

September 10, 2018

**VIA COURIER, RESS and EMAIL**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> 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  
Argument-in-Chief of NextBridge (Development Costs)**

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In accordance with Procedural Order No. 3 dated August 31, 2018, enclosed please find the Argument-in-Chief (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 ARGUMENT IN CHIEF  
ON DEVELOPMENT COSTS**

1. Upper Canada Transmission, Inc., operating as NextBridge Infrastructure LP (NextBridge), seeks recovery of prudently incurred development costs in the amount of \$40.2M. This amount includes: (1) the \$22.4M in Board-approved development costs approved at the time of designation; (2) \$13.3M in incremental development costs that were incurred during the extended development period; and (3) \$4.5M in expenditures related to First Nations and Métis participation, land acquisition costs, and other costs that were identified as unbudgeted at the time of designation. NextBridge spent these amounts as it completed development work for the East-West Tie Line project (the EWT Line Project) between August 7, 2013 and July 31, 2017. NextBridge also complied with all reporting requirements related to tracking the development costs. NextBridge submits that review of the evidence leads to the conclusion that NextBridge prudently incurred the identified development costs and that the Board should approve them as prudent.

## **Introduction**

2. In its EB-2011-0140 Phase 2 Decision and Order issued on August 7, 2013 (the Phase 2 Decision), the Board designated NextBridge as the electricity transmitter to complete development work for the EWT Line Project. NextBridge filed an application for leave to construct the EWT Project on July 31, 2017. On July 31, 2017, Hydro One Networks Inc. (Hydro One) also filed an application for leave to construct certain transmission facilities (the EWT Station Project) to connect to the EWT Line Project.

3. The Board issued a Notice of Application on October 17, 2017 in which it indicated that it would hear the applications in respect of the EWT Line Project and the EWT Station Project together. On February 15, 2018, Hydro One filed an application for leave to construct a transmission line between the same two points as the EWT Line Project and Hydro One referred to this proposal as the Lake Superior Link Project (the LSL Project). In a Procedural Order issued on August 13, 2018, the Board said that the applications in respect of the EWT Line Project, the EWT Station Project and the LSL Project will be heard together in a single hearing (the Combined Hearing).

4. The evidence filed in support of NextBridge's leave to construct application was prepared and submitted in compliance with the Board's *Filing Requirements for Electricity Transmission Applications, Chapter 4*,<sup>1</sup> which do not address the subject of development costs. NextBridge was mindful, though, of the Phase 2 Decision in which the Board indicated an expectation that, at the time of applying for leave to construct, NextBridge would file a proposal for the disposition of development costs.<sup>2</sup> In its leave to construct application, NextBridge put forward a proposal that the prudence of

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<sup>1</sup> Exhibit A-2-1.

<sup>2</sup> EB-2011-0140 Phase 2 Decision and Order, page 41.

development costs be decided in a future proceeding prior to the in-service date for the EWT Line Project.<sup>3</sup>

5. The Board did not accept NextBridge's proposal for the consideration of development costs in a future proceeding, and the Board has issued a series of Procedural Orders regarding the review of development costs in this proceeding. More particularly, the sequence of Procedural Orders regarding development costs is as follows:

(a) Procedural Order No. 2, March 1, 2018

The Board said that it would conduct a detailed review of development costs (and construction costs) in the EB-2017-0182/EB-2017-0194 proceeding and that a more complete record is needed to assess the prudence of the development costs. The Board ordered that NextBridge file any additional evidence on development costs by March 14, 2018.

(b) Procedural Order No. 5, June 26, 2018

The Board said that it would schedule an oral hearing to review NextBridge's development costs related to the EWT Line Project. The Board said that the scope of the hearing would be the prudence of NextBridge's development costs up to the date of filing its leave to construct application on July 31, 2017. The Board ordered that an oral hearing to review development costs would begin on July 5, 2018 and, if necessary, continue on July 6, 2018.

(c) Procedural Order No. 6, July 27, 2018

The oral hearing to review NextBridge's development costs was held on July 5, 2018 and NextBridge filed answers to undertakings from the hearing on July 23, 2018. The Board ordered that OEB staff and intervenors may pose questions pertaining to the undertakings by way of written interrogatories by August 7, 2018 and that NextBridge file responses to the interrogatories by August 17, 2018. By way of letter

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<sup>3</sup> EB-2017-0182/EB-2017-0194 Procedural Order No. 2, March 1, 2018, page 2; Exhibit B-13-1; Exhibit I.B.NextBridge.Staff.18.

dated July 31, 2018, the Board extended the timeline for filing written interrogatories arising from NextBridge's undertaking responses on development costs to August 14, 2018, with responses due by August 24, 2018.

