



PUBLIC INTEREST ADVOCACY CENTRE
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September 19, 2018

VIA E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge St.
Toronto, ON

Dear Ms. Walli:

**Re: EB-2017-0182 / EB-2017-0194
Submission of Vulnerable Energy Consumers Coalition (VECC)**

On behalf of the Vulnerable Energy Consumers Coalition (VECC) we have attached their Submission with respect to the above-noted proceedings. We have also directed copies to all parties via email.

Yours truly,

John Lawford

Counsel for VECC

Cc: All parties

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

NextBridge Development Costs

Submission
of the
Vulnerable Energy Consumers Coalition
(VECC)

September 19, 2018

John Lawford
Vulnerable Energy Consumers Coalition

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1.0 Summary of the Submissions

1.1 VECC submits that the development costs of approximately \$40.2 million sought by NextBridge (Upper Canada Transmission Inc.) in this Application were reasonably incurred. The Applicant has stated that the costs in excess of the pre-approved development costs were due to a number of factors including¹:

- Extension of the in-service date to 2020;
- Increase in route length to go around rather than through Pukaskwa National Park;
- Fluctuations in currency exchange rates;
- Construction access plan refinement;
- Increased need for the use of self-supported structures;
- Increased costs to foundations and grounding due to subsurface conditions;
- Project refinements arising from First Nations and Métis and stakeholder engagement, including moving the line north of Loon Lake, and west of Ouimet Canyon Provincial Park;
- Landowner incentive payment adjustments;
- Enhanced design requirements at crossings to adhere to Hydro One requirements; and
- Physical design enhancements to increase strength parameters to enable ability to withstand a 1 in 100 year weather event.

1.2 In Technical Conference Undertaking JT1.7 NextBridge provided detailed tables comparing original milestones to forecast and actual values. In numerous other places and specifically in response Exhibit JD1.2, NextBridge gave detailed evidence for the variances and explanations as to whether the driver was due to project regulatory delays (e.g. OPA/Government), routing changes or other reasons².

2.0 Committed Costs

2.1 In its Argument-in-Chief ('AIC') NextBridge states it is seeking recovery of a total of \$40.2M in development costs consisting of:

- (1) \$24.2M in pre-approved development costs;
- (2) \$13.3M in incremental development costs attributable to both the extended development period and the change in routing; and
- (3) \$4.54M with respect to First Nation and Metis Participation Costs.³

¹ From Exhibit JT1.14

² The main body of evidence on Development costs is set out in Exhibit B, Tab 16, Schedule 1

³ NextBridge Argument-in-Chief, September 10, 2018, pg.1

2.2 This request is slightly at odds with the evidence that during the hearing of this matter the Board asked that “Attachment 11” be updated and this is shown below:⁴

Cost Category	Board-Approved Costs (1) (in 2013 \$)	Anticipated Extended Development Period Incremental Costs (in 2015 \$, rounded to nearest 10,000s)	Actual Extended Development Period Incremental Costs (in nominal \$) (2)	Total Extended Development Period Costs (in nominal \$)
	(A)		(B)	(A + B)
Engineering, Design and Procurement Activity	10,553,290	240,000	(289,826)	10,263,464
Permitting and Licensing	47,320	30,000	37,461	84,781
Environmental and Regulatory Approvals	3,592,680	4,890,000	4,225,000	7,817,680
Land Rights	1,991,000	2,580,000	3,809,532	5,800,532
First Nations and Métis Consultation	1,724,000	3,750,000	1,530,002	3,254,002
Other Consultation	496,000	2,020,000	1,091,015	1,587,015
Regulatory (legal support, rate case and LTC filings)	985,000	1,510,000	888,499	1,873,499
Interconnection Studies	179,000	60,000	(95,141)	83,859
Project Management (3)	1,300,000	3,330,000	3,666,784	4,966,784
Contingency (4)	<u>1,529,710</u>	<u>1,960,000</u>	<u>(1,529,710)</u>	<u>0</u>
SUBTOTALS - BUDGETED	22,398,000	20,370,000	13,333,616	35,731,616
First Nation and Métis Land Acquisition			16,862	16,862
First Nation and Métis Participation			3,415,388	3,415,388
Pic River Appeal Costs			230,163	230,163
Carrying Costs			733,013	733,013
SUBTOTALS - UNBUDGETED	0	0	4,395,425	4,395,425
TOTALS	<u>22,398,000</u>	<u>20,370,000</u>	<u>17,729,041</u>	<u>40,127,041</u>

