

September 28, 2018

VIA COURIER, RESS and EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: Upper Canada Transmission, Inc. (“NextBridge”) and
Hydro One Networks Inc. (“HONI”)
East-West Tie Line Project and Lake Superior Link Project
Combined Hearing
EB-2017-0182/EB-2017-0194/EB-2017-0364
Reply Argument of NextBridge (Development Costs)**

In accordance with Procedural Order No. 3, as extended September 27, 2018, enclosed please find the Reply Argument (Development Costs) filed by NextBridge in the above noted proceeding.

Yours truly,

(Original Signed)

Krista Hughes
Senior Legal Counsel
Enbridge Employee Services Canada Inc.

ONTARIO ENERGY BOARD

Upper Canada Transmission Inc. (on behalf of
NextBridge Infrastructure)
Application for leave to construct an electricity
transmission line between Thunder Bay and Wawa, Ontario

- and -

Hydro One Networks Inc.
Application to upgrade existing transmission station facilities
In the Districts of Thunder Bay and Algoma, Ontario

- and -

Hydro One Networks Inc.
Application for leave to construct an electricity transmission line
between Thunder Bay and Wawa, Ontario.

NEXTBRIDGE REPLY ARGUMENT ON DEVELOPMENT COSTS

Introduction

1. Upper Canada Transmission Inc., operating as NextBridge Infrastructure LP (“NextBridge”) filed its argument-in-chief (“AIC”) with respect to the development costs for the East-West Tie line project (the “EWT Line Project”) on September 10, 2018. In accordance with Procedural Order No. 3 on Combined Hearing (“Procedural Order 3”) submissions by OEB Staff and intervenors were filed by September 19, 2018. Procedural Order 3 provides for the filing of NextBridge’s reply argument by September 26, 2018.¹

2. NextBridge received the following submissions that were filed pursuant to Procedural Order No. 3:

¹ On September 26, 2018, NextBridge requested an extension to the deadline to file reply argument, and was granted an extension to noon on September 28, 2018

- (i) OEB Staff Submission (“Staff Submission”);
- (ii) Bamkushwada Limited Partnership (“BLP”) written submissions (“BLP Submission”);
- (iii) Biinjitiwaabik Zaaging Anishinaabek (“BZA”) submissions (“BZA Submission”);
- (iv) Consumers Council of Canada (“CCC”) final argument (“CCC Submission”);
- (v) Hydro One Networks Inc. (“Hydro One”) submissions (“Hydro One Submission”);
- (vi) Métis Nation of Ontario (“MNO”) written submissions and authorities (“MNO Submission”);
- (vii) School Energy Coalition (“SEC”) written submissions (“SEC Submission”); and
- (viii) Vulnerable Energy Consumers Coalition (“VECC”) submission (“VECC Submission”).

3. NextBridge will first address the comments from interveners and OEB Staff on the application of the prudence standard, followed by addressing the submission on each development cost that interveners and OEB Staff questioned as appropriate for recovery. Thereafter, NextBridge addresses more generalized arguments of certain interveners that appear to contradict the intent of the development phase and misapply the facts associated with NextBridge’s focus on bringing the EWT Line Project into service in 2020.

The Prudence Standard

4. Through the course of the designation proceeding, there were many references to a prudence review of any development costs in excess of budgeted costs and, in the EB-2011-0140 Phase 1 Decision and Order (the “Phase 1 Decision”), the Board stated explicitly that:

...applicants should be aware that costs in excess of budgeted costs that are put forward for recovery from ratepayers will be subject to a prudence review, which would include consideration of the reasons for the overage.²

5. In the Phase 2 Decision, the Board's evaluation of applications included consideration of the cost estimates and proposals put forward by applicants. In its evaluation of NextBridge's cost estimates and proposals, the Board specifically noted that a feature of NextBridge's proposal for development costs was that:

...the project's development phase be treated as a cost of service case whereby any expenditure in excess of budget would be recoverable, subject to a prudence review.³

6. In its September, 2013 Decision and Order Regarding Reporting by Designated Transmitter (the "September 2013 Decision"), the Board reminded NextBridge that any costs in excess of the budget found to be reasonable in the Phase 2 Decision would be subject to a prudence review.⁴

7. After the Ontario Power Authority ("OPA") made its recommendation in September of 2014 that the in-service date for the EWT Line Project be extended, NextBridge sought Board approval of an Updated Extended Development Period Schedule and the associated Extended Development Period costs.⁵ The Board approved the Updated Extended Development Schedule, but it did not approve the Extended Development Period costs. In its November 2015 decision denying approval of the Extended Development Period costs (the "November 2015 Decision"), the Board referred to the need for "further scrutiny of the prudence and reasonableness of these costs".⁶

² Phase 1 Decision, page 17.

³ Phase 2 Decision, page 32.

⁴ September 2013 Decision, page 3.

⁵ AIC, pages 7-9, paragraphs 16-20.

⁶ EB-2015-0216 Decision and Order, November 19, 2015, page 8.

8. Despite these clear indications from the Board that the prudence standard will be applied, and despite NextBridge's clear statement that its proposal was based on the premise that recovery of costs in excess of budget would be recoverable subject to a prudence review, certain parties now argue that NextBridge must meet a higher or different standard than prudence. CCC says "it is not enough" that costs in excess of the Approved Development Budget be prudently incurred.⁷ Similarly, SEC says "it is not enough" for NextBridge simply to show that the incremental costs to undertake a given activity are reasonable.⁸ Hydro One proposes an expansive series of six tests to be satisfied in order for a cost to be recoverable⁹. The contentions of Hydro One, CCC, and SEC, however, are on their face not congruent with the prudence standard.

9. In contrast, the Staff Submission confirms the nature of a "prudence review" by the Board. As pointed out by OEB Staff, a decision to incur costs is prudent if it was reasonable under the circumstances that were known or ought to have been known to the utility at the time when the decision was made.¹⁰ In reliance on a decision of the Supreme Court of Canada, OEB Staff note that prudence in this context has essentially the same meaning as reasonable.¹¹ Based on the Phase 1 Decision, the Phase 2 Decision, the September 2013 Decision, and the November 2015 Decision, it was understood and to be expected that NextBridge's development costs would be subject to a prudence review such as that described in the Staff Submission, which involves a review of whether decisions to incur costs were reasonable under the circumstances that were known or ought to have been known to NextBridge at the time of such

⁷ CCC Submission, page 6.

⁸ SEC Submission, page 4, paragraph 12.

⁹ HONI Submission, at p.4, paragraph 16.

¹⁰ Staff Submission, pages 4-5.

¹¹ Staff Submission, page 5. The decision relied on by OEB Staff for this proposition is *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)* 2015 SCC 45, wherein Rothstein J. said (at paragraph 35 of his judgment delivered on behalf of the Court): "In the context of utilities regulation, I do not find any difference between the meaning of a "prudent" cost and a cost that could be said to be reasonable."

decisions. As set forth in AIC and herein, NextBridge's development costs meet this standard of prudence.

10. NextBridge submits that arguments by parties in support of a higher or different standard of review should not be accepted by the Board. These arguments are contrary to the Board's decisions, they require NextBridge to meet a standard at the end of the development period that was never previously within the knowledge or contemplation of NextBridge and, further, acceptance of the notion that parties can come forward with their own criteria for a higher or different standard than prudence after the completion of the development period means that the designated transmitter would be required to manage the project throughout the development period without knowing the nature of the after-the-fact review that would be applied to its decisions.

11. Accordingly, NextBridge's development costs should be reviewed based on whether decisions to incur costs were reasonable under the circumstances that were known or ought to have been known to NextBridge at the time of such decisions.

Submissions on Specific Development Costs

12. A variety of positions have been put forward in relation to the recoverability of NextBridge's EWT Line Project development costs. VECC submits that the development costs of approximately \$42 million incurred by NextBridge were reasonably incurred¹² and, further, that NextBridge has adequately demonstrated that the incremental spending during the extended development period was prudently incurred.¹³ In other instances, parties recommend either a reduction or a complete disallowance in the amount to be recovered by NextBridge in relation to a specific

¹² VECC Submission, page 2, paragraph 1.1.

¹³ VECC Submission, page 7, paragraph 4.3.

activity or category of cost. NextBridge disagrees with these arguments as elaborated on in the submissions below.

Submissions by OEB Staff

13. The Staff Submission addresses in considerable detail the additional development costs incurred by NextBridge above the Approved Development Budget.¹⁴ In respect of certain costs, OEB Staff recommend either a reduction in the amount to be recovered by NextBridge, or a complete disallowance. NextBridge disagrees with OEB Staff's arguments regarding reductions or complete disallowances, as set out in the submissions that follow.

14. Below is a table that provides an overview of the expenses NextBridge incurred during the development period and the prudence of those expenses. In the submissions set out after the table, NextBridge also provides detailed explanations to confirm the prudence of the expenses.

¹⁴ OEB Staff argument starting at p.7.

Reply Argument, Development Costs
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Activity #	Activity Description	NextBridge Spend (k\$)	OEB Recoverable Amount		Support
			Recommendation (k\$)		
	Expanded alternatives assessment				
20	Incremental field studies and access route assessment				
21	Incremental environmental permits	\$ 2,952	\$0		Incurred in response to feedback from regulators and stakeholders
22	Establish incremental study area and required activities				
23	Incremental socio-economic assessment				
24					
Other	3rd Party Engineering Costs	\$ 1,927	\$0		
Other	Filing of Leave to Construct	\$ 584	\$0		Costs were not incremental spend but originally budgeted in the \$22.4MM approved by the OEB and not part of this prudence review
Other	Land Permitting and consultation (Crown and Public)	\$ 442	\$0		
10	Project work from all work streams	\$ 1,241	\$0		progress during the extended development period
26	Archaeology Stage 2 study	\$ 1,012	\$0		Incurred due to requirements from Stage 1 Archaeology study results in need of further archaeological assessment
15	May 15, 2015 submission costs	\$ 952	\$ 238		Involved a complete creation of a new project schedule and development costs
41	Environmental Assessment review participation	\$ 460	\$0		Incurred due to responding to over a 1,000 regulatory and stakeholder comments on the draft EA report
38	Stakeholder relations activity	\$ 299	\$0		Addressing expanded stakeholder driven requirements including municipality requested engagement during the extended development period
29	Land title review Activity	\$ 248	\$ 12		
30	Legal support for land activity	\$ 96	\$ 5		Increased scope due to lack of land history in Northwestern Ontario to establish value and
13	Supplemental socio-economic assessment	\$ 160	\$0		To ensure that socio-economic data remained valid during the extended development period
28	Engineering Review	\$ 95	\$0		Increased interest by OEB staff and other stakeholders in tower design verification during designation phase
40	Support functions for EWT Line Project development work	\$ 84	\$0		Coordination of expanded project scope due to input and direction from regulators, government and other stakeholders
8	Ramp-up of LTC preparation	\$ 54	\$0		Costs needed to re-engage the team leads on establishing a new schedule and ensure adherence to LTC requirements
39	Regulatory and accounting matters	\$ 44	\$0		This activity was primarily completed by regulatory whereas project management was a support function and the vast majority of project management cost in Activity #9
33	Data management/technical figure production	\$ 42	\$0		These costs were for additional land acquisition and environmental field study
31	Compliance tracking and safety coordination & monitoring	\$ 39	\$0		Project management office used contract staff to support this activity and direct salaries from the Project Director were not included in this
1	Update stakeholder relations consultation plan	\$ 10	\$ 3		Incurred to modify the engagement strategy because of project delay which resulted in the need to update the consultation plan
32	Community Investment	\$ 7	\$0		NextBridge does not have the ability to recover these costs and they should be excluded from the development costs

Activity #20: Expanded alternatives assessment; Activity #21: Incremental field studies and access route assessment; Activity #22: Incremental environmental permits; Activity #23: Establish incremental study area and required activities; Activity #24: Incremental socio-economic assessment

15. OEB Staff recommends a complete and permanent disallowance of the incremental costs incurred by NextBridge for incremental environmental study activity, calculated at \$2,952,000. OEB Staff states that insufficient information was offered regarding the incremental studies that were required and why they were not anticipated in the original budget.

