

DECISION AND ORDER

EB-2019-0127

UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE INFRASTRUCTURE, LP (NEXTBRIDGE)

East West Tie Project Expropriation Application

BEFORE: Michael Janigan
Presiding Member

Emad Elsayed
Member

Cathy Spoel
Member

September 12, 2019 (Corrected December 3, 2019)

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1 INTRODUCTION AND SUMMARY

On April 17, 2019, Upper Canada Transmission Inc., operating as NextBridge Infrastructure, LP (NextBridge) applied to the Ontario Energy Board (OEB) under section 99 of the *Ontario Energy Board Act, 1998* (OEB Act)¹ for an order granting authority to expropriate interests in 23 parcels of land to construct a 450 kilometre 230 kV transmission line in northwestern Ontario (East West Tie (EWT) Project). On June 10, 2019, NextBridge amended its application advising that, since the filing of the application with the OEB, it had negotiated agreements in relation to 10 parcels of land and so that it is now requesting authority to expropriate interests in 13 parcels of land owned by seven landowners, rather than 23 parcels of land. NextBridge continues to pursue voluntary agreements with those landowners.² On August 9, 2019 in its Argument-in-Chief, NextBridge informed the OEB that it has reached an agreement with one additional landowner, and that it now seeks the authority to appropriate interests in land on 12 properties owned by six registered owners.

NextBridge seeks the authority to expropriate three types of interests in land³:

- i. Permanent Transmission Line Easements – required for construction and ongoing operation and maintenance of the EWT Project.
- ii. Permanent Road Use Easements – required for access during construction and to maintain and operate the EWT Project.
- iii. Temporary Road Use Easements – required for temporary road use and access during construction of the EWT Project. The term of the temporary rights sought is for either four or seven years.

Construction of the EWT Project was approved by the OEB on February 11, 2019 pursuant to section 92 of the OEB Act in a leave to construct (LTC) proceeding.⁴

NextBridge indicated that it planned to start construction of the EWT Project in June 2019 and that it requires access to the subject lands by December 2019.

¹ S.O. 1998, c.15, Sched. B

² NextBridge's Response to OEB staff IR No. 1 b) (EB-2019-0127)

³ NextBridge Application (EB-2019-0127) Exhibit A, Tab 1, Schedule 2, paragraph 10, pages 3-4 ; Exhibit A, Tab 2, Appendices B,C,D,E Description of Rights Sought

⁴ EB-2017-0182

The OEB finds that the requested expropriation is in the public interest and grants to NextBridge the authority to expropriate the interests in land described in Schedule “A” of this Decision and Order.

2 THE PROCESS

The OEB issued its Notice of Hearing (Notice) on May 28, 2019, and directed NextBridge to serve the Notice, the application and relevant evidence on current registered property owners, encumbrancers and those with any interest in the lands directly affected by the expropriation application.

By letter dated May 28, 2019, the OEB notified all intervenors in the EWT Project LTC proceeding and all First Nation and Métis communities that were consulted in relation to the EWT Project of the filing of the expropriation application. None of the affected properties are on First Nations reserves.

Based on a title search, NextBridge determined that it was required to serve seven registered property owners and 49 encumbrancers. By letter dated July 16, 2019, NextBridge advised the OEB that it had served all but one property owner and 10 encumbrancers. The unserved landowner owns a property identified as F-4 in the Amended Expropriation Application (see Schedule “A” to this Decision and Order). NextBridge advised that, on that property, it requires a Temporary Road Easement over an area of approximately 5,692 m² and that this property will be liable to be forfeited and vested in the Crown on December 1, 2019. NextBridge intends to acquire a Temporary Road Easement for the property through the current expropriation proceeding as the property continues to be registered in the name of the landowner. If that property is forfeited and vested in the Crown, NextBridge will contact the Crown to determine the appropriate reservation of rights. With regard to the 10 unserved encumbrancers, NextBridge provided a detailed explanation of the circumstances that prevented service.⁵

There are no intervenors in this proceeding. No party requested an oral hearing.

