



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2017-0182

UPPER CANADA TRANSMISSION INC. (ON BEHALF OF NEXTBRIDGE INFRASTRUCTURE)

Application for leave to construct an electricity transmission line between
Thunder Bay and Wawa, Ontario

EB-2017-0194

HYDRO ONE NETWORKS INC.

Application to upgrade existing transmission station facilities in the Districts of
Thunder Bay and Algoma, Ontario

EB-2017-0364

HYDRO ONE NETWORKS INC.

Application for leave to construct an electricity transmission line between
Thunder Bay and Wawa, Ontario

BEFORE: Christine Long
Presiding Member

Allison Duff
Member

Michael Janigan
Member

February 11, 2019

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1 INTRODUCTION AND SUMMARY

This Decision and Order is made further to two applications to the Ontario Energy Board (OEB) for leave to construct filed under section 92 of the *Ontario Energy Board Act, 1998* (Act). The two applications before the OEB propose different projects to meet the Ontario government identified need of maintaining long-term system reliability in Northwest Ontario. The applications that are the subject of this Decision and Order are as follows:

- An application filed by Upper Canada Transmission Inc., on behalf of NextBridge Infrastructure (NextBridge)¹ on July 31, 2017 for leave to construct a transmission line between Wawa and Thunder Bay, which it refers to as the East-West Tie Project² (NextBridge-EWT Project)
- An application filed by Hydro One Networks Inc. (Hydro One)³ on February 15, 2018 for leave to construct a transmission line between the same two points as the NextBridge-EWT Project, which Hydro One refers to as the Lake Superior Link Project⁴ (Hydro One-LSL Project)

This Decision and Order covers the following aspects of the applications:

- Granting leave to construct to NextBridge for the NextBridge-EWT Project, further to a directive to the OEB issued by the Minister of Energy, Northern Development and Mines and approved by Order in Council 52/2019 dated January 30, 2019
- Approving 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 Act
- Approving the transfer by NextBridge of \$31.241 million in development costs (plus carrying costs from July 31, 2017) to a Construction Work-in-Progress (CWIP) Account 2055, which will be the opening account balance related to this project
- Denying leave to construct to Hydro One for the Hydro One-LSL Project

¹ This application has been assigned OEB File No. EB-2017-0182.

² Referred to as NextBridge-EWT Application in the OEB's December 20, 2018 Decision and Order.

³ This application has been assigned OEB File No. EB-2017-0364.

⁴ Referred to as Hydro One-LSL Application in the OEB's December 20, 2018 Decision and Order.

2 BACKGROUND AND HISTORY OF THE PROCEEDING

2.1 OEB'S DESIGNATION PROCESS AND DESIGNATION DECISION

In 2011, the OEB, further to an expression of interest from the Minister of Energy, commenced a designation process to select a transmitter to carry out development work for a new transmission line between Wawa and Thunder Bay, in order to maintain long-term system reliability in Northwest Ontario.

On August 7, 2013, upon completion of the designation proceeding, the OEB selected NextBridge as the electricity transmitter to complete development work for the new line with an approved development budget of \$22.4 million (Designation Decision).

2.2 AFTER THE DESIGNATION DECISION

In September 2014, the former Ontario Power Authority, now the Independent Electricity System Operator (IESO), proposed a delay of the in-service date from 2018 to 2020 for the new transmission line between Wawa and Thunder Bay. As a result, NextBridge adjusted its timelines for the development of the new transmission line.

On March 2, 2016, the Lieutenant Governor in Council made Order in Council 326/2016 under section 96.1 of the Act (Priority Project OIC), declaring that the new transmission line between Wawa and Thunder Bay is needed as a priority project. The OEB is therefore required to accept that the transmission line is needed when it considers an application for leave to construct under section 92 of the Act.

2.3 LEAVE TO CONSTRUCT PROCEEDINGS

On July 31, 2017, NextBridge filed its application for the NextBridge-EWT Project with the OEB. In that application, NextBridge estimated the cost to construct the new transmission line between Wawa and Thunder Bay at \$737 million, an amount significantly higher than the \$409 million⁵ construction cost estimate provided by NextBridge during the designation proceeding.⁶

Also on July 31, 2017, Hydro One filed an application⁷ seeking leave to upgrade the Wawa Transformer Station (TS), Marathon TS and Lakehead TS to connect the new transmission line between Wawa and Thunder Bay (Hydro One-Station Upgrades

⁵ EB-2011-0140, Phase 2 Decision and Order, August 7, 2013, p. 32.