(d) Procedural Order No. 3 in the Combined Hearing, August 31, 2018

The Board ordered that NextBridge file and serve argument in chief pertaining to development costs by September 10, 2018, that OEB staff and intervenors shall file and serve their written submission on development costs by September 19, 2018 and that NextBridge file its reply submission by September 26, 2018.

6. This is NextBridge's argument in chief on development costs filed in accordance with Procedural Order No. 3 in the Combined Hearing. Under the headings that follow, NextBridge will address the background to the Board's review of development costs, the extensive evidence that has been filed by NextBridge regarding its development costs, and the prudence of the development costs.

### **Background**

7. The Board's Phase 1 Decision and Order in the EB-2011-0140 proceeding (the Phase 1 Decision) addressed the prudence of budgeted development costs. The directions provided by the Board with regard to development costs include the following:

The selection of a transmitter for designation will indicate that the Board has found the development costs to be reasonable as part of an overall development plan. This selection will also establish that the development costs are approved for recovery. ...applicants should be aware that costs in excess of budgeted costs that are put forward for recovery will be subject to a prudence review, which would include consideration of the reasons for the overage.<sup>4</sup>

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<sup>4</sup> Phase 1 Decision and Order, page 17.

8. As noted above, the Board determined that NextBridge is the designated transmitter for the development phase of the EWT Line project. Consistent with the comments set out above from the Phase 1 Decision, the Board found that the development costs budgeted by NextBridge in the amount of \$22,187,022 (2012 dollars) are reasonable.<sup>5</sup>

9. NextBridge's evidence in the designation proceeding specifically addressed the basis for and assumptions underlying its 2012 development cost estimate. In this evidence, NextBridge said that "[a]lthough significant in value", no estimate had been included for First Nations and Métis land acquisition as this would be determined at a later date, after engagement and consultation had advanced.<sup>6</sup> Further, in response to Board Staff Interrogatory #26 to all applicants in that proceeding, NextBridge provided a table of costs which again said that an estimate for First Nations and Métis participation costs and land acquisition costs was not included in the development costs budget as it would be determined after engagement and consultation had advanced.<sup>7</sup>

10. Thus, NextBridge's development costs were approved in the designation proceeding on the basis that First Nations and Métis participation costs and land acquisition costs are part of the development costs, and, also with the understanding that the amount of such costs would be determined after the consultations with First Nations and Métis had advanced.

11. In the Phase 2 Decision, the Board ordered that a deferral account be established for NextBridge to record the actual costs of development of the EWT Line

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<sup>5</sup> Phase 2 Decision, page 41.

<sup>6</sup> EB-2011-0140 Filing by NextBridge on January 4, 2013, page 116.

<sup>7</sup> EB-2011-0140 NextBridge Response to Board Interrogatory 26 to all Applicants, filed March 28, 2013. See also Exhibit I.JD1.NextBridge.CCC.2, which, in response to parts a) and b) of the interrogatory, sets out numerous places in the record of the designation proceeding where NextBridge highlighted the potentially wide range of participation choices available that could not be appropriately narrowed or committed to in advance of consultation.

Project from the date of the decision up to the filing of a leave to construct application, or such other time as the Board may order.<sup>8</sup> The Board also ordered that special conditions be included in NextBridge's licence to require monthly reporting on specified matters until the filing of the leave to construct application, and it also ordered that NextBridge file a revised development schedule for review and approval.<sup>9</sup>

12. The Accounting Order for the Development Cost Deferral Account (DCDA) was issued as part of the Board's Decision and Order Regarding Reporting by Designated Transmitter dated September 26, 2013 (the Reporting Order).<sup>10</sup> The DCDA Accounting Order sets out the specific sub-account categories in which NextBridge is required to track and record its development costs.

13. The Reporting Order also approved NextBridge's Revised Development Schedule.<sup>11</sup> The Revised Development Schedule approved by the Board was based on an in-service date for the EWT Line Project in the first half of 2018 and it set out targets for a number of milestones culminating with a target date of January 28, 2015 for the filing of a leave to construct application by NextBridge.<sup>12</sup> As found by the Board in a later decision, the filing date and in-service date were consistent with the information received, at that time, from the Ontario Power Authority (OPA) regarding the need for the line.<sup>13</sup>

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<sup>8</sup> Phase 2 Decision, page 43, paragraph 4.

