



**BY EMAIL and RESS**

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February 9, 2024  
Our File: EB20230298

**Attn: Nancy Marconi, Registrar**

Dear Ms. Marconi:

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

We are counsel to the School Energy Coalition (“SEC”). These are SEC’s brief reply submissions to Upper Canada Transmission 2 Inc.’s (“UCT 2”) response to our request for the OEB to order it to provide a full and adequate response to Interrogatory SEC-4.

First, contrary to UCT 2’s suggestion, the OEB did not state in either the letter excluding greenfield utilities from the application of the COVID-19 guidelines, or the Custom IR decision, that in considering any balance in the COVID-19 Deferral Account, it cannot consider any type of “means test”.

What the OEB did say in its letter was that “the circumstances for these greenfield utilities, and the impacts of the pandemic on them, substantially differ from other electricity and natural gas utilities, and a generic application of the guidelines to these entities would likely be impractical.”<sup>1</sup> It determined that the ratemaking implications of the pandemic for those utilities should be determined in their respective rate proceedings. With respect to UCT 2 (Nextbridge), it noted that its Custom IR application was currently before it and that “it will be up to the panel hearing that application to determine whether and how to address any pandemic related issues in that proceeding, including whether to defer any such issues to another proceeding.”<sup>2</sup>

The OEB never said that it should or cannot consider the principles and concepts included in the COVID-19 guidelines and apply them to greenfield utilities. It simply said that direct application of the specifics of the guideline would not be appropriate. Those principles (as opposed to their specific application) include not just a utility’s means but also cost-sharing (not generally considered in other contexts), materiality, causation and prudence.<sup>3</sup>

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<sup>1</sup> [OEB Letter, Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency \(EB-2020-0133\), April 13, 2021](#), p.3

<sup>2</sup> [OEB Letter, Re: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency \(EB-2020-0133\), April 13, 2021](#), p.3

<sup>3</sup> [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, 17, 24-25

UCT 2's reading of the Custom IR decision is too narrow. What the OEB decided was to defer consideration of the issue of COVID-19 costs until the company sought to dispose of any balance in the generic COVID-19 Deferral Account.<sup>4</sup> This made sense since UCT 2 (Nextbridge) has not provided any evidence regarding the type and quantum of their COVID-19 costs.<sup>5</sup> Furthermore, the issue of a means test or any other criteria for future disposition was never really at issue in that proceeding since no recovery had been sought, and the OEB's letter regarding the applicability to the COVID-19 guidelines was issued after the close of the evidentiary record.

Second, UCT 2 says that "while not explicitly stated, SEC's second ground for its objection seemingly relies on the alleged benefit of hindsight." It then provides its view on how using hindsight in assessing prudence is inappropriate. While SEC disagrees with UCT 2's argument on the use of hindsight, that is not the basis for the requested information. The 2023 ROE information is relevant to a possible argument related to UCT 2's means, not the prudence of any specific cost.

How, if at all, a means test principle or concept should apply to UCT 2 as it relates to any incremental costs as a result of COVID-19 is a matter to be determined in this proceeding. The 2023 ROE information is an important component for parties and the OEB to assess the companies' means. The OEB may ultimately agree that it should not be a factor in any disposition decision, and SEC may ultimately not put forward such an argument, but at this stage, the information is clearly relevant to parties' assessment of the issue of the approval, and clearance of the revenue requirement impact, of an additional \$111M of COVID-19 related capital costs.

SEC submits the OEB should order UCT 2 to respond in full to Interrogatory SEC-4.

Yours very truly,  
**Shepherd Rubenstein P.C.**

Mark Rubenstein

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

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

<sup>5</sup> [Decision and Order \(EB-2020-0150\), June 17, 2021](#), p.37