⁶ NextBridge's construction cost estimate was \$409 million for the Reference Plan and \$378 million for the Recommended Plan during the designation proceeding.

⁷ This application has been assigned OEB File No. EB-2017-0194.

Project). These station upgrades are necessary to support the new transmission line between Wawa and Thunder Bay.

On August 4, 2017, the Minister of Energy wrote to the IESO requesting that it prepare an updated needs assessment for the new transmission line between Wawa and Thunder Bay given the updated cost estimate of \$737 million provided in NextBridge's application. The Minister of Energy's letter stated that the scale of the cost increases was very concerning to the Ontario government and that it would be appropriate for the IESO to review all possible options to ensure that ratepayers are protected.

Hydro One filed a letter, dated September 22, 2017, informing the OEB of its intention to file a competing leave to construct application in December 2017 seeking approval to construct the new transmission line between the same two points as the NextBridge-EWT Project. Hydro One's letter also stated that it intended to provide a cost-effective alternative to the NextBridge-EWT Project, while substantively meeting the timelines.

In parallel to the IESO carrying out its updated needs assessment, the OEB issued a Notice of Hearing for the NextBridge-EWT Project and the Hydro One-Station Upgrades Project applications, noting that it would hear both applications together.

The IESO responded to the Minister of Energy's request for an updated needs assessment on December 1, 2017, which continued to recommend the construction of a new transmission line between Wawa and Thunder Bay over other options.⁸

Hydro One filed a second letter, dated December 21, 2017, with the OEB stating that it still intended to file its competing leave to construct application, noting that the application would be filed in mid-January 2018 rather than in December 2017.

On February 15, 2018, Hydro One filed its application for the Hydro One-LSL Project. The Hydro One application included a construction cost estimate more than \$100 million lower than NextBridge's construction cost estimate and a proposed in-service date of 2021, one year later than NextBridge's proposed in-service date.

On February 27, 2018, NextBridge filed a motion (NextBridge Motion) with the OEB asking that the Hydro One-LSL Project application be dismissed, or in the alternative, not be processed because it was not complete and/or not compliant with the OEB's

⁸ At the OEB's request, the IESO filed with the OEB an Addendum to its Updated Needs Assessment on July 26, 2018 that continued to recommend that the transmission line be in-service by the end of 2020, after which other mitigating measures would have to be in place resulting in additional costs and increased risks to system reliability. The IESO also indicated that if the transmission line is not in service by the end of 2022, the risks to system reliability and the associated cost uncertainties are unacceptable.

Filing Requirements for electricity transmission line leave to construct applications. The OEB proceeded to hear this motion.

In parallel, the OEB held an oral hearing on July 5, 2018 to review the prudence of NextBridge's development costs.

On July 19, 2018, the OEB issued a decision dismissing the NextBridge Motion. On August 13, 2018, the OEB issued Procedural Order No. 1 on Combined Hearing in which it decided to hear the NextBridge-EWT Project application, the Hydro One-LSL Project application and the Hydro One-Station Upgrades Project application together. An oral hearing was held on October 2, 3, 4, 9, 10, 11, and 12, 2018, and the last round of submissions, being reply arguments from NextBridge and Hydro One, were filed on November 9, 2018.

2.3.1 The December Decision

The OEB issued a Decision and Order on December 20, 2018 (December Decision).

The December Decision included the following:

- A finding that NextBridge is eligible to recover \$31.241 million in development costs from ratepayers
- A decision granting Hydro One leave to construct the Hydro One-Stations Upgrade Project, subject to leave to construct approval for the new transmission line between Wawa and Thunder Bay being granted to either Hydro One or NextBridge and subject to certain other conditions
- A finding that both the NextBridge-EWT Project and the Hydro One-LSL Project were acceptable from a reliability and quality of electricity service perspective and that there were no substantial differences between the two projects with respect to those public interest considerations
- Acceptance by the OEB of the evidence of the representatives of the Ontario Ministry of the Environment, Conservation and Parks and Hydro One that given the expected timelines for the Environmental Assessment (EA) approval of upgrades to transmission station facilities, the expected in-service date for the Hydro One-Stations Upgrade Project was now October 2021. As neither of the projects to construct the new transmission line could go into service until the station upgrades were completed, the OEB concluded that the in-service date for the new transmission line would be the end of 2021

