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May 14, 2020

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SENT BY ELECTRONIC MAIL

Canada Energy Regulator
Suite 210, 517 10 Ave SW
Calgary, AB T2R 0A8

Attention: Ms. L. George, Secretary of the Commission

Dear Madam:

**Re: NOVA Gas Transmission Ltd. (“NGTL”)
North Corridor Expansion Project (“Project”)
Hearing Order GH-002-2019 (“Hearing Order”)
File OF-Fac-Gas-N081-2019-02 02
NGTL Reply Argument**

Pursuant to sections 3.11 and 3.12 of the Hearing Order¹ and the Commission’s Procedural Directive No. 4,² please find enclosed NGTL’s reply argument for the Project, including its reply to the intervenors’ comments on conditions.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Yours truly,



Sander Duncanson

Encl.

cc: GH-002-2019 Intervenors

¹ [C01209](#)

² [C05450-1](#)

CANADA ENERGY REGULATOR

IN THE MATTER OF the *National Energy Board Act*, R.S.C. 1985. c. N-7, as amended (“NEB Act”) and the regulations made thereunder;

IN THE MATTER OF the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 37, as amended, and the regulations made thereunder;

IN THE MATTER OF an application by NOVA Gas Transmission Ltd. for a Certificate of Public Convenience and Necessity and other related approvals pursuant to Part III and Part IV of the NEB Act; and

IN THE MATTER OF Hearing Order GH-002-2019 and National Energy Board File Number OF-Fac-Gas-N081-2019-02 02.

NOVA Gas Transmission Ltd.

North Corridor Expansion Project

Reply Argument

May 14, 2020

To: The Secretary
Canada Energy Regulator
Suite 210, 517 Tenth Ave SW
Calgary, AB T2R 0A8

Introduction

1. NOVA Gas Transmission Ltd. (“NGTL”) makes this submission in response to the final arguments of the following intervenors:¹
 - (a) Environment and Climate Change Canada (“ECCC”);²
 - (b) Bigstone Cree Nation (“Bigstone”);³
 - (c) Driftpile Cree Nation (“DCN”) and Whitefish Lake First Nation (#459) (“WLFN”);⁴
 - (d) Duncan’s First Nation (“DFN”);⁵
 - (e) Dene Tha’ First Nation (“DTFN”);⁶
 - (f) Peerless Trout First Nation (“PTFN”);⁷ and,
 - (g) Louis Bull Tribe (“LBT”).⁸
2. NGTL anticipated most of the issues raised in the intervenors’ arguments and addressed those issues in its written final argument filed on April 30, 2020.⁹ NGTL continues to rely on its previous submissions and will not repeat them again in reply.
3. This reply submission will focus on specific issues in the intervenor arguments that were not already addressed in NGTL’s written final argument or otherwise fully addressed in NGTL’s written evidence. The first section of this reply argument will address common issues raised by more than one intervenor, and the second section will address any remaining reply submissions to specific intervenors.

¹ NGTL does not have any specific reply to the argument from Cadotte Lake Métis (C06189). That argument is fully addressed through NGTL’s final argument and written evidence in this proceeding.

² C06214 (“ECCC Argument”).

³ C06207 (“Bigstone Argument”).

⁴ C06197-1 and C06198-1 (“DCN and WLFN Argument”).

⁵ C06195 (“DFN Argument”).

⁶ C06192 (“DTFN Argument”).

⁷ C06191 (“PTFN Argument”).

⁸ C06186 (“LBT Argument”).

⁹ C06041 (“NGTL Final Argument”).

4. NGTL notes that none of the intervenor arguments substantively challenged NGTL's arguments regarding the need for the North Corridor Expansion Project ("Project"), its benefits, NGTL's ability to finance the Project, NGTL's proposed toll treatment, NGTL's system design process and assessment of facility alternatives, pipeline route selection, or the timing of the Project and need for relief under section 58 of the *National Energy Board Act* ("NEB Act"). NGTL's arguments on these matters remain uncontroverted and should be accepted by the Commission.