16. Contrary to the claims of OEB Staff, NextBridge has provided extensive and detailed information about what these activities include and how they arose. These amounts were incurred in response to direct feedback from environmental regulators, Indigenous communities, landowners, and interested parties. Specifically, the Ministry of Environment and Climate Change (now MECP) and the Ministry of Natural Resources and Forestry (“MNRF”) instructed NextBridge that:

- (i) a comprehensive alternatives assessment was required to be completed¹⁵;
- (ii) additional environmental assessment (“EA”) and field study activity was required in relation to an expanded area, including access roads, laydown, and difficult to access areas¹⁶, including recommendations for more data collection and/or assessment be completed¹⁷; and
- (iii) more detailed information on all aspects of the undertaking such as location of aggregate resources, detailed fisheries assessments, location

¹⁵ May 15, 2015 submission at Schedule C, p.4.; NexBridge response to HONI Interrogatory #15 at Exhibit I.JD1.NextBridge.HONI.15 describes and attaches specific references to MNRF request that an Alternatives Assessment be completed; Exhibit JD1.2 at p.21-22.

¹⁶ May 15, 2015 submission at Schedule C, p.4.

¹⁷ Exhibit I.JD1.NextBridge.HONI.15, including attachments; Exhibit JD1.2 at p.23.

of temporary laydown yards and man camps was to be provided than was typically associated with the permitting stage following EA approval¹⁸.

17. At the time of designation, NextBridge used the Hydro One Bruce to Milton project as a template for the EWT Line Project EA because it was the most recent large transmission project built in Ontario¹⁹. An alternate assessment was not required in respect of the Bruce to Milton project.

18. Because the EWT Line Project was to parallel an existing transmission line in accordance with the Provincial Policy Statement under Planning Act similar to the Bruce to Milton project, was to tie into existing transformer stations, was identified as a priority project in provincial long term energy plans, and had been the subject of a government-mandated designation proceeding coordinated by the Board with an indicative reference route, NextBridge reasonably expected that, similar to the Bruce to Milton project, a comprehensive alternatives assessment would not be required for the EWT Line Project.²⁰ NextBridge submits that the fact that this reasonable expectation based on recent historical information did not materialize, but, rather, that MECP and MNRF determined within their authority to conduct a more extensive review is not a basis for the Board to disallow costs.

19. In respect of data collection and assessment, the evidence provides a detailed description of the additional EA study scope that was required as a result of consultation with environmental regulators, Indigenous communities, landowners, and interested parties.²¹ NextBridge undertook the incremental activities in the best interests of the project, preparing an EA that satisfied the needs of parties consulted as well as the specific EA Terms of Reference.

¹⁸ May 15, 2015 submission at Schedule C, p.4.

¹⁹ Exhibit I.JD1.NextBridge.STAFF.18 at p.2.

²⁰ Exhibit I.JD1.NextBridge.CCC.1 at p.2.

²¹ Exhibit JD1.2 at p.23-25.

20. The decisions that NextBridge made, specifically:

- following expert advice from a reputable environmental consultant;
- using a reasonable project analogue (Bruce to Milton); and
- conducting additional environmental assessment and field study activities as a result of direction from environmental regulators and stakeholder consultation

were all reasonable in the circumstances, and resulted in reasonably incurred costs by NextBridge. These costs would have been expected of any prudent project developer and therefore meet the prudence standard described earlier in this reply.

Third Party Engineering Costs, Filing of Leave To Construct (“LTC”), and Land Permitting and consultation (Crown and Public Entities)

21. OEB Staff recommends a complete and permanent disallowance of the amounts claimed by NextBridge in this category in the amount of \$2,953,000. The breakdown of these costs provided in Attachment 1 of Exhibit JD1.2 is as follows: (i) third Party Engineering Costs, \$1,927,000; (ii) filing of the LTC application, \$584,000; and (iii) land permitting and consultation (Crown and Public Entities), \$442,000. OEB Staff states that these costs should be disallowed because NextBridge has not provided any details on the specific costs or how they differ from activities in the original budget and costs reported in the Extended Development Period.

22. Board Staff’s recommendations are not consistent with the record. As set forth in the evidence,²² these three categories of cost represent originally budgeted items that form part of the \$22.4 million originally approved by the OEB (the “Approved Development Budget”) and are not part of this prudence review. Specifically, in Attachment 1 of Exhibit JD1.2 the title above these three items reads, “Costs included in \$22.4 MM and excluded from the June 2015 Extended Development Budget”. These

²² Exhibit JD1.2, Attachment 1

costs are not incremental costs in any part - they are part of the originally Approved Development Budget of \$22.4 million.

23. The only reason for inclusion of these costs in Attachment 1 to Exhibit JD1.2 is because the undertaking requested that NextBridge itemize all of the activities that occurred from February 2015 to July 2017. Since the project was delayed, most of the amounts spent in relation to these categories were incurred during the Extended Development Period but they are not incremental in cost nor do they exceed the original budget in any way.

24. Specifically, the Filing of the Leave to Construct category was for the actual work required to file the Leave to Construct application. Filing of the Leave to Construct requires every discipline to provide detailed information and to coordinate with other activities to ensure overall schedule alignment in providing the Board with the most accurate construction timeline, costs and details. Board Staff asked for differentiations between activities (#8, #34, and #38) and Filing of the Leave to Construct, which is provided below:

- #8 - \$54,000 was spent to bring the team back together from the low activity period to ensure the data, activities and timelines throughout the team were aligned to proceed with LTC filing.
- #34 - Land optioning - there is no connection between the work performed for land optioning and filing of the Leave to Construct
- #38 - \$44,000 was spent for specific crossover of regulatory and accounting activities. The type of activities included in this activity were GAAP accounting designation, Electricity Reporting and Recordkeeping Requirements (RRR) and performance based rate making coordination which were done at minimal costs.

25. Regarding Land Permitting and Consultation, NextBridge....NextBridge assumed and included in their original budget of \$22.4 million that Crown and public entity

consultation and permitting would need to occur but the timing of the actual spend occurred during the extended development period.

26. All parties, including OEB Staff, submit that the originally approved \$22.4 million was previously approved to be prudent and therefore should be fully recoverable by NextBridge. As the identified costs are entirely within the \$22.4 million, NextBridge strongly opposes the recommendation by Board Staff that they be disallowed.

Activity #10: Support functions for EWT Line Project work from all work streams

27. OEB Staff recommend a complete and permanent disallowance of incremental amounts claimed by NextBridge in the amount of \$1,241,000 related to incremental support functions for project development work across all work streams. OEB Staff say there is a lack of information regarding additional workstream review and coordination work caused by the delay and also question how these costs are not covered under other categories of costs.

28. In the evidence,²³ NextBridge explained that during the Extended Development Period there was a need for the various workstreams to continue to meet on a regular basis to ensure appropriate coordination of activities between the various disciplines. For example, work being done on the EA by the environment group could impact or influence an upcoming Indigenous consultation meeting or an engineering plan. These regular meetings²⁴ provided a forum to ensure that updates were well communicated across all team leads and synergies were achieved over the additional 30 months of the development period.

²³ Exhibit JD1.2 at p.13-14 ; Exhibit I.JD1.NextBridge.STAFF.9 at p. 1-2

²⁴ Often held via conference calls and remote meetings to limit costs – see Exhibit JD1.2 at p.14.

29. Further NextBridge was directed in the Cost Accounting Order to record development costs on a workstream basis.²⁵ OEB Staff subsequently requested²⁶ that NextBridge make best efforts to provide actual costs broken down on an activity basis. In response to this request, NextBridge recast its budget from the methodology that it had been using to track costs, to the format used in the May 15, 2015 and June 24, 2015 submissions, on the basis of a defined methodology.²⁷

30. NextBridge submits that it is not now open for OEB Staff to mix and match the two methodologies, suggesting that costs attributed to a specific activity may be more appropriately attributed to a workstream. By definition, all of the activity costs are sourced within a specific workstream. While the majority of the activities in this cost category relate to bi-weekly teleconference meetings, as noted in NextBridge's response to Board Staff Interrogatory #9, found at Exhibit I.JD1.NextBridge.STAFF.9, NextBridge also held 10 in-person meetings over the course of the additional 30 months of project delay between 2014 and 2017.

31. These costs were necessary to ensure that NextBridge continued to move project activities forward in a coordinated and efficient fashion during the entire development period. Even though NextBridge slowed its activities and spending during the extended development period, it never completely ceased all activities, and, therefore, there was a need for continued coordination. This need was heightened with the issuance of the March 2016 Order in Council designating the EWT Line Project with a 2020 in-service date as a priority.²⁸ The costs related to this activity include the costs of the incremental 30 months of cross functional coordination and arose exclusively as a result of the extension of the development period. These costs were not and could not have been anticipated as part of the designation budget. For the reasons set out

²⁵ Cost Accounting Order at Appendix 2.

²⁶ Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 30-31

²⁷ Exhibit JD1.2 at p.1 and p.4.

²⁸ Exhibit B-4-1, Attachment 1.

above, NextBridge submits that the costs it incurred in respect of this activity were reasonable under the circumstances and prudently incurred.

Activity #26: Archaeology Stage 2 study

32. OEB Staff recommends a complete and permanent disallowance of the costs incurred by NextBridge in relation to incremental Stage 2 archaeological work in the amount of \$1,020,000. OEB Staff argues that this cost should be disallowed because it is not clear what was included in NextBridge's original budget for this activity and what specifically was done using the original budgeted amounts.

33. NextBridge's original budget related to Stage 2 archaeology work was approximately \$800,000.²⁹ The information related to archaeological sensitive sites obtained from the Stage 1 archaeological assessment coupled with the incorporation of a variety of methodologies to provide construction flexibility resulted in larger areas being considered as potentially subject to ground disturbance showed a need for further archaeological assessment.³⁰ This resulted in the Stage 2 archaeological work being estimated to increase by approximately \$1.2 million.³¹ Using the methodology described in NextBridge's response to Undertaking JD1.2, incremental Stage 2 archaeological study costs amount to \$1.012 million. The Archaeology Stage 2 study work was competitively tendered, with NextBridge selecting the lowest cost bidder after an RFP process involving five bidders.³²

34. At the time of designation, NextBridge made a reasonable estimate on the budget for Stage 2 archaeological work based on data it had at the time. As project development progressed, NextBridge appropriately re-assessed the budget in light of

²⁹ May 15, 2015 Submission at p.10.

