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February 5, 2024

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Ms. Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Attention: Ms. Nancy Marconi, Registrar

Dear Ms. Marconi:

**Re: Request for Confidential Treatment of Answers to Interrogatories
EB-2023-0298: Upper Canada Transmission 2 Inc. ("UCT 2") Application for
Electricity Transmission Rates Beginning January 1, 2024 (the "Application")**

We are legal counsel to UCT 2 in the Application.

UCT 2 requests the confidential treatment of certain information contained in its responses to the interrogatories ("**IRs**") set out below pursuant to Rule 10.01 of the Ontario Energy Board's ("**OEB**") Rules of Practice and Procedure (the "**Rules**") and the OEB's *Practice Direction on Confidential Filings* dated December 17, 2021 (the "**Practice Direction**").¹

In accordance with subsection 6.1.2, 6.1.4 and 6.1.7 of the Practice Direction and subsections 10.01 and 10.02 of the Rules, UCT 2 proposes that the confidential versions of its responses to the following interrogatories to be disclosed to OEB staff and intervenors (including their experts and counsel) from whom the OEB accepts a Declaration and Undertaking.

UCT 2 submits that the need to protect confidential treatment set out below outweighs the general public interest in transparency and openness. The portions of these responses, entire exhibits and portions of exhibits that the Applicant claims are confidential primarily involve material that is highly commercially sensitive information. Many of the requests seek confidential treatment of information on behalf of UCT 2's general contractor, Valard Construction LP ("**Valard**"). Valard has submitted a letter in support of UCT 2's request for confidential treatment. A copy of Valard's letter is attached and marked **Appendix "A"**.

Many of the responses and attachments contain information that is presumptively confidential under Appendix B of the Practice Direction. In addition, confidential treatment is warranted

¹ These include portions of interrogatory responses and exhibits filed by UCT 2 in response to IRs: I-01-08, I-01-09, I-01-13, I-01-14, I-01-16, I-01-19, I-01-30, I-01-32, I-01-33, I-01-35, I-01-36, I-01-37, I-02-07, I-02-12, I-03-03, I-03-04, I-03-08, I-03-10, I-03-12, I-03-13, I-03-14, I-05-01, and I-05-06.

under the Appendix A *Considerations in Determining Requests for Confidentiality* for the following reasons (collectively, the “**Rationale**”):

1. Similar types of information were previously held confidential by the OEB in EB-2020-0150, on the grounds that the information sought to be withheld: “*contains business information that is highly confidential and commercially sensitive, and that public disclosure could reasonably be expected to prejudice the economic interest and competitive position of [the Applicant] and its contractors.*”²
2. Public disclosure risks interfering with ongoing or future commercial discussions related to infrastructure projects involving UCT 2 and/or its general contractor in the Province of Ontario and North America.
3. UCT 2 and/or its general contractor’s competitive position in the marketplace will be prejudiced.
4. Public disclosure could interfere significantly with negotiations being carried out by UCT 2 and/or its general contractor.
5. There is a likelihood of significant loss to UCT 2 and/or its general contractor, or gain to a competitor of UCT 2 and/or its general contractor.

The specific information for which UCT 2 seeks confidential treatment and a summary of supporting rationale are set out below as required by subsections 5.1.4 and 5.3 of the Practice Direction.

| No. | IR | Response or Exhibit, and the information for which confidential treatment is being requested | Presumptively confidential category (Appendix B) | Additional Alternative Rationale, reasons and harms (Appendix A) |
|-----|---------------|---|---|--|
| 1. | STAFF I-01-08 | Exhibit I-01-08 Attachment 5: UCT 2 seeks confidential treatment for portions of the Socotec July 14, 2021 report that contain commercially sensitive information (PDF pages 103-105, 110, 125, 128, 129, 131-137, 141-145, 147-150, 152, 154-157, 159-168, 170-173, and 175-177). | <ol style="list-style-type: none"> 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above. If disclosed to the public or competitors, this information may harm UCT 2’s general contractor by exposing its underlying cost structure, undermine its competitiveness, disadvantage its position in ongoing commercial negotiations, and/or provide competitors an advantage during competitive bids. |

