July 28, 2023

via RESS

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

Dear Ms. Marconi:

Re: EB-2022-0024 – Elexicon Energy Inc. (“Elexicon”) – Response to Comments on Draft Rate Order

Pursuant to the Ontario Energy Board’s (“OEB”) Decision and Order - Phase 2 issued July 6, 2023 in respect of the above noted matter (the “Decision”) please find below Elexicon’s responses to the comments submitted by OEB Staff[1] and School Energy Coalition (“SEC”)[2] on the Draft Rate Order filed by Elexicon on July 14, 2023 (the “DRO”).

In responding to the written comments from OEB Staff and SEC, Elexicon adopts and affirms the submissions made in the DRO.

In the DRO, Elexicon sought OEB approval to utilize the 2023 inflation factor in the Whitby Rate Zone for the purposes of the Incremental Capital Module (“ICM”) threshold test calculation on the basis that it more appropriately factors in the cumulative, multiplicative impact of the price cap index (“PCI”) over the years since the Elexicon Whitby Rate Zone was last rebased (2011).

<u>OEB Staff Submissions</u>

OEB Staff does not oppose Elexicon’s request to use the 2023 inflation factor for the Whitby Rate Zone as it is consistent with OEB Staff’s understanding of the Decision.[3]

If this was truly the OEB panel’s intention, Elexicon agrees with and supports this approach.

For consistency and completeness of the record, Elexicon has updated and filed the ICM

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[1] Ontario Energy Board Staff Submission on the Draft Rate Order dated July 24, 2023 (the “OEB Staff DRO Submissions”).
[2] School Energy Coalition Submissions on the Draft Rate Order dated July 19, 2023 (the “SEC DRO Submissions”).
[3] OEB Staff DRO Submissions at page 2.

model for the Veridian Rate Zone to use the 2023 inflation factor. As noted in OEB Staff DRO Submissions at page 6 this does not affect the ICM funding amount in the Veridian Rate Zone and has no impact on the proposed Tariff of Rates and Charges filed as part of Elexicon's DRO.

See: EE_VRZ_2023_ACM_ICM_Model_20230726_3.7%.xlsm

In the alternative, OEB Staff argues that the Decision would still result in just and reasonable rates should the 2024 inflation factor be used.[4]

Elexicon does not agree.

Strangely, the only rationale OEB Staff provides for their position is that with a 4.8% inflation factor, Elexicon can fund a higher level of capital expenditures through current distribution rates.[5] This is incorrect.

As shown in Table 1 of the DRO, using an inflation factor of 4.8% the ICM model will materially overestimate the amount of capital funded through existing rates. This is also shown in Table 2 of the DRO.

While it is true that a 4.8% inflation factor in 2024 will increase the capital funding available to Elexicon in its Whitby Rate Zone in 2024 and 2025, it does not impact the historical levels of funding from the *actual* rate increases which have been already approved in prior years. Elexicon already accounted for the true impact of the 4.8% inflation factor in both the illustration in Figure 1 of the DRO (a 4.5% PCI is being applied in 2024 and 2025) and in each of the Actual PCI, Geo-mean of Actual PCI and the Simple Avg. of Actual PCI calculations in Table 2 of the DRO.[6]

As shown clearly by Elexicon, for the Whitby Rate Zone the ICM model fails to achieve its intended purpose[7] to explicitly and appropriately factor in "the multiplicative and cumulative impact of both the price cap adjustment and growth that increases the amount effectively funded through rates"[8] over the years since Whitby's last cost of service rebasing application.

Notably, OEB Staff first raised concerns with the ICM model in submissions dated August 23, 2022 in EB-2022-0013.[9] Specifically (**emphasis added**):

> "***OEB staff notes that given the current economic climate, the IPI used to calculate the PCI in the formula could be adjusted to better reflect the intent of the materiality threshold calculation. Specifically, instead of using the***

[4] OEB Staff DRO Submissions at page 2.
[5] OEB Staff DRO Submissions at page 2.
[6] See EE-WRZ_Threshold_Calculations_20230717.xls at Tab WRZ_ICM_Threshold_Actual_PCI at Cells F66 to F72.
[7] The intended purpose of the ICM threshold value calculation is clearly articulated in the January 22, 2016 *Report of the Board – New Policy Options for Funding Capital Investments: Supplemental Report* (EB-2014-0219) and is cited by Elexicon at paragraphs 18-20 of the DRO.
[8] Supplemental ICM Report at pages 13-14.
[9] Available online at : https://www.rds.oeb.ca/CMWebDrawer/Record/754192/File/document

current year's IPI for each historical year, a historical average could be used.[7]

The intention of the materiality threshold is to calculate how historical Price Cap IR adjustments (i.e., historical IPIs) and growth have affected the level of depreciation expense being recovered in current rates, from the level of depreciation expense recovered as part of the revenue requirement underpinning approved rates at the utility's last rebasing.[8]

The higher the price cap adjustment (due to higher IPIs) and/or growth, the higher the depreciation expense that is recovered in rates. This results in a higher level of capital expenditures that can be funded through current distribution rates. In turn, this reduces the amount of capital expenditure that would require incremental capital funding, all else being equal.

