

May 4, 2023

**Sent Via RESS and Email**  
[registrar@oeb.ca](mailto:registrar@oeb.ca)

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, Ontario M4P 1E4

Dear Ms. Marconi:

**Re: Elexicon Energy Inc.; Application for Approval of 2023 Distribution Rates, Phase 2; Written Submissions of Board Proceeding No.: EB-2022-0024**

We are writing on behalf of the Brooklin Landowners Group Inc. ("**Brooklin Landowners**") and in accordance with Ontario Energy Board Procedural Order No. 5 dated February 15, 2023, to file the Written Submissions of the Brooklin Landowners (attached). This submission has also been submitted through RESS.

Kind regards,  
**Dentons Canada LLP**



Kate Wiltse  
Associate

cc: Parties to EB-2022-0024  
Helen Newland, Partner, Dentons Canada LLP

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, SO 1998, c. 15 (Sched B), as amended (the “**OEB Act**”);

**AND IN THE MATTER OF** an Application by Elexicon Energy Inc. (“**Elexicon**”) under section 78 of the OEB Act for an Order or Orders approving or fixing just and reasonable rates and other charges for the distribution of electricity by Elexicon;

**AND IN THE MATTER OF** OEB Procedural Order No. 2 bifurcating the proceeding into two phases, Phase I and Phase II;

**AND IN THE MATTER OF** Phase II to consider and decide Elexicon’s request for approval of Incremental Capital Modules funding for the Whitby Smart Grid Project and the Sustainable Brooklin Project, together with an exemption for the Brooklin Line from section 3.2 of the *Distribution System Code*.

**Submissions of Brooklin Landowners Group Inc.**

**May 4, 2023**

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## I. INTRODUCTION

1. Phase II of this proceeding deals with Elexicon's application to the Ontario Energy Board ("**OEB**" or "**Board**") for approval of Incremental Capital Module ("**ICM**") funding for the Whitby Smart Grid, the Sustainable Brooklin Project and an exemption from provisions of the *Distribution System Code* ("**DSC**") that require Elexicon to collect a capital contribution from the Brooklin Landowners Group Inc. ("**Brooklin Landowners**") in respect of the construction of the Brooklin Line (together, the "**Application**").
2. This submission, by the Brooklin Landowners, deals with some, but not all, of the matters on the Board's list of suggested submission topics that was circulated on March 6, 2023. Some of the matters on the list are more properly dealt with by Elexicon; for example, issues related to the requested timeline for approval, the OEB's ICM criteria, cost allocation and future reporting and metrics.
3. The Brooklin Landowners support Elexicon's Application, without reservation. With respect to Elexicon's request for ICM funding for the Whitby Smart Grid, the Brooklin Landowners endorse and subscribe to the submissions of Elexicon in its Argument-in-Chief and do not repeat them here. The focus of this submission is the reasons why approval of the request for ICM funding for the Sustainable Brooklin Project and an exemption from the DSC is in the public interest.
4. The balance of this submission is in five parts. First, it describes the Brooklin Landowners, the timing and phasing of their development plans and their service request to Elexicon. Second, it describes the Sustainable Brooklin Project and the associated request for an exemption from the capital contribution provisions of the DSC. Third, it discusses the factors that should be considered when deciding the Application. Fourth, this submission describes the ratepayer and public interest benefits of the Sustainable Brooklin Project. Finally, the submission describes the unfair consequences of applying the DSC capital contribution rules to the unique circumstances of North Brooklin and the reasons why an exemption should be approved.

## II. THE BROOKLIN LANDOWNERS AND THE DEVELOPMENT OF NORTH BROOKLIN

### (a) The Brooklin Landowners

5. The Brooklin Landowners is an incorporated entity comprising 13 umbrella development companies who intend to construct multiple residential subdivisions in the new community of North Brooklin, Ontario.<sup>1</sup> These 13 developers comprise 30 of the 90 individual landowners in North Brooklin and own 60 of the 123 parcels of land in the community.
6. Development in North Brooklin is proceeding in accordance with the Brooklin Community Secondary Plan that was approved by Whitby Town Council in 2018, pursuant to the Official Plan of the Town of Whitby. To date, six of the 30 individual landowners in the Brooklin Landowners group have received approval of their draft plans of sub-division from the Town of Whitby ("**Draft**

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<sup>1</sup> See Supplementary IR Response of Brooklin Landowners Group ("**Supp IR Response**") to Staff-12(a); The 12 Brooklin Landowners' developers have entered into a cost-sharing agreement to facilitate the development of North Brooklin in accordance with the Official Plan of the Town of Whitby.

