

May 4, 2023

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms Marconi:

EB-2022-0024 –Elexicon Energy Inc. – 2023 Rates Phase 2 – Incremental Capital Module Funding Requests – Final Argument

Please find, attached, the Final Submissions of the Consumers Council of Canada pursuant to the above-referenced proceeding.

Please feel free to contact me if you have questions.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC: All parties

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

RE: ELEXICON ENERGY INC. – INCREMENTAL CAPITAL MODULE

WHITBY SMART GRID AND SUSTAINABLE BROOKLIN PROJECTS

EB-2022-0024

INTRODUCTION:

Elexicon Energy Inc. (Elexicon) filed an incentive rate-setting mechanism Application with the Ontario Energy Board (OEB) on July 28, 2022, seeking approval of its rates effective January 1, 2023. On November 1, 2022, the OEB bifurcated the Application into two phases. The first phase would consider the IRM components of the Application and the second phase would consider Elexicon’s requests for incremental capital module (ICM) funding.

The specific requests that Elexicon is seeking approval for are:

- ICM funding for in 2025 of \$36.739 million for the Whitby Smart Grid Project (WSG Project), including a proportionate share of Advanced Distribution and Data Management System (ADMS) and Supervisory Control and Data Acquisition Costs (SCADA) in the Whitby Rate Zone (WRZ);
- ICM funding in 2025 of \$6.432 million for a proportionate share of the ADMS and SCADA costs of the WSG project, in the Veridian Rate Zone (VRZ); and
- ICM funding in 2025 of \$26.657 million for the Sustainable Brooklin Project (SB Project) in the WRZ together with an exemption for the Brookline Line from Section 3.3 of the Distribution System Code (DSC) which would otherwise require Elexicon to collect a capital contribution to from the local developers towards the cost of constructing and operating the Brooklin Line.¹ The exemption is tied to a commitment from a specific group of developers to build 10,000-11,000 homes over 20 years that are distributed energy resource (DER) and electric vehicle (EV) ready.

The total requested funding from Elexicon through this Application is \$69.828 million, to be recovered from Elexicon ratepayers, primarily those in the Whitby Rate Zone (WRZ). Elexicon is seeking to recover most of these costs from residential customers through rate riders. Although the rate riders are based on current cost projections for the projects, the actual project amounts will not be trued up until Elexicon rebases its rates effective January 1, 2029. The final impact on rates at that time is unknown as the variability around the cost estimates, at this stage is significant.

¹ Argument-in-Chief, dated April 18, 2023, p. 3

On December 14, 2022, the OEB received a request by the Brooklin Landowners Group (Brooklin Landowners) to provide written responses or supplement the written responses of Elexicon to various interrogatories and make a representative available at the OEB's scheduled Technical Conference to answer any clarification questions from OEB Staff and intervenors. The OEB approved the Brooklin Landowners request.

On January 17 and 18 the Technical Conference took place. Following the Technical Conference, the OEB requested that Elexicon answer a number of written questions from the OEB Panel prior to the commencement of the hearing. On March 27, 2023, Elexicon provided an evidence update. The primary purpose of the evidence update related to a change in the in-service date for the Sustainable Brooklin Project (SB Project) from Q4 2023 to Q2 2025. The oral hearing took place on March 31 and April 3, 2023. On April 6, 2023 the OEB distributed a list of suggested topics for final submissions.

This is the Final Argument of the Consumers Council of Canada (Council) regarding Elexicon's ICM requests. The Council will set out some of the key components of the evidence presented by Elexicon and then address the topics set out by the OEB for final submissions.

Overall, based on the evidence presented in this proceeding, the Council urges the OEB to reject Elexicon's request for ICM funding. Both the costs and the benefits of these projects for Elexicon's ratepayers are unclear. There is not a clear line indicating that the benefits will outweigh the costs. The rate impacts are significant and could potentially increase if the project costs go beyond what is currently forecast. The capital spending proposed far exceeds what has been typical for Elexicon. Elexicon has not justified its ICM funding requests. In addition, Elexicon's requests are over and above what is normally considered by the OEB through an ICM application. Typically, ICM applications are for projects that arise during an IRM period, that are required and cannot be funded through base rates. It is for projects that are going into service during the year that is the subject of the rate application. That is not the case here. Although the current application is for 2023 rates both the Whitby Smart Grid project and the Sustainable Brooklin project are not expected to be in service until 2025².