⁴ Exhibit JD1.1 – updated form of Exhibit B, Tab 16, Schedule 1, Attachment 11

- 2.3 This updated form of Exhibit B/Tab 16/Schedule 1/Attachment 11 shows (in highlight) the revised carrying charges. The sum total of this table is slightly different (lower by \$122,462) than that provided in response to an interrogatory by the Consumers Council of Canada at Exhibit I.B.NextBridge.CCC.9 and which sums to the same total of \$40.2 million spoken to in NextBridge's AIC.
- 2.4 While the differences are not significant it is unclear to us what evidence NextBridge relies upon for recovery.
- 2.5 Irrespective these amounts do not include all the committed cost NextBridge has expended on this Project. At least a further \$23.52M in post leave-to-construct costs have been incurred up to July 2018.⁵ These costs are not a matter before Board in this proceeding. Nonetheless we think it is important to consider the status of such costs given NextBridge has yet to receive, and may never be granted, leave-to-construct for building the East-West Tie. If that were to happen then and the post-leave-to-construct amounts are not "development costs" then they would otherwise appear to be construction costs incurred prior to regulatory approval to construct. On the face of it, in the event NextBridge is not successful in being granted leave-to-construct it would follow that costs incurred subsequent to the development period may not be recoverable.
- 2.6 While the "post development costs" are not subject to this part of the proceeding we note that in its designation decision the Board made the following finding:
- Generally, if the project does not move forward due to factors outside the designated transmitter's control, the designated transmitter should be able to recover the budgeted development costs spent and reasonable wind-up costs.⁶
- 2.7 VECC remains cognizant that while the Board has yet to hear and decide on which Utility should be granted a leave-to-construct for building of the East-West Tie the determination of any "wind-up" costs remains a potential liability to ratepayers.
- 2.8 The remainder of our submissions follow the following format: Pre-Approved Development Costs; Extended Development Period Costs; and First Nations and Metis Incremental Costs.

⁵ Undertaking JT1.25

⁶ Ibid, pg. 19

3.0 Pre-Approved Development Costs

- 3.1 In our submission NextBridge is entitled to recover \$22,398,084 in pre-approved development costs without the burden of proving prudence. The Board made this exception explicitly in the designation decision:

In designating a transmitter, the Board is providing an economic incentive: the designated transmitter will recover its development costs up to the budgeted amount (in the absence of fault on the part of the transmitter), even if the line is eventually found to be unnecessary. The designation may be rescinded and costs denied if the designated transmitter fails to meet the performance milestones for development or the reporting requirements imposed by the Board in this decision.

Furthermore the Board provided rationale for this novel approach:

