Ontario Energy Board | Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2022-0317

ELEXICON ENERGY INC.

Z - Factor Application for rates and other charges to be effective July 1, 2023

BEFORE:

Pankaj Sardana
Presiding Commissioner

Michael Janigan
Commissioner

David Sword
Commissioner

June 15, 2023

1. OVERVIEW

Electric distributors may request cost recovery associated with unforeseen events that are outside the control of their ability to manage by means of a Z-factor application. In order to qualify, the cost to a distributor must be material and the costs prudently incurred.

On December 9, 2022, Elexicon Energy Inc. (Elexicon Energy) filed a Z-factor application with the OEB, requesting recovery from its ratepayers an amount of $4,602,788 for restoration costs associated with a major windstorm that occurred within its service area on May 21, 2022.[1]

The OEB finds that the storm was outside the ability of Elexicon Energy to manage; that the costs to the distributor were material and with noted exceptions as outlined below, that Elexicon Energy should be permitted to recover the costs.

In this Decision and Order, the Ontario Energy Board (OEB) approves $4,107,342 in Z-factor cost recovery, with a $495,447 deduction for the amount claimed for poles.

The OEB's findings implement the purpose of the Z-factor, which is to permit recovery of costs of major unforeseen and uncontrollable events. However, these costs must be truly outside of costs built-in base rates and reflect no more than the expense that would not have been incurred but for the unforeseen event.

Therefore, the OEB is not allowing cost recovery for certain poles that would be expected to be replaced in the near term. The OEB also finds that some costs related to the storm should be expensed and not treated as capital costs.

[1] Application, p. 3

2. BACKGROUND

On May 21, 2022, a storm swept through the province of Ontario, including large portions of Elexicon Energy's service territory. This resulted in power outages for over 95,000 Elexicon Energy customers in the communities of Ajax, Belleville, Bowmanville, Pickering, Uxbridge, and Whitby. Uxbridge was the most severely impacted service area with its main transformer station requiring a full rebuild as part of the restoration operation. Elexicon Energy declared a level 3 outage, which encompasses any power interruption event affecting more than 25,000 customers with an expected restoration time exceeding 24 hours.

By May 27, 2022, power had been restored to approximately 98.7% of customers, at which point Elexicon Energy declared its level 3 outage over. Elexicon Energy continued the major reconstruction work in Uxbridge and fully restored the power to the utility's customers on May 29.[2]

Elexicon Energy stated with evidence that the storm was one of the most severe storms in the service territory of Elexicon Energy or its predecessor utilities.

Elexicon Energy Historical Rates Zones: Veridian and Whitby

Elexicon Energy was established when the OEB approved the amalgamation of Veridian Connections and Whitby Hydro through an application under the OEB's policies for Mergers, Amalgamations, Acquisitions, and Divestitures (MAADs). The amalgamation came into effect on April 1, 2019.[3]

With the amalgamation, Elexicon Energy elected a ten-year deferred rebasing period, with the next application for rebasing rates scheduled for rates effective for 2029. As part of the MAADs decision, Elexicon Energy maintained its respective rate-setting methods for each of the Whitby Rate Zone and Veridian Rate Zone during the deferral period.[4]

As approved by OEB in a letter dated December 1, 2021,[5] Elexicon Energy adopted the same Price Cap Incentive Rate-setting adjustment formula for both rate zones for 2023 rates, although the rates are calculated separately for each of the two rate zones.[6]

[2] *Ibid*, pp. 3-5
[3] EB-2018-0236, Decision and Order, December 20, 2018
[4] *Ibid*, p. 18
[5] OEB letter to Stakeholders re: Applications for 2023 Electricity Distribution Rates, December 1, 2021
[6] EB-2022-0024, Application, July 27, 2022, p. 10

The rates for the Whitby Rate Zone were last rebased for the 2011 rate year,[7] while rates for the Veridian Rate Zone were last rebased for the 2014 rate year.[8]

[7] EB-2009-0274, Decision, December 20, 2010
[8] EB-2013-0174, Decision and Order, April 10, 2013

3. PROCESS

The OEB considered Elexicon Energy's application by way of a written hearing. While not specifically mentioned in its application, Elexicon Energy's application seeks to recover the revenue requirement impacts of storm restoration costs proposed in the Z-factor application through separate rate riders, in addition to Elexicon Energy's approved distribution rates; this application is made pursuant to section 78 of the *Ontario Energy Board Act, 1998*, to recover the costs associated with the May 2022 storm event.

Notice was published on January 23, 2023.

There was an intervention, by the Vulnerable Energy Consumers Coalition (VECC), which also sought a claim for cost awards. The Power Workers Union also intervened and generally submitted that Elexicon Energy's Z-factor application met the eligibility criteria as set out in the OEB Z-Factor Guidelines[9] and should be approved as filed.[10]

There was no objection to VECC's and the Power Workers Union's interventions, or to VECC's eligibility for cost awards. The interventions and cost eligibility were accepted by the OEB in Procedural Order No. 1.[11]

Interrogatories were posed by VECC and OEB staff to Elexicon Energy on March 3, 2023. Elexicon Energy filed responses to interrogatories on March 22, 2023, with a revised response for one interrogatory on March 31, 2023.

