

CME INTEROGATORY- 01

Reference:

1. Exhibit C, Tab 2, Socotec Report, pages 11-12 of 61

Interrogatory:

At pages 10 and 11, Socotec stated that the mobilization date was rescheduled from November 1, 2018, to August 1, 2019 (a period of 9 months). This delay was attributed, at least in part to “OEB LTC approval” delays. In this regard:

- (a) Please describe all the causes of the 9-month delay to the extent there are other causes apart from the “OEB LTC approval” delays.
- (b) With respect to the OEB LTC approval delay, please explain the cause of the delay and any reason(s) why those delays were not previously anticipated by UCT.
- (c) Can Socotec please calculate the impact of removing the PIF from 9 months of the project. In other words, if the project had gone ahead with the mobilization as scheduled on November 1, 2018, and therefore 9 additional months of the project were completed prior to COVID, what would be the impact of applying the PIF to the remainder of the project?

Response:

- a) UCT 2 is not aware of any factors outside of the “OEB LTC approval delay” that contributed to the 9-month delay.
- b) The delay in obtaining Leave to Construct (“LTC”) authorization from the OEB was triggered by the intervention of a second electricity transmitter who requested the opportunity to submit a competing LTC application. The time spent evaluating this request resulted in the delay of UCT 2’s LTC approval until an Order in Council was issued by the Government of Ontario directing UCT 2 to proceed with construction. This unforeseeable delay could not have been reasonably anticipated by UCT 2. Regarding the referenced page 11, UCT 2 also notes that cost adjustments listed in Change Order No. 1 were part of the approval granted in EB-2020-0150 and are not included in the applied-for relief in the Application.
- c) Socotec completed the requested calculations for the hypothetical scenario outlined, which assumes the following:
 - Project duration is same as actual (01AUG19 to 03MAR22 = 32 months).
 - Based on the hypothetical start date of 01NOV18, no COVID impacts would have been experienced for the first 16 months of construction (November 2018 to February 2020).
 - Based on the hypothetical start date of 01NOV18, COVID impacts would have been experienced for the final 16 months of construction (March 2020 to June 2021).

- During the final 16 months in the hypothetical period, labour hours, labour cost and equipment costs are assumed to be the same as was experienced in the actual final 16 months of construction.
- Project-wide Travel, LOA, and Camp costs are assumed to be the same.
- Seasonality of the work, environmental conditions and restrictions, or any other factor which could affect efficiency during the hypothetical period have not been considered.

Based on the assumptions above, our calculations indicate that the theoretical costs of the mitigation and productivity loss associated with COVID-19 would be mathematically adjusted to \$52,090,023. Of course, the Project was not actually completed in June of 2021, as suggested in the hypothetical. The Project work continued through actual substantial completion in March 2022. Accordingly, the actual loss calculated at \$89,014,103 represents Socotec's view of the added costs of the mitigation and productivity loss associated with COVID-19.

CME INTEROGATORY - 02

Reference:

1. Exhibit C, Tab 2, Socotec Report, page 23 of 61

Interrogatory:

At page 23, Socotec provided a list of publications that attempted to measure the productivity impacts of the COVID-19 pandemic. Socotec listed one study "Evaluation of measures to prevent the spread of COVID-19 on the construction sites" which estimates the impact of COVID-19 as being 20-70%. With respect to this report:

- (d) Please confirm that this report used self-reported answers from survey participants from Malaysia.
- (e) Did Socotec or UCT complete any analysis on any differences between Malaysia's response to the pandemic as opposed to Canada's or Ontario's?

Response:

- (d) Confirmed. The referenced report "Evaluation of Measures to Prevent the Spread of COVID-19 on the Construction Sites" used self-reported answers from survey participants on construction work in Malaysia. As the report notes in Exhibit C, Tab 2, Section 6.2, paragraph 3, *"most of the construction site operatives were foreigners, and many foreign construction workers that returned to their countries could not return to Malaysia due to movement restrictions during the pandemic."*

The report also compares the statistics in Malaysia to other countries, as stated in Section 6.2, par 2: *"the findings seem to follow the reality in most countries."*

- (e) Socotec did not complete an analysis of differences (if any) between Malaysia's response to the pandemic as opposed to Canada's or Ontario's responses. Please also refer to answer in IR Staff-17 (Exhibit I-01-17).

CME INTEROGATORY- 03

Reference:

1. Exhibit D, Tab 1, pages 18-22 of 37

Interrogatory:

At page 23, UCT describes the Pic Mobert First Nation's cultural and historical resources in the White Lake Narrows Work Fronts and the associated incremental costs. With respect to this category of costs:

- (f) Is UCT aware of why the Pic Mobert First Nation didn't previously raise this issue as part of UCT's indigenous engagement? Please explain why and indicate the steps UCT took to engage with Pic Mobert prior to learning about the cultural and historical resources.
- (g) UCT describes that the new locations for the towers located E002 and E004 required archaeological investigations to ensure that the new tower locations did not disturb anything of significance to the Pic Mobert First Nation. Please provide all calculations or considerations UCT undertook to conclude that this change (and attendant required archaeological investigation) would be superior to conducting archaeological investigations on the island of White Lake to address the concern without changing the routing.

Response:

- (f) UCT 2 engaged in extensive consultation with all First Nation communities whose traditional territory would be impacted by the construction of the Project. During the development period, UCT 2 thoroughly reviewed Project design and routing plans with each of the participating First Nation communities. Pic Mobert First Nation ("PMFN") did not identify any concerns with the Project routing during the development or permitting stages, and accordingly, Project permitting steps were initiated for the proposed route. Ongoing consultations occurred during and following the permit approval process. These discussions also included the initial design locating structure E003 on the island in question. Once the EPC Contractor began mobilizing equipment to the area, PMFN raised concerns about the E003 site location. UCT 2 has no basis to comment on why culture concerns regarding this location were not raised earlier by PMFN representatives. Multiple engagement and consultation meetings were held throughout the development and permitting stages.
- (g) During meetings with PMFN representatives, UCT 2 was advised that archaeological investigations on White Lake Island were not permitted because of the cultural significance of this area to PMFN. Accordingly, UCT 2 honoured this and proceeded with the re-routing of the Project right-of-way as it was determined to be the least impactful solution that best balanced cultural considerations, Project cost, and Project schedule. In addition, there was a high probability that performing archaeological investigations would not have mitigated this particular issue, as the discovery of any artifacts would have resulted in significant schedule delays, which could only have been mitigated by re-routing the Project.

CME INTEROGATORY - 04

Reference:

1. Exhibit D, Tab 1, page 23 of 37

Interrogatory:

At page 23, UCT describes the application for judicial review and Notice of Appeal filed by Biiinjitiwabik Zaaging Anishnabek First Nation ("BZA"). UCT states that the impact of these filings included an increase of approximately \$10 million in incremental costs. With respect to the legal proceedings and claimed incremental costs:

- (h) Please file the pleadings from the application for judicial review and Notice of Appeal, including any responses by UCT in this proceeding.
- (i) Please describe the nature of the consultation that BZA required, and any reasons why UCT did not complete these consultations earlier and/or why BZA's response was unforeseen.

Response:

(h) BZA's Judicial Review Motion was made to the Ontario Superior Court of Justice (Divisional Court) and assigned Divisional Court File No. DC-19-004-JR.

BZA's Notice of Appeal Motion was also made to the Ontario Superior Court of Justice (Divisional Court) and assigned Divisional Court File No. DC-19005.

Timing constraints have not permitted UCT 2 to obtain copies of all filed pleadings as these are not available online and accessible only through in person requests/reviews of records maintained at the Thunder Bay, Ontario courthouse. Some of the main pleadings UCT 2 has located in its records (originating motions, Affidavit filed on behalf of UCT 2, and consent orders dismissing motions) are provided in Attachment 1 (Exhibit I-04-04, Attachment 1).

(i) For a comprehensive description of the consultation efforts undertaken between UCT 2 and BZA, please refer to the Affidavit evidence included as Attachment 2 (Exhibit 1-04-04, Attachment 2). Importantly, UCT 2's consultations with BZA were not incomplete or deficient. This is demonstrated by the fact the consultations carried out allowed for the issuance of the main approvals necessary to allow Project construction to proceed. These approvals were (i) the environmental assessment approval issued on March 21, 2019; (2) the Board's Leave to Construct Approval issued in proceeding EB 2017-0182; and (3) the Lieutenant Governor of Ontario's Order in Council 52/2019 dated January 30, 2019 approving issuance of a Minister's Directive under the Ontario Energy Board Act, 1998 requiring, among other things, to include a requirement that UCT 2's predecessor, NextBridge, proceed to develop and proceed with immediacy to construct the Project ("Main Approvals").

The incremental costs noted in the Preamble to this question arose after the issuance of the Main Approvals. UCT 2 proceeded, as planned, and commenced construction activities. Because local

permitting was required for each Work Front, applications made to these permitting authorities occurred in the normal course and as part of the construction process. The Minister of Natural Resources and Forests (“MNRF”) was one such local permitting authority.

As described in the Affidavit Evidence referred to in part (h) above, UCT 2’s consultations with BZA continued throughout the environmental assessment and leave to construct process. At the time that all Main Approvals had been issued, discussions with BZA focused on economic opportunities with construction of the Project, disputes over equity participation, and ongoing efforts to provide additional capacity funding. Satisfactory agreements regarding these matters could not be reached.

BZA proceeded to challenge three of the Main Approvals (the Order in Council, the Directive made by the Minister of Energy, and the Ontario Energy Board’s decision) but not the environmental assessment approval. If BZA’s challenges were successful, UCT 2 would have been prevented from proceeding with all aspects of Project construction. BZA’s main arguments concerned assertions of inadequate consultation – that the Crown had failed to meet its constitutional duty to consult with BZA. These assertions were vigorously challenged.

Advancing this litigation itself did not prevent UCT 2 from continuing its construction efforts. UCT 2 therefore proceeded to make the necessary permitting applications to MNRF. BZA’s response to these permitting steps caused it to advance concerns previously raised and considered during the environmental assessment process (which had not been challenged) and concerns consistent with its litigation of the Main Approvals. Despite this, MNRF provided BZA the opportunity to review permitting applications and without imposing finite deadlines. In UCT 2’s view, permit issuance appeared to become conditional upon BZA determining its review was complete and consent was given to MNRF for permit issuance. Delays taken by BZA seemingly were consistent with the objectives of the Main Approval litigation.

These circumstances presented UCT 2 with a choice: (a) incur greater delay costs while co-respondents resolved litigation and endure ongoing permitting delay tactics; or (b) seek to negotiate a settlement with BZA and all co-respondents. UCT 2 chose the latter option. The impacts of these circumstances could not have been reasonably foreseeable by UCT 2. UCT 2 planned its construction activities based on the Main Approvals not being challenged and that MNRF permitting would proceed in the normal course.

Ex_I_T_4_S_4_Attach_1

Divisional Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

**IN THE MATTER OF THE APPEAL OF THE ONTARIO ENERGY BOARD
DECISIONS AND ORDERS OF DECEMBER 20, 2018 AND FEBRUARY 11, 2019**

BETWEEN

BIINJITIWAABIK ZAAGING ANISHINAABEK

Appellant

-and-

**THE ONTARIO ENERGY BOARD and HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by THE MINISTER OF ENERGY, NORTHERN
DEVELOPMENT AND MINES**

Respondents

NOTICE OF APPEAL

APPEAL UNDER s.33 of the *Ontario Energy Board Act 1998*, S.O., c.15 Sched B (the "*Ontario Energy Board Act*").

INTRODUCTION

- 1) This Appeal is advanced by the Biinjitiwaabik Zaaging Anishinaabek of the Decisions and Orders issued by the Ontario Energy Board (the "OEB") and dated December 20, 2018 and February 11, 2019 in OEB Proceedings EB-2017-0182, EB-2017-0194 and EB-2017-0364. These proceedings concerned two competing Leave to Construct Applications (the "Leave to Construct Applications") to construct and operate a new

transmission line running between Wawa and Thunder Bay, Ontario, commonly known as the "East-West Tie".