Common Issues Among Intervenors

Community-Specific TLRU Assessment is Not Required

5. Several of the Aboriginal group intervenors challenged the adequacy of the Traditional Land and Resource Use ("TLRU") assessment in NGTL's Environmental and Socio-economic Assessment ("ESA") because it did not include community-specific assessments.¹⁰ However, nowhere in the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012") or the Filing Manual is there a requirement to conduct community-specific assessments, and the preparation of Project-specific as opposed to community-specific assessments for TLRU is consistent with past practice for recently-approved federal pipelines.¹¹
6. As noted in NGTL's final argument, the ESA conservatively assumed that TLRU harvesting sites, areas, and activities have the potential to occur throughout the Project area and that traditionally used species identified as being present within the area could be hunted, fished, trapped, or gathered by Aboriginal groups, even if information identifying specific activities, species, or sites had not been received from Aboriginal groups.¹² Where specific information was provided by Aboriginal groups, NGTL considered this information in the ESA and, where appropriate, for incorporation into Project planning. As a result, to the extent an Aboriginal group provided information or expressed concerns that were unique to their group, that information was considered in the context of the ESA. This approach ensured that NGTL's assessment reasonably and conservatively assessed the full scope of potential effects of the Project on all Aboriginal groups' TLRU.

The ESA Was Not Limited to Biophysical Impacts

7. Some Aboriginal group intervenors challenged NGTL's ESA methodology on the basis that NGTL's assessment of potential impacts on TLRU was limited to biophysical impacts,

¹⁰ See, for example: Bigstone Argument at para 7; DFN Argument at para 79; and, DTFN Argument at para 14.

¹¹ See, for example: North Montney Project (GH-001-2014); Trans Mountain Expansion Project (OH-001-2014); Towerbirch Expansion Project (GH-003-2015); 2017 NGTL System Expansion Project (GH-002-2015); West Path Delivery Project (GH-002-2018); and, 2021 NGTL System Expansion Project (GH-003-2018).

¹² NGTL Final Argument at para 55.

and that potential impacts on Aboriginal and treaty rights are broader than impacts on TLRU.¹³

8. NGTL disagrees with the intervenors' characterizations. The ESA's assessment of TLRU considered potential effects on TLRU activities, not simply the environmental resources that those activities rely on.¹⁴ For example, the ESA considered potential effects on plant gathering activities, fishing activities, hunting and trapping activities, and use of trails and travelways, habitation sites, gathering places and sacred sites. These assessments were much broader than simply biophysical impacts.
9. As NGTL noted in its final argument, its assessment of TLRU followed the requirements of the Filing Manual.¹⁵ To the extent Aboriginal groups assert rights that might be affected by the Project and that are not captured in NGTL's TLRU assessment, the onus is on the groups to explain what those rights are and how those rights might be affected.¹⁶ Beyond broad assertions of rights, no intervenor provided evidence demonstrating potential effects from the Project beyond effects on TLRU.
10. For these reasons, NGTL maintains that its TLRU assessment for the Project is appropriate and provides sufficient information for the Commission to determine the likely effects of the Project on TLRU as well as Aboriginal and treaty rights.

Complaints about Consultation Adequacy are Premature or Unfounded

11. A recurring theme in the arguments from Aboriginal group intervenors is the assertion that Crown consultation on the Project is not yet adequate. In some cases, such arguments reflect misunderstandings about the role of the Commission's hearing process in the broader Crown consultation process. As NGTL explained in its final argument, the Crown may rely on the Canada Energy Regulator ("CER") hearing process to fulfill aspects of its duty to consult, but the Crown (i.e., the federal Government) retains the ultimate responsibility for ensuring the adequacy of consultation before the Project is approved.¹⁷ NGTL expects that the federal Government will carry out additional direct consultation with Aboriginal groups prior to that ultimate decision by Federal Cabinet if it deems such additional consultation to be necessary, consistent with its approach to past NGTL

¹³ See, for example: Bigstone Argument at paras 76-81 and DFN Argument at para 79.

¹⁴ C02981-4 at PDF 18-19.

¹⁵ NGTL Final Argument at para 51.

¹⁶ *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68, leave to appeal to SCC refused (August 18, 2005); *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348, leave to appeal to SCC refused, 2016 CanLII 32302.

