



BY EMAIL and RESS

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2300 Yonge Street
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September 19, 2018
Our File: EB20170182

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2017-0182/0194/0364 – EWT/LSL – Submissions on Nextbridge Development Costs

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No.3, please find SEC's submissions on Nextbridge's development costs.

Yours very truly,
Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)
Nextbridge and Interested parties (by email)

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**

**SCHOOL ENERGY COALITION WRITTEN SUBMISSIONS
ON NEXTBRIDGE'S DEVELOPMENT COSTS**

Overview

1. Upper Canada Transmission Inc., operating as Nextbridge Infrastructure LP (“Nextbridge”) has brought an application before the Ontario Energy Board (the “Board”) for leave to construct the East-West Tie Line. Its application included a proposal to determine the appropriateness of its development costs after the line had gone in-service. The Board determined that it wished to consider the development cost in this proceeding.

2. Nextbridge is seeking approval of \$40.13M of development costs which include the period up until the filing of its leave to construct proceeding (July 31, 2017).¹ Since the Board has already approved \$22.18M in 2012 dollars, the equivalent to \$22.4M (in nominal dollars at the time of designation in 2013)², at issue is the prudence of the incremental \$17.73M.³

¹ SEC notes in the Argument-in-Chief, Nextbridge states that is seeking approval of \$40.2M. SEC understands JD1.1 updated the numbers and the correct new request should be 40.1 as Nextbridge during the oral hearing update the carrying cost number (Tr.1, p.4).

² In the Designation Decision the Board approved a development budget for Nextbridge of \$22,187,022. This amount corresponded to Nextbridge's development budget provided in response Interrogatory #26 which required all participants to respond in 2012 dollars without any escalation. The \$22,398M amount was the original forecasted amount and represented the original forecast budget with escalation.

³ Undertaking JD1.1

3. These are the submissions of the School Energy Coalition (“SEC”) on the proposed recovery of the incremental development costs.

Background

4. In EB-2011-0140, the Board initiated a proceeding to designate a proponent to undertake development work for the construction of the East-West Tie transmission line, with a target in-service date of 2017. The aim of the designation process was to introduce competition into the construction of transmission lines in Ontario by providing a financial incentive for participation in the process. The Board was able to do this by guaranteeing that “the designated transmitter will recover its development costs up to the budgeted amount (in absence of fault on the part of the transmitter), even if the line is eventually found to be unnecessary”.⁴

5. Six different transmitters participated in the process. To ensure comparability between the proposals filed, the Board created a reference option which included a certain design and route for the East-West Tie Line. While parties were allowed to deviate from the option, they all filed cost estimates that included the reference option route (“reference route”). The Board also required, during the interrogatory phase, that all parties complete a table that set out their designation budgets broken down in certain common cost components and expressed in 2012 dollars (“Interrogatory #26”).⁵

6. After considering all six transmitters’ proposals, and weighing various criteria, the Board in its Phase 2 Decision and Order (“Designation Decision”) designated (i.e. selected) Nextbridge (then called Upper Canada Transmission or UCT) as the successful proponent.⁶ In doing so, the Board found that the “development costs budgeted by UCT of \$22,187,022 (in \$2012) are reasonable.”⁷ The Board required Nextbridge to record the actual development costs in a deferral account, and when it sought leave to construct, bring forward a proposal for the disposition.⁸

⁴ *Phase 2 Decision and Order* (EB-2011-0140 - East-West Tie Line Designation), August 7 2013, p.4

⁵ EB-2011-0140, Board Interrogatory to All Parties No. 26; KD1.2, p.81-84

⁶ *Phase 2 Decision and Order* (EB-2011-0140 - East-West Tie Line Designation), August 7 2013

⁷ *Ibid*, p.41

⁸ *Ibid*, p.43

7. Between the Designation Decision and the filing of Nextbridge's leave to construct application, two significant events occurred that impacted the actual development costs. First, in September 2014, the OPA wrote to the Board to recommend that the original in-service of 2017 be delayed until 2020.⁹ Second, in the spring of 2015, Parks Canada informed Nextbridge that it would not allow it to access Pukaskwa Park to do needed development work, and thus ultimately the construction work, to build the line.¹⁰ This required Nextbridge to do consider different routes around Pukaskwa Park.

8. In 2015, Nextbridge sought approval of an extended development schedule and budget. The Board denied the approval at that time, and stated that consideration of approval for any additional costs that were incurred during the development phase would take place at a later date when they could be properly reviewed.¹¹

Competitive Process Key To Determining Prudence of Incremental Costs

9. In seeking approval for recovery of incremental costs in excess to what was approved by the Board in the Designation Decision, Nextbridge claims that these costs were all prudently incurred and thus are required to be passed on to ratepayers.

