



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

BY EMAIL

January 27, 2023

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB) Staff Submission
Elexicon Energy Inc.
Application for 2023 Rates
OEB File Number: EB-2022-0024**

Please find attached the OEB staff's submission on the type of hearing for Phase 2 (ICM portion) of the application in the above-referenced proceeding pursuant to Procedural Order No. 2, as well as Elexicon Energy Inc.'s request for confidential treatment of its undertaking response JT1-18.

Yours truly,

Birgit Armstrong
Sr. Advisor, Incentive Rate Setting and Regulatory Accounting

Encl.

cc: All parties in EB-2022-0024



ONTARIO ENERGY BOARD

OEB Staff Submission Type of Hearing and Confidentiality

Elexicon Energy Inc.

2023 Rates Application

EB-2022-0024

January 27, 2023

Introduction

Elexicon Energy Inc. (Elexicon Energy) filed an incentive rate-setting mechanism (IRM) application with the Ontario Energy Board (OEB) on July 28, 2022, under section 78 of the *Ontario Energy Board Act, 1998* (OEB Act) seeking approval for changes to its electricity distribution rates to be effective January 1, 2023.

As part of Procedural Order (PO) No. 2, the OEB bifurcated the application into two phases.¹ The OEB considered the IRM elements during Phase 1 through a written hearing process.² In Phase 2, the OEB will decide on three incremental capital module (ICM) requests: (i) the Whitby Smart Grid project (WSG) in the Whitby rate zone, (ii) Advanced Distribution Management System (ADMS) costs associated with the WSG allocated to the Veridian rate zone, and (iii) an expansion project called Sustainable Brooklin in the Whitby rate zone. The Sustainable Brooklin project also includes a request for an exemption from section 3.2 of the Distribution System Code.

PO No. 2 also permitted all parties to file a submission as to whether one or more of the ICM requests in Phase 2 should proceed via (i) an oral hearing or (ii) written submissions following a technical conference scheduled for January 2023. The OEB noted that it is open to considering different hearing types for each of the three ICM requests.

On December 22, 2022, the OEB issued PO No. 3, which allowed for the filing of supplemental interrogatory responses by one of the intervenors, the Brooklin Landowners Group Inc. (Brooklin Landowners). The supplemental interrogatory responses were filed on January 9, 2023. A transcribed technical conference was held on January 17-18, 2023. Elexicon Energy as well as the Brooklin Landowners answered clarification questions from parties on ICM-related interrogatories.

On January 24, 2023, Elexicon Energy and the Brooklin Landowners both filed written responses to undertakings that their representatives had given during the technical conference on. As part of its filing, Elexicon Energy has requested confidential treatment for one undertaking response (JT1-18).

In this submission, OEB staff provides its view on: (i) the type of hearing as per PO No.3 and (ii) the proposed confidential treatment of JT 1-18.

¹ Issued November 1, 2022.

² The OEB issued a Partial Decision and Order on Phase 1 (IRM elements) on December 8, 2022. An Interim Rate Order for Phase 1 was issued on December 16, 2022.

Type of Hearing

OEB staff submits that the supplemental responses as well as the undertakings are raising additional questions regarding the Sustainable Brooklin ICM. OEB staff notes that the supplemental evidence provided by the Brooklin Landowners raises questions that will need to be examined further, specifically the resourcing of this incremental project. OEB staff is concerned with the overall quantum of these incremental funding requests, which total \$63.4M versus Elexicon Energy's OEB-approved rate base of \$75.7M.

Given the complexity, importance, and interrelated nature of all three ICM requests, OEB staff submits Phase 2 would be most efficiently handled by way of an oral hearing.

Confidential Treatment

In one of its undertaking responses, Elexicon Energy filed its forecasted Return on Equity (ROE) for the years 2022-2025. It is seeking confidential treatment of such information pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice Direction).³

As part of the cover letter, Elexicon Energy acknowledged that the request for confidentiality does not fall within Appendix B of the Practice Direction's list of specific categories of information that will presumptively be considered confidential. Elexicon Energy noted that the information provided is close to exemptions #9 and #10 but noted that it is a municipally owned corporation that does not participate in public markets and, therefore, the exemptions do not apply.

Appendix A of the Practice Direction sets out the considerations in determining requests for confidentiality. Elexicon Energy submitted that the disclosure of forecasted values for ROE can be expected to harm Elexicon Energy by prejudicing its competitive position. In particular, credit agencies may be able to obtain this information and it could have an adverse effect on Elexicon Energy's cost of capital. Elexicon Energy argued that the forecasted ROE is speculative, non-public, forward-looking financial information, which is consistently treated in a confidential manner. Elexicon Energy further noted that the ROE is based on unaudited, draft financial information that is subject to change.

Submission

OEB staff objects to the confidential treatment of undertaking response JT 1-18. In OEB staff's view, this information does not prejudice Elexicon Energy's "competitive position" as it does not operate in a competitive industry. Rather, Elexicon Energy is a monopoly

³ Elexicon Energy Response to Technical Conference Undertaking JT1-18

electricity distributor for its exclusive service territory.

The OEB further notes that the same type of information was filed publicly by another distributor in another proceeding.⁴ OEB staff notes that in both cases the applicant is a municipally owned corporation and therefore confidential treatment of the same information in the case of Elexicon Energy is unnecessary. OEB staff further takes issue with Elexicon Energy's claim that disclosure could adversely affect its cost of capital. Elexicon Energy has not provided any specifics as to how/why this would occur.

~All of which is respectfully submitted~

⁴ EB-2020-0249/EB-2018-0219, Interrogatory Response to VECC 14