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2) THE APPELLANT ASKS that each of the December 20, 2018 (the "December Decision") and February 11, 2019 Decisions and Orders of the OEB in OEB Proceedings EB-2017-0182, EB-2017-0194 and EB-2017-0364 (collectively, the "Board Decisions"), be set aside, and a judgement be granted as follows:

- a) An Order allowing this Appeal and setting aside and/or quashing each of the Board Decisions;
- b) A Writ of Mandamus requiring the OEB to consider whether the Duty to Consult and Accommodate has been fulfilled and the Honour of the Crown upheld with respect to the East West Tie apart from, and in addition to the considerations required in section 96(2) of the *Ontario Energy Board Act*, before making a final determination on the Leave to Construct Applications;
- c) Leave to extend the time for service and filing of this Notice of Appeal, if necessary;

3) Furthermore, the Appellant seeks the following declaratory relief:

- a) A Declaration that the development, construction and operation of the East-West Tie, as per the Board Decisions, will result in a *prima facie* infringement of the Bijnjitiwaabik Zaaging Anishinaabek's Aboriginal rights and title;

- b) A Declaration that the issuance of the Board Decisions constitutes Crown action which triggers the Duty to Consult and Accommodate the Biinjitiwaabik Zaaging Anishinaabek;
- c) A Declaration that the Duty to Consult and Accommodate the Biinjitiwaabik Zaaging Anishinaabek must be fulfilled prior to any Crown action that could adversely affect their Aboriginal rights and title;
- d) A Declaration that the Duty to Consult and Accommodate the Biinjitiwaabik Zaaging Anishinaabek was not fulfilled prior to the issuance or the rendering of the Board Decisions;
- e) A Declaration that the OEB's failure to either Consult and Accommodate the Biinjitiwaabik Zaaging Anishinaabek or assess the Consultation and Accommodation that had taken place prior to issuing or the rendering of the Board Decisions constituted a breach of the Duty to Consult and Accommodate and a failure to uphold the Honour of the Crown and the Constitutional Values of protecting Aboriginal and treaty rights and as such renders the Board Decisions as unconstitutional;
- f) A Declaration that the OEB acted outside or exceeded its jurisdiction and authority; and/or made an error of law and/or failed to honour and discharge its duties within its jurisdiction by finding that it did not have the statutory authority to consider whether the Duty to Consult and Accommodate had been fulfilled prior to it making

a decision in the Leave to Construct Applications, and by inferring in the December Decision that fulfillment of the Duty to Consult and Accommodate would be assessed as part of the Environmental Assessment process;

- g) A Declaration that the Board Decisions are contrary to the principle of free prior informed consent and Article 28 of the *United Nations Declaration on the Rights of Indigenous Peoples* resolution/adopted by the General Assembly, 2 October 2007 A/RES/61/295 ("UNDRIP");

4) Further, the Appellant seeks:

- a) costs in this Appeal;
- b) A Stay of the operation of the Board Decisions pending the final determination of this Appeal;
- c) An Order that this Appeal be heard together with the Appellant's corresponding Application for Judicial Review to the Divisional Court, Divisional Court File No DC-19-004-JR, of the Minister of Energy, Northern Development and Mines' (the "Respondent Minister") Minister's Directive dated January 30, 2019 to the Ontario Energy Board (the "Minister's Directive"), and the Order in Council 25/2019 issued on January 30, 2019 by the Lieutenant Governor in Council ("OIC"); and

d) Such further and other relief as this Honourable Court may deem necessary and just.

THE GROUNDS OF APPEAL ARE AS FOLLOWS:

- 5) The Biinjitiwaabik Zaaging Anishinaabek is a First Nation in Northwestern Ontario. They are considered a Band under the *Indian Act*, R.S.C., 1985, c.1-5, and an Aboriginal People within the meaning of the *Constitution Act, 1982* (UK) 1982, c 11 ("*Constitution Act, 1982*").
- 6) The Biinjitiwaabik Zaaging Anishinaabek have never surrendered or ceded their interests in their traditional territory and have an unextinguished Aboriginal title claim which the Crown has knowledge of. As a result, the Duty to Consult and Accommodate the Biinjitiwaabik Zaaging Anishinaabek lies at the high end of the spectrum and requires deep consultation and consent.
- 7) The Biinjitiwaabik Zaaging Anishinaabek reserve lands are located approximately 50 km north of the proposed corridor for the East-West Tie. The traditional territory and land use area of the Biinjitiwaabik Zaaging Anishinaabek extends throughout the region and will be transected by the East-West Tie.
- 8) The East-West Tie was approved by the Province as part of its Long-Term Energy Plan in 2010. Since then, the Independent Electricity Systems Operator has continued

to recommend the East-West Tie to maintain a reliable and cost-effective supply of electricity to Northwestern Ontario for the long term.

9) In response to a call for expressions of interest by the Minister of Energy in 2011, the OEB undertook a designation process to choose a proponent to complete the development work for the East-West Tie. From this process, the OEB designated Upper Canada Transmission Inc., on Behalf of Nextbridge Infrastructure LP, ("Nextbridge") to complete the development work in 2013.

10) The Duty to Consult and Accommodate the Biinjitiwaabik Zaaging Anishinaabek was delegated to Nextbridge by the Minister of Energy pursuant to a Memorandum of Understanding dated November 4, 2013. By this time, little consultation had occurred with the Biinjitiwaabik Zaaging Anishinaabek especially in relation to the accommodation benefits that would be available from the project. However, by early 2014, and before Nextbridge conducted any meaningful consultation with Biinjitiwaabik Zaaging Anishinaabek, Nextbridge made a determination that it would not be offering any economic participation benefits in the form of equity in the project to the Biinjitiwaabik Zaaging Anishinaabek. Nextbridge unilaterally decided this even though it was offering equity to other First Nation communities and despite the fact that the Biinjitiwaabik Zaaging Anishinaabek had maintained that they wanted to receive economic benefits from the project. To date, the level of consultation concerning the East-West Tie has not been sufficient to satisfy or discharge the duties

owed by the Crown and no meaningful Accommodation has been made or offered by the Crown or any proponent to Biinjitiwaabik Zaaging Anishinaabek.

11) On July 31, 2017, Nextbridge filed a Leave to Construct Application with the OEB to construct and operate the East-West Tie. On February 15, 2018, Hydro One Networks Inc. ("Hydro One") filed a competing Leave to Construct Application. The OEB combined the proceedings for the two Applications in Procedural Order 1, dated August 13, 2018, and the Leave to Construct Applications were heard together.

12) Oral Hearings took place in October 2018, with written submissions following. On October 2, 2018 the Respondent Minister, who was not a participant in the Leave to Construct Application proceedings, wrote to the OEB requesting that a decision be issued promptly.

13) On December 20, 2018, the OEB issued the December Decision and ruled that determining whether the Crown had fulfilled its Duty to Consult and Accommodate was not a matter within the statutory jurisdiction of the OEB and that the adequacy of Indigenous consultation is considered as part of the Ministry of Environment, Conservation and Parks' Environmental Assessment process. The OEB made this ruling despite the fact that it had already assumed the jurisdiction and the obligation to assess the Duty to Consult and Accommodate by: (1) granting intervenor status to parties seeking to address Consultation and Accommodation issues, including Biinjitiwaabik Zaaging Anishinaabek; (2) considering the importance of Indigenous

partnerships in the Designation Proceedings; and (3) permitting and inviting questioning and submissions on the Duty to Consult and Accommodate. The OEB then directed Nextbridge and Hydro One to file a "Not to Exceed" price by January 31, 2019. The OEB stated that this would be the final step in the proceeding before the OEB would grant leave to construct.

14) On January 18, 2019, Biinjitiwaabik Zaaging Anishinaabek wrote to the Respondent Minister, and the Minister of Environment, Conservation and Parks, and the Minister of Natural Resources and Forestry, seeking their intervention. The Biinjitiwaabik Zaaging Anishinaabek sought the Ministers' intervention as neither Hydro One or Nextbridge had adequately or meaningfully consulted with or accommodated the Biinjitiwaabik Zaaging Anishinaabek. In fact, the Biinjitiwaabik Zaaging Anishinaabek noted the discriminatory treatment it has received. The Biinjitiwaabik Zaaging Anishinaabek also expressed concerns that there was no oversight or evaluation from the Crown in relation to the consultation activities that had occurred to date. The Biinjitiwaabik Zaaging Anishinaabek states that the Respondent Minister has never responded to this correspondence in any meaningful way.

15) Suddenly, and without any notice or consultation with the Biinjitiwaabik Zaaging Anishinaabek, the Respondent Minister wrote to the OEB on January 30, 2019 and advised that he was, with the approval of the Lieutenant Governor in Council as represented by the Order in Council, issuing a directive to the OEB to amend Nextbridge's licence to require it to build the transmission line, thereby bypassing the

need for the OEB to make a decision on the merits of Leave to Construct Applications before it.

16) On February 11, 2019 the OEB issued its Decision and Order and, pursuant to the Minister's Directive and Order in Council, awarded Leave to Construct the East-West Tie to Nextbridge without any condition or requirements concerning the issue of Indigenous Consultation or Accommodation.

17) The Duty to Consult and Accommodate:

a) is triggered when contemplated Crown conduct may affect an asserted or established Aboriginal or Treaty Right, and continues throughout the course of the action or project;

b) flows from the Honour of the Crown and section 35 of the *Constitution Act*, 1982. Further, the protection of Aboriginal and treaty rights is a Constitutional Value; and

c) must be fulfilled *every time* when Crown action or conduct is contemplated that could adversely affect the rights in question.

18) The Minister's Directive, OIC and the Board Decisions directly or indirectly determine the route, costs, levels of economic participation and/or consultation afforded to Indigenous groups concerning the East-West Tie. These decisions constitute Crown

action which triggers the Duty to Consult and Accommodate as they, and particularly the Board Decisions, result in a final determination with respect to certain aspects of the project – namely the route, the chosen proponent, costs and levels of economic participation and/or consultation. The OEB is an agent of the Crown in right of Ontario, and as such the OEB has the same obligations as the Respondent Minister to ensure that the Duty to Consult and Accommodate was fulfilled. Since there is no further opportunity for the Crown to engage and undertake Consultation and Accommodation with respect to these aspects of the project, the Duty to Consult and Accommodate must be fulfilled prior to the Board Decisions being made.

19) The OEB cannot rely on the apparent jurisdictional silos in the project approval process and unilaterally relieve itself of the obligation to ensure the Duty to Consult and Accommodate has been fulfilled with respect to the East-West Tie simply because further permits and approvals are required from other Ministries and Crown agencies. Only the OEB could ensure that Duty to Consult and Accommodate was fulfilled prior to the Leave to Construct being granted and the OEB's failure to address, consider, or ensure whether the Duty to Consult and Accommodate had been fulfilled was a breach of the Duty to Consult and Accommodate and a failure to uphold the Honour of the Crown.

20) Furthermore, the OEB's failure to address, consider, or ensure whether the Duty to Consult and Accommodate had been fulfilled breached the Biinjitiwaabik Zaaging Anishinaabek's right to free prior informed consent and Article 28 of UNDRIP, to which Canada is a signatory.

21) Furthermore, the OEB has the duty and authority to apply the *Constitution Act, 1982*, as the authority to decide constitutional issues is implied in the OEB's power to decide questions of law. The legislature has not clearly demonstrated an intention to exclude the power to decide constitutional issues in relation to Aboriginal rights from the OEB's powers. The OEB must read the *Ontario Energy Board Act* in a manner consistent with the *Constitution Act, 1982* and the Duties flowing therefrom, and not ignore the same merely because they are not specifically referenced.

22) To date, no Ministry or Agency of the Crown has discharged the Duty to Consult and Accommodate the Biinjitiwaabik Zaaging Anishinaabek. No Ministry or Agency of the Crown has evaluated the Consultation that has occurred or whether appropriate Accommodation has been afforded. If any did, they did so without consulting or seeking the feedback and opinions of the Biinjitiwaabik Zaaging Anishinaabek.

23) Furthermore, no one from any Ministry or Agency of the Crown has ever determined, suggested, or maintained that the Biinjitiwaabik Zaaging Anishinaabek is:

- a) Not a proximate community to the East-West Tie;
- b) A community that is less adversely affected by the East-West Tie; or
- c) A community that is entitled to less in terms of the Accommodation and/or participation benefits than that which is being offered to other Indigenous communities who will also be affected by the East-West Tie.

24) Finally, the Board Decisions and determination on jurisdiction were made without hearing from the Ministry of Environment, Conservation and Parks on whether the Duty to Consult and Accommodate had been fulfilled, or whether the Crown's fulfilment of the Duty to Consult and Accommodate, and specifically with respect to economic participation, would be assessed by the Ministry of Environment, Conservation and Parks in the Environmental Assessment or otherwise. The OEB exceeded its jurisdiction or failed to honour and discharge its duties by directly, or indirectly, interpreting the governing legislation of the Ministry of Environment, Conservation and Parks without hearing from that Ministry, or any other party (including the Biinjitiwaabik Zaaging Anishinaabek) with standing before it, and without an adequate evidential record on this issue.

