



Canada Energy  
Regulator

Régie de l'énergie  
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# Canada Energy Regulator Report

NOVA Gas Transmission Ltd.  
GH-003-2018



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Regulator

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du Canada

# Canada Energy Regulator Report

In the Matter of

**NOVA Gas Transmission Ltd.**

Application dated 20 June 2018 for the 2021 NGTL System Expansion Project

GH-003-2018  
February 2020

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GH-003-2018

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## Glossary of Terms and Abbreviations

<b>ACE</b>	Abandonment Cost Estimate
<b>Accountable Officer</b>	The accountable officer of NGTL, appointed as Accountable Officer pursuant to section 6.2 of the <i>National Energy Board Onshore Pipeline Regulations</i> .
<b>Applicant, NGTL or the Company</b>	NOVA Gas Transmission Ltd.
<b>Application</b>	NGTL application for the 2021 System Expansion Project dated 20 June 2018, pursuant to sections 52 and 58 of the <i>National Energy Board Act</i> (NEB Act) and Part IV of the NEB Act
<b>ASME</b>	American Society of Mechanical Engineers
<b>ATP</b>	Application to Participate
<b>CAPA</b>	Corrective and Preventative Action
<b>CEAA 2012</b>	<i>Canadian Environmental Assessment Act, 2012</i>
<b>CEARIS</b>	Canadian Environmental Assessment Registry Internet Site
<b>CER</b>	Canada Energy Regulator
<b>CER Act</b>	<i>Canadian Energy Regulator Act</i>
<b>Certificate</b>	The Certificate of Public Convenience and Necessity (Certificate) applied for by NGTL under section 52 of the NEB Act, authorizing the construction and operation of the Section 52 Pipeline and Related Facilities
<b>CHR&amp;OMP</b>	NGTL's Caribou Habitat Restoration and Offset Measures Plan, submitted with the Application
<b>CHROMMP</b>	Caribou Habitat Restoration and Offset Measures Monitoring Program required to be filed in respect of CER Condition 33 for the Section 52 Pipeline and Related Facilities
<b>commencing construction</b>	The clearing of vegetation, ground-breaking and other forms of right of way (ROW) preparation that may have an impact on the environment (activities associated with normal surveying do not constitute commencing construction)
<b>Commenter</b>	A person, company or group who applied to participate in the hearing and was granted standing to provide a letter of comment
<b>Commission</b>	Commission of the Canada Energy Regulator

<b>COSEWIC</b>	Committee on the Status of Endangered Wildlife in Canada
<b>CP</b>	Cathodic Protection
<b>CPCN or Certificate</b>	Certificate of Public Convenience and Necessity
<b>CSA Z245.1</b>	Canadian Standards Association Z245.1, Steel pipe
<b>CSA Z246.1</b>	Canadian Standards Association Z246.1, Security Management
<b>CSA Z662</b>	Canadian Standards Association Z662 – Oil and Gas Pipeline Systems
<b>CSA Z662-19</b>	Canadian Standards Association Z662-19, Oil and Gas Pipeline Systems
<b>designated project</b>	A defined term in subsection 2(1) of CEEA 2012; this Project is a designated project pursuant to CEEA 2012 and its Regulations, and is therefore subject to a federal environmental assessment under CEEA 2012
<b>DFO</b>	Fisheries and Oceans Canada
<b>EA</b>	Environmental Assessment
<b>EGAT</b>	East Gate
<b>EIE</b>	Enhanced Indigenous Engagement
<b>EECC</b>	Environment and Climate Change Canada
<b>EDSML</b>	Edson Mainline
<b>EMP</b>	Emergency Management Program
<b>EMS</b>	Emergency Management System
<b>EPP</b>	Environmental Protection Plan
<b>ERP</b>	Emergency Response Plan
<b>ESA</b>	Environmental and Socio-Economic Assessment
<b>Filing Manual</b>	The National Energy Board’s Filing Manual
<b>for approval</b>	When a condition requires a filing with the Commission “for approval”, NGTL must not commence the indicated action or activity until the Commission issues its written approval of the filing.
<b>FT-D</b>	Firm Transportation – Delivery

<b>GDP</b>	Gross Domestic Product
<b>Governor in Council or the GiC</b>	The Governor General acting on the advice of the Federal Cabinet
<b>GPML</b>	Grande Prairie Mainline
<b>HDD</b>	Horizontal Directional Drill
<b>HSE</b>	Health, Safety and Environment
<b>ICS</b>	Incident Command System
<b>ILI</b>	In-line Inspection
<b>IAA</b>	<i>Impact Assessment Act</i>
<b>IMP</b>	Integrity Management Plan
<b>including</b>	Use of this term, or any variant of it, is not intended to limit the elements to just those listed. Rather, it implies minimum requirements with the potential for augmentation, as appropriate.
<b>Intervenor</b>	A person, company or group who applied to participate in the hearing and was granted standing to participate as an Intervenor; has rights and obligations in the proceeding as set out in the Hearing Order or other procedural direction.
<b>IR or Information Request</b>	A written question to the Applicant or an Intervenor in relation to its evidence, during the written portion of the hearing pursuant to the deadlines set out, to which a response must be subsequently filed.
<b>LSA</b>	Local Study Area
<b>LTO</b>	Leave to Open
<b>MD</b>	Municipal District
<b>MLV</b>	Mainline Block Valve
<b>MOP</b>	Maximum Operating Pressure
<b>NEB</b>	National Energy Board
<b>NEB Act</b>	<i>National Energy Board Act</i>
<b>NDE</b>	Non-destructive examination
<b>NGTL</b>	NOVA Gas Transmission Ltd.

<b>NGTL System</b>	NGTL's natural gas pipeline system comprised of approximately 24,000 km of pipeline, associated compression, and other facilities located in Alberta and British Columbia; subject to federal jurisdiction and regulation.
<b>NPS</b>	Nominal Pipe Size
<b>Offset measures</b>	Habitat-focused measures to be implemented outside of the Project footprint to provide some degree of ecological compensation for the residual effects of the Project on the landscape, after all possible avoidance, mitigation and on-site restoration measures are applied
<b>OPP</b>	Overpressure protection
<b>OPR</b>	<i>National Energy Board Onshore Pipeline Regulations</i>
<b>PA</b>	Public Awareness
<b>Part IV Order</b>	The Toll Order applied for by NGTL under Part IV of the NEB Act, authorizing the tolling methodology for the Project.
<b>Participant</b>	A person, company or group who has applied to participate in the hearing and who was granted standing to participate. The term participant includes the Applicant, Intervenor and Commenters in the hearing.
<b>Parties</b>	Includes the Applicant and Intervenor; does not include Commenters
<b>PC</b>	Pressure control
<b>PFP</b>	Participant Funding Program
<b>post-construction</b>	Activities to take place once construction is complete, following final clean-up through to the completion of reclamation activities; including monitoring to evaluate the success of reclamation activities, compliance with commitments and the stability of the disturbed lands.
<b>PPBoR</b>	Plan, Profile and Book of Reference
<b>Process Advisor</b>	Commission staff assigned to provide assistance to the public, landowners, Indigenous communities, and Participants to help them understand the process, the different roles of the hearing participants, and how to participate in the hearing.
<b>Project</b>	The proposed 2021 System Expansion Project as described in NGTL's 20 June 2018 Application, consisting of the Section 52 Pipeline and Related Facilities, the Section 58 Facilities and Activities, and the request pursuant to Part IV of the NEB Act.
<b>PRPA</b>	Peace River Project Area

<b>QMS</b>	Quality Management System
<b>Report or Canada Energy Regulator Report</b>	Report submitted by the Commission of the Canada Energy Regulator to the Minister (as defined in section 2 of the NEB Act) that sets out the Commission's recommendation as to whether a Certificate should be issued for all or any portion of the pipeline, the reasons for the recommendation, and all the terms and conditions the Commission considers necessary or desirable in the public interest to which any Certificate would be subject, pursuant to section 52 of the NEB Act. This Report also contains the Commission's decisions in respect of NGTL's applications under section 58 of the NEB Act and Part IV of the NEB Act.
<b>Restoration measures</b>	Measures used so that the landscape in is consistent, over the long term, with adjacent ecosystems. Common restoration measures include seeding and/or planting to achieve establishment, survival and growth of target species in the short term, so natural ecosystems are expected to regenerate over the long term
<b>ROW</b>	Right of Way
<b>RSA</b>	Regional Study Area
<b>SARA</b>	<i>Species at Risk Act</i>
<b>Section 52 Pipeline and Related Facilities</b>	The proposed construction and operation of approximately 344 kilometers of new gas pipeline and associated facilities in northwest Alberta.
<b>Section 58 Facilities and Activities</b>	The proposed right of way preparation activities in certain specified locations, the temporary infrastructure required for pipeline construction, including stockpile sites, contractor yards, access roads and borrow pits/dugouts, and all activities related to the construction of the proposed compressor station unit additions and the January Creek valve.
<b>Section 58 Order</b>	The Exemption Order applied for by NGTL under section 58 of the NEB Act, authorizing the construction and use of the Section 58 Facilities and Activities.
<b>SESA</b>	Socio-economic Study Area
<b>SMP</b>	Safety Management Plan
<b>SSSP</b>	Site Specific Safety Plan
<b>TLRU</b>	Traditional Land and Resource Use
<b>TOMS</b>	TransCanada's Operational Management System

<b>TOPS</b>	TransCanada's Operating Procedures
<b>TWS</b>	Temporary Workspace
<b>WASP</b>	Wapita Area Synergy Partnership
<b>WCS</b>	West Central Stakeholders
<b>WCSB</b>	Western Canada Sedimentary Basin

### List of Units

Bcf/d	Billion cubic feet per day
CO <sub>2</sub> e	Carbon dioxide equivalent units
ft	feet
GJ/d	Gigajoules per day
ha	hectares
km	Kilometre
kPa	Kilopascal (one thousand pascals)
L	Litre
m	Metre
m <sup>3</sup> /d	Cubic metres per day
mm	Millimetre
Mcf	Thousand cubic feet
MMcf/d	Million cubic feet per day
MPa	Megapascal (one million pascals)
PJ/d	Petajoules per day (1 Pj/d = 1,000,000 GJ/d)
%	Per cent
10 <sup>3</sup> m <sup>3</sup>	Thousand cubic meters
10 <sup>3</sup> m <sup>3</sup> /d	Thousand cubic meters per day



## Recital and Appearances

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

**IN THE MATTER OF** the *Canadian Environmental Assessment Act, 2012* (S.C. 2012, c. 19, s. 52), as amended, and the regulations made thereunder;

**IN THE MATTER OF** an application by NOVA Gas Transmission Ltd., before the Commission of the Canada Energy Regulator for a Certificate of Public Convenience and Necessity and other related approvals pursuant to sections 52 and 58, and Part IV of the *National Energy Board Act*, filed under File No. OF-Fac-Gas-N081-2018-03 02 on 20 June 2018;

**IN THE MATTER OF** National Energy Board Hearing Order GH-003-2018 dated 4 December 2018;

**HEARD** in Grande Prairie, Alberta on 30 April 2019, and in Calgary, Alberta on 13-17 May 2019, 12-16, 20-21, and 26-27 August 2019, 24 October 2019 and 13 November 2019;

### **BEFORE:**

M. Lytle            Presiding Commissioner  
D. Côté            Commissioner  
W. Jackknife      Commissioner

### **Oral Indigenous Knowledge**

<b>Appearances</b>	<b>Parties</b>	<b>Witnesses</b>
I. Bailey	Horse Lake First Nation	C. Horseman Elder J. Horseman Elder P. Joachim Elder Ph. Joachim
	Blood Tribe	M. Oka J.J. Shade M. Tailfeather Elder R. Blackplume Elder B. Wolf Child Elder D. Striped Wolf Elder W. Good Striker A. Knowlton J. Glover

C. Tuharsky

O'Chiese First Nation

**Panel 1:**

Elder J. Gladeau (interpreter)  
Elder L. Yellowface  
J. Strawberry  
Elder R. Desjarlais  
S. Beaverbones  
Elder D. Daychief  
R. Beaverbones  
A. Bremner  
J. Chipaway  
D. Strawberry

**Panel 2:**

Elder J. Gladeau (interpreter)  
Elder J. Chipaway  
Elder R. Bremner  
Elder B. Strawberry  
Elder E. Strawberry  
Elder P. Mackinaw  
F. Strawberry  
D. Beaverbones  
Elder J. Thomas Bremner  
Elder R. Bremner

**Panel 3:**

Elder J. Gladeau (interpreter)  
T. Strawberry  
S. Poorman  
Elder M. Daychief  
Elder G. Beaverbones  
Elder W. Strawberry  
B. Saulteaux  
J. Daychief  
Elder P. Strawberry  
F. Strawberry  
A. Lagrelle

K. A. Bear Robe

Samson Cree Nation

K. Swampy

Elder J. Buffalo  
Elder L. Bruno  
B. Crier  
B. Lightning  
B. Soosay  
S. Soosay  
B. Buffalo Jr.  
K. Yellowbird  
K. Northwest  
C. Montour

K. Brooks R. Dean	Alexis Nakota Sioux Nation	Elder R. Alexis B. Bull J. Alexis Yellowdirt
	Tsuut'ina Nation	V. Meguinis
M. Langille R. Speiran	Piikani Nation	I. Provost Elder P. Provost Elder S. Crow Shoe Elder D. Smith M. Crow Shoe
L. Carter S. Louden	Stoney Nakoda Nations representing Bearspaw First Nation, Chiniki First Nation and Wesley First Nation	W. Snow Elder C. Abraham Elder G. Francis Elder J. Wesley Elder J. Snow Elder A. Young Elder L. Wesley Elder G. Dixon Elder F. Crawler B. Wesley C. Goodstoney C. Labelle S. Abraham L. David Jr
	Saddle Lake Cree Nation	F. Cardinal C. Delver I. Jackson Elder R. Steinhauer W. Pasquayak R. Speiran
A. Lalji D. Overall	Driftpile Cree Nation	K. Giroux Elder G. Giroux Elder R. Giroux Sr. Elder P. Okemow M. Langille T. Gastmeier R. Speiran

## **Oral Cross-Examination**

<b>Appearances</b>	<b>Parties</b>	<b>Witnesses</b>
S. Duncanson M. Ducharme M. Graham	NOVA Gas Transmission Ltd.	B. West C. Dunn C. Losos K. Nelson R. Powell
C. Dickins S. McHugh	Natural Resources Canada	C. Carey
C. Dickins S. McHugh	Environment and Climate Change Canada	A. McLandress P. Gregoire B. Asher M. Tobin
K. Brooks R. Dean	Alexis Nakota Sioux Nation	T. Campbell
A. Lalji	Driftpile Cree Nation	K. Giroux R. Speiran
K. Jutla	Ermineskin Cree Nation	D. Bellerose
P. S. Jull, Q.C. B. Yaworski	O'Chiese First Nation	J. Gladeau P. Whitford T. Campbell
I. Bailey	Horse Lake First Nation	T. Campbell
K. Jutla	Piikani Nation	I. Provost J. Glover M. Langille
K. A. Bear Robe	Samson Cree Nation	K. Northwest
S. Loudon	Stoney Nakoda Nations representing Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation	W. Snow D. Cherkas S. McGarvey
K. Jutla	Whitefish (Goodfish) Lake First Nation #128	D. O'Connor

## **Written Final Argument**

NOVA Gas Transmission Ltd.  
Alberta Department of Energy  
Alexis Nakota Sioux Nation  
Bears paw First Nation  
Blood Tribe  
Chiniki First Nation  
Drift pile Cree Nation  
Environment and Climate Change Canada  
Ermineskin Cree Nation  
Horse Lake First Nation  
Métis Nation of Alberta – Region 3 Regional Council  
Natural Resources Canada  
O’Chiese First Nation Consultation Office  
PETRONAS Energy Canada Ltd.  
Piikani Nation  
Saddle Lake Cree Nation  
Samson Cree Nation  
TransGas Limited  
Wesley First Nation  
Whitefish (Goodfish) Lake First Nation #128

## **Oral Final Argument**

### **Appearances**

S. Duncanson  
M. Ducharme  
J. Fontaine

S. Louden

P. Whitford

K. Slipp  
T. Jordan  
N. Bakker

K. Brooks  
R. Dean

### **Parties**

NOVA Gas Transmission Ltd.

Stoney Nakota Nations  
representing Bears paw First  
Nation, Chiniki First Nation,  
and Wesley First Nation

O’Chiese First Nation  
Consultation Office

TransGas Limited

Alexis Nakota Sioux Nation

# 1 Recommendation and Decisions

This Canada Energy Regulator Report (Report) constitutes the Recommendation, decisions and reasons of the Commission of the Canada Energy Regulator (Commission) in respect of NOVA Gas Transmission Ltd.'s (NGTL) application to construct and operate (Application) the 2021 System Expansion Project (Project), considered by the Commission in the GH-003-2018 proceeding. The Project is an expansion of the existing NGTL System to receive and deliver sweet natural gas in Alberta. The Project consists of approximately 344 kilometres of pipeline in eight pipeline section loops and three compressor station unit additions. The Project is located wholly in Alberta, near Grande Prairie and runs roughly south towards Calgary, mostly adjacent to existing rights of ways (ROWs) and facilities.

Chapters 1 and 2 form a summary of the Commission's Recommendation and determinations and are provided for convenience only; the Commission's detailed consideration of the issues is contained in the chapters that follow. If there is a discrepancy between these two summary chapters and the body of the Report, the wording and determinations set out in the chapters that follow chapters 1 and 2 take precedence.

## 1.1 Recommendation to Governor in Council

Although the *Canadian Energy Regulator Act* (CER Act) came into force during the GH-003-2018 proceeding on 28 August 2019, which is referred to as the commencement day, section 36 of the transitional provisions of the CER Act states that applications pending before the National Energy Board (NEB) immediately before the commencement day are to be taken up before the Commission and continued in accordance with the *National Energy Board Act* (NEB Act) as it read immediately before the commencement day. The Commission's consideration of the Application filed by NGTL and the deliberations that the Commission undertook, as explained in this Report, have been made by the Commission, pursuant to the NEB Act.

In its consideration of any application under Part III of the NEB Act, which includes sections 52 and 58, the Commission must consider whether the applied-for facilities are in the overall Canadian public interest. In doing so, the Commission must exercise its discretion in balancing the interests of a diverse public. In order to issue a Recommendation or decision, the Commission is required to consider and weigh all relevant evidence on the record. This requires that the Commission balance the benefits and the burdens of a project, based upon analysis of the relevant evidence properly before it.

Section 52 of the NEB Act requires that a Recommendation be made to the Minister responsible for the Act (the Minister of Natural Resources) as to whether or not a certificate should be issued for all or any portion of the applied for pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and the reasons for that Recommendation. Section 52 of the NEB Act also requires that regardless of the Recommendation, the Recommendation must include all the terms and conditions that are necessary or desirable in the public interest to which the certificate will be subject if the Governor in Council (GiC) were to direct the issuance of the certificate, including terms or conditions relating to when the certificate or portions or provision of it are to come into force.

### 1.1.1 Public Convenience and Necessity (Section 52 Pipeline and Related Facilities)

The various factors that the Commission considered in this Project assessment cannot be understood in isolation from one another, or separate from the specific context and circumstances surrounding this Project. In the Commission's view, the benefits of the Project are considerable and would be realized throughout the lifecycle of the Project. As discussed further in this Report, Project benefits include:

- increased access to diverse markets for Canadian natural gas;
- maintaining access to natural gas supplies for diverse Canadian consumers;
- creation of jobs across Canada;
- development of capacity of local and Indigenous<sup>1</sup> individuals, communities, and businesses;
- direct spending on pipeline materials in Canada; and,
- considerable revenues to various levels of government which is spent to support programs and services in both Indigenous and non-Indigenous communities.

However, the Commission is also of the view that the Project carries risks. Burdens associated with this Project include:

- the adverse effects that are likely to be caused by increased disturbance in the Little Smoky Caribou Range; and,
- further modification of the landscape in the region, potentially affecting the abilities of Indigenous peoples to use and access Crown land.

The benefits and burdens of any Project are never distributed evenly across the country. In light of these circumstances, reasonable people can and will disagree on what the best balance and outcome is for Canadians.

The Commission understands that sometimes Parties disagree on the evidence and facts, while other times, Parties agree on the facts but differ in their opinions, perspectives, or values. In carrying out the hearing, the Commission listened carefully and took these diverse views into account. The Commission has remained cognizant that the public interest is both regionally and nationally based, and therefore is inclusive of all Canadians. The Commission must also be responsive to Canadians' interests and values as they change over time. It is through this holistic and contextual lens that the Commission has carried out its Project assessment, including the justification analysis; considered and weighed the Project's benefits and burdens; and determined that the Project is in the Canadian public interest.

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<sup>1</sup> "Indigenous" has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*:

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

It is the Commission's view that, having regard to all considerations that appear to be directly related and relevant to the Application, the Project is and will be required by the present and future public convenience and necessity. In coming to this Recommendation, the Commission considered the public interest, defined as being inclusive of all Canadians and referring to a balance of economic, environmental and social interests that changes as society's values and preferences evolve over time.

The Commission recommends that a Certificate of Public Convenience and Necessity (CPCN or Certificate) be issued under section 52 of the NEB Act, for the construction and operation of the Project, including approximately 344 km of new gas pipelines and associated facilities (**Section 52 Pipeline and Related Facilities**). The Commission's conclusions on individual matters which fall within the ambit of the Certificate are contained in the chapters that follow.

This Report sets out the reasons for this Recommendation and the terms and conditions to which the Certificate would be subject. In Appendix I of this Report, the Commission has set out conditions to which the Certificate will be subject, if the **Section 52 Pipeline and Related Facilities** are approved by the GiC.

### 1.1.2 Environmental Assessment

Sections 52(3) and 58(6) of the NEB Act require that if an application relates to a designated project as defined in section 2 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), the Recommendation Report concerning the application must also set out an environmental assessment prepared under CEAA 2012 in respect of the project. Further details regarding the CEAA 2012 requirements are provided in Section 2.1.3 and Chapter 8 of this Report. Section 36.1 of the transitional provisions of the CER Act states that section 182.1 of the *Impact Assessment Act* (IAA) applies to applications pending before the NEB immediately before the commencement day (28 August 2019). Section 182.1 of the IAA states that any environmental assessment of a designated project by the NEB commenced under CEAA 2012, in respect of which a decision statement has not been issued before the day on which the IAA comes into force (28 August 2019), is to be continued under CEAA 2012.

In the GH-003-2018 hearing process, the Commission heard arguments for caution in regards to further development in the Little Smoky Caribou Range, and it recognizes the important role of the precautionary principle under the CEAA 2012 which requires that environmental measures must anticipate and prevent environmental harm. However, the Commission is of the view that, consistent with the precautionary principle, a lack of full scientific certainty should not be used as a reason for not implementing measures to prevent environmental harm. Adaptive management can, in certain circumstances, be an important part of a follow-up program for a project to allow for uncertainties in the environmental assessment process.

Having undertaken the environmental assessment, the Commission concludes that, with the implementation of NGTL's environmental protection procedures and mitigation measures, and the Commission's recommended conditions, the Project is not likely to cause significant adverse environmental effects. In coming to this conclusion, the Commission has required that effects or consequences be minimized, even if they are only anticipated or possible and not certain. The Commission has recommended a number of conditions on the Project with respect to protecting the caribou habitat in the Little Smoky Caribou Range. The Commission is of the view that with the successful implementation of these conditions, the potential residual effects associated with the Project will be mitigated (as explained in Chapter 8).



In addition to the recommended conditions related to caribou habitat mitigation measures, the Commission is mindful of the importance of considering the degree of disturbance in the Little Smoky Caribou Range. It is clear to the Commission that the Little Smoky Caribou Range is not the healthy environment it once was for caribou. The Little Smoky Caribou Range is subject to a number of stressors, including significant forestry cuts, linear seismic lines and an existing pipeline ROW. Addressing the cumulative impacts on this area requires a broader, more holistic approach than the Commission is able to require due to the limits of its legislative mandate.

The Commission has taken the opportunity to set out within this Report a number of recommendations to the GiC and other government bodies who have the mandates to address the larger issues of caribou habitat disturbance and loss of the ability of Indigenous peoples to practice their traditional harvesting and cultural pursuits within the larger disturbance area. These recommendations are outlined in Section 1.3 of this Report, and summarized in Appendix II. It is the Commission's view that, should the GiC and other government bodies take up these specific recommendations, significant steps will be made towards reducing the cumulative impacts in the Little Smoky Caribou Range, relationships with Indigenous peoples will be further enhanced, and a template will be created to monitor and make recommendations to moderate the impacts of future industrial activities in Alberta.

### **1.1.3 Consultation with Indigenous Peoples**

As mentioned above, the Commission carefully considered all of the relevant evidence and submissions it received. As part of its assessment, the Commission evaluated the sufficiency of NGTL's consultation with Indigenous peoples. The Commission also considered the views and concerns of Indigenous peoples participating in the hearing process, the potential impacts on the rights and interests of Indigenous peoples and proposed measures to avoid or mitigate those impacts. The Commission heard mixed points of view on the Project from Indigenous peoples; some were supportive of the Project while others were not. Discussion of the Commission's findings on these topics is provided in Chapter 7.

The Commission also heard mixed points of view on its hearing process and undertook to design an approach for the meaningful participation of Indigenous Intervenor. The process undertaken is discussed throughout this Report (particularly in Chapters 2 and 7) where the Commission endeavored to not just listen, but to hear the concerns raised. The Commission acknowledges that this was met with varying success:

*[...] I'll be honest, you know, this morning we had a little meeting and I was getting very frustrated and upset, feeling that we're just coming to another meeting just to be -- just so that later on it can be recorded that yeah, we did meet with the Piikanis and yeah, they addressed our concerns and yes, we did listen to them. And that's where my frustration was, listening to our concerns and then acting upon them is two different things.*

Elder Pat Provost, Piikani Nation, Transcript Volume 5 [2310]

*So we are thankful to you and the Proponent that we've been able to have this opportunity to speak to our concerns. We are thankful to the Board for their work in this matter. We are thankful for the Intervenor that have attended and heard our question. And we thank you for listening to our story, because this is our tradition, our oral testimony, our understanding, and our way of life.*

Elder John Snow, Stoney Nakoda Nations, Transcript Volume 6 [3097]

*Firstly, I would like to thank and acknowledge that we are on the Treaty 7 territory, and secondly, I'd like to thank and acknowledge the National Energy Board for hosting this hearing right here on Tsuut'ina Nation. And thirdly, I'd like to thank and acknowledge the homeland of the Métis.*

Katherine Swampy, Samson Cree Nation, Transcript Volume 3 [1272]

Additionally, and in response to specific requests received from Indigenous Intervenors, this hearing process included a one-day Conference to discuss meaningful participation of Indigenous Intervenors (held on 24 January 2019). The Conference provided an opportunity for all Parties to come together to provide their comments and ideas in relation to how Indigenous Intervenors can meaningfully participate in the hearing process. Further discussion of this Conference is provided in Chapters 2 and 7. Overall, the Commission is of the view that the GH-003-2018 hearing process offered a fair and meaningful opportunity for Parties to participate and to fully present their case and represent their diverse points of view.

The Commission understands that the GH-003-2018 hearing process forms part of the overall consultation process with Indigenous peoples with respect to their constitutionally protected rights. In this regard, the Government of Canada has indicated that it will rely on the CER's process, to the extent possible, to fulfill any duty to consult related to the Project. This Report may also inform any additional consultations being carried out separately by the Government of Canada with respect to the Project.

Although the GiC has the responsibility of ultimately ensuring that the duty to consult has been fulfilled before a decision is made on the Project, the Commission has considered those aspects of consultation which are relevant to the Project and for which evidence was filed. The Commission understands that the dialogue between Indigenous peoples and the Government of Canada is ongoing.

## **1.2 Decisions made by the Commission**

### **1.2.1 Section 58 Facilities and Activities**

As explained in Sections 2.1.2 and 2.3.2 of this Report, NGTL requested that a number of activities and facilities associated with the Project be authorized by the Commission through an order pursuant to section 58 of the NEB Act, and that the section 58 order exempt those activities from certain further authorizations.

The Commission is of the view that the applied-for activities and facilities would be in the public interest, should the GiC direct the Commission to issue a Certificate in respect of the **Section 52 Pipeline and Related Facilities**. However, the Commission also finds that a number of the applied-for activities and facilities are not appropriate for exemption from certain further authorizations under section 58 of the NEB Act.

Accordingly, the Commission has decided to grant Order XG-001-2020 pursuant to section 58 of the NEB Act exempting NGTL from paragraphs 31(c) and 31(d), and section 33 of the NEB Act for the components identified in Section 2.3.2 and subject to the attached conditions. The conditions associated with Order XG-001-2020 are provided as Appendix III of this Report. Should the GiC direct the Commission to issue a Certificate in respect of the **Section 52 Pipeline and Related Facilities**, the Commission will issue Order XG-001-2020 concurrently.

This Report also sets out the reasons for the Commission's decision on these section 58 matters.

### 1.2.2 Part IV Tolling Methodology

The Commission agrees to allow the use of NGTL's current tolling methodology for the Project as applied for. Further discussion of the Commission's views on NGTL's request pursuant to Part IV of the NEB Act is contained in Chapter 2 and Chapter 3 of this Report.

### 1.3 Issues beyond the Commission's Mandate: Comments and Broad Recommendations to Governments and Agencies

The Commission's Recommendation and decisions outlined above include the 34 recommended conditions to be included on the **Section 52 Pipeline and Related Facilities** Certificate and the 24 conditions to be imposed on the XG-001-2020 Order, which the Commission finds are required for the Project to be considered in the public interest. These conditions cover a wide range of matters, including emergency preparedness and response, protection of the environment, consultation with affected communities of Indigenous peoples, socio-economic matters, and pipeline safety and integrity. All of these are made in a manner consistent with the NEB Act, CEAA 2012 and the *Species at Risk Act* (SARA). The conditions, should the GiC direct the issuance of the Certificate, are regulatory requirements imposed on NGTL, which the Commission would oversee and enforce as part of its regulatory mandate.

The Commission also heard submissions from participants regarding issues that were of great concern to them, but that were beyond the mandate of the Commission to address. In making these recommendations to the GiC and other government bodies that deal with matters beyond the Commission's mandate, the Commission draws guidance from the Federal Court of Appeal's decision in *Tsleil Waututh Nation*<sup>2</sup>. The Court stated that the Commission has a responsibility in its recommendations to the GiC to identify mitigation measures outside of the jurisdiction of the Commission and within the authority of senior levels of government. By providing these recommendations about issues beyond the Commission's authority but within that of the GiC and/or other government bodies, the GiC will possess the requisite breadth of information to make the informed decisions required of it with respect to the Project.

The Commission is mindful of an increased awareness and concern towards energy infrastructure projects, and towards the discussion and subjects that arise when those projects are the subject of an assessment by a regulatory body. The Commission heard a number of submissions regarding the cumulative effects in the Project area due to the level of industrial development, and recognizes that no one development at any one time is necessarily responsible for all the cumulative outcomes, so too are cumulative effects not going to be resolved by any one party. The Commission is of the view that it is imperative that any discussions on addressing cumulative effects consider Indigenous peoples and all stakeholders (e.g., industries, governments, and landowners). The Commission notes that there are numerous proponents and industries with existing past developments or ongoing operations in the region who have responsibility for addressing their past and ongoing contributions to cumulative effects. The Commission recognizes that while individual projects

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<sup>2</sup> *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 155 [herein referred to as *Tsleil-Waututh Nation*].

can be a small part of the solution, the multiple interacting past contributions are best addressed through other multi-stakeholder means coordinated through the appropriate government agencies responsible.

Having heard these comments, the Commission has formed a number of recommendations that it has set out below for consideration and action by governments and agencies whose mandates extend to the issues identified. These recommendations are described below and are summarized in Appendix II.

The recommendations outlined below played no role in the Commission's public interest determination, and the Commission's conclusion in this regard is unaffected by whether or not the recommendations are acted upon. The Commission does, however, view these recommendations as important. They reflect matters of significant concern which were either brought to the Commission directly, or which the Commission necessarily came to see during the hearing process. While those matters were outside the scope of the Commission's mandate, it is our view that the underlying information is valuable to governments and agencies and the Commission encourages their implementation.

#### 1. Agreement for the Conservation and Recovery of Woodland Caribou

The Commission notes a Draft *Agreement for the Conservation and Recovery of the Woodland Caribou in Alberta*<sup>3</sup> (draft Agreement) was released in August 2019 by the Federal Minister of the Environment and the Alberta Minister of Environment and Parks. The stated purpose of the draft Agreement is to set out effective conservation and recovery measures to support woodland caribou local populations in Alberta, and it identifies the immediate priority is to maintain critical habitat in all of Alberta's woodland caribou ranges. For the Little Smoky Caribou Range, the draft Agreement identifies the immediate priority, within the first four years, as initiating critical habitat restoration.

The Commission recognizes that the draft Agreement identifies a role for Indigenous peoples and their perspectives to inform the implementation of the draft Agreement, including with respect to their constitutionally protected Aboriginal and treaty rights. The draft Agreement states that the two governments are committed to engage with Indigenous peoples so as to share information on the progress and future measures related to implementation; to consider opportunities for collaboration on implementation of conservation and recovery measures; and to consider Indigenous peoples' relevant knowledge.

The Commission further recognizes that the draft Agreement provides for the formation of an Indigenous and multi-stakeholder sub-regional task force to be established for the Little Smoky Caribou Range in 2019-2020 as one of the initial steps in range specific planning. This sub-regional task force will recommend community-based solutions to range specific details that achieve critical habitat outcomes set out in the Recovery Strategies. In addition, the draft Agreement provides for capacity funding to enhance Indigenous peoples' involvement in range plan development and to explore opportunities for involvement in implementation.

The Commission notes that during the GH-003-2018 proceeding, it was identified by a number of Parties, including Environment and Climate Change Canada (ECCC) that the pre-existing

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<sup>3</sup> See [C01684-1](#)

level of cumulative effects within the Little Smoky Caribou Range is significant as the current level of anthropogenic disturbance exceeds the disturbance management threshold of 65 per cent undisturbed habitat as identified in the 2012 *Recovery Strategy for the Boreal Woodland Caribou*.

The Commission strongly recommends to the GiC that it should expedite the finalizing of the draft Agreement with a focus on the immediate implementation of the first year deliverables, including those stated for the Little Smoky Caribou Range. The Commission also recommends that there be consideration given to entering into conservation agreements with Indigenous peoples (as provided under SARA) with a view to co-management of the woodland caribou.

In addition to this recommendation, Commissioner Côté has further specific views regarding the involvement of Indigenous peoples in the caribou habitat restoration, offsetting and monitoring measures provided for by NGTL, and disagrees with the Majority view of the Commission. His dissenting views are provided in Chapter 8. However, in as much as this recommendation is not in conflict with his dissenting views in Section 8.7.3, this recommendation is supported by Commissioner Côté.

## 2. Increased Involvement of Indigenous Peoples in Pre- and Post-Disturbance Monitoring

The Commission understands that Indigenous peoples and landowners can have deep connections to the land on which they live. As a largely resource-based economy, there are a number of industries outside of the Commission's reach which act on and modify the natural landscape. The Commission has also heard of the benefits of increased involvement of both Indigenous peoples and landowners in the monitoring activities associated with resource development projects, both in the pre-disturbance understanding of baseline conditions and the post-disturbance monitoring of the required reclamation and remediation activities.

The Commission would recommend the creation of a pan-Albertan, multi-industry, framework through which landowners and Indigenous peoples could participate as fully-funded monitors for all industrial projects and activities that affect their property and section 35 rights and interests. In areas of critical habitat, the Commission strongly encourages the involvement of Indigenous peoples, and recommends that their involvement should be sought out so that their Indigenous and Treaty rights are included in the development of all range plans and they are involved in the implementation of the plans, including the consideration of re-introduction of Indigenous stewardship for the woodland caribou. This recommendation is also compatible with the Commission recommendation for the creation of a province-wide Crown Land Offsets Program (recommendation 4).

## 3. Development of an Offset Framework for Woodland Caribou

The Commission notes there is a lack of standard regulatory framework for the calculation and implementation of offsets within woodland caribou ranges. The Commission therefore strongly recommends that the GiC should, in conjunction with ECCC, provincial governments, Indigenous peoples and stakeholders including industry develop a comprehensive and detailed Offsets Framework for linear projects in caribou critical habitat. The Offset Framework should provide a framework that is practical and can be operationalized and measured in the field. It should provide a methodology for the use of multipliers, or derivation of ratios, that is sufficiently detailed to be transparent and can be applied fairly and consistently between all federally and provincially regulated projects while quantitatively accounting for differences. The methodology should be founded on effectiveness, including an understanding of sound incentives, and should

consider the different varying circumstances that may be encountered, whether project types (point feature facilities as compared to linear facilities and disturbances), nature of habitat (upland / lowland, greenfield / existing disturbances, etc.), or different restoration methods.

A draft Offset Framework should be developed with focused input from experts on offsets, on caribou habitat and on restoration methods. Expert input into the development of the draft should include (but not necessarily be limited to) particular input from relevant researchers, industry and consultant experts, Indigenous peoples knowledgeable about the various caribou herds within Alberta, and expert government agencies and regulators (including from the provinces of Alberta and British Columbia). The draft Offset Framework should then be circulated more widely for broader Indigenous, local and public comment before being finalized. The Offset Framework should include provision for periodic review every few years to ensure it remains valid and effective. The Commission sees the development of an Offsets Framework to be complimentary to the draft Agreement, as noted in recommendation 1, and strongly recommends that these initiatives be undertaken as soon as possible.

#### 4. Crown Land Offsets Program

The Commission heard considerable evidence and argument from Indigenous Intervenorers that the barriers to accessing Crown land to exercise section 35 rights are not solely physical. The Commission heard that, even though NGTL submitted that there would be no lasting physical barriers to using the Crown land required for this Project, the spiritual and traditional nature of the land for many would be irredeemably altered as a result of the construction-related disturbance. The Commission heard a number of different definitions and interpretations of the concept of access to land, and acknowledges that access barriers can be both real and perceived.

The Commission noted substantial evidence filed on the record that the Crown land in and around the Project area is affected by industries or activities outside the Commission's mandate, such as forestry cuts, or linear seismic lines. These effects on Crown land may in turn have impacts on the ability of Indigenous peoples to exercise their section 35 rights. The Commission has provided specific views on efficient route planning relating to minimizing new disturbances in Chapter 5 of this Report.

In light of the concerns noted above, the Commission recommends that the Government of Alberta investigate the creation of regional areas of Crown land that could be placed under shared stewardship with Indigenous peoples. Such areas would remain available for industrial leases but would be subject to an enhanced consultation and engagement process with the Indigenous peoples in order to issue future development permits.

By way of clarifying this recommendation, the Commission suggests that, for example, an area of size equal to the Crown land disturbed by the Project, within or near the Little Smoky Caribou Range, could be identified and purchased, if necessary, to be used as a Crown Land Offset in which Indigenous peoples can exercise their section 35 rights with a level of shared stewardship.

#### 5. Indigenous Peoples Educational Endowment

It appears to the Commission that current industrial projects address the training of Indigenous peoples in an *ad hoc* fashion which does not allow a forward-looking, holistic approach towards matching industry needs to the capacity of Indigenous peoples.

The Commission is encouraged by the recent passage of the *Alberta Indigenous Opportunities Corporation Act*, and is of the opinion that there may be opportunities to build on this initiative, or to create a compatible program. The Commission recommends that the Government of Alberta investigate the establishment of an Indigenous peoples' educational endowment based on the capital value of any new industrial construction in the Province.

The endowment would be established so that resource industries would contribute based on a formula reflecting the extent of their use of Crown lands. The funds would then be used to mitigate the loss of section 35 rights. This endowment could be jointly managed by the Government of Alberta, representatives from Alberta Indigenous communities and representatives from industry to ensure that the training needs of industry are adequately addressed. Funds would be accessible to Indigenous communities so that their members would have access to the training they would need to meaningfully participate in the provincial and national economies.

## 6. Access to Crown Lands for Indigenous Peoples

The Commission heard a number of Indigenous peoples state that they encountered issues with accessing their traditional territories in order to exercise their rights due to locked and gated roads. The Commission notes that NGTL indicated that it would not implement access control measures on trails or travel-ways that are intersected by the Project footprint if any are identified by Indigenous peoples. In Section 7.6.7.3 of this Report, the Commission further discusses the potential for the preferential selection of the use of Crown land, potentially leading to impaired access by Indigenous peoples.

The Commission recommends that the GiC and the Province of Alberta review their policies regarding access for Indigenous peoples to Crown lands so that they are not hindered in exercising their rights.

## 1.4 Conclusion

The Commission considered and weighed all of the evidence and all of the arguments, both written and oral, properly placed on the record, in making its recommendation and decision on this Project.

When considering the balance between the benefits and the burdens associated with the Project, the Commission is of the view that the Project is in the public interest and is consistent with the requirements of the NEB Act. In assessing NGTL's Application, the Commission has recommended and included conditions in addition to the pipeline integrity, safety and environmental protection legislation and standards to which the Project would be subject.

The Commission carefully considered all commitments made by NGTL at various stages in this proceeding, and expects them to be implemented. For these reasons, the Commission has recommended **Condition 16** for the **Section 52 Pipeline and Related Facilities**, and would impose **Condition 14** for the **Section 58 Facilities and Activities**, which collectively require NGTL to track and fulfil the commitments it made during the proceeding.

Should the Certificate be issued, NGTL is required to fulfil its commitments and satisfy the Commission's requirements. The Commission will monitor NGTL's compliance with the Commission's requirements throughout the lifecycle of the Project.



M. Lytle  
Presiding Commissioner



D. Côté  
Commissioner



W. Jacknife  
Commissioner

Calgary, Alberta  
February, 2020



## 2 Summary

This chapter summarizes the Commission's recommendation and decisions, and highlights those issues that were brought forward by Intervenor and Commenters throughout the hearing process. The Commission's detailed consideration of the issues is contained in the chapters that follow.

### 2.1 What did NGTL apply for?

On 20 June 2018, NGTL<sup>4</sup> filed an application for the 2021 NGTL System Expansion Project. NGTL proposes to build and operate approximately 344 km of 1,219 mm (NPS 48) outside diameter natural gas pipeline and associated facilities in northwestern Alberta, from approximately Grande Prairie to north of Calgary, including three compressor station unit additions. If approved, the Project would "loop" or add new pipeline parallel or adjacent to, the existing Grande Prairie Mainline (GPML) and to the existing Edson Mainline (EDSML) of the NGTL System.

The Project would be located on provincial Crown land (approximately 254.6 km) and on private (freehold) land (approximately 89.4 km).

In its Application, NGTL said the Project was needed to transport natural gas from areas of increasing production in northwestern Alberta and northeastern British Columbia to intra-Alberta and export markets. If approved, NGTL plans to begin operating the Project by April 2021.

The estimated cost of the Project is \$2.3 billion. A map of the Project is provided in Figure 2-1.

#### 2.1.1 Section 52 Pipeline and Related Facilities

The Section 52 Pipeline and Related Facilities comprise approximately 344 km of 1,219 mm (NPS 48) pipeline loops in eight sections. A summary of the Project components that comprise the Section 52 Pipeline and Related Facilities is provided in Table 2-1. Further discussion on NGTL's engineering design, route selection and environmental assessment of the applied-for corridor is provided in Chapter 4, Chapter 5 and Chapter 8 respectively.

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<sup>4</sup> a wholly owned subsidiary of TransCanada PipeLines Limited (TransCanada)

**Table 2-1: Section 52 Pipeline and Related Facilities Component Summary**

Component	Length (km)	Contiguous* /non-contiguous (km)	Public/Private Land (%)	Outside Diameter (mm)	Minimum Wall Thickness (mm)	MOP* (kPa)
Grande Prairie Mainline Loop No. 4						
Valhalla Section	36	34/2	0/100	1,219	13.3 to 17.8	8,450
Grande Prairie Mainline Loop No. 3						
Elmworth Section	46	30/16	38/62	1,219	13.3 to 17.8	8,450
Grande Prairie Mainline Loop No. 2						
Karr Section	57	48/9	100/0	1,219	13.1 to 17.4	8,275
Deep Valley Section	69	65/4	100/0	1,219	13.1 to 17.4	8,275
Colt Section	13	11/2	100/0	1,219	13.1 to 17.4	8,275
Edson Mainline Loop No. 4						
Robb Section	42	35/7	94/6	1,219	13.7 to 18.3	8,690
Dismal Creek Section	32	26/6	98/2	1,219	13.7 to 18.3	8,690
Brewster Section	49	47/2	100/0	1,219	13.7 to 18.3	8,690

\*contiguous with existing NGTL pipeline or other existing linear infrastructure

\*Maximum Operating Pressure

### 2.1.2 Section 58 Facilities & Activities

NGTL stated that to achieve the proposed construction schedule and commercially required in-service date for the Project, its Application included exemptions from the detailed route process pursuant to section 58 of the NEB Act. A summary of the Project components included in the section 58 portion of the Application are listed below and technical details are provided in Table 2-2. In total, the requested facilities and activities comprise the following:

- three compressor station unit additions at existing NGTL sites;
- launcher and receiver facilities for cleaning and in-line inspection;
- a control valve (January Creek control valve) and associated pipeline tie-ins to safely facilitate the flow of gas from the January Creek Lateral to the Western Alberta System;
- construction-related temporary infrastructure, including:
  - access roads and travel lanes;
  - stockpile sites;
  - borrow pits/dugouts;
  - contractor yards and laydown yards;
  - construction camp; and

- ROW preparation activities (including clearing, grading, and stripping) and commencing trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length).

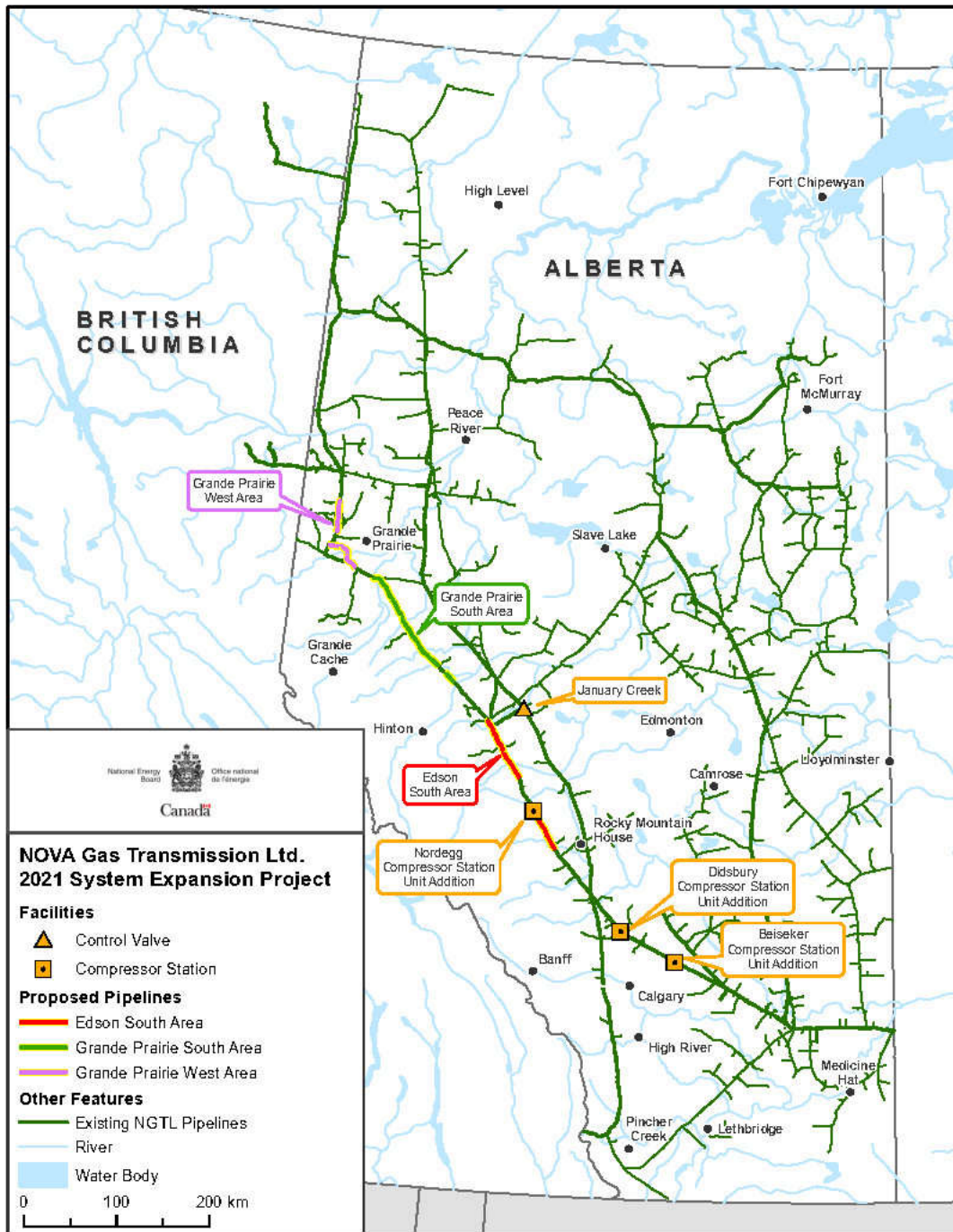
**Table 2-2: Section 58 Facilities Technical Details**

	<b>New Permanent Area (ha)</b>	<b>TWS* (ha)</b>	<b>Public/Private land (%)</b>	<b>Outside Diameter (mm)</b>	<b>Minimum Wall Thickness (mm)</b>	<b>MOP (KPA)</b>
Nordegg Unit C6 Addition	n/a	4.5	100/0	n/a	n/a	6,450
Didsbury Unit B7 Addition	2.28	2.63	100/0	n/a	n/a	8,690
Beiseker Unit B3 Addition	2.46	0.41	0/100	n/a	n/a	8,690
January Creek Valve	0.5	0	100/0	406	14.3	7,550

\* TWS = Temporary Work Space

NGTL also requested exemption from the requirement to apply for Leave to Open (LTO) for various tie-ins associated with the Project. Further discussion of the LTO exemption request is provided in Chapter 4.

Figure 2-1: Project Overview<sup>5</sup>



<sup>5</sup> Map produced by the National Energy Board, March 2018, for use in the GH-003-2018 hearing process as a graphical representation intended for general information purposes only. The Commission disclaims all responsibility for any errors, omissions and inaccuracies. Readers wishing to consult the actual maps should refer to the official record of the GH-003-2018 hearing.

### **2.1.3 CEEA 2012 and Environmental Assessment**

NGTL's proposed Project involves construction and operation of gas pipeline components that are collectively over 40 km in length. Accordingly, the Project is a "designated project" for the purposes of section 2 of the CEEA 2012 and requires a CEEA 2012 environmental assessment for which the Commission is the responsible authority. The Commission also considers environmental protection as part of its broader mandate under the NEB Act. The Commission's environmental assessment for the Project, following the provisions of CEEA 2012, is set out in Chapter 8 of this Report.

### **2.1.4 Part IV of the NEB Act**

NGTL stated that the Project is required to increase NGTL System capability to transport gas from areas where supply is growing, and also to meet delivery requirements in areas where market demand is growing. NGTL also stated that the forecasted supply and demand growth, combined with aggregate contractual underpinnings, demonstrates that the applied-for facilities would be used and useful over their economic life. Customers have signed long-term contracts for firm receipt and delivery transportation services that exceed capacity of the NGTL System beginning in 2021.

NGTL proposed to provide services that utilize the Project under the terms and conditions established in the NGTL Gas Transportation Tariff (NGTL Tariff), as amended from time to time. NGTL proposed to treat the costs for the Project on a rolled-in basis, and to determine the tolls for services in accordance with the NGTL toll design methodology in effect, and as approved, at any given time. The Commission's views on the economic feasibility and tolling implications for the Project are provided in Chapter 3.

### **2.1.5 Relief Requested by NGTL**

In its Application, NGTL specifically requested the following relief from the Commission in respect of the Project:

- a report recommending the issuance of a CPCN, pursuant to section 52 of the NEB Act, authorizing construction and operation of the Project;
- an exemption from the requirements of sections 30(1)(b) and 47(1) of the NEB Act to obtain LTO from the Commission before installing certain tie-ins for the Project;
- an exemption from the 100 per cent Non-Destructive Examination (NDE) requirement in section 17 of the NEB *Onshore Pipeline Regulations* (OPR) pursuant to subsections 48(2.1) and 48(2.2) of the NEB Act for certain low-pressure piping systems associated with the Project;
- an order, pursuant to section 58 of the NEB Act, exempting NGTL from the requirements of subsections 31(c), 31(d) and 33 of the NEB Act in relation to:
  - temporary infrastructure required for construction of the pipeline;
  - ROW preparation activities (including clearing, grading, and stripping) and commencing trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length); and
  - three compressor station unit additions.

For clarity, these activities would only be undertaken after the CPCN has been issued for the entire Project and after any applicable conditions for the section 58 activities have been satisfied.

- an order pursuant to Part IV of the NEB Act affirming that:
  - prudently incurred costs required to provide service on the applied-for facilities would be included in the determination of the NGTL System revenue requirement; and
  - the tolls for services on the applied-for facilities would be calculated using the same methodology used to calculate tolls for services on the NGTL System, as determined through Commission order from time to time.
- such further and other relief as NGTL might request or the Commission might consider appropriate.

The Commission accepts the following components as also being part of the section 58 relief requested, as they are substantively described both elsewhere in the Application and in other, subsequent filings by the Applicant in this hearing process:

- launcher and receiver facilities for cleaning and in-line inspection;
- a control valve (January Creek control valve); and
- associated pipeline tie-ins to safely facilitate the flow of gas from the January Creek Lateral to the Western Alberta System.

The Commission is of the view that NGTL clearly intended these components to be assessed as part of the Commission's section 58 decision, and has considered them in that light.

## **2.2 Commission's Conclusions**

This Section outlines both the process that the Commission undertook and the Commission's views and conclusions on individual matters which fall within the scope of the NEB Act. The views and conclusions of the Commission are further described in the individual chapters of this Report. For reference, a list of all of the Rulings and Procedural Updates released during GH-003-2018 is provided in Appendix IV.

The Commission notes the importance of the whole Report and cautions readers against reading individual chapters in isolation as some concerns raised by participants cover multiple topics and are cross-referenced across chapters.

### **2.2.1 What did the Commission consider?**

Under subsection 52(2) of the NEB Act, the Commission is required to consider all matters that appear to be directly related to the Project and to be relevant. For this Application, the Commission received comment on and identified a List of Issues to guide the hearing process (Appendix V).

Having considered and weighed all of the evidence and the arguments, both written and oral, properly placed on the record, the Commission has decided that the proposed Project, with the

Commission's imposed conditions, is in the public interest, for the reasons described throughout this Report.

## **2.2.2 Recommendation to the GiC**

When considering the balance between the benefits and the burdens associated with the Project, as described in Section 1.1.1, the Commission is of the view that the Project is in the public interest, is consistent with the requirements of the NEB Act and recommends that a Certificate be issued for the construction and operation of the **Section 52 Pipeline and Related Facilities**.

Regarding Issues 1 to 4 (for the List of Issues, see Appendix V), as explained in Chapter 3, the Commission finds the assumptions of NGTL's supply and demand outlooks reasonable and adequate to support the Project. The Commission is of the view that the number and characteristics of contracts NGTL has in place are sufficient to support the need for the Project. The Commission also finds that through its parent company, TC Energy, NGTL is sufficiently able to finance the Project. Discussion and conclusions regarding commercial impacts and tolling methodology are provided in Chapter 3. Specific conclusions regarding the Commission's decisions are summarized below (Section 2.3).

Regarding Issues 9 to 12 (Appendix V), the Commission is satisfied that the general design of the **Section 52 Pipeline and Related Facilities** is appropriate for their intended use. The Commission is also satisfied that these would be constructed and operated in accordance with all applicable legislation and standards. Discussion relating to engineering design, operation and emergency response is provided in Chapter 4.

Regarding Issues 5 to 8 and 12 (Appendix V), the Commission is of the view that, with the implementation of NGTL's environmental protection procedures and mitigation, and the Commission's recommended and imposed conditions, the Project is not likely to cause significant adverse environmental effects. Additionally, this Report includes the Commission's recommended follow-up program to be implemented in respect of the Project. The Commission's Environmental Assessment (EA) is set out in Chapter 8, and discussion of other potential socio-economic impacts is provided in Chapter 9.

Additionally, the Commission is of the view that NGTL's design and implementation of Project-specific public and Indigenous engagement activities are appropriate for the scope and scale of the Project, and that all Indigenous communities potentially affected by the Project were provided with sufficient information and opportunities to make their views about the Project known to NGTL and to the Commission. Public consultation is further discussed in Chapter 6 and consultation with Indigenous communities is discussed in Chapter 7.

Overall, through the reasons provided in this Report, the Commission recommends that a Certificate be issued for the construction and operation of the **Section 52 Pipeline and Related Facilities**. The Commission has set out the terms and conditions that it considers necessary or desirable in the public interest in Appendix I of the Report.

## 2.3 Decisions made by the Commission

### 2.3.1 Decision under Part IV of the NEB Act

In addition to the recommendation for approval provided to the GiC related to the **Section 52 Pipeline and Related Facilities**, the Commission has made decisions with respect to the **Section 58 Facilities and Activities** and NGTL's proposed tolling methodology for the Project.

The Commission approves NGTL's request to calculate the tolls for services on the applied-for facilities using the same methodology used to calculate tolls for services on the NGTL System, as determined through Commission order from time to time. The Commission approves NGTL's request to include prudently incurred costs required to provide service in the determination of the NGTL System revenue requirement.

### 2.3.2 Decision pursuant to Section 58 of the NEB Act

Also explained in Chapter 1, the Commission has decided that the facilities and activities applied for by NGTL pursuant to section 58 of the NEB Act are in the public interest and will issue Order XG-001-2020, should the GiC direct the Commission to issue a Certificate in respect of the **Section 52 Pipeline and Related Facilities**. However, having considered the evidence placed before it, as well as the fundamental importance of procedural fairness and the legislative scheme behind the CER's mandate, the Commission has decided that the Order will not include all of the exemptions applied for.

Specifically, the applied-for ROW preparation activities (including clearing, grading, and stripping), and the commencement of trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length), are not approved by the Commission for exemption. These activities could entail land rights acquisition issues still to be determined, as NGTL has stated that it has not as yet acquired all the land rights that are needed. These activities are typically not commenced until after the Plan, Profile and Book of Reference (PPBoR) is approved by the Commission and any detailed route process is completed. Significant work on those activities prior to that would potentially make moot a future detailed route hearing, should one be required, and/or potentially fetter the discretion of a future Panel considering such a detailed route hearing.

The Commission is of the view that an exemption for these activities would frustrate the intention of Parliament in prescribing a statutory scheme for the detailed route process. Therefore, the Commission denies the requested exemption from the requirements of paragraphs 31(c) and 31(d), and section 33 of the NEB Act<sup>6</sup>, for the ROW preparation activities (including clearing, grading, and stripping), and for the commencement of trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length).

With respect to its decision on the remaining facilities and activities applied for pursuant to section 58, the Commission has included 24 conditions in Order XG-001-2020 that are necessary for the facilities and activities to be in the public interest. Therefore, the Order to be

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<sup>6</sup> Now paragraphs 198 (c) and 198 (d), and section 199 of the CER Act.



issued would include authorization for the following (collectively defined as the **Section 58 Facilities and Activities**):

- the construction related temporary infrastructure, including access roads and travel lanes, stockpiles sites, borrow pits/dugouts, contractor yards and laydown yards, and construction camps;
- the three compressor station unit additions proposed;
- launcher and receiver facilities for cleaning and in-line inspection;
- the January Creek control valve; and
- the LTO exemption for the tie-ins identified as applied for.

These five components noted for exemption are either located on lands for which NGTL has existing lands rights and therefore no lands rights issues are anticipated, or relate to temporary construction or infrastructure activities and do not involve permanent land acquisition. Accordingly, the Commission approves the exemption for these five components defined as the **Section 58 Facilities and Activities** from the requirements of paragraphs 31(c) and 31(d), and section 33 of the NEB Act.

The chapters in this Report explain the context and expectations of the conditions which the Commission has set out for the **Section 58 Facilities and Activities**.

## **2.4 How did the Commission assess the Application?**

### **2.4.1 Project Description, Early Engagement and Participation**

On 1 June 2018, the NEB sent a letter to Indigenous communities potentially affected by the Project, based on the information provided by NGTL in its Project Description that was filed on 27 February 2018 in advance of NGTL's Application. At that time, Horse Lake First Nation and O'Chiese First Nation filed letters of concern regarding the Project Description. Further discussion on the NEB's notifications to Indigenous communities is provided in Chapter 7.

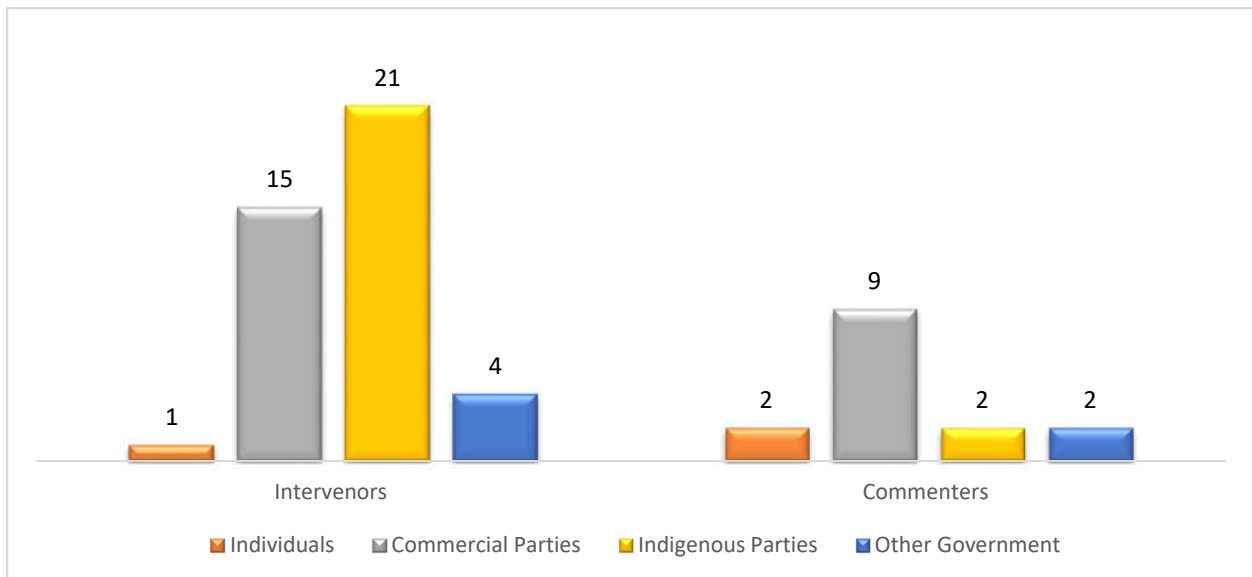
Following NGTL's filing of the Application on 20 June 2018, the NEB issued a Notice of Public Hearing and Application to Participate (Notice) to NGTL on 5 July 2018 which directed NGTL to serve and publish such Notice. The Notice included a Preliminary List of Issues and established a process by which interested persons could apply to participate in the GH-003-2018 hearing process. In order to be eligible to participate in the hearing, interested persons or groups had to submit an Application to Participate (ATP) and demonstrate that they were directly affected by the proposed project or that they had relevant information or expertise. Those who wished to participate in the GH-003-2018 hearing process were required to submit ATPs by 17 August 2018. NGTL did not oppose any of the ATPs filed.

On 20 September 2018, the NEB issued Ruling No. 1 determining both the participation (or standing) and method (or level) of participation for the 51 ATPs received by the deadline and one late ATP received before issuing the Ruling, should the Application be deemed sufficiently complete to proceed to assessment. On 17 October 2018, the NEB issued Ruling No. 2 granting two additional late requests for Intervenor status in the GH-003-2018 hearing process, from Samson Cree Nation and Cadotte Lake Métis Local #1994, respectively.

The NEB received further late applications from Asini Wachi Nehiyawak Traditional Band and Gift Lake Metis Settlement. In Ruling 15 issued on 25 June 2019, the NEB determined that Asini Wachi Nehiyawak Traditional Band could participate as a Commenter. In response to the later application filed by Gift Lake Metis Settlement, the NEB determined on 8 August 2019 in Ruling 19 that Gift Lake Metis Settlement could participate as an Intervenor or Commenter, but that participation at either level would be limited in scope due to the late stage of the hearing process.

On 12 November 2019, the Commission issued Ruling No. 28 denying a late application for Commenter status by Michel First Nation, due to the late stage of the hearing process which was anticipated to close on 13 or 14 November 2019. In all, the NEB or Commission received and assessed a total of 57 requests to participate; of these, 41 applications requested and were granted Intervenor status, 15 requested and were granted Commenter status, and one requested and was denied Commenter status. A summary of participation is provided in Figure 2-2 below.

**Figure 2-2: Summary of Participation in GH-003-2018<sup>7</sup>**



### 2.4.2 Participant Funding

The CER administers a Participant Funding Program (PFP), separate and apart from the hearing process, which provides financial assistance to individuals, Indigenous peoples, landowners and non-industry not-for-profit groups to facilitate public participation in project hearings and environmental assessments of designated projects.

For the GH-003-2018 hearing process, all PFP applications were filed by Indigenous Intervenor. Further details regarding the applications and the amounts awarded are provided in

<sup>7</sup> Includes all those who were granted participation status, including Duncan’s First Nation and Cadotte Lake Métis Local #1994 who subsequently withdrew.

Section 7.3.3 of this Report. More information on the program in general and the funding awards to all eligible applicants can be found on the CER's website at <http://www.cer-rec.gc.ca/pfp>.

### **2.4.3 Request for Comments, Hearing Order and Conference**

In addition to issuing Ruling No. 1 explained above, on 20 September 2018 the NEB issued a letter to all approved Participants in the GH-003-2018 hearing process. That letter requested comments from Intervenor, Commenters and NGTL on the Preliminary List of Issues, the Factors and Scope of Factors for the EA, and the hearing process itself. This request included a potential timetable of events, and invited, through a series of questions, comments on the steps to be included in the hearing, the timing associated with these steps, and the locations for the hearing.

After considering the comments filed by Participants including NGTL in relation to the Preliminary List of Issues, and the Factors and Scope of Factors for the EA, the NEB modified its List of Issues to include specific reference to potential impacts on the economic interests of communities of Indigenous peoples, and specific reference to potential impacts on Indigenous and Treaty Rights, releasing its decision on 3 December 2018. Having further considered the comments filed, the NEB determined that the original Factors and Scope of Factors for the EA did not require any modification.

Also on 3 December 2018, the NEB issued its determination of completeness regarding NGTL's Application. The NEB determined that the Application had sufficiently addressed the technical requirements outlined in the Filing Manual and could proceed to assessment. The NEB also set out the legislated time limit to issue its recommendation report to the Minister regarding the section 52 components, being no later than 3 March 2020, subject to any modifications allowed under the NEB Act.

The NEB then issued a Hearing Order for GH-003-2018 on 4 December 2018, including identification of hearing steps and timing of the hearing, taking into consideration the comments received and the reply provided by NGTL (see Table 2-3).

In response to specific requests received from Indigenous Intervenor, the NEB convened a one-day Conference to discuss meaningful participation of Indigenous Intervenor (Conference) on 24 January 2019. The Conference was open to all Parties to register to attend, and was facilitated by a neutral third party. The Conference provided an opportunity for all Parties to come together to provide their comments and ideas in relation to how Indigenous Intervenor can meaningfully participate in the hearing process. Details of the Conference, including topics and questions to guide the discussion were provided in the 4 December 2018 letter.

After reviewing the Final Conference Summary Report on the Conference and considering the positions raised within it by the registered Parties, on 21 February 2019, the NEB released Procedural Update No. 1, which further modified the hearing process in terms of the timetable of hearing steps. A summary of the changes to the Hearing Steps is provided in Table 2-3 below. Additional changes as a result of Rulings provided in response to specific requests are summarized in Appendix IV.

Further discussion on the NEB's Conference is provided in Chapter 7.

**Table 2-3: Summary of Changes to Hearing Steps in GH-003-2018**

Changes made to Hearing Steps from written comments received from Participants	Changes made to Hearing Steps from consideration of the Conference Report
<ul style="list-style-type: none"> <li>• the session for the sharing of oral Indigenous knowledge was moved from February 2019 to April 2019;</li> <li>• the filing of Intervenor’s written evidence was moved from March 2019 to April 2019;</li> <li>• oral cross-examination was scheduled in two parts:               <ul style="list-style-type: none"> <li>○ cross-examination on Issues 5 to and including 12 was to be held in Grande Prairie (Alberta) in late June 2019; and,</li> <li>○ cross-examination on Issues 1 to and including 4, and Issue 12 was to be held in Calgary (Alberta) in early July 2019; and</li> </ul> </li> <li>• final argument may be provided both orally and/or in writing, commencing with NGTL’s Argument-in-Chief being heard orally immediately following the close of the second session of oral cross-examination in mid-July.</li> </ul>	<ul style="list-style-type: none"> <li>• an extension to the date for Indigenous Intervenor’s to file the Notice of Intent to share oral Indigenous knowledge;</li> <li>• two additional rounds of Intervenor Information Requests;</li> <li>• an extension to the deadline for Intervenor’s to file their written evidence;</li> <li>• an adjustment to the process of cross-examination to include oral cross-examination of NGTL’s witnesses and witness panels on all Issues of the List of Issues in both Calgary and Grande Prairie; and</li> <li>• an adjustment to the timing of cross-examination and final argument to avoid the months of June and July, to accommodate harvesting, cultural and ceremonial events for Indigenous Intervenor’s.</li> </ul>

#### **2.4.4 Hearing Process Steps and Procedural Updates**

The NEB designed a hearing process that included both written and oral components, including the filing of written evidence and the testing of that evidence through written questions (known as Information Requests (IRs)) and through oral cross-examination. Hearing steps also included oral Indigenous knowledge sharing and opportunities to provide argument both in writing and orally. In total, 20 Intervenor’s and NGTL filed evidence, ten Indigenous Intervenor’s participated in sharing oral Indigenous knowledge, 18 Intervenor’s and NGTL participated in the oral cross-examination and 19 Intervenor’s and NGTL provided argument. The CER also received five letters of comment.

Each of the hearing process steps was explained in detail in the Hearing Order and Procedural Updates issued for the GH-003-2018 hearing process. These documents outlined the expectations and requirements for Parties associated with each process step, and the CER also had a Process Advisor available to help Participants understand the process, their roles in the process and how they could participate effectively in the hearing process. Overall, a total of nine Procedural Updates, some of which were further updated, were issued by the NEB or the Commission prior to the close of the record for GH-003-2018 on 13 November 2019. For reference, a list of all of the Rulings and Procedural Updates released during GH-003-2018 is provided in Appendix IV. All filings and transcripts associated with the hearing process are available on the CER website, and all oral portions of this hearing were open for the public to attend.

#### **2.4.4.1 The Sharing of Oral Indigenous Knowledge**

The Commission recognizes that Indigenous peoples share their knowledge and lessons through an oral tradition from generation to generation and that this information cannot always be shared adequately in writing. In response to suggestions made by Indigenous Intervenors as noted in the Final Conference Summary Report, the NEB held the Calgary session of oral Indigenous knowledge sharing at the Grey Eagle Resort and Casino on the Tsuut'ina Nation lands. In addition, the NEB issued Procedural Update No. 2 on 2 April 2019, which provided a schedule and guidance regarding the introduction of Elders or knowledge keepers, methods for sharing oral Indigenous knowledge, sharing Indigenous knowledge in a group setting, asking questions of Elders and knowledge keepers in relation to the oral Indigenous knowledge they shared, the role of counsel, and confidentiality measures.

