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July 17, 2025

RESS & Email

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

Attention: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2025-0149 Stakeholder Consultation on the Review of the OEB's Filing
Requirements for Electricity Transmission Applications - Chapter 1 and Chapter 2

We are counsel to Upper Canada Transmission 2, Inc. ("UCT2"). Below are UCT2's comments on the Ontario Energy Board ("OEB") proposed changes to Chapters 1 and 2 of the Filings Requirements for Electricity Transmission Applications.

Please contact the undersigned should you have any further questions or concerns.

Yours truly,

McCarthy Tétrault LLP

Gordon M. Nettleton
Partner | Associé

Submission regarding Proposed Amendments to the Filing Requirements for Electricity Transmitters

Upper Canada Transmission 2, Inc.

EB-2025-0149

July 17, 2025

INTRODUCTION

Upper Canada Transmission 2, Inc. (“UCT2”) appreciates the opportunity to submit comments to the Ontario Energy Board (“OEB” or “Board”) regarding the Board’s proposed amendments to its Filing Requirements for Electricity Transmission Applications – Chapters 1 and 2 (“Proposed Amendments”) published on June 5, 2025. UCT2 attended the subsequent stakeholder conference hosted by OEB Staff on June 25, 2025 (“Stakeholder Conference”) and submits these comments in response to the OEB’s June 27, 2025 correspondence.

UCT2 is the general partner acting for and on behalf of the East-West Tie Limited Partnership and is the licensed¹ operator of the electricity transmission facilities commonly referred to as the “East-West Tie Line.” The East-West Tie Line is comprised of a 450km, 230kV double circuit electric transmission line and related tower facilities located between the Lakehead, Marathon, and Wawa Transformer Stations, which increases the electricity transfer capability into Northwest Ontario from 175MW to 650MW, with improvements to overall grid efficiency and flexibility. UCT2 is currently operating under a multi-year Custom Incentive Regulation (“Custom IR”) revenue-setting framework, as approved in EB-2020-0150, ending December 31, 2027.

As a single-asset transmitter that stands to be impacted by the Proposed Amendments, UCT2 is particularly concerned with proposals unfairly targeting and limiting the choices available to such transmitters to propose revenue-setting frameworks. As explained in more detail below, UCT2 urges the OEB to preserve the flexibility of the current framework.

UCT2 has organized this submission into two principal sections, as follows:

1. Comments on material proposals included in the Proposed Amendments related to single-asset transmitters; and,
2. Section-specific comments and proposed edits to the Proposed Amendments.

¹ ET-2011-0222

I. Comments on Material Proposals Included in the Proposed Amendments related to Single-Asset Transmitters

A. Overview of Proposed Amendments Applicable to Single-Asset Transmitters

The stated focus of the Proposed Amendments is to “provide guidance on the revenue requirement framework for the growing number of single-asset transmitters now operating in Ontario, specifically [the update] aims to clarify the expectations for Custom Incentive Rate-setting (Custom IR) applications required to support filings under this approach.”² This additional guidance is contained at section 2.0.3 of the Proposed Amendments. While the Proposed Amendments define single-asset transmitters as “transmitters who operate a single-line transmission asset,” the comments of OEB Staff and participants at the Stakeholder Conference clarified that the term could apply to transmitters operating more than a singular asset, where ongoing capital expenditures are consistently low. For purposes of this submission, UCT2 accordingly understands the term Single-Asset Transmitters (“SA Transmitters”) to also include certain transmitters operating more than one consolidated transmission asset. Although UCT2 disagrees with the Proposed Amendments’ changes to the revenue-setting framework applicable to SA Transmitters (see below), UCT2 nonetheless encourages the OEB to establish clear definitions in any revision to the OEB’s Electricity Transmission Filing Requirements (“Filing Requirements”) to ensure effective and efficient regulatory processes.

The Proposed Amendments highlight that since the last iteration of the Filing Requirements and the Handbook for Utility Rate Applications (“Handbook”) in 2016, the Province has seen growth in the number of SA Transmitters. The Proposed Amendments articulate the Board’s concern as follows:

These “single-asset transmitters” usually do not incur material capital expenditures once the transmission line is initially constructed and in service. The OEB believes that the revenue requirement-setting framework for these transmitters warrants unique consideration.

