



By EMAIL and RESS

**Jay Shepherd**  
jay@shepherdrubenstein.com  
Dir. 416-804-2767

July 19, 2023  
Our File: EB20220024

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

**Re: EB-2022-0024 – Elexicon Rates – Draft Rate Order**

We are counsel to the School Energy Coalition (“SEC”). This letter is sent to provide submissions on the Draft Rate Order of the Applicant.

**Problems with the ICM Model**

There are two issues raised in the DRO related to the ICM Model. First, does the model inappropriately calculate a Whitby threshold and therefore eligible ICM capital? Second, if so, what is the appropriate process to correct that problem?

SEC generally agrees that imputing an unusually high inflation rate and therefore PCI over the last decade or more is, on the face of it, not what the OEB intended when the ICM model was developed. The model was a simplification at a time when Canada and Ontario had experienced many years of stable inflation rates. It is not clear that the model works as intended when inflation spikes and recent rate increases are higher than past rate increases.

We also note that the volatility of inflation is exacerbated by the long delays between rebasing that can arise due to the MAADs policy. That is what is happening here. Figure 1 in the Applicant’s DRO illustrates this graphically.

On the other side, the PCI is not the only simplification in the model, and not the only way that it assumes long term stability as opposed to short term volatility. If changes are going to be ordered to the model to increase eligible ICM capital, it is likely also appropriate to review whether there are other changes to the model that should be considered, particularly if they

would decrease eligible ICM capital or would also be driven by changing economic circumstances.

It also worth noting that in other ACM/ICM approvals in the past, utilities have had the benefit of the same identified model issue, to the detriment of customers (although likely not to the same extent), where the PCI adjustment in a given year is lower than the historic average.

SEC believes that the OEB has had sufficient experience with the ICM model to learn from its application in various circumstances, and to initiate a review in light of that information. This review should include all aspects of the model, in order to generate a revised (or reconfirmed, perhaps) model that will have some staying power.

A proper review of the ICM model is outside the scope of this proceeding. Many other utilities and stakeholders would be interested in that review, so it would certainly be inappropriate for that review to take place here and without notice to them.

On the other hand, that review should probably take place.

### **What Is the Appropriate Process?**

Against that background, SEC believes that the solutions discussed by the Applicant are not suitable options.

The first solution proposed by the Applicant is to use an inflation factor that is clearly incorrect, and inconsistent with the Decision, in effect amending the model by including a different inflation factor that only accidentally accomplishes the result the Applicant seeks.

SEC does not agree that using an out of date PCI figure is an appropriate solution. It asks the OEB to amend the Decision to accomplish a result that is different from the result the Decision ordered.

The second solution proposed by the Applicant is for the OEB to hear a Motion to Review and Vary, which would seek to achieve the same result, i.e. use a different PCI in the model, in effect amending the model.

SEC believes that amending the ICM model in a single ICM case is not appropriate unless there is some particular reason why the model doesn't work in that case, but is still appropriate in all other cases. That is not true here. If the PCI approach is changed, that may impact other LDCs that are experiencing volatile inflation, or have long periods between rebasings due to MAADs transactions.

Further, SEC believes that the change being proposed by the Applicant is not an appropriate amendment, as it does not attempt to get at the cause of the problem. That is, it makes no attempt to "fix" the model. It simply seeks to use a different input in order to achieve the result the Applicant wants.

The better approach, in our view, is to recognize that this case involves determining an ICM rider that will not arise until 2025. The Decision has stipulated that the ICM Rider will be calculated using today's values, and not be updated.

SEC believes that the problem raised by the Applicant can be addressed by amending the Decision to stipulate that the ICM Rider will be calculated at the time of the 2025 IRM Rate Order, rather than today.

This would have two effects.

First, the OEB would have the opportunity over the next 12-15 months to review the working of the ICM model in the context of the current economic environment, and make whatever changes may be necessary to adjust it. This would also allow for the many other interested parties to provide input, and for them, and the OEB, to model other scenarios that could be affected by the current model or any modifications. In short, this would allow for time to get the correction right, rather than just implementing a quick fix.

Second, in the event that the OEB is not in a position to adjust the ICM model in that time frame, the result intended by the Applicant would still likely be achieved. That is, in a period of declining inflation, a lower assumed PCI next year would result in higher eligible ICM capital in the Whitby Rate Zone. It would also reflect a more accurate PCI adjustment over time, regardless of what approach the OEB ultimately decides with respect to the ICM model.

Therefore, SEC proposes that the Decision be amended to provide that the rate riders coming out of this Decision, including the ICM threshold and the eligible ICM capital, be calculated at the time the 2025 IRM rate order is being determined.

This then leads to the technical question of whether this should be treated as a Motion to Review and Vary or simply part of the DRO process.

SEC believes that the Commissioners deciding this case are still seized with the matter until they approve a rate order, since the jurisdiction they are exercising is to approve just and reasonable rates. The rate order is the point in time at which they have reached a final determination.

That being the case, it is submitted that the Commissioners can amend the wording of their Decision at this point, and change the use of the ICM model from one with current inputs to one with inputs set next year.

While setting the rate riders today would certainly simplify the process and provide more certainty, setting them in the 2025 rate order would be more accurate. In addition, given the fact that the approval is for a smaller ICM project, the value of earlier certainty is much less.

SEC thus concludes that a Motion to Review and Vary is not required in this case, and the Decision can be amended to solve the problem through the DRO process.

### **Conclusion**

SEC therefore proposes that:

- The Commissioners should recommend to the OEB a review of the ICM model to ensure that it produces the intended results in the current economic circumstances, and



- The Decision should be amended to provide that the calculation of eligible ICM capital, including the ICM threshold, and the calculation of appropriate rate riders, take place as part of the 2025 IRM rate order process.

All of which is respectfully submitted.

Yours very truly,

**Shepherd Rubenstein Professional Corporation**

A handwritten signature in black ink, appearing to read "Jay Shepherd", written over a light gray rectangular background.

Jay Shepherd

cc: Brian McKay, SEC (by email)  
Interested Parties (by email)