<sup>9</sup> EB-2011-0140 Phase 2 Decision and Order, pages 42-43, paragraphs 2 and 3, respectively.

<sup>10</sup> Reporting Order, Appendix 2.

<sup>11</sup> Reporting Order, Appendix 1.

<sup>12</sup> Reporting Order, Appendix 1; Decision and Order Regarding Reporting by Designated Transmitter, January 22, 2015, at page 2.

<sup>13</sup> Decision and Order Regarding Reporting by Designated Transmitter, January 22, 2015, at page 2.

14. As well, the Reporting Order required that NextBridge report to the Board on the 15<sup>th</sup> business day of each month, beginning on October 21, 2013, with regard to the matters set out in Schedule 3 to NextBridge's licence.<sup>14</sup>

15. NextBridge proceeded to work towards completion of the milestones set out in the Revised Development Schedule, including the filing of a leave to construct application by January 28, 2015. NextBridge reported to the Board on this work in monthly reports that it filed from October of 2013 to October of 2014.<sup>15</sup> In so doing, NextBridge reported on development costs that were tracked and recorded in the specific sub-account categories required by the DCDA Accounting Order.

16. On September 30, 2014, the OPA wrote to the Board to recommend that the in-service date for the EWT Line Project be extended. The Board responded by requiring NextBridge and the OPA to work together to develop a revised development schedule, a revised reporting schedule, and a new proposed in-service date. The Board also asked NextBridge to consider the effect on development costs of the revised development schedule.<sup>16</sup>

17. NextBridge provided revised development and reporting schedules to the Board on December 19, 2014. At that time, NextBridge was awaiting a decision regarding access to Pukaskwa National Park (the Park) so that a route traversing the Park could be considered.<sup>17</sup> In its Decision and Order issued on January 22, 2015 (the January

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<sup>14</sup> Reporting Order, page 3, paragraph 2.

<sup>15</sup> Filed in EB-2011-0140 proceeding and imported into EB-2017-0182 proceeding record in Exhibit I.NextBridge.SEC.2. In accordance with Board correspondence to NextBridge dated October 29, 2014, NextBridge was not required to file reports for the months of November and December 2014.

<sup>16</sup> Decision and Order Regarding Reporting by Designated Transmitter, January 22, 2015, at page 2.

<sup>17</sup> *Ibid.*



2015 Decision), the Board said that, given uncertainty about routing and access to the Park, it was not prepared to approve the revised development schedule at that time.<sup>18</sup>

18. In the January 2015 Decision, the Board relieved NextBridge from compliance with milestones that fell due during that month; it changed the frequency of reporting by NextBridge from monthly to quarterly (the 15<sup>th</sup> business day of April, July, October and January of each year); and it required NextBridge to provide answers to questions included at Appendix A to the Decision and Order.<sup>19</sup> Among other things, the questions in Appendix A required NextBridge to provide information about new activities not included in the original development schedule and about incremental development costs, should NextBridge seek approval of development costs in addition to the Board-approved budget.<sup>20</sup>

19. On May 15, 2015, NextBridge filed responses to the Board's questions, an Updated Extended Development Schedule and details of additional development costs for the Extended Development Period. Subsequently, NextBridge learned that access to the Park would not be allowed for the purpose of studying a route through the Park and, accordingly, NextBridge updated the May 15, 2015 filing on June 24, 2015. NextBridge asked the Board to approve the Updated Extended Development Schedule and development costs of \$20.37M in addition to the approved development budget of \$22.4M.<sup>21</sup>

20. The Board issued its decision in respect of the extended schedule and the additional development costs on November 19, 2015. The Board approved the

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<sup>18</sup> *Supra*, note 16, page 3.

<sup>19</sup> January 2015 Decision, pages 4-5, paragraphs 1, 2 and 4, respectively.

<sup>20</sup> January 2015 Decision, Appendix A, items 2 to 6.

<sup>21</sup> EB-2015-0216 Decision and Order, November 19, 2015, page 1.

