

May 18, 2023

via RESS

Ms. Nancy Marconi
Registrar
Ontario Energy Board
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Dear Ms. Marconi:

**Re: EB-2022-0024 – Elexicon Energy Inc. (“Elexicon”) ICM Application
Reply Argument**

Pursuant to Procedural Order No. 5 dated February 15, 2023 please find attached Elexicon’s Reply Argument.

Please contact the undersigned with any questions by email at svetsis@elexiconenergy.com or by phone at (905) 427-9870 ext. 2256.

Yours truly,



Stephen Vetsis
Vice President – Regulatory Affairs & Stakeholder Relations
Elexicon Energy Inc.

cc: John Vellone

EB-2022-0024

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended (the “Act”);

AND IN THE MATTER OF an Application by Elexicon Energy Inc. under Section 78 of the Act for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2023, and January 1, 2025.

**SUBMISSIONS OF
ELEXICON ENERGY INC.**

May 18, 2023

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A. INTRODUCTION

1. Elexicon submits this written reply to the written submissions of OEB Staff,¹ the Consumers Council of Canada (“CCC”),² the Distributed Resource Coalition (“DRC”),³ the Power Workers’ Union (“PWU”),⁴ Environmental Defence (“ED”),⁵ the School Energy Coalition (“SEC”),⁶ the Coalition of Concerned Manufacturers & Businesses of Canada (“CCMBC”),⁷ the Brooklin Landowners Group Inc. (“**Brooklin Landowners**”),⁸ and the Vulnerable Energy Consumers Coalition (“VECC”) ⁹ each dated May 4, 2023.
2. In replying to the above written submissions, Elexicon adopts and affirms the submissions in its April 18, 2023 Argument-in-Chief (“**Argument-in-Chief**”). Capitalized terms (including acronyms) used in this reply but not otherwise defined herein have the meaning ascribed to those terms in Argument-in-Chief or in Evidence.
3. In summary, the Brooklin Landowners support Elexicon’s Application without reservation.¹⁰ DRC generally supports the Application¹¹ and ED supports the WSG as an “excellent initiative” and that “Elexicon should be commended for bringing these innovative projects to the OEB”.¹² Both SEC¹³ and OEB Staff¹⁴ are generally supportive

¹ OEB Staff Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/787051/File/document>> [OEB Staff Submissions].

² CCC Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/787090/File/document>> [CCC Submissions].

³ DRC Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/787026/File/document>> [DRC Submissions].

⁴ PWU Submissions filed May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/786938/File/document>> [PWU Submissions].

⁵ ED Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/787053/File/document>> [ED Submissions].

⁶ SEC Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/787035/File/document>> [SEC Submissions].

⁷ CCMBC Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/786975/File/document>> [CCMBC Submissions].

⁸ Brooklin Landowners Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/787050/File/document>> [Brooklin Landowners Submissions].

⁹ VECC Submissions dated May 4, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/787091/File/document>> [VECC Submissions].

¹⁰ Brooklin Landowners Submissions, at page 3, para. 3.

¹¹ DRC Submissions, at page 2, para. 2.

¹² ED Submissions, at page 2.

¹³ SEC Submissions, at paras 1.3.6 to 1.3.9; Oral Hearing Transcript Day 1 dated March 31, 2023, at page 144, line 20, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

¹⁴ OEB Staff Submissions, at page 1.

of the Whitby Smart Grid investments, however they argue that only a portion of the project¹⁵ should receive ICM funding with the remainder of the project to be funded through base capital spending. CCC,¹⁶ VECC,¹⁷ and PWU each include platitudes about supporting innovation, but ultimately argue the OEB should reject both ICM proposals. PWU is dismissive of,¹⁸ and CCMBC is hostile to¹⁹ notions of innovation in arguing the OEB should reject both ICM proposals.

4. At a high-level, Elexicon notes the following key themes in reply:

- a) *The Whitby Smart Grid represents an important “no regrets” action that is needed now to have any chance of avoiding a forecasted material upstream capacity investment in 2030* – Several parties seek to distinguish the OEB’s approval of the Sault Smart Grid project from the Whitby Smart Grid on the basis that Elexicon does not have 25% NRCan funding that will be “lost” unless the Whitby Smart Grid is completed now. However, Elexicon does have \$4MM NRCan funding (for the ADMS) and the METSCO evidence demonstrates that Elexicon also has an opportunity to defer a new TS in 2030 valued at up-to \$9.94MM which will be lost if the ADMS and the Whitby Smart Grid, respectively, are not done now.²⁰ As is explained in Argument-in-Chief,²¹ the Whitby Smart Grid is needed now to modernize the distribution system in the Town of Whitby by 2025 so as to be in a position to begin integrating, accommodating and managing DER penetration between 2026 – 2030 so as to have a realistic chance of having those DER resources available and to have sufficient experience with those DER resources to be able to making a sound engineering judgement to be able to defer or avoid a material upstream capacity investment forecasted by METSCO to be

¹⁵ SEC argues that ICM funding should be limited to the ADMS. OEB Staff argue that ICM funding should be approved for the ADMS and SCADA portion of the Whitby Smart Grid.

¹⁶ CCC Submissions, at page 7.

¹⁷ VECC Submissions, at pages 6-7.

¹⁸ PWU Submissions.

¹⁹ CCMBC Submissions, at page 17.

²⁰ Application, Appendix B-4, at page 29, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/752068/File/document>>.

²¹ Argument-in-Chief, at paras. 66-69, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/785697/File/document>>.

required as early as 2030. In this way, the Whitby Smart Grid is the first necessary step to modernize the local distribution system before implementing programs to aggressively enable DERs and local capacity markets²² and potentially contribute in a meaningful way to address the pending summer capacity need the IESO forecasts is due to emerge in 2026.²³

- b) ***Rate mitigation can be used to address the rate impact concerns with the Whitby Smart Grid*** - The primary concern with the Whitby Smart Grid raised by several parties relates to the pacing of the Whitby Smart Grid investment and the resulting rate impacts, not the need for the investment itself. If rate impacts are the principal concern, then the solution should be to mitigate those rate impacts rather than deny approval of the project. Elexicon has proposed one rate mitigation option that would more slowly spread the rate increase over 2025, 2026 and while still delivering the greatest net benefit to customers as soon as is possible.²⁴ If the OEB approves the Whitby Smart Grid project for delivery in 2025, such an approval could also include a condition of approval that would have Elexicon produce evidence of various options to mitigate rate impacts as part of the 2025 IRM application.
- c) ***Both ICM Projects are good examples of utility innovation aligned with OEB and Government policy objectives and expectations*** - The ICM Projects are responsive to and consistent with the Province of Ontario's objective to build 1.5 million new homes over 10 years, the OEB's statutory objectives including to facilitate innovation, the Minister of Energy's 2021 mandate letter and 2022 letter of direction, various OEB filing requirements and guidelines, as well as the OEB's 2023 Framework for Energy Innovation report.²⁵ Both ICM Projects are excellent examples of a utility proposing well known technologies in an innovative solution that should be supported.

²² Application, Appendix B-3.

²³ Argument-in-Chief, at para. 28.

²⁴ Undertaking J2.9 dated April 12, 2023, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>>.

²⁵ Argument-in-Chief, at paras. 63-65.

- d) ***The Whitby Smart Grid is a good example of responding to the call for distribution sector resiliency, responsiveness and cost efficiency*** – The Whitby Smart Grid is responsive and consistent with the provincial and local Government’s vision for, and current OEB consultation on,²⁶ a clean energy grid that promotes electrification, attracts investment and creates jobs while continually enhancing the reliability, resiliency and customer choice of Ontario’s energy systems.²⁷ The Whitby Smart Grid provides customers with greater choices for meeting energy needs (e.g., promoting a high DER future) and enhances the reliability and resiliency of Elexicon’s distribution system, all at a projected \$39.785 million net benefit to customers (excluding the value of any deferred TS or capacity contribution).²⁸
- e) ***Uncertainty in Whitby Smart Grid costs and benefits are exaggerated and should be dismissed*** – Arguments that ask the OEB to deny Whitby Smart Grid due to uncertainty in forecasted costs and benefits greatly exaggerate the level of uncertainty and should be rejected. The costs are forecasted based on traditional Class 4 estimate methodology, which has been used for estimates previously approved by the OEB in several recent decisions including EB-2022-0003 and EB-2022-0086.²⁹ On the other hand, the technologies involved are all proven and benefits are readily predictable as is documented by METSCO analysis,³⁰ in the

²⁶ OEB, Distribution Sector Resilience, Responsiveness & Cost Efficiency (EB-2023-0003), online: <<https://engagewithus.oeb.ca/sectorresilience>>.

²⁷ Ontario Ministry of Energy, Letter of Direction, October 21, 2022, at pages 1-2, online: <<https://engagewithus.oeb.ca/34570/widgets/143646/documents/96565>>; and Application, Appendix B-6, Durham Region, Letter of Support.

²⁸ Argument-in-Chief, at pages 4-5, 11, and 27, paras. 6-9, 36 and 86; Application, Appendix B-1, at section 3.2 and page 58.

²⁹ OEB Decision EB-2022-0003, Enbridge Gas Inc., July 7, 2022, pages 15 and 18; OEB Decision EB-2022-0086, Enbridge Gas Inc., November 3, 2022, pages 15 and 18.

³⁰ Application, Appendix B-5, at pages 8, 9, 12 and 15.

Application,³¹ in IRRs,³² in oral testimony³³ and in the most recent Hydro Ottawa pilot.³⁴

- f) ***An overly technical application of the decade old ICM policy will pose a barrier to innovation*** – In many of the submissions, parties make various arguments to disallow recovery of Elexicon’s proposed projects based on false, overly technical, and rigid interpretations of OEB policy. A panel of commissioners considering individual rate applications are not bound by OEB policy, and where justified by specific circumstances, may choose not to apply the policy (or part of a policy).³⁵ The OEB is expected to facilitate and enable then energy transition through innovation and adoption of new technologies.³⁶ The Minister of Energy’s 2021 Mandate Letter states that developing policies that support the adoption of non-wires alternatives to traditional forms of capital investment will be essential to maintaining an effective regulatory environment amidst the increasing adoption of DERs.³⁷ Elexicon recognizes that there are challenges and tradeoffs with approving the ICM Projects, however the OEB should not allow perfection to be the enemy of the good especially where nearly all of the parties in this proceeding and local governments are supportive of the innovative concepts proposed in the Application.
- g) ***Asking Elexicon to pace the construction of the Whitby Smart Grid will not only delay customer benefits, but take an extraordinary amount of time*** – The evidence

³¹ Application, Appendix B-1, at section 3.2.

³² Undertaking JT2.3 dated January 24, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/774374/File/document>>; Interrogatory Response to CCMBC-13(c) dated October 18, 2022, at page 47,

online:<<https://www.rds.oeb.ca/CMWebDrawer/Record/758815/File/document>>.

³³ Oral Hearing Transcript Day 1 dated March 31, 2023, at pages 141-142, and pages 144-145, at lines 13 and 18, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

³⁴ Undertaking JT1.10 dated January 24, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/774374/File/document>>.

³⁵ Argument-in-Chief, at para. 43.

³⁶ Ontario Ministry of Energy, Mandate Letter, November 15, 2021, at page 2, online:

<<https://www.oeb.ca/sites/default/files/mandate-letter-from-the-Minister-of-Energy-20211115-en.pdf>>; Ontario Ministry of Energy, Letter of Direction, October 21, 2022, at page 1, online:

<<https://www.oeb.ca/sites/default/files/letter-of-direction-from-the-Minister-of-Energy-20221021.pdf>>.

³⁷ Ontario Ministry of Energy, Mandate Letter, November 15, 2021, at page 2, online:

<<https://www.oeb.ca/sites/default/files/mandate-letter-from-the-Minister-of-Energy-20211115-en.pdf>>

on the record demonstrates Elexicon's prudent prioritization and re-forecasting of its capital investments.³⁸ The record also demonstrates that the benefits customers will receive from the Whitby Smart Grid are maximized with the shortest construction timeline.³⁹ A decision that asks Elexicon to pace construction beyond the proposed two-year timeline will delay WRZ customers receipt of tangible benefits.

5. Should the OEB have concerns with the applicability of its existing approach in the context of the Whitby Smart Grid Project set out in Undertaking J2.9 to more slowly spread the rate increase over 2025, 2026 and 2027, Elexicon submits that it would be willing to provide evidence that explores alternative approaches to cost allocation at the time of its 2025 IRM Application (i.e. before the rate riders are finalized) and, on an interim basis, set a maximum annual rate impact to customers.
6. Elexicon agrees with ED that an outright rejection of the ICM Projects could have a chilling effect on innovation and other utilities may shy away from proposing new approaches.⁴⁰ An application such as this one, on average, takes two years (or more) to put together and one year to litigate.⁴¹ This is a significant undertaking for utilities and an outright rejection, or even a curtailed approval, may signal to others preparing similar innovative applications it is simply not worth the risk, time, effort or cost.
- 7.

³⁸ Interrogatory Response to SEC-13 dated October 18, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758809/File/document>>; Interrogatory Response to PWU-7 dated October 18, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758808/File/document>>; Oral Hearing Transcript Day 2 dated April 3, 2023, at page 146, lines 13-26, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>; Technical Conference Transcript Day 1 dated January 17, 2023, at page 179, lines 14-16, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/772938/File/document>>; Interrogatory Response to CCMBC-9 c) dated October 18, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758815/File/document>>.

³⁹ Oral Hearing Transcript Day 1 dated March 31, 2023, at page 195, lines 6-13, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

⁴⁰ ED Submissions, at page 6; Oral Hearing Transcript Day 1 dated March 31, 2023, at pages 149, lines 14-25, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

⁴¹ Oral Hearing Transcript Day 1 dated March 31, 2023, at page 196, lines 2-20, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

8. In summary, the proposed ICM requests and record of this proceeding meet the OEB's policy requirements, the policy mandate of the Ontario Government, demonstrates substantive customer benefits, and the Elexicon's proposed adjustments to incorporate rate mitigation and alternative cost allocation address customer bill impact concerns. All of the above is responsive to all stakeholders and provide the OEB Panel support for its approval of the requested relief in this Application.
9. While Elexicon has not specifically responded to all written submissions in this Reply, it should not be assumed by Elexicon's silence that it agrees with or is ambivalent towards the comments made.