- Confirmation that the adequacy of Indigenous consultation is considered as part of the EA process. The OEB's authority to consider Indigenous consultation is limited to any impacts on the issues set out in section 96(2) of the Act

On the issue of the interests of consumers with respect to prices, the December Decision found that the risks associated with the two applications are disproportionately visited upon ratepayers, with Hydro One having submitted a not-to-exceed (NTE) price with a cost escalation condition linked to environmental approvals and NextBridge having chosen not to submit a NTE price against the backdrop of its escalating construction costs.⁹

In order to compare the applications on a level-playing field and to mitigate ratepayer risk, the OEB allowed NextBridge and Hydro One to file a NTE price by January 31, 2019 based on certain OEB-stipulated conditions, including a commitment not to seek to recover in rates amounts in excess of the NTE price and to reduce the maximum amount sought to be recovered in rates to account for incremental system costs incurred by the IESO in the event that the December 31, 2021 in-service date is not met.¹⁰

The OEB stated that it would make its final decision with respect to leave to construct the new transmission line based on the lowest cost. The December Decision indicated that the OEB committed to have a final decision on the successful proponent by the end of February 2019.¹¹ By doing so, the OEB's leave to construct decision would be issued at the same time or before the provincial decision on NextBridge's EA, expected in late February or March 2019.¹²

2.3.2 The Minister's Directive

On January 30, 2019, the OEB received a directive issued by the Minister of Energy, Northern Development and Mines as well as Order in Council 52/2019 dated January 30, 2019 approving the directive (Directive).

The Directive requires the OEB to amend the conditions of NextBridge's transmission licence to include a requirement that NextBridge:

⁹ December Decision, p. 2.

¹⁰ Subject to exceptions for unforeseen events outside of the applicant's control. See the December Decision, pp. 67-69.

¹¹ December Decision, Table 5, p. 61.

¹² NextBridge's Argument-in-Chief, October 22, 2018, p. 17 and December Decision, p. 61.

- Develop, seek approvals in respect of, and proceed with immediacy to construct, expand, or reinforce the new transmission line between Wawa and Thunder Bay
- Provide such reporting to the OEB and the IESO as considered appropriate, including, at a minimum, regular reports on construction progress, budget, timing, and risks of the project

The amendments to NextBridge's licence, which the Directive requires be made without a hearing, are addressed separately under delegated authority and not as part of this Decision and Order.

Under section 97.1 of the Act, the OEB may not, in an application under section 92 of the Act, grant leave to construct to a person if a licence that is held by another person includes an obligation to develop, construct, expand or reinforce the line that is the subject of the application.

On January 31, 2019, Hydro One filed a letter with the OEB indicating that, as a result of the Directive, Hydro One would not be submitting a NTE price for the Hydro One-LSL Project.

3 DECISION ON THE TRANSMISSION LINE APPLICATIONS

Under section 96(1) of the Act, leave to construct is granted if the OEB is of the opinion that the project is in the public interest. In the circumstances of this case, pursuant to section 96(2) of the Act only the interests of consumers with respect to prices and the reliability and quality of electricity service shall be considered by the OEB in assessing whether a project is in the public interest.¹³ As noted earlier, given the Priority Project OIC, the OEB must accept that the transmission line between Wawa and Thunder Bay is needed.

As noted above, in the December Decision, the OEB found that the NextBridge-EWT Project is acceptable from a reliability and quality of electricity service perspective. As a result, the outstanding issue is the interests of consumers with respect to prices. The OEB's concerns in this regard prompted it to allow for the submission of a NTE price by each of the proponents, in order to mitigate ratepayer risk.

Given the Directive, mitigation of ratepayer risk through a comparative analysis of two competing applications based on costs is no longer an option.

The OEB remains concerned with the construction costs put forward by NextBridge. At designation, NextBridge's cost estimate for the construction of the transmission line was \$409 million. By the time it filed its leave to construct application, NextBridge's construction estimate had increased to \$737 million. NextBridge did not provide an updated construction cost estimate since filing its application nor did NextBridge submit a construction cost estimate associated with a 2021 in-service date. During the oral hearing, NextBridge stated that if it did not have to accelerate to ensure a December 2020 in-service date, it could actually bring the construction costs in lower.¹⁴ This Decision and Order should not be taken as accepting the level of costs of the NextBridge-EWT Project for the purposes of recovery from ratepayers. NextBridge will have to demonstrate the prudence of its costs when seeking to recover those costs in the future.