The Power Workers Union, VECC and OEB staff filed submissions on April 6, 2023, to which Elexicon Energy filed its reply submission on April 23, 2023.

[9] Power Workers Union submission, p. 2
[10] *Ibid*, p. 3
[11] Procedural Order No. 1, February 15, 2023

4. Z-Factor Cost Recovery

Elexicon Energy proposed to recover restoration costs of $4,602,788 from ratepayers via the following two Rate Riders:

I. **Capital cost recovery rate rider of $4,379,603**: A fixed rate rider from July 1, 2023, to December 31, 2028[12]

II. **Operating cost recovery rate rider of $223,186**: A fixed rate rider over a one-year period from July 1, 2023, to June 30, 2024

These two rate riders would be calculated separately for each of the Whitby Rate zone and the Veridian Rate zone, based on allocated storm restoration costs and charge determinants for each rate zone.

For Z-factor treatment, the OEB's filing requirements[13] state that a distributor must submit evidence to substantiate that the costs incurred meet the following eligibility criteria of causation, materiality, and prudence:

• **Causation** – Amounts should be directly related to the Z-factor event. The amount must be clearly outside of the base upon which rates were derived.

• **Materiality** – The amounts must exceed the OEB-defined materiality threshold and have a significant influence on the operation of the distributor; otherwise, they should be expensed in the normal course and addressed through organizational productivity improvements.

• **Prudence** – The amounts must have been prudently incurred. This means that the distributor's decision to incur the amounts must represent the most cost-effective option (not necessarily least initial cost) for ratepayers.

The filing requirements further indicate that the OEB may review and prospectively adjust the amounts for which Z-factor treatment is claimed.[14] Moreover, a distributor must "[p]rovide a clear demonstration that the management of the distributor could not have been able to plan and budget for the event and that the harm caused by

[12] Deferred rebasing period until December 31, 2028, approved by the OEB during the amalgamation between the former Veridian Connections Inc. and Whitby Hydro Electric Corporation (EB-2018-0236, Decision and Order).
[13] Filing Requirements for Electricity Distribution Rate Applications- 2022 Edition for 2023 Rate Applications – Chapter 3 Incentive Rate-Setting Applications May 24, 2022, p. 22, section 3.2.8.1
[14] *Ibid*

extraordinary events is genuinely incremental to their experience or reasonable expectations."[15]

The filing requirements also stipulate that, in order for a claim for Z-factor cost recovery to be allowed, the applicant utility's regulatory return on equity must not be more than 300 basis points above the return on equity (ROE) approved and embedded in the utility's base distribution rates.[16] Elexicon Energy filed a revised interrogatory response documenting that its achieved ROE on a regulated basis for 2022 was 4.86%.[17] This confirmed that it was not earning at least 300 basis points above its allowed ROE of 9.36%.

In an interrogatory response, Elexicon Energy provided Table 1 which summarized the annual budgeted and actual amounts for capital expenditures and Operations, Maintenance, and Administration (OM&A) related to storm restoration or other emergency response/maintenance from 2019 to 2022.[18]

Elexicon Energy stated that the budgeted and actual amounts dating back to the rebasing of Elexicon Energy's predecessor utilities were not readily available and submitted that the separate budgeted amounts for Veridian Connections and Whitby Hydro were no longer relevant as, pursuant to its amalgamation, Elexicon Energy operated as a consolidated entity.[19]

Table 1: Capital and OM&A budget and actuals since 2019

	2019		2020		2021		2022	
	Budget ($'000)	Actual ($'000)	Budget ($'000)	Actual ($'000)	Budget ($'000)	Actual ($'000)	Budget ($'000)	Actual ($'000)
Capital	-	-	-	314	-	377	-	404
Capital Z-Factor	-	-	-	-	-	-	-	4,379
Subtotal - Capital	-	-	-	314	-	377	-	4,784
Operating	2,007	2,027	1,796	1,620	2,009	1,647	1,829	1,816
Operating Z-Factor	-	-	-	-	-	-	-	223
Subtotal - Operating	2,007	2,027	1,796	1,620	2,009	1,647	1,829	2,039
Total	**2,007**	**2,027**	**1,796**	**1,934**	**2,009**	**2,024**	**1,829**	**6,823**

[15] *Ibid*
[16] *Ibid*, section 3.2.8
[17] Elexicon Energy, Updated Interrogatory Response OEB Staff-07 with 2022 Regulated ROE, May 3, 2023
[18] Staff-01b
[19] *Ibid*

In an interrogatory response,[20] Elexicon Energy provided Table 2 below that outlined the condition of the poles that were replaced because of the storm restoration efforts. In its submission, OEB staff noted that 12% of the poles replaced were in Poor or Fair-Poor condition, while 35% of the poles had no records.[21]

