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BY RESS & 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 Module (“ICM”) funding (“Application”) Ontario Energy Board (“OEB”) File Number: EB-2022-0024 Reply to OEB Staff Submission on Confidentiality

We are counsel to Elexicon in the above noted proceeding. We are writing in response to OEB Staff’s submission on Elexicon’s request for confidential treatment of Undertaking Response JT1-18 dated January 27, 2023.

OEB Staff challenges the confidentiality request on three basis: (a) Elexicon operates as a monopoly and does not operate in a competitive industry; (b) PUC Distribution disclosed similar information in another OEB proceeding; and (c) a lack of detail on how / why Elexicon would be harmed by this disclosure.

With respect to (a), all utilities regulated by the OEB operate as a monopoly. That is not a reason to deny confidential treatment of Undertaking Response JT1-18. Elexicon notes that the OEB has approved confidential treatment for “projected” return on equity (“ROE”) in another case.¹

With respect to (b), respectfully, what PUC does or does not disclose is not relevant to Elexicon’s request for confidentiality of its forecasted ROE. Appendix A, section (b) of the Practice Direction talks about information that has been consistently treated as confidential “...**by the person providing it to the OEB.**” What PUC elected to disclose is not relevant to the analysis. OEB Staff has provided no evidence to suggest that PUC is rated by third party debt rating agencies in the same way Elexicon is. Rather, this information has been consistently treated as confidential by Elexicon.

With respect to (c), Elexicon obtains debt financing by borrowing from financial institutions. One element that impacts Elexicon’s cost of borrowing is its credit rating. As is detailed in the original

¹ EB-2016-0152, Confidentiality Request – Exhibit N1-1-1 Impact Statement, December 20, 2016, Exhibit N1-1-1, Attachment 1, at page 2; EB-2016-0152, Decision and Order on Confidentiality, January 31, 2017, at page 22.

confidentiality request, public disclosure of Elexicon's ROE forecasts would be prejudicial and harmful as ratings agencies could use this information to adjust Elexicon's credit rating and therefore its cost of capital. Elexicon could potentially be harmed by financial institutions increasing its cost of capital as a result of this information becoming public. Forecasted ROE is not information that Elexicon has ever made public. Moreover, the forecasted ROE is being provided on a condensed timeline, is speculative, and has not been subject to sufficient scrutiny to permit public disclosure.

Please contact the undersigned with any questions.

Yours truly,



John Vellone

JV/CB

cc: Parties in EB-2022-0024