¹⁷ NGTL Final Argument at para 44.

projects.¹⁸ It would be premature for the Commission to assess the adequacy of Crown consultation at this time because consultation is likely not yet complete.

12. With respect to the intervenor arguments about the adequacy of NGTL's engagement, NGTL continues to rely on the submissions in its final argument as to why its engagement on the Project has been appropriate.¹⁹ NGTL notes that its level of engagement with each community was informed, in part, on the feedback it received from the community about their level of interest in the Project and the scope of potential Project effects on their rights and interests. Certain intervenors who are now alleging inadequate engagement previously communicated to NGTL that they had no outstanding concerns about the Project or that the Project was outside their traditional territory.²⁰ While NGTL disagrees with the characterization that it has not engaged appropriately with these communities, the reasonableness of its specific engagement activities with these communities must be viewed in that context.
13. Other intervenors' allegations related to NGTL's engagement are simply incorrect. For example:
 - (a) PTFN claims that "NGTL has not provided any information to PTFN regarding it's [*sic*] site specific environmental protection plans or other mitigation measures to address PTFN's concerns, nor...initiated a meeting to discuss the key findings or implications of the impacts and proposed mitigations or accommodation measures..."²¹ In fact, in addition to providing PTFN with links to the Application (including the Environmental Protection Plans, or "EPPs"), NGTL proposed mitigation measures in response to PTFN's Traditional Knowledge ("TK") Report and met with PTFN to specifically discuss those mitigation measures.²² A further meeting has also been scheduled with PTFN and is pending.²³
 - (b) PTFN also claims that NGTL has not reached out to discuss employment or procurement opportunities in respect of the Project.²⁴ This is incorrect. NGTL's

¹⁸ See, for example: GH-003-2018 Canada Energy Regulator Report, p. 80.

¹⁹ NGTL Final Argument at paras 45-47.

²⁰ See for example: A98641-1 at PDF 173; C01488-1 at PDF 48; and, A98641-1 at PDF 177. Similarly, see LBT statements made during Oral Indigenous Knowledge sessions regarding the Project being outside of their regular use area and that they are not seeking to be consulted on the Project (C04569-1 at PDF 63).

²¹ PTFN Argument at para 43.

²² See, for example: C05684-1 at PDF 32 and C01488-1 at PDF 44-45.

²³ C05684-1 at PDF 10.

²⁴ PTFN Argument at para 19.

reply evidence clearly demonstrates NGTL's efforts to engage PTFN to schedule a meeting to discuss employment and procurement opportunities.²⁵

- (c) Similarly, DFN claims that it invited NGTL to meet to discuss its evidence for the Project and that NGTL did not take advantage of that offer.²⁶ In fact, NGTL offered to meet with DFN to discuss its TK reports once they were received, subsequently proposed mitigation measures to respond to the concerns identified in those reports, and then again offered to meet with DFN to discuss those measures.²⁷
14. NGTL encourages the Commission to review its extensive summaries of engagement with Aboriginal groups on the Project²⁸ to verify the substantial efforts NGTL made to provide Aboriginal groups with opportunities to participate in the planning of the Project and identify possible concerns. Unlike the intervenors' arguments, these summaries provide a complete picture of NGTL's engagement on the Project and demonstrate that NGTL's engagement was reasonable and appropriate in the circumstances.

NGTL's Cumulative Effects Assessment Was Sound and Defensible

15. One of the common critiques of the ESA by intervenors in their arguments is that cumulative effects of the Project have not been properly assessed. For example, DFN argues that the "whole NGTL System must be considered when assessing the cumulative effects of the Project on DFN's Treaty rights and whether or not the Project is in the public interest."²⁹ Similarly, DCN and WLFN indicate that "the ESA prepared by NGTL is confined to the immediate footprint of the Project and a relatively limited surrounding area."³⁰
16. These arguments have no merit. NGTL assessed cumulative effects from the Project in accordance with the requirements of CEAA 2012 and the Filing Manual, as well as standard and well-accepted environmental assessment methodologies. NGTL's assessment considered all existing and reasonably foreseeable future activities (including other NGTL projects) within the Regional Study Area, which was delineated to encompass the area where all direct and indirect influences of other land uses and activities could overlap with adverse Project-related residual effects and contribute to cumulative effects.³¹ While NGTL noted in its final argument that many concerns of Aboriginal groups appear to relate

²⁵ C05684-1 at PDF 10-11.

