

**UPPER CANADA TRANSMISSION, INC.  
(d/b/a NextBridge Infrastructure)**

**East-West Tie Line**

**Response to OEB Request Dated February 12, 2020 RE: Quarterly Construction  
Progress Report - Reporting Period - October 1, 2019 to December 31, 2019**

**Date Submitted: February 26, 2020**

On February 12, 2020, the Ontario Energy Board Staff requested that NextBridge Infrastructure, LP (NextBridge) respond to the following questions related to its January 22, 2020 Quarterly Construction Progress Report - Reporting Period: October 1, 2019 to December 31, 2019 for the East-West Tie Project (the Project):

1. In the January Progress Report, NextBridge has reallocated budgets in various cost categories, in some cases for cost categories that were previously assigned contingency funds based on forecasted risks. Please explain, in detail, the reasons for the budget reallocations (i.e., the increases and decreases in budgets for cost categories).
2. According to the January Progress Report, permit and access approval delays have resulted in construction start-up delays, in addition to the delays identified in the previous report. Please provide more information explaining the reasons for the delays to date in receiving permit and access approvals. In addition, please provide the analysis of impacts on the East-West Tie Project's cost and schedule now. If this is not possible at this time, please explain why the analysis can only be completed following the 2020 winter construction season.
3. Please identify the impacts for the East-West Tie Project's costs and schedule under each of the following two scenarios: (i) all necessary approvals are received in February and (b) no necessary approvals are received prior to the end of the 2020 winter construction season.
4. According to the January Progress Report, there may be delays associated with finalizing acquisition with mining claim holders. Please outline the potential implications for the East-West Tie Project's cost and schedule of the Mining and Lands Tribunal hearings for the two outstanding mining claim holders.

To facilitate the review of the additional information provided herein, the updated cost table from the January 22, 2020 report is duplicated below, followed by responses to each of the OEB Staff's questions.

**Table 1. Project Cost Update Table**

Cost Categories for NextBridge's Construction Costs Reporting	Actuals Spent		Budget			Forecast Budget Variance			Reasons For Change
	A Spent This Reporting Period \$	B Total Spent To Date \$	C Budget Per LTC Application \$	D=C-B Budget Remaining	E=D/C*100 Budget Remaining %	F Forecast Budget Change \$	G Forecast Budget Change %	H Revised Total Budget	
<b>Engineering &amp; Construction</b>	<b>23,967,393</b>	<b>98,992,633</b>	<b>572,761,388</b>	<b>473,768,755</b>	<b>83%</b>	<b>41,505,901</b>	<b>7%</b>	<b>614,267,289</b>	Revised based on in-service date
1 Engineering, Design and Procurement	2,043,625	7,234,610	19,342,245	12,107,635	63%	(10,808,892)	-56%	8,533,353	
2 Materials and Equipment	6,874,302	11,242,010	89,408,231	78,166,221	87%	(22,538,717)	-25%	66,869,514	
8 Site Clearing, Access	(13,828,058)	8,451,503	107,463,339	99,011,836	92%	33,828,145	31%	141,291,484	
9 Construction	28,877,524	72,064,511	356,547,573	284,483,062	80%	41,025,365	12%	397,572,938	
<b>Environmental &amp; Remediation Activities</b>	<b>2,238,277</b>	<b>10,860,690</b>	<b>26,929,260</b>	<b>16,068,570</b>	<b>60%</b>	<b>4,348,606</b>	<b>16%</b>	<b>31,277,866</b>	Revised based on in-service date
3 Environmental and Regulatory Approvals	2,238,277	10,860,690	13,030,561	2,169,871	17%	5,894,505	45%	18,925,066	
10 Site Remediation	-	-	13,898,699	13,898,699	100%	(1,545,899)	-11%	12,352,800	
<b>Indigenous Activities</b>	<b>1,594,089</b>	<b>10,335,240</b>	<b>20,211,000</b>	<b>9,875,760</b>	<b>49%</b>	<b>3,442,555</b>	<b>17%</b>	<b>23,653,555</b>	Revised based on in-service date
5 Indigenous Economic Participation	469,237	4,744,344	7,000,000	2,255,656	32%	2,730,362	39%	9,730,362	
6 Indigenous Consultation	1,124,852	5,590,896	13,211,000	7,620,104	58%	712,193	5%	13,923,193	
4 Land Rights (excludes Aboriginal)	2,104,329	10,759,706	23,830,512	13,070,806	55%	-	0%	23,830,512	
7 Other Consultation	81,700	538,655	2,530,194	1,991,539	79%	-	0%	2,530,194	
11 Contingency	-	-	49,399,445	49,399,445	100%	(49,297,062)	-100%	102,383	Allocation of Contingency
12 Regulatory	298,670	3,013,692	5,405,078	2,391,386	44%	-	0%	5,405,078	
13 EWT Management	255,167	3,515,120	4,900,644	1,385,524	28%	-	0%	4,900,644	
<b>Total Project Spend</b>	<b>30,539,626</b>	<b>138,015,735</b>	<b>705,967,521</b>	<b>567,951,786</b>	<b>80%</b>	<b>49,297,062</b>	<b>7%</b>	<b>705,967,521</b>	
14 Interest During Construction (IDC) <sup>1</sup>	1,082,447	5,681,100	31,003,000	25,321,900	82%	-	0%	31,003,000	
<b>Total Construction Costs<sup>2,3</sup></b>	<b>31,622,073</b>	<b>143,696,836</b>	<b>736,970,521</b>	<b>593,273,685</b>	<b>81%</b>	<b>49,297,062</b>	<b>7%</b>	<b>736,970,521</b>	

