



September 1, 2023

Delivered by Email & RESS

Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Marconi:

**Re: EB-2023-0143 – Elexicon Energy Inc. (“Elexicon”)
Request for Generic Variance Account
Reply Submission**

In response to the Ontario Energy Board’s August 1, 2023, *Notice of Hearing and Procedural Order No. 1* please find attached the reply submission for Elexicon Energy Inc..

Please contact the undersigned with any questions concerning this matter.

Regards,

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

Stephen Vetsis
Vice President - Regulatory Affairs and Stakeholder Relations
Elexicon Energy Inc.
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1 **Background**

2 On May 11th, 2023, Elexicon along with a group comprising of many of Ontario's largest
3 local distribution companies ("Large Utilities") filed a letter with the Ontario Energy
4 Board ("OEB") requesting that the OEB establish generic, sector-wide variance
5 accounts for distributors to track the incremental costs of providing locates in 2023 and
6 future years arising from the implementation of recent Provincial legislation: *Bill 93,*
7 *Getting Ontario Connected Act, 2022.* On June 14th, 2023, the OEB issued a letter to the
8 group of distribution companies requesting that they file certain evidence to determine
9 whether a hearing may be required to consider the request for a new generic variance
10 account.

11 On July 7th, 2023, Elexicon supplied the additional information requested.

12 On August 1st, 2023, the OEB issued a Notice of Hearing and Procedural Order No. 1
13 to consider whether a generic account should be established to track the relevant costs
14 through a public written hearing. Intervenor and OEB Staff provided written
15 submissions on the evidence filed by the Large Utilities.

16 Subject to minor proposed adjustments, the majority stakeholders supported the
17 request to establish a generic account and agreed that the account met the causation,
18 materiality and prudence criteria. Elexicon's reply to the intervenor submissions are
19 provided below.

20 ***Energy Probe Submission***¹

21 Energy Probe submits that there should be no allocation of indirect overheads to any
22 costs recorded in the account. Elexicon submits that excluding overhead costs leads to
23 an inadequate representation of the total incremental costs that would be incurred to
24 provide locate services. Overhead costs are a critical component in supporting the
25 administration of locate services in the most cost-effective manner. For example,
26 investment in overhead costs aimed at automating processes will result in more efficient
27 delivery of services and provide a means of delivering on the expected increased
28 volume of locates with the least resources possible.

¹ [Energy Probe Submission](#), Page 4, August 18, 2023



1 Elexicon submits that the OEB should not limit the types of incremental costs that can
2 be tracked in the account at this time to afford utilities the necessary flexibility to provide
3 locates in the most cost-effective manner. Elexicon expects that any costs in the
4 account will be assessed for prudence at the time of disposition.

5 Energy Probe submits that there are large differences between the utilities cost per
6 locate from inconsistent methods of accounts possibly related to the allocation of
7 overhead costs. Elexicon strongly disagrees with this statement. It is essential to
8 consider that the costs of the Large Utilities vary significantly in terms of various factors
9 such as their operational structure, service territory size, and distribution network
10 configurations.

11 ***OEB Staff Submission - Incrementality of Costs***

12 OEB Staff submits that an adjustment should be made to the locate budget to account
13 for the percentage change in rate revenue, instead of IRM adjustments to rates. The
14 rationale behind this, according to the OEB Staff, stems from the increase in customer
15 connections and load, resulting in both additional revenue and added costs.²

16 Elexicon submits that locate costs are primarily driven by projects by other parties which
17 come into proximity with a utility's assets. These are not directly tied to load and
18 customer growth as implied by OEB staff. As such, no adjustment for growth is required.
19 Elexicon observes that no other party raised this issue.

20 ***Treatment of Z-Factor Claim***

21 SEC submitted that the variance account should be approved as a Z-factor³. Elexicon
22 submits that this is inconsistent with OEB precedent.