The Revenue Cap IR option may be inappropriate for transmitters that have low capital expenditures over the rate term and experience a declining rate base. Specifically, the Revenue Cap IR option inflates the entire revenue requirement annually, even if the capital

² OEB Letter “Re Stakeholder Consultation on the Review of the OEB’s Filing Requirements for Electricity Transmission Applications - Chapter 1 and Chapter 2 Ontario Energy Board File No. EB-2025-0149”, June 5, 2025, page 1.

components, namely, return on capital and capital depreciation, may not require an inflationary increase.³

To address this concern, the Proposed Amendments define “material capital expenditures” by establishing a threshold test that each electricity transmitter must perform to determine if it is an SA Transmitter, or not. Specifically, electricity transmitters with annual capital additions of less than 2% of their gross capital asset balance are deemed SA Transmitters and are required to adhere to the specific Custom IR revenue-setting framework prescribed for SA Transmitters in the Proposed Amendments “unless it can demonstrate a strong rationale for departing from it.”⁴

The core characteristics of the proposed SA Transmitter revenue-setting framework (“SA Framework”) are:

- First-year revenue requirements established on a Cost-of-Service basis, including return on capital (and taxes), depreciation expense, and Operation, Maintenance and Administrative Expenses (“OM&A”);
- Remaining years’ return on capital (including taxes) and depreciation expense established on the basis of a fixed forecast of capital additions and depreciation; and,
- Remaining years’ OM&A established as the prior year’s OM&A, escalated by an inflation factor less a productivity / stretch Factor (commonly referred to as “I-X”).

As set forth in more detail below, UCT2 does not support the proposals to establish (i) a test that deems a transmitter an SA Transmitter and (ii) a one-size-fits-all revenue-setting approach for all SA Transmitters. While UCT2 appreciates and understands the concern with respect to the potential for declining rate base articulated in the Proposed Amendments, the present Filing Requirements update focused on administrative changes to filing requirements is an improper forum for deciding substantive legal issues. Beyond this procedural defect, the proposals unfairly deprive SA Transmitters of the flexibility afforded other Transmitters in selecting a suitable revenue-setting approach.

B. Implementation of a SA Framework via Filing Requirement Amendments Is Improper

As an initial matter, the present effort to update administrative filing requirements is not the appropriate forum to propose substantive ratemaking changes that purport to fundamentally alter and

³ Proposed Amendments, Section 2.0.3, page 6

⁴ Ibid.

narrow SA Transmitter options for selecting a revenue-setting framework. The proposed SA Framework would implement, if adopted, a distinct policy change to the OEB's Renewed Regulatory Framework ("RRF"), which was the product of a multi-year regulatory effort to create constructs that continue to serve as the basis for rate-making in Ontario today. If changes to accommodate the increase in SA Transmitters are required, such changes should instead be introduced through proposed revisions to the OEB Rate Handbook or a targeted update to the RRF, which would require a principles-first, policy-based proposal to change the OEB's performance-based regulation framework. While UCT2 appreciates that the present proceeding may provide a convenient time to introduce the SA Framework, the proposed SA Transmitter threshold test and SA Framework go well beyond the administrative changes suitable for the present effort. These SA Transmitter-related proposals attempt to revise fundamental ratemaking constructs established in the RRF. UCT2 appreciates – and strongly agrees with – OEB Staff's acknowledgment during the Stakeholder Conference that the Filing Requirements are not the standard venue to implement this type of change.

The inadequacy of attempting to utilize the Filing Requirements update to change substantive ratemaking policy is further underscored by the insufficient procedural schedule and regulatory process that is otherwise required for substantive changes to revenue-setting proposals. The OEB's Filing Requirements Review process has set an abbreviated timeline and limited opportunities for participants to review and provide adequate comments on the significant changes proposed -- changes that directly impact UCT2's future rate applications and its business. Where such fundamental ratemaking changes are contemplated or proposed, the OEB typically undertakes a thorough consultation process that involves extensive reports and reviews prepared by OEB staff or third parties, a principles-first approach to identifying potential changes and evaluating possible solutions, detailed analyses of potential economic and other outcomes, and lengthier timelines for stakeholder feedback.

Although the Proposed Amendments stand to implement an across-the-board policy expectation for SA Transmitters that eliminates revenue-setting options, the current effort purports to do so absent the development of any public or evidentiary record of the financial, regulatory, and other impacts of the changes, much less the incentives or disincentives that such Amendment may create. UCT2 urges the OEB to withdraw the SA Transmitter-related changes here.