Updated Extended Development Schedule,<sup>22</sup> but it did not approve the Extended Development Period costs for recovery. The Board indicated that the reasonableness of the development cost budget, as approved in EB-2011-0140, had been determined, but that prudence had not been determined in respect of additional development costs.<sup>23</sup> The Board also said that:

The OEB remains of the view that the established parameters of the DCDA adequately facilitate the tracking of unanticipated costs for full review at a later date.<sup>24</sup>

21. Accordingly, NextBridge continued to track and record actual development costs consistent with the specific sub-account categories required by the DCDA Accounting Order. NextBridge continued its development activities in accordance with the Updated Extended Development Schedule. NextBridge also reported to the Board on the progress of its development activities, and its actual development costs in quarterly reports that were filed from April of 2015 to July of 2017.<sup>25</sup>

22. In March of 2016, the Lieutenant Governor in Council issued an order (the OIC) declaring, pursuant to section 96.1 of the *Ontario Energy Board Act, 1998* (the OEB Act),<sup>26</sup> that the construction of the EWT Line Project is needed as a priority project.<sup>27</sup> The OIC makes clear that the expansion or reinforcement of the electricity transmission network between Wawa and Thunder Bay, with an in-service date of 2020, is considered to be a priority.<sup>28</sup>

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<sup>22</sup> *Supra*, pages 9-10.

<sup>23</sup> *Supra*, page 8.

<sup>24</sup> *Supra*, page 9.

<sup>25</sup> Filed in EB-2011-0140 and EB-2015-0216 proceedings and imported into EB-2017-0182 proceeding record in Exhibit I.NextBridge.SEC.2.

<sup>26</sup> S.O. 1998, C. 15, Sched. B.

<sup>27</sup> Exhibit B-2-1, page 4.

<sup>28</sup> Exhibit B-4-1, Attachment 1.

23. From the time of the issuance of the OIC in March of 2016, NextBridge has been managing the EWT Line Project with a view to achievement of a 2020 in-service date.<sup>29</sup> As far as NextBridge is aware, there has been no change, since March of 2016, to the declaration under section 96.1 of the OEB Act that an expansion or reinforcement project between Wawa and Thunder Bay with an in-service date of 2020 is a priority.

24. On December 1, 2017, the Independent Energy System Operator (IESO) submitted its report on an *Updated Assessment of the Need for the East-West Tie Expansion* to the Ministry of Energy. In the updated need assessment, the IESO continued to recommend an in-service date of 2020 for the project.<sup>30</sup> The Minister of Energy sent a letter to the IESO on December 4, 2017, with a copy to the Chair of the Board, which referred to the OIC, as well as the Province's Long Term Energy Plan, and stated that the IESO's report "clearly explains the need to pursue the completion of the EWT with a 2020 in-service date".<sup>31</sup>

### **Key Evidence on Development Costs**

25. As a result of the particular history of the EWT Line Project, there is an extensive evidentiary record in this case to support the reasonableness and prudence of the development costs incurred by NextBridge. This extensive evidentiary record includes the following:

- (a) Monthly Reports to the Board from October 2013 to October 2014

The monthly reports provide detailed information about NextBridge's work activities during the development period and about the status and achievement of milestones. Each report also provides actual development costs on the basis of the DCDA sub-account categories. Thus, each report provides a monthly update on development costs together with an

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<sup>29</sup> Response to Undertaking JD1.2, page 5.

<sup>30</sup> *Updated Assessment of the Need for the East-West Tie Expansion*, December 1, 2017, page 19.

<sup>31</sup> Letter dated December 4, 2017 from the Minister of Energy to Mr. Peter Gregg, President and CEO of the IESO.

explanation of the work activities and progress associated with the particular month's updated costs.

(b) NextBridge May 15, 2015 and June 24, 2015 Filings

These filings provide considerable evidence in support of the reasonableness and prudence of NextBridge's development costs. The May 15, 2015 filing includes an update of development costs and development activities. It also addresses in detail the impacts of extending the development period and the implications of other circumstances, such as a denial of access to the Park. Both the May 15, 2015 filing and the June 24, 2015 filing contain a detailed breakdown and explanation of extended development period incremental activities and budgeted costs. Unlike NextBridge's tracking and recording of costs on the basis of the DCDA sub-account categories, the detailed breakdown was prepared so as to estimate costs by activity. This was done in order to respond to the request in item 6 of Appendix A to the January 2015 Decision, which asked NextBridge to break down incremental development costs by activity.

(c) Quarterly Reports to the Board from April 2015 to July 2017

As is the case with the monthly reports referred to above, the quarterly reports provide detailed information about work activities during the development period, about the status and achievement of milestones and about actual development costs. Each report represents a quarterly update on development costs together with an explanation of the work activities and progress associated with the particular quarter's updated costs.