B. ISSUE #1: Are the three ICM projects proposed mutually exclusive? If not, how should the OEB consider common/overlapping elements?

10. OEB Staff argues that the OEB should consider each ICM request independently based on the costs and benefits provided for each.⁴² SEC similarly argues that the two projects can be treated as two unrelated requests for approval.⁴³
11. Elexicon agrees, in part. Elexicon structured its Application so that the Whitby Smart Grid Project and the Sustainable Brooklin Project could be considered as separate and distinct projects – the OEB can approve one without the other based on its assessment of the public interest.⁴⁴
12. Elexicon has articulated the factual linkages between the two projects in its Argument-in-Chief.⁴⁵ Elexicon submits it would not be prudent to simply ignore those linkages. The linkages represent an opportunity for Elexicon to provide its Whitby Rate Zone (“WRZ”) customers benefit, and meet Provincial Government mandated goals. Rather, to the extent those factual linkages are a relevant consideration is a matter the panel of commissioners can decide when considering the entirety of the evidence.

⁴² OEB Staff Submissions, at page 6.

⁴³ SEC Submissions, at page 7, section 2.2.2.

⁴⁴ Argument-in-Chief, at page 7, para. 15.

⁴⁵ Argument-in-Chief, at page 7, para. 17.

C. ISSUE #2: Has the customer engagement for these projects been appropriate?

13. OEB Staff acknowledges that project specific customer engagement is not a requirement for an ICM funding request.⁴⁶ Elexicon agrees.
14. Despite this, Elexicon consulted directly with the democratically elected representatives of the Town of Whitby and considered the results of its Customer Engagement Report filed as part of its Distribution System Plan just one year before the ICM application was filed.
15. OEB Staff⁴⁷ and SEC⁴⁸ argue that the OEB should put less weight on the Whitby Town Council's endorsement for the projects because the Town of Whitby is Elexicon's shareholder. SEC goes on to argue that "there is no evidence before the OEB to indicate whether the town council approval was based on their perception of constituents' concerns, or on the financial benefits to the Town of increasing rate base and utility revenue."⁴⁹
16. Elexicon does not agree.
17. There is no evidence that the Town of Whitby was in any way influenced by its role as a minority shareholder (32%) of Elexicon's parent company Elexicon Corporation when endorsing the projects. The presentation made by Elexicon to the Town of Whitby is on the evidentiary record in this proceeding.⁵⁰ The information focused on project costs, project benefits and bill impacts. Shareholder returns were not part of the discussion. Similarly, the Town of Whitby's July 12, 2022 support letter attaching the Special Council meeting minutes is available on the public record.⁵¹ This endorsement focuses on the importance of a wide range of considerations, but shareholder returns were not one of them.⁵² Finally, the Town of Whitby submitted a letter of comment on January 18, 2023

⁴⁶ OEB Staff Submissions, at page 6.

⁴⁷ OEB Staff Submissions, at page 6.

⁴⁸ SEC Submissions, at pages 8-9, sections 2.3.8 and 2.3.9.

⁴⁹ SEC Submissions, at page 8-9, section 2.3.8.

⁵⁰ SEC-01, Attachment 2 dated February 10, 2023, at pages 27 to 33, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/777671/File/document>>.

⁵¹ Application, Appendix B-6, at pages 325-331, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/752068/File/document>>. The Special Council Minutes are also available at <https://pub-whitby.escribemeetings.com/FileStream.ashx?DocumentId=6806>.

⁵² Application, Appendix B-6, at pages 325-327, online:

reaffirming its strong support for the ICM Application.⁵³ Again, shareholder returns were not mentioned among any of the reasons for the Town's support for the project.

18. SEC also alleges that there were errors on the bill impacts presented to the Whitby Town Council, when compared to Elexicon's response to Undertaking JT2.6.⁵⁴ Elexicon does not agree. Undertaking JT2.6 assumes 0% energy savings from the VVO component of Whitby Smart Grid and it includes the impacts of a separate Z-factor application that is completely unrelated to these ICM projects. Elexicon would not propose investing in VVO technology if a 0% energy savings was even a remotely realistic outcome. In addition, the Z-factor costs and bill impacts were premature at the time of the Whitby Town Council meeting.
19. OEB Staff and SEC also entirely ignore the preferences of the Regional Municipality of Durham as expressed in their July 19, 2022, letter in support of the Application,⁵⁵ even though the Region has no ownership stake in Elexicon.
20. Elexicon submits that OEB Staff has erred in not properly considering the local preferences expressed by the democratically elected representatives of the affected community. This is not in the public interest.
21. OEB Staff further argues that Elexicon did not sufficiently consider customer concerns to limit rate increases into consideration, and further that Elexicon has not sufficiently considered its customer preferences for managing reliability within existing rates, or gradually increasing rates, if required.⁵⁶ SEC similarly argues that the OEB should disregard the Customer Engagement Report results because there was no bill impact information included.⁵⁷

<<https://www.rds.oeb.ca/CMWebDrawer/Record/752068/File/document>>.

⁵³ Town of Whitby Letter of Support dated January 18, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/779605/File/document>>.

⁵⁴ SEC Submissions, at page 9, sections 2.3.10 to 2.3.13.

⁵⁵ Application, Appendix B-6, at pages 332-333, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/752068/File/document>>.

⁵⁶ OEB Staff Submissions, at page 6.

⁵⁷ SEC Submissions, at page 8, section 2.3.4.

22. Elexicon does not agree. Elexicon submits the OEB must consider all of the benefits associated with the Whitby Smart Grid Project when assessing customer needs and preferences. In proposing this Application, Elexicon carefully weighed its customer concerns as they relate to limiting rate increases against customer support for certain reliability and resiliency investments, investment in new grid management technologies that will help Elexicon manage more electric vehicles, renewable generation and energy storage, and investments that will help to reduce rate increases after 2029.⁵⁸ This is illustrated in the following table taken from the Customer Engagement Report,⁵⁹ showing that 84% of customers are supportive of Elexicon focusing its efforts on benefits delivered by the Whitby Smart Grid Project.

Table 1: Responses from Customer Engagement Report⁶⁰

"Please choose two of the following objectives that you think Elexicon should focus its efforts on, in addition to keeping the system safe and accommodating new growth in the coming years."

	First mention	Second mention	Combined	WSG
Improving the grid's resilience to major weather events, like storms, etc.	28%	31%	30%	✓
Preparing the grid for new types of uses, like EV's & renewable generation	23%	11%	17%	✓
Investing now in things that will help reduce rate increases after 2029	13%	20%	16%	✓
Minimizing the impact of power outages	7%	19%	13%	✓
Helping customers manage their electricity use	10%	10%	10%	
Reducing the environmental impact of Elexicon's operations	12%	5%	8%	✓
Improving power quality	5%	2%	4%	
Addressing customer requests faster and more efficiently	2%	1%	2%	

23. Finally, OEB Staff notes that if the three ICM requests and the current Z-factor request are approved, it would result in a 31.36% increase in distribution rates or 11.95% on the total bill impact for the 2025 rate year.⁶¹

⁵⁸ Argument-in-Chief, at page 9, paragraph 24.

⁵⁹ Elexicon Distribution System Plan dated April 1, 2021, Appendix B, at page 10, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758818/File/document>>.

⁶⁰ Application, Appendix B-7, at page 10, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/752068/File/document>>.

⁶¹ OEB Staff Submissions, at page 7.

24. Elexicon does not agree for the following three reasons.
25. First, to the extent that immediate bill impacts arising from this ICM Application are a concern, Elexicon has provided a rate mitigation option⁶² to more slowly spread the rate increase over 2025, 2026 and 2027 to directly address this concern while still delivering the greatest net benefit to customers as soon as is possible.⁶³ OEB Staff does not address this rate mitigation option.
26. Second, the Z-factor application (EB-2022-0317) will, if approved, result in a fixed rate rider from July 1, 2023 to December 31, 2028 (capital cost recovery rate rider) and a fixed rate rider from July 1, 2023 to June 30, 2024 (operating cost recovery rate rider). Neither of these requests for relief will result in an incremental bill increase in 2025.
27. Third, it is improper to consider the bill impacts of a separate and distinct Z-factor application when considering this Application before the OEB. Elexicon should not be penalized for the unanticipated rate impacts arising from an event that is truly outside of management's control and outside of existing rates.
28. Extending the duration of implementation for the Whitby Smart Grid does not address the bill impact concerns. The economic analysis performed by Elexicon consistently found that the option with the fastest implementation of the Whitby Smart Grid is the one with the highest net present value for customers.⁶⁴ Elongating the deployment of the Whitby Smart Grid may result in increased project costs and unequal deferral of net benefits (but not the costs) for some of Elexicon's customers as the Whitby Smart Grid is constructed over time in different parts of the service territory.⁶⁵ These parties' proposal is tantamount to a rate mitigation plan that does not allow WRZ customers to receive the up-front benefits documented from the WSG project."

⁶² Undertaking J2.9 dated April 12, 2023, at pages 2-6, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>>.

⁶³ Elexicon's focus on the most economically efficient option, being the one that delivers the greatest net benefit to customers, was covered throughout Argument-in-Chief dated April 18, 2023 and will not be repeated again here.

⁶⁴ Oral Hearing Transcript Day 1 dated March 31, 2023, at page 195, lines 6-13, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

⁶⁵ Application, Appendix B-1, at pages 48-49 and 54.

29. CCC⁶⁶, CCMBC⁶⁷, SEC⁶⁸ and VECC⁶⁹ argue that the customers and/or the Whitby Town Council did not receive sufficient information related to the projects per se, the impact on ratepayer bills (especially for low-income customers⁷⁰), uncertainties of project costs and benefits, availability of further federal funding, or other slower paced options with lower or no monthly bill impacts. SEC's submissions raised concerns regarding the Whitby Town Council's financial interest in Elexicon's investment decisions,⁷¹ and finally, DRC argues that despite the sufficiency of Elexicon's customer engagement process, it needs to provide additional data in relation to DERs, the impact of the Sustainable Brooklin Project, and file a proposal of Elexicon's DER Enabling Program.⁷²
30. Elexicon disagrees with the premise that the Whitby Town Council did not receive sufficient information related to the projects. The evidence on record shows that Elexicon went out of its way to seek guidance from the Whitby Town Council with full transparency.⁷³
31. The presentation to the Whitby Town Council informed them about the sources and timing of how customers would receive the benefits from Volt-Var Optimization ("VVO"), and Fault Location, Isolation and Restoration ("FLISR"). The Whitby Town Council understood that savings generated from the VVO would directly reduce a customer's bill, and savings from FLISR would benefit a customer by improving reliability.
32. Additionally, the Whitby Town Council was informed of the cost increase from not only both ICM projects but also the estimated bill impact from the 2023 IRM rate increase.⁷⁴

⁶⁶ CCC Submissions, at pages 5-6.

⁶⁷ CCMBC Submissions, at pages 16-17.

⁶⁸ SEC Submissions, at pages 7-9.

⁶⁹ VECC Submissions, at pages 8-9.

⁷⁰ VECC Submissions, at page 9.

⁷¹ SEC Submissions, at pages 8-9.

⁷² DRC Submissions, at page 15.

⁷³ Interrogatory Response dated October 18, 2022, at page 52, Interrogatory SEC-11 Attachment 1, Slide titled ICM Application: Bill Impacts, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758809/File/document>>, which notes the Monthly Total Bill value of \$126 and cost increases of \$3.83/month from the WRZ IRM, and \$5.19/month from both ICM Projects. The total of these cost increases was articulated as \$9.02/month on an estimated \$126/month customer bill.

⁷⁴ Interrogatory Response dated October 18, 2022, at page 52, Interrogatory SEC-11 Attachment 1, Slide titled ICM Application: Bill Impacts, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758809/File/document>>.

Elexicon submits that CCC, CCMBC, SEC, VECC and OEB Staff have selectively focused on one element of the bill impact calculation to justify their argument.

33. A significant differentiator of this proceeding from many other ICM requests before the OEB is Elexicon's transparent request for guidance by its ratepayers' elected constituency. Elexicon went before the elected body to seek approval, believing this is one of the best forms of customer engagement. For this reason alone, the OEB Panel should give substantive weight to the unanimous approval and support provided by the Whitby Town Council. However, if this point is not sufficient reason, the OEB Panel should feel very confident in the comprehensive and transparent engagement of Elexicon with the Whitby Town Council.
34. The record in this proceeding shows that the energy savings will provide a substantive offsetting bill impact to WRZ customers. When the energy savings are combined with Elexicon's commitment to a bill impact mitigation proposal, the WRZ customers will be able to immediately receive the benefits from the Whitby Smart Grid to offset smoothed bill increases.
35. DRC agrees that Elexicon's engagement has been sufficient for the approvals it seeks in this application. As noted by DRC, However, DRC believes that future customer engagements move beyond the more basic and general approach Elexicon has employed here. ED submits that adding certain approval conditions for additional data could help signal this expectation and establish a precedent for similar future proceedings (as discussed in section I of this Reply below).⁷⁵
36. Elexicon strongly disagrees with DRC's characterization of the customer engagement as being "basic" and "general". There is no standard method or approach required for customer engagement. For the reasons discussed above and in the Application, the ICM Projects are directly responsive to the preferences of customers and have been endorsed by elected officials in a public forum.⁷⁶ Elexicon tailored customer engagement to the

⁷⁵ DRC Submissions, at page 15, paras. 44-45.