² EB-2020-0150, Decision on Confidentiality and Procedural Order No. 2, February 5, 2021 at pp 2-3.

| No. | IR | Response or Exhibit, and the information for which confidential treatment is being requested | Presumptively confidential category (Appendix B) | Additional Alternative Rationale, reasons and harms (Appendix A) |
|-----|---------------|--|---|--|
| 2. | STAFF I-01-08 | Exhibit I-01-08 Attachment 7: Portions of NextBridge Infrastructure's Board of Directors quarterly meeting materials and minutes that include banking information (PDF page 857) and commercially sensitive negotiations (PDF pages 110, 209, 290, 786, 803, 817, 837, 842, 857, 859, 861, 867, 868, 879, 891, 897, 905, and 913). | N/A | See Rationale 3 and 4 above. |
| 3. | STAFF I-01-09 | Exhibit I-01-09 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. It is a spreadsheet detailing UCT 2's general contractor's detailed actual costs, markup, personnel, subcontractors and other costs related to COVID-19. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above. |
| 4. | STAFF I-01-13 | Response I-01-13: Portions of the following response sub-parts: (a) UCT 2's general contractor's original budgeted travel costs. | N/A | See Rationale 3 above. |
| 5. | STAFF I-01-14 | Exhibit I-01-14 Attachment 3: UCT 2 seeks confidential treatment for spreadsheet tabs <ul style="list-style-type: none"> • P-4921 (CCVA) • P-4837 (COVID) • P-3117_\$22.4M_Detail • O-2156 thru 7-17_Detail These tabs contain detailed individual costs actually incurred by UCT 2's general contractor. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1 for I-01-08. |

| No. | IR | Response or Exhibit, and the information for which confidential treatment is being requested | Presumptively confidential category (Appendix B) | Additional Alternative Rationale, reasons and harms (Appendix A) |
|-----|---------------|---|---|--|
| 6. | STAFF I-01-14 | Exhibit I-01-14 Attachments 6.2 to 6.7: UCT 2 seeks confidential treatment for the entirety of these documents. They are spreadsheets detailing individual costs actually incurred by UCT 2's general contractor. Attachment 6.8: UCT 2 seeks confidential treatment for a portion of tab "All Labour Detail" setting out actual labour costs for the project. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1 for I-01-08. |
| 7. | STAFF I-01-19 | Response I-01-19: Portions of the following response sub-parts: (a) budget amounts; and (b) labour Hours and labour Costs. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1 for I-01-08. |
| 8. | STAFF I-01-19 | Exhibit I-01-19 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. It is a spreadsheet detailing the monthly labour hours and costs, as well as labour cost detail, for UCT 2's general contractor. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1 for I-01-08. |
| 9. | STAFF I-01-30 | Response I-01-30: Portions of response sub-part: (a) budget amounts for labour hours, equipment, materials, other, subcontracts, and total. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1 for I-01-08. |
| 10. | STAFF I-01-32 | Response I-01-32: Portions of the tables detailing force account standby unit rates, labour rates, pickup rates and flight costs. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 11. | STAFF I-01-33 | Exhibit I-01-33 Attachment 1: Portions of tab "Mobilization – B.2.3C Bid Sheet" with details on UCT 2's general contractor's unit cost pricing. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |

| No. | IR | Response or Exhibit, and the information for which confidential treatment is being requested | Presumptively confidential category (Appendix B) | Additional Alternative Rationale, reasons and harms (Appendix A) |
|-----|---------------|---|---|--|
| 12. | STAFF I-01-35 | Response I-01-35: Portions of the table to response (c) detailing mobilization and demobilization rates for equipment crews. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 13. | STAFF I-01-35 | Exhibit I-01-35 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. It is a spreadsheet detailing UCT 2's general contractor's detailed budget, actual costs, unit rates, markup, subcontractors and other costs related to the White Lake Narrows structure removal and revision. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1 for I-01-08. |
| 14. | STAFF I-01-36 | Exhibit I-01-36 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. It is a spreadsheet detailing UCT 2's general contractor's detailed budget, actual costs, unit rates, markup, subcontractors and other costs related to Right of Way (RoW) changes. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 15. | STAFF I-01-37 | Exhibit I-01-37 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. It is a spreadsheet detailing UCT 2's general contractor's detailed budget, actual costs, unit rates, markup, subcontractors and other costs related to Right of Way (RoW) changes. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |

| No. | IR | Response or Exhibit, and the information for which confidential treatment is being requested | Presumptively confidential category (Appendix B) | Additional Alternative Rationale, reasons and harms (Appendix A) |
|-----|---------------|--|---|---|
| 16. | AMPCO I-02-07 | Response I-02-07: Portions of the following response sub-parts: (b) UCT 2's general contractor's originally budgeted labour hours and costs; (c) the contractor's originally budgeted material costs; (d) the contractor's bid estimate budget by cost type; and (e) overall cost increases from the original budget. | N/A | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 17. | AMPCO I-02-07 | Exhibit I-02-07 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. It is a spreadsheet detailing UCT 2's general contractor's budget for the project, broken down by cost code and description. Each cost code contains a cost estimate for labour, equipment, material, and subcontractors. | 1. Unit pricing of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. This detailed budget breakdown carries particular risk of competitive harm to UCT 2's general contractor. This contains commercially sensitive information detailing how UCT 2's general contractor priced the project and structured its costs. |
| 18. | AMPCO I-02-12 | Exhibit I-02-12 Attachment 2: Portions of the UCT 2's general contractors' subcontractors' invoices containing unit rates and personnel names on the following PDF pages: 9, 10, 11, 12, and 14. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 19. | AMPCO I-02-12 | Exhibit I-02-12 Attachment 3: Portions of the UCT 2's general contractors' subcontractors' invoices containing unit rates and personnel names on the following PDF pages: 22-28. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 20. | CCMBC I-03-03 | Response to IR I-03-03: Portions of the response that (a) contain actual incremental safety costs by cost type and (b) identify UCT 2's general contractor's subcontractors' names. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |

| No. | IR | Response or Exhibit, and the information for which confidential treatment is being requested | Presumptively confidential category (Appendix B) | Additional Alternative Rationale, reasons and harms (Appendix A) |
|-----|---------------|---|---|---|
| 21. | CCMBC I-03-04 | Response to IR I-03-04: Portions of the response that contain incremental COVID costs by type of expense. | N/A | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 22. | CCMBC I-03-08 | Response to IR I-03-08: Portions of response detailing budgeted labour hours to complete structure work and hours overrun. | N/A | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 23. | CCMBC I-03-10 | Exhibit I-03-10 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. This spreadsheet details UCT 2's general contractor's subcontractors by name, actual amounts paid during the project by date, and total amounts paid. | 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. In particular, this spreadsheet would be detrimental to the competitive position of UCT 2's general contractor in current and future negotiations. |
| 24. | CCMBC I-03-12 | Response to IR I-03-12: Portions of response detailing UCT 2's general contractor's budget and actual costs for equipment. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 25. | CCMBC I-03-12 | Exhibit I-03-12 Attachment 1: UCT 2 seeks confidential treatment for the entirety of this document. This spreadsheet details UCT 2's general contractor's company owned equipment hours, unit rates and amounts, including general ledger entries by date across the project. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 26. | CCMBC I-03-13 | Exhibit I-03-13 Attachment 1: Portions of the spreadsheet detailing Living Out Allowance ("LOA") per diem expenses. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |

| No. | IR | Response or Exhibit, and the information for which confidential treatment is being requested | Presumptively confidential category (Appendix B) | Additional Alternative Rationale, reasons and harms (Appendix A) |
|-----|---------------|--|---|--|
| 27. | CCMBC 1-03-14 | Exhibit I-03-14 Attachment 2: UCT 2 seeks confidential treatment for the entirety of this document. This spreadsheet details UCT 2's general contractor's commercially sensitive costs, unit pricing, subcontractors and personnel. | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 28. | SEC I-05-01 | Response to IR I-05-01: Portions of the table relating to UCT 2's general contractor's engineering and construction budget and actual incurred costs. | N/A | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 29. | SEC I-05-06 | Response to IR I-05-06: UCT 2 seeks confidential treatment over a portion of the response to (a): the lump sum contract price. | N/A | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. |
| 30. | SEC I-05-06 | Exhibit I-05-06 Attachment 1: UCT 2 seeks confidential treatment over the lump sum price in the EPC Contract (Tab 1). UCT 2 further seeks confidential treatment over the entirety of the following Exhibits to the EPC Contract: Exhibit B (pricing breakdown); Exhibit I (list of major subcontractors); and Exhibit X (Additional contractor responsibilities and Aboriginal consultation plan). | 1. Unit pricing of a third party. 2. Billing rates of a third party. | See Rationale 1, 2, 3, 4 and 5 above and the additional rationale provided in row 1. In particular, UCT 2's general contractor's pricing breakdown, list of major subcontractors, and Aboriginal consulting plan are highly commercially sensitive and disclosure of those documents to competitors would prejudice UCT 2's general contractor in the marketplace. |

Yours truly,

McCarthy Tétrault LLP

A handwritten signature in black ink, appearing to read "G. Nettleton", written in a cursive style.

Gordon M. Nettleton
Partner | Associé

**VALARD CONSTRUCTION LP REQUEST FOR CONFIDENTIALITY**

Valard Construction LP ("Valard") has prepared this letter in support of the confidentiality request of East West Tie Limited Partnership ("EWT LP") in respect of certain commercially sensitive information that was supplied by Valard in confidence¹ and which if disclosed on the public record would:

- (a) prejudice Valard's competitive position;
- (b) interfere significantly with negotiations being carried out by Valard; and
- (c) be likely to produce a significant loss to Valard, and corresponding gains to Valard's competition.

Valard is a utilities contractor specializing in large engineering, procurement and construction ("EPC") contracts in Canada. The majority of our business in recent years, and forecasted for the upcoming years, is centered in the Ontario market. Valard's direct competitors are a pool of utility contractors in North America performing large EPC work which includes Forbes Bros, Voltage Power, PowerTel and Victor Energy.

Currently, Valard is one of two selected contractors (competing against one of the above-named competitors) in an early contractor involvement process to construct a 135 Km Single Circuit 500kV EPC transmission line project in Ontario. Valard is also currently the selected EPC Contractor to complete a 360km transmission line project in Northwest Ontario. Additional information can be provided outlining Valard's upcoming business endeavors in Ontario on request.

Successful construction requires cost-effective planning and budget management. Resourcing a large project economically through direct labour, equipment and subcontractors is what sets contractors apart.

Competitor insight into Valard's cost planning, cost tracking strategies, or actual costs will cause irreparable harm to our business and greatly hinder competition for upcoming bids.

Planned or actual costs spent on this Project allows Valard's sophisticated competitors to discern:

- Work Valard self-performs and work that is subcontracted;
- Payment schemes used for subcontractors and suppliers;
- Equipment used and crew makeup;
- Indigenous partners and partnering strategies;
- Worker accommodation practices and strategies;
- Supervision to direct workforce ratio; and
- Areas of profitability.

Any competitor reviewing this information will not only know how to strategically price against Valard in upcoming bids, but also may attempt to encroach upon limited resources and partnerships which Valard has leveraged to remain competitive. Furthermore, information regarding crew makeup, equipment, third party services provide clear vision into our construction planning and methodologies.

Apart from competitors, any potential clients having access to this redacted information will be able to determine areas of profit and subcontracting strategies. This would not only put Valard in a position of

¹ Section 17.1 of the Engineering, Procurement and Construct Agreement for Transmission Facilities dated December 5, 2017 regarding the Ontario East/West Transmission Project.

disadvantage when negotiating pricing with clients but may allow potential clients to determine what scopes to award Valard and what scopes should directly be awarded to other entities.

Finally, in addition to customers and competitors, this information could be significantly damaging if received by any subcontractors or suppliers. This is a timely concern as we are in the middle of trying to set-up subcontracting agreements for upcoming work in Ontario throughout 2024. Being able to compare budget information, actual costs and contract pricing would allow subcontractors to strategically price.

Pricing under this EPC Contract was confidential, and we would request remain confidential. However, equally important would be any information relating to Valard's actual budget or costs incurred on this Project.

Public disclosure of this information would be directly harmful to Valard and would hinder fair competition in the future.

In this context, Valard has identified the following three categories of information over which it is supporting confidential treatment by the OEB.

1. EPC Contract - Pricing and Other Commercially Sensitive information

Now that the work is substantially complete, Valard does not object to the disclosure of the terms and conditions of the EPC Contract, with the exception of specific commercially sensitive provisions including contractual pricing.

Even high-level pricing information is likely to cause irreparable harm. Transmission line projects follow a standard construction sequence. Work proceeds by completing access, installing foundations, installing steel towers, and then running wire from tower to tower. While pricing certainly has complexities, insight into the basic premises of a lump sum figure and the total length of the transmission line being constructed will allow any competitor to conclude Valard's price per km number. It is noteworthy that unit pricing of a third party is considered presumptively confidential.

This information would enable sophisticated competitors the ability to forecast Valard's pricing for upcoming bids, interfering with Valard's competitive position. The problem is amplified as pricing becomes more detailed as outlined in Exhibit B of this contract, which details specifics on foundation types and structures.

2. Detailed Valard Budget

Valard's budget contains more than four hundred rows of detailed commercially sensitive pricing data broken down by groupings that represent the various elements of a major transmission EPC project. This is further broken out between labour hours (which can be used to calculate labour unit pricing information which is presumptively confidential), equipment spend, materials spend, subcontract spend and other costs.

With this information sophisticated competitors will be able to forecast Valard's pricing for upcoming bids.

Illustrating our concern we note that the budget attributes a defined amount to contingency. This information would inform competitors how Valard prices risks that cannot otherwise be prevented.

**Valard***Connecting People.
Powering Communities.*10774 42nd Street SE | Calgary, AB | T2C 0L5
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Valard's budget also includes a specific dollar value of risk items such as weather, local conditions and labor resourcing. Assessing and managing a risk profile is often one of the few distinguishing features between competitors. Any party reviewing this information will be able to determine what items Valard anticipates as a likely cost increase (and at what percentage of the overall value of the project). Similarly, the budget can be used further to determine how Valard mitigates risk items. To exemplify this:

- A lack of contingency dollars for weather combined with budgetary costing for matting would provide clear indication that Valard's construction plans favor incurring the cost of matting to work late into the winter season once ice roads start to melt.
- A lack of contingency dollars for risk associated with late material combined with significant third party vendor costs signals a risk mitigation strategy of flowing down this risk through subcontracting agreements.

These are some of the many examples how budgetary pricing can shed light on actual construction execution plans and put Valard at a competitive disadvantage.

Further concern with the inclusion of budgets, is the same can be used by subcontractors in future negotiations to determine exactly how to price up to the likely limit of our budget.

3. Valard's Detailed Actual Costs and Subcontractor Cost Data

This data includes subcontractor's unit price rates, as well as actual costs and invoicing by each subcontractor, which will pose a significant concern in regard to ongoing subcontractor negotiations on other projects both for Valard and those subcontractors. It also provides clear indication of subcontractor spend and Valard's indirect costs that go along with same. This allows insight into how much supervision Valard dedicates to managing subcontractors.

The data includes specific crew makeup. Details regarding equipment and individuals making up a crew to perform tasks such as road maintenance, bridge installation etc is included. Knowing exactly how many individuals are performing a task and what specific equipment they are using is no longer simply a pricing concern, it is giving clear insight into exactly how work is performed by Valard.

Additionally, portions of the detailed documentation provide evidence of employee wages. This would be invaluable for competitors wanting to solicit Valard employees or determine wages for their own employees to ensure retention.

Should the OEB order EWT LP to place any of the above information on the public record, Valard reserves its right to seek to withdraw the information in accordance with Rule 10.05 of the OEB's Rules of Practice and Procedure and the Practice Direction on Confidential Filings.

Sincerely,

Jessie Feniuk, General Counsel

CC: John Vellone, Borden Ladner Gervais LLP