(d) January 25, 2018 Responses to Interrogatories

Extensive evidence related to development costs is provided in NextBridge's responses to the first round of interrogatories filed January 25, 2018.<sup>32</sup>

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<sup>32</sup> NextBridge Response to Interrogatories STAFF.2(a), STAFF.4, STAFF.7(e), STAFF.15, STAFF.18, STAFF.21, STAFF.22, STAFF.23, STAFF.25, STAFF.26, STAFF.29, STAFF.34, CCC.4, CCC.9, CCC.15, HONI.5, SEC.2, SEC.9, SEC.11 and SEC.15.

(e) March 14, 2018 Filing

As noted above, the procedural order issued on March 1, 2018 stated the Board's intention to review development costs in this proceeding and it provided an opportunity for NextBridge to file additional evidence on development costs. NextBridge did so on March 14, 2018. The March 14, 2018 filing included considerable narrative explaining the prudent approach that NextBridge brought to cost management and control throughout the development period and it also included 12 attachments. The attachments set out costs incurred and descriptions of activities completed during the development period, on an individual work stream basis, and, in one of the attachments, NextBridge consolidated the Extended Development Period Costs to match the format in its reports to the Board.

(f) May 7, 2018 Technical Conference and Undertaking Answers

Further evidence related to development cost was provided orally in the May 7, 2018 technical conference as well as in NextBridge's answers to undertakings.<sup>33</sup>

(g) July 5, 2018 Hearing

A full day of oral hearing on July 5, 2018 was devoted to NextBridge's development costs and a number of undertakings were given by NextBridge, including undertakings to re-map or re-cast costs that, in accordance with the Board's directions, had been tracked and recorded on the basis of the DCDA sub-account categories.<sup>34</sup>

(h) Undertaking Answers

NextBridge's answers to undertakings given at the oral hearing on July 5, 2018 provide additional support for the reasonableness and prudence of the development costs.<sup>35</sup> For example, the answer to Undertaking JD1.2 explains how, during the entire 48 months of the extended development period, NextBridge was focused on effectively and efficiently managing the overall disciplines and associated activities, such that it was successful in

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<sup>33</sup> NextBridge Responses to Undertakings JT1.1, JT1.2, JT1.3, JT1.4, JT1.5, JT1.6, JT1.8, JT1.9, JT1.10, JT1.13, JT1.16, JT1.22, JT1.23, JT1.30, JT1.33; May 7, 2018 Tr., pages 12-37, 100-101, 104-107, 131-133, 143-148, 157 – 159, 169.

<sup>34</sup> July 5, 2018 transcript.

<sup>35</sup> NextBridge Undertaking Responses dated July 23, 2018.

limiting the incremental extended development period cost to \$13.3M, down from the budgeted \$20.3M estimate.<sup>36</sup>

(i) Responses to Interrogatories on Undertaking Answers

NextBridge filed responses to more than 55 interrogatories, many with numerous sub-parts, on its answers to the undertakings given during the hearing on July 5, 2018. The responses provide additional detail on a broad range of topics, including extensive detail related to activities completed and costs incurred. As a result of the detailed nature of many of these interrogatories, NextBridge's interrogatory responses provide support for the development costs at a very thorough level of detail.

**Prudence of NextBridge EWT Line Project Development Costs**

26. The Supreme Court of Canada provided guidance regarding the methodology for a prudence review of a regulated utility's costs in two decisions released in September of 2015. The decisions resulted from two cases heard together by the Supreme Court, one of which, *Ontario (Energy Board) v. Ontario Power Generation Inc.* (the OPG Case),<sup>37</sup> originated in Ontario and one of which, *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)* (the ATCO Case),<sup>38</sup> originated in Alberta.

27. In the OPG Case, the majority of the Supreme Court noted that the OEB Act "requires only" that the Board set just and reasonable rates and that the statute allows the Board to make use of a variety of analytical tools in assessing the justness and reasonableness of a utility's proposed rates.<sup>39</sup> Thus, the majority said that "the Board's ability to select its methodology rests on the particulars of the statutory scheme".<sup>40</sup>

28. The statement by the majority of the Court about "the Board's ability to select its methodology" was made in the context of arguments about whether the Board is

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<sup>36</sup> Response to Undertaking JD1.2, pages 5-6.

<sup>37</sup> 2015 SCC 44.