10. In *Ontario Energy Board v. Ontario Power Generation Inc.*, the Supreme Court stated that the Board did not have to apply any particular test in evaluation of the prudence of costs, and that it had "broad latitude to determine the methodology it uses in assessing utility costs".¹² SEC submits that in assessing whether the incremental amounts are prudent, the Board must consider the context of the approvals provided in the Designation Decision. The Board's assessments of the incremental development costs must consider not just *what* was approved (i.e. what was part of the approved budget), but also *how* it was approved (i.e. the competitive process).

11. In the Designation Decision, the Board determined the reasonableness of the proposed development budget in the context of a competitive process. The Board did not conduct a line-by-line review of the budgeted amounts but determined the reasonableness based on the designation process being competitive:

⁹ Exhibit B-9-1, p.9

¹⁰ Exhibit B-9-1, p.8

¹¹ Decision and Order (EB-2015-0216 – Upper Canada Transmission Inc., November 19 2015), p.8-9

¹² *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, paras. 7, 105

By designating one of the applicants, the Board will be approving the development costs, up to the budgeted amount, for recovery. The School Energy Coalition submitted that there is insufficient information for the Board to determine that the development costs are just and reasonable. The Board does not agree. The Board has had the benefit of six competitive proposals to undertake development work. In the Board's opinion, the competitive process drives the applicants to be efficient and diligent in the preparation of their proposals. With the exception of Icon/TPT, the development cost proposals ranged from \$18.2 million to \$24.0 million which is relatively narrow given the overall size of the project. Therefore, the Board finds that the development costs for the designated transmitter are reasonable, and will be recoverable subject to certain conditions.¹³

12. The budgeted development costs were part of the broader cost criterion which the Board considered in its decision to designate Nextbridge. It is not enough for Nextbridge simply to show that the incremental costs to undertake a given activity are reasonable. It must demonstrate that the incremental costs were of a type that would not have reasonably been considered at the time of designation. To do otherwise would undermine the designation process and decision. It would reward Nextbridge for under-budgeting its development costs which were part of the reason it was designated over the remaining five transmitter proponent.

13. The only types of incremental costs that Nextbridge should be allowed to recover are those that either, a) are outside of the scope of underlying assumptions of the proposals (and corresponding budgets) put forward by the transmitters in the designation process, or b) it had explicitly stated at the time of the designation proceeding it had not included in its budget, and thus provided notice to the Board to consider it in its decision of who to designate.

14. This is similar to what one would expect in a traditional competitive procurement process. The contract that the winning bidder would sign usually includes terms that only allow it to seek recovery of additional costs if they are a result from things that have occurred outside of its control (i.e. scope or timeline changes dictated by the project owner), or amounts if they were for activities that were explicitly excluded.

15. If the Board does not place any restriction on the types of incremental costs that Nextbridge can recover, then the competitive designation process and the approval of development costs in that application has been undermined. What is the point of approving the proposed development budget by way of a competitive process if ultimately the designated transmitter is not held to it?

¹³ *Phase 2 Decision and Order* (EB-2011-0140 - East-West Tie Line Designation), August 7 2013, p.30-31

16. With respect to costs that do not fall within the types that should be recoverable, it is not that they were not required to be incurred, but that due to the nature of the competitive designation process, they should be borne by Nextbridge and not ratepayers.

Categories of Increment Costs

17. After much discussion during the oral hearing, Nextbridge provided in response to undertakings a breakdown of the incremental costs by category. Those undertakings were the subject of further interrogatories. SEC has broken down some of those categories down to assess which costs should be considered recoverable from ratepayers, and which ones should not.

<u>Incremental Development Costs</u>			
<u>Category</u>	<u>(\$M)</u>	<u>Source</u>	<u>Recoverable?</u>
Cost of Major Reroute (Around Pukaskwa Park)	1.700	JD1.6	Yes
Cost of Project Delay (OPA Decision to Delay In-Service)	7.600	JD1.6	
Project Delay	5.701	JD 1.6 - Phase Shift	Yes
Phase Shift	1.899	JD1.NB.SEC.1/JD1.2	No
Other	4.034	JD1.6	
Scope/Budget Variances	3.211	JD1.6-Esculation	No
Esculation	0.823	Para. 30	Yes
Unbudgeted at Designation	4.395	JD1.6	
First Nation and Metis Land Acquisition	0.017	JD1.1	Yes
First Nation and Metis Participation	3.415	JD1.1	Maybe
Pic River Appeal Costs	0.230	JD1.1	No
Carrying Costs	0.733	JD1.1	Yes
Total Incremental Development Cost Request	17.729		

