



BY EMAIL and RESS

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2300 Yonge Street
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February 7, 2024
Our File: EB20230298

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2023-0298 – Upper Canada Transmission 2 – SEC Correspondence

We are counsel to the School Energy Coalition (“SEC”). SEC writes to request that Upper Canada Transmission 2 Inc. (“UCT 2”) be ordered to provide a full and adequate response to Interrogatory SEC-4.¹ Due to the limited time before the start of the Settlement Conference next week, which we do not seek to delay, SEC is making this request by way of this letter as opposed to a formal notice of motion.

Interrogatory SEC-4 – 2023 ROE

Interrogatory SEC-4² asked UCT 2 to provide a revised version of a table in its evidence that showed its return on equity (“ROE”) calculated for 2022³, with a forecast/actual 2023 ROE calculation. In its response, UCT 2 declined to provide the information based on relevance. In its view, the requested information, the 2023 ROE calculation, is not relevant to the issue of whether the applied-for amounts were prudently incurred.

SEC disagrees. The information is relevant and should be required to be produced in advance of the Settlement Conference.

One of the major components of the application is UCT 2’s request for a disposition of \$111.7M in costs that it has recorded in its COVID-19 Deferral Account (Account 1590 – Impacts Arising From the COVID – Sub Account Other Costs). In the Custom IR decision, the OEB deferred consideration of the regulatory treatment of COVID-19-related costs to this application.⁴

¹ [Rules of Practice and Procedure](#), Rule 27.03

² Exhibit I, Tab 5, Schedule 4 (See Attachment)

³ Exhibit B, Tab 1, p.4

⁴ [Decision and Order \(EB-2020-0150\), June 17, 2021](#), p.37

The OEB has issued a report that provided generic guidelines regarding the recovery of any balances in the COVID-19 Deferral Account by regulated utilities.⁵ While the OEB has determined that those generic guidelines would not apply to greenfield utilities such as UCT 2 (then referred to as NextBridge)⁶, there is no reason that some of the components and the broader principles should not be considered in this application for the disposition of the balances in the COVID-19 Deferral Account. A central aspect of the OEB's generic guidelines is the adoption of a means test for recovery based on a utility's achieved ROE compared to its approved level.⁷

UCT 2's 2023 ROE, and the underlying calculation, is relevant to understanding UCT 2's means, and how a test could be designed and applied. The OEB may ultimately decide that there should be no means test, and that the 2023 ROE should not be considered in any decision regarding the disposition of the balance of the COVID-19 Deferral Account, that is a matter for final argument. However, at this stage, it cannot reasonably be said that the information is not relevant to the issues in this proceeding.

Moreover, the 2023 ROE is also important contextual information for parties in assessing an application that seeks significant incremental funding through clearance of a number of deferral and variance accounts.

UCT 2 should be required to provide the requested information in SEC-4.

Additional Matter

Section 5.1.6 of the OEB's *Practice Direction on Confidential Filings* provides that parties have five days from the filing of a request for confidentiality to file an objection, unless otherwise directed by the OEB. On February 6th, we received UCT 2's request for confidentiality treatment over portions of 30 interrogatory responses.

Considering the magnitude of the request, as well as the limited time between receipt of the interrogatory responses and the Settlement Conference, SEC requests the OEB order that the deadline for a party to file any objection to the confidentiality request be deferred until sometime after the completion of the Settlement Conference. This will allow parties to focus on their review of the interrogatory responses and preparation for the Settlement Conference.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)

⁵ [Report of the Ontario Energy Board, Regulatory Treatment of Impacts Arising from the COVID-19 Emergency \(EB-2020-0133\), June 17, 2021](#)

⁶ [OEB Letter, Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency \(EB-2020-0133\), April 13, 2021](#), p.3

⁷ [Report of the Ontario Energy Board, Regulatory Treatment of Impacts Arising from the COVID-19 Emergency \(EB-2020-0133\), June 17, 2021](#), p.2-3,13-15

SEC INTEROGATORY- 04

Reference:

1. [B-1, p.4]

Interrogatory:

Please provide a revised version of Table Ex.B.1 with a forecast/actual of the 2023 ROE calculation.

Response:

The requested information is not relevant to the issues in this proceeding. This information pertains to UCT 2's financial performance for a period commencing nine months following the in-service date of the Project. None of the Applied-For Costs relates to 2023. Thus, the requested information was not known and could not have been known at the time the Applied-For Costs were budgeted or incurred. The requested information therefore has no relevance to the central issue of whether UCT 2 has demonstrated that the applied-for amounts were prudent and thereby appropriate for recovery in rates.