Ontario Energy Board
2300 Yonge Street, 27th floor,
P.O. Box 2319, Toronto, ON, M4P 1E4

Submitted via RESS

May 16, 2025

RE: EB-2024-0092 – Feedback on Proposed Amendments to the Distribution System Code to Establish a Capacity Allocation Model – OEB File# EB-2024-0092

Dear Ms. Marconi,

On April 17, 2025, the Ontario Energy Board ("OEB") issued a Notice of Proposal to Amend a Code. The Notice proposed amendments to the Distribution System Code ("DSC") to establish a capacity allocation model. Stakeholders were invited to provide comments on the proposed amendments.

The proposal issued by the OEB admirably aims to adhere to the traditional regulatory principle of "beneficiary pays" by ensuring that connecting customers only pay the amount of capacity that they require. However, in doing so, the OEB is proposing a methodology that is administratively complex and burdensome to implement while providing only broad guidance on eligibility. This has the potential to drive disagreements in interpretation between distributors and customers, create inconsistencies in application across the province, and may yield unintended financial consequences on distributors, as proposed.

There also remain several areas where additional clarity is required on fundamental concepts, including, but not limited to, providing clear guidance on the funding mechanism for distributors' upfront capital outlay and understanding the near-term rate impact to existing rate payers.

Further consultation would be beneficial to provide clarity for this proposed CAM to be implemented effectively and consistently.

Elexicon appreciates the opportunity to provide the expanded comments below for the OEB's consideration and remains committed to continue to work with the OEB and industry to establish an appropriate CAM.

Sincerely,

Stephen Vetsis
Vice President, Regulatory Affairs & Stakeholder Relations
Elexicon Energy

Elexicon Energy Comments
Feedback on Proposed Amendments to the Distribution System Code to Establish a Capacity Allocation Model
Ontario Energy Board File Number: EB-2024-0092
May 16, 2025

Background – Elexicon

Elexicon is keenly interested in supporting housing development and fairly apportioning capacity and costs in expanding to new development areas. Elexicon Energy (Elexicon) delivers safe, reliable, and affordable electricity to more than 180,000 homes and businesses including communities in the Durham Region, as well as Belleville, which are all experiencing significant growth. The majority of Elexicon's service territory is within the Region of Durham, whose population is expected to almost double by 2051. Other regions within our service territory are also experiencing high growth.

General Comments

Elexicon supports the development of a CAM model that provides clear guidance, aligns with housing objectives, addresses concerns identified, protects both existing and future rate payers and, ensures distributors and their shareholders are held whole.

The proposal issued by the OEB admirably aims to adhere to the traditional regulatory principle of "beneficiary pays" by ensuring that connecting customers only pay the amount of capacity that they require. However, in doing so, the OEB is proposing a methodology that is administratively complex and burdensome to implement while providing only broad guidance on eligibility. This has the potential to drive disagreements in interpretation between distributors and customers, create inconsistencies in application across the province, and may yield unintended financial consequences on distributors, as proposed.

There also remain several areas where additional clarity is required on fundamental concepts, including, guidance on eligibility to ensure appropriate developments qualify, how the mechanisms for funding distributors' upfront capital outlay will be treated in a rate-setting context and understanding the near-term rate impact to existing rate payers. The latter two are particularly important to ensure, as stated in the Minister's letter of direction dated December 19, 2024, that *"LDCs, transmitters and their shareholders should be kept whole"* with respect to last mile connections.

While the process of the CAM Advisory Group (CAMAG) yielded some productive conversations, the limited timeframe allocated to developing the CAM, despite the extension into April, has restricted the exploration of alternative approaches that may be viable, and more practical to implement (e.g. upfront development or per kW capacity charges). Furthermore, several substantive and fundamental concerns that were raised during CAMAG meetings, and in Elexicon's submission to OEB Staff, remain unresolved and should be considered prior to implementation to avoid unintended negative consequences. With additional time, Elexicon believes the proposal could be developed to more effectively meet the desired objectives.

Elexicon's concerns include:

Rate-Funding Mechanism

Further clarity is required on the mechanism for funding the distributor/rate payer share of costs in the CAM. From discussions in the working group, it is unclear whether the OEB expects that costs are carried in a deferral account and slowly credited over time or whether they are added to rate base as soon as they are energized. In either case the details are important.

As a high-growth distributor, Elexicon is very concerned that the proposed approach of having distributors carry costs for an extended period of time will place a disproportionate burden on high-growth distributors. This could create a financial disincentive/penalty for high-growth distributor and provide a barrier to enabling growth in the areas that need it most.

Section 2.2 of the proposal model needs more specificity regarding the integration of the proposed amendments with the existing rate-setting framework and needs to ensure that there is some mechanism for up-front funding to build infrastructure far in advance of the materialization of load. The proposed model would have distributors carrying construction costs for an extended period of time, potentially up to 15 years. Existing mechanisms (ACM, ICM, DVA) are not effective avenues of funding in these circumstances.

Deferral accounts create cash flow concerns as distributors would need to outlay capital without associated revenues, potentially over a 15-year period, before they could receive revenues to fund the cost of that capital. Two key metrics debt issuers look at are the debt-to-equity ratio and the ratio of cashflow to debt. The longer debt is carried without corresponding revenue the worse those metrics will appear, all other things being equal. This increases the risk to rate payers of increased costs due to less favourable borrowing terms given the potential 15-year horizon over which costs may need to be carried while revenue materializes. There are no examples of other investments made by distributors that have a 15-year lag between expenditures and revenues. An investment in the tens of millions could have a significant financial impact even for a distributor the size of Elexicon.

The Advanced Capital Module and Incremental Capital Module are flawed because both require that each project must be individually material relative to a distributor's overall envelope. This can be limiting and can result in situations where CAM projects would not meet the threshold individually even though they are material in aggregate and therefore not qualify for recovery, contrary to the government's stated intent in the Minister's letter of direction dated December 19, 2024, that *"LDCs, transmitters and their shareholders should be kept whole"* with respect to last mile connections.

The OEB has also not considered instances where distributors' capital budgets may already be constrained and significant additional borrowing capacity may not be available. Distributors are already facing a burden to execute on existing capital plans within existing envelopes to fund system expansions with lower capital contributions from customers as a result of longer connection and revenue horizons[1]. This proposed CAM, which requires the distributor to cover the upfront costs for all but the "paid committed" customers, will significantly exacerbate the impact on distributors' existing capital plans. Connection of new load is an obligation per the existing rules, which could result in System Renewal and System Service investments being deferred and reduce system performance.

Financing Charge

Elexicon understands the proposed financing charge in Appendix I, section 2.4.1, for customers that pay in future years, is intended to ensure distributors, shareholders and rate payers are "held whole" for the borrowing costs incurred by the distributor to finance the infrastructure. OEB staff has indicated they believe the financing charge will "incentivize" developers to commit early with paid committed capacity to avoid financing charges. While this may hold true for developers looking to move forward in the nearer term, it may have the opposite effect on later term developers who are willing to wait out the 15 years plus a day before applying for capacity in the same way developers did with the five-year connection horizon (now up to 15 years). Elexicon's experience with subdivisions is they very often have long development periods where a delay of a decade to avoid committing capital or financing charges may outweigh the possibility of limited available capacity. This is another potential risk to rate payers, to whom the burden of the costs will ultimately fall.

Section 2.4.1 also outlines the basis for the financing charge as the distributor's weighted average cost of capital plus Payment-in-Lieu of Taxes (PILs) or corporate taxes, whichever is applicable. Elexicon is looking for clarity on how PILs or corporate taxes relate to the financing charge.

Binding Commitments

Elexicon recommends removing "surety bonds" as an instrument to commit to future capital contributions included in the definition of "agreed committed capacity" in Section 3.2A.1 of the proposed DSC Amendments. There are inherent differences between letters of credit and surety bonds, including legal differences that could affect a distributor's ability to obtain full and prompt payment on any default claim. Obtaining payment under surety bonds is generally a longer and more substantive process which includes a greater risk of litigation on the default and any other argument

[1] See December 23, 2024 DSC changes in EB-2024-00092.

that may be raised by the provider of the surety bond (often insurance companies). This adds additional complexity and risk to the recovery of "agreed committed capacity" capital contributions which further exposes distributors and rate payers to potential financial harm.

Should the OEB retain surety bonds as a potential instrument to commit to future capital, Elexicon strongly suggests clarifying in the "agreed committed capacity" definition that the form of instrument is solely at the discretion of the distributor.

Section 2.2.1 b) of Appendix I, should clarify that customers with "agreed committed capacity" may also be required to enter into a form of agreement with the distributor to which the binding financial commitment is affixed. The form of offer and/or agreement noted in Section 2.5.1 should take the shape of an Offer to Connect which is the distributor's instrument under which capacity can be "reserved". Further, it should be explicitly stated in this section that, should the customer not connect within the 15-year CAM period, where no other load materializes to utilize that capacity, distributors will have the right to keep the amount included in their binding financial commitment.

Finally, it should be clarified that, for both paid and agreed committed capacity customers, distributor approval will be required for any transfer or sale of committed capacity to another entity. Distributors will need to obtain signed offers to connect and binding financial commitments from any new entity in advance of termination of current agreements or cancelling binding financial commitments. Consideration should also be given to whether new entities acquiring committed capacity should do so at the cost at that point in time (i.e. including financing charges) or from the original entity's entry point.

Eligibility Requirements

There is a need for clear and consistent guidance on eligibility in the definition of a "qualifying development area" in Section 3.2A.1 of the DSC, to ensure only qualifying developments benefit from deferred contributions and avoiding long, protracted negotiations from one development area to the next. Without a well-defined eligibility structure, distributors will face challenges from developers questioning all elements of each CAM against each other, resulting in a poor customer experience and risk of inconsistencies across the province.

In absence of clear and consistent guidance, it should be explicitly stated in the DSC amendments that *"a distributor should have the discretion to determine, in consultation with developers or other customers, if a CAM should be applied based on the eligibility criteria for a qualifying development area…"*. While this is referenced on page 7 of the Notice itself, it is not reflected in the amendments.

It would also be beneficial to clarify that there is a certain level of maturity of development plans required to qualify for a CAM, so that planning can begin. Distributors need clarity on where roads and civil infrastructure will be in order to design the electricity infrastructure, which isn't always known in early stages of development plans.

Finally, there is some ambiguity around the term "significant" as it relates to significant residential growth in the definition of a qualifying development area in proposed section 3.2A.1 of the DSC. In absence of a specific threshold to define significant, distributors should be provided flexibility in determining whether the growth is significant enough to warrant a CAM.

Administrative Complexity

The CAM, as proposed, does not take into consideration the significant complexity and administrative burden that distributors will need to undertake in managing a CAM, or in some cases multiple CAMs, over long periods of time. Preparation of detailed development area plans, coordinating multiple developers (versus a single landowner group), balancing paid, agreed and uncommitted / unforecasted customers, all add operational complexity that has not been taken into account. A cost benefit analysis is recommended to quantify the potential impacts to distributor operations.

Section 2.3.8 in Appendix I to the DSC states that "any surplus revenues calculated from the economic evaluation (for the individual subdivision) in Appendix B may be credited toward the customer's capital contribution payable under the CAM. Elexicon appreciates the application of surplus revenues from the individual subdivision to the CAM capital contribution. Elexicon also understands it is likely rare that a surplus would occur. There are, however, concerns related to the timing and complexity aspects of this proposal and the ability of a distributor's future capital plans (up to 15 years in the future) to absorb a potentially large, unanticipated credit back to a developer for their CAM contribution.

Miscellaneous

Appendix I, Section 2.3.3 – Elexicon notes the difficulty previously raised (bottom of page 11 of the Notice) around allowing for alternative bid and the complexity added with overall construction timing and the involvement of multiple developers under the same CAM. To be clear, Elexicon is not suggesting that work should not be eligible for alternative bid, but is requesting further guidance from the OEB on how the assignment of alternative bid work should be undertaken where more than one customer in the development area is interested in pursuing alternative bid work.

Appendix I, Section 2.3.4 – Elexicon notes that there are not "typical" demand values by building type. Distributors work with information from developers to understand the characteristics of the buildings they plan to construct including size, heating type, fitted for EV charger or rough ins for DERs, etc. in order to estimate the anticipated loads. A detached bungalow with 1,500 square feet will likely have a different anticipated load than a three-storey detached home with 3,500 square feet. Similarly, the usage for commercial buildings can vary significantly in size, usage and operations requirements meaning there is no "typical" commercial building. Elexicon strongly suggests that this section be removed or reworked to place the onus on the developer to communicate the characteristics of their needs and total estimated load in order for the distributor to be able to provide a reasonable CAM allocation.

Coming into Force

The Notice proposes that the amendments to the DSC come into force 90 days after the date that the OEB posts the final amendments on its website.

Elexicon acknowledges the value of a CAM that offers clear guidance, supports housing objectives, ensures fair allocation of capacity and costs, and safeguards rate payers. However, the accelerated development timeline, limited review of alternative approaches, and unresolved concerns present risks that may impact existing rate payers and have unintended consequences.

Elexicon recommends that the OEB afford additional time to continue development and identify solutions for the concerns raised at the CAMAG, in this submission, and in comments provided by other stakeholders. In particular, the issue of upfront capital funding for distributors should be determined in advance of implementation. Additional time will also allow opportunity to explore other potentially viable, less complex alternatives that better balance regulatory principles with the practical realities of implementation.

Conclusion

Elexicon operates within a fast-growing service territory and recognizes the importance of effectively managing capacity and costs for multi-development residential subdivisions. A balanced approach is necessary to ensure developers contribute equitably to capacity needs while minimizing short-term financial burdens on existing rate payers. Elexicon submits that the CAM approach warrants further consultation and consideration.