**Plan Approval**”), as required under the Brooklin Community Secondary Plan and the associated Comprehensive Block Plan.<sup>2</sup>

7. Draft Plan Approval is required in order to proceed to registration of the subdivision development. Importantly, Draft Plan Approval is also required before banks and other financial institutions would be prepared to provide financing.<sup>3</sup> Of the remaining Brooklin Landowners land owners, 15 have submitted development applications and are awaiting approval and nine expect to submit applications within the next two to three years.<sup>4</sup>

(b) **Brooklin Landowners’ Request for Service**

8. The Brooklin Landowners first approached Whitby Hydro, predecessor to Elexicon, in 2018 to inquire about the provision of electricity service to North Brooklin, with the expectation that service to energize first home construction, as early as 2020, would be readily available. This expectation was founded on two factors. First, the fact that in 2013, the Official Plan of the Region of Durham had been amended to assign a growth forecast to the Town of Whitby and to specifically designate North Brooklin as a “growth” area.<sup>5</sup> (The Official Plan includes forecasts of growth for the Region of Durham and mandates the growth that is to be achieved by 2031). Second, the fact that North Brooklin was located adjacent to the established community of Brooklin which was already served via Whitby Hydro’s 13.8 kilovolt (“kV”) system.
9. The Brooklin Landowners were surprised, therefore, to learn that Whitby Hydro (and, since 2019, Elexicon) had not anticipated the need for service in North Brooklin and had done no pre-planning.<sup>6,7</sup> In response to a request from the Brooklin Landowners, Elexicon commenced a system planning exercise to determine how North Brooklin could be connected.<sup>8</sup> Numerous discussions between the parties occurred in 2019, and regular meetings between Elexicon and the Brooklin Landowners commenced in August 2020.<sup>9</sup>
10. In November, 2020, Elexicon advised the Brooklin Landowners that its existing 13.8 kV system, which served the existing community of Brooklin, did not have the capacity to serve anticipated growth in North Brooklin as *per* the Brooklin Community Secondary Plan and, moreover, that Elexicon expected to phase out 13.8kV service in favour of a new 27.6kV service. (Elexicon acquired Veridian’s 27.6kV assets at the time of the merger of Whitby Hydro and Veridian, in 2019). In the result, Elexicon concluded that an expansion of the existing 13.8 kV system was neither practical nor preferred.

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<sup>2</sup> Oral Hearing Transcript, Vol 1, pg 25, lines 7-8; Supp IR Response to Staff 12(a).

<sup>3</sup> Technical Conference Transcript, Vol 2, pg 26, lines 6 to 13; pg 43, lines 13 to 25; pg 46, lines 3 to 17; Oral Hearing Transcript Vol 1, pg 118, lines 15 to 22; pg 129, lines 1 to 10; pg 155, lines 9 to 13.

<sup>4</sup> Supp IR Response to Staff-12(a).

<sup>5</sup> Supp IR Response to Staff-12(a).

<sup>6</sup> Supp IR Response to Staff-15(c); Supp IR Response to CCMB-11, Attachment 1 (Sept 9, 2021 MGP Letter).

<sup>7</sup> Supp IR Response to Staff-15(c); Supp IR Response to CCMB-11, Attachment 1 (June 9, 2021 MGP Letter).

<sup>8</sup> Supp IR Response to Staff-15(c).

<sup>9</sup> Supp IR Response to Staff-15(c); Supp IR Response to CCMB-11, Attachment 1 (June 9, 2021 MGP Letter).