25) For these reasons the Board Decisions should be set aside or quashed and the requested relief granted.

26) In addition to the grounds set out above, the Appellant pleads and relies on:

- a) Section 35 of the *Constitution Act, 1982* (UK) 1982, c 11
- b) the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
- c) the *Ontario Energy Board Act, 1998*, S.O, c.15, Sched. B;
- d) the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- e) Article 28 the *United Nations Declaration on the Rights of Indigenous Peoples* resolution/adopted by the General Assembly, 2 October 2007 A/RES/61/295
- f) applicable constitutional and administrative law principles;

- g) the inherent jurisdiction of this Court; and
- h) such further and other authorities as counsel may advise and this Honourable Court may allow.

THE BASIS OF THE APPELATE COURT'S JURISDICTION IS:

- 27) Section 33(1)(a) of the *Ontario Energy Board Act* provides for leave to appeal to the Divisional Court from an Order of the Board; Leave to Appeal is not required.
- 28) The OEB Decision dated December 20, 2018 was an interlocutory decision; and
- 29) The OEB Decision dated February 11, 2019 was a final decision.
- 30) The Appellant requests that this Appeal be heard at **THUNDER BAY, ONTARIO.**

Date: March 8, 2019

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AND HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO as
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MINJITWAABIK ZAAGING ANISHINAABEK

and

THE ONTARIO ENERGY BOARD et. al.
Respondents

Divisional Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

PROCEEDINGS COMMENCED AT Thunder Bay

NOTICE OF APPEAL

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ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

IN THE MATTER OF THE APPEAL OF THE ONTARIO ENERGY BOARD
DECISIONS AND ORDERS OF DECEMBER 20, 2018 AND FEBRUARY 11, 2019

BETWEEN

BIINJITWAABIK ZAAGING ANISHINAABEK

Appellant

-and-

**THE ONTARIO ENERGY BOARD and HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by THE MINISTER OF ENERGY, NORTHERN
DEVELOPMENT AND MINES**

Respondents

APPELLANT'S CERTIFICATE RESPECTING EVIDENCE

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. The following exhibits, transcripts, Procedural Orders, and Orders and Directions, and other documents which form the record of the Ontario Energy Board Proceedings EB-2017-0182, EB-2017-0194; and EB-2017-0364:
 - a. Procedural Orders:
 - i. Procedural Order No. 1 (April 27, 2018) EB-2017-0364
 - ii. Procedural Order No. 1 on Combined Hearings (August 13, 2018) EB-2017-0182; 2017-0194; 2017-0364
 - b. Decisions and Orders:
 - i. Decision and Order on Motion (July 19, 2018) EB-2017-0364;

- ii. Decision and Order (December 20, 2018) EB-2017-0182; 2017-0194; 2017-0364;
 - iii. Decision and Order (February 11, 2019) EB-2017-0182; 2017-0194; 2017-0364;
 - iv. Notice of Hearing, Motion, (April 6, 2018) EB-2017-0364
- c. The Minister of Energy, Northern Development and Mines' Letter to the Ontario Energy Board (January 30, 2019)
- d. The Minister's Directive of the Minister of Energy, Northern Development and Mines to the Ontario Energy Board, Dated January 30, 2019;
- e. The Order in Council 25/2019 issued on January 30, 2019 by the Lieutenant Governor in Council ("OIC");
- f. Transcripts from the:
- i. Technical Conference EB-2017-0364 (May 16-17, 2018);
 - ii. Motion Hearing EB-2017-0364 (June 4-5, 2018);
 - iii. Development Cost Hearing EB-2017-0182; EB-2017-0194 (July 5, 2018)
 - iv. Combined Hearing Transcripts, Vol 1-7 (October 2- 11, 2018)
- g. Written submissions filed with the OEB:
- i. on Development Costs (September 19, 2018);
 - ii. on the Combined Proceedings (October 31, 2018)
- h. BZA's intervenor request letter (March 12, 2018)
- i. Affidavit of Melvin Hardy (May 8, 2018)
- j. The Memorandum of Understanding between the Minister of Energy and Nextbridge (November 4, 2013) (Appendix A to the Aboriginal Consultation Plan for the EWT Transmission Project, Schedule D to the January 22nd 2014 Monthly Report filed in EB-2011-0140 (the designation proceedings)
- k. Pre-filed Evidence and Responses to Interrogatories filed by BZA, and Hydro One's Response to OEB Interrogatory 11.

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Toronto, ON M7A 2S9

BINJITIWAABIK ZAAGING ANISHINAABEK

and

THE ONTARIO ENERGY BOARD et. al.
Respondents

Divisional Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

PROCEEDINGS COMMENCED AT Thunder Bay

CERTIFICATE RESPECTING EVIDENCE

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ETIENNE ESQUEGA (LSO 51273S)

Lawyer for the Appellant

SERVICE OF A COPY
ADMITTED THIS 28th DAY OF March 2019
Crown Law Office (Civil Law)
MINISTRY OF THE ATTORNEY GENERAL
FOR ONTARIO
Per: *[Signature]* Time: 2:55 pm
720 BAY STREET
TORONTO, ONTARIO M7A 2S9

Divisional Court File No. DC-19-004-JR



ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

IN THE MATTER OF THE APPLICATION FOR JUDICIAL REVIEW OF THE ORDER IN COUNCIL OF THE GOVERNOR IN COUNCIL 52/2019 AND THE MINISTER'S DIRECTIVE DATED JANUARY 30, 2019

REGISTRAR

)
)
)

Friday....., THE *18th*
DAY OF *June*..., 2021

B E T W E E N:

(Court Seal)

BIINJITIWAABIK ZAAGING ANISHINAABEK

Applicant

- and -

THE HONOURABLE MINISTER GREG RICKFORD, THE MINISTRY OF ENERGY, NORTHERN DEVELOPMENT and MINES (ONTARIO), THE LIEUTENANT GOVERNOR IN COUNCIL, THE ONTARIO ENERGY BOARD, and UPPER CANADA TRANSMISSION, INC., operating as NEXTBRIDGE INFRASTRUCTURE LP

Respondents

ORDER

THIS MOTION, by the Respondents, the Honourable Minister Greg Rickford, the Ministry of Energy, Northern Development and Mines (Ontario) and the Lieutenant Governor in Council, for an Order dismissing this Application, with prejudice, without costs, was read this day at the Court House, 125 Brodie Street North, Thunder Bay, Ontario, P7C 0A3.

ON READING the consent of the parties by their respective lawyers, filed.

1. **THIS COURT ORDERS** that this Application is dismissed, with prejudice,
without costs.



BIINJITWAABIK ZAAGING and
ANISHINAABEK

THE HONOURABLE MINISTER
GREG RICKFORD, THE MINISTRY
OF ENERGY, NORTHERN
DEVELOPMENT and MINES
(ONTARIO), et al.

Divisional Court File No. DC-19-004-JR

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT THUNDER BAY

ORDER

MINISTRY OF THE ATTORNEY GENERAL

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The Honourable Minister Greg Rickford, the Ministry
of Energy, Northern Development and Mines
(Ontario), and the Lieutenant Governor in Council

Divisional Court File No. DC-19005



ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

**IN THE MATTER OF THE APPEAL OF THE ONTARIO ENERGY BOARD DECISIONS
AND ORDERS OF DECEMBER 20, 2018 AND FEBRUARY 11, 2019**

REGISTRAR

)
)
)

Friday, THE *18th*
DAY OF *June*, 2021

B E T W E E N:

(Court Seal)

BIINJITIWAABIK ZAAGING ANISHINAABEK

Appellant

- and -

THE ONTARIO ENERGY BOARD, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by THE MINISTER OF ENERGY, NORTHERN
DEVELOPMENT and MINES, and UPPER CANADA TRANSMISSION, INC.,
operating as NEXTBRIDGE INFRASTRUCTURE LP

Respondents

ORDER

THIS MOTION, by the Respondent, Her Majesty The Queen in Right of Ontario
as represented by the Minister of Energy, Northern Development and Mines, for an Order
dismissing this Appeal, with prejudice, without costs, was read this day at the Court House, 125
Brodie Street North, Thunder Bay, Ontario, P7C 0A3.

ON READING the consent of the parties by their respective lawyers, filed.

1. **THIS COURT ORDERS** that this Appeal is dismissed, with prejudice, without costs.



Appellant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT THUNDER BAY

ORDER

MINISTRY OF THE ATTORNEY GENERAL

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Her Majesty The Queen in Right of Ontario as
represented by the Minister of Energy, Northern
Development and Mines



**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

**IN THE MATTER OF THE APPEAL OF THE ONTARIO ENERGY BOARD DECISIONS
AND ORDERS OF DECEMBER 20, 2018 AND FEBRUARY 11, 2019**

THE HONOURABLE *Mr. Justice*) *Wednesday*, THE *11th* DAY OF
J.S. FREGEAU)
) *September*, 2019.

B E T W E E N:

BIINJITIWAABIK ZAAGING ANISHINAABEK

Appellant

- and -

**THE ONTARIO ENERGY BOARD and HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by THE MINISTER OF ENERGY, NORTHERN
DEVELOPMENT and MINES**

Respondents

- and -

**UPPER CANADA TRANSMISSION, INC.,
operating as NEXTBRIDGE INFRASTRUCTURE LP**

Moving Party

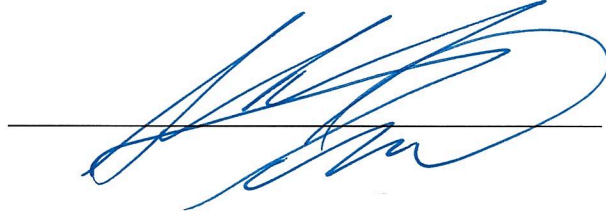
ORDER

THIS MOTION, made on consent by the Moving Party was heard in writing this day at
the Court House at 125 Brodie Street North, Thunder Bay, Ontario.

ON READING the Notice of Motion of the Moving Party, filed; and on reading the
consent of the Moving Party and of the other parties, filed,

1. **THIS COURT ORDERS** that Upper Canada Transmission, Inc., operating as NextBridge Infrastructure LP (“NextBridge”) is hereby added as respondent to this appeal, and the title of proceeding is hereby amended accordingly.

2. **THIS COURT ORDERS** that there shall be no order as to costs of this motion.



ENTRE 0 BOOK
INSUIT _____ REGISTRAR _____
DATE SEP 16 2019 _____
No. 6387 PER _____
No. _____ POUR AT

BENJAMIN WAABIK
MAJONG
ANISHINAABEK
Appellant

and
THE ONTARIO ENERGY BOARD and HER
MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by THE MINISTER
OF ENERGY, NORTHERN
DEVELOPMENT and MINES

Respondents

and
UPPER CANADA
TRANSMISSION, INC.,
operating as
NEXTBRIDGE
INFRASTRUCTURE LP

Moving Party

Divisional Court File No.
DC-19005

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

PROCEEDING COMMENCED AT THUNDER BAY

ORDER

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Lawyers for the Moving Party



**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

IN THE MATTER OF THE APPLICATION FOR JUDICIAL REVIEW OF THE ORDER IN COUNCIL OF THE GOVERNOR IN COUNCIL 52/2019 AND THE MINISTER'S DIRECTIVE DATED JANUARY 30, 2019

THE HONOURABLE *Mr. Justice*) *wednesday*
J.S. FREGEAU) *H~~th~~ AT.* DAY, THE *11th* DAY OF
) *September*, 2019.

B E T W E E N:

BIINJITIWAABIK ZAAGING ANISHINAABEK

Applicant

- and -

**THE HONOURABLE MINISTER GREG RICKFORD, THE MINISTRY OF ENERGY,
NORTHERN DEVELOPMENT and MINES (ONTARIO), THE LIEUTENANT GOVERNOR
IN COUNCIL and THE ONTARIO ENERGY BOARD**

Respondents

- and -

**UPPER CANADA TRANSMISSION, INC.,
operating as NEXTBRIDGE INFRASTRUCTURE LP**

Moving Party

ORDER

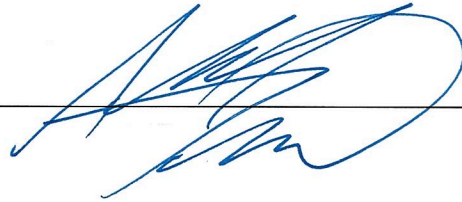
THIS MOTION, made on consent by the Moving Party was heard in writing this day at the Court House at 125 Brodie Street North, Thunder Bay, Ontario.