⁷⁶ Application, Appendix B, at section 2.4.

circumstances. Indeed, DRC's argument notes that 76% of Elexicon customers were highly supportive or somewhat supportive of Elexicon investing in grid management technologies that will help it manage the impact of energy transition.⁷⁷

D. Issue #3: For the Sustainable Brooklin Project, is the requested exemption to the distribution system code: (a) appropriate; (b) in the best interest of ratepayers; (c) in the public interest?

A. Is the requested exemption appropriate?

37. OEB Staff argues that the requested exemption is not appropriate because in their words, "Elexicon Energy's request, in essence, is that the beneficiary pays principle should not apply where a property developer may incur delays associated with financing a capital contribution as may be required under section 3.2 of the DSC."⁷⁸
38. Elexicon does not agree.
39. Elexicon understands the beneficiary pays principle and outlined five specific reasons why Elexicon is supportive of the Sustainable Brooklin Project exemption at paragraphs 27, 34, and 38 – 40 of its Argument-in-Chief. OEB Staff does not address any of Elexicon's submissions in this regard. This is not helpful for a reasoned debate.
40. In the case of the Sustainable Brooklin Project, the beneficiary of incremental DER capacity facilitated through the project will be a much broader than the developers or the local property owners. Ratepayers in the Town of Whitby stand to benefit from the potential deferral or avoidance of a material capacity investment, as well as increased reliability and resiliency of the local distribution system.⁷⁹ In addition, ratepayers across Ontario stand to benefit from incremental DER capacity to help meet forecasted Province-wide needs.⁸⁰ OEB Staff completely ignores these beneficiaries, and what amount if any, they should be required to contribute.

⁷⁷ DRC Submissions, at page 15, para. 44.

⁷⁸ OEB Staff Submissions, at page 7.

⁷⁹ Application at Appendix B-5 at Section 5.

⁸⁰ Argument-in-Chief at paras. 28-31.

41. Perhaps most concerning is OEB Staff's acknowledgement that if the OEB were to refuse the exemption request this will delay the Sustainable Brooklin project without giving any consideration to the implications of this decision on the Province of Ontario's commitment to get 1.5 million homes built over the next ten years. The entire Province is going in one direction. OEB Staff argues that the OEB should go in the opposite direction.
42. While evidence of potential delays that property developers may or may not incur is evidence that Elexicon believed was relevant to the OEB's consideration of this matter - it is not the sole or even the primary reason driving Elexicon's proposed exemption request. Rather, Elexicon assessed the investment from a much broader perspective as outlined in its Argument-in-Chief. Particularly, Elexicon assessed and identified the opportunity to facilitate a deferral or avoidance of future capital investment, as well as, the opportunity to reduce barriers to customer choice and facilitate climate action.
43. ED is very concerned that an outright rejection of Elexicon's Sustainable Brooklin Project could have a chilling effect on innovation.⁸¹ ED is supportive of the Sustainable Brooklin Project provided that existing ratepayers are not fully funding the \$26.6 million Brooklin Line.⁸² Instead of the *quid pro quo* proposed by Elexicon, ED is proposing that Elexicon use financial incentives to address concerns raised by the Brooklin Developers, including⁸³: (1) extending the Customer Attachment and Customer Revenue Horizon from 5 to 10 years and from 25 to 40 years, respectively (addressed in section J.3 below); (2) relieve first contributors from fronting the full capital contribution by instead collect those costs developer-by-developer until the customer attachment forecast underpinning the capital contribution calculation has been met; and (3) dispense with or reduce the expansion deposit required under section 3.2.20 of the DSC.
44. Elexicon disagrees with ED that its proposed relief would bring about greater benefits at a lesser cost to existing customers. In effect, ED is proposing to shift the financial risk in the

⁸¹ ED Submissions, at page 6; Oral Hearing Transcript Day 1 dated March 31, 2023, at pages 149, lines 14-25, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

⁸² ED Submissions, at page 4.

⁸³ ED Submissions, at pages 4-5.

connection process onto utilities and ratepayers. If first contributors are relieved from fronting the full capital contribution, it is the utility and/or ratepayers that will be financing distribution system expansions on behalf of customers without any risk premium in their cost of capital. If the load or connection forecast does not materialize as expected, a utility would not have recourse to the customer's expansion deposit to make the underfunded expansion whole. There is a significant risk that utilities and ratepayers could be left with the bill for overbuilt or stranded assets.

45. ED states that these financial incentives for developers will “likely be sufficient to convince them to install the rough-ins”.⁸⁴ This question should have been put to the Brooklin Landowners during the oral hearing to support this conclusion, but ED chose not to do so. Unlike Elexicon's *quid pro quo*, ED does not know whether its proposed financial incentives will result in developers constructing any DER or EV ready homes. This alternative proposal is too financially uncertain and does not compel any binding commitments from developers. Elexicon and its ratepayers have a real and substantial risk of negative financial consequences with ED's proposal and it should be rejected by the OEB.
46. With respect to the “review of residential connection policies” proposed by ED, the proposals of ED represent significant changes and deviations from the DSC that would be better considered in another forum rather than in a specific application.

B. Is the requested exemption in the best interest of ratepayers?

47. OEB Staff argues that there is no reasonable expectation of material ratepayer benefit and therefore the exemption is not in the best interest of ratepayers.⁸⁵

⁸⁴ ED Submissions, at pages 4-5.

⁸⁵ OEB Staff Submissions, at page 8.

48. In arriving at this conclusion, OEB Staff argues that the sole quantifiable benefit to Whitby Rate Zone ratepayers is the potential to defer an investment in a new transmission station⁸⁶ to justify focusing exclusively on the METSCO TS deferral analysis.⁸⁷
49. Elexicon submits that OEB Staff takes an overly narrow reading of the evidence that fails to do justice to this innovative proposal. In discharging its authority, the OEB Panel has the ability to exercise a broad read of the evidence. The OEB Panel can also give weight to an investment proposal the accelerates Ontario towards its Net-Zero goals.
50. Specifically, OEB Staff ignores numerous other ratepayer benefits associated with the innovative Sustainable Brooklin proposal that is clearly detailed in the evidence:⁸⁸ including environmental benefits,⁸⁹ the ability of DERs to not only defer capital investments but to facilitate alternative asset designs that may result in the avoidance of those capital investments altogether,⁹⁰ the grid resiliency benefits of increased DER penetration,⁹¹ facilitation of the customers' ability to connect DERs to Elexicon's grid at lower costs,⁹² compliance with the latest safety standards,⁹³ incorporation of the latest security and data safety features to protect cybersecurity and privacy through the deployment of new communications systems,⁹⁴ leveraging of resources and expertise arising from the collaboration between Elexicon and the developers,⁹⁵ as well as the potential of a Conservation and Demand Management ("CDM") program under the OEB's 2021 CDM Guidelines for Electricity Distributors to fund upfront customer incentives.⁹⁶
51. In addition, OEB Staff fails to read the METSCO conclusions based on the limited scope of the report (METSCO only examined the impact of DER penetration levels in the North

⁸⁶ OEB Staff Submissions, at page 9.

⁸⁷ Application, Appendix B-4.

⁸⁸ Application, Appendix B-2, at pages 27-36 (which includes a detailed list of all of the quantitative and qualitative benefits).

⁸⁹ Application, Appendix B-2, at pages 33-34; Application, Appendix B, at pages 50-51, section 5.4.

⁹⁰ Application, Appendix B-2, at page 32.

⁹¹ Application, Appendix B-2, at pages 28-29.

⁹² Application, Appendix B-2, at page 27.

⁹³ Application, Appendix B-2, at pages 33.

⁹⁴ Application, Appendix B-2, at pages 33.

⁹⁵ Application, Appendix B-2, at page 34.

⁹⁶ Application, Appendix B-2, at page 35.

Brooklin community alone).⁹⁷ In reality, although the barriers to entry will be higher elsewhere in the WRZ, it can reasonably be expected that as DERs proliferate generally in Ontario there will also be increasing numbers of DERs elsewhere in the WRZ, it just may not be to the same extent as North Brooklin.⁹⁸ Elexicon submits that this increases the probability of achieving the highest level of benefits forecasted by METSCO in their analysis, if not exceeding those potential benefits.

52. Finally, OEB Staff fails to recognize that benefits will accrue to existing WRZ ratepayers associated with the significant load growth in the North Brooklin area. These benefits arise as a result of the economies of scale that are a key feature of natural monopolies like electricity distribution. As more customers are added to Elexicon's distribution system, the fixed costs associated with the system will be spread over a larger group of customers. This in turn reduces the portion of those fixed costs paid for by existing ratepayers. While OEB Staff acknowledges the likely delays that will be incurred by the property developers if the requested DSC exemption is not approved,⁹⁹ OEB Staff fails to recognize the implication of this – that the existing WRZ will continue to bear a larger portion of the fixed costs for a longer period of time. This is contrary to the OEB's statutory objective to promote economic efficiency and cost effectiveness in the distribution of electricity and to facilitate the maintenance of a financially viable electricity industry.¹⁰⁰

C. Is the requested exemption in the public interest?

53. OEB Staff argues that Elexicon has not demonstrated that granting the requested exemption is in the public interest, noting that failure to enforce the beneficiary pays principle raises significant concerns regarding the interests of private developers versus ratepayers.¹⁰¹
54. Elexicon again does not agree. OEB Staff fails to engage with or respond to any of the five specific reasons where Elexicon argues that the requested exemption is in the public

⁹⁷ Application, Appendix B-4, at page 24, Table 15, and page 29, section 7.

⁹⁸ Oral Hearing Transcript Day 2 dated April 3, 2023, at page 85, lines 6-10, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

⁹⁹ OEB Staff Submissions, at page 7.

¹⁰⁰ OEB Act, 1998, SO 1998, c 15, Sch B, s.1(1)(2).

¹⁰¹ OEB Staff Submissions, at pages 10-11.

interest at paragraphs 27, 34, and 38 – 40 of its Argument-in-Chief. Ignoring relevant considerations is not, in Elexicon’s submissions, appropriate.

55. SEC does not take a position on the exemption request, per se, but argues that the lack of availability of the quid-pro-quo to non-residential customers is inherently unfair.¹⁰² SEC instead argues that if the OEB approves the Sustainable Brooklin ICM proposal, a similar incentive should be granted to all customers that incur incremental spending for comparable DER rough-ins.¹⁰³ Elexicon agrees with this approach in principle, although the specifics of any such treatment of non-residential customers would need to be fair and appropriate. The proposal in Elexicon’s pre-filed evidence aligns the cost responsibility (i.e., capital contribution) and benefits (i.e., credits for unforecasted load) with what developers would have received under the standard rules of the DSC. In Undertaking JT2.4, Elexicon noted another more administratively efficient alternative which would be to simply not require any contributions from unforecasted non-residential loads and have the line be entirely funded by rate payers. In that alternative proposal, the only future contributions towards the line would be from developers that did not meet the *quid pro quo*.
56. VECC submits that if the OEB does not approve the DSC exemption, the later in-service date allows more time for additional developers to achieve draft site plan approval and share the contribution costs.¹⁰⁴ Elexicon submits that VECC is being optimistic in this regard. If the OEB does not approve the Sustainable Brooklin Project, Elexicon will need to sign an offer to connect and receive a capital contribution from the developers shortly after the issuance of the OEB’s decision in order to place orders for materials with long lead times to meet the Q2 2025 in-service date. This would not provide significant time for additional developers to receive approvals and share in the contribution costs, as implied by VECC.

¹⁰² SEC Submissions, at page 10, section 3.2.

¹⁰³ SEC Submissions, at page 14, section 3.2.15.

¹⁰⁴ VECC Submissions, at page 19.

57. VECC expresses its opinion that the lack of wiring and a plug for an EV charger would not be providing homebuyers with a convenient form of charging and would do little to remove barriers to adoption.¹⁰⁵ Elexicon disagrees. VECC has provided no evidence that this would be the case. The evidence on the record is that the installation of the rough-ins would in fact cost 300% more if done post-construction. The installation of rough-ins after the fact would also be more burdensome and disruptive for homeowners, as it can require damage and repairs to the internal aesthetics of a home (e.g. opening walls to run cable) which would be an even more significant barrier for customers. In contrast, running a wire through conduit that is already provided is a straight-forward, non-disruptive and relatively low-cost exercise. VECC's submission also myopically focuses on EV readiness and ignores that the rough-ins provided by the developers would also greatly facilitate solar panel and battery installations.
58. VECC states that EV ready parking requirements for new developments are emerging as a leading practice.¹⁰⁶ Elexicon submits that is not supported by the evidence in this proceeding. While there may be other municipalities which are considering such requirements, what is relevant to this case are the requirements in Whitby which apply to the Brooklin developers. The town of Whitby has no requirement for EV ready parking or solar ready homes. VECC acknowledges that current requirements are voluntary in Whitby.¹⁰⁷ The evidence in this proceeding is that the Brooklin developers will not make these homes EV/DER ready absent the quid-pro-quo of the Sustainable Brooklin Project.¹⁰⁸ VECC implies that there is a trend moving towards additional requirements¹⁰⁹ however, not all changes have been incremental. VECC ignores that fact that the 2018 Ontario Building Code requirements were revoked recently in 2019.
59. Regarding the Whitby framework, VECC states that "performance measures increase every four years. This means that in 2024, Tier 2 will advance and become the mandatory Tier

¹⁰⁵ VECC Submissions, at pages 19-20.

¹⁰⁶ VECC Submissions, at pages 22-25.

¹⁰⁷ VECC Submissions, at page 23.

¹⁰⁸ Response by Brooklin Landowners to Interrogatory STAFF-24(f), dated January 9, 2023, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/770860/File/document>>.

¹⁰⁹ VECC Submissions, at page 22.