11. Elexicon further advised the Brooklin Landowners that its preferred option for providing electricity service to the community of North Brooklin was to construct a new 27.6 kV feeder (the “**Brooklin Line**” or “**Phase 1 Facility**”) to connect the Whitby Transformer Station (“**TS**”) to a new distribution system that would distribute electricity along primary streets in the community of North Brooklin (the “**Phase 2 Facilities**”).<sup>10</sup> The Phase 2 Facilities would be in addition to the work that individual developers would have to undertake within their own subdivisions to connect individual dwellings to the lines running along subdivision roads and streets.<sup>11</sup> While the Brooklin Line would need to be constructed, in its entirety, at one time, the Phase 2 Facilities were scalable and could be constructed in stages, over time, as the community of North Brooklin was built out.<sup>12</sup>
12. Finally, Elexicon advised the Brooklin Landowners that the construction of the Brooklin Line would constitute an “expansion” of its existing system and would, accordingly, trigger a requirement under the DSC, for a capital contribution to be collected from the new “customers” requesting service; i.e., the Brooklin Landowners.<sup>13</sup> This was notwithstanding the fact that the Brooklin Line would not connect, directly, to any load customers and, further, that it would be designed to meet the electricity requirements of the entire community of North Brooklin for a period of 20 to 30 years and not only the requirements of the Brooklin Landowners. The construction of the Phase 2 Facilities would also trigger capital contribution requirements (estimated at \$20 million) but these would be payable, over time, as the community was built out.<sup>14</sup>
13. That the Brooklin Landowners would be required to finance the entire \$26.7 million capital cost of the Brooklin Line, raised a host of issues related to fairness and ability to finance. As only landowners with Draft Plan Approval would be able to obtain bank financing, the capital contribution burden would fall, disproportionately, on the handful of landowners who expected to have such approval by the time the capital contribution came due.
14. In a letter to Elexicon dated September 9, 2021, the Brooklin Landowners identified five options that it asked Elexicon to consider: (i) treat the Brooklin Line as a separate project that would be paid for by Elexicon; (ii) extend the customer connection horizon for the system to be constructed within the Brooklin Community Secondary Plan area to 20 years; (iii) enter into a cost sharing arrangement that allocated “system costs” to Elexicon; (iv) assign the capacity of the circuits constructed by the Brooklin Landowners to the members of the Brooklin Landowners Group; and/or (v) adjust the economic evaluations used to determine the quantum of required capital contribution to reflect realistic assumptions for new load, over the longer term. In its letter of response dated November 8, 2021, Elexicon rejected all five options for the reasons set out in the letter.<sup>15</sup>

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<sup>10</sup> Supp IR Response to Staff-15(c).

<sup>11</sup> Oral Hearing Transcript, Vol 1, pg 59, lines 19 to 27; Supp IR Response to Staff-15(c).

<sup>12</sup> Supp IR Response to Staff-15(c); Oral Hearing Transcript, Vol 1, pg 63, lines 13 to 16; Oral Hearing Transcript, Vol 1, pg 62, lines 27 to 28; pg 63, lines 1 to 3.

<sup>13</sup> Supp IR Response to CCMBC-11, Attachment 1.

<sup>14</sup> Supp IR Response to Staff-15(c).

<sup>15</sup> Supp IR Response to CCMBC-11, Attachment 1 (Sept 9, 2021 MGP Letter and Nov 8, 2021 Elexicon Response).

15. Discussions between Elexicon and the Brooklin Landowners continued through 2021 and into 2022. Ultimately, Elexicon filed its Application in July 2022, seeking approval of the Sustainable Brooklin Project and an exemption from the requirement to collect a capital contribution in respect of the Brooklin Line.
16. Approval of Elexicon's Application is the only critical path item that remains in the development of North Brooklin.<sup>16</sup> In order to maintain its ability to commence new house construction in the last quarter of 2023 (since deferred to 2025, because of delays), the Brooklin Landowners engaged MQ Energy to perform the engineering and design work required for both the Phase 1 Facility and the Phase 2 Facilities. Regular design meetings amongst MQ Energy, Elexicon and the Brooklin Landowners are continuing.<sup>17</sup> To-date, the Brooklin Landowners have incurred approximately \$500,000 in MQ Energy-related costs which they would expect to recover, should the Application be approved.

### **III. THE SUSTAINABLE BROOKLIN PROJECT**

17. The Sustainable Brooklin Project has two components: (i) the construction of two new 27.6 kV feeders extending from a point of connection with the Whitby TS, a distance of approximately 10 kilometers ("**km**"), to a point of connection with the Phase 2 Facilities, the new distribution system to be constructed within the new community of North Brooklin;<sup>18</sup> and (ii) a commitment by the Brooklin Landowners to install, in all new homes constructed in their North Brooklin sub-divisions, standard rough-ins capable of accommodating rooftop solar panels, battery storage facilities and electric vehicle ("**EV**") charging ports (together, distributed energy resource technologies or "**DERs**").<sup>19</sup> Assuming the construction of 700 new Brooklin Landowner homes per year and an average DER cost of \$2,260 per home, this commitment represents an incremental investment in DER enablements of approximately \$25.2 million. This estimate was prepared some time ago and is likely, now, to be materially higher due to upward pressure on the cost of labour, materials and equipment caused by supply chain shortages and inflation.<sup>20</sup>
18. The Sustainable Brooklin Project goes hand in hand with Elexicon's request for approval of an exemption from the applicable capital contribution provisions of the DSC in respect of the construction of the Brooklin Line, subject to appropriate conditions. Put another way, Elexicon should not be required to collect a capital contribution from the Brooklin Landowners if the Board approves its request for ICM funding for the Brookline Line.
19. If the Board approves the Sustainable Brooklin Project and the requested exemption from the DSC, the landowners in the Brooklin Landowners group would be prepared to enter into binding agreements with Elexicon that reflect their DER and EV-enablement commitment.<sup>21</sup> If, on the other hand, the Brooklin Landowners are required to contribute to the capital cost of the Brooklin Line,