<sup>38</sup> 2015 SCC 45.

<sup>39</sup> 2015 SCC 44, at paragraph 103.

<sup>40</sup> *Supra*, at paragraph 105.

required to apply a particular formulation of the prudence test that includes, among other things, the following propositions:

- ~ To be prudent a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made;
- ~ Hindsight should not be used in determining prudence; and
- ~ Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time.<sup>41</sup>

29. The majority said that the Board is not required as a matter of law to apply this formulation of the prudence test, but that it “presents one express statement of how a regulatory board might structure its review to assess the prudence of utility expenditures at the time they were incurred or committed”.<sup>42</sup> More particularly, for the purpose of understanding “the reasonableness of a regulator’s choice of methodology”, the majority drew a distinction between forecast costs and committed costs.

30. Forecast costs, the majority said, are costs which the utility has not yet paid and over which the utility still retains discretion as to whether the disbursement will be made. By contrast, committed costs are those for which, if a regulatory board disallows recovery of the costs in approved rates, the utility and its shareholder will have no choice but to bear the burden of those costs themselves, because the utility has already spent the costs or has entered into a binding commitment or is subject to other legal obligations that leave it with no discretion.<sup>43</sup>

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<sup>41</sup> *Supra*, at paragraph 99.

<sup>42</sup> *Supra*, at paragraph 102.

<sup>43</sup> *Supra*, at paragraph 82.

31. The majority said that, where the regulator has discretion over its methodological approach, understanding whether the costs at issue are forecast or committed may be helpful in reviewing the reasonableness of a regulator's choice of methodology.<sup>44</sup> The majority also said that:

...it is not necessarily unreasonable ... for the Board to evaluate committed costs using a method other than a no-hindsight prudence review. ... The question of whether it was reasonable to assess a particular cost using hindsight should turn instead on the circumstances of that cost. I emphasize, however, that this decision should not be read to give regulators *carte blanche* to disallow a utility's committed costs at will.<sup>45</sup>

32. In line with these comments, the Supreme Court said in the ATCO Case that "the no-hindsight prudence test may be appropriate when the regulator reviews utility costs that are committed".<sup>46</sup>

33. The development costs incurred by NextBridge are, of course, committed costs. Through the course of the extended development period NextBridge was faced with, and successfully managed, significant changes in circumstances and challenges that were not expected when the budgeted development costs were approved in the designation proceeding. NextBridge submits that an assessment of the prudence of the development costs must be conducted in the context of the circumstances that NextBridge encountered during the Extended Development Period.

34. The circumstances during the extended development period that give important context to an understanding and assessment of the development costs include the following:

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<sup>44</sup> *Supra*, at paragraph 83.

<sup>45</sup> *Supra*, at paragraph 104.

<sup>46</sup> 2015 SCC 45, at paragraph 48.



(a) OPA Recommendation in September of 2014

As stated above, the OPA recommended in September of 2014 that the in-service date for the EWT Line Project be extended. This recommendation was made approximately four months prior to the end of the development period contemplated by the Board-approved Revised Development Schedule. At the time of the OPA's recommendation, the NextBridge regulatory team was in the process of reviewing and providing feedback in relation to the second draft version of the leave to construct application that was to be filed by January 28, 2015.<sup>47</sup> The evidence explains in detail NextBridge's response to this unexpected development to ensure that costs would continue to be prudently managed despite a significant change in circumstances.<sup>48</sup> NextBridge successfully transitioned from an average spending level of \$1.4M per month in the fall of 2015 to a low spend of \$240,000 in March of 2015.<sup>49</sup>

(b) Extension of the Development Period from 18 Months to 48 Months

The development period contemplated by the Board-approved Revised Development Schedule was 18 months. The filing of the leave to construct application on July 31, 2017, as opposed to January 28, 2015, added 30 months to the development period, for a total of 48 months.<sup>50</sup> NextBridge carefully and prudently considered the appropriate level of work to sustain the EWT Line Project over the Extended Development Period without jeopardizing the benefit of work completed to date.<sup>51</sup> Development activities that had either not yet been initiated or could be delayed without incurring additional costs or compromising the project's progression were delayed; activities that were already underway that could be put on hold without significant overall additional expenditure were frozen; activities that were already committed were continued to ensure that additional costs were not incurred; and activities that were critical to proceed so as to preserve the project's good standing and allow effective resumption of full development were identified.<sup>52</sup> As a result, NextBridge's actual spending on budgeted development costs over a 48 month Extended Development Period was \$35.7M. Even though the OPA's recommendation to delay the in-service date was made approximately

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<sup>47</sup> Exhibit I.JD1.NextBridge,STAFF.7, pages 1-2.