The OEB issued Procedural Order No. 1, on July 23, 2019, setting the schedule for written discovery through interrogatories and for submissions. The written interrogatories process was completed on August 6, 2019. NextBridge filed its Argument-in-Chief on August 9, 2019 and OEB staff filed its submission on August 13, 2019. NextBridge did not file a reply submission but responded by letter on August 20, 2019 indicating that it has no issue with the OEB staff submission including the proposed draft conditions.

⁵ NextBridge's Letter to the OEB dated July 16, 2019, page 2

3 PUBLIC INTEREST CONSIDERATIONS

The OEB's power to grant an applicant authority to expropriate land is derived from section 99 of the OEB Act, which is set out in Schedule "B" to this Decision and Order. Under this section, any person who has been granted leave by the OEB to construct certain 'works' under section 90 (natural gas) or section 92 (electricity) of the OEB Act may apply for authority to expropriate land for such works⁶.

Compensation issues do not fall within the OEB's jurisdiction under section 99 of the OEB Act and are addressed in accordance with the *Expropriations Act* (Expropriations Act)⁷ and, if required, are resolved by the Board of Negotiations⁸. If the OEB grants authority to expropriate land, the applicant would follow the process set out in the Expropriations Act to determine the amount of compensation to be paid.

Subsection 99(5) of the OEB Act establishes the test for approving an application brought under subsection 99(1) and states that, if 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.

The OEB applied the following public interest considerations in reviewing this application:

1. Is the proposed expropriation in the public interest?
2. Are the specific interests in the lands requested for expropriation appropriate?
3. Has NextBridge taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?
4. Is NextBridge's decommissioning and abandonment plan appropriate and reasonable?

⁶ Section 99 of the OEB Act falls under Part VI of the Act and sets out the requirements for leave to construct, expropriation and related matters. A "work" is defined in this part of the OEB Act as a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station.

⁷ R.S.O. 1990. C. E 26

⁸ This role was formerly played by the Ontario Municipal Board. The Board of Negotiation (BON) is an informal tribunal that mediates settlements for compensation when property is expropriated. If no settlement is reached during the BON process, either party may file an appeal with the Local Planning Appeal Tribunal (LPAT), an adjudicative tribunal that hears cases in relation to a range of land use matters, or through civil proceedings. The LPAT is part of the Environment and Land Division (ELD) of Tribunals Ontario.

5. Has the impact of the proposed expropriation on the landowner been minimized?
6. What conditions, if any, should be attached to the OEB's Order?

Is the proposed expropriation in the public interest?

Under section 96(1) of the OEB Act, leave to construct is granted if the OEB is of the opinion that the project is in the public interest. Pursuant to section 96(2) of the OEB Act, in the case of the EWT Project, the interests of consumers with respect to prices and the reliability and quality of electricity service were already considered by the OEB in assessing whether the EWT Project is in the public interest.

NextBridge applied on July 31, 2017 under section 92 of the OEB Act for leave to construct the EWT Project.⁹ On February 11, 2019, the OEB issued its decision as follows:

- The OEB granted leave to construct approval to NextBridge for the EWT Project, and found that the EWT Project is in the public interest with respect to prices and the reliability and quality of electricity service.¹⁰
- The OEB approved the form of land easement agreements that have been or will be offered by NextBridge to directly affected landowners for the purposes of section 97 of the OEB Act.¹¹

NextBridge stated that it had offered the agreements in the form approved by the OEB to the registered landowners whose land is subject to this expropriation application¹².

⁹ NextBridge's application was assigned OEB File No. EB-2017-0182 and was heard in a combined proceeding together with Hydro One Networks Inc. Stations Upgrades s. 92 Application (EB-2017-0194) and Hydro One Networks Inc. section 92 application for leave to construct a transmission line between the same two points as NextBridge's EWT Project (referred to as the Lake Superior Link Project (EB-2017-0364).

¹⁰ Section 96(2) of the Act also includes the promotion of the use of renewable energy sources as an issue to be considered, where applicable. The promotion of the use of renewable energy sources was not relevant in this case.

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

¹² NextBridge's Response to IR No. 3 a) (EB-2019-0127)

Both OEB staff and NextBridge submitted that it is in the public interest that the OEB grant NextBridge authority to expropriate the interests in land, as requested by NextBridge.