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<sup>16</sup> Oral Hearing Transcript, Vol 1, pg 27, lines 12 to 15.

<sup>17</sup> Supp IR Response to Staff-15(c).

<sup>18</sup> Supp IR Response to Staff-15(c).

<sup>19</sup> Application, Appendix B-2, Sustainable Brooklin Business Case, pg 5.

<sup>20</sup> Supp IR Response to Staff 17(b).

<sup>21</sup> Supp IR Response to Staff 17(b).

they will have to take steps to maintain affordable and competitive house prices and will not commit to delivering DER-enabled new houses in North Brooklin.<sup>22</sup> Furthermore the burden of the unanticipated external electricity infrastructure costs will contribute to the ever-inflating cost to deliver new homes and could further inflate the housing affordability issue.

#### IV. CONSIDERATIONS AND MATTERS THAT ARE RELEVANT TO BOARD'S DECISION

(a) **Statutory Objectives**

20. When making any decision, the Board must have regard to its statutory objectives. While the OEB Act requires the Board, in carrying out its responsibilities, to protect consumers with respect to the price of electricity service, it also requires the Board to have regard to the reliability, adequacy and quality of electricity service.<sup>23</sup> Further, the Board's electricity objectives require it to promote electricity conservation and demand management in a manner that is consistent with the policies of the Government and to facilitate innovation in the electricity sector.<sup>24</sup> The Board is required to consider and weigh all of these factors, never more so than in the circumstances of this case.

(b) **Board's Innovation Policies, Objectives and Innovation Handbook**

21. The Board's innovation objective was added to the OEB Act on December 8, 2020. The objective is reflected both in the Board's *2022 - 2025 Business Plan* ("**Business Plan**") and in its *2021/22 - 2025/26 Strategic Plan* ("**Strategic Plan**"). The latter describes the OEB's strategic goals in the following terms: "The OEB facilitates innovation that can provide demonstrable value to Ontario's energy consumers and solve energy challenges cost effectively. The OEB provides clear direction on when and how regulated distributors can recover costs for innovation-related activities from ratepayers and for how risk is addressed. The OEB continually evaluates which activities or emerging needs are better undertaken or addressed through competitive markets."
22. In January 2023, the OEB issued its *Report, Framework for Energy Innovation: Setting a Path Forward for DER Integration* ("**Innovation Framework**"). The Report sets out the OEB's policy determinations and next steps with respect to the integration of DERs into distribution system planning and operations, as well as the use of DERs by electricity distributors as non-wires alternatives or "NWAs". The Report establishes OEB policy and next steps for: (i) expectations of distributors with respect to DERs so that distributors can begin to evolve their planning, operations and overall businesses to maintain cost-effective, reliable service that considers the impacts of widespread DER adoption; (ii) a *Benefit Cost Analysis Framework* to help distributors make the business case for DER solutions, when cost effective, as alternatives to traditional system investments in their rate applications; and (iii) incentives for distributors to use third-party DER solutions to ensure distributors give equal consideration to the use of these solutions within their own system investments.

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<sup>22</sup> Application, Appendix B, pg 6-7; Elexicon IR Response to PWU-3; Oral Hearing Transcript, Vol 1, pg 51, lines 4 to 14; Oral Hearing Transcript, Vol 1, pg 31, lines 19 to 28; Supp IR Response Staff 17(b).

<sup>23</sup> OEB Act, s 1(1), para 1.

<sup>24</sup> OEB Act, s 1(1), paras 3-4.



23. Finally, in March 2023, the OEB issued its *Innovation Handbook*, a compendium of existing OEB policies, staff guidance and decisions that relate to innovative activities, services or business models. The *Innovation Handbook* is intended to serve as a guide to energy sector innovators and provide broader awareness of the OEB's work in this area.