³⁰ May 15, 2015 Submission at Schedule C p.5; Exhibit JD1.2 at p.26.

³¹ Exhibit I.JD1.NextBridge.STAFF.19 at p.2; Exhibit JD1.2 at p.26

³² Exhibit I.JD1.NextBridge.STAFF.19.

the actual on-the-ground cultural assessments. NextBridge submits that any project developer would have been faced with the same circumstances and would have made very similar decisions and incurred similar costs as NextBridge did in completion of the Archaeology Stage 2 study work.

Activity #14: Preparation of revised EWT schedule; Activity #15: May 15, 2015 submission costs

35. OEB Staff recommends a 75% reduction in the amount related to preparation of a revised EWT schedule and May 15, 2015 submission costs, from the requested amount of \$952,000 down to \$238,000. This recommendation and the arguments made in support of it reflect a misunderstanding of the breadth and depth of the activities completed, as well as the way in which time is recorded on the EWT Line Project.

36. First, the activities were broader in scope than acknowledged by OEB Staff. They involved revisiting and revising project execution strategy, scope, schedule, and budget to address extension of the EWT Line Project in-service date to 2020, as well as preparing and presenting the revised schedule for approval and budget of costs for recovery before the OEB.³³ The work involved a complete reconsideration and creation of a new baseline of the project schedule and development costs due to the interactive nature of scheduling, the interrelated disciplines and activities, including the seasonality of constructing the line.³⁴

37. NextBridge worked diligently, in coordination with the OPA, to create a new development schedule that would:

³³ Exhibit JD1.2 at p.16.

³⁴ Exhibit JD1.2 at p.17.

- (i) serve to meet the in-service date of December 2020 regardless of the outcome of the Park access decision³⁵;
- (ii) incorporate both past milestones achieved and future milestones with proposed completion dates for development work on the project³⁶; and
- (iii) allow flexibility in the event that there should be a change in the pace of demand growth in Northwestern Ontario³⁷.

38. The evidence sets out in extensive detail the complexity of the work completed by NextBridge.³⁸ These activities arose directly out of the OPA's September 30, 2014 letter recommending delay to the in-service date, and would not otherwise have been undertaken.

39. Second, from a duration perspective, these activities spanned a period much longer than four months – the activities began in late October 2014³⁹, and extended through the summer of 2015 when the Board invited specific parties to comment on the May 15, 2015 and June 24, 2015 NextBridge submissions. The invited parties⁴⁰ and others⁴¹ filed submissions in response, to which NextBridge replied.⁴²

40. Finally, it is not correct to state that the costs incurred in relation to Activities 14 and 15 were already covered by Activity 9 and Activity 11 costs, as asserted by OEB Staff.⁴³ As previously identified in the evidence, NextBridge recorded costs in

³⁵ NextBridge East-West Tie Expansion Project – Development Schedule Submission dated December 19, 2014 (December 2014 Submission) at p.3.

³⁶ December 2014 Submission at p.2.

³⁷ December 2014 Submission at p.2.

³⁸ Exhibit JD1.2 at p.17.

³⁹ Exhibit JD1.2 at p.16.

⁴⁰ IESO, AltaLink Ontario LP and OEB Staff

⁴¹ SEC and Algoma Coalition

⁴² Responding Submission of NextBridge in relation to the OEB's July 9, 2015 Invitation to Comment dated August 7, 2015 (EB-2015-0216).

⁴³ Staff Submission at p.11.

accordance with the September 2013 Decision.⁴⁴ The OPA's September 30, 2014 letter recommended that the in-service date of the EWT Line Project be extended to work toward a 2020 in-service date and that consideration be given to sequential EA/LTC development. It also indicated that there would be value to Ontario ratepayers if NextBridge were to pursue the route through the Park.⁴⁵

41. NextBridge was asked by the Board to work together with the OPA to produce a revised development schedule with an in-service date based on the OPA's most current information regarding the need for the line and incorporating flexibility to allow the project to come into service quickly should the pace of demand growth change.⁴⁶ As a result, NextBridge devoted substantial effort towards a satisfactory resolution of the Park access issue and worked with the OPA's successor, the Independent Electricity System Operator ("IESO"), and government representatives to develop a revised schedule and a corresponding budget of costs to complete the development of the EWT Line Project work in the changed circumstances.⁴⁷

42. From the beginning, NextBridge tracked costs incurred to assess the implications of the OPA's letter and other specific activities required to address extension of the development period separately.⁴⁸ This work was undertaken by project team members working in all project disciplines, as well as external parties. While project management team members (including the Project Manager that led the re-budgeting and rescheduling exercise) did record costs in relation to some of these activities, there is no overlap with work undertaken in relation to Activity 9 and 11.

⁴⁴ Transcript, EB-2017-0182/EB-2017-0194 Vol. 1, p. 19

⁴⁵ May 15, 2015 Submission at p.8

⁴⁶ Ontario Energy Board letter to NextBridge dated October 29, 2014 at p.1.

⁴⁷ May 15, 2015 Submission at p.8-9.

⁴⁸ Exhibit JD1.2 at p.17.

43. All time is recorded by the hour based on work completed by employees of the NextBridge partner entities – there is no risk of double counting because time can only be recorded in one project code at a time. Costs incurred attributable to Activities 14 and 15 by team members and external parties in each work stream is separately quantified.⁴⁹ NextBridge ensured costs were prudently incurred by directly capturing the costs, reviewing project time records and external vendors invoicing for the work completed in relation to these activities, and implementing cost management controls and actions as needed.⁵⁰

44. In summary, the re-scheduling activities were extensive, complex, and required coordination with regulators, the IESO, and other parties. All the work undertaken was in response to changed circumstances not known at the time of designation and outside of NextBridge's control. Throughout the duration of this activity, NextBridge established a well-defined process to accurately document the specific costs for this activity to ensure costs were reasonable and properly captured, and, therefore, NextBridge submits that the costs it incurred for this activity were reasonable and prudent.

Activity #41: Environmental Assessment review participation

45. OEB Staff recommends a complete and permanent disallowance of the costs incurred by NextBridge in the amount of \$460,000 for EA review participation. Specifically, OEB Staff points to NextBridge's response to Board Staff Interrogatory #18, found at Exhibit I.JD1.2.NextBridge.STAFF.18, part c, as indicating that the additional costs associated with this activity were related to not having certain information available within a specific timeline and that NextBridge has not explained what may have impacted its ability to provide this information in a timely manner.

⁴⁹ Exhibit B, Tab 16, Schedule 1, Attachments 1-10 Project Delay Category of Activity.

⁵⁰ Exhibit I.JD1.NextBridge.STAFF.12 at p.2.

46. The interrogatory response referred to by OEB Staff does not pertain to Activity 41, but, rather, to Activities 20-24, and, thus, OEB Staff's argument for disallowance does not even apply to Activity 41. NextBridge has provided detailed information in its response to Exhibit JD1.2 where it describes the main driver of the cost for Activity 41, namely, the receipt of over 1,000 comments on the draft EA Report, which was significantly higher than could reasonably have been expected. As set out above, these costs were not related to the issue identified in Staff's Submission and NextBridge submits that the costs it incurred in respect of this activity were reasonable under the circumstances and prudently incurred.

Activity #38: Stakeholder relations activity

47. Although OEB Staff has recommended full recovery for NextBridge's incremental stakeholder engagement program arising out of the extension of the development period⁵¹, OEB Staff recommend a complete and permanent disallowance of incremental amounts claimed by NextBridge in the amount of \$299,000 related to original stakeholder relations activity scope. Specifically, OEB Staff considers that the additional costs attributable to incorporating expanded components to open house activities, including additional locations and security measures, as well as more frequent and extensive meetings with municipalities to address interest in the EWT Line Project, were not reasonable and prudently incurred. NextBridge respectfully disagrees.

48. As explained in the evidence⁵², after NextBridge's first round of meetings with municipalities and the publication of the first round of open houses to be held in four locations along the proposed route, there was significant feedback from the municipalities noting the locations were too far apart for their residents to participate

⁵¹ OEB Staff Submission, September 19, 2018 at page 9.

⁵² Exhibit JD1.2 at p.37.

effectively. At the request of the municipalities, and to ensure proper engagement, the number of locations was effectively doubled from that planned at designation.

49. Further, with each additional open house location that is added, there are increased stakeholder interactions, which are beneficial, but, also, require additional time to document and manage. The nearly 4,000 records of engagement described in the evidence⁵³ arose in relation to the January 2015 to July 2017 period alone. Many more records of engagement arose throughout the balance of the development period.

50. Addressing the expanded stakeholder interest added material costs to stakeholder relations activities. Steps were taken to minimize the cost increases that resulted from these changes, but there were still cost increases. These costs included security during the first two rounds of opens houses, though at diminishing levels during these two rounds, and increased numbers of meetings with municipalities to satisfy their expectations and needs to develop a successful project.⁵⁴

51. In summary, the scope and the associated budget for the stakeholder relations activities that NextBridge initially established at designation were reasonable based on the information it had at the time. As it progressed through community engagement, NextBridge gained better information and insight that could only be known through stakeholder and municipal feedback and, most notably, identified a need for more open house locations and more meetings than originally planned. NextBridge submits that its decision to incur incremental costs to meet the request of municipalities and stakeholders, by facilitating accessible and meaningful stakeholder relations engagement, was reasonable under the circumstances and prudently incurred.

⁵³ Exhibit JD1.2 at p.11.

⁵⁴ Exhibit JD1.2 at p.37.

Activity #29: Land title review Activity; (g) Activity #30: Legal support for land activity

52. In relation to incremental land title review (Activity 29), OEB Staff recommends that only \$12,400 of the \$248,000 incurred by NextBridge be recovered for this activity, a recommended permanent disallowance of 95%.

53. Similarly, in relation to incremental legal support for land activity (Activity 30), OEB Staff recommend that only \$4,800 of the \$96,000 incurred by NextBridge be recovered for this activity.

54. NextBridge is unsure of the basis on which OEB Staff has calculated a 95% disallowance without the necessary support that was not provided. However, NextBridge incurred incremental costs to purchase and review title and encumbrance documents in support of third party agreement negotiations which were more extensive than anticipated.⁵⁵ In addition to the 309 private lands along the project footprint⁵⁶, there are numerous Crown land interest holders, representing a range of interests granted under the *Mining Act*, the *Public Lands Act*, and the *Aggregate Resources Act* such as unpatented claims, leasehold interests, land use permits, sustainable forest licenses, and aggregate operations.⁵⁷

55. The combination of a complex title history of land in the project area arising from ongoing resource development and outdated title records relative to other parts of the Province worked to expand the costs related to this necessary activity.⁵⁸ Purchasing parcel registers and registered instruments for all properties directly affected by proposed project infrastructure to confirm property ownership and identify registered

⁵⁵ May 15 Submission at Schedule C p.5

⁵⁶ Exhibit E, Tab 4, Schedule 1, at p.1.

⁵⁷ Exhibit E, Tab 4, Schedule 1, at p.4.

⁵⁸ Exhibit JD1.2 at p.30.

encumbrance holders on title is imperative to ensure that all impacted land interest holders are identified.⁵⁹

56. Incremental costs were also incurred for legal support to review and execute complex land agreements in relation to Crown disposition rights holders. Changes in the assumptions to calculate the land acquisition component resulted in increased costs associated with land contract services needed to meet the project land acquisition and permitting requirements, in particular the number of parcels anticipated for acquisition and permitting which exceeded reasonable expectations and had a direct impact on the scale and cost of this activity.⁶⁰

57. As outlined in NextBridge's response to Board Staff Interrogatory #15(b), found at Exhibit I.B.NextBridge.STAFF.15 and in Exhibit JD1.2⁶¹, to mitigate and contain cost increases for this activity, NextBridge completed a competitive bid process to ensure competitive rates for services were obtained⁶² and reviewed project footprint requirements regularly to reduce unnecessary increases to the parcel count.

58. The scope and the associated budget for these two activities originally established at designation was reasonable based on the information NextBridge had available to it at the time. As NextBridge progressed through land title review, it gained better information and insight and discovered complexities not originally known, including changes to some of its original assumptions. NextBridge submits that these costs were reasonable in quantum and purpose, were critical to completing necessary land due-diligence and acquisition during the development phase, and that the decision to incur them was reasonable under the circumstances.

⁵⁹ Exhibit JD1.2 at p.30.

⁶⁰ Exhibit I.B.NextBridge.STAFF.15

⁶¹ Exhibit JD1.2 at p.30.

⁶² NB response to STAFF Interrogatory #22 at p.1-2; NB response to STAFF Interrogatory #23(b);

Activity #13: Supplemental socio-economic assessment

59. OEB Staff recommends a complete and permanent disallowance of incremental costs incurred by NextBridge in the amount of \$160,000 for supplemental socio-economic assessment work. NextBridge, however, identified the need for supplemental socio-economic data collection arising out of the project delay to ensure the information collected remained current and up-to-date over a development period which was extended by more than two years.⁶³

60. Although the EA requirements did not change during this timeframe, NextBridge still needed to conduct due diligence to ensure that the socio-economic data that had been collected remained valid during the period of the delay, and the socio-economic data was expected to need refreshing in the circumstances. While the initial socio-economic baseline data was later assessed to have some gaps⁶⁴, this served only to expand the breadth of the supplementation undertaken, and was not the sole cause for the activity. The socio-economic data was supplemented on a more expansive basis than it otherwise would have been, and this work was needed, at least in part, as a result of the delay in project development. The work was completed as part of a competitive tender process, with NextBridge selecting the bidder after an RFP process involving multiple bidders.

61. NextBridge submits further that it should not be penalized for pro-actively anticipating regulatory requirements related to the currency of socio-economic or other data and information – had NextBridge not initiated supplemental socio-economic assessment data collection, NextBridge would likely have been requested to do so by the Ministry of the Environment, Conservation and Parks at a later date.

⁶³ May 15, 2015 filing at Schedule C, p.3

⁶⁴ Exhibit I.JD1.NextBridge.STAFF.11 at p.1-2.

62. In summary, the project delay, which was out of NextBridge's control, necessitated incremental work to be conducted by NextBridge in relation to socio-economic assessment. NextBridge submits that the corresponding costs incurred to support this incremental work were reasonable, given the circumstances, and were therefore prudently incurred.

Activity #28: Engineering Review

63. OEB Staff recommend a complete and permanent disallowance of the \$95,000 incurred for this activity due to the fact that the activity was not a result of the major re-routes or the delay of the project. As NextBridge indicated in its evidence,⁶⁵ the costs for this activity were for an independent third party expert to review NextBridge's tower design. This need came about as a result of significant interest by both OEB Staff and other stakeholders even after NextBridge had addressed many questions and concerns in the designation proceeding⁶⁶. This item was not in the original budget because NextBridge could not have reasonably foreseen the extent of questions and concerns regarding its tower design in advance of the designation process when the budget was developed.

64. In light of the designation phase interest in tower design verification, which was not known to NextBridge at the time that it prepared its designation application, NextBridge determined it would be prudent to add this activity to the development work. NextBridge's submits that its decision to incur incremental cost to address this need was reasonable in the circumstances and prudently incurred

⁶⁵ Exhibit JD1.2 at p.28-29.

⁶⁶ EB-2011-0140 Board Interrogatory #15 and #16 (All Applicants)

Activity #40: Support functions for EWT Line Project development work

65. OEB Staff recommends a complete and permanent disallowance of costs incurred by NextBridge in the amount of \$84,000 related to incremental support functions for project development work. As explained in the evidence,⁶⁷ these costs relate to Activity #10 and are the budget variance of additional costs for coordinating and participating in multi-disciplinary project development activities, including additional labour, for activities contemplated at the time of designation⁶⁸. Coordination activities from all functions and corresponding costs expanded as the project development work scope expanded due to input and direction from regulators, government, landowners and other stakeholders.⁶⁹ For the reasons set out above, NextBridge submits that the costs it incurred in respect of this activity were reasonable under the circumstances and prudently incurred.

Activity #8: Ramp-up of LTC preparation

66. OEB Staff recommend a complete and permanent disallowance of the incremental costs incurred by NextBridge related to stopping and re-starting preparation of the NextBridge LTC application, calculated at \$54,000. While NextBridge agrees that no changes were made to the OEB's LTC filing Requirements after July 2014, NextBridge submits that considering whether any filing requirement changes were implemented focuses on the wrong issue.

67. As explained in the evidence,⁷⁰ the activity included under "Ramp-up of LTC preparation" arose exclusively out of the extension of the development period⁷¹ and was

⁶⁷ NB Response to STAFF Interrogatory #9; Attachment to NB response to STAFF Interrogatory #21;

⁶⁸ May 15, 2015 submission Schedule C at p.7.

⁶⁹ Attachment to NB response to STAFF Interrogatory #21.

⁷⁰ Exhibit JD1.2 at p.12; Exhibit I.JD1.NextBridge.STAFF.7.

⁷¹ May 15 2015 submission, Schedule C.

not contemplated at the time of designation because LTC preparation was assumed to proceed as a single, continuous, and uninterrupted process. As a result of the delay introduced by the OPA September 2014 letter, NextBridge considered that it was efficient to stop LTC application preparation altogether, and resume it at a later date.

68. When preparation of the LTC application resumed, “ramp-up” activities not previously needed were required as a result of the stop and re-start. Specifically, NextBridge needed to revisit LTC requirements to ensure no further amendments had been made to the OEB filing requirements in the intervening period, re-establish a schedule for LTC application preparation, complete an additional draft cycle (preparation and review), and liaise with the IESO regarding incremental needs analyses.

69. Further, NextBridge submits that characterization of any particular LTC application exhibit as being brief or lengthy is not an indication that the LTC ramp-up steps were not required in order to resume LTC application preparation. Completing these activities ensured a smooth resumption of LTC preparation activities based on current requirements, and facilitated (among other things) coordination with IESO related to preparation of incremental needs assessment updates (December 2015) that arose out of the extension of the development period.

70. The incremental costs incurred by NextBridge in order to ramp back up preparation of the LTC application were only required as a result of the project delay. NextBridge submits that these incremental costs would have been reasonably expected of any project developer in NextBridge’s position, and, therefore, are prudently incurred costs.

Activity #39: Regulatory and accounting matters

71. OEB Staff recommends a complete and permanent disallowance of incremental costs incurred by NextBridge for regulatory and accounting matters in the amount of \$44,000 on the basis that such costs should have been part of Activity 9 which covers Accounting support costs, and that OEB Staff are not aware of reports, applications or evidence filed with the OEB “under a US GAAP methodology”.

72. With respect, OEB Staff is mistaken regarding the nature of the information on the record in support of these amounts. NextBridge prepared and filed an application on September 2, 2014 with the Board under section 74 of the *Ontario Energy Board Act, 1998* for an order of the Board granting NextBridge an amendment to its electricity transmission licence authorizing the use of US GAAP rather than Modified International Financial Reporting Standards (EB-2014-0282). The Board granted NextBridge’s application on November 20, 2014.⁷² Thus, there is record evidence of the need to incur this regulatory and accounting expense.

73. OEB Staff further states that NextBridge did not explain “one-off” or annual regulatory responsibilities.⁷³ As provided in NextBridge’s response to Board Staff Interrogatory #31 at Exhibit I.NextBridge.STAFF.31, Activity 39 “Regulatory and accounting matters” relates to one-off or annual regulatory responsibilities that are required of a transmitter in Ontario. The activities completed by NextBridge regulatory team members, including preparation of an OEB application for authorization to use US GAAP, preparation of RRR submissions, and preparation of an OEB application related to extension of (or alternatively creation of a new) deferral account for expenditures incurred post-LTC application filing and corresponding process. The costs are not

⁷² EB-2014-0282 Decision and Order at p.3

⁷³ OEB Staff Submission, September 19, 2018 at p.6

duplicative of Activity 9 which accounts for the back office accounting work completed on the project, not the aforementioned regulatory filings.

74. NextBridge's regulatory team members performed work and recorded time in relation to the Activity 39 regulatory activities, and project management team members performed work and recorded time in relation to the Activity 9 project management activities. While the activity titles both include the term "accounting", the categories relate to two different types of activity completed by different teams of subject matter experts.

75. In summary, the work required for this activity was not duplicative of other activities and is directly attributable to filings clearly on the record. Moreover, throughout the duration of this activity, NextBridge established a well-defined process to accurately document the specific costs for this activity to ensure costs were reasonable and properly captured, and, therefore, NextBridge submits that the costs it incurred for this activity were reasonable and prudent.

Activity #33: Data management/technical figure production

76. OEB Staff recommend a complete and permanent disallowance of incremental amounts claimed by NextBridge related to data management and technical figure production in the amount of \$42,000. OEB Staff argue that the amount should be disallowed as OEB Staff are of the opinion that NextBridge has not explained whether this activity duplicates work in other activities and that it is unclear whether NextBridge simply exceeded its own original budget, and, if it did, why the original budget was inadequate.

77. NextBridge explained in the evidence that these costs were for additional land acquisition and environmental field study analysis activity and were incurred because

NextBridge identified an increased need for mapping and Geographical Information System (“GIS”) work in support of the EA.⁷⁴ As set out earlier in this submission, regulators directed NextBridge to undertake the extensive additional environmental study and data collection activity as part of the EA process.⁷⁵ In response to OEB Staff IR 26⁷⁶, NextBridge explained that this cost involves internal labour hours, and that the team member who manages this process is not a full time NextBridge employee and allocates only the time actually worked on the project.

78. In summary, the work required for this activity was not duplicative of other activities and resulted due to incremental requirements that only became known during the development period. Throughout the duration of this activity, NextBridge established a well-defined process to accurately document the specific costs for this activity to ensure costs were reasonable and properly captured, and, therefore, NextBridge submits that the costs it incurred for this activity were reasonable and prudent.

Activity #31: Compliance tracking and safety coordination & monitoring

79. OEB Staff recommends a complete and permanent disallowance of incremental amounts claimed by NextBridge of \$39,000 related to compliance tracking and safety coordination & monitoring. OEB Staff argue that these costs were completely internal and it is unclear why these costs were not covered by the project office staff salaries in Activity 11.

80. As NextBridge explained in Exhibit JD1.2 and in response to Board Staff Interrogatory #24⁷⁷, found at Exhibit I.B.NextBridge.STAFF.24, this activity constitutes

⁷⁴ Exhibit JD1.2 at p.33; May 15, 2015 submission at Schedule C p.6.

⁷⁵ See submissions related to Activities 14 & 15 at p.21-24 above.

⁷⁶ Exhibit I.JD1.NextBridge.STAFF.26

⁷⁷ Exhibit I.JD1.NextBridge.STAFF.24

internal labour costs for development team members to track compliance with commitments made by NextBridge over the course of the designation and development phases, and to tailor safety and other processes and compliance monitoring for the EWT Line Project. As explained in JD1.2, in regards to Activity 11, to reduce costs during the Extended Development Period, NextBridge reduced its dedicated staff from a Project Director, Project Manager, and an administrative position to a single Project Director while leveraging other internal labour as needed. Therefore, the only full time salary being paid for under Activity 11 was the project director.

81. The project director is not the person who was responsible for Activity 31 (the compliance tracking and safety coordination & monitoring), and, therefore, these costs were not covered by the project office staff salary in Activity 11. Although the costs associated with this activity are a subset of the project management discipline (Activities 10, 11 and 40) they were tracked separately and only hours spent on Activity 31 (by a different team member, not the Project Director) are included in the Activity 31 costs.

82. In summary, the work required for this activity was not duplicative of other activities and would have been incurred by any prudent project developer. Throughout the duration of this activity, NextBridge established a well-defined process to accurately document the specific costs for this activity to ensure costs were reasonable and properly captured, and, therefore, NextBridge submits that the costs it incurred for this activity were reasonable and prudent.

Activity #1: Update stakeholder relations consultation plan

83. OEB Staff recommends a 75% reduction in the amount allowed related to updating the stakeholder relations consultation plan, from the requested amount of \$10,000 down to \$2,500. NextBridge considers this recommendation to be inappropriate for a number of reasons.

84. The significant delay to project in-service arising out of the OPA's extension of the development period by more than two years triggered the need to re-assess and adapt consultation strategies in light of the changed circumstances to ensure the continuation of timely and meaningful dialogue with interested individuals and groups.⁷⁸ OEB Staff argue that edits made to the stakeholder relations consultation plan are largely formatting or other minor changes unrelated to project delay.⁷⁹

85. While formatting and minor changes were made to the plan, substantive changes were also planned and captured, including the addition of a round of open houses and the introduction of Update Letters for distribution to stakeholders when important project updates are identified.⁸⁰ The time to make changes to the text of the document did not contribute in any significant way to the \$10,000 incurred to update the plan.⁸¹ As noted in the evidence⁸², while the actual text edits to the Consultation Plan would not have taken more than a couple days to complete, the time to discuss and develop the modified Consultation Plan and engagement strategy is where the bulk of the time was spent.

86. Most of the costs associated with updating the plan were a result of the discussions among NextBridge team members about an appropriate level of consultation in view of the extension of the project in-service date. Given the amount of time to be bridged, it was necessary to balance effective engagement and reasonable costs.

87. The costs incurred to give due consideration to an appropriate level of consultation actually worked to save money over the length of the delay. For example,

⁷⁸ Exhibit JD1.2, Attachment 3, p.7.

⁷⁹ OEB Staff argument at p.7-8.

⁸⁰ Exhibit JD1.2, Attachment 3 at p.15 and 17.

⁸¹ Exhibit JD1.2 at p.6.

⁸² Exhibit JD1.2 at p.6.

during the planning process, NextBridge considered conducting two additional rounds of open houses during the delay, which could have been reasonable given the length of the delay. However, as an outcome of the discussions that were part of the updated consultation plan, the decision was made to only hold one extra round.⁸³

88. Proper planning takes time and has costs, but results in better decision making and overall cost savings. The costs incurred by NextBridge related to updating the stakeholder relations consultation plan set the strategy and framework for ongoing consultation over the extended development period. The work required for this activity required careful consideration that was time consuming and was in direct response to the project delay. NextBridge submits that its decision to incur incremental cost to address this need was reasonable under the circumstances and prudently incurred.

Activity #32: Community Investment

89. OEB Staff recommends that costs in the amount of \$7,000 recorded in respect of Activity 32 be disallowed. As noted by OEB Staff, NextBridge's evidence indicated that these costs were mistakenly recorded. No costs were incurred in respect of Activity 32,⁸⁴ but costs of \$7,000 incurred during the Extended Development Period to consider and develop a community investment plan that would work into the future were mistakenly recorded in relation to Activity 32, rather than Activity 7 (Stakeholder Engagement Program).⁸⁵

90. While these costs were mistakenly attributed to Activity 32 in accordance with the methodology described in Exhibit JD1.2, the costs were not mistakenly incurred, and rather belong as a further minor increment to the amount claimed in relation to Activity

⁸³ NB response to OEB Staff Interrogatory #2a.

⁸⁴ Exhibit JD1.2, Activity 32 narrative at page 32..

⁸⁵ Exhibit I.JD.1.NextBridge.STAFF.25, part a).

7, Stakeholder Engagement Program costs.⁸⁶ The decision to develop a community investment plan was appropriate in the circumstances, and the limited costs incurred to complete the activity were reasonable.

Submissions by Intervenors

91. Certain intervenors have made submissions about specific cost items or categories that are included in NextBridge's development costs and have advocated either reductions to the costs recoverable for specific activities, or complete disallowances. NextBridge disagrees with these submissions for the reasons set out below.

(a) Phase Shift amounts

92. Activity 41 (Environmental Assessment review participation) and Activity 42 (Incremental land optioning negotiations) relate to activities originally planned for the construction phase of the project that were brought forward into the development period and have been referred to as "Phase Shift" amounts. Each of SEC⁸⁷, CCC⁸⁸ and Hydro One⁸⁹ dispute the inclusion of these costs, collectively totaling \$1.899 million, in NextBridge's development costs. They assert that these costs are not eligible for recovery as development costs because they belong in the category of construction costs.

93. NextBridge submits that costs related to EA review participation and incremental land optioning negotiations that were incurred in advance of filing of NextBridge's LTC application are properly treated as development costs as they were necessary to

⁸⁶ Exhibit I.JD.1.NextBridge.STAFF.25, part a).

⁸⁷ SEC Submission, page 6, paragraph 20.

⁸⁸ CCC Submission at page 9-10.

⁸⁹ Hydro One Submission, page 12, paragraphs 49-50.

advance critical path activities. As explained in NextBridge's evidence and in particular in its response to undertaking JD1.2, this work was undertaken to ensure that a 2020 in-service date could be met, in accordance with the Order in Council declaring the EWT Line Project as a priority project with an in-service date of 2020.

94. Further, had NextBridge not pulled forward the Phase Shift activities as it did, route certainty may have been compromised. As well, shifting a portion of land optioning activities to the development period was a prudent project management measure to reduce schedule risk by ensuring that land would be available for construction access in a timeframe that would allow a 2020 in-service date to be met.⁹⁰

95. For all these reasons, NextBridge's decision to "pull forward" these particular activities was a reasonable one. NextBridge submits that the Phase Shift costs would have been reasonably expected of any project developer, were prudently incurred during the development period, and should be approved for recovery as development costs. In this regard, NextBridge notes that OEB Staff support full recovery of costs incurred for incremental land optioning negotiations.⁹¹

96. In the alternative, if for any reason the Board is not prepared to approve the Phase Shift costs for recovery as development costs, NextBridge submits that the Board should accept the suggestion that a decision in respect of these costs be deferred until NextBridge seeks approval of costs incurred after the end of the development period.

⁹⁰ NB response HONI Interrogatory #9 at p.2.

⁹¹ Staff Submission, pages 16-17.

(b) Project Delay and Project Extension Costs

97. The CCC Submission⁹² expresses concern on the ground that there appear to be two different calculations and amounts for the delay-related costs found in NextBridge's responses to undertakings JD1.2 and JD1.6. The Staff Submission mirrors the same concern.⁹³ While the undertaking requests both incorporate project delay cost values, each request involved different methodologies to arrive at a value.

98. In the request for undertaking JD1.2 NextBridge was asked to break down costs into the categories provided in the 2015 updated cost projection. However, JD1.6 asked NextBridge to break down costs into project delay and reroute costs. There are 42 different activities in Exhibit JD1.2 while JD1.6 asked for the breakdown of costs by two activities. Another example of differences is that JD1.6 has a category for the cost of major reroutes however there was not a category for major reroute in Exhibit JD1.2 (the 2015 cost breakdown method).

99. For clarity, NextBridge provides the table below to illustrate that not only did the comparisons begin at different cost points in time, but the two cost amounts of \$7.4MM and \$7.6MM were calculated in a correct manner based on the questions asked.

Actual Costs in 2015 Categories			2018 Actual Reported Costs	
JD1.2			JD1.6	
Spent from designation to January 2015	\$16,986	Starting point is different on when dollars start being accounted	\$22,398	Spent from designation to Fall 2016
Project Extension Cost	\$7,463	NextBridge minimized work during the Extended Development Phase to lower development costs for the overall project	\$7,600	Cost of project delay
Budget Variance & Scope Change	\$6,431		\$4,034	All other drivers (including escalation)
Phase Shift	\$1,899			
Previously budgeted items	\$2,953			
Cost of Major Reroute	N/A		\$1,700	As a % of the overall route
Unbudgeted at designation	\$4,395		\$4,395	Unbudgeted at designation
Overall Development Cost	\$40,127		\$40,127	Overall Development Cost

⁹² CCC Submission at p.7

⁹³ Staff Submission at p.7.

(c) Pic River Appeal Costs

100. SEC and CCC argue for a permanent disallowance of the costs incurred by NextBridge in relation to the Pic River Appeal of \$230,163 on the grounds that these amounts should either have been included under the regulatory category of costs or categorized as costs covered by NextBridge's contingency.

101. In September of 2013 the Ojibways of Pic River (Heron Bay First Nation), now Biigtigong Nishnaabeg filed a Notice of Appeal of the Board's designation decision in EB-2011-0140 in the Ontario Divisional Court.⁹⁴ Details related to the appeal and NextBridge's participation in the appeal are provided in the evidence.⁹⁵ NextBridge actively participated in the procedural steps respecting the appeal until the appeal was ordered abandoned on April 2, 2014.⁹⁶

102. The prospect of an appeal of the designation decision was not contemplated or budgeted for by NextBridge during the designation proceeding. NextBridge submits, though, that, when the designation decision was challenged, it made an entirely reasonable and prudent decision that, as the designated transmitter, it should participate actively in the appeal. It is clear from the evidence that NextBridge's participation in the appeal was reasonable, and the manner in which it participated was appropriate in the circumstances.

(d) First Nations and Métis Land Acquisition and Participation Costs

103. Hydro One⁹⁷ and CCC⁹⁸ submit that recovery of NextBridge's costs for First Nations and Métis land acquisition and participation should be disallowed, apparently

⁹⁴ NB LTC application Exhibit B, Tab 9, Schedule 1, p.7.

⁹⁵ Exhibit JT1.2 at p.1.

⁹⁶ NB LTC application Exhibit B, Tab 9, Schedule 1, p.7.

⁹⁷ Hydro One Submission, page 21, paragraph 95.

without any regard for the fact that these were necessary and prudently-incurred costs. Hydro One, for example, does not address the prudence of these costs, but makes the rather startling assertion that they were “voluntarily assumed” by NextBridge.⁹⁹

104. During the designation proceeding, NextBridge conveyed to the Board that it was not in a position to estimate the costs associated with First Nations and Métis participation and that these costs were not included in its development costs budget.¹⁰⁰ NextBridge also highlighted the potentially wide range of participation choices that could not be appropriately narrowed or committed to in advance of consultation with identified First Nation and Métis groups.¹⁰¹

105. In the Phase 2 Decision, the Board selected NextBridge as the designated transmitter and accepted the Approved Development Budget without a stated amount for NextBridge’s costs in respect of First Nations and Métis participation. Notwithstanding that NextBridge had not given a cost estimate for First Nations and Métis participation as part of its development costs budget, the September 2013 Decision approved the Development Cost Deferral Account with a sub-account for “Costs of Aboriginal participation and mitigation of project impact”.¹⁰²

106. In each of its reports to the Board, starting with the first report dated October 21, 2013, NextBridge clearly identified unbudgeted costs incurred in the relevant period, including First Nations and Métis participation.¹⁰³ At no time prior to this proceeding was NextBridge made aware of any view that it had “voluntarily assumed” responsibility for these costs.

⁹⁸ CCC Submission, page 11.

⁹⁹ Hydro One Submission, page 7, paragraph 27.

¹⁰⁰ Exhibit I.JD1.NextBridge.CCC.2, page 1.

¹⁰¹ Exhibit I.JD1.NextBridge.CCC.2, pages 1-2.

¹⁰² September 2013 Decision, Appendix 2, page 9, Sub-account 11.

¹⁰³ Exhibit I.JD1.NextBridge.CCC.2, page 2.

107. The cost estimates given by those applicants in the designation proceeding which actually attempted to state a dollar amount (greater than zero) for First Nations and Métis participation covered a very wide range, from \$290,000 to \$9,021,000.¹⁰⁴ NextBridge's indication that it would not even attempt to put a number on this uncertain and potentially large cost has, in this proceeding, been turned around by some into the proposition that NextBridge voluntarily assumed responsibility for the uncertain and potentially large cost of First Nations and Métis participation¹⁰⁵. This proposition is contrary to the entire record of the EWT Line Project, including the record of the designation proceeding, the many reports and other filings submitted to the Board by NextBridge prior to its LTC application and the record of this proceeding.

108. SEC's argument with respect to costs for First Nations and Métis participation discusses the evidence filed by NextBridge in the designation proceeding¹⁰⁶ and posits ideas about how NextBridge's exclusion of a dollar amount in this category from its development costs budget might have been understood at the time.¹⁰⁷ NextBridge submits that SEC's observations overlook and mis-state important aspects of the evidence on development costs that NextBridge provided in the designation case.

109. Among the evidence filed by NextBridge with respect to its development costs budget was a response to an interrogatory from the Board asking that cost estimates be provided in tabular format with breakdowns into particular cost categories. One of the categories, for both development costs and construction costs, was "First Nation and Métis participation (direct and indirect costs, including impact mitigation if applicable)". In respect of both the development cost estimate and the construction cost estimate for

¹⁰⁴ Exhibit I.JD1.NextBridge.CCC.2, page 2.

¹⁰⁵ CCC Submission at p.11 and HONI submission at paras 42-45 and 95.

¹⁰⁶ SEC Submission, page 7, paragraphs 22-24.

¹⁰⁷ SEC Submission, pages 7-8, paragraph 25.

this cost category, the table provided by NextBridge in response to the interrogatory clearly stated: “Not Included”.¹⁰⁸

110. SEC refers to NextBridge’s response to the Board interrogatory and says that “including a zero” is not sufficient.¹⁰⁹ But NextBridge did not include a “zero”; it explicitly stated “Not Included” in two instances. SEC refers to a footnote to NextBridge’s table and says that no similar footnote was provided for the First Nation and Métis participation cost category.¹¹⁰ This is also wrong.

111. Both instances where NextBridge indicated that First Nation and Métis costs were not included in its cost estimates were connected by asterisk to the same footnote at the bottom of the table. This footnote referred to an estimate being developed at a later time after engagement and consultation had advanced. While it is correct that, as noted by SEC, the footnote referred back to evidence about an estimate for land acquisition, the footnote was linked to the First Nation and Métis participation category (which did not mention land acquisition) and, more specifically, the two instances in the table stating that costs in this category were not included in NextBridge’s estimates.

112. In AIC, NextBridge noted that, at the time of the designation proceeding, it was not in a position to estimate the costs associated with First Nations and Métis participation until further engagement had been initiated and indeed to do so would have been presumptuous to the needs of communities.¹¹¹ This statement was adopted, with added emphasis, in the MNO Submission.¹¹²

¹⁰⁸ EB-2011-0140 NextBridge Response to Board Interrogatory to all Applicants, filed March 28, 2013.

¹⁰⁹ SEC Submission, pages 7-8, paragraph 25.

¹¹⁰ SEC Submission, page 7, paragraph 24.

¹¹¹ AIC, page 17, paragraph 34(c).

¹¹² MNO Submission, page 16, paragraph 26.

113. The MNO Submission sets out in considerable detail the reasons why both Aboriginal consultation and economic participation discussions must take place – and therefore require a proponent to incur costs – during the development phase of a project.¹¹³ The MNO Submission also supports the prudence and reasonableness of NextBridge's costs for First Nations and Métis consultation and participation.

114. The MNO Submission makes clear, among other things, the time and effort required to build relationships¹¹⁴ and the reasons why NextBridge could not have ceased its consultation activities during the Extended Development Period, or at any point of the development process.¹¹⁵ Similarly, the BLP Submission explains why NextBridge's costs for consultation and economic participation were essential to the development phase¹¹⁶ and submits that NextBridge's costs for prioritizing Indigenous engagement are justified by its success in establishing positive working relationships with the BLP First Nations, among others.¹¹⁷ For the reasons set out above, NextBridge submits that the costs it incurred in respect of this activity would have been reasonably expected of any project developer, and, therefore, are prudently incurred costs.

115. The BZA Submission asserts that the consultation and participation benefits offered to BZA by NextBridge are inadequate or non-existent.¹¹⁸ While NextBridge disagrees with BZA's position, the conclusion to be drawn from a submission about inadequate consultation and benefits is that NextBridge's First Nations and Métis participation and consultation costs should, if anything, be higher. In any event, though, BZA's arguments are based on the duty to consult¹¹⁹ and the Board has indicated that it

¹¹³ MNO Submission, page 2, paragraph 3, and following pages.

¹¹⁴ MNO Submission, pages 10-11, paragraphs 15-16, and following pages.

¹¹⁵ MNO Submission, page 12, paragraphs 16-17.

¹¹⁶ BLP Submission, pages 2-3, paragraph 4 and following paragraphs.

¹¹⁷ BLP Submission, page 3, paragraph 11.

¹¹⁸ BZA Submission, paragraph 3.

¹¹⁹ BZA Submission, paragraphs 1-3, 6 and 7.

does not have jurisdiction to consider Aboriginal consultation issues in an electricity LTC application.¹²⁰

(e) First Nations and Métis Consultation Costs

116. Hydro One argues that NextBridge should be disallowed costs in the amount of \$1.5 million in relation to incremental First Nation and Métis consultation activity conducted over the extended development period.¹²¹ Hydro One confusingly states that “NextBridge acknowledges that the additional costs in this category were not caused by the extension of the in-service date”, and instead NextBridge simply decided to continue consulting during this time.¹²² This statement is incorrect. Throughout the evidence, and specifically in NextBridge’s response to undertakings, NextBridge confirmed that the costs associated with this Activity were a result of both the project delay (extension of the in-service date) and major re-routes¹²³. By suggesting as it has that NextBridge simply made a choice to continue consultation during the development period, Hydro One implies that NextBridge could and should have simply stopped or paused consultation with First Nation and Métis communities for 30 months to avoid incurring incremental costs. NextBridge disagrees with this suggestion and submits that it could not have reasonably been expected to cease First Nations and Métis consultation activities during the Extended Developed Period. Doing so would undermine the significant time and effort NextBridge invested in building relationships with First Nations and Métis groups, causing harm to the project. This point is reinforced by the MNO and BLP Submissions¹²⁴.

¹²⁰ *Filing Requirements for Electricity Transmission Applications*, Chapter 4, pages 17-18, section 4.3.8.

¹²¹ Hydro One Submission, page 19, para 85

¹²² Hydro One Submission, page 18, para 78.

¹²³ Exhibit JD1.2, page 8 and 9.

¹²⁴ MNO Submission, pages 10-11, paragraphs 15-16, and following pages; MNO Submission, page 12, paragraphs 16-1; BLP Submission, pages 2-3, paragraph 4 and following paragraphs.

117. Hydro One also makes the puzzling argument that because the parties to the Designation Process (including NextBridge) would have based their estimates for the cost of consultation on the time line that ended with the filing of an LTC application in late 2014 or early 2015, that somehow it would be unfair to allow NextBridge to recover costs for First Nation and Métis Consultation incurred as a result of the extended development period¹²⁵. It is precisely because circumstances changed after designation, most significant of which was the extension of the in service date, that NextBridge was required to conduct more consultation than originally planned. NextBridge submits that any other bidder would be in the exact same position and would have reasonably continued consultation over the extended development period. Further, Board Staff's assessment concludes that the costs for consultation that occurred over the extended period seem reasonable and recommended that NextBridge be able to recover 100% of the costs incurred for this activity¹²⁶.

118. Lastly, Hydro One argues that NextBridge provided no evidence that the Crown directed NextBridge to undertake additional consultation during the extended development phase¹²⁷. As MNO explains in their submission, it is common practice for the Crown to delegate procedural aspects of the duty to consult and it has done so in this case through an executed Memorandum of Understanding ("MOU") between NextBridge and the Ministry of Energy on November 4, 2013. This MOU provided, among other things, that "NextBridge is responsible for carrying out procedural aspects of consultation that are delegated to it by the Crown."¹²⁸ This MOU has been referenced extensively in NextBridge's evidence including in Exhibit H, Tab 1,

¹²⁵ Hydro One Submission page 17, para 80.

¹²⁶ Staff Submission, page 8.

¹²⁷ Hydro One Submission, page 19, para 83.

¹²⁸ Memorandum of Understanding between the Ontario Ministry of Energy and NextBridge, dated November 4, 2013, s 2.2 (b), Monthly Report, Schedule E, EB-2011-0140, filed November 21, 2013 (the "MOU").

Schedule 1 of NextBridge's Application, and in its responses to interrogatories¹²⁹ and undertakings¹³⁰. Once delegated the express responsibilities outlined in the MOU, NextBridge had an obligation to continue with adhering to the responsibilities outlined in the MOU unless and until the agreement is terminated. Only the Minister has the authority to terminate the MOU,¹³¹ and to date has not done so.

119. On this basis, NextBridge's decision in the circumstances to continue consulting with First Nation and Métis groups over the extended development period to foster positive relationships with Aboriginal communities, by offering reasonable assistance (including financial assistance) where appropriate to participate in consultation and engage with Aboriginal Communities was appropriate. Proceeding in the manner that NextBridge did was reasonable and resulted in costs being incurred prudently.

(f) Environmental and Regulatory Approvals Costs

120. Hydro One argues that the incremental costs associated with the EA process should have been anticipated by NextBridge and are therefore not recoverable.¹³² Hydro One further asserts that NextBridge failed to disclose in a timely manner that NextBridge estimates and expectations were based on the Hydro One Bruce to Milton project experience, and were informed by expert advice from an environmental consulting firm, which could have been tested in cross examination if disclosed earlier.¹³³ These assertions are not supported by the facts and should be disregarded. NextBridge's application for designation stated that NextBridge was working with Dillon Consulting (among others) regarding the routing analysis and environmental approvals

¹²⁹ See for example, Exhibit I.JD1.NextBridge.HONI.7, page 2-3 Exhibit I.JD1.NextBridge.STAFF.3, page 3.

¹³⁰ NB response to Undertaking JD1.2, page 8.

¹³¹ MOU at section 8.2.

¹³² Hydro One Submission, page 16, para 67.

¹³³ Hydro One Submission at p.14, para 57.

process in support of designation application preparation.¹³⁴ Dillon's experience with the Bruce to Milton project was highlighted.¹³⁵ In the very first monthly report to the Board, filed in October 2013, NextBridge reiterated that it was being assisted by Dillon Consulting in respect of environmental assessment work.¹³⁶ In fact, NextBridge was not the only party that considered the Bruce to Milton project to represent an appropriate reference point.¹³⁷ Even more importantly, the EWT LP Application for designation in which Hydro One was a partner is replete with references to the Bruce to Milton Transmission Reinforcement Project, listed first on a select list of projects "with specific relevance due to their scope, complexity and recent completion"¹³⁸. EWT LP highlights the "recent and highly relevant environmental assessment experience related to electrical transmission lines in Ontario" that it acquired from the Bruce to Milton project.¹³⁹ The Bruce to Milton Land Acquisition Principles and Memorandum of Understanding with the Minister of Energy are also included in the EWT LP application for designation. Like EWT LP, NextBridge recognized the benefit of closely considering the "largest transmission project to have been completed recently in Ontario"¹⁴⁰, and appropriately used the Bruce to Milton project as a model for environmental assessment matters.

121. NextBridge rejects Hydro One's position that NextBridge's defence of its environmental budget has changed over the course of the proceeding. Contrary to Hydro One's assertion, the referenced transcript excerpt¹⁴¹ does not demonstrate that

¹³⁴ NextBridge Application for Designation filed January 4, 2013 at p.27 and p.50.

¹³⁵ NextBridge Application for Designation filed January 4, 2013 at p.50.

¹³⁶ NextBridge Monthly Report dated October 21, 2013 at page 4, para 8.

¹³⁷ Both Icon Transmission, Inc. and TransCanada Power Transmission (Ontario) L.P. (at pdf page 57 and 200 of the application for designation) and Canadian Niagara Power Inc. (at pdf page 149 of the application for designation) highlighted the government's identification of the Bruce to Milton transmission reinforcement project as a model for the memorandum of understanding setting out the respective roles and responsibilities of the Crown and the designated transmitter related to First Nations and Métis consultation.

¹³⁸ EWT LP Designation Application Part 1, at pdf p.43.

¹³⁹ EWT LP Designation Application Part 1, at pdf p.110.

¹⁴⁰ EWT LP Designation Application Part 1 at pdf p.18.

¹⁴¹ Hydro One Submission at p.14.

the environmental budget was developed solely on the experience of NextBridge. Taking the evidence together, it is clear that NextBridge (and others) used the Bruce-to-Milton project as a model in relation to multiple aspects of the East-West Tie line project development. More specifically, this included the fact that an alternatives assessment was not required of Hydro One. For the reasons set out above and based on the evidence on the record¹⁴², NextBridge submits that it was reasonable to rely on the Bruce to Milton project experience to guide EWT Line project environmental assessment requirements. Hydro One had ample opportunity to test this evidence over the course of the proceeding.

122. Hydro One further faults NextBridge for being unable to identify the amount of costs attributable solely to the route around Pukaskwa National Park (Park).¹⁴³ NextBridge reminds Hydro One that the September 2013 Order directed NextBridge to record costs on a workstream basis, in accordance with a specific set of sub-accounts. In response to a request from Board Staff, NextBridge made best efforts to map the costs recorded on a workstream basis into an activity-based framework. NextBridge did not do so arbitrarily, but rather in accordance with a considered and sound methodology.¹⁴⁴ NextBridge sees no contradiction between the responses that it provided estimating, on a best efforts basis, costs attributable to the route around the Park in Exhibit JD1.2 and the activity characterizations in NextBridge's response to Undertaking JD1.2, and considers that the Board can confidently rely on this information to conclude the amounts of the costs incurred in respect of environmental assessment activities.

¹⁴² Exhibit JD1.2; NextBridge response to CCC Interrogatory #1.

¹⁴³ Hydro One Submission at p.17.

¹⁴⁴ Exhibit JD1.2 at page 4-5.

(g) Land Rights Costs

123. Hydro One broadly states that there is no evidence that the costs incurred in relation to land rights are prudent, and, therefore are not recoverable,¹⁴⁵ asserting that the costs in this category were not caused by the extension of the in-service date.¹⁴⁶ This is incorrect. There is extensive evidence on the record related to land-related development work undertaken and corresponding costs.¹⁴⁷ Furthermore, that a particular expenditure was or was not “caused” on a specific basis is not an appropriate criteria to impose in relation to assessing prudence. NextBridge has explained that the initiation of land optioning during the development phase was critical to maintaining the project schedule, and allowed NextBridge to enhance cost, schedule and route certainty for the EWT Line Project.¹⁴⁸ Not only was the decision to incur land acquisition expenditures reasonable in the circumstances, NextBridge may have unreasonably imperilled the 2020 in-service date identified in the Order in Council had it not taken the opportunity to progress land acquisition over the extended development period.

124. NextBridge notes that Board Staff expressly support recoverability of land rights costs incurred related to timber valuation¹⁴⁹, market valuation¹⁵⁰, incremental land optioning negotiations¹⁵¹, and portions of the costs incurred related to land title review activity and legal support for land activity¹⁵². Based on the evidence¹⁵³ and for the reasons set out above, NextBridge submits that costs associated with land rights are recoverable in full as prudently incurred expenditures that would have been reasonably expected of any project developer.

¹⁴⁵ Hydro One Submission at p.18 para 75-76.

¹⁴⁶ Hydro One Submission at p.18, para 74.

¹⁴⁷ Exhibit E, Tab 1, Schedule 1 through Exhibit E, Tab 5, Schedule 1 and Attachments ; Exhibit B, Tab 16, Schedule 1, Attachment 4; Exhibit JD1.2 , including at pages 27-31, 34, 40 and 41;

¹⁴⁸ Exhibit JD1.2 at p. 40.

¹⁴⁹ Staff Submission at p.14.

¹⁵⁰ Staff Submission at p.17.

¹⁵¹ Staff Submission at p.16.

¹⁵² Staff Submission at p.15.

¹⁵³ Exhibit JD1.2.

(h) Other Consultation Costs

125. Hydro One argues all incremental costs related to non-indigenous or “Other” consultation should be disallowed.¹⁵⁴ In support of this position, Hydro One identifies that NextBridge conducted four rounds of open houses despite only being required to complete three.¹⁵⁵ As NextBridge explained in the evidence,¹⁵⁶ with an additional 30 months being inserted into the schedule, the former plan which included three rounds of open houses would have resulted in a large gap between rounds during which the public was not properly engaged. NextBridge considered completing two more rounds of open houses given the length of the delay, but for cost considerations, decided to only conduct one.¹⁵⁷ Beyond the open houses, NextBridge also continued to use other methods of consultation and engagement, not relying exclusively on open houses.¹⁵⁸ NextBridge carefully considered what consultation was appropriate in the circumstances and how to complete it most cost effectively. On this basis, NextBridge acted reasonably, incurring costs in a prudent fashion, and should be entitled to recover such costs.

(i) Project Management Costs

126. Hydro One advocates disallowance of all “excess” project management costs. While Hydro One does not dispute *prima facie* recoverability of incremental project management costs, conceding that some costs may have been necessary to “maintain NB’s infrastructure”,¹⁵⁹ because the quantum is asserted to be uncertain, Hydro One encourages the Board to disallow all incremental project management costs.¹⁶⁰

¹⁵⁴ Hydro One Submission at p.20, para 87.

¹⁵⁵ Hydro One Submission at p.20, para 87.

¹⁵⁶ Exhibit I.JD1.NextBridge.STAFF.2

¹⁵⁷ Exhibit I.JD.1.NextBridge.STAFF.2

¹⁵⁸ Exhibit I.JD.1.NextBridge.STAFF.2

¹⁵⁹ Hydro One Submission at p.21 para 93.

¹⁶⁰ Hydro One Submission at p.21 para 94.

NextBridge does not agree that the quantum of project management costs claimed is either uncertain or unexplained. As captured in the evidence, NextBridge incurred a total of approximately \$5 million in project management costs over the course of the entire development period, \$3.7 million of which are incremental to the Board-approved amount of \$1.3 million.¹⁶¹ In asserting that these costs were for work which was to have been completed by the early part of 2015 and should have been captured in the designation estimates¹⁶², Hydro One shows that it misunderstands the nature of the incremental project management costs claimed. Project management was essential to the development of the EWT Line Project - project management team members lead overall project and team member coordination, and organize regulatory reporting (among other things).¹⁶³ In order to continue managing the project, consistent oversight and its associated costs are required even during the delay period to ensure that the project is achieving required milestones and regulatory requirements.¹⁶⁴ That NextBridge spent nearly three times the amount on project management in the extended development period suggests not that NextBridge grossly underestimated the costs at designation as Hydro One asserts, but rather that the development period nearly tripled, which it did.¹⁶⁵ The incremental project management costs largely represent activities that had to be continued over the extended period of time, including costs of preparing and maintaining financial statements and completing required reporting.¹⁶⁶ NextBridge notes that Board Staff expressly support recoverability of project management costs incurred related to accounting, back office, internal reporting and procurement support¹⁶⁷, EWT Project office salary and overheads¹⁶⁸, OEB quarterly

¹⁶¹ Exhibit B, Tab 16, Schedule 1, Attachment 11.

¹⁶² Hydro One Submission at p.20, para 91.

¹⁶³ Exhibit JD1.2 at p.14.

¹⁶⁴ Exhibit JD1.2 at p.14.

¹⁶⁵ The development period was extended from 18 months to a total of 48 months – see Exhibit B, Tab 16, Schedule 1, at page 6.

¹⁶⁶ May 15, 2015 Submission at p.9.

¹⁶⁷ Staff Submission at p.10.

¹⁶⁸ Staff Submission at p.10.

reporting¹⁶⁹, Proponent information tax returns¹⁷⁰, Annual audit of EWT project financials¹⁷¹ and a portion of costs incurred related to Preparation of revised EWT schedule and May 15, 2015 submission costs¹⁷².

127. On the basis that both the quantum and purpose of incremental project management expenditures are clear on the evidence, and were undertaken in accordance with detailed and extensive cost management practices¹⁷³, NextBridge submits that the record strongly supports the conclusion that all incremental project management costs are reasonable and were prudently incurred.

(j) Carrying Costs

128. CCC¹⁷⁴ and SEC¹⁷⁵ support the recovery of carrying costs by NextBridge, although both intervenors say that, should the Board disallow any of NextBridge's development costs, the carrying costs will need to be recalculated. For all the reasons set out in this reply argument, NextBridge submits none of its development costs should be disallowed and, accordingly, that the carrying costs should be approved without any recalculation.

Designation Process Context

129. As noted above, Hydro One has made arguments about the impact of the Board's decision with respect to development costs on the "integrity" of the designation process. CCC and SEC express concerns about approval of cost recovery so as to

¹⁶⁹ Staff Submission at p.13.

¹⁷⁰ Staff Submission at p.13.

¹⁷¹ Staff Submission at p.13.

¹⁷² Staff Submission at p.10.

¹⁷³ Exhibit B, Tab 16, Schedule 1 at pages 4-11.

¹⁷⁴ CCC Submission, pages 11-12.

¹⁷⁵ SEC Submission, page 9, paragraph 31.

“undermine” the designation process”¹⁷⁶ and, in this context, SEC refers to the potential for a “reward” to NextBridge for under-budgeting development costs. NextBridge submits, though, that allowing recovery of prudently incurred development costs does not in any way undermine the designation process or impact its integrity.

130. The designation proceeding provided the Board with a basis to compare competing proposals on a common set of expectations, assumptions and circumstances as they were known at the time. The development cost budgets submitted by the applicants on this common basis made it likely that under-budgeting (or over-budgeting) would be exposed and they gave the Board a foundation upon which to reach a conclusion about a reasonable budget for development costs. The Board noted in the Phase 2 Decision that, with one exception, the development cost proposals covered a range that was relatively narrow given the overall size of the project.¹⁷⁷ Thus, the information regarding development costs that was before the Board in the designation proceeding belies any suggestion that there was “under-budgeting” based on the circumstances that were known at the time.

131. The point of the comparison of development cost budgets in the designation proceeding was not to bind the successful applicant to a particular amount regardless of actual circumstances, nor was it to penalize the successful applicant for the outcome of reasonable efforts to address changing circumstances. Rather, the comparison of development cost budgets was made on the basis of circumstances as they were known or assumed to be at the time, so as to assist the Board in its selection of the designated transmitter and to provide a grounding for a determination that the Approved Development Budget was reasonable.

¹⁷⁶ CCC Submission, page 6; SEC Submission, page 4, paragraph 12 and page 8, paragraph 27.

¹⁷⁷ Phase 2 Decision, page 30.

132. Of course, there could have been no expectation going forward that actual circumstances during the development period would remain unchanged from those that were understood or assumed at the time of the designation proceeding. In fact, NextBridge experienced significant changes in circumstances, including the OPA's recommendation that the in-service date for the project be extended and the decision by Parks Canada not to allow access to Pukaskwa National Park (the "Park") for the purpose of studying a route through the Park.

133. As it worked through the actual circumstances of the extended development period, NextBridge carefully and prudently managed spending on development costs.¹⁷⁸ There is no evidence or basis on which to conclude that NextBridge's reasonable expenses in the actual circumstances of the extended development period resulted in variances from the Approved Development Budget that can be equated with "under-budgeting" in the context of the circumstances that were known or assumed during the designation proceeding. To the contrary, the evidence in this proceeding shows that NextBridge adapted to changing circumstances and extended periods of development in a reasonable and prudent manner so to control the spend of development costs.

134. Nor does approval of reasonable costs incurred by the successful proponent in the actual circumstances of the extended development period have any bearing on the "integrity" of the designation proceeding. Should such approval be granted by the Board, it would remain the case that all of the applicants in the designation proceeding had an equal opportunity to put forward their proposals and that this process resulted in a relatively narrow range of development cost estimates from which the Board was able to conclude that the Approved Development Budget was reasonable in the circumstances known or assumed at the time. Despite Hydro One's arguments about the "integrity" of the designation process, it strains credulity to think that, if EWT LP (a partnership including Hydro One Inc.) had been selected as the designated transmitter,

¹⁷⁸ See for example Exhibit B, Tab 16 Schedule; Plus Attachments and Exhibit JD1.2 Plus Attachments.

EWT LP would not have sought recovery of its reasonably and prudently incurred development costs at the end of the development period.

Need to Meet In-Service Date

135. The narrow and restrictive view of recoverable development costs asserted in intervenor submissions such as those of Hydro One and CCC disregards the need for NextBridge to make reasonable and prudent decisions as it managed the EWT Line Project in the evolving circumstances of the Extended Development Period. Hydro One and CCC argue that, but for “very narrow exceptions”¹⁷⁹ or “exceptional circumstances”,¹⁸⁰ NextBridge’s development costs should be limited to the Approved Development Budget.

136. At no time, however, did the Board indicate that it would apply a standard of exceptional circumstances or “very narrow exceptions” in its review of actual spending on development costs in excess of the Approved Development Budget. As discussed above, the Board made clear that it would apply a standard of prudence.

137. The pace and progress of many activities needed to bring the EWT Line Project to completion, such as negotiations for the acquisition of land rights and negotiations with Hydro One for crossing agreements, were not within the sole control of NextBridge. As NextBridge addressed changing circumstances during the Extended Development Period, having regard to the pace and progress of activities not within its sole control, it was necessary for NextBridge to make reasonable and prudent decisions in order to manage the project towards the expected in-service date.

¹⁷⁹ CCC Submission, page 6.

¹⁸⁰ Hydro One Submission, page 4, paragraph 17.

138. NextBridge explained in considerable detail the continuous focus on prudent decision-making that it brought to bear as it effectively and efficiently managed the project through the Extended Development Period, with a view to the expected 2020 in-service date.¹⁸¹ Hydro One misunderstood the intent of this evidence. Hydro One says that a “rough paraphrase” of NextBridge’s evidence is that “if NB deems something prudent, then the OEB must do so”.¹⁸²

139. Hydro One’s assertion does not accurately “paraphrase” NextBridge’s evidence. NextBridge has not said or implied that, if it deems a cost to be prudent, then the Board must do so. Rather, NextBridge has explained how, throughout the changing circumstances of the development period, it maintained a continuous focus on effective and efficient project management and prudent decision-making. The result of this focus, NextBridge’s submits, is that its decisions, activities and associated costs during the development period were those that would reasonably be expected of a prudent project developer in the actual circumstances of the time. There is ample evidence on the record to support NextBridge’s position and for the Board to make its own determinations of prudence.

140. Of course, a project developer would not manage a project through the development period without regard for whether its proposal will actually meet the expected in-service date for the project. In AIC, NextBridge pointed out that, in order to bring a meaningful LTC application to the Board, it was necessary to undertake activities during the Extended Development Period with a view to NextBridge’s ability to achieve the expected 2020 in-service date.¹⁸³

141. Indeed, at no time during the development period was any other in-service date recommended by the IESO or the Minister of Energy. NextBridge’s project schedule, as

¹⁸¹ See AIC, pages 18-20, and, in particular, the evidence cited in footnotes to paragraphs 36, 39 and 40.

¹⁸² Hydro One Submission, page 6, paragraph 25.

¹⁸³ AIC, page 20, paragraph 39.

updated in reports to the Board, consistently explained how NextBridge's development activities were focused on bringing the EWT Line Project into service in 2020. It would be the quintessential application of hindsight to evaluate NextBridge now based on a post-development period opinion that NextBridge could have selected and worked towards another in-service date. There is no evidence to support NextBridge working toward any other date than a 2020 in-service date, and, therefore, its development activities must be assessed as prudent in the context of achieving a 2020 in-service date.

142. Intervenors such as Hydro One and CCC have not addressed NextBridge's point about the need for the project developer to manage activities during the development period with a view to achievement of the expected in-service date. This is because the submissions of Hydro One and CCC do not approach the subject of development costs with any regard to the decisions, activities and costs that would reasonably be expected of a project developer, but instead put forward a much more narrow and restrictive standard for the review of development costs.

143. NextBridge submits that the narrow and restrictive standard relied on by these intervenors should be rejected by the Board, not only because it is out of line with the prudence standard clearly enunciated by the Board, but also because a standard that suggests a designated transmitter must do otherwise than meet reasonable expectations for a prudent project developer is simply inappropriate.

Development Costs for NextBridge's Proposal

144. The Board's EB-2010-0059 Policy Framework for Transmission Project Development Plans (the "Policy Framework") discusses whether a designated transmitter can expect to be able to construct and operate the facilities in respect of

which it has been designated.¹⁸⁴ The Policy Framework says that, under normal circumstances, the Board would expect that the designated transmitter would construct and operate the facilities, but it refers to two instances where this might not be the case.

145. In the discussion of two instances where the designated transmitter would not construct and operate the facilities, the Policy Framework states as follows:

The Board cannot prevent any person from submitting an application for any matter under its jurisdiction. However, the undesignated transmitter would have undertaken development at its own cost which would not be recoverable from ratepayers.¹⁸⁵

146. Hydro One's assertion that the development phase of the project "was always intended to be for the benefit of the project" is not consistent with the guidance provided in the Policy Framework. Nowhere in the Policy Framework is it stated or even implied that development costs incurred by a designated transmitter are "for the benefit of the project". To the contrary, the Policy Framework makes clear that when a transmitter has been designated to develop a project and an undesignated transmitter brings its own LTC application, the development work of the undesignated transmitter is undertaken at its own cost, which is not recoverable from ratepayers.

147. NextBridge submits that the Board should reject Hydro One's submission that, as a condition to the recovery of any development costs, NextBridge should be required to make its reports, agreements and other work product "available to anyone".¹⁸⁶ Similarly, NextBridge submits that it is not appropriate to delay recovery of development costs in the manner proposed by VECC.¹⁸⁷

¹⁸⁴ EB-2010-0059 Board Policy: Framework for Transmission Project Development Plans, August 26, 2010, page 17.

¹⁸⁵ *Ibid.*

¹⁸⁶ Hydro One Submission, page 21, paragraph 98.

¹⁸⁷ VECC Submission, page 10, paragraph 6.3.

Conclusion

148. For all of the reasons set out above and in AIC, NextBridge submits that the development costs of \$40.1 million¹⁸⁸ were prudently incurred and should be approved by the Board.

All of which is respectfully submitted.

September 28, 2018

(Original Signed)

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¹⁸⁸ Although in AIC NextBridge referred to development costs of \$40.2 million, the amount has been reduced to \$40.1 million by reason of the re-calculation of carrying costs as captured in Exhibit JD1.1 attachment.