- 1.”¹¹⁰ Elexicon submits that there is no evidence to support this claim. In footnote 93 of its submission, VECC provides a web link relating to this statement. However, Elexicon is unable to find a reference on that page which would support VECC’s claim. Rather, Elexicon can only see reference to a statement on page 4 of the Whitby Green Standard Reference Guide¹¹¹ which states that “Tiers 2 to 4 are higher level *voluntary* standards that *could eventually* be tied to financial and non-financial incentives.” [emphasis added] Elexicon notes that the Sustainable Brooklin Project was presented to the Whitby Town Council. It is reasonable to expect that the council would not have been supportive of the project if these requirements were to be mandatory, as implied by VECC.
60. VECC also argues that “METSCO’s assumptions with respect to solar penetration is unrealistic.”¹¹² VECC appears to have misunderstood the analysis performed by METSCO. The findings in Table 15 (updated in Undertaking J2.6) of the METSCO 2022-2041 Peak Load Forecast Report regarding the “DER Penetration Required” are not assumptions, rather these values are outputs from METSCO’s analysis.¹¹³ Table 15 summarizes METSCO’s analysis of the level of DER penetration required to defer capital investment in a new station, which may be required as early as 2030 for 1, 3 or 5 years.¹¹⁴ In any event, in the case of solar combined with battery installations, it is the battery (not the solar panels) that is the limiting factor in terms of determining the necessary level of DER penetration.¹¹⁵
61. Finally, VECC argues that the OEB does not have the jurisdiction to approve the requested DSC exemption under its legislated objectives.¹¹⁶ VECC bases this view on the characterization that the Sustainable Brooklin proposal is facilitating “the efficient

¹¹⁰ VECC Submissions, at page 24.

¹¹¹ Whitby Green Standard Reference Guide dated 2020, online: <<https://www.whitby.ca/en/work/resources/Green-Standard/Whitby-Green-Standard-Reference-Guide.pdf>>

¹¹² VECC Submissions, at page 25.

¹¹³ Application, Appendix B-4, at page 24; Undertaking J2.6 dated April 12, 2023, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>>.

¹¹⁴ The OEB expects distributors to plan, design, and operate their systems in a way that accounts for the anticipated impacts of DERs: Framework for Energy Innovation: Setting a Path Forward for DER Integration dated January 2023, at page 28, online: <<https://www.oeb.ca/sites/default/files/FEI-Report-20230130.pdf>>.

¹¹⁵ Oral Hearing Transcript Day 2 dated April 3, 2023, at page 167, lines 16-24, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

¹¹⁶ VECC Submissions, at pages 27-28.

development of any particular electricity appliance”¹¹⁷. Firstly, the Sustainable Brooklin Project is the Brooklin Line which in and of itself is electricity infrastructure. The Sustainable Brooklin Project is not trying to facilitate the efficient development of devices. Rather, it is to facilitate a DER/EV enabled community at initial construction, so that customer owned devices can be leveraged to provide services to the distribution system to defer or potentially avoid the need for infrastructure upgrades. VECC itself acknowledges that DERs can provide services to the distribution system.¹¹⁸ Elexicon submits that the Sustainable Brooklin Project is aligned with the OEB’s objective under the OEB Act to **“promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.”**¹¹⁹ [emphasis added]

62. Additionally, VECC states that “the Board has no current authority to participate in or approve schemes to provide incentives to purchase electric cars – or heat pumps or any other appliance.”¹²⁰ Elexicon disagrees. The OEB has through conservation frameworks overseen and facilitated rate recovery of various incentive programs.
63. CCMBC argues that Elexicon adopts a “buffet cafeteria” approach to the DSC, as it wants to comply with some subsections under section 3.2 of the DSC, but be exempted from the others.¹²¹ CCMBC also submits that approval of the DSC Exemption would result in undue cross-subsidy of new customers by current customers, so it is not in the interest of ratepayers and therefore not in the public interest either.¹²²
64. Elexicon’s listing of specific subsections is not a “buffet cafeteria” approach. In fact, Elexicon’s Application originally requested an exemption from the entirety of section 3.2 of the DSC, and the listing of specific subsections came about through the discovery

¹¹⁷ VECC Submissions, at pages 27-28.

¹¹⁸ VECC Submissions, at page 28.

¹¹⁹ OEB Act, 1998, S.O. 1998, c. 15, Sched. B, section 1.

¹²⁰ VECC Submissions, at page 28.

¹²¹ CCMBC Submissions, at page 11.

¹²² CCMBC Submissions, at page 13.

process as part of this regulatory proceeding. The listing reflects an increased specificity that CCMBC should be supporting rather than a broader exemption.

65. Specific to cross-subsidization of new customers by current customers that PWU¹²³ and CCMBC argue, the record in the proceeding has detailed the benefits the WRZ customers will receive from the quid-pro-quo engagement with Brooklin Landowners. WRZ customers up-front support of the Sustainable Brooklin costs is reciprocated by the avoided costs resulting from the deferral of future capital investments,¹²⁴ the reduction in Greenhouse Gases (“GHG”),¹²⁵ and the reduction of upstream electricity generation requirements as a result of potentially 10,000 plus homes installing solar and/or storage DERs.¹²⁶
66. It should also be recognized that the current customers in the WRZ will be joined by 700+ Sustainable Brooklin customers¹²⁷ to pay for the Sustainable Brooklin Project. Over the course of twenty years, over 10,000 additional customers will join the current WRZ customers.¹²⁸ Elexicon submits that the cross-subsidy argument is not supported by either the benefits afforded the current WRZ customers, or the fact that 10,000+ new customers in North Brooklin will pay the costs of the Sustainable Brooklin Project.
67. PWU’s claim that Elexicon did not sufficiently consider ratepayer impact via customer consultation is false.¹²⁹ As noted above in this submission, the record in this proceeding shows Elexicon being transparent and comprehensive in its consultation with the Whitby Town Council, where it received unanimous approval for the Sustainable Brooklin Project.
68. PWU’s claim that Elexicon did not consider revenue requirement or bill impacts when rejecting the “without ICM” option¹³⁰ is also false. Elexicon’s Sustainable Brooklin evidence states that a “pro” in the “without ICM” option was that developers would pay a

¹²³ PWU Submissions, at pages 5-10.

¹²⁴ Application, Appendix B-2, at pages 30-33.

¹²⁵ Application, Appendix B, at pages 50-51, section 5.4.

¹²⁶ Application, Appendix B, at page 25, section 2.3.2.

¹²⁷ Application, Appendix B-2, at page 6.

¹²⁸ Application, Appendix B, at page 25, section 2.3.2.

¹²⁹ PWU Submissions, at page 6, para. 20.

¹³⁰ PWU Submissions, at page 6, para. 21.

capital contribution reducing rates¹³¹. Further in the evidence Elexicon submitted that its preferred alternative, the *quid pro quo*, provided customer benefits, through increasing DER penetration in WRZ, increasing grid resiliency, and deferral of future assets.¹³²

69. PWU also claims that Elexicon did not explore an ICM request proportionate in amount to the proposed benefits, and made no effort to negotiate a better deal for its ratepayers.¹³³ Elexicon submits that this claim is also false. The record shows the extensive discussions and negotiations between Elexicon and Brooklin Landowners. It is this substantive effort to work on behalf of the interest of WRZ customers that led to Brooklin Landowners' commercially binding acceptance to spend up to \$30MM on DER rough-ins¹³⁴.
70. The Brooklin Landowners support the exemption request to redress the following perceived fairness concerns, including: (1) disproportionate allocation of cost responsibility to "early mover" customers; (2) "early movers" are required to pre-pay for assets that will be required in any event; (3) the Brooklin Line serves a transmission function; and (4) some Brooklin Line costs are system costs.¹³⁵ The Brooklin Landowners also conclude that the Sustainable Brooklin Project is in the public interest as it lowers barriers to entry for homeowner DER participation, allows for customer specific benefits (e.g., rate arbitrage and backup power), enables DER uptake to achieve net-zero objectives of governments, potentially avoid or defer future infrastructure investments, facilitate timely innovation and assist local governments in meeting housing pledges.¹³⁶
71. Elexicon agrees that the Sustainable Brooklin Project is in the public interest and the fairness principle justifies quid-pro-quo treatment to exempt the Brooklin Developers from paying a capital contribution to construct the Sustainable Brooklin project. However, Elexicon disagrees that the Brooklin Line serves a transmission function and that some Brooklin Line costs are system costs. Respectively, the *Electricity Act* is clear on the

¹³¹ Application, Appendix B-2, at page 20.

¹³² Application, Appendix B-2, at pages 27-36.

¹³³ PWU Submissions, at page 7, para. 23.

¹³⁴ Application, Appendix B, at page 25, section 2.3.2.

¹³⁵ Brooklin Landowners Submissions, at pages 12-13.

¹³⁶ Brooklin Landowners Submissions, at pages 9-11.

distinction between transmission and distribution¹³⁷ and the DSC sets out the distinction between an expansion and enhancement.¹³⁸

72. The question before the OEB Panel is whether the Brooklin Landowner's investment is substantive enough relief to support Elexicon's WRZ customers paying for the Sustainable Brooklin project cost. Elexicon submits the benefits documented on the record in the proceeding in addition to the above rebuttal of parties arguments does support the OEB Panel's approval of Elexicon's requested relief.

E. ISSUE #4: 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?

1. Is the requested timeline for approval appropriate for the Whitby Smart Grid project/Sustainable Brooklin project?

73. Elexicon agrees with ED that there are unique circumstances relating to the timing of this application, there is no prejudice in granting approval now, and if anything, the additional planning time will benefit customers.¹³⁹

2. Should the OEB allow an exception to the ICM policy?

74. OEB Staff argues that that the funding requests for projects that will be in service in 2025 are premature.¹⁴⁰ However, OEB Staff acknowledges that such requests can and should be approved in the right circumstances. Specifically, OEB Staff supports funding for the ADMS and SCADA portion of the Whitby Smart Grid for both rate zones on the basis that the ADMS forms the backbone of the proposed smart grid technology.¹⁴¹ As a consequence, the dispute is really about the scope of the project – not on whether or not the OEB should allow an exception.

¹³⁷ *Electricity Act, 1998, SO 1998*, c 15, Sch A, s.2(1).

¹³⁸ *Distribution System Code*, ss. 1.2, 3.2 and 3.3.

¹³⁹ ED Submissions, at page 3.

¹⁴⁰ OEB Staff Submissions, at page 10.

¹⁴¹ OEB Staff Submissions, at pages 10-11.

75. SEC expresses hesitance about providing advanced approval for Whitby Smart Grid project, citing concerns with the Class 4 cost-estimate and raising the specter that other distributors may follow suit.¹⁴² However, SEC is also supportive of ICM funding for the ADMS and acknowledges that an exception may be justified in certain circumstances, such as the magnitude of the costs or the long-lead times.¹⁴³ Again, the dispute is about scope – not on whether or not the OEB should allow an exception.
76. Elexicon similarly argues in its Argument-in-Chief that the existing regulatory framework should not impose undue barriers to innovation, particularly in light of Elexicon’s need for certainty in regard to cost recovery for such significant and innovative investments and as a result of the long-lead times required for such significant projects.¹⁴⁴
77. The ICM proposals included in the Application are consistent with the ACM/ICM report. The funding is for discrete projects and the rate recovery only begins in the year in which the proposed projects would go into service. Elexicon is not aware of any findings in the OEB’s ACM/ICM report which would prohibit approval of these projects in advance. In fact, the OEB has done so before in the case of PUC Distribution. Elexicon further submits that limiting approval of ICMs to applications for the rate year in which assets go into service introduces an unnecessary regulatory barrier to regulated entities who require certainty before proceeding with significant projects. Particularly, in the current context of supply chain constraints and long equipment lead times.
78. The OEB granted a similar exception for the Sault Smart Grid Project.¹⁴⁵ The factual distinctions between the Sault Smart Grid Project and the Whitby Smart Grid Project which SEC raises in its argument¹⁴⁶ are not relevant considerations to whether or not an exception should be granted in circumstances where materiality, need and prudence are proven.

¹⁴² SEC Submissions, at page 17, section 4.2.6.

¹⁴³ SEC Submissions, at page 18, section 4.2.8.

¹⁴⁴ Argument-in-Chief, at pages 13-14, paras. 41-48.

¹⁴⁵ Argument-in-Chief, at pages 13-14, para. 47.

¹⁴⁶ SEC Submissions, at page 16, sections 4.1.6 to 4.1.9.

3. Are the Proposed Illustrative Rate Riders Appropriate?

79. OEB Staff argues that the OEB should allow funding for the ADMS and SCADA portion of the Whitby Smart Grid through an ACM (rather than an ICM). This, in OEB Staff's submissions, makes the use of "illustrative rate riders" approved on an interim basis unnecessary.¹⁴⁷
80. By contrast, "*SEC does not agree that the request for the WSG should be treated as an ACM, as ACM should only be approved as part of a cost-of-service application, which provides a detailed DSP outlining exactly how the ACM project fits with other planned capital expenditures over the five-year term of the application.*"¹⁴⁸
81. Elexicon agrees with SEC in this regard.
82. There are two principal advantages to the use of the ACM methodology suggested by OEB Staff. First, it makes the approval of interim rate riders unnecessary. Second, the +/- 30% deadband on project costs would apply. Should actual costs fall outside this deadband, both the need and prudence criteria would be reopened.
83. Elexicon is not opposed to obtaining advanced approval of need and prudence, with the final rate riders to be computed at a later date. With one key exception, this is consistent with the effect of Elexicon's proposal to update the Proposed Updated Parameters as set out in its Argument-in-Chief.¹⁴⁹
84. The key difference appears to be the requirement to also update project costs at the time the rate rider is set. Elexicon did not propose this type of update, in large part because questions of prudence of any cost overruns as well as any necessary refunds would all be dealt with as part of Elexicon's next cost of service rebasing application. Elexicon sought to not complicate the process by introducing yet another additional step, and if costs are

¹⁴⁷ OEB Staff Submissions, at page 12.

¹⁴⁸ SEC Submissions, at page 17, section 4.2.5.