(c) **Minister's Mandate Letter**

24. In considering Elexicon's Application, the Board must have regard to the Minister of Energy's October 21, 2022 letter of direction ("**Minister's Letter**") which, *inter alia*, observes that "the push for further electrification and the transition to cleaner energy sources will require innovation and leadership from the OEB. The government has a vision for the energy system in which Ontario leverages its clean energy grid to promote electrification and job creation while continually enhancing reliability, resiliency, and customer choice."<sup>25</sup> The Minister's Letter goes on to note that "[T]he government's vision for a clean energy grid that promotes electrification, attracts investment and creates jobs while continually enhancing reliability, resiliency and customer choice, will require utilities to make new investments." The Minister mandates the OEB to consider regulatory reform required for these new investments by utilities in promotion of a clean energy grid, and to not wait until it is provided with additional legislative authority to do so.<sup>26</sup> The letter goes on to recognize the importance of the Board continuing its work of facilitating innovation and proposing meaningful changes as to how utilities can make use of DERs to cost-effectively meet emerging local and broader system needs.<sup>27</sup>

(d) **Government Policy Framework**

25. Economic regulators, such as the OEB, do not make decisions in a policy vacuum but, rather, in the context and against the background of the broader policy framework of the government of the day. Government policies and objectives may not fetter, but should inform, the exercise of an independent regulator's discretion. In the circumstances of this case, relevant considerations include provincial and local government policies that have established clear and compelling imperatives for measures that address climate change and promote economic growth and the construction of affordable new houses. Examples of policies that are particularly relevant in this proceeding include: (i) Ontario's *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* (August 2022) that requires municipalities to plan for more growth to the 2051 planning horizon;<sup>28</sup> (ii) the Town of Whitby's commitment to deliver a total of 18,000 new homes by 2031, reflecting the imperatives of Bill 23, *More Homes Built Faster Act, 2022*;<sup>29</sup> and (iii) the *Made-in-Ontario Environment Plan* that commits to reductions in emissions to 30 percent below 2005 levels, by 2030, in line with the federal government's Paris commitments; and (iv) the Town of Whitby's *Zero Carbon Whitby: The Corporate Plan to Reduce Greenhouse Gas Emissions* (2021), as well as the

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<sup>25</sup> Letter of Direction from the Minister of Energy (October 21, 2022) at page 1.

<sup>26</sup> Letter of Direction from the Minister of Energy (October 21, 2022) at page 2.

<sup>27</sup> Letter of Direction from the Minister of Energy (October 21, 2022) at page 4.

<sup>28</sup> Supp IR Response to Staff-12(a).

<sup>29</sup> Tech Conference Transcript, Vol 2, pg 136, lines 26 to 28; Oral Hearing Transcript, Vol 1, pg 30, lines 14 to 28.

Town of Whitby's 2019 formal declaration of climate change as an emergency and ongoing development of the Town of Whitby's *Climate Adaptation Plan*.<sup>30</sup>

(e) **Local Government Preferences**

26. Finally, the Board has endorsed the desire of local communities to have a say in the kinds of electricity investments that are made, on their behalf, including the choice to opt for a "premium solution".<sup>31</sup> Accordingly, the Board must now acknowledge and take into account the clearly expressed preferences of: (i) Whitby Town Council, the elected representatives of the citizens of the Town of Whitby and the ratepayers of Elexicon; and (ii) the Region of Durham.
27. In July, 2022, the Whitby Town Council passed a resolution unanimously endorsing and supporting Elexicon's Application for approval of the Whitby Smart Grid and Sustainable Brooklin Project and an exemption from the capital contribution provisions of the DSC. As stated in the Brooklin Landowners' Supplementary Responses to Interrogatories and discussed during the oral testimony of Mr. Cory, on behalf of the Brooklin Landowners, Whitby Town Council endorsed the Sustainable Brooklin Project with full knowledge of the cost consequences to ratepayers.<sup>32</sup> There is nothing to suggest otherwise.
28. In a letter to the OEB dated July 19, 2022, the Region of Durham also expressed its support of the Sustainable Brooklin Project, noting that the provision of EV and solar rough-ins aligned with the objectives of the Durham Community Energy Plan and its carbon pathway.<sup>33</sup> The Region of Durham noted that the Sustainable Brooklin Project would assist in the reduction of fossil fuel consumption and green house gas emissions in the Region and would offset the electricity demand attributed to anticipated growth in the Region to 2031, thereby creating more sustainable, adaptable and resilient communities.<sup>34</sup>

**V. THE SUSTAINABLE BROOKLIN PROJECT IS IN THE PUBLIC INTEREST**

29. The benefits of the Sustainable Brooklin Project justify a conclusion that the project is in the overall public interest and in the interest of Elexicon's ratepayers. Elexicon's proposal for the Sustainable Brooklin Project represents a significant opportunity to leverage private investment for public benefit. Approval of the Project would capture and deploy between \$25 million and \$30 million of private sector investment over a 20-year period, resulting in the customer-specific, environmental, ratepayer, innovation and housing benefits described below.