ON READING the Notice of Motion of the Moving Party, filed; and on reading the consent of the Moving Party and of the other parties, filed,

1. **THIS COURT ORDERS** that Upper Canada Transmission, Inc., operating as NextBridge Infrastructure LP (“NextBridge”) is hereby added as respondent to this application, and the title of proceeding is hereby amended accordingly.

2. **THIS COURT ORDERS** that NextBridge may deliver a notice of appearance within 10 days after NextBridge becomes aware of this Order.

3. **THIS COURT ORDERS** that there shall be no order as to costs of this motion.



ENTRE 0 BOOK
INSUIT _____ REGISTRAR _____
DATE SEP 16 2019
No. 6388 PER
No. _____ POUR AT

~~BRITISH COLUMBIA~~
~~AVAILING~~
~~ANISHINAABEK~~
Applicant

and
THE HONOURABLE MINISTER GREG
RICKFORD, THE MINISTRY OF ENERGY,
NORTHERN DEVELOPMENT and MINES
(ONTARIO), THE LIEUTENANT
GOVERNOR IN COUNCIL and THE
ONTARIO ENERGY BOARD

Respondents

and
UPPER CANADA
TRANSMISSION, INC.,
operating as
NEXTBRIDGE
INFRASTRUCTURE LP

Moving Party

Divisional Court File No.
DC-19-004-JR

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

PROCEEDING COMMENCED AT THUNDER BAY

ORDER

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Ex_I_T_4_S_4_Attach_2

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

IN THE MATTER OF THE APPLICATION FOR JUDICIAL REVIEW OF THE ORDER IN COUNCIL OF THE GOVERNOR IN COUNCIL 52/2019 AND THE MINISTER'S DIRECTIVE DATED JANUARY 30, 2019

B E T W E E N:

BIINJITWAABIK ZAAGING ANISHINAABEK

Applicant

- and -

THE HONOURABLE MINISTER GREG RICKFORD, THE MINISTRY OF ENERGY, NORTHERN DEVELOPMENT and MINES (ONTARIO), THE LIEUTENANT GOVERNOR IN COUNCIL, THE ONTARIO ENERGY BOARD, and UPPER CANADA TRANSMISSION, INC., operating as NEXTBRIDGE INFRASTRUCTURE LP

Respondents

**RESPONDENT'S APPLICATION RECORD OF
UPPER CANADA TRANSMISSION, INC., operating as
NEXTBRIDGE INFRASTRUCTURE LP
Volume I of III**

March 4, 2020

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AND TO:

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ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

IN THE MATTER OF THE APPLICATION FOR JUDICIAL REVIEW OF THE ORDER IN COUNCIL OF THE GOVERNOR IN COUNCIL 52/2019 AND THE MINISTER’S DIRECTIVE DATED JANUARY 30, 2019

B E T W E E N:

BIINJITWAABIK ZAAGING ANISHINAABEK

Applicant

- and -

THE HONOURABLE MINISTER GREG RICKFORD, THE MINISTRY OF ENERGY, NORTHERN DEVELOPMENT and MINES (ONTARIO), THE LIEUTENANT GOVERNOR IN COUNCIL, THE ONTARIO ENERGY BOARD, and UPPER CANADA TRANSMISSION, INC., operating as NEXTBRIDGE INFRASTRUCTURE LP

Respondents

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TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

IN THE MATTER OF THE APPLICATION FOR JUDICIAL REVIEW OF THE ORDER IN COUNCIL OF THE GOVERNOR IN COUNCIL 52/2019 AND THE MINISTER'S DIRECTIVE DATED JANUARY 30, 2019

B E T W E E N:

BIINJITIWAABIK ZAAGING ANISHINAABEK

Applicant

- and -

THE HONOURABLE MINISTER GREG RICKFORD, THE MINISTRY OF ENERGY, NORTHERN DEVELOPMENT and MINES (ONTARIO), THE LIEUTENANT GOVERNOR IN COUNCIL, THE ONTARIO ENERGY BOARD, and UPPER CANADA TRANSMISSION, INC., operating as NEXTBRIDGE INFRASTRUCTURE LP

Respondents

AFFIDAVIT OF JENNIFER TIDMARSH
(Sworn March 4, 2020)

I, Jennifer Tidmarsh, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am President, NextEra Energy Transmission – Canada (“**NextEra**”) and Project Director for Upper Canada Transmission, Inc., operating as NextBridge Infrastructure LP (“**NextBridge**”). In those roles, I was responsible for NextBridge’s consultation with the Applicant First Nation, Biinjitiwaabik Zaaging Anishinaabek (“**BZA**”). I have had general overview and supervision of all consultations with BZA and can speak to those consultations with personal knowledge.
2. NextBridge is a partnership between affiliates of NextEra Energy, Inc., Enbridge Inc., and the Ontario Municipal Employees Retirement System. Before joining NextEra and NextBridge, I

was the Director of First Nation and Métis Relations at the former Ontario Power Authority (“**OPA**”), where I was responsible for facilitating and integrating all aspects of Indigenous involvement into the work of the organization. Prior to that position, I was the Senior Advisor to the Chief Executive Officer of the OPA, and I was involved in designing and managing the Aboriginal Renewable Energy Fund and the Community Energy Partnerships Program of the OPA. Since as of 2015, the OPA has been amalgamated and continued as the Independent Electricity System Operator (the “**IESO**”).

3. I have personal knowledge of the matters in this affidavit, except where stated to be based on information and belief, in which case I believe the same to be true.

4. I am authorized by NextBridge to make this affidavit in response to BZA’s Application for Judicial Review. I make this affidavit for no other or improper purpose.

Overview of My Affidavit

5. This affidavit describes, among other things:

- (a) The East-West Tie Transmission project (the “**EWT Project**” or the “**Project**”);
- (b) The need to build the Project to ensure the reliability of electricity in Northwestern Ontario, and the system costs and risks of further Project delay;
- (c) The process of the Ontario Energy Board (“**OEB**”) through which NextBridge was selected as the designated transmitter to develop the Project, including the OEB’s selection criteria related to Indigenous consultation and participation;
- (d) The economic participation opportunities that have been offered to BZA;

- (e) The two principal governmental approvals required for NextBridge to construct the EWT Project, namely: (1) the Leave to Construct approval from the OEB (which reflected the Order-in-Council and Ministerial Directive dated January 30, 2019, directing the OEB to amend the conditions of NextBridge’s transmission license requiring NextBridge to develop, seek approvals in respect of, and proceed to construct the EWT Project); and (2) the ministerial approval by the Minister of the Environment, Conservation and Parks of NextBridge’s Environmental Assessment in relation to the EWT Project;
- (f) The delegation to NextBridge by the Provincial Crown of the procedural aspects of the Crown’s constitutional duty to consult First Nations and Métis communities;
- (g) The more than six-years of consultation between NextBridge and BZA in relation to the Project, which remains ongoing; and
- (h) My concerns with the affidavit of Chief Melvin Hardy sworn August 30, 2019.

A. The East-West Tie Transmission Project

6. The EWT Project will consist of the installation of a double-circuit 230 kilovolt electricity transmission line generally paralleling the existing Hydro One Networks Inc. (“**HONI**”) east-west tie transmission corridor (“**HONI Line**”). It will connect the Wawa Transformer Station (near Wawa, Ontario) to the Lakehead Transformer Station (near Thunder Bay), with a connection point approximately mid-way in Marathon, Ontario. Attached to my affidavit as **Exhibit “1”** is a map depicting the planned route for the EWT Project.

7. The full length of the new transmission line will be above-ground and connected by lattice towers. The planned route is approximately 450 km long and primarily parallels the existing HONI Line. However, the planned route avoids certain sensitive features crossed by the existing line, including Pukaskwa National Park. The right-of-way (cleared area) for the Project is expected to be approximately 64 meters wide. However, additional space may be required for some areas.

8. At completion, the EWT Project will be 20% owned by six First Nations who assert Aboriginal and Treaty rights over the planned Project route: namely, Biigtigong Nishnaabeg, Fort William First Nation, Michipicoten First Nation, Pays Plat First Nation, Pic Moberg First Nation, and Red Rock Indian Band. These six First Nations have formed a partnership called the Bankushwada Limited Partnership, and thus I will refer to these First Nations in my affidavit as the “**BLP First Nations**”.

9. NextBridge and the BLP First Nations negotiated the terms of the latter’s investment in the EWT Project over the course of approximately five years between 2013 and 2018. The parties’ agreement (the “**Implementation Agreement**”) is confidential, but I can advise that it addresses the relationship between NextBridge and the BLP First Nations beyond the 20% equity interest that the latter invested or will invest into the Project.

10. The Project is estimated to cost approximately \$777 million and is expected to provide greater than \$200 million in economic benefits to local Indigenous communities and businesses.

B. The Need and Priority for Completing the East-West Tie Transmission Project

11. The Project is required to ensure the long-term reliability of the electricity supply in northwestern Ontario. The EWT Project was included as a priority project in the Government of

Ontario's 2010 Long Term Energy Plan (the "**2010 LTEP**"), which stated that a new line was needed to maintain system reliability, allow more renewables, and accommodate the electricity needs of new mineral projects. The 2010 LTEP is attached to my affidavit as **Exhibit "2"**.

12. On March 2, 2016, the Lieutenant Governor in Council issued Order-in-Council 326/2016, which declared that Ontario considers the construction of the EWT Project to be a priority project for the purposes of section 92 of the *Ontario Energy Board Act, 1998*.

13. The IESO has also confirmed that constructing the EWT Project is necessary. In December 2015, the IESO released its "Assessment of the Rationale for the East West Tie Expansion" ("**2015 Needs Assessment**"). In December 2017, the IESO released the "Updated Assessment for the Need for the East-West Tie Expansion" ("**2017 Needs Assessment**"), and then in June 2018, the IESO released the "Addendum to the 2017 Updated Assessment for the Need for the East-West Tie Expansion" ("**2018 Needs Assessment**"). In each of these assessments, the IESO recommended constructing the EWT Project as the lowest cost option for meeting system needs. The OPA had reached similar conclusions prior to its amalgamation with IESO in 2015. Copies of the 2015 Needs Assessment, the 2017 Needs Assessment, and the 2018 Needs Assessment are attached to my affidavit as **Exhibits "3", "4", and "5"**, respectively.

14. According to the IESO's analysis, if the in-service date of the EWT Project is delayed beyond a 2020 in-service date this would introduce increased system costs and risks to reliability. Poor reliability of the electricity system would negatively impact Indigenous and non-Indigenous communities in northwestern Ontario, including the potential lack of electricity supply to provide power to remote Indigenous communities planned for connection to the grid or loss of refrigerated protein and sustenance that is either hunted or harvested by Indigenous communities.

15. Attached to my affidavit as **Exhibit “6”** is a letter dated November 22, 2019 from the BLP First Nations outlining the importance of the Project to their communities and the serious consequences of further delay. Regarding the economic participation that NextBridge offered the BLP First Nations, this was a matter of economic participation in furtherance of the Government of Ontario’s policy. However, I appreciate that the BLP First Nations may see some of the benefits for their communities as satisfying what they perceive is a Crown duty to accommodate.

C. Equity Participation in the Project Reflects the OEB’s Selection Criteria

16. As I set out in this section of my affidavit, the BLP First Nations will invest 20% equity in the Project further to the socioeconomic policy of the Government of Ontario, which was reflected in the OEB’s selection criteria to designate a transmission company to develop the EWT Project, of encouraging Indigenous participation in energy projects. To meet that selection criterion, NextBridge made the strategic business decision to offer equity to First Nations after the BLP First Nations expressed an interest in negotiating such a deal with NextBridge, but that in no way detracts from NextBridge’s commitment to consult with BZA.

17. It is important to recognize that NextBridge offered equity to the BLP First Nations but has not “given” them equity. Rather, the BLP First Nations are investors in the Project. They will secure financing and invest their own funds after the conditions precedent have been satisfied in accordance with the terms of the Implementation Agreement.

18. At the request of the Minister of Energy, the OEB issued a Notice of Proceeding in February 2012 advising that it was initiating the process to select a designated transmission company to develop the Project. A copy of the notice is attached to my affidavit as **Exhibit “7”**. On August 7, 2013, the OEB designated NextBridge, following a competitive process, to develop

the EWT Project and to file a Leave to Construct (“**LTC**”) application. In other words, NextBridge was selected to perform the work needed to develop a specific plan for the EWT Project, including consulting with Indigenous communities and applying to the OEB for permission to begin construction.