²⁶ DFN Argument at para 141.

²⁷ See, for example: C04972-1 at PDF 17 and C05684-1 at PDF 8.

²⁸ See, for example: A98641-1 at PDF 171-191; C01488-1 at PDF 28-48; C02984-1 at PDF 3-5; C04972-1 at PDF 12-28; and, C05684-1 at PDF 6-12.

²⁹ DFN Argument at para 52.

³⁰ DCN and WLFN Argument at para 35.

³¹ A98641-11 at PDF 73

to other types of development outside NGTL or the Commission's control,³² NGTL still assessed the cumulative effects associated with those developments to the extent they overlapped with the effects of the Project. Intervenor arguments that NGTL ignored the effects of other developments just because they are outside its control³³ reflect a fundamental misunderstanding of the ESA.

Intervenor Requests for Modifications to Conditions Are Unsupported and Unnecessary

17. Several of the Aboriginal group intervenors requested modifications to the Commission's draft conditions or requested additional conditions, but did not provide any explanation (or supporting evidence) as to why such modified or new conditions are warranted or why the Commission's draft conditions are inadequate.
18. For example, several intervenors request additional engagement requirements through Project conditions and opportunities to comment on NGTL's mitigation plans and Aboriginal engagement summaries before they are finalized.³⁴ These parties have already had an opportunity to review and comment on NGTL's mitigation plans and engagement summaries through the hearing. To the extent any party has additional comments on any of NGTL's condition filings, they will also be able to submit comments directly to the CER (as parties already have the ability to do for any CER filing) or discuss those concerns directly with NGTL in accordance with NGTL's commitment to continuing engagement with all potentially affected Aboriginal groups to discuss any issues or concerns.³⁵ In this context, NGTL submits that the intervenors have already been (or will be, as the case may be) provided with reasonable opportunities to review NGTL's plans and raise any concerns directly to the CER or NGTL. There is no need to change the Commission's potential conditions.
19. Similarly, several intervenors seek to modify the Commission's potential conditions to impose substantive changes to NGTL's mitigation plans or the Commission's conditions that go beyond the scope of what NGTL and the Commission proposed, without any supporting evidence or explanation. These include changes to NGTL's plans and the Commission's potential conditions regarding construction and post-construction monitoring,³⁶ emergency preparedness,³⁷ outstanding TLRU studies,³⁸ Aboriginal

³² NGTL Final Argument at para 34.

³³ See, for example: DTFN Argument at para 16.

³⁴ See, for example: DTFN Argument at Appendix B and DCN and WLFN Argument at Appendix A.

³⁵ C01488-1 at PDF 59.

³⁶ See, for example: DFN Argument at para 123 and DCN and WLFN Argument at Appendix A.

³⁷ See, for example: DFN Argument at paras 125-126.

³⁸ See, for example: DCN and WLFN Argument at Appendix A and PTFN Argument at para 38.

employment and procurement,³⁹ and the scope of mitigation in NGTL's EPPs.⁴⁰ The intervenors have not explained why the potential conditions as drafted are inadequate, or why their proposed changes are required in the context of this Project.

20. NGTL notes that many of these same requests for modified or new conditions were recently made in relation to the 2021 NGTL System Expansion Project but were not accepted by the Commission.⁴¹ The intervenors have not explained why the scope or circumstances of the Project require additional requirements beyond those imposed on the 2021 NGTL System Expansion Project, which was a much larger project in scope.
21. Finally, some Aboriginal group intervenors request that the Commission impose requirements for NGTL to enter into agreements, provide funding or otherwise provide compensation for Project impacts, and initiate regional assessments that go beyond the scope of the Project.⁴² The Commission has no legal authority to impose these types of conditions.⁴³ Further, with respect to intervenor requests for economic benefits, the record demonstrates that the Project has been designed to create meaningful economic benefits for Aboriginal groups by providing contracting and employment opportunities to Aboriginal businesses and individuals, with a view to developing a suite of participation measures appropriate for the scope and scale of the Project.⁴⁴ Again, the intervenors have not justified the need for any changes in Project conditions in this regard.
22. NGTL submits that the potential conditions released by the Commission for the Project (subject to NGTL's comments in its final argument) are appropriate for the scale and scope of the Project and are consistent with similar requirements for other NGTL projects, thus ensuring consistency in reporting and condition compliance. The intervenors have not justified modifying those conditions.