The Council supports utilities modernizing their grid to the extent necessary to ensure reliability, and particularly with the expectation that there will be an increased need to facilitate distributed energy resources in the future. However, the proposal for the Whitby Smart Grid seeks to do this all at once at a significant cost to ratepayers. This ignores a long-established rate-setting principle endorsed by the OEB – it is important for utilities to pace their capital spending.

Through this application Elexicon is seeking an exemption from both the Distribution System Code (DSC) and the OEB's ICM policy. The Council is of the view that the OEB must be very careful in considering exemptions from its Codes and policies. If, in light of the Government's policy objectives regarding innovation and further electrification, changes to the OEB's policies

² Evidence Update filed March 27, 2023, Attachment A

and codes need to be made, this should be done through a generic process and not considered in the context of a single ICM application. Once an exemption is granted it sets a precedent which could mean the OEB would be inundated with similar applications seeking wholesale grid modernization and exemptions from capital contributions at a significant cost to electricity consumers across the Province. This could potentially impact electricity affordability unnecessarily.

THE EVIDENCE:

In its initial evidence the WSG and SB Projects were anticipated to provide “anticipated” annual benefits to WRZ customers of \$.637 million. This included:

1. **Energy Savings:** Implementation of the WSG will enable Elexicon to pursue conservation voltage reduction across its system, reducing electricity consumption across the WRZ by as much as 3% resulting in forecast aggregate customer bill reductions of \$3.26 million annually;
2. **Customer Reliability Improvements:** The WSG will implement fault location and distribution automation that will improve customer reliability. In the WRZ, SAIFI is expected improve from .87 to .28 and SAIDI is expected to improve from 1.03 to .45. The estimated annual benefits are approximately \$1.828 million;
3. **Leveraging Private Capital:** The commitment by the Developers to invest approximately \$30.4 million over a 20 year period Distributed Energy Resources (DER) and electric vehicle (EV) enabling infrastructure in a newly constructed homes in North Brooklin will lower barriers to entry for customers wishing to install DER and EV infrastructure in their newly purchased homes. ICM funding for the Sustainable Brooklin Project will guarantee this investment of private sector capital;
4. **Customer-Specific Benefits:** Greater access to DERs and EVs will create customer-specific benefits including opportunities for rate arbitrage, reduced electricity consumption at the meter, provision of back-up power and a buffer against the volatility of gas prices;
5. **GHG Reductions:** Reduced electricity consumption will decrease the use of natural gas fired generation for marginal electricity generation, resulting in GHG reductions of approximately (202.977) CO₂e over the next twenty years.³

The anticipated annual benefits were updated to \$.433 million following the Technical Conference.⁴ These benefits are not expected to benefit low volume customers in any significant way and are not being guaranteed in any way from Elexicon. The reliability benefits

³ Appendix B – pp. 9-10

⁴ Exhibit JT 1.22

for residential customers are approximately 10% of the total.⁵ The expectation has been that the Whitby Smart Grid project could reduce electricity consumption across the WRZ by “as much as 3%”, but this benefit will not necessarily materialize, and on a per bill basis is much less for residential consumers, particularly those that use less electricity.

In addition, Elexicon is making an assertion that with respect to its Sustainable Brooklin project upstream assets could be deferred if 12% of all new customers in the North Brooklin area install rooftop solar with battery storage. This deferral would be for one year in 2038. A 39 % take up could delay the infrastructure for three years and a 53% take up would result in a 5-year deferral⁶. The assertion that infrastructure could be deferred is unfounded. Elexicon has done no forecasts of DER or EV uptake in its service territory.⁷ In addition, new infrastructure requirements in the future will be subject to many factors including load growth arising from new communities, the pace of increased electrification and the adoption of EVs. So certain assumptions around the uptake in North Brooklin of DER adoption does not necessarily mean that infrastructure in the future will be deferred because of that specific DER adoption. Elexicon also has no idea how many of the North Brooklin customers will actually install EV chargers or solar panels even if the rough-ins are in place.