<sup>48</sup> See, for example, Exhibit B-16-1, pages 6 to 11.

<sup>49</sup> Exhibit B-16-1, page 10.

<sup>50</sup> Exhibit B-16-1, page 6.

<sup>51</sup> Exhibit B-16-1, page 9.

<sup>52</sup> Exhibit B-16-1, pages 7 to 9.

four months before the expected end of the development period, NextBridge was able to extend the \$22.4M budget approved at designation until the fall of 2016 – more than a year and a half beyond the expected end of the development period on January 28, 2015. And from then, NextBridge spent only an additional \$13.3M in respect of budgeted development costs to the end of the 48 month Extended Development Period.<sup>53</sup>

(c) Unbudgeted Costs

As was made clear in the designation proceeding, NextBridge's Board-approved development costs of \$22.4M did not include costs for First Nations and Métis participation and land acquisition.<sup>54</sup> These costs were to be determined after engagement and consultation with First Nations and Métis had advanced.<sup>55</sup> NextBridge 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.<sup>56</sup> As with costs incurred in respect of all of the budgeted development costs, NextBridge has provided detailed evidence to demonstrate the prudence of its spending on the unbudgeted costs of First Nations and Métis participation and land acquisition.<sup>57</sup>

(d) Denial of Access to the Park and Route Changes

Major route changes not expected at the time of designation include routing around the Park, the Township of Dorion and Loon Lake. These major re-routes do not take into consideration over 90 alternative change requests to route around landowners or environmentally sensitive areas.<sup>58</sup> NextBridge's evidence explains the additional costs that it incurred to study alternative routes and arrive at the route proposed in the leave to construct application.<sup>59</sup> NextBridge has also provided a detailed rationale for each of the route changes in respect of the Park, Dorion and Loon Lake and the evidence explains how NextBridge worked with landowners

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<sup>53</sup> Exhibit JD1.2, page 2

<sup>54</sup> Exhibit I.JD1.NextBridge.CCC.2, particularly, response to parts a) and b) of CCC Interrogatory #2; July 5, 2018 Tr., page 221.

<sup>55</sup> EB-2011-0140 NextBridge Response to Board Interrogatory 26 to all Applicants, filed March 28, 2013.

<sup>56</sup> Exhibit JD1.5, page 1.

<sup>57</sup> Exhibit I.JD1.NextBridge.CCC.2; Exhibit I.JD1.NextBridge.HONI1.9; Exhibit I.B.NextBridge.STAFF.22; Exhibit JD1.5; July 5, 2018 Tr., pages 221-224.

<sup>58</sup> Exhibit JD1.6, pages 1-2.

<sup>59</sup> Exhibit JD1.6.

and stakeholders at Dorion and Loon Lake in order to move the project forward in a positive and constructive manner.<sup>60</sup> NextBridge's best efforts calculation is that major route changes added approximately \$1.7M to costs incurred during the Extended Development Period.<sup>61</sup>

(e) OIC in March of 2016: 2020 In-service Date

The OIC declared that the construction of the EWT Line Project is needed as a priority project, with an in-service date of 2020. The OIC added a sense of urgency and priority to ensuring that the EWT Line Project was completed so as to meet the 2020 in-service date. Prudent project management dictated that activities that might have been delayed to the construction phase of the project needed to be pursued prior to the filing of a leave to construct application in order for the 2020 in-service date to be achieved.<sup>62</sup> The IESO's updated need assessment provided to the Ministry of Energy on December 1, 2017 and the Minister of Energy's letter of December 4, 2017, make clear that there was a continued expectation that the EWT Line Project will meet a 2020 in-service date.<sup>63</sup>

35. NextBridge submits that the evidence in this case strongly supports a conclusion that the development costs are reasonable and prudent, particularly when the costs are viewed in light of the circumstances that NextBridge faced during the Extended Development Period. NextBridge submits further that there are many indicators in this case that all point to the conclusion that the development costs should be approved by the Board.

36. NextBridge implemented a robust cost management strategy and control measures during the development phase of the EWT Line Project that involved day-to-day expenditure management, regular reporting and variance analyses.<sup>64</sup> Expenditures were recorded using an established cost recording framework and in accordance with

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<sup>60</sup> Exhibit I.B.NextBridge.STAFF.34, part c).