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<sup>30</sup> Town of Whitby, "Climate Change and Extreme Weather", online: <https://www.whitby.ca/en/live/climate-change-and-extreme-weather.aspx>.

<sup>31</sup> Application, Appendix B: Incremental Capital Module Whitby Smart Grid & Sustainable Brooklin, page 15.

<sup>32</sup> Application Appendix B: Incremental Capital Module Whitby Smart Grid & Sustainable Brooklin, page 9; Application, Appendix B-6: Letters of Support for ICM Application (July 12, 2022 Letter from the Town of Whitby, Special Council Minutes of the Town of Whitby dated July 11, 2022 Resolution #186-22, July 18, 2022 Letter from the Town of Whitby).

<sup>33</sup> Application, Appendix B-6: Letters of Support for ICM Application (July 19, 2022 Letter from the Region of Durham).

<sup>34</sup> Application, Appendix B-6: Letters of Support for ICM Application (July 19, 2022 Letter from the Region of Durham).

(a) **Lowering Barriers to Entry**

30. The provision of DER and EV-enabled new houses will facilitate and encourage the adoption of DER and EV technologies by future owners by lowering barriers to entry. While it is true that uptake by future owners can neither be guaranteed nor forecasted with any degree of precision, there is no question that new owners will be more likely to purchase solar panels and battery storage upgrade packages available from the builders or install such technologies, at some future time, if they do not have to first incur retrofit and reconstruction costs to install the necessary rough-ins.<sup>35</sup> Moreover, the availability of a rough-in that accommodates the installation of an EV charger may encourage homeowners to make the switch to an electric vehicle.

(b) **Customer-Specific Benefits**

31. The adoption of DER and EV technologies will result in customer-specific benefits. These include opportunities for rate and commodity price arbitrage, opportunities to hedge against gasoline and carbon prices, the ability to reduce electricity consumption at the meter and an increase in resilience as a result of the availability of behind-the-meter back-up power during distribution and transmission outages.<sup>36</sup>

(c) **Environmental Benefits**

32. Environmental benefits associated with the transition to DER technologies include reductions in greenhouse gases (“GHGs”) due to reductions in the consumption of grid-supplied gas-fired generation during peak periods, as well as reductions in vehicular GHG emissions due to the switch to electric vehicles. Elexicon’s Application notes that the enablement and uptake of DERs is key to achieving the net-zero objectives of the Region of Durham and the Town of Whitby and, ultimately, of the provincial and federal governments.<sup>37</sup>

(d) **Deferral of Infrastructure Investments**

33. The adoption of DER technologies as alternatives to wire technology will create opportunities for transmission and distribution utilities to defer or avoid future investments in new distribution and transmission infrastructure. This will lead to lower transmission and distribution costs and, in the result, lower transmission and distribution rates than would otherwise be the case. Elexicon’s Application describes the level of DER uptake in North Brooklin that would be required to achieve deferrals of one, two and five years, in investment in a North Brooklin TS. Such deferrals will reduce upward pressure on distribution rates, to the benefit of all ratepayers.

(e) **Innovation Benefits**

34. Elexicon’s Application for approval of the Sustainable Brooklin Project is a real and tangible opportunity for the Board to implement the innovation and DER goals and objectives described in

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<sup>35</sup> Oral Hearing Transcript, Vol 1, pg 118, lines 12 to 22; Brooklin Landowners Group Response to Undertaking No. JT2.11; Technical Conference Transcript, Vol 2, pg 172, lines 20 to 26; Oral Hearing Transcript, Vol 1, pg 171, lines.4-13.

<sup>36</sup> Application, Appendix B: Incremental Capital Module Whitby Smart Grid & Sustainable Brooklin, page 10.

<sup>37</sup> Application, Appendix B-2: Sustainable Brooklin Business Case, page 33-34.

its Business Plan and its Strategic Plan. There is general unanimity that innovation in the energy space is not only desirable, but necessary. For innovation to actually occur, however, someone has to take the first step. This is precisely what Elexicon and the Brooklin Landowners propose to do.