Table 2: Conditions of wood poles replaced

Condition*	Quantity	Percentage
Fair	82	50%
Fair-Poor	7	4%
Good	5	3%
Poor	13	8%
No Record	58	35%
Total	165	100%

*Asset Condition Assessment Health Index

85-100 Very Good
70-85 Good
50-70 Fair
30-50 Poor
0-30 Very Poor

Elexicon Energy listed the costs of the major assets that were replaced during the storm event in another interrogatory response, documenting that the cost for wood pole replacements was $2,683,672 and the cost for the Uxbridge Transformer Station rebuild was $395,889, as shown below.[22]

[20] Staff-04c
[21] OEB staff submission, pp. 1, 8-9
[22] VECC-03d, Table 1

Table 3: List of Major Asset Quantities Replaced Due to the Storm

Description	Quantity	Total ($)
Power Transformer	1	395,889
Wood Pole	165	2,683,672
O/H Conductors	25,156 m	432,507
Load Interrupter Switch	1	68,584
In-Line Switch	99	88,166
U/G Conductors	1,033 m	58,776
Pad Mounted Transformer	4	73,096
Pole Mounted Transformer	24	470,761
O/H Secondary Conductor	2,452 m	80,718
S.C.A.D.A.	1	27,434
	Total Cost	**4,379,603**

Causation

Elexicon Energy's Z-factor claim of $4,602,788 is comprised of the costs in Table 4 below. The revision was filed by Elexicon Energy on March 22, 2023.[23] The total cost claim did not change, but there was a reclassification of some operating costs as capital costs.

Table 4: Revised Total Z-Factor Event Costs

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

In its submission, the Power Workers Union raised a concern that Elexicon Energy had no capital budget allocated for storm restoration or for any emergency response since amalgamation. However, for the current application, the Power Workers Union

[23] Elexicon Energy reply submission, p. 4

submitted that the evidence clearly demonstrated that the Z-factor application met the causation threshold.[24]

VECC submitted that the OEB should disallow $13,021 related to OM&A costs, on the basis that the claimed costs are not incremental to Elexicon Energy's base budget amount for 2022.[25] VECC submitted that the OEB should consider Elexicon Energy's underspending on its own storm restoration budget in conjunction with the underspending on vegetation management, as proper vegetation management can mitigate storm damage.[26]

VECC also noted that Elexicon Energy had underspent its planned Vegetation Management budget in each of the four years (2019-2022) leading up to and including the year of the storm, on average, by approximately 23.4%. [27] VECC submitted that had Elexicon Energy spent its allocated vegetation management budget and done more tree trimming and other vegetation management work in the preceding years, VECC was almost certain that there would be less damage and fewer costs resulting from the 2022 storm; in other words, some of the storm costs could have been avoided in the first place. VECC submitted that it was reasonable to assume that the avoided costs were not zero.[28]

VECC submitted that the OEB should disallow 23.4% of the capital storm costs related to wood poles ($2,683,672) and O/H Conductors ($432,507), commensurate with the percentage of underspending on vegetation management. VECC's total proposed capital disallowance was $729,186.[29]

OEB staff submitted that the pole replacement costs associated with the Poor and Fair-Poor condition poles should be disallowed as these costs should have been accounted for in Elexicon Energy's pole renewal program outlined in the 2021 Distribution System Plan. At a minimum, OEB staff proposed a 12% disallowance of replaced poles, representing a $322,040 reduction, to remove the costs associated with the replacement of the Poor and Fair-Poor condition poles from the Z-factor claim.[30]

In addition, OEB staff submitted that the poles with no records should also be accounted for in the reduction of the pole replacement cost. OEB staff proposed that the poles with no records and their asset conditions be extrapolated using the distribution of

[24] Power Workers Union submission, paras. 4-10
[25] VECC submission p. 3
[26] *Ibid*, p. 4
[27] *Ibid*
[28] *Ibid*
[29] *Ibid*
[30] OEB staff submission, p. 8

known pole conditions and noted that this approach is commonly seen in Asset Condition Assessment studies where a sample size is used. Using this methodology, OEB staff calculated the total percentage of poles with Poor or Fair-Poor conditions to be 18.5%, representing a $495,447 reduction to the Z-factor claim[31]

OEB staff submitted that, while it was acceptable that there would have been storm-related pole replacement costs, Elexicon Energy did not clearly substantiate that all poles replacement costs were incremental to its regular pole renewal program, particularly since poles in poorer condition (and already due for replacement) would have higher probabilities of failing as a result of the storm or other adverse event that might not otherwise significantly affect Elexicon Energy's network performance.