The overall costs of the two projects are \$69.828 million, the majority of which is being paid for by residential customers. The monthly increase from these ICM projects is \$5.73 per month for the Whitby Smart Grid and \$3.26 per month for the Sustainable Brooklin Project based on current cost estimates.⁸

ISSUES:

1. Are the three ICM projects proposed mutually exclusive? If not, how should the OEB consider common/overlapping elements?

Elexicon is seeking approval for funding of the Whitby Smart Grid project (which will be split between the Whitby rate Zone and the Veridian Rate Zone) and the Sustainable Brooklin project. It is Elexicon’s position that these projects are separate and distinct and the OEB may approve one without the other.⁹ Having said that Elexicon sets out its view regarding “the factual linkage” between the two projects. These are summarized as being;

- a) The benefits forecast from DER uptake arising from the Sustainable Brooklin project (for example the station deferral) will depend on the availability of the Whitby Smart Grid technologies to effectively manage the levels of DER penetration that are required to achieve a future deferral of investment; and

⁵ Responses to OEB Panel Questions, February 21, 2023

⁶ Appendix B-4, p. 30

⁷ TC Transcript Vol. 2, pp. 35-36

⁸ Exhibit J2.9

⁹ Argument-in-Chief, p. 7

- b) While the reliability, energy savings, increases in resiliency, and other operational and grid modernization benefits of the Whitby Smart Grid Project would occur absent the Sustainable Brooklin Project, Elexicon’s ability to defer potentially costly capacity upgrades in the future would be lessened without the quid pro quo of DER and EV enabled homes that is a core element of the Sustainable Brooklin project.¹⁰

The Council does not accept Elexicon’s position that the two projects are linked. With respect to the Sustainable Brooklin Project it has been characterized as a quid-pro-quo. Essentially, the Brooklin Landowners Group have negotiated a deal with Elexicon. If they commit to constructing DER and EV ready homes in the North Brooklin community at an incremental cost of \$2260 per home¹¹ Elexicon is seeking approval to exempt them from paying the capital contributions for the line that are required by the DSC.

2. Has Customer Engagement for these projects been appropriate?

Elexicon has characterized the following as “appropriate” customer engagement:

- a) Elexicon consulted directly with the Town of Whitby on July 22, 2022. In that meeting Elexicon provided the scope, drivers, needs, benefits and costs, and anticipated bill impacts to customers. The Whitby Council voted to unanimously endorse the projects. The Regional Municipality of Durham also filed a letter in support of the application.¹²
- b) In connection with its 2022 IRM rate application Elexicon filed a Customer Engagement Report in the context of its Distribution System Plan (DSP) asking customers to identify how Elexicon should focus its investments.¹³ That engagement indicated that 76% of customers were highly supportive or somewhat supportive of Elexicon investing in grid management technologies that will help it manage the impact of more EV, renewable generation and energy storage. The engagement indicated strong support for Elexicon investing in things that will help reduce rate increases after 2029 and preparing the grid for EVs and renewable generation¹⁴.

The Council notes that the Whitby Smart Grid and the Sustainable Brooklin projects were not the subject of that customer engagement and were not a part of the previous DSP. Customers were not asked specifically about these projects. Without providing an appropriate context it is unfair to conclude that Elexicon’s customers, particularly those in Whitby, are support of the ICM projects. The Council questions if support would be there if the following points were made to customers:

¹⁰ AIC, p. 7

¹¹ Appendix B, p. 44

¹² AIC, p. 8

¹³ Appendix B- p. 27

¹⁴ AIC, p. 9

- a) These two projects amount to almost \$70 million which represents an unprecedented amount of capital spending for a utility the size of Elexcion;
- b) Although the ultimate benefits to lower volume customers are not guaranteed, it is those customers that will be paying for the majority of the costs;
- c) Elexicon is choosing to modernize its entire grid in a relatively short period of time which will result in rate impacts of approximately 30% in 2025. The impacts maybe greater once the actual capital costs are known and the projects complete. These initiatives could be done over a longer period of time in order to mitigate the impacts on rates;
- d) In its consideration of these projects Elexicon did not undertake a wholesale review of its DSP in an attempt to reprioritize or potentially defer other capital projects;
- e) With respect to Sustainable Brooklin, developers are in North Brooklin are not required to pay the capital contribution to build the line to the area in exchange for building homes that have EV and DER “rough ins” that will facilitate EV and DER connections for the homeowners. That cost will be borne by the other Whitby customers that do not stand to benefit from the arrangement Elexicon is making with the developers and who would have to pay considerably more to make their homes EV ready.