[…]

There has been a sharp increase in the IPI beginning in mid-2021 due to socioeconomic pressures arising from the recovery of the COVID-19 pandemic, and other external factors. ***As a result, it is unlikely that the future 2023 IPI will accurately represent the historical effect of inflation on depreciation. Using the 2023 IPI would therefore inflate the materiality threshold value, relative to the impact that actual historical price cap rate adjustments and growth have had on rates and revenues.*** *Using the 2023 IPI would thereby decrease the eligible maximum incremental capital for both the PowerStream and Enersource rate zones.*

[…]

OEB staff notes however that there may be material impacts on the 2024 funding. *While the implementation of approved ACM funding is intended to be mechanistic,* ***OEB staff recommends that the OEB consider allowing Alectra Utilities to file evidence on the potential use of an alternate calculation if the forecasted IPI for 2024 rates is expected to remain much higher than historical values, as part of the 2024 rate implementation application for any approved amounts.***"

Elexicon expressly cited these previous OEB Staff submissions at paragraph 26 and in footnote 8 of its DRO. Elexicon's expectation was that OEB Staff would want to ensure that the positions it is putting before various different OEB panels are, at a minimum, consistent.

The OEB Staff DRO Submissions are also particularly surprising, given that Elexicon has simply followed OEB Staff's recommendation to file evidence on the potential use of alternative calculations given that the inflation factor for 2024 rates is much higher than historical values, as part of the rate implementation for the amounts approved in the

Decision.

In their comments on Elexicon's DRO, OEB Staff argue that Elexicon incorrectly calculated the historical geomean and arithmetic mean, allegedly "due to a misunderstanding of the ICM methodology and the materiality threshold."[10]

Elexicon does not agree. Elexicon expressly and clearly indicated in the DRO that its calculations represent the geometric mean and the simple average of the actual PCI in the Whitby Rate Zone (not the assumed PCI used in the ICM model).[11] Put even more simply, Elexicon took the geomean and simple average of the Actual PCI values shown in Table 1 of the DRO.

In providing this evidence Elexicon adopted a purposeful approach which aligns with the intention of the threshold value formula as its guiding principle. If the intention of the threshold value formula is to explicitly and appropriately factor in the cumulative, multiplicative impact of both growth and the price cap index over the years since Whitby's last cost of service rebasing application – then a simple average of the Actual PCI and geometric mean of the *Actual* PCI in WRZ better achieves that purpose. In other words, using the Actual PCI reflects the costs that are actually being funded through rates.

Elexicon considered, and ultimately rejected, adding two additional columns to Table 2 showing averaging of PCI but using the 0.3 simplified assumption included in the ICM model on the basis that it (1) needlessly confused the record; and (2) did not materially alter the concerns it was trying to raise or the conclusions. OEB Staff acknowledge that "[t]hese numbers do not change the point that Elexicon Energy is raising".[12]

OEB Staff also argues that the use of the middle stretch factor of 0.3% was intended to "ensure equitable treatment for all utilities for incremental capital eligibility". As is aptly illustrated in the now ubiquitous illustration shown in Figure 1 below, equal treatment (applying the same 0.3% stretch factor) is not the same thing as equitable treatment (applying the actual stretch factor for each utility). In Elexicon's view, applying the actual stretch factor for each utility (equitable treatment) would best achieve the OEB's statutory mandate for a just (and reasonable) outcome if the intention of the threshold value formula is to explicitly and appropriately factor in the cumulative, multiplicative impact of both growth and the price cap index over the years since a utility's last cost of service rebasing application.

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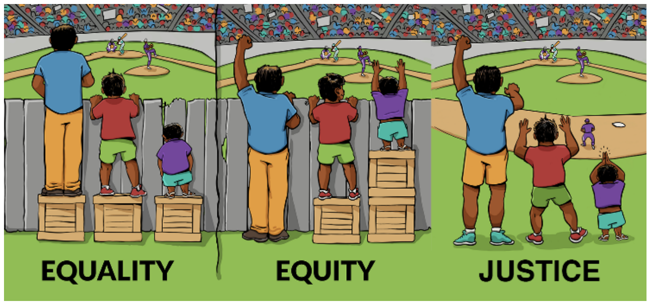
[10] OEB Staff DSO Submissions at page 4.

[11] The Table 2 headings in the DRO clearly state "Geo-mean of **Actual PCI** (1.95%)" and the "Simple Avg. of **Actual PCI** (1.95%)". This is also described in detail in paragraphs 25 and 26 of the DRO.

[12] OEB Staff DSO Submission at page 5.

