



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Gordon M. Nettleton
Direct Line: 416-601-7509
Email: gnettleton@mccarthy.ca

February 8, 2024

Filed on RESS

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

Dear Ms. Marconi:

Re: East-West Tie Limited Partnership – Updated 2024 Electricity Transmission Rates Application (EB-2023-0298) – Applicant Interrogatory Responses

We are legal counsel to Upper Canada Transmission 2 Inc. (“**UCT 2**”) in the above-matter. This letter is submitted in reply to Mr. Rubenstein’s letter, made on behalf of School Energy Coalition (“**SEC**”), dated February 7, 2024.

SEC has based its objections to UCT 2’s Response to SEC IR-4 on two main grounds:

1. Reliance on the determinations made by the OEB in EB-2020-0133 (“**COVID Guideline**”); and
2. Having the forward looking requested information produced so that it may be used in final argument as it concerns development of a “means test” for purposes of deciding what, if any portion of the COVID costs, or such other applied-for amounts may be recovered in rates.

The source of the “means test” concept referenced by SEC is the OEB’s COVID Guideline. Yet, this proceeding explicitly determined that the “means test” developed in that proceeding was for existing operating utilities and not applicable to greenfield transmission developments - a category that includes the East West Tie Project.¹ SEC’s attempt to rely on this inapposite determination contradicts the plain exclusion provided to the East West Ties Project. SEC offers no basis for the OEB to depart from its prior guidance. Indeed, the delineation between greenfield utilities and operational utilities, and the anticipated divergent impacts that COVID would have on each utility type, was deliberate and should not now be disturbed by applying principles to one category as if they were intended to apply to both.

As it concerned greenfield utilities, the Board expressly stated that recovery of COVID costs would be considered in rates proceedings. At no time was a “means test” for greenfield developments

¹ OEB Letter dated April 13, 2021 and Report dated June 17, 2021

contemplated. As is seen in UCT 2's first rate proceeding Decision² at issue instead was the duration over which COVID cost recovery would be permitted and the expenditure classification (capital or expense). The Panel in EB-2020-0150 determined to have those matters addressed in the present proceeding and pending greater certainty on COVID related costs.³

UCT 2's position on these two deferred issues is set out in its Response to VECC IR-1.⁴ UCT 2's forecast ROE level for 2023 is not relevant to whether prudent expenditures should or should not be characterized as capital or operating expenses. Nor has the requested information been shown to be relevant to the duration that such prudent expenditures may be recovered in rates. There simply is no nexus existing between the requested information and the matters at issue.

While not explicitly stated, SEC's second ground for its objection seemingly relies on the alleged benefit of hindsight. UCT 2 respectfully submits that allowing forward looking financial information onto the record of this proceeding causes unnecessary complications and inconsistencies to the manner in which the issues identified for this proceeding should fairly and objectively be determined.

In response, UCT 2 also relies on the Board's EB-2017-0182 Decision concerning UCT 2's committed development costs that exceeded pre-approved budget levels. A "no hindsight" prudence test to assess reasonableness was used.⁵ Further, in its Decision EB-2020-0150, the Board also adopted a "no hindsight" prudence test to assess increases in Project construction cost forecasts. "The test of prudence must be based on the facts that were known at the time NextBridge was making decisions to incur costs."⁶

While UCT 2 recognizes that the Supreme Court of Canada in OPG⁷ permits different methods for evaluating committed costs, the present circumstances should not alter the Board's consistent and predictable approach to assessing committed costs. Doing so would be a sudden and unnecessary departure from the approach taken in Decision EB-2020-0150. Moreover, the costs involved in this proceeding concern committed costs, which provides more reason for maintaining the "no hindsight" approach to prudence. Confirmation of this approach in response to SEC's objection ensures certainty, fairness and fosters confidence in the Board's decision-making process.

The evidentiary record before the Board is comprehensive. UCT 2 submits this scope should not now be broadened to include information that was not known nor ought to have been known at the time committed construction costs were incurred. Future period ROE information should therefore be excluded and not form part of this record.

² OEB Decision into EB-2020-0150, was issued on the same date as the OEB's COVID Guideline

³ EB-2020-0150 Decision and Order at Pages 34-37

⁴ See UCT 2 Response to VECC IR-1 (Exhibit I-06-01).

⁵ 2018 NextBridge Development Costs Decision at paras 67-68.

⁶ EB-2020-0150 Decision and Order at Page 28

⁷ *Ontario (Energy Board) v Ontario Power Generation*, 2015 SCC 44 at para 104.

For the foregoing reasons, UCT 2 respectfully requests the Board deny SEC's objection and provide clarity to parties that the test of prudence adopted in this proceeding will not include hindsight analysis.

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