35. Innovation has to start somewhere and it would be a mistake to wait until there is perfect knowledge and information about all possible outcomes. The very nature of innovation is that there are no guarantees. The evidence in this proceeding demonstrates the value that Elexicon's innovative proposal will bring to the community of North Brooklin. That such value cannot be completely quantified, in dollars and cents, should not be a reason for denying Elexicon's application.
36. The Brooklin Landowners expect that the Strategic Brooklin Project, if approved, will set a precedent among developers and builders in Ontario by changing the way that new communities are conceived and developed and establishing a new standard for home construction.<sup>38</sup> If the Sustainable Brooklin Project does not proceed, however, the opportunity for innovation on offer from the Brooklin Landowners, will be lost.<sup>39</sup> Should Elexicon's Application be denied, the Brooklin Landowners will seek ways to offset their capital contribution obligations in respect of the Brooklin Line by reducing outgoings in other areas. This would mean abandoning their proposed investment in DER and EV enablements.

(f) **The Town of Whitby's Housing Pledge**

37. The six Draft Plan Approvals, together with the 15 Development Applications that are being advanced by individual landowners in the Brooklin Landowners group, represent a total of almost 8,000 new housing units to be constructed in North Brooklin. This, in turn, represents approximately 44 percent of the Town of Whitby's pledge, to the provincial government, to deliver 18,000 new homes by 2031. The Town of Whitby is counting on the delivery of these new units.<sup>40</sup> Delays in securing electricity service, to date, mean that the Brooklin Landowners will be challenged to deliver even 5,000 of the promised 8,000 homes, by 2031. As Mr. Cory testified, a decision to deny Elexicon's Application could delay development by a further three to five years.<sup>41</sup> This will materially jeopardize the Town of Whitby's ability to fulfill its provincial housing pledge.<sup>42</sup>

**VI. APPROVAL OF DSC EXEMPTION WOULD REDRESS FAIRNESS CONCERNS**

38. In making impartial and objective decisions, the Board must have regard to considerations of fairness and equity. In this proceeding, the Brooklin Landowners have been very clear about their concerns regarding fairness or, rather, unfairness. The Brooklin Landowners respectfully submit that in light of the fairness issues discussed below, the Board should exercise its discretion to exempt Elexicon from the requirement to collect a capital contribution in respect of the Brooklin

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<sup>38</sup> Oral Hearing Transcript, Vol 1, pg 33, lines 19-28; pg 168, lines 20-26; pg 170, lines 7-19; pg 179, lines 10-17.

<sup>39</sup> Oral Hearing Transcript, Vol 1, pg 51, lines 4-14.

<sup>40</sup> Oral Transcript, Vol 1, pg 30, lines 14 to 22; pg 31, lines 5 to 28; pg 35, lines 3 to 15; Supp IR Response to Staff-12(a).

<sup>41</sup> Oral Hearing pg 32, lines 6 to 24.

<sup>42</sup> Oral Hearing, Vol 1, pg 31 lines 18 to 28; pg 32, lines 1 to 17.

Line. The unique circumstances of this case are precisely the type of circumstances that warrant an exemption.

(a) **Disproportionate Allocation of Cost Responsibility to “Early Mover” Customers**

39. The DSC allocates cost responsibility for required connection facilities to those “customers” (defined to include developers of residential or commercial sub-divisions) that request service, in this case, the Brooklin Landowners. The Brooklin Line will have the capability to serve the forecasted requirements of the entire community of North Brooklin for a 20 to 30-year period. Under the DSC, the Brooklin Landowners are required to bear the entire cost of constructing the Brooklin Line (subject to contributions from other landowners who connect within the five-year customer connection horizon). As explained above, only the six landowners who have received Draft Plan Approval will be able to secure bank financing. This means that six “early movers”, who represent less than seven percent of all North Brooklin landowners, will be required to assume 100 percent of the \$26.7 million cost of constructing an asset that is being designed to deliver electricity to the doorstep of North Brooklin, for the benefit of all 90 landowners. This is the consequence of applying the DSC rules to the unique situation of North Brooklin. It is neither fair nor equitable.<sup>43</sup>
40. To the \$26.7 million cost of the Brooklin Line must be added the approximately cost of the Phase 2 Facilities required to serve the early mover customers.<sup>44</sup> As Mr. Cory testified at the Technical Conference and at the Oral Hearing, the collective cost would represent an extraordinary and unprecedented financial burden on the “early movers”.<sup>45</sup>
41. If other developers proceed to financing within the five-year customer connection horizon that is stipulated in the DSC, they will be required to recompense the “early movers” in accordance with the DSC. However, if such developers proceed to connect outside of the five-year customer connection horizon, there is no legal mechanism that requires such developers to recompense the “early movers”.<sup>46</sup> Moreover, while extending the DSC customer connection horizon to 20 or 25 years may mitigate, to some extent, the problem of “late movers” and “free riders”, it would not alleviate the extraordinary financial burden imposed upon the “early movers”, of having to finance the costs of the Phase 1 Facility and the Phase 2 Facilities in the first place. An extension of the customer connection horizon does not fix this particular fairness issue.
42. During the oral hearing, it was suggested that the “early movers” could solve the problem by recovering financing costs through the sale price of their houses. Mr. Cory responded by observing that developers are always under pressure to maintain affordable and competitive house prices, that every additional cost added to the ultimate cost of a house and that there was a limit to price increases that are possible in the competitive GTA market. It may not even be possible for the