Figure 1: Illustration of Equity vs. Equality vs. Justice



OEB Staff also argues that the issues that Elexicon Energy are not new, and that changes in the policy and the models, while not insubstantial, are not as complex as Elexicon Energy suggests. OEB Staff argue that a review and change in the generic policy that applies as frequently and as importantly as the capital funding option policy should not be done in the application of an individual utility.[13]

Elexicon is not seeking a review and change in the generic ICM policy or ICM model in its DRO.

Rather, it is widely understood that when unique factual circumstances give rise to a need to depart from a particular OEB policy or model, it is squarely within the purview of the OEB panel deciding the case to consider the evidence and make a determination allowing variances from the policy or model when warranted and supported. OEB Staff make this exact point at page 3 and in footnote 7 of the OEB Staff Submissions. This is what Elexicon is requesting in the DRO.

For clarity, Elexicon does not oppose a more generic policy review focused on the ICM model and policy. However, the OEB panel need not and should not defer its determination on the DRO pending the outcome of any such review.

<u>SEC DRO Submissions</u>

SEC generally agrees with Elexicon that imputing an unusually high inflation rate and therefore PCI over the last decade or more is, on the face of it, not what the OEB intended.[14]

However, SEC argues that there are various other simplifications in the ICM model that demand a broader review of the ICM model.[15] Unfortunately, SEC is not specific in identifying what "other simplifications" they believe need to be re-assessed. As a consequence, SEC provides no concrete reasons to support their assertion that a broader reassessment of the ICM model over the next 12-15 months.

Elexicon is not supportive of SEC's proposal to defer a determination in this case so that

[13] OEB Staff DSO Submissions at page 6.
[14] SEC DRO Submissions at page 1.
[15] Ibid. pages 1-2.

a broader reassessment of the ICM model can be conducted for the following reasons.

First, it undermines Elexicon's need for certainty[16] in regards to cost recovery for what remains significant and innovative investments. The OEB considered this need for certainty in granting an exception to the ICM funding policy and practice in 2023 to enable $8.8M in funding to start April 1, 2025.[17] Elexicon also notes that consultation timeframe of 12-15 months, as indicated by SEC, would not yield a concrete outcome from the OEB with sufficient time to be evaluated and incorporated in to Elexicon's 2025 rate application which would normally be due to be filed in August of 2024.

Second, and as noted above, when unique factual circumstances give rise to a need to depart from a particular OEB policy or model, it is squarely within the purview of the OEB panel deciding the case to consider the evidence and make a determination allowing variances from the policy when warranted and supported. OEB Staff make this same point at page 3 and in footnote 7 of the OEB Staff Submissions.

Third, the concerns raised by Elexicon in the DRO relate to the unique factual circumstances involving the Whitby Rate Zone. That Elexicon has not raised a similar concern with respect to the Veridian Rate Zone illustrate clearly that the issue is due to the unique facts in Whitby. It would not be efficient to undertake a broader policy review every time unique facts merit deviations from an OEB policy.

Fourth, the OEB panel was clear in the Decision that the approved Natural Resources Canada ("NRCan") funding was integral to the OEB's consideration of the ICM request.[18] Further delay and funding uncertainty caused by a generic hearing, as proposed by OEB Staff, is not supported by the Decision because doing so may jeopardize the NRCan funding, which expires in March 2025.[19] The importance of NRCan funding to the OEB panel's Decision further supports making a decision on the ICM model today versus deferring to a future generic proceeding.

Finally, while a review of the ICM model may impact the specific estimate of the materiality threshold it is unlikely to impact the outcome from a rate setting perspective. Specifically, that the incremental funding of $2.4M for the Whitby rate zone would be fully funded by the resulting ICM rate riders. SEC argues that "the change being proposed by the Applicant is not an appropriate amendment, as it does not attempt to get at the cause of the problem." Elexicon disagrees. Elexicon's DRO provides multiple calculations which aim to address the issue of correctly reflecting the level of capital that is effectively funded through rates in order to determine the allowable incremental capital for ICM funding. All of the calculations provided result in the same outcome as the proposed solution; $2.4M in eligible ICM funding for the Whitby rate zone.

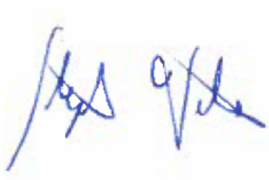
[16] Argument-in-Chief at pages 13-14, paras. 41-48
[17] Decision at page 15.
[18] Decision at page 16.
[19] Decision at page 11; Appendix B-1 - Whitby Smart Grid Business Case Page 54 of 67.

The Motion to Review

Neither SEC nor OEB Staff believe that the motion to review is necessary for the OEB to grant the relief requested, although they arrive at this conclusion for different reasons.[20] Elexicon agrees that the motion to review is not necessary to grant the relief requested. However, in the event the panel does not agree, the motion to review stands as filed.

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

Yours truly,



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cc: John Vellone

[20] SEC DRO Submissions at page 3; OEB Staff DSO Submissions at page 6.