¹³ 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. As noted in the December Decision, the promotion of the use of renewable energy sources is not relevant in this case.

¹⁴ EB-2017-0182/EB-2017-0194/EB-2017-0364 Oral Hearing Transcript, Volume 7, October 12, 2018, p. 50, lines 4-9.

Section 23(1) of the Act states that the OEB, in making an order, may impose such conditions as it considers appropriate. The OEB's order granting leave to construct the NextBridge-EWT Project is subject to the following conditions:

1. The leave to construct is subject to fulfillment of the requirements of the System Impact Assessment and Customer Impact Assessment and all other necessary approvals, permits, licences, certificates and rights required to construct, operate and maintain the proposed facilities.
2. Independent of any reporting requirements under NextBridge's licence, NextBridge shall advise the OEB of any proposed material change in the approved NextBridge-EWT Project in respect of routing, construction schedule, necessary environmental approvals, and all other approvals, permits, licences, certificates and rights required to construct the proposed facilities.
3. NextBridge shall coordinate with Hydro One to align the in-service date of the NextBridge-EWT Project with the in-service date for the Hydro One-Station Upgrades Project.

As noted above, given the Directive and related amendments to NextBridge's licence, the OEB is precluded by section 97.1 of the Act from granting Hydro One leave to construct the new transmission line between Wawa and Thunder Bay. As a result, Hydro One's application for leave to construct the Hydro One-LSL Project is denied.

4 FORMS OF LAND AGREEMENTS

Section 97 of the Act states:

In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board

NextBridge has indicated that it will require approximately 5.51 km² of permanent easement from 69 landowners in respect of 153 parcels of land. The typical width of NextBridge's right-of-way for the proposed transmission line is 64 m. In response to OEB staff interrogatories, NextBridge indicated that the forms of agreement filed by NextBridge have not been previously approved by the OEB. However, NextBridge did identify that clauses detailed in Appendix A to the OEB's *Filing Requirements for Electricity Transmission Applications* (Chapter 4) have been incorporated in the forms of agreement submitted for approval in its evidence.¹⁵ NextBridge highlighted, in response to OEB staff interrogatories, that it had secured option agreements with 74% of private landowners. In the instance that NextBridge is unable to attain settlement agreements, NextBridge stated that it will pursue expropriation. NextBridge estimated that expropriation initiatives would aim to be completed by the first quarter of 2020.¹⁶

OEB staff submitted that the forms of permanent easement agreements that will be offered, or have been offered, to affected landowners by NextBridge adhere to the minimum requirements in the OEB's *Filing Requirements*.¹⁷ All remaining parties did not take issue with the forms of land agreements as filed in the NextBridge-EWT Project application.

Findings

The OEB approves the forms of agreement that NextBridge will offer or has offered to affected landowners for the NextBridge-EWT Project.

¹⁵ EB-2017-0182, NextBridge Interrogatory Response to OEB staff Interrogatory No. 35, January 25, 2018.

¹⁶ EB-2017-0182, NextBridge Interrogatory Response to OEB staff Interrogatory No. 35, January 25, 2018.

¹⁷ 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.

5 CONSTRUCTION WORK IN PROGRESS (CWIP) ACCOUNT

NextBridge applied pursuant to section 78 of the Act, for an Order to establish a CWIP account. NextBridge proposed to transfer its incurred development costs of \$40.2 million from its existing Development Cost Deferral Account to the new CWIP deferral account for consideration in a subsequent proceeding. The \$40.2 million would be the opening balance of the new CWIP account before adding construction costs.

During the proceeding, OEB staff clarified that OEB approval is not required to establish a new CWIP account as a generic CWIP account is available for utilities to use as needed.¹⁸

Findings

In the December Decision, the OEB approved \$31.241 million of NextBridge's development costs for recovery from ratepayers. The December Decision also allowed NextBridge to continue recording carrying costs from July 2017 until recovery is complete.

In this Decision and Order, the OEB approves the transfer of the \$31.241 million in development costs plus carrying costs from July 31, 2017, to a CWIP Account 2055, included in the OEB's Uniform System of Accounts.¹⁹ The \$31.241 million will be the opening balance for NextBridge's CWIP account related to this project.

NextBridge is directed to use CWIP Account 2055 to record construction costs incurred after July 31, 2017, the date when NextBridge filed its leave to construct application and ended the development phase.