As for the support from the Town of Whitby they were never told that the costs could increase (or decrease) and that the benefits have yet to be proven. They were also told that there is an opportunity to get more federal funding from NRCan – which has not been pursued or discussed in the context of this proceeding. In addition, the 31.63% distribution rate increase was never put to them. The estimated total customer bill impact presented to them was \$5.19¹⁵ which assumed benefits would be realized by all customers on the same basis, not the current estimate of \$15.11 per month or the impacts set out in Exhibit JT2.6.

Overall, the Council does not accept that Elexicon undertook sufficient customer engagement that should be used to justify the OEB approval of the projects and the ICM relief. Had sufficient customer engagement been undertaken, the ICM requests may well have differed.

3. For the Sustainable Brooklin project, is the requested exemption to the Distribution System Code: a) appropriate; b) in the best interests of ratepayers; and c) in the public interest?

As set out in more detail below the Council is not supportive of the ICM relief being sought for the Sustainable Brooklin project primarily on the basis that the costs of the project that are being borne by the Whitby ratepayers are not in line with any benefits they might receive.

¹⁵ SEC- 11 Presentation

The Sustainable Brooklin project has been characterized as follows by Elexicon:

The Sustainable Brooklin project is also another key project that further enables this “Grid of the Future” by supporting the development of a DER and EV-ready community. Along with the assets being installed as part of the Whitby Smart Grid, the connection of these homes will allow Elexicon and its customers to reap the benefits of a more sustainable and smarter grid community.¹⁶

Mr. Vestis in his opening remarks stated, “These proposed innovative solutions are aligned with the OEB’s communicated expectations of distributors, the OEB’s statutory objectives regarding facilitation of innovation, and communicated expectations from the Minister of Energy.”¹⁷

The Council supports innovation and recognizes that there is an expectation on the part of the OEB and the Government of Ontario for distributors to adapt to a changing electricity system and adopt innovative proposals going forward. Innovation should be undertaken to benefit utility ratepayers. The Sustainable Brooklin project, and the request to be exempted from the provisions set out in the DSC regarding capital contributions are not appropriate, nor are they in best interests of ratepayers nor are they in the public interest. The Council does believe that projects like this are “models of innovation” that justify exemptions from long-standing regulatory rules. The developers are not providing EV chargers, are not providing solar panels and are not providing electric heat. They are simply putting in the “rough-ins” that make it less costly for the homeowners to potentially add these things in the future.

The proposal is relatively simple and it is clear the genesis of the project was not about developing an innovative project that will necessarily benefit the Whitby ratepayers, especially those that are funding the project through rates. It has been characterized repeatedly as a quid-pro-quo. In order to accommodate the near term and long term forecasted demand within North Brooklin Elexicon has to build two new 27.6 kV feeders connecting the North Brooklin development to the Whitby TS DESN 1.¹⁸ The cost of the project is \$26.6 million.

The quid-pro-quo is an unwritten agreement between the Brooklin Landowners Group (BLG) to build approximately 700 homes per year for 20 years that are EV and DER ready. Under that agreement the BLG landowners will not be required to pay contributions in the amount of \$26.6 million as long as they ensure that the homes they are building are “roughed in” for DERs and EVs. To the extent they construct homes that are not EV and DER-ready they would be required to pay Elexicon \$2,260 for each of those homes. It was deal struck by Elexicon and the developers to avoid the capital contributions required by the DSC for the distribution line.