Several Intervenors Misunderstand the Scope of the Project

23. Several of the intervenors seem to misunderstand the scope of the Project in their arguments. For example:
 - (a) PTFN references the Project widening an existing right-of-way that is already 60 metres wide.⁴⁵ While there is no evidence on the record about the width of the

³⁹ See, for example: DCN and WLFN Argument at Appendix A; PTFN Argument at para 35; and, DFN Argument at para 127.

⁴⁰ See, for example: DCN and WLFN Argument at Appendix A.

⁴¹ GH-003-2018 Canada Energy Regulator Report, Appendix VI.

⁴² See, for example: DCN and WLFN Argument at Appendix A and DFN Argument at paras 110-111.

⁴³ *Athabasca Tribal Council v Amoco Canada Petroleum Co Ltd et al.* [1981] 1 SCR 699 (SCC).

⁴⁴ C05367-1 at PDF 96; C05684-1 at PDF 43.

⁴⁵ PTFN Argument at para. 4.

existing NGTL right-of-way, NGTL has explained that its pipelines typically require only 32 metres of right-of-way (with vegetation regrowth only controlled over a 10-metre maintenance zone over the pipe centerline), and that reductions to the permanent right-of-way for new pipelines are often possible when constructing adjacent to an existing NGTL easement.⁴⁶ As a result, PTFN has significantly overstated the scope of the existing corridor.

- (b) DFN in its argument incorrectly states that the Project will transport natural gas liquids.⁴⁷ The Project will solely transport sweet natural gas.⁴⁸
- (c) DTFN suggests that one possible mitigation measure within caribou range is to install the pipe underground,⁴⁹ but as the Commission is likely aware all of the pipeline components of the Project (with the exception of piping at fenced above-ground facilities) will be buried.
- (d) Several groups focus their arguments on impacts to Crown land resulting from the North Star 2 Section of the Project, but almost 80% of that Project component is proposed to be located on private agricultural land adjacent to existing pipe.⁵⁰ Similarly, the Northwest Mainline Loop No. 2 (Bear Canyon North Extension) is proposed to be sited on approximately 50% private agricultural land adjacent to existing pipe.⁵¹ This routing significantly reduces potential effects on Crown land use.

24. The Commission should take these misunderstandings into account when reviewing the intervenors' arguments about the Project.

Intervenor-Specific Reply

Dene Tha' First Nation

25. DTFN focuses its final argument on alleged deficiencies in NGTL's caribou mitigation plans that reflect fundamental misunderstandings of NGTL's plans. For example, DTFN claims that NGTL has not followed the mitigation hierarchy by seeking to avoid and minimize effects prior to implementing offsets, that NGTL's offset measures methodology does not address uncertainties such as time lags and that NGTL's methodology does not

⁴⁶ C01545-1 at PDF 170; A98641-8 at PDF 2.

⁴⁷ DFN Argument at para 10.

⁴⁸ A98641-1 at PDF 6.

⁴⁹ DTFN Argument at para 40(g).

⁵⁰ A98641-12 at PDF 115-118.

⁵¹ A98641-12 at PDF 115-118.

appropriately address existing disturbances.⁵² NGTL disagrees with each of these arguments.