For example, poles with Poor and Fair-Poor conditions might need to be replaced from a strong local wind gust that would not qualify for Z-factor treatment. As a result, any costs related to poles that would otherwise have been replaced in 2022 or shortly thereafter under Elexicon Energy's regular renewal program or under the emergency budget should not be approved as part of the Z-factor claim, as the costs for normal replacement are already funded through Elexicon Energy's base electricity distribution rates.[32]

In response to the OEB staff's submission, Elexicon Energy argued that none of the poles replaced because of the storm were on the list of poles to be replaced as part of the pole replacement program.[33] Elexicon Energy submitted that its practice is to replace poles with Poor or Fair-Poor classification within one to two years of identification. Elexicon Energy argued that it is reasonable to assume that some or all of the costs to replace Poor or Fair Poor poles would not have been included in the 2022 pole renewal program budget. Elexicon Energy stated that a pole being defined to be in Poor or Fair-Poor conditions does not guarantee that the pole will be replaced immediately.[34]

In its reply submission, Elexicon Energy stated that the actual pole replacement expenditure in 2022 was $3.84M compared to an original budget of $2.12M. Elexicon Energy stated that this increase in expenditure was related to increases in material, labour costs, and due to an increase in the number of poles replaced. Elexicon Energy submitted that none of the poles replaced as part of the storm recovery efforts would otherwise have been replaced under its pole replacement program, and the total number of poles replaced under the program increased relative to the plan and

[31] *Ibid*
[32] OEB staff submission, p. 9
[33] Elexicon Energy reply submission, p. 6
[34] *Ibid,* p. 7

expenditures on the pole replacement program increased over 80% relative to budget in 2022 indicating that the poles replaced in response to the May 2022 storm were incremental to Elexicon Energy's pole replacement program.[35]

Findings

The OEB finds that, with some exceptions, the amounts in Elexicon Energy's Z-factor claim were directly related to the storm event, and that, had the storm not occurred, the utility would not have incurred the costs being requested for recovery.

The OEB recognizes that Elexicon Energy is under an Incentive Rate-setting Mechanism (IRM) form of regulation whereby the utility is allowed flexibility in its management of costs and savings.

Specifically, the OEB finds it acceptable for utilities to manage their operations using an envelope approach for OM&A costs. Such an approach tacitly recognizes that higher-than-budgeted cost pressures could impact one area of utility operations, while other operating areas could see lower-than-budgeted costs materialize. Importantly, though, if the utility manages its overall approved cost envelope, savings commensurate with good utility management can be retained by the utility.

Furthermore, the occurrence of a Z-factor event does not mean that the results of management efficiency and cost reductions in the IRM are automatically to be applied to the damages from an unplanned or unforeseen event. However, it also does not mean that all damages claimed for the event are automatically compensable by way of a Z-factor adjustment to rates. The OEB must assess whether the damages were truly incremental to budgeted or projected revenue requirement expenses or whether such damages could be reasonably expected to be absorbed within the budgeted account category.

As part of this assessment, the OEB examined and was initially concerned with the significant underspending by Elexicon Energy of its capital plan in 2022. The underspending amounted to $7.7 million of its planned capital program (even after factoring in capital costs related to the damage from the storm) as shown in Table 2 in response to VECC IR-03. Closer scrutiny provided further concern. Before factoring in capital contributions from third parties, Elexicon Energy has under-spent its capital budget by over $34 million (including capital costs associated with the storm event).

Nevertheless, it is entirely possible that much of Elexicon's 2022 capital work may not have proceeded due to contributory capital projects being delayed, deferred, or even

[35] *Ibid*

canceled. Additionally, given the exceptionally long time lag between rebasing for the predecessor Elexicon Energy utilities, the quantum of the planned capital program amount in 2022 does not tie neatly into the revenue requirement components of capital being funded through base rates.

Still, the OEB encourages Elexicon Energy to meet its planned capital program on an annual basis, which program undoubtedly incorporates assets to assist with storm hardening.

As part of its evidence, Elexicon Energy explained that its strategy for dealing with the impacts of extreme weather events included asset hardening and a power restoration plan. Elexicon Energy further noted that its asset hardening strategy included proactively replacing poles, carrying out vegetation management, and reinforcing key infrastructure.

However, the OEB notes that the evidence shows questionable record keeping for its pole assets that do not accord with its professed execution of a well-executed, comprehensive, and proactive storm-hardening strategy. In particular, Elexicon Energy has no records for 35% of pole assets that were replaced in the aftermath of the storm. The OEB is concerned that this gap in Elexicon Energy's asset registry, and likely associated with the predecessor utilities' asset registries, may also extend to other critical assets in a similar manner.

Despite Elexicon Energy's assertion that none of the poles that were replaced because of the storm were on the list of poles to be replaced as part of its pole replacement program, the OEB notes that poles classified as "Poor" or "Fair-Poor" are likely to be replaced within 1 to 2 years of identification.[36] Accordingly, the OEB will reduce Elexicon Energy's Z-factor cost claim in the Poles and Overhead Conductor category by 12% or $322,000 on the basis that the poles classified as "Poor" and "Fair-Poor" would have been replaced within 1 to 2 years.[37]

Additionally, the OEB cannot approve in full the claimed cost recovery associated with poles, due to the number of poles for which there are no records of asset condition kept, both during regular pole inspection programs and also for the poles replaced as part of the storm recovery effort. The OEB will only accept a limited Z-factor cost claim recovery for the poles with no records.