¹⁴⁹ Argument-in-Chief, at page 14, para. 50.

greater than the OEB approved amount, customers will benefit for the duration of 2025 to 2029 by not having the incremental costs reflected in their bills.

85. That said, Elexicon is not opposed to updating project costs when it applies to set its 2025 ICM rate riders, nor is Elexicon opposed to the application of a symmetrical +/- 30% deadband to the Whitby Smart Grid and the Sustainable Brooklin projects in accordance with the spirit and intent of the ACM policy. However, Elexicon submits that should this OEB panel wish to do so, the best way to do this would be to include this as a condition of approval of this ICM rather than attempting to apply the ACM policy in a circumstance where it clearly was not intended to apply.
86. Elexicon does, however, oppose any attempt to apply an asymmetrical adjustment or deadband, such as the adjustment proposed by SEC where the rate riders would not be increased by higher costs, but will be decreased by lower costs.¹⁵⁰ Elexicon submits that higher costs, if prudently incurred, should be eligible for rate recovery.
87. CCC expresses concerns regarding risks of approving rate riders of projects whose ultimate costs are subject to change, and uncertainties of the coming-into-effect date of the rate riders should the project timing change.¹⁵¹
88. Elexicon does not agree. The ICM true-up mechanism specifically contemplates and provides a mechanism to address the concerns of CCC. In fact, both concerns are specifically identified as within scope of the true-up in the ACM/ICM report.
89. CCC also mentioned concerns regarding uncertainties of the costs and benefits.¹⁵² Respectfully, Undertaking J2.8 shows that the NPV of the project remains substantively positive, even at the upper end of the potential costs.¹⁵³ Elexicon also submits that the evidence before the OEB indicates that the benefits in energy savings and reliability are not uncertain as asserted by CCC. To the contrary, Elexicon is applying proven

¹⁵⁰ SEC Submissions, at page 18, section 4.3.3.

¹⁵¹ CCC Submissions, at page 9.

¹⁵² CCC Submissions, at page 2.

¹⁵³ Undertaking J2.8 dated April 12, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>>.

technologies. The reliability benefits have been substantiated based on the METSCO study. The assumption of 3% energy savings has also been shown to be achievable in other projects, such as the Hydro Ottawa pilot, as well as being achievable based on the specifics of Elexicon's distribution system.¹⁵⁴

90. CCC also argued that changes to the OEB's and codes need to be made in light of the government's policy objectives and that this should be done through a generic process and not considered in the context of a single ICM application.¹⁵⁵
91. Elexicon does not agree. The entire idea is that a generic process is not required because the exemption request is specific to the particular facts and circumstances underlying the Sustainable Brooklin Project. In addition, the OEB has already indicated in the Framework for Energy Innovation (FEI) report that "the Incremental Capital Module is available to address qualifying and material capital costs incurred during a rate term, which can be used to facilitate any urgent DER-related investments that may be required."¹⁵⁶ The Framework for Energy Innovation Report report also states that "distributors **should not wait** until after the OEB has finalized its BCA framework to consider DER solutions and seek OEB approval for distribution rate funding, where appropriate."¹⁵⁷ Elexicon's application is consistent with the OEB's guidance.

F. ISSUE #5: Have the OEB's ICM criteria been met for the Whitby Smart Grid and Sustainable Brooklin projects?

92. Elexicon agrees with DRC that there is a rapidly increasing need for cost effective initiatives like the Whitby Smart Grid Project and Sustainable Brooklin Project to facilitate

¹⁵⁴ Oral Hearing Transcript Day 1 dated April 3, 2023, at pages 170-174, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

¹⁵⁵ CCC Submissions, at pages 2-3.

¹⁵⁶ Framework for Energy Innovation: Setting a Path Forward for DER Integration dated January 2023, at page 28, online: <<https://www.oeb.ca/sites/default/files/FEI-Report-20230130.pdf>>.

¹⁵⁷ Framework for Energy Innovation: Setting a Path Forward for DER Integration dated January 2023, at page 23, online: <<https://www.oeb.ca/sites/default/files/FEI-Report-20230130.pdf>>.

and accommodate the ongoing global transition to DERs, including EVs.¹⁵⁸ Grid modernization is seen as the first step towards preparing for a high DER future.¹⁵⁹

93. Elexicon also agrees with ED that the Whitby Smart Grid project is an excellent proposal that represents an opportunity to save customers money, improve reliability, reduce carbon emissions, promote government / OEB policy and achieve other benefits that have not been monetized and accounted for in Elexicon's cost-benefit analysis.¹⁶⁰

1. Materiality

- **Is the proposed eligible amount appropriate?**
- **Does it have a significant influence on the operation of the distributor**

94. SEC takes no issue with the calculated materiality thresholds for the WRZ and VRZ and agrees that the Whitby Smart Grid meets the materiality criteria.¹⁶¹
95. OEB Staff acknowledges that the Whitby Smart Grid Project and the Sustainable Brooklyn Project would both be material, although an accurate materiality threshold cannot yet be calculated for the 2025 rate year at this time.¹⁶² OEB Staff suggests that Elexicon be required as part of its 2025 IRM application to update for the OEB-approved inflation factors applicable for 2025 rates, any changes to Elexicon's forecasted 2025 capital budget, and actual 2023 demand data.¹⁶³
96. Elexicon notes that this is similar to the Proposed Updated Parameters that it set out in its Argument-in-Chief with two principal differences. First, Elexicon proposes to update the ICM model with the approved 2024 rates¹⁶⁴ – which is necessary for the ICM model to work properly. Elexicon does not understand why OEB Staff believes this update is not

¹⁵⁸ DRC Submissions, at pages 7 and 15, paras. 22 and 44.

¹⁵⁹ DeMartini & Kristov. Distribution Systems in a High Distributed Energy Resources Future: Planning, Market Design, Operation & Oversight. Lawrence Berkeley National Lab. October 2015, at pages 7-8, online: <<https://eta-publications.lbl.gov/sites/default/files/lbnl-1003797.pdf>>; DRC Submissions, at pages 6-7, paras. 20-21.

¹⁶⁰ ED Submissions, at page 2.

¹⁶¹ SEC Submissions, at page 19, section 4.4.5.

¹⁶² OEB Staff Submissions, at page 13.

¹⁶³ OEB Staff Submissions, at page 14.

¹⁶⁴ Argument-in-Chief, at page 14, para. 50.

needed. Second, OEB Staff proposes to update the model to reflect any changes to Elexicon's forecasted 2025 capital budget. Elexicon is agreeable to this additional update.

97. In its submission, CCC incorrectly states that the incremental funding associated with proceeding with only the ADMS component of the Whitby Smart Grid may not meet the materiality threshold.¹⁶⁵ This is incorrect. The evidence provided by Elexicon in response to Undertaking J2.5(b)¹⁶⁶ shows that the ADMS only costs do exceed the materiality threshold for the VRZ.

Are the eligible amounts for the ICM Projects appropriate?

98. OEB Staff goes on to argue that the proposed eligible amounts for both the Whitby Smart Grid and the Sustainable Brooklin Project are not appropriate, because if the ICM for this project is approved, Elexicon's ICM funding would far exceed its approved rate base for the WRZ if an earlier ICM request in 2022 for the Seaton TS and Bus Rapid Transit Hwy 2 (EB-2021-0015) is taken into account.¹⁶⁷ OEB Staff argues that the proposed amount is "disproportionately high" and should only be considered in rebasing.¹⁶⁸
99. Elexicon does not agree.
100. First, OEB Staff errs when it compares the Seaton TS and the Bus Rapid Transit Hwy 2 projects in 2022 (EB-2021-0015) with the Whitby Rate Zone rate base. Both the Seaton TS and Bus Rapid Transit Hwy 2 projects occurred in the Veridian Rate Zone, not the Whitby Rate Zone. Elexicon has not received any prior ICM approvals for the Whitby Rate Zone.
101. Second, the proposed amount being "disproportionately high" when compared to rate base is not a relevant consideration if the ICM criteria of materiality, need and prudence are met. OEB Staff has not identified any aspect of the OEB's 3rd Generation Incentive Regulation

¹⁶⁵ CCC Submissions, at page 11.

¹⁶⁶ Undertaking J2.5(b) dated April 12, 2023, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>>.

¹⁶⁷ OEB Staff Submissions, at pages 14 and 15.

¹⁶⁸ OEB Staff Submissions, at pages 14 and 15.

Mechanism Policy, Renewed Regulatory Framework for Electricity Policy or the Report of the Board: New Policy Options for the Funding of Capital Investments: The Advanced Capital Module to suggest that this is a relevant part of the test for ICM funding. OEB Staff also has not identified any other ICM or ACM decisions to indicate that this criterion has been used by the OEB previously. Elexicon submits that such a test does not exist and that approval for capital funding should not be limited where the project meets the ICM criteria. The ICM materiality threshold test is the tool by which the eligible recovery of capital is limited.

102. Third, in its Decision in EB-2018-0236, the OEB found that consistent with the *Handbook to Electricity Distributor and Transmitter Consolidations*, Elexicon would be able to apply for an ICM during the deferred rebasing period.¹⁶⁹ In making this ruling, the OEB understood that Whitby Hydro had not been in to rebase in many years. To now suggest that Elexicon is not eligible for ICM funding simply because of a subjective assessment that the amount feels “disproportionately high” is entirely contrary to the basis upon which the OEB’s EB-2018-0236 Decision was made and the subsequent merger occurred. This would have a chilling effect on future potential mergers as the OEB continues to make it more difficult for utilities to operate their business and meet unexpected capital needs in a deferred rebasing period.

2. **Need**

- **Is the evidence sufficient to approve ICM funding in 2023?**
- **Are the project’s components severable? If so, should the components be phased in over time?**

Whitby Smart Grid

103. With respect to the Whitby Smart Grid Project, OEB Staff argues that except for the ADMS and SCADA portion, insufficient evidence has been provided to explain why the three ICM projects could not have been foreseen or planned as part of Elexicon’s 2021 DSP.¹⁷⁰ OEB Staff submits that Elexicon should be ordered to demonstrate the reprioritization of other

¹⁶⁹ Decision and Order (EB-2018-0236) dated December 20, 2018 (corrected February 11, 2020), at page 1, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/667527/File/document>>.

¹⁷⁰ OEB Staff Submissions, at page 20.

capital projects and the incorporation of the Whitby Smart Grid Project.¹⁷¹ VECC also asserts that Elexicon has not been adequately demonstrated the Whitby Smart Grid Project to be a higher priority than other projects.¹⁷²

104. Similarly, SEC recommends that the OEB approve an ICM for the VRZ for the ADMS only, and that the remainder of the project be deployed incrementally and integrated into Elexicon's regular capital program.¹⁷³
105. Elexicon does not agree, for the reasons that follow.
106. First, Elexicon has already completed a robust and formalized distribution system planning process for the 2022-2026 forecast period where the entirety of its system needs have been prioritized and paced, as further documented in Elexicon's April 1, 2021 Distribution System Plan. In addition, Elexicon revisits its capital plan on an annual basis to reallocate and prioritize projects as things change and priorities evolve.¹⁷⁴ The record in this proceeding substantiates Elexicon's rigorous system planning process, prioritization and points to its capital forecasts only including necessary investments.¹⁷⁵ The forecasted investment level in WRZ does not allow for a paced construction of the WSG within any reasonable number of years as proposed by some parties.¹⁷⁶ As discussed in response to

¹⁷¹ OEB Staff Submissions, at page 20.

¹⁷² VECC Submissions, at pages 9-10.

¹⁷³ SEC Submissions, at page 25, section 4.11.2.

¹⁷⁴ Interrogatory Response to SEC-13 dated October 18, 2022, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/758809/File/document>>; Interrogatory Response to PWU-7 dated October 18, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758808/File/document>>; Oral Hearing Transcript Day 2 dated April 3, 2023, at page 146, lines 13-26, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>; Technical Conference Transcript Day 1 dated January 17, 2023, at page 179, lines 14-16, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/772938/File/document>>; Interrogatory Response to CCMBC-9 c) dated October 18, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758815/File/document>>.

¹⁷⁵ Interrogatory Response to SEC-13 dated October 18, 2022, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/758809/File/document>>; Interrogatory Response to PWU-7 dated October 18, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758808/File/document>>; Oral Hearing Transcript Day 2 dated April 3, 2023, at page 146, lines 13-26, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>; Technical Conference Transcript Day 1 dated January 17, 2023, at page 179, lines 14-16, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/772938/File/document>>; Interrogatory Response to CCMBC-9 c) dated October 18, 2022, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758815/File/document>>.

¹⁷⁶ Evidence Update dated January 12, 2023, at pages 55-57, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/772305/File/document>>.

Interrogatory PWU-7, deferring other necessary capital investments could have detrimental impact to Elexicon's distribution system.¹⁷⁷

107. None of the technologies included in the proposed Whitby Smart Grid Project are new.¹⁷⁸ The OEB recognized this in its decision on the Sault Smart Grid.¹⁷⁹ In this context, Elexicon considered grid modernization, energy resources and climate change adaptation as part of this process,¹⁸⁰ and determined that the only aspect of the Whitby Smart Grid Project that can be accommodated within its capital program at the existing levels of funding is the ADMS and some limited opportunities to install discrete SCADA related improvements.¹⁸¹ Elexicon compared the existing capital plan with the scope of work and technologies included in the Whitby Smart Grid technologies and concluded that: (1) Elexicon is unable to defer or modify other capital investments beyond what was already done due to the needs of the system; and (2) there is very little overlap, if at all, between the capital plan and the Whitby Smart Grid.¹⁸²
108. Second, a key driver of the Whitby Smart Grid Project is that the net benefits to customers greatly outweigh the costs.¹⁸³ In this context, what is new with the proposed Whitby Smart Grid Project – and largely based on the Sault Smart Grid precedent – is an effort to complete the work by 2025 in order to ensure, as much as is possible, that all of the customers that are being asked to pay incremental rates for the Whitby Smart Grid Project will also have an opportunity to benefit from the project. Conceptually, Elexicon is proposing to implement the Whitby Smart Grid Project in a manner that best matches benefits with costs. By contrast, a prolonged rollout of field technologies would mean that a large number of customers over a potentially prolonged period will be required to pay

¹⁷⁷ Interrogatory Response to PWU-7 dated October 18, 2022, at page 2, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758808/File/document>>.