26. Contrary to DTFN's suggestion, NGTL's evidence demonstrates that it has followed the mitigation hierarchy by first seeking to avoid disturbance within caribou zone if possible, then seeking to minimize the effects of Project components in caribou zone (such as through restoring caribou habitat on the Project footprint), and then only applying offsets for the remaining residual effects.⁵³ NGTL explained in response to a DTFN Information Request how it considered avoidance in its route selection and facility siting criteria, and that the amount of undisturbed land required for the Project in caribou zone has been significantly reduced or avoided through paralleling existing disturbances along the pipeline route (for the Red Earth Section 3) and through siting the Hidden Lake North Unit Addition adjacent to the existing Hidden Lake North Compressor Station.⁵⁴ Similarly, while DTFN questions whether it is feasible to construct the Hidden Lake North Unit Addition entirely outside of the caribou Restricted Activity Period (something DTFN never expressly asked NGTL during the proceeding), the evidence demonstrates that this is not feasible given that construction of the Hidden Lake North Unit Addition requires at least 12 months of construction prior to Q1 2022.⁵⁵
27. With respect to NGTL's methodology for calculating offsets in its Caribou Habitat Restoration and Offset Measures Plan ("CHROMP"), these methodologies are consistent with past CHROMPs that have been approved by the Commission and its predecessor. As noted in NGTL's final argument, these methodologies also incorporate NGTL's experience with caribou habitat restoration and offsetting on past projects, as well as feedback from Aboriginal groups and Alberta Environment and Parks ("AEP").⁵⁶ Contrary to DTFN's suggestion, the methodologies do account for key uncertainties such as time lags and are supported by extensive scientific literature.⁵⁷
28. Further, many of the issues raised by DTFN in its argument about NGTL's offset methodologies have not been raised by any other party in this proceeding (such as ECCC) and are being raised for the first time in DTFN's argument, including extensive discussions that are not supported by any evidence and references to literature that are not on the hearing record.⁵⁸ By submitting these types of detailed comments on NGTL's methodologies at this late stage in the proceeding, DTFN is inappropriately seeking to

⁵² DTFN Argument at para 20.

⁵³ C02981-3 at PDF 26-27 and 51

⁵⁴ C02981-3 at PDF 51.

⁵⁵ C02981-3 at PDF 59.

⁵⁶ NGTL Final Argument at para 36.

⁵⁷ C01545-1, see Annex B at PDF 96-141.

⁵⁸ Such as Poulton 2018 and MOE and MFLNRO 2017.

introduce new evidence through legal argument and depriving NGTL of the ability to test that evidence and submit its own evidence in reply. For these reasons, NGTL submits the Commission should give minimal weight to these portions of DTFN's argument. In any event, NGTL maintains that its offset methodologies are sound and consistent with methodologies that have consistently been approved for NGTL projects by the Commission (and its predecessor) as well as the provincial regulator. There is no evidentiary basis to depart from those established methodologies for this Project.

Driftpile Cree Nation and Whitefish Lake First Nation (#459)

29. DCN and WLFN submit that the ESA does not address certain issues associated with the Project, such as hunting by non-Aboriginal people.⁵⁹ This argument is simply incorrect. The ESA addressed each of those concerns.⁶⁰
30. DCN and WLFN also argue that NGTL should be required to support them in completing TLRU studies prior to Project construction.⁶¹ NGTL disagrees with this request. As noted above, NGTL's engagement summaries demonstrate that NGTL has reasonably engaged with all potentially affected Aboriginal groups based on their expressed interests in the Project. All potentially affected groups, including DCN and WLFN, have had reasonable opportunities to provide TLRU information directly to NGTL or to the Commission through the hearing process. The Commission's Potential Condition 7 will also ensure that any TLRU received from groups after the close of the hearing is incorporated as appropriate into the Project plans prior to construction. However, there is no legal requirement for NGTL to fund TLRU studies for all potentially interested Aboriginal groups, and requiring such studies prior to construction would effectively give each group a veto over the Project (as they control the timing of any such studies), which is contrary to law.⁶² As a result, while NGTL will review and consider any TLRU information provided by DCN or WLFN, NGTL strongly disagrees with their requested requirement.

Duncan's First Nation

31. DFN argues that NGTL has characterized effects on DFN as "insignificant."⁶³ This mischaracterizes NGTL's evidence. NGTL assessed the potential impacts of the Project and determined whether any of those effects will be "significant", in accordance with the Filing Manual, CEAA 2012 requirements and standard environmental assessment practice.⁶⁴ NGTL's conclusions that the Project will not result in significant adverse

⁵⁹ DCN and WLFN Argument at para 29.

⁶⁰ A98641-12, at PDF 211, 218, 234, 236-237

⁶¹ DCN and WLFN Argument at para 45.