Poles with no records of their asset condition will be assessed using the same distribution of the known pole conditions that are classified as "Poor" or "Fair-to-Poor".

[36] Elexicon Energy's reply submission, p. 7
[37] The $322,000 reduction is derived as 12% of the cost of poles replaced $2,683,672.

Using this approach, the total percentage of poles with “Poor” or “Fair-Poor” conditions is 18.5% representing an additional reduction of $173,407 for a total reduction of $495,447 to the Z-factor capital claim.

The OEB considered VECC’s proposed reduction of 23.4% to Elexicon Energy’s Z-factor claim for capital based on Elexicon Energy’s underspending on vegetation management over the 2019 to 2022 period. Elexicon Energy submitted that the underspending did not involve a reduction of planned vegetation management achievement.

While the cost reduction is significant, vegetation management is an operating expense, and the OEB will accept the claim as presented in keeping with the expectations of the IRM Framework whereby the OEB finds it acceptable for utilities to manage their operating costs using an envelope approach.

The OEB considered VECC’s submission that the OEB should disallow $13,021 related to Elexicon’s underspending its OM&A budget in 2022. As noted previously, however, the OEB finds it more appropriate to examine total OM&A spending. On this basis, the OEB is satisfied that Elexicon Energy is managing its operations on an overall basis at or close to its budget, and no reduction will be made to the sought-after Z-factor operating expenses.

Materiality

The OEB-defined materiality threshold for a Z-factor claim is 0.5% for a distributor with a distribution revenue requirement of between $10 million and $200 million.[38] Elexicon Energy calculated its distribution revenue requirement as the sum of the OEB-approved revenue requirements from Veridian Connection’s ($49,930,177)[39] and Whitby Hydro’s ($19,196,426)[40] last cost of service applications. These two revenue requirements sum to $69,126,603 and 0.5% of this amounts to $346,352.[41]

The Power Workers Union supported Elexicon Energy’s calculation of the materiality threshold.[42]

OEB staff considered that the proposed Z-factor claim satisfied the appropriate Z-factor materiality threshold. However, OEB staff submitted that the Z-factor materiality threshold proposed by Elexicon Energy is inappropriate given the utility’s

[38] *Report of the Board on 3rd Generation Incentive Regulation for Ontario’s Electricity Distributors*, July 14, 2008, Appendix, p. 5
[39] EB-2013-0174, Veridian Connections’ Decision and Order, April 10, 2013
[40] EB-2009-0274, Decision, December 20, 2010
[41] OEB staff submission, p. 9
[42] Power Workers Union submission, para. 14

circumstances. Elexicon Energy has not had its distribution rates rebased (through a cost-of-service application) since its amalgamation in 2019.

For the predecessor utilities, Veridian Connections rebased for 2014 rates[43] and Whitby Hydro rebased for 2011 rates year[44]. By the storm in 2022, it was eight years since Veridian Connections' last rebased and eleven years since Whitby Hydro's last rebasing. The rate-setting history of Elexicon Energy and its predecessors departs significantly from the OEB's current five-year standard rate-setting framework.[45]

OEB staff considered that it is vital for Elexicon Energy to follow the OEB's recommended framework especially as it relates to rebasing. This is important because of the average growth in demand, growth in customer base, kWh, kW, and the cumulative and multiplicative impact of the IRM rate adjustments over the years since rebasing.

While IRM and growth adjustments are relatively small each year, ranging between about 0.5% to 3% per year[46], their interaction and accumulation over time, increase comparable to interest-compounding situations.

OEB staff submitted that its proposed approach in arriving at the materiality threshold is based on the OEB's Capital Funding Options policy[47] which adjusted Whitby Hydro's 2011 approved revenue requirement and Veridian Connections' 2014 approved revenue requirement to derive the implicit revenue requirements recovered in the two rate zones in 2022 in a separate concurrent proceeding for incremental capital module (ICM) funding application by Elexicon Energy.[48]

As calculated in the interrogatory Staff-13, OEB staff submitted that using OEB staff's proposed approach, the Z-factor Materiality Threshold should be $422,555, versus Elexicon Energy's proposal of $345,633 indicating a difference of 22% from Elexicon Energy's proposal, demonstrating the fact that IRM rate adjustments and demand growth cumulatively over the years made a substantive difference over a long interval since the last rebasing.[49] OEB staff submitted that Elexicon Energy's proposed Z-factor

[43] EB-2013-0174
[44] EB-2009-0274
[45] EB-2010-0379, Draft Report of the Board on Empirical Research to Support Incentive Rate-setting for Ontario's Electricity Distributors, September 13, 2013, Report of the Board Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors, November 21, 2013, corrected December 4, 2013
[46] OEB staff submission, p.10
[47] EB-2014-0219, Report of the Board on New Policy Options for the Funding of Capital Investments: Supplemental Report, January 22, 2016, pp. 12-20
[48] EB-2022-0024; see also OEB staff submission, pp. 9-11
[49] *Ibid*

claim, in terms of revenue requirement, would still exceed OEB staff's proposed Z-factor Materiality Threshold.