¹⁷⁸ Application, Appendix B-5, at page 5.

¹⁷⁹ Decision and Order (EB-2020-0249/EB-2018-0219) dated April 29, 2021, at pages 10-11, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/713839/File/document>>.

¹⁸⁰ Distribution System Plan dated April 1, 2021, at pages 35-36, section 5.2.1 h), online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758818/File/document>>.

¹⁸¹ Distribution System Plan dated April 1, 2021, at pages 178-180, section 5.4.1 e), online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758818/File/document>>.

¹⁸² Oral Hearing Transcript Day 2 dated April 3, 2023, at page 146, lines 13-26, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

¹⁸³ Argument-in-Chief, at page 5, paragraphs 7-9.

incremental costs for a project that they have no opportunity to benefit from. For many customers, there will be no net benefit over the extended period – only increased costs. Concerns raised by VECC regarding cost allocation for low income consumers will be exacerbated in a prolonged implementation of the Whitby Smart Grid.¹⁸⁴

109. Third, the evidence in this case demonstrates that Elexicon does not have the financial capacity to undertake additional capital projects beyond what is already planned for without access to incremental revenue. Elexicon is already under earning - 2022 ROE was 4.86%¹⁸⁵ - and this trend is forecasted to continue in future years.¹⁸⁶ Elexicon is also subject to a 10-year deferred rebasing period,¹⁸⁷ and does not have the ability to pursue an early rebasing absent exceptional circumstances. As a consequence, without incremental capital approval, the most likely outcome will be that the Whitby Smart Grid (except the ADMS or any components the OEB grants incremental capital funding for) will be deferred with any benefits not being realized until after Elexicon's next rebasing application at the earliest.
110. Fourth, absent full approval of the necessary Whitby Smart Grid suite of enabling technologies – Elexicon would need to revisit whether or not it would pursue either of the proposed DER Enabling Program or the Local Capacity Market.¹⁸⁸ Elexicon's primary concern would be that without a distribution system that is capable of accommodating significant DER uptake safely and reliably, it would be misleading to be running programs that seek to promote DERs.
111. Fifth, due to the high growth in the Region of Durham, the METSCO peak load forecast shows that the 44-kV system is expected to exceed capacity by as early as 2030.¹⁸⁹ Any decision to delay the implementation of the Whitby Smart Grid (and as a consequence the

¹⁸⁴ VECC Submissions, at pages 13-14.

¹⁸⁵ Updated Undertaking J2.5(a), dated May 3, 2023, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/786883/File/document>>.

¹⁸⁶ Undertaking JT1-18 (confidential treatment thereof approved by the OEB as per Procedural Order No.4 and Decision on Confidentiality dated February 8, 2023 in EB-2022-0024).

¹⁸⁷ Decision and Order (EB-2018-0236) dated December 20, 2018 (corrected February 11, 2020), at page 18, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/667527/File/document>>.

¹⁸⁸ Application, Appendix B-3.

¹⁸⁹ Application, Appendix B-4, at page 6.

associated DER enabling programs) will result in limited opportunities to defer or avoid this incremental capacity requirement using DERs. This Application represents Elexicon's best and good faith efforts to get the necessary system improvements in place in time to realistically be able to impact this future capacity need.

112. In terms of rate base, OEB Staff submits that there are clear overlaps between the Whitby Smart Grid Project and DSP.¹⁹⁰ Specifically, OEB Staff asserts that pole replacements, switches, switchgear, system reliability improvements, information technology, reclosers and faulted circuit indicators are already within the existing approved rate base.¹⁹¹ OEB Staff concludes that the Whitby Smart Grid Project should not be considered separately from the ongoing capital budget.¹⁹²
113. OEB Staff's conclusion is not supported by the evidence. As discussed at length during the oral hearing in response to OEB Staff's questions, the Smart Grid Project and DSP have different drivers. For example, the driver for system renewal in the DSP is asset condition. The Whitby Smart Grid Project does not directly address asset condition, rather the driver is automation and incremental smart grid capabilities. The likelihood of overlap of new electricity infrastructure between proposed DSP investments and the Whitby Smart Grid Project is unlikely, given the different drivers of investments. In the limited instances where overlap exists, this would allow Elexicon to reprioritize other assets of poor condition.¹⁹³
114. It is difficult to reconcile the position OEB Staff has taken in this proceeding versus the contradictory one in PUC Distribution's ICM Application (EB-2020-0249/EB-2018-0219). On a technical level the PUC project is very similar to the Whitby Smart Grid.¹⁹⁴ Like Elexicon, PUC Distribution noted that the Sault Smart Grid Project was not included in its most recent cost of service application. The Sault Smart Grid Project was unrelated to anything currently implemented in its distribution system and would introduce new

¹⁹⁰ OEB Staff Submissions, at page 19.

¹⁹¹ OEB Staff Submissions, at page 19.

¹⁹² OEB Staff Submissions, at pages 19-20.

¹⁹³ Oral Hearing Transcript Day 2 dated April 3, 2023, at pages 145-146, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

¹⁹⁴ Oral Hearing Transcript Day 1 dated March 31, 2023, at pages 145, lines 25-26, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

classes of assets related to voltage control and distribution automation.¹⁹⁵ OEB Staff was satisfied that the Sault Smart Grid Project was discrete and unfunded through base rates since it would introduce certain new smart grid technologies (e.g. VVO, self-healing circuits) that are not currently implemented anywhere in PUC Distribution's system.¹⁹⁶ Indeed, the OEB agreed that the amount requested for the Sault Smart Grid was based on a discrete project as it was a novel project and therefore not part of an ongoing capital program.¹⁹⁷ Elexicon submits that this OEB panel should make the same finding for the Whitby Smart Grid. The overlap between items in the DSP and Whitby Smart Grid Project is minimal, if at all.¹⁹⁸

115. CCC argues that the Whitby Smart Grid Project does not meet the need and prudence criteria given the overall cost to rate payers and the fact that those costs exceed any benefits to Elexicon's residential ratepayers.¹⁹⁹
116. Elexicon does not agree. The evidence has demonstrated that the overall project will provide a net benefit to its customers under many different assumptions. As discussed in Undertaking J2.9²⁰⁰, the residential reliability benefits may be underestimated as they are based on a study of the value of reliability for residential customers prior to the pandemic. In the current post-COVID world where hybrid working arrangements are more common and customers are more reliant on power at their homes to support their livelihoods, it is reasonable to expect that they would place a greater value on reliability, all other things equal. This is particularly important for a customer base such as Elexicon's. As discussed under Issue #8 below, CCC's concerns regarding costs and benefits could also be addressed through cost allocation in a future application.

¹⁹⁵ Response to Interrogatory Staff-25 (EB-2018-0219) dated May 31, 2019, at page 13, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/643941/File/document>>.

¹⁹⁶ OEB Staff Submissions (EB-2018-0219) dated March 22, 2021, at pages 17-18, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/709560/File/document>>.

¹⁹⁷ Decision and Order (EB-2020-0249/EB-2018-0219) dated April 29, 2021, at page 20, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/713839/File/document>>.

¹⁹⁸ Oral Hearing Transcript Day 2 dated April 3, 2023, at pages 146, lines 24-26, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

¹⁹⁹ CCC Submissions, at page 10.

²⁰⁰ Undertaking J2.9 dated April 12, 2023, at page 5, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>>.

117. CCMBC's argument²⁰¹ that VVO and FLISR may be delayed until a need arises is basically saying Elexicon should not proactively try to invest in assets that can save customers money (VVO) or significantly improve reliability and resiliency (FLISR).
118. Elexicon's proposed investments in smart grid technologies tie directly to the urgency noted in the Minister of Energy's Letter of Direction to the OEB dated October 21, 2022 ("Letter of Direction"):

"The government has a vision for the energy system in which Ontario leverages its clean energy grid to promote electrification and job creation while continually **enhancing** reliability, **resiliency** and customer choice. [...]

At this time, I wish to highlight areas where I will be expecting significant progress over the coming year. While previous mandate letters have referred to these priorities, **there is urgent need to advance them in the next 12 months** and thus I am providing the OEB with my timing expectations

As the pace of the electrification of the economy increases and extreme weather events as a result of climate change impact our businesses and communities, there will be pressure on local distribution companies (LDCs) to continue to provide high levels of reliability and resiliency to their customers, be responsive to changing consumer expectations and new government mandates, and to do it all at an affordable price." [Emphasis added]²⁰²

119. The Letter of Direction and substantive policy initiatives that have been commenced by the OEB establish the urgency and need for Elexicon to proceed with the Whitby Smart Grid Project. As the fastest growing service area in Elexicon's territory, the WRZ is best suited for the deployment of the grid modernization technologies proposed in this ICM application.
120. As discussed above in Section A, the Whitby Smart Grid is a good example of responding to the call for distribution sector resiliency, responsiveness and cost efficiency.

²⁰¹ CCMBC Submissions, at page 15.

²⁰² Ontario Ministry of Energy, Letter of Direction dated October 21, 2022, online: <<https://www.oeb.ca/sites/default/files/letter-of-direction-from-the-Minister-of-Energy-20221021.pdf>>.

Sustainable Brooklin

121. For the Sustainable Brooklin Project, OEB Staff argues that one of the 27.6kV pole lines could be built at first, and the other could be built when additional load is needed in the future. OEB Staff also claims that engineering planning can be done with the full design of six feeders on two pole lines, but the construction of the poles can be phased, so that redesign costs may be avoided.²⁰³
122. Elexicon does not agree. There is no evidence on the record to support OEB Staff's positions. Building a single pole line to service the Brooklin residential development is not good utility practice and not something Elexicon, or any other utility, would entertain.²⁰⁴
123. OEB Staff appears to misunderstand the purpose of the second pole line. Redundancy, not additional capacity, is driving the need for the second pole line.²⁰⁵ Redundant system design (also known as "N minus 1 contingency") is an engineering concept where two pole lines operate in parallel to address situations where one pole line experiences an outage (e.g., car crash into a pole or tree falling on a line) the other pole line can seamlessly pick up 100% of the load to maintain service without interruption. Physical separation of the pole lines is necessary to provide redundancy so that a single event does not cause a complete loss of power. If the system is not designed in this manner, the entire Brooklin neighbourhood may experience complete loss of power on a more frequent basis and for extended periods of time. Additionally, it may be dangerous for Elexicon employees to repair since one of the lines in close proximity needs to remain energized to avoid power interruption to customers.²⁰⁶ Single pole lines are only used on a small cluster of houses in a rural setting, not 11,000 residential homes in an urban setting.²⁰⁷

²⁰³ OEB Staff Submissions, at pages 21-22.

²⁰⁴ Oral Hearing Transcript Day 2 dated April 3, 2023, at pages 107 (lines 1-11), page 108 (lines 4-18), 116 (lines 10-11) and 119 (lines 13-18), online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²⁰⁵ Oral Hearing Transcript Day 2 dated April 3, 2023, at pages 117-118, lines 5-5, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²⁰⁶ Oral Hearing Transcript Day 2 dated April 3, 2023, at pages 107-122, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>; Responses to OEB Panel-2 and OEB Panel-4 dated February 21, 2023, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/778620/File/document>>.

²⁰⁷ Oral Hearing Transcript Day 2 dated April 3, 2023, at page 117, lines 18-22, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

124. OEB Staff has not cited any evidence supporting the assertion that redesign costs may be avoided if Elexicon performs a full design of six feeders on two pole lines. The Brooklin Developers anticipate that residential construction will occur in three phases with electricity demand increasing as: (i) new homes are constructed; and (ii) other real estate developers build residential and commercial properties in the North Brooklin area. Initially, each of the pole lines will be strung with a single circuit but will have the capacity to accommodate three circuits each.²⁰⁸ It may be more prudent to defer system design for subsequent circuits once the load in North Brooklin materializes.
125. An adversarial quasi-judicial hearing process is not an appropriate forum to engage in detailed engineering, system planning or design. The parties making submissions on this topic, including OEB Staff, do not have the necessary technical expertise to engage in engineering design or system planning. In addition, none of the parties are responsible for the consequences should a solitary 27.6 kV pole fail thereby stranding one or more entire subdivisions with no redundancy.
126. With respect to costs, OEB Staff casts doubt on Elexicon's statement that separate construction of the two poles would incur more expenses, and claims that the two feeders being on separate sides of the road means minimal costs savings of constructing them together.²⁰⁹
127. OEB does not cite any evidence to support their skepticism. By contrast, the evidence is that the proposed design is fully aligned with the lowest total long-term cost and the best outcomes for the customers while dealing with Elexicon's obligations for reliability and safety of the distribution system.²¹⁰ Elexicon has been clear that costs of the Brooklin Line will be materially higher if the two pole lines are not built at the same time.²¹¹ In any event,

²⁰⁸ Application, Appendix B-2, pages 11-12.

²⁰⁹ OEB Staff Submissions, at pages 21-22.