19. The OEB followed a two-phase competitive process for designating a transmitter. In Phase 1, the OEB established specifics for the proceeding, including decision criteria, filing requirements, obligations and consequences arising on designation, the hearing process for Phase 2, and the schedule for filing applications for designation. In Phase 2, the interested transmitters had an opportunity to file applications and compete with one another through the hearing process.

20. A copy of the OEB’s Phase 1 Decision and Order dated July 12, 2012 (the “**Phase 1 Decision**”) is attached to my affidavit as **Exhibit “8”**. The Phase 1 Decision identified 10 criteria that the OEB would consider when selecting a transmitter, which were not given specific weights. Of the 10 criteria, the OEB included two separate criteria related to Indigenous issues:

- (a) First Nation and Métis participation; and
- (b) First Nation and Métis consultation.

21. At this stage of the Phase 1 Decision, the OEB assessed not whether the potential proponents had already consulted Indigenous communities or put Indigenous participation into place, but rather the strength of their plans in respect of consultation and participation.¹ The Phase 1 Decision held that “Applicants will be required to demonstrate their ability to conduct successful consultations with First Nation and Métis communities, as may be delegated by the Crown, by

¹ As noted below, the Crown had delegated the procedural aspects of consultation to the OPA at this point in time.

providing a plan for such consultations, and evidence of their experience in conducting such consultations” (Phase 1 Decision, p. 8).

22. The OEB identified Indigenous participation and Indigenous consultation as separate criteria because they are different concepts, although they may overlap. Indigenous participation reflects the policy of the Government of Ontario of promoting Indigenous participation in energy projects, which was set out in the 2010 LTEP. The 2010 LTEP states, for example, as follows:

Ontario will encourage transmission companies to enter into partnerships with aboriginal communities, where commercially feasible and where those communities have expressed interest. The government will also work with the [Ontario Power Authority] to adjust the Aboriginal Energy Partnerships Program — currently focussed on renewable energy projects — to provide capacity funding for aboriginal communities that are discussing partnerships on future transmission projects. [Emphasis added]

23. The OEB’s Phase 2 Decision and Order designating NextBridge (the “**Phase 2 Decision**”) is attached to my affidavit as **Exhibit “9”**. The Phase 2 Decision further explains the different meaning that the OEB attributed to Indigenous participation compared to consultation:

There is a distinction between this criterion (First Nations and Métis Participation) and the criterion addressed later in this decision (First Nations and Métis Consultation). The former arises from Ontario socio-economic policy and the latter is related to a constitutional obligation. [...]

In evaluating the applications in this area, the Board kept in mind the distinction between participation and consultation, and considered the following factors:

- Whether the existing arrangement or plan provides for equity participation by First Nations and Métis communities.
- The extent to which the existing arrangement or plan provides for other economic participation such as training, employment, procurement opportunities, etc. for all impacted communities.

- The degree of commitment to the plan.

The more that an application demonstrably provided opportunities for participation and was committed to that participation, the higher the Board ranked the proponent. [Emphasis added]

24. Further to this, one of the proponents originally competing with NextBridge to develop the Project, EWT LP (an affiliate of HONI), aligned itself with the BLP First Nations in respect of furthering the goal of Indigenous participation in the Project. After NextBridge was designated to develop the Project, the BLP First Nations wrapped up their agreement with EWT LP, and NextBridge made the strategic business decision to negotiate with the BLP First Nations for a potential equity stake in the Project. This furthered the OEB's Indigenous participation criterion.

25. NextBridge has no knowledge of why the BLP First Nations did not include BZA when they formed their partnership in 2011, as this was done before NextBridge began negotiating with them. However, BZA did not self-identify to NextBridge as being interested in acquiring equity in the Project until September 2018 (*i.e.*, more than five years after NextBridge won the OEB's competition to develop the Project and after the development work was already complete).

26. The partnership between NextBridge and the BLP First Nations ultimately took the form of the BLP First Nations being offered the opportunity to make an investment in the Project to acquire a 20% equity interest, along with other consideration and terms to build their mutual relationship. NextBridge also negotiated other forms of economic participation with local Indigenous groups, which includes contracting opportunities not limited to the BLP communities, rather open to all Indigenous groups.

27. Entering into these economic negotiations and agreements, which took approximately five years to complete, was a strategic business decision of NextBridge and was separate from its efforts

to consult with Indigenous communities regarding the Project. The Phase 2 Decision summarized NextBridge's application in respect of the separate Indigenous consultation criterion as follows:

[NextBridge] provided a comprehensive consultation plan for all project phases (pre-designation to operation). A record of actual communication (letters, phone calls) with the 18 affected communities was provided as well as a list of potential key issues and proposed mitigation. [NextBridge] referenced NextEra's First Nations and Métis Relationship Policy and Enbridge's Aboriginal and Native American Policy as the basis for its plan. [NextBridge] described existing relationships with a number of First Nations and Métis communities who would be engaged as part of this project. [NextBridge] also described its relevant past experience with a number of projects involving the engagement, consultation and economic participation of First Nations and Métis communities.

28. As set out in more detail below, NextBridge and BZA have consulted extensively in respect of the EWT Project, particularly in respect of the required Environmental Assessment.

29. Since being designated to develop the EWT Project, NextBridge has obtained input from Indigenous groups and the Ontario government to complete the design of its First Nations and Métis Participation Plan (the "**Participation Plan**") and its First Nations and Métis Consultation Plan (the "**Consultation Plan**"). These Plans constitute different streams (the participation stream and the consultation stream), although there may be overlap in some of the activities undertaken in each of the streams. Attached to my affidavit as **Exhibits "10"** and "**11"** are copies of NextBridge's current Participation Plan and Consultation Plan, respectively.

D. Economic Participation Available to BZA

30. In addition to the consultation between NextBridge and BZA pursuant to NextBridge's Consultation Plan (detailed below), NextBridge has made available to BZA opportunities for economic participation as part of its Participation Plan. Even though NextBridge has not offered

equity to BZA, the economic opportunities in the Participation Plan are not limited to equity and are not limited to the BLP First Nations. Rather, NextBridge's agreement with its contractor ("**Valard**") requires Valard to ensure that all 18 Indigenous communities in the area of the Project, including BZA, receive opportunities for employment and procurement (*e.g.*, contracts for water hauling, fuel delivery, printing/signage, catering, welding, snow removal, and labourer positions). This agreement with Valard is subject to a confidentiality provision. However, I understand that NextBridge may seek the Court's permission to file a copy of the contract on a confidential basis.

31. The vehicle to promote all 18 Indigenous communities' participation in the Project is a company called Supercom Industries LP ("**Supercom**"). Supercom is a subsidiary of the partnership of the BLP First Nations, governed by a non-political Board of Directors, and is required to distribute contracting opportunities to all of the 18 Indigenous communities, not just to the BLP First Nations. Although some of the opportunities have been earmarked for BLP First Nations, Valard and Supercom have created a list of approximately \$60 million of contracting opportunities for Indigenous communities where First Nations other than the BLP First Nations will be given preferential treatment to secure contracting opportunities in relation to the Project.

32. BZA is not guaranteed to receive any particular contract, but provided that members of its community submit bids that are schedule and cost competitive, they will have preference over the BLP First Nations for at least the \$60 million of opportunities noted above. The list of these opportunities was provided to BZA at a meeting in September 2018 between BZA (including Chief Melvin Hardy for that part of the meeting), NextBridge (including myself), Supercom, and Valard. That meeting is discussed further below in my affidavit in Part G(ii). Attached to my affidavit as **Exhibits "12"** is a copy of the list of opportunities that was presented to BZA at this meeting.

E. Principal Governmental Approvals Required for the EWT Project

33. There are two principal governmental approvals required to build the EWT Project (in addition to various permitting and more localized approvals): the Leave to Construct (LTC) from the OEB, and the approval of the Environmental Assessment by the Minister of the Environment, Conservation and Parks (“MECP”). NextBridge has now received both the LTC (the subject of this Application) and ministerial approval of the Environmental Assessment. However, it is important to appreciate that both of these approvals are required, and if the MECP did not approve the Environmental Assessment, the Project would not proceed irrespective of the LTC.

34. It is also important to appreciate that the MECP takes Indigenous consultation into consideration when making a decision of whether to approve the Environmental Assessment. Accordingly, Ministerial attention is paid to the adequacy of the consultation efforts in connection with the Environmental Assessment process before a decision is made.

i. Leave to Construct Application and Ministerial Involvement

35. After developing the plan for the Project, NextBridge filed an application with the OEB on July 31, 2017 for leave to construct the Project (the “LTC Application”). As noted above, the OEB’s Phase 2 Decision designated NextBridge to develop the Project, but this did not guarantee that the OEB would authorize NextBridge to actually begin construction. The LTC Application was required first to allow the OEB to assess, generally, the impact of the Project on consumer

pricing, and the quality and reliability of the service.² Also, the OEB's Phase 2 Decision did not give NextBridge the exclusive right to apply to construct the Project.

36. The LTC Application included details of NextBridge's engagement with First Nations and Métis communities, including both Indigenous participation and consultation. Attached to my affidavit as **Exhibit "13"** is a copy of an excerpt from the LTC Application addressing these issues (specifically, Exhibit H, Tab 1, Schedule 1 of the LTC Application). This excerpt refers to the more detailed summary of NextBridge's consultations with Indigenous communities found in the Consultation Report section of NextBridge's Environmental Assessment (discussed below).

37. The staff of the OEB required NextBridge to submit further information regarding its consultations with Indigenous communities through written interrogatories. NextBridge responded to those interrogatories on January 25, 2018. Attached to my affidavit as **Exhibit "14"** is an excerpt from NextBridge's response to certain of these interrogatories which provided further information regarding Indigenous consultation (specifically, in response to Interrogatories #40 and #41). I have omitted the attachments from NextBridge's response to Interrogatory #41, as those attachments consist of update letters to government ministries regarding NextBridge's consultation efforts, which I have described and included below in my affidavit.

38. After previously having advised the OEB of its intention to do so in September 2017, HONI filed a competing application for leave to construct on February 15, 2018. HONI called its proposed project the "Lake Superior Link Project" ("**LSL Project**"). However, the LSL Project

² I understand that the factors that the OEB may consider on an application for an LTC are specified in section 96(2) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B. I will leave it to NextBridge's counsel to make submissions to the Court regarding the interpretation of that provision.

was proposed as a transmission line between the same two points (Wawa to Thunder Bay), and therefore would have replaced the EWT Project.

39. On February 27, 2018, NextBridge brought a motion to the OEB asking it to dismiss HONI's competing application or, in the alternative, not to process it on the grounds that it was incomplete and did not comply with the OEB's filing requirements. The OEB dismissed NextBridge's motion on July 19, 2018. Following the OEB's decision, on July 24, 2018, NextBridge wrote to the relevant Ontario ministries requesting Provincial intervention into the OEB process to prevent delays and reduce the likelihood of increased costs and system reliability issues. A copy of that letter is attached to my affidavit as **Exhibit "15"**.

40. On August 13, 2018, the OEB ordered that the competing LTC applications be heard together at a combined hearing, together with an application by HONI to construct certain related station upgrades in Wawa, Marathon and Thunder Bay (the "**Combined Hearing**").

41. BZA was among the 17 parties granted intervener status for the Combined Hearing. BZA participated in that process, including submitting written interrogatories to NextBridge, cross-examining a panel of representatives of NextBridge (including myself), and making submissions.

42. NextBridge responded to BZA's written interrogatories on September 24, 2018 ("**NextBridge's IR Responses**"). NextBridge's IR Responses provided the OEB with a further update regarding the consultations between NextBridge and BZA regarding the Project and, at the request of BZA, included meeting notes, emails, and other source documents proving the record of consultation. Attached to my affidavit as **Exhibit "16"** is a copy of NextBridge's IR Responses regarding consultation. I have excluded certain of the attachments because they consist of update

letters to government ministries regarding NextBridge's consultation efforts, which I have described and included below in my affidavit.

43. BZA did not take a position regarding whether the OEB should grant an LTC to either NextBridge or HONI, but rather submitted that the LTC order "must be conditional that the successful proponent meaningfully and adequately consult and accommodate, and obtain the consent of, [BZA] prior to commencing construction". Attached to my affidavit as **Exhibit "17"** is a copy of BZA's submissions to that effect.

44. On December 20, 2018, the OEB released an initial Decision and Order regarding the Combined Hearing (the "**December LTC Decision**"). The December LTC Decision did not select either NextBridge or HONI. Rather, the OEB gave the parties an opportunity to each file "Not-to-Exceed" prices, which the OEB would consider before making a final selection. A copy of the December LTC Decision is found at Tab 7 of the Application Record.