However, OEB staff submitted that putting the cumulative impact of IRM rate adjustments and demand growth into perspective is important in situations such as Elexicon Energy's, where there has been an extended period since rebasing years. In its response to the interrogatory, Elexicon Energy confirmed the data and calculations in the spreadsheet model provided by the OEB staff but preferred its proposed approach.[50]

VECC supported OEB staff's proposal in interrogatory Staff-13 while acknowledging that Elexicon Energy's Z-factor cost claim satisfied this materiality threshold as well.[51]

Elexicon Energy submitted that it had not "proposed" any approach in this proceeding, it however, acknowledged that pro-rations such as those proposed by OEB staff are used in ICM but submitted that the Z-factor Filing Guidelines are clear that the materiality threshold is to be established on the basis of revenue requirement and not an "implicit revenue requirement".[52]

Elexicon Energy further explained that this is not an ICM application and contended that these pro-rated figures are not a revenue requirement; particularly given that revenues and costs are purposefully decoupled during an incentive regulation (or deferred rebasing) period. Elexicon Energy stated that it is not aware of any Z-factor application that adopted alternative approaches to the calculation of the materiality threshold. Elexicon Energy submitted that OEB staff's assertion that this is a peculiar circumstance that requires differential treatment since Elexicon Energy did not "adhere to the normal five-year approach" seemed, to Elexicon Energy, to be "largely inconsistent with the OEB's [MAADs] policies and numerous rebasing deferral approvals of recent years".[53]

Elexicon Energy submitted that OEB staff's proposed approach represents a material departure from the OEB's policy on materiality as it relates to Z-factor applications, and has the effect of materially prejudicing merged distributors that are currently in an extended rebasing period, like Elexicon Energy, by significantly increasing the Z-factor materiality threshold for those utilities, but without any public consultation, debate, or consideration of the significant disincentive such a major change in risk allocation would create for future electricity distributor consolidations.[54] As such, Elexicon Energy

[50] Staff-13
[51] VECC submission, p. 2
[52] Elexicon Energy reply submission, p. 12
[53] *Ibid*, pp. 12-13
[54] *Ibid*

submitted that the OEB should reject the OEB staff's alternative proposal to the calculation of the Z-factor materiality threshold.[55]

The Power Workers Union supported Elexicon Energy's proposal for the Z-factor materiality threshold calculation.[56]

Findings

Elexicon Energy maintains that the revenue requirement in the Filing Guidelines to be used in the calculation of the Materiality Threshold must be an OEB -approved revenue requirement. The OEB does not agree. The use of the figure of 0.5% of the distributor's revenue requirement represents an effort to ensure a fair result for all utilities claiming a Z-factor. When it is apparent from the dates of the last OEB-approved revenue requirement that there has likely been a significant change, the OEB finds it reasonable to adjust the materiality threshold to recognize the likelihood of such change.

In this case, the OEB has adjusted for the exceptionally long period between the last rebasing for the legacy Veridian Connections and Whitby Hydro utilities (2011 and 2014 respectively) and the date of the current application. In the OEB's view, such inflationary adjustments to base rates in Z-factor applications maintain fairness and provide a more reasonable result. In any case, as noted by all parties, Elexicon Energy's Z-factor claim is above the revised materiality threshold.

Similarly, the OEB does not agree that adjusting a distributor's revenue requirement to set the materiality threshold that is appropriate for a Z-factor application is inconsistent with the OEB's MAADs policy guidelines. While the MAADs policy provides that a utility is permitted to defer rebasing for an extended period in order to carry out the difficult work of combining operations, and obtain and retain synergies from the merger, a Z-factor application addresses a different concern - an unforeseen event that has disrupted the anticipated operation of the utility during a deferral period. There is little reason to assess the need for compensation of the utility by its ratepayers as a result of this disruption by using a measurement of revenue requirement that is likely out of date. It is no departure from the MAADs policy guidelines when the OEB attempts to address and remedy circumstances that are material themselves and reflect the changed operations of the consolidated utility during the deferred rebasing period.

[55] Elexicon Energy reply submission, pp.12-13 and referencing Z-factor applications for Canadian Niagara Power Inc. and Burlington Hydro Inc. (respectively, EB-2000-0008 and EB-2022-0019).
[56] Power Workers Union submission, para. 14

Prudence

Elexicon Energy submitted that it carried out power restoration efforts in a prudent manner utilizing all available internal labour and third-party contractors to complete its restoration efforts. Internal labour costs that were incurred followed the collective agreements for the Power Workers Union and Elexicon Energy's overtime policy for non-union employees.[57] Elexicon Energy stated that it pulled needed resources primarily from its existing inventory/stores for replacements and supplemented the restoration efforts with additional purchases of material based on pricing that was negotiated for Elexicon Energy's regular day-to-day purchases.

The Power Workers Union supported Elexicon Energy's position, arguing that the evidence lists actions that demonstrate the amounts associated with restoring service to customers were incurred prudently and cost-effectively.[58]

In its submission on this issue, OEB staff acknowledged that Elexicon Energy was able to restore power to its customers expeditiously. However, OEB staff had concerns with the $395,889 in proposed capital costs for the Uxbridge Transformer Station rebuild.