The NEB heard oral Indigenous knowledge from Horse Lake First Nation on 30 April 2019 in Grande Prairie. On 13 May 2019, the NEB heard from Blood Tribe in Calgary in the NEB hearing room.

From 14 to 17 May 2019, the NEB heard oral Indigenous knowledge at the Grey Eagle Resort and Casino on Tsuut'ina Nation lands. On these dates, the NEB heard from O'Chiese First Nation, Samson Cree Nation, Alexis Nakota Sioux Nation, Tsuut'ina Nation, Piikani Nation, Stoney Nakota Nations (representing Bearspaw First Nation, Chiniki First Nation and Wesley First Nation), Saddle Lake Cree Nation, and Driftpile Cree Nation.

The receipt of this oral form of knowledge and information as shared by the Elders and knowledge keepers of Indigenous Parties was valuable for the Commission's consideration of the Application. Further discussion regarding Indigenous matters, including information heard during the oral Indigenous knowledge sessions is provided in Chapter 7.

#### **2.4.4.2 Cross-examination**

The process and dates for cross-examination and argument were also modified in response to comments received, as explained above. Accordingly, the NEB heard oral cross-examination on 12 through 16 August, 20 and 21 August 2019 in Calgary, and on 26 and 27 August 2019 on the Tsuut'ina Nation lands.

Cross-examination was scheduled to continue on 28 August 2019. However, due to the coming into force of the CER Act on 28 August 2019, the oral cross-examination sessions planned for that day were temporarily adjourned and were resumed and concluded on 24 October 2019 at the CER Hearing Room in Calgary.

#### **2.4.4.3 Transition to the CER**

As explained in Chapter 1, on 9 August 2019, the NEB issued a letter to all Participants to GH-003-2018, noting that the CER Act would come into force on 28 August 2019. The letter further cited section 36 of the transitional provisions of the CER Act, which states that applications pending before the NEB would be dealt with by the Commission and continued in accordance with the NEB Act. Accordingly, the assessment of NGTL's Application as set out in Hearing Order GH-003-2018 and subsequent Procedural Updates, would continue pursuant to the relevant provisions of the NEB Act.

On 22 August 2019, the NEB issued Procedural Update No. 8 which announced the temporary adjournment of some remaining hearing steps, specifically all remaining oral cross-examination scheduled for 28 August 2019, due to the commencement of the CER Act. It stated that the Lead Commissioner would determine the membership of the Panel for the remainder of the hearing process.

On 12 September 2019, the Commission issued a letter to all Parties notifying them of the membership of the Panel under the CER. The letter stated that Murray Lytle would continue to hear and decide the Application as the Presiding Commissioner of the Panel, with Lead Commissioner Damien Côté continuing to hear and decide the Application, and that they would be joined by Commissioner Wilma Jacknife.

On 18 September 2019, the Commission issued Procedural Update No. 9, outlining the process for the continuation of the GH-003-2018 hearing. The Commission stated that it would not repeat any of the previous hearing steps, but would continue with the remaining steps, being the remainder of oral cross-examination and the final argument process. The Commission provided two date options for the resumption of oral cross-examination, including the opportunity for Indigenous Intervenors who were not being cross-examined by NGTL to adopt their evidence and / or provide an opening statement. The Commission also provided an updated schedule for written and oral final argument. Following the identification of preferred dates by Indigenous Intervenors, the Commission confirmed the schedule for the resumption of the hearing process in an Update to Procedural Update No. 9 issued on 1 October 2019.

The Commission did receive comments on its Procedural Update No. 9 and established a formal process to hear from Parties regarding both the principle of *he / she who hears must decide*, as well as “any proposed or requested relief regarding previously completed oral steps in the hearing process.” The Commission received no responses that argued for a change in the remaining process, and a number of Intervenors and NGTL argued against any such change. Accordingly, on 22 October 2019, the Commission released its views on these matters, confirming the continuation of the GH-003-2018 hearing process as outlined in Procedural Update No. 9. The Commission notes that some Parties further discussed these topics in their final written arguments. As the Commission considered and determined its views on this matter, there is no reason to revisit those views. The Parties in question were provided the opportunity to provide their input during the formal process established earlier, and their comments on the matter during Final Argument were not considered.

#### **2.4.4.4 Final Argument**

Once cross-examination was complete, NGTL and 19 Intervenors submitted written final argument. Intervenors who submitted written final argument were permitted to participate in oral final argument, which took place on 13 November 2019 at the CER Hearing Room in Calgary. Oral final argument was provided by NGTL, Stoney Nakoda Nations (representing Bearspaw First Nation, Chiniki First Nation and Wesley First Nation), O’Chiese First Nation Consultation Office, TransGas Limited and Alexis Nakota Sioux Nation, with reply argument provided by NGTL.

### **2.5 What does the Commission do now?**

Should the GiC approve the Project, it is important to keep in mind that approval of the Project through the issuance of the CPCN and Order, is just one phase in the Commission’s lifecycle

regulation. Throughout the lifecycle of the Project, the CER would hold NGTL accountable for meeting its regulatory requirements in order to keep its pipelines and facilities safe and secure, and to protect people, property and the environment.

### **2.5.1 Detailed route**

After a project application is assessed and the Commission makes its recommendation regarding the **Section 52 Pipeline and Related Facilities** (as described in Chapter 1), the Project cannot proceed unless and until the GiC approves the Project and directs the Commission to issue the necessary CPCN. If approved, the company would then prepare plans showing the proposed detailed route of the pipeline and notify landowners pursuant to the sections of the legislation dealing with the detailed route process and the PPBoR. Pursuant to transitional provision 34 of the CER Act, should a certificate be issued, it would be considered to be issued under the CER Act, and the Commission will consider the PPBoR under the CER Act.

A detailed route hearing may be required, subject to section 203(1) of the CER Act, if a statement of opposition is filed. Pursuant to subsection 203(2) of the CER Act, if no statements of opposition are filed in respect of a PPBoR, that PPBoR may be approved by the Commission without further process.

During this process, the company would also proceed with the detailed design of the project and could be required to undertake additional studies, prepare plans or meet other requirements pursuant to Commission conditions on the CPCN or related Commission order pursuant to section 58. The company would be required to comply with the conditions to move forward with its project, prior to and during construction, and before commencing operations. While Commission specialists would review all condition filings, those requiring approval of the Commission prior to construction would require this approval before the project could proceed.

### **2.5.2 Conditions**

The Commission sets out conditions that it considers necessary to or desirable in the public interest. The purpose of conditions is to mitigate potential risks and effects associated with a project so that the project can be designed, constructed, operated and ultimately abandoned in a safe manner that protects the public and the environment. For each condition, the Commission has also set out a timing requirement that it considers reasonable to undertake the necessary assessment of the condition submission.

On 12 February 2019, the NEB released for comment a total of 41 potential conditions that it might include in any recommendation or decision it makes with respect to the Project under sections 52 and 58 of the NEB Act. These potential conditions were based on the NEB's initial assessment of the Project application, and the NEB indicated that it would provide a further opportunity for Parties to review and comment on potential conditions during the hearing process.

On 30 July 2019, the NEB issued a second draft of potential conditions for comment which reflected changes and additional conditions as a result of comments filed on the previously floated conditions, as well as information provided through multiple rounds of IRs and the filing of evidence. In this second draft, a total of 54 potential conditions were floated, included a number of revised potential conditions and 13 new potential conditions, based on the hearing record to that date.

The Commission has considered all comments received from Parties before finalizing and setting out the terms and conditions it will recommend or impose on the Project. Appendix VI provides a summary of the comments the Commission received from Intervenors and a summary of the Commission's response to these comments, including where the Commission modified a condition or found that the wording remained appropriate. For example, Blood Tribe, Driftpile Cree Nation, Piikani Nation and Saddle Lake Cree Nation commented that Potential Condition 5 for the **Section 52 Pipeline and Related Facilities** (updated EPP) does not include how Indigenous peoples will be informed, consulted or involved in the updating and implementation of the EPP, and made specific suggestions in this regard. The Commission modified the condition to require NGTL to provide a copy of the EPP to all Indigenous peoples who have expressed an interest in receiving a copy, and to file confirmation with the Commission that it did so. The Commission further included this modification, to provide a copy of the condition filing to Indigenous peoples who have expressed an interest in receiving it, on a number of the conditions recommended or imposed.

Overall, the Commission has recommended the inclusion of 34 conditions in order for the **Section 52 Pipeline and Related Facilities** to be in the public interest, and has included 24 conditions in the XG-001-2020 Order for the **Section 58 Facilities and Activities** that would be issued in respect of the Project.

The Commission will monitor and enforce compliance with these terms and conditions, and any additional conditions the GiC might attach, throughout the lifecycle of the Project using audits, inspections and other compliance and enforcement tools.

### **2.5.3 Company Commitments**

The Commission takes the commitments made by NGTL seriously and throughout its deliberations the Commission carefully considered all commitments made by NGTL in this proceeding. Commitments relevant to specific concerns are discussed in the applicable chapter and are not summarized here. Additionally, commitments made by NGTL in its Application or in its related submissions during the proceeding also become regulatory requirements, as set out in **Condition 16** for the **Section 52 Pipeline and Related Facilities** and **Condition 14** for the **Section 58 Facilities and Activities** (provided in Appendices I and III, respectively).



### **3 Economic Feasibility and Need for the Project**

In making its Recommendation, the Commission considered the economic feasibility of the proposed Project. The purpose of this analysis is to aid in the Commission's conclusion as to whether the Project is needed and would be sufficiently used over its lifetime. Specifically, the Commission had regard to the supply and markets available to the pipeline, transportation matters including the contracts underpinning the facilities, and the Applicant's ability to finance the Project. The Commission also considered the proposed tolling treatment and the economic benefits associated with the Project.

#### **3.1 Commercial Need**

NGTL submitted that the Project is driven primarily by Western Canada Sedimentary Basin (WCSB) producers seeking increased access to markets and the ability to compete for downstream market share. The Project would provide incremental capacity allowing WCSB gas to compete and capture increased market share and growth and would provide producers the needed ability to diversify their market portfolio within and beyond NGTL intra-basin demand.

The migration of supply into the more prolific Montney, Deep Basin and Duvernay supply areas has resulted in a geographic shift in the supply distribution on the NGTL System, and thus has led to the requirement for incremental facilities to transport this supply to growing markets at existing locations.

NGTL submitted that customers have signed long-term contracts for firm receipt and delivery transportation services that will exceed the capacity of the NGTL System beginning in 2021, and that facilities are commercially required to be in-service by April 2021 to provide transportation capability to allow NGTL to meet the existing and future supply and market requirements for WCSB gas.

#### ***Views of Participants***

No participants submitted that the Project was not commercially needed.

#### **TransGas Limited**

TransGas Limited (TransGas), stated that, as the provincial utility solely responsible for transporting natural gas in Saskatchewan, it has executed long-term contracts with NGTL for firm delivery transportation service associated with the Project. The majority of TransGas System supply is obtained from the NGTL System. As demand for natural gas within Saskatchewan is increasing, natural gas production within Saskatchewan is declining. The majority of TransGas System supply is, therefore, obtained extra-provincially.

#### **Alberta Department of Energy**

The Alberta Department of Energy submitted the incremental capacity provides WCSB producers with the ability to diversify their market portfolios and compete with other supply basins in North America.

## **PETRONAS Energy Canada**

PETRONAS Energy Canada (PETRONAS) argued the Project need is demonstrated through growing natural gas supply from the Peace River Project Area (PRPA) as well as the growing intra-basin and export markets in Canada and the United States.

**ATCO Power, the Canadian Association of Petroleum Producers, Canadian Natural Resources Limited, Capital Power, Chevron Canada Limited, Jupiter Resources Inc., Shell Canada, and Tourmaline Oil Corp.**

The above noted Participants all submitted comments stating commercial support for the Project.

### **3.2 Supply and Markets**

NGTL submitted that the trend for gas to be produced in the Northwest section of the NGTL System is a result of economic supply in Northwest Alberta and Northeast British Columbia replacing declining and less-economic supply in Southern Alberta and Northeast Alberta. The total WCSB gas supply is expected to steadily grow from the current 449 10<sup>6</sup>m<sup>3</sup>/d (15.8 Bcf/d) to approximately 637 10<sup>6</sup>m<sup>3</sup>/d (22.5 Bcf/d) by 2030. Supply available to the NGTL System is about three quarters of total WCSB supply. The forecast of supply available to the NGTL System follows the WCSB forecast of increasing over the forecast period to 2030 before stabilizing at around 490 10<sup>6</sup>m<sup>3</sup>/d (17.3 Bcf/d) for the remainder of the forecast period.

NGTL intra-basin demand growth is primarily associated with increased gas-fired electrical generation and gas required for oil sands projects. Total intra-basin demand is expected to grow from 144 10<sup>6</sup>m<sup>3</sup>/d (5.1 Bcf/d) in 2017/18 to 191.1 10<sup>6</sup>m<sup>3</sup>/d (6.7 Bcf/d) in 2029/30. Together, the electric generation and oil sands sectors represent approximately 80 per cent of intra-basin growth through the forecast period. Liquefied natural gas exports to the BC west coast, which are projected to start-up in mid-2024 and mid-2028, make up the remainder of the forecasted system export demand.

#### ***Views of Participants***

No participants expressed concerns regarding the supply and markets available to the Project.

#### **TransGas Limited**

TransGas argued there is clear evidence of increasing natural gas supply in the WCSB and PRPA driving the need for additional pipeline capacity. This increasing supply, forecast to continue until at least 2030, supports the conclusion that the Project would be used and useful over its economic life. The uncontested evidence is that markets are expected to have sufficient demand to absorb supply from the applied-for facilities over the long term.

### **3.3 Transportation**

NGTL executed incremental contracts that it stated provide the commercial support for the Project, including 1,091,900 GJ/d of Firm Transportation – Delivery (FT-D) service contracts with a weighted average term of 25.6 years. 985,000 GJ/d of the FT-D contracts are FT-D1 contracts at the East Gate (EGAT), a major export point off the NGTL System that connects with

the TransCanada Mainline and Foothills pipeline systems, which serve markets in Saskatchewan, Eastern Canada, North Eastern United States and mid-Western United States. 106,900 GJ/d of intra-basin FT-D2 and FT-D3 service contracts were also executed. In addition, customers executed 17.6 10<sup>6</sup>m<sup>3</sup>/d (622 MMcf/d) of Firm Transportation – Receipt service contracts with eight-year terms.

The proposed pipelines and facilities that comprise the Project were designed to meet both incremental flow requirements at receipt points in the PRPA and incremental deliveries to intra-basin locations and at the EGAT, while also satisfying design conditions throughout the entire NGTL system. The proposed facilities increase system capability at EGAT to 5.5 PJ/d, meeting the delivery design flow requirements of 5.4 PJ/d, and also increase system capability in the PRPA to 13.3 Bcf/d, meeting the receipt design flow requirements of 13.3 Bcf/d.

NGTL considered a “North Build” alternative, which was not selected due to its significantly higher capital cost of \$4.7 billion, compared to the Project’s \$2.3 billion estimate. NGTL also considered individual facility alternatives of compression and looping. Pipeline looping was selected to overcome the greatest capacity constraints, and compression was selected in the areas that were less constrained to maximize the existing available pipeline capacity.

### ***Views of Participants***

No participants expressed concerns regarding transportation matters.

### **3.4 Ability to Finance**

NGTL submitted that the estimated capital cost is \$2.3 billion, and that TransCanada PipeLines Limited (TransCanada) would fund the Project construction through a combination of predictable cash flows generated from operations, new senior debt, as well as subordinated capital in the form of additional preferred shares and hybrid securities, the issuance of common shares and portfolio management. As of 31 March 2018, TransCanada and other subsidiaries of TransCanada Corporation, now known as TC Energy, had approximately \$1.3 billion of cash on hand and \$7.9 billion of undrawn committed credit facilities. Over the past five years ending in 2017, TransCanada and TransCanada Corporation had generated \$23 billion in cash from operations and raised \$43 billion in the debt and equity capital markets.

NGTL submitted that TransCanada will have the financial resources to ensure that it can financially sustain management of all potential risks including liabilities that may arise from an accident or malfunction during the construction or operation of the Project. TransCanada maintains access to at least \$200 million in financial resources to respond to a potential incident, consistent with the *Pipeline Financial Requirements Regulations*. On 14 May 2019, NGTL submitted its Financial Resources Plan<sup>8</sup> for the NGTL System, which was approved by the NEB on 26 August 2019<sup>9</sup>.

NGTL provided an Abandonment Cost Estimate (ACE) for the Project of \$46.9 million, which represents approximately 1.9 per cent of the ACE for the entire NGTL System. NGTL stated that

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<sup>8</sup> See [A99408-1](#)

<sup>9</sup> See [C01213-1](#)

there would be a commensurate impact on its abandonment surcharge calculations, which would be reflected in periodic updates filed with the Commission.

### ***Views of Participants***

No participants expressed concerns regarding the Applicant's ability to finance the Project.

## **3.5 Tolling**

As stated in 2.1.4., NGTL proposed to provide services that utilize the Project under the terms and conditions established in the NGTL Tariff as amended from time to time. NGTL proposed to roll in the cost of the Project's facilities to the rate base for the NGTL System and to apply the existing NGTL System toll methodology for the Project. NGTL stated that the Project is an expansion of the NGTL System that is required to meet the aggregate demand for receipt and delivery service. The Project would be fully integrated with the rest of the system. The expected increase to the annual cost of service is approximately \$271 million in 2022. The full-path rate impact is an approximate toll increase of 2¢/Mcf over the first five years. The planned system expansion projects that would come into service during the 2019-2021 timeframe have an approximate combined increase of 1¢/Mcf to full-path tolls.

### ***Views of Participants***

No participants expressed concerns regarding proposed tolling treatment for the Project.

## **3.6 Economic Benefits**

NGTL submitted that the Project would result in a \$2.3 billion capital expenditure as well as additional operational expenditures on an annual basis. During construction, the Project is estimated to directly increase Alberta's Gross Domestic Product (GDP) by \$386 million. The total economic impact on Alberta is estimated to be \$1.2 billion in GDP and \$817 million in labour income. During operations, the Project is estimated to contribute a total of approximately \$5 million per year in property taxes to the County of Grande Prairie, Greenview County, Yellowhead County, Clearwater County, Mountain View County and Rocky View County, Alberta.

The Project is also estimated to generate approximately \$4.6 million in federal and \$3.7 million in provincial tax revenue, annually during operations.

NGTL submitted that the Project would also provide benefits to Indigenous communities through NGTL's Aboriginal Contracting and Employment Program, and to existing users of the NGTL System and gas producers in Western Canada through providing incremental capability to accommodate growth in both domestic gas production and demand. NGTL stated that this growth would in turn result in numerous economic benefits, including jobs, tax revenues and royalties that would benefit many Albertans and Canadians.

NGTL submitted that given the scope of the Project and the existing socio-economic conditions in nearby communities, as well as the rest of Alberta, NGTL determined that the Project would only create positive effects on employment and the economy and that there would be no interactions that could create adverse economic effects.

For additional information on the Project's potential effects on employment and economy, see Section 9.2.

### ***Views of Participants***

#### **Alberta Department of Energy**

Alberta Department of Energy argued that the Project would provide critically important access to demand markets, which is urgently required to prevent a collapse of the Canadian natural gas industry and further insolvencies. Alberta's natural gas supply continues to be constrained from accessing demand markets due to a lack of sufficient egress infrastructure. This is adversely impacting the financial position and investability of the industry, as well as impacting natural gas consumers, and the Crown resource owner.

#### **PETRONAS Energy Canada Ltd.**

PETRONAS submitted that the Project would have substantial positive commercial impacts for NGTL customers. As well, the Project-related construction would create significant benefits to third party businesses.

#### **Bears paw First Nation, Chiniki First Nation, and Wesley First Nation**

The Bears paw First Nation, Chiniki First Nation, and Wesley First Nation submitted that they know the risks and benefits of natural gas development as they have been one of the largest First Nation gas producers in Alberta since the 1970s. Stoney Nakoda royalty gas flows through the NGTL system.

#### **TransGas Limited**

TransGas submitted that the Project is the only practical means by which it would be able to satisfy current and growing natural gas demand in Saskatchewan. Denial of the Application or delay in the in-service date would have significant detrimental impacts on TransGas' ability to reliably serve its customers and the Saskatchewan public more broadly. The TransGas system interconnects with SaskEnergy's distribution lines to deliver natural gas to more than 396,000 residential, farm, commercial and industrial customers. SaskEnergy serves 17 cities, 150 towns, 313 rural regions, 59 Indigenous communities and 161 villages.

### ***Views of the Commission***

The Commission finds the assumptions used by NGTL to be reasonable, including the supply and demand forecasts submitted in this hearing. Therefore, the Commission finds that the applied-for facilities are economically feasible. The Commission's finding is consistent with the long-term contractual commitments made by shippers to underpin the facilities. The Commission also finds that NGTL and TransCanada have the ability to finance the Project, including the construction, operation and abandonment of the facilities. NGTL is subject to the CER's requirements for the funding of future abandonment costs and for financial resources to respond to an incident, including the requirement for NGTL to maintain \$200 million in financial resources in accordance with the *Pipeline Financial Requirements Regulations*. NGTL's Financial Resources Plan was approved by the NEB on 26 August 2019.

The Commission finds NGTL's proposal to roll in the cost of the Project's facilities to the rate base for the NGTL System and to apply the existing NGTL System toll methodology to be reasonable. The Commission considered the degree of integration of the Project's facilities to the existing system, as well as the nature of service provided on the Project's facilities. The Project is comprised of various pipeline loops and compressor station unit additions that expand the capacity of the existing NGTL System. The Commission therefore finds the Project to be sufficiently integrated to the existing system. Additionally, the transportation services provided through the facilities are identical to those already offered on the NGTL System. The Commission also acknowledges that no party opposed NGTL's proposed tolling treatment.

The Commission also finds that the Project would provide overall economic benefits to Canadians. The significant capital expenditure as well as the operations of the facilities would increase GDP in Alberta and provide increased tax revenues at the municipal, provincial and federal levels. The Project would also allow for growth in both Canadian natural gas production and demand, which would provide economic benefits to Canadians in the form of tax revenues, royalties and jobs. As well, the Project would provide increased reliability to gas distributors, who could then more reliably serve communities, such as cities, towns, rural areas, and Indigenous communities across Saskatchewan and Alberta. While the Commission has made its findings on a broad Canadian basis, it acknowledges that several Indigenous communities raised concerns that they would not see any direct or tangible benefits from the Project. The Commission speaks to those issues in Chapter 7. The Commission also considered the economic benefits to Canadians in relation to the Project's burdens, which are summarized in Section 1.1.1.

## 4 Facilities and Emergency Response Matters

In consideration of the safety and security of proposed facilities, the Commission assesses whether the facilities are appropriately designed for the properties of the product being transported, the range of operating conditions, and the human and natural environment where the facilities would be located. NGTL is responsible for ensuring that the design, specifications, programs, engineering assessments, manuals, procedures, measures, and plans developed and implemented are in accordance with the OPR, which includes by reference the Canadian Standards Association (CSA) Standard CSA Z662 – Oil and Gas Pipeline Systems (CSA Z662).

The CER holds its regulated companies accountable so that Canadians and the environment are protected throughout the lifecycle of each pipeline or project. The lifecycle includes the planning and pre-application phase, the application assessment and public hearing phase, the construction and post-construction phase, the operations and maintenance phase, and the eventual abandonment phase. Using a risk-informed approach, the CER conducts compliance verification activities such as audits, inspections, meetings, and review of condition filings, and other manuals and reports. The Commission notes that the Project would be part of the existing NGTL System which is subject to the CER's comprehensive regulatory oversight.

### 4.1 Project Description

The NGTL 2021 Expansion Project, as applied for, is comprised of approximately 344 km of 1,219 mm (NPS 48) pipeline loops in eight sections. A summary of the Project components and a Project map are provided in Chapter 2.

NGTL submitted that the Project would also include three compressor station unit additions at existing NGTL compressor stations. One 30 MW gas turbine compressor package and associate systems would be added to the Nordegg Compressor Station, Didsbury Compressor Station and Beiseker Compressor Station. The MOP of the Nordegg Compressor Station Addition would be 6,450 kPa and the MOP of the Didsbury and Beiseker Compressor Station Additions would be 8,690 kPa.

NGTL stated that a control valve (January Creek control valve) would be installed near the existing JAN30 valve site to provide an additional flow path for gas leaving the Edson area. The Project would include mainline block valves to facilitate operational and isolation activities as well as crossover valves to manage flow on the NGTL System.

NGTL also stated that three launchers would be installed on the pipeline sections for the purposes of cleaning and in-line inspection. Two receivers were installed as part of other projects reviewed and authorized by the NEB, while one is proposed to be installed as part of another NGTL project currently being assessed by the Commission.

## 4.2 Design and Construction

### 4.2.1 Codes and Standards

NGTL stated that the Project would be designed, constructed and operated in accordance with the requirements of the NEB OPR and CSA Z662-19. If there are any inconsistencies between the OPR and CSA Z662-19, the OPR would govern.

#### *Views of Participants*

No participants expressed concerns with respect to the codes and standards for the Project.

#### *Views of the Commission*

The Commission is satisfied that the general design of the Project is appropriate for the intended use. The Commission is further satisfied that the Project would be designed, located, constructed, installed and operated in accordance with the OPR and CSA Z662-19.

The Commission recommends **Condition 2** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 2** for the **Section 58 Facilities and Activities** requiring NGTL to comply with the specifications, standards, commitments made and other information included in or referred to in its Project Application or in its related submissions.

In addition, the Commission recommends **Condition 16** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 14** for the **Section 58 Facilities and Activities** requiring NGTL to update its Commitments Tracking Table to reflect commitments made throughout this proceeding.

### 4.2.2 Material Specifications

NGTL stated that the estimated mainline pipe material grade for all pipeline sections is 483 MPa with varying wall thicknesses and that the final grade(s) would meet or exceed minimum requirements. Material for the Project would be in accordance with CSA Z245.1-18 for steel pipe, CSA Z245.11-17 for steel fittings, CSA Z245.12-17 for steel flanges, and CSA Z245.15-17 for steel valves.

NGTL submitted that all purchased items and contracted services would be obtained from suppliers and contractors which have been pre-qualified by TransCanada's internal supplier management and pre-qualification procedures or have been pre-qualified by a prime contractor to TransCanada.

#### *Views of Participants*

No participants expressed concerns with respect to the material specifications for the Project.

#### *Views of the Commission*

The Commission is of the view that the selected pipe grades for the Project meet the requirements set out in CSA Z662-19 and NGTL's Quality Management System (QMS), including the purchasing of the pipe for the Project, is appropriate. This includes



consideration of the quality assurance of pipe and components as addressed by the NEB Safety Advisories (SA 2016-01A2 and SA 2019-01) and Orders (MO-001-2016, MO-003-2018 and MO-032-2019).

### **4.2.3 Geotechnical Design**

NGTL specified that the geotechnical and hydrotechnical assessments would focus on the stability of significant slopes, scour and erosion potential at watercourse crossings, subsurface conditions for watercourse crossings using trenchless methods and areas of potential stress concentrations.

NGTL submitted Phase I Geological Hazard Assessments for all of the proposed pipeline sections and indicated that a Phase II Geological Hazard Assessment would verify the desktop assessment. NGTL is performing a Phase II Geological Hazard Assessment via field reconnaissance and has committed to sharing the findings with the Commission once completed.

Geological hazards that would be evaluated in the Phase II Assessment would include landslides, debris flow, and significant slopes. These hazards would be addressed through site-specific mitigation where required. NGTL stated that most of the proposed alignment parallels existing NGTL ROW that NGTL has knowledge and experience from existing operation, and therefore, major issues related to slope stability are not expected.

NGTL submitted hydrotechnical studies and scour depth analysis for the major and minor water crossings along each of the pipeline sections. These hydrotechnical studies provided hydrotechnical design recommendations, including minimum burial depth.

NGTL stated that the Project would be located in areas of low activities from the perspective of historic major seismic events and the route does not cross known active fault zones; seismic events are not expected to be a threat to the integrity of the pipeline.

NGTL stated that mitigation measures for design and construction, where required, may include:

- micro re-routes to avoid unstable slopes;
- detailed geotechnical investigation to understand the nature of instability if it is not possible to avoid the area;
- implementation of slope stabilization measures, including horizontal drains and/or toe buttress, where applicable;
- implementation of erosion protection measures, particularly at toe areas of watercourse crossings;
- diligent effort during construction to avoid reactivating old slides;
- selection of heavy wall pipe to accommodate additional strains potentially induced by slides where they cannot be avoided;
- selection of low-friction backfill, where required and applicable, to minimize the impact of potential hill slides; and
- selection of reduced depth of cover to minimize the impact of potential slides and to facilitate strain relief if necessary.

NGTL further stated that mitigation measures for the operation phase, if required, may include:

- detailed geotechnical investigation and engineering assessment to understand the nature of the slides and their potential impact on pipe integrity;
- monitoring ground movement and/or pipe strains during pipeline operation;
- assessment of pipeline deformation using in-line inspection data;
- implementation of slope stabilization measures, including horizontal drains and/or toe buttress, where applicable;
- strain relief, where necessary; and
- pipe realignment, including placing pipeline on surface with mechanisms to accommodate ground sliding.

For the areas of organic and muskeg terrain, general soil units and drainage conditions, NGTL submitted that it expects standard buoyancy-control measures would be used for the Project. These potential measures include continuous concrete coating, swamp (saddle) weights, river (bolt-on) weights and screw anchors. NGTL committed to designing the Project to account for all potential geotechnical hazards to ensure a sustainable safe operation throughout the design life of the pipeline.

### ***Views of Participants***

No participants expressed concerns with respect to NGTL's geotechnical design for the Project.

### ***Views of the Commission***

The Commission expects that NGTL will address all geological hazards, organic terrain and muskeg issues considering that the proposed alignment mostly parallels an existing NGTL ROW where NGTL has designed, constructed and operated several pipelines. The Commission is also satisfied with NGTL's proposed measures applied to the design, construction and operations phases of the Project to mitigate the geological hazards identified along the pipeline route and through the zones of muskeg and other organics. The Commission notes NGTL's commitment to designing the Project to account for all potential ground conditions.

The Commission is mindful that NGTL committed to undertake detailed location-specific geological hazard assessments prior to construction and was not able to provide this detail to the Commission during the hearing process. The Commission is of the view that proper geological hazard management, including the identification of landslide and steep slope hazards, will be required in order to identify the risk level at these locations and the application of proper mitigations and monitoring techniques during the different phases of the Project. The identification, the mitigations and the monitoring of steep slopes and potential landslide areas are essential to ensuring pipeline integrity. Therefore, the Commission recommends **Condition 8** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to file, prior to construction, Phase II Geological Hazard and Landslide Assessments and the mitigation and monitoring techniques that will be applied for each pipeline section identified as a high hazard area.

The Commission notes that Condition 8 has been modified from the potential conditions that were released for comment, to not speak to specific areas but to identify in greater detail the type of information asked for. The Commission is of the view that this alteration does not represent a burden on NGTL, as it is designed to provide clarity and does not meaningfully change the scope of the information required.

#### **4.2.4 Watercourse and Highway Crossing Methods**

NGTL stated that the pipeline routes would traverse portions of the basins of the Peace, Athabasca and North Saskatchewan rivers, and would cross 130 watercourses and 50 drainages. NGTL submitted that appropriate watercourse crossing locations and techniques were determined using industry-accepted design and installation practices following the guidance of Fisheries and Oceans Canada (DFO) Measures to Avoid Causing Harm to Fish and Fish Habitat, and Alberta Environment and Parks Water Act Codes of Practice as well as site-specific assessments to minimize potential effects on fish and fish habitat. Further discussion regarding potential effects of watercourse crossings is provided in Chapter 8.

NGTL considered site-specific environmental parameters, watercourse characteristics, fisheries values, constructability, social and economic considerations and operational and pipeline integrity aspects when determining the pipeline crossing method. For the Project, NGTL proposed using isolated crossings, open cut crossings and trenchless crossings. As a primary crossing method, NGTL proposed Horizontal Directional Drill (HDD) crossings at the following major watercourses:

- North Saskatchewan River;
- Pembina River;
- McLeod River;
- Little Smoky River;
- Smoky River; and
- Wapiti River.

For the following major road crossings, NGTL proposed a conventional bore as the primary crossing method:

- Highway 11;
- Highway 734;
- Highway 672; and
- Highway 59.

##### **4.2.4.1 Baptiste River and Brewster Creek**

In its Project Update, filed on 19 June 2019, NGTL proposed to utilize pre-installed pipeline segments at the Baptiste River and Brewster Creek if they were found to be fit for service. These watercourse crossings were previously installed during the construction of the Edson Mainline Loop No. 3 in 1999 to minimize disturbance for future pipeline looping installation.

Through an IR response, NGTL clarified that the engineering assessments (pursuant to CSA Z662-19) would not be available within the timeframe of the hearing process.

On 25 July 2019, the NEB determined that it would not consider NGTL's proposal to use these sections of existing pipeline, given the lack of information regarding their status and condition and the fact that the engineering assessment for these pipe segments would not be available within the timeframe for the hearing process (see Appendix V).

### ***Views of Participants***

No participants expressed concerns with respect to the crossings.

### ***Views of the Commission***

The Commission is satisfied that the Project would be constructed using accepted industry practices, and would comply with the requirements of the OPR and CSA Z662-19. The Commission notes that the success of trenchless installations for pipeline construction depends on accurate feasibility assessments, proper design and planning, and actual conditions encountered during the execution of the installation. Accordingly, the Commission recommends **Condition 9** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to file, prior to construction, the outstanding geotechnical investigation reports and final feasibility studies for the trenchless crossings.

The Commission reminds NGTL that the views provided here do not include any consideration of the use of the pre-existing crossings at Baptiste River and Brewster Creek.

### **4.2.5 Depth of Cover**

NGTL stated that the pipeline would generally have a minimum depth of cover of 0.9 m. Depth of cover would increase in the following circumstances:

- agricultural lands would have a minimum depth of cover of 1.2 m;
- valve site locations would have a minimum depth of cover of 1.1 m;
- road crossings would have a minimum depth of cover of 1.5 m or as agreed to with the relevant statutory authority or third-party owner, whichever is greater;
- buried utility and foreign pipeline crossings, above or below the pipeline, would have a minimum clearance of 0.3 m or as agreed to with the third-party owner, whichever is greater; and
- the minimum depth of cover for pipeline crossings of watercourses with defined beds and banks would be 1.8 m. Increased depth of cover might be required at locations where there is a potential for scouring of the watercourse bed.

NGTL committed to evaluate the requirement for increased depth of cover as engineering design and construction planning progresses.

### ***Views of Participants***

No participants expressed concerns with respect to the depth of cover.

### ***Views of the Commission***

The Commission is satisfied with NGTL's proposal to bury the pipeline to a minimum depth of 0.9 m. The Commission notes that the increased burial depth for agricultural lands, road and water crossings exceeds the requirements of CSA Z662-19 and accommodates ordinary agricultural practices, road and water crossings.

#### **4.2.6 Construction**

NGTL stated that the joining program and non-destructive examination (NDE) of pipeline welds would comply with the requirements of the OPR and CSA Z662-19. All pipeline welds would undergo NDE and, once validated, would be coated.

Since construction of the Project would involve several tie-ins to existing pipelines and facilities, NGTL requested LTO exemption for 28 tie-ins in order to preserve construction schedules and minimize outages on operating facilities. NGTL stated that the welds listed for each tie-in could not be pressure tested in the field because they are final tie-in welds. However, the integrity of the welds would be verified by both a visual inspection and NDE that includes one or more of radiographic, ultrasonic, magnetic particle, or liquid penetration examination, depending on the size and type of weld. Inspectors would monitor the welding on site, verify that safe practices are implemented and record welding parameters as part of their inspection to ensure that welding is conducted in conformance with the qualified welding procedures. NGTL has committed that the shop tests for the tie-in assemblies would comply with the required time duration and pressure testing requirements of CSA Z662-19.

For the compressor stations included in the Project, all welding and NDE testing of welds would be conducted in accordance with the requirements of CSA Z662-15 and the OPR. For all high-pressure gas piping designed to CSA Z662-19, NGTL would use 100 per cent NDE coverage. For all other piping systems, NGTL would select material and design joints in accordance with American Society of Mechanical Engineers (ASME) B31.3-2016: Chemical Plant and Petroleum Refinery Piping, as referenced in Clauses 4.14.2.11, 5.1.1, 7.2.4 and 8.1.7 of CSA Z662-19.

For lower-risk auxiliary piping systems, NGTL proposed to conduct NDE on 15 per cent of production welds per day during construction. NGTL indicated that this conforms to CSA Z662-19, Clause 7.2.5, and would not compromise the safety of the public or company personnel. NGTL indicated that these systems operate at low stress levels and generally have instrumentation that shuts down the system and limits any leaks if a release incident occurs. NGTL confirmed it would hydrostatically pressure test all high-pressure natural gas components of the installed facilities (including the yard piping) in accordance with the requirements of section 8 of CSA Z662-19 before placing them in-service.

NGTL confirmed it would clean the pipeline to remove construction debris. Prior to arrival onsite, pressure testing of pre-fabricated components such as above ground risers, valve assemblies and elbow fittings with associated piping would be completed in accordance with CSA Z662-19. NGTL committed to preparing a hydrostatic test plan for the hydrostatic testing of the pipeline sections and submitting it to the Commission before hydrotesting. NGTL noted that upon the successful completion of hydrostatic testing, the pipeline would be prepared for commissioning and startup.

## ***Views of Participants***

No participants expressed concerns with respect to construction.

### ***Views of the Commission***

The Commission is satisfied that the Project will be constructed using accepted industry practices, and will comply with the requirements of the OPR and CSA Z662-19.

The Commission notes that NGTL has committed to monitoring construction activities. The Commission has decided to grant NGTL an exemption from the requirements of sections 30(1)(b) and 47(1) of the NEB Act to obtain LTO from the Commission before installing tie-ins to existing pipelines and facilities. The Commission has also decided to grant NGTL an exemption from the requirement of section 17 of the NEB OPR from 100 per cent NDE requirement for certain low-pressure piping systems associated with the Project.

To accommodate reasonable and acceptable changes during construction the Commission would impose **Condition 18** for the **Section 58 Facilities and Activities**. The condition will require NGTL to file any technical specification updates for the components listed in the Section 58 Order concurrently with applicable LTO application(s). Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade or material that do not impact any other information provided in the Application. Any other changes will require advance approval from the Commission. Once filed by NGTL, the Commission will review all final technical specification updates and issue an Amending Order as appropriate. While this specific condition was not included in previously released list of potential conditions, the Commission notes that this is a standard condition imposed frequently on projects with similar facilities and activities, including other NGTL projects, and the Commission views it as appropriate to impose.

In addition, the Commission recommends **Condition 29** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to provide geographic information system data in the form of ESRI® shapefiles.

## **4.3 Operations – Pipeline Integrity**

### **4.3.1 Control System and Overpressure Protection**

NGTL submitted that the pressure control (PC) and overpressure protection (OPP) design of the Project would comply with the requirements of the OPR and CSA Z662-19. NGTL also stated that the TransCanada Operational Control Centre in Calgary monitors and controls NGTL System operations.

NGTL committed to meet CSA Z662-19 design standards and design, operation and maintenance philosophy for regular inspection, assessment and testing at the required intervals to ensure the facilities are adequate to meet capacity and reliability requirements with respect to PC and OPP at the NGTL facilities. NGTL further stated that it follows procedures to ensure that all facilities are in good operational condition and set to function at the operating pressure. In addition, the PC and OPP systems operate and monitor independently, automatically and continuously.

NGTL has mandated that all new and upgraded receipt customer OPP systems and devices are reviewed, verified and accepted as conforming to CSA Z662-19 to be available for service. NGTL has also implemented an annual receipt OPP verification process requiring all customers to send OPP information to NGTL for review and verification annually.

The January Creek control valve crossover would connect the Western Alberta System Mainline (MOP of 6,178 kPa) to the Edson Mainlines via the January Creek Lateral (MOP of 7,550 kPa). Since there is a pressure differential between the two existing systems, NGTL has committed to installing an NPS 10 pressure control valve and an independent slam-shut isolation valve that would limit the pressure-communication between the lines and eliminate any potential over-pressure of the downstream system.

NGTL has submitted that in the event of overpressure, the compressor stations would be protected by the following employed OPP levels:

- the recycle (anti-surge) valve would be connected downstream of the compressor unit discharge valve and upstream of the unit discharge check valve;
- the equipment as provided by the vendor would monitor actual inlet flow and differential pressure across the compressor through a pressure differential transmitter, and is equipped with algorithms to detect and avoid surge;
- the station pressure control would be maintained by increasing or decreasing the compressor speed. The station suction and discharge pressure would be monitored using pressure transmitters, and the station pressure set points are set by TransCanada Gas Control; and
- a self-contained and independent station discharge pressure-relief device would provide the last level of station overpressure protection.

NGTL has committed to verifying that the OPP system design contains:

- OPP design drawings, including a process and instrument diagram or as-built drawings;
- planned maintenance programs for OPP devices and systems, including its frequency and type of maintenance;
- operational philosophy that details all reasonable emergency scenarios that could apply to the OPP system, such as loss of power or valve failure; and
- OPP device calibration and maintenance records.

NGTL states that the OPP system would be automatic and continuously operating without relying on manual intervention. NGTL further commits to ensuring that the maintenance programs and their frequency meet the requirements of CSA Z662-19 with respect to verification and monitoring.

### ***Views of Participants***

No participants expressed concerns with respect to NGTL's pressure control and overpressure protection.

### ***Views of the Commission***

The Commission is satisfied that the Project's proposed pressure control and OPP systems are appropriate and will meet the requirements of the OPR and CSA Z662-19.

The Commission notes NGTL's commitment not to permit a new or upgraded receipt connection to be available for service until OPP information has been reviewed, verified and accepted as meeting CSA Z662-19.

#### **4.3.2 Coating**

NGTL has submitted that the primary coating for the external surface of the below ground pipe would be fusion-bonded epoxy. Girth welds coated in the field would be protected with a liquid applied coating. Where pipe is installed using boring, drilling or other methods that could cause abrasion to the coating during installation, abrasion-resistant coating would be used. If large and/or angular backfill material is encountered, NGTL would implement an additional mechanical protection system such as sand padding or rock shield. Below-ground assembly piping would be protected with a suitable liquid applied coating. Above-ground piping would be primed and painted.

#### ***Views of Participants***

No participants expressed concerns with respect to the coating.

### ***Views of the Commission***

The Commission is satisfied that NGTL has appropriately considered issues related to coating and integrity threats to the pipeline during construction and operation. The Commission finds the coating measures to be appropriate for the Project.

#### **4.3.3 Cathodic Protection**

NGTL submitted that in addition to the pipe coating, an impressed current cathodic protection (CP) system would be installed which may consist of existing CP systems as well as new CP systems, if required. These would include groundbeds and rectifiers, as determined during detailed design. These would be located at sites where a convenient source of electrical power exists. Sacrificial anodes may also be used at specific locations, which would be identified during detailed design. NGTL stated that CP test leads would be installed along the pipeline and at road, foreign pipeline and utility crossings, where required, for monitoring the effectiveness of the operation of the CP system and to demonstrate compliance to the applicable code requirements.

NGTL also submitted that compressor station piping and facilities would be protected by impressed current CP systems, consisting of appropriately located and sized anode groundbeds and power sources as determined by detailed design. NGTL specified that these systems would be designed in conjunction with the upstream and downstream pipeline system. In addition, NGTL noted sacrificial anodes might be used at specific locations.

#### ***Views of Participants***

No participants expressed concerns with respect to NGTL's proposed CP systems.



### ***Views of the Commission***

The Commission is satisfied that NGTL's CP measures are appropriate for the Project and notes its commitment to monitoring its effectiveness and compliance to the applicable code requirements.

#### **4.3.4 In-line Inspection**

NGTL has submitted that it would install in-line inspection (ILI) facilities at time of construction of the pipeline to allow cleaning and in-line inspection. Three launchers would be installed as part of the Project, at GPM143, NGTL's Gold Creek Compressor Station, and at GPM 10. Receivers have been installed as components to other NGTL projects.

NGTL committed to using a high-resolution commissioning caliper tool during Project pre-commissioning to inspect for construction related defects and indications of dents or ovalities in the pipeline as well as a baseline ILI using magnetic flux leakage and high-resolution caliper tool.

### ***Views of Participants***

No participants expressed concerns with respect to NGTL's proposed in-line inspection.

### ***Views of the Commission***

The Commission understands that during the early stages of operation, an ILI provides important data on the integrity status of the pipeline. Comparing this baseline data with subsequent ILI runs enhances a company's ability to identify potentially threatening changes to the integrity of the pipeline. The Commission is of the view that ILI is a widely used pipeline industry best practice to monitor the condition of a pipeline and is satisfied with NGTL's plans to conduct ILI baseline assessments.

#### **4.3.5 Integrity Management**

NGTL described its initial threat identification process for the Project, stating that potential pipeline integrity threats are initially identified prior to detailed design. Threat categories would be defined by ASME B31.8S - Managing System Integrity of Gas Pipelines. A qualitative threat assessment would be conducted on the preliminary design and route selection for the Project. Potential issues identified for threat management including steep slopes as identified in the Geological Hazards Assessment would then be used to develop recommendations on the design of the Project. Mitigation of integrity concerns would be considered during route selection, detailed design, fabrication, construction, and pre-commissioning of the pipeline.

NGTL committed to implementing TransCanada's Integrity Management Program (IMP) to monitor and ensure the integrity of the Project. NGTL's risk assessment is used to identify potential integrity threats and initiate inspection and mitigation activities. In the operations phase of the Project, implementation of the IMP would be used to:

- reduce the potential for adverse environmental effects;
- protect the installed pipelines and facilities;

- maintain reliability; and
- ensure the safety of the public and Project personnel.

In the design and operations phase of the Project, NGTL committed to implementing preventative maintenance programs, including:

- aerial patrols;
- internal inspections;
- cathodic protection monitoring; and
- pipeline markers at roads and pipeline watercourse crossings.

### ***Views of Participants***

No participants expressed concerns with respect to NGTL's proposed integrity management program.

### ***Views of the Commission***

The Commission requires companies to develop, implement and maintain an IMP that anticipates, prevents, manages and mitigates conditions that could adversely affect safety or the environment. The Commission understands that integrity monitoring is a continuous improvement process and is applied throughout the lifecycle of a project.

The Commission is satisfied that potential integrity threats would be identified and mitigated and that the Project would be incorporated into TransCanada's IMP once operations commence. The Commission notes that the stability of steep slopes and landslide areas represent potential integrity threats, and anticipates that NGTL will apply remote slope monitoring techniques at the areas of concern identified during the Phase II Geological Hazard Assessment performed in accordance with Condition 8, for the **Section 52 Pipeline and Related Facilities**.

## **4.4 Emergency Response, Safety and Security**

As part of its public interest mandate and under its approach to lifecycle regulation, the CER requires regulated companies to demonstrate that they are able to safely build and operate their facilities in a manner that protects people, the environment, and species living within the area. In the proceeding, some Intervenor expressed concern about the potential for ruptures from pipelines and how this might affect their distinct and community-based needs in the event of an emergency. This chapter examines NGTL's ability to anticipate, prevent, and respond to emergencies.

The OPR requires companies regulated by the CER to have a systematic, comprehensive, and proactive risk management approach integrated into its overall management system throughout the lifespan of a pipeline system. This includes design, construction, operation, maintenance, and abandonment. The OPR also reflect the CER's expectation for continual improvement with regard to safety, security, environmental protection, and the promotion of a safety culture.

With respect to emergency management, a company must develop and implement an Emergency Management Program (EMP) for all aspects of its facilities and operational activities. A company's EMP should include the following elements:

- EMP development (hazard assessment), which ensures that all persons and parties that may be involved in responding to an emergency are knowledgeable of company facilities, the hazardous products involved, and emergency procedures to be followed in the event of an incident or emergency;
- Emergency Procedures Manual;
- Liaison Program which establishes and maintains liaison with all parties that may be involved in an emergency situation;
- Continuing Education Program for all appropriate agencies, organizations, Indigenous communities and the public adjacent to its pipeline, to inform them of the location of the facilities, potential emergency situations, and emergency procedures to be followed;
- Emergency response training and exercises;
- Incident and response evaluation; and
- Emergency response equipment.

#### **4.4.1 Emergency Response**

NGTL stated that the effects of accidents and malfunctions with the potential to occur during Project construction and operation were considered in its Application in accordance with the Filing Manual. The company said accidents and malfunctions are unplanned events not part of routine Project activities during any Project phase. NGTL said these could occur as a result of abnormal operating conditions, wear and tear, acts of nature, extreme weather events, human error, equipment failure, and other possible causes. However, many accidents and malfunctions are preventable, and can be readily addressed or prevented by good planning, design, equipment selection, hazard analysis and corrective action, emergency response planning, and mitigation.

NGTL said the Project would be designed, constructed, and operated in a manner that prevents and reduces potential hazards and risks to the safety and security of the public, employees, property, NGTL facilities and the environment. NGTL said the risk of an unplanned event occurring during construction and operation is reduced or avoided through implementing TC Energy's Corporate Security Policy, and is also avoided or reduced during operation by implementing TC Energy's Damage Prevention Program and Integrity Management Program. TC Energy's Damage Prevention and Integrity Management programs are described further in the Application.

NGTL stated that in the unlikely event of an accident or malfunction, such unplanned events are effectively managed during construction through implementing contingency measures in the Project-specific Environmental Protection Plan (EPP) and also through implementing the Project-specific Emergency Response Plan (ERP), and during operation through TC Energy's overarching Emergency Management Corporate Program Manual, emergency shutdown, and facility isolation procedures that minimize the volume of potential release. NGTL said that being prepared for the rare cases when something does go wrong is part of its commitment to ensure the safety of the communities where the company operates. NGTL said it trains personnel to

know exactly what to do in the event of an emergency, both during construction and ongoing operations and work with area emergency responders to ensure a coordinated response in the event of an incident

NGTL said that before construction, the prime contractor for each Project component would be responsible for developing and implementing an ERP to cover potential emergencies at their worksite and while travelling and hauling to and from their worksite during construction. The ERP would be reviewed by NGTL and communicated during the site-specific safety orientation before accessing the site. NGTL would consult with regional emergency response agencies to ensure that appropriate communications, understanding and cooperation are in place for the Project during construction. This would ensure that the construction ERPs appropriately link into the plans maintained by other affected agencies.

NGTL confirmed that emergency management during Project construction would be governed by the Project-specific ERPs, and during operations by TC Energy's overarching Emergency Management Corporate Program Manual and related operating procedures. As part of Project consultation activities NGTL provides information concerning Emergency Preparedness and Response to potentially affected stakeholders, landowners and Indigenous communities, and NGTL publishes its Emergency Management Corporate Program Manual in accordance with NEB Order AO-001-MO-006-2016. In the event of an operational emergency TC Energy's comprehensive Emergency Response Program would be activated.

### ***Views of Participants***

#### **Indigenous involvement, community-based needs and translation of Emergency Response Plans**

Stoney Nakoda Nations (representing the Intervenor Bears paw First Nation, Chiniki First Nation, and Wesley First Nation) and O'Chiese First Nation discussed the communities' distinct and community-based needs in the event of an emergency and asked NGTL whether it considered these distinct and community-based needs in the company's assessment of an Indigenous community-specific ERP.

Stoney Nakoda Nations, Piikani Nation, Blood Tribe, Whitefish (Goodfish) Lake First Nation #128 and Ermineskin Cree Nation discussed the importance of informing, consulting and involving Indigenous communities in Emergency Management Preparedness and Response Planning. They also stressed the importance of the knowledge and connections to the land and waters that Indigenous communities have to the Project area. The O'Chiese First Nation Fire Chief Operations Manager also discussed the importance of informing, consulting and involving Indigenous communities in Emergency Management Preparedness and Response Planning:

*Well, for emergency first responder, I haven't been provided any document -- documentation in terms of emergency response plan. For anything else around the O'Chiese First Nation we have one. We have some documentation for an emergency response plan because right now at this current time we don't have a disaster emergency management position filled. It's vacant, so we've taken on that role right now. But yeah, like I said, I haven't gotten any documentation from -- from you guys [NGTL], based on you know, if the -- if or when this pipeline does go through, an emergency response plan in place, something that we can review and probably revise or revamp if need be.*

Shane Poorman, O'Chiese First Nation, Transcript Volume 3 [1192, 1193]

Stoney Nakoda Nations and O'Chiese First Nation also asked NGTL what capacity funding levels the company would provide to translate documentation in relation to the ERPs.

### **Recommendations for Environmental Emergencies**

ECCC recommended that NGTL commit to mitigative strategies, contingency plans and response capabilities commensurate with their Project's environmental risks and that the plans include, but not be limited to, contingency plans based on "worst-case" and "alternative" accident scenarios; training and exercise programs; staff certification and continuous improvement programs; community awareness and education initiatives; and community notification and communications procedures.

### ***Reply of NGTL***

#### **Indigenous involvement, community-based needs and translation of Emergency Response Plans**

NGTL said response personnel are best able to protect the safety of Indigenous communities when they are equipped with consistent response tools. NGTL said the company would value contributions from Indigenous communities' fire department for its ERP. NGTL said development of multiple internal ERPs would provide NGTL personnel with inconsistent response tools, which could seriously threaten life safety during incident response. NGTL said it will use TransCanada's existing emergency management system (EMS) and will develop specific ERPs for the Project in accordance with TransCanada's EMS. The ERPs will be developed in consultation with emergency service agencies, including Indigenous first responders. The ERPs will be finalized, submitted to the NEB [Commission] and distributed to applicable emergency service agencies, as necessary, before the start of operations.

NGTL stated that during construction, the Project will notify the appropriate responsible regulatory authority of reportable release incidents as soon as practical and within 24 hours of detection. NGTL said reportable release incidents will be included within the Project construction progress reports if required as part of any approval conditions issued by the Board [Commission], and which will be publicly available via the CER repository. Indigenous communities interested in receiving a copy of the Project construction progress reports have the option to opt-into notifications on compliance filings and may choose to be notified of these filings and review them through the CER's electronic repository at their convenience. NGTL said its emergency response procedures will be included in the Emergency Management Plans for the Project. NGTL said the Emergency Management Plans will include communications protocols, including current contact information for all potentially affected Indigenous communities. In the event of an emergency, NGTL said the regionally-based Indigenous and Community Liaisons will contact the appropriate individual via telephone and/or email to notify them of the nature of the emergency.

NGTL said in the event of an emergency, NGTL Indigenous and Community Liaisons would be available to notify and establish contact with the Indigenous community representative listed in NGTL's ERP. Once contact is established, NGTL would share incident and safety information to ensure that life safety remains the top priority during response. NGTL said the company's Regional Liaison is available to answer any specific questions O'Chiese First Nation and Stoney Nakoda Nations may have regarding emergency response, including reviewing the appropriate contact information, and is open to meeting with O'Chiese First Nation and Stoney Nakoda

Nations, at the communities' earliest convenience, to discuss emergency response, contingency plans and accidents or malfunctions.

NGTL said upon request or identification of interest in an Indigenous community-led translation of an ERP, NGTL would work with the Indigenous community to establish a mutual understanding and agreement of the scope and determine reasonable associated funding. NGTL said translating documents into an Indigenous community's language is an initiative that the company would consider supporting through community legacy and education and training and capacity development. This Indigenous community-led translation could include Project-specific ERPs upon request or identification of interest from an Indigenous community. NGTL said it does not have the linguistic expertise to verify the translations and would not be able to implement the ERP in that language. NGTL said that community investment and education and training and capacity development described in its Application are the proposed mechanisms that would likely be used to fund the Indigenous community-led translation of the Project-specific ERP, upon request or identification of interest from an Indigenous community. NGTL said the company has not pre-determined a communication and distribution process for a translated Project-specific ERP, once created. NGTL said it would work with Indigenous communities that have requested or identified an interest in translation to understand the groups' specific needs and requirements during the consideration of the request.

### **Recommendations for Environmental Emergencies**

NGTL provided comments related to ECCC's recommendations for Environmental Emergencies. For Contingency Plans Based on "Worst-Case" and "Alternative Accident" Scenarios, NGTL said TC Energy's Emergency Management Corporate Program Manual latest revision incorporates the NEB Corrective and Preventive Action (CAPA) Requirements for Contingency Planning and Risk Assessment. NGTL also said that during emergency situations, contingency plans addressing abnormal conditions would be considered during the "Planning P" component of the Incident Command System (ICS).

For Training and Exercise Programs and Staff Certification and Improvement Programs, NGTL said TC Energy trains its personnel for general and role-specific ICS certification and once TC Energy's ERPs are created, they are practiced through training and exercises to identify any opportunity for improvement, revision or enhancement of plans.

For Community Awareness and Education Initiatives, NGTL said once the Project is in-service and transitioned to operations, any outstanding commitments from the Indigenous or stakeholder engagement programs would be transitioned into the overall Public Awareness (PA) Program. The PA Program would remain in place for the lifecycle of the asset. One of the goals of the PA Program is to maintain contact with Indigenous communities, landowners, community groups, contractors and emergency service agencies that might be directly affected by NGTL facilities or operations.

For Community Notification and Communication Procedures, NGTL said TC Energy ERPs would include communications protocols, including current contact information for all potentially affected Indigenous communities. In the event of an emergency, regionally-based Indigenous and Community Liaisons would contact community representatives identified in the ERP and share critical information related to the incident.

## ***Views of the Commission***

The CER's regulatory requirements focus on preventing incidents and emergencies, and the CER promotes development of pipeline company safety culture as an important element in meeting this goal. The Commission is satisfied with NGTL's commitments to identify areas of high risk and to implement additional risk mitigation measures where needed.

While the prevention of incidents is the CER's top priority, the CER also believes that being prepared for any situation is a critical part of energy safety. CER-regulated companies must have robust emergency management programs to manage conditions and reduce consequences during an emergency. Should an incident occur, the CER investigates the incident and holds the company accountable for corrective actions and clean up.

The Commission heard from Indigenous communities about the lack of engagement to date and the company's inability to incorporate feedback into emergency response planning. They also expressed concerns over not having a functional understanding of how response efforts may impact their respective communities. In addition, the Commission heard from intervenors including Bearspaw First Nation, Chiniki First Nation, Wesley First Nation, Piikani Nation, Blood Tribe, Whitefish (Goodfish) Lake First Nation #128 and Ermineskin Cree Nation about the need for emergency response plans and documents developed by NGTL to have meaningful input from Indigenous communities.

The Commission is of the view that engagement and communication between NGTL and Indigenous communities is needed. This engagement and communication must be transparent, genuine, ongoing, structured, collaborative and respectful.

The Commission is satisfied with NGTL's commitment to ensure Indigenous communities are aware of their roles and responsibilities during emergency incidents, receive adequate information on the procedures to follow during emergency incidents that could occur along the pipeline, and have the opportunity to consult and provide input with respect to ERPs. However, the Commission recommends **Condition 17** for the **Section 52 Pipeline and Related Facilities**, and would impose **Condition 15** for the **Section 58 Facilities and Activities**, to confirm that the company proactively plans to incorporate Project-specific elements within its continuing education program required by section 35 of the OPR. Among other things, NGTL would be required to proactively consult with potentially affected parties and to describe how it would address any requests from potentially affected Indigenous communities to have emergency management information translated into the local Indigenous language.

Pursuant to section 32 of the OPR and the CER's Emergency Procedures Manual Letter to All Oil and Gas Companies (26 March 2015), the CER expects CER-regulated companies to provide annual updates to their respective Emergency Procedures Manual including roles and responsibilities in the event of an emergency, response procedures, up-to-date internal and external contact lists and relevant documentation such as maps, agreements, and forms and records. Specific to internal and external contact lists, the CER expects NGTL to conduct annual testing of emergency contact information, including with Indigenous communities, and to ensure the group being contacted has up-to-date company emergency contact information as well.

The CER has a comprehensive regulatory regime in place that considers ECCC's recommendations for Environmental Emergencies and is related to pipeline design, safety, incident prevention, development of an emergency management program and an emergency management system as well as emergency preparedness and response. NGTL would be subject to this regime.

#### **4.4.2 Safety**

NGTL stated that during construction, the prime contractor for each Project component would have overall responsibility for health and safety at their worksite. This includes, among other things, developing a Site Specific Safety Plan (SSSP) that outlines how the prime contractor would implement, measure and review its Health, Safety and Environment (HSE) processes onsite, implementing all applicable health and safety laws and regulations, including all applicable orders, directives, codes, guidelines, permits, licences and municipal bylaws and developing a site-specific ERP. NGTL would develop a Safety Management Plan (SMP) that provides details on the roles and responsibilities of the Project/construction management teams and other, relevant safety information associated with the Project.

NGTL submitted that TransCanada's Operational Management System (TOMS) applies to all of TransCanada's assets including the proposed Project. By implementing TOMS in support of a strong safety culture, TransCanada's projects are designed, constructed, operated and decommissioned or abandoned in a manner that provides for the safety and security of the public, TransCanada personnel and physical assets, and the protection of property and the environment.

#### ***Views of Participants***

Stoney Nakoda Nations (representing the Intervenor Bears Paw First Nation, Chiniki First Nation and Wesley First Nation), identified a concern with the lack of a formal plan to respond to any accidents and safety risks that may impact Stoney Nakoda Nations.

Several Indigenous communities expressed concerns regarding safety of community members during when they are exercising their Indigenous and Treaty rights in the vicinity of the Project during construction and during operations and maintenance.

#### ***Reply of NGTL***

When asked by several Indigenous participants if traditional use of the ROW would be impeded by construction, NGTL confirmed where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users would not be impeded. NGTL would provide Indigenous communities with the proposed construction schedule and maps prior to the start of construction to avoid potential conflicts between construction crews and traditional users. NGTL also stated the safety and health of TransCanada's employees, contractors and the public is paramount. The Project's potential impact on public safety and security would be mitigated by enforcement of applicable TransCanada policies by employees, contractors and consultants while on NGTL business, NGTL premises and NGTL worksites. Additionally, all Prime Contractors are required to develop and implement safety and security plans designed to protect employees and mitigate the risk of potential harm to communities and community members. NGTL also collaborates with local emergency response and law enforcement agencies regarding Project plans. NGTL confirmed Project-specific ERP are developed through a detailed and comprehensive program specific to the project and communities in which



TransCanada operates. This program includes gathering necessary and important feedback from local communities and emergency responders during the planning stages. While project ERPs may vary depending on project and community needs, the basic elements of a plan would include hazard identification, notifications and response tactics to ensure TransCanada personnel are able to effectively respond to incidents.

### ***Views of the Commission***

The Commission is of the view that the measures proposed by NGTL to address safety throughout the lifecycle of the Project are appropriate. The Commission recommends **Condition 4** for the **Section 52 Pipeline and Related Facilities**, and would impose **Condition 4** for the **Section 58 Facilities and Activities**, requiring NGTL to file ERPs for the construction phase of the Project. The Commission would also recommend **Condition 11** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 9** for the **Section 58 Facilities and Activities**, requiring NGTL to confirm that a Construction Safety Manual(s) pursuant to section 20 of the OPR is in place for the Project. The Commission notes NGTL's commitment to continue to engage with Indigenous communities with regards to safety during the lifecycle of the Project.

### **4.4.3 Security**

NGTL submitted that security management would be governed by TransCanada's Corporate Security Program Manual, Policy, and TransCanada's Operating Procedures (TOPs) which adhere to the CSA Z246.1 standard for security management. NGTL also confirmed TransCanada's Corporate Security Program Manual, Policy and TransCanada's Operating Procedures would govern security management during construction and operations.

### ***Views of Participants***

No Participants expressed any concerns with respect to security of the Project.

### ***Views of the Commission***

The Commission expects construction and operations practices to address security considerations. The Commission finds the measures proposed by NGTL to address security considerations are appropriate for the Project. The Commission recommends **Condition 19** for the **Section 52 Pipeline and Related Facilities**, and would impose **Condition 17** for the **Section 58 Facilities and Activities**, requiring NGTL to file bi-monthly construction progress reports. These reports must include information on the activities carried out during construction and report any environmental, socio-economic, safety and security issues and issues of non-compliance, and the measures undertaken for the resolution of each issue and non-compliance. The Commission recommends **Condition 18** for the **Section 52 Pipeline and Related Facilities** and would also impose **Condition 16** for the **Section 58 Facilities and Activities**, requiring NGTL to provide a detailed construction schedule or schedules for the Project identifying major construction activities.

## 5 Land Matters

The Filing Manual sets out the expectations for lands information in support of an application pursuant to sections 52 and 58 of the NEB Act. Applicants are expected to provide a description and rationale for the proposed route, the location of associated facilities, and the permanent and temporary lands required for a project. Applicants are also expected to provide a description of the land rights to be acquired and the land acquisition process, including the status of land acquisition activities.

### 5.1 Project Footprint and Routing

The Project would transport natural gas from a tie-in about 50 kilometres (km) northwest of Grande Prairie, Alberta (29-75-09 W6M) to a location about 25 km west of Rocky Mountain House, Alberta (14-39-10 W5M). The pipeline components of the Project cross through Grande Prairie County, Greenview Municipal District, Yellowhead County, and Clearwater County, while compressor stations are located in Clearwater County, Mountain View County and Rocky View County, in the Green and White areas of Alberta. Project details and components are summarized in Chapter 2 of this Report.

#### 5.1.1 Pipeline Components

The Project includes the addition of new pipeline facilities to the existing Grande Prairie Mainline (GPML) and to the existing Edson Mainline (EDSML) in the PRPA of the NGTL System.

NGTL stated that each section of new pipeline facilities is a loop of an existing section of the NGTL System. The design method determined which sections of the GPML and the EDSML to loop, and the location of connections of each loop section is determined by the locations of the existing mainline facilities, such as mainline block valves (MLV). NGTL noted that adding loop sections generally limits the area for routing consideration to the areas on either side of the existing pipeline facilities, as well as constraining the locations at which connections to the existing NGTL System can be made.

NGTL stated that where feasible, the pipeline components parallel existing linear disturbances, such as existing NGTL ROW or other pipelines, roads and electrical power lines. NGTL stated that routing the pipeline components parallel and adjacent to these existing linear disturbances allows it to minimize incremental environmental, stakeholder, and landowner effects, through reduction of the size of the new non-parallel permanent ROW required for the pipeline, and facilitates efficient operations and maintenance of the pipeline.

NGTL noted that locating the route adjacent to these existing linear disturbances is not always feasible and new non-parallel ROW is required at some locations along the route. NGTL stated that for this Project, approximately 293 km (86 per cent) of the proposed pipeline route parallels existing NGTL ROW or other existing linear disturbances, which includes other pipelines, roads and electrical power lines.

NGTL stated it has assessed alternatives to the pipeline route in each section, taking into consideration NGTL's route selection criteria, including constructability assessments, and considering feedback from engagement with Indigenous communities, stakeholders,

landowners, and environmental and government agencies. In NGTL's view, the proposed route for the Project is the most appropriate route based on its routing criteria.

NGTL stated its route selection process considers and balances several criteria when evaluating route options, including the following, where practical or feasible:

- minimizing length to reduce overall environmental and socio-economic footprint;
- ensuring pipeline sections and facilities are economical to construct and operate;
- paralleling existing linear disturbances to:
  - minimize the fragmentation of land parcels by introduction of infrastructure to areas in which it currently does not exist;
  - maximize the amount of TWS on existing ROWs;
  - minimize the amount of new (non-parallel and non-overlapping) ROW required; and
  - minimize potential effects on environmental resources (e.g., native plant communities and wildlife habitat) and agricultural operations;
- ensuring public safety;
- minimizing the number, and ensuring the construction feasibility, of watercourse, road, rail and utility crossings;
- considering and avoiding sensitive environmental features (e.g., wetlands, riparian areas, and watercourse crossings) and sites with known occurrences of provincially or federally listed wildlife and plant species (habitat features for species of management concern, provincially listed species at risk, species and habitats for species listed under the Committee on the Status of Endangered Wildlife in Canada [COSEWIC] or the federal Species at Risk Act [SARA]);
- avoiding terrain subject to geotechnical issues such as areas of unstable slopes, problem soils, or known seismic activity;
- avoiding lands of designated status, such as parks, protected areas, cemeteries and historic, archaeological or heritage sites;
- avoiding concentrated areas of rural residences and urban developments; and
- considering input received from potentially affected landowners, stakeholders and Aboriginal groups through various engagement activities.

NGTL stated that since filing its Application and Additional Written Evidence, Project engineering and construction planning have progressed, resulting in route refinements to the Project's proposed pipeline sections. NGTL confirmed that the route refinements do not result in new landowners being affected, do not change the scope of the Project and remain within the Local Study Area (LSA).

NGTL stated that information it has received through traditional knowledge reports has informed its Project planning, for instance, where it will locate TWS and considerations regarding detailed routing design. It also stated that, while these types of changes may not be included in the EPP, they will be seen in the final Project planning, routing and footprint.

NGTL stated it would continue to refine the route for the Project based on detailed design, additional field studies and in consideration of input received through the stakeholder, landowner and Indigenous engagement programs.

#### **5.1.1.1 Grande Prairie West Area**

##### ***Grande Prairie Mainline Loop No. 4 – Valhalla Section***

The Valhalla Section is approximately 36 km in length and begins at SW 17-72-09 W6M and ends at NE 29-75-09 W6M.

According to NGTL, the Valhalla Section runs parallel to the existing GPML, generally on the east side, which would maximize the amount of TWS that can be located on the existing ROW. NGTL stated that minor route deviations are necessary to avoid a wet, flooded area and to accommodate tie-ins at the existing mainline valve sites.

NGTL stated it has incorporated landowner feedback into a minor route refinement on the Valhalla Section, moving the crossing of Highway 94 approximately 125 m to the north to be located further away from the landowner, with no change to the length, cost, or constructability of the proposed pipeline.

##### ***Grande Prairie Mainline Loop No. 3 – Elmworth Section***

The Elmworth Section is approximately 46 km in length and begins at NW 24-68-07 W6M and ends at SE 12-71-10 W6M.

The proposed route for the Elmworth Section runs parallel to the existing GPML and other existing linear infrastructure for approximately 34 km. NGTL stated that the route deviations for this section are necessary to accommodate a feasible trenchless crossing location of the Wapiti River, while still adhering to the route selection criteria and minimizing the overall length of this section.

NGTL has also incorporated landowner feedback into route refinements of the Elmworth Section. NGTL stated that further field work would be conducted at the north slope of Wapiti River to confirm the alignment.

#### **5.1.1.2 Grande Prairie South Area**

##### ***Grande Prairie Mainline Loop No. 2 – Karr Section***

The Karr Section is approximately 57 km in length and begins at NW 28-63-01 W6M and ends at NE 26-67-05 W6M.

NGTL stated that although the proposed route for the Karr Section runs parallel to the existing GPML, a third-party ROW is abutted to each side of the existing GPML ROW at GPM60. NGTL submitted that a proposed route on the east side of the existing GPML would be adjacent to other existing pipeline ROWs, would require less deviations than the west side route, and would require less new non-parallel ROW (approximately 6 km of non-parallel ROW on the east side versus approximately 13 km on the west side). NGTL stated that although there is less

opportunity for using existing GPML ROW for TWS on the east side route, for the reasons identified above, it is the overall preferred route.

NGTL stated that proposed deviations from the parallel route on the east side of the existing GPML are required to avoid existing infrastructure and to cross to the west side of the existing GPML and align to a location suitable for a trenchless crossing of the Smoky River.