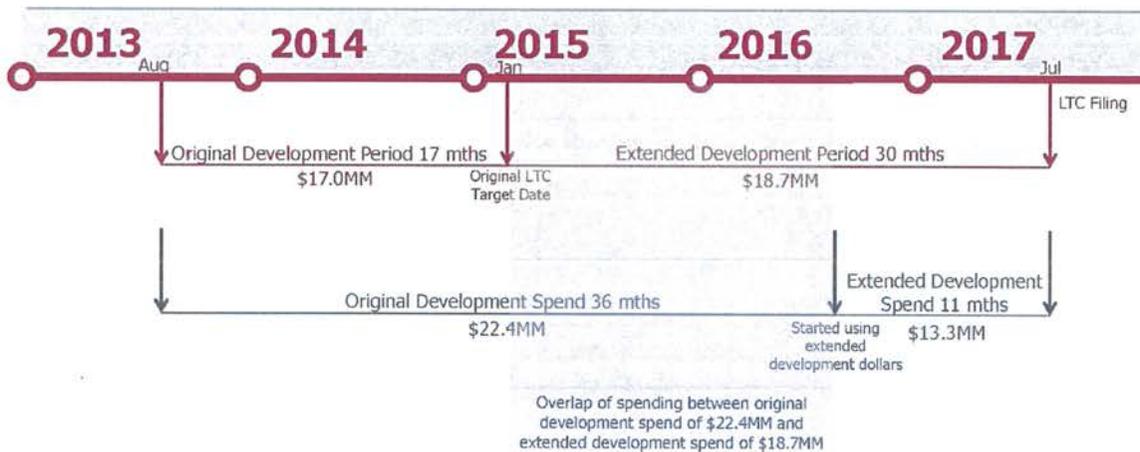
By designating one of the applicants, the Board will be approving the development costs, up to the budgeted amount, for recovery. The School Energy Coalition submitted that there is insufficient information for the Board to determine that the development costs are just and reasonable. The Board does 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.

- 3.2 NextBridge has met its reporting requirements and the adjusted milestones. And while we respectfully disagree that the designation process was sufficiently robust to ensure the value for money proposition of the actual costs incurred we recognize that matter has already been determined.

4.0 Extended Development Period Costs

4.1 NextBridge provide a graphical representation of the development and extended development costs⁷:

Figure 1
Chronology of NextBridge's Cost Spend



4.2 The Utility expended a total of 35.7M on direct costs as shown below⁸.

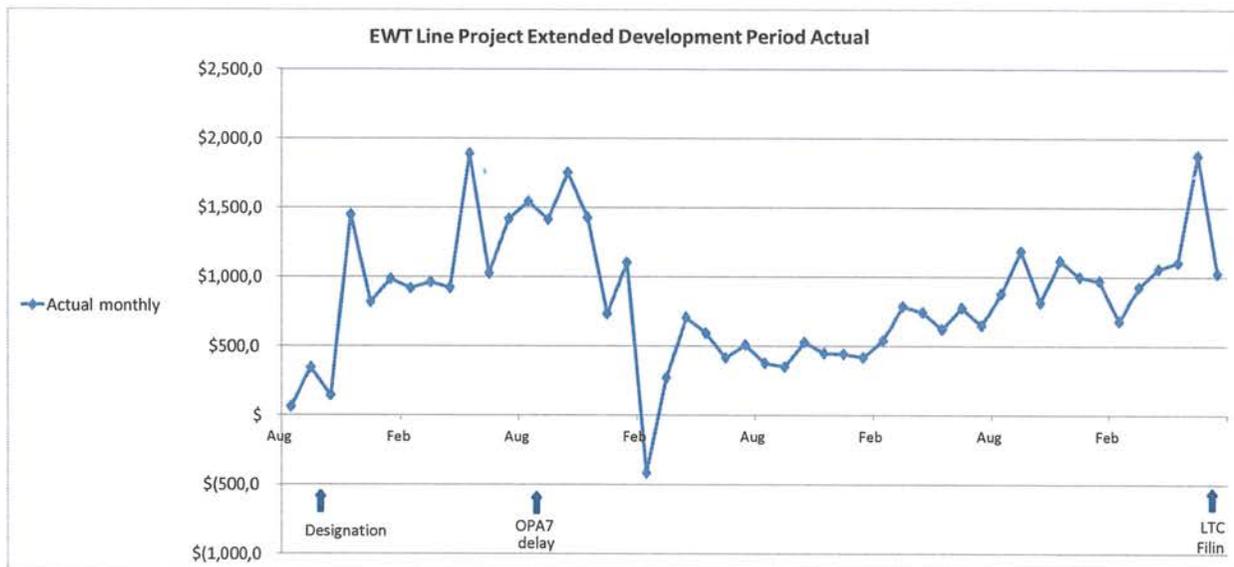
Table 1
Total Development Cost (\$'000)