In response to an OEB staff interrogatory, Elexicon Energy provided the breakdown of the claimed $395,889 in Table 5 below. [59] In addition, Elexicon Energy provided some details of the work required to rebuild the Uxbridge Transformer Station.[60]

Table 5 : Breakdown of Labour and Material costs for Uxbridge Transformer Station Rebuild

Description	Cost ($)
Labour - regular	17,005
Labour - OT	33,114
Vehicles	8,497
Materials	155,756
Purchases	18,680
Contract services -Line	162,838
Total UXB W Substation-Rebuild cost	**395,889**

In response to an interrogatory,[61] Elexicon Energy noted that falling equipment punctured the Transformer radiator, resulting in a spillage of about 4,000 litres of oil.

[57] OEB staff submission, p.11
[58] Power Workers Union submission, para. 17
[59] Elexicon Energy Z-Factor Application IRRs, p. 2 of 3
[60] *Ibid*
[61] Staff-11

However, the oil and contaminated water had to be removed by a vacuum truck and the membrane of the oil containment system replaced. Elexicon Energy indicated that it capitalized the costs to remove the oil and contaminated water.[62]

OEB staff disagreed with Elexicon Energy's capitalization of the costs of removing oil and contaminated water. In OEB staff's view, the removal while necessary for environmental, health, and safety reasons, is for the purpose of bringing it back to pre-storm conditions. As a result, OEB staff submitted that the costs are similar to repair costs and should be expensed rather than capitalized. Following OEB's interrogatory, Elexicon Energy, in its reply submission, identified the costs associated with the spill clean-up as $42.7K.[63]

Elexicon Energy disagreed with the OEB staff's interpretation of this matter on two fronts. First, it stated that the reference relied on by OEB staff explicitly contextualizes Article 410 of the Accounting Procedures Handbook guidance as relating to the "day-to-day" servicing of items.[64]

Elexicon Energy opined that there was nothing "day-to-day" about the cause or context of the work in question, particularly given the work was completed in Uxbridge and was highly proximate to the path of the rare Category-2 Tornado which touched down in that hard-hit community.[65]

Second, Elexicon Energy explained that it appeared that OEB staff relied on the logic that "remediation of the site is for the purpose of bringing it back to the pre-storm conditions" and was similar to repair costs not warranting capitalization.

However, Elexicon Energy explained that the OEB staff's own submission is consistent with Elexicon's and that the OEB Staff acknowledged that the membrane of the oil containment system (i.e., an asset) had to be replaced as part of the Uxbridge Transformer Station rebuild.[66] Elexicon Energy opined that the work completed was a necessary component of rebuilding the Uxbridge Transformer Station and should be capitalized.[67]

VECC did not make any submission on prudence.

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[62] *Ibid*
[63] Elexicon Energy reply submission, p.15
[64] *Ibid*
[65] *Ibid*
[66] *Ibid*
[67] *Ibid*, p. 16

Findings

Elexicon Energy was prudent in its storm management as it restored service to 90% of its customers within 48 hours of the storm's passing and did so safely and efficiently. In particular, the OEB notes that Elexicon Energy also acted prudently as it sought but was unable to get assistance from neighbouring utilities to assist with power restoration efforts and mitigate the storm damage.

One issue that was the focus of submissions by parties was the disposal costs associated with the Uxbridge Transformer Station. On this issue, the OEB finds that the costs of disposing oil and contaminated water should be expensed rather than capitalized. While Elexicon Energy was required to dispose of the oil and treat contaminated water as part of the work necessary to bring the transformer station back to its original state, *disposal* costs have no measurable future economic value, and the OEB finds that these costs are more appropriately expensed. As a result, Elexicon Energy's operating cost claim in this Z-factor application will be increased by $42,700, with a corresponding reduction to its capital cost claim. This results in an approved capital cost claim as set out below:

Table 6: Elexicon Energy's Capital Cost Recovery Approved by the OEB

Description	Total ($)
Original Claim	4,379,603
Less disposal costs	(42,700)
Less Pole cost disallowance.	(495,447)
Net Total	**3,841,456**

With respect to Elexicon Energy's operating cost Z-factor claim, as noted above, the OEB finds that operating costs will be increased by $42,700 to reflect that disposal costs associated with dealing with contaminated water and the oil spill are more properly expensed rather than capitalized.

The OEB approves a revised Z-factor operating cost claim of $265,886. The total operating cost claim is derived as the sum of the initial operating cost claim of $223,186, plus $42,700 to factor in the costs of disposing of leaked oil and contaminated water.

Allocation and Rate Design

Elexicon Energy proposed the operating costs of the Z-factor claim to be recovered through fixed rate riders, over a 12-month period.