### ***Grande Prairie Mainline Loop No. 2 – Deep Valley Section***

The Deep Valley Section is approximately 69 km in length and begins at SE 25-58-24 W5M and ends at NW 28-63-01 W6M.

The proposed route for the Deep Valley Section starts on the west side of the existing GPML to avoid the existing Berland River Compressor Station located on the east side. The route crosses to the east side of the existing GPML to maximize the amount of TWS on the existing ROW.

NGTL stated that proposed deviations from the parallel route on the east side of the existing GPML are required to avoid existing infrastructure; to avoid a steep side-slope area with potential slope instability; and to have a straight alignment for a proposed trenchless crossing of the Simonette River.

### ***Grande Prairie Mainline Loop No. 2 – Colt Section***

The Colt Section is approximately 13 km in length and begins at NW 1-57-22 W5M and ends at NW 36-57-23 W5M.

The proposed route for the Colt Section would be on the east side of the existing GPML, which would maximize the amount of TWS on the existing ROW, except for deviations that would be required to avoid existing infrastructure.

#### **5.1.1.3 Edson South Area**

### ***Edson Mainline Loop No. 4 – Robb Section***

The Robb Section is approximately 42 km in length and begins at NW 23-49-16 W5M and ends at SE 11-53-18 W5M.

The proposed route for the Robb Section would be on the east side of the existing EDSML, which would maximize the amount of TWS on the existing ROW, except for proposed deviations that are required to align the proposed route to be roughly perpendicular for a road crossing; to avoid existing infrastructure; and to have a straight alignment for a proposed trenchless crossing of the McLeod River.

### ***Edson Mainline Loop No. 4 – Dismal Creek Section***

The Dismal Creek Section is approximately 32 km in length and begins at SW 3-47-14 W5M and ends at NW 23-49-16 W5M.

NGTL stated that the proposed route for the Dismal Creek Section would be on the east side of the existing EDSML, which would maximize the amount of TWS on the existing ROW, except

for proposed deviations that are required to align the proposed route to be roughly perpendicular for a crossing of Dismal Creek; to avoid existing infrastructure; and to have a straight alignment for a proposed trenchless crossing of the Pembina River.

### ***Edson Mainline Loop No. 4 – Brewster Section***

The Brewster Section is approximately 49 km in length and begins at SE 14-39-10 W5M and ends at NW 20-43-12 W5M.

The proposed route for the Brewster Section would be on the east side of the existing EDSML, which would maximize the amount of TWS on the existing ROW, except for proposed deviations that are required to align the proposed route to be roughly perpendicular for a road crossing; to avoid existing infrastructure; and to have a straight alignment and a suitable setback from the river bank for a proposed trenchless crossing of the North Saskatchewan River.

### **5.1.2 Compression Facilities**

The Project also involves the installation of three additional compressor units at existing NGTL compressor stations. The locations of the proposed compressor station unit additions have been determined by NGTL based on assessing system requirements, engineering, environmental considerations and consultation with landowners, stakeholders and Indigenous communities. NGTL stated that station locations would continue to be refined through detailed design, geotechnical studies, environmental assessments, and ongoing consultation programs.

#### **5.1.2.1 Nordegg Compressor Station – Nordegg Unit C6 Addition**

NGTL has proposed to expand the existing Nordegg compressor station to the south on Crown land within SW 20-43-12 W5M.

NGTL has submitted that as a result of ongoing construction planning, it is evaluating an alternative location for its Nordegg TWS based on safety considerations. NGTL stated this change would reduce the need to cross the existing Weyerhaeuser access road during construction, which is a safety consideration, and would eliminate the need for additional traffic control measures. NGTL stated that this alternative would be the preferred location subject to completion of consultation and environmental studies.

NGTL stated that an early season rare plant, wetlands and wildlife reconnaissance survey was conducted at the proposed alternative TWS located during the week of June 23, 2019 and that a late season rare plant survey was also planned for the week of July 21, 2019. NGTL stated that no other additional field surveys were needed since the proposed alternative TWS is within the ESA's terrestrial LSA. NGTL also stated that any additional site-specific mitigation resulting from the surveys would be included in the EPP and Environmental Alignment Sheets as filed prior to construction.

#### **5.1.2.2 Didsbury Compressor Station – Didsbury Unit B7 Addition**

The existing Didsbury compressor station would be expanded to the east on private (freehold) land within SE 29-30-2 W5M to accommodate the additional facilities and avoid existing pipeline infrastructure on the west side of the existing compressor station.

NGTL stated that changes to the Didsbury compressor station unit addition were determined since the Application was filed as a result of landowner engagement and minimizing potential effects to the existing environment and community. Primary concerns included noise emissions and visual impacts. Changes include the relocation of the unit addition from east of the existing compressor station (greenfield site) to south of the existing compressor station (primarily within the existing compressor station boundary).

### **5.1.2.3 Beiseker Compressor Station – Beiseker Unit B3 Addition**

The existing compressor station would be expanded to the west on private land within E 24-27-25 W4M to accommodate the additional facilities.

NGTL stated that changes to the Beiseker Compressor Station unit addition were determined since the Application was filed as a result of improvements made during detailed design. These improvements focused on the layout and constructability of the unit addition which resulted in expanding the proposed plot plan.

### **5.1.3 January Creek Control Valve**

The January Creek control valve would be located on provincial Crown land within the confines of an existing NGTL ROW at NE-27-054-14-W5M.

NGTL stated that the January Creek control valve site would be in a fenced 50 m by 80 m area and requires a buried communications line between the control valve to NGTL's existing January Creek Meter Station site.

### **5.1.4 Alternative Routes**

NGTL assessed alternatives to the pipeline route in each section, and took into consideration its route selection criteria, including constructability assessments, and considered feedback from engagement with Indigenous peoples, stakeholders, landowners, and environmental and government agencies.

#### **5.1.4.1 Facility Alternatives**

According to NGTL, the 'facility set', or the suite of facilities that make up the Project (e.g., pipeline section loops, compressor station unit additions, and control valve), selected that forms the basis for the Project is referred to as the "South Build", while the alternative facility set considered is referred to as the "North Build".

NGTL determined that the North Build would require more than double the length of new pipeline facilities (820 km) and twice as many compressor units (six units) as compared to the South Build. NGTL selected the South Build as the preferred flow path and facility set for the Project because it would minimize the length and footprint of new facilities and require less capital than the North Build.

#### **5.1.4.2 Little Smoky Caribou Range**

A portion of the Deep Valley Section of the Project would parallel NGTL's existing GPML for approximately 44 km within the Little Smoky Caribou Range. Alexis Nakota Sioux Nation expressed concern with NGTL's proposed route through the Little Smoky Caribou Range and requested that the Project be re-routed outside of the range to minimize impacts.

NGTL evaluated two alternative routes that would avoid the Little Smoky Caribou Range but determined that both of these routes would be inferior to the proposed route. The lengths of the two alternatives would be approximately 83 km and 107 km long, respectively, compared to approximately 44 km for the proposed route. NGTL stated the alternative routes would result in a much larger construction footprint than the proposed route and would take longer to construct. They would also involve a greater length of "new cut", i.e., ROW that is not adjacent to existing disturbance, resulting in greater fragmentation of land, new access and increased construction footprint and, ultimately, in higher potential environmental effects and impacts to Indigenous traditional land and resource use.

NGTL concluded that the alternatives were not practical or feasible, and would be uneconomical to construct. NGTL noted that, under similar design constraints, each alternative would add less capacity to the NGTL System than the proposed route due to insufficient compression, and therefore be less functional. NGTL stated that if sufficient compression was added downstream to compensate for the longer alternatives, a capacity addition equivalent to the applied-for routing could be obtained but at a significantly greater capital cost (between \$350 million and \$500 million) and with additional impacts to the environment and other parties at those locations. Overall, NGTL determined that the proposed Project route through the Little Smoky Caribou Range best aligns with its routing criteria and environmental considerations, and is the most appropriate route for the Project.

#### ***Views of Participants***

Alexis Nakota Sioux Nation acknowledged that NGTL identified two alternative routes around the Little Smoky Caribou Range and submitted that rejecting those routes based primarily on financial considerations is not sound environmental planning. Alexis Nakota Sioux Nation was of the view that more consideration should have been given to the alternative routes given the precarious status of the Little Smoky caribou herd. Alexis Nakota Sioux Nation stated that to mitigate the impacts on woodland caribou, the Project would need to be re-routed around the Little Smoky Caribou Range.

Additional views regarding the Project route in relation to the Little Smoky Caribou Range are discussed in Section 8.3.1 of Chapter 8.

#### ***Reply of NGTL***

In its written argument, NGTL reiterated the reasons for the selection of the proposed route over the two alternate routes and stated that it determined that the proposed Project route through the Little Smoky Caribou Range best aligned with its routing criteria and environmental considerations. NGTL stated that the proposed route has the lowest overall impact, however, recognized that the proposed route crosses through caribou range.

Additional reply from NGTL regarding the Project route in relation to the Little Smoky Caribou Range is found in Section 8.3.1 of Chapter 8.



### ***Views of the Commission***

After much consideration and weighing of the evidence and argument put forward by the Parties, the Commission is satisfied that NGTL has proposed suitable mitigation to address the Project's potential land-related effects during the design, construction, and operation of the Project. The Commission notes that NGTL's route selection criteria minimizes potential adverse effects, including avoiding sensitive environmental areas and minimizing environmental and social impacts and fragmentation as much as possible. The Commission finds that NGTL's route selection process and the criteria used to determine the route to be reasonable and justified.

The Commission notes NGTL's proposed route for the Project deviates from paralleling existing disturbances only in exceptional cases and that over 86 per cent of the route follows an existing ROW. The Commission also notes that NGTL took into consideration input from landowners, Indigenous communities, and environmental studies in determining the route. Additionally, the Commission notes that NGTL has said that information received from traditional knowledge reports will inform TWS locations, detailed routing design, and final footprint considerations.

After considering the evidence about the route in light of the criteria and selection process used by NGTL, which has been approved by the Commission, the evidence specific to alternate routes considered by NGTL, and the submissions made by various Parties during final argument, the Commission finds the proposed route to be appropriate.

### **Obiter Dictum: Right of Way Planning**

The CER takes a lifecycle approach to the management of environmental issues throughout all phases of a regulated facility, including the planning and application phase, the application assessment and public hearing phase, the construction and post-construction phase, the operations and maintenance phase, and the abandonment phase. While the CER does not regulate a company's planning or pre-application activities of project development, the CER can influence a company's planning activities by requiring certain information that must be submitted as part of a complete application.

Further, the CER puts safety and environmental protection at the forefront of its responsibilities in protecting Canadians. The Commission achieves this by taking a leadership role to improve awareness and drive fundamental change when and where it is needed.

It is with these points in mind that the Commission makes the following comments to all pipeline companies that it regulates regarding the planning and design of their routing and ROWs.

One of the most important elements of designing a new pipeline is determining its route. Where possible, companies should minimize the route length and use existing pipeline ROWs or other previously established corridors, to reduce social and environmental impacts.

The Commission is cognizant that three of the most important things to take into consideration when planning a pipeline route are topography, human geography and the environment. The Commission is also aware that the great distances traveled by pipelines

means the development of these types of projects can take a great deal of time as surveys and studies about potential impacts are completed. In fact, the Commission expects that projects would go through lengthy periods of research and refinement before ground is ever broken. The Commission further expects companies to take into account all existing infrastructure, like roads, other pipelines, and utilities during the pipeline planning and routing process.

The Commission strongly encourages that, to the extent possible, companies should anticipate and plan for the possibility of future expansion and looping of their projects, and integrate necessary mitigations into the initial design and planning of the route and required lands for the ROW. To the extent possible, and where a future looping expansion is anticipated, the cross section of pipeline ROW should be laid out in order to accommodate a future looping expansion without the requirement for additional Crown or private lands to be taken up. This encouragement of the Commission is not a direction to companies as specific situations will demand their own design criteria. However, it is the desire of the Commission that construction projects today be designed bearing in mind the potential for expansion in the future and the need to reduce overall project footprints.

## **5.2 Land Requirements**

### **5.2.1 Pipeline Components**

The pipeline components for the Project require a total cumulative length of approximately 344 km of ROW as well as associated TWS. An estimated 851 hectares (ha) of permanent ROW would be required for the pipeline components and an estimated 434 ha of TWS would be required for construction of the pipeline components. The new ROW and TWS are located on both private (freehold) land and provincial Crown land in Alberta. Approximately 20 per cent of all parcels traversed by the pipeline components are private (freehold) land and approximately 80 per cent are provincial Crown land.

To illustrate its land requirements for the pipeline components of the Project, NGTL submitted a table which is included below as Table 5-1. As indicated in Table 5-1, the proposed pipeline is 344 km in length, of which approximately 296 km runs parallel to existing linear disturbances. Of the parallel portion, approximately 137 km would be located within existing NGTL land rights and approximately 159 km would be located along other existing linear disturbances. Approximately 48 km of the proposed pipeline would be new ROW.

For the majority of the length of the pipeline components, a minimum construction ROW width (including permanent ROW and TWS) of approximately 32 m would be utilized to provide for safe and efficient workspace for construction. NGTL noted that the width of the construction ROW is primarily determined by size of pipe (NPS 48) and method of construction. The construction ROW would be required to be greater than 32 m in some instances in order to accommodate:

- safety (e.g., steep slopes or unstable ground conditions require more grading to ensure a level working area for heavy equipment to safely operate on);
- watercourse crossings;
- pipeline deflection areas;

- areas where deeper or wider ditches are required (e.g., bores, crossings, buoyancy control) or other situations where workers need to enter the excavation to complete tasks;
- additional material storage (e.g., due to grading, installation of ditch plugs);
- timber clearing and storage; and / or
- access and egress (e.g., travel lane is required for safe passage of vehicles and emergency equipment in areas where there is no or limited access).

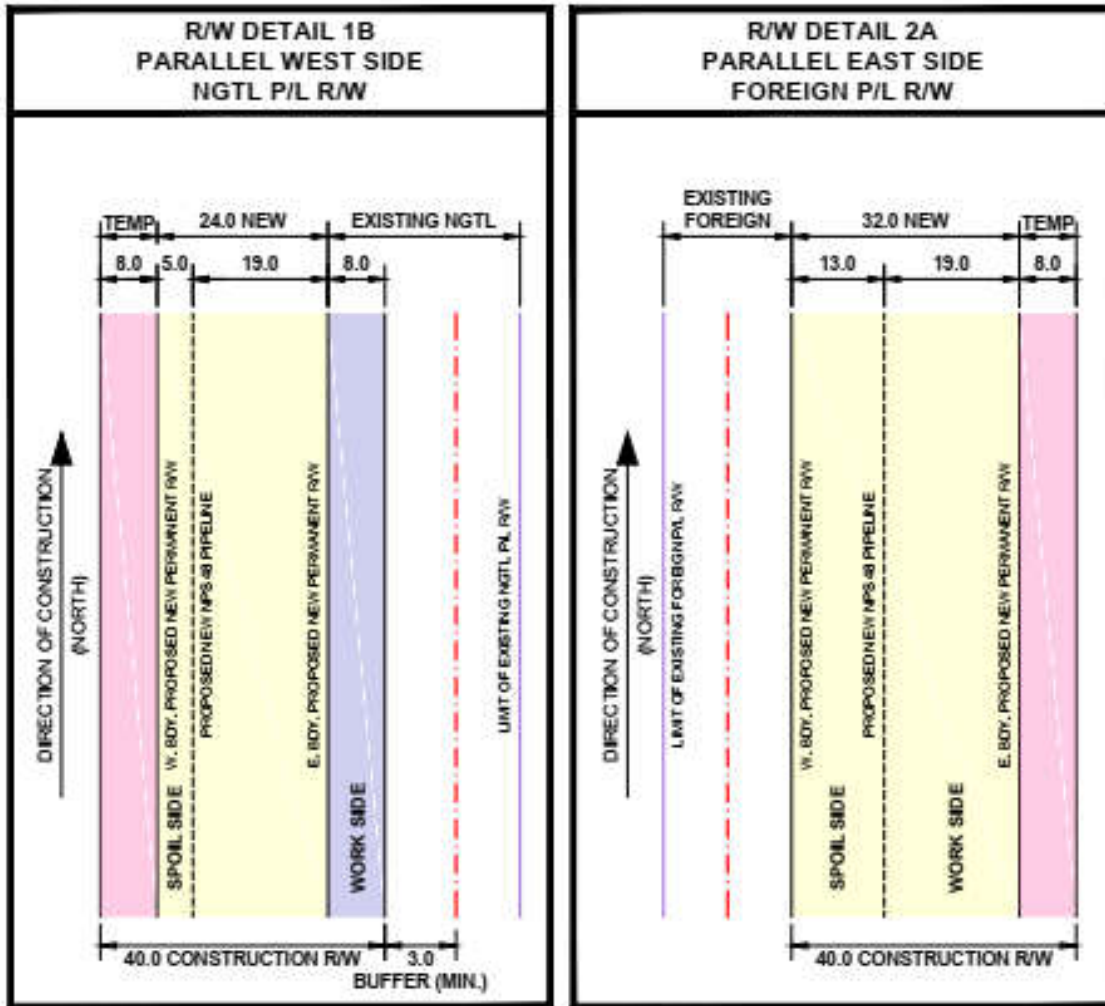
NGTL said it requires a permanent ROW of varying widths along the proposed route for operations and maintenance purposes. NGTL said a standard permanent ROW width is 18 m, however, in areas where pipeline components parallel an existing NGTL ROW, the permanent ROW would, where possible, be reduced. In its Application, NGTL included drawings of what its typical ROW may look like, a selection of which has been included below for illustrative purposes (Figure 5-1).

**Table 5-1: NGTL Table – Land Requirements<sup>10</sup>**

	Valhalla Section	Elmworth Section	Karr Section	Deep Valley Section	Colt Section	Robb Section	Dismal Section	Brewster Section
Length of pipeline loop (km)	36	46	57	69	13	42	32	49
New ROW (ha)	71	141	183	160	30	100	74	92
New TWS (ha) <sup>(1)</sup>	43	66	66	87	16	55	41	60
Length of pipeline located within existing NGTL land rights (km)	23	6	0	42	8	24	20	14
Percentage of pipeline located within existing NGTL land rights (%)	64	13	0	61	62	57	63	29
Percentage of Crown Lands (%)	0	38	100	100	100	94	98	100
Percentage of private lands (%)	100	62	0	0	0	6	2	0
Parcels of Crown lands	0	27	98	116	23	68	55	87
Parcels of private lands	51	44	0	0	0	4	1	0
Number of utility crossings <sup>(2)</sup>	55	100	34	76	21	38	51	17
Percentage of utility crossings (%)	14	26	9	19	5	10	13	4
Length of pipeline contiguous with existing linear disturbances (km) <sup>(3)</sup>	34	30	48	65	11	35	26	47
Percentage of pipeline contiguous with existing linear disturbances (%)	94	65	84	94	85	83	81	96
<p>Note:</p> <ol style="list-style-type: none"> <li>1. TWS presented in Table NEB 1.22-1 is based on a desktop assessment of estimated construction space requirements. The values presented include TWS requirements for safe construction and crossings of roads, pipelines, watercourses, and utilities. The values presented do not include TWS for access requirements, HDD pads, log decks, crossing drainages and tie-ins. These additional requirements for TWS will be determined by the field construction planning completed in 2019.</li> <li>2. Utility crossings include pipelines, communication cables and powerlines.</li> <li>3. Portions of the proposed pipeline routes are deemed contiguous with existing linear infrastructure when the proposed new ROW is alongside and abutted to the existing linear infrastructure. In cases where the proposed route deviates around existing non-linear infrastructure, the proposed route has been aligned as close as is practicable to this infrastructure, which creates short segments of the route that are not alongside and abutted to existing infrastructure. These short segments are counted as non-contiguous, although the proposed route cannot be aligned closer to the existing infrastructure.</li> <li>4. All numbers are approximate and rounded and will be updated during detailed engineering.</li> </ol>								

<sup>10</sup> The table was originally submitted in response to NEB IR No. 1, IR 1.22 – Land Requirements on PDF p. 373 ([A96810-1](#))

Figure 5-1: Illustrative diagram of ROW composition<sup>11</sup>



NGTL stated that the TWS requirements for the pipeline components are subject to refinement as the Project proceeds through detailed engineering. In addition, before the start of construction, NGTL and the prime contractor(s) would complete an additional assessment of lands required for construction activities. Once this assessment is completed, additional TWS may be required on a site-specific basis, which would be finalized in the field before, and potentially during construction. These areas, if needed, are expected to be located within the lands assessed in the ESA. In the event that TWS is required outside lands assessed in the ESA, NGTL would conduct a desktop review and field studies if necessary, apply any necessary mitigation as detailed in the EPP, and obtain any necessary permits or authorizations prior to construction.

NGTL stated that TWS lands would not be required for NGTL’s operational needs and would be vacated and released back to the provincial Crown or the landowner after construction, cleanup and final reclamation.

<sup>11</sup> Drawings appear in Appendix 11-1 Typical ROW Drawings on PDF pp. 30-31 (A92619-6)

## **5.2.2 Compression Facilities**

There are three compressor station unit additions, to be located at existing compressor stations, with one (Nordegg) located on provincial Crown land, and the other two (Didsbury and Beiseker) located on private (freehold) land. NGTL stated an estimated 12.3 ha of new permanent land is required for the compressor station unit additions.

NGTL stated that based on current information, no new access roads would be required to the compressor station unit additions. Existing access to the sites would be maintained and expanded, as required, for construction purposes.

### **5.2.2.1 Nordegg Compressor Station – Nordegg Unit C6 Addition**

NGTL stated that as a result of ongoing construction planning and environmental concerns, NGTL has relocated its TWS (4.5 ha) to the south of the Nordegg Compressor Station unit addition, outside of the boundaries of the existing Nordegg compressor station site on provincial Crown land.

All permanent facilities to be installed at the Nordegg Compressor Station unit addition would be on NGTL owned lands, and no new permanent land rights are required.

### **5.2.2.2 Didsbury Compressor Station – Didsbury Unit B7 Addition**

NGTL stated that as a result of landowner consultation, it revised the location of the Didsbury Compressor Station unit addition, resulting in changes to the estimated land requirements since the Application was submitted. NGTL stated that the final land requirements for the construction of the Didsbury Compressor Station unit addition would be determined through further detailed design, but presently 2.63 ha is planned for TWS with an additional 2.28 ha for the unit addition. NGTL noted this is a reduction of nearly five ha of permanent land requirements from the originally applied-for location.

### **5.2.2.3 Beiseker Compressor Station – Beiseker Unit B3 Addition**

NGTL stated that as a result of engineering changes NGTL requires an additional 0.56 ha of permanent land for the Beiseker Compressor Station unit addition, for a total permanent land requirement of 2.46 ha. Further, 0.41 ha of land would be required for TWS. NGTL noted that any other TWS required would be located on existing NGTL owned land.

## **5.2.3 Valve Sites**

NGTL stated that mainline valves would be installed at intervals as required along the proposed pipeline sections and would be located within the permanent ROW. Additional TWS would be required at these valve sites during construction. The permanent valve sites would be fenced to ensure the safety and protection of the asset and public, as well as protection of the environment. Access to valve sites would be via the permanent ROW or permanent or temporary access roads during both construction and operations.

### **5.2.3.1 January Creek Control Valve**

The January Creek control valve is located on provincial Crown land, and is anticipated to be within the confines of an existing NGTL ROW. The January Creek control valve site would be 50 m by 80 m (approximately 0.5 ha of Crown land) and would be fenced. Communications between the control valve to NGTL's existing January Creek Meter Station site would be facilitated via a 5 m by 200 m underground electrical connection.

Access to the control valve site would be facilitated via an existing access road requiring the construction of an approximately 9 m by 15 m driveway from the existing access road to the control valve site.

### **5.2.4 Launcher and Receiver Lands**

NGTL stated that permanent launcher and receiver site requirements would be assessed for each pipeline component and would be located within a fenced area within the boundaries of the permanent pipeline ROW.

### **5.2.5 Cathodic Protection Land Requirements**

NGTL stated the pipeline components would share the cathodic protection (CP) system that currently protects the NGTL System. Upgrades to the existing CP system may be needed and would be evaluated as detailed design progresses, including investigation of potential alternating current mitigation where required. New test stations would be installed at appropriate intervals and locations along the Project to monitor the effectiveness of the applied CP current. NGTL stated that compressor station CP requirements would be determined during detailed design.

### **5.2.6 Stockpile Sites and Contractor Yards**

NGTL said that stockpile sites and contractor yards would be required for construction of the pipeline sections. NGTL is currently investigating potential locations for stockpile sites and contractor yards should they be required, and would use existing disturbed areas where feasible, to minimize effects on previously undisturbed areas.

### ***Views of Participants***

No Participants expressed concerns with respect to land requirements.

### ***Views of the Commission***

The Commission finds the anticipated land requirements to be reasonable and justified. The Commission finds that the requested right of way and temporary work space land requirements, as described in the Application, and as amended, are necessary to allow for the construction and operation of the Project in a safe and efficient manner. The Commission finds that NGTL's anticipated requirements for permanent and temporary land rights are acceptable.

### 5.3 Land Rights and Acquisition Process

The proposed pipeline would cross a total of 585 parcels of land, which would include 114 of private (freehold) land and 471 of provincial Crown land. NGTL identified 78 landowners and 10 occupants that are potentially affected by the Project. NGTL also determined that land users such as trappers, guide/outfitters, snowmobile clubs and grazing tenure holders might also be affected by the Project. NGTL identified 29 Registered Trapping Areas, 63 guide/outfitters and seven Grazing Lease Holders.<sup>12</sup>

NGTL stated that as it developed the proposed pipeline section routes and locations for the compressor station unit additions, Project maps were used to identify all lands potentially affected by the Project. Surface Public Land Standing Report searches were completed to provide information on the Crown lands relating to all disposition holders that have an interest in the lands. Title searches were completed through Alberta Land Titles to obtain information relating to all potentially affected private (freehold) lands, including identification of landowners and registered occupants. NGTL also identified unregistered occupants by gathering information from landowners regarding who customarily occupies their land. NGTL stated this land data was then included in a Project Line List, forming the basis of consultation and land acquisition activities.

NGTL stated that the land acquisition process for the Project would comply with the applicable sections of the NEB Act, including sections 86 and 87. NGTL anticipates that all land rights would be acquired and crossing agreements obtained in advance of the scheduled construction.

NGTL commenced the acquisition of permanent and temporary land rights, including the service of section 87 notices, where applicable, in Q2 of 2019. As of July 17, 2019, NGTL has signed easement agreements for 49 of 107 Freehold Tracts, representing 46 per cent of those agreements required. NGTL stated that the completion of freehold land rights acquisition is anticipated by April 2020. NGTL also stated that it requires 50 Crown pipeline dispositions, 17 Crown surface installations and facilities agreements and seven freehold surface installations and facilities agreements. None of these dispositions or other type of agreements have been obtained as of July 17, 2019. NGTL anticipates the receipt of all required permanent Crown land dispositions by July 2020. The execution of miscellaneous leases and third-party agreements would occur upon completion of construction planning and the detailed engineering design.

NGTL stated that its objective is to reach voluntary and reasonable agreements with landowners for land rights, including agreement on the compensation payable for such rights. When NGTL and a landowner cannot agree on compensation, either party may apply to the Minister of Natural Resources Canada to receive the services of a negotiator or to have the matter settled by arbitration as provided for in sections 88 to 103 of the NEB Act.

NGTL stated that landowner consultation and land rights acquisition would continue throughout the regulatory process. Throughout the construction phase, NGTL would maintain contact with landowners and occupants to address Project-related issues and concerns, and to implement agreed-on mitigation or avoidance strategies.

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<sup>12</sup> NGTL submitted a table specifying Land Ownership, Land Rights Required, Guides/Outfitters, Lease Holders and Trappers for each section of the Project in response to Horse Lake First Nation IR No. 2 on PDF pp. 9-29 ([A98655-4](#))



NGTL stated that where the pipeline sections cross or are adjacent to other existing linear facilities or developments, or road access is required, NGTL would seek to obtain the necessary agreements, consents and approvals from each third-party owner in accordance with requirements of the applicable legislation.

NGTL stated that at pipeline watercourse crossings a permanent easement would be established and maintained for pipeline operation.

### ***Views of Participants***

No Participants expressed concerns with respect to land acquisition.

Information regarding impacts of the route on the availability of Crown lands, including the traditional land and resource use of Crown lands by Indigenous communities is discussed in Chapter 7.

### ***Views of the Commission***

The Commission notes that NGTL still needs to acquire over half of the required freehold land rights, as well as all of the Crown pipeline dispositions. Having considered the evidence on the record, the Commission finds that NGTL's anticipated requirements for land rights, and the process for the acquisition of these land rights are acceptable and is satisfied that the acquisition will meet the requirements of the legislation.

The Commission notes that in the event NGTL and a landowner would not be able to agree on compensation, there is a process for determining compensation under the CER Act. Section 327 provides that either the company or the landowner may bring an application to the Commission to determine compensation in accordance with various factors as set out in subsection 327(2).

## 6 Public Engagement

The Filing Manual sets out the expectations for applicants regarding engagement to support a project application. Applicants are expected to undertake an appropriate level of public involvement, commensurate with the setting, nature and magnitude of a project. The Commission considers public involvement to be a fundamental component during each phase in the lifecycle of a project (project design, construction, operation and maintenance, and eventual abandonment) in order to address potential impacts of that project. This chapter addresses NGTL's public engagement program and Project-specific engagement activities.

### 6.1 NGTL's Stakeholder Engagement Program

In its Application, NGTL stated it has undertaken engagement activities with municipalities, potentially affected stakeholders, landowners and Indigenous communities to provide information and to address questions and concerns that may arise from the proposed Project.

Note that NGTL's Indigenous engagement program and Project-specific engagement activities with Indigenous communities are fully discussed in Chapter 7 which deals specifically with matters related to Indigenous peoples.

In its Application, NGTL explained that its consultation and engagement programs for the Project are guided by TransCanada's corporate values of safety, integrity, responsibility and collaboration, as well as *TransCanada's Stakeholder Engagement Commitment Statement, Working with Landowners - Our Guiding Principles and TransCanada's Aboriginal Relations Policy*.

NGTL stated that the overriding principle underpinning the stakeholder engagement program is that stakeholders would be engaged in a fair, honest, open, consistent and timely manner by NGTL representatives, and would have the opportunity to provide input into NGTL's Project planning.

NGTL explained that the purpose and goals of the stakeholder engagement program for this Project are to:

- formally introduce the Project to stakeholders;
- understand and respect stakeholders' capacity to consult;
- actively seek and consider comments on:
  - pipeline routing and facility site selection;
  - potential environmental and socio-economic effects;
  - mitigation, to address potential adverse Project effects; and
  - enhancement measures, where appropriate, to improve potential positive socio-economic effects;
- identify and respond to questions and concerns;
- provide stakeholders with ongoing Project updates, including communication about the proposed Project and the anticipated regulatory schedule and planned application to the NEB;

- consider stakeholder questions or concerns for incorporation as part of Project planning; and
- facilitate ongoing communications that continue through the construction and operations phases to ensure future stakeholder questions or concerns, if any, are addressed in a timely manner.

In addition to the general stakeholder engagement principles and goals noted above, NGTL stated that the goals specific to landowner consultation are also to:

- identify and address Project-related landowner questions and concerns; and
- support the acquisition of land rights necessary for the construction, operation and maintenance of the Project.

NGTL submitted that the stakeholder engagement program was designed and implemented by NGTL in accordance with the principles of TransCanada's stakeholder engagement framework, as well as community relations and communications best practices. The program is designed to:

- foster positive relationships with stakeholders;
- provide opportunities for stakeholder input into the Project planning and development process; and
- provide information for stakeholders that reduces uncertainty and increases clarity.

NGTL explained its stakeholder engagement program is undertaken in a phased approach and implemented using open communication and participatory stakeholder involvement practices.

NGTL said that once the Project is in-service, responsibility for ongoing landowner relations would be transitioned to NGTL operations. Regionally-based NGTL liaisons would continue to build and maintain relationships with landowners and occupants. As construction completion of the Project nears, TransCanada's Public Awareness (PA) personnel would work in collaboration with the Project team to integrate these new assets into the PA Program.

According to NGTL, the PA Program is intended to increase awareness of pipeline safety and, thereby, protect the public, environment and NGTL facilities. It targets the potentially affected stakeholders, landowners and Indigenous communities engaged through Project planning and construction phases.

## **6.2 Design of Public Engagement Activities**

NGTL identified 78 landowners and 10 occupants that are potentially affected by the Project. NGTL also determined that land users such as trappers, guide/outfitters, snowmobile clubs and grazing tenure holders might also be affected by the Project. Specifically, NGTL identified:

- 29 Registered Trapping Areas;
- 63 guide/outfitters; and
- seven Grazing Lease Holders.

More broadly, NGTL also identified the following stakeholders for the Project:

- landowners and occupants whose lands are traversed by the Project;
- adjacent landowners and occupants;
- land users (e.g., guides, outfitters and trappers);
- members of the public;
- municipal leaders and representatives (e.g., regional districts and municipalities);
- elected officials (i.e., provincial and federal);
- government agencies and representatives;
- non-government organizations;
- synergy groups; and
- emergency responders.

NGTL noted that since the process of identification is ongoing and continues throughout the evolution of the Project, the stakeholder list is regularly updated. In addition, stakeholders can self-identify by contacting the Project email account or toll-free telephone number.

NGTL stated it used a variety of engagement tools and activities as part of its engagement program. This included but was not limited to:

- distribution of general information print materials (e.g., Project letter to stakeholders, Project fact sheet, public notices, Project maps, open house invitations, open house displays, and PowerPoint presentations);
- Project website, email and telephone number;
- personal contact with stakeholders including face-to-face meetings;
- synergy group participation;
- newspaper and radio advertisements;
- open house engagements;
- Project information distribution by mail or email;
- media releases;
- digital media posts; and
- TransCanada program brochures (e.g., Aboriginal Relations, Stakeholder Engagement) and the NEB brochure *Information for Proposed Pipeline or Power Line Projects that Involve a Hearing*.

NGTL submitted sample copies of its Project materials that were provided to stakeholders through its engagement activities.<sup>13</sup>

### 6.3 Implementation of Engagement Activities

NGTL stated that initial implementation of the phased stakeholder engagement program began as early as August 2017 for certain Project components and that in January 2018, broad engagement on all proposed Project components began and is ongoing.

In its Application, NGTL stated it began approaching landowners to obtain survey access for the pipeline sections in September 2017. Contact was made to provide information about the Project and to obtain survey access for environmental, geotechnical, and other surveys. NGTL stated it then began consulting with adjacent and nearby landowners surrounding the Didsbury and Beiseker compressor station unit addition locations in February 2018. NGTL stated it would be consulting with the provincial Crown regarding the Nordegg compressor station unit addition.

NGTL said that between August 2017 and May 2018, it met with representatives from six municipal districts and counties and an additional six municipalities regarding proposed Project components, to provide information on the Project, and to understand and address their questions and concerns. NGTL held meetings with representatives from the following regional governments:

- County of Grande Prairie No. 1;
- Municipal District of Greenview No. 16;
- Yellowhead County;
- Clearwater County;
- Mountain View County;
- Rocky View County;
- The City of Grande Prairie;
- The City of Edson;
- The City of Rocky Mountain House;
- The Town of Wembley;
- The Town of Didsbury; and
- The Town of Beiseker.

NGTL stated that Project representatives also participated in municipal conferences, including the Alberta Association of Municipal Districts and Counties Spring Conference in Edmonton, Alberta on March 19, 2018 as well as the Federation of Canadian Municipalities Conference in Halifax, Nova Scotia on June 2, 2018.

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<sup>13</sup> Sample copies of NGTL's Project materials provided to stakeholders through engagement activities were filed as Appendix 12 in its Application ([A92619-7](#)).

NGTL said that in order to collect feedback on the Project and share information more broadly with interested community members, NGTL participated in regional synergy groups, which are forums where multi-stakeholder roundtable discussions cover industrial development and regionally specific interests and issues. NGTL provided Project information and presentations regarding proposed Project activities to synergy groups identified as being potentially interested in the Project. NGTL said it has participated in the following synergy groups on behalf of the Project:

- West Central Stakeholders Group, covering proposed Project components in Clearwater County;
- Yellowhead Synergy Group, covering proposed Project components in Yellowhead County;
- Central Mountainview Advisory Group, covering the proposed Project component in Mountain View County; and
- Wapiti Area Synergy Partners, covering proposed Project components north and south of the Wapiti River in the County of Grande Prairie and Municipal District of Greenview No. 16.

NGTL also stated it participates in synergy groups in the Project area, providing regular updates to the Wapiti Area Synergy Partnership (WASP) and West Central Stakeholders (WCS) Synergy Group on a monthly basis. NGTL said it plans to participate in WASP and WCS meetings for the duration of the Project and would continue to engage with synergy groups that have an interest in the Project.

In its Application and additional filings, NGTL described a number of questions and concerns that have been raised by landowners, occupants, land users and other identified stakeholders potentially affected by the Project since consultation began in September 2017. These included:

- impacts to land values and questions about compensation;
- impact of construction on local recreational land users and businesses;
- limitations or effects on current or future planned or approved land use;
- visual impact of compressor station facilities;
- noise pollution from facilities and noise generated by construction activities;
- impact of traffic during construction, including damage to local roads, increased vehicle numbers, general traffic safety concerns;
- environmental concerns such as clubroot and other invasive species;
- routing of the pipeline; and
- safety of pipelines.

NGTL described in its Application, Supplemental Report and Additional Written Evidence, how it responded to issues and addressed the concerns raised, and confirmed that it would continue to engage with landowners to address these and any other additional questions or other concerns going forward. More information regarding some of these concerns and NGTL's proposed mitigation (i.e., routing, environment, traffic, noise, and safety) are addressed in Chapter 8 of this Report.

More broadly, NGTL stated that it would continue to engage stakeholders through all Project phases and respond appropriately, including through the regulatory review process, and until completion of Project construction. Once the Project is in-service, NGTL has noted that the responsibility for ongoing landowner and stakeholder relations would be transitioned to its PA Program where regionally-based NGTL liaisons would continue to build and maintain relationships with landowners, occupants and other stakeholders.

NGTL commented that feedback gathered through consultation and engagement with local governments and the general public has been incorporated into ongoing engagement and would continue to be considered for incorporation into Project planning and execution, as appropriate.

### ***Views of Participants***

#### **Jeramie Heistad**

In his Letter of Comment, Mr. Heistad noted an initial lack of information provided by land representatives and Project managers at the beginning of the process. Mr. Heistad's letter also referenced a meeting with NGTL regarding the location for one of the compressor stations and other related concerns (i.e., noise and visual impact from the compressor station).

In his letter, Mr. Heistad noted that after the meeting, the company was looking into the concerns raised and said it appeared that they were attempting to address them.

No other potentially affected landowners or other stakeholders applied to participate in the hearing process.

### ***Views of the Commission***

The Commission is of the view that NGTL adequately and appropriately identified stakeholders and potentially affected landowners, as well as developed appropriate engagement materials. The Commission is also of the view that NGTL's design and implementation of engagement activities for the Project was adequate given the scope and scale of the Project.

The Commission notes that NGTL has been consulting on the Project since 2017 and has said it will continue to build and maintain relationships through consistent and ongoing communication with landowners, occupants and other stakeholders. The Commission expects NGTL to continue its efforts to engage and maintain effective and timely engagement activities, as appropriate, throughout the lifecycle of the Project.

## 7 Matters related to Indigenous Peoples

The Commission has considered all of the evidence and arguments on the record for this proceeding provided by Indigenous<sup>14</sup> peoples and other Parties, including NGTL, about the potential impacts of the Project on the rights and the interests of Indigenous peoples, NGTL's proposed mitigation of the Project's potential effects, requirements in the regulatory framework and the conditions proposed to be imposed by the Commission in the Certificate and Order that would be issued should the Project be approved.

The Commission interprets its responsibilities in the assessment process in a manner consistent with the *Constitution Act, 1982*, including subsection 35(1), which recognizes and affirms the existing Indigenous and Treaty rights<sup>15</sup> of Indigenous peoples. Further discussion of the Commission's role in upholding section 35 of the *Constitution Act, 1982* is set out in Section 7.6.8. The Commission is of the view that there has been adequate consultation and accommodation for the purpose of the Commission's recommendation on this Project under section 52 of the NEB Act, and its decision under section 58 of the NEB Act, in keeping with section 35 of the *Constitution Act, 1982*, and the honour of the Crown. The Commission is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed by the implementation of the mitigation measures and commitments made by NGTL, and the conditions recommended and imposed by the Commission.

As noted in Chapter 1 of this Report, the Commission has set out recommendations exclusively for consideration and action by the Governor in Council (GiC) and other government bodies in relation to issues that are beyond the CER's mandate. These issues, however, are ones that are part of the mandates of either the GiC and / or other government bodies. The Commission reiterates that these exclusive recommendations, whether implemented or not, played no role in the Commission's determination of whether the Project is in the public interest.

This chapter includes summaries of evidence provided directly by Indigenous peoples through their participation in the hearing, as well as summaries of NGTL's consultation with affected Indigenous peoples, which noted the concerns and interests, assessment methods and rationales, and any mitigation proposed by Indigenous peoples as recorded by NGTL. The Commission notes that identifying and referring to specific passages within the record can lead to other direct and indirect references being overlooked. Therefore, anyone wishing to fully understand the context of the information and evidence provided by Indigenous peoples should familiarize themselves with the entire record of the hearing. This chapter of the Report should not be considered in isolation from the Report as a whole. In addition, Appendix VII provides a summary of the general and specific concerns and issues raised by Indigenous peoples through this proceeding, as well as summaries of the responses to those concerns provided by NGTL and the Government of Canada, as well as

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<sup>14</sup> "Indigenous" has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*:

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.

<sup>15</sup> The term "Indigenous rights" has the meaning assigned to the term "aboriginal rights" as set out in subsection 35(1) of the *Constitution Act, 1982*.



the responses by the Commission (including conditions), and applicable requirements provided through regulation and / or legislation.

## **7.1 NGTL's Engagement with Indigenous Peoples in relation to the Project**

NGTL stated that TransCanada's policies, principles and practices guide the design and implementation of its Aboriginal Engagement Program for the Project, the goal of which is to provide Project information and seek feedback from Indigenous communities to anticipate, prevent, mitigate and manage conditions that have the potential to affect Indigenous communities. NGTL stated that it strives to meet this goal by:

- establishing a practical approach for the implementation of Project-specific engagement activities;
- initiating engagement activities as soon as possible in the planning of the Project;
- providing clear, relevant and timely information to potentially affected Indigenous peoples; and
- responding to concerns raised and commitments made during engagement activities.

NGTL indicated that its Aboriginal Engagement Program, the design of which is consistent with the NEB's guidance on consultation as set out in its Filing Manual, is intended to foster productive dialogue and exchange of information with potentially affected Indigenous peoples interested in the Project. NGTL indicated that this program was designed, developed and adapted according to the scope, nature, location, and potential effects of the Project, and to the identified interests, information needs and concerns of Indigenous peoples. NGTL stated that while the underlying principles remain the same, the scope and depth of engagement may vary according to the potential for Project-related effects and the identified interests of each Indigenous community.

NGTL indicated that its Aboriginal Engagement Program was carried out by identifying potentially affected Indigenous peoples; establishing the engagement approach; implementing engagement program activities; and responding to questions and concerns. NGTL stated that it tailored its approach to gathering information from Indigenous communities to meet a community's specific needs, and where appropriate, provide reasonable resources to support participation in Project engagement activities.

NGTL stated that it identified potentially affected Indigenous peoples based on the location of Project components within asserted traditional territories, regional boundaries and / or areas of interest.

NGTL indicated that preliminary engagement with Indigenous peoples began in August 2017 regarding the Grande Prairie Mainline Loop No. 2 - McLeod River Connection Section, (later renamed Colt Section), and in September 2017 regarding the Grande Prairie Mainline Loop No. 3 - Elmhurst Section. NGTL stated that the Project ESA was started in January 2018 and that broader engagement regarding the overall Project began in February 2018.

NGTL stated that engagement with Indigenous peoples initially included notification and provision of Project information for their review, and follow-up phone calls and emails to discuss any questions and concerns they may have about Project activities.

NGTL stated that on 14 February 2018, initial Project notification packages providing notice of NGTL's intent to file an application under section 52 of the NEB Act with the NEB were sent by email to the potentially affected Indigenous communities listed below. It also stated that on 16 February 2018, the initial Project notification packages were sent by mail to the same Indigenous communities.

- Alexander First Nation
- Alexis Nakota Sioux Nation
- Aseniwuche Winewak Nation
- Blood Tribe
- Driftpile Cree Nation
- Duncan's First Nation
- East Prairie Métis Settlement
- Enoch Cree Nation
- Ermineskin Cree Nation
- Foothills Ojibway Society
- Gunn Métis Local 55
- Horse Lake First Nation
- Kapawe'no First Nation
- Kelly Lake Cree Nation
- Kelly Lake First Nation
- Kelly Lake Métis Settlement Society, also known as Apetokosan Nation
- Louis Bull Tribe
- Marlboro Community Association
- Métis Nation of Alberta
- Métis Nation of Alberta Region 3
- Métis Nation of Alberta Region 4
- Métis Nation of Alberta Region 6
- Métis Settlements General Council
- Montana First Nation
- Mountain Métis Nation Association (Grande Cache Métis Local 1994)
- Nakcowinewak Nation of Canada
- Nekaneet Cree Nation
- Nose Creek Community
- O'Chiese First Nation
- Paul First Nation
- Piikani Nation
- Saddle Lake Cree Nation
- Samson Cree Nation
- Siksika Nation
- Stoney Nakoda Nations (Bears paw First Nation, Chiniki First Nation, and Wesley First Nation)
- Sturgeon Lake Cree Nation
- Sucker Creek First Nation
- Sunchild First Nation
- Tsuut'ina Nation

NGTL stated that the Project notification packages included a Project introduction letter and Project fact sheet, including a Project overview map; the TransCanada brochure: *Aboriginal Relations*; and the NEB brochure *Information for Proposed Pipeline or Power Line Projects that Involve a Hearing*. NGTL indicated that the Project fact sheet included general information about the Project design; environmental, social and economic effects, including potential community benefits such as employment opportunities and investment in local communities; a preliminary Project schedule; and information on what to expect during and after construction.

NGTL stated that it engaged in preliminary discussions with the potentially affected Indigenous communities to understand their specific capacity and resourcing needs, and also worked with interested Indigenous communities to develop a Project-specific work plan and budget. NGTL

stated that work plans formalize the engagement activities to be conducted for the Project and the associated funding. NGTL stated that following the initial notifications and preliminary discussions, it implemented a range of activities and communication tools to engage Indigenous communities on the Project (including regulatory notifications, maps, shapefiles, Google Earth files, fact sheets, and brochures). NGTL stated that engagement activities on the Project included, but were not limited to:

- presentations, technical meetings;
- face-to-face meetings;
- email, telephone calls, text messages;
- map reviews;
- site visits;
- sharing of traditional knowledge, including traditional knowledge studies;
- review of community-specific traditional knowledge literature review;
- discussions on contracting, employment, education and training opportunities; and
- community investment.

NGTL stated that following the initial Project notification it was made aware that Mountain Cree (Small Boy Camp) may have an interest in the Project. NGTL also stated that upon review of engagement activities conducted for another project in the region, it identified Asini Wachi Nehiyawak Traditional Band as an Indigenous community potentially affected by the Project. NGTL stated that Project notification packages providing notice of NGTL's intent to file an application under section 52 of the NEB Act with the NEB were sent by email to Mountain Cree (Small Boy Camp) on 18 April 2018 and Asini Wachi Nehiyawak Traditional Band on 2 May 2018.

NGTL indicated that on 1 June 2018, it was informed that the NEB identified the following eight Indigenous communities as also having known or asserted traditional territory in the Project area, and therefore, may be impacted by the Project:

- Akisq'nuk (Columbia Lake) First Nation
- Akun'kunik' (Tobacco Plains) First Nation
- Aqam (St. Mary's) First Nation
- Kehewin Cree Nation
- Ktunaxa Tribal Council
- Michel First Nation
- Swan River First Nation
- Yaqan Nukiy (Lower Kootenay) First Nation

NGTL stated that on 21 June 2018, it provided notification to all identified Indigenous communities that it had filed the Project Application with the NEB, and that on 13 July 2018 it provided the Notice of Hearing and details regarding the process for submitting an Application to Participate for the Project.

NGTL stated that it held three public open houses in Alberta: 18 June 2018 in Wembley, 19 June 2018 in Edson, and 20 June 2018 in Rocky Mountain House.

NGTL confirmed that in August 2018 it provided Project information to Foothills First Nation, Whitefish (Goodfish) Lake First Nation #128, and Sawridge First Nation. The first two Indigenous communities applied to participate in the hearing, and the latter was identified by the Major Projects Management Office, Natural Resources Canada (NRCan), as being potentially impacted by the Project. Gift Lake Metis Settlement submitted an application to participate in the hearing on 29 July 2019, approximately two weeks before the start of the cross-examination. NGTL stated that Gift Lake Metis Settlement was not identified by NGTL as being potentially affected by the Project because NGTL is not aware of any use of the Project area by Gift Lake Metis Settlement. NGTL did commit to engaging with Gift Lake Metis Settlement going forward to share information and discuss any questions or concerns that they may have with the Project.

NGTL stated that it seeks to work collaboratively with Indigenous communities to address Project-related questions or concerns and to provide information on how the input of Indigenous communities influenced Project design changes, and that questions or concerns identified by them during engagement activities are recorded and responded to by NGTL.

NGTL stated that it would continue to engage all identified Indigenous communities according to their level of interest in the Project and the potential adverse impact of the Project on Indigenous or Treaty rights.

## **7.2 Government of Canada's Consultation Process with Indigenous Peoples**

To identify Indigenous communities potentially impacted by the Project, NRCan stated that it created a list known as the Crown list by considering information available to the Crown relating to Indigenous communities whose reserves fall within 50 km on either side of the zone of impact represented by the Project, or whose Treaty / traditional territories are crossed by the Project. NRCan stated that its analysis was also informed by information provided by Crown-Indigenous Relations and Northern Affairs Canada and / or the NEB during the current process as well as past processes. NRCan stated that Indigenous communities may be added to the Crown list should the Crown receive any new information regarding potential impacts to section 35 Indigenous and Treaty rights by the proposed Project from Indigenous communities. This Crown list is filed on the record. The Indigenous communities identified within that list have all been included in engagement by NGTL.

On 3 July 2018 NRCan issued letters to 42 Indigenous communities potentially affected by the Project clarifying the Government of Canada's approach to fulfilling the federal duty to consult with Indigenous peoples that relate to the Project. The letter stated that the Government is committed to a renewed relationship with Indigenous peoples based on recognition, respect, cooperation and partnership. Further, NRCan stated that the Government intends to rely, to the extent possible, on the NEB's assessment of the Project to fulfill any federal duty to consult related to the Project, and that during the NEB hearing process, the Crown would be tracking issues raised by Indigenous peoples. NRCan stated that matters brought forward to the NEB would be assessed to determine whether additional consultation obligations may exist after the NEB issues the Report on the Project. The letter also encouraged Indigenous peoples to engage directly with NGTL on the Project as NGTL has the ability to make changes to the Project to address any specific concerns raised. NRCan also referenced a Project Agreement that would guide the coordination of elements of the NEB assessment and other federal authorizations of the Project, including consultation with Indigenous peoples, and noted that once concluded, a copy of the Project Agreement would be sent to those on the Crown list.

In another letter to 42 Indigenous communities potentially affected by the Project, dated 1 April 2019, the Major Projects Management Office, NRCan, provided an update on the Government of Canada's approach to consulting with Indigenous communities regarding the Project. This letter reiterated that the Crown intends to draw on the NEB public hearing process, as well as on its own NRCan-led consultation process, to fulfill the Crown's duty to consult. It also included an outline of the Crown's preliminary consultation approach, stating that the Crown would consult with potentially impacted Indigenous communities on this Project during the NEB process up until a GiC decision on the Project. The letter further stated that in some cases, consultation may continue post-GiC decision, including consultation related to any federal permits or commitments, and that the Major Projects Management Office would serve as the Crown consultation coordinator for the Project. Again, the Crown encouraged Indigenous peoples to participate in the NEB process for the Project to convey perspectives about the Project's potential impact on their rights that are recognized and affirmed by section 35 of the *Constitution Act, 1982*, as well as other views, and encouraged them to continue to engage directly with NGTL on any specific concerns they may have.

The NGTL 2021 Project Agreement between NRCan and the NEB, was filed on the record on 12 June 2019. The Project Agreement states that NRCan has two roles in the Project Review. First, it would support the Minister of Natural Resources in making a recommendation to the GiC for consideration and decisions on the Project, including in relation to the Interim Approach. To support this role NRCan would develop the Crown Consultation and Accommodation Report for the GiC. Second, NRCan would act as a point of contact for NGTL during the Project Review to provide information on the federal review process. NRCan stated its participation in the NEB assessment process is to advance these responsibilities set out in the Project Agreement. NRCan also would support the NEB on issues related to consultation with Indigenous peoples through the MPMO Deputy Minister Committee structure, as required, throughout the Project Review.

NRCan stated that it participated throughout the course of the hearing process by attending the Conference for Discussion about Meaningful Participation for Indigenous Intervenors; filing written evidence outlining its approach to Crown consultation for this Project; responding to information requests; reviewing the evidence filed by the proponent and other intervenors; attending the oral Indigenous knowledge sharing sessions; and seating its witness for cross-examination.

NRCan has stated on the record that, outside of the NEB process, it engaged with several Indigenous communities in preliminary Crown consultation meetings to gain a better understanding of Indigenous concerns related to the Project. In oral cross examination, NRCan indicated that it would welcome the opportunity to meet with Gift Lake Metis Settlement at the soonest possible time that is convenient for them.

### **7.3 The Hearing Process and Participation of Indigenous Peoples**

The Commission's hearing process was designed to obtain as much relevant evidence as possible on concerns regarding the Project, the potential impacts on the interests of Indigenous peoples, including Indigenous and Treaty rights (as noted in the List of Issues, Appendix V), and possible mitigation measures to minimize the potential adverse impacts on those rights and interests.

#### **7.3.1 Enhanced Process for Engagement with Indigenous Peoples**

The Commission's Enhanced Indigenous Engagement (EIE) initiative aims to provide proactive contact with Indigenous communities that may be affected by a proposed project, and to help

Indigenous communities understand the Commission's regulatory process and how to participate in that process. The Commission assesses the completeness of the list of potentially affected Indigenous communities identified in an applicant's project application in collaboration with the Government of Canada. The Commission then sends letters to each potentially impacted Indigenous community on the list, informing them of the project as well as the Commission's regulatory role in respect of the project, and offering to provide further information on the Commission's process. Following issuance of these letters, CER staff follow up, respond to questions, and / or conduct information meetings, where requested by Indigenous peoples.

The NEB initiated EIE activities for the Project following the receipt of the Project Description on 27 February 2018, which set out NGTL's identification of Indigenous communities potentially affected by the Project.

The Commission, through its own assessment of publicly known or asserted Indigenous traditional territory information, identifies Indigenous peoples who may be potentially affected by any applied-for project. After receiving NGTL's Project Description, the NEB reviewed the list of potentially affected Indigenous communities identified by NGTL. The NEB, in collaboration with the Government of Canada, identified additional Indigenous communities who may be potentially affected by the proposed Project, and also advised NGTL of these additional communities.

On 1 June 2018 the NEB sent an EIE letter to each of the following potentially affected Indigenous communities:

- Akisq'nuk (Columbia Lake) First Nation
- Akun'kunik' (Tobacco Plains) First Nation
- Alexander First Nation
- Alexis Nakota Sioux Nation
- Apetokosan Nation (Kelly Lake Métis Settlement Society)
- Aqam (St. Mary's) First Nation
- Aseniwuche Winewak Nation
- Bearspaw First Nation
- Blood Tribe
- Chiniki First Nation
- Driftpile First Nation
- Duncan's First Nation
- East Prairie Métis Settlement
- Enoch Cree Nation
- Ermineskin Cree Nation
- Foothills Ojibway Society
- Gunn Métis Local 55
- Horse Lake First Nation
- Kapawe'no First Nation
- Kehewin Cree Nation
- Kelly Lake Cree Nation
- Kelly Lake First Nation
- Ktunaxa Tribal Council
- Louis Bull Tribe
- Marlboro Community Association
- Métis Nation of Alberta
- Métis Nation of Alberta Region 3
- Métis Nation of Alberta Region 4
- Métis Nation of Alberta Region 6
- Métis Settlements General Council
- Michel First Nation
- Montana First Nation
- Mountain Métis Nation Association (Grande Cache Métis Local 1994)
- Nakcowinewak Nation of Canada
- Nekaneet Cree Nation
- Nose Creek Community
- O'Chiese First Nation
- Paul First Nation
- Piikani Nation
- Saddle Lake Cree Nation
- Samson Cree Nation
- Siksika Nation
- Sturgeon Lake Cree Nation
- Sucker Creek First Nation
- Sunchild First Nation
- Swan River First Nation
- Tsuut'ina Nation
- Wesley First Nation
- Yaqan Nukiy (Lower Kootenay) First Nation

The EIE letters described the NEB's hearing process and Participant Funding Program. The letters also included a summary of the Project, contact information on how to obtain further information from the NEB, and an offer from NEB staff to attend a community meeting. No EIE meetings were requested.

### 7.3.2 Application to Participate in the NEB's Hearing Process

Indigenous peoples who are concerned with potential Project-related impacts on their rights and interests had opportunities to present their views directly to the NEB. While the NEB required NGTL to implement an engagement program and undertake an assessment of the Project's potential effects, including its environmental and socio-economic effects, the NEB also took steps to facilitate the direct participation of these communities in the NEB's hearing process. Section 55.2 of the NEB Act requires the NEB to hear any person who is directly affected by the granting or refusing of an Application.

On 5 July 2018, the NEB issued a Notice of Public Hearing and Application to Participate, which directed NGTL to provide to all potentially affected Indigenous communities identified by NGTL and the NEB. The NEB conducted an Application to Participate process between 16 July 2018 and 17 August 2018, which required interested persons or groups to request participation in the NEB's hearing process by demonstrating that they are directly affected by the proposed Project or that they have relevant information or expertise that would assist the NEB in making its decisions in respect of the proposed Project. Nineteen Indigenous communities applied to participate by the timeline set by the NEB (16 July 2018 to 17 August 2018) and were granted the participant status they requested.

Three Indigenous communities filed late applications to participate: Samson Cree Nation on 4 October 2018, Cadotte Lake Métis Local #1994 on 9 October 2018, and Gift Lake Metis Settlement on 29 July 2019. All Indigenous communities who applied to participate as an Intervenor were accepted.

Kelly Lake First Nation was granted commenter status, as requested. The following Indigenous communities were granted Intervenor status in the hearing, as requested:

- Alexis Nakota Sioux Nation
- Bearspaw First Nation
- Blood Tribe
- Cadotte Lake Métis Local #1994
- Chiniki First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Ermineskin Cree Nation
- Foothills First Nation
- Gift Lake Metis Settlement
- Horse Lake First Nation
- Métis Nation of Alberta Region 3
- Nekaneet Cree Nation
- O'Chiese First Nation
- Piikani Nation
- Saddle Lake Cree Nation
- Samson Cree Nation
- Sturgeon Lake Cree Nation
- Tsuut'ina Nation
- Wesley First Nation
- Whitefish (Goodfish) Lake First Nation #128

On 9 June 2019, the NEB received a Letter of Comment from Asini Wachi Nehiyawak Traditional Band. Although Asini Wachi Nehiyawak Traditional Band had not applied to participate in the hearing, the NEB granted them commenter status and accepted their Letter of Comment on the record. Michel First Nation applied on 31 October 2019 to be granted commenter status which the



Commission denied on 12 November 2019 after a comment period was held, due to the lateness of their application and the late stage of the hearing process.

On 20 August 2019, both Cadotte Lake Métis Local #1994 and Duncan's First Nation withdrew from the hearing. As these two Intervenor withdrew, the Commission has placed no weight on the evidence they filed on the record. However, there are references found in this chapter in relation to NGTL's Project-related issues summaries and summary of engagement activities that include information about Duncan's First Nation.

Both Foothills First Nation and Samson Cree Nation sought the approval to file late evidence. In response to Foothills First Nation's filing (on 24 June 2019 for a Traditional Land Use Study), NGTL indicated that accepting their written evidence more than a month past the timeline for Intervenor to file such evidence would be prejudicial and unfair. The Commission agreed with NGTL's submissions and did not grant Foothills First Nation's request on 16 July 2019. Having considered that NGTL did not object to the late filing by Samson Cree Nation, (on 7 November 2019, attached to their written final argument<sup>16</sup>), the Commission allowed the late evidence to be filed on the record. NGTL stated in its oral final argument that the Commission should place no weight on this late evidence as it was untested. The Commission concurs with that argument and has not given any weight to the three documents attached to Samson Cree Nation's written final argument filed 7 November 2019 in making its recommendation in this Report or its decision on the application filed under section 58 of the NEB Act.

### **7.3.3 Participant Funding Program**

The NEB, and now the CER, administers a Participant Funding Program (PFP), which is independent of the hearing process, and the Commissioners conducting it. PFP provides financial assistance to individuals, Indigenous peoples, landowners, and non-industry not-for-profit groups to facilitate participation in certain project hearings and environmental assessments of designated projects.

As stated on the CER's website, on 18 May 2018, it was announced that funding would be available to assist individuals and groups with their participation in the hearing for the NGTL 2021 System Expansion Project. The PFP received 21 applications requesting a total of \$2,251,171. After reviewing the applications, all 21 applications were awarded funding to a total of \$1,588,830. The NEB's Executive Vice President, Regulatory, approved the recommendation. Indigenous Intervenor account for 100 per cent of the funding awarded. Table 7-1 sets out the information found on the CER's website as to the recipients and the amounts awarded. Further information regarding eligible costs and associated contribution agreements is available in the PFP section of the CER's website.

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<sup>16</sup> a revised Traditional Knowledge and Use Study Specific to NGTL's Proposed Project, an Adequacy Review of Proponent IR Responses, and an Adequacy Review of Proponent Proposed Mitigation – June 2019

**Table 7-1: Participant Funding Program Awarded Amounts**

<b>Applicant</b>	<b>Amount awarded</b>
Alexis Nakota Sioux Nation	\$80,000
Bearspaw First Nation	\$80,000
Blood Tribe	\$80,000
Cadotte Lake Métis Local #1994	\$80,000
Chiniki First Nation	\$80,000
Driftpile Cree Nation	\$75,630
Duncan's First Nation	\$66,280
Ermineskin Cree Nation	\$80,000
Foothills First Nation	\$79,800
Horse Lake First Nation	\$65,475
Métis Nation of Alberta Region 3	\$79,655
Nekaneet Cree Nation	\$77,460
O'Chiese First Nation	\$80,000
Piikani Nation	\$80,000
Saddle Lake Cree Nation	\$79,420
Samson Cree Nation	\$80,000
Siksika Nation	\$80,000
Sturgeon Lake Cree Nation	\$25,110
Tsuut'ina Nation	\$80,000
Wesley First Nation	\$80,000
Whitefish (Goodfish) Lake First Nation #128	\$80,000
Total	\$1,588,830

#### **7.3.4 Conference for Discussion about Meaningful Participation for Indigenous Intervenor**

As explained in Section 2.3.3 of this Report, the NEB heard comments on process in a number of different ways. Many comments were received regarding extending the proposed hearing timeline; avoiding hearing steps in certain months due to ceremonial obligations and commitments; and adding an additional process step for Indigenous Intervenor and the NEB to collaboratively develop a consultation approach.

Upon consideration of all of the comments filed, modifications to the hearing process were made, for example, extension of dates for various process steps. The NEB also scheduled a one-day Conference for Discussion about Meaningful Participation for Indigenous Intervenor (Conference) open to all Parties and facilitated by a neutral third party. The purpose of the Conference was to

provide an opportunity for all the Parties to come together and provide their comments and ideas in relation to meaningful participation in the hearing process.

The Conference was held on 24 January 2019 in the Hearing Room at the NEB's offices in Calgary, Alberta. The following registered Parties attended the Conference:

- Alexis Nakota Sioux Nation (attendance by telephone)
- Bearspaw First Nation, as represented by the Stoney Nakoda Nation
- Blood Tribe
- Cadotte Lake Métis Local #1994
- Chevron Canada Limited
- Chiniki First Nation, as represented by the Stoney Nakoda Nation
- Ermineskin Cree Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Métis Nation of Alberta Region 3
- Natural Resources Canada
- NOVA Gas Transmission Ltd.
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- TransGas Limited
- Tsuut'ina Nation
- Wesley First Nation, as represented by the Stoney Nakoda Nation
- Whitefish (Goodfish) Lake First Nation #128

The Panel for the hearing was not in attendance, and no transcript was created for the Conference. NEB staff were present in the room taking notes of what was said and produced a draft report. The draft report was shared with all Parties at the Conference and their written feedback was requested. Thirteen Parties provided written feedback on the draft report. The Final Conference Summary Report incorporates the feedback, which includes corrections, omissions, and further clarification where Parties felt their comments were misinterpreted or taken out of context in the draft Final Report. The Final Report was issued on 14 February 2019, and filed on the record.

The Commission committed to consider the Final Conference Summary Report and to make any modifications to the hearing process it deemed appropriate.

The changes to the hearing process resulting from the Conference are described in Section 2.3.3 and Table 2-3 of this Report and were set out in detail in Procedural Update No. 1 (see Appendix II of that document).

### **7.3.5 Opportunities to Participate**

During the hearing, Indigenous Intervenors were able to obtain further information about the Project, and to present their views and concerns to the NEB, and later the Commission, in a variety of ways. Indigenous Intervenors could file written evidence; share oral Indigenous knowledge; ask written questions (information requests or IRs) of NGTL and other Parties; respond to any written questions asked of them by the NEB and NGTL; conduct cross-examination of NGTL and other Parties; provide comments on two drafts of potential conditions; and submit final argument, in writing, or in both written and oral if they filed written argument first.

The Commission acknowledges that Indigenous peoples have an oral tradition for sharing knowledge and information from generation to generation and that this knowledge and information cannot always be shared adequately in writing. The Commission is of the view that it is valuable to hear oral Indigenous knowledge as it assists the Commission in understanding how the Project may impact Indigenous rights and interests.

In Procedural Update No. 1, the NEB extended an invitation to all Indigenous intervenors in the proceeding to share oral Indigenous knowledge in either Grande Prairie, Alberta, or in Calgary, Alberta. The NEB noted that the Final Conference Summary Report included comments from Indigenous intervenors who participated that the NEB's past processes for Indigenous knowledge were formal and intimidating. As a result, the NEB decided to hold the Calgary session of Indigenous knowledge at the Grey Eagle Resort and Casino, on the Tsuut'ina Nation lands, noting that this venue offers space for ceremonies.

The NEB received notices of intent to share oral Indigenous knowledge from Alexis Nakota Sioux Nation, Bearspaw First Nation, Blood Tribe, Chiniki First Nation, Driftpile Cree Nation, Horse Lake First Nation, O'Chiese First Nation, Piikani Nation, Saddle Lake Cree Nation, Samson Cree Nation, Tsuut'ina Nation, and Wesley First Nation. The NEB heard Indigenous knowledge given by Horse Lake First Nation in Grande Prairie; by Blood Tribe in the NEB's hearing room in Calgary; and by the remaining Indigenous intervenors at the Grey Eagle Resort and Casino.

For all oral portions of the hearing, an audio broadcast was provided and transcripts of the proceedings were filed on the record, so that interested Parties who were not in attendance, and the public, could be aware of what was occurring during the hearing. The NEB, and later the Commission, also offered remote participation to Parties in order to make the hearing as accessible as possible.

Table 7-2 below summarizes the process steps participated in by Indigenous intervenors, including the types and sources of information submitted by Indigenous intervenors during the proceeding and considered by the Commission.

**Table 7-2: Written and Oral Evidence and Submissions by Indigenous Intervenor by Exhibit Number**

Intervenor	Comments on Potential Conditions	Comments on Consultation Logs	Information Requests made (to NGTL or Intervenor)	Oral Indigenous Knowledge	Written Evidence	Response to IRs & Indigenous Knowledge Questions	Final Argument
Alexis Nakota Sioux Nation	<u>A98089</u>	<u>A99522</u>	<u>A98002</u> <u>A98435</u> <u>A99637</u> <u>C00260</u>	<u>A99463</u>	<u>A98975</u>	<u>A99922</u>	<u>C02839</u> <u>C02967</u>
Bearspaw First Nation	<u>A98095</u>	<u>A98431</u>	<u>A98004</u> <u>A98443</u> <u>A99624</u> <u>A99625</u> <u>C00257</u>	<u>A99488</u>  <u>A99837*</u>	<u>A98976</u>	<u>A99578</u> <u>A99585</u> <u>A99931</u>	<u>C02841</u> <u>C02967</u>
Blood Tribe	<u>A98078</u>		<u>A97990</u>	<u>A99846</u>	<u>A98937</u>	<u>A99894</u>	<u>C02838</u>
Cadotte Lake Métis Local #1994 (withdrew on 20 August 2019)	<u>A98106</u>		<u>A98012</u>		<u>A98963</u>		
Chiniki First Nation	<u>A98094</u>	<u>A98430</u>	<u>A98005</u> <u>A98444</u> <u>A99627</u> <u>A99628</u> <u>C00259</u>	<u>A99488</u>  <u>A99839*</u>	<u>A98968</u>	<u>A99579</u> <u>A99584</u> <u>A99934</u>	<u>C02840</u> <u>C02967</u>
Driftpile Cree Nation	<u>A98087</u>	<u>A98445</u>	<u>A98009</u>	<u>A99848</u>	<u>A98972</u>	<u>A99928</u>	<u>C02852</u>
Duncan's First Nation (withdrew on 20 August 2019)	<u>A98102</u>		<u>A98013</u>		<u>A98974</u> <u>A99550</u>	<u>A99942</u>	
Ermineskin Cree Nation	<u>A98105</u>		<u>A98014</u>		<u>A98959</u>	<u>A99943</u>	<u>C02861</u>

<b>Intervenor</b>	<b>Comments on Potential Conditions</b>	<b>Comments on Consultation Logs</b>	<b>Information Requests made (to NGTL or Intervenor)</b>	<b>Oral Indigenous Knowledge</b>	<b>Written Evidence</b>	<b>Response to IRs &amp; Indigenous Knowledge Questions</b>	<b>Final Argument</b>
Foothills First Nation							
Gift Lake Metis Settlement							
Horse Lake First Nation	<a href="#"><u>A98098</u></a>	<a href="#"><u>A98439</u></a>	<a href="#"><u>A98008</u></a> <a href="#"><u>A98438</u></a> <a href="#"><u>A99635</u></a> <a href="#"><u>A99636</u></a> <a href="#"><u>C00263</u></a>	<a href="#"><u>A99616</u></a>	<a href="#"><u>A98954</u></a>	<a href="#"><u>A99930</u></a>	<a href="#"><u>C02854</u></a>
Métis Nation of Alberta Region 3	<a href="#"><u>A98103</u></a>		<a href="#"><u>A97996</u></a>		<a href="#"><u>A98941</u></a>	<a href="#"><u>A99890</u></a> <a href="#"><u>A99893</u></a>	<a href="#"><u>C02893</u></a>
Nekaneet Cree Nation							
O'Chiese First Nation	<a href="#"><u>A98110</u></a> <a href="#"><u>A98113</u></a>	<a href="#"><u>A98453</u></a>	<a href="#"><u>A98007</u></a> <a href="#"><u>A98456</u></a> <a href="#"><u>A99640</u></a> <a href="#"><u>A99641</u></a> <a href="#"><u>C00266</u></a>	<a href="#"><u>A99434</u></a>	<a href="#"><u>A98978</u></a>	<a href="#"><u>A99524</u></a> <a href="#"><u>A99938</u></a>	<a href="#"><u>C02845</u></a> <a href="#"><u>C02967</u></a>
Piikani Nation	<a href="#"><u>A98080</u></a>		<a href="#"><u>A97989</u></a>	<a href="#"><u>A99847</u></a>	<a href="#"><u>A98938</u></a>	<a href="#"><u>A99911</u></a>	<a href="#"><u>C02803</u></a>
Saddle Lake Cree Nation	<a href="#"><u>A98092</u></a>			<a href="#"><u>A99507</u></a>	<a href="#"><u>A98952</u></a>	<a href="#"><u>A99920</u></a>	<a href="#"><u>C02828</u></a>
Samson Cree Nation		<a href="#"><u>A98447</u></a>	<a href="#"><u>A98015</u></a> <a href="#"><u>C00264</u></a>	<a href="#"><u>A99434</u></a> <a href="#"><u>A99463</u></a>	<a href="#"><u>A98979</u></a> <a href="#"><u>A99356</u></a>	<a href="#"><u>A99929</u></a>	<a href="#"><u>C02857</u></a> <a href="#"><u>C02967</u></a>
Sturgeon Lake Cree Nation							
Tsuut'ina Nation		<a href="#"><u>A98450</u></a>	<a href="#"><u>A98010</u></a>	<a href="#"><u>A99463</u></a>			

<b>Intervenor</b>	<b>Comments on Potential Conditions</b>	<b>Comments on Consultation Logs</b>	<b>Information Requests made (to NGTL or Intervenor)</b>	<b>Oral Indigenous Knowledge</b>	<b>Written Evidence</b>	<b>Response to IRs &amp; Indigenous Knowledge Questions</b>	<b>Final Argument</b>
Wesley First Nation	<u>A98096</u>	<u>A98432</u>	<u>A98003</u> <u>A98440</u> <u>A99631</u> <u>A99632</u> <u>C00261</u>	<u>A99488</u>  <u>A99838*</u>	<u>A98962</u>	<u>A99580</u> <u>A99586</u> <u>A99935</u>	<u>C02843</u> <u>C02967</u>
Whitefish (Goodfish) Lake First Nation #128	<u>A98104</u>		<u>A98016</u>		<u>A98958</u>		<u>C02864</u>

\* Includes comments regarding transcript accuracy

Table 7-3 below summarizes the type of information filed by Indigenous commenters during the proceeding and considered by the Commission.

**Table 7-3: Letter of Comment by Indigenous Commenters by Exhibit Number**

Commenter	Letter of Comment
Asini Wachi Nehiyawak Traditional Band	<u>A99845</u>
Kelly Lake First Nations	<u>C01472</u>

To the extent that other government departments had information to provide to the NEB related to Indigenous peoples' concerns, they had the opportunity to participate in the NEB's process and file relevant information on the NEB's record. Both ECCC and NRCan participated in the NEB's proceeding as Intervenor and filed information on the NEB's hearing record that relates to some of the concerns raised by Indigenous peoples in this hearing, such as matters relating to caribou, discussed further in Chapter 8, and the Government of Canada's consultation process with Indigenous peoples, discussed in this chapter. Health Canada participated with a Letter of Comment and discussed potential Project impacts on country foods and shallow drinking water wells; and assessment methodology.

## 7.4 Issues and Concerns

### 7.4.1 NGTL's Engagement with Indigenous Peoples

Many Indigenous communities raised concerns regarding NGTL's engagement with Indigenous peoples.

Alexis Nakota Sioux Nation indicated that NGTL did not provide them with sufficient time to review the Project, identify Project impacts to their section 35 rights, and to provide input into the Project route or the ESA.

*So I feel their consultation wasn't adequate and there should be additional consultation on this Project with our Nation.*

Bridget Bull, Alexis Nakota Sioux Nation, Transcript Volume 4 [2128]

Blood Tribe, Driftpile Cree Nation, Piikani Nation, and Saddle Lake Cree Nation indicated that NGTL had not consulted them on a variety of subjects with respect to the Project, (e.g., water quality, aquatic habitat and species at risk, watercourse crossings, fugitive emissions, monitoring, historical and cultural resources). Saddle Lake Cree Nation indicated that while NGTL provided capacity to conduct a traditional knowledge study, Saddle Lake Cree Nation were not informed about the timing or use of their findings regarding the Project planning and design. Blood Tribe, Piikani Nation, and Saddle Lake Cree Nation requested that NGTL engage with them regarding their respective independent traditional knowledge / traditional land and resource use studies prior to the Project commencing. Blood Tribe and Piikani Nation stated that NGTL's consultation has been limited to sharing Project information with Blood Tribe and Piikani Nation staff rather than a meaningful dialogue and issues resolution process.

*We should have been able to be meaningfully consulted right at the onset of this project. That way we could have had the data, we could have found the tipi rings, we could have*



*noted all the sacred trees, the brush that we use, the willows, different kinds of willows, berry brush of different kinds, the pipestone, the different medicinal plants and roots that we use, we could have identified that; the creeks, rivers in the area that we utilise our names for, how we had travelled over time, ending up on a measly tract of land that we occupy as an Indian reserve today.*

Mike Oka, Blood Tribe, Transcript Volume 2 [606]

*Now, this pipeline project that's coming through, I want to make it clear that the consultation, the engagement that has taken place to date on this has been very weak. It's been a process where we have not had much contact with NOVA, with TransCanada. To this point we have -- I believe that their Indigenous relations department has been very flawed in its approach to engaging our Nation. [...] So I think that that's what really speaks loudly in our concern is this ability for us to not be engaged in a meaningful way.*

Ira Provost, Piikani Nation, Transcript Volume 5 [2373, 2376]

Driftpile Cree Nation proposed the establishment of a 2021 NGTL System Expansion Project-specific relationship agreement. They stated that this relationship agreement between Driftpile Cree Nation and NGTL would provide a forum for discussing ways to maximize socio-economic benefits to Driftpile Cree Nation members and businesses associated with the Project, as well as considering and mitigating specific adverse impacts.

Horse Lake First Nation indicated that consultations with NGTL about alternate routing should have occurred at the Project design phase, and prior to filing the Project Description. They indicated that by the time that they were notified of the Project, the value components had already been selected, studies had already commenced, and the route had been largely identified.

Métis Nation of Alberta Region 3 indicated that they were not consulted by NGTL on a variety of subjects with respect to the Project, such as water quality, travel routes and access for traditional activities, and monitoring. They indicated that further engagement with NGTL is required to ensure adequate consultation and accommodation regarding recommendations made by Métis Nation of Alberta Region 3 to protect the environment and provide more opportunities for Métis citizens to participate in the construction and monitoring of the Project. Métis Nation of Alberta Region 3 requested that NGTL engage with them regarding their respective independent traditional knowledge / traditional land and resource use study prior to the Project commencing. Métis Nation of Alberta Region 3 stated that NGTL should commit to engaging with them in a manner that is both consistent with the guidelines provided in the Métis Nation of Alberta Consultation Agreement, and within best practices and industry standards for Indigenous engagement and consultation.

O'Chiese First Nation indicated that NGTL failed to notify and initiate early consultation with them in a way that was meaningful and inclusive. O'Chiese First Nation indicated that there was not sufficient time to consider the Project information or complete an assessment prior to the Application being filed. They indicated that NGTL has had a long presence in their traditional territory but has yet to establish a positive relationship with O'Chiese First Nation, and that NGTL is not approaching consultation in a manner that creates respectful, positive two-way dialogue.

*There was no meaningful consultation. There was none that took place. The company did not come to the Nation to talk to the Nation, Chief and Council, to the community members, proposing this years ago. I'm pretty sure the plans have been in place years before it actually came out.*

Elder Joanne Gladeau, O'Chiese First Nation, Transcript Volume 3 [1227]

Samson Cree Nation submitted that NGTL's Aboriginal Engagement Program is vague but that they remain agreeable to working with NGTL to tailor a mutually-acceptable plan.

Bears paw First Nation, Chiniki First Nation, and Wesley First Nation, the Stoney Nakoda Nations, indicated that NGTL should have sought to engage early with Indigenous communities, including themselves, from the outset, prior to any routing or design decision, or the commencement of the ESA-related studies. They stated that the Stoney Nakoda Nations Consultation Office would like to see an increase in consultation and accommodation efforts by industry proponents like NGTL to better include the traditional ecological knowledge and expert information of the Stoney Nakoda Nations.

*So my father, before he passed, he was able to participate with Shell in a cultural awareness session. And so we were able to deliver the awareness to the proponent, to the contractors, to all the subcontractors, and the key to success, Mr. Chairman, is notification of the project. In Shell's case we were notified two years ahead of time. So that allowed us to put together plans that allowed us together -- to work together with the company on workplans, on looking at providing insight on traditional areas, traditional land use studies. It allowed us to do cultural assessment. It allowed us to mitigate any type of significant sites that were involved.*  
Elder John Snow, Stoney Nakoda Nations, Transcript Volume 6 [2775]

In their written evidence, Whitefish (Goodfish) Lake First Nation #128 indicated that prior to the Application being filed, they had not been consulted about potential impacts of the Project on their traditional land use practices nor on the impacts of the Project to their Indigenous and Treaty rights. They indicated that as a result, the reliability of NGTL's assessment and its conclusions regarding Project impacts on Whitefish (Goodfish) Lake First Nation #128 are questionable.

In its Indigenous communities Project-related Issue Summaries, NGTL noted that Gunn Métis Local 55, Siksika Nation, and Sunchild First Nation, requested or recommended further engagement with NGTL.

## **7.4.2 Monitoring by Indigenous Peoples**

### **7.4.2.1 Monitoring during Project construction and operation**

Many Indigenous communities expressed that Indigenous peoples should be involved in monitoring activities related to Project construction and post-construction activities.

Alexis Nakota Sioux Nation indicated that they are seeking opportunities to collaborate or to apply their stewardship practices, including monitoring for the Project. They requested a community-specific monitoring program consisting of a small group who would be present during construction and operation to mark important areas, ensure activities are carried out respectfully on the land, and assist the workers in monitoring water crossings or special areas. Alexis Nakota Sioux Nation noted that their members indicated that monitoring would be important to ensure that maintenance of areas along the Project did not include spraying, and that reclamation activities took into account the native flora and fauna as well as any necessary cultural protocols prior to replanting.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation stated that it is imperative that Indigenous community members are meaningfully involved in environmental and cultural monitoring during construction as well as post-construction. They indicated that while NGTL stated that all environmental inspections during Project

construction would be performed by NGTL staff, there is no mention of environmental inspections occurring by Indigenous monitors. They stated that it is important for Indigenous monitors to be included in environmental inspections and ongoing monitoring throughout the Project phases to ensure that there is third-party oversight over Project activities; that Indigenous knowledge is being considered during everyday Project activities; and that impacts to Indigenous values are minimized. Driftpile Cree Nation requested that they also be directly involved in the regulation of the Project, including involvement in Project planning.

*But what we're asking is to be part, to be real partners, to be real partnerships being forged through this process. So we have a dual responsibility when it comes to monitoring, making sure the stewardship is protected within the lines, making sure there's a dual process from a First Nation process as well. Our methodology has been ignored for generations.*

Karl Giroux, Driftpile Cree Nation, Transcript Volume 8 [3562]

*We want to retain the right to be the stewards of our lands. We need involvement in monitoring. [...] I believe proper engagement is acknowledging the needs of our community, to be able to re-engage with our lands. We would like -- we have a need for proper management, environmental stewardship, cultural heritage monitors in this area during the construction as well as throughout the life of the Project. There is no way that we should not be a part of this Project in the way of a continued involvement.*

Ira Provost, Piikani Nation, Transcript Volume 5 [2462]

*[...] we'd like to be involved with any design measures to protect the environment, whatever the Proponent might be working on to try and have protection areas or protection plans for the area. In saying that, maybe if they're planning to have any areas regarding species at risk, we'd like to be also involved with that, Saddle Lake Cree Nation.*

Frank Cardinal, Saddle Lake Cree Nation, Transcript Volume 7 [3289]

Ermineskin Cree Nation stated that their members are interested in participating as environmental monitors during the construction phase. They indicated that NGTL should consult with them and prioritize the hiring of Ermineskin Cree Nation members for construction-phase monitoring activities.

Horse Lake First Nation requested that they be involved in Project reclamation monitoring. They noted in their written evidence that one of their members stated: "...*We should have our people out there right through the whole job*".

Samson Cree Nation expressed concern regarding potential Project impacts on grizzly bears, and that they wanted to be involved in monitoring and reporting grizzly bear observations during Project operations. They indicated that they wanted to be involved in post-construction monitoring and adaptive management program for effective revegetation of disturbed riparian areas. Samson Cree Nation indicated that contamination, perceived or otherwise, may alienate their land users, and suggested that there be culturally appropriate programs or Indigenous monitoring programs to enhance confidence in berries, medicines, and other harvest resources along or in the vicinity of the ROW.

*One of the things that we had talked about and have heard about is the ability to be able to monitor and looking at those -- those monitoring roles from an Indigenous perspective. But one of the things that we're seeing is that monitoring without action is just not enough. We need to be able to enhance the roles of Indigenous peoples in monitoring pipeline construction, operations, decommissioning, those types of things. And then also being able to*

*look at how those things are enforced, how is compliance being able to move forward.*  
Kyra Northwest, Samson Cree Nation, Transcript Volume 4 [1694]

Bears paw First Nation, Chiniki First Nation, and Wesley First Nation indicated that they be involved in continual Project monitoring and evaluation. They also indicated that their members requested to be included in reclamation planning and monitoring.

In its Indigenous communities Project-related Issue Summaries, NGTL indicated that Alexander First Nation requested to be included in short- and long-term monitoring and maintenance programs, including monitoring at all watercourse crossings. NGTL also indicated that Kelly Lake Cree Nation requested that NGTL have environmental and Indigenous monitors from the Kelly Lake Cree Nation community onsite during the construction phase to identify important plants and to ensure that they are not damaged or destroyed by workers; ensure that traditional resources, like animals and plants (and their habitats) are protected; and help ensure that negative impacts from the Project are minimized, thereby minimizing cumulative impacts to the region.

NRCan provided comments on the Commission's draft potential conditions for the Project. NRCan recommended that the conditions on construction and post-construction monitoring plans for Indigenous peoples include a requirement for NGTL to explain how the results from engagement with Indigenous peoples were incorporated into its plans.

#### **7.4.2.2 Indigenous Advisory Monitoring Committee**

Bears paw First Nation, Blood Tribe, Chiniki First Nation, Drift pile Cree Nation, Horse Lake First Nation, O'Chiese First Nation, Piikani Nation, Saddle Lake Cree Nation, and Wesley First Nation recommended or supported the idea that the NEB create an Indigenous Advisory and Monitoring Committee (IAMC).

Bears paw First Nation, Chiniki First Nation, and Wesley First Nation indicated that an IAMC be created to provide oversight on all NEB conditions, similar to the IAMCs established for the Trans Mountain Expansion Project and the Enbridge Line 3 Project. They stated that an IAMC is necessary to help make the balance of power more equitable between NGTL and Indigenous Nations.

Drift pile Cree Nation and Saddle Lake Cree Nation stated that they agree that an IAMC is required for the Project. Both Drift pile Cree Nation and Saddle Lake Cree Nation indicated that they wanted representation on this committee. O'Chiese First Nation also supported the request that an IAMC be established.

Blood Tribe recommended that an IAMC be created to provide oversight in the monitoring of the NGTL system to ensure an appropriate forum exists for Indigenous communities to identify concerns or opportunities and assist in monitoring activities. They indicated that a dedicated monitoring and advisory committee with Indigenous representation would help to increase transparency around NGTL's operations, and that such an IAMC would help to make the balance of power more equitable between TransCanada and Indigenous communities, relative to TransCanada's current monitoring programs. Blood Tribe indicated that an IAMC could help to streamline the environmental assessment process for future NGTL expansion projects (e.g., NGTL's Edson Mainline Expansion and North Corridor Expansion Project), and that NGTL could work closely with the IAMC to mitigate impacts to Indigenous lands and notify communities of any abnormalities or issues in the performance of the system. Blood Tribe indicated that an IAMC would require the training of their members to be meaningfully involved in the monitoring of NGTL

projects, and that this approach would ensure that Blood Tribe rights and interests are being considered in all NGTL activities and that significant cultural and ecological sites near the 2021 NGTL System Expansion Project and other NGTL projects are protected.

Horse Lake First Nation and Piikani Nation both indicated that an IAMC should be established for the NGTL System, and that they be involved. Horse Lake First Nation indicated that an IAMC would maintain a mechanism to track all of the monitoring commitments made to the Indigenous communities during post-construction monitoring. Piikani Nation indicated that an IAMC would provide oversight in the monitoring of the NGTL system.

Similar to an IAMC, both Ermineskin Cree Nation and Whitefish (Goodfish) Lake First Nation #128 indicated the importance for impacted Indigenous communities to provide overarching advisory functions to NGTL while the pipeline is constructed, as well as to coordinate better governance of the Project as a whole, and recommended that NGTL be required to fund the formation of an Indigenous Advisory Board for the Project. Both Nations stated that the role of the Indigenous Advisory Board would be to provide ongoing advice on the development of plans to satisfy conditions and to provide support regarding Indigenous monitoring for both construction and operation of the Project.

In response to information requests by Indigenous communities, NRCan stated that the Crown views Indigenous participation in monitoring as an important contribution to addressing the potential impacts of the Project on section 35 Indigenous and Treaty rights. NRCan indicated that IAMCs are not a regulatory body and do not regulate pipeline activities, rather they provide opportunities for a collaboration amongst federal government departments and federal regulators to work with impacted Indigenous communities to understand, explore and address shared interests related to the projects. NRCan indicated that IAMCs have enabled Indigenous monitors to participate with regulators in various compliance verification activities, and that the Crown's experiences on the Trans Mountain Expansion Pipeline and the Enbridge Line 3 Pipeline IAMCs have demonstrated that IAMCs are an effective means of integrating Indigenous knowledge and building capacity through the construction and operation phases of a project.

#### **7.4.2.3 Indigenous Working Group on Caribou Habitat Restoration, Offsets and Monitoring**

Several Indigenous Intervenor recommended that NGTL establish an Indigenous Working Group regarding the Caribou Habitat Restoration and Offset Measurement Plan. This is discussed in Chapter 8.

#### **7.4.3 Heritage Resources**

Many Indigenous communities raised concerns regarding potential effects of the Project on heritage resources, including archaeological, historical, and / or cultural resources.

Alexis Nakota Sioux Nation members identified concerns regarding potential effects of the Project on areas of sacred value, including ceremonial areas, grave sites, meat racks, prayer trees, old campsites, potential archaeological finds.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation expressed concerns regarding NGTL's archaeological assessment methodology, recommending the inclusion of Indigenous traditional use sites; assessing the

potential for Project-related impacts to heritage resources; and consultation / notification commitments regarding archaeological discoveries. These communities, as well as Horse Lake First Nation, expressed concerns regarding the lack of involvement of Indigenous communities in the Project's archaeological studies. They requested involvement of Indigenous monitors in any outstanding archaeological work for the Project.

Samson Cree Nation indicated that they were concerned about potential Project-related impacts to heritage resources. They recommended a *Culture and Heritage Resource Management Plan* that would include financial contributions to Samson Cree Nation and other Indigenous communities; Indigenous community-specific cultural protocols regarding human remains; increased Indigenous engagement, oversight, decision making, and commitments; and the use of Indigenous monitors.

In its Indigenous communities Project-related Issue Summaries, NGTL noted that some Indigenous communities identified concerns regarding heritage sites. Alexander First Nation expressed concerns about potential effects of the Project on camps, cabins, burial, spiritual and ceremonial sites, trails and ancestral / archaeological sites, including unrecorded sites being disturbed during clearing and construction. Mountain Métis Nation Association (Grande Cache Métis Local 1994) made several recommendations regarding unanticipated discoveries during construction of the Project. Paul First Nation identified concerns regarding potential Project effects on gathering sites and a historic cabin.

In their Letter of Comment, Asini Wachi Nehiyawak Traditional Band indicated concerns regarding NGTL's engagement with them related to heritage resource matters.

#### **7.4.4 Social and Cultural Well-being**

Some Indigenous communities identified concerns regarding the potential Project impacts on social and cultural well-being.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation indicated concerns regarding NGTL's lack of information on work camps. They stated that knowing the status of work camps is critical given their potential to trigger adverse socio-economic effects related to community health and well-being (e.g., pressures on harvesting; social dynamics related to vulnerable groups; drugs and alcohol, etc.). These communities stated that decisions regarding work camps need to be decided prior to Project approval and need to be communicated to Indigenous communities whose members use and access the lands intersecting the Project's ROW and access roads. These communities recommended that socio-economic or socio-cultural effects that may occur as a result of work camp activities and personnel be monitored.

Ermineskin Cree Nation recommended that NGTL inform its Project contractors and workers that the Project is on Treaty lands and to be respectful of the First Nations who exercise their Treaty and constitutionally protected right to use the land in the Project area for subsistence purposes.

O'Chiese First Nation indicated that the methods used by NGTL when assessing potential Project effects on social and community well-being did not consider specific Indigenous elements or unique O'Chiese First Nation values, including their connection to lands, cultural and ceremonial activities, cultural attachment to land, language teaching, knowledge transmission and emotional loss related to diminishing exercise of rights.

Samson Cree Nation indicated that NGTL's application made no references to community safety with respect to the 120 person construction camp at Nordegg, especially in relation to gender based violence. Samson Cree Nation stated that Indigenous communities, particularly women and children, are the most vulnerable and at risk of experiencing the negative effects of construction camps. Samson Cree Nation stated that NGTL should develop, in consultation with Samson Cree Nation and other Indigenous communities, programs and services that address issues of community safety.

When providing Indigenous knowledge, Driftpile Cree Nation, O'Chiese First Nation, and Samson Cree Nation raised concerns regarding potential increases in traffic, and Samson Cree Nation recommended that NGTL file a traffic control management plan prior to commencing construction.

*[...] with this pipeline going through, it's going to bring more traffic. It's going to bring more people. It's going to destroy the land even more, which takes a long time to come back.*  
Terrance Strawberry, O'Chiese First Nation, Transcript Volume 3 [1082]

In its Indigenous communities Project-related Issue Summaries, NGTL noted that Gunn Métis Local 55 recommended that NGTL provide Project employees with cultural sensitivity training and multiple land use rights within Project areas.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation expressed concerns that the social and cultural well-being valued component was not carried forward for the cumulative effects assessment. These Indigenous communities stated that NGTL's assessment reflects the lack of understanding and consequent omission of consideration of the devastating effects other natural resource development has had on Indigenous communities' ability to harvest and in turn, way of life and community well-being. These Indigenous communities indicated that an assessment of how the Project would either alleviate or contribute to the existing cumulative effects being experienced in the regional study area is needed, in particular, for Indigenous populations who use the lands and water surrounding the Project area. They also indicated that such an assessment should also identify the links of these biophysical impacts on Indigenous cultural and community well-being, and sustainability.

#### **7.4.5 Human Health**

During their sharing of oral Indigenous knowledge, members from Alexis Nakota Sioux Nation, Bearspaw First Nation, Blood Tribe, Chiniki First Nation, Driftpile Cree Nation, O'Chiese First Nation, Saddle Lake Cree Nation, Samson Cree Nation, and Wesley First Nation all noted concerns regarding human health.

*But my grandfather, my great-grandfather, and they always said that, you know, "Don't pick anything anywhere near a fence line, property line. You see any kind of development, you stay away. It's not safe." So they already knew back then. And we still practice that. We listen to that.*

Bridget Bull, Alexis Nakota Sioux Nation, Transcript Volume 4 [1953]

*Long time ago, when I was young, I will say when I was about 15 years old, we used to go and hunt. Meat was good. Now our meats got to be tested because of all this contaminated water and all these seeds they're eating.*

Elder Robert Steinhauer, Saddle Lake Cree Nation, Transcript Volume 7 [3180]

Driftpile Cree Nation identified Project-related concerns regarding potential contamination of spring water. Ermineskin Cree Nation indicated having concerns regarding the potential impacts of the Project and other NGTL pipelines in the area on their health. Horse Lake First Nation indicated that their members report an increase in health concerns as a result of industrial development in their territory, and stated that there is concern that the Project could contribute to already increasing human health issues. Samson Cree Nation indicated concerns about fishing, with respect to fear of contamination and safety of consumption.

O'Chiese First Nation noted that their members have expressed concerns relating to their health. They stated that increased development activity poses a higher risk for contamination such as from vegetation management tactics like herbicide spraying. They also indicated that their members are concerned that once water becomes contaminated, it has the potential to contaminate the whole ecosystem.

*[...] a lot of them made camps near wetlands and near waters, the rivers, streams, lakes, because the water was clean and pure, and there was no issue of contamination to the water at all.*

Elder Joanne Gladeau, translating for John Strawberry, O'Chiese First Nation, Transcript Volume 3 [763]

In its Indigenous engagement log, NGTL stated that Louis Bull Tribe expressed concern about their community having safe drinking water.

In its Letter of Comment, Health Canada suggested that NGTL provide additional information regarding shallow drinking water wells and the safety of country foods with respect to natural gas spills.

#### **7.4.6 Capacity Funding, Economic Benefits, Employment and Training**

Indigenous communities raised concerns regarding capacity funding, economic benefits, and employment.

##### **7.4.6.1 Capacity Funding**

Some Indigenous communities raised the issue of capacity funding and community investment initiatives. Blood Tribe, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation indicated that NGTL should commit to providing them with capacity funding to be involved in a variety of archaeological work; to undertake, or at a minimum, to participate in, pre-construction wildlife surveying and mitigation measures outlined in the Project's ESA; and to be able to react to abnormal operational events.

Alexis Nakota Sioux Nation and Ermineskin Cree Nation requested additional funding for their members to conduct harvesting activities prior to construction and Horse Lake First Nation raised the issue of having capacity funding to harvest diamond willow fungus prior to construction. Horse Lake First Nation stated that the capacity funding for doing a traditional knowledge study was utilized for the purpose of collecting baseline information, and that as a mitigation measure, it is unrealistic and inappropriate for community members to harvest during the traditional knowledge study field assessment.



O'Chiese First Nation indicated that they would like there to be stable and ongoing Project-specific capacity funding.

In its Indigenous communities Project-related Issue Summaries, NGTL noted that Gunn Métis Local 55 requested that NGTL provide support for seasonal harvesting camps to promote awareness among youth about traditional harvesting and environmental stewardship.

#### **7.4.6.2 Economic Benefits and Compensation**

Both Ermineskin Cree Nation and Whitefish (Goodfish) Lake First Nation #128 stated that Indigenous communities should receive economic benefits from the Project. Blood Tribe and Piikani Nation stated that where impacts cannot be avoided or mitigated, they must be substantially addressed through mutually agreed upon accommodation measures such as financial and economic benefits. Blood Tribe, Piikani Nation, and Saddle Lake Cree Nation indicated that they have had no commitments from NGTL for any tangible benefits from the Project, and that NGTL has not clearly outlined or formally agreed to providing any specific benefits to offset the impact of the Project on their rights. Blood Tribe and Piikani Nation stated that natural gas expansion / export would generate significant economic growth; but that they have not been provided the opportunity to share equitably in economic benefits related to natural gas extraction and transport across Blackfoot Traditional Territory. They stated that other parties including TC Energy, Canadian Natural Resources Ltd, Chevron Canada Ltd, Shell Canada Ltd, PETRONAS, the Government of Canada, the Government of Alberta and the Government of British Columbia would significantly benefit from commercial agreements and tax revenue associated with natural gas expansion / export, but that no such arrangements to secure economic benefits exist for Blood Tribe or Piikani Nation.

*And we're not fortunate to benefit from these big pipelines and stuff that are going up. That's the reality of where we live. We don't benefit from them. Because right now, we're getting cut back on our education, we're getting cut back on our health.*

Elder Pat Provost, Piikani Nation, Transcript Volume 5 [2405]

Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, and Wesley First Nation expressed concern about bearing the impacts of the Project without being compensated, recommending there be compensation for impacts that cannot be fully mitigated. Alexis Nakota Sioux Nation and Horse Lake First Nation raised the idea of impact benefit agreements. A similar concern was raised by Saddle Lake Cree Nation when providing Indigenous knowledge.

*Maybe education should be part of it. You know, some of those dollars that the resources make should go into First Nation education so we could educate the outside.*

Elder Roderick Alexis, Alexis Nakota Sioux Nation, Transcript Volume 4 [2117]

*[...] they're going to be just transporting the product, but, you know, if there was a -- if there was some type of royalty or equity ownership or something of the pipeline that could be offered to the First Nations, so we could benefit for the life of the pipeline itself, that would be something we could look at, in the spirit of where we had sharing with the treaties.*

Frank Cardinal, Saddle Lake Cree Nation, Transcript Volume 7 [3295]

Driftpile Cree Nation and Métis Nation of Alberta Region 3 also raised the idea of impact benefit agreements. Driftpile Cree Nation indicated that extractive resource industries continue to remove valuable resources from their Treaty lands and traditional territory and sell them nationally and

internationally, often with no social or economic benefits for their community. Métis Nation of Alberta Region 3 stated that they have been in discussions with NGTL for years to develop an agreement (such as an impact benefit agreement or a relationship agreement) that would include their citizens in the overall benefits of the Project.

*And we're never compensated for any disruptions as trappers, hunters, or gatherers, and, you know, I would like to see more revenue sharing, because, you know, in our culture, when we take something from the land, we give something back. And it has to be both ways. You've taken -- the gas pipelines have taken so much of our land away from us, and it's only for your profit. We don't get nothing back, no revenue sharing, and that's not the way of -- that's not our way as First Nation people. You have to give something back, because you're disrupting the land and Mother Earth. And like I said, you know, and as First Nation's people, we are the protectors of her.*

Elder Ross Giroux Sr., Driftpile Cree Nation, Transcript Volume 8 [3436]

### **7.4.6.3 Employment and Training**

This section pertains specifically to employment and economic benefit issues and concerns raised by Indigenous peoples. See Chapter 9 for issues and concerns raised by non-Indigenous peoples.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation indicated that Indigenous guardians should be provided with funding and industry-standard job training to assist qualified environmental inspectors or professional biologists with the other wildlife mitigation and monitoring measures, specifically those outlined in the ESA (e.g., amphibian breeding field surveys, exclusion fence installation and salvage surveys, surveying construction sites for bird nests and non-intrusive monitoring, etc.).

Ermineskin Cree Nation recommended that NGTL and its subcontractors prioritize the hiring of their community members and businesses for Project activities.

In its Indigenous communities Project-related issue summaries and Indigenous engagement logs, NGTL noted that many Indigenous communities raised concerns regarding employment. Alexander First Nation requested that NGTL provide their members with long-term employment, including involving Alexander First Nation environmental technicians during all Project phases (especially clearing and construction). Duncan's First Nation indicated concerns that First Nations businesses are not being considered and the most impacted Nations should receive opportunities. Gunn Métis Local 55 requested that NGTL provide them with Project-specific contract, employment, training and planning opportunities prior to Project construction, including training and employment for Gunn Métis Local 55 environmental monitors. Kelly Lake Cree Nation expressed concerns that their businesses were not being considered for the NGTL Project. Kelly Lake Métis Settlement Society requested opportunities to become more involved in the Project, including during construction. Mountain Métis Nation Association (Grande Cache Métis Local 1994) requested that they be advised of any potential employment or contracting opportunities arising from the Project's approval and that NGTL strive to hire from the local community. Sturgeon Lake Cree Nation requested that NGTL provide them with procurement opportunities associated with the Project.

## 7.4.7 Traditional Land and Resource Use

### 7.4.7.1 Assessment Methodology

A number of Indigenous Intervenors raised concerns about NGTL's methods of assessing potential impacts to traditional land and resource use (TLRU).

Blood Tribe and Piikani Nation indicated that NGTL has not collected primary data relating to their TLRU and cultural heritage resources in the Project area, instead relying on generalized information from literature reviews. Blood Tribe and Piikani Nation indicated that NGTL's approach does not provide reliable baseline information on their TLRU or cultural heritage specific to the Project, making it impossible to adequately assess the potential effects of the Project on their Indigenous and Treaty rights, and in turn, address these impacts.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation raised concerns with how NGTL assessed Project impacts on TLRU. They indicated that grouping habitation, spiritual, and cultural sites into one TLRU category (rather than as individual values) does not effectively assess the potential Project impacts to each TLRU activity or occupation that this category represents. They indicated that there is a concern that the mitigations for this category only refer to historic resources, and that this assumption that habitation, cultural sites, and spiritual sites are historic does not recognize that Indigenous communities use a much larger area (e.g., anywhere from the whole of Métis Region 3 to the whole of Alberta), including the Project site, for current and present-day habitation, occupation, travel, and for cultural and spiritual purposes. These communities indicated that there is a lack of information on how NGTL would ensure that specific traditional knowledge information from their communities would be considered in the Project design and the effects assessment process, including plans for mitigation, management, monitoring, and accommodation.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation raised concerns with how NGTL assessed Project impacts on social and cultural effects on Indigenous communities in the Project area. These Indigenous communities indicated that NGTL's assessment did not provide an integrated cross-analysis between TLRU and social and community well-being. These Indigenous communities indicated that as such, most social, cultural and / or economic effects pertaining to Indigenous peoples have been either dismissed or minimized, and that it is imperative that a regulatory-mandated process is implemented to capture such effects through analyzing the results of Indigenous communities' own traditional knowledge and land use impact studies. Similarly, Blood Tribe and Piikani Nation stated that the impacts of the Project to their traditional land use, cultural heritage and socio-economic well-being should be considered in the context of the cumulative impacts resulting from their historic displacement from their traditional lands and the ongoing effects of pipeline development, mining and other industrial activities in their traditional territories.

*We learn from the teachings of the ones that walked before us, and then we can make decisions that affect future generations, many generations, so we don't just make decisions that will benefit us today. We have to take into consideration the unborn of our people.*  
Elder Wilton Good Striker, Blood Tribe, Transcript Volume 2 [540]

Blood Tribe, Ermineskin Cree Nation, Piikani Nation, and Whitefish (Goodfish) Lake First Nation #128 requested that NGTL adapt the methodology co-developed by Canadian Environmental Assessment Agency and the Mikisew Cree First Nation for the Frontier Oil Sands Mine Project

environmental assessment, or a methodology of similar scope and rigour, for evaluating the potential impacts of the Project on Treaty rights.

Both O'Chiese First Nation and Whitefish (Goodfish) Lake First Nation #128 identified concerns with NGTL's TLRU assessment methods regarding the use of biophysical elements. O'Chiese First Nation expressed concern with NGTL's reliance of TLRU (as a valued component) on biophysical proxies. Whitefish (Goodfish) Lake First Nation #128 indicated that NGTL's ESA, particularly its TLRU section, focused on the Project's potential impacts on biophysical and site-specific valued components, and that this approach reduces culture, values and customs of Indigenous peoples to points on a map and ignores the cultural and social context of each community and its unique land use practices. Whitefish (Goodfish) Lake First Nation #128 further indicated that as such, NGTL's ESA failed to describe how its Project would relate to the existing socio-cultural context of Indigenous peoples in the foothills, and that this approach may have downplayed the importance to Indigenous peoples of the land and traditional resources in the Project footprint and surrounding areas.

Whitefish (Goodfish) Lake First Nation #128 also indicated that NGTL did not consult with them prior to submission of the Application and the ESA, to collect baseline traditional knowledge information from their community. Whitefish (Goodfish) Lake First Nation #128 stated that the paucity of Project-specific traditional land use information in NGTL's assessment and potential questions about the appropriateness of mitigation measures puts in question the validity of NGTL's conclusions about the significance of Project effects to traditional land use.

Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, O'Chiese First Nation and Wesley First Nation indicated that they were not consulted by NGTL on the selection of the valued components in the Project ESA. They indicated that the valued components selected by NGTL did not reflect components that could be used to clearly identify potential impact of the Project to how they exercise their section 35 rights.

Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation noted that the Stoney Nakoda Nations Consultation Office indicated that they would like better inclusion and more serious consideration of their traditional ecological knowledge, expert information, and their land and resource use experiences. They indicated that such information could be a key resource for companies like NGTL in ensuring mitigation and remediation work is completed accurately and in such a way that is not only a benefit to the environment, but also to the continued exercise of their section 35 rights.

#### **7.4.7.2 Access**

Many Indigenous communities expressed concern regarding potential Project impacts on access. Alexis Nakota Sioux Nation expressed concern that if the Project is approved, it would impact their ability to access lands available for the exercise of their section 35 rights. They indicated that their community members also raised concerns with industrial development opening up land and creating the ability for the general public to access lands that were once not as easily accessed, indicating that in the past this has allowed hunters to enter prime habitat for moose, deer and elk, causing a decline in these populations. Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, and Piikani Nation indicated that access / travel routes are important aspects of land use and occupancy, and that any change to travel routes may have impacts to how and where lands and waters can be used for harvesting by Indigenous communities. Ermineskin Cree Nation noted that when carrying out their 2018 reconnaissance visit, radios were required to call into almost

every road along the pipeline ROW, and observed instances of cattle ranching and horses on the pipeline ROW that rendered the areas inaccessible.

Horse Lake First Nation indicated that while development may provide greater ease of access to certain areas and species, a resulting concern is that more non- members can also gain access to these preferred areas, affecting the quality of the land (e.g., increased noise, vandalism, garbage). Saddle Lake Cree Nation indicated concern regarding potential Project impacts to their access to ceremonial lands and traditionally used plant species. Samson Cree Nation indicated that a disruption to access to natural resources can affect cultural continuity. Whitefish (Goodfish) Lake First Nation #128 indicated that one of their main concerns about the Dismal Creek Section of the Project include the loss of access to hunting areas during Project construction.

O'Chiese First Nation indicated that their Elders and members expressed frustration with the increase in physical barriers (fences, signs, gates etc.) in their traditional areas.

*I have every right as a hunter, as a community member, and as a Treaty person, to access those areas that we have been able to access with our parents and grandparents. And we still have that right today.*

Elder Joanne Gladeau, translating for Sammy Beaverbones, O'Chiese First Nation, Transcript Volume 3 [848]

In its Indigenous communities Project-related issue summaries and summary of engagement activities, NGTL noted that Alexander First Nation, Gunn Métis Local 55, Kelly Lake Cree Nation, and Sunchild First Nation identified access to TLRU sites and activities as a concern. Alexander First Nation identified that the Project may result in limited access to nearby harvesting sites, and in increased access to non-Indigenous hunters. Gunn Métis Local 55 recommended that NGTL develop access management plans and communicate construction scheduling to avoid fall hunting season. Kelly Lake Cree Nation members identified concerns regarding potential effects to access, including maintaining access to the area for Kelly Lake Cree Nation members to practice traditional activities. Sunchild First Nation identified concerns regarding potential effects of the Project on wildlife related to increased access for recreational and game hunters.

#### **7.4.7.3 Potential Project-related Effects**

Many concerns were raised by Indigenous communities about the Project's potential impacts on their use of lands, waters, and resources for cultural and traditional purposes, including traditional hunting and trapping, fishing, plant gathering / harvesting, and ceremonial practices.

Alexis Nakota Sioux Nation indicated that their members expressed concerns regarding their ability to exercise stewardship on the lands in their traditional territory, stating that there would be a decrease of available lands for the exercise of section 35 rights. They indicated that members expressed concerns for the loss of, and their hindered ability to access sacred areas. They indicated that members already avoid or prefer to avoid a large amount of lands for ceremonies, cultural events, and sacred sites in the Project study areas due to the amount of infrastructure and industrial development present, and that their cultural avoidance behaviours would be exacerbated if the Project is approved.

*We don't hunt or do ceremonies or want to have any kind of sacred sites near pipelines or generation plants, power plants, you know, oil and gas mining lease sites, anywhere where's there's flaring. We wouldn't pick any medicines or do any sort of gatherings near, like, maybe a kilometre, or maybe even many kilometres away from anything like that, or private land, or*

*farm land. So with the increasing development, it's really hard to find any pristine non-wasteland areas where we can practise our culture, and be ourselves, and transfer knowledge to other generations.*

Bridget Bull, Alexis Nakota Sioux Nation, Transcript Volume 4 [1910, 1911]

Alexis Nakota Sioux Nation stated that their members are not currently able to steward caribou and caribou habitat in the way that they would prefer, which has a corresponding impact on being able to continue their cultural practices and activities. They stated that losing access to culturally significant species, or losing knowledge about them, can demonstrate a more drastic loss of language and culture. Alexis Nakota Sioux Nation indicated the importance of harvesting and community camps for the transmission of knowledge, skills, and culture. One member described their community camps as a way to ensure the passing on of knowledge of harvesting and preparing traditional foods. Another member noted that community camps teach youth how to survive by living off the land, how to hunt, where to gather, and how to trap.

*With less and less land to practise our identity or learn language, learn culture -- because as we're out in the land we're picking medicines and berries and whatnot, we're also learning the culture, so it's also a sensory environment, whereas a lot of people go to school. They'll learn in a library or will be sitting in a room and will learn in a lecture. For us, our learning, our history, our identity, our culture is tied to the grass, you know, being outside, being able to smell and pick and find medicines.*

Bridget Bull, Alexis Nakota Sioux Nation, Transcript Volume 4 [1880]

Alexis Nakota Sioux Nation indicated that they had to travel farther for hunting, that land was not available, and that animals have moved away because of disturbances such as clearing, construction, and noise. They indicated that if approved, the Project would decrease their preferred conditions for hunting resulting in an increase in their hunting avoidance behaviours in the local and regional study areas where the majority of lands are already avoided by Alexis Nakota Sioux Nation for the exercise of their section 35 rights. They also indicated that access to sufficient quantity and quality of water to support their traditional fishing is important to them. They expressed concern that pipeline water crossings may cause changes to water quantity and quality, impacting fishing for community members.

*[...] how do we put fish back into the creeks, into the streams, into the lakes that are out there, because some of those lakes are dead, really, you know.*

Elder Roderick Alexis, Alexis Nakota Sioux Nation, Transcript Volume 4 [1890]

Alexis Nakota Sioux Nation indicated that gathering (berries, medicinal plants, trees, fungi) is a common practice among their members. They indicated that some medicines are difficult to find, and that it is important to have the knowledge passed on from elder generations in order to be able to find particular medicine and fungi. They indicated that prior to construction, all medicines should be harvested by the community members, and documented. They also indicated that Project construction work should be done mostly in the winter, which would allow for less ground disturbance, hopefully protecting the low, wet areas such as muskeg, and would enable important plants to remain protected.

*[...] there is a big concern which is a concern in many projects is that we never get to do any harvesting before construction. So yeah, they did the study. They went through there, but there is a lot of medicine so are we going to be allowed to return to that area if it's not rerouted? Are we going to be allowed to harvest before everything is destroyed or contaminated? And that was one of the big concerns a lot of community members and elders*

*had to express.*

Bridget Bull, Alexis Nakota Sioux Nation, Transcript Volume 4 [2055]

Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation identified concerns regarding potential effects to traditional land and resource use, including Project effects on quality and quantity of species harvested; and Project impacts to ceremonial, cultural and sacred sites without appropriate accommodation to those impacts. They indicated that the interconnected nature between the environment and Stoney Nakoda Nations section 35 rights, culture, and well-being, should be more effectively explored by NGTL in its Application. They indicated that without the ability to access lands (including family territories and camp spots) to exercise section 35 rights, and without the ability to harvest animals, plants, berries, fish, trees, rocks and minerals, their cultural practices and activities would be impacted.

Similar to Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation indicated that the Project would result in a decrease in available lands for the exercise of section 35 rights, and that such decrease has had an adverse effect on harvesting, including fishing and gathering. They indicated that gathering sites are frequently damaged and that there is less wild game available in areas where their members can exercise their section 35 rights. They indicated that the Project would conflict with Stoney Nakoda Nations' preferred conditions for hunting and gathering, which would result in an increase in their hunting and gathering avoidance behaviours.

*[...] we don't really want to walk along these pipelines, proposed pipelines because the vintage is spoiled for picking huckleberries and blueberries. Invasive species start to come in and turn and choke, along with the insects and starts feeding on -- we call them fruit flies. It kills the berries. And this is what we've noticed already anyway.*

Elder Lenny Wesley, Stoney Nakoda Nations, Transcript Volume 6 [2907]

Bearspaw First Nation, Chiniki First Nation, Wesley First Nation recommended that a Crown Land Offset Measures Plan, similar to a condition imposed by the NEB in the Manitoba-Minnesota Transmission Line Project, be required to offset or compensate for the loss of Crown lands available for traditional uses by Indigenous peoples. Alexis Nakota Sioux Nation also recommended that a Crown Land Offset Measures Plan be required.

Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation indicated that that there is a relationship between the amount of land available and the ability to transmit culture, and that the ability of Stoney Nakoda Nations to transmit culture would be negatively impacted by the Project. They indicated that it is important to be on the land in order to share knowledge, history and skills related to their culture, and that with the limited available lands surrounding the Project, they can no longer simply go elsewhere for ceremonies and cultural events or for sacred sites. They indicated that they are of the view that their ceremonies, cultural events, and sacred sites are linked to a specific location and specific physical attributes. They indicated that once such sites are disturbed, the ceremony, stories, history, cultural activity, etc. associated with those sites often cannot be replicated in a new location.

*[...] when other cultures come here and they lose their language or culture, they have the ability to return to the mother country and obtain that culture back or that language. When we lose it here, it's gone forever. So as we teach, as we learn, we're looking to share what we know. We're looking to share the opportunities. We're looking to share our culture.*

Elder John Snow, Stoney Nakoda Nations, Transcript Volume 6 [2787]

*[...] if you look at some of our landmarks, it's not easily moved or transferable. So one of the mountains we have that's sacred to us [...] Eyamnuska cannot be moved. We cannot pick another place to have vision quest. We cannot take down -- if you're in the dominant society, you can take down a church, and you can put up a high rise, and they don't care where the church goes. Our culture is not transportable, not transferrable. That is the difference.*  
Elder John Snow, Stoney Nakoda Nation, Transcript Volume 6 [2788, 2789]

Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation also identified the importance of having ceremonies and indicated that there are cultural protocols that need to be observed.

*I was approached, and this was in 2008, 2009, by the then Superintendent Kevin Van Tighem in Banff. And at that time, we were commemorating our 125-year expulsion from Banff, and he came in reconciliation manner and he said, "What can we do?" So in order to initiate that program, that reconciliation, to initiate the return of the Stoney to the Banff Park, we had a ceremony. We began humbly with a pipe ceremony that was followed by other ceremonies, sweat lodge, and also feasts. So this is the protocol, the validation of accepting work, accepting relationship with other entities, whether that's Banff National Park, or a proponent dealing with a pipeline. We try and work with all and we try and understand how we are able to help one another. And that's one of the teachings of our people, is working in harmony.*  
Elder John Snow, Stoney Nakoda Nation, Transcript Volume 6 [2784, 2785]

*[...] if you disturb a plant, if you go replant it, well, it's not going to work because you're not following proper protocols. Every plant has a protocol to follow to harvest, to replant. Even the rocks, every one of them has a protocol to follow. And that's through our pipe ceremonies.*  
Barry Wesley, Stoney Nakoda Nation, Transcript Volume 6 [2623]

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation indicated that Indigenous communities have expressed concern over the potential loss of traditionally used plants species, as well as alteration of access to these resources. They stated that traditionally harvested plant species need to be included in restoration plans, where possible. Driftpile Cree Nation identified concerns regarding potential Project-related impacts to family camping areas, and moose, elk, grizzly bear and habitat in and around the Project ROW, including potential impacts to species at risk in the area. Saddle Lake Cree Nation also indicated concerns regarding potential impacts of the Project as several of their hunting, fishing, and gathering areas are in close proximity to, or intersect with, the Project's ROW.

When providing oral Indigenous knowledge, TLRU concerns were raised several times by Driftpile Cree Nation and Saddle Lake Cree Nation members.

*Now, in the last five years, I am losing my traditional hunting area. Same as berry picking and traditional herbs. And now, lately, I've been thinking where can I go where they don't follow me. That land is getting abused. It's just like rush hour in the bush with so many vehicles, and it -- all that activity chases our animals away from us.*  
Elder Peter Okemow, Driftpile Cree Nation, Transcript Volume 8 [3468]

*And some of this pipeline is certainly going to go through some of our medicinal plant areas and that's what concerns me the most. Because I know I -- we do -- as First Nations People, we do need those medicines and they have to be pure and undisturbed.*  
Elder Ross Giroux Sr., Driftpile Cree Nation, Transcript Volume 8 [3432]



*There's so many things underlying that we need to really look and preserve and do our utmost as human beings for the future, because we got to look at seven generations ahead. What are they going to have?*

Cameron Delver, Saddle Lake Cree Nation, Transcript Volume 7 [3168]

Saddle Lake Cree Nation also indicated concerns regarding potential impacts of the Project as many of their ceremonial sites are located close to the Project's ROW, and that there is potential for impact from construction noise to these sites which may cause a change to the experience of those who use these sites for traditional and cultural purposes.

*And we talk about the disruption on this line pertaining the plants, the roots, the animals, the fliers, the water, the air, all of these elements that we use within our tradition and our culture. I myself as a Sun Dance carrier, everything that's mentioned, everything that's used, and everything that's taken down on this pertaining line is everything I use within my ceremonies. That's how crucial these things are. You heard my colleague talk about a horse dance, a sun dance, a chicken dance, a ghost dance, a round dance, a powwow, a skinny man ceremony, all of these. Everything that grows, lives, and breathes on Mother Earth, we use within these ceremonies. That's why we're here. These things are crucial to our people.*

Cameron Delver, Saddle Lake Cree Nation, Transcript Volume 7 [3165 to 3167]

Ermineskin Cree Nation stated that their members depend on the area that is proposed to be affected by the development of the Project for the exercise of Treaty rights, and that their concern is that the Project would render areas that they depend upon inaccessible or unsuitable for the exercise of Treaty rights. They identified concerns that potential Project impacts could reduce the availability of big game, including moose and elk hunting and breeding grounds; bird harvesting and nesting areas; fishing; subsistence water; and berries and medicines available to Ermineskin harvesters, in particular sweet pine which was found in considerable quantities in certain areas of the Project ROW; and also fungus. They also indicated that other specific concerns include increased traffic from Project construction; increased habitat fragmentation / loss of viable space to hunt; and increased pressure on hunters from industrial and recreational users. Ermineskin Cree Nation stated that their identity is deeply tied to their cultural practices and activities. They stated that fishing, language, stories, songs, and storytelling have been an integral part of Ermineskin culture for a period beyond counting, and that the protection of these cultural practices and activities and the lands on which they occur are of paramount concern. Ermineskin Cree Nation indicated having concerns regarding the proposed disturbance of cultural sites which may impact traditional uses and the transmission of culture and ceremony to future generations.

Horse Lake First Nation indicated concerns regarding potential effects of the Project on hunting, fishing, and trapping. They also indicated that if approved, the Project would increase Horse Lake First Nation's avoidance behaviors in both the local and regional study areas. They indicated that the Project is located in an area where there is already a lot of land avoided or not preferred by their members for the exercise of their section 35 rights. Horse Lake First Nation also indicated concerns regarding potential effects of the Project on vegetation and plant gathering, including herbs, medicines, trees, shrubs, plants, lichen, moss, and fungi. They stated that their harvesters have concerns about impacts to quality of harvesting areas, and impacts to animals relied upon for the exercise of rights. They indicated that the Project would affect a number of game trails and traplines, and create a significant disturbance that would affect the movements and harvesting abilities of their members in the Project area, and would change the quality of the area for hunting, gathering, and harvesting purposes. Horse Lake First Nation also indicated that they have concerns about the future availability of resources on their traditional lands for future generations.

*There's certain berries once disturbed, that we have patches of berries along that route. Once they're disturbed, they never grow back. There's a lot of berries out there that do come back, and actually, with -- but there's certain medicine berries that they -- once they're ruined, taken out of those areas, they never grow back in those areas.*

Casey Horseman, Horse Lake First Nation, Transcript Volume 1 [54]

O'Chiese First Nation indicated that their members were concerned that the Project would result in further physical damage to the land, vegetation, water, and animals (including the Little Smoky caribou herd), such that it would prevent or further interfere with their required means for harvesting, including hunting, fishing and gathering. They indicated that there are difficulties in hunting in certain areas due to locked gates and disturbances such as cut blocks, and having to drive farther. O'Chiese First Nation stated that harvesting is a central component of everyday life for their members and indicated that finding plants such as willows, sage, sweetgrass and berries is more difficult than it used to be. O'Chiese First Nation indicated that fishing is not the same anymore because of contaminated water, and that there is a decline in the quality and quantity of harvested resources.

*A lot of places we used to go hunt, we can't go no more because there's a locked gate there because there's a pipeline going through, right through there or some kind of something happening there. [...] We used to learn from them [animals], but now they're not around no more and our hunters have to go drive for a few, three, four hours before they can run into any kind of game. And before it was just go outside and 10 minutes later, you got yourself a good moose.*

Elder Leslie Yellowface, O'Chiese First Nation, Transcript Volume 3 [780, 786]

*So she talked about years ago, the people and the women included were very free to set up camps, dry meat, do things out there and build fires to dry the meat, set up camps. They were able to do all of that years ago, she said. Today now we're very restricted. Even to build a campfire today, you need a permit. Because of the impacts, the negative impacts it has on us, we are not able to utilize our way of life, exercise the ceremonies and our way of life because of the restrictions and the restrictions to the land itself, and also being able to continue what we were given as Native people to live off the land from.*

Elder Joanne Gladeau, translating for Elder Josephine Thomas Bremner, O'Chiese First Nation, Transcript Volume 3 [980]

*And one thing I want to mention about that pipeline, the proposed pipeline, is that once that ground is disturbed, they won't be able to go pick those berries, pick those medicines, because even though you guys put it all back, it might come back, but from what I hear they don't come back as strong, or if they even come back. I spent a big majority of my life on the drilling side, pipeline, oil field, service rigs, and I seen the outcome of all that, and the damage it does to the earth.*

Terrance Strawberry, O'Chiese First Nation, Transcript Volume 3 [1076]

O'Chiese First Nation indicated that the Project would interfere and negatively impact their abilities to carry out ceremonial, sacred, and cultural activities, which are required to maintain their cultural identity. O'Chiese First Nation indicated frustration with the decrease in available land for ceremony and cultural activities; and indicated that sacred sites must be kept peaceful and that sacred sites and camping sites are kept clean. O'Chiese First Nation stated that attending or participating in ceremonial, sacred and cultural activities is essential to the exercise of Inherent and Treaty rights related to culture. O'Chiese First Nation indicated that development, including the Project, would impact the transmission and continuation of language. They indicated that being

able to share in knowledge, and cultural protocols inter-generationally is an important component of being an Elder, that Elders teach younger generations how to live off the land by sharing the knowledge they learned from their parents and grandparents, and that the land is a vital component of sharing knowledge.

*[...] he's talking about the importance of keeping our lands for our children, the future of the children and maintaining, and protecting, and preserving the Treaty rights, their inherent right to continue the lifestyle that we have taught, and we've been taught through our Elders, to continue that way of life for our children.*

Elder Joanne Gladeau, translating for Elder Mike Daychief, O'Chiese First Nation, Transcript Volume 3 [1059]

*And White ways, you know, they have their church. They build a church, it's there for life. But us guys, we build a church once a year, like, you know, a ceremony. That's our church. That's how we live. And that, we respect that, you know, what Elders do from generation, generation, what they teach us how to live. And that should be still respected. And we still continue that and we're still teaching our kids, you know, how to up ahead, you know, what to -- their language and their culture, a way of life, and hunting the way of life.*

Elder Ron Desjarlais, O'Chiese First Nation, Transcript Volume 3 [872]

Samson Cree Nation stated that they are deeply concerned that their ability to meaningfully exercise their explicit right to hunt and trap would be impaired and justifiably infringed should the Project proceed without proper mitigation and accommodations. They indicated concerns about the potential Project effects on plants and medicines that they rely on for food and health, and that in particular, members identified raspberries, Saskatoon berries, goose berries, cedar, and sweet pine being at risk, as well as berries, roots, and medicines more broadly. In response to potential Project effects, Samson Cree Nation members described how plant and medicine resources are already in decline, including abundance and quality.

*We were hunting for berries last year. We were hunting for sweetgrass. We had nothing last year.*

Elder Josephine Buffalo, Samson Cree Nation, Transcript Volume 3 [1345]

Samson Cree Nation also indicated that the Project study area is of cultural importance to their members. Samson Cree Nation indicated that their cultural persistence relies, in large part, on the ability and opportunity of members to transmit cultural knowledge and values to future generations. They stated that for the Samson Cree Nation community, being on the land and engaging in fishing, hunting, trapping, camping, and travel, and other cultural land uses, are essential components of knowledge transmission. They also indicated that oral histories are often tied to specific places; and that the disruption of natural resources relied on by the community, and access to those resources, can affect Samson Cree Nation knowledge transfer and cultural continuity.

*In First Nations' country, traditional ecological knowledge is very important to us because we live it and we practice it. And we recognize our sisters and brothers plants and animals to be part of our relations, and living in harmony with our environment around us. And it is through this Indigenous knowledge systems that are carried by our revered Elders that it is carried in the teachings that pass through to our younger generations.*

Elder Leo Bruno, Samson Cree Nation, Transcript Volume 3 [1314]

*[...] the preservation and protection of sacred sites. These sites are our church, our history, and our culture. These sites tie closely to our identity as Indigenous peoples. And we see how the non-Indigenous protect what they consider historical sites. And yet they bulldoze over our history or often fence us out of our own sacred sites. Therefore, we ask for the preservation and protection of these specific sacred sites.*

Katherine Swampy, Samson Cree Nation, Transcript Volume 4 [1722]

Samson Cree Nation also indicated the importance of ceremony and protocol prior to making changes to their environment.

*For us, in all aspects, before we initiate any projects, before we initiate anything that will affect our environment, that will affect our sisters and brothers, plants and animals, that will especially affect our -- the future of our people, of our children, we practise protocol, we practise ceremony and protocol.*

Elder Leo Bruno, Samson Cree Nation, Transcript Volume 3 [1311]

When providing Indigenous knowledge, Tsuut'ina Nation remarked on culture and ceremonial practices and indicated the importance of preserving their language and transmitting knowledge:

*When we took out our elders and our pipe holders, they were trying to do ceremony. And unfortunately, there's not enough places for solitude.*

Violet Meguinis, Tsuut'ina Nation, Transcript Volume 4 [2214]

*We need to know where we come from. We need to know. And that's something that everyone has, all of you have that. And I think that's something that really is worrisome in terms of the oral history and the culture. If we do not have those ties to that -- to the teachings of that land, that's going to impact us in our -- how we identify ourselves. It's going to impact ourselves, how we see ourselves. It's going to impact the health and the wellbeing of our people. And right now, when you have that disconnect, that's exactly what's happening. We have a lot of youth who don't know who they are. They don't have the pride in their warrior spirit. They don't have the pride of the language. They don't have the pride of the values and the beliefs that we had that came from those ties to that land.*

Violet Meguinis, Tsuut'ina Nation, Transcript Volume 4 [2196, 2197]

Whitefish (Goodfish) Lake First Nation #128 stated that they are concerned that the Project would render areas they depend upon inaccessible or unsuitable for the exercise of Treaty rights. They indicated that the Project is likely to affect their hunting in the Colt, Robb, Dismal Creek, and Brewster sections, due to impacts resulting from Project construction, and the Project's contribution to cumulative effects. They also indicated that the Project may potentially disrupt traditional camping and fishing activities in the Dismal Creek Section, due to construction and increased human presence in the area. Whitefish (Goodfish) Lake First Nation #128 identified loss of intergenerational teaching and gathering places in the Dismal Creek Section as a potential effect of the Project, and that this could entail disruptions to knowledge transfer between generations. They stated that they are deeply tied to their cultural practices and activities that have endured for generations, including fishing, language, stories, songs, storytelling, and the protection of these cultural practices.

In its Indigenous communities Project-related issue summaries and summary of engagement activities, NGTL noted that several Indigenous communities expressed concerns regarding potential impacts on TLRU, including culture. Alexander First Nation indicated concerns regarding potential effects of the Project on hunting and trapping; fishing, including direct disturbance and

destruction of fish resources; and on plant gathering. Aseniwuche Winewak Nation expressed concerns with potential effects on vegetation, including disturbed soils growing different vegetation relative to undisturbed soils which support diverse grazing and foraging vegetative species; and invasive, noxious and prohibited plants becoming a threat to native species. Duncan's First Nation identified concerns regarding potential effects to wildlife and wildlife habitat and the ability to hunt, indicating that during the clearing and construction phases of the pipeline, wildlife would tend to shift away from the construction and would do so for a period following construction impacting Duncan's First Nation's ability to successfully hunt in the area for a period of time. Duncan's First Nation also indicated concerns regarding potential effects to the ability to fish, including the Wapiti River, and potential effects to vegetation and plant gathering, including high value cultural plants located on the margins of wetlands that are harvested by their members.

East Prairie Métis Settlement Society indicated concerns about loss of traditional hunting areas and disruption of hunting, and potential effects on plant harvesting, including loss of medicinal plants and berries, and identified loss of cultural identify as a concern related to potential effects of the Project on wildlife, wildlife habitat, hunting, and plant harvesting. Gunn Métis Local 55 identified concerns regarding potential effects on hunting due to Project construction, loss of access, and noise and disruptions to adjacent habitat. They also identified concerns regarding potential effects on fishing, including the impact of Project construction on traditional fish resources within Swartz Creek and McLeod River. Kelly Lake Cree Nation identified concerns regarding potential effects to TLRU, including potential for culturally sensitive sites to be identified, and the preservation and protection of cultural heritage. They indicated that their members are concerned that the Project would lead to further decreases in wildlife and wildlife habitat in the region, impacting their ability to hunt, fish and trap in the area in the future, and making teaching young people about their cultural heritage more difficult. They also indicated concerns regarding potential impacts to the culturally important food and medicine plants that grow in the area. Kelly Lake Métis Settlement Society indicated concerns regarding the potential effect on game trails and on vegetation, including medicines such as Tamarack, muskeg tea, red willow, and fungus. Louis Bull Tribe indicated a concern regarding medicinal plants in the Project area.

Métis Nation of Alberta Region 6 indicated concerns regarding the potential effects on fishing and on vegetation, including removal of old growth forest, loss of medicinal plants, and associated habitat. Mountain Métis Nation Association (Grande Cache Métis Local 1994) indicated concerns regarding potential effects on vegetation, including potential impacts of construction to traditional medicines within the Project footprint and wetland areas, and potential loss of seed bed for medicinal plants due to improper soil salvage. They requested that NGTL grant permission for local Indigenous communities to harvest tamarack trees, prior to construction. Sturgeon Lake Cree Nation identified concerns regarding potential effects on trapping areas, and on vegetation, including traditional, medicinal, and ceremonial plants. Sunchild First Nation identified concerns regarding potential effects of Project on trapping, and on vegetation, including herbicides on traditional medicinal plants and herbs, and decreased availability of herbal medicines. Tsuut'ina Nation indicated concerns regarding potential effects on medicinal plants and vegetation, including sacred medicinal plants.

In their Application to Participate, Nekannet Cree Nation stated that the Project has the potential to impact their cultural well-being by way of impacts to the lands, waters and cultural values within their traditional territory.

#### 7.4.7.4 Potential Project-related Cumulative Effects

Many Indigenous communities identified concerns regarding potential cumulative effects on traditional land and resource use.

Alexis Nakota Sioux Nation indicated that their members are stewards of the lands and resources within their territory, but that this stewardship is becoming increasingly more difficult due to development activities occurring there, and the lack of control or influence that Alexis Nakota Sioux Nation members have over these activities. They indicated that their members already avoid or prefer to avoid the majority of lands for hunting and for ceremonies, cultural events, and sacred sites in the Project footprint and the local and regional study areas due to the amount of infrastructure and industrial development.

Blood Tribe and Piikani Nation stated that NGTL did not adequately assess or characterize cumulative effects related to the Project. Similarly, Driftpile Cree Nation stated being concerned that NGTL has not appropriately considered or assessed the cumulative effects. Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation indicated that there is ongoing cumulative effects that they continue to experience from natural resource development in their territories such as oil, gas, logging, forestry, transmission and other industrial activities. These Indigenous communities also expressed concerns regarding the Project's cumulative impact on the Little Smoky Caribou Range.

*Development and growth of this province continues to overwhelm our right to be who we are, which is supposed to be protected under the Constitution of Canada. Pre and prior consent, where do we fit in? Aboriginal and Treaty rights are to be protected. The sacred sites that we talk about, tipi rings, medicine wheels, are all Blackfoot. We can define our boundaries that were set for us over time by finding those stone features that are left for us. Farming operations, municipalities, highways, hamlets, have all adversely impacted what is left.*  
Mike Oka, Blood Tribe, Transcript Volume 2 [612, 613]

*And what we've seen over time is a degradation to the land and development over the years with oil and gas projects. And I want to encourage that the Panel understand how important it is for our people to reconnect with the land.*  
Ira Provost, Piikani Nation, Transcript Volume 5 [2372]

*[...] nowadays, when I go hunting in Hinton, around that area, Grande Prairie, Fox Creek, even at Sundre here, there's hardly any game there. They disappeared. I don't know if they died or what happened. [...] A long time ago we can go any time, any place, to go and fish. We can't even go and around our area to go and fish. I have to travel an hour and a half to go to that one good lake to go and fish.*  
Elder Robert Steinhauer, Saddle Lake Cree Nation, Transcript Volume 7 [3181, 3183]

Driftpile Cree Nation indicated that extractive resource industries have left them with environmental degradation and damages, which in turn have had negative socio-cultural impacts, and that their community suffers the consequences of these industries within their own Treaty lands. They indicated that their citizens are having to travel farther to exercise their Indigenous and Treaty rights due to cumulative impacts experienced from other industrial development that has happened within their ancestral lands.

*[...] our camp already has been destroyed by forestry. That was our traditional camp, and what we said when they start tying them ribbons around them trees? Oh, oh, there goes our*

*land. Now, we got to pick another campsite where we have all the water, and all the traditional -- and the berries. We like to camp where that stuff is there where we can -- maybe we could walk across the road, and pick berries. Now, it's getting harder to find these camps.*  
Elder Peter Okemow, Driftpile Cree Nation, Transcript Volume 8 [3474]

Métis Nation of Alberta Region 3 indicated that with the continued increase in Alberta's population and ongoing developments, especially near urban centers, many Métis are being excluded from areas where they once practiced traditional activities. They indicated that the Project is a continuation of this trend and acts cumulatively with all the other human activities in the region to prevent Métis citizens from exercising their rights. They indicated that it is important in the development and planning of this Project for NGTL to recognize this issue and take steps to mitigate and accommodate the Métis of Region 3.

Ermineskin Cree Nation stated that due to the intensity of industry development in and around their reserves, their members have been forced to exercise their Indigenous and Treaty rights elsewhere in their traditional lands, including the Project area. They indicated that the areas in and around the proposed Project have been intensively developed by the oil and gas industry, which does not include the significant disturbances caused by forestry and coal mining in the more southern portions of the foothills, and that their members have recently found themselves travelling as far as High Level to find more pristine and intact environments and more plentiful big game.

Horse Lake First Nation stated that concerns were raised that the Project would contribute to the cumulative and longer-term effects of their resources. They indicated that several projects and developments in the Project area could impact their ability to use the area, including harvesting, camping, and for ceremonies; that their members travel farther and farther way from their community in search of herbs and medicines; and that there are direct and indirect cumulative effects of industrial development on wildlife and fish.

*One of the biggest problems we have with any project is that we don't have enough knowledge about the impacts, the cumulative impacts to the land, to the water, to the animals. Nobody really knows what's going on, you know? That is a really big concern to me and to our people in Horse Lake because you know, we have all these people, so-called scientists doing studies on certain things, but nobody really knows the long-terms effects.*  
Casey Horseman, Horse Lake First Nation, Transcript Volume 1 [84]

O'Chiese First Nation indicated that they have noticed an increase in the amount of development within their homeland, noting there are not many places left that are free from development. They indicated being frustrated with how increased activity and development on the land have affected access to the areas they once were able to use; that there were no animals close to the reserve land anymore; how they have lost their traplines; and that they now have difficulty accessing areas to hunt, trap, fish, gather, practice ceremonies, or visit sacred sites.

*So when there's situations like a wake, or somebody passes away, a feast, they need that raw meat. They need the meat for the feast, so it's kind of -- it's really disappointing and heartbreaking when we go out for days on days looking for wild game and we can't find nothing because everything's scared off from the pipelines, from the drilling, from the forestry, all of that.*  
Terrance Strawberry, O'Chiese First Nation, Transcript Volume 3 [1087]

Samson Cree Nation indicated that pipeline construction and land clearing from forestry and other developments have led to the loss of animal habitat and habitat fragmentation, and that members

have observed a lack of wildlife in and around clear cut areas. They indicated that these changes have collectively reduced the amount of space and opportunities available for members to practice their culture, and consequently, opportunities for the transmission of knowledge central to Samson Cree Nation identities and cultural persistence. They indicated that it is important to recognize their knowledge and use values in and around their territory, which includes the Project footprint and the local and regional study areas. They also indicated that their territory has been and is already subject to numerous cumulative effects with ongoing impacts, and that the ability of members to maintain and engage in their traditional activities and culture is vulnerable to further disturbance.

*Just the amount of industry that's out there, you know, it is concerning. It sends out alarm bells for me because of the amount of clearcutting, the erosion of the land. Our waterways are slowly disappearing. And even a lot of the reforestation that they're doing, it takes them years to even get that going. So it's driving the big game closer to rural areas because there is a big difference between rural wildlife and mountain wildlife, because of all the pesticides and stuff like that that are being used. So the big game is getting harder and harder to find that's all clean and natural.*

Byron Soosay, Samson Cree Nation, Transcript Volume 3 [1372]

*This whole map that you see there between Canada and the United States with, it's criss-crossed with pipelines. Everything's been disturbed. The wildlife don't know where to go. They have nobody to speak to. They have nobody to speak for them. So we are speaking for them.*

Beverly Crier, Samson Cree Nation, Transcript Volume 3 [1453]

Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation indicated concerns regarding potential cumulative impacts, and the contribution of other NGTL projects in the same area. They indicated that there is a potential for other projects to interact with the Project and cause a cumulative effect on the landscape in Stoney Nakoda Nations' traditional territory. They indicated that their members noted that other development on Crown lands has resulted in the loss of traditional family territories and camps, and expressed their concern and sadness because of the adverse effect it may have on their culture and the ability for Elders and knowledge keepers to pass down traditions and Stoney Nakoda Nations culture to future generations. They indicated that NGTL did not conduct an assessment to determine the contribution to cumulative effects on impacts to section 35 rights, and that such an assessment should be conducted before any Project approval.

*You know, with the contracting such as clearing, the pipeline boundaries or pipeline lines, and forestry lumber companies, they're really taking our -- it gives us a big impact with our hunting.*

Elder John Wesley, Stoney Nakoda Nations, Transcript Volume 6 [2947]

Whitefish (Goodfish) Lake First Nation #128 indicated concern that the Project would contribute to / exacerbate cumulative effects of industrial activity in the traditional land use local study area on wildlife, vegetation and the landscape due to additional linear footprint, noise, and human presence, and would reduce opportunities for their members to successfully hunt elk and moose during construction and possibly during operations. They stated that their territory is already highly disturbed by industry and infrastructure and that due to the intensity of industrial development in and around their reserves, their members have been forced to exercise their Indigenous and Treaty rights elsewhere in their traditional lands, including the Project area.