	<u>Cost</u>
Designation – August 2013 * (\$2013)	\$22,398
Cost of Major Reroute	\$1,700
Cost of Project Delay	\$7,600
All other drivers (including escalation)	\$4,034
Subtotal Budgeted Development Cost *	\$35,732
Unbudgeted at Designation *	\$ 4,395
Overall Development Cost *	\$ 40,127

⁷ Exhibit JD1.2

⁸ Ibid, pg. 3 of 41

- 4.3 In our view NextBridge has adequately demonstrated that the incremental spending during the extended period was prudently incurred. Specifically the Utility has outlined reasons for continuing activity in pursuit of a 2020 implementation date. NextBridge has also shown that it made substantial efforts to reduce costs during a period of uncertainty for which it had no control over.
- 4.4 We also submit that the additional consultation that was undertaken during the extended development period was prudent in light of the uncertainty created by delays in the process⁹.
- 4.5 The original development period was projected at 18 months. In the event a total of 48 months transpired between designation and the end of the development period. NextBridge was not responsible for the most significant part of this delay – the OPA in-service date change from 2018 to 2020. The evidence is that NextBridge took reasonable steps to modify its work schedule in order to accommodate this change while maintaining the momentum needed to bring the project to completion. Specifically NextBridge transitioned from an average monthly spend of approximately \$1.4 million per month in the fall of 2014 to \$240,000 in March of 2015. The trend of spending is shown below.¹⁰



- 4.6 Furthermore, NextBridge fulfilled its reporting obligations to the Ontario Energy Board. Regulatory reporting requirements have a cost that must be ultimately borne by ratepayers and so they should also have a purpose. In ordering monthly and quarterly reporting on the Applicant the Board puts itself in the position of oversight of ongoing costs with a responsibility to intervene if things were significantly off track. Since the Board did not intervene one must assume that, at least at the broadest or highest level, the Applicant was within the parameters of reasonability.
- 4.7 For these reasons we submit that NextBridge should recover the total of \$35.7 million development costs not related to First Nation and Metis incremental costs.

5.0 First Nation and Metis Incremental Costs

- 5.1 It is NextBridge's contention that First nation and Metis participation costs were not included in the original designation development budget. The evidence summary for this position is set out in detail at Exhibit I.JD1.NextBridge.CCC.2. In that response NextBridge specifically references its response to Board Staff interrogatory #26, Attachment 1 from EB-2011-0140. We have reproduced the relevant table from that Attachment below:

Development Activity	Recommended Plan Estimated Cost	Reference Plan Estimated Cost	Reference in filed application
Engineering, Design, and Procurement Activity	10,553,085	10,553,085	Section 8.2 - Figure 21 - Engineering & Design
Materials and Equipment	-	-	Section 8.2 - Figure 21 - Materials & Procurement
Permitting and Licensing	46,667	46,667	Section 8.2 - Figure 21 - Permitting, Licensing, Environmental
Environmental and Regulatory Approvals	3,593,500	3,593,500	Section 8.2 - Figure 21 - Permitting, Licensing, Environmental
Land Rights (acquisitions or options), including consultation and negotiation with landowners	1,990,805	1,990,805	Section 8.2 - Figure 21 - Land Acquisition & Aboriginal Affairs *
First Nation and Metis participation (direct and indirect costs, including impact mitigation if applicable)	-	-	Not Included *
First Nation and Metis consultation	1,723,375	1,723,375	Section 8.2 - Figure 21 - Land Acquisition & Aboriginal Affairs
Other Consultation (community, stakeholder)	496,240	496,240	Section 8.2 - Figure 21 - Land Acquisition & Aboriginal Affairs
IDC or AFUDC	-	-	Not Included
Contingency	1,319,136	1,319,136	Section 8.2 - Figure 21 - Engineering & Design
Other (explain in detail)			
<i>Regulatory (Legal Support, Rate Case Filing, LTC Filing)</i>	985,240	985,240	Section 8.2 - Figure 21 - Other Significant Expenditures
<i>Interconnection Studies</i>	179,210	179,210	Section 8.2 - Figure 21 - Other Significant Expenditures
<i>Project Management</i>	1,299,764	1,299,764	Section 8.2 - Figure 21 - Other Significant Expenditures
TOTAL (2012 Dollars)	22,187,022	22,187,022	Total Removing Escalation
<i>Escalation (To Bring back to 2012 Dollars)</i>	211,062	211,062	Section 8.2 - Figure 21 - Engineering & Design
TOTAL (Including Escalation)	22,398,084	22,398,084	Total Including Escalation - Matches Application