²¹⁰ Oral Hearing Transcript Day 2 dated April 3, 2023, at page 119, lines 19-27, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²¹¹ Response to OEB Panel-2(f) dated February 21, 2023, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/778620/File/document>>; Oral Hearing Transcript Day 2 dated April 3, 2023, at pages 114-115, lines 6-20, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

this proposal by OEB Staff is not a viable solution and therefore not relevant to the OEB's determination as constructing a single pole line is not good utility practice in the circumstances.²¹²

3. Prudence

- **Are the risk/cost vs. benefits appropriate?**
- **Is the proposal the most cost-effective option for ratepayers?**

128. With regard to the Whitby Smart Grid Project, OEB Staff submits that if the project is deployed for service in 2028 but installation of project components is phased in starting from 2025, the project could create the greatest Net Present Value, i.e., the highest benefit to ratepayers.²¹³ OEB Staff claims that different assumptions and calculations regarding the project's Net Present Value yield minimal differences in benefits whether the project is implemented by 2025 or 2028, but costs-wise, deployment in 2025 will result in a higher rate hike versus a phased-in deployment.²¹⁴
129. SEC believes Elexicon's rejection of one of its alternatives to the Whitby Smart Grid Project, i.e., "pursue, develop and deploy the Whitby Smart Grid Project by 2028 using the existing capital envelope", is faulty, because (1) if Elexicon phased in non-ADMS components of the Whitby Smart Grid Project, it does not appear that NRCan funding would be at risk; (2) equipping the WRZ with VVO and FLISR as quickly as possible is inconsistent with distributors' standard capital planning; and (3) Elexicon has provided no evidence to support its need to begin integrating, accommodating and managing high-levels of DER penetration in 2026-2030.²¹⁵ Furthermore, SEC argues that Elexicon did not sufficiently investigate the project impact on ratepayer bills.²¹⁶
130. Elexicon does not agree.

²¹² Oral Hearing Transcript Day 2 dated April 3, 2023, at page 108, lines 4-18, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²¹³ OEB Staff Submissions, at page 23.

²¹⁴ OEB Staff Submissions, at page 23.

²¹⁵ SEC Submissions, at pages 20-21, section 4.6.3.

²¹⁶ SEC Submissions, at pages 21-22, sections 4.6.4-4.6.8.

131. First, Elexicon has provided a rate mitigation option²¹⁷ to more slowly spread the rate increase over 2025, 2026 and 2027 to directly address OEB Staff's rate hike concern while still delivering the greatest net benefit to customers as soon as is possible.²¹⁸ OEB Staff and other stakeholders do not address this rate mitigation option.
132. Second, the METSCO load forecast provides evidence of a capacity need by as early as 2030.²¹⁹ However, Elexicon is not likely to offer its DER enabling program or its local capacity market until its distribution system is ready to accommodate high levels of DER penetration. As a consequence, delaying implementation of the Whitby Smart Grid until 2028 would delay the adoption of new DERs which would in turn mean Elexicon would not have sufficient experience with those resources to credibly determine if it could defer or avoid a new capacity resource which may be needed as soon as 2030.
133. In its submission, CCC argues that the Elexicon did not meet the need and prudence criteria for either project because it did not address the requirements outlined in the letter issued by the OEB on February 10, 2022.²²⁰ Elexicon submits that the requirements in the OEB's letter are not relevant to the proposed ICM projects. The February 10, 2022 letter was released by the OEB to allow for utilities in a deferred rebasing period to recover the costs associated with typical capital *programs* in the later years of a deferred rebasing period. This does not apply to ICM *projects* such as the Whitby Smart Grid Project and Sustainable Brooklin Project.
134. VECC argues that the customer benefits are sensitive to the cost of power and the projected percentage of energy savings, which impacts the project economics.²²¹ While project benefits may vary due to these factors, the evidence in this proceeding is that the estimates are reasonable. As discussed by Mr. Thompson at the oral hearing, a 3% estimate of savings is achievable for Elexicon's circumstances and similar levels of savings have been

²¹⁷ Undertaking J2.9 dated April 12, 2023, at pages 2-6, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>>.

²¹⁸ Elexicon's focus on the most economically efficient option, being the one that delivers the greatest net benefit to customers, was covered throughout Argument-in-Chief and will not be repeated again here.

²¹⁹ Application, Appendix B-4, at page 6.

²²⁰ CCC Submissions, at page 10.

²²¹ VECC Submissions, at page 11.

achieved in other projects such as Hydro Ottawa.²²² As noted in Undertaking J2.7²²³, the cost of power is unlikely to decrease therefore the downside risk to customers is limited. Given the IESO's forecast need for investment to meet future supply requirements, it can reasonably be expected that the cost of power will only increase over time which will improve the economics of the project. Moreover, the savings presented by VVO is particularly beneficial to low-income customers represented by VECC who might not be able to invest in many of the energy efficiency, DERs or demand side management programs.²²⁴

135. Several parties, including CCC²²⁵ and VECC²²⁶, argue that the cost uncertainty associated with the Class 4 estimates in this proceeding provide significant risk to customers. As discussed in Undertaking J2.8²²⁷, Elexicon is confident in its estimates being reasonable. The estimates were based on known asset unit costs and estimated quantities. Additionally, the unit costs in its estimates are based on data from recent projects with escalations for known factors such as inflation and labour/material constraints.
136. Elexicon notes that the OEB has approved projects that utilize Class 4 estimates in numerous recent decisions including:
- In a Decision and Order issued July 7, 2022 in EB-2022-0003 the OEB granted leave to construct for two natural gas pipelines and associated facilities in the City of Toronto. The evidence from Enbridge Gas Inc. was that project cost estimate of \$23.5MM was a Class 4 estimate.²²⁸

²²² Oral Hearing Transcript Day 1 dated April 3, 2023, at pages 170-174, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>.

²²³ Undertaking J2.7 dated April 12, 2023, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>.

²²⁴ Undertaking JT1-10, Attachment 2, page 9, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/774374/File/document>.

²²⁵ CCC Submissions, at page 9.

²²⁶ VECC Submissions, at page 10.

²²⁷ Undertaking J2.8 dated April 12, 2023, online: <https://www.rds.oeb.ca/CMWebDrawer/Record/785366/File/document>.

²²⁸ Decision and Order issued July 7, 2022 in EB-2022-0003 at page 15.

- In a Decision and Order issued November 3, 2022 in EB-2022-0086 the OEB granted leave to construct natural gas pipeline and ancillary facilities in the Township of Dawn-Euphemia and St. Clair Township. The evidence from Enbridge Gas Inc. was that the project cost estimate of \$250.7MM was a Class 4 estimate.²²⁹
137. This is because Class 4 estimates are commonly accepted by the OEB in respect of advanced approvals of material capital projects.
138. The OEB even approved a project that utilized a Class 5 estimate in its Decision and Order issued March 21, 2019 in EB-2018-0257 where the OEB granted leave to construct for the Cote Lake Mine Connection Project. In that case, Hydro One Networks Inc. clarified that the estimate for the T2R project of \$56.3MM, which was the subject of the leave to construct application, had an AACE Class 5 (-50% / +100%) level of accuracy.²³⁰
139. Elexicon agrees with ED that its estimate of the Whitby Smart Grid benefits is conservative. The \$39.7 million in net benefits does not include, for example, ED's estimate that the Whitby Smart Grid would save a net present value of \$19.3 million in avoided carbon emissions at the Government of Canada's carbon price.²³¹

G. ISSUE #6: Is the proposed cost allocation for each project appropriate?

140. With respect to the Whitby Smart Grid Project, OEB Staff²³², CCC²³³ and VECC²³⁴ submit that Elexicon should employ a cost allocation methodology that better aligns costs and benefits for residential ratepayers. SEC believes that until Elexicon provides sufficient data on the actual benefits by class, it is premature to finalize the cost allocation for the Whitby Smart Grid Project, as Elexicon unrealistically assumes benefits flow equally to all customers and customer classes.²³⁵

²²⁹ Decision and Order issued November 3, 2022 in EB-2022-0086 at page 15.

²³⁰ Decision and Order issued March 21, 2019 in EB-2018-0257 at page 7.

²³¹ ED Submissions, at page 3.

²³² OEB Staff Submissions, at pages 24-25.

²³³ CCC Submissions, at page 11.

²³⁴ VECC Submissions, at page 14.

²³⁵ SEC Submissions, at page 22, section 4.7.2.

141. VECC is concerned that residential customers are expected to pay 68% of the Whitby Smart Grid Project, but are estimated to receive only 33% of the benefits.²³⁶
142. Elexicon has followed the OEB's standard approach for cost allocation. The costs are being allocated to customers consistent with how Elexicon's overall revenue requirement is recovered from the various customer classes. As noted at the oral hearing, the 3% VVO savings apply to all customers equally.²³⁷ Only the reliability benefits vary by customer class. As noted in Undertaking J2.9, the study utilized to estimate the reliability benefits likely underestimates the value of lost load for residential customers as it was conducted prior to the COVID pandemic and does not reflect the current reality of hybrid working arrangements. Therefore the disparity between benefits and costs is not as pronounced as is suggested by some stakeholders. In Elexicon's view, the OEB's standard approach to cost allocation is well established and has been relied upon to set just and reasonable rates for many years and in many applications.
143. Should the OEB have concerns with the applicability of its existing approach in the context of the Whitby Smart Grid Project, Elexicon submits that it would be willing to provide evidence that explores alternative approaches to cost allocation at the time of its 2025 IRM Application (i.e. before the rate riders are finalized). Parties can then conduct discovery on the various alternatives and the OEB panel can make a final decision on cost allocation at that time.

H. ISSUE #7: What Conditions of Approval would be appropriate for each project?

144. Each of OEB Staff²³⁸, CCC²³⁹ and VECC²⁴⁰ submits that the OEB's approval of the Whitby Smart Grid Project should be based on the conditions imposed by the OEB on PUC

²³⁶ VECC Submissions, at page 13.

²³⁷ Oral Hearing Transcript Day 2 dated April 3, 2023, at page 32, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²³⁸ OEB Staff Submissions, at pages 25-26.

²³⁹ CCC Submissions, at page 11.

²⁴⁰ VECC Submissions, at page 15.

Distribution Inc.'s Sault Smart Grid project, with certain variations between the submissions.

145. OEB Staff argues that due to differences between the Sault Smart Grid project and the Whitby Smart Grid Project, Elexicon should propose a symmetrical link between the expected project benefits (VVO performance and reliability improvements – rather than just VVO performance) and the project ROE.²⁴¹ VECC, in contrast, proposes that only VVO performance, but not reliability improvements, be included in the expected project benefits.²⁴²
146. Elexicon does not agree to this condition. As expressed at the oral hearing, there are challenges with the measurement of benefits since there is no way to directly measure the VVO energy savings or reliability benefits. For VVO, it is not possible to run the system with and without VVO and see the difference. For reliability benefits, a number of assumptions would need to be made to ascertain an estimated improvement in reliability. Neither of these approaches generate a dollar savings on a customer's bill without significant assumptions.²⁴³ While Elexicon does not agree that the benefits should be linked to the project ROE, Elexicon is willing to make reasonable efforts to estimate benefits based on practical realities.
147. For the reasons that follow, the ROE mechanism creates a disincentive for innovation and is inappropriate where there has been an identified need, especially when the mechanism cannot be calculated by any reliable metric. The OEB recognizes that, in deploying DER solutions, distributors will forgo an opportunity to earn a return by adding to their rate base.²⁴⁴ The OEB also understands that uncertainty about the potential recovery of new types of DER-related OM&A costs can be another barrier for distributors.²⁴⁵ The OEB

²⁴¹ OEB Staff Submissions, at page 26.

²⁴² VECC Submissions, at page 15.

²⁴³ Oral Hearing Transcript Day 1 dated March 31, 2023, at pages 198-199, lines 24-20, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784784/File/document>>.

²⁴⁴ OEB, Framework for Energy Innovation: Setting a Path Forward to DER Integration, at page 24, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/775948/File/document>>.

²⁴⁵ OEB, Framework for Energy Innovation: Setting a Path Forward to DER Integration, at page 24, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/775948/File/document>>.

concludes that prudently planning a distribution system that reliably serves customers in the context of broader DER adoption will become a routine function for distributors and related costs will generally be treated the same as other capital and OM&A spending.²⁴⁶

148. Several parties have indicated that the types of technologies employed in the Whitby Smart Grid have been commonly deployed by other utilities over time. Approval of the ROE mechanism would effectively be reducing the ROE for some utilities for the same investment relative to others that make similar investments more gradually over time. This would be inconsistent and unfair and should not be approved by the OEB.
149. OEB Staff and SEC proposes as a condition for approval, that Elexicon file a DSP at the time of its next rebasing application which demonstrates how the Whitby Smart Grid Project is being accommodated through the re-prioritization of other capital expenditures.²⁴⁷
150. Elexicon does not agree to this condition. Elexicon's capital forecast represents the essential projects for it to connect new customers and continue delivering safe and reliable service to its existing customers. Elexicon does not see a combination of deferrals which would allow for completion of the Whitby Smart Grid within current rates.²⁴⁸
151. SEC proposes updating the 2024 ICM rate riders in the 2025 rate application to reflect the actual cost of the ADMS project, if the OEB approves SEC's recommendation that the ADMS proceed as a separate project, eligible for a 2024 ICM in the VRZ, with the remaining project components phased in over time.²⁴⁹

²⁴⁶ OEB, Framework for Energy Innovation: Setting a Path Forward to DER Integration, at page 27, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/775948/File/document>>.

²⁴⁷ OEB Staff Submissions, at page 25; SEC Submissions, at page 24, section 4.9.2.

²⁴⁸ Response to Interrogatory PWU-7(c), online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/758808/File/document>>; Response to Interrogatory SEC-13, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/758809/File/document>>; Oral Hearing Transcript Day 2 dated April 3, 2023, at page 146, lines 13-18, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²⁴⁹ SEC Submissions, at page 24, section 4.9.3.

