

## ONTARIO ENERGY BOARD

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Schedule B), s.78;

**AND IN THE MATTER OF** an application by Upper Canada Transmission Inc., on behalf of Nextbridge Infrastructure LP (“**Nextbridge**”) requesting approval of, among other things, a Custom Incentive Regulation (“CIR”) plan.

**EB-2020-0150**

## INTERVENOR ARGUMENT

### MICHIPICOTEN FIRST NATION

1. I am counsel to Michipicoten First Nation (“**MFN**”), an intervenor in Ontario Energy Board (the “**Board**”) proceeding EB-2020-0150, Nextbridge’s Custom Incentive Rate-setting Application (the “**Application**”), under s.78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B), as amended (the “**Act**”).

2. Nextbridge's East-West Tie project (the "**Project**"), which Project is the subject matter of the Application, crosses one of MFN's Reserves. MFN is also one of the six First Nations which comprise Bamkushwada, LP, a limited partnership intended to have equity ownership in the Project when the line goes into commercial operation.
3. After an amicable, respectful and productive negotiation, MFN, Nextbridge and Indigenous Services Canada concluded a section 28(2) permit for the use and occupation of the Project on MFN's Reserve (the "**Permit**") in June of 2020.
4. Throughout the negotiation of the Permit, Nextbridge was made aware of the quantitative and qualitative costs of the Project having to re-route around MFN's Reserve. As was stated in paragraph 10 of MFN's October 31, 2018 Intervenor Argument in EB-2017-0182; EB-2017-0194; EB-2017-0364, the cost of the Project by-passing 28.5 hectares of the Reserve (the "**By-pass**") is \$1.34 million per kilometer <sup>1</sup>.
5. Nextbridge was also made aware, and readily appreciated, that First Nations Peoples have say over who uses or occupies their home. First Nations are distinct from private landowners whose lands may be expropriated once leave to construct is granted. Indigenous Services Canada has confirmed that it will no longer utilize s.35 of the *Indian Act*, R.S.C, 1985, c.I-5, as amended (the expropriation/"lands taken for public services" section), for transmission lines. <sup>2</sup>

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<sup>1</sup> Testimony of Mr. Karunakaran, Final Transcript for EB-2017-0182-0364 Volume 1, Tuesday Oct 2, 2018, Page 95, line 23.

<sup>2</sup> The *Indian Act* is available online at [laws-lois.justice.gc.ca](http://laws-lois.justice.gc.ca).

6. It was this appreciation that informed Nextbridge's IR Response OEB Staff IR #31c): "...Nextbridge...considered the potential costs of avoiding the crossing of Indigenous Reserve lands and determined that the costs associated with reroutes were higher and more environmentally impactful than the costs associated with securing the Federal Section 28(2) permits. It is important to note that without these agreements, the East-West Tie line could not have been built with the free, prior, and informed consent of the Indigenous communities engaged".
7. MFN supports Nextbridge's response, and applauds it for not staying mired in antiquated paradigms for use and occupation of Reserve land.
8. In fact, MFN would go one step further with regard to this point. The impacts to schedule and budget of constructing on the rocky, uneven, northern terrain of the By-pass were never studied, nor was the question of whether it would necessitate an amended leave to construct application and/or other project permits, including environmental, investigated. MFN submits that the quantitative and qualitative costs to re-route the Project around the Reserve are significant. It further submits that, in light of the fact that expropriation on Reserve land for the Project is not possible, any amount which is one dollar \$1 less than these re-routing costs is de facto prudent.
9. MFN supports Nextbridge's application with regard to its approach to Indigenous participation and compliance. Thus, it supports recovery of the Phase Shift Costs and Construction costs, generically, and in particular with regard to the Indigenous land rights, consultation and participation costs embedded therein. Nexbridge has furthered reconciliation, and acted in the best interests of ratepayers, at the same time.
10. For all of the reasons set out above, MFN submits that Nextbridge's expenses for Indigenous Participation, Indigenous Compliance and Property Taxes and Rights Payments are just

**EB-2020-0150,  
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April 27, 2021.**

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and reasonable. Specifically, and significantly, the Permit to cross MFN's Reserve was indicative of the Applicant acting with the outmost prudence and safeguarding of costs to customers. By understanding, instead of obfuscating, what the real costs to ratepayers could have been if a Permit was not concluded, Nextbridge proactively protected the Project's timelines and budget.

ALL OF WHICH RESPECTFULLY  
SUBMITTED THIS 27th DAY OF  
APRIL, 2021.

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First Nation