- 5.3 The Table shows the same \$1,723,375 as that provided in Attachment 11 above. We also note in this table that First Nation and Metis Participation are, as stated by the Applicant, explicitly excluded.

- 5.4 While not relieving Applicants of their due diligence in the Designation Decision recognized the potential difficulty in estimating these types of costs:

Particular concern was expressed by some parties regarding commitment to construction costs, First Nation and Métis participation, and First Nation and Métis consultation. The Board recognizes that these three areas in particular may be subject to modification to accommodate new information, and changing needs and circumstances. Nevertheless, in the leave to construct proceeding, the Board will compare the actual performance of the designated transmitter in these areas to the evidence filed in its designation application to assess the reasonableness of any deviations from the application¹¹

- 5.5 Conversely the Capacity Funding Agreements between NextBridge and Indigenous communities are confidential¹² so there is little opportunity to judge the overall value of this spending. Nonetheless based on the criteria to engage in both First Nations and Metis Participation and Consultation the amounts do not appear unreasonable.

6.0 Sharing of Intellectual and other Development Cost funded Property

- 6.1 The Board made the following statement in the Designation Decision¹³:

The Board notes SEC's submission that if a designated transmitter does not bring forth a leave to construct application, it must relinquish ownership of all information and intellectual property that it created or acquired during the development phase. AltaLink and others argued in response that to require delivery of all such information and intellectual property would be punitive, confiscatory and contrary to the public interest. The Board will not determine this issue at this time. However, if failure of the project occurs, and development costs are to be recovered from ratepayers, the Board may wish to consider whether information gathered and even design work completed at ratepayer expense must be made available to a substitute transmitter.

- 6.2 Given the state of affairs with a competing leave-to-construct proposed by Hydro One with its Lake Superior Link (LSL) project we believe it important that the matter of sharing of the intellectual and other property funded by development costs be made clear. If ratepayers are being required to fund these costs they are entitled to their full value. The development work carried out by NextBridge is unique to the East-West Tie. The tangible and intangible assets derived during the development phase have little if any alternative use than for the building of the East-West Tie. It would be clearly unreasonable and unjust to have

¹¹ EB-2011-0140 Designation: East-West Tie Line, August 7, 2013, page 19

¹² Technical Conference Exhibit I.JD1.NextBridge.STAFF.3

¹³ Op. cit. pg. 16

ratepayers pay for duplicated development services or products if such assets are available and transferable.

- 6.3 In our submission no recovery of development costs should be made until the Board has decided which Utility is to be given leave-to-construct the East-West Tie. If NextBridge is not the successful Party then recovery should be delayed pending an agreement between Hydro One (LSL) and NextBridge on the transfer of any available tangible and intangible assets arising from the development work of NextBridge.

7.0 Costs Incurred

- 7.1 VECC respectfully submits that it has acted responsibly and efficiently during the course of this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED