



Elexicon Energy Inc.

Application for electricity distribution rates and other charges effective January 1, 2023

PROCEDURAL ORDER NO. 4 AND DECISION ON CONFIDENTIALITY

February 8, 2023

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*, seeking approval for changes to its electricity distribution rates to be effective January 1, 2023.

On November 1, 2022, the OEB bifurcated the application. The OEB determined that it would consider the IRM elements during Phase 1 and the incremental capital module (ICM) requests as part of Phase 2. The OEB issued a Partial Decision and Order deciding on the Phase 1 IRM elements on December 8, 2022. 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 to be in service in 2025, (ii) the Advanced Distribution Management System (ADMS) costs associated with the WSG in the Veridian rate zone to be in service in 2025, and (iii) an expansion project called Sustainable Brooklin with an expected in-service date of 2023.

The OEB held a Technical Conference from January 17 to 18, 2023. On January 24, 2023, consistent with Procedural Order No. 3, Elexicon Energy filed responses to undertakings from the Technical Conference. Elexicon Energy has requested confidential treatment of the information included in undertaking response J1.18 which includes a forecast of its estimated return on equity (ROE) between 2022 and 2025.¹ Elexicon Energy also filed an unredacted version of interrogatory response SEC.01 claiming non-relevance of certain information.

In accordance with Procedural Order No. 3, the parties and OEB staff filed submissions on the type of hearing for Phase 2.

Confidential Treatment of Undertaking Response JT 1.18

¹ EB-2022-0024, [Undertaking Response JT 1.18](#), January 24, 2023

The redacted information is a forecast of Elexicon Energy's ROE for 2022, 2023, 2024 and 2025. Elexicon Energy requested confidential treatment of the redacted information based on Sections 10.01 and 10.02 of the OEB's *Practice and Direction on Confidential Filings* noting that the disclosure of forecasted values for ROE can be expected to harm Elexicon Energy by prejudicing its competitive position. Elexicon Energy further noted that its forecasted ROE is speculative, non-public, and forward-looking, which is consistently treated in a confidential manner.

OEB staff objected to the confidentiality request on three bases: (a) Elexicon Energy 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 Energy would be harmed by this disclosure.

Elexicon Energy replied with respect to (a) that all utilities regulated by the OEB operate as a monopoly. With respect to (b), Elexicon Energy submitted that PUC's example is not relevant to Elexicon Energy's request for confidentiality as OEB staff did not provide evidence that PUC is rated by a third-party debt rating agency. Elexicon Energy further submitted that (c) it obtains its debt financing by borrowing from financial institutions and one element that impacts its cost of borrowing is its credit rating. Elexicon Energy stated that its ROE forecast would be prejudicial and harmful as rating agencies would use this information to adjust its credit rating.

OEB staff and Elexicon Energy referred to prior OEB decisions in which forecast ROE information had, and had not, been treated as confidential under different circumstances.

Findings

The OEB approves confidential treatment of JT1.18 on the basis that Elexicon Energy indicated that the forecast ROE was provided on a condensed timeline and had not been subject to sufficient internal scrutiny to permit public disclosure. The OEB notes that forecast ROE is not always afforded confidential treatment.

The purpose of the Technical Conference undertaking as stated in the transcript was to obtain evidence by which the OEB could assess the Means Test, one of the criteria for approval of ICM funding. The OEB agrees that there needs to be sufficient evidence on the public record for the OEB to consider whether Elexicon Energy passes the Means Test for its Whitby Smart Grid ICM request.

Rather than consider if public disclosure of Elexicon Energy's JT1.18 projected ROE could harm its credit rating and cost of capital, the OEB requires Elexicon Energy to

answer one additional question. This question and answer will be placed on the public record.

Additional Question #1: Does Elexicon Energy forecast that its return on equity in 2022, 2023, 2024 or 2025 will exceed 300 basis points over the 2023 deemed return on equity approved by the OEB? Please explain.

Non-Relevant Claim Interrogatory Response SEC.01 Attachments 1 and 2

On October 18, 2022, Elexicon Energy filed its Responses to the Interrogatories pursuant to Procedural No. 1. In response to School Energy Coalition (SEC)-01, Elexicon Energy filed redacted versions of: (a) Attachment 1 – Management’s update to its Board of Directors on June 14, 2022; and (b) Attachment 2 – Management’s September 27, 2022, report to its Board of Directors that included the presentation made to Whitby Town Council (together the “SEC-01 Attachments”).

Elexicon Energy filed only redacted versions of the SEC-01 Attachments. After Elexicon Energy noted this unintentional oversight, it filed unredacted versions of the SEC-01 Attachments.

Any information found to be non-relevant by the OEB is removed from the record of the proceeding.

