

August 9, 2019

VIA COURIER, EMAIL and RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

**Re: Upper Canada Transmission, Inc. operating as NextBridge Infrastructure,
LP (“NextBridge”)
Ontario Energy Board (“Board”) File EB-2019-0127
East-West Tie Project – Expropriation Application
Argument-in-Chief**

In accordance with the Board’s Procedural Order No. 1 dated July 22, 2019 in relation to the expropriation proceeding, attached is NextBridge’s Argument-in-Chief. The Argument-in-Chief has been filed electronically through the Board’s RESS, and two paper copies will be couriered to the Board.

Please contact the undersigned at nina.lindop@enbridge.com or at (780) 420-5202 if you have any questions.

Yours truly,

(Original Signed)

Nina Lindop
Legal Counsel
Enbridge Employee Services Canada Inc.

Cc: Zora Crnojacki, Case Manager (zora.crnojacki@oeb.ca)
Ljuba Djurdjevic, OEB Counsel (ljuba.djurdjevic@oeb.ca)

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), as amended, (the “Act”);

AND IN THE MATTER OF an application by Upper Canada Transmission, Inc. under section 99 of the Act, for an Order or Orders granting authority to expropriate land for the purpose of constructing and operating a new double circuit 230 kV electricity transmission line between Thunder Bay, Ontario and Wawa, Ontario;

ARGUMENT-IN-CHIEF

INTRODUCTION

1. Upper Canada Transmission, Inc., operating as NextBridge Infrastructure (“NextBridge”) has applied to the Ontario Energy Board (the “Board”) for authority to expropriate interests in 13 parcels of land owned by 7 registered landowners in order to construct and operate the East-West Tie Transmission Project (the “EWT Project”)¹.

2. As of today’s date, NextBridge has concluded arrangements with Barrick Gold Inc. (property EWT 8072 identified in Appendix F-12 of the Amended Expropriation Application), and no longer requires a Board Order in respect of this property. Therefore, NextBridge now only requires authority to expropriate interests in 12 parcels of land owned by 6 registered landowners.

¹ NextBridge Expropriation Application, April 17, 2019; NextBridge Amended Expropriation Application, June 10, 2019.

3. The EWT Project is approximately 450km in length and NextBridge has secured land rights from the vast majority of owners. NextBridge has sought authority for 3 types of expropriation – permanent easements for the proposed transmission line, permanent easements for access roads, and temporary easements for access roads for the construction period.

4. NextBridge served 6 of the 7 registered landowners and 39 encumbrancers.² NextBridge notes that it did attempt to serve the seventh registered owner at the address provided in land registration documents. Records documenting the extensive efforts of NextBridge to communicate with landowners from the beginning of the EWT Project were provided to the Board on August 6, 2019 in response to Board Staff Interrogatory 1(b).

5. No landowners, encumbrancers or other persons sought intervenor status in this proceeding.

6. Granting NextBridge the authority to expropriate, as requested in this proceeding, is in the public interest. No person has opposed the application and expropriation is necessary to complete the EWT Project. The evidence and inference from the lack of participation is that owners do not oppose the EWT Project or the rights sought by NextBridge. Rather the unwillingness or inability to execute easement documents is due to estate title issues³, continuing negotiations regarding clauses in the agreements,

² NextBridge Letter dated July 16, 2019.

³ Responses to Board Staff Interrogatories 1(b) and 3(a).

or disagreement regarding the compensation. As the Board is aware, compensation is not within the Board's jurisdiction.

ARGUMENT

7. In March of 2016, the Lieutenant Governor in Council issued an order declaring, pursuant to section 96.1 of the Act, that the construction of the EWT Project is needed as a priority project. An Updated Assessment of the Need for the EWT Project issued by the Independent Electricity System Operator (the "IESO") on December 1, 2017 indicates that "[t]his project continues to be the IESO's recommended option to maintain a reliable and cost-effective supply of electricity to the Northwest for the long term." The IESO reaffirmed this need in an update on June 29, 2018 in response to a request from the Board.

8. In its EB-2017-0182/EB-2017-0194/EB-2017-0364 Decision and Order dated February 11, 2019, the Board granted leave to NextBridge to construct the EWT Project pursuant to section 92 of the Act. In its EB-2019-0088 Decision and Order, also dated February 11, 2019, the Board ordered that NextBridge's electricity transmission licence be amended in accordance with the requirements of the Directive issued by the Minister of Energy, Northern Development and Mines on January 30, 2019.

9. The EWT Project is in the public interest and NextBridge has met the statutory pre-conditions in the Act to seek authority to expropriate.