The Council acknowledges that the cost of the line is significant. However, the requirements of the DSC are there to protect the interests of ratepayers. If the exemption is granted, the non-

¹⁶ Appendix B-2, p. 4

¹⁷ Transcript Vol. 1, p. 114

¹⁸ Appendix B-2, p. 4

Brooklin ratepayers are paying for the cost of the line that is not used to serve them, and are benefitting the developers that are in the business of selling homes for profit. There is no indication, that in the absence of the exemption the developers will not continue with the proposed construction of homes in North Brooklin. There is no indication that the developers will not construct homes that are EV and DER ready, as it may be a plus for buyers and may ultimately be required through changes to the Ontario Building Code or municipal requirements. Elexicon has also made it clear that this exemption is not meant to apply in any other areas of its service territory. It is meant only for Sustainable Brooklin.

The Council submits that the OEB carefully consider a number of issues if it chooses to grant the exemption from the DSC as proposed by Elexicon:

- What is the explicit rationale for the exemption?;
- Should it apply across the entire Elexicon franchise area?;
- If so, at what point or cost level would a capital contribution trigger an exemption?;
- How does the OEB oversee compliance with the proposal over the course of 20 years?;
- Who actually determines whether a home has been built DER and EV-ready? Who bears the cost of monitoring compliance?;
- What is the OEB's role in approving the contractual arrangements between the developer and Elexicon?;
- Does the OEB have the jurisdiction to oversee "behind the meter" activities?;
- Should the credit back to Elexicon of \$2,260 for those that do not build the homes DER and EV-ready be inflated over time?;
- What are the implications if the Provincial or Municipal governments mandate that homes are to be built DER and EV-ready?;
- Should the OEB grant similar relief in other LDC territories? If not, would this not be discriminatory (the BLG developers are getting an advantage not afforded other developers)?;
- What are the implications for rates going forward across the Province if developers continue to be exempt from capital contributions?

4. Is the requested timeline for the approval appropriate for the Whitby Smart Grid project and the Sustainable Brooklin Project? Should the OEB allow an exception to the ICM policy? Are proposed illustrative rate riders on an interim basis appropriate?

As noted above, the Council is not supportive of the Whitby Smart Grid project or the Sustainable Brooklin project. ICMs are for projects that will come into service during the rate year. Elexicon has pointed to the PUC Distribution Sault Smart Grid project (PUC project) that was approved by the OEB in its 2021 rate proceeding although the intended in-service date was December 2022. The OEB approved the relief that PUC was seeking.¹⁹ The Whitby Smart Grid

¹⁹ The Council opposed the PUC Distribution Inc. proposal on the basis that for residential consumers it was not clear the benefits would outweigh the costs of the project.

project is expected to go into service in Q4 2025 and the Sustainable Brooklin project is now forecast to be in-service in Q2 2025²⁰

What distinguishes the PUC project from these projects is that the PUC project was for an in-service date one year out. More importantly the PUC project was subject to a fixed price contract. The scope of the project might change, but the costs would not.

Although the Council is not supporting the two ICM projects it has concerns with Elexicon's "illustrative rate riders" should the OEB approve the projects. The cost estimate for the Whitby Smart Grid is class 4 which means a great deal of variability in the overall project costs. Accuracy is 30% on the low side and 50% on the high side.²¹ Elexicon acknowledged that there could be a wide range of costs at the end of the day relative to the forecasts.²² In addition, they have not tendered for the work which they expect to do once they receive OEB approval²³. Elexicon's answer to the concern about cost uncertainty is that there is a true-up at the end of the day and cost overruns would be considered at that time.²⁴ For Elexicon, those true-ups would be undertaken in its 2029 rate proceeding at which time Elexicon would be rebasing. That is a long time from now.

What Elexicon is asking the OEB to approve is the project costs as presented today which are Class 4 and subject to a great deal of variability. The work has not yet been tendered. Elexicon is prepared to update the amounts to reflect the OEB parameters, but not reflect provide any cost updates in the 2025 proceeding or adjust the rate riders to reflect more current cost estimates.²⁵

Unlike the PUC project which was subject to a fixed price contract, the ultimate costs of the projects are not known. The OEB could be approving the projects and the rate riders that will not be in place until 2025 based on today's cost forecasts and the projected benefits. In addition, if the timing of the projects change when do the rate riders come into effect? The timing of the PUC project in-service date has changed and given they are similar initiatives it is a real possibility that the timing of the Whitby Smart Grid project could be subject to a delay as well.