18. **Major Reroute.** The designation proceeding required parties to provide a proposal based on reference route that would parallel the existing Hydro One line.¹⁴ Parks Canada's decision to not allow access to the park, as well as the decision to make some further route modifications in response to concerns by stakeholders, required Nextbridge to expend additional costs to study alternatives as it added 50km to the proposed line.¹⁵ SEC accepts reasonable costs in this category should be recoverable from ratepayers as they were caused by external factors that were not considered as part

¹⁴ Exhibit B-9-1, p.7

¹⁵ *Ibid*; Tr.1, p.92

of the designation process. A route around the park was not part of the common assumptions in which proponents submitted their forecast development budgets in the designation process.¹⁶

19. **Project Delay.** Similar to the major reroute, the decision by the OPA to propose a delay of the in-service date of the project was an external event that changed the common basis upon which the transmitters submitted their proposals. The target in-service date for the project at the time of the designation proceeding was 2017. When the OPA recommended to the Board to delay the in-service date until 2020, this reasonably added to the development costs of the project. With one noted exception discussed below, these incremental costs were outside the scope of the budget approved by the Board in the designation decision.

20. **Phase Shift.** SEC disagrees with project delay costs that Nextbridge has claimed for recovery which it classifies as ‘Phase Shift’ costs.¹⁷ These costs are for two activities tallying \$1.89M, for which Nextbridge originally had forecast to undertake in the construction phase but shifted to the development phase. The shift of these activities into the development phase was not *caused* by the OPA’s decision to recommend a delay of the in-service date. Nextbridge simply used the delay as an *opportunity* to move them forward on the project schedule.¹⁸ By doing so, Nextbridge is adding to the costs that it says ratepayers should have to bear if it is not granted leave to construct. This is especially important considering Nextbridge has total control over the timing of the end development phase as it determined when it filed its leave to construct. If it had filed it earlier, there would have been fewer costs.¹⁹

21. SEC submits these costs, which could have easily been construction costs, should not be recoverable as part of the incremental development costs. Since they should have been construction phase costs, SEC is not suggesting they should be disallowed completely. Nextbridge should simply be required to seek recovery of those costs, if it is granted leave to construct, when it seeks approval of its construction costs.

¹⁶ While Nextbridge did propose a ‘Recommended Plan’ that varied from the Reference Option, the only change that was included was structure design and not route (See EB-2011-0140, UCT Designation Application, p. 92)

¹⁷ Undertaking JD1.1

¹⁸ Exhibit B-16-1, p.9

¹⁹ Tr.1, p.220-221

22. ***First Nation and Métis Participation and Land Acquisition Costs.*** Nextbridge incurred costs related to the First Nation and Métis participation and land acquisition activities. Nextbridge claims that it made clear in the designation proceeding that its submitted development budget did not include costs related to categories of activities. While SEC accepts that Nextbridge did explicitly inform the Board that it did not include First Nation and Métis land acquisition costs, it did not do so with respect to participation costs.

23. In response to interrogatory JD1.Nextbridge.CCC.2, Nextbridge provided references to the record in the designation process where it says it conveyed to the Board that it could not estimate First Nation and Métis participant costs.²⁰ A review of the underlying material referenced shows that the only place in its application, interrogatory responses, or argument where it identified that it was budgeting zero dollars was in response to Interrogatory #26 where it did not include any amounts in that cost category. At no point in any of its application or submissions in Phase 2, did Nexbridge explain why it had not done so.

24. The references provided by Nextbridge where it says it did provide a rationale for not including any budgeted amounts, are only regarding First Nation and Métis land acquisition costs. For those costs, it did explicitly state in different places that it could not budget them at this time. The contrast between development costs and land acquisition costs is most stark in response to Interrogatory #26 where Nextbridge included a footnote that stated, “[a]s stated in the UCT Application, an estimate for First Nation and Métis land acquisition is not included as this will be determined at a later date after engagement and consultation have advanced”.²¹ No similar footnote was provided for the First Nation and Métis participation cost category. While Nextbridge did say that it could not determine what type of participation it would offer in absence of consultation with individual First Nation and Métis communities, it never said that because of that it was not providing a budgeted amount for that category.

25. It is not clear what the Board thought was included for participation costs when it made its decision to designate UCT. The Board made no reference to any of this in the designation decision. Including a zero in the First Nation and Métis participation cost category in Interrogatory #26 is not

²⁰ Interrogatory JD1.Nextbridge.CCC.2(a)(b); All the referenced material from the EB-2011-0140 proceeding have been deemed on the record by Nextbridge by agreement in response to Interrogatory I.NextBridge.SEC.1.