C. The Proposed Approach to SA Transmitter Revenue Setting Is Misguided

As to the merits of the OEB's proposed approach to SA Transmitter revenue setting (which should not be considered in this Filing Requirements process), UCT2 opposes the approach, which imposes a rigid,

one-size-fits all framework that unfairly limits applicants' abilities to propose solutions that fit their specific circumstances. These issues should be explored in a proper consultation process, including other possible approaches to addressing the OEB's concerns with a declining rate base. For example, this process could explore an option that sets the expectation amongst transmitter applicants that their revenue requirement applications should either:

- a) Establish with evidence that the applicant is not a SA Transmitter with low capital additions leading to consistent rate base decline; or
- b) Propose a revenue-setting framework which appropriately responds to a declining rate base in a manner that both protects ratepayers and allows the utility the opportunity to earn a fair return.

Even among SA Transmitters who are experiencing declining rate base, significant variation can exist that makes a rigid solution administered by the Filing Requirements inappropriate. These include but are not limited to:

- variations in OM&A, both in the overall amount required over the rate term and the year-to-year variations driven by factors such as multiyear vegetation management cycles;
- the relative probability of unforecasted increases to capital expenditures as a result of new customer connection requests, weather-related events, or other factors; or
- variations in historical capital contributions and deferred revenue.

Indeed, many factors can influence an applicant transmitter's choice of rate framework in a given application, and it would be prudent for the OEB to continue to allow transmitters to rely on the purposely flexible nature of the Custom IR framework to propose solutions that are responsive to the specifics of their circumstances at the time of their application.

UCT2 also observes that the specifics of the SA Framework proposed in Section 2.0.3 appear to be based upon three recent applications submitted by SA Transmitters ("SA Applications"),⁵ with some further changes made by the OEB. While these Applications did propose a five-year forecast of little to no capital additions, they relied on forecast OM&A responsive to their unique and varying OM&A needs over the rate term. The Proposed Amendments, on the other hand, forego this tailored forecasting approach and instead apply the inflation factor (I) minus productivity factor (X) calculation

⁵ Niagara Reinforcement Limited Partnership, EB-2024-0117; B2M Limited Partnership, EB-2024-0116; Chatham X Lakeshore Limited Partnership, EB-2024-0216.

to determine OM&A. In sum, the proposed SA Framework is inconsistent with the OEB-approved revenue-setting frameworks of three SA Transmitters experiencing declining rate base, and UCT2 is not aware of any other application where the OEB has approved the unprecedented framework now proposed.

Further distinguishing the SA Applications is the fact that each Application was specific to each applicant transmitter and culminated in a confidential settlement negotiation. Although the settlement proposal in each of these proceedings was ultimately approved by the OEB, confidentiality precludes non-parties from accessing the settlement terms and understanding the balance of gives and takes that ultimately formed the basis of the approved rate frameworks implemented. While the approved frameworks may be acceptable to the applicants, it is unknown what other negotiated outcomes or data points were relied upon to reach settlement. As a result, it cannot be inferred that a single feature of a larger negotiated outcome applicable to three SA Transmitters can be uniformly applied to a series of other non-party transmitters.

Practical issues associated with implementing the proposed SA Framework also weigh against its adoption. As noted, the SA Framework relies on a materiality threshold for annual capital additions of 2% or more of the gross capital asset balance of the transmitter at the start of the rate term, in order to deem the transmitter as a SA Transmitter.⁶ However, setting a hard metric creates potentially undesirable incentives for SA Transmitters to seek out capital investments up to a certain threshold instead of encouraging transmitters to make prudent investments in line with their needs. The 2% metric is also premised on an average useful life of 50 years for transmission assets, an assumption which is unnecessarily generic. Many core transmission assets have useful lives of 70 years or more, while others are closer to 50, and still others have shorter lives. As such, the specific average useful life of assets owned by any given transmitter will vary by virtue of the make-up of their rate base. Mathematically, it is entirely possible for a transmitter to experience a rising rate base while investing less than 2% of gross assets where its transmitter-specific average is greater than 50 years, and the opposite may also be true. In light of these concerns, the definition of a specific capital expenditure threshold is unnecessary and unworkable. The onus should be on transmitter applicants to demonstrate how the OEB's concern regarding declining rate base does not apply to their circumstances, or how its application effectively responds to this concern in a utility-specific manner.

⁶ Appendix A, "Stakeholder Consultation on the Review of the OEB's Filing Requirements for Electricity Transmission Applications - Chapter 1 and Chapter 2", June 5, 2025, pages 3-4.