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<sup>43</sup> Oral Hearing Transcript, Vol 1, pg 25, lines 7-8; Supp IR Response to Staff 12(a).

<sup>44</sup> Supp IR Response to Staff-15(c).

<sup>45</sup> Oral Hearing Transcript, Vol 1, pg 24, lines 13 to 24; Technical Conference Transcript, Vol 2, pg 124, lines 1 to 24.

<sup>46</sup> Oral Hearing Transcript, Vol 1, pg 25, lines 14 to 22; pg 40, lines 16 to 28; pg 42, lines 1 to 12; pg 43, lines 7 to 16; pg 102, lines 13 to 28; pg 103, lines 1 to 15.

“early movers” to secure financing for a disproportionate share of the capital contribution but if it were, the developers will seek every means to offset the cost in order to keep house prices down.<sup>47</sup>

(b) **“Early Movers” Required to Pre-Pay for Assets that Will be Required In Any Event**

43. Significant population growth is forecast to occur within the next seven to 10 years, along the proposed route of the Brooklin Line (90,000 people and jobs in northeast Pickering and another 40,000 to 60,000 in the greater Brooklin area).<sup>48</sup> The Brooklin Line will not have the capacity to accommodate this growth and, in consequence, Elexicon will need to construct a new transformer station. Mr. Cory testified that it does not seem fair that the Brooklin Landowners are being required, in effect, to pre-pay for an asset that Elexicon and its ratepayers will require in any event.<sup>49</sup> If the Brooklin Line were to be connected to a new Brooklin TS, now, as opposed to seven years from now, its cost would be socialized across all ratepayers.

(c) **Brooklin Line Serves a Transmission Function**

44. The Brooklin Line will serve a transmission rather than a distribution function. It will comprise a 10 km “backbone” or “extension cord”, whose sole function will be to deliver electricity to the Phase 2 Facilities, being the distribution system that will be constructed to distribute electricity within community of North Brooklin. The Brooklin Line will not directly serve or interconnect with any individual load customers and, in fact, will serve no customer connection function, at all.

(d) **Some Brooklin Line Costs are System Costs**

45. The Brooklin Line is being designed as a looped system (as opposed to a radial system) in order to provide 100 percent redundancy. This is a system requirement of Elexicon and Elexicon has explained the reasons for it. The Brooklin Line is also being designed with poles that will support three circuits in order to accommodate the requirements North Brooklin, as it develops over time; in other words, future growth in North Brooklin. The Brooklin Landowners submit that it is unfair to allocate, to them, 100 percent of what are clearly system costs (i.e., the cost of installing redundancy) and costs to accommodate future growth (i.e., the cost of poles that can support three circuits).<sup>50</sup>

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<sup>47</sup> Oral Hearing Transcript, Vol 1, pg 42, lines 1 to 12; pg 43, lines 7 to 16.

<sup>48</sup> Oral Hearing Transcript, Vol 1 pg 24, lines 1 to 2; Technical Conference Transcript, Vol 2, pg 164, lines 5 to 15; Official Plan of the Region of Durham, pg 37, s 7.3.3..

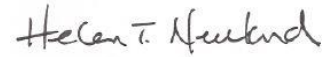
<sup>49</sup> Oral Hearing Transcript, Vol 1, pg 23, lines 20 to 28; pg 24, lines 3 to 12.

<sup>50</sup> Oral Hearing Transcript, Vol 1, pg 63, lines 8 to 16; pg 104, line 28; pg 105, lines 1 to 14.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4<sup>TH</sup> DAY OF MAY 2023.

**DENTONS CANADA LLP**

By:



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Matthew Cory, Malone, Given, Parsons Ltd.