45. The OEB addressed the scope of its jurisdiction to consider Indigenous consultation matters, which I understand is the subject of a separate appeal filed by BZA in Divisional Court File No. DC-19-005, and I will leave it to NextBridge's counsel to address that aspect of the December LTC Decision. However, I note that the OEB addressed BZA's request that a condition be imposed regarding Indigenous consultation and imposed the following condition:

[...] as it typically does in decisions granting leave to construct electricity facilities, *the OEB will require that the successful applicant obtain all necessary approvals, which includes [Environmental Assessment] approval*, as may be required to construct the project. *The MECP has confirmed that environmental approval will not be granted if there are outstanding issues related to Indigenous consultation. As a result, this condition will ensure that the adequacy of Indigenous consultation has been determined during the project approvals*

phase. BZA asks for an additional condition requiring its consent to the project prior to the commencement of construction. The OEB will not require this condition. If BZA wishes to pursue this approach, it should do so as part of the [Environmental Assessment] process. [emphasis added]

46. The OEB also commented that since its 2013 decision designating NextBridge to develop the Project, “NextBridge has undertaken extensive consultations with Indigenous communities.”

47. Following the OEB’s decision not to select a proponent in its December LTC Decision, NextBridge and its Indigenous partners sought the intervention of the Minister of Energy, Northern Development and Mines (the “**MENDM**”). Attached as **Exhibit “18”** to my affidavit is a copy of the letter dated January 21, 2019 that NextBridge sent to the MENDM. Owing to the delay in the OEB proceeding and substantive concerns with HONI’s LTC application, NextBridge and its Indigenous partners urged the Government of Ontario to issue an Order-in-Council to designate NextBridge as the licensed transmitter to construct the EWT Project.

48. On January 30, 2019, the Lieutenant Governor of Ontario issued Order-in-Council 52/2019 (the “**OIC**”) approving the issuance of a Minister’s Directive (the “**Directive**”) under the *Ontario Energy Board Act, 1998* requiring, among other things, the OEB to amend the conditions of the electricity transmission licence of NextBridge to include a requirement that NextBridge proceed to develop, seek approvals in respect of, and proceed with immediacy to construct, expand, or re-enforce the EWT Project. Copies of the OIC and Directive are found at Tabs 3 and 4 of the Applicant’s Application Record. I understand that these are the specific statutory decisions that BZA challenges in this Application.

49. The practical consequence of the OIC and Directive was to select NextBridge over HONI to proceed to seek the necessary approvals and construct the EWT Project. As noted, BZA had expressly not taken a position regarding this selection decision at the Combined Hearing.

50. On February 11, 2019, the OEB issued a Decision and Order (the “**February LTC Decision**”) to approve NextBridge’s LTC Application and to dismiss HONI’s competing LTC application. A copy of the February LTC Decision is found at Tab 8 of the Application Record. The February LTC Decision imposed the following condition to address Indigenous consultation:

*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.** [emphasis added]*

51. The December LTC Decision explains that this condition was to ensure that Indigenous consultation is assessed before construction. The MECP advised at the Combined Hearing that an Environmental Assessment would not be approved if there are unresolved consultation issues.

ii. Ministerial Approval of the Environmental Assessment

52. The MECP approved NextBridge’s Environmental Assessment, with Cabinet concurrence (Order-in-Council 403/2019), on March 21, 2019. Attached as **Exhibit “19”** is the Notice of Approval to Proceed with the Undertaking issued by the MECP for the Project (the “**EA Approval**”). The EA Approval provides reasons that address Indigenous consultation:

*The ministry’s review of: the government, public and **Indigenous community submissions** on the environmental assessment and the ministry review **has indicated no outstanding concerns that have not been addressed or that cannot be addressed through commitments made during the environmental assessment process, through the conditions set out below or through future approvals***

that will be required. I am not aware of any outstanding issues with respect to this Undertaking which suggest a hearing should be required. [emphasis added].

53. The EA Approval also imposes ongoing requirements to ensure that NextBridge continues to consult with Indigenous communities throughout the construction of the Project:

7. Consultation with Indigenous Communities

7.1 The proponent shall prepare, in consultation with Indigenous Communities, an Indigenous consultation plan that sets forth:

- a) how, during implementation of the undertaking, the proponent will consult with Indigenous Communities and provide them with opportunities to be involved in environmental monitoring activities;
- b) how the proponent will notify Indigenous Communities, using a notification protocol, if archaeological resources or Indigenous remains are encountered during implementation of the undertaking;
- c) how the proponent will consider any additional traditional ecological knowledge and traditional land and resource use information that Indigenous Communities may provide during implementation of the undertaking; and
- d) how the proponent will issue notices and updates to Indigenous communities on key steps during the implementation of the undertaking.

7.2 At least 30 days prior to the start of construction or by such other date as may be agreed to in writing by the Director, the proponent shall submit the Indigenous consultation plan to the Director for approval, including details of the consultation that was undertaken with Indigenous Communities on the plan, as required by Condition 7.1.

7.3 The Director may require the proponent to amend the Indigenous consultation plan at any time. Should an amendment be required, the Director shall notify the proponent in writing of the amendment required and when the amendment must be completed.

7.4 Once the Director is satisfied with the Indigenous consultation plan, the proponent shall implement the Indigenous consultation plan and any amendments to it.

[...]

8.7 If adverse impacts on Aboriginal or treaty rights are identified through consultation with Indigenous communities on the Detailed Project Plan(s), the proponent must notify the Director in writing. The Director may require the proponent to amend the Detailed Project Plan(s) or carry-out additional consultation at any time to address potential adverse impacts on Aboriginal or treaty rights. The proponent shall consult with the ministry about any consultation requirements that may apply. [emphasis added]

54. To obtain the EA Approval (with its conditions for ongoing consultation), NextBridge completed the Environmental Assessment process over the course of approximately four years. At a high level, the key phases of the Environmental Assessment process included the following:

- (a) The process began with the preparation and ministerial approval of the Terms of Reference outlining NextBridge’s workplan to address the requirements of the *Environmental Assessment Act*. Attached to my affidavit as **Exhibit “20”** is a copy of NextBridge’s Terms of Reference, which the Ministry of the Environment and Climate Change approved on August 28, 2014. BZA was given opportunities to review, comment on, or raise concerns with the proposed Terms of Reference both before and after NextBridge applied for ministerial approval. NextBridge’s application for approval outlined NextBridge’s consultations with interested persons—including Indigenous groups—regarding the Terms of Reference. Attached to my affidavit as **Exhibit “21”** is a copy of a letter dated January 13, 2014 from NextBridge to BZA providing an opportunity to comment on the draft Terms of Reference. Attached to my affidavit as **Exhibit “22”** is a copy of a letter dated February 24, 2014 from the Ministry of the Environment to BZA also seeking to understand whether BZA had concerns about the Terms of Reference.

- (b) After the Terms of Reference were approved, NextBridge advised BZA and proceeded with the preparation of the Environmental Assessment. Attached to my affidavit as **Exhibits “23”** and **“24”** are letters dated September 22, 2014 and November 7, 2014, respectively, where NextBridge advised BZA that the Terms of Reference were approved.
- (c) The Environmental Assessment involved conducting environmental studies and meeting with Indigenous communities and other stakeholders to determine the potential positive and negative impacts of the Project on the communities, people, places, businesses, economy, and natural environment in the study area. Indigenous communities such as BZA were encouraged to participate in this process.
- (d) Based on these environmental studies and consultations, NextBridge prepared a draft Environmental Assessment Report (“**EA Report**”) for public review and comment. This draft EA Report was open for comment between December 2016 and March 2017. As discussed further below, NextBridge provided capacity funding for BZA to retain a consultant to assist with their review of the draft EA Report. BZA provided input into the draft EA Report through its consultant, and NextBridge responded to these comments and factored them into its amendments to the EA Report (given the timing of when the consultant sent these comments).
- (e) Based on public input, NextBridge updated its environmental plans and prepared a final EA Report, which it submitted to the Ministry of the Environment and Climate Change in July 2017. The final EA Report included detailed logs summarizing NextBridge’s consultations with affected Indigenous communities. Attached to my

affidavit as **Exhibit “25”** is a copy of the formal Notice of Submission of the EA Report, dated July 18, 2017, in English and French, which NextBridge sent to Indigenous communities and other stakeholders.

- (f) The final EA Report was made available for public comment between July 2017 and September 2017. NextBridge reviewed this input and committed to amending the final EA Report to reflect the feedback received from Indigenous communities, the provincial government review team, and other interested persons. BZA had the opportunity to review and comment on the final EA Report. However, as BZA’s consultant was still reviewing the draft EA Report when the final EA Report was open for public review, NextBridge factored BZA’s comments on the draft EA Report into later amendments. NextBridge published its Notice of Intent to Amend the EA Report on November 14, 2017. Attached to my affidavit as **Exhibit “26”** is a copy of the Notice of Intent to Amend. As described further below, each of the comments received from BZA’s consultant were incorporated and addressed.
- (g) NextBridge amended its final EA Report (the “**Amended EA Report**”) and re-submitted it to the Ministry of the Environment and Climate Change on February 16, 2018. The Amended EA Report was sent to interested stakeholders and Indigenous communities (including BZA) and made available for public comment between February 16 and March 29, 2018. As discussed further below, NextBridge again provided capacity funding to BZA to allow its consultant to review the Amended EA Report. NextBridge continued to engage with BZA and its consultant regarding the Amended EA Report. BZA provided comments through its

consultant, and NextBridge took these into account, including through the development of its draft Vegetation Management Plan (regarding herbicides).

- (h) Based on feedback, NextBridge further amended and supplemented certain sections of the Amended EA Report. These amendments included revising the appendices to the Amended EA Report to include updated Indigenous consultation and engagement records up to June 8, 2018.
- (i) On October 12, 2018, the Ministry of the Environment, Conservation and Parks released its review of the Amended EA Report for public, Indigenous community, and agency comment and published a Notice of Completion of Review (the “**Notice of Completion**”). Attached to my affidavit as **Exhibit “27”** is a copy of the Notice of Completion. A copy of the Ministry’s review is found at Exhibit “J” of the affidavit of Andrew Evers of the Ministry’s Environmental Assessment and Permissions Branch affirmed December 19, 2019.
- (j) The Ministry’s review concluded, among other things, that: (1) NextBridge had provided sufficient opportunities for Indigenous communities to comment during the development of the Amended EA Report; and (2) the concerns raised had either been addressed or NextBridge had made a commitment to address those concerns through additional work as part of future approval requirements.
- (k) The Notice of Completion provided a submission period that expired on November 16, 2018, during which Indigenous communities could make submissions and/or request a hearing. BZA’s consultant provided comments to MECP on November 16, 2018. BZA’s consultant raised certain concerns but did not request a hearing by

the Environmental Review Tribunal. A copy of the Shared Value Solutions' comments is attached to my affidavit as **Exhibit "28"**.

- (1) As noted above, the MECP approved NextBridge's Environmental Assessment on March 21, 2019. MECP included conditions of the EA Approval to address comments received from Indigenous communities, including BZA during the Environmental Assessment process.

55. This process involved extensive consultation with all 18 potentially impacted First Nation and Métis communities, including BZA. That consultation is discussed further below, but at a high level, it included: (1) providing BZA with capacity funding to hire a consultant to review and comment on the draft and amended EA Reports; (2) offering community walkthroughs of the EA Reports for members of BZA and its consultant; and (3) providing opportunities for BZA to submit its Traditional Ecological Knowledge and Traditional Land and Resource Use values to factor into the Environmental Assessment. BZA has thus far chosen not to provide this latter information.

56. Attached to my affidavit as **Exhibit "29"** are excerpts of the Amended EA Report addressing NextBridge's Indigenous engagement and consultation: namely, Section 2B regarding "Indigenous Engagement and Consultation"; and Section 17, regarding "Indigenous Current Use and Lands and Resources for Traditional Purposes". I note, however, that NextBridge's engagement with Indigenous communities and their input is reflected throughout the Amended EA Report, the body of which is more than 2,400 pages in length, not including the 89 appendices.

57. Section 2B of the Amended EA Report summarizes the key issues and concerns of BZA as communicated to NextBridge, as well as the mitigation or responses that NextBridge committed to implement in relation to each concern (see pp. 2-79 to 2-80 of Section 2B of the Amended EA

Report). As is indicated in Section 2B, each of BZA's comments were incorporated into the Amended EA Report where actionable. For example:

- (a) BZA raised the need for the community to receive economic and employment opportunities from the Project. NextBridge committed to implementing measures to support economic opportunities for Indigenous communities and individuals, including supporting local hiring where appropriate, supporting local and regional procurement where practicable, and prioritizing employment for qualified Indigenous candidates. This is addressed in Section 18 of the Amended EA Report.
- (b) BZA raised the question of what monitoring would be done once the Project commences. NextBridge committed to implement a comprehensive and effective monitoring program to indicate if the assumptions used in the Amended EA Report were correct and if mitigation measures were in effect. This is addressed in Section 23 of the Amended EA Report.
- (c) BZA raised concerns regarding the Stage 1 archaeological survey methodology and their interest in participating in the Stage 2 archaeological survey. NextBridge expressly confirmed its view that future archaeological studies on the route should include a culturally-respectful approach. NextBridge offered to have its archaeological consultants meet with BZA to discuss the results of the assessment.

58. BZA's consultant (Shared Value Solutions), which was acting for multiple First Nations in relation to the Project, also raised concerns regarding herbicide use. The Amended EA Report addresses the mitigation that NextBridge committed to regarding herbicide use, including that no planned use of herbicides will be permitted during construction. During the operation phase, the

use of herbicides will be limited. In addition to complying with all applicable legal and regulatory requirements, NextBridge committed to the following measures to address herbicide concerns:

- (a) No herbicides will be used within 100 meters of identified wells;
- (b) No aerial applications of herbicides are planned within the right-of-way. If herbicides are required, they will be applied on the ground as spot applications;
- (c) No herbicides will be used within the 30 meters of the water body buffer unless the herbicide application is conducted by ground application equipment or otherwise approved by the relevant regulatory authority;
- (d) No herbicides will be used in sensitive areas, including reserve lands, provincial parks, within 30 meters of water bodies, or in certain other edible and medicinal plant harvesting areas that communities have identified;
- (e) General application of herbicides will be restricted near rare plants and rare ecological communities;
- (f) General application of herbicides will be restricted in critical landform/vegetation association areas to the extent practicable; and
- (g) NextBridge will post on its website relevant information about the application of herbicides (*e.g.*, anticipated dates, areas to be sprayed, and sprayed dates).

59. These mitigation measures are summarized within Section 2B of the Amended EA Report for those Indigenous communities who raised concerns with herbicides directly with NextBridge during the Environmental Assessment process. NextBridge's commitments in this respect apply

equally to lands over which BZA asserts an interest. More information regarding these mitigation measures can be found in the Amended EA Report, including the chapter regarding Vegetation and Wetlands (Section 12). A copy of that chapter of the Amended EA Report is attached to my affidavit as **Exhibit “30”**.

F. Delegation of the Procedural Aspects of Consultation to NextBridge

60. Shortly after NextBridge was designated as the transmitter to develop the Project, Her Majesty the Queen in Right of Ontario (the “**Crown**”) delegated to NextBridge the procedural aspects of consultation with Indigenous communities. This was formalized in a Memorandum of Understanding (“**MOU**”) of November 4, 2013 between NextBridge and the Crown, as represented by the Minister of Energy. A copy of the MOU is attached to my affidavit as **Exhibit “31”**.

61. Appendix A to the MOU lists the 18 First Nation and Métis communities in the area of the Project, which the Crown identified to be consulted on the Project, and which includes BZA.

62. The MOU provides that “the Crown bears any [constitutional duty that the Crown may have to consult and, where, appropriate, accommodate Aboriginal Communities with respect to the Project (“**Duty**”)]” and that “NextBridge is responsible for carrying out the procedural aspects of consultation that are delegated to it by the Crown”. NextBridge’s obligations are procedural to assist the Crown to satisfy the Duty, such as:

- (a) “providing Aboriginal Communities with timely notice of the Project for the purposes of considering possible impacts on their Section 35 Rights”;

- (b) “providing Aboriginal Communities with information about the Project and the role that NextBridge will play in Crown consultation on the Project”;
- (c) “explaining to Aboriginal Communities the regulatory and approval processes that apply to the Project”;
- (d) “taking all reasonable steps to foster positive relationships with Aboriginal Communities”;
- (e) “offering Aboriginal Communities reasonable assistance, including financial assistance where appropriate and as determined by NextBridge, to participate in consultation on the Project”;
- (f) “meeting with, and receiving and considering correspondence or other written materials from Aboriginal Communities in order to identify any concerns they may have regarding the potential impact of the Project on their Section 35 Rights”;
- (g) “where appropriate, discussing with Aboriginal Communities accommodation, including mitigation, of potential adverse affects of the Project on their Section 35 [constitutional] rights”; and
- (h) “where appropriate, developing and proposing appropriate accommodation measures, in consultation with the Crown”.

63. I note that the participation opportunities discussed above in my affidavit (such as offering equity participation to the BLP First Nations and contracting opportunities to BZA) are primarily

a result of strategic business decisions to satisfy the OEB's selection criteria and further the socio-economic policy objectives of Ontario.

64. The Crown has overseen NextBridge's exercise of its delegated procedural consultation duties under the MOU. This has included monthly meetings between representatives of NextBridge and the Ontario ministry responsible for energy, along with monthly phone calls with the consultation division of that ministry. Additionally, NextBridge has provided periodic updates to the Ontario government ministries regarding Indigenous consultation activities. Attached to my affidavit as **Exhibit "32"** is a package of examples of those updates dated from between October 2017 and September 2019, although I have omitted the pages and consultation tables in respect of Indigenous communities other than BZA, and I have omitted the appendices which contain presentation materials, meeting notes, and other source documentation.

G. Consultation with Biinjitiwaabik Zaaging Anishinaabek

65. It is important to NextBridge to maintain strong relationships with Indigenous communities. To this end, NextBridge has engaged and consulted extensively with BZA regarding the EWT Project. That consultation has been in respect of the Project as a whole, with much of the specific consultation having been focused on the Environmental Assessment, and more recently ongoing consultation related to various permits that are required for aspects of the Project work.

66. NextBridge's Amended EA Report, which the MECP approved, included the Indigenous Consultation and Engagement Record Log for the Project in respect of BZA (along with 17 other Indigenous communities identified by the Crown). Attached to my affidavit as **Exhibit "33"** is an updated Record of Consultation regarding BZA to the present ("**Record of Consultation**").

Removed from this exhibit are references to the specific dollar amounts being negotiated with BZA in relation to a proposed relationship agreement.

67. The Record of Consultation is made in the usual and ordinary course of business. NextBridge's usual and ordinary course of business is for employees to update the Record of Consultation within a reasonable period of time after each consultation activity is undertaken.

i. NextBridge's Consultation from 2013 to Present

68. The Record of Consultation contains summaries of the correspondence, emails, telephone calls, meetings, and voicemails that were exchanged between NextBridge and BZA over the course of more than six years since NextBridge was designated (from at least August 23, 2013 to the present). The Record of Consultation reflects frequent interactions between NextBridge and BZA's leadership in respect of the Project. As set out in the Record of Consultation, the consultation between BZA and NextBridge concerning the Project included the following (without attempting to be exhaustive):

- (a) ***Initial Outreach to BZA:*** Shortly after being designated by the OEB to develop the Project, NextBridge wrote to the Chief of BZA on August 28, 2013 advising of next steps and indicating that NextBridge would be reaching out to seek input. NextBridge followed this up on October 4, 2013 indicating that we wanted to engage with the BZA community and wanted also to ensure that the traditions and heritage of the community were recognized and respected. NextBridge wrote again on November 11, 2013 advising that senior NextBridge employees would be asking in the next few weeks to begin procedural consultation about the Project. Attached

to my affidavit as **Exhibits “34”, “35” and “36”** are copies of these letters of August 28, 2013, October 4, 2013 and November 11, 2013, respectively.

- (b) ***Numerous Meetings with Leadership:*** In addition to numerous written and telephone communications, NextBridge has met with BZA leadership numerous times to provide information regarding the Project and discuss the communities’ concerns. The Record of Consultation reflects that the first such in-person meeting occurred on December 5, 2013 between representatives of NextBridge and BZA’s Economic Development Officer. Below in Part G(ii) of my affidavit, I discuss in more detail certain of the meetings at which I was present, and I attach minutes of those meetings where available.
- (c) ***Providing Information to the Community:*** NextBridge provided detailed Project information to BZA in numerous forms, including orally and in writing. For example, NextBridge distributed periodic newsletters providing Project updates and details regarding opportunities to provide input. Attached to my affidavit as **Exhibits “37” and “38”** are examples of these newsletters and notices of public open houses. NextBridge also provided information to the BZA community regarding the OEB proceedings. For example, attached to my affidavit as **Exhibit “39”** is a letter addressed to BZA dated October 18, 2017, which enclosed information regarding the LTC Applications, and which provided notice in Ojibway, Cree, English, and French. The Record of Consultation shows that NextBridge has regularly shared Project-related information with the BZA community since 2013.

- (d) ***Capacity Funding for Open Houses:*** NextBridge provided capacity funding to BZA to hold open houses specifically for the BZA community (in addition to the open houses that NextBridge held for the public more broadly). Attached to my affidavit as **Exhibit “40”** is a copy of the BZA Band Council Resolution authorizing the capacity funding, which notes that BZA and NextBridge had “established a cooperative and respectful relationship”. NextBridge also made available Project team members, including environmental and engineering specialists, to attend the open houses and answer questions from the community. Two such open houses took place specifically for members of BZA: one in Thunder Bay on October 21, 2014, and the other on-reserve on October 23, 2014. The Record of Consultation indicates that approximately 24 members of the BZA community attended in Thunder Bay, and approximately 40 attended on-reserve.
- (e) ***Capacity Funding to Hire Technical Consultant:*** NextBridge provided capacity funding for BZA to hire a technical consultant to perform a collaborative technical review of the draft EA Report; to provide input to NextBridge; and to explain the EA Report to the community. Together with two other First Nations, BZA retained Shared Value Solutions (a consulting firm) to perform this function. NextBridge expanded the scope of the funding to also cover the subsequent review by Shared Value Solutions of the Amended EA Report on behalf of BZA.
- (f) ***Engagement with Consultant Regarding the EA Reports:*** As noted above, NextBridge received comments from BZA’s consultant on the draft EA Report. NextBridge responded to the community in respect of this feedback and took the consultant’s feedback into account to address concerns as it finalized the EA

Report. NextBridge also met with Shared Value Solutions to address its questions on the draft EA Report, and it held a dedicated teleconference on March 28, 2018 with the consultants for various First Nations (including Shared Value Solutions) to discuss issues regarding herbicides.

- (g) ***Community Walkthroughs Regarding the EA Reports:*** In addition to the technical engagement with the consultant, there was direct engagement between NextBridge and members of the community regarding the EA Reports. For example, on March 1, 2018, NextBridge held a community walkthrough of the Amended EA Report by teleconference. The minutes from this walkthrough are attached to my affidavit as **Exhibit “41”**. As indicated in the minutes, members of various Indigenous communities attended this walkthrough, including Edward King of BZA. NextBridge provided an overview of the changes to the Amended EA Report, including the changes which responded to the communities’ concerns.
- (h) ***Engaging with the Community Regarding Environmental Issues:*** NextBridge engaged with the BZA community regarding the environmental field study work that NextBridge’s environmental consultant conducted to investigate possible effects on the environment and to develop mitigation measures to avoid or reduce potential impacts. For example, attached to my affidavit as **Exhibit “42”** is a letter dated May 13, 2014 that NextBridge sent BZA’s Chief to begin this process. In this letter, NextBridge also offered free-of-charge training for Indigenous archaeological and environmental monitors to be hired to participate in the work.

- (i) ***Opportunities to Share Traditional Ecological Knowledge:*** NextBridge provided opportunities for BZA to share its Traditional Ecological Knowledge values to factor into the EA Report. BZA has so far chosen not to share this knowledge, which is its right, as this knowledge belongs to the community. However, without being advised of this knowledge, NextBridge could not factor it into the Project plan.
- (j) ***Engagement Regarding Economic Opportunities:*** NextBridge engaged specifically with BZA leadership regarding potential economic opportunities from the Project. I discuss below in more detail in Part G(ii) of my affidavit certain meetings I attended where these issues were discussed with BZA leadership, including directly with BZA's Chief.
- (k) ***Consultation Regarding Archaeological Studies:*** NextBridge has consulted directly with BZA regarding the archaeological studies being conducted in respect of the Project route. For example, Councillor Hardy of BZA wrote to NextBridge on January 28, 2016 expressing the community's interest in future archaeological work. I responded on February 5, 2016 explaining that the Stage 1 archaeological assessment that had been done as of that time involved desktop work, and that site visits would be incorporated in the Stage 2 archaeological assessment. Attached to my affidavit as **Exhibit "43"** and **"44"** is a copy of Councillor Hardy's letter, and my response. The Stage 2 assessment has since occurred, and NextBridge provided funding for a member of the BZA community to participate as a community monitor. NextBridge has received a Stage 2 Archaeological Compliance Letter from the Ministry of Tourism, Sport and Culture. A copy of NextBridge's email to

BZA advising that the compliance letter had been received, along with the response of the Chief, is attached to my affidavit as **Exhibit “45”**.