1 IDC has not been reforecasted as interest rates will vary based on the OEB prescribed rates

2 On the record (EB-2017-0182)

3 Development Costs eligible for consideration as construction costs of \$5.3 MM not reflected in column B. (OEB Decision, December 20, 2018)

- 1. In the January Progress Report, NextBridge has reallocated budgets in various cost categories, in some cases for cost categories that were previously assigned contingency funds based on forecasted risks. Please explain, in detail, the reasons for the budget reallocations (i.e., the increases and decreases in budgets for cost categories).**

## **BUDGET REALLOCATIONS WITHIN ENGINEERING AND CONSTRUCTION (E&C) ACTIVITIES**

### **Cost Category 1) Engineering, Design & Procurement - (\$10.8 MM)**

- This reduction is a reallocation within the overall E&C budget. This is broken down into: a) reallocation of \$5 MM, broken down into \$4.3 MM for General Contractor's (GC) Survey (included in #8) and \$0.7 MM in escalation of Engineering costs from the original Leave to Construct (LTC) application budget and negotiated into the final GC's contract under the Civil Work (included in #8); and b) reallocation of \$5.8 MM from the Engineering budget allocated for foundation engineering as this was negotiated into GC's scope in their contract after the LTC was awarded. (included in #9).

### **Cost Category 2) Materials and Equipment - (\$22.5 MM)**

- This reduction is made up of: a) a negotiated reallocation of \$12.5 MM of materials into the construction installation line item as a supply and install activity in the GC contract (included in #9), and b) a \$10 MM reduction that is forecasted in the remaining NextBridge furnished materials due to successful negotiations on material pricing.

### **Cost Category 8) Site Clearing Access - \$33.8 MM**

- This increase is a combination of \$23.4 MM broken down into: a) \$5 MM from the GC Survey and escalation of Engineering costs referenced in #1 above; and b) \$18.4 MM in contingency, all reallocated to the Site Clearing, Access budget in the GC's contract (this reallocation of contingency was necessary to accommodate the transfer of access risk to the GC as negotiated in the terms of the contract); and c) \$10.4 MM is a new risk forecasted due to additional requirements to bridge over stream crossings which were otherwise anticipated to use culverts.