<sup>61</sup> Exhibit JD1.6.

<sup>62</sup> Exhibit JD1.2, page 5.

<sup>63</sup> *Updated Assessment of the Need for the East-West Tie Expansion*, December 1, 2017, page 19; Letter dated December 4, 2017 from the Minister of Energy to Mr. Peter Gregg, President and CEO of the IESO.

<sup>64</sup> NextBridge response to Board Staff Interrogatory #23 at Exhibit I.B.NextBridge.STAFF.23; Exhibit B-16-1.

OEB direction. In response to new information and changing circumstances, the most significant of which was the OPA's September 2014 recommendation to extend the in-service date, NextBridge adapted development activity to suit the changing circumstances and timelines.<sup>65</sup> Upon learning of these important changes in circumstances, NextBridge revisited all development activities and assessed the characteristics of those activities to inform priorities, carefully considering the conservation and best use of development dollars in the face of a near tripling of the development period.

37 As discussed above, the Board's designation of NextBridge as the transmitter to complete development of the EWT Line Project established that NextBridge's budgeted development costs in the amount of \$22,187,022 (2012 dollars) were reasonable and approved for recovery. These approved costs, of course, were based on the development schedule that was before the Board in the designation proceeding and that contemplated the filing of a leave to construct application by January 28, 2015.

38. As a result of the OPA's recommendation in September of 2014, NextBridge re-estimated its costs to complete the work contemplated by the Updated Extended Development Schedule to be an additional \$20.37M.<sup>66</sup> In fact, despite the need to accommodate the changing circumstances set out above (including the issuance of the OIC in March of 2016), NextBridge's spending in respect of budgeted development costs, as at the time of filing of the leave to construct application, was \$13.3M, or approximately \$7M below the cost estimate associated with the Updated Extended Development Schedule approved by the Board.

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<sup>65</sup> Exhibit B-16-1.

<sup>66</sup> EB-2015-0216 Decision and Order, November 19, 2015, page 6.

39. Needless to say, it was critical that, during the Extended Development Period, NextBridge manage its activities not only with a view to meeting the target for filing a leave to construct application, but, also with a view to NextBridge's ability to meet the 2020 in-service date set out in the OIC. Thus, in order to bring a meaningful leave to construct application to the Board, it was necessary for NextBridge to proceed with development activities during the Extended Development Period focused on achieving 2020 in-service date.

40. In this regard, NextBridge's evidence notes the distinction between the regulatory view of a development period that ends with the filing of a leave to construct application and the project management view of development and construction activities. From a project management point of view, regardless of the particular point in time at which a leave to construct application is filed, effective and efficient management requires a continuous focus on the ultimate goal of completing the project on time (in this case, by the end of 2020) and within the development and construction period cost estimates/budgets.<sup>67</sup> The evidence in this case explains in considerable detail how NextBridge applied effective and efficient management to the EWT Line Project throughout the Extended Development Period with a focus on completing the project on time and within the estimates and budgets for the project.<sup>68</sup>

41. In this case, there is an extensive record of evidence, as summarized above, to support the prudence of the development costs incurred by NextBridge. The evidence has been the subject of questioning and scrutiny that was both broad-ranging and detailed. The questioning and scrutiny brought to bear on NextBridge's evidence has not revealed any instance where NextBridge failed to bring a prudent approach to spending during the development period, but, instead, has made clear that, as a result

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<sup>67</sup> Exhibit JD1.2, page 5.

<sup>68</sup> See, for example, all of the monthly and quarterly reports filed by NextBridge, Exhibit B-16-1 and Exhibit JD1.2.

of its effective and efficient project management, NextBridge succeeded in maintaining reasonable and prudent spending while navigating the numerous challenges that arose during the Extended Development Period.

### **Conclusion**

42. NextBridge seeks recovery of prudently incurred development costs in the amount of \$40.2M. The amounts were incurred as NextBridge developed the EWT Line Project in compliance with all reporting requirements and as it adapted to changing circumstances. NextBridge submits that review of the evidence leads to the conclusion that NextBridge prudently incurred the identified development costs.

43. For all of the reasons set out above, NextBridge submits that the development costs that it incurred are prudent and should be approved by the Board.

All of which is respectfully submitted.

September 10, 2018

(Original Signed)

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Fred D. Cass  
Counsel for NextBridge