For the recovery of Z-factor capital costs, Elexicon Energy stated that it evaluated two approaches:

1. A fixed rate rider recovering revenue requirement for all of the Z-factor capital costs in one-year
2. A fixed rate rider that recovers the revenue requirement of the Z-factor capital costs annually until rebasing in 2029[68]

Elexicon Energy recommended option 2 because it had a lower monthly bill impact for customers. For a residential customer in the Veridian Rate zone, the bill impact would be $1.48 less per month under option 2 versus the bill impact under option 1, and similarly, a Whitby Rate zone residential customer would experience a bill impact that is $0.94 less per month. Elexicon Energy argued that spreading out the recovery of the Z-factor capital costs until rebasing minimizes customer bill impacts when compared to a 12-month recovery.[69]

Elexicon Energy's proposed recovery allocated the Z-factor event costs to all electricity distribution rate classes based on its last OEB-approved cost of service application. Elexicon Energy calculated the monthly rate rider using the number of customers as of December 31, 2021 that was submitted in its 2021 Record-keeping and Reporting Requirements (RRR).[70]

OEB staff submitted that the allocation and rate design of Elexicon Energy's Z-factor claim were reasonable. OEB staff submitted that spreading out the recovery of the capital-related revenue requirement of the Z-factor claim over a longer period reduces the monthly bill impact on ratepayers. OEB staff noted that the rate riders and bill impacts may change if OEB staff's recommendations with respect to a disallowance and expensing of some costs are accepted.

VECC and the Power Workers Union did not make any submissions on Allocation and Rate design.

[68] Application, p. 14
[69] Application, p. 14
[70] Application, p. 15

Findings

The OEB agrees that spreading out the recovery of the capital-related revenue requirement of the Z-factor claim over a longer period reduces the monthly bill impact to ratepayers and therefore approves, for each rate zone, a "fixed rate rider that recovers the revenue requirement of the Z-factor capital costs annually until rebasing in 2029". The OEB also approves the recovery of operating costs of the Z-factor claim through fixed rate riders over a 12-month period from July 1, 2023 to June 30, 2024.

The Challenges in Assessing Records

OEB staff noted that there were challenges in analyzing the records of this proceeding beginning with the availability and quality of information filed.[71] OEB staff is of the view that making relevant information available to understand the history and trends of Elexicon Energy and its predecessors on system renewal and on storm restoration costs, as well as information necessary to understand the utility's management of its distribution system, would have been helpful.[72]

Elexicon Energy is of the opinion that information it provided was sufficient for all parties to have assessed relevant trends to inform their submissions on Causation, Materiality, and Prudence as they relate to Elexicon Energy's application.[73]

The OEB makes no finding on this issue, but is of the view that the importance of access to relevant information for adjudication purposes should be well understood by all parties in an application.

[71] OEB staff submission, pp.18-19
[72] *Ibid*
[73] Elexicon Energy reply submission, p.18

5. ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Elexicon Energy Inc. shall file with the Ontario Energy Board and forward to intervenors a draft rate order with a proposed Tariff of Rates and Charges by June 26, 2023, reflecting the Ontario Energy Board's finding in this Decision and Order. The draft rate order shall include customer rate and bill impacts and necessary detailed information in support of the proposed rates in the draft rate order.
2. Intervenors and OEB staff may file any comments on the draft rate order with the OEB by July 5, 2023. A copy of any comments on the draft rate order shall be provided to Elexicon Energy Inc. and all other intervenors.
3. Elexicon Energy Inc. may file with the OEB and forward to intervenors, responses to any comments on its draft rate order by July 14, 2023 .

Parties are responsible for ensuring that any documents they file with the OEB, such as applicant and intervenor evidence, interrogatories and responses to interrogatories or any other type of document, **do not include personal information** (as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*), unless filed in accordance with rule 9A of the OEB's Rules of Practice and Procedure.

Please quote file number, **EB-2022-0317** for all materials filed and submit them in searchable/unrestricted PDF format with a digital signature through the OEB's online filing portal.

- Filings should clearly state the sender's name, postal address, telephone number and e-mail address. Please use the document naming conventions and document submission standards outlined in the Regulatory Electronic Submission System (RESS) Document Guidelines found at the File documents online page on the OEB's website.
- Parties are encouraged to use RESS. Those who have not yet set up an account, or require assistance using the online filing portal can contact registrar@oeb.ca for assistance.
- Cost claims are filed through the OEB's online filing portal. Please visit the File documents online page of the OEB's website for more information. All participants shall download a copy of their submitted cost claim and serve it on all required parties as per the Practice Direction on Cost Awards.

All communications should be directed to the attention of the Registrar and be received by end of business, 4:45 p.m., on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Vithooshan Ganesanathan at Vithooshan.Ganesanathan@oeb.ca, and OEB Counsel, Lawren Murray at Lawren.Murray@oeb.ca .

Email: registrar@oeb.ca

Tel: 1-877-632-2727 (Toll free)

DATED at Toronto, June 15, 2023

ONTARIO ENERGY BOARD

Nancy Marconi

Digitally signed by Nancy Marconi
Date: 2023.06.15 08:51:24 -04'00'

Nancy Marconi
Registrar