²¹ EB-2011-0140, UCT Response to Board Interrogatory to All Parties No. 26; KD1.2, p84

sufficient to provide the Board explicit notice. EWT LP also had included zero in the cost category in Interrogatory #26, but stated that the costs were included in other relevant categories and not separated out into its own category.²² It is very possible that the Board and other parties thought Nextbridge had done a similar thing.

26. First Nation and Métis land acquisition costs were explicitly identified as being excluded from the Nextbridge designation budget. In doing so, the Board gave notice that in designating Nextbridge and approving its designation budget, it was doing so despite not including these costs in its forecast. With respect to First Nation and Métis Participation budget, reviewing the evidence in the most favorable light to Nextbridge, it is unclear what the expectations were of the Board at the time of designation. SEC leaves it to the Board to determine if the lack of a forecast for this cost category was clear enough to the hearing panel that made the Designation Decision to allow for recovery now.

27. ***Budget Variance and Scope Costs.*** In addition to the cost impact of the major reroute and in-service delay, Nextbridge is seeking recovery of budget variances and non-route project scope changes. SEC submits that these costs should not be recoverable. As discussed earlier, allowing recovery of these amounts undermines the competitive nature of the selection process which was the basis of Nextbridge being designated and the approval of the original development budget. These costs relate directly to amounts budgeted for and approved. Moreover, the Board-approved development budget included a contingency amount. These budget variances and scope changes were expected to occur, and Nextbridge provided a budgeted contingency amount as part of the budget that the Board approved.

28. ***Pic River Appeal Costs.*** Nextbridge seeks recovery of incremental costs related to responding to the appeal brought by Pic River First Nations of the Designation Decision.²³ It has included these costs as ‘unbudgeted’. SEC disagrees that they should be recoverable. In SEC’s view, insofar as it did not include these costs under the regulatory category of costs, they are fairly categorized as costs that are covered by the approved contingency category.

²² EB-2011-0140, EWT LP Response to Board Interrogatory to All Parties No. 26; KD1.2, p61

²³ Exhibit B-16-1, Attachment 11

29. **Escalation.** SEC agrees that Nextbridge should be able to include escalation costs of the Board-approved amount. Nextbridge was unable to provide an estimate of those amounts, separate from the 'other' category of incremental costs.²⁴

30. Since Nextbridge is using the nominal dollar equivalent of the 2012 dollars Board-approved amount, already included in that amount is a forecast escalation of costs up until the original forecast filing date of the leave to construct application (January 2015) of \$211,062.²⁵ SEC submits the a simple way to estimate the total escalation costs over the approximately 4.5 years (January 2013 designation filing date to July 2017 filing date of the leave to construct application and end of designation period), is to calculate the escalation of the 2012 amount over the full development period, and then remove the amount already included in the nominal dollar Board-approved amount. This results in an incremental escalation cost of \$822,885.²⁶

31. **Carrying Costs.** Nextbridge seeks recovery of the carrying costs related to the amounts spent during the development phase that are recorded in the approved variance account. Carrying costs are appropriate as it is clear that Nextbridge did not include any amount for CWIP or AFUC in its Board-approved budget.²⁷ The Board's Accounting Order directed carrying charges on the balances and to be calculated consistent with the Board's usual methodology.²⁸ SEC submits Nextbridge should be allowed to recover its carrying costs, but the specific amount will need to be recalculated in light of the Board's decision on the appropriate recoverable development costs. Nextbridge should only recover carrying costs on Board approved incremental development costs.

Summary

32. SEC submits that the Board should only approve recovery of incremental development costs related to the major reroute, project delay, First Nation and Métis land acquisition costs, escalation costs, and the associated carrying costs. With respect to First Nation and Métis participation costs, SEC submits the issue of recovery is unclear. The rest of the cost categories are simply not prudent

²⁴ Undertaking IJD1.Nextbridge.SEC.2(a)

²⁵ EB-2011-0140, UCT Response to Board Interrogatory to All Parties No. 26; KD1.2, p84

²⁶ (\$22,198,022 x annual compounding inflation rate of 2% for 4.5 years divided by 2) - \$211,062
067,894.67

²⁷ EB-2011-0140, UCT Response to Board Interrogatory to All Parties No. 26; KD1.2, p84

²⁸ *Decision and Order Regarding Reporting by Designated Transmitter* (EB-2011-0140), September 26 2013, Appendix 2, Accounting Order, p.2

since the Board's designation process was a competitive process in which the approved forecast budget was a central component to Nextbridge being selected as the designated transmitter.

Respectfully submitted on behalf of the School Energy Coalition, this 19th day of September, 2018.

Original signed by

Mark Rubenstein
Counsel for the School Energy Coalition