In its Indigenous communities Project-related issue summaries and summary of engagement activities, NGTL noted that various Indigenous communities raised concerns regarding cumulative effects on TLRU. Aseniwuche Winewak Nation indicated concern regarding potential cumulative



effects, including effects on their traditional land use and contemporary occupancy. Duncan's First Nation identified concerns regarding potential cumulative effects, including high likelihood that the pipeline would give rise to and shape further natural gas gathering systems, well drilling, pipeline tie-ins, access roads and facilities such as dehydration facilities which would intensify development within the Wapiti – Smoky Fan which would adversely and further impact an area actively used by their members. East Prairie Métis Settlement indicated concerns regarding potential cumulative effects, including loss of medicinal plants and herbs, and disruption to hunting. Kelly Lake Cree Nation identified concerns about adding to the cumulative impacts of development activities in the region, including diminished quality and quantity of resources in the territory; and impact to their Indigenous rights to access and use the lands and resources in their territory. Louis Bull Tribe indicated concerns that with all the industrial development in and near their community, members must travel further within their traditional territory to hunt. Métis Nation of Alberta Region 6 identified concerns regarding potential cumulative effects, including ongoing disruption of ungulate habitat. Sunchild First Nation indicated concerns regarding potential cumulative effects including existing oil and gas activity along the route. Tsuut'ina Nation identified concerns regarding cumulative impacts, including increasing travel distances required to harvest resources (plants and animals) and access spiritual areas. They indicated that overdevelopment of urban areas and the vast tracts of cultivated lands have continually compressed members further into the Eastern Slopes. They also indicated that their members have noticed changes in the landscape and have to travel much further to access clean, untouched plants and animals as well as areas for spiritual practice.

#### **7.4.8 Section 35(1), Constitution Act, 1982**

##### **7.4.8.1 Potential impacts of the Project on Indigenous and Treaty rights**

The following Indigenous communities identified that they hold and exercise Indigenous and Treaty rights in the Project area and raised concerns that the Project could impact their ability to exercise their rights: Alexis Nakota Sioux Nation, Bearspaw First Nation, Blood Tribe, Chiniki First Nation, Driftpile Cree Nation, Duncan's First Nation, Ermineskin Cree Nation, Horse Lake First Nation, Louis Bull Tribe, Métis Nation of Alberta Region 3, Nekaneet Cree Nation, O'Chiese First Nation, Piikani Nation, Saddle Lake Cree Nation, Samson Cree Nation, Wesley First Nation, and Whitefish (Goodfish) Lake First Nation #128.

Alexis Nakota Sioux Nation stated that they are a signatory to Treaty No. 6, and further stated that the terms of Treaty No. 6 include the right to hunt, trap, and fish throughout the Treaty No. 6 lands. They stated that their Elders and members consider Treaty No. 6 to be the foundation of a relationship between Indigenous and non-Indigenous peoples that is based on sharing land and resources and protecting their culture and livelihood. Alexis Nakota Sioux Nation stated that they consider the oral promises made by the Treaty Commissioners to be sacred, and the words spoken are important to their people today.

Alexis Nakota Sioux Nation stated that their understanding of the Treaty included the following:

- Alexis Nakota Sioux Nation members have the right to be out on the land, to hunt, trap, fish and practice the way of life fully, regardless of where or when they were born, where they live or how they were raised;
- Alexis Nakota Sioux Nation rights were established at signing of Treaty and they do not erode or become less over time. They are meant to last forever;

- Alexis Nakota Sioux Nation rights are held collectively. It is not acceptable for government or industry to remove the ability of any Alexis Nakota Sioux Nation member or family to practice harvesting and way of life in their preferred and culturally known places which puts strain on community relationships; and
- Alexis Nakota Sioux Nation rights depend on certain conditions being present, including their members being able to maintain relationships with lands and waters, including hunting, fishing, trapping, gathering plants, teaching and practicing the Alexis Nakota Sioux Nation way of life, free from outside interference, and with confidence.

Bears paw First Nation, Chiniki First Nation, and Wesley First Nation stated that they are signatories to Treaty No. 7. They stated that they hold rights under Treaty No. 7, the *National Resources Transfer Act, 1930*, and maintain unextinguished Aboriginal Title as recognized and affirmed under section 35 of the *Constitution Act, 1982*, collectively referred to as section 35 rights. They also stated that it is uncontroverted that they hold and exercise section 35 rights in the Project area. They stated that their members have the right to exercise their section 35 rights on all available lands.

Both Blood Tribe and Piikani Nation stated that they are signatories to Treaty No. 7. They stated that Treaty No. 7 provides rights to carry out activities incidental to the exercise of hunting, fishing, and trapping rights, including, but not limited to:

- rights to unrestricted access to preferred lands and waters of a sufficient quality and quantity necessary to exercise rights within their traditional lands;
- rights to sufficient and culturally appropriate land and resources to support the exercise of rights;
- rights to participate in the management of natural resources within their traditional lands;
- rights to gather various natural resources, including plants and berries, within their traditional lands;
- rights to establish the infrastructure necessary to exercise rights, including by building trails, cabins and camps; and
- rights to maintain and access sites where Blood Tribe culture and way of life can be taught to subsequent generations.

Driftpile Cree Nation stated that they are a signatory to Treaty No. 8 and have protected and established Indigenous rights and interests under section 35 of the *Constitution Act, 1982*.

Ermineskin Cree Nation stated that they are a signatory to Treaty No. 6, and have the rights pursuant to Treaty No. 6 to hunt, fish, trap, and carry on their way of life throughout Alberta. They stated that they have rights under section 35 of the *Constitution Act, 1982*. They stated that they exercise Indigenous and Treaty rights in the Project area.

Horse Lake First Nation stated that they are a signatory to Treaty No. 8 which includes the right to hunt, trap, and fish. They stated that they also hold section 35 rights that protect their rights to hunt, trap, and fish throughout all of their traditional territory. Horse Lake First Nation stated that they exercise the following rights:

- hunting and trapping various animals, including big game;
- carrying on a traditional way of life by maintaining their preferred use sites;
- carrying out a variety of practices, traditions, and customs within their territory, which includes the Project area;
- fishing; and
- gathering and harvesting traditional and cultural herbs, medicines, and berries.

Métis Nation of Alberta Region 3 stated that their rights are classified into two categories: i) land and resource rights; and ii) self-governing rights. They stated that their rights are recognized and affirmed in section 35 of the *Constitution Act, 1982*.

O'Chiese First Nation stated that they are a signatory to Treaty No. 6. They stated that they have Indigenous and Treaty rights that are protected under section 35 of the *Constitution Act, 1982*. They stated that they believe in, and are governed by, Natural Laws which set out how they care for the land and resources that have been provided by the Creator, how they live with those who dwell alongside humans, and how they teach their future generations. They further stated that in accordance with these Natural Laws, they have the responsibility to protect and preserve the land, air, water, sun, plants, and animals.

Saddle Lake Cree Nation stated that they are a signatory to Treaty No. 6, and that they have established Indigenous and Treaty rights and interests under section 35 of the *Constitution Act, 1982*.

Samson Cree Nation stated that they have inherent and Treaty No. 6 rights within their traditional territory and include the right to self-determination as Indigenous peoples within Canada. They stated that their rights are protected by, but not limited to, Treaty No. 6, *Natural Resources Transfer Act*, and section 35 of the *Constitution Act, 1982*. Samson Cree Nation stated that their Treaty rights also include incidental rights which include activities reasonably incidental to the exercise Treaty harvesting rights, and an independent source of protection of Samson Cree Nations' right to exercise their harvesting rights as formerly.

Whitefish (Goodfish) Lake First Nation #128 stated that they are a signatory to Treaty No. 6 and that they exercise Treaty rights in the area that is proposed to be affected by the Project. They indicated that they have Treaty and Indigenous rights to hunt, fish, trap, gather, and occupy Crown lands in Alberta for traditional purposes.

Many of these communities filed documents which they indicated identified and / or evaluated how the Project may adversely impact their section 35 rights. Many also provided oral Indigenous knowledge to that effect.

*So we are no longer able to do and exercise our inherent right. To me, that speaks volume in itself. And to me, that speaks that we need to definitely look at areas that we could start to form relationships and proponents need to start forming real relationships with the First Nations that are impacted, not only the Nations that are impacted, but the Nations as a whole.*  
Karl Giroux, Driftpile Cree Nation, Transcript Volume 8 [3542]

*When the old people signed Treaty, they were told that as long as the river flows, as long as there's green grass, as long as the sun comes up and goes down that it's their Treaty rights; right? And the way I understand things, we're losing our Treaty bit by bit and that worries me because I got kids, I got grandchildren and those are the ones I fear for.*  
Diane Beaverbones, O'Chiese First Nation, Transcript Volume 3 [1019]

*As we sat here and described for the last few days, this project directly impacts us adversely against our way of life, our Treaty rights, and our inherent rights. In fact, I'm confident this project benefits everyone else except us.*  
Katherine Swampy, Samson Cree Nation, Transcript Volume 4 [1725]

Many Indigenous communities raised concerns regarding NGTL's method of assessing Project impacts to potential and established Indigenous and Treaty rights.

Alexis Nakota Sioux Nation indicated that neither NGTL's Application nor its ESA assessed how adverse impacts from the Project on the environment may adversely affect their section 35 rights, including in relation to Project impacts on the critical habitat of the Little Smoky Caribou Range. They stated that there is a need to assess impacts to Indigenous and Treaty rights from the effects of the Project, including from environmental effects. They stated that it is insufficient to assess environmental effects of the Project, and then not go on to consider how adverse impacts from the Project on the environment may adversely affect their section 35 rights. Alexis Nakota Sioux Nation stated that assessing impacts to Indigenous and Treaty rights is not limited to assessing environmental effects on the current use of lands and resources for traditional purposes or on discrete biophysical components such as wildlife. They stated that an assessment of impacts to Indigenous and Treaty rights must include consideration of experience, culture, governance, knowledge and other factors.

Horse Lake First Nation indicated that there is a general frustration by their members over their lack of control or influence concerning the approval and potential impacts of the Project. They stated that currently they do not have any legislative authority to manage land and resources necessary for the exercise of their section 35 rights. Horse Lake First Nation indicated that NGTL's ESA addresses only issues / concerns and not impacts to Treaty rights. Horse Lake First Nation indicated that they were concerned about NGTL's approach to identifying impacts to their Treaty and Indigenous rights in the application process, and about the narrow view NGTL is taking on the Project regarding the identification of and accommodation for impacts to Indigenous and Treaty rights. Horse Lake First Nation indicated that they do not have confidence that NGTL has taken every necessary step to identify and accommodate impacts to their section 35 rights resulting from the Project.

O'Chiese First Nation stated that they are extremely concerned about the additional adverse impacts that the Project would have on their ability to exercise their Indigenous and Treaty rights. They indicated that there was not any identification or assessment of potential impacts to their Indigenous and Treaty rights from the Project, including the tangible, intangible, environmental, social and cultural aspects of the exercise of these rights. O'Chiese First Nation stated that they are concerned that NGTL is treating the assessment of impacts to their Indigenous and Treaty

rights resulting from the Project as an afterthought. They indicated that there have not been any discussions with either NGTL or NRCan regarding potential accommodations.

Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation indicated that they are not of the view that NGTL has done a sufficient job in identifying and accommodating Project-impacts to their section 35 rights, and that NGTL's homogenous approach to assessing impacts to Indigenous Nations should not be sufficient for the NEB. They stated that the valued component of TLRU is only one component of section 35 rights, and that an assessment only of TLRU is not a complete or comprehensive consideration. They also stated that the sole use of biophysical proxies to determine project impacts to section 35 rights is not sufficient, and that mitigation aimed at addressing biophysical valued components and by proxy some of the resources used by Stoney Nakoda Nations is not the same as accommodation of impacts to section 35 rights. Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation stated that NGTL's TLRU assessment relating to Stoney Nakoda Nations was based off of extremely limited, insufficient information which in no way was a complete or comprehensive assessment of Stoney Nakoda Nations' rights.

Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, O'Chiese First Nation and Wesley First Nation filed, as written evidence, reports they indicated provide information about how the Project may directly and adversely impact their ability to exercise their section 35 rights, and, in the case of Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, and Wesley First Nation, provide suggestions for appropriate accommodation measures for Project-impacts to these rights.

Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, O'Chiese First Nation and Wesley First Nation indicated that they followed NGTL's Environmental Assessment methodology where possible. They indicated that as they were not consulted by NGTL on the selection of the valued components in the Project ESA, they instead determined valued components and related key indicators that may interact with the Project to represent changes to their section 35 rights. They indicated that, in keeping with the Filing Manual definition of mitigation measures, they defined accommodation measures for their reports as measures to eliminate, reduce or control identified effects to selected valued components.

Both Blood Tribe and Piikani Nation indicated that a principal concern of theirs is that NGTL has not gathered information to adequately assess the potential impacts of the Project on their traditional use of resources or on their Indigenous and Treaty rights. Both First Nations stated that this failure hinders the NEB in carrying out its statutory duty to assess the impacts of the Project, and its constitutional obligation to ensure that the duty to consult is fulfilled through its regulatory process. Piikani Nation stated that their position is that the CER must not provide its approval for the Project based on the current level of consultation and accommodation.

Ermineskin Cree Nation stated that a full assessment of the impact on their Indigenous and Treaty No. 6 rights has not been completed and expressed concern that the Project will render areas that they depend upon inaccessible or unsuitable for the exercise of Treaty rights.

Samson Cree Nation indicated that the Project suggests potentially highly significant impacts to their inherent and Treaty No. 6 rights.

Whitefish (Goodfish) Lake First Nation #128 stated that NGTL has failed to conduct a meaningful assessment of their Indigenous and Treaty rights. They indicated that NGTL's ESA does not attempt to evaluate or assess the extent to which potential Project impacts could interfere with the

exercise of their Indigenous and Treaty harvesting rights, and stewardship in relation to the ability to exercise rights and culture into the future, within their territory.

#### **7.4.8.2 Restrictions on the exercise of Indigenous and Treaty rights**

Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Ermineskin Cree Nation, Horse Lake First Nation, O'Chiese First Nation, and Wesley First Nation indicated concerns regarding a decrease in total amount of lands available for the exercise of Indigenous and Treaty rights. In their written evidence, Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, and Wesley First Nation indicated that the Project would result in a conversion of available lands (defined as unoccupied Crown lands) where section 35 rights can be exercised to unavailable lands (defined as occupied Crown lands with no right of access) for the exercise of section 35 rights. Horse Lake First Nation submitted that NGTL should be required to consult with them any time that NGTL intends to use, maintain, operate, dispose of, or otherwise act in any way with respect to Crown lands to which it holds dispositions. O'Chiese First Nation stated that the change in lands available post-Project approval would lead to a decrease in lands available for the exercise of Inherent and Treaty rights in an area where there are already minimal lands available for the exercise of O'Chiese First Nation Inherent and Treaty rights.

Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, and Wesley First Nation suggested accommodation measures regarding predicted adverse impacts of the Project resulting in an increase in their avoidance behaviours for the exercise of section 35 rights (e.g., hunting and gathering, ceremonial and cultural activities, ability to transmit culture, taking up of lands available for the exercise of Indigenous and Treaty rights, and increased legal restrictions on lands). These Indigenous communities identified various accommodations measures regarding the elimination, reduction, and control of remaining predicted adverse effects. These measures range from no Project approval; locating the Project only on existing rights of way; constructing and operating the Project as non-visible; reducing the alteration / displacement of wildlife, harvesting / harvested species, ceremonial and cultural activities, family territories and camps, and sacred sites; compensating for remaining effects; providing capacity for cultural and language camps; developing and delivering cultural awareness training for NGTL staff related to their culture, promoting preservation of ceremonial, cultural, and sacred sites; reducing the width of the Project footprint; exempting members of these Indigenous communities from legal restrictions on lands; creating or making available an equivalent amount of land so that there is no net loss of lands for the exercise of section 35 rights; and compensating for remaining effects. Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, O'Chiese First Nation, and Wesley First Nation expressed concerns about legal restrictions on lands where they exercise their section 35 rights. They indicated that if the Project is approved, NGTL would be given priority rights over Crown lands to which it holds dispositions as provided by the provincial government. They indicated that once these dispositions are awarded to NGTL, there would be a resulting change in legal restrictions on the lands, which would impact the exercise of their section 35 rights and would place their members at risk for charges under Alberta's *Petty Trespass Act*. O'Chiese First Nation and Horse Lake First Nation indicated that this loss or reduction of their priority rights to the Project areas would last during construction and operation.

*We can't get into the places that we used to hunt. They're making us travel further because they're putting up gates that don't allow us to get access where we've always travelled through.*

Casey Horseman, Horse Lake First Nation, Transcript Volume 1 [76]

*[...] -- on these pipelines, well, like as I was saying that there's no -- there's restrictions in there. We can't go in there. There's no trespassing in there. If we get in there, what do they do? They charge us for trespassing.*

Elder Alvin Young, Stoney Nakoda Nations, Transcript Volume 6 [2721]

### **7.4.8.3 Government of Canada's Consultation Process with Indigenous Peoples**

Alexis Nakota Sioux Nation stated that there was little consultation with the Crown during the hearing process, despite the demonstrated serious potential adverse impacts, particularly as they relate to caribou.

Blood Tribe, Driftpile Cree Nation, and Saddle Lake Cree stated that the Crown must consult Indigenous peoples or groups when the Crown is contemplating taking action or making a decision (such as issuing a permit or approving the proposed Project) that might have an adverse effect on a right of that group.

Driftpile Cree Nation stated that as a Nation committed to United Nations Declaration on the Rights of Indigenous Peoples; free, prior and informed consent; and reconciliation; Canada must uphold its responsibilities and obligations to consult with and accommodate First Nations. Saddle Lake Cree Nation indicated that the legal imperatives of the duty to consult and accommodate have not been adequately met, and requested further consultation with the NEB and NRCan.

O'Chiese First Nation indicated that NGTL should not be granted approval to proceed with the Project without their free, prior and informed consent. O'Chiese First Nation also stated that while they acknowledge that the Crown can fulfill its duty to consult, in whole or in part, through the regulatory process, they say that this duty has not been fulfilled in this case through the consultation to date with either NGTL or NRCan, individually or combined. O'Chiese First Nation stated that consultation is meaningless when it excludes, from the outset, any form of accommodation.

### **7.4.9 Environmental Effects**

Several Indigenous communities raised concerns regarding environmental effects. This is described in Chapter 8.

### **7.4.10 Emergency Response**

Several Indigenous communities raised concerns regarding community-specific emergency response plans. This is described in Chapter 4.

## **7.5 NGTL's Reply to Issues and Concerns**

### **7.5.1 NGTL's Engagement with Indigenous Peoples**

NGTL stated that since beginning engagement with potentially affected Indigenous communities, it has worked closely with each community to provide information about the Project, make opportunities available for the group to provide information to NGTL about potential issues and concerns, including through traditional knowledge studies, and develop mutually acceptable solutions and benefits. NGTL indicated that where engagement has occurred in addition to these Project updates, summaries of engagement activities for the Project have been routinely provided on the record, and include concerns raised during NGTL's engagement with potentially affected Indigenous communities.

NGTL stated that it worked with interested Indigenous communities to collect and incorporate traditional knowledge information into Project planning, as appropriate. In response to concerns that the ESA was filed before some Indigenous communities were able to provide input, NGTL indicated that it used the best information available at the time, not just Project-specific information provided by Indigenous communities, but also a comprehensive literature review, desktop analysis, publicly available reports, and NGTL's operating experience. NGTL indicated that it has long-term existing relationships with many Indigenous communities, which contribute to its understanding of how these communities use the land and practice their traditional activities. NGTL stated that in addition to its traditional knowledge program, NGTL would continue to document and address, where feasible, traditional knowledge information and related concerns identified by Indigenous communities during activities associated with the Project's broader Aboriginal Engagement Program.

NGTL stated that its early and proactive engagement, combined with its extensive experience implementing the environmental mitigation measures detailed in the Project EPP and ESA, help ensure that situations with the potential to affect Indigenous communities have been prevented, mitigated and / or managed by the time a project reaches the operations phase of its lifecycle. NGTL indicated that it committed to ongoing engagement throughout all phases of the Project with potentially affected Indigenous communities, and would address potential issues on a case-by-case basis, should any arise.

NGTL stated that at the time of filing the Application, its engagement with potentially affected Indigenous communities was appropriate for the scope of the Project and the stage that the Project was at. NGTL indicated that while the engagement process was not complete at the time of the Application, the Application filing is the start of the regulatory process and that Indigenous communities had many additional opportunities to provide input into the Project through direct engagement with NGTL and through the regulatory process. NGTL stated that its engagement was informed by requests made by and expressed interest from each Indigenous community.

### **7.5.2 Monitoring by Indigenous Peoples**

#### **7.5.2.1 Monitoring during Project construction and operation**

In response to concerns regarding Project monitoring by Indigenous peoples, NGTL referenced its Aboriginal Construction Participation Program (ACPP) and its Post-construction Monitoring (PCM) program.



NGTL stated that it would be developing an ACPP for the Project which would provide employment opportunities for individuals from participating Indigenous communities to “grow their skills and understanding of NGTL’s construction activities and environmental protection measures through observation and discussion of Project construction activities”. NGTL stated that part of the ACPP would include reporting back to the Indigenous community to provide Project construction updates. NGTL stated that details of the ACPP, including training and funding, would be developed closer to construction, pending approval of the Project, and would be informed by results of the biophysical field programs for the Project, engagement with Indigenous communities, engagement with federal and provincial government agencies, feedback obtained from participants during construction activities on past NGTL projects, experience gained from other pipeline projects, and industry accepted best practices and procedures.

NGTL stated that it would provide the opportunity to participate in the ACPP to all potentially affected Indigenous communities that identify interest in participating. NGTL stated that engagement with Indigenous communities is an input into developing the ACPP Plan for the Project, allowing for integration of concerns of Indigenous peoples that pertain to construction into the plan, as applicable. NGTL stated that it has successfully implemented the ACPP on previous projects since 2012, and applies lessons learned and feedback on each iteration as part of continuous improvement of the program.

NGTL stated that the Project would implement PCM activities, which include an assessment of reclamation success, including identification of any environmental issues and an assessment of the effectiveness of mitigation practices. NGTL stated that PCM activities would also identify recommended corrective actions for outstanding environmental issues. NGTL stated that the scope and nature of a project must be considered when determining the need for and / or scope of the involvement of Indigenous peoples in PCM activities. NGTL stated that its understanding of Indigenous involvement in PCM activities is that it should be fit-for-purpose, focused on addressing outstanding issues and be specific to the phase of the project most appropriate for addressing the issue. NGTL stated that a tailored program for Indigenous involvement in PCM helps ensure meaningful participation by aiming for issue resolution and alignment with communities’ specific protocols, reducing unnecessary capacity or resource constraints on Indigenous communities that could arise from blanketed or superficial involvement and avoiding increasing potential interactions that may affect or impede reclamation success. NGTL stated that it requires additional information from Indigenous communities to understand the interest in and specific issues to be addressed by involvement in PCM activities before it can determine Indigenous involvement opportunities to best address post-construction specific issues, if any. NGTL stated that it has committed to ongoing engagement throughout all phases of the Project and Indigenous communities would have an opportunity to provide feedback on post-construction through ongoing engagement with Regional Liaisons and TC Energy’s Public Awareness Program. NGTL has committed to respond to any Indigenous community’s concerns post-construction and address potential issues on a case-by-case basis.

#### **7.5.2.2 Indigenous Advisory Monitoring Committee**

NGTL stated that it disagrees with the recommendation that the CER establish an IAMC for the Project, indicating that the goal of NGTL’s Aboriginal Engagement Program for the Project is to provide Project information and seek feedback from Indigenous communities in order to anticipate, prevent, mitigate and manage situations that have the potential to affect Indigenous communities. NGTL also referred to its ACPP and PCM and stated that collectively, these plans and programs

would allow Indigenous communities to provide input into NGTL's Project plans in a manner that is consistent with the nature and scope of the Project.

NGTL stated that the CER is the primary regulator for the Project, and that establishing parallel oversight responsibilities would duplicate efforts, create regulatory uncertainty regarding monitoring obligations and condition compliance, and could frustrate the CER's ability to regulate implementation of the Project in an orderly and efficient manner. NGTL stated that IAMCs should be reserved for exceptional projects, like the Trans Mountain Expansion Project or Enbridge Line 3 Project, and that if an IAMC is required for the Project, NGTL is concerned that most CER-regulated projects would require similar conditions. NGTL stated that such conditions would create significant regulatory burden for proponents, the Regulator, and Indigenous communities that, in its view, is disproportionate to the benefits any such committee would have. NGTL also indicated that there is a lack of important details on how the IAMC would be structured, its functions, and its decision-making process.

NGTL stated that the two projects which currently have established IAMCs (Trans Mountain Expansion Project and Enbridge Line 3 Project) have terms of reference differing from each other, are approximately three times longer than the proposed Project, have more additional project components and related infrastructure, and are crude oil carrying pipelines which present materially different risks than a natural gas pipeline.

In response to the suggestion that an IAMC should be created for the entire NGTL system, NGTL stated that this is a matter that extends beyond the Commission's jurisdiction in this hearing.

### **7.5.3 Heritage Resources**

NGTL indicated that its route selection process for the Project considered and balanced several criteria when evaluating route options, including, where practical or feasible, avoiding historical, archaeological, or heritage sites; and considering input received from potentially affected landowners, stakeholders, and Indigenous communities through various engagement activities.

NGTL indicated that in Alberta, heritage resources are protected by the *Historical Resources Act* administered by Alberta Culture, Multiculturalism and Status of Women (ACMSW), and that significance determination and mitigation of Project effects are prescribed by ACMSW. NGTL stated that it would comply with any approval conditions and requirements, including mitigation, issued under the *Historical Resources Act* by ACMSW before construction and any future ground disturbance activities (e.g., integrity digs).

NGTL stated that in April 2019, it provided all Indigenous communities details of employment opportunities with NGTL's consultant for biophysical and heritage resources fieldwork to be conducted in 2019 for the Project. NGTL further stated that should further Historical Resources Impact Assessment work or additional mitigation be required, NGTL would follow guidance from ACMSW regarding the completion of this work. NGTL stated that it would determine interest and potential opportunities for the participation of Indigenous peoples, if any, following the receipt of decisions from ACMSW.

NGTL indicated that if a chance discovery of a new historic resource is encountered during construction, NGTL would implement its Cultural Resource Discovery Contingency Plan, as described in the EPP. NGTL stated that this plan applies to all NGTL personnel, their contractor(s) and subcontractors during construction of the Project and is designed to address the following unanticipated cultural resource sites: TLRU sites; heritage sites, including historic, archaeological

and paleontological resources; and human remains. NGTL indicated that its Cultural Resource Discovery Contingency Plan lays out the steps to inform decision making in the event of the discovery of an unanticipated cultural resource site during construction, regardless of site type. NGTL indicated that in the event human remains are found, it would contact the RCMP or regional police immediately (Law Enforcement). If the remains are confirmed to be human and appear to be of some antiquity (e.g., buried, aged), the Heritage Resource Specialist would provide initial notification to the Provincial ministry / agency responsible for heritage resources. NGTL indicated that as part of Cultural Resource Discovery Contingency Plan, any potentially affected Indigenous community would be informed of any unanticipated cultural resource site discoveries. NGTL indicated that Indigenous communities would then have the opportunity to help identify which community(ies) the site may belong to, and that if an unanticipated site is identified by an Indigenous community, the planned mitigation strategy would be discussed and reviewed with that community.

#### **7.5.4 Social and Cultural Well-being**

NGTL stated that the ESA provided a detailed and comprehensive assessment of the potential effects to the social and cultural well-being of Indigenous communities in the socio-economic study area. NGTL indicated that within the socio-economic study area, local hiring, and the implementation of TransCanada's Aboriginal Relations Policy would contribute additional income which may improve housing and education. NGTL noted existing corporate initiatives such as the Empower Communities Scholarships program which includes TransCanada Trades Scholarships, Aboriginal Legacy Scholarships and Community Leaders Scholarships.

NGTL stated that potential construction camp locations are chosen based on ease of access to the facility or major roads; avoidance, to the extent practical, of areas of native vegetation, wildlife habitat, or archaeological or heritage resources, or other environmentally, socially, or culturally sensitive areas; and preference for previously disturbed sites. NGTL stated that it plans to use existing open camps in combination with existing local accommodations for the purposes of pipeline construction activities, and that it continues to refine its estimate of the required personnel for the duration of pipeline construction that would further define an anticipated number of workers in existing camps or existing local accommodations. NGTL stated that an existing NGTL camp near the Nordegg Compressor Station, with a capacity of 210 people, including camp staff, is expected to be used for the Nordegg Compressor Station Unit Addition, supplemented where needed by local accommodation. NGTL stated that a camp management plan would be developed closer to the start of construction, and that the unit additions at the Didsbury and Beiseker Compressor Stations are expected to rely on local accommodation in nearby towns or cities. NGTL indicated that its ESA considered the assessment of the potential socio-economic effects from workers being accommodated at a temporary camp for the proposed Nordegg Compressor Station Unit Addition.

NGTL stated that it evaluated the potential impacts to all nearby residents, including Indigenous women and children, and provided specific mitigation to avoid and minimize any potential effects. NGTL stated that Project contractors are required to develop a construction orientation for all personnel to ensure safe and respectful conduct in all work, and that these orientations cover topics including safety, environment and cultural awareness. NGTL stated that it contributes to the development of the construction orientation and would ensure the requisite cultural sensitivity component is included so that all personnel working on the Project are informed about Indigenous culture and heritage resources. NGTL stated that Project employees and contractors would adhere to a Code of Conduct, and to TransCanada's Alcohol and Drug Policy. NGTL also stated that it

would implement a Traffic Control Management Plan. NGTL stated that it would require employees and contractors to adhere to TransCanada's Health, Safety and Environment Commitment Statement. NGTL stated that it would also require Project Contractors to have their own Site-Specific Safety Plans, where best practices and community engagement expectations are communicated to all personnel. NGTL stated that it would require Project Contractors to have their own Emergency Response Plans, and provide their own medical staff to address minor medical issues and first aid incidents.

NGTL stated a number of times during the hearing that it would provide potentially affected Indigenous communities with the proposed Project construction schedule and maps. NGTL stated that available traditional knowledge is considered and incorporated into NGTL's orientation materials, as appropriate. NGTL stated that it is willing to provide a copy of the orientation materials, upon request to potentially affected Indigenous communities, and that any feedback received by NGTL prior to construction would be considered in the finalization of the orientation.

NGTL stated that the Project is not expected to result in impacts to the intergenerational transfer of traditional knowledge, given the construction schedule (expected to be third quarter 2020 to April 2021 for the pipeline sections; and third quarter 2020 to second quarter 2021 for the compressor station unit additions), and since residual effects for TLRU indicators were predicted by NGTL to be short-term to medium-term in duration and reversible.

NGTL stated that with the implementation of the socio-economic mitigation proposed in the ESA, the planned construction schedule, and the estimated size of the workforce to be housed at the Nordegg construction camp, NGTL estimates that there would be no significant adverse socio-economic effects to nearby communities. NGTL stated that it is committed to its requirements that all personnel and contractors conduct business activities with integrity, mutual responsibility and collaboration when working with Indigenous communities. NGTL stated that it would continue engaging with Indigenous communities to identify potential issues and concerns, and if warranted, develop enhancements to the proposed socio-economic mitigation.

NGTL stated that cumulative effects are evaluated for significance using the same definition used for significance determination for residual effects, as described in its ESA. NGTL reiterated that no adverse residual effects are predicted for social and cultural well-being, and that therefore, social and cultural well-being effects were not carried forward to the cumulative effects assessment.

#### **7.5.5 Human Health**

NGTL indicated that potential changes to the health of local Indigenous populations related to changes in water quality beyond the range of guideline values, reduced air quality and increased comprehensive sound levels were assessed and that no residual effects to human health were predicted.

NGTL indicated that it considered how the Project might affect the health of those using traditional areas for hunting, trapping, fishing, berry picking and medicinal plant collection. NGTL stated that Project effects to traditionally harvested species availability and quality (wildlife, fish and plants), were addressed in the TLRU assessment under the traditional hunting, trapping, fishing and plant gathering key indicators. NGTL stated that this assessment considered the assessment of relevant biophysical valued components, including: vegetation, wetlands, fish and fish habitat and wildlife and wildlife habitat. NGTL stated that Project effects to traditional hunting, trapping, fishing and plant gathering were predicted to be not significant.

In response to concerns regarding potential Project impacts to shallow drinking water wells, NGTL stated that the Project is not anticipated to measurably affect groundwater quantity or quality, and that mitigation would protect groundwater wells. NGTL noted that in the unlikely event of a release, the sweet natural gas in the pipeline is buoyant and would rise through the soil to the atmosphere and would not be expected to impact ground water. NGTL also stated that an unignited release or rupture would quickly dissipate in the atmosphere, resulting in minimal risk to the environment or to human health in the vicinity of the release.

## **7.5.6 Capacity Funding, Economic Benefits, Employment and Training**

### **7.5.6.1 Capacity Funding**

NGTL stated that its practice, where appropriate, and depending on the scope and scale of the project, is to offer a range of project-specific capacity funding agreements to Indigenous communities for engagement activities with NGTL to better understand the potential effects of the project on Indigenous or Treaty rights and interests. NGTL stated that it provided several Indigenous communities with capacity funding to conduct a traditional knowledge study which included funding to conduct fieldwork. NGTL stated that capacity funding provides Indigenous communities with the resources to support Project-related engagement activities with NGTL, whereby the Indigenous communities provide information that informs Project planning and mitigations. NGTL also stated that it has been and would continue working with Indigenous communities to identify opportunities for capacity development to support the communities' immediate and / or long-term training needs. NGTL stated that as a matter of practice, it does not enter into impact benefit agreements and does not assign a monetary value to Indigenous and Treaty rights.

In response to Indigenous communities' request for funding to harvest medicinal and traditional plants prior to Project construction, NGTL stated that Indigenous communities would be given the opportunity to harvest medicinal and traditional plants before the commencement of construction if they did not already do so during the fieldwork for their traditional knowledge study. However, additional funding would not be provided by NGTL specific to this opportunity.

### **7.5.6.2 Economic Benefits**

NGTL stated that it works directly with Indigenous communities through community investment, education and training, and project-related employment and contracting, to promote and enhance long-term benefits for Indigenous communities. NGTL stated that it has been contributing to community investment initiatives with local Indigenous communities in the Project area and would continue to identify opportunities for community investment in the region, in the areas of safety, community and environment. NGTL stated that it also supports individual community members in achieving their education goals through TransCanada's Community Scholarships Program, stating that the Program delivers over 500 scholarships to students across North America, including 100 Indigenous Legacy Scholarships specifically for Indigenous students.

As noted in Section 7.5.2 of this chapter, NGTL stated that it would be developing an ACPP for the Project which would provide employment opportunities for individuals from participating Indigenous communities to grow their skills and understanding of NGTL's construction activities and environmental protection measures. NGTL stated that individuals employed in the ACPP would receive compensation for their employment which would include on the job training.

NGTL stated that projects contribute economic benefits to local communities through employing qualified Indigenous businesses and individuals that are affiliated with Indigenous communities. NGTL stated that it has an Aboriginal Contracting and Employment Program to maximize employment and contracting opportunities for the local Indigenous communities potentially affected by the Project.

### **7.5.6.3 Employment and Training**

NGTL stated that it is committed to supporting local Indigenous communities by providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL stated that it continues to work with Indigenous communities to identify employment opportunities during the pre-construction, construction, and post-construction phases of the Project, and any associated training requirements. NGTL stated that it would encourage the participation of Indigenous workers and businesses on the Project by implementing TransCanada's Aboriginal Contracting and Employment Program.

NGTL stated that it, and its prime contractors would work with the community or organization (through their human resource coordinators, local economic development, and education officers) to support the completion of the training requirements identified through this collaborative effort. NGTL indicated that for this Project its Prime Contractor would submit an Aboriginal Participation Plan to NGTL that outlines the processes that it would follow to facilitate productive opportunities for qualified and competitive Indigenous businesses and people on the Project. NGTL stated that the plan would align with NGTL's Aboriginal Contracting and Employment Program. NGTL stated that based on this collaboration, it would develop and maintain a list of contracting opportunities that are within the capacity of Indigenous and local contractors in the area. NGTL stated that it would work with communities to identify businesses and individuals who have interest in Project-related contracting and employment opportunities. NGTL stated that based on this information, it would prepare an Aboriginal and Local Participation Plan for the Project. NGTL stated that this plan would include the processes used to make contracting and employment opportunities available to Indigenous and local contractors.

NGTL stated that it implements many measures that enhance the opportunity for local and Indigenous communities to participate in the Project: for example, it includes requirements in contracts with prime contractors to hire qualified and competitive, local, Indigenous contractors and employees. NGTL stated that prime contractors are required to report regularly on their performance relating to local and Indigenous contracting and employment. NGTL stated that it actively monitors the implementation by prime contractors of its subcontracting, employment, and training commitments.

NGTL stated that it is willing to meet with any Indigenous community expressing an interest in potential contracting, employment, and training opportunities with NGTL to discuss its contracting process and to develop an understanding of the Indigenous community's capacities.

## **7.5.7 Traditional Land and Resource Use**

### **7.5.7.1 Assessment Methodology**

NGTL indicated that its approach to assessing potential Project effects on the current use of lands and resources for traditional purposes by Indigenous peoples complied with the Filing Manual and

CEAA 2012 requirements, and is consistent with the ESAs that have been accepted by the Regulator for past projects.

NGTL stated that it disagrees that the methodology co-developed by the Canadian Environmental Assessment Agency and the Mikisew Cree First Nation in the Frontier Oil Sands Mine Project environmental assessment is applicable to the Project. That methodology was for a new oil sands mine, whereas NGTL's Project is an approximately 344 km natural gas pipeline with associated compression located in southern Alberta. NGTL stated that the varying nature, scale and setting of each project determine not only the relevant regulatory requirements but are also key considerations in the design of proponent-led engagement programs, the identification of project interactions, and potential effect pathways. NGTL also stated that the Frontier Oil Sands Mine is undergoing an environmental assessment by a Joint Review Panel under CEAA 2012, which is a different process than the Commission's process to consider applications under section 52 of the NEB Act.

#### **7.5.7.2 Access**

NGTL indicated that it assessed temporary or permanent disruption of access with respect to potential effects on hunting, trapping, fishing, plant harvesting, and habitation, spiritual or cultural sites, and that no residual effects to disruption of access were predicted with the implementation of mitigation measures.

NGTL stated that no new permanent access is anticipated for the Project, and that existing infrastructure would be used, where practical. NGTL noted that access to the Project would be from existing public and private access points and roads, respecting traffic safety and concern for other users, and controlled existing access and ROWs of others.

NGTL noted that with the exception of the January Creek control valve, which would be constructed on a proposed site of 0.4 ha, no new gates or fences would be constructed for the Project on Crown land where they do not already exist, and that any existing access control (e.g., gates, signage, fenced locations) would be maintained.

NGTL stated that during construction, access would not be restricted but may be temporarily affected to mitigate safety concerns: where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users would not be impeded.

NGTL indicated that following construction, it would only implement access control management measures where applicable to deter an increase in motorized public access along new pipeline ROWs, on new temporary construction access, and into existing linear disturbances that intersect the Project ROW. NGTL indicated that it would not implement access control measures on trails or travelways that are intersected by the Project footprint if any are identified by Indigenous communities.

NGTL stated that it continues to engage with all stakeholders and Indigenous communities to determine site-specific access control requirements for the Project.

#### **7.5.7.3 Potential Project-related Effects**

NGTL submitted that approximately 86 per cent (296 km) of the proposed pipeline route parallels existing NGTL ROW or other existing linear disturbances. NGTL sought to parallel existing or

proposed disturbances to the extent possible because it (i) typically results in the shortest length of pipeline between the upstream and downstream “control points” on the existing System; (ii) allows NGTL to locate a portion of the Project construction workspace on the existing NGTL ROW, thereby reducing the amount of new Project footprint required; (iii) reduces environmental impacts and fragmentation associated with creating new linear features; and (iv) is more efficient from an operations perspective.

NGTL indicated that in its opinion Indigenous communities are best positioned to identify the specific suitable habitat and locations for their traditional practices, and as such has been engaging with most Indigenous communities since February 2018 concerning the overall Project. NGTL stated that in addition to receiving traditional knowledge through ongoing engagement, it provided participating Indigenous communities the opportunity to collect Project-specific traditional knowledge independently or with the support of environmental consultants to meet a community’s specific needs. NGTL indicated that through the collection of traditional knowledge with interested communities, it was seeking to:

- identify and consider potential adverse effects of the Project on the current use of lands and resources for traditional purposes;
- incorporate traditional ecological knowledge and traditional land use information in Project planning;
- identify concerns about the Project; and
- propose measures to avoid, mitigate, or otherwise manage potential adverse Project effects on Indigenous interests.

NGTL noted that its TLRU assessment included consideration of effects to relevant bio-physical indicators. NGTL indicated that traditional knowledge information provided directly by potentially affected Indigenous communities was integrated into the overall ESA and was considered in the identification of key indicators for TLRU and for relevant biophysical valued components (e.g., wildlife, fisheries, vegetation and wetlands), given the close connection to TLRU resources (e.g., traditional species harvested and other resources required for TLRU activities). NGTL stated that Project effects on biophysical valued components were considered in the assessment of TLRU key indicators in the TLRU assessment as related to potential disturbance to harvesting areas, access to areas, and species availability and quality.

NGTL stated that when new information (e.g., traditional knowledge studies, concerns and recommendations) was provided to NGTL after the ESA was completed, through the hearing process or otherwise, NGTL reviewed the information to determine whether it identified potential adverse effects that were not assessed in the ESA, if any new mitigation was required, and whether the results changed the conclusions of the ESA. NGTL stated that generally, the information confirmed the assumption in the ESA of general use of the Project area for hunting, fishing, trapping, plant harvesting, habitation, spiritual or cultural sites. NGTL also stated that in some cases, however, specific TLRU sites were identified that warranted additional, site-specific mitigation beyond what is contained in the EPP (e.g., avoidance through micro-routing or relocation of temporary workspace).

NGTL indicated that it examined the interactions of the TLRU indicators (traditional hunting, trapping, fishing, and plant gathering; and habitation, cultural or spiritual sites within the local and regional study areas) with the Project. NGTL indicated that its assessment assumes that TLRU harvesting sites, areas, and activities have the potential to occur and that traditionally used species



identified as being present within the Project regional study area could be hunted, trapped, fished, or gathered by Indigenous peoples, even if Indigenous communities did not identify specific activities, species, or sites.

NGTL stated that it is of the view that the Project has been designed to reasonably avoid or minimize impacts on traditional land use activities / TLRU, as well as cultural activities as the Project is designed to parallel existing linear disturbances; overlap existing rights of way to the extent practical; and to have construction activities restricted mainly to the ROW; all of which reduce the amount of Project clearing and disturbance to adjacent lands and TLRU.

NGTL indicated that the mitigation planned for the Project was developed after considering available traditional knowledge, including evaluating whether NGTL's planned mitigation would effectively manage the identified potential interactions, or whether additional or refined mitigation is warranted. NGTL noted that the EPP provides details regarding mitigation for clean-up and reclamation with an objective to maintain equivalent land capability on lands within the construction footprint (excluding aboveground facilities), ensuring the ability of the land to support various land uses similar to the uses that existed before construction. NGTL stated that it would consider implementing additional mitigation in specific, localized areas if warranted based on site-specific concerns raised by Indigenous communities.

NGTL stated that with the exception of localized areas during the short period of active construction, the ROW would remain available for traditional use during construction of the Project. As noted in Section 7.5.3 of this chapter, NGTL indicated that if traditional land use sites, including cultural resources, not previously identified are found on the construction footprint during construction, NGTL would implement the Cultural Resource Discovery Contingency Plan described in the EPP. However, NGTL stated that in its view it is unlikely that previous TLRU sites would be identified as the proposed pipeline routes parallel existing linear disturbances for the majority of their length. NGTL stated that it would provide potentially affected Indigenous communities with the proposed construction schedule and pipeline route maps, and Indigenous communities would be given the opportunity to harvest medicinal and traditional plants before the commencement of construction. NGTL also stated that it is open to discussing with interested and potentially affected Indigenous communities the opportunity to conduct appropriate cultural ceremonies prior to the start of construction activities, upon request from an Indigenous community.

NGTL indicated that during pipeline operations, since the Project pipeline sections would be buried and the ROW reclaimed, no effects on land and resource use are expected, and that the use of NGTL's pipeline ROW within Crown lands is generally not restricted to land users, including Indigenous communities. NGTL stated that the only activities that would not be permitted within the ROW during operations would be ones that could pose a safety risk, such as fires, ground disturbance (digging), use of heavy equipment, etc. NGTL noted that it does require consultation through one-call notification for activities causing ground disturbance or vehicular access as per the NEB's *Pipeline Damage Prevention Regulations*.

NGTL stated that it would continue to evaluate and assess additional traditional knowledge information as it is made available by Indigenous communities. NGTL also stated that in addition to its traditional knowledge program, NGTL would continue to document and address, where feasible, traditional knowledge information and related concerns identified by Indigenous communities during activities associated with the Project's broader Aboriginal Engagement Program.

In response to concerns regarding NGTL's method of assessing habitation, cultural and spiritual sites as one key indicator rather than assessing each as an individual indicator, NGTL stated that

assessing these individually would effectively duplicate the assessment, inflating the potential effects of the Project and affecting confidence in the assessment. NGTL indicated that the habitation, cultural, and spiritual sites key indicator includes both historic and current conditions, and that the assessment of this key indicator included sites identified within the local study area based on information gathered through the Project's Aboriginal Engagement Program (e.g., traditional knowledge studies). NGTL stated that the potential and residual effects on habitation, cultural, and spiritual sites are the same (i.e., temporary alteration or loss of the site).

In response to recommendations by some Intervenors recommending that NGTL be conditioned to offset Crown land to be used for the Project, similar to a condition imposed in the Manitoba-Minnesota Transmission Line Project, NGTL stated that this recommendation is not supported by evidence and should not be imposed on the Project. NGTL stated that the Manitoba-Minnesota Transmission Line Project would result in a permanent footprint on the land while NGTL's Project would result in minimal new permanent footprint on Crown land and the remainder of the Project footprint would be available for TLRU activities. NGTL stated that it is of the view that such limited reduction in Crown land within the regional study area does not warrant Crown land offsets. NGTL further stated that *Public Lands Act* dispositions are controlled by the provincial government and the Commission has no jurisdiction to order the release of any Crown lands for offsets, or otherwise. NGTL stated that as a result, it submitted that the Commission should similarly conclude that such a condition would not be appropriate to impose on the Project.

#### **7.5.7.4 Potential Project-related Cumulative Effects**

NGTL stated that the cumulative effects assessment methodology follows the Canadian Environmental Assessment Agency's Operational Policy Statement for Assessing Cumulative Environmental Effects under the CEAA 2012 and the Filing Manual.

NGTL stated that the TLRU assessment included acknowledgment that past and existing projects and activities in the TLRU local study area have directly and indirectly affected TLRU. NGTL stated that the description of the existing environmental and socio-economic setting in each section of the ESA, including TLRU, reflects changes that have occurred from past developments and activities as well as current conditions and activities.

NGTL stated that the Project's contribution to cumulative effects was assessed as having a low magnitude as Project design measures would avoid or reduce potential adverse effects due to a temporary alteration of land; and because planned mitigation for traditional use areas, activities, resources and sites are considered to be effective to avoid or reduce Project effects. NGTL stated that overall, the magnitude of the cumulative effects including past activities is not expected to change in combination with the predicted Project effects and those of reasonably foreseeable projects and activities. NGTL stated that the duration of effects ranged from immediate- to long-term, and effects were regional because existing, ongoing activities and reasonably foreseeable projects would occur throughout the regional study area. NGTL stated that based on the criteria set out in the ESA, cumulative effects on TLRU were predicted to be not significant.

NGTL indicated that its cumulative effects assessment conservatively assumed that past and existing disturbances represent a moderate to high change from an undisturbed landscape. NGTL stated the activities that have resulted in the existing disturbance are in alignment with provincial management plan goals and objectives; and that the existing landscape is not homogenous and continues to support multiple land uses and habitats and resources.

NGTL indicated that while the cumulative effects assessment conservatively assumed that future activities would be 100 per cent located within areas of native vegetation and for most indicators overlapping suitable habitat, some of the ongoing activities would actually be located within existing ROW or other disturbed areas, and not within native vegetation or suitable habitat for traditionally hunted species.

#### **7.5.8 Section 35(1), Constitution Act, 1982**

NGTL stated that under the current legal and regulatory regime, project proponents are expected to assess the impacts of their project on the environment and land users, including members of Indigenous communities who may exercise section 35 rights in the vicinity of the project. NGTL stated that it complied with all applicable legal requirements. NGTL stated that potential effects on Indigenous and Treaty rights were considered in the ESA through the assessment of potential Project effects on current use of lands and resources for traditional purposes, in accordance with the requirements of CEAA 2012 and the Filing Manual.

NGTL indicated that as stated in the Procedural Update No. 1 issued on 21 February 2019, it is the NEB's view that its assessment of Indigenous and Treaty rights, and the potential impacts of the Project upon those rights, is dealt within the NEB's analysis and determinations

In response to Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, and Wesley First Nation's suggested accommodation measures regarding predicted adverse impacts of the Project resulting in an increase in their avoidance behaviours for the exercise of section 35 rights, NGTL indicated that the suggestions were vague, with no consideration for whether the measures were feasible, or how they could be achieved. In response to these Intervenor's suggestions that they be provided financial compensation regarding residual impacts, NGTL noted that financial compensation is beyond the scope of the Commission's jurisdiction in this proceeding.

##### **7.5.8.1 Restrictions on the exercise of Indigenous and Treaty rights**

NGTL stated that reports prepared on behalf of Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Horse Lake First Nation, O'Chiese First Nation, and Wesley First Nation incorrectly assumed that pipeline ROWs are unavailable for the exercise of section 35 rights. NGTL also stated that these reports quantified areas of avoidance by traditional land users based on community members' "preferred conditions" for land use, not actual avoidance.

NGTL stated that the Project has been designed to parallel existing disturbances for approximately 86 per cent of its length; allowing the Project footprint to be reduced by utilizing temporary workspace on the adjacent disposition, and minimizing the fragmentation of the landscape. NGTL stated that reclamation and cleanup would be completed to maintain equivalent land capability, ensuring the ability of the land to support various land uses similar to the uses that existed before construction. NGTL stated that areas affected by current land use could be available for traditional use (e.g., existing ROWs which have already started to revegetate in areas creating a forest edge that may be suitable habitat for traditionally hunted species).

NGTL stated that the Project would result in the new disturbance of 1,059 ha of native vegetation cover within the regional study area, and that this represents the maximum area affected during either the year or season of construction, which could potentially affect Indigenous communities' short-term use of the land. NGTL stated that during operations, fenced compressor stations and

valve sites required for the Project would not be available for traditional use. NGTL indicated that there would be no expansion of the Nordegg compressor station outside of the existing footprint. However, there are 13 locations where new valve facilities would be added to existing valve sites, and one new valve site location for the January Creek Control Valve for a total area of 0.92 ha of additional Crown land which would be unavailable for traditional use.

NGTL stated that the *Public Lands Act* is provincial legislation enforced by the Alberta government, and as such, the Commission does not have jurisdiction to ensure that “priority rights” are ensured under *Public Lands Act* dispositions. NGTL stated that regardless, it confirmed that the ROW would remain available for use during construction and operation of the Project, save for short periods during active construction, and Indigenous members’ right of access would remain unchanged by the pipeline ROW. NGTL stated that as a result, it cannot restrict or limit access to Indigenous land users except in localized areas during the short periods of active construction.

NGTL submitted that the *Petty Trespass Act* does not apply to the pipeline ROW. NGTL stated that the Alberta Energy Regulator recently considered these same arguments and confirmed that a pipeline ROW does not give a company the right to restrict access unless that access interferes with the use for which the ROW was granted. NGTL stated that this interpretation is consistent with NGTL’s evidence in this proceeding and the interpretation provided in *R. v Badger*<sup>17</sup> regarding visible, incompatible use.

NGTL stated that it is not aware of instances when people (including Indigenous peoples and recreational users) were asked to leave for any land use activities such as hunting, fishing, trapping and plant gathering. NGTL also stated that it is not aware of instances where Indigenous harvesters have been restricted from accessing the ROW, and that in the past, encounters between NGTL personnel and Indigenous harvesters on ROWs have included respectful discussions and explanations of what activities both parties are conducting at the location.

## **7.6 Views of the Commission**

The Commission values the participation, knowledge, and information that Indigenous peoples bring to the hearing process. The Commission notes that the Indigenous peoples who participated in the hearing are from Treaty No. 4, Treaty No. 6, Treaty No. 7, Treaty No. 8, and the Métis Nation of Alberta. The Commission thanks all participants in the GH-003-2018 hearing and, in particular, Alexis Nakota Sioux Nation, Bearspaw First Nation, Blood Tribe, Chiniki First Nation, Driftpile First Nation, Horse Lake First Nation, O’Chiese First Nation, Piikani Nation, Saddle Lake Cree Nation, Samson Cree Nation, Tsuut’ina Nation, and Wesley First Nation for sharing their local, traditional, and cultural knowledge during the oral Indigenous knowledge sharing sessions of the hearing.

### **7.6.1 NGTL’s Engagement with Indigenous Peoples**

A proponent’s early engagement with Indigenous peoples is a critical part of the development of a proposed project, and a key matter for consideration within the regulatory process. Timely, accessible, and inclusive consultation facilitates the effective exchange of information and provides opportunities for the proponent to learn about the concerns of potentially affected Indigenous peoples, to discuss how those concerns can be addressed through project design and operations,

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<sup>17</sup> *R. v Badger* [1996] 1 SCR 771.

and to develop and discuss measures to reduce and mitigate the effects a project may have on the rights and interests of Indigenous peoples. Timely and effective engagement can help establish productive relationships that can carry on throughout the life of the project.

The Commission notes that engagement efforts undertaken by a proponent with Indigenous communities are considered within the context of the expectations set out in the Filing Manual. The requirements reflect the fact that proponent is often in the best position to respond to the concerns of Indigenous peoples about a project before an application is filed and while a project is still in the early stages of development. The Commission expects companies to design and implement their engagement activities with regard to the nature and magnitude of a project's potential impacts. Where there is a greater risk of more serious impacts on the rights and interests of Indigenous peoples, the Commission has proportionally greater expectations in terms of the companies' engagement with potentially impacted Indigenous communities. In contrast, where there is a remote possibility of an impact on rights and / or interests of Indigenous peoples, or where the impacts are minor in nature, the proponent's engagement would generally not be expected to be as extensive.

While a proponent's engagement efforts are distinct from those of the Crown, the information gathered as a result of such efforts often provide helpful information to the Commission's understanding of the views and concerns with respect to the rights and interests of potentially affected Indigenous peoples.

NGTL was required to identify and then make all reasonable efforts to engage with potentially affected Indigenous peoples and to provide information about those consultations to the Commission. This included evidence on the nature of the interests potentially affected, the concerns that were raised, and the manner and degree to which those concerns have been addressed. Therefore, Indigenous peoples who chose not to participate in the hearing process still had their concerns brought to the attention of the Commission through the NGTL's evidence.

In assessing the engagement undertaken by NGTL with Indigenous peoples, the Commission evaluated both the design and implementation of NGTL's engagement activities. The Commission notes NGTL's Aboriginal Engagement Program involved identifying potentially affected Indigenous communities; establishing an engagement approach, tailored to meet a community's specific needs; implementing engagement activities; and responding to questions and concerns. The Commission considered how this input influenced the Project's proposed design and operation.

NGTL began engaging with Indigenous communities it identified as being potentially impacted by some sections of the Project in August and September 2017, and by the Project in its entirety in February 2018. NGTL commenced consultation activities with additional Indigenous communities identified by the NEB in June 2018 (see Section 7.1). NGTL's engagement evidence demonstrates that it engaged with all of the potentially impacted Indigenous communities as identified on the Crown's list, by the NEB, and a few additional communities identified by NGTL.

The Commission's hearing process acts as a necessary and important check on the engagement conducted by NGTL by providing Indigenous peoples an additional avenue to explain their concerns about the Project and have those concerns considered by the Commission. The Commission has heard and fully considered the concerns raised by Indigenous communities, both in their written evidence and oral Indigenous knowledge, about NGTL's engagement (summarized in Section 7.4.1), including, for example, oral Indigenous knowledge provided by Blood Tribe and by Piikani Nation, and has assessed that evidence against the evidence submitted by NGTL in reply to these concerns (summarized in Section 7.5.1). The Commission notes NGTL's

commitment to continue to engage all identified Indigenous communities according to their level of interest in the Project and the potential adverse impact of the Project on Indigenous or Treaty rights. The Commission expects NGTL, as it does all companies, to continue to learn about the concerns that Indigenous peoples may have about a project, and to discuss ways to address those concerns to the extent possible. The Commission also encourages Indigenous peoples with an interest in the Project to continue to engage with NGTL.

The Commission recommends **Condition 14** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 11** for the **Section 58 Facilities and Activities**, requiring NGTL to file reports on its engagement with Indigenous peoples. The Commission also recommends **Condition 10**, **Condition 12**, and **Condition 27** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 6**, **Condition 10** and **Condition 22** for the **Section 58 Facilities and Activities**. These conditions include engagement-related requirements, obligating NGTL to file summaries of engagement activities undertaken with Indigenous peoples regarding monitoring opportunities and reports describing any outstanding concerns following receipt of any outstanding TLRU investigations. The Commission finds that with these conditions and NGTL's commitments, NGTL would continue to engage with Indigenous peoples to learn more about their interests and concerns; demonstrate how it has considered and addressed information provided in outstanding TLRU investigations in its EPP; and address issues that may arise throughout the lifecycle of the Project.

Having assessed all of the evidence on the record, and taking into account NGTL's engagement commitments, the Commission is of the view that NGTL has designed and implemented appropriate engagement activities that meet the requirements and expectations set out in the Filing Manual and are appropriate for the size, scope, and scale of the Project. The Commission has recommended and imposed conditions that will enhance NGTL's engagement activities for the lifecycle of the Project.

### **7.6.2 Monitoring by Indigenous Peoples**

The Commission has considered the evidence filed with respect to monitoring by Indigenous peoples, which is summarized in Sections 7.4.2 and 7.5.2.

The Commission notes that many Indigenous communities indicated that their members should be involved in monitoring activities related to Project construction and post-construction. For example, the Commission heard oral Indigenous knowledge from Karl Giroux of Driftpile Cree Nation and Kyra Northwest of Samson Cree Nation, among others, about the importance of Indigenous peoples being provided a meaningful opportunity to shape and participate in monitoring during, and following, Project construction. The Commission also notes that NGTL has committed to provide potentially affected Indigenous peoples employment opportunities related to Project construction as part of its Aboriginal Construction Participation Program (ACPP). The ACPP includes opportunities for individuals from participating Indigenous communities to monitor construction activities and having participants report back to their Indigenous community to provide Project construction updates.

The Commission notes that details of the ACPP, including training and funding, would be developed closer to construction, pending approval of the Project, and would be informed by results of NGTL's biophysical field programs for the Project, engagement with Indigenous communities, engagement with federal and provincial government agencies, feedback obtained from participants during construction activities on past NGTL projects, experience gained from other pipeline projects, and industry accepted best practices and procedures. NGTL stated that it

requires additional information from Indigenous communities to understand the interest in and specific issues to be addressed by involvement in Post-construction Monitoring (PCM) activities before it can determine opportunities to involve Indigenous peoples to best address post-construction specific issues, if any. The Commission also notes that NGTL has committed to respond to any Indigenous community's concerns post-construction and address potential issues on a case-by-case basis, and that NGTL has stated that Indigenous communities would have an opportunity to provide feedback post-construction through ongoing engagement with Regional Liaisons and TC Energy's Public Awareness Program.

The Commission is of the view that the desire voiced by Indigenous peoples to be involved in monitoring is about the value and unique perspectives that they can provide, based on their Indigenous knowledge, and in determining mitigation measure effectiveness. The Commission acknowledges NGTL's ACPP as a positive mechanism to promote employment opportunities, but does not have sufficient details about the Project-specific ACPP and PCM activities to know whether these would promote meaningful monitoring opportunities. As such, the Commission recommends **Condition 12** and **Condition 27**, for the **Section 52 Pipeline and Related Facilities**, and would impose **Condition 10** and **Condition 22** for the **Section 58 Facilities and Activities**, requiring NGTL to file its monitoring plans for Indigenous peoples related to both the Project's construction and post-construction.

The Commission is of the view that these conditions would enhance the involvement of Indigenous peoples to participate more meaningfully in monitoring opportunities. NGTL is welcome to submit the project-specific ACPP and PCM activities to fulfill these conditions. However, the Commission is of the view that NGTL must demonstrate that meaningful monitoring opportunities are built into the ACPP and PCM activities so that Indigenous cultural, traditional land and resource use, and environmental interests are effectively addressed in monitoring activities. The Commission considered the recommendations NRCan made in its final argument regarding these two conditions and is of the view this further enhances the involvement of Indigenous peoples to participate more meaningfully in monitoring opportunities. As a result, the Commission has added a requirement that NGTL provide a description of how the results from its engagement with Indigenous peoples were incorporated into both plans.

The Commission notes that many Indigenous Intervenors recommended the creation of an IAMC to provide oversight in the monitoring of the Project. Some recommended the creation of an IAMC for oversight of the entire NGTL system. Their recommendations set out in either case that they would be similar to the IAMCs for the Trans Mountain Expansion Pipeline and the Enbridge Line 3 Pipeline. The Commission is not recommending that the Government of Canada create an IAMC for this Project. However, consistent with NGTL's commitment to incorporate industry accepted best practices and procedures, the Commission encourages NGTL to offer to engage with Indigenous communities that have direct experience with IAMC monitoring activities, or Indigenous Caucus members from both the Trans Mountain Expansion Project and the Enbridge Line 3 IAMCs. The purpose of such engagement would be to gather input on how meaningful monitoring opportunities can be built into NGTL's ACPP, PCM and ongoing engagement. The Commission expects to see a summary of any such engagement included in the condition filings noted above.

### **7.6.3 Heritage Resources**

Sub-paragraphs 5(1)(c)(ii) and (iv), and 5(2) (b)(ii) and (iii) of the CEEA 2012 require consideration of the environmental effects that are likely to result from a designated project on physical and cultural heritage, or any structure, site or thing that is of historical, archaeological and paleontological or architectural significance, including with respect to Indigenous peoples. In its

evaluation, the Commission has considered the effects of the Project on heritage resources to include all of the effects described in these sub-paragraphs of section 5 of CEAA 2012. The Commission's approach to its environmental assessment is described in Chapter 8.

The Commission recognizes the value of heritage resources preservation to Indigenous peoples, and acknowledges the information and knowledge shared by Indigenous communities with the Commission and NGTL regarding historical, cultural, and archaeological sites that are of significance and value to them. The Commission acknowledges the concerns raised by Indigenous communities regarding the potential effects of the Project on physical and cultural heritage resources, as well as the recommendations made to the Commission by a number of Indigenous communities. These included, among other things, the inclusion of Indigenous communities during any outstanding archaeological field work, and reporting and monitoring during construction. A summary of concerns raised by Indigenous communities about heritage resources is provided in Section 7.4.3, and NGTL's responses are provided in Section 7.5.3.

Most types of development activities are required to obtain formal approval by the Province of Alberta under the *Historical Resources Act* prior to the onset of activities. Before construction can begin, NGTL must obtain clearances from Alberta Culture, Multiculturalism and Status of Women (ACMSW) with respect to heritage resources. Any clearance issued by the Province of Alberta may identify conditions of approval or mitigation measures that NGTL would be required to meet. The Commission notes NGTL's commitment to determine interest and potential opportunities for the participation of Indigenous peoples should further historic resources impact assessment work or additional mitigation be required, following the receipt of decisions from ACMSW. The Commission is supportive of and encourages NGTL to include participation of Indigenous Elders and knowledge keepers in any outstanding archaeological field work and mitigation. The Commission further notes NGTL has a Cultural Resource Discovery Contingency Plan which includes informing any potentially affected Indigenous communities of any unanticipated cultural resource site discovery, and reviewing planned mitigation strategies with potentially affected Indigenous communities.

The Commission is therefore of the view that, with the following:

- measures and commitments made by NGTL to avoid all sites where possible;
- commitment made by NGTL to implement its Cultural Resource Discovery Contingency Plan in the event cultural resource sites are encountered during construction;
- evidence and Indigenous knowledge identifying potential sites of concern provided by Indigenous communities; and
- regulatory oversight of provincial authorities that issue final clearances for lands involved for the Project,

the potential effects of the Project on physical and cultural heritage resources would be confined to the Project footprint, would be short- to long-term, reversible to permanent, and of low to moderate magnitude. Appendix VIII specifies the definitions for criteria used in this evaluation.

To ensure that the Commission and all Parties, including potentially affected Indigenous peoples, are aware of any approvals or conditions imposed by provincial authorities for the Project, the Commission recommends **Condition 15** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 13**, for the **Section 58 Facilities and Activities**, requiring NGTL to file confirmation that all heritage resource clearances have been obtained from the relevant provincial ministry prior to commencing construction, including a description of how NGTL will address any



conditions / recommendations in these clearances and make any relevant updates to its EPP. In addition, the Commission notes NGTL's commitment to include its final version of NGTL's Cultural Resource Discovery Contingency Plan in its Updated EPP. Given all of the above, the Commission is of the view that the potential adverse effects of the Project on heritage resources are not likely to be significant.

#### **7.6.4 Social and Cultural Well-being**

The Commission has considered the evidence filed with respect to social and cultural well-being, which is summarized in Sections 7.4.4 and 7.5.4.

The Commission acknowledges the concerns raised by Indigenous peoples regarding potential impacts related to the Project's construction camp(s). The Commission notes NGTL's commitment to contribute to the development of a construction camp orientation for all personnel regarding safety; respectful conduct; and environmental and cultural awareness, including Indigenous culture and heritage resources. The Commission also notes that NGTL has not finalized the number of camp personnel required, and that NGTL plans to develop a camp management plan closer to the start of construction. To ensure that the Commission is aware of NGTL's plans regarding construction camps, the Commission would impose **Condition 7** for the **Section 58 Facilities and Activities** requiring NGTL to file a Camp Management Plan for all construction camps, and **Condition 8** for the **Section 58 Facilities and Activities**, requiring NGTL to notify the Commission if any additional construction camp(s) is required and to file an environmental and socio-economic protection plan for the additional camp(s). The Commission expects the Camp Management Plan to include a cultural awareness program that is developed and delivered with input from local Indigenous communities, and gender-specific training. Gender-specific training would include a discussion about the harassment and discrimination policies that exist, how these policies would be applied to gender issues (e.g., examples of what constitutes harassment and discrimination against women), and a discussion about the ramifications of breaching these policies.

The Commission acknowledges that NGTL committed to continue engaging with Indigenous communities regarding potential issues and concerns. In addition, the Commission recommends **Condition 14** for the **Section 52 Pipeline and Related Facilities**, and would impose **Condition 11** for the **Section 58 Facilities and Activities**, requiring NGTL to file its reports on its on-going engagement with Indigenous peoples.

Having considered all of the evidence filed on the record, the Commission is satisfied with NGTL's approach to assessing concerns related to the social and cultural well-being of Indigenous peoples.

#### **7.6.5 Human Health**

Sub-paragraphs 5(1)(c)(i), and 5(2)(b)(i) of the CEAA 2012 require consideration of the environmental effects that are likely to result from the designated project on human health, including with respect to Indigenous peoples. Indigenous communities raised concerns about potential impacts to the general health of their communities, including effects associated with potential contamination of drinking water and traditional foods. During the oral Indigenous knowledge sessions, the Commission heard, for example, Elder Robert Steinhauer speak about his concerns regarding contamination of water and traditional meat, and Bridget Bull of Alexis Nakota Sioux Nation speak about the long-held concerns about harvesting near developed areas.

The Commission accepts the evidence provided by many Indigenous communities that they rely on, and have a preference for, eating traditional foods.

With respect to the suggestion from Health Canada for NGTL to provide additional information regarding shallow drinking water wells and the safety of country foods with respect to natural gas spills, the Commission is satisfied that adequate information was provided through the hearing process. Moreover, the Commission is satisfied with the mitigation proposed by NGTL to address these issues as noted by Health Canada.

With respect to perceptions of contamination that could have a negative effect on traditional harvesting and food consumption, the Commission has considered both the potential environmental effects of the Project on biophysical resources relied on by Indigenous peoples for traditional land and resource use, as well as the effects of the Project on those uses. The Commission concurs with NGTL's conclusion regarding traditional land and resource use and is of the view that any residual effect is likely to be limited to the period during construction, restricted primarily to the Project footprint, and is low in magnitude. Given all of the above, the Commission is of the view that the potential adverse effects of the Project on human health are not likely to be significant.

#### **7.6.6 Capacity Funding, Economic Benefits, Employment and Training**

The Commission has considered the evidence filed with respect to capacity funding, economic benefits, and employment. The evidence is summarized in Sections 7.4.6 and 7.5.6.

Indigenous communities raised concerns about capacity funding regarding carrying out Project-related surveys and studies, pre-construction harvest opportunities, and community initiatives. The Commission heard, for example, Elder Roderick Alexis of Alexis Nakota Sioux Nation suggest that a portion of money from resource developments be put towards educating Indigenous peoples. The Commission also heard Indigenous peoples raise concerns regarding economic benefits and employment opportunities, such as those stated in the oral Indigenous knowledge provided by Frank Cardinal of Saddle Lake Cree Nation and Elder Pat Provost of Piikani Nation. The Commission notes that NGTL stated that it continues to work with Indigenous communities to identify employment opportunities during the pre-construction, construction, and post-construction phases of the Project, and any associated training requirements.

The Commission heard from a number of Indigenous Participants expressing interest in Project-related training and employment. The Commission notes that NGTL entered into agreements with Indigenous communities to provide capacity funding to conduct traditional knowledge studies, which included funding to conduct fieldwork; and that NGTL committed to continue working with Indigenous communities to identify opportunities for capacity development to support the communities' training needs. The Commission notes NGTL's ACPP and its Aboriginal Contracting and Employment Program, both aimed at providing employment opportunities. The Commission also notes that NGTL committed to providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. The Commission encourages NGTL to seek employment opportunities amongst Indigenous communities with traditional territories affected by the Project route.

The Commission notes that NGTL would require its Prime Contractor to submit an Aboriginal Participation Plan to NGTL that outlines the processes that it would follow to facilitate productive opportunities for qualified and competitive Indigenous businesses and individuals on the Project. The Commission further notes that NGTL would ensure that the Aboriginal Participation Plan of its

Prime Contractor aligns with NGTL's Aboriginal Contracting and Employment Program. To increase the transparency of NGTL's commitments regarding providing contracting and employment opportunities, the Commission is of the view that a condition in relation to the Aboriginal Participation Plan of the Prime Contractor is required for both the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities. These conditions were not provided for comment by the Parties during the hearing process. However, as this Plan is required by NGTL from its Prime Contractor, and NGTL has stated it will ensure it aligns with its Aboriginal Contracting and Employment Program, the Commission is of the view the requirements of the conditions, which are the same, are not burdensome. The Commission, therefore, recommends **Condition 13** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 12** for the **Section 58 Facilities and Activities**, requiring NGTL to file an update to its Employment, Contracting and Procurement Plan which would include the submission of its Prime Contractors Aboriginal Participation Plan, and a summary of how this Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program.