UCT2 also finds some of the features of the proposed SA Framework to run counter to the purpose of a Custom IR, including section 2.0.3.2 of the proposed Filing Requirements, which appears to imply that SA Transmitters should address and propose solutions to their excess earning threshold and sharing. However, it is incorrect to include this requirement in a framework specifically developed for SA Transmitters for two reasons. First, under the RRF, only a Custom IR requires the consideration of additional consumer protections such as an Earnings Sharing Mechanism (“ESM”), while a Revenue Cap IR does not include such a requirement. As a result, the inclusion of an ESM alongside the proposed SA Framework is misplaced. The Custom IR framework was developed to assist utilities with extraordinary or multi-year capital needs that would not otherwise be sufficiently funded via Revenue Cap IR.⁷ The purpose of the ESM within this context is to provide consumers added protection, in light of the additional capital funding often facilitated by Custom IR. Because the proposed SA Framework is more restrictive than a Revenue Cap IR and provides less funding, it is not necessary to pair a more restrictive, lower-funded revenue-setting framework with an ESM.

Similarly, the inclusion of any productivity or stretch factors applicable to the capital-related revenue requirement (“CRRR”) within the proposed SA Framework is not appropriate, and it is not immediately clear whether this exclusion is explicitly contemplated in the SA Framework. The baseline logic of the SA Framework is that the transmitters’ assets are effectively static. Within this context, there are no initiatives that can be employed by the transmitter that can reduce their depreciation expense, deemed interest, return on equity, or taxes. As a result, the application of any X-factor to CRRR is punitive and denies the transmitter the opportunity for a fair return on equity invested. The only scenario in which a SA Transmitter does have control over potential capital productivity is one in which the Transmitter is actively investing capital through the rate term. As such, if the SA Framework explicitly excludes a X-factor relating to capital, this portion may be appropriate for a utility with zero capital investment. However, utilities with some capital investment would not be subject to productivity and vice versa. This again highlights the inappropriateness of a generic, required SA Framework.

Finally, it is not clear to UCT2 whether the proposed SA Framework assumes a fixed inflation factor will be applied to OM&A, or whether the OEB’s annual inflation factor will apply. In the three previously mentioned SA Transmitter cases, OM&A was established on a forecast basis, which, when combined with the CRRR treatment agreed to in those cases, removed the need for annual revenue requirement

⁷ Report of the Ontario Energy Board: Renewed Regulatory Framework, page 14

applications for these transmitters. This was an acceptable outcome to these particular transmitters, with the implication being that variations in inflation are anticipated to be manageable within the context of forecast OM&A in revenues, and greater regulatory efficiency. However, it is not appropriate to assume that this same balance of risk will be acceptable to all transmitters, who may have greater sensitivity to variances in inflation relative to these previously approved SA Transmitters. By way of example, UCT2's EB-2020-0150 Decision established a fixed inflationary value of 2% as opposed to relying on the OEB's inflation factor, which was 5.4% in 2024 and 3.6% in 2025, opening a significant gap between increases to operational funding and increased expenditures due to inflation. It is possible the proposed SA Framework intends to allow the applicant to propose a fixed or variable inflation factor. UCT2 supports this flexibility, and notes that it is indicative of the broader flexibility that transmitters require to propose revenue-setting frameworks that respond to their individual circumstances.

Recommendations

In summary, UCT2 submits the OEB's RRF and Custom IR option have remained in place since their establishment because of the appropriate flexibility provided for through these policies. In the face of an evolving electricity and transmission sector, it is misguided to limit flexibility in favor of a rigid, one-size-fits-all approach. As explained above, the proposed SA Framework (and its material capital test) is flawed and unfairly limits the flexibility of SA Transmitters in rate-setting. Moreover, substantive ratemaking proposals of this magnitude are not properly introduced in administrative updates to Filing Requirements and should not be entertained outside of normal consultative processes.

Consistent with its comments, UCT2 recommends the following be implemented in any revised version of the Filing Requirements:

1. The Filing Requirements (and other applicable OEB policy and guidance documents) should state the concern raised with respect to the potential for declining rate base of transmitters with low to no capital additions;
2. The Filing Requirements should require applicant transmitters to either:
 - a. Establish with evidence that the applicant is not a SA Transmitter with low capital additions leading to consistent rate base decline; or
 - b. Propose a revenue-setting framework which appropriately responds to a declining rate base in a manner that both protects ratepayers and allows the utility the opportunity to earn a fair return.