⁶² *Haida Nation v British Columbia (Ministry of Forests)*, [2004] 3 SCR 511, 2004 SCC 73 at paras 47-49.

⁶³ DFN Argument at para 26.

⁶⁴ C06041-2 at PDF 2-3, 8-9 and 17.

environmental and socio-economic effects were made in that context and do not mean that NGTL characterizes potential impacts on DFN as “insignificant”.

32. DFN asserts that NGTL approached its assessment for the Project based on the false premise that DFN members “can go elsewhere” to exercise their rights.⁶⁵ This too is a mischaracterization. NGTL did not assume that Aboriginal land users could use alternative areas as a substitute for the Project area. On the contrary, NGTL assumed that land users may continue to exercise TLRU activities in the Project area and assessed how the Project would affect the exercise of those activities. NGTL’s conclusion that the Project will not likely result in significant adverse effects on TLRU activities is supported by the evidence from Aboriginal groups in this proceeding that they continue to use the Project area notwithstanding the presence of an existing NGTL pipeline right-of-way.⁶⁶
33. DFN requests that a Crown Land Offsets Program be established to mitigate the impact of taking up and disturbance of Crown lands on DFN’s Section 35 Rights.⁶⁷ This recommendation is not supported by the evidence and should not be imposed on the Project. The Project will result in minimal new permanent footprint on Crown land and the remainder of the Project footprint will be available for TLRU activities.⁶⁸ Further, as the Commission has found on past NGTL projects, provincial Crown land disposition decisions rest with the Province of Alberta and the Commission has no jurisdiction to order the release of any Crown lands for offsets, or otherwise.⁶⁹ As a result, it would be inappropriate and unlawful for the Commission to impose this requirement on the Project.
34. DFN also recommends that the Hidden Lake North Unit Addition be moved outside of “undisturbed” caribou habitat and that the Commission not allow any further development in the future within the Chinchanga caribou herd range.⁷⁰ First, NGTL notes that the location of the Hidden Lake North Unit Addition is not “undisturbed”, but rather on lands adjacent to existing facilities, which are already considered permanently disturbed under the woodland caribou Recovery Strategy.⁷¹ NGTL has explained on the record the rationale for siting the Hidden Lake North Unit Addition where it is proposed, and why it is not feasible to locate the station outside of caribou range.⁷² Second, the Commission cannot

⁶⁵ DFN Argument at para 85.

⁶⁶ This was affirmed in the Bigstone Argument at para 50 and the DFN Argument at para 86.

⁶⁷ DFN Argument at paras 112-116.

⁶⁸ See, for example A98641-12 at PDF 230 and C01545-1 at PDF 169-174

⁶⁹ NEB Letter Decision, Application for the McLeod River North Project (Project), April 25, 2019, p 7; GH-003-2018 Canada Energy Regulator Report, p. 9.

⁷⁰ DFN Argument at paras 120-122.

⁷¹ C01545-1 at PDF pages 40 and 60.

⁷² See, for example: A98641-1 at PDF 33-32, C02981-3 at PDF 46 and C01545-1 at PDF 115-116.

lawfully fetter its discretion regarding possible future activities within the Chinchaga caribou zone. As a result, the Commission cannot accept this recommendation.

35. With respect to the ALCES report filed by DFN during the proceeding, DFN claims in its argument that NGTL misunderstood that report and DFN uses its argument as an attempt to rationalize certain ALCES' methods and conclusions. Instead of clarifying misunderstandings, however, these arguments create further inconsistencies in the ALCES methodology. For example, when asked about differences between ALCES' findings in this proceeding relative to a recent ALCES report filed for the 2021 NGTL System Expansion Project, ALCES explained that the difference was due to raster resolution rounding⁷³. Now DFN suggests that the differences are caused by the ordering of how categories of land use restrictions are removed from the land base.⁷⁴ Logically, ALCES' conclusions regarding the amount of available land base should not differ based on the order of how certain features were removed from that land base. But because this explanation was provided for the first time in legal argument, NGTL has had no opportunity to test that explanation or respond to it with reply evidence.
36. DFN also claims in its argument that NGTL's critiques of the ALCES report are either (i) trivial, or (ii) premised on assumptions about the availability of land that are contradicted by community perspectives and common sense.⁷⁵ In terms of triviality, DFN characterizes certain features as "trivial" that are, in fact, several times larger than the Project footprint. Further, in terms of land availability, DFN does not address in its argument NGTL's observation that lands within 183 metres of transportation features are, in fact, available for DFN land use, and that while existing natural features such as waterbodies and steep slopes may not be areas used by DFN members, they are nonetheless part of the natural landbase prior to any assessment of cumulative effects.
37. For these reasons, NGTL maintains its position that the ALCES report is based on flawed assumptions and should be given little, if any, weight by the Commission in assessing the effects of the Project.