- (l) ***Consultation Regarding the Priority Designation:*** After the *Ontario Energy Board Act* was amended to allow Cabinet to issue an Order-in-Council declaring a transmission line to be a priority project, the then Minister of Energy wrote to NextBridge to advise that the government was considering designating the Project as a priority and a copy of this letter (dated January 18, 2016) is attached to my affidavit as **Exhibit “46”**. On the same day, NextBridge wrote to the Chief of BZA as part of the ongoing consultation efforts to advise of this potential order. Attached to my affidavit as **Exhibit “47”** is a copy of NextBridge’s letter to BZA dated January 18, 2016. NextBridge asked BZA to provide any comments regarding this development directly to myself. I did not receive any comments from BZA regarding this issue.

- (m) ***Ongoing Efforts to Provide Capacity Funding:*** As discussed further below, NextBridge is continuing to consult with BZA, and is endeavoring to secure a capacity funding agreement with BZA to support the community to engage in this ongoing consultation, including in respect of the various permits that NextBridge requires for construction of the Project. NextBridge has made offers to BZA in this respect, including an offer on October 24, 2019 that would provide BZA with the amount of funding that it had requested, and which is nearly four times the amount provided under the prior agreement. BZA has not accepted NextBridge’s offers.

69. This is all in addition to BZA's direct participation in the LTC Application process, discussed above, which included cross-examining NextBridge witnesses and making submissions. This is also in addition to the extensive engagement between NextBridge and the community members that BZA selected to work as monitors of the Project. For example, BZA community member Edward Panamick exchanged numerous emails with NextBridge (not reflected on the Record of Consultation) until he stepped down from his job as monitor in August 2018 to accept another opportunity. Attached to my affidavit as **Exhibit "48"** is a copy of the email from Mr. Panamick to Herb Shields of NextBridge announcing his resignation as monitor. I am advised by Mr. Shields and believe that Mr. Panamick later became an archaeological monitor for the Project.

ii. **BZA Expresses Concerns with Consultation Beginning in 2018**

70. To my knowledge, the first time that BZA raised a concern with NextBridge's consultation efforts was when NextBridge met with the BZA leadership on May 4, 2018. I was present at this meeting. The Chief of BZA stated that additional engagement and discussion with community members was required. However, he also indicated that he had reviewed the record of consultation for BZA and acknowledged that there had been a fair amount of contact between NextBridge and their community. The Chief also acknowledged that BZA had registered to be an intervenor in HONI's LTC application process because of their concerns. A copy of the minutes of the meeting that NextBridge prepared is attached to my affidavit as **Exhibit "49"**.

71. At this meeting, the Chief proposed mailouts and surveys of the community. The Chief also requested information be made available that was less technical and easier to understand. NextBridge acknowledged this concern and noted that Shared Value Solutions was selected as consultants to complete a technical review of the EA Report and summarize it in easy to understand

terms for the communities while providing advice. NextBridge proposed that Shared Value Solutions staff come into the community to better explain their recommendations on the technical review of the EA Report. NextBridge also stated that it would work with the community to determine its capacity needs and support more engagement work moving forward.

72. I do not recall the subject of equity participation in the Project being raised or discussed at the meeting with BZA leadership on May 4, 2018. I also do not believe that the topic of equity had been discussed with BZA up to this point in NextBridge's engagement with the community.

73. I attended another meeting between NextBridge and BZA on September 19, 2018. Also present at the meeting were BZA's Chief, a band councilor, and representatives of Valard and Supercom. Attached to my affidavit as **Exhibit "50"** is a copy of the minutes that NextBridge prepared in respect of this meeting. At the meeting, NextBridge provided a Project update and noted that the EA Report process was coming to completion. The parties also discussed capacity funding and ongoing consultations. The Chief recognized that his community had contact and meetings with NextBridge, but he requested that more consultation take place going forward.

74. This meeting was the first time, to my knowledge, that BZA raised its request for equity participation in the Project. The Chief noted that he was aware of the equity participation deal with the BLP First Nations and noted that the BLP First Nations had not included BZA. NextBridge advised that the equity portion of the Project was closed. This was necessarily the case for NextBridge, as the development work had already been completed, and the LTC Application had been filed. The Chief suggested that I had personally committed to BZA equity at the May 4, 2018 meeting. As noted above, I have no recollection of this topic being discussed.

75. The Chief indicated that he was going to leave the meeting, but he was persuaded to stay to listen to the representatives of Valard and Supercom discuss the economic participation opportunities available to BZA. Supercom provided a list of contracting opportunities that would be available to all 18 area Indigenous communities, including BZA. Although the Chief did not remain at the meeting for this entire portion of the meeting, the BZA band councilor remained.

76. On September 20, 2018, the Chief of BZA emailed NextBridge advising that if an agreement had been signed the previous day, it “will be deemed nullified immediately”. NextBridge responded on September 21, 2018 confirming that no agreements had been made after the Chief left the meeting. A copy of that email chain is attached to my affidavit as **Exhibit “51”**. On the same day, NextBridge also emailed BZA with notes from the September 19, 2018 meeting. A copy of that email (without attachments) is attached to my affidavit as **Exhibit “52”**.

H. Ongoing Consultation and Capacity Funding

77. I wish to emphasize that there has been—and will be—ongoing consultation with BZA and other Indigenous communities regarding the Project. As noted, the EA Approval contained conditions to ensure that this consultation continues through the construction phase of the Project. Further to those requirements, NextBridge submitted an Indigenous Consultation Plan to MECP in July 2019 to address NextBridge’s plan for Indigenous consultation going forward.

78. NextBridge’s Indigenous Consultation Plan takes into accounts comments from BZA, which NextBridge received from MECP by email dated May 13, 2019. Attached to my affidavit as **Exhibit “53”** is a copy of an email chain beginning with the email from MECP dated May 13, 2019. As reflected in that email chain, NextBridge provided responses to BZA’s comments on May 21, 2019. Attached to my affidavit as **Exhibit “54”** is a copy of BZA’s comments (as provided

to NextBridge by MECP), which were received in the form of a letter from BZA's counsel. Although that letter was dated "May 9, 2018", I believe that it was likely sent in 2019.

79. NextBridge has continued to consult with BZA regarding the Project during this litigation. For example, after the Chief of BZA reached out to NextBridge on July 2, 2019, NextBridge's representative responded on July 4, 2019 advising that he was "available anytime to discuss the project" with the Chief's staff or legal counsel. NextBridge's representative also provided an update regarding the Stage 2 archaeological assessment that was then underway. BZA's counsel requested further information regarding the archaeological process, which NextBridge provided, including about the opportunity for community monitors to participate in the archaeological assessment. A copy of the email chain dated July 2 to July 4, 2019 between NextBridge and BZA's Chief and legal counsel is attached to my affidavit as **Exhibit "55"**. This was followed by a conference call between NextBridge and BZA's Chief and legal counsel held on July 8, 2019.

80. NextBridge has also been engaged in ongoing discussions with BZA regarding a new capacity funding agreement to provide BZA with financial resources to support BZA's continued engagement on the Project, including in respect of permitting. Attached to my affidavit as **Exhibit "56"** is an email chain dated March 11, 2019 to May 7, 2019 reflecting NextBridge's efforts to engage with representatives of BZA to put in place new capacity funding for the benefit of the community to allow them to engage in consultations with NextBridge. In this Exhibit, the attachment is removed (a draft of the capacity funding agreement), and the dollar amounts are redacted as these are confidential as between the parties.

81. Attached to my affidavit as **Exhibit "57"** is another email chain dated July 8, 2019 to July 19, 2019 between NextBridge and BZA's legal counsel reflecting the negotiations for a capacity

funding agreement for ongoing consultations and, separately, funding for monitors to participate in the archaeological assessment.

82. NextBridge provided a revised letter agreement to fund the archaeological monitors on July 19, 2019. BZA's legal counsel incorporated additional changes, which NextBridge accepted, and BZA's Chief signed the letter agreement on July 29, 2019. Attached to my affidavit as **Exhibit "58"** is a copy of the email chain reflecting these exchanges.

83. BZA has not signed off on NextBridge's broader proposed capacity funding agreement for ongoing consultations (beyond just the capacity to hire monitors for the archaeological assessment). The amount of additional funding currently on offer is nearly four times the funding provided to BZA under the prior capacity funding agreement between NextBridge and BZA signed in 2014 and reflects the amount of funding requested by BZA. Attached as **Exhibit "59"** is a copy of a letter dated October 24, 2019 from Matthew Jackson of NextBridge, copying myself, to Chief Hardy of BZA, outlining NextBridge's offer. The dollar amounts are redacted as they are confidential between the parties. However, I understand that NextBridge may seek the Court's permission to file an unredacted copy of this letter on a confidential basis.

84. Rather than providing comments on NextBridge's offer, BZA sent a letter dated November 1, 2019 to various Ontario ministries requesting funding from the Crown. Attached to my affidavit as **Exhibit "60"** is a copy of that letter, which was copied to NextBridge. Negotiations have continued since then in respect of signing a new capacity funding agreement for ongoing consultations. NextBridge has agreed to provide the amount of funding requested by BZA to support their ongoing engagement on Project permitting.

85. Attached to my affidavit as **Exhibit “61”** is a copy of the capacity funding agreement that NextBridge has most recently negotiated with counsel to BZA. Although this agreement provides BZA with the full amount of capacity funding requested, BZA has not executed this agreement. The dollar amounts in this exhibit are redacted as they are confidential between the parties. However, I understand that NextBridge may seek the Court’s permission to file an unredacted copy of this agreement on a confidential basis.

I. The Affidavit of Chief Melvin Hardy

86. I have reviewed the affidavit of Chief Melvin Hardy sworn August 30, 2019. I note that Chief Hardy refers to his community’s concerns regarding herbicides and the impacts on moose (paragraphs 6 and 44). These issues were addressed within the Environmental Assessment process. As noted above, NextBridge and BZA consulted about these issues, and the MECP’s review “indicated no outstanding concerns that have not been addressed or that cannot be addressed through commitments made during the environmental assessment process”.

87. Regarding Chief Hardy’s understanding of the email attached as Exhibit “F” to his affidavit (paragraph 10), I have no recollection of offering equity to BZA, nor did I suggest (or mean to suggest) that NextBridge “should” offer equity participation to BZA. Rather, I tried to explain to Chief Hardy that the participation stream and consultation stream were separate, but that I would work with Supercom to ensure BZA was aware of contracting opportunities (as I have done). This is reflected in the minutes from our meeting of May 4, 2019 (referred to above).

88. Regarding Chief Hardy’s understanding at paragraph 11 that NextBridge offered an “equity deal” to the Métis Nation of Ontario in June 2018, this is not accurate. NextBridge does not have

an equity arrangement with the Métis Nation of Ontario regarding the Project. Rather, NextBridge and the Métis Nation of Ontario have entered an Economic Participation Agreement.

89. Regarding Chief Hardy’s understanding at paragraph 12 that “NextBridge advised that economic opportunities would be available to BZA but would be limited to those that remained after the BLP First Nations took what they wanted”, this is not accurate. BZA has been given a list of approximately \$60 million of contracting opportunities for Indigenous communities where BZA will have preferential bidding over the BLP First Nations, subject to cost and schedule.

90. Regarding Chief Hardy’s understanding at paragraph 19 that “[f]ive BZA members received workforce training, however BZA was never consulted with respect to who would receive training or how they would be chosen”, this is incomplete. The training Chief Hardy mentions was a partnership between Supercom and Confederation College. I am advised by Robert Starr of Supercom and believe that individuals were not “chosen” for training, but rather, the program was advertised, and interested individuals self-identified and attended the training. I am also advised by Robert Starr and believe that the same effort went into letting each community know about these training opportunities.

91. Regarding Chief Hardy’s allegations at paragraphs 41-42 that Minister Rickford was in a conflict of interest when he issued the Directive, I am not aware of any contact between Marvin Pelletier and Minister Rickford regarding either the Directive or the OIC.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on the
4th day of March, 2020.


A Commissioner for taking oaths, etc.

W. David Rankin


Jennifer Tidmarsh