10. In determining whether to grant authority to expropriate, the Act provides the Board with the following direction:

99 (5) If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

11. With respect to expropriation, the “public interest” includes the requirement to demonstrate that the project is in the public interest and the expropriation is necessary and is not more invasive than necessary to complete the project. This is generally viewed in terms of geography (or space) and duration.

12. NextBridge’s approach to the EWT Project design included locating the transmission line to primarily parallel the existing Hydro One transmission line and using existing access roads and trails where practical. In this way, the EWT Project would minimize the spatial and other impacts on landowners as well as environmental impacts. Route selection was considered and approved by the Board during the Leave to Construct proceeding⁴ and by the Minister of the Environment, Conservation and Parks in the approval of the Environmental Assessment⁵.

13. In order to minimize the extent of the expropriation – jurisdictionally, geographically, and temporally – NextBridge has requested three separate classes of expropriation: Permanent Transmission Line Easements, Permanent Road Use Easements, and Temporary Road Use Easements. The proposed wording of the expropriation may be found at Exhibit A, Tab 2, Schedule 1, Appendix B, C and D⁶.

⁴ Decision and Order, EB-2017-0182/EB-2017-0194/EB-2017-0364, February 11, 2019, page 12.

⁵ O.C No 403/2019, March 21, 2019.

⁶ NextBridge Amended Expropriation Application, June 10, 2019.

14. By using this approach, NextBridge is able to secure the rights it requires yet preserve for the landowner, to the extent possible, continuing rights to use the lands. NextBridge notes that the easements sought are not completely exclusionary but premised on non-interference so that the landowner may continue to use the lands subject to the use being consistent with NextBridge's use.⁷

15. The easement rights are premised on the rights of use provided in the agreements approved by the Board in the Leave to Construct proceeding.⁸ As such, the rights sought have been the subject of prior Board approval.

16. The lands on which each of the easements have been sought are described in Exhibit A, Tab 2, Schedule 1, Appendix F⁹. This evidence includes a legal description of the lands and plans showing each of the types of easements.

17. NextBridge determined the width of the transmission corridor based upon the specific facts at the location in question such as guy-design, spacing and applicable codes.¹⁰ As noted, no person has participated in this proceeding to oppose the size of the easements sought nor indicated that the provisions of the easements are overly broad.

18. Permanent easements have been sought for the construction, operation and maintenance of the actual transmission line, and to provide access to the EWT Project during construction and throughout its life.

⁷ Response to Board Staff Interrogatory 4(a).

⁸ Decision and Order, EB-2017-0182/EB-2017-0194/EB-2017-0364, February 11, 2019, page 9.

⁹ NextBridge Amended Expropriation Application, June 10, 2019.

¹⁰ Response to Board Staff Interrogatory 4(b).

19. Where possible, temporary use easements have been requested for access necessary for the construction of the EWT Project. Construction requires additional lands to accommodate construction crews, and the movement of equipment and materials necessary to construct the transmission line. As discussed in the response to Board Staff Interrogatory 4(c), temporary easements have been requested for either 4 years or 7 years. NextBridge anticipates that construction will take approximately 2 years; post-construction environmental restoration and ensuring that restoration has been successful will require an additional 2 years. However, in certain areas requiring temporary easements, NextBridge has sought a 7 year period in order to complete post-construction environmental restoration and monitoring pursuant to typical conditions in certain environmental permits which require field access for approximately 5 years following construction. Compliance with permitting requirements is in the public interest.

20. NextBridge has brought forward this Application to obtain the land rights necessary to complete the EWT Project in a timely way. NextBridge has undertaken significant efforts to negotiate with each landowner and its preferred approach to acquiring land rights is through negotiating mutually acceptable agreements. However, the schedule and in-service date for the EWT Project dictate that NextBridge cannot wait longer for circumstances to change and for negotiations to conclude successfully. NextBridge has indicated that it will continue to negotiate with landowners and, if agreement is reached, it will immediately inform the Board.

21. No person has indicated that the rights sought or the duration of the easements are inappropriate.

22. The expropriations are necessary to complete the EWT Project and are minimally intrusive to the existing landowners.

23. NextBridge requests that the Board authorize the expropriation of the rights sought no later than September 13, 2019 or at the earliest opportunity. This timing will permit NextBridge to obtain access to the properties through the normal course of the *Expropriations Act*¹¹ without additional filings and costs being incurred to maintain the EWT Project schedule.

24. NextBridge submits that expropriation is in the public interest and should be authorized by the Board, subject to the Board Staff proposed conditions as amended by NextBridge in response to Board Staff Interrogatory 6.

All of which is respectfully submitted to the Board on August 9, 2019.

NextBridge Infrastructure
by its Counsel

Aird & Berlis LLP

(Original Signed)
Scott A. Stoll

¹¹ RSO 1990, c E.26