

**John Vellone**  
T: 416-367-6730  
jvellone@blg.com

**Colm Boyle**  
T: 416-367-7273  
cboyle@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto ON M5H 4E3  
Canada  
T 416-367-6000  
F 416-367-6749  
blg.com



**File No. 99576.89**

January 12, 2023

**BY RESS and EMAIL**  
**registrar@oeb.ca**

Ms. Nancy Marconi  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

**Re: Elexicon Energy Inc. (“Elexicon”)**  
**Application for 2023 Distribution Rates and Incremental Capital funding**  
**(“Application”)**  
**Ontario Energy Board (“OEB”) File Number: EB-2022-0024**

We are counsel to Elexicon in the above-noted Application.

On December 14, 2022, the OEB received a request from the Brooklin Landowners Group (“**Brooklin Landowners**”), seeking leave to (i) provide written responses or supplement the written responses of Elexicon Energy, to various interrogatories set out in their letter; and (ii) make a Brooklin representative available at the Technical Conference on January 12, 2023 to answer any follow-up questions from OEB staff or other intervenors.

On December 22, 2022, the OEB issued Procedural Order No. 3 ordering Elexicon to indicate whether it adopts the supplemental interrogatory responses of Brooklin Landowners in support of this application. The OEB directed that in the event that Elexicon takes issue with specific responses of the Brooklin Landowners, Elexicon Energy should set out the evidence that it does not agree with and the reason for its disagreement.

On January 9, 2023, the Brooklin Landowners filed their supplemental interrogatory responses (the “**Supplementary Responses**”).

This letter is intended to respond to the requirements of Procedural Order No. 3.

While Elexicon is willing to consent to the inclusion of the Supplementary Responses of the Brooklin Landowners onto the evidentiary record in this proceeding, it affirms and adopts only the Elexicon responses to the Interrogatory Responses.

Elexicon is unable to adopt the Supplementary Responses of the Brooklin Landowners as its own, as this would constitute hearsay. Neither the OEB Panel nor the intervenors would be able to test Elexicon’s witnesses on the Brooklin Landowner’s assertions. Those are the Brooklin Landowner’s assertions, not those of Elexicon. In this context, the OEB accepted Brooklin Landowners’ offer to make its witness(es) available at the Technical Conference to clarify the interrogatory responses provided by the Brooklin Landowners.

In any event, with the exception of what is set out in Table 1 below, Elexicon neither agrees nor disagrees with the responses provided by the Brooklin Landowners. Rather, in many instances Elexicon has no additional information upon which to either agree or disagree with the information provided in the Supplementary Responses.

With regard to the OEB’s request that it set out any evidence it does not agree with and the reasons for the disagreement, Elexicon provides on a best-efforts basis its response to this request in Table 1 below.

**Table 1**

Response	Reason for Disagreement
CCMBC-11	<p>Elexicon disagrees that the series of correspondence filed by the Brooklin Landowners in Attachment 1 is relevant to the question as asked, which was seeking correspondence about “their concern about the inconsistency between the DSC and TSC.” After reviewing the materials filed in Attachment 1, it is clear that none of the correspondence raises the concern about the inconsistency between the DSC and the TSC and thus it is not relevant to the IR as asked. Rather, Elexicon remains of the view that the Brooklin Landowners expressed this concern verbally during discussions with Elexicon.</p> <p>Elexicon also disagrees with many of the assertions made by the Brooklin Landowners in the letters dated June 9, 2021 and September 9, 2021 attached as Attachment 1 to this Supplementary Response. The basis for the disagreements are set out in detail in Elexicon’s letters dated July 19, 2021 and November 8, 2021 which are also attached as Attachment 1 to this Supplementary Response.</p>
CCMBC-20(d)	<p>Elexicon does not agree with the Brooklin Landowners that “[t]hese applications stand on their own and are justified, not by the DER and EV proposal, but by the regulatory arguments, including the fairness arguments, that are summarized in the Supplementary Responses of the Brooklin Landowners Group to 1-Staff-15 and 17.”</p> <p>Elexicon would not have filed the ICM application for the Sustainable Brooklin project absent the benefits associated with enabling DER/EV ready homes in the community to facilitate incremental non-wires alternatives that have the potential defer future capacity upgrades in a very high growth community.</p>

<p>STAFF-15(c)</p>	<p>Elexicon does not agree with the assertion that “[t]he cost of which is a system cost that should be borne by all ratepayers.” This sentence is qualified as a normative statement as to the Brookline landowners’ view. Elexicon does not agree with this view. Rather, absent this Application and specifically the requested DSC exemption, of both the Phase 1 and Phase 2 projects is an “expansion” within the meaning of the DSC with the cost responsibility rules thereby specified by the DSC (i.e., beneficiary pays). In addition, the decision to separate the Phase 1 and Phase 2 projects was made by Elexicon to ensure the developers benefit from different 5-year time horizons for each of the projects so that they most closely align with the actual developments on the ground.</p> <p>Elexicon also does not agree with the statement that: “Elexicon will exercise its discretion to request the OEB permit the extension of the customer connection horizon used to determine the quantum of required capital contribution, from five to 20 years.”</p> <p>Specifically, while Elexicon is aware of industry relation’s December 22, 2022 letter re: <i>Reminder of Distributor Discretion to Extend Customer Connection Horizon for System Expansions</i>, and Elexicon agrees that the letter correctly draws attention to a footnote in Appendix B of the DSC which requires LDCs to provide justification to any extension of the five year period to the OEB, Elexicon notes the letter is simply the views of OEB Staff and is not binding on any OEB panel and in addition Elexicon’s view is that the letter fails to address several elements of the DSC that limit Elexicon’s discretion to simply extend the customer connection horizon.</p> <p>Specifically, the last paragraph in the Letter fails to identify that extending the economic evaluation period is not at the discretion of the applicable LDC but instead requires that the OEB issue corresponding regulatory exemptions to compliance obligations under Section 3.2.23, 3.2.24, and 3.2.27 of the Distribution System Code because the five year period is hard coded into those provisions of the Code (and is not in any way qualified by the words “or such extended period as may be approved by the distributor in accordance with Appendix B of the Code”).</p> <p>Failure to comply with any one of Sections 3.2.23, 3.2.24 or 3.2.27 of the DSC would constitute a breach of an enforceable provision of the Ontario Energy Board Act, 1998 which may lead to compliance and enforcement proceedings being brought against the applicable LDC.</p> <p>For these reasons, it is Elexicon’s view that the letter is neither legally nor factually accurate when it suggests that LDCs “have discretion, on a case-by-case basis, to extend the customer connection horizon that is used in distribution system expansions.” Currently the opposite is true.</p>
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	Finally, Elexicon is not aware of any factual circumstances where such an extension was granted beyond 7 years.
STAFF-17(d)	The fairness arguments presented by the Brooklin Landowners in this response appear to challenge the validity of the beneficiaries pay principles as currently set out in the DSC. Elexicon does not support such a challenge. Rather, Elexicon's view is that the specific facts in this Application support differential treatment for this specific project so as to drive the specific benefits as set out in the Application.

Elexicon notes that the Supplementary Responses constitute more than 400 pages in additional evidence. In this context, Elexicon has used best efforts to respond to the OEB's request in the timeframe provided, but notes that there may be other aspects of the Supplemental Responses that Elexicon does not fully agree with beyond what is identified above.

Therefore, Elexicon does not adopt the supplemental interrogatory responses of Brooklin Landowners. Please contact the undersigned if you have any questions.

Yours truly,



John Vellone

JV/CB