The Commission also recommends **Condition 28** for the **Section 52 Pipeline and Related Facilities**, and would impose **Condition 23** for the **Section 58 Facilities and Activities**, requiring NGTL to report on employment, contracting, and procurement, once Project construction is complete. The Commission is interested in knowing how many self-identified Indigenous businesses and individuals were employed by NGTL, if any, for this Project. As noted in Chapter 9, the Commission is of the view that the Project would benefit local, regional, and provincial economies. The Commission is also of the view that the Project would result in increased employment for Indigenous individuals and contracts for Indigenous-owned businesses.

### 7.6.7 Traditional Land and Resource Use

Sub-paragraphs 5(1)(c)(iii) and (iv), and 5(2) (b)(ii) and (iii) of the CEAA 2012 require consideration of the environmental effects that are likely to result from a designated project on the current use of lands and resources by Indigenous peoples for traditional purposes<sup>18</sup>. In assessing potential impact on Indigenous interests, the Commission considered all of the evidence provided. The Commission assessed how NGTL identified and evaluated the potential impacts on the rights and interests of Indigenous peoples, the concerns raised by Indigenous communities, and the measures NGTL has proposed to minimize or eliminate the Project's potential impacts on the interests of Indigenous peoples. Concerns about impacts on TLRU filed by Indigenous communities are summarized in Section 7.4.7 and NGTL's responses are summarized in Section 7.5.7.

#### 7.6.7.1 Assessment Methodology

Some Indigenous Intervenors voiced concerns regarding the methodology NGTL used to assess Project impacts on TLRU. The Commission notes that NGTL's approach in assessing potential Project effects on the current use of lands and resources for traditional purposes by Indigenous peoples was based on the Filing Manual and CEAA 2012 requirements and guidance. The Commission further notes that when new information (e.g., traditional knowledge studies, concerns

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<sup>18</sup> The Commission references the Technical Guidance for Assessing the Current Use of Lands and Resources for Traditional Purposes under CEAA 2012: <https://www.canada.ca/en/environmental-assessment-agency/services/policy-guidance/technical-guidance-assessing-current-use-lands-resources-traditional-purposes-under-ceaa-2012.html>.

and recommendations) was provided to NGTL after the ESA was completed, through the hearing process or otherwise, NGTL reviewed the information. Its review was to determine whether it identified potential adverse effects that were not assessed in the ESA, if any new mitigation was required, and whether the results changed the conclusions of the ESA. The Commission is of the view that NGTL's approach, including its methodology, for assessing the Project's potential effects on the current use of lands and resources for traditional purposes by potentially affected Indigenous groups was appropriate.

The Commission heard about the importance of incorporating TLRU / Indigenous knowledge information into Project design as well as construction and operational activities. The Commission also heard concerns that effective incorporation and consideration of sufficient Indigenous knowledge and experiential information into both the Project's design and effects assessment (including mitigation, monitoring, and accommodation planning and implementation) was not carried out by NGTL. The Commission notes that NGTL entered into agreements with potentially impacted Indigenous communities to conduct their own community directed traditional knowledge studies for the Project and that some traditional knowledge studies are outstanding. The Commission notes that NGTL committed to continue to evaluate and assess additional traditional knowledge information as it is made available by Indigenous communities and to document and address, where feasible, traditional knowledge information and related concerns identified by Indigenous communities during activities associated with the Project's broader Aboriginal Engagement Program. Having considered all of this information, the Commission recommends **Condition 10** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 6** for the **Section 58 Facilities and Activities**, with some modification since the original draft conditions were provided for comment. These conditions require NGTL to submit a report on any outstanding TLRU investigations for the Project, including a description of how NGTL has revised its EPP and its lifecycle oversight as a result of the investigations.

The Commission notes the concerns raised by Indigenous Intervenors about the lack of engagement by NGTL on determining the selection of the valued components in the Project ESA. The Commission has previously expressed that it expects engagement activities to be responsive to the needs, inputs and concerns of potentially affected persons or communities, including those of Indigenous peoples. The Commission encourages all proponents and Indigenous peoples to explore possibilities for enhanced engagement opportunities (e.g., a more collaborative approach during the scoping of environmental and socio-economic assessments might identify more community-appropriate valued components). In the NEB Report for the 2017 NGTL System Expansion Project, the NEB stated this expectation. In the present Project before the Commission it appears that there were varying levels of success in relation to enhancing engagement opportunities between NGTL and Indigenous peoples. The Commission reiterates its expectation for enhanced engagement, noting that the CER now has a mandate to advance reconciliation with Indigenous peoples, and expects proponents to implement continual improvements that enhance meaningful engagement with Indigenous peoples.

#### **7.6.7.2 Access**

The Commission heard from Indigenous Intervenors concerns about how the Project would impact their ability to access lands to carry out their traditional activities, and could potentially change traditional travel routes and increase access for non-Indigenous recreational and game hunters. For example, Sammy Beaverbones of O'Chiese First Nation (as translated by Elder Joanne Gladeau) said that he has every right to access those areas that he has been able to access with past generations. The Commission accepts that during construction, access for traditional users

would not be impeded except when there is active construction or other identified safety risks (e.g., open trench or excavations). The Commission also accepts that, after construction is completed, access to the ROW would be unchanged (except for access control management measures where applicable to deter an increase in motorized public access along new pipeline ROWs, on new temporary construction access, and into existing linear disturbances that intersect the Project ROW) and that plant harvesting, fishing, hunting, trapping, ceremonial practices, travel, and use of cultural sites would still be possible.

### **7.6.7.3 Potential Project-related Effects**

Through the assessment process, Indigenous communities had the opportunity to make known to NGTL and the Commission their views and concerns about the Project, including what effects it might have on their potential and / or established rights and interests. Indigenous Intervenor and those Indigenous communities included in NGTL's evidence identified how the Project might affect their Indigenous and Treaty rights, including those related to hunting, fishing, trapping, the harvest of plant resources for food and medicines, and the maintenance of cultural and ceremonial practices within their traditional territories. The Commission heard Elders and knowledge keepers of various Indigenous Intervenor express their views and concerns about the importance of the land and the water during their oral Indigenous knowledge sharing. Written evidence also included concerns in relation to these matters. The Commission acknowledges the concerns raised by Indigenous communities regarding the potential effects of the Project on TLRU, including the transfer of traditional language and knowledge, as well as the recommendations made to the Commission by a number of Indigenous communities.

The Commission notes that NGTL stated it would limit Project effects to the extent possible, by paralleling the existing ROW as much it can. As a result, approximately 86 per cent (296 km) of the proposed pipeline route parallels existing NGTL ROW or other existing linear disturbances. More specific to TLRU matters, NGTL proposed a comprehensive suite of mitigation measures to reduce the adverse effects of the Project on TLRU. This includes, but is not limited to: implementing mitigation measures for wildlife, wildlife habitat, plants, vegetation, wetlands, watercourse crossings, erosion control and secondary containment, fish, and fish habitat; Traffic Control Plan; Access Management Plan; Cultural Resource Discovery Contingency Plan; posting signage to discourage unauthorized public access onto the construction footprint during construction; providing potentially affected Indigenous communities with the proposed Project construction schedule and maps; notifying registered trappers at least ten days prior to construction; forbidding Project personnel from hunting or fishing on the construction footprint; avoiding disturbance to environmentally sensitive features during clearing; and following clearing, re-mark all sensitive resources as necessary and supplement markings with signage.

The Commission heard Indigenous communities state that they wanted the opportunity to go to their traditional territories and be able to harvest and possibly move various traditional plants, medicines, and trees prior to construction commencing. Indigenous communities also stressed the importance of ceremonies and protocol prior to events such as disturbing their local environment. Indigenous communities also indicated that they would like to be notified in advance of the construction schedule and be updated in relation to changes in that schedule. The Commission notes that NGTL stated it was agreeable to these requests. The Commission strongly encourages Indigenous peoples to reach out to NGTL to indicate their interests in these endeavours. Further, the Commission expects NGTL to do all it can to facilitate these endeavours happening in a timely and successful manner.

The Commission notes the concerns from Indigenous Intervenor about offsets for effects on traditional use, including the recommendation of a plan to offset or compensate for the loss of Crown lands available for traditional uses by Indigenous peoples. The Commission notes that NGTL's Project would result in minimal new permanent footprint on Crown land and that the remainder of the Project footprint would be available for TLRU activities. In light of these points, the Commission is of the view that such a recommendation is not appropriate to be included as a condition for this Project.

The Commission recognizes that there may be cost differentials between the acquisition of Crown and private lands that may favour route selections on Crown lands. Such an imbalance has the potential to overweight the impairment of traditional land use on Crown lands by Indigenous peoples. As noted in Chapter 5, the Commission finds that NGTL's route selection process and the criteria used to determine the route to be reasonable and justified for the Project. However, the Commission encourages government to investigate the potential for such over selection of Crown land to the impairment of traditional use by Indigenous peoples.

The Commission heard concerns from Indigenous communities about the positive role that Indigenous monitors could play in being able to prevent potential adverse effects of the Project on the current use of lands and resources for traditional purposes. In relation to this, the Commission recommends, as noted above, **Condition 12** and **Condition 27** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 10** and **Condition 22** for the **Section 58 Facilities and Activities**, requiring NGTL to file its monitoring plans for Indigenous peoples related to both the Project's construction and post-construction. See Section 7.6.2 for a full discussion.

Considering the evidence on the record, including NGTL's proposed mitigation measures to reduce the adverse effects of the Project on TLRU and the Commission's recommended and imposed conditions in the previous paragraph, as well as the recommended **Condition 10** for the **Section 52 Pipeline and Related Facilities** and **Condition 6** that would be imposed for the **Section 58 Facilities and Activities**, the Commission finds that effects of the Project on traditional land and resource use would therefore be short-term to medium-term, reversible in the long-term, limited to the local study area, and low to moderate in magnitude. Given all of the above, the Commission finds that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples are not likely to be significant. Appendix VIII specifies the definitions for criteria used in this evaluation.

#### **7.6.7.4 Potential Project-related Cumulative Effects**

The Commission notes the concerns raised by Indigenous Parties about the cumulative effects on TLRU in the regions affected by the Project and the overall effects that previous and continuing development is having on the ability of Indigenous peoples to continue to use the lands and resources for traditional purposes. The Commission is of the view that the existing cumulative effects on TLRU could be significant in certain areas of high development. The Commission recognizes how ongoing and potential cumulative effects can have lasting cultural implications. As discussed in Chapter 8, the Commission notes the nature of the Project and the environmental context - multiple looping of an existing pipeline, in an area of substantial developments from a number of industries. To minimize or avoid to the extent possible, specific Project-related cumulative effects on the TLRU, the Commission has considered NGTL's mitigation measures to address effects on the biophysical resources that support TLRU activities, NGTL's mitigation measures to address effects on TLRU activities, and the Commission's additional related recommended conditions mentioned in Section 7.6.7.3. As a result, the Commission is of the view that the Project would not likely result in significant adverse cumulative effects on TLRU.

Nonetheless, the Commission acknowledges the concerns raised by the Parties and continues to encourage all interested stakeholders, Indigenous peoples, NGTL and other governing bodies, to contribute towards ensuring more integrated and holistic approaches towards addressing cumulative effects.

### **7.6.8 Section 35(1) Constitution Act, 1982**

Evidence was filed during the hearing process by Alexis Nakota Sioux Nation, Bearspaw First Nation, Blood Tribe, Chiniki First Nation, Driftpile Cree Nation, Ermineskin Cree Nation, Horse Lake First Nation, Louis Bull Tribe, Métis Nation of Alberta Region 3, Nekaneet Cree Nation, O'Chiese First Nation, Piikani Nation, Saddle Lake Cree Nation, Samson Cree Nation, Wesley First Nation, and Whitefish (Goodfish) Lake First Nation #128 regarding concerns that the Project could potentially impact their ability to exercise their Indigenous and Treaty rights. In addition, many of these Indigenous communities indicated concern regarding NGTL's method of assessing Project impacts to potential and / or established Indigenous and Treaty rights. Submissions made by Indigenous communities are summarized in Section 7.4.8 and NGTL's responses are summarized in Section 7.5.8.

The Commission notes that the Government of Canada stated in letters from NRCan, issued on 3 July 2018 and 1 April 2019 to identified potentially impacted Indigenous communities, that the Government of Canada relies on the NEB's hearing process to the extent possible to fulfill its duty to consult Indigenous communities for the proposed Project. The assessment process employed by the Commission is robust and inclusive. It makes use of its technical expertise and has broad remedial powers with respect to Project-related matters. A number of judicial decisions, including *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*<sup>19</sup>, have acknowledged the Crown's ability to rely on opportunities for Indigenous consultation that are available within existing processes for regulatory or environmental review. This is a means by which the Crown may be satisfied that Indigenous concerns have been heard and considered, and where appropriate, accommodated. The Commission notes that the Supreme Court of Canada has acknowledged in two more recent decisions, *Clyde River* and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*<sup>20</sup>, that the NEB, now the Commission, has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures as well as the requisite technical expertise.

Regulatory tribunals, through their legislative mandates, are charged with performing duties and exercising the powers that fall within the executive branch of government. Regulatory tribunals such as the Commission must perform those duties and exercise those powers, not only in accordance with their legislative mandates, but also in accordance with section 35 of the *Constitution Act, 1982* and other applicable laws. The NEB Act provides the Commission with broad powers and expansive remedial authority to deal with the impacts of federally-regulated pipeline projects. The Commission is the federal statutory body that has the most direct involvement in the assessment of applications to construct and operate pipelines. The Commission also has the technical expertise and the regulatory experience to understand a project, the likelihood of impacts and the measures that can be implemented to minimize the impacts. In

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<sup>19</sup> 2004 3 SCR 550, 2004 SCC 74 (CanL II), at [40] (and reiterated in *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at [30-31] (hereinafter *Clyde River*)).

<sup>20</sup> *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41.

addition, the Commission has the authority to elicit commitments from the proponent, impose conditions on an approval and ensure ongoing regulatory oversight of a project and a proponent's compliance. The Commission also has been given the statutory mandate to impose and enforce mitigation measures to reduce negative project impacts and hold a proponent to the commitments made in the Commission's project assessment process.

The framework within which the Commission operates and under which decisions under the NEB Act are made, including the requirement that a project assessment process be conducted in a procedurally fair manner, can provide a practical, effective and efficient way within which Indigenous peoples can request and receive meaningful assurances from the proponent or the Commission about project-related impacts on the rights and interests of Indigenous peoples. Hearing directly and indirectly about Indigenous peoples' concerns about project-related impacts on their interests allows the Commission to impose measures to mitigate the impacts and balance, as appropriate, any residual effects with the other societal interests at play when assessing a project. As a result, decisions on pipeline projects can be made in a constitutionally-appropriate manner consistent with the honour of the Crown. This framework also provides an effective mechanism through which Indigenous peoples' concerns that are beyond the mandate of the CER can be communicated to the GiC for consideration in its decision making. It also provides other government agencies with information that they may choose to use in any decisions that they may need to make, should the Project be approved. It should be understood that the Commission's consideration of what is required in terms of consultation with Indigenous peoples is a fluid process as more information is obtained and assessed in the Commission's proceeding. There are several points in a Commission proceeding where the existence and extent of the rights and / or interests of Indigenous peoples and the potential impact on them are considered with a view to determining the procedural opportunities that must be provided and the substantive outcomes that are warranted. For example, such factors may be considered when:

- the proponent determines who may be impacted by its proposed project;
- the Commission decides to whom notices are sent;
- the Commission considers the type of process that should be employed;
- the Commission decides who should be allowed to participate in the proceeding and to what extent;
- the Commission assesses the level of consultation expected of the proponent and any others who may have authority to deal with an issue;
- the Commission considers the totality of information required from the proponent regarding potential impacts and proposed mitigation measures;
- the Commission considers the totality of information required from Indigenous participants;
- the Commission recommends what conditions would need to be imposed; and,
- the Commission recommends whether the authorization should be issued.

The Commission's assessment process is designed to be thorough and accessible to Indigenous peoples so that they may make their concerns known to the Commission and have those concerns addressed as appropriate. In addition to the engagement that is to occur between a proponent and potentially impacted Indigenous communities (described in Section 7.1), it should be understood that the Commission's hearing process itself (described in Section 7.3), including this Report, is part of the overall consultative process in relation to the Crown's duty to consult.



In this Application, while much of the early engagement was performed by NGTL, the Commission process acted as a necessary and important check on that engagement and gave Indigenous peoples an additional avenue to explain their concerns about the Project and have those concerns considered by the Commission. Indigenous Intervenor assisted in shaping the Commission's hearing process by participating in the Conference for Discussion about Meaningful Participation, and also had the opportunity to comment on the two sets of draft conditions.

The Commission is of the view that NGTL designed and implemented appropriate and effective engagement activities for the Project, and is also of the view that the Commission process was appropriate for these circumstances and enhanced the information flow to potentially impacted Indigenous communities and provided greater opportunities for meaningful participation of Indigenous peoples.

To the extent that other government departments had information to provide to the Commission, they had the opportunity to participate in the Commission's process and file relevant information on the Commission's record. Several government departments participated in the Commission's proceeding by filing information, including NRCan, ECCC, Health Canada, and the Alberta Department of Energy. The federal government participants filed expert information on the Commission's hearing record, and those who were Intervenor were available to answer questions asked by the Commission, NGTL, and other Intervenor, including Indigenous communities. These government Intervenor also had the opportunity to comment and provide information on appropriate mitigation measures.

The Commission has also considered the consultation evidence filed by NRCan whereby it provided information to all Indigenous communities potentially impacted by the Project in relation to how the Crown would satisfy its duty to consult. The Commission notes that NRCan will produce the Consultation and Accommodation Report to be presented to the GiC with this Report. The GiC, in making its determination in relation to the Project, will need to determine whether the Crown's duty to consult has been satisfied.

The Commission has considered the information submitted regarding the nature of potentially impacted rights and interests of Indigenous peoples in the Project area. The Commission has also considered the anticipated impacts of the Project on those rights and interests and the concerns expressed by Indigenous communities, as discussed in this Chapter and this Report. In light of the nature of the rights and interests and the anticipated impacts, the Commission has evaluated the consultation undertaken with respect to this Project, including the mandated engagement performed by NGTL and the consultation undertaken through the Commission's project assessment process. The Commission has also considered the mitigation measures proposed by NGTL to address the various concerns and potential impacts. The Commission has also determined it is necessary to include conditions in relation to Indigenous peoples' concerns and the potential impacts on the rights and interests of Indigenous peoples. The Commission is of the view that there has been adequate consultation and accommodation for the purpose of the Commission's decision on this Project. The Commission is of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples, after mitigation, are not likely to be significant and can be effectively addressed.

As a result of the above, considering all of the findings in this Report, the Commission is of the view that an approval of this Project is consistent with section 35 of the *Constitution Act, 1982* and the honour of the Crown.

## 8 Environment and Socio-Economic Matters

As the Project is over 40 km in length, it is designated under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Accordingly, the Commission is required, as the Responsible Authority, to conduct an environmental assessment (EA) and prepare an EA report. The Commission also considers environmental protection as part of its broader mandate. When making its recommendations, the Commission is responsible for assessing the environmental and socio-economic effects of the Project. This chapter represents the Commission's EA.

### 8.1 The CEAA 2012 Context

The Commission posted a Notice of Commencement on the Canadian Environmental Assessment Registry Internet Site (CEARIS) on 29 May 2018 and its reference number is 80153. On 5 July 2018, the Commission posted on the CEARIS a description of the preliminary factors to be taken into account in the EA and the scope of those factors as required by subsections 19(1) and 19(2) of the CEAA 2012 and requested comments from the Participants. The final factors and scope of the factors was included in Hearing Order GH-003-2018 published on 4 December 2018. The environmental effects considered include those listed in subsection 5(1) of the CEAA 2012 as well as other effects pursuant to subsection 5(2) and set out in the Filing Manual.

CEAA 2012 requires the Commission to provide opportunities for public participation and provide participant funding, both of which are described in Chapter 2 and Chapter 7.

### 8.2 The Commission's EA Methodology

In assessing the environmental and socio-economic effects of the Project, the Commission used an issue-based approach as set out in the Filing Manual.

This assessment begins with a description of the Project (Section 8.3), followed by a description of the environmental setting and the environmental and socio-economic elements within that setting (Section 8.4), and then a summary of those environmental and socio-economic concerns raised by the public (Section 8.5).

Based on this information, the Commission identified Project-environment interactions expected to occur and any resulting potential adverse environmental effects (Table 8-10 in Section 8.6). For those valued components for which Project-related environment interactions are not expected, or the interaction would result in positive or neutral effects, further examination was deemed unnecessary.

The Commission then assessed the potential adverse environmental and socio-economic effects, as well as the adequacy of NGTL's proposed environmental protection strategies and mitigation measures for the Project (Section 8.6). Section 8.6.3 discusses the extent to which standard mitigation is relied on to mitigate potential adverse effects. In Section 8.6.4, the Commission provides detailed analysis for issues that are of public concern or of environmental consequence, and that may require additional mitigation. For each issue considered in detail, Views of the Commission are provided and the Commission assesses whether further mitigation is recommended by way of condition on any potential Project authorization, in order to ensure any potential environmental and socio-economic effects would not be significant.

Where there are any residual effects remaining after proposed mitigation, cumulative effects are considered in the following section (8.7). Follow-up under the CEAA 2012 is then discussed (Section 8.8). The Commission’s determination of significance is provided in Section 8.9.

### 8.3 Project Details

Chapter 2 of this Report provides a general description of the Project. In addition, Table 8-1 provides further details regarding each Project component and the associated activities that are relevant to the EA.

**Table 8-1: Project Components and/or Activities**

<b>Project Components and/or Activities</b>
<p><i>Construction Phase – Timeframe:</i>  <i>Temporary Infrastructure: Q3 of 2020</i>  <i>Compressor Station Unit Additions: Q3 of 2020 to Q2 2021</i>  <i>Pipeline Construction is scheduled to commence in Q3 of 2020 and be completed by Q2 2021</i></p>
<p>Pipeline Route:</p> <p>Grande Prairie West</p> <ul style="list-style-type: none"> <li>• Grande Prairie Mainline Loop No. 4 - Valhalla Section <ul style="list-style-type: none"> <li>○ Approximate total length – 36 km; contiguous with existing disturbances – 34 km</li> </ul> </li> <li>• Grande Prairie Mainline Loop No. 3 - Elsworth Section <ul style="list-style-type: none"> <li>○ Approximate total length – 46 km; contiguous with existing disturbances – 30 km</li> </ul> </li> </ul> <p>Grande Prairie South</p> <ul style="list-style-type: none"> <li>• Grande Prairie Mainline Loop No. 2 - Karr Section <ul style="list-style-type: none"> <li>○ Approximate total length – 57 km; contiguous with existing disturbances – 48 km</li> </ul> </li> <li>• Grande Prairie Mainline Loop No. 2 - Deep Valley Section <ul style="list-style-type: none"> <li>○ Approximate total length – 69 km; contiguous with existing disturbances – 65 km</li> </ul> </li> <li>• Grande Prairie Mainline Loop No. 2 - Colt Section <ul style="list-style-type: none"> <li>○ Approximate total length – 13 km; contiguous with existing disturbances – 11 km</li> </ul> </li> </ul> <p>Edson South</p> <ul style="list-style-type: none"> <li>• Edson Mainline Loop No. 4 – Robb Section <ul style="list-style-type: none"> <li>○ Approximate total length – 42 km; contiguous with existing disturbances – 35 km</li> </ul> </li> <li>• Edson Mainline Loop No. 4 – Dismal Creek Section <ul style="list-style-type: none"> <li>○ Approximate total length – 32 km; contiguous with existing disturbances – 26 km</li> </ul> </li> <li>• Edson Mainline Loop No. 4 – Brewster Section <ul style="list-style-type: none"> <li>○ Approximate total length – 49 km; contiguous with existing disturbances – 47 km</li> </ul> </li> </ul>

<b>Project Components and/or Activities</b>
<ul style="list-style-type: none"> <li>• January Creek Control Valve <ul style="list-style-type: none"> <li>○ Approximate total length: 80 m</li> </ul> </li> </ul>
<p>Compressor Station Unit Additions</p> <ul style="list-style-type: none"> <li>• Nordegg Unit C6 Addition <ul style="list-style-type: none"> <li>○ Additional footprint required– approximately 5 ha</li> </ul> </li> <li>• Didsbury Unit B7 Addition <ul style="list-style-type: none"> <li>○ Additional footprint required – approximately 7 ha</li> </ul> </li> <li>• Beiseker Unit B3 Addition <ul style="list-style-type: none"> <li>○ Additional footprint required – approximately 2 ha</li> </ul> </li> </ul>
<p>ROW preparation and related infrastructure installation:</p> <ul style="list-style-type: none"> <li>• Clearing, grubbing and grading for the ROW and all temporary and permanent infrastructure. Minimum construction ROW width of 32 m plus temporary workspace for the pipeline sections, with the exception of the portion of the Deep Valley section through the Little Smoky Caribou Range where the construction ROW width would be further decreased.</li> <li>• Pipeline stringing, welding, bending, coating, trenching, installation and backfill.</li> <li>• Construction of compressor station unit additions and other permanent above ground infrastructure.</li> <li>• Construction and operation of temporary construction camp for Nordegg Compressor Station Addition.</li> <li>• Temporary access roads</li> <li>• Watercourse crossings: <ul style="list-style-type: none"> <li>○ Trenchless crossings at: Wapiti River, Smoky River, Little Smoky River, McLeod River, Pembina River, and North Saskatchewan River</li> <li>○ Isolated open cut crossing at Simonette River; and</li> <li>○ Isolated trenched crossings where water is present or an open cut crossing method where dry or frozen to the bottom for the remaining proposed crossings.</li> </ul> </li> <li>• Trenchless Highway crossings at Highway 11 in the Brewster Section, Highway 734 in the Karr Section, and Highways 672 and 59 in the Valhalla Section.</li> <li>• Water withdrawal and hydrostatic testing</li> <li>• ROW clean-up, reclamation and site restoration</li> </ul>
<p><i>Operation Phase – Timeframe: Service life of the Project (estimated in-service date: April 2021)</i></p> <ul style="list-style-type: none"> <li>• ROW maintenance including vegetation control, erosion control, line integrity flyovers and third-party activity near lines</li> <li>• Facility maintenance</li> </ul>
<p><i>Abandonment Phase – Timeframe: At the end of the service life of the Project</i></p> <ul style="list-style-type: none"> <li>• To abandon the facility, an application to the Commission would be required pursuant to the CER Act, at which time the environmental effects would be assessed by the Commission.</li> </ul>

## 8.4 Environmental Setting

In this section, the Commission provides a description of the environmental setting for the Project. Since the information provided is from NGTL's Application, and specifically from its Environment and Socio-Economic Impact Assessment, the Commission has used the same spatial extent descriptors as used by NGTL. They include Project footprint, Local Study Area (LSA) and Regional Study Area (RSA) and are defined below:

### Project footprint

- Defined as the area actually disturbed by construction activities, and is a minimum of 32 m in width.
- To account for potential areas of temporary workspace (TWS), the Project footprint is defined as 75 m in the environmental assessment, with the exception of the pipe section located within the Little Smoky Caribou Range, where the Project footprint was assessed at 42 m width.

### Local Study Area (LSA)

- For pipeline sections: defined as a 1.1 km wide corridor centered over the proposed centerline, and expanded to an approximate 2 km square at the Wapiti River, Smoky River, Latornell River, Simonette River, Deep Valley Creek, Little Smoky River, McLeod River, Pembina River and North Saskatchewan River.
- For each of the compressor stations: includes an approximate 50 m radius from the proposed fence line of each compressor station unit addition.

### Regional Study Area (RSA)

- For pipeline sections: defined as the area for which the Project may potentially contribute to cumulative effects, and was defined as a 20 km wide corridor centered over the pipeline centerline.
- For each of the compressor stations: includes a 10 km radius from the proposed fence line.

#### 8.4.1 Location

- The Project facilities and components are all located within northern Alberta. See Figure 2-1 in Chapter 2 for a map showing their locations.
- The pipeline is located in County of Grande Prairie No.1, extends though the Municipal District of Greenview No. 16, Yellowhead County and ends in Clearwater County. The pipeline sections are adjacent to the existing Grand Prairie Mainline and include the Grande Prairie West, Grande Prairie South and the Edson South areas.
- The locations of the Project facilities and components and information on the Natural Subregions are described in Table 8-2.

**Table 8-2: Project Locations and Natural Subregions**

<b>Project Area</b>	<b>Project Component</b>	<b>Location</b>	<b>Natural Subregion(s)</b>
Grande Prairie West	Valhalla Section	County of Grande Prairie No.1, northwest of Grande Prairie, Alberta (AB)	Dry Mixedwood and Central Mixed Wood
	Elmworth Section	County of Grande Prairie No.1 and Municipal District of Greenview No.16, southwest of Grande Prairie, AB	Dry Mixedwood and Central Mixed Wood
Grande Prairie South	Karr Section	Municipal District of Greenview No.16, southeast of Grande Prairie, AB	Dry Mixedwood and Central Mixed Wood and Lower Foothills
	Deep Valley Section	Municipal District of Greenview No.16, southeast of Grande Prairie, AB	Lower Foothills and Upper Foothills
	Colt Section	Yellowhead County, southwest of Fox Creek, AB	Lower Foothills
Edson South	Robb Section	Yellowhead County, south of Edson, AB	Lower Foothills
	Dismal Creek Section	Yellowhead County, southwest of Fox Creek, AB	Lower Foothills and Upper Foothills
	Brewster Section	Clearwater County, northwest of Rocky Mountain House, AB	Lower Foothills
	January Creek Control Valve	Yellowhead County, northeast of Edson, AB	Lower Foothills
	Nordegg Compressor Station	Clearwater County, northwest of Rocky Mountain House, AB	Lower Foothills

Project Area	Project Component	Location	Natural Subregion(s)
	Didsbury Compressor Station	Mountain View County, south-southwest of Didsbury, AB	Central Parkland
	Beiseker Compressor Station	Rockyview County, east of Airdrie, AB	Foothills Fescue

#### 8.4.2 Land, Human Occupancy and Resource Use

- A total of 22 dwellings were identified within the LSA. Five cabins were also identified within the LSA.
- Private dwellings are not intersected by the Project footprint. One cabin, located within the Brewster Section of the LSA, is within the Project footprint, however, the routing assessment indicates that the cabin would not be within the ROW.
- Approximately 20 per cent (89 km) of all parcels traversed by the pipeline components are private (freehold) land and approximately 80 per cent (255 km) are provincial Crown land.
- In Alberta, Crown land is divided into White and Green areas and is administered under the *Public Lands Act* by the Public Lands and Forests Division of Alberta Environment and Parks. In the White Area, the majority of the land is privately owned (75 per cent), with the remaining being public land. The Project occurs both within the Green and White areas of Alberta.
- The Green Area is designated public land and encompasses most of northern Alberta and the mountain and foothill areas along the western border, where public land is managed for timber production, watershed, wildlife and fisheries, recreation and other uses. Traditional land use and some grazing activities are also present in the Green Area.
- The White Area is primarily private land and encompasses the populated central, southern and Peace River areas of the province, where land use is primarily agriculture, recreation, soil and water conservation, and fish and wildlife habitat.
- No parks are found in the Project's LSA, although approximately 22 per cent of the LSA is composed of land classified as environmentally significant.
- The Project does not traverse any federally-owned or administered land including Indian Reserves as defined under the *Indian Act*.
- The dominant land use for each Project component is described in Table 8-3.

**Table 8-3: Dominant Land Use for Project Components**

Project Area	Project Component	Area of Alberta (%)	Dominant Land Use
Grande Prairie West	Valhalla Section	White (100)	Agricultural (cultivated, hay and tame pasture) (29 km); forested (3 km); anthropogenic disturbances (2 km) and wetlands (2 km)
	Elmworth Section	White (83) Green (17)	Agricultural land (cultivated, hay, pasture) (18 km); forested (16 km); wetlands (7 km) and anthropogenic disturbances (5 km)
Grande Prairie South	Karr Section	Green (100)	Forested (33 km); wetlands 7 km); anthropogenic disturbances (16 km); natural non-vegetated areas (exposed soil, lakes, ponds and rivers) (1%)
	Deep Valley Section	Green (100)	Forested (31 km); anthropogenic disturbances (26 km); wetlands (13 km).
	Colt Section	Green (100)	Wetlands (6 km); forested (5 km); and anthropogenic disturbances (3 km)
Edson South	Robb Section	White (5) Green (95)	Forested (25 km); anthropogenic disturbances (10 km); wetlands (6 km); agricultural land (< 1 km)
	Dismal Creek Section	Green (100)	Forested (12 km); anthropogenic disturbances (14 km) and wetlands (5 km)
	Brewster Section	Green (100)	Anthropogenic disturbances (25 km); forested (20 km); wetlands (3 km).
	Nordegg Compressor Station	Green (100)	Uplands (58%); wetlands (33%); anthropogenic disturbances (9%).
	Didsbury Compressor Station	White (100)	Agricultural – spring seeded small grain
	Beiseker Compressor Station	White (100)	Agricultural – spring seeded small grains; Anthropogenic disturbances



### 8.4.3 Physical Environment

- The LSA of the Project falls in an area of isolated patches of permafrost, however provincial mapping and previous construction in the LSA did not find permafrost.
- Modelling indicated that areas of incised valley slopes have a higher potential for terrain instability.

### 8.4.4 Soil and Soil Productivity

- Soils within the Project LSA are described in Table 8-4.

**Table 8-4: Soils in the Project LSA by Pipeline Section**

Project Area	Project Component	Surficial Geology
Grande Prairie West	Valhalla Section	Glaciolacustrine deposits
	Elmworth Section	Glaciolacustrine deposits, fluvial deposits, colluvial deposits, eolian deposits, morainal deposits
Grande Prairie South	Karr Section	Glaciofluvial and glaciolacustrine deposits
	Deep Valley Section	Pleistocene-aged moraine, stagnant ice and fluted moraine, colluvial, fluvial, glaciofluvial, glaciolacustrine, bedrock and pre-glacial fluvial deposits
	Colt Section	Pleistocene-aged moraine, fluvial and morainal deposits
Edson South	Robb Section	Pleistocene-aged glaciolacustrine deposits, fluvial, glaciofluvial, moraine and fluted moraine deposits
	Dismal Creek Section	Pleistocene-aged moraine, fluted moraine, colluvial, fluvial, glaciofluvial, glaciolacustrine and organic deposits
	Brewster Section	Pleistocene-aged fluted moraine, fluvial deposits, glaciofluvial and glaciolacustrine deposits, moraine, stagnant ice moraine and organic deposits
	Nordegg Compressor Station	Pleistocene-aged and fluted moraine, peat forming wetland

Project Area	Project Component	Surficial Geology
	Didsbury Compressor Station	Fluted moraine
	Beiseker Compressor Station	Pleistocene-aged glaciolacustrine deposits
	January Creek Valve	Pleistocene-aged stagnant ice moraine

### Soil Contamination

- Past contamination has been reported by various companies in seven pipeline sections (Valhalla, Elmworth, Karr, Deep Valley, Robb, Dismal Creek and Brewster). The records indicate contamination is from either operation beyond design limit with no reportable contaminant released or the result of spills / releases. All of the spills or releases have been documented as being cleaned up, or the file has been closed with no further action required.
- Two releases of gas production have been reported at the Nordegg Compressor Station Unit Addition footprint and were both documented as cleaned up with no further action required.
- One release of an unspecified volume of unknown contaminant was reported in 1998 at a third party facility adjacent to the Didsbury Compressor Station Unit Addition footprint.
- One release of natural gas (sweet) was documented at the Beiseker Compressor Station Unit due to equipment malfunction.

#### **8.4.5 Vegetation, including Species at Risk**

- The LSA falls within six natural subregions: the Central Mixedwood, Dry Mixedwood, Lower Foothills, Upper Foothills, Central Parkland, and Foothills Fescue of Alberta.
- Surveys confirmed the presence of old seral stage forests within the Valhalla, Karr, Deep Valley, Colt, Robb, Dismal Creek, and Brewster sections. No old seral stage forest was recorded at the three compressor station unit additions or the January Creek valve site.
- No plant species at risk listed under the Schedule 1 of the *Species at Risk Act* (SARA), or Schedule 6 of the Wildlife Regulation under the *Alberta Wildlife Act* were observed during field surveys within the LSA or Project footprint.
- Rare plant species listed under the Alberta Conservation Information Management System were identified within the Elmworth, Karr, Deep Valley, Colt, and Brewster sections. No rare plant species were identified at the three compressor station unit additions.
- Two prohibited noxious weed species (meadow hawkweed (Deep Valley section) and giant hogweed (Brewster section)) were identified within the existing Grande Prairie Mainline pipeline ROW or disturbed areas adjacent to the Project footprint. Nine noxious weed species (creeping thistle, narrowleaf hawksbeard, great burdock, perennial sow-thistle, wooly burdock, ox-eye daisy, scentless chamomile, tall buttercup and field bindweed) were

recorded along the Project footprint in the seven pipeline segments, and two compressor unit addition sites, Didsbury and Beiseker.

- No signs of mountain pine beetle infestation were observed within the LSA and Project footprint during field surveys.

#### **8.4.6 Water Quality and Quantity**

##### Surface Water

- The pipeline sections cross the North Saskatchewan River, Athabasca River and Peace River watersheds while the Didsbury and Beiseker Compressor Station Unit Additions are located within the Red Deer River watershed.
- Sections of the Peace River and the Red Deer River watersheds within the RSA were identified as having a moderate or high risk to surface water contamination from agricultural land use. The Athabasca River watershed had low risk of contamination from agriculture land use in the northern portion of the Robb section, while the North Saskatchewan River watershed was not identified as having risk of contamination from agricultural use.
- Field surveys identified 130 watercourse crossings and 50 drainages crossed by the Project. The number of watercourses and drainages to be crossed by the Project are shown per pipeline section in Table 8-5.

**Table 8-5: Watercourses and Drainages to be Crossed by the Project**

Project Component	No. of Watercourse Crossings	No. Drainages Crossed	Watershed(s)
Valhalla Section	5	6	Peace River
Elmworth Section	3	5	Peace River
Karr Section	27	6	Peace River
Deep Valley Section	38	15	Peace River and Athabasca River
Colt Section	5	4	Athabasca River
Robb Section	15	3	Athabasca River
Dismal Creek Section	12	3	Athabasca River and North Saskatchewan River
Brewster Section	29	9	North Saskatchewan River

- The three compressor station unit additions and the January Creek control valve are not located within 30 m of any watercourses.

#### Groundwater

- Two springs are recorded in the LSA within the Robb section.
- There are 213 registered groundwater wells within the LSA of the Project, with the main uses being industrial, domestic, stockwatering, investigation or observation. The depths range from 6.1 to 374 metres below ground surface. Only one of these wells, located in the Robb section, recorded artesian conditions.

#### **8.4.7 Fish and Fish Habitat, including Species at Risk**

- There have been 33 fish species (coldwater and coolwater), including 12 sport fish species documented within the RSA.
- No fish species documented within the LSA or RSA are listed as federally at risk under the SARA
- Fish species listed as threatened under the *Alberta Wildlife Act*, were identified in watercourses during aquatic surveys include Bull trout (Elmworth, Karr, Deep Valley and Brewster sections), Athabaskan River population of Rainbow trout (Deep Valley, Robb and Colt sections) and Lake sturgeon (Brewster section).

- The Provincially listed fish species of management concern identified within watercourses as ‘may be at risk’ are Arctic grayling (Elmworth, Karr, Deep Valley, Robb and Dismal Creek sections) and Spoonhead sculpin (all sections except Valhalla and Elmworth); and as ‘sensitive’ are Largescale sucker (Elmworth section) and Northern redbelly dace, and Northern pikeminnow (Karr section).
- Twenty seven watercourses were identified as having good habitat potential for all sportfish and forage fish. The remaining watercourses ranged from a rating of poor to moderate, or a mix of poor to good for different habitat uses, or fish groups.
- Whirling Disease has been documented in the North Saskatchewan River.

#### 8.4.8 Wetlands

- Approximately 260 ha of wetland would be potentially altered and includes 53 ha of bogs, 70 ha of fens, 140 ha of swamp, 8 ha of marshes, 2 ha of open water, and less than one ha of treed bog. A summary of wetlands is provided in Table 8-6.

**Table 8-6: Wetlands to be Altered by the Project**

Project Component	Area of wetlands within LSA (ha)	Dominant wetland type(s) within LSA	Wetland area altered by Project footprint (ha)
Valhalla Section	224	Swamps (192 ha)	5
Elmworth Section	1272	Wooded coniferous fens (305 ha); wooded mixedwood swamps (278 ha)	60
Karr Section	1125	wooded coniferous swamps (469 ha); wooded coniferous fens (319 ha)	54
Deep Valley Section	1931	wooded coniferous swamps (883 ha); wooded coniferous bogs (481 ha)	48
Colt Section	603	Wooded coniferous fens (345 ha); wooded coniferous swamps (102 ha); wooded coniferous bogs (92 ha)	28
Robb Section	1281	Wooded coniferous fens (402 ha); wooded coniferous swamps (395 ha); wooded coniferous bogs (382 ha)	33
Dismal Creek Section	1029	Wooded coniferous bogs (533 ha); wooded coniferous swamps (207 ha) and wooded coniferous fens (244 ha)	28

Project Component	Area of wetlands within LSA (ha)	Dominant wetland type(s) within LSA	Wetland area altered by Project footprint (ha)
Brewster Section	669	Wooded coniferous swamps (286 ha); wooded coniferous bogs (164 ha)	27
Nordegg Compressor Station Unit Addition	<1	Wooded coniferous bog (< 1 ha)	<1
Didsbury Compressor Station Unit Addition	0	N/A	0
Beiseker Compressor Station Unit Addition	0	N/A	0
January Creek Valve	0	N/A	0

#### 8.4.9 Wildlife and Wildlife Habitat, including Species at Risk

- The LSA is comprised of forested habitat, (pine forest (18 per cent), mixedwood forest (12 per cent), black spruce forest (11 per cent), deciduous forest (8 per cent) and white spruce forest (7 per cent)); and approximately 8 per cent lowland habitats (fens/marshes, swamps, riparian/open water), upland grassland/shrubland (1 per cent), fir forest (2 per cent) and coniferous forest and exposed soil (<1 per cent). The LSA also contains approximately 12 per cent agricultural developments and 22 per cent is existing disturbances.
- Each pipeline section crosses through provincially designated wildlife sensitivity zones. These areas are shown in Table 8-7.

**Table 8-7: Designated Wildlife Sensitivity Zones to be crossed by the Project**

Project Component	Designated Wildlife Sensitivity Zone	Restricted Activity Period
Valhalla Section	Trumpeter Swan Sensitivity Zone	01 April to 30 September
	Environmentally Significant Area	N/A

<b>Project Component</b>	<b>Designated Wildlife Sensitivity Zone</b>	<b>Restricted Activity Period</b>
Elmworth Section	Key Wildlife Biodiversity Zone (KWBZ)	15 January to 30 April
	Trumpeter Swan Sensitivity Zone	01 April to 30 September
	Environmentally Significant Area	N/A
Karr Section	KWBZ	15 January to 30 April
	Environmentally Significant Area	N/A
Deep Valley Section	KWBZ	15 January to 30 April
	Little Smoky Caribou Range	15 February to 15 July
	Grande Cache Core and Secondary Grizzly Zone	November to 01 May
	Environmentally Significant Area	N/A
Colt Section	KWBZ	15 January to 30 April
	Grande Cache Secondary Grizzly Zone	November to 01 May
	Environmentally Significant Area	N/A
Robb Section	Environmentally Significant Area (Northern Goshawk land use conditions)	01 April to 30 September
Dismal Creek Section	KWBZ	15 January to 30 April
	Yellowhead Secondary Grizzly Zone	November to 01 May
	Environmentally Significant Area	N/A
Brewster Section	KWBZ	15 January to 30 April
	Yellowhead and Clearwater Secondary Grizzly Zone	November to 01 May

Project Component	Designated Wildlife Sensitivity Zone	Restricted Activity Period
	Environmentally Significant Area	N/A

- Both the Didsbury and Beiseker Compressor Station Unit Additions are located within a Sensitive Raptor Range and Sharp-tailed Grouse Zone, however no records of sensitive raptor species or sharp-tailed grouse have been documented in the area.
- The LSA provides suitable breeding habitat for a number of species of management concern. This includes 31 bird species, six mammal species and three reptile species. Of these species, the following have been previously documented within the LSA: trumpeter swan, bald eagle, great gray owl, alder flycatcher, common yellowthroat, least flycatcher, western wood-peewee, barred owl, eastern phoebe, sandhill crane, and pileated woodpecker.
- Eight species listed on Schedule 1 of SARA have the potential to breed in the LSA. These include common nighthawk (threatened), olive sided flycatcher (threatened), rusty blackbird, (special concern) yellow rail (special concern), little brown bat, (endangered) Northern bat (endangered), woodland caribou (threatened), grizzly bear (special concern) and western toad (special concern).
- Five ungulate species (moose, elk, white-tailed deer, mule deer and woodland caribou) have the potential to occur in the LSA. Historical observations of moose have been documented for the Valhalla, Elmworth, Karr, Deep Valley, Robb, Colt and Dismal Creek sections.
- Three amphibian species (boreal chorus frog, wood frog and western toad) have the potential to occur within the LSA.

2018 Field Surveys

- A winter tracking survey (2018) was conducted in pipeline sections within KWBZs and the Little Smoky Caribou Range. The species confirmed during the surveys are listed in Table 8-8 below.



**Table 8-8: Wildlife Species detected in KWBZs and Little Smoky Caribou Range**

Wildlife Species	Elmworth	Karr	Deep Valley	Little Smoky Caribou Range	Colt	Dismal Creek	Brewster
Caribou	--	--	--	Y	--	--	--
Coyote	Y	Y	Y	Y	Y	Y	Y
Deer	Y	--	Y	Y	--	--	Y
Elk	--	--	Y	--	Y	Y	Y
Fisher/Marten	Y	Y	Y	Y	Y	Y	--
Grouse	--	--	--	--	--	Y	--
Lynx	Y	--	Y	Y	Y	--	Y
Microtine Rodents	Y	--	Y	Y	--	Y	--
Moose	Y	Y	Y	Y	Y	Y	Y
Red Squirrel	Y	Y	--	Y	Y	Y	--
Snowshoe hare	--	Y	Y	Y	Y	Y	Y
Weasel sp.	--	Y	Y	Y	--	--	Y
Wolf	Y	Y	Y	Y	Y	Y	--

- Information from various Indigenous communities have confirmed the presence of deer laydown areas, deer and elk tracks, mineral licks and elk scat near the Colt section, and deer tracks in the Elmworth section.
- A wildlife camera survey (2018) was conducted in the Deep Valley section and identified the presence of white-tailed deer, mule deer, caribou, elk, moose, fisher, black bear, grizzly bear, coyote, wolf, Canada lynx, rabbit, sandhill crane, barred owl, sharp-tailed grouse, weasels and red squirrels.
- The amphibian surveys detected boreal chorus frog in the Valhalla, Karr, Robb, Dismal Creek sections, as well as the Didsbury and Beiseker Compressor Station Unit Additions. Wood frogs were detected in the Valhalla section. Western toads were detected in the Elmworth, Valhalla, Karr, Robb, Dismal Creek and Brewster sections. Breeding was confirmed for the western toad in each of these sections with the exception of the Valhalla section and the three compressor station unit additions.
- During the songbird surveys, ten species accounted for 51 per cent of the songbirds detected. These included the yellow-rumped warbler, white-throated sparrow, ruby-crowned kinglet, chipping sparrow, warbling vireo, American robin, hermit thrush, dark-eyed junco, red-winged blackbird and yellow warbler.
- One SARA listed species, an olive sided flycatcher, was detected during the songbird survey. Fifteen provincially listed bird species of management concern were detected during the songbird survey (alder flycatcher, bald eagle, Baltimore oriole, black tern, black-throated green warbler, brown creeper, common yellowthroat, eastern kingbird, least

flycatcher, pileated woodpecker, sandhill crane, sora, trumpeter swan, western tanager, western wood-pewee).

- Surveys were conducted for yellow rail and common nighthawk, and although potential yellow rail habitat was confirmed within the LSA, no individuals were detected. No common nighthawks were detected during the survey, however incidental detections during other field surveys occurred in the Elsworth, Robb and Dismal Creek sections.
- 20 species of management concern were incidentally identified during field surveys, including alder flycatcher, American kestrel, bald eagle, Baltimore oriole, barred owl, black throated green warbler, brown creeper, common yellowthroat, great blue heron, great gray owl, least flycatcher, pileated woodpecker, sandhill crane, sora, trumpeter swan, western tanager, western wood pee-wee, hoary and silver-haired bat species, and red-sided garter snake.
- Seven SARA listed species were identified through incidental observations during field surveys, including common nighthawk, horned grebe, olive-sided flycatcher, short-eared owl, woodland caribou, myotis bat species, and western toad.

#### **8.4.10 Atmospheric Environment**

- Baseline air quality in the Project Area for nitrogen dioxide (NO<sub>2</sub>), fine particulate matter (PM<sub>2.5</sub>) and carbon monoxide (CO) is well below the federal and provincial ambient air quality objectives and standards. There is a low level of industrial and commercial developments in the vicinity of the Project.
- The total annual provincial greenhouse gas emissions in 2016 were 263 million tonnes CO<sub>2</sub>e, and 704 million tonnes CO<sub>2</sub>e for all of Canada.

#### **8.4.11 Acoustic Environment**

- The Alberta Energy Regulator (AER) Directive 038 stipulates that the Permissible Sound Level (PSL) is derived from receptors located within a 1.5 km boundary of the Project. If there are no receptors identified within the 1.5 km boundary of the proposed compressor station unit addition sites, then, the Project must meet a PSL of 40 dBA Leq for nighttime conditions and 50 dBA Leq for daytime conditions at the 1.5 km distance from the Project fence line.
- There is one residential receptor location within 1.5 km of the Beiseker Compressor Station Unit Addition, approximately 1,350 m northeast of the fence line. There are 11 residential receptor locations within approximately 1.5 km of the Didsbury Compressor Station Unit Addition, the closest of which is located approximately 290 m to the north. There are no residential receptors within 1.5 km of the Nordegg Compressor Station Unit Addition.

#### **8.4.12 Heritage Resources**

- In Alberta, heritage resources are protected by the *Historical Resources Act*, which is administered by Alberta Ministry of Culture, Multiculturalism, and the Status of Women (ACMSW), formerly Alberta Culture and Tourism.

- Existing data relating to historical resources in the regional and local study areas showed that, although several previous historic resources impact assessments (HRIAs) have been conducted in the vicinity, very little of the LSA has been field-tested.
  - 446 shovel tests have been excavated.
  - 10 archaeological sites have been identified in the LSA during previous HRIAs for other projects, of which seven were not considered to have value after they were recorded.
  - Two archaeological sites were subject to data recovery excavations yielding over 11,000 artifacts and both have been assigned a Historic Resource Value (HRV) of 0, and four retain a HRV of 4, indicating additional mitigative requirements are likely.
- The presence of these valuable sites and the identification of hundreds of separate land parcels with archaeological potential indicate that the LSA may contain valuable historical resources.

#### **8.4.13 Traditional Land and Resource Use**

- The Project is located within Treaty 6, Treaty 7, and Treaty 8 boundaries, as well as within the lands of Métis Nation of Alberta, Regions 3, 4 and 6.
- A total of 56 Indigenous communities were identified by NGTL, the NEB, the Major Projects Management Office, other Indigenous communities, or self-identified as being potentially affected or having an interest in the Project.
- Approximately 78 per cent of the Project is located on Crown land.
- Indigenous peoples engage in traditional land and resource use activities and practices on Crown land throughout the region, including the Project local and regional study areas. These activities and practices include plant/medicinal harvesting, hunting, trapping, fishing, use of trails and travelways, camping, and cultural sites.

#### **8.4.14 Navigation and Navigation Safety**

- The proposed pipeline crosses the North Saskatchewan River, which is listed in the *Navigation Protection Act* Schedule of Navigable Waters.
- Surveys completed at each crossing confirmed there are a total of 58 navigable watercourses crossed by the proposed Project.

#### **8.4.15 Human Health**

- The main groups that could potentially be affected by the Project for human health concerns are construction workers involved in the Project; and individuals who live or rely on services and activities near the Project Footprint.
- Project construction activities have the potential to create air emissions, dust and noise that may affect human health. Potential effects to water quality may also affect human health.

## 8.5 Environmental Issues of Public Concern

The Commission received a number of submissions from participants that raised particular concerns related to environmental issues. Table 8-9 summarizes the topics of concern.

**Table 8-9: Environmental Issues Raised by Participants**

Participant	Environmental Issue(s) Raised
Alexis Nakota Sioux Nation	<ul style="list-style-type: none"> <li>• Boreal Woodland Caribou</li> <li>• Herbicide Use</li> <li>• Heritage Resources</li> <li>• Human Health</li> <li>• Traditional Land and Resources Use</li> <li>• Cumulative Effects</li> </ul>
Bears paw First Nation Wesley First Nation Chiniki First Nation	<ul style="list-style-type: none"> <li>• Traditional Land and Resources Use</li> <li>• Human Health</li> <li>• Herbicide Use</li> </ul>
Blood Tribe Saddle Lake Cree Nation Piikani First Nation Métis Nation of Alberta Region 3 Driftpile Cree Nation	<ul style="list-style-type: none"> <li>• Air Quality and Greenhouse Gases</li> <li>• Vegetation, including Old Seral Forests and traditional use plants</li> <li>• Wetlands including invasive plant species</li> <li>• Caribou and the Little Smoky Caribou Range</li> <li>• Amphibians</li> <li>• Migratory birds and birds of cultural importance</li> <li>• Acoustic Environment</li> <li>• Species at Risk</li> <li>• Water Quality and Quantity</li> <li>• Fish and Fish Habitat</li> <li>• Navigation</li> <li>• Heritage Resources</li> <li>• Social and Cultural Well Being</li> <li>• Human Health</li> <li>• Traditional Land and Resources Use</li> <li>• Cumulative Effects</li> </ul>
Horse Lake First Nation	<ul style="list-style-type: none"> <li>• Air Quality</li> <li>• Water Quality/Quantity</li> </ul>

Participant	Environmental Issue(s) Raised
	<ul style="list-style-type: none"> <li>• Herbicide Use</li> <li>• Human Health</li> <li>• Traditional Land and Resources Use</li> <li>• Cumulative Effects</li> </ul>
Ermineskin Cree Nation	<ul style="list-style-type: none"> <li>• Loss of habitat and vegetation</li> <li>• Linear disturbances and habitat fragmentation</li> <li>• Water quality</li> <li>• Human Health</li> <li>• Traditional Land and Resources Use</li> <li>• Social and Cultural Well-being</li> <li>• Cumulative effects</li> </ul>
O'Chiese First Nation	<ul style="list-style-type: none"> <li>• Water Quality and Quantity</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Boreal Woodland Caribou and Habitat</li> <li>• Use of Herbicides</li> <li>• Human Health</li> <li>• Social and Cultural Well-being</li> <li>• Traditional Land and Resources Use</li> <li>• Cumulative Effects</li> </ul>
Samson Cree Nation	<ul style="list-style-type: none"> <li>• Cumulative effects assessment</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Species at Risk</li> <li>• Vegetation</li> <li>• Water Quality and Quantity</li> <li>• Heritage Resources</li> <li>• Human Health</li> <li>• Traditional Land and Resources Use</li> <li>• Cumulative Effects</li> </ul>
Whitefish (Goodfish) Lake First Nation #128	<ul style="list-style-type: none"> <li>• Cumulative effects on wildlife, vegetation and the landscape</li> <li>• Potential effects on moose and elk</li> </ul>

Participant	Environmental Issue(s) Raised
	<ul style="list-style-type: none"> <li>• Noise</li> <li>• Effects of vegetation clearing</li> <li>• Traditional Land and Resource Use</li> <li>• Cumulative Effects</li> </ul>
Health Canada	<ul style="list-style-type: none"> <li>• Air Quality</li> <li>• Water Quality</li> <li>• Noise</li> <li>• Human Health</li> </ul>
ECCC	<ul style="list-style-type: none"> <li>• Woodland Boreal Caribou</li> <li>• Greenhouse Gases</li> <li>• Air Quality</li> <li>• Environmental Emergencies</li> </ul>

## 8.6 Environmental Effects Analysis

### 8.6.1 Interactions and Potential Adverse Environmental Effects

Table 8-10 identifies the expected interactions between the Project and the environment, and the potential adverse environmental effects resulting from those interactions.

### 8.6.2 Mitigation of Potential Adverse Environmental Effects

In its Application, NGTL has identified routine design and standard mitigation and certain best practices to mitigate most of the potential adverse environmental effects identified in Table 8-10. Details on all of NGTL's proposed mitigation are set out in its Application, supporting documentation, and related submissions including the Environmental Protection Plan (EPP), Environmental Alignment Sheets, and Amended Preliminary Caribou Habitat Restoration and Offset Measures Plan.

Where there are outstanding issues regarding key environmental elements, or NGTL's proposed mitigation may not be sufficient and additional mitigation may be necessary, a detailed analysis is presented in Section 8.6.4.

The Commission recognizes that many adverse environmental effects are resolved through standard mitigation. Standard mitigation refers to a specification or practice that has been developed by industry, or prescribed by a government authority, that has been previously employed successfully and is now considered sufficiently common or routine that it is integrated into the company's management systems and meets the expectations of the Commission.

**Table 8-10: Project-Environment Interactions**

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
Bio-Physical	Physical Environment	<ul style="list-style-type: none"> <li>• Construction activities including, clearing, grading, soil handling, trenching and backfilling</li> </ul>	<ul style="list-style-type: none"> <li>• Changes to terrain stability</li> <li>• Alteration of topography (landscape contours and drainage patterns)</li> </ul>	8.6.3
	Soil and Soil Productivity	<ul style="list-style-type: none"> <li>• Construction activities including clearing, soils stripping, salvage and grading, trenching, equipment movement, soils handling, clean up and reclamation</li> <li>• Operation of compressor station unit additions</li> </ul>	<ul style="list-style-type: none"> <li>• Trench instability</li> <li>• Soil subsidence</li> <li>• Topsoil degradation or loss during handling</li> <li>• Soil compaction and rutting</li> <li>• Loss of soil quality through contamination from equipment leaks and spills</li> <li>• Loss of soils through wind or water erosion</li> <li>• Loss of soil quantity and quality through long-term storage</li> </ul>	8.6.3
	Vegetation	<ul style="list-style-type: none"> <li>• Clearing of vegetation, grading, trenching and backfilling during construction of pipeline and permanent facilities</li> <li>• Potential weed and non-native species introduction from equipment movement</li> <li>• Vegetation control during operations activities</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or reduction in plant species diversity</li> <li>• Loss or reduction in vegetation community diversity</li> <li>• Loss or alteration of rare plants</li> <li>• Introduction and spread of weeds and non-native species or forest pests</li> <li>• Loss or alteration of traditional use plant species</li> <li>• Loss or alteration of old seral stage forest</li> </ul>	8.6.3

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed in:
	Water Quality and Quantity	<ul style="list-style-type: none"> <li>• Construction activities including clearing, grading, soil handling, trenching and backfilling</li> <li>• Construction of isolated, trenched and trenchless watercourse crossings</li> <li>• Control of surface drainage during construction and operation</li> <li>• Water withdrawal and release of hydrostatic testing during construction</li> <li>• Drilling mud disposal</li> </ul>	<ul style="list-style-type: none"> <li>• Alteration of surface water flow rates and/or patterns</li> <li>• Alteration of natural drainage patterns</li> <li>• Changes in groundwater quantity or flow</li> <li>• Reduction in surface water quality or quantity</li> <li>•</li> </ul>	8.6.3 8.6.4.1
	Aquatic Species and Habitat	<ul style="list-style-type: none"> <li>• Construction of trenched watercourses</li> <li>• Hydrostatic testing</li> <li>• Release of drilling mud at trenchless crossings</li> <li>• Pipeline construction at watercourse crossings (clearing, topsoil salvage, grading, trenching, drilling, backfilling, clean up and reclamation)</li> <li>• Bank and riparian restoration or maintenance activities</li> </ul>	<ul style="list-style-type: none"> <li>• Alteration or reduction of fish habitat</li> <li>• Increase in fish mortality risk or injury</li> <li>• Reduction in water quality</li> <li>• Increased sediment deposition in watercourse and downstream of ROW</li> <li>• Inter-basin transfer of aquatic organisms</li> </ul>	8.6.3 8.6.4.1
	Wetlands	<ul style="list-style-type: none"> <li>• Pipeline construction (clearing, grading, trenching, drilling, watercourse crossings, stringing pipe, lowering, backfilling, hydrostatic testing, cleanup and final restoration)</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or alteration of wetland hydrological function</li> <li>• Loss or alteration of wetland habitat function</li> <li>• Loss or alteration of wetland biogeochemical function</li> <li>• Alteration of wetland communities</li> </ul>	8.6.3



	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
	Wildlife and Wildlife Habitat	<ul style="list-style-type: none"> <li>• Pipeline construction (clearing, grading, trenching, backfilling, hydrostatic testing and final reclamation)</li> <li>• Vegetation control for operations and maintenance purposes</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or alteration of suitable wildlife habitat</li> <li>• Reduced habitat availability and effectiveness</li> <li>• Wildlife mortality or injury</li> <li>• Changes to wildlife movement patterns</li> </ul>	8.6.3
	Species at Risk or Species of Special Status and Related Habitat	<ul style="list-style-type: none"> <li>• Refer to interactions for Aquatic Species and Habitat and Wildlife and Wildlife Habitat</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or alteration of vegetation species of special concern or their habitat</li> <li>• Refer to potential effects as described under Aquatic Species and Habitat to aquatic species at risk</li> <li>• Refer to potential effects as described under Wildlife and Wildlife habitat for wildlife species at risk</li> </ul>	8.6.3 8.7.3
	Atmospheric Environment	<ul style="list-style-type: none"> <li>• Operation of construction equipment</li> <li>• Operation of proposed compressor station unit additions</li> <li>• Emissions from monitoring and surveillance traffic during operations</li> </ul>	<ul style="list-style-type: none"> <li>• Increase in dust and air emissions during construction</li> <li>• Increase in air and fugitive emissions during operation of pipeline and compressor stations</li> <li>• Increase in greenhouse gases</li> </ul>	8.6.4.2
	Acoustic Environment	<ul style="list-style-type: none"> <li>• Trenchless watercourse crossings during pipeline construction</li> <li>• Operation of construction equipment</li> <li>• Operation of compressor station unit additions</li> <li>• Pipeline inspection and maintenance during operation</li> </ul>	<ul style="list-style-type: none"> <li>• Sensory disturbance to wildlife</li> <li>• Increase in comprehensive sound levels during construction</li> <li>• Increase in comprehensive sound levels during compressor station unit additions operation</li> </ul>	8.6.3

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
Socio-Economic	Human Occupancy and Resource Use	<ul style="list-style-type: none"> <li>• Construction activities (clearing, stripping, topsoil salvage, grading, trenching, backfilling, watercourse crossing, pad/foundation construction, infrastructure installation)</li> <li>• Operation of compressor station unit additions</li> <li>• Pipeline inspection and maintenance during operations</li> </ul>	<ul style="list-style-type: none"> <li>• Disruption to Crown land activities due to a temporary alteration of land</li> <li>• Disruption of private land (e.g., agriculture, grazing)</li> <li>• Disruption to human habitation</li> <li>• Disruption to trapping, hunting, fishing and guide outfitting activities</li> <li>• Disruption of recreational activities and land use (e.g., trail use)</li> <li>• Disruption to parks, protected areas and environmentally significant area</li> <li>• Disruption to access</li> <li>• Alteration of visual landscape</li> </ul>	8.6.3
	Heritage Resources	<ul style="list-style-type: none"> <li>• Construction activities (clearing, stripping, topsoil salvage, grading, trenching, backfilling, watercourse crossing, pad/foundation construction, infrastructure installation)</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of a historic resource site</li> <li>• Loss of knowledge of regional prehistory</li> <li>• Loss of contextual data, devaluation of resources if resources are located in the Project footprint</li> <li>• Temporary or permanent loss of habitation, cultural and spiritual sites</li> <li>• Temporary or permanent loss of access to habitation, cultural and spiritual sites</li> </ul>	Chapter 7
	Current Traditional Land and Resource Use	<ul style="list-style-type: none"> <li>• Construction activities (clearing, soils stripping, salvage and grading, trenching, hydrostatic testing, equipment movement, soils handling, clean up and reclamation)</li> </ul>	<ul style="list-style-type: none"> <li>• Disturbance to or interference with traditional uses, including hunting; trapping; fishing; plant/medicine harvesting; and habitation, cultural, and spiritual sites</li> </ul>	Chapter 7

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
		<ul style="list-style-type: none"> <li>• Potential weed and non-native species introduction from equipment movement</li> <li>• Vegetation control during operations activities</li> <li>• Bank and riparian restoration or maintenance activities</li> <li>• Trenchless crossings</li> <li>• Operations and maintenance activities</li> </ul>	<ul style="list-style-type: none"> <li>• Avoidance of traditional use sites due to perceptions of potential impacts.</li> </ul>	
	Navigation and Navigation Safety	<ul style="list-style-type: none"> <li>• Construction activities at watercourse crossings (i.e., clearing, grading, trenching, drilling, backfilling, hydrostatic testing and final reclamation)</li> </ul>	<ul style="list-style-type: none"> <li>• Change in movement through or access to navigable watercourses</li> <li>• Potential harm to users on navigable watercourses</li> <li>• Disruption of watercourse users on navigable watercourses during construction</li> <li>• Decrease in access to navigable waters for waterway users including Indigenous Peoples</li> </ul>	8.6.3
	Social and Cultural Well-being	<ul style="list-style-type: none"> <li>• Construction activities and influx of temporary construction workforce</li> <li>• Pipeline inspection and maintenance during operation</li> </ul>	<ul style="list-style-type: none"> <li>• Change in socio-economic study area population</li> <li>• Change in demographics in socio-economic study area</li> <li>• Change to Community Well-Being Index scores</li> <li>• Disruption of community life by temporary workers</li> </ul>	Chapter 9
	Human Health	<ul style="list-style-type: none"> <li>• Project construction activities (i.e., including vehicle and equipment operation, burning, and watercourse</li> </ul>	<ul style="list-style-type: none"> <li>• Change to health of local population related to reduced air quality (i.e., resulting from dust and changes in</li> </ul>	Chapter 7

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed in:
		<p>crossings) have the potential to create air emissions, dust and noise</p> <ul style="list-style-type: none"> <li>• Operation of compressor station unit additions</li> <li>• Pipeline inspection and maintenance during operation</li> </ul>	<p>ambient concentrations of criteria air contaminants</p> <ul style="list-style-type: none"> <li>• Change in health of local population related to reduced water quality beyond range of guideline values</li> <li>• Changes to health of local population related to increase in comprehensive sound levels beyond provincial regulatory limits</li> </ul>	8.6.3
Other	Accidents / Malfunctions	<ul style="list-style-type: none"> <li>• Product release through a pipeline break or leak</li> <li>• Spills of hazardous material (e.g., hydraulic fluid, antifreeze, gasoline, motor oil)</li> <li>• Release of drilling mud during trenchless watercourse crossing</li> <li>• Fire during construction or operation of pipeline</li> <li>• Transportation accidents during construction and operation</li> <li>• Damage to foreign utilities during construction and operation</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or alteration of soil productivity, surface and groundwater quality, vegetation, wetlands, aquatic species, wildlife habitat, species at risk, air quality</li> <li>• Injury or mortality to humans and wildlife</li> <li>• Restrictions on land and resource use</li> <li>• Increased demand for emergency services and temporary workers</li> <li>• Potential effects to human health</li> <li>•</li> </ul>	8.6.3 Chapter 4
	Effects of the Environment on the Project	<ul style="list-style-type: none"> <li>• Terrain instability</li> <li>• Seismic activity</li> <li>• Flooding</li> <li>• Forest fire</li> <li>• Severe weather events</li> </ul>	<ul style="list-style-type: none"> <li>• Exposure of pipeline or loss of depth of cover due to slope instabilities, flooding or erosion at watercourses</li> <li>• Damage to infrastructure</li> <li>• Impede access to pipeline area during construction and operation</li> </ul>	Chapter 4

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed in:
			<ul style="list-style-type: none"> <li>• Delays to construction and operation schedules</li> <li>• Worker injury</li> </ul>	

### 8.6.3 Standard Mitigation

NGTL's mitigation measures are included in its Application, EPPs, Environmental Alignment Sheets and associated filings. Standard mitigation is proposed by NGTL to avoid or minimize potential adverse environmental effects on the terrain and topography, soils, water quality and quantity, vegetation, wetlands, wildlife and wildlife habitat, species at risk including species of special concern, KWBZs, atmospheric and acoustic environments, as well as navigation and navigation safety.

To ensure mitigation measures are followed, NGTL has committed to having qualified Environmental Inspectors onsite during construction to verify all activities are in compliance with regulatory commitments and mitigation measures as outlined in its EPP, and to develop environmental orientation and training for Project personnel.

In addition, NGTL has committed to completing outstanding wildlife surveys for yellow rails in the Colt and Dismal Creek sections, songbird survey in the Elsworth section, common nighthawk surveys for the Colt, Elsworth and Dismal Creek sections, nocturnal amphibian surveys for the Colt and Deep Valley sections and a late season rare plant survey for the Elsworth section.

Among the mitigation strategies to avoid or minimize the effects of the Project, NGTL has relied in part on avoidance through route and site selection; minimizing the footprint by paralleling existing ROWs; and scheduling activities to avoid species-specific sensitive and restricted activity periods. NGTL has also relied on the development of detailed, practical, effective mitigation and contingency measures to address site-specific and general issues; inspection during construction to ensure that planned mitigation is implemented and effective and conducting the maintenance and operation of the pipeline system implementing NGTL's existing programs and procedures to ensure pipeline integrity, public safety and environmental protection.

NGTL has included management and contingency plans in its EPP that would be implemented as required. Management Plans were provided for the following: chemicals and waste, traffic control, hydro-vac slurry handling, trenchless watercourse crossings, breeding bird and nests, access, amphibians, KWBZs, and bears. The contingency plans include accidental spill release, adverse weather, floods and excessive flow, wet soils, fire suppression, soil handling, soil erosion, contaminated soils, drilling mud release, plant species and ecological communities of concern discovery, wildlife species of concern discovery, and cultural resource discovery. NGTL has also provided a preliminary Caribou Habitat Restoration and Offsets Measures Plan for mitigation in the Little Smoky Caribou Range.

NGTL also committed to implementing post-construction monitoring following final clean-up, where it would identify an environmental issues list based on reports documented during construction and reclamation phases of the Project. These issues and any mitigation and/or remedial actions taken, as well as any new environmental issues and required remedial actions identified and implemented would be reported in post-construction monitoring reports including any regulatory and landowner consultation conducted.

NGTL evaluated alternative means including alternate routing and facility options for use with its system. NGTL ultimately selected the proposed route which would be the shortest physical route connecting to the supply and demand areas, and would parallel existing NGTL ROWs or other existing linear disturbances for 86 per cent (296 km) of its length. Details on the overall

route selection can be found in Chapter 5, Land Matters. Additional details on alternative routes considered around the Little Smoky Caribou Range are discussed in Section 8.7.3. NGTL stated that Historic Resource Impact Assessments (HRIA) were completed in 2018 for all sections of the Project.<sup>21</sup> Further archaeological studies to address target locations that were not accessible during the 2018 field surveys and watercourse crossing refinements were completed in May and June 2019. NGTL stated that 33 new archaeological sites were recorded during the HRIA and four existing sites were revisited as per the *Heritage Resources Act* requirement from Alberta Culture and Tourism. NGTL stated the ACMSW would review the HRIA reports and make a final decision on the value of archaeological sites reported, the level of significance, and on further investigation that may or may not be required under the HRA for each archaeological resource. NGTL stated it is currently awaiting a *Historical Resources Act* Requirement Letter from the ACMSW.