Elexicon Energy’s stated that the SEC-01 Attachments contain some information that is relevant and other information that is not relevant to SEC’s request in SEC-01. The specifics of claims for non-relevance were outlined in a table included in the request. Elexicon Energy requested that the OEB determine that the redacted information is not relevant and accept the filed non-confidential, redacted versions of the SEC-01 Attachments.

Findings

The OEB does not agree that all the proposed redactions, to be removed from the record in this proceeding, are not relevant. The OEB has considered the interrogatory question which was specific to the Whitby Smart Grid project, and the scope of this proceeding.

Elexicon Energy’s application indicates that system reliance will be improved, and outage duration will be reduced if the Whitby Smart Grid project is implemented as planned. The OEB does not agree with Elexicon Energy’s claim that all the redacted projects, strategic initiatives, or regulatory procedures are “unrelated” to this proceeding.

The OEB finds that the information under the following sub-headings in Attachments 1 and 2 are relevant to the proceeding and are within the scope of the OEB's considerations for the Whitby Smart Grid project. The OEB orders Elexicon Energy to file revised redacted versions of Attachments 1 and 2, with the following sub-sections available for the public record.

SEC.01 Attachment 1

- Reliability (page 2)
- May 21 Severe Thunderstorm and Power Restoration efforts (pages 3-4)
- Business Continuity Plan (page 4)
- Advanced Distribution Management System (ADMS) Project (page 5)

SEC.01 Attachment 2

- Reliability (page 2)
- Ministry of Energy (page 4)
- Business Continuity Plan (page 5)
- Advanced Distribution Management System (ADMS) Project (page 7)

Type of Hearing

Procedural Order No. 3, among other matters, set out procedural steps for this proceeding up to the submission on the type of hearing. As noted above, those submissions have now been filed. Six intervenors, as well as OEB staff, requested or supported that an oral hearing be held, and two intervenors and the applicant requested to proceed by way of a written hearing. Some intervenors also argued that the hearing should be held in person rather than virtual.

The OEB has reviewed the Application evidence, interrogatories responses, Technical Conference transcript and undertaking responses. Based on that review, the OEB agrees with many intervenors that the evidentiary record is not complete, and an oral hearing should be held. In addition, to expedite the proceeding, the OEB panel hearing this application is preparing questions for which Elexicon Energy is to provide written responses in advance of the oral hearing. This should limit the number of undertakings and allow parties to ask any follow-up questions at the oral hearing itself. By February 10, the OEB will send the questions to Elexicon Energy, copying all parties. Elexicon Energy shall file answers to those questions by the date set out in the Order section.

A two-day hearing was suggested by a number of parties, and the OEB agrees two days is sufficient. The OEB reminds parties to be prepared with cross-examination

questions that seek new information not currently on the public record. The OEB notes that the Technical Conference transcript often strayed into argument.

The oral hearing will be held virtually online. After considering the submissions from parties and the utilization of virtual oral hearings to date, the OEB is not convinced that a virtual hearing could not accomplish the goals desired. Further, if one party is unable to attend an in-person hearing, the OEB does not have a hybrid hearing model available at this time, to accommodate some parties online and others in person, to a technical standard that ensures procedural fairness and equity to all.

In preparation for an oral hearing, the OEB's Hearings Advisor will work with Elexicon Energy and its witnesses to avoid the issues encountered at the Technical Conference. A witness panel may be together in one room, yet each person should have a unique camera and microphone to assist with speaker identification. The proposed oral hearing setup should be tested in advance of the oral hearing.

Parties are expected to work with the Hearings Advisor to develop a hearing schedule.

The OEB considers it necessary to make provision for the following matters related to this proceeding. The OEB may issue further procedural orders from time to time.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Elexicon Energy Inc. shall, in accordance with the findings above, file revised public versions of SEC.01 Attachments 1 and 2 by **February 13, 2023**.
2. Elexicon Energy Inc. shall file answers to the Additional Question #1 and OEB panel's questions by **February 21, 2023**.
3. A transcribed oral hearing will be held on **March 3 and 6, 2023** starting at 9:30 a.m. This event will be conducted by way of a virtual hearing. Further information on how to connect to the proceeding will be communicated to parties closer to the date.
4. Elexicon Energy Inc. shall file its Argument-in-Chief with the OEB and deliver to all parties by **March 28, 2023**.
5. OEB staff and intervenors shall file any submissions with the OEB and deliver them to all other parties by **April 14, 2023**.
6. Elexicon Energy Inc. shall file any reply submissions with the OEB and deliver it to all other parties by **April 28, 2023**.

DATED at Toronto **February 8, 2023**

ONTARIO ENERGY BOARD

Nancy Marconi
Registrar