OEB Findings

The OEB finds that the proposed expropriation is in the public interest based on the following reasons:

- The OEB approved the EWT Project and found that construction and operation of the EWT Project is in the public interest.
- The OEB is satisfied that the public interest with respect to the EWT Project was fully examined during the LTC approval proceeding.
- The EWT Project may be completed only if all necessary land rights for construction and operation of the EWT Project are acquired by NextBridge.

The OEB notes that NextBridge has acquired the majority of land rights and interest in land along the 450 kilometre OEB-approved route of the EWT Project and that it demonstrated reasonable and multiple efforts to notify the landowners and encumbrancers affected by this expropriation application. The OEB is satisfied that NextBridge confirmed that it has offered the agreements in the form approved by the OEB to the registered landowners whose land is subject to this expropriation application.

Are the specific interests in the lands requested for expropriation appropriate?

The OEB's Order granting LTC the EWT Project states:

NextBridge is granted leave pursuant to section 92 of the Act to construct 450 km of new transmission line that will run for 235 km from Lakehead TS to Marathon TS, continuing for approximately 215 km from Marathon TS to Wawa TS. For a map depicting the line route proposed in the NextBridge-EWT Project application, see Schedule A.¹³

¹³ Decision and Order, EB-2017-0182/EB-2017-0194/EB-2017-0364, February 11, 2019, page 12

The locations of the specific interests in the properties for which NextBridge seeks authority to expropriate are within the approved route of the EWT Project transmission line. NextBridge's evidence in this application includes aerial maps and survey drawings for each property and location of the area of the interest in lands on each of the 12 properties.¹⁴

OEB Findings

The OEB finds that the locations of the requested Permanent Easements and Permanent and Temporary Road Use Easements are appropriate as these are within the OEB approved EWT Project route.

Has NextBridge taken reasonable steps to minimize the impact of the proposed expropriation on the subject properties?

For the Permanent Transmission Line Easements, the average Right-of-Way (ROW) width of approximately 64 metres of permanent easement was determined in order to accommodate topographic features and provide flexibility in final structure placement, as well as consideration of the design of the structures, the span between structures, and the sag of the conductor. NextBridge stated that it determined the ROW width in accordance with current standards and technical requirements.¹⁵

The dimensions of the Permanent and Temporary Road Use Easements for the construction of new access roads were determined based on the access requirements for the Project, such as the width required to accommodate vehicular traffic and turning radius. In order to determine the dimensions of the road easements, NextBridge used the Ministry of Natural Resources and Forestry Guidelines for Access Roads, including the Environmental Guidelines for Access Roads and Water Crossings document (MNR 1990).¹⁶ NextBridge also noted that in order to minimize impacts, it will use the existing

¹⁴ NextBridge Application (EB-2019-0127) Exhibit A Tab 2, Schedule 1, Appendix F, Property Descriptions, pages 1-87

¹⁵ NextBridge referenced in its Response to IR No. 4 b) (EB-2019-0127) that it determined the width of the ROW in accordance with CSA 22.3 No. 1-15 (Canadian Standards Association, June 2015), CSA 22.3 No. 60826-10 (Canadian Standards Association, December 2010), NERC FAC-003-4, (North American Electric Reliability Corporation, Transmission Vegetation Management, April 2016), ANSI Vegetation Management Standard Z133 – Safety Requirements for Arboricultural Operations, and the OEB Minimum Technical Requirements.

¹⁶ NextBridge's Response to IR No. 4 b) (EB-2019-0127)

roads to the extent possible and that it is finalizing agreements to use Hydro One roads and ROWs.

With regard to the different terms of Temporary Road Use Agreements on different parcels of land, NextBridge explained that it requires a four-year term on a number of parcels as the construction is estimated to last two years and it needs an additional two years for post construction monitoring and restoration. NextBridge further explained that it requires seven-year Temporary Road Use Easements on parcels where species at risk permits are required pursuant to the *Endangered Species Act, 2007*.¹⁷ According to NextBridge, these permits will require monitoring for five years after construction is completed, resulting in a requirement for a seven-year access period.