NGTL stated that a noise impact assessment was conducted in December 2018 to assess the operational noise effects associated with the Project at the Beiseker, Didsbury, and Nordegg compressor station unit additions sites. The noise impact assessment found the daytime and nighttime PSLs at the residential receptors and at 1.5 km boundaries are determined to be under 50 dBA Leq-15h and 40 dBA Leq-9h, respectively. Both the predicted Project-only sound levels and the predicted cumulative sound levels meet the daytime and nighttime PSLs at all three sites. The noise impact assessment determined there is potential for low frequency noise effects from the Beiseker, Didsbury, and Nordegg locations. NGTL stated the noise impact assessment concluded that noise control measures are required at the three compressor station unit addition sites.

NGTL stated that the proposed schedule would enable construction activities to occur primarily during the winter season to take advantage of frozen ground conditions for access to and along the Pipeline ROW. It stated that the proposed schedule would help reduce overall environmental impact by avoiding caribou and migratory bird restricted activity periods (RAPs), as well as meeting timing restrictions associated with watercourse crossings. NGTL also stated that it would provide potentially affected Indigenous communities with the proposed construction schedule and pipeline route maps to allow interested Indigenous communities the opportunity to harvest medicinal and traditional plants prior to construction.

In response to the draft floated conditions, NGTL requested that Condition 22, Working within the Little Smoky Caribou Range Restricted Activity Period, not be for approval to avoid duplication in approval processes between the CER and Alberta Environment and Parks for working in the RAP. NGTL also proposed that telemetry data from the Province be used as NGTL has not been approved to do this type of work.

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<sup>21</sup> Wood completed an HRIA on all sections except for the Elmworth Section, which was completed by Stantec.

## ***Views of Participants***

### **Saddle Lake Cree Nation, Driftpile Cree Nation, Piikani Nation, Whitefish (Goodfish) Lake First Nation #128, Ermineskin Cree Nation, Horse Lake First Nation, O'Chiese First Nation, Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Wesley First Nation**

Driftpile Cree Nation and Piikani Nation stated that their Technical Reviews raised concerns about NGTL's ESA in relation to the scope and methodology, as well as the evidence collected. Saddle Lake Cree Nation stated that its Technical Review of NGTL's ESA demonstrated deficiencies in the methodology used by NGTL to characterize the existing environment, assess Project effects and develop mitigation measures.

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, Saddle Lake Cree Nation, Ermineskin Cree Nation, Alexis Nakota Sioux Nation and Samson Cree Nation expressed concerns regarding the potential loss and reduction in quality of traditionally used plant species. Driftpile Cree Nation also indicated that the plant species used for medicines need to be pure and undisturbed. Alexis Nakota Sioux Nation and Samson Cree Nation identified that plant and medicine resources are already in decline in both abundance and quality.

A number of Indigenous Intervenors identified concerns regarding the Project effects on wildlife and wildlife habitat, birds of cultural importance as well as fish populations from construction activities and potential spills or contamination. Driftpile Cree Nation identified concerns regarding potential effects on moose, elk, grizzly bear, species at risk and their habitats in the vicinity of the Project ROW.

O'Chiese First Nation stated that the elk and moose used to be very healthy, but now a lot of them are sick and skinny and are not seen in the area. Alexis Nakota Sioux Nation submitted that animals have moved from the area due to disturbances such as clearing, construction and noise. Samson Cree Nation stated that they have noticed a lack of game in areas near the Project area, and a decline in moose, caribou and ducks. Horse Lake First Nation stated that berries, fish, moose and rabbits used to be abundant and could be found close to where they lived, but now they have to travel to harvest them.

Whitefish (Goodfish) Lake First Nation #128 identified concerns around Project effects on moose and elk, including increased predation from wolf and cougar in the Robb section.

Ermineskin Cree Nation were concerned that the Project could reduce the availability of big game due to increased prevalence and success of predators in and around the ROW. Ermineskin Cree Nation also expressed concerns around bird nesting areas and the potential for disruption to trout populations in Dismal Creek and a reduction in the availability of fish. Samson Cree Nation also identified concerns regarding the Project on water and fishing resources in particular the contamination of water sources.

O'Chiese First Nation identified concerns regarding impacts to the animals, plants and spring waters in the Project area, as well as potential contamination of these resources.

A number of Indigenous Intervenors identified concerns with the use of chemicals for vegetation management and reported avoiding areas that have evidence of being sprayed with herbicides.



The concern is that the herbicides could pollute water, traditional plants and sacred and gathering sites.

Blood Tribe, Driftpile Cree Nation, Piikani Nation and Saddle Lake Cree Nation expressed the need for incorporation of traditional knowledge and traditional land and resource use information into components of the condition regarding working within the restricted activity period for the woodland caribou. In addition, they requested additional consultation and monitoring opportunities within the EPP and Post-Construction Monitoring Report filings. Lastly they requested copies of the Construction Schedule, EPP and Post-Construction Monitoring Report filings.

### **Environment and Climate Change Canada**

ECCC stated that its general advice on adverse Project effects is guided by information found in recovery documents, and section 73(3) of SARA to ensure all reasonable alternatives that would reduce the impact on the listed species have been considered and that the best solution has been adopted; all feasible measures would be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and the activity would not jeopardize survival or recovery of a species.

With the exception of woodland caribou, ECCC stated it did not provide specific advice on any other species at risk identified for the Project because they are primarily the management responsibility of the Province of Alberta.

ECCC's evidence regarding woodland caribou is addressed in Section 8.7.3.

### **Health Canada**

Health Canada submitted a Letter of Comment on the Project including comments and recommendations regarding water quality, air quality, noise, and country foods.

### ***Reply of NGTL***

NGTL stated that its ESA assessed the potential effects of the Project in accordance with the Filing Manual requirements, methodologies that have been accepted by the Commission for past projects, and CEAA guidance. NGTL is of the view that these methods produced conclusions that are reasonable, defensible and valid.

NGTL stated that the use of herbicide is prohibited on the Project footprint unless otherwise approved by NGTL, and is also prohibited within 30 m of an open body of water unless the application is done by ground application equipment or otherwise approved by the responsible regulatory agency. NGTL's draft EPP requires that herbicide not be used near occurrences of rare plant species or rare ecological communities.

NGTL stated that it would adhere to both the *Migratory Bird Convention Act* and the *Alberta Wildlife Act*, both of which are expected to include birds of cultural importance to Indigenous Peoples.

### **Views of the Commission**

The Commission is of the view that NGTL has committed to sufficient and appropriate routine design and standard mitigation measures, as well as best practices, to mitigate the potential adverse environmental effects identified. The Commission notes NGTL's consideration of alternative means and after careful consideration and thorough weighing of the evidence, the Commission accepts the overall routing as proposed. The Commission also notes that many aspects of NGTL's engineering design for the Project address environmental risks, in particular with respect to accidents and malfunctions, and the effects of the environment on the Project. These are described in Chapter 4, as are the related engineering conditions which the Commission would impose.

The Commission acknowledges the variety of concerns raised by Participants and notes that NGTL followed both the Filing Manual and the guidance provided by the Canadian Environmental Assessment Agency when designing and undertaking its ESA for the Project. The Commission is of the view that NGTL's ESA methodology is acceptable.

The Commission notes that the Filing Manual provides guidance to applicants on what should be included in the ESA with respect to baseline information and that an applicant is not expected to provide extensive descriptions of features of the environment that are unlikely to be impacted by the Project. The Commission also notes that the goal of the applicant is to provide information with sufficient detail in order to identify project-environment interactions; to identify, predict and determine the significance of the effects of the project; and to formulate appropriate mitigation measures and monitoring programs.

In some cases, the effects of a project on certain environmental elements can be predicted and appropriate mitigation proposed, regardless of the level and detail of baseline information provided. In this case, the Commission is of the view that NGTL has included sufficient baseline information that is supported by a description of the methodology used and the rationale for that methodology. The Commission is also of the view that NGTL's ESA properly analyzed and characterized the level of significance of potential adverse environmental effects as a result of the Project as outlined in the Filing Manual.

The Commission notes that NGTL has committed to implementing standard mitigation and best practices for soils, wildlife and wildlife habitat, vegetation (including the use of herbicides), wetlands, species at risk and fish and fish habitat. The Commission further notes NGTL's commitment to provide the affected Indigenous communities with the Project schedule to allow for the communities to conduct harvesting of medicinal and traditional plants prior to the start of Project construction. The Commission accepts NGTL's commitment to adhere to both the *Migratory Bird Convention Act* and the *Alberta Wildlife Act* in order to include birds of cultural importance to Indigenous peoples in its mitigation. The Commission is of the view that any potential Project impacts on these elements are likely to be minimal and can be effectively addressed through NGTL's proposed mitigation, best practices and the conditions that would be imposed by the Commission. A discussion of watercourse crossings and air quality are discussed in Sections 8.6.4.1 and 8.6.4.2 respectively.

With respect to the suggestions from Health Canada regarding noise, the Commission is satisfied that adequate information was provided through the hearing process and that NGTL's acoustic environment assessment was completed in accordance with the Filing Manual. Moreover, the Commission is satisfied with the mitigation proposed by NGTL and

that it will be in compliance of the AER Directive 038 permissible sound levels. The Commission's views on country foods are provided in Section 7.6.5.

To be satisfied that all general and site-specific mitigation measures are appropriate and would be implemented according to their intent, the Commission imposes certain conditions. The Commission notes that NGTL and a number of Participants commented on the Commission's potential conditions for the Project that were made available for review, and in some instances proposed additional conditions. The Commission considered all comments received before setting out the terms and conditions to be imposed should the Project be approved. The Commission's views on the comments received on the draft conditions are provided in Appendix VI.

### **Environmental Protection Plan**

The Commission recommends **Condition 5** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 5** for the **Section 58 Facilities and Activities**, requiring NGTL to file an updated Project-specific EPP for the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities, respectively. The EPPs would communicate all environmental protection procedures and mitigation measures to employees, contractors, regulators and on-site NGTL personnel. These procedures and mitigation measures must be clear and unambiguous to minimize errors of interpretation. Updated Environmental Alignment Sheets are also to be included with the EPP. The EPP must be comprehensive and cover general and specific mitigation related to all environmental elements.

The Commission notes that NGTL filed both a draft EPP and an updated draft EPP that included results from the supplemental field surveys during the GH-003-2018 proceeding, and that Indigenous Intervenors had the opportunity to provide comments on these documents. The Commission further notes NGTL's ongoing engagement with Indigenous communities and commitment to incorporate any additional mitigation into the final EPPs and Environmental Alignment Sheets. The Commission has recommended **Condition 14** for the **Section 52 Pipeline and Related Facilities**, which requires NGTL to report to the Commission any comments and/or concerns raised by Indigenous peoples and how NGTL plans to address these concerns. The Commission is of the view that the engagement of Indigenous peoples on the Updated EPP would be captured in Condition 14, and therefore Condition 5 remains appropriate. The Commission has modified Condition 5 to require NGTL to provide copies of the updated EPP to Indigenous peoples who have expressed an interest in the condition filing during the hearing process.

### **Wildlife and Rare Plant Surveys**

The Commission notes that due to access issues, several surveys for wildlife and rare plant surveys were not able to be conducted and reported on during the timeframe of the proceeding for specific pipeline sections. Therefore, the Commission recommends **Condition 7** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to conduct, and file the survey results of the remaining wildlife and rare plant surveys for the Project. The Commission expects that any mitigation required as a result of these surveys would be included in the Final EPPs and Environmental Alignment Sheets.

## **Camp Management Plan**

NGTL plans to use existing open camps in combination with existing local accommodations for the purposes of pipeline construction activities, including a temporary construction camp located near the existing Nordegg Compressor Station. The Commission would impose **Condition 7** for the **Section 58 Facilities and Activities**, requiring NGTL to file a Camp Management Plan for all its camps with the Commission at least 45 days prior to commencing construction.

## **Additional Temporary Construction Camp(s)**

The Commission notes that NGTL stated it would require one temporary construction camp for construction of the Nordegg Compressor Station Unit Addition. The Commission further notes that NGTL does not expect that camps would be required for construction of the pipeline components of the Project as sufficient accommodation exists in the Project area. In the event that additional temporary construction camp(s) are required, the Commission would impose **Condition 8** for the **Section 58 Facilities and Activities**, requiring NGTL to file a camp-specific environmental and socio-economic protection plan, for approval, prior to construction of any additional temporary camp(s). The Commission expects that should additional temporary camps be required, NGTL would select locations that maximize use of previously disturbed land and avoids sensitive environmental features.

## **Heritage Resources**

The Commission recommends **Condition 15** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 13** for the **Section 58 Facilities and Activities**, requiring NGTL to file information related to archeological and heritage resource clearances; including any additional mitigation measures associated with the relevant provincial approval, at least 30 days prior to commencing construction.

## **Construction Schedule**

To track construction schedule(s), the Commission recommends **Condition 18** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 16** for the **Section 58 Facilities and Activities**, requiring NGTL to provide detailed construction schedule(s) identifying major construction activities, and any modifications to the schedule as they occur.

## **Working within the Little Smoky Caribou Range Restricted Activity Period**

NGTL committed to work outside of the RAP (15 February through 15 July) to the extent possible, and obtain approval from Alberta Environment and Parks should the requirement to work within the RAP arise. The Commission recommends **Condition 23** for the **Section 52 Pipeline and Related Facilities**, should it be required for NGTL to work within the RAP for caribou. The condition would require NGTL to file a summary of consultation with government officials and interested Indigenous communities regarding the requirement to work within the window, a description of work activities remaining and a comparison of the alternatives considered to working within the RAP, a construction schedule for the remainder of the work within the RAP, and a report outlining the results of a recent caribou survey identifying the presence and level of use of the area surrounding the proposed work

activities as well as documentation from a senior official at Alberta Environment and Parks approving the work.

The Commission notes NGTL's request that Condition 23 not be for approval of the CER in order to avoid duplication in approval processes between the CER and Alberta Environment and Parks. The Commission disagrees with removing the approval requirement of Condition 23. Although Alberta Environment and Parks is the decision maker for work occurring in the Little Smoky Caribou Range, the Commission maintains jurisdiction and oversight of the work being conducted on federally regulated ROWs. Regarding the proposed telemetry data identified for use in the caribou surveys, the Commission is of the view that due to the short time frame associated with the caribou survey in Condition 23, recent and relevant telemetry data collected by the provincial departments or other entities would be adequate for use as part of the data to help inform the caribou survey. The Commission expects NGTL to make every effort possible to avoid work during the RAP in the Little Smoky Caribou Range.

The Commission notes the Indigenous Intervenor comments regarding the need for incorporation of Indigenous knowledge and traditional land and resource use information into components of Condition 23. The Commission is of the view that relevant Indigenous knowledge and traditional land use was collected during NGTL's engagement activities, the hearing process and would continue to be collected during NGTL's ongoing consultation process leading up to any potential construction within the Little Smoky Caribou Range.

The Commission is further of the view that **Condition 12** for the **Section 52 Pipeline and Related Facilities**, and **Condition 10** for the **Section 58 Facilities and Activities** require the identification of Indigenous monitors and would include any work required as part of Condition 23.

### **Construction Progress Reports**

To track construction activity and environmental, socio-economic, safety and security issues during construction, the Commission recommends **Condition 19** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 17** for the **Section 58 Facilities and Activities**, requiring NGTL to file monthly construction progress reports for each pipeline section loop. These reports must include information on the activities carried out during the construction and report any environmental, socio-economic, safety and security issues and issues of non-compliance, and the measures undertaken for the resolution of each issue and non-compliance.

NGTL indicated that, within the Little Smoky Caribou Range, clearing as well as pipeline construction, machine cleaning, validation testing and tie-in activities would occur between September 2020 and February 2021. Therefore, each construction progress report to be filed under **Condition 19** for the **Section 52 Pipeline and Related Facilities** for the Deep Valley section of the Project must also include an update on the extent to which any potential delays could risk the overlap of Project activities with the Little Smoky Caribou Range restricted activity period. The report must identify any construction delays at least 15 days in advance, and comply with the requirements of **Condition 23** for the **Section 52 Pipeline and Related Facilities**.

## Post Construction Environmental Monitoring Reports

The Commission notes NGTL's commitment to begin post-construction monitoring after final clean-up. The Commission is of the view that a robust post-construction monitoring program is a fundamental tool to ensuring that potential adverse effects have been effectively mitigated. To be satisfied that post-construction environmental monitoring is thorough and effective and that reports would be developed and filed, the Commission recommends **Condition 30** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 24** for the **Section 58 Facilities and Activities**. While Condition 24 was not specifically included in the previously released lists of potential conditions, it is both substantively similar to the floated Condition 30 and is a standard condition imposed on other Section 58 projects with similar facilities and activities. The Commission therefore views it as appropriate to impose.

The Commission is of the view that Conditions 12 and 27 for the **Section 52 Pipeline and Related Facilities**, Construction and Post-Construction Monitoring Plans for Indigenous Peoples, respectively, provide for potential Indigenous monitoring opportunities for the Project. The Commission expects that NGTL will provide the methodology used for all monitoring, including Indigenous monitoring if it differed from non-Indigenous monitoring, as well as all issues identified for monitoring. Therefore, the Commission has not amended these points of Conditions 30 and 24.

The Commission has modified Conditions 30 and 24 to require NGTL to include a summary of its consultation with affected Indigenous communities, and to provide a copy of the filing to all interested Indigenous peoples that expressed an interest in receiving a copy.

### 8.6.4 Detailed Analysis of Key Environmental Issues

This subsection provides a more detailed analysis of two issues that were either raised by Participants or are of environmental consequence, and which may require additional mitigation by way of Commission conditions. The definitions for criteria used in evaluating the significance of residual effects are provided in Appendix VIII.

#### 8.6.4.1 Watercourse Crossings

The Project crosses 130 watercourses and 50 drainages. Six watercourse crossings would be constructed using a trenchless crossing method. These watercourse crossings are the Wapiti River, Smoky River, Little Smoky River; McLeod River, Pembina River, and North Saskatchewan River.

NGTL changed the planned crossing method for the Simonette River from a trenchless crossing to a trenched (isolated open cut) crossing method as the risk for a failure of the trenchless crossing method for that location is high due to the significant elevation difference between the drilling entry and exit points and the large diameter size of pipe.

The remaining watercourses would be crossed using a trenched method, either isolated (if water flow is present) or open cut (if dry or frozen to the substrate) methods. Where the primary crossing method is identified is trenched (isolated or open cut), no contingency method was proposed.

Under the Memorandum of Understanding between the CER and the Department of Fisheries and Oceans (DFO), the CER is responsible for referring potential watercourse crossings that are likely to require a *Fisheries Act* authorization to DFO. NGTL stated it used DFO's self-assessment process and determined that the planned crossing methods for all watercourse crossings would avoid serious harm to fish. However, the contingency plan crossing methods for the Wapiti River, Smoky River, Little Smoky River, McLeod River, Pembina River, and the North Saskatchewan River would potentially cause serious harm if they were implemented.

### Proposed Mitigation

NGTL stated that all watercourse crossing construction activities would be performed in accordance with established best management practices for instream construction and construction in and around stream environments. NGTL further stated that it would adhere to mitigation measures outlined in its Application, EPP and would be in compliance with the DFO *Measures to Avoid Causing Harm to Fish and Fish Habitat*.

As part of mitigation for watercourse crossing construction activities, NGTL's application and EPP also provided mitigation measures to address fish stranding and impingement, hydrostatic testing, prevention of potential introduction of invasive aquatic species, and activities adjacent to flowing waters.

NGTL stated that instream construction activities would avoid the instream restricted activity period (RAP) unless the watercourse is dry or frozen to the bottom at the time of construction.

### Proposed Monitoring

NGTL would monitor watercourse crossings as part of its post-construction monitoring activities. Through landscape, soil and vegetation assessments, evaluation of soil productivity, riparian vegetation re-establishment and erosion control of watercourses as well as evaluation of terrain stability would be conducted, and reported on through post-construction reporting.

NGTL provided comments on the Potential Condition 20, requesting that it be specific to proposed trenched watercourse crossings, and that the notification period be decreased from 15 to 5 days prior to commencing the contingency crossing to help maintain its schedule. NGTL stated that it may not be known until a few days prior to the crossing being installed that a contingency method may be needed.

### ***Views of Participants***

**Alexis Nakota Sioux Nation, Blood Tribe, Bearspaw First Nation, Chiniki First Nation, Driftpile Cree Nation, Environment and Climate Change Canada, Horse Lake First Nation, Métis Nation of Alberta Region 3, O'Chiese First Nation, Piikani Nation, Saddle Lake Cree Nation, Samson Cree Nation, Wesley First Nation**

Most Indigenous Intervenors expressed concerns through their evidence or during oral Indigenous knowledge that the Project could cause changes to water quality and impact fish, fish habitat and spawning areas within the watercourses.

A number of Indigenous Intervenors, as well as ECCC were concerned that there was no water quality plan commitment for all watercourse crossings and recommended NGTL establish a water quality monitoring protocol or plan for watercourse crossing construction activities.

A number of Indigenous Intervenors identified concerns regarding the release of drilling fluid and mud into watercourses, the method used for determining serious harm to fish and fish habitat, and the sensitivity rating used for watercourses where provincially listed species occurred.

Blood Tribe, Driftpile Cree Nation, Piikani Nation and Saddle Lake Cree Nation requested that parts a) and b) of the Potential Condition 21, Authorizations under Paragraph 35(2)(b) of the *Fisheries Act*, be amended to provide copies of the authorizations to interested Indigenous communities.

### ***Reply of NGTL***

NGTL stated that water quality monitoring plans to monitor for sediment events during instream construction activities would be developed, where required by the applicable regulatory approvals or as identified by an Aquatic Resource Specialist, using a control station upstream of the watercourse crossing for comparison to treatment stations within the zone of influence. NGTL indicated the scope of the monitoring would vary according to the sensitivity of the fish species present, (e.g., species of conservation concern, commercial, recreational, or Aboriginal fisheries), season, presence of flowing water and crossing method. If monitoring were to reveal suspended sediment values are approaching threshold values, the water quality monitors would notify the Environmental Inspector(s) and work with them to develop corrective actions. If corrective actions were not successful, construction activities would be temporarily suspended until effective solutions are identified.

In response to concerns regarding drilling mud releases, NGTL stated that the EPP contained a Trenchless Crossing Management Plan which includes proactive mitigation measures for potential releases of drilling mud. In addition, the EPP includes a Drilling Mud Release Contingency Plan.

In response to the concerns regarding the method used for determining serious harm to fish, NGTL stated that the potential effects associated with the Project activities were identified and assessed in the ESA, and align with the intent of the DFO Pathways of Effect assessment tool. NGTL stated that these were re-evaluated with site specific information from field surveys and no additional mitigation was identified.

NGTL stated that it does not agree that a sensitivity ranking of “high” should be assigned to watercourses containing provincially listed species and “highest” for watercourses containing federal-listed species at risk. NGTL stated that stream classifications are determined by Alberta Environment and Parks, and based on habitat sensitivity, not fish distribution.

### ***Views of the Commission***

The Commission’s analysis of pipeline integrity and the risk of pipeline failure are presented in Chapter 4 of this Report, along with the assessment of NGTL’s emergency management plan. Potential environmental effects due to accidents and malfunctions is provided in Section 8.6.3.

The Commission is aware that the requirements of the *Fisheries Act* have changed as of 28 August 2019, including the change from identifying the potential for serious harm, to identifying the potential for harmful alteration, disruption or destruction of fish or fish habitat.



Therefore, the Commission has revised its conditions related to watercourse crossings to be current with the most recent legislation.

Pursuant to the Memorandum of Understanding between the CER and DFO, the CER reviews Project activities and refers to DFO any works that would likely result in harmful alteration, disruption or destruction to fish or fish habitat, and therefore require authorization under paragraph 35(2)(b) of the *Fisheries Act*.

The Commission recommends **Condition 20** for the **Section 52 Pipeline and Related Facilities**, which requires NGTL to file its finalized site-specific watercourse crossing information at least 90 days prior to commencing any watercourse crossing construction activities. For each primary crossing method, where there may be potential for harmful alteration, disruption or destruction of fish or fish habitat, the condition specifies additional information that must be provided.

Where a contingency crossing method is required in place of the proposed trenched watercourse crossing method, the Commission recommends **Condition 21** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL notify the Commission of the contingency, its differences from the trenched watercourse crossing method, as well as explain the rationale for requiring the contingency method. For any contingency crossing where there may be harmful alteration, disruption or destruction of fish or fish habitat, the Commission would assess the need for a *Fisheries Act* authorization. In response to NGTL's comments on the Condition 21 requesting that the condition be specific to trenched watercourse crossing methods, the Commission is of the view that this change is appropriate and has amended the condition. However, the Commission disagrees regarding the notification period decreasing to 5 days. The Commission has revised the notification period from 15 days to 10 days.

To address uncertainty in the unlikely event that an authorization is required, the Commission also recommends **Condition 22** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to provide confirmation that any required authorizations under paragraph 35(2)(b) of the *Fisheries Act* were obtained. In response to comments received from Indigenous Intervenor, the Commission has amended Condition 22 to require NGTL to provide copies of the authorizations to Indigenous peoples who have expressed an interest in the condition filing during the hearing process.

The Commission is of the view that with NGTL's proposed mitigation measures and the Commission imposed conditions, the adverse effects of the Project on watercourse crossings are not likely to be significant.

With regard to the concerns raised by Indigenous Intervenor, the Commission is of the view that given the watercourses and standard crossing methods, any potential Project impacts on watercourses, water quality and quantity are likely to be minimal and can be effectively addressed through NGTL's proposed mitigation and the conditions that would be imposed by the Commission.

<b>Evaluation of Significance of Residual Effects</b>	Temporal Extent	Reversibility	Geographical Extent	Magnitude
	Short-term to medium-term	Reversible	LSA	Low to Moderate
	Adverse Effect			
	Not likely to be significant			

#### 8.6.4.2 Air Quality

The Project proposes to construct 344 km of 1219 mm (NPS 48) outside diameter pipeline, in eight sections, and includes the addition of a 30 mega-watt compressor station unit addition to each of the existing Nordegg, Didsbury and Beiseker Compressor Stations.

##### Proposed Mitigation

In order to minimize emissions during construction, and operation, NGTL committed to using standard mitigation, including equipment that is well maintained, reducing idling time of equipment where feasible and using multi-passenger vehicles for the transport of crews to and from job sites. During operation of the pipeline, NGTL would integrate aerial patrols of the Project with its ongoing regional program.

In order to reduce emissions from the compressor station unit additions, NGTL committed to using low NOx technology to minimize emissions and reduce CO. NGTL would implement a maintenance program which includes regular turbine compressor blade cleaning to optimize efficiency, utilizing pull-down compressors where practical during maintenance to conserve natural gas and reduce venting. In addition, NGTL committed to implementing the Fugitive Emissions Management Program which includes identification of leaks on both pipeline and compressor station unit addition components.

NGTL provided comments on the Potential Condition 24 for the **Section 52 Pipeline and Related Facilities** and Potential Condition 18 for the **Section 58 Facilities and Activities**. NGTL stated that the current timing of Potential Condition 24 would not allow capture of construction-related activity that would continue through to commencement of operations. NGTL suggested the timing be changed to 30 days after commencement of operation in order to capture all construction related data. For Potential Condition 18, NGTL submitted that the condition should be struck, as the quantification of GHG emissions associated with Section 58 activities would be captured by Potential Condition 24.

##### ***Views of Participants***

**Bears paw First Nation, Blood Tribe, Chiniki First Nation, Driftpile Cree Nation, Métis Nation of Alberta Region 3, O'Chiese First Nation, Piikani Nation, Saddle Lake Cree Nation, Samson Cree Nation, Wesley First Nation**

During the oral Indigenous knowledge sessions, a number of Indigenous Intervenors identified the cleanliness of the air as a potential concern of the Project.

A number of Indigenous Intervenors were concerned that NGTL did not plan to monitor air emissions related to the Project. They stated that NGTL's methodology is highly speculative and

lacks specific air dispersion modelling for the construction and operation phases of the Project, and recommended NGTL develop a comprehensive air monitoring program. The monitoring program would need to be more robust during construction and in the initial three years of operation in order to determine actual concentrations of air emission related to the Project and to verify the predictions made in the ESA.

### **Environment and Climate Change Canada**

ECCC noted that the predicted concentrations of NO<sub>2</sub>, at some locations near the Project construction activities, already exceed the Canadian Ambient Air Quality Standards mainly due to high baseline NO<sub>2</sub> levels. ECCC further stated that the Project would also contribute to the deterioration of local air quality. ECCC submitted that NGTL should implement measures to minimize construction emissions to reduce the Project's potential contribution to ambient NO<sub>2</sub> concentrations, including the management of emissions for older specialized construction equipment. ECCC provided several recommendations for NGTL to help reduce emissions which included employee training on minimizing idling of off-road equipment, avoiding tampering with emission control systems, use of low emission vehicles, as well as the use of emission control technologies and its maintenance.

ECCC requested that NGTL conduct an upstream GHG assessment to satisfy the Government of Canada's requirement in accordance with the Interim Approach for Major Project Review, and to make the report publically available. A number of Indigenous Intervenor also requested that NGTL conduct an upstream GHG assessment and revise the GHG data within the ESA. ECCC acknowledged that NGTL was aware of the new federal regulations *Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds* and recommended that NGTL provide a Fugitive Emission Management Plan prior to commencement of the Project.

### **Health Canada**

Health Canada stated in its Letter of Comment that the differing methods used to calculate the background 1-hour average for NO<sub>2</sub>, CO and PM<sub>2.5</sub> and calculating the 8-hour, 24-hour and annual averaging periods may artificially skew the high the background scenario and lower the perception of risk.

### **Samson Cree Nation**

Samson Cree Nation filed an Application for Review seeking, as a remedy, the inclusion of greenhouse gas emissions as a specific item on the List of Issues. The Ruling on that Application is described in Appendix IV.

### **Reply of NGTL**

NGTL disagreed with the recommendation to develop a comprehensive air monitoring program for the Project. NGTL stated that airsheds potentially impacted by the Project are currently monitored, and that it is not practical to monitor pipeline construction emission as the emissions are small and occur over long distances. NGTL submitted that the change in emissions at the proposed compressor station unit additions are also small and the Project is predicted to meet the provincial air quality standards to the nearest receptors.

NGTL clarified that the area ECCC referred to as having high baseline NO<sub>2</sub> levels was at a single area, located 7.2 km northeast of the Nordegg Compressor Station Unit Addition, and

was both influenced by and confined between the nearby existing Keyera Nordegg River Gas Plant and Peyto Brazeau Gas Plant facilities. NGTL noted that modelling showed the interaction with the operation of the Nordegg Compressor Unit Addition would be negligible. NGTL also stated the majority of construction emissions would be from pipeline construction and are expected to be intermittent, transient in nature and of limited duration. In regard to construction, NGTL submitted that emissions would have locally higher concentrations, but would decrease rapidly with distance from the construction area, and would be considered negligible within tens to hundreds of meters.

In response to ECCC's recommendations, NGTL indicated it would advise potential contractors of the objective of using low emissions equipment, however the Project would be constructed at the same time as other large infrastructure projects that may be competing for construction services from the same contractors. Therefore, NGTL expects that the ability to influence the choice of equipment could be limited. NGTL stated that it would work with contractors to determine where emission mitigation measures can be implemented on older, specialized equipment, and to ensure that equipment and vehicle maintenance programs are implemented. NGTL agreed with ECCC's recommendations for employee training on minimizing idling of off-road equipment, avoiding tampering with emission control systems, use of low emission vehicles, as well as the use of emission control technologies and its maintenance. NGTL stated it would add these requirements to the updated EPP or Project orientation materials for contractors, their employees and NGTL site personnel.

In response to requests to conduct an upstream GHG assessment, NGTL declined. NGTL stated that upstream GHG emissions are not included in the List of Issues for the proceeding, and are generally regulated by provincial regulatory authorities. NGTL added that an assessment of upstream GHG emissions could not be completed within the timelines of the current proceeding. NGTL indicated it was willing to work with ECCC outside the hearing process to assist ECCC in estimating upstream GHG emissions under the Interim Measures for Major Project Reviews, which would be consistent with ECCC's approach to previous CER regulated projects.

NGTL stated that TC Energy is currently developing a Fugitive Emissions Management Plan for its Canadian Gas operations system, and that it would submit a synopsis of the Plan relative to the Project prior to the commencement of operations. During cross-examination, NGTL committed to providing a copy of Fugitive Emissions Management Plan synopsis to interested Parties involved in the GH-003-2018 proceeding. Until the finalization of the revised Plan, NGTL is continuing to follow the fugitive emissions management processes under the existing TC Energy Fugitive Emissions Plan, such as the ongoing annual leak detection and repair program focused on equipment such as seals and valves. NGTL stated that under the existing Plan, methane is identified as a GHG and is monitored and reported annually to the federal government.

In response to Health Canada, NGTL stated that the rationale for the selection of background concentrations was to ensure that overall predicted concentrations are not understated, while allowing for background variability due to unusual sources or transient events. NGTL noted that the guidance used, Alberta Environment and Parks' *Air Policy No. 2 Alberta Ambient Air Quality Objectives and Guideline's Summary* (2016) is consistent with other jurisdictions, including United States Environmental Protection Agency Guidance.

## ***Views of the Commission***

The Commission notes the concern identified by Intervenor regarding the lack of a comprehensive air quality monitoring program. The Commission agrees that it is difficult to monitor construction emissions based on the transient nature of linear construction. In regard to monitoring the operational emissions, the Commission notes that NGTL is required to meet the provincial air quality standards for this Project, and is therefore satisfied that a comprehensive air quality monitoring program is not required.

In regard to ECCC's request that NGTL conduct an upstream GHG assessment to satisfy the Government of Canada's requirements in accordance with the Interim Approach for Major Project Review, the Commission is of the view that the request falls outside the Commission's mandate. However, the Commission notes NGTL's willingness to work with ECCC outside of the hearing process to assist in completing the requested assessment.

The Commission understands that during Project operation an increase in emissions is expected, though the emissions from the compressor stations will remain below applicable objectives. The Commission notes the existing background concentrations and expects NGTL to work with the Province of Alberta to manage the cumulative effects on the local air quality. For operation-related emissions, the Commission understands that the facilities are subject to the federal regulations *Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds* and that NGTL has committed to file a synopsis of how the Project fits into the new TC Energy Fugitive Emissions Management Plan for the Canadian Gas Operations system.

The Commission acknowledges that the methodology used by NGTL to estimate the construction-related emissions is valid, though is concerned that it relies on emission factors that were calculated prior to 2010, and may soon be out of date. The Commission notes that construction techniques continuously improve and appreciates changes in technology and approach (e.g., prevalence of minimum disturbance techniques).

Therefore, the Commission recommends **Condition 26** for the **Section 52 Pipeline and Related Facilities** and would impose **Condition 21** for the **Section 58 Facilities and Activities**, requiring NGTL to file a quantitative assessment of the actual GHG emissions directly related to the construction of the Section 52 Pipeline and Related Facilities, and the Section 58 Facilities and Activities respectively. This condition is expected to validate the estimates made in the ESA. The Commission encourages NGTL to use the emission factor generated by the condition requirements to be used in the assessment of future NGTL projects when constructed under similar conditions. In response to NGTL's comment on Potential Condition 24, the Commission is in agreement and has adjusted the timing to be within 30 days after commencement of operation to capture all construction related data. In response to NGTL's comments on Potential Condition 18, the Commission is of the view that Potential Condition 18 should remain separate. The Commission notes that although the filings may be combined together, the data should be separated and clearly identified between the section 52 and section 58 activities.

In response to Health Canada's concerns regarding the background concentrations, the Commission accepts NGTL's rationale and methodology. The Commission notes the guidance used by NGTL is consistent with that of other jurisdictions.

The Commission is of the view that with NGTL’s proposed mitigation measures and the Certificate and Order conditions which the Commission would impose, the adverse effects of the Project on air quality are not likely to be significant.

Evaluation of Significance of Residual Effects	Temporal Extent	Reversibility	Geographical Extent	Magnitude
	Short to medium- term (Ambient Air Quality)	Reversible (Ambient Air Quality)	LSA (Ambient Air Quality)	Low
	Long- term (GHG)	Permanent (GHG)	Global (GHG)	
	Adverse Effect			
	Not likely to be significant			

## 8.7 Cumulative Effects Assessment

The assessment of cumulative effects considers the impacts of the residual effects associated with the Project in combination with the residual effects from other projects and activities that have been or are reasonably foreseeable to be carried out within the appropriate temporal and spatial boundaries and ecological context.

### 8.7.1 Commission Overview of Cumulative Effects

The Commission notes that a number of Parties had concerns regarding cumulative effects and ranged from loss of Crown Lands, to disappearance of wildlife, traditional land and resource use, and specifically regarding the Little Smoky caribou herd. The Commission notes that cumulative effects on caribou are closely related to broader long term cumulative effects of past and ongoing developments. As has been noted in previous NEB reports<sup>22</sup>, impacts on caribou and caribou habitat is an overall indicator of the adverse changes on the landscape.

The Commission makes the following observation regarding what it heard from intervenors on cumulative effects. The Commission finds that no party disputes that there are already significant existing cumulative effects (on caribou and their habitat); and no party disputes that, without sufficient and effective mitigation, the Project has the potential to further contribute to cumulative effects. Where the Commission notes disagreement in the context of this Project EA is largely around the scope, or extent, of what NGTL is responsible to assess and address.

The Commission is of the view that cumulative effects require cumulative solutions. Just as no one development at any one time is necessarily responsible for all the cumulative outcomes, so too are cumulative effects not going to be resolved by any one party. It is imperative that any discussions on addressing cumulative effects consider all stakeholders (e.g., industries, government, landowners and Indigenous peoples) responsible. The Commission is of the view that as a regulator conducting an EA of a particular project in which existing cumulative effects are already significant, the Commission is responsible to ensure that the proponent’s proposed project have no net increase in cumulative effects, or in other words does not add any new contribution to cumulative effects. The Commission notes that there are numerous proponents

<sup>22</sup> See for example, NEB Report GH-002-2015, dated June 2016 – 2017 NGTL System Expansion Project

(including NGTL) and industries with existing past developments or ongoing operations in the region who have responsibility for addressing their past and ongoing contributions. These multiple interacting past contributions are best addressed through other multi-stakeholder means coordinated through the appropriate government agencies responsible. The Commission is of the view, however, that specific project EAs, and resulting mitigation work, can form a small part of an overall solution.

Given that each province is responsible for its own development, conservation and management of non-renewable natural resources and forestry resources, any cumulative effects initiative should be led by, or at the very least directly involve, the provincial government. As a result, with regard to other initiatives (and NGTL's role or contributions to them), the Commission views them as rightly important to addressing past and ongoing cumulative effects, but not as mitigation for this Project. The Commission encourages all interested stakeholders, including NGTL and other governing bodies, to contribute towards ensuring more integrated and holistic approaches towards addressing cumulative effects.

Section 8.7.2 provides a discussion of cumulative interactions and assessment concerning residual effects. Further assessment of cumulative impacts on caribou and the Little Smoky Caribou Range follows in Section 8.7.3, and cumulative effects on traditional land and resource use can be found in Chapter 7.

### **8.7.2 Residual Effects**

The assessment of cumulative effects considers the impacts of the residual effects associated with the Project in combination with the residual effects from other projects and activities that have been or will be carried out, within relevant temporal and spatial boundaries and the environmental context.

Potential residual effects of the Project on biophysical elements are associated primarily with: physical environment (landform), soil and soil productivity, GHG emissions, fish and fish habitat, vegetation, wildlife and wildlife habitat and species at risk habitat. Potential residual impacts are also associated with traditional use which is addressed in Chapter 7.

Existing, proposed and reasonably foreseeable projects and activities that have the potential for spatial and temporal interaction of effects, and therefore potential for interaction of cumulative effects include: forestry, transportation infrastructure, agriculture, fishing and hunting, coal mining, quarrying and oil and gas extraction.

#### ***Views of the Commission***

The extent to which a proponent must consider the effects associated with other future physical facilities and activities and the associated depth of analysis would depend upon the relative contribution of the applied-for project to the predicted cumulative effects. In this case the Commission notes the nature of the Project and the environmental context: multiple looping of an existing pipeline, in an area of substantial developments from a number of industries.

Although there are possible cumulative effects for a number of biophysical and socioeconomic elements, the Commission is of the view that, with the exception of the Little Smoky Caribou Range and herd, most of these cumulative interactions and effects are limited in spatial extent, short-term during construction, reversible and minor in nature, and

would be mitigated by NGTL's environmental protection and mitigation measures and by the Commission's additional related recommended conditions. Therefore, the Commission concludes that for these elements, the Project would not likely result in significant adverse cumulative effects. Nonetheless, the Commission acknowledges the concerns raised by the Parties and continues to encourage all interested stakeholders, including NGTL and other governing bodies, to contribute towards ensuring more integrated and holistic approaches towards addressing cumulative effects.

### **8.7.3 Little Smoky Caribou Range**

The woodland caribou is listed as Threatened on Schedule 1 of the *Species at Risk Act*, and as Endangered under the *Alberta Wildlife Act*. In the 2012 *Recovery Strategy for the Woodland Caribou (Rangiferus tarandus caribou)*, it is identified that in order for a caribou herd to be considered a self-sustaining population, a minimum of 65 per cent undisturbed habitat within the caribou range is required. The amount of disturbed habitat within the Little Smoky Caribou Range varies from 95 per cent reported in the federal Recovery Strategy, to 96 per cent in a Progress Report on the Recovery Strategy to 99 per cent in the draft Provincial Range Plan released by the Government of Alberta in 2017. Each of these reports also identify that the Little Smoky caribou herd is not a self-sustaining population. This indicates a significant cumulative effects risk under current conditions.

When referring to amount of habitat disturbed within the Little Smoky Caribou Range, the federal Recovery Strategy defines it as the amount of human caused disturbance that is visible on Landsat at a scale of 1:50,000, and includes a buffer area of 500 m around this disturbance. The buffer area is to account for potential sensory disturbance of the woodland caribou, and an area around the human made disturbance that the caribou is less likely to utilize. Human made disturbance includes both permanent and temporary disturbances. Permanent disturbances do not currently possess or have the potential to possess the biophysical attributes of critical habitat for boreal caribou and include industrial and urban developments, permanent infrastructure and graded or paved roads. Temporary disturbances have the potential to possess the biophysical attributes of critical habitat for boreal caribou and include cut lines, seismic lines and forestry harvest blocks.

Disturbance also includes an area that has been burned by fire within the last 40 years, however no buffer is applied to these areas. Therefore, undisturbed habitat is considered to be all other areas outside of the 500 m of a human made disturbance or a natural fire burn.

The Little Smoky Caribou Range is 308,606 ha in size. The 2017 draft Provincial Range Plan identifies the main industrial activities to be petroleum, natural gas, metallic and industrial minerals and forestry. There are 9,476 km of seismic lines, 1,812 km of existing pipeline ROWs, and less than 1 per cent of natural disturbance (fire) within the Little Smoky Caribou Range. The amount of the Little Smoky Caribou Range disturbed by forestry is not provided. However, 100 per cent of the Range is tenured for Forest Management Agreements or Quotas, and 97 per cent is tenured for petroleum and natural gas.

The Project traverses 43.9 km of the Little Smoky Caribou Range in the Deep Valley section. Approximately 96 per cent of this length is parallel to existing disturbances, primarily the NGTL Grande Prairie Mainline ROW.



### **8.7.3.1 Alternative Routing around the Little Smoky Caribou Range**

NGTL identified two alternate routes for the proposed Project that avoided traversing the Little Smoky Caribou Range.

NGTL stated that Alternate Route A was approximately 80 per cent longer than the proposed route, and would require approximately 80 per cent new ROW. Alternate Route A would require a larger construction footprint and additional access as there is no opportunity to overlap existing ROW(s) for use as temporary workspace. Three new mainline valve sites and fenced in areas would be required, as well as new cathodic protection groundbed installations. Alternate Route A would result in an increased number of watercourse, wetland, road and pipeline crossings. There would be additional length of overlap with a Grizzly Bear Zone and Key Wildlife and Biodiversity Zones. Additional fuel for compression would be required due to the increased length of pipeline route including the need to be longer lengths of pipe taken out of service during periods of maintenance or other outages.

NGTL stated that Alternate Route B is approximately 130 per cent longer than the proposed route. Alternate Route B would require approximately 30 per cent additional new ROW and where paralleling existing ROW, none of the existing ROW could be used as workspace. This would result in a larger construction footprint and additional access. Four new greenfield mainline valve sites and fenced areas would be required including new cathodic protection groundbed installations. Alternate Route B would result in an increased number of watercourse, wetland, road and pipeline crossings including a requirement for additional temporary workspace for each. Alternate Route B would have an additional 12.4 km and 8.4 km of overlap with Grizzly Bear Zone and Key Wildlife Biodiversity Zone, respectively. There would also be a requirement for additional fuel for compression due to the longer pipeline route, and longer lengths of pipe that would need to be taken out of service during periods of maintenance or other outages.

NGTL stated that the proposed route brought forward in the Application parallels existing NGTL ROW that can be used for construction footprint overlap, including temporary workspace. The shorter length of the proposed route and connection at an existing mainline valve site provides operational benefit as less pipe length is required to be out of service during maintenance activities, reducing throughput impact to the System.

NGTL stated that while the two alternate routes would avoid the Little Smoky Caribou Range, the proposed route minimizes potential impacts on caribou and this route is preferable from a broader environmental, functional and cost perspective.

NGTL stated that construction for all three routes would be proposed for the winter season, however the construction for the proposed route would be much shorter (Alternate Route A - 40 days longer; Alternate Route B - 65 days longer).

## ***Views of Participants***

### **Alexis Nakota Sioux Nation**

Alexis Nakota Sioux Nation identified the woodland caribou as a species of importance and submitted that the Little Smoky Caribou Range is important as it is the last area where caribou are located within the Alexis Nakota Sioux traditional territory.

Alexis Nakota Sioux Nation acknowledged that NGTL identified two alternative routes around the Little Smoky Caribou Range. They noted the alternatives were technically feasible from an engineering standpoint, but were rejected by NGTL primarily due to financial considerations including reduced capacity. Further, they noted rejection was not based on considerations surrounding the continued viability of the herd or the continued exercise of their section 35 rights. Alexis Nakota Sioux Nation submitted that rejecting routes based primarily on financial considerations is not sound environmental planning.

Alexis Nakota Sioux Nation was of the view that more consideration should have been given to alternative routes given the precarious status of the Little Smoky caribou herd. They stated that there is no justification for traversing that area and putting the Little Smoky caribou herd at further risk.

Alexis Nakota Sioux Nation stated that the addition of impacts from the proposed Project are not acceptable and was of the view that the existing degree of impact to woodland caribou has already breached an acceptable level of change, and the addition of impacts from the Project are unacceptable and remain unmitigated. Alexis Nakota Sioux Nation stated that to mitigate the impacts on woodland caribou, the Project would need to be re-routed around the Little Smoky Caribou Range.

### ***Reply of NGTL***

In written argument, NGTL reiterated the reasons for the selection of the proposed route over the two alternate routes and stated that it determined that the proposed Project route through the Little Smoky Caribou Range best aligned with its routing criteria and environmental considerations. NGTL stated that the proposed route has the lowest overall impact. NGTL stated, however, that it recognized that the proposed route crosses through caribou range, and noted that it would reduce and offset Project effects on caribou through the Caribou Habitat Restoration and Offset Measures Plan (CHR&OMP), which would ensure that the Project does not result in any net loss of caribou habitat.

### ***View of the Commission***

The Commission notes that NGTL did not provide the details of this alternate routing until prompted to do so through the Information Request process in the proceeding. The Commission is of the view that the Application was in accordance with the Filing Manual and related guidance. The Commission does note that based on the status of the Little Smoky Caribou Range the subject of route choice should have been anticipated to be raised in this hearing process. Earlier provision of detailed information on the subject, whether in the Application or in subsequent filings, could have aided the Commission and all Participants in that discussion.

The Commission is of the opinion that disturbances within caribou ranges should firstly be avoided and secondly minimized with measures taken before, during and after construction to help minimize the disturbance and accelerate the restoration of caribou habitat. After careful consideration and thorough weighing of the evidence, the Commission is satisfied with the rationale provided by NGTL for the identification and selection of the proposed route. The Commission recognizes NGTL's efforts at routing the pipeline to parallel the existing ROW in order to minimize the creation of new linear disturbance, both overall and within the Little Smoky Caribou Range. The Commission is further satisfied that the proposed route has minimized the potential disturbance within the Little Smoky Caribou Range.

### **8.7.3.2 Restoration and Offsets**

NGTL submitted a Preliminary Caribou Habitat Restoration and Offset Measures Plan (CHR&OMP) with its Application which quantifies the effects of the Project and outlines the approach to restoration and offsets in order to reduce the predicted residual Project effects and minimize the Project's contribution to cumulative effects on caribou and caribou habitat. NGTL identified the Project construction footprint area as 186.9 ha of which 64.4 ha overlaps existing permanent disturbances, primarily the existing Grande Prairie Mainline ROW. NGTL stated that based on the proposed Project layout and existing disturbance, the Project construction would result in approximately 121.95 ha of incremental direct disturbance and 0.44 ha of incremental indirect disturbance. NGTL indicated that it would implement as much onsite restoration as possible to mitigate the overall Project habitat effects. The remaining Project effects would be offset.

NGTL indicated that the restoration measures would be selected through the use of Habitat Restoration Decision Frameworks and would be based on suitability, specific site conditions and availability of appropriate materials. The restoration measures would be applied during clean-up on the Project footprint.

NGTL stated that the total Project residual effect is the area required to be offset after habitat restoration measures are implemented on the Project footprint, and include the area of remaining direct and indirect disturbance. NGTL applied effectiveness values for each offset measure and delay factors to account for time lags to determine the total Project residual effect of 16.83 ha.

NGTL stated that the Project residual effect would be adjusted based on the actual area of restored construction footprint. This revised value would then be subject to risk multipliers specific to the habitat and the habitat restoration measures to account for uncertainty in implementation of the measures and the time lag for the measures to become usable. NGTL indicated that this would result in a final offset value that was larger than the calculated Project residual effect.

NGTL stated that the existing Grande Prairie Mainline ROW was identified as a good candidate location through discussions with Alberta Environment and Parks for implementation of Project offsets within the Little Smoky Caribou Range. NGTL indicated that this would allow for a corridor level approach when implementing offsets and would allow for access management control across the ROWs from natural treeline to natural treeline.

NGTL stated that it would coordinate the Project activities with offsets required for the Little Smoky Lateral Loop project to ensure the most effective approach to caribou offsets, and may include early implementation to reduce the temporal range.

NGTL committed to develop a Caribou Habitat and Offset Implementation Report and Monitoring Program which would describe the restoration and offset measures were implemented, monitor effectiveness and provide details on monitoring and adaptive management of any restoration measures.

### ***Views of Participants***

#### **Environment and Climate Change Canada**

ECCC stated that due to the pre-existing cumulative effects on habitat and individuals in the Little Smoky Caribou Range, and the absence of a spatially explicit provincial range plan consistent with the federal Recovery Strategy, all remaining habitat within the Little Smoky Caribou Range, with the exception of permanent disturbance and the associated 500 m buffer, is considered potential critical habitat and therefore necessary for caribou survival and recovery.

ECCC's view is any additional habitat loss in the Little Smoky Caribou Range should be avoided. ECCC also stated that should the Project be approved, additional habitat loss should be fully mitigated using offsets.

ECCC disagreed with the method used to calculate total existing disturbed habitat. ECCC stated that based on the current level of disturbed habitat within the Little Smoky Caribou Range, all remaining habitat outside of permanent disturbances and the associated buffer areas is considered critical habitat. Therefore, temporary disturbances should not be included in the calculation.

ECCC also disagreed with NGTL's calculation of initial offset value, or residual effects of the Project. ECCC is of the view that there should be no application of an inherent effect adjustment, where the Project effects are reduced by 80 per cent in areas where the Project parallels an existing ROW. ECCC submitted that the Project's effects on potential caribou critical habitat, as well as required offsets to mitigate Project effects, have not been appropriately calculated by NGTL in a manner consistent with the recovery strategy and have been underestimated. ECCC is of the view that the proposed Project has the potential to add to the existing cumulative effects within the Little Smoky Caribou Range, resulting in a potential increase in risk to the recovery of the local population.

In the event that the Project receives approval, ECCC identified a number of recommendations for inclusion within the final CHR&OMP including addressing the calculation issues mentioned previously and habitat restoration be located within the Little Smoky Caribou Range in a timely manner and demonstrated to be feasible and verified through a follow-up program. Habitat restorations should account for identified risks and uncertainties associated with implementation and offset ratios should be a minimum of 4:1 (habitat restored: habitat lost). Regarding offsets, ECCC stated that NGTL should also consider Environment Canada's *Operational Framework for the Use of Conservation Allowances 2012*.

ECCC also recommended that access control measures be implemented and effective across the full width of other adjacent ROW dispositions, as well as having robust monitoring and enforcement programs in place.

With respect to the final CHR&OMP, ECCC recommended that it be given the opportunity to review and comment on the final document, follow-up and monitoring plans and reports.

In final argument, ECCC summarized its recommendations if the Project were to be approved, in three main points. These include:

- aggressively restoring linear features within the Little Smoky Caribou Range to minimize the attraction of alternate prey species (e.g., moose, elk and deer) and predators that could use the linear feature as a travel corridor;
- implementing a minimum 4:1 offset ratio as habitat compensation to compensate for time lag of restoration; and
- including restored habitat in the residual effects offsets calculations in order to account for the large time lags inherently increase risk when considering future gains as compensation for immediate losses.

### **Alexis Nakota Sioux Nation**

Alexis Nakota Sioux Nation noted that ECCC's written evidence stated that additional habitat loss in the Little Smoky Caribou Range should be avoided and that preventing further habitat loss is consistent with the Recovery Strategy.

During cross examination, counsel for Alexis Nakota Sioux Nation asked ECCC whether re-routing the pipeline outside of the Little Smoky Caribou Range was one way in which further habitat loss in the Little Smoky Range could be avoided. ECCC replied it was their view that any additional habitat loss should be avoided, and there are a number of ways that could be accomplished, and re-routing would be one.

Alexis Nakota Sioux Nation stated that NGTL's assessment does not accurately portray the potential for impact on remaining undisturbed caribou habitat within the Little Smoky Caribou Range, and has not provided clarity on how the Project would impact the suitable high and good quality habitat that remains in the undisturbed portions of the Little Caribou Range. They further stated that habitat destruction through habitat loss, degradation and fragmentation is the main threat to the ability of the Little Smoky caribou herd to survive. Alexis Nakota Sioux Nation was of the view that impacts to caribou must be avoided by re-routing the Project around the Little Smoky Caribou Range.

### **Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, Saddle Lake Cree Nation**

Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation noted the Project would destroy woodland caribou critical habitat in the Little Smoky Caribou Range and it would have an additive cumulative impact with NGTL's previous pipeline projects. They noted that ECCC recommended an offsetting ratio for caribou habitat restoration be a 4 ha offset for every 1 ha of habitat destroyed. Based on NGTL's written argument, Driftpile Cree Nation indicated it was of the view that NGTL does not intend to implement this offset ratio for the Project.

## **O'Chiese First Nation**

O'Chiese First Nation stated it has a recognized interest and role in the conservation and protection of the Little Smoky caribou herd. O'Chiese First Nation stated the Project would destroy critical habitat for woodland caribou and put the Little Smoky caribou herd at risk.

O'Chiese First Nation noted that ECCC is responsible for providing technical advice and support in addressing section 79 of SARA and the federal assessment requirements. O'Chiese further noted that ECCC reviewed the CHR&OMP and concluded that the amended CHR&OMP is inadequate to mitigate the effects of the Project through the Little Smoky Caribou Range. They reiterated that ECCC confirmed that to achieve the goal of the Draft Conservation Agreement and restore the Little Smoky herd to self-sustaining status, measures need to be undertaken to restore habitat to an earlier natural state, and the CHR&OMP fails to achieve this. Rather than rehabilitating the habitat, the Project has the potential to add to the existing cumulative effects in the Little Smoky Caribou Range.

O'Chiese First Nation stated that the Commission should accept ECCC's conclusions that the CHR&OMP is currently inadequate to mitigate the effects of the proposed pipeline through the Little Smoky Range.

## **Samson Cree Nation**

Samson Cree Nation noted that Project footprint is projected to cross the Little Smoky Caribou Range which would lead to habitat fragmentation and animal dispersal. Further, they stated that the protection, management, and recovery of caribou in and around Samson Cree Nation's Territory are of serious interest to them and any attempts to assess or manage caribou without their involvement is deeply concerning.

In their written argument, Samson Cree Nation stated that the Little Smoky Range currently has between 96 – 99 per cent disturbed habitat and that the Project not only proposes to disrupt land within an important use area, it would also intersect and destroy "critical habitat" in the Little Smoky Caribou Range. Destruction of "critical habitat" defeats the purposes of the *Species at Risk Act*.

Samson Cree Nation further stated that justifying significant adverse environmental effects on the Little Smoky caribou would defeat the purposes of the *Species at Risk Act* and the protections it provides to the threatened Little Smoky caribou herd.

Samson Cree Nation supported ECCC's view that the use of residual effects, multipliers and inherent effect multipliers to calculate lost habitat and offsets values is counter to ECCC's recommendation that offsets be calculated based on loss of existing habitat.

Samson Cree Nation is of the view that NGTL's Caribou Habitat Restoration and Offset Measures Plan does not sufficiently mitigate or offset significant adverse effects to the Little Smoky caribou and would destroy critical habitat.

## **Reply of NGTL**

NGTL stated that its ESA recognized that pre-existing cumulative effects in the Little Smoky Caribou Range are significant, and has therefore committed to implementing a Project-specific CHR&OMP which contains a variety of strategies for habitat restoration and access

management, including outside of the Project footprint to offset the residual effects of the Project on caribou habitat. NGTL stated that this would ensure that the Project does not result in any net loss of caribou habitat.

In response to ECCC's concern and recommendation regarding the calculation of existing disturbance within its Preliminary CHR&OMP, and the use of an inherent effect adjustment to reduce Project effects, NGTL amended the CHR&OMP to include temporary disturbance areas within the Project footprint calculation. NGTL stated that it disagreed with ECCC's comment that Project effects should not be reduced by the use of an inherent effect multiplier when the Project footprint parallels existing habitat, as this underestimates the Project effects. NGTL stated that in its preliminary CHR&OMP submitted for the Project, it identified that parallel alignment are assigned a 20 per cent inherent effect which over predicts the effect within the 500 m buffer zone.

NGTL stated that ECCC did not support its 4:1 offset ratio recommendation with scientific evidence. In response to information requests and cross examination, ECCC stated it was a qualitative assessment completed on a project by project basis that included consideration of uncertainty of any delay associated with the restoration of the habitat and lag time for vegetation growth.

NGTL noted that although ECCC has recommended this 4:1 offset ratio on previous CER regulated projects, it is not aware of any CER regulated projects where this approach was used.

NGTL confirmed that its restoration and offsets valuation method includes the use of several multipliers that account for the delivery, spatial and temporal risks specific to the proposed restoration or offset habitat.

In response to ECCC's recommendations should the Project be approved, NGTL noted that the preliminary offsets proposed for the Project are located within the Little Smoky Caribou Range, in an area where NGTL has land access and operational control. NGTL further stated it would implement the restoration and offsets measures as soon as feasible.

### ***Views of the Commission***

The Commission notes ECCC's recommendation for a habitat restoration ratio of 4:1 and that ECCC has previously recommended this ratio on previous NEB pipeline project applications. The Commission remains of the same view as previous NEB pipeline projects<sup>23</sup> that a fixed 4:1 ratio does not allow for different time lag circumstances or varying levels of uncertainty, nor does it ensure that the offset measures selected would be effective, account for the timing of implementation or proximity of the offset location. The Commission notes that NGTL's multipliers, as set out in its evidence, account for a wide variety of mitigation and habitat related variables and provide different multipliers for inherent values, as well as delivery, temporal, and spatial risks encountered under different circumstances. This approach could potentially result in a ratio greater than 4:1, where and when the risks are greater to the environment.

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<sup>23</sup> NEB Report GH-002-2015, dated June 2016 – 2017 NGTL System Expansion Project; NEB Letter Decision, GHW-001-2018, dated 31 July 2018 – Northwest Mainline Loop 2018 Boundary Lake North Section

The Commission notes the view of ECCC that all remaining existing habitat in the Little Smoky Caribou Range is considered potential critical habitat and that the existing cumulative effects on the local caribou population are high in magnitude. Despite the existing cumulative effects, and despite SARA provisions allowing for different protection orders, the Commission notes that such orders have not been issued, and is not aware of any advice that ECCC has provided to the Minister indicating that caribou critical habitat is not sufficiently protected in Alberta.

The Commission has also considered NGTL's preliminary CHR&OMP and amended preliminary CHR&OMP which were filed during the proceeding. The Commission notes the concerns raised by Intervenor regarding the exclusion of temporary disturbances from the calculation of existing disturbed habitat in the preliminary CHR&OMP. The Commission acknowledges that the Recovery Strategy considers temporary disturbances to be existing habitat with the potential to become critical caribou habitat and contribute to the attainment of 65 per cent undisturbed habitat. The Commission further acknowledges ECCC's view that due to the current level of disturbance in the Little Smoky Caribou Range, all existing habitat, with the exception of permanent disturbances and associated buffer areas, is considered critical habitat. The Commission is therefore of the view that existing temporary disturbance areas should be included as habitat when calculating Project effects, so that the effects on critical habitat and subsequent offset requirements are not underestimated. The Commission notes that when temporary disturbance was included in the amended preliminary CHR&OMP, the Project effects value increased from 14.2 ha to 16.83 ha.

The Commission notes the value of capturing the information on the Little Smoky Caribou Range that was collected and discussed during the GH-003-2018 proceeding. The Commission recommends **Condition 6** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to prepare a Revised CHR&OMP that would include the information provided and the commitments made during the GH-003-2018 proceeding.

The Commission is of the view that given the already substantial ongoing cumulative effects on the landscape and on caribou in the Little Smoky Caribou Range due to both direct and indirect habitat disturbance, all residual effects on caribou habitat should be considered and fully offset to avoid additional cumulative effects on any already existing significant cumulative effects in the Little Smoky Caribou Range. The Commission expects NGTL to offset all potential direct and indirect residual effects of the Project in order to ensure no net loss of caribou habitat and no incremental increase in adverse cumulative effects on habitat. The Commission recommends **Condition 31** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to file a Caribou Habitat Restoration Implementation Report and Status Update. The Commission also recommends **Condition 32** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to file a Caribou Habitat Offset Measures Implementation Report to review the results of the measures implemented to compensate for all Project related residual effects from directly and indirectly disturbed habitat and verify the calculations for the total required offset area.

The Commission notes NGTL's commitment to monitor the effectiveness of restoration methods as well as to implement adaptive management to address any issues that arise. In order to oversee this monitoring, the Commission recommends **Condition 33** for the **Section 52 Pipeline and Related Facilities**, requiring NGTL to file a Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP) for monitoring and verifying the effectiveness of the caribou habitat restoration and offset measures implemented as part of the CHR&OMP. In addition, the Commission recommends



**Condition 34** for the **Section 52 Pipeline and Related Facilities**, to file Caribou Monitoring Reports which would outline the results of the CHROMMP.

The Commission fully understands the importance of protecting caribou critical habitat which is why it has imposed the above noted conditions. The Commission is mindful that these conditions are not a panacea for all the cumulative impacts on caribou. However, the Commission is of the view that with these conditions, and the Commission's regulatory oversight of them, the Project's additional impacts to caribou habitat within the Little Smoky Caribou Range would be effectively mitigated, and not affect the status of the existing cumulative effects. Moreover, the Commission is of the view that with the imposed offset measures conditions, there may be potential benefits for caribou habitat in general elsewhere within the range, particularly with careful and strategic selection of offset site locations.

Subsection 77(1) of SARA requires the Commission to consult with the competent Minister whenever the Commission may authorize an activity that may result in the destruction of any part of the critical habitat of a listed wildlife species. The Commission is also required to consider the impact on the species' critical habitat and reach the opinion that:

- a. all reasonable alternatives to the activity that would reduce the impact on the species' critical habitat have been considered and the best solution has been adopted; and
- b. all feasible measures would be taken to minimize the impact of the activity on the species' critical habitat.

Through its letter identifying the potential effects on Species listed under the SARA, dated 18 December 2018, the Commission has consulted with the competent Minister and considered the impact on the species' critical habitat. The Commission is of the view that, with the mitigation proposed by NGTL and the conditions that would be imposed by the Commission, the impacts to caribou within the Little Smoky Caribou Range would be minimized.

### **8.7.3.3 Indigenous Working Group on Caribou Habitat Restoration, Offsets and Monitoring**

#### ***Views of Participants***

Five Indigenous Intervenors, Blood Tribe, Driftpile Cree Nation, Métis Nation of Alberta Region 3, Piikani Nation, and Saddle Lake Cree Nation recommended that an Indigenous Working Group (IWG) be established for the Project which would oversee and actively participate in all stages of the CHR&OMP and subsequent Caribou Habitat and Offset Implementation Report and Monitoring Program (CHOIRMP) planning and decision-making in collaboration with NGTL, Alberta Environment and Parks, and ECCC. The Indigenous Intervenors identified that the IWG would include representation of individuals who had the most relevant experience and knowledge of caribou from each of their respective communities. Further, the Indigenous Intervenors stated that the IWG would be funded by the Proponent and ideally, the cost would be shared by the Province through a trilateral agreement. Horse Lake First Nation agreed with the recommendation of such an IWG. Driftpile Cree Nation, Saddle Lake Cree Nation and Horse Lake First Nation each indicated during argument that they would like representation on this working group.

## ***Reply of NGTL***

NGTL stated that it disagrees with the recommendation to establish an IWG for the Project to oversee and actively participate in all stages of the CHR&OMP and subsequent CHOIRMP planning and decision making in collaboration with NGTL, Alberta Environment and Parks, and ECCC.

NGTL stated that it has committed to ongoing engagement with potentially affected Indigenous communities and confirmed that any traditional knowledge and recommendations gathered through that ongoing process would be considered in the Final CHR&OMP. NGTL stated that the Intervenor have not demonstrated that NGTL's commitments around engagement on the CHR&OMP are inadequate such that an IWG is necessary for the Project. NGTL stated that Alberta and the federal government are also planning to establish working groups for the Little Smoky caribou herd in 2020-2021, the results of which would influence the content of the Final CHR&OMP. NGTL is of the view that adding an IWG requirement for the Project in these circumstances is unnecessary, duplicative and impractical.

NGTL stated that as proposed in the evidence of the Intervenor in this proceeding, an IWG would include participation of two members for each Indigenous community affected by the Project (i.e., over 100 people, not including any representatives from NGTL or government). NGTL stated that it is of the view that such a large working group may be well suited for broader policy development (such as what Alberta and the federal government are contemplating for caribou range planning), but it would be practically difficult if not impossible to organize in the context of a single project in a manner that is both efficient and effective.

### ***Views of the Majority of the Commission***

Firstly, the Commission notes that the argument provided by several parties for an IWG discussed the need to participate and provide input on the CHR&OMP and CHOIRMP. It is the Commission's view such participation and input can be accomplished through avenues other than direct Working Group oversight. As an example, the Commission views the preliminary CHR&OMP that was filed as part of the Application, and subsequently updated, as sufficiently detailed to allow meaningful discussion and identification of concerns throughout the Hearing process.

In addition, the Commission notes that the scope of the Working Group's oversight – the offsets managed under the CHOIRMP – is an exceedingly small area within the overall Little Smoky Caribou Range. While the total offset area is not yet determined, a hypothetical offset ratio of 4:1, for example, would provide such a working group with responsibility for offsets representing less than 0.2 per cent of the Little Smoky Caribou Range.

While the Commission is of the view that it is vitally important that the proposed Project's effects within the Little Smoky Caribou Range be minimized, it is the Commission's view that on a CHR&OMP of this scale this is best accomplished through rigorous conditions imposed on the Project that includes input from affected Indigenous communities. The Commission is concerned that the organization of a working group and development of its guidance could take considerable time and potentially delay the implementation of offsets to the detriment of the Little Smoky Caribou Range.

Secondly, the arguments heard for the creation of an IWG also discussed its use for monitoring. The Commission is of the view that the Section 52 Pipeline and Related Facilities Conditions 12 and 27 for Construction and Post-Construction Monitoring Plans for Indigenous Peoples, respectively, already provide for potential Indigenous monitoring opportunities for the Project, which may include caribou habitat restoration and offsetting activities. The Commission refers to Chapter 7 for further discussion on Indigenous monitoring opportunities.

Finally, the Commission notes that a number of Intervenors referred to the importance of the protection of offsets. The Commission notes that the preliminary CHR&OMP identifies an offset location – the existing Grande Prairie Mainline ROW – that was identified by NGTL in discussion with the AER and ECCC, and that would provide meaningful protections for the offsets into the future. The Commission also notes the importance of collaborating with those government departments for meaningful offset development.

Accordingly, the Commission is of the view that an IWG condition is not warranted or necessary for the CHR&OMP or CHOIRMP.

Notwithstanding the above, the Commission does agree strongly with the arguments heard stating the importance of Indigenous involvement and engagement in the CHR&OMP and CHOIRMP. The Commission is of the opinion that Indigenous knowledge and input would be beneficial and meaningful in developing and finalizing restoration, offsetting, and monitoring plans in the Little Smoky Caribou Range to the greatest positive impact. Therefore, the Commission has added requirements concerning consultation with Indigenous peoples to the Section 52 Pipeline and Related Facilities Conditions 6, 31, 32, 33 and 34.

The Commission has read and considered the views of Commissioner Côté. It remains of the view that the conditions recommended and imposed are sufficient for the Project to be in the public interest and that an IWG condition is not required. The Commission is further of the view that the creation and implementation of an IWG of this scope poses demands in terms of process and resources, including time, which may in turn pose a risk both to the Project and to other efforts being made to improve the state of the Little Smoky Caribou Range. The Commission finds that the effects of the Project on the Little Smoky caribou herd can be mitigated through the conditions recommended and imposed, which will allow for effective inclusion of Indigenous knowledge.

### **Dissenting Views of Commissioner Côté on the Imposition of an IWG Condition**

While I agree with the conclusion of the Majority that the applied-for Project is in the public interest, and agree that the conditions related to restoration and offsets measures for caribou in the Little Smoky Caribou Range are acceptable, unlike the Majority I would have included an additional condition related to collaboration with Indigenous peoples on those measures.

This condition would have required NGTL to seek to establish an IWG for the purposes of collaborative finalization of the CHR&OMP and related detailed planning of the restoration and offset measures. And while I agree (in part) with the Majority that the specifics of the condition as proposed by a number of the Indigenous Intervenors that participated in the hearing are not warranted in these particular circumstances, I disagree with the Majority that an IWG would not provide better or more rigorous mitigation of Project effects than the

conditions proposed by the Majority. In my view, involving Indigenous peoples directly in the development and finalization of the caribou measures would more clearly recognize their deep attachment to, and knowledge of, caribou, and is more in keeping with the spirit of collaboration on a matter of shared interest.