3. The Filing Requirements should not describe a net new revenue-setting framework, beyond those currently addressed in the RRF and Rate Handbook; and,
4. The Proposed Amendments should be revised consistent with the proposals included in the section-by-section recommendations provided in this submission.

Section-Specific Comments on the Proposed Amendments

This final section of submission provides specific comments and recommendations on items not specifically related to SA Transmitters, organized by section of the Proposed Amendments. While UCT2 has not provided comments on all sections within the Proposed Amendments, UCT2's silence on a given section at this time should not be interpreted as UCT2's agreement with the changes to that section. UCT2 reserves the right to further comment on all sections of the Proposed Amendment in its responsive comments.

2.0 Filing Requirements for Revenue Requirement Applications

2.0.2 Revenue Requirement-Setting for Transmitters

- No issues or changes to the OEB proposed changes

2.0.3 Custom IR Guidance for Transmitters with Minimal Capital Expenditures

- Remove the following paragraph in this section given its leading statement that restricts "single-asset transmitters" (SA Transmitters) from choosing the Revenue Cap IR option. It connects to subsequent position(s)/recommended changes relating to the OEB Staff's proposed criteria for SA Transmitters:
 - *"The Revenue Cap IR option may be inappropriate for transmitters that have low capital expenditures over the rate term and experience a declining rate base. Specifically, the Revenue Cap IR option inflates the entire revenue requirement annually, even if the capital components, namely, return on capital and capital depreciation, may not require an inflationary increase.*

To address this gap, this section of the filing requirements defines "material capital expenditures", then provides further guidance on the Custom IR option for transmitters that do not expect to incur material capital expenditures over the rate term. The OEB expects an eligible transmitter to file revenue requirement applications consistent with this option unless it can demonstrate a strong rationale for departing from it."

- Replace with:

- *“In certain circumstances the depreciation expense of a single-asset transmitter may exceed annual capital expenditures on a sustained and consistent basis, resulting in declining rate base. Where this applies to a transmitter applicant, the OEB expects the revenue requirement-setting framework to respond to this dynamic in a manner that protects ratepayers while affording the transmitter the opportunity to continue to earn a fair return.”*

2.0.3.1 Eligibility and Definition of Material Capital Expenditures Over the Rate Term

- Remove section

2.0.3.2 Handbook Principles Considered

- Remove section

2.0.3.3 Revenue Requirement Formation

- Remove section

2.0.3.4 Rate Term

- Remove section

2.0.3.5 Earnings Sharing Mechanism (ESM)

- Remove section

2.0.3.6 Performance Reporting

- Remove section

2.1 General Requirements

2.1.1 Application Filing Schedule

- UCT2 notes that the proposed deadline of the last business day of May for annual update applications may not be practical for all transmitters. In particular, UCT2 notes the OEB’s communication of its annual inflation factor did not take place until June 11, 2025. UCT2 also relies on certain inputs from the Independent Electricity System Operator to include the most

recent available data in its annual update applications, which are typically not available until mid-July. To the degree a deadline in May is established for annual update submissions, UCT2 would likely be required to include placeholder values in its initial application, to be updated over the course of the proceeding. In light of the above, UCT2 recommends a filing deadline for annual update applications of the last business day in July.

- ***Recommended Revision:*** *For an annual update application of an existing transmitter, the OEB asks that the application to be filed by the last business day of July, for implementation on January 1 of the following year.*

2.1.5 Materiality Thresholds

UCT2 appreciates the OEB's plans to update materiality thresholds to reflect inflation since 2016. At present, the increases to materiality thresholds (i.e. \$50k to \$65k, 0.5% to 0.65%, and \$3M to \$4M) have not been articulated as tied to any specific index or increase in costs. UCT2 recommends that increases to these values be done in a transparent manner, which clearly communicates the index or other evidence relied upon to increase the figures. For clarity, once evidence-based values are established UCT2 is not opposed to broad rounding of the results for administrative simplicity in the application of materiality thresholds. To the degree any figures informing materiality thresholds are increased for inflation, UCT2 is of the view that all values should be increased. Specifically, both the \$10M and \$200M thresholds informing materiality threshold calculations should be increased in the same manner as the remaining figures.

- Update inflated figures if applicable to reflect the results of an evidence-based inflationary increase, rounded as necessary
- Update \$10 million and \$200 million thresholds in a manner consistent with other materiality threshold inflationary increases