152. Elexicon disagrees that this condition is necessary as ICM Projects would be trued up to account for the difference between actual costs and recovery in rate riders at the next cost of service application.
153. DRC requests six conditions of approval: (1) Elexicon should begin the collection of data relevant to DERs at the earliest opportunity (e.g., average load, DER capacity, resource location, etc.); (2) Elexicon should begin to generate the data related to the impact of rough-ins on the homeowner's decision to purchase DERs, homeowner's decision to purchase DER ready homes and sale price of the property; (3) paragraph 5 of Elexicon's proposed draft order should be revised so that the penalty reflects the actual cost of retrofits for homeowners; (4) penalty funds be directed to benefit ratepayers; (5) Elexicon be required to pursue developers in the event installations are not adequately completed; and (6) a requirement for effective oversight and/or a reporting mechanism to ensure that developers perform the installations (e.g., random inspections or mechanism for homeowner reporting).²⁵⁰
154. Elexicon does not agree to DRC's proposed conditions (1) and (2) as they are premature. Elexicon does not currently have the ability to gather this information. Elexicon intends to propose future data collection plans, which will incorporate the proposal from DRC, as part of a future DER Enabling Program.²⁵¹ This issue should be addressed at that time. Currently, Elexicon is not able to see data of behind the meter DERs unless those customers actively enroll and participate in something akin to the DER Enabling Program.²⁵²
155. With respect to DRC's proposed condition (3), this would be nearly impossible to administer. Elexicon does not have the ability, expertise or capacity to estimate the actual costs to retrofit individual homes. The value of \$2,260 per home was provided by the Brooklin Developers as an approximate average cost.²⁵³

²⁵⁰ DRC Submissions, at page 8.

²⁵¹ See Appendix B-3 of the Application.

²⁵² Oral Hearing Transcript Day 2, dated April 3, 2023, at page 81, lines 11-22, online: <<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²⁵³ Oral Hearing Transcript Day 2, dated April 3, 2023, at page 54, lines 11-14.

156. With respect to DRC's proposed conditions (4) and (5), these are not necessary. Elexicon has already proposed these conditions²⁵⁴ which would require Elexicon by law to impose contractual obligations and to collect a capital contribution from developers to support the Brooklin Line should they fail to deliver on the construction of DER and EV ready homes or buildings.²⁵⁵ The treatment of these payments as capital contributions will ensure that ratepayers, not Elexicon, will financially benefit from these payments. The proposed conditions are not necessary.
157. Elexicon has no objection to DRC's proposed condition (6).

I. ISSUE #8: If ICM funding is approved, what future reporting and metrics would be appropriate for each project?

158. Both OEB Staff and SEC submit reporting requirements – OEB Staff argues that (1) Elexicon should file a report 18 months after the Whitby Smart Grid Project is fully implemented that compares the project costs and benefits as implemented to what was forecasted; and (2) Elexicon should file on its website for 10 years actual benefits of the Whitby Smart Grid Project 18 months after its full implementation.²⁵⁶ SEC submits that (1) Elexicon should be required to file the proposed performance metrics it intends to track for the Whitby Smart Grid Project, within one year of the OEB's decision; (2) Elexicon should file a detailed report annually from 2026, comparing the Whitby Smart Grid Project costs and benefits as implemented versus what was forecast; and (3) Elexicon should hire an independent third party to review the VVO savings.²⁵⁷
159. VECC submits, as a condition for approval, that Elexicon retain independent third parties to review the VVO savings from the Whitby Smart Grid Project, to be filed as part of its next rebasing.²⁵⁸

²⁵⁴ Undertaking J2-10.

²⁵⁵ Application at Appendix B, page 8, lines 10-19.

²⁵⁶ OEB Staff Submissions, at page 26.

²⁵⁷ SEC Submissions, at pages 24-25, sections 4.10.1-4.10.3.

²⁵⁸ VECC Submissions, at page 15.

160. Elexicon believes that OEB Staff's proposed reporting is reasonable, subject to the caveat that there is a risk that 18 months may not provide sufficient time to gather the necessary data to provide an accurate assessment of costs and benefits. This is because the specific processes around data collection, data validation and data assessment / analysis would still need to be formulated. Elexicon would be willing to use commercially reasonable efforts to complete the proposed reporting by 18 months.
161. Elexicon similarly believes that SEC's first two proposed reporting requirements are reasonable on a commercially reasonable efforts basis.
162. With regards to VECC's proposal and SEC's third proposal that Elexicon conduct an independent third party review of VVO savings, Elexicon submits that an independent third party review is not necessary. Elexicon is not seeking any incremental funding for this type of independent third-party study. In addition, VECC has not demonstrated why an analysis of VVO savings completed by Elexicon would not be adequate. In this context, Elexicon notes that there is an active IEEE standard #1885-2022 *IEEE Guide for Assessing, Measuring, and Verifying Volt-Var Control and Optimization on Distribution Systems*,²⁵⁹ as may be amended, that already stipulates the methodologies used to assess VVO savings.

J. ISSUE #9: Other?

1. Accounting order

163. OEB Staff supports the establishment of the sub-accounts under Account 1508 if all or part of the Whitby Smart Grid Project is approved for ICM funding.²⁶⁰ Elexicon agrees.

2. Other contractual obligation for future developers

164. Elexicon requests that the OEB's approval of the Sustainable Brooklin Project include a condition that requires developers to pay a capital contribution of \$2,260 per home if they fail to deliver DER/EV-ready homes. OEB Staff²⁶¹ and VECC²⁶² raised concerns regarding

²⁵⁹ <https://standards.ieee.org/ieee/1885/5624/>

²⁶⁰ OEB Staff Submissions, at page 26.

²⁶¹ OEB Staff Submissions, at page 27.

²⁶² VECC Submissions, at page 21.

the enforceability and other difficulties of this arrangement, including challenges of monitoring DER and EV installation and installation deficiency determination.

165. As set out in response to Staff-21, Elexicon anticipates that the binding agreement, be it a connection agreement or otherwise, will provide the opportunity for ‘spot check’ inspections to confirm that construction proceeds in accordance with documentation provided.²⁶³ Elexicon also anticipates that the agreement will stipulate that failure of a developer to install a rough in results in a requirement for payment of a capital contribution equivalent to the cost of the rough-in of \$2,260 per home. Elexicon expects that the incentive would remain to provide the rough-in due to the trade-off from a cost and marketing perspective since the developer would pay for a rough-in whether or not it is installed.²⁶⁴

3. Connection horizon issue

166. Elexicon raises concerns with an OEB Staff letter issued in December 2022²⁶⁵ that says distributors have the discretion to extend the customer connection horizon for distribution system expansions beyond the default 5 years as set out under the DSC.²⁶⁶ Specifically, Elexicon pointed to contradictions between the letter and the OEB Act and contradictions between the December 2022 letter and prior OEB Staff guidance and difficulties with implementation.²⁶⁷

²⁶³ Response to Interrogatory Staff-21 dated October 18, 2022, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/758807/File/document>>.

²⁶⁴ Oral Hearing Transcript Day 2 dated April 3, 2023, at page 74, lines 9-26, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/784834/File/document>>.

²⁶⁵ OEB, Letter re: Reminder of Distributor Discretion to Extend Customer Connection Horizon for System Expansions dated December 22, 2022, online: <<https://www.oeb.ca/sites/default/files/OEB-staff-Letter-Customer-Connection-Horizon-20221222.pdf>>.

²⁶⁶ Elexicon, Evidence Update and Purported Extension of the Customer Connection Horizon (EE_ICM_Add'l Evidence_20230327), March 27, 2023, at pages 3-4.

²⁶⁷ Undertaking JT1.6 dated January 24, 2023, online:

<<https://www.rds.oeb.ca/CMWebDrawer/Record/774374/File/document>>.

167. OEB Staff submits that whether distributors have such discretion does not need to be decided in this proceeding, but if the OEB decides to consider this issue further, OEB Staff would stand by its views expressed in the December 2022 letter.²⁶⁸
168. Elexicon does not agree. Should the OEB deny the DSC Exemption for the Sustainable Brooklin Project, then the application of the 5-year customer connection horizon becomes an immediate and live issue. Elexicon is asking as a part of this Application that this OEB panel provide clarity on the confusion created by the December 2022 letter.
169. Similarly, ED proposes to extend the “Customer Attachment and Customer Revenue Horizon” from 5 to 10 years and from 25 to 40 years, respectively, to reduce the upfront costs to developers.²⁶⁹ ED disagrees that adjustments to the capital contribution calculation parameters would be a breach of s. 26 of the *Electricity Act*.²⁷⁰
170. Elexicon does not agree. An extension of the connection horizon will not address the issue of requiring a significant capital contribution in these circumstances. A substantial capital contribution would be required from developers in all scenarios considered.²⁷¹
171. Elexicon is also required as a term of its distribution licence to provide generators, retailers and consumers with non-discriminatory access to its distribution systems.²⁷² Elexicon cannot discriminate between those who are similarly situated or who fall into one class of consumers.²⁷³ Thus, Elexicon would be providing discriminatory service if it offers different connection horizons (e.g., 5, 10, 15, 20 years) to similarly situated consumers. Extending or shortening the connection horizon would impact the economics of each project by, respectively, decreasing or increasing the capital contribution required under the DSC. The OEB has not provided any guidance on how Elexicon is to exercise its

²⁶⁸ OEB Staff Submissions, at pages 27-28.

²⁶⁹ ED Submissions, at page 4.

²⁷⁰ ED Submissions, at page 6.

²⁷¹ Response to OEB Panel-4(c) dated February 21, 2023, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/778620/File/document>>.

²⁷² Electricity Distribution Licence (ED-2019-0128), at section 6, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/735932/File/document>>.

²⁷³ Decision and Order (EB-2009-0308) dated January 27, 2010, at pages 11-12, para. 37, online:
<<https://www.rds.oeb.ca/CMWebDrawer/Record/171935/File/document>>.

purported discretion or how to deal with prior expansions subject to the 5-year connection horizon. Elexicon could be liable for a penalty of \$1,000,000 per day for contravening a condition of its licence.²⁷⁴

172. The December 2022 letter may also create some practical challenges to implementation. For example, under section 2.3.3 of the Electricity Reporting and Record Keeping Requirements²⁷⁵ a distributor is required to keep detailed records of all economic calculations “for two years beyond the end of the customer connection horizon specified in Appendix B to the Distribution System Code”. Ignoring the fact that this provision appears to suggest a fixed duration of the customer connection horizon, if a distributor indeed has discretion to extend the customer connection horizon it will be administratively challenging ensure compliance with this record keeping requirement.
173. The December 2022 letter only deals with a distributor’s purported “...discretion, on a case-by-case basis, to extend the customer connection horizon that is used in distribution system expansions”.²⁷⁶ This letter does not consider or interpret extensions to the customer revenue horizon. Appendix B of the DSC clearly states that the maximum customer revenue horizon is 25 years, calculated from the in-service date of the new customers.²⁷⁷

4. Jurisdictional concerns

174. The OEB Staff submits that it is unclear whether SEC’s earlier jurisdictional concerns given changes to the in-service dates of the proposed ICM projects remain an outstanding issue.²⁷⁸ Regardless, OEB Staff argues that it has not identified an issue that the OEB cannot decide on with respect to Elexicon’s ICM application.²⁷⁹ Elexicon agrees.

²⁷⁴ OEB Act, 1998, SO 1998, c 15, Sch B, s.112.5(3).

²⁷⁵ *Electricity Reporting and Record Keeping Requirements*, effective March 31, 2020, online: <<https://www.oeb.ca/sites/default/files/RRR-Electricity-20200331.pdf>>.

²⁷⁶ OEB, Letter re: Reminder of Distributor Discretion to Extend Customer Connection Horizon for System Expansions dated December 22, 2022, at page 1, online: <<https://www.oeb.ca/sites/default/files/OEB-staff-Letter-Customer-Connection-Horizon-20221222.pdf>>.

²⁷⁷ Distribution System Code, Appendix B, at page 4, online: <https://www.oeb.ca/oeb/_Documents/Regulatory/Distribution_System_Code_AppB.pdf>.

²⁷⁸ OEB Staff Submissions, at page 28.

²⁷⁹ OEB Staff Submissions, at page 28.

175. VECC believes that absent clear written direction (directive or law) from the Government of Ontario, the OEB does not have the jurisdiction to participate in or approve schemes to provide incentives to purchase EVs, heat pumps, or any other appliance (even including DERs), because these are behind-the-meter activities of consumers outside the OEB's regulatory ambit.²⁸⁰
176. Elexicon does not agree. The OEB has been actively involved in adjudicating and approving a wide range of different demand side management (DSM) programs on the natural gas side and conservation and demand management (CDM) programs on the electricity side. By VECC's interpretation, the OEB does not have the jurisdiction to do any of this. Clearly this is incorrect.

K. CONCLUSION

177. For the foregoing reasons, Elexicon respectfully requests the approval of the ICM funding requests for the ICM Projects, approval of the associated ICM interim rate riders and approval of the requested DSC Exemption. In summary:
- a) the Whitby Smart Grid represents an important "no regrets" action that is needed now to have any chance of avoiding a forecasted material upstream capacity investment in 2030;
 - b) rate mitigation (rather than deferral) is the solution to address any rate impact concerns to ensure customers gain the maximum net benefits;
 - c) both ICM Projects are good examples of utility innovation aligned with both OEB and Government policy objectives and expectations;
 - d) the beneficiaries of the Sustainable Brooklin quid-pro-quo include Town of Whitby ratepayers that stand to benefit from a potential material capital project deferral or avoidance, as well as all ratepayers that stand to benefit from incremental DER

²⁸⁰ VECC Submissions, at page 28.

capacity to meet future Province wide supply needs, as well as all Ontarians as we proceed to address the affordable housing crisis while advancing evidence on the efficacy of DER enabling features in new homes increasing DER adoption – with the potential to inform and influence future building code amendments;

- e) an outright rejection of the ICM Projects without additional guidance could have a chilling effect on innovation and other utilities may shy away from proposing new approaches;
- f) the Whitby Smart Grid is directly responsive to the call for distribution sector resiliency, responsiveness and cost efficiency;
- g) alleged uncertainty in Whitby Smart Grid costs and benefits are exaggerated and should be dismissed;
- h) an overly technical application of the ICM policy can pose serious barriers to innovation; and
- i) asking Elexicon to pace the construction of the Whitby Smart Grid will not only delay customer net benefits and miss the opportunity to defer material new capacity investments in the 2030s.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF MAY, 2023.

BORDEN LADNER GERVAIS LLP

Per:



John Vellone