23 There are numerous examples where the OEB has created deferral and variance
24 accounts to provide relief for legislative or policy changes. These include but are not
25 limited to:

² [OEB Staff Submission](#), Page 7, August 21, 2023

³ [SEC Submission](#), August 18, 2023



- 1 • Implementation of the Ultra-low overnight (ULO) Time of Use rate structure for
2 RPP customers⁴
- 3 • Implementation of Green Button⁵
- 4 • Impacts Pertaining to Ontario Regulation 410/22 (Electricity Infrastructure –
5 Designated Broadband Projects)⁶
- 6 • Recording of Costs Associated with Distributor Partnership in the Local Initiatives
7 Program Under the 2021-2024 CDM Framework⁷

8 Additionally, Elexicon also observes that the circumstances surrounding the request do
9 not align with typical Z-factor requests. Namely:

- 10 • The costs are not yet fully known. Z-factor claims typically approve actual costs
11 after an event has occurred (e.g. storm damage).
- 12 • The impact of Bill 93 on locate costs represents incurred costs which will extend
13 beyond a specific 12-month period. A crucial criterion for Z-factor claims is
14 establishing that the incurred costs fall within a specific 12-month period.⁸

15 In their submission, SEC states that “there is no free-standing ability for any utility to
16 seek a deferral and variance account under any of the OEB’s rate-setting approaches,
17 outside of a cost of service or Custom IR application.” Elexicon submits that this is not
18 true. The OEB has approved requests by utilities to establish deferral accounts outside

⁴ [EB-2022-0160 – Accounting Order for the Establishment of a Deferral Account to Record Impacts Arising from Implementing the Ultra-Low Overnight \(ULO\) Regulated Price Plan Option](#), March 2, 2023

⁵ [EB-2021-0183 – Accounting Order \(003-2021\) for the Establishment of a Deferral Account to Record Impacts Arising from Implementing the Green Button Initiative](#), November 1, 2021

⁶ [Accounting Order \(001-2022\) for the Establishment of a Deferral Account to Record Impacts Pertaining to Ontario Regulation 410/22 \(Electricity Infrastructure – Designated Broadband Projects\)](#), July 7, 2022

⁷ [Accounting Order \(002-2021\) for the Establishment of a Deferral Account to Record Costs Associated With Distributor Partnership in the Local Initiatives Program Under the 2021-2024 Conservation and Demand Management Framework](#), May 28, 2021

⁸ [OEB Filing Requirements - Chapter 3 - Distributors](#), Page 23, June 24, 2021



1 of rebasing applications. For example, they approved a request to establish a regulatory
2 account in a stand-alone application in EB-2021-0169.⁹

3 Elexicon submits that the OEB should approve the variance account in accordance with
4 past practise.

Effective Date

5 VECC and SEC submitted that the effective date of the deferral account should be after
6 the date of the request by the Large Utilities.¹⁰ The parties argued that to approve any
7 other effective date would constitute retroactive rate making. Elexicon does not agree.

8 Deferral accounts are a recognized exception to rules against retroactive ratemaking
9 which allow for recovery of an expense or revenue which cannot be forecast with
10 certainty in a test year.¹¹ It is Elexicon's view that the OEB has the flexibility to approve
11 an effective date prior to the date of an applicant's request if the circumstances warrant
12 the request.

13 Bill 93 received Royal Assent on April 14, 2022, and its relevant provisions came into
14 force on April 1, 2023. However, there were still ongoing discussions regarding the
15 compliance regime and the treatment of penalties into late 2022. The outcome of those
16 discussions was not known at the end of 2022 and would have a material impact on
17 determining the resources necessary for utilities to become compliant. While utilities
18 began incurring costs prior to April 1, 2023, to become compliant with the new
19 requirements under Bill 93, they did not have the certainty necessary to fully determine
20 the materiality of the impact.

21 Within that context, it is Elexicon's view that the Large Utilities provided their request for
22 the deferral account as soon as was practically possible given the circumstances.

23 As a result, Elexicon submits that January 1, 2023, is a fair and reasonable start date
24 for the variance account.

⁹ [EB-2021-0169 - Hydro One Networks Inc.: Accounting order to establish a new regulatory account effective May 28, 2021](#), dated Oct 2, 2021

¹⁰ For example see, [SEC Submission](#), Page 3, August 18, 2023 and [VECC Submission](#), Page 3, August 21, 2023

¹¹ [EB-2018-0205 - Enbridge Gas: Decision On Appeal](#), April 30, 2019



1 **Conclusion**

2 Elexicon submits that the majority of stakeholders support the creation of the proposed
3 deferral account. Elexicon submits that the OEB should approve the proposed account,
4 effective January 1, 2023, to track the incremental cost of providing locate services until
5 a utility's next rebasing. Approval of the account will ensure that utilities have the
6 resources necessary to: (i) deliver locates in a cost-effective and timely manner, (ii)
7 ensure public safety, and (iii) support government policy priorities.