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September 19, 2018

BY EMAIL AND RESS

Ontario Energy Board
2300 Young Street
27th Floor,
Toronto Ontario M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

RE: EB-2016-0182/EB-2017-0194/EB-2017-0364

We are counsel to Biinjitiwaabik Zaaging Anishinaabek, an intervenor in the above proceedings. Please find enclosed the submissions of Biinjitiwaabik Zaaging Anishinaabek with respect to Nextbridge's Development Costs in these proceeding, submitted in accordance with Procedural Order No. 3 and Procedural Order No. 4 of the Combined Proceedings issued August 31st 2018 and September 7th 2018 respectively.

Please do not hesitate to contact me should there be any issues with the same.

Yours very truly,

ESQUEGA LAW OFFICE

ETIENNE ESQUEGA

ARGUMENT IN CHIEF – Nextbridge Development Costs
From BIINJITWAABIK ZAAGING ANISHINAABEK (“BZA”)

Filed September 19, 2018

1. Biinjitiwaabik Zaaging Anishinaabek agrees with the position taken by BLP in that the duty to consult and accommodate is a constitutional duty that cannot be ignored and that it must be undertaken early in the development process. While the duty to consult is an ongoing duty, adequate consultation and accommodation with the First Nations and Metis groups affected by the transmission line project must take place before final decisions are made. With respect to this project, accommodation includes economic participation. As noted by BLP in their submissions, economic participation was identified as a priority by the Minister of Energy during the designation stage.
2. Biinjitiwaabik Zaaging Anishinaabek submits that Nextbridge was assigned the procedural duty to consult and accommodate eighteen different (18) Indigenous communities as identified by the Minister of Energy.
3. Despite the fact that Nextbridge was delegated the duty to consult, and that the duty needed to be undertaken early in the process, BZA submits that the development cost spending of Nextbridge on Indigenous consultation and participation needs to be carefully scrutinized on the basis that Nextbridge’s consultation and participation benefits offered to Biinjitiwaabik Zaaging Anishinaabek are inadequate or non-existent.

4. Nextbridge has confirmed in this proceeding that Biinjitiwaabik Zaaging Anishinaabek will not be offered any equity in the project and may be entitled to some participation benefits. Nextbridge's spending needs to be scrutinized as it has failed, or been unwilling, to enter into an economic participation agreement with BZA despite the fact that:
 - a. Biinjitiwaabik Zaaging Anishinaabek has an outstanding Aboriginal title claim;
 - b. Biinjitiwaabik Zaaging Anishinaabek is located only approximately 50 km away from the transmission line;
 - c. The transmission line is in the traditional territory of the Biinjitiwaabik Zaaging Anishinaabek; and
 - d. No one has ever determined, and Biinjitiwaabik Zaaging Anishinaabek has never agreed, that it is an Indigenous community which is less adversely affected by the project.
5. In fact, Nextbridge has only reached economic participation agreements with the six (6) BLP First Nations communities and the Metis Nation of Ontario. Nextbridge has never offered any reasonable explanation as to why it has not been able to enter into economic participation agreements with the eight (8) remaining Indigenous Communities, which includes the Biinjitiwaabik Zaaging Anishinaabek, despite the financial resources it claims to have committed to this since August of 2013.
6. Biinjitiwaabik Zaaging Anishinaabek has asked for an economic participation agreement and has been clear that further consultation is required.

7. As Nextbridge's development cost spending has not achieved the results of satisfying the Crown's duty to consult or accommodate these costs need to be scrutinized. As previously submitted by the Biinjitiwaabik Zaaging Anishinaabek, consultation and accommodation is a significant outstanding issue that must be resolved before the East West Tie line project can move forward.