5. Have the OEB's ICM criteria been met for the Whitby Smart grid and Sustainable Brooklin projects?

In consideration of ICM request the OEB's policies consider materiality, need and prudence. The Council recognizes this is how the OEB evaluates and considers ICM requests and only allows for ICM funding when these criteria are met. In this case the ICM projects are clearly

²⁰ Evidence Update, filed March 27, 2023

²¹ Transcript Vol. 2, p. 34 and SEC 18

²² Transcript Vol 2, p. 34-35

²³ Transcript Vol. 2, p. 35

²⁴ Transcript vol. 2, p. 35

²⁵ Transcript, Vol. 2, p. 39

material. With respect to the other criteria the Council does not accept that they are necessarily needed, nor are they, as currently proposed prudent.

On February 10, 2022 the OEB released a letter directed to distributors that chose a deferred rebasing period. Specifically, the OEB required that these utilities that are in a deferred rebasing period can obtain ICM funding if they can demonstrate the following:

- An urgent need for such additional funding that is based on new information that has arisen since the utility's most recent rebasing application related to the management of risk associated with asset condition, reliability and quality of service and public safety;
- History of good utility practice in capital planning, capital program management and asset maintenance;
- How this ICM investment addresses customer need and preferences and delivers benefits to customers;
- Exhaustion of other available options to manage its costs within the envelope provided by the existing price cap or other applicable formula.²⁶

Given the fact that the utilities that have formed Elexicon have not rebased for many years, or that their most recent DSP has not been scrutinized in the context of this application these questions are difficult to assess. Clearly, however, Elexicon has not established an urgent need for the additional funding requested, nor have they aligned these requests with customer needs and preferences.

Sustainable Brooklin

Given the unique nature of the Sustainable Brooklin project the consideration of the ICM using the OEB's criteria is not necessarily how the OEB assesses ICM funding. Elexicon has determined that to bring power to North Brooklin two feeders are needed. The Council is taking no position as to whether the two-feeder approach is required as concerns were raised by some parties whether this approach was the most cost-effective. From the Council's perspective whatever the ultimate cost of bringing power to North Brooklin is it should be recovered from the developers and not the Whitby ratepayers as proposed by Elexicon through its exemption request.

Whitby Smart Grid

The Council has raised concerns about the Whitby Smart Grid project given the overall cost to ratepayers and the fact those costs exceed any benefits to Elexicon's residential ratepayers. Elexicon has not established that the benefits outweigh the costs. The approach to roll out the

²⁶ Letter dated February 10, 2022 from Nancy Marconi, registrar

full project all at once is not, from the Council's perspective prudent. The PUC project has yet to go into service. Before moving forward with all elements of the Whitby Smart Grid project, it would be prudent to assess the results of the PUC project. If Elexcion chooses to move forward with the Advanced Distribution Management System (ADMS) as some parties are proposing they have not established that they need ICM funding. The amounts may not meet the materiality threshold. In addition, Elexicon did not undertake an extensive review of its DSP and its other proposed capital spending to consider how to re-prioritize those investments in order to proceed with the overall Smart grid project.

6. Is the proposed cost allocation for each project appropriate?

As discussed during the hearing the majority of the costs related to the two ICM projects are being born by Elexicon's residential ratepayers. When asked whether Elexicon would consider alternative approaches to cost allocation the answer was no. This was discussed during the oral proceeding and has been set out in its Argument-in-Chief²⁷. Elexicon's approach to cost allocation is troubling. Assuming the OEB approves the requests for ICM funding Elexicon should be required to develop a cost allocation methodology that better aligns project costs and benefits.

7. What Conditions of Approval would be appropriate for each project?

The Council submits that the OEB in its Decision regarding the PUC Distribution Inc.'s SSG project set out a number of conditions that PUC Distribution Inc. is required to meet²⁸. The Council submits that those requirements should also be applied to Elexicon if the OEB ultimately approves the Whitby Smart Grid project.

²⁷ Transcript Vol. 2, pp. 43-44, AIC, p. 28

²⁸ EB-2020-0249 Decision and Order, dated April 29, 2021