Further accounting guidance for Account 2055 is provided in the OEB's *Accounting Procedures Handbook for Electricity Distributors* (January 1, 2012).²⁰

¹⁸ EB-2017-0182/0194 Technical Conference, May 7, 2018, pp. 3-4, lines 7-28 and 1-3, respectively.

¹⁹ The OEB's *Accounting Procedures Handbook For Electricity Distributors*, Issued December 2011, Effective January 1, 2012, 2055 Construction Work in Progress – Electric, p. 82.

²⁰ The *OEB's Accounting Procedures Handbook for Electricity Distributors* has also been applied to electricity transmitters regulated by the OEB.

6 COST AWARDS

In terms of intervenor and OEB costs in the combined proceeding, the OEB finds that Hydro One shall pay 40 percent of the costs and NextBridge shall pay 60 percent of the costs.

In arriving at this apportionment, the OEB has weighed the number of procedural steps, issues, hearing days and intervenor submissions in determining the appropriate amount of costs to be paid by each applicant.

The OEB heard three applications as part of this proceeding. One application dealt with the station upgrades required for the transmission line. The Hydro One-Station Upgrades Project application was much less involved than the other two leave to construct applications. The OEB estimates that the hearing of the Hydro One-Station Upgrades Project application represented 10 percent of the combined proceeding.

Regarding the two transmission line applications, the NextBridge-EWT Project had more procedural steps than the Hydro One-LSL Project. NextBridge's development cost proposals resulted in evidence updates, an additional round of interrogatories, a separate oral hearing and filing of submissions. In contrast, the Hydro One-LSL Project application did not include a detailed review of development costs. As a result, the OEB finds that it is appropriate for NextBridge to pay a larger portion of the associated costs.

This Decision and Order sets out a process for intervenors who were found to be eligible to file their cost claims. Hydro One and NextBridge will be able to file any objections to these cost claims and the OEB will then decide upon the appropriate cost award for each intervenor. In determining the amount of the cost award, the OEB will apply the principles set out in section 5 of the OEB's *Practice Direction on Cost Awards* and the maximum hourly rates set out in the OEB's Cost Awards Tariff.

The costs submitted should include all outstanding amounts for the three applications. Costs previously claimed in respect of the NextBridge Motion are not to be included as part of this cost award process.

7 ORDER

ON LEAVE TO CONSTRUCT, THE ONTARIO ENERGY BOARD ORDERS THAT:

1. 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.
2. NextBridge's leave to construct is subject to fulfillment of the requirements of the System Impact Assessment and Customer Impact Assessment and all other necessary approvals, permits, licences, certificates and rights required to construct, operate and maintain the proposed facilities.
3. Independent of any reporting requirements under NextBridge's licence, NextBridge shall advise the OEB of any proposed material change in the NextBridge-EWT Project in respect of routing, construction schedule, necessary environmental approvals, and all other approvals, permits, licences, certificates and rights required to construct the proposed facilities.
4. NextBridge shall coordinate with Hydro One to align the in-service date of the NextBridge-EWT Project with the in-service date for the Hydro One-Station Upgrades Project.

ON COST AWARDS, THE ONTARIO ENERGY BOARD ORDERS THAT:

5. Hydro One shall pay 40 percent and NextBridge shall pay 60 percent of costs awarded to intervenors.
6. Cost-eligible intervenors shall file with the OEB and serve on Hydro One and NextBridge, their cost claims by February 25, 2019.
7. Hydro One and NextBridge may file with the OEB, and serve on the party against whose claim the objection is being made, an objection to the claimed costs by March 7, 2019.
8. An intervenor whose cost claim was objected to, may file with the OEB and serve on the objecting party, a reply submission as to why its cost claim should be allowed by March 14, 2019.

9. Hydro One and NextBridge shall pay the OEB costs of and incidental to the hearing of the NextBridge-EWT Project, Hydro One-Stations Upgrade Project and Hydro One-LSL Project applications upon receipt of the OEB's invoice which will be apportioned 40 percent to Hydro One and 60 percent to NextBridge.

DATED at Toronto February 11, 2019

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
ROUTE IN THE NEXTBRIDGE-EWT APPLICATION

DECISION AND ORDER

UPPER CANADA TRANSMISSION INC.
(ON BEHALF OF NEXTBRIDGE INFRASTRUCTURE)

HYDRO ONE NETWORKS INC.

EB-2017-0182 | EB-2017-0194 | EB-2017-0364

FEBRUARY 11, 2019

Route in the NextBridge-EWT Application