Environment and Climate Change Canada

38. NGTL has fully addressed the recommendations of ECCC through both its reply evidence⁷⁶ and written final argument⁷⁷ and NGTL will not repeat those submissions again in this reply. However, with respect to ECCC's comments about the need for engagement

⁷³ C05382-2 at PDF 10

⁷⁴ DFN Argument at para 141.

⁷⁵ DFN Argument at para 142.

⁷⁶ C05684.

⁷⁷ C06041-2.

on a revised CHROMP,⁷⁸ NGTL's CHROMP was filed as part of the hearing and ECCC had opportunities to provide comments on it (and, in fact, availed itself of that opportunity). The CHROMP reflects the same methodologies that NGTL has proposed and implemented (and that the Commission and its predecessor have approved) on other past NGTL projects, and that ECCC has been engaged on.⁷⁹ Going forward, the specific caribou habitat restoration and offset measures for the Project will be finalized based on detailed design and the as-built construction footprint.⁸⁰ NGTL has committed to engage with ECCC on those details as they become available and on its subsequent reports to the Commission.⁸¹ For these reasons, ECCC's requested condition is not warranted.

Peerless Trout First Nation

39. NGTL has one final point of reply to PTFN. PTFN requests that NGTL be required to provide accommodation for potential impacts to trapping activities.⁸² While compensation matters are beyond the Commission's jurisdiction in this proceeding, NGTL has already committed to compensate registered trappers for disruption related to the Project in accordance with its trapper compensation policy.⁸³ PTFN has not identified any inadequacy with that policy that warrants direction from the Commission in this proceeding.

Conclusion

40. None of the intervenors' final arguments dispute the need for the Project. Further, the record demonstrates that the Project will have relatively minor impacts on the environment and Aboriginal land users due to NGTL's efforts to locate the majority of the Project pipeline routes and facilities adjacent to existing NGTL facilities and other disturbances.
41. While several Aboriginal group intervenors request that NGTL or the Commission take certain additional steps to accommodate their interests, these requests are not supported by the evidence or warranted in the circumstances. The record demonstrates that NGTL has made extensive efforts to provide all potentially affected Aboriginal groups with opportunities to provide input into the Project and that NGTL has reasonably addressed the concerns that have been raised. NGTL has also committed to continue to work with these

⁷⁸ C06214-1 at PDF 2.

⁷⁹ See for example: Northwest Mainline Loop (Boundary Lake North Section) (C04467-1); Smoky River Lateral Loop (C04473-1); Peace River Mainline Abandonment (A96593-1) and (A97635-1); Leismer to Kettle River Crossover (A48745, A56819 and A60689); Northwest Mainline Komie North Extension (Chinchaga Lateral Loop No. 3) (A52951 and A69803); Liege Lateral Loop No. 2 (Thornbury Section) (A71014, A72136 and A87455), Northwest Mainline Expansion (A44778 and A56798); and, 2017 NGTL System Expansion (A79253).

⁸⁰ C01545-1 at PDF 34 and 63.

⁸¹ C01545-1 at PDF 53.

⁸² PTFN Argument at p. 6.

⁸³ C05684 at PDF 32.

communities through the life of the Project to address any further issues or concerns that arise, if any.

42. For the reasons set out in NGTL's final argument and this reply argument, NGTL submits that the Project is consistent with the overall public interest and the Commission should recommend that the Project be approved by the Federal Cabinet.

Respectfully submitted,

May 14, 2020
Calgary, Alberta



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cc: GH-002-2019 Intervenors