To minimize environmental impacts on the affected properties, NextBridge has committed to apply the mitigation strategies specified in its Environmental Assessment report approved by the Ministry of Environment, Conservation and Parks (EA Report).¹⁸

NextBridge confirmed that the post construction inspection and maintenance of the transmission line will be done in accordance with NextBridge's EA Report and with applicable reliability standards, including standards by the North American Electric Reliability Corporation (NERC) and the Independent Electricity System Operator (IESO). During operation of the transmission line, NextBridge will inspect the line annually by helicopter and will have to access the easements every three years for ground inspection and vegetation management.¹⁹

OEB Findings

The OEB finds that the requested permanent and temporary easement area dimensions, locations and terms are appropriate in the circumstances. The OEB finds that NextBridge has minimized the size of the requested easements following the applicable standards and guidance in order to reduce the impact on the affected properties. The OEB notes that NextBridge has committed to implement mitigation strategies outlined in the EA Report to minimize environmental impacts on the affected properties.

¹⁷ NextBridge's Response to IR No. 4 c) (EB-2019-0127)

¹⁸ NextBridge's Response to IR No. 5 c) (EB-2019-0127)

¹⁹ NextBridge's Response to IR No. 4 e) (EB-2019-0127)

Has the impact of the proposed expropriation on the landowners been minimized?

To minimize disruption to landowners and interest-holders during construction, NextBridge has stated that it would take a number of actions such as: advance notification of entering a property, having land agents on site as a point of contact during construction, mitigations to minimize disruption to coordinate scheduled work with landowners and interest-holders, restricting work hours to mitigate noise impacts, and minimizing noise through the use of mufflers on construction vehicles and equipment.

In addition, NextBridge will have environmental inspectors present during construction to ensure that appropriate mitigation measures are employed, including utilizing silt fences; installing swamp mats and geotextile fabric; bridging in wet/soft areas; and separating topsoil from subsoil during grading. NextBridge noted that during operation and maintenance, NextBridge will restrict the access for ground inspections and maintenance to every three years.²⁰

OEB Findings

The OEB finds that NextBridge's plans of action to minimize the impact of the proposed expropriation on the landowners and tenants are reasonable and appropriate. The OEB is satisfied that NextBridge has taken steps to locate and determine the size of the requested easements such that the impacts of the proposed expropriation on the landowners are minimized.

Is NextBridge's decommissioning and abandonment plan appropriate and reasonable?

The forms of NextBridge's easement agreements approved by the OEB²¹ include a clause related to decommissioning of the EWT Project ²². The decommissioning clause sets out the general approach for restoration of the easement area during the process of decommissioning and states that, "...should the Province of Ontario or Canada

²⁰ NextBridge's Response to IR No. 5 i) and 5 ii) (EB-2019-0127)

²¹ The approved forms adhere to the OEB's *Filing Requirements for Electricity Transmission Applications* (Chapter 4), Appendix A: Draft Form of Lease or Easement Agreement, pp. 28-30, July 31, 2014.

²² NextBridge Evidence EB-2017-0182, Exhibit E, Tab 5, Schedule 1, Attachment 2 page 3, paragraph 12.

impose any regulatory or legislative decommissioning requirements greater than described above, the Grantee shall comply with the same”.

OEB Findings

The OEB has no concerns with NextBridge’s approach and submits that a more detailed decommissioning and abandonment plan may be premature at this time. The OEB finds that the decommissioning clause in the form of easement agreement offered to the affected landowners is sufficient, reasonable and appropriate at this time.

What conditions, if any, should be attached to the OEB’s Order?

OEB staff proposed draft conditions of approval for NextBridge’s review and comments. In response to interrogatories, NextBridge suggested a number of changes and amendments to these draft conditions²³. OEB staff responded to NextBridge’s comments and suggestions and created a modified set of conditions which are set out in OEB staff’s submission. In its response to OEB staff’s submission, NextBridge stated that it does not take any issue with the proposed draft conditions.

OEB Findings

The OEB approves the wording of the draft conditions in the OEB staff submission²⁴ and will order that these conditions be adhered to by NextBridge. The OEB’s conditions of approval are attached in Schedule “C” to this Decision and Order.