### **Cost Category 9) Construction - \$41.0 MM**

- This increase is a combination of: a) \$39.1 MM increase broken down into \$12.5 MM in materials (referenced in cost category 2 above), \$5.9 MM in engineering (referenced in cost category 1 above), and \$20.7 MM in contingency, all reallocated to the Construction budget in the GC's contract (this reallocation of contingency was necessary to accommodate the transfer of subsurface/foundation risk to the GC negotiated into the terms of the contract); b) a reduction of \$3.3 MM in the GC's supply of the line arrestors; and c) \$5.6 MM is a new risk forecasted due to the delay in receiving the LTC approval which delayed the forecasted start of construction from the original LTC application date of November 2018 to August of 2019, broken down into \$5.4 MM for the GC and \$0.2 MM for NextBridge.

## BUDGET REALLOCATIONS WITHIN ENVIRONMENT & REMEDIATION ACTIVITIES

### Cost Category: 3) Environmental - \$5.9 MM

The Amended Environmental Assessment (EA) was approved in March 2019 and contains conditions that increased the Environmental budget for surveys, permitting work, and pre-construction activities.

- Additional studies, site investigation, the creation of a new permitting approach system (i.e. Detailed Project Plans) and documentation development were also required by the government reviewers (which included the Department of Fisheries and Oceans, the Ministry of Natural Resources and Forestry (MNR), the Ministry of Environment Conservation and Parks) that resulted in expanded requirements in the Amended EA.
- An increase of \$2.1 MM was realized due to the direction of government reviewers that requested additional aquatic, bat, acoustic, and avian studies and surveys, as well as multiple rounds of review during the Amended EA process. While the Amended EA was received in March 2019, the additional requirements outlined in the Amended EA required more analysis.
  - Since this was the first EA to be completed in decades for a long, linear project in northern Ontario, several government agencies were unsure of how to evaluate the commitment requirements of the approved Amended EA as they relate to issuing permits. NextBridge worked through multiple rounds of questions to address government concerns and allow the agencies to place the Amended EA conditions into practice in parallel with issuing permits. These collaborative discussions extended the review duration and increased the support activities required for achieving permit approvals.
- An increase of \$1.9 MM was realized due to the compression of NextBridge's permitting timeline as a result of the revised timing for the receipt of the Amended EA, which also included new conditions. The Amended EA was issued in March 2019, instead of the originally-contemplated EA approval date in 2018 as per the LTC schedule. The compression of the schedule, paired with the new Detailed Project Plan (DPP) process (discussed in the response to Question #2 below), resulted in NextBridge having to amend the GC contract to allow for the hiring of additional resources to expeditiously complete the new DPP process and permitting requirements to meet the scheduled construction start date.
- An increase of \$0.3 MM related to the adjustments by government reviewers to the archeological studies that NextBridge expected to conduct based on the original Project footprint. As part of the Amended EA review process, government reviewers and other stakeholders (including Indigenous communities) encouraged NextBridge to reduce environmental impacts from the Project where possible. In response, NextBridge included minor adjustments to the Project route, permanent and temporary access roads, and temporary workspaces (e.g., laydown yards, storage yards, construction camps and construction easements) in the Amended EA. After the approved Amended EA was issued to NextBridge in March 2019, NextBridge continued to adjust the access routes to ensure optimal and efficient access to Project area and minimize the potential environmental impacts. This incremental cost

was realized for the adjustments to the Project footprint and required additional archaeological studies of those adjustments.

- An increase of \$1.6 MM due to increased construction compliance support for the duration of construction was also required. The LTC Budget included construction compliance by the GC in relation to the original EA. However, the Amended EA had significantly more conditions than contemplated in the original EA (815 commitments in the original EA vs. 1061 in the Amended EA) that required the hiring of an additional environmental monitoring firm through NextBridge to meet those conditions.