In my view, collaboration of Indigenous peoples on the finalization of the caribou restoration and offset measures is warranted. The state of the Little Smoky herd is undeniably dire. With 95-99 per cent of the herd's range currently disturbed, the cumulative effects of all development within the herd's range are already severe, and as the oral Indigenous knowledge shared on the record of this hearing has made clear, the impacts of these cumulative effects are significant. The decline and potential loss of the Little Smoky herd represents not only a loss of a resource used since time immemorial for Indigenous peoples in the region, but also represents a potential loss of Indigenous knowledge and elements of Indigenous culture associated with caribou. As knowledgeable stewards of the lands and resources within their traditional territories, the direct participation of Indigenous peoples in finalizing the restoration and offset measures for the herd should be implemented for this Project as I believe it raises the measures' likelihood of success.

With regard to my colleagues' reasons for not requiring an IWG Condition, I would agree that the habitat disturbance from this one Project is relatively small compared to the size of the Little Smoky Caribou Range. However, in my view, that is not a reason to reject calls for an IWG. Cumulative effects at multiple scales require cumulative solutions at multiple scales, and any measures aimed at addressing the broader issue of cumulative disturbance could work in parallel with an IWG Condition. In this respect, I note that in Section 1.3 of this Report, the Commission has made recommendations to government concerning issues related to caribou more generally and to the Little Smoky Caribou Range as a whole, including the recommendation to expedite the finalization of the *draft Agreement for the Conservation and Recovery of the Woodland Caribou in Alberta* (draft Agreement).

The draft Agreement contemplates a role for Indigenous peoples to inform the implementation of the draft Agreement and provides for the formation of an Indigenous and multi-stakeholder sub-regional task force to be established for the Little Smoky Caribou Range in 2019-2020. However, it bears noting that the draft Agreement has not yet been signed and resides outside the reach of CER jurisdiction; there is no guarantee that the draft Agreement will be signed, or the form it will take upon signature. Furthermore, given the geographical reach of the draft Agreement, it is unclear at this time how effective it will be in addressing the specific needs of the Little Smoky Caribou Range. Ultimately, the draft Agreement may represent a necessary component of an eventual recovery of the Little Smoky Caribou Range, but I believe that it does not displace the need for concrete actions for specific Projects, and for collaborative involvement of Indigenous peoples on those actions, and thus the draft Agreement remains insufficient on its own.

I would also agree with my colleagues that the Indigenous communities that participated in the hearing had an opportunity to comment on NGTL's preliminary CHR&OMP, and that NGTL will be required to continue to consult with them, and that Indigenous monitoring of the caribou measures is already covered by other conditions. In my view, however, that does not negate the desirability for additional collaboration with Indigenous peoples on the final development of those very measures. Based on this hearing record, I hold the view that both NGTL and Indigenous peoples share a genuine interest in wanting the implementation of effective solutions for the benefit of the Little Smoky Caribou Range.

However, I am also of the view that the record of this hearing highlighted a number of unrealized opportunities for NGTL to more fully incorporate into its assessment of project effects and resulting mitigation measures, the Indigenous knowledge that was provided by Indigenous peoples at various points throughout the development of the application and the hearing process. As one example, during oral cross-examination O'Chiese First Nation inquired about the extent to which NGTL had considered O'Chiese valued components such as *ganaadan* in relation to the ESA for the Project. While this information was provided during the hearing process as part of O'Chiese First Nation's written evidence, and may not have been available to NGTL during the development of its ESA, such exchanges nonetheless highlight the potential benefits that can be captured through more collaborative approaches to the assessment of impacts and development of mitigation measures. By virtue of its design, I am of the opinion that an IWG would have created a more equitable and collaborative framework to realize Indigenous peoples' ability to see their Indigenous knowledge integrated into NGTL's plans.

Thus, in my view, NGTL should be required to make best and meaningful efforts to establish an IWG that would provide for the direct involvement of Indigenous peoples in the finalization of the caribou measures for this Project, which would include the effective and meaningful application of Indigenous knowledge, and allow Indigenous peoples in the Project area to fulfill, at least in part, their roles as land and resource stewards. This, in my view, is both proportional to the current circumstances related to the herd, and an appropriate response to the concerns raised by Indigenous peoples that participated in the hearing.

In light of the above, I would have imposed the IWG Condition set out below. In my view, the condition below strikes an appropriate balance between the concerns and objectives expressed by Indigenous peoples in this hearing regarding their direct participation in developing protective measures for the herd and the concerns expressed by NGTL regarding their ability to comply with a condition that requires the participation of third parties that are not regulated by the CER:

### **IWG Condition**

For the purpose of collaborative finalization of the CHR&OMP and related detailed planning concerning restoration, access management, offsets, and monitoring measures, and for the development of other filings relating to caribou required under Conditions 6, 31, 32, 33 and 34, including ensuring the collection and incorporation of caribou-specific Indigenous knowledge, NGTL must seek to establish an Indigenous Working Group (IWG) for the Little Smoky Caribou Range with any interested Indigenous communities that have been identified as being potentially affected by the Project ('The Indigenous communities').

- a) NGTL must file with the Commission, for approval, within two months of issuance of the certificate for the Project, a plan for the establishment of an IWG. The plan for the establishment of the IWG should be developed in collaboration with any of The Indigenous Communities that express interest in participating, and to the extent possible, with the participation of relevant government departments, and must include at a minimum:
  - i) a summary of any activities undertaken to-date for the development of the plan to establish an IWG; and

- ii) the planned steps for establishing an IWG, including an outline and timeline of activities for collaboration on the development of the IWG and its working documents.
- b) NGTL must file with the Commission, for approval, within six months of issuance of the certificate for the Project, a final report on the establishment of the IWG:
- i) if one or more of The Indigenous Communities agree to participate in the IWG, the report must confirm the establishment of the IWG and describe:
    - 1) the membership of the IWG;
    - 2) the collaboratively-developed working documents of the IWG, including, as agreed to by the membership of the IWG:
      - any terms of reference;
      - the scope of the IWG, including confirmation of any aspects of the Preliminary CHR&OMP that have already been implemented or irreversibly committed to, or are necessary to achieve at least the same level of protection for caribou and its habitat as committed to during the Commission hearing and in the Preliminary CHR&OMP, and are thus not open to change;
      - decision-making protocol;
      - dispute resolution process;
      - work plan; and
      - the lifespan of the IWG;
    - 3) a summary of any issues or concerns raised by The Indigenous Communities regarding the functioning of the IWG, including plans or mechanisms for collaborative resolution of those issues, or an explanation as to why any issue or concern identified by The Indigenous Communities will not be addressed. NGTL must include any correspondence from The Indigenous Communities, if provided and subject to any confidentiality agreements, that outlines any issue or concern raised; and
    - 4) a description of the resources that will be available to support the participation of The Indigenous Communities; or
  - ii) if none of The Indigenous Communities agree to participate, the report must include an explanation of NGTL's efforts to create an IWG and a summary of any reasons given by The Indigenous Communities for their non-participation.
- c) If an IWG has been formed, following the establishment of the IWG, NGTL must include the following in any filings to the Commission that are required under Conditions 6, 31, 32, 33 and 34:
- i) in addition to the consultation requirements under those other conditions for Indigenous communities that are not participating in the IWG, a description of the collaboration with the IWG that has occurred with respect to the development of the filing, including how caribou-specific Indigenous knowledge has been incorporated into the filing; and
  - ii) a summary of any issues or concerns raised by interested Indigenous communities regarding the filing, including how NGTL has addressed the issue or

concern in the filing, any ongoing collaborative attempts to resolve the issue or concern, or an explanation as to why the issue or concern will not be addressed.

- d) If an IWG has been formed, following establishment of the IWG, NGTL must file a summary of the activities of the IWG every 6 months until all filings under Conditions 6, 31, 32 and 33 have been approved and the first two years of monitoring reports under Condition 34 have been filed.

I hold the view that the establishment of an IWG would have provided for multiple beneficial outcomes, including – primarily – for the Little Smoky herd itself, but also for Indigenous peoples in the Project area and for the relationship between NGTL and Indigenous peoples generally.

Firstly, establishing an IWG would have ensured that Indigenous knowledge is fully considered in the finalization of the caribou restoration, offset and monitoring measures for the Project. The IWG contemplated in the condition set out above is focused on an important but clearly defined issue: namely, the successful finalization, implementation and monitoring of the caribou restoration and offset measures for this Project. The success of these measures could only be enhanced through the direct application of Indigenous knowledge of the caribou and its habitat that is held by Indigenous peoples in the region.

Second, it would allow for the implementation of a multi-set of solution strategies to what is a clear cumulative impacts challenge. An effective IWG would complement any action that may (or may not) be taken at broader scales by Provincial and Federal governments.

Finally, it would provide for the meaningful involvement of Indigenous peoples in the management of the herd through their direct participation in the protective measures that would be implemented for the Project. While the IWG contemplated here would not achieve full co-management, it would nonetheless allow those Indigenous peoples that chose to participate to realize, at least in part, their roles as land and resource stewards within their territories for the finalization of the caribou restoration and offset measures for this Project. In this sense, in my view, it would be a positive step towards relationship-building and collaboration.

As a result of the above, I do not agree with the Majority's decision to forego a condition related to the establishment of an IWG.

## **8.8 Follow-Up Program**

The CEAA 2012 requires a follow-up program. The Commission recommends that **Conditions 33 and 34** for the **Section 52 Pipeline and Related Facilities** be implemented as a follow-up program. Please refer to Section 8.7.3.2 for more detailed information.

## **8.9 Commission Conclusion**

The Commission has conducted an environmental assessment of the Project and is of the view that overall, with the implementation of NGTL's environmental protection procedures and mitigation measures and the Commission's recommended conditions, the Project is not likely to cause significant adverse environmental effects.

Therefore, pursuant to the CEAA 2012, the Commission recommends that the GiC decide that the designated Project is not likely to cause significant adverse environmental effects.



## 9 Infrastructure, Employment and Economy

The Filing Manual sets out the expectations for applicants regarding direct socio-economic impacts caused by the existence of a project. Applicants are expected to identify and consider the impacts a project may have on infrastructure, services, employment and economy. Applicants are also expected to provide mitigation of negative impacts and the consideration of positive benefits of the project.

Potential socio-economic effects that are caused by changes to the environment are included in Chapter 8. Other economic effects are addressed in Chapter 3. Direct socio-economic effects caused by the existence of the Project itself are discussed below. Employment and economic benefits, as they relate to Indigenous communities, are discussed in Chapter 7.

### 9.1 Infrastructure and Services

NGTL provided its assessment of the potential effects on infrastructure and services and discussed its proposed mitigation measures in the ESA and EPP. NGTL also identified and evaluated the predicted residual and cumulative effects from the Project.

In the ESA, NGTL identified the key indicators of potential effects on infrastructure and services as: water supply, waste management and utilities; emergency, health and social services; commercial accommodation; recreation; and, regional transportation and traffic. NGTL provided the baseline conditions of these indicators for each of the rural municipal districts, counties, and community service centres in the socio-economic study area (SESA)<sup>24</sup>.

NGTL stated that small temporary increase in population is predicted as a result of the temporary influx of workers from outside the SESA required during Project construction. NGTL noted that construction activities and the temporary increase in population could increase demand on infrastructure and services in the SESA.

NGTL stated that a temporal overlap between the Project and other reasonably foreseeable projects identified within the SESA is likely to create incremental cumulative demand on infrastructure and services in the area. NGTL said that given the nature and size of these other projects (combined value in excess of \$2.1 billion), they are likely to demand similar services and place a similar type of pressure on infrastructure as the Project during the construction phase. NGTL noted that the cumulative effects on infrastructure and services would be an incremental cumulative demand for water, waste management and utility services; emergency, health and social services; and, traffic and transportation.

NGTL said that given the location of the reasonably foreseeable projects, and other ongoing activities (e.g., oil and gas, forestry, transportation), the cumulative effects on infrastructure and services are expected to be more noticeable in Yellowhead County and Greenview Municipal

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<sup>24</sup> The SESA includes the following six rural MDs and counties: County of Grande Prairie No. 1; MD of Greenview; Yellowhead County; Clearwater County; Mountain View County; and Rocky View County. The SESA also includes the following nine communities, which may act as service centres for the Project: City of Grande Prairie; Valleyview; Fox Creek; Whitecourt; Edson; Drayton Valley; Rocky Mountain House; Didsbury; and Airdrie.

District (MD). NGTL stated baseline conditions show that the capacity of water, waste management and utility services, and emergency, health and social services in Yellowhead County and Greenview MD are sufficient to serve its population and cover a temporary additional demand within the anticipated population growth. NGTL said it has discussed traffic management with the County of Grande Prairie and the Greenview MD and would continue to engage with them both.

NGTL stated that no substantial additional workforce is anticipated during Project operation. Therefore, no noticeable increase in infrastructure and services demand over pre-Project demands in the SESA are anticipated. NGTL said that because the Project operation activities would be integrated into the existing operation structure, no additional demands for infrastructure services during operation are anticipated.

### ***Views of Participants***

#### **Driftpile Cree Nation, O'Chiese First Nation and Samson Cree Nation**

The above Parties all noted concerns regarding traffic. During their oral Indigenous knowledge sessions, Elder Peter Okemow of Driftpile Cree Nation, Mr. Terrance Strawberry, a Band member of O'Chiese First Nation, and Mr. Besim Buffalo Jr., a hunter from Samson Cree Nation, all brought up the effects of traffic and its impacts on their use of the land. In response to an IR from the NEB, Samson Cree Nation also proposed a condition regarding traffic management.

See Chapter 7 for further detail and discussion.

### ***Reply of NGTL***

NGTL stated it would implement a Traffic Control Management Plan for the Project. NGTL explained this plan deals with the management and control of construction traffic on the construction footprint and temporary access routes. NGTL also said that Contractors working on the construction of the Project would be aware of access mitigation measures.

### ***View of the Commission***

The Commission accepts the evidence filed by NGTL and finds that the measures planned by NGTL would adequately address the potential impacts of the Project on local infrastructure and services, including effects on traffic. Given the Project is spread across multiple locations and would require a relatively small outside workforce, the Commission finds that Project demands are unlikely to exceed the available capacity of community infrastructure and services, or impact the quality of local services.

The Commission also notes that NGTL has committed to implementing mitigation and management plans, including the Chemical and Waste Management Plan, Traffic Control Management Plan, Release Contingency Plan, Site-Specific Safety Plan, and Emergency Response Plan.

## 9.2 Employment and Economy

NGTL stated that the Project would create employment opportunities, generate additional income and create business opportunities and revenues for contractors in the SESA and Alberta.

NGTL said Project expenditures would have positive effects on both the Alberta and national economies through employment, additional labour income and higher GDP. The Project and associated labour force and business activity would generate tax revenues for municipal, provincial and national governments.

NGTL stated that the average size of the construction workforce is expected to be 1,890 workers with a peak of 2,920 workers. NGTL said that construction workers would be recruited preferentially from Alberta and that the total economic impact (direct, indirect and induced) on Alberta would be \$1,221 million in GDP and \$817 million in labour income.<sup>25</sup>

NGTL said that for the pipeline component of the Project, employment and contracting opportunities would include supervisory and field administration, welders and pipefitters, equipment operators, labourers, and drivers. For the compressor station unit additions, NGTL said that employment and contracting opportunities include those mentioned above as well as building trades (boilermakers, carpenters, electricians). NGTL noted that the unemployment rate and the workforce in the construction and the mining, quarrying and oil and gas sectors suggest a skilled workforce would be available for the Project.

NGTL stated that no substantial additional workforce is anticipated during Project operation.

NGTL said it expects that the pipeline contracts would be awarded based on safety, quality, capacity, experience, and cost competitiveness and would likely be awarded to an Alberta contractor, but not necessarily one based in the SESA. NGTL noted the Project would use qualified local and Indigenous employees, contractors and services where feasible.

NGTL stated it expects that most expenditures on ancillary services are expected to flow to businesses located in the SESA, including Indigenous businesses, as most of the required services are available in the SESA. NGTL noted that the same evaluation and selection criteria that apply to the pipeline contract apply to ancillary services.

At a regional level, within the SESA, NGTL stated the Project would offer short-term and long-term economic benefits and strengthen the economy of the SESA rural MDs, counties and communities, and improve the economic investment. NGTL said pipeline construction would create demand for local goods and services including food and accommodation, hardware, industrial parts, automotive parts and servicing, fuel and more. NGTL highlighted that the purchase of local goods and services along with generated taxes directly during operation and indirectly during construction would enhance economic investment in the SESA. It also said that generated taxes would be available for use by rural MDs and counties to improve infrastructure

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<sup>25</sup> For more examples of NGTL's estimated contributions to changes in GDP, labour income, and tax revenues see Section 20 of the ESA ([A92619-15](#)).

and expand services as needed. Additionally, the purchase of local goods and services would support local businesses to grow and expand in response to the growing demand.

NGTL stated other regional economic effects would be generated from the accommodation of workers. During construction, Project personnel would be housed in camps and other existing SESA commercial or temporary accommodations. Workers accommodations are expected to generate revenue for camps, hotel, motel, and campground operators and other local businesses (e.g., gas stations, local stores and restaurants).

NGTL noted concerns raised through engagement with Indigenous communities include the redirection of economic benefits of projects to outside communities due to outsourcing of skilled workers, contractors, and consultants. NGTL stated the Project is committed to providing contracting and employment opportunities to qualified local and Indigenous businesses and individuals in the SESA.

NGTL provided information summarizing the potential effects on employment and economy, enhancement measures (rather than mitigation measures), and predicted residual effects in its ESA. Examples of its enhancement measures include, but are not limited to:

- Project would use qualified local and Indigenous employees, contractors and services where feasible;
- Encourage the participation of Indigenous workers and businesses on the Project by implementing TransCanada's *Aboriginal Contracting and Employment Program*; and
- Prime Contractor would submit an Aboriginal Participation plan to NGTL that outlines the processes that it would follow to facilitate productive opportunities for qualified and competitive Indigenous businesses and people on the Project. The plan would align with NGTL's *Aboriginal Contracting and Employment Program*.

NGTL stated positive residual effects are predicted from the Project on employment and the economy. These include positive residual effect on business, employment and labour income. NGTL noted the enhancement measures listed in its ESA are measures to maximize positive effects on employment and economy key indicators.

Given the scope of the Project and the existing socio-economic conditions in nearby communities, as well as the rest of Alberta, NGTL determined that the Project would only create positive effects on employment and the economy and that there would be no interactions that could create adverse economic effects. Therefore, based on the results of the ESA, NGTL said it considers that the Project would not create any economic hardship or displacement of workers or businesses.

### ***Views of Participants***

For specific issues and concerns raised by Indigenous communities regarding employment and economy, see Chapter 7.

### ***Views of the Commission***

The Commission accepts the evidence filed by NGTL and finds that the Project would benefit local, regional, and provincial economies. The Commission finds that the socio-economic benefits related to the construction phase of the Project, through both direct and

indirect employment, procurement and contracting opportunities, would benefit local communities as well as workers from elsewhere in Alberta. The Commission is also of the view that the Project would result in increased employment for Indigenous individuals and contracts for Indigenous-owned businesses.

The Commission notes NGTL's *Aboriginal Contracting and Employment Program* and its commitments to engage with Indigenous communities. The Commission also notes NGTL's commitments to work with interested Indigenous communities to identify opportunities for education and training initiatives. Additional views regarding Indigenous communities, including the recommended conditions regarding Employment, Contracting and Procurement, can be found in Chapter 7.

# Appendix I - Conditions for the Section 52 NEB Act Certificate

In this Appendix, the meanings of the terms and expressions below (in bold) are described in the Glossary.

## General

### **1. Condition Compliance**

NGTL must comply with all of the conditions contained in this Certificate, unless the Commission otherwise directs.

### **2. Section 52 Pipeline and Related Facilities Design, Location, Construction and Operation**

NGTL must cause the Section 52 Pipeline and Related Facilities to be designed, located, constructed, and operated in accordance with the specifications, standards, commitments made and other information included in its Application or as otherwise agreed to during questioning or in its related submissions.

### **3. Environmental Protection**

NGTL must implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its Application or in its related submissions.

## Prior to Construction

### **4. Construction Emergency Management Preparedness and Response Planning**

- a) NGTL must file with the Commission **at least 60 days prior to commencing construction**, the Emergency Response Plan, specific to the Section 52 Pipeline and Related Facilities that will be implemented during the construction phase of the Section 52 Pipeline and Related Facilities. The plan must include spill contingency measures that NGTL will employ in response to accidental spills attributable to construction activities, 24-hour medical evacuation, fire response and security.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **5. Updated Environmental Protection Plan for Section 52 Pipeline and Related Facilities**

- a) NGTL must file with the Commission **for approval, at least 60 days prior to commencing construction**, an updated Environmental Protection Plan (EPP) specific to the Section 52 Pipeline and Related Facilities. The updated version of the EPP is to include revisions based on evidence provided during the hearing process. The updated EPP must include, but not be limited to, the following:
  - i) environmental protection procedures (including site-specific plans), criteria for implementing these procedures, mitigation measures and monitoring applicable to all Project phases and activities;

- ii) any updates to contingency plans and management plans;
  - iii) a description of the condition to which NGTL intends to reclaim and maintain the rights-of-way, once construction has been completed, and a description of measurable goals for reclamation;
  - iv) a list of measures to be taken during construction to minimize disturbance to caribou and caribou habitat and help accelerate habitat restoration, including:
    - a. any provincial and federal best practices, requirements and timing restrictions specifically related to minimizing construction disturbance; and
    - b. the criteria for where those measures will be taken.
  - v) all specific mitigation related to species at risk and their habitat, Key Wildlife and Biodiversity Zones, trumpeter swan waterbodies, Grizzly Bear Secondary Areas and Special Access Zones;
  - vi) updated environmental alignment sheets;
  - vii) evidence demonstrating that consultation took place with relevant government authorities, where applicable; and
  - viii) a revision log of the updates made, the reference where the updates can be found in the revised document, as well as the reference from the hearing evidence for each update.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

#### **6. Revised Caribou Habitat Restoration and Offset Measures Plan (CHR&OMP)**

- a) NGTL must file with the Commission **for approval, at least 60 days prior to commencing construction**, a revised version of the CHR&OMP. The updated version of the CHR&OMP is to include revisions based on evidence provided during the hearing process, and a summary of consultation with Indigenous peoples that expressed an interest in being involved with the CHR&OMP during the GH-003-2018 hearing process to confirm that all caribou-specific Indigenous knowledge that has been provided has been reflected. The revised CHR&OMP will include:
- i) a revision log of the updates made, the reference where the updates can be found in the revised document, as well as the reference from the hearing evidence for each update; and
  - ii) a summary of caribou-specific Indigenous knowledge received from Indigenous communities and the reference where the updates can be found in the revised document.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy, and to Environment and Climate Change Canada and to all appropriate provincial authorities; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **7. *Wildlife and Rare Plant Surveys***

NGTL must file with the Commission, **at least 60 days prior to commencement of construction**, the following Wildlife and Plant Survey Reports:

- a) yellow rail surveys for the Colt and Dismal Creek pipeline sections;
- b) songbird survey for the Elsworth pipeline section;
- c) common nighthawk surveys for the Colt, Elsworth and Dismal Creek pipeline sections;
- d) nocturnal amphibian surveys for the Colt and Deep Valley pipeline sections; and
- e) late season rare plant survey for the Elsworth pipeline section.

Each of these survey reports must include the survey methodology used, results of the survey and proposed mitigation, as well as a confirmation that the proposed mitigation has been included in the environmental protection plan and the environmental alignment sheets.

## **8. *Geological hazards***

NGTL must file with the Commission, **at least 60 days prior to commencing construction**, the following reports:

- a) Phase II Geological Hazard Assessment(s). The report(s) must include but not be limited to:
  - i) an assessment of all the geological hazards that the Project crosses along the right of way;
  - ii) the risks associated with the identified hazards; and
  - iii) the mitigation and monitoring methods to control the identified hazards.
- b) Landslide and steep slope assessments for all the areas identified as prone to instability in the Geological Hazard Assessment(s). The landslide and steep slope assessments should include the following:
  - i) a list of all the high hazard locations and the proposed mitigations that NGTL will be implementing during construction to deal with the hazardous conditions at those locations; and
  - ii) NGTL's proposed monitoring plans during operation to monitor high hazard locations including a list of the monitoring techniques that NGTL will implement at those locations. Monitoring techniques that the Commission will be assessing will include remote continuous slope monitoring methods and similar approaches.

## **9. *Trenchless Crossing Reports***

NGTL must file with the Commission, **at least 60 days prior to commencing construction**, the geotechnical investigation reports and final feasibility studies for the following trenchless water crossings:

- a) Smoky River;
- b) Little Smoky River;
- c) McLeod River;



- d) Pembina River; and
- e) North Saskatchewan River.

#### **10. Outstanding Traditional Land and Resource Use Investigations**

- a) NGTL must file with the Commission **for approval, at least 45 days prior to commencing construction of the section 52 Pipeline and Related Facilities**, a report on any outstanding traditional land and resource use investigations for the Project. The report must include, but not be limited to:
  - i) a summary of the status of investigations undertaken for the Project, including Indigenous community-specific studies or planned supplemental surveys;
  - ii) a description of how NGTL has considered and addressed information from any investigations on which it did not report during the GH-003-2018 hearing process;
  - iii) a description of any outstanding concerns raised by potentially-affected Indigenous peoples regarding potential effects of the Project on the current use of lands and resources for traditional purposes, including a description of how these concerns have been or will be addressed by NGTL, or an explanation why these concerns will not be addressed by NGTL;
  - iv) a summary of any outstanding investigations or follow-up activities that will not be completed prior to commencing construction, including an explanation why they are not being completed prior to construction; an estimated completion date, if applicable; and a description of how NGTL has already identified, or will identify, any potentially-affected traditional land and resource use sites or resources if the outstanding investigations will not be completed prior to construction; and
  - v) a description of how NGTL has incorporated any revisions necessitated by the investigations or follow-up activities into the Environmental Protection Plan for the Project, or, if appropriate, into NGTL lifecycle oversight.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

#### **11. Programs and Manuals – Safety**

NGTL must file with the Commission, **at least 30 days prior to commencing construction**, confirmation that a Construction Safety Manual(s) pursuant to section 20 of the *National Energy Board Onshore Pipeline Regulations* is in place for the Project. This confirmation must be signed by the Accountable Officer of the company.

#### **12. Construction Monitoring Plan for Indigenous Peoples**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, a plan describing participation by Indigenous peoples in monitoring activities during construction. Activities would include monitoring for adverse environmental impacts, heritage resources, areas related to traditional land and resource uses, and areas of cultural significance. The plan must include, but not be limited to:

- i) a summary of engagement activities undertaken with Indigenous peoples to determine opportunities for their participation in monitoring activities;
  - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan;
  - iii) a list of Indigenous peoples who have reached agreement with NGTL to participate as monitors;
  - iv) a description of the anticipated training and participant requirements, including potential certifications;
  - v) the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii), including those elements of construction and geographic locations that will involve monitors;
  - vi) a description of how NGTL will use the information gathered through the participation of monitors; and
  - vii) a description of how and the timeframe in which NGTL will provide the information gathered through the participation of monitors to the participating Indigenous communities.
- b) NGTL must also provide a copy of the plan to those Indigenous peoples identified in a) iii); and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### ***13. Employment, Contracting, and Procurement Plan Update***

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, an update on the employment, contracting and procurement plan that includes:
- i) a copy of the Prime Contractor's Aboriginal Participation Plan; and
  - ii) a summary of how the Prime Contractor's Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### ***14. Report on Engagement with Indigenous Peoples***

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 52 Pipeline and Related Facilities, and every six months thereafter until completing construction**, a report summarizing NGTL's engagement with all potentially affected Indigenous peoples. These reports must include but not be limited to:
- i) the methods, dates, and locations of engagement activities, including site visits;
  - ii) a summary of the concerns raised by Indigenous peoples;
  - iii) a description of how NGTL has addressed or will address the concerns raised;

- iv) a description of any outstanding concerns; and
  - v) a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **15. Heritage Resource Clearances**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 52 Pipeline and Related Facilities:**
- i) confirmation, signed by the Accountable Officer of the company, that NGTL has obtained all of the required archaeological and heritage resource clearances from Alberta Ministry of Culture, Multiculturalism and Status of Women;
  - ii) a description of how NGTL will meet conditions and respond to any comments and recommendations contained in the clearances referred to in i); and
  - iii) a description of how NGTL has incorporated additional mitigation measures into its EPP as a result of conditions, comments, or recommendations referred to in ii).
- b) NGTL must also provide a copy of this information to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **16. Commitments Tracking Table**

NGTL must:

- a) file with the Commission and post on its Project website, **within 90 days from the date of this Certificate and at least 30 days prior to commencing construction**, a Commitments Tracking Table (CTT) listing all commitments made by NGTL in its application, and otherwise agreed to during questioning or in its submissions in the Commission's GH-003-2018 hearing process, including all commitments made to Indigenous peoples, and that includes references to:
- i) the documentation in which the commitment appears (for example, the Application, responses to information requests, hearing transcripts, permit requirements, condition filings, or other);
  - ii) the accountable lead for implementing each commitment; and
  - iii) the estimated timelines associated with the fulfillment of each commitment.
- b) update the status of the commitments in a) on its Project website and file these updates with the Commission on a:
- i) monthly basis until commencing operations; and
  - ii) quarterly basis until the end of the fifth year following the commencement of operations.
- c) maintain at its construction office(s):

- i) the CTT listing all regulatory commitments and their completion status, including those commitments resulting from NGTL's Application and subsequent filings and conditions from permits, authorizations and approvals;
- ii) copies of any permits, approvals or authorizations issued by federal, provincial or other permitting authorities, which include environmental conditions or site-specific mitigation or monitoring measures; and
- iii) any subsequent variances to permits, approvals or authorizations in c) ii).

### **17. Emergency Management Continuing Education Program**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction**, a Project-specific plan (Plan) for the development of a continuing education program for the Project (Program) that would be incorporated into the broader continuing education program required by section 35 of the *National Energy Board Onshore Pipeline Regulations* (SOR/99-294). The Plan must include:
  - i) a list of potentially affected Indigenous communities, first responders (for example, police, fire departments, medical facilities), and any other appropriate organizations, government authorities and agencies (for example, municipalities) that have been identified for consultation and the results of consultation to date;
  - ii) the goals, principles and objectives for consultation for the development of the Program;
  - iii) a description of how information provided by potentially affected Indigenous communities, first responders or any other appropriate organizations, government authorities and agencies will be incorporated into the Program, including a description of NGTL's procedure to communicate to potentially affected parties how their information will be incorporated into the Program and justification for why any information may not have been incorporated into the Program;
  - iv) a description of how Program information would be communicated or distributed to potentially affected Indigenous communities, first responders, and any other appropriate organizations, government authorities and agencies, including how NGTL will address any requests from potentially affected Indigenous communities to have Program information translated into the local Indigenous language; and
  - v) a summary of the information to be included in the Program, including:
    - a. potential emergency situations involving the Section 52 Pipeline and Related Facilities;
    - b. the safety procedures to be followed in the case of an emergency;
    - c. a description of how NGTL will conduct annual testing of emergency contact information, including with Indigenous communities, and how NGTL will ensure the group being contacted has up-to-date company emergency contact information as well;
    - d. the methods by which potentially affected Indigenous communities, first responders, and any other appropriate organizations, government authorities and agencies can contact NGTL in the case of an emergency situation; and

- e. the methods by which NGTL can contact potentially affected Indigenous communities, first responders, and any other appropriate organizations, government authorities and agencies in the case of an emergency situation.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **18. Construction Schedule**

- a) NGTL must, **at least 14 days prior to the commencement of construction of the approved Section 52 Pipeline and Related Facilities**, file with the Commission a detailed construction schedule or schedules identifying major construction activities and must notify the Commission of any modifications to the schedule or schedules as they occur.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **During Construction**

#### **19. Construction Progress Reports**

NGTL must file with the Commission, **by the 16<sup>th</sup> day and by the last day of each month during construction**, construction progress reports. The report must include:

- a) information on the activities carried out during the reporting period; any environmental, socio-economic, safety and security issues and issues of non-compliance; and the measures undertaken for the resolution of each issue and non-compliance.
- b) specific details on construction progress within the Little Smoky Caribou Range, and must confirm the extent to which construction is on schedule to complete clearing, pipeline construction, testing, tie-ins, cleanup, etc., prior to the Restricted Activity Period (RAP). Should construction fall behind schedule, the report must identify this at least 15 days in advance of any delays in the schedule, and comply with the requirements of Condition 23.

#### **20. Finalized Watercourse Crossing Inventory**

For all watercourse crossings, NGTL must file with the Commission, **at least 60 days prior to commencing any watercourse crossing construction activities**:

- a) an updated inventory of all the watercourses to be crossed. This inventory must include:
  - i) name of each watercourse crossing being crossed and an identifier for the crossing;
  - ii) location of the crossing;
  - iii) primary crossing methods;

- iv) timing of construction;
  - v) information on the presence of fish and fish habitat;
  - vi) the fisheries timing window of least risk for each crossing; and
  - vii) an indication of whether there is potential for harmful alteration, disruption or destruction of fish or fish habitat, as defined by the *Fisheries Act*, as a result of the proposed watercourse crossing.
- b) for each watercourse crossing where there is potential for harmful alteration, disruption or destruction of fish or fish habitat, as indicated above in a) part vii) provide:
- i) detailed crossing-specific design drawings;
  - ii) photographs of the crossing location, including both upstream and downstream;
  - iii) a description of the fish species and habitat that is present at the crossing location, and whether fish spawning is likely to occur within the immediate area;
  - iv) site-specific mitigation and habitat enhancement measures to be used to minimize impacts to fish;
  - v) any potential residual effects;
  - vi) proposed reclamation measures;
  - vii) a discussion of potential impacts to local fisheries resources within the immediate area as a result of the crossing construction; and
  - viii) a description of how NGTL has taken available and applicable Indigenous Traditional Land Use and Traditional Ecological Knowledge into consideration in developing the watercourse crossing designs.

## **21. Contingency Watercourse Crossing Method**

- a) For any fish-bearing watercourse crossing where NGTL will employ a contingency crossing method, other than a trenchless technique, instead of its proposed primary crossing method, and where there is no potential harmful alteration, disruption or destruction of fish or fish habitat, as defined in the *Fisheries Act*, NGTL must file with the Commission, a notification to this effect, **at least 10 days prior to commencing the contingency crossing**. In the notification, NGTL must explain why the contingency method is being employed and provide a summary of the differences between the primary and contingency watercourse crossing methods.
- b) For any fish-bearing watercourse crossing where NGTL will employ a contingency crossing method instead of its proposed primary method, and where there is potential for harmful alteration, disruption or destruction of fish or fish habitat, as defined by the *Fisheries Act*, NGTL must file with the Commission **at least 30 days prior to commencing construction of the contingency watercourse crossing**:
- i) confirmation of the contingency watercourse crossing method that will be employed, the rationale for employing that method, and a summary of the differences between the primary and contingency watercourse crossing methods;
  - ii) the following site-specific information:

- a. detailed crossing-specific design drawings;
  - b. photographs of the crossing location, as well as upstream and downstream;
  - c. a description of the fish species and habitat that is present at the crossing location, and if fish spawning is likely to occur within the immediate area;
  - d. the site-specific mitigation and habitat enhancement measures to be used to minimize impacts;
  - e. any potential residual effects;
  - f. proposed reclamation measures;
  - g. a discussion of the potential impacts to local fisheries resources within the immediate area as a result of the crossing's construction; and
  - h. a description of how NGTL has taken available and applicable Indigenous Traditional Land Use and Traditional Ecological Knowledge into consideration in developing the watercourse crossing designs; and
- iii) A summary of NGTL's consultation with appropriate government authorities and any potentially affected Indigenous peoples and stakeholders regarding the works proposed to be authorized, as well as any offsetting measures proposed. This summary must include all issues and concerns raised regarding these works and how NGTL has addressed or responded to them. If there are any outstanding issues or concerns, provide a plan as to how these will be addressed.
- c) NGTL must confirm, within 30 days after commencing operations that any contingency watercourse crossing identified to the Commission pursuant to a) and b) were the only contingency watercourse crossing(s) implemented for the construction of the pipeline.

## **22. Authorizations under Paragraph 35(2)(b) of the Fisheries Act**

- a) For any instream activities that will require Authorization under paragraph 35(2)(b) of the *Fisheries Act*, NGTL must file with the Commission, **at least 10 days prior to commencing the respective instream activities**, a copy of the Authorization under paragraph 35(2)(b) of the *Fisheries Act*.
- b) NGTL must confirm, **within 30 days after commencing operations**, that any required *Fisheries Act* Authorizations were obtained from Fisheries and Oceans Canada and were filed with the Commission pursuant to a), or notify the Commission if no Authorizations were required.
- c) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **23. Working within the Little Smoky Caribou Range Restricted Activity Period**

- a) Clearing and construction activities within the Little Smoky Caribou Range must occur outside of the Restricted Activity Period (RAP) for woodland caribou of 15 February to 15 July. In the event that working within the RAP is unavoidable, NGTL must file with the Commission **for approval, at least 15 days prior to activities occurring within the RAP:**

- i) a summary of consultation with Alberta Environment and Parks, Environment and Climate Change Canada, and any Indigenous peoples that expressed interest in the Little Smoky Caribou Range during the GH-003-2018 hearing process, including a list of concerns and how these have been addressed, or a rationale for why the concerns have not been addressed;
- ii) a description of the remaining and proposed work activities including, but not limited to the following:
  - a. a description of the scope of the work activities;
  - b. the proximity of each of the work activities to greenfield and other sensitive locations;
  - c. the predicted environmental effects of working within the RAP;
  - d. the specific mitigation that will be implemented to reduce the effects on the caribou; and
  - e. the predicted residual effects of the construction activities;
- iii) a comparison of the alternatives to working within the RAP that were considered and assessed, including the potential impacts of each;
- iv) a construction schedule for the remainder of the Project that includes each week NGTL intends to work within the RAP and includes but is not limited to the following:
  - a. each work activity;
  - b. the dates each work activity will be conducted;
  - c. the workforce and equipment required for each work activity;
  - d. the location of each work activity with reference to the Environmental Alignment Sheets by Kilometre Post and Latitude and Longitude; and
  - e. if helicopters are required, the purpose of the helicopter plus the location and frequency of use;
- v) a report on the results from a caribou survey (including but not limited to telemetry) of the right of way and an appropriate buffer zone surrounding the area where activities will occur during the RAP. The survey will be conducted between three weeks to a month prior to the start of construction within the RAP. The report will include:
  - a. timing of survey and method(s) used;
  - b. locations (Kilometre Post and Latitude and Longitude), dates and numbers of individual caribou sighted;
  - c. location and description of evidence of caribou use; and
  - d. description of the specific mitigation to be implemented and for how long;
- vi) documentation from a senior Alberta Environment and Parks manager authorizing activities between 15 February and 15 July. This documentation will include:
  - a. minutes of meetings, conversation records, and letters with regard to approval of construction activity as described in part iv); and
  - b. evidence that NGTL has contacted an appropriate qualified professional to discuss alternatives and potential mitigation and monitoring plans; and



- vii) any other pertinent information that may be relevant to the above.
- b) NGTL must also provide a copy of the information required by this condition to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

#### **24. Sunset Clause**

This Certificate shall expire on *[three years from the date the Certificate is granted]*, unless construction in respect of the Section 52 Pipeline and Related Facilities has commenced by that date.

### **Post-Construction and Operations**

#### **25. Condition Compliance by the Accountable Officer**

**Within 30 days of the date that the approved Project is placed in service**, NGTL must file with the Commission a confirmation that the approved Project was completed and constructed in compliance with all applicable conditions in this Certificate. If compliance with any of these conditions cannot be confirmed, NGTL must file with the Commission details as to why compliance cannot be confirmed. The filing required by this condition must include a statement confirming that the signatory to the filing is the accountable officer of NGTL.

#### **26. Quantification of Construction-related Greenhouse Gas (GHG) Emissions**

- a) NGTL must file with the Commission **within 30 days after commencing operations**, a quantitative assessment of the actual GHG emissions directly related to the construction of the Section 52 Pipeline and Related Facilities, including but not limited to emissions generated by vehicles and equipment, land clearing and slash burning. The assessment must include:
  - i) the year, make and model of equipment used;
  - ii) average operating hours for each vehicle or equipment type;
  - iii) emission estimates for each equipment type from current sources such as Environment and Climate Change Canada's National Inventory Report 1990-2017 or United States Environmental Protection Agency models such as MOVES2014; and
  - iv) the calculation of an updated, accurate emission factor for construction related GHG emissions in tonnes per kilometer.

The filing must also include:

- v) estimated biomass volumes remaining after merchantable timber was salvaged;
- vi) change in total number of hectares cleared compared to estimates presented in the Project application; and
- vii) a description of all mitigation measures undertaken to reduce GHG emissions associated with land clearing (for example, reduction of the number of hectares cleared or transportation of slash to a biomass pellet facility, or others).

- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **27. Post-construction Monitoring Plan for Indigenous Peoples**

- a) NGTL must file with the Commission, **within 90 days after the date that the last Order for Leave to Open is issued**, a plan describing participation by Indigenous peoples in monitoring activities during post-construction of the Section 52 Pipeline and Related Facilities. The plan must include, but not be limited to:
  - i) a summary of engagement activities undertaken with Indigenous peoples to determine opportunities for their participation in monitoring activities;
  - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan;
  - iii) a list of the Indigenous peoples that have reached agreement with NGTL to participate as monitors;
  - iv) a description of the anticipated training and participant requirements, including potential certifications;
  - v) the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a)iii), including those elements of post-construction and operation, and geographic locations that will involve monitor(s);
  - vi) a description of how NGTL will use the information gathered through the participation of monitors; and
  - vii) a description of how NGTL will provide the information gathered through the participation of monitors to the participating Indigenous community.
- b) NGTL must provide a copy of the plan to those Indigenous peoples identified in a)iii); and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **28. Employment, Contracting, and Procurement Report**

- a) NGTL must file with the Commission, **within 6 months after the date that the last Order for Leave to Open is issued**, a report on employment, contracting, and procurement for the Project during the construction phase, that must include but is not limited to:
  - i) a summary of the elements or indicators monitored;
  - ii) a summary of Indigenous, local, and regional employment and business opportunities during the reporting period;
  - iii) the numbers of self-identified Indigenous businesses and individuals employed; and
  - iv) a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous communities and local, regional, community, and industry groups or representatives, regarding employment and business

opportunities. This summary must include any issues or concerns raised regarding employment and business opportunities and how NGTL has addressed or responded to them.

- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **29. Pipeline Geographic Information Systems (GIS) Data**

NGTL must file with the Commission, **within one year after commencing operations**, as-built GIS data in the form of Esri® shapefiles. This must include:

- a) A file that contains pipeline segment centre lines identified by pipeline name, where each segment has a unique outside diameter, wall thickness, maximum operating pressure, external coating, field-applied girth weld coating, pipe manufacturing specification and depth of cover. If the above values of the pipeline change at any point along the length of the pipeline, the pipeline should be segmented at that point. This file must include details on the degree of accuracy of the GIS data.
- b) A file that depicts point locations and names of compressor stations, terminals, custody transfer meters, and block valves, as applicable.

The datum must be NAD83 and projection must be geographic (latitudes and longitudes). The filing required by the condition must include a statement confirming that the signatory to the filing is the Accountable Officer of NGTL.

### **30. Post-Construction Environmental Monitoring Reports**

- a) NGTL must file with the Commission, on or before 31 January following each of the first, third and fifth complete growing seasons after completing final clean-up, a post-construction environmental monitoring report that:
  - i) describes the methodology used for monitoring, the criteria established for evaluating success and the results found;
  - ii) identifies any modifications for the criteria established for evaluating reclamation success described in its EPP, as approved by the Commission, and the rationale for any modifications;
  - iii) identifies the issues to be monitored, including but not limited to unexpected issues that arose during construction, and their locations (for example, on a map or diagram, in a table);
  - iv) describes the current status of the issues (resolved or unresolved), any deviations from plans and corrective actions undertaken;
  - v) assesses the effectiveness of the mitigation measures, both planned and corrective, applied against the criteria for success;
  - vi) includes a detailed summary of NGTL's consultation undertaken with the appropriate provincial and federal authorities, and affected Indigenous communities;
  - vii) provides proposed measures and the schedule that NGTL would implement to address ongoing issues or concerns; and

- viii) includes an evaluation of the effectiveness of access control measures.

The report must include, but is not limited to, information specific to the effectiveness of mitigation applied to minimize effects on: soils, weeds, watercourse crossings, wetlands, rare plants, wildlife and wildlife habitat, wildlife species at risk and of special concern, including western toad habitat and caribou habitat, fish and fish habitat, Key Wildlife and Biodiversity Zones, trumpeter swan waterbodies, and Grizzly Bear Secondary Areas.

- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **31. Caribou Habitat Restoration Implementation Report and Status Update**

- a) NGTL must file with the Commission **for approval**, a Caribou Habitat Restoration Implementation Report and Status Update on the implementation and status of caribou habitat restoration measures undertaken on the Project right of way in areas of the Project within the Little Smoky Caribou Range. This report must be filed **on or before 1 November following the implementation of the revised caribou habitat restoration measures identified in the revised CHR&OMP as required by Condition 6**, and must include, at a minimum:
  - i) a table of caribou habitat restoration measures implemented including, the location(s) of the measures on the right of way, the distance or spatial extent of the measures, the site specific method applied at each location, a description of the adjacent off-right of way habitat, as well as any site specific challenges;
  - ii) updated Environmental Alignment Sheets showing the types of caribou habitat restoration measures implemented and at what locations;
  - iii) a quantitative assessment and populated tables of the total remaining disturbance (direct and indirect) that was carried into the initial offset value calculation, including the disturbance before restoration, the restored footprint and the total remaining disturbance;
  - iv) a summary of consultation on this report with Indigenous peoples that expressed an interest in being involved with the CHR&OMP and related filings during the GH-003-2018 hearing process, including any additional caribou-specific Indigenous knowledge, any concerns raised regarding the incorporation of the caribou-specific Indigenous knowledge provided and/or concerns regarding the report content, and a summary of any caribou-specific Indigenous knowledge and/or concerns that were not addressed and a rationale for why they were not addressed;
  - v) offset measures planning status; and
  - vi) updates or considerations, if any, from relevant provincial range or action plans, and any additional Traditional Land Use information identified since completion of the revised CHR&OMP (Condition 6).
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy, to Environment and Climate Change Canada, and to all appropriate provincial authorities; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **32. Caribou Habitat Offset Measures Implementation Report**

- a) NGTL must file with the Commission **for approval**, a Caribou Habitat Offset Measures Implementation Report demonstrating how all Project related residual effects from directly and indirectly disturbed caribou habitat have been offset. This implementation report must be filed **on or before 31 March following the implementation of the revised caribou offset measures identified in the revised CHR&OMP as required by Condition 6**, and must include:
- i) an inventory of what measures were implemented, at what map locations, for what distance or spatial area, and on what type of previous disturbance (for example, type, width, age, condition);
  - ii) an alignment sheet, or map indicating locations of offset measures;
  - iii) a description of factors considered when determining the location for offset measures, including consideration of both site-specific factors, landscape-level factors and how the selected locations optimized landscape restoration or preservation;
  - iv) how the measures at the locations identified in i) and ii) met the criteria for offsets identified in the revised CHR&OMP;
  - v) a quantitative assessment of the final offset value calculations, based on the revised CHR&OMP and inventory of measures implemented from i), and demonstrating how the offset measures have offset the previously calculated residual effects;
  - vi) evidence of how consultation feedback was integrated into the implementation of offsets, including:
    - a. any feedback from provincial authorities; and
    - b. any feedback from potentially affected Indigenous peoples where the offset measures may be implemented; and
  - vii) a summary of consultation on this report with Indigenous peoples that expressed an interest in being involved with the CHR&OMP and related filings during the GH-003-2018 hearing process, including: any additional caribou-specific Indigenous knowledge provided, any concerns raised regarding the incorporation of the caribou-specific Indigenous knowledge provided and/or concerns regarding the report content, a summary of any caribou-specific Indigenous knowledge and/or concerns that were not addressed; and a rationale for why they were not addressed.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy, to Environment and Climate Change Canada, and to all appropriate provincial authorities; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **33. Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP)**

- a) NGTL must file with the Commission **for approval**, **on or before 31 March after the second complete growing season** after commencing operation of the Project, a Caribou Habitat Restoration and Offset Measures Monitoring Program for monitoring and verifying the effectiveness of the caribou habitat restoration and offset measures implemented as part of the CHR&OMP. This CHROMMP must include, but not be limited to:

- i) the scientific methodology and protocols for short-term and long-term monitoring of the restoration and offset measures, including the appropriate duration of monitoring for each type of measure implemented;
  - ii) sufficient sampling and control locations to provide statistical validity for each measure, accounting for ecological conditions;
  - iii) protocols for how restoration and offset measures will be adapted, as required, based on the monitoring results from either this CHROMMP or other related NGTL caribou habitat programs;
  - iv) a quantitative assessment that demonstrates how the previously calculated residual effects have been offset by the measures implemented, to be updated in each report based on monitoring results;
  - v) a schedule for filing reports of monitoring results and the adaptive management responses, to the Commission, Environment and Climate Change Canada and provincial authorities to be contained in the CHROMMP as well as at the beginning of each report filed; and
  - vi) a summary of consultation on this report with Indigenous peoples that expressed an interest in being involved with the CHR&OMP and related filings during the GH-003-2018 hearing process, including any additional caribou-specific Indigenous knowledge provided, any concerns raised regarding the incorporation of the caribou-specific Indigenous knowledge provided and/or concerns regarding the report content, and a summary of any caribou-specific Indigenous knowledge and/or concerns that were not addressed and a rationale for why they were not addressed.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **34. Caribou Monitoring Reports**

- a) NGTL must file with the Commission based on the schedule referred to in the CHROMMP (Condition 33), Caribou Monitoring Report(s) which must outline the results of the CHROMMP. The report must also include, **for approval by the Commission**, all necessary corrective adaptive management measures required to demonstrate how implementation of the measures effectively fulfills the intent of the CHR&OMP (Condition 6).
- b) The report must also provide a summary of consultation on this report with Indigenous peoples that expressed an interest in being involved with the CHR&OMP and related filings during the GH-003-2018 hearing process, including: any additional caribou-specific Indigenous knowledge provided, any concerns raised regarding the incorporation of the caribou-specific Indigenous knowledge provided and/or concerns regarding the report content, and a summary of any caribou-specific Indigenous knowledge and/or concerns that were not addressed and a rationale for why they were not addressed.
- c) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## Appendix II – Summary of Recommendations

The Commission also heard concerns from Participants which were beyond the mandate of the Commission to address. For these, the Commission has made six additional recommendations to GiC:

1. Expedite the signing of the draft Agreement for the Conservation and Recovery of Woodland Caribou in Alberta.
2. Increase the involvement of Indigenous peoples and landowners in pre- and post-disturbance monitoring.
3. Develop a standard regulatory framework for the calculation and implementation of habitat offsets within Boreal Woodland caribou ranges.
4. Investigate the creation of a province-wide Crown Land Offsets Program.
5. Investigate the creation of a province-wide Indigenous Peoples Educational Endowment.  
and
6. Undertake a holistic review of government policies regarding access to Crown lands for Indigenous peoples.

# Appendix III - Conditions for the Order pursuant to section 58 of the NEB Act

In this Appendix, the meanings of the terms and expressions below (in bold) are described in the Glossary.

## General

### **1. Condition Compliance**

NGTL must comply with all of the conditions contained in this Order, unless the Commission otherwise directs.

### **2. Section 58 Facilities and Activities Design, Location, Construction and Operation**

Subject to Condition 18, NGTL must cause the Section 58 Facilities and Activities to be to be designed, located, constructed, installed and operated in accordance with the specifications, standards, commitments made, and other information referred to in its application or as otherwise agreed to during questioning or in its related submissions.

### **3. Environmental Protection**

NGTL must implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its Application or in its related submissions.

## Prior to Construction

### **4. Construction Emergency Management Preparedness and Response Planning**

- a) NGTL must file with the Commission, **at least 60 days prior to commencing construction**, the Emergency Response Plan, specific to the Section 58 Facilities and Activities that will be implemented during the construction phase of the Section 58 Facilities and Activities. The plan must include spill contingency measures that NGTL will employ in response to accidental spills attributable to construction activities, 24-hour medical evacuation, fire response and security.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **5. Environmental Protection Plan (EPP) for Section 58 Facilities and Activities**

- a) NGTL must file with the Commission **for approval, at least 45 days prior to commencing construction**, an EPP (including Environmental Alignment Sheets) specific to the section 58 Facilities and Activities. The EPP must be a comprehensive compilation of all environmental protection procedures, mitigation measures, and monitoring commitments, as set out in NGTL's Project Application, subsequent filings, or as otherwise agreed to through the hearing process. The EPP must describe the criteria for the implementation of all procedures and measures.



- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **6. Outstanding Traditional Land and Resource Use Investigations**

- a) NGTL must file with the Commission **for approval, at least 45 days prior to commencing construction of the Section 58 Facilities and Activities**, a report on any outstanding traditional land and resource use investigations for the Project. The report must include, but not be limited to:
  - i) a summary of the status of investigations undertaken for the Project, including Indigenous community-specific studies or planned supplemental surveys;
  - ii) a description of how NGTL has considered and addressed information from any investigations on which it did not report during the GH-03-2018 hearing process;
  - iii) a description of any outstanding concerns raised by potentially-affected Indigenous peoples regarding potential effects of the Project on the current use of lands and resources for traditional purposes, including a description of how these concerns have been or will be addressed by NGTL, or an explanation why these concerns will not be addressed by NGTL;
  - iv) a summary of any outstanding investigations or follow-up activities that will not be completed prior to commencing construction, including an explanation why they are not being completed prior to construction; an estimated completion date, if applicable; and a description of how NGTL has already identified, or will identify, any potentially-affected traditional land and resource use sites or resources if the outstanding investigations will not be completed prior to construction; and
  - v) a description of how NGTL has incorporated any revisions necessitated by the investigations or follow-up activities into the EPP for the Project, or, if appropriate, into NGTL lifecycle oversight.
- b) NGTL must also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it provided those copies.

## **7. Camp Management Plan**

- a) NGTL must file with the Commission, **at least 45 days prior to commencing construction**, a Camp Management Plan for all construction camps, including:
  - i) the measures NGTL will take to comply with any applicable legislated requirements;
  - ii) a layout of the camp facilities to include location of fencing and controlled access points, as well as office and first aid facilities;
  - iii) camp rules on access and conduct at the camp, including:
    - a. how these rules will be communicated to all persons involved; and
    - b. how compliance to these rules will be enforced;

- iv) the measures NGTL will take to avoid or reduce the potential adverse effects of the camp(s) on nearby communities;
  - v) gender-specific training;
  - vi) a cultural awareness program developed and delivered with input from local Indigenous community members;
  - vii) documentation describing NGTL's and/or its Prime Contractor(s)' consultation regarding the Camp Management Plan with the relevant municipalities, regional authorities, and all potentially affected stakeholders and Indigenous peoples;
  - viii) a summary of any issues or concerns raised by municipalities, regional authorities, and any potentially affected stakeholders and Indigenous peoples regarding the Camp Management Plan; and
  - ix) a description of how the issues and concerns identified in viii) are addressed in the Camp Management Plan, or if not addressed, an explanation as to why not.
- b) NGTL must also provide a copy of the plan to those who raised issues or concerns in a) viii); and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it provided those copies.

#### **8. Additional Temporary Construction Camp(s)**

- a) In the event that an additional Camp(s) is required, NGTL must notify the Commission, **at least 45 days prior to commencing construction of the temporary construction camp(s)**.

In its notification, NGTL must provide the Commission, **for approval**, an environmental and socio-economic protection plan for the additional Camp(s) that includes the following:

- i) the location of each additional Camp and a description of the environmental setting;
- ii) a suitably-scaled plot plan that includes satellite imagery showing land use in the immediate and surrounding areas;
- iii) the size of the additional Camp(s) in hectares;
- iv) the predicted human occupancy of each of the additional Camp(s) including the number of people accommodated at the Camp and the number of Camp staff;
- v) the proposed schedule for constructing, operating and dismantling the additional Camp(s);
- vi) identification of the environmental and socio-economic effects of construction, operating and dismantling of the additional Camp(s);
- vii) a description of all proposed mitigation measures associated with vi);
- viii) documentation describing NGTL's consultation with the relevant municipalities, regional authorities, and all potentially affected stakeholders and Indigenous peoples;

- ix) a summary of any issues or concerns raised by municipalities, regional authorities, and all potentially affected stakeholders and Indigenous peoples; and
  - x) a description of how the issues and concerns identified in ix) are addressed in the environment and socio-economic protection plan for the additional Camp(s), or if not addressed, an explanation as to why not; or
  - xi) if no additional temporary construction Camp(s) is required, NGTL must file with the Commission, within 30 days after commencing operations, confirmation that no additional temporary construction Camp(s) was needed.
- b) NGTL must also provide a copy of the plan to those who raised issues or concerns in a) ix); and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it provided those copies.

### **9. Programs and Manuals – Safety**

NGTL must file with the Commission, **at least 30 days prior to commencing construction**, confirmation that a Construction Safety Manual(s) pursuant to section 20 of the *National Energy Board Onshore Pipeline Regulations* is in place for the Project. This confirmation must be signed by the Accountable Officer of the company.

### **10. Construction Monitoring Plan for Indigenous Peoples**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 58 Facilities and Activities**, a plan describing participation by Indigenous peoples in monitoring activities during construction. Activities would include monitoring for adverse environmental impacts, heritage resources, areas related to traditional land and resource uses, and areas of cultural significance. The plan must include, but not be limited to:
- i) a summary of engagement activities undertaken with Indigenous peoples to determine opportunities for their participation in monitoring activities;
  - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan;
  - iii) a list of Indigenous peoples who have reached agreement with NGTL to participate as monitors;
  - iv) a description of the anticipated training and participant requirements, including potential certifications;
  - v) the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii), including those elements of construction and geographic locations that will involve monitors;
  - vi) a description of how NGTL will use the information gathered through the participation of monitors; and
  - vii) a description of how and the timeframe in which NGTL will provide the information gathered through the participation of monitors to the participating Indigenous communities.
- b) NGTL must also provide a copy of the plan to those Indigenous peoples identified in a) iii); and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **11. Report on Engagement with Indigenous Peoples**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 58 Facilities and Activities, and every six months thereafter until completing construction**, a report summarizing NGTL's engagement with all potentially affected Indigenous peoples. These reports must include but not be limited to:
  - i) the methods, dates, and locations of engagement activities, including site visits;
  - ii) a summary of the concerns raised by Indigenous peoples;
  - iii) a description of how NGTL has addressed or will address the concerns raised;
  - iv) a description of any outstanding concerns; and
  - v) a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken.
- b) NGTL must also provide a copy of the report to all Indigenous peoples who expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **12. Employment, Contracting, and Procurement Plan Update**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 58 Facilities and Activities**, an update on the employment, contracting and procurement plan that includes:
  - i) a copy of the Prime Contractor's Aboriginal Participation Plan; and
  - ii) a summary of how the Prime Contractor's Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

### **13. Heritage Resource Clearances**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction of the Section 58 Facilities and Activities**:
  - i) confirmation, signed by the Accountable Officer of the company, that NGTL has obtained all of the required archaeological and heritage resource clearances from Alberta Ministry of Culture, Multiculturalism and Status of Women;
  - ii) a description of how NGTL will meet conditions and respond to any comments and recommendations contained in the clearances referred to in i); and
  - iii) a description of how NGTL has incorporated additional mitigation measures into its EPP as a result of conditions, comments, or recommendations referred to in ii).

- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy of this information; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

#### **14. Commitments Tracking Table**

NGTL must:

- a) file with the Commission and post on its Project website, **within 90 days from the date of this Order and at least 30 days prior to commencing construction**, a Commitments Tracking Table (CTT) listing all commitments made by NGTL in its application, and otherwise agreed to during questioning or in its related submissions in the Commission's GH-003-2018 hearing process, including all commitments made to Indigenous peoples, and that includes references to:
  - i) the documentation in which the commitment appears (for example, the Application, responses to information requests, hearing transcripts, permit requirements, condition filings, or other);
  - ii) the accountable lead for implementing each commitment; and
  - iii) the estimated timelines associated with the fulfillment of each commitment.
- b) update the status of the commitments in a) on its Project website and file these updates with the Commission on a:
  - i) monthly basis until commencing operations; and
  - ii) quarterly basis until the end of the fifth year following the commencement of operations.
- c) maintain at its construction office(s):
  - i) the CTT listing all regulatory commitments and their completion status, including those commitments resulting from NGTL's Application and subsequent filings and conditions from permits, authorizations and approvals;
  - ii) copies of any permits, approvals or authorizations issued by federal, provincial or other permitting authorities, which include environmental conditions or site-specific mitigation or monitoring measures; and
  - iii) any subsequent variances to permits, approvals or authorizations in c) ii).

#### **15. Emergency Management Continuing Education Program**

- a) NGTL must file with the Commission, **at least 30 days prior to commencing construction**, a Project-specific plan (Plan) for the development of a continuing education program for the Project (Program), that would be incorporated into the broader continuing education program required by section 35 of the *National Energy Board Onshore Pipeline Regulations* (SOR/99-294). The Plan must include:
  - i) a list of potentially affected Indigenous communities, first responders (for example, police, fire departments, medical facilities), and any other appropriate organizations, government authorities and agencies (for example, municipalities) that have been identified for consultation and the results of consultation to date;
  - ii) the goals, principles and objectives for consultation for the development of the Program;

- iii) a description of how information provided by potentially affected Indigenous communities, first responders or any other appropriate organizations, government authorities and agencies will be incorporated into the Program, including a description of NGTL's procedure to communicate to potentially affected parties how their information will be incorporated into the Program and justification for why any information may not have been incorporated into the Program;
- iv) a description of how Program information would be communicated or distributed to potentially affected Indigenous communities, first responders, and any other appropriate organizations, government authorities and agencies, including how NGTL will address any requests from potentially affected Indigenous communities to have Program information translated into the local Indigenous language; and
- v) a summary of the information to be included in the Program, including:
  - a. potential emergency situations involving the Section 58 Facilities and Activities;
  - b. the safety procedures to be followed in the case of an emergency;
  - c. a description of how NGTL will conduct annual testing of emergency contact information, including with Indigenous communities, and how the company will ensure the group being contacted has up-to-date emergency company emergency contact information as well;
  - d. the methods by which potentially affected Indigenous communities, first responders, and any other appropriate organizations, government authorities and agencies can contact NGTL in the case of an emergency situation; and
  - e. the methods by which NGTL can contact potentially affected Indigenous communities, first responders, and any other appropriate organizations, government authorities and agencies in the case of an emergency situation.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **16. Construction Schedule**

- a) NGTL must, **at least 14 days prior to the commencement of construction of the approved section 58 Facilities and Activities**, file with the Commission a detailed construction schedule or schedules identifying major construction activities and must notify the Commission of any modifications to the schedule or schedules as they occur.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **During Construction**

### **17. Construction Progress Reports**

NGTL must file with the Commission, **by the 16<sup>th</sup> day and by the last day of each month during construction**, construction progress reports. The report must include information on the activities carried out during the reporting period; any environmental, socio-economic, safety and security issues and issues of non-compliance; and the measures undertaken for the resolution of each issue and non-compliance.

### **18. Technical Specification Updates**

NGTL must file with the Commission any technical specification updates for the Project components listed in the Order concurrently **with its Leave to Open application**. Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade or material that do not impact any other aspect of the Project as approved.

### **19. Sunset Clause**

This Order shall expire on *[three years from the date the section 58 Order is granted]*, unless construction in respect of the Section 58 Facilities and Activities has commenced by that date.

## **Post-Construction and Operations**

### **20. Condition Compliance by the Accountable Officer**

**Within 30 days of the date that the approved Section 58 Facilities and Activities are placed in service**, NGTL must file with the Commission a confirmation that the approved Section 58 Facilities and Activities were completed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, NGTL must file with the Commission details as to why compliance cannot be confirmed. The filing required by this condition must include a statement confirming that the signatory to the filing is the accountable officer of NGTL.

### **21. Quantification of Construction-related Greenhouse Gas (GHG) Emissions**

- a) NGTL must file with the Commission **within 30 days after commencing operations**, a quantitative assessment of the actual GHG emissions directly related to the construction of the Section 58 Facilities and Activities, including but not limited to emissions generated by vehicles and equipment, land clearing and slash burning. The assessment must include:
  - i) the year, make and model of equipment used;
  - ii) average operating hours for each equipment type;
  - iii) emission estimates for each equipment type from current sources such as Environment and Climate Change Canada's National Inventory Report 1990-2017 or United States Environmental Protection Agency models such as MOVES2014; and
  - iv) the calculation of an updated, accurate emission factor for construction related GHG emissions in tonnes per kilometer.

The filing must also include:

- v) estimated biomass volumes remaining after merchantable timber was salvaged;
  - vi) change in total number of hectares cleared compared to estimates presented in the Project application; and
  - vii) a description of all mitigation measures undertaken to reduce GHG emissions associated with land clearing (for example, reduction of the number of hectares cleared or transportation of slash to a biomass pellet facility, or others).
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## **22. Post-construction Monitoring Plan for Indigenous Peoples**

- a) NGTL must file with the Commission, **within 90 days after the date that the last Order for Leave to Open is issued**, a plan describing participation by Indigenous peoples in monitoring activities during the post-construction of the Section 58 Facilities and Activities. The plan must include, but not be limited to:
- i) a summary of engagement activities undertaken with Indigenous peoples to determine opportunities for their participation in monitoring activities;
  - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan;
  - iii) a list of Indigenous peoples who have reached agreement with NGTL to participate as monitors;
  - iv) a description of the anticipated training and participant requirements, including potential certifications;
  - v) the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii), including those elements of post-construction and operation, and geographic locations that will involve monitor(s);
  - vi) a description of how NGTL will use the information gathered through the participation of monitors; and
  - vii) a description of how NGTL will provide the information gathered through the participation of monitors to the participating Indigenous community.
- b) NGTL must also provide a copy of the plan to those Indigenous peoples identified in a) iii); and NGTL must, within 7 days, file confirmation with the Commission that it did so.

## **23. Employment, Contracting, and Procurement Report**

- a) NGTL must file with the Commission, **within 6 months after the date that the last Order for Leave to Open is issued**, a report on employment, contracting, and procurement for the Project during the construction phase, that must include but not be limited to:
- i) a summary of the elements or indicators monitored;



- ii) a summary of Indigenous, local, and regional employment and business opportunities during the reporting period;
  - iii) the numbers of self-identified Indigenous businesses and individuals employed; and
  - iv) a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous communities and local, regional, community, and industry groups or representatives, regarding employment and business opportunities. This summary must include any issues or concerns raised regarding employment and business opportunities and how NGTL has addressed or responded to them.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it provided those copies.

#### **24. Post-Construction Environmental Monitoring Reports**

- a) NGTL must file with the Commission, **on or before 31 January following each of the first, third and fifth complete growing seasons after completing final clean-up**, a post-construction environmental monitoring report that:
- i) describes the methodology used for monitoring, the criteria established for evaluating success and the results found;
  - ii) identifies any modifications for the criteria established for evaluating reclamation success described in its EPP, as approved by the Commission, and the rationale for any modifications;
  - iii) identifies the issues to be monitored, including but not limited to unexpected issues that arose during construction, and their locations (for example, on a map or diagram, in a table);
  - iv) describes the current status of the issues (resolved or unresolved), any deviations from plans and corrective actions undertaken;
  - v) assesses the effectiveness of the mitigation measures, both planned and corrective, applied against the criteria for success;
  - vi) includes a detailed summary of NGTL's consultation undertaken with the appropriate provincial and federal authorities, and affected Indigenous communities;
  - vii) provides proposed measures and the schedule that NGTL would implement to address ongoing issues or concerns; and
  - viii) includes an evaluation of the effectiveness of access control measures.

The report must include, but is not limited to, information specific to the effectiveness of mitigation applied to minimize effects on: soils, weeds, watercourse crossings, wetlands, rare plants, wildlife and wildlife habitat, wildlife species at risk and of special concern, fish and fish habitat, and Key Wildlife and Biodiversity Zones.

- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.

## Appendix IV– Rulings, Procedural Updates, and other Commission Statements

Date	Filing ID	Description
20 September 2018	A94099	<p>NEB Ruling No. 1</p> <ul style="list-style-type: none"> <li>• determined participation (or standing) and the manner of participation for those who applied to participate in the GH-003-2018 hearing; and</li> <li>• established the List of Parties (NGTL and Intervenor) and the List of Commenters.</li> </ul>
17 October 2018	A94900	<p>NEB Ruling No. 2</p> <ul style="list-style-type: none"> <li>• granted Intervenor status to Samson Cree Nation and Cadotte Lake Métis.</li> </ul>
19 November 2018	A95862	<p>NEB Ruling No. 3</p> <ul style="list-style-type: none"> <li>• denied a request by Tsuut'ina Nation for an extension of time to comment on the Preliminary List of Issues, Factors and Scope of the Factors for the Environmental Assessment in respect of the Project.</li> </ul>
21 February 2019	A97991	<p>NEB Procedural Update No. 1</p> <ul style="list-style-type: none"> <li>• provided the following: <ul style="list-style-type: none"> <li>○ determinations on various points in the hearing process;</li> <li>○ a revised timetable of hearing steps;</li> <li>○ a process step for the sharing of oral Indigenous knowledge;</li> <li>○ process steps for oral cross-examination;</li> <li>○ a process step for final argument; and</li> <li>○ general information on the NEB assessment process</li> </ul> </li> </ul>
2 April 2019	A98599	<p>NEB Procedural Update No. 2</p> <ul style="list-style-type: none"> <li>• provided a schedule and guidance for oral Indigenous knowledge;</li> <li>• identified that the Calgary session of oral Indigenous knowledge would be held on the Tsuut'ina Nation lands;</li> <li>• provided process steps related to sharing of oral Indigenous knowledge; and</li> <li>• provided information on confidentiality measures.</li> </ul>

Date	Filing ID	Description
26 April 2019	A99073	<p>NEB Procedural Update No. 3</p> <ul style="list-style-type: none"> <li>provided an updated schedule for oral Indigenous knowledge in Calgary</li> </ul>
30 April 2019	A99616	<p>NEB Ruling No. 4 (from the Bench)</p> <ul style="list-style-type: none"> <li>granted a motion by Horse Lake First Nation to redact sensitive information in relation to specific sites, trails and other important locations shared as oral Indigenous knowledge on 30 April 2019 from the hearing transcript for that date; and</li> <li>established a process for the redaction of the information, for providing written questions regarding the evidence shared, and for responses by Horse Lake First Nation to any questions.</li> </ul>
13 May 2019	A99846-1	<p>NEB Ruling No. 5 (from the Bench)</p> <ul style="list-style-type: none"> <li>granted a motion by Blood Tribe allowing them to review, for accuracy, the transcript of their oral Indigenous knowledge evidence shared on 13 May 2019; and</li> <li>granted NGTL's request to also receive a copy of the transcript that would be reviewed by Blood Tribe, and any comments made by Blood Tribe in regards to the transcript;</li> <li>granted NGTL additional time to submit written questions, if any, to Blood Tribe; and</li> <li>established a process for both Parties to comment on the transcript prior to the NEB posting the transcript on its website.</li> </ul>
14 May 2019	A99399	<p>NEB Ruling No. 6</p> <ul style="list-style-type: none"> <li>granted a motion by Duncan's First Nation to file certain late evidence by 22 May 2019.</li> </ul>
14 May 2019	A99401	<p>NEB Procedural Update No. 4</p> <ul style="list-style-type: none"> <li>provided a revised timetable of hearing steps as a result of Ruling No. 6.</li> </ul>
15 May 2019	A99463	<p>NEB Ruling No. 7 (from the Bench)</p> <ul style="list-style-type: none"> <li>granted a motion