²³ NextBridge Response to IR No. 6

²⁴ OEB Staff Submission (EB-2019-0127), August 13, 2019, Appendix A

4 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. NextBridge Infrastructure, LP is hereby authorized to expropriate the interests sought in the lands listed in Schedule “A” to this Decision and Order.
2. NextBridge Infrastructure, LP shall file, with the OEB, a final expropriation plan for OEB approval and endorsement as soon as practical.
3. The authorization granted to NextBridge Infrastructure, LP is subject to conditions attached in Schedule “C” to this Decision and Order.
4. NextBridge Infrastructure, LP shall pay the OEB’s costs incidental to this proceeding upon receipt of the OEB’s invoice.

DATED at Toronto September 12, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

DATED at Toronto December 3, 2019 (Corrected)

Original Signed By

Christine E. Long
Registrar and Board Secretary

SCHEDULE A

DECISION AND ORDER

**UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE
INFRASTRUCTURE, LP**

EB-2019-0127

SEPTEMBER 12, 2019

(CORRECTED DECEMBER 3, 2019)

Description of Land Subject to Expropriation and Interest Approved

SCHEDULE B

DECISION AND ORDER

**UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE
INFRASTRUCTURE, LP**

EB-2019-0127

SEPTEMBER 12, 2019

(CORRECTED DECEMBER 3, 2019)

ONTARIO ENERGY BOARD ACT, 1998, SECTIONS 99 AND 100

Expropriation

99 (1) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.
2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted from the requirement to obtain leave by the Board under section 95 or a regulation made under clause 127 (1) (f). 1998, c. 15, Sched. B, s. 99 (1).

Hearing

(2) The Board shall set a date for the hearing of the application, but the date shall not be earlier than 14 days after the date of the application. 1998, c. 15, Sched. B, s. 99 (2).

Information to be filed

(3) The applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land. 1998, c. 15, Sched. B, s. 99 (3).

(4) Repealed: 2003, c. 3, s. 67.

Power to make order

(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. 1998, c. 15, Sched. B, s. 99 (5).

Section Amendments with date in force (d/m/y)

Determination of compensation

100 If compensation for damages is provided for in this Part and is not agreed upon, the procedures set out in clauses 26 (a) and (b) of the *Expropriations Act* apply to the determination of the compensation, and the compensation shall be determined under section 27 of that Act or by the Ontario Municipal Board. 1998, c. 15, Sched. B, s. 100.

SCHEDULE C

DECISION AND ORDER

**UPPER CANADA TRANSMISSION, INC. OPERATING AS NEXTBRIDGE
INFRASTRUCTURE, LP**

EB-2019-0127

SEPTEMBER 12, 2019

(CORRECTED DECEMBER 3, 2019)

NextBridge
East West Tie Project – Expropriation Application
Section 99 Order

1. NextBridge shall notify the OEB in writing in the event that, after this Decision and Order has been issued, a negotiated settlement is reached and expropriation is no longer necessary for any of the 12 properties that are the subject of this proceeding. This notice shall be filed with the OEB within ten days of the settlement.
2. NextBridge shall use all reasonable efforts to provide oral or written notice at the landowner preference to the landowners a minimum of 48 hours prior to the initial entry onto the land. In the event of an emergency, as determined by NextBridge, entry may take place prior to oral or written notice, but reasonable efforts will be made to notify the landowners of entry as soon as practicable.
3. Reasonable accommodation shall be made in NextBridge's schedule for landowner requests/concerns to ensure that transmission facilities' construction and associated activities do not interfere with landowner operations.
4. Upon providing NextBridge with reasonable prior notice, the landowners and tenants can be present to observe the transmission facilities' construction and associated activities subject to NextBridge's health, safety and security policies and procedures and the *Occupational Health and Safety Act, R.S.O. 1990, c.O.1*.
5. NextBridge shall keep records of the personnel attending its worksite and entering on lands, including the time in which entry and departure occurred.
6. NextBridge shall designate one of its employees as project manager who will be responsible for the fulfillment of these conditions, and shall provide the employee's name and contact information to the OEB and to the landowners and tenants as well clearly posted on the construction site. The project manager will be responsible for the fulfillment of the conditions of approval on the site.
7. NextBridge shall furnish the OEB's designated representative with all reasonable assistance for ascertaining whether NextBridge has complied with these conditions of approval.

The OEB's designated representative for the purpose of these Conditions of Approval shall be the OEB's Manager of Supply and Infrastructure (or the Manager of any OEB successor department that oversees leave to construct applications).