#### **Cost Category: 10) Site Remediation - (\$1.5 MM)**

- A forecasted decrease of \$1.5 MM based on site remediation due to a portion of the remediation being performed under the GC contract. Although some remediation activities will occur throughout the construction of the Project, most activities will take place once construction is complete and NextBridge will have a clearer understanding of these costs at that time.

### **BUDGET REALLOCATIONS WITHIN INDIGENOUS ACTIVITIES**

#### **Cost Category: 5) Indigenous Economic Participation – \$2.7 MM**

- An increase of \$1.9 MM due to making two additional payments for 28(2) Permits during the construction period. The Project requires two Permits under Subsection 28(2) of the Indian Act 1985 (“Section 28(2) Permits”) to cross Reserve Lands. The fees for these permits were expected to start after the in-service date of the Project, but under direction from the Federal government they are now due to start while NextBridge occupies the Reserve Land during construction.
- A reduction of \$0.7 MM was achieved for the Section 28(2) Permit negotiations. NextBridge was able to achieve savings on legal costs associated with the Section 28(2) Permit negotiations. The savings was generated by utilizing NextBridge in-house counsel versus the budgeted external legal.
- An increase to the budget \$0.7 MM was realized to support the economic participation agreements with Indigenous communities.
- An increase of \$0.8 MM due to additional legal and consultant fees in offering economic participation. Due to the delay in construction start date of 9 months, additional economic participation agreements were needed to provide for Indigenous job training and worker preparation were needed.

#### **Cost Category: 6) Indigenous Consultation – \$0.7MM**

- In increase of \$0.7 MM for Indigenous monitors and community site tours. As a condition of the approval of the Amended EA, the Indigenous Consultation Plan was updated to provide more opportunities for Indigenous communities to monitor the Project.

- To address the requirement of providing opportunities for Indigenous communities to be involved in environmental monitoring activities, it was determined that:
  - Ten full time Indigenous monitors would be employed throughout the construction phase of the Project; and
  - As part of its ongoing Duty to Consult, NextBridge will provide tours of the Project to Indigenous community members.

- 2. According to the January Progress Report, permit and access approval delays have resulted in construction start-up delays, in addition to the delays identified in the previous report. Please provide more information explaining the reasons for the delays to date in receiving permit and access approvals. In addition, please provide the analysis of impacts on the East-West Tie Project's cost and schedule now. If this is not possible at this time, please explain why the analysis can only be completed following the 2020 winter construction season.**

## **DELAYS TO DATE IN RECEIVING PERMIT AND ACCESS APPROVALS**

Delays in receiving permit and access approvals were driven by a number of factors including, but not limited to:

- The implementation of a new Amended EA mandated DPPs permitting approach system, as explained below;
- The unanticipated extended duration of the review and approval period for the Ministry of Natural Resources and Forestry of the DPPs;
- Determination of adequacy of consultation with Biinjitiwabik Zaaging Anishnabek (BZA) by the government which ultimately delayed the permit issuance process; and
- Current restrictions in the Aggregate Act that required an exemption before roads were built which took a number of months and delayed road building.

### **DPP Process and Review**

As part of the conditions of approval of the Amended EA, a new concept was created that required NextBridge to produce DPPs. Twelve DPPs were created; one for the over-arching Project, and then one for each of the eleven Work Fronts (WFs).

The intent of the DPPs is to verify and supplement the information in the Amended EA and include information on how NextBridge will construct the Project. Each plan was submitted to the Ministry of Natural Resources and Forestry and to Indigenous communities for a minimum of 30 days prior to carrying out construction activities in each of those WF's.

The overarching DPP was submitted on June 22, 2019, and a revised version was re-submitted on July 30, 2019. The content of the overarching DPP was discussed at length with the government agencies to establish content. Each one of the subsequent WF DPPs was prepared and reviewed by the regulators; however, the relationship of these DPPs to the content in the permits was unclear, and therefore, the review period was extended. By mid-November 2019 all the DPPs had formally been submitted for review to allow for the expected availability of all permits to be issued by mid-December 2019.

### **Determination of adequacy of consultation with Biinjitiwabik Zaaging Anishnabek (BZA)**

On March 8, 2019, BZA filed a Judicial Review against the Government of Ontario and the Ontario Energy Board for issuing the Order in Council and LTC, respectively, which designated NextBridge as the Transmitter of the Project.

BZA asserted that it was not adequately consulted or accommodated on the Project. In addition to engagement with BZA, which began shortly after the initial award of the development to the Project in 2013, NextBridge engaged with BZA to provide additional consultation on the Project, and more specifically regarding the permits managed under the MNRF, for WFs 1, 2, 3, 4, 5, and 6 for which they claim the Project is impacting parts of their Traditional Territory.

In order to determine if BZA had been adequately consulted the MNRF halted the issuance of permits while NextBridge engaged with the community to address their concerns. The MNRF released the permits for WFs 2 and 6 in December 2019 (impeding the start of the winter construction season in northern Ontario which had begun in September) as consultation progressed and Traditional Territory boundaries were refined.

After MNRF had determined that consultation had been adequate, the approvals for permits for WFs 3, 4, and 5 were released on January 31, 2020 (well into the construction season and after the 4Q 2019 Reporting Period). The delay in the issuance of permits resulted in a delay in access to clear the trees across a number of areas. Although NextBridge managed the delay in permits to prevent work stoppages to the extent possible, interruptions were still encountered while reorganizing crews and mobilizing them to other parts of the Project.

### **Aggregate Act Restrictions**

The Aggregate Act did not allow the proposed road building and crossing methods that were outlined in the Amended EA and common construction practice. Road building approach was secured through an exemption from the government after months of discussions and negotiations which delayed the start of constructing access roads to reach the right of way.

## **ANALYSIS OF IMPACTS ON THE CURRENT EAST-WEST TIE PROJECT'S COST AND SCHEDULE**

It is not possible at this time to analyze the potential impacts to the East-West Tie's cost and schedule resulting from the delay of permit approvals due to the seasonal nature of construction in northern Ontario and the limitations of constructing in environmentally sensitive timing windows for birds, bats, and caribou. NextBridge's construction schedule is based on the need for the ground to be frozen to clear trees and build roads; however, the timing as to when the ground freezes and thaws cannot be reliably predicted or controlled.

NextBridge's approved Amended EA includes a commitment to optimize the construction schedule to conduct as much clearing as possible under frozen ground conditions for several reasons, including:

- Reduction of impacts to wetlands and hydrologically sensitive areas;
- Decreases in sedimentation and erosion; and

- Reduction of ground disturbance and the need to install and remove road building materials that can cause additional impacts to the environment.

Installing roads under frozen ground conditions also allows the avoidance of timing windows for:

- Migratory nesting birds (April 15<sup>th</sup> to August 31<sup>st</sup>);
- Nursery and calving for Woodland Caribou (May 1<sup>st</sup> to September 15<sup>th</sup>);
- Moose aquatic feeding area (May 1<sup>st</sup> to June 30<sup>th</sup>);
- Avoids bat maternity roosting (May 15<sup>th</sup> to August 31<sup>st</sup>); and
- Eastern Whip-Poor-Will nesting (May 15<sup>th</sup> to August 31<sup>st</sup>).

Additionally, the development of East-West Tie Project construction schedule was designed to allow construction to take place in the Caribou Zone (restricted by the Overall Benefits Permit) as well as in areas limited by Species at Risk timing restriction windows noted above. The Overall Benefit Permit requires all construction activities in the Caribou Zone (WFs 5, 6, and 7) be performed between a period of September 15<sup>th</sup> to April 30<sup>th</sup>. The Species at Risk permitting restrictions also limit clearing activities beyond the winter season across all other WF's on the Project.

It is likely that NextBridge will no longer be able to complete all activities in the Caribou Zone as planned during the 2019/2020 winter season, although this still depends on the timing of frozen ground conditions. This may require construction crews to re-mobilize to these areas during the 2020/2021 winter season, which was not part of the original construction schedule.

In anticipation that NextBridge will no longer be able to complete all activities in the Caribou Zone as planned during the winter 2019/2020 season, NextBridge has adjusted its construction sequence which has impacted the flow of work in other WF's. NextBridge must be able to assess the amount of clearing and road building that is completed in the winter of 2019/2020 to be able to then assess how much more clearing needs to be completed in the winter of 2020/2021.

## **ADDITIONAL ANALYSIS TO BE COMPLETED FOLLOWING THE 2020 WINTER CONSTRUCTION SEASON**

Once the spring thaw period is confirmed for the 2019/2020 winter construction period, the schedule will be re-evaluated to determine the amount of work completed this winter season and establish plans for clearing activities to resume after September 1, 2020. At that time, it will also be possible to analyze the potential impacts to the East-West Tie's cost and schedule resulting from the delay of permit approvals.

**3. Please identify the impacts for the East-West Tie Project's costs and schedule under each of the following two scenarios: (a) all necessary approvals are received in February and (b) no necessary approvals are received prior to the end of the 2020 winter construction season.**

For many of the same reasons explained in response to Question #2, NextBridge cannot identify the impacts for the Project's costs and schedule for the scenarios presented in Question #3. That said, NextBridge provides the following additional information to facilitate an understanding of how the scenarios could affect the Project.

- a) Having all of the permits by the end of February would no longer provide immediate benefits to the Project for the 2019/2020 winter season as outlined below. However, obtaining all permits by the end of February would provide more certainty for the scheduling of the 2020/2021 winter season activities.

At this time, existing crews have been mobilized to other locations where construction activities are permitted. If all permits were received by the end of February 2020, the addition of clearing crews at that time is not advisable given the uncertainty of the timing of the upcoming spring thaw. If spring thaw arrives early, mobilization could take place with little to no work taking place, resulting in increased costs to the Project.

- b) No matter whether all permits are obtained by the end of February, construction crews will continue working for as long as possible, weather permitting. Once the spring thaw begins, crews will have to stop work until the terrain can be accessed to continue construction activities.

**4. According to the January Progress Report, there may be delays associated with finalizing acquisition with mining claim holders. Please outline the potential implications for the East-West Tie Project's cost and schedule of the Mining and Lands Tribunal hearings for the two outstanding mining claim holders.**

NextBridge requires certain surface rights in order to construct the Project, including in locations where there are existing unpatented mining claims. NextBridge has reached agreement with all but two mining claim holders and has made constant efforts to resolve these remaining claims over the past 18 months.

One mining claim is located in WF 6, which is in an environmentally sensitive area for Woodland Caribou, and has a winter construction restriction (as described earlier) where NextBridge cannot clear vegetation and trees within the timing window of nursery and calving season.

If NextBridge cannot reach a settlement with the mining claim holder in WF 6 before the end of the 2019/2020 winter construction season, clearing will have to be completed in the winter of 2020/2021.

The second remaining outstanding mining claim is located in WF 10. Currently, NextBridge does not have the necessary environmental permits for this WF that would allow for construction activities to commence in the 2019/2020 winter construction period. The clearing of this parcel of land will now have to be completed during the 2020/2021 winter construction season and the impact to schedule and cost will be reassessed after the end of the winter 2019/2020.

The cost impacts of resolving these two outstanding claim holders has not been estimated, and would not be estimated until the winter season has been completed and a new schedule created to factor in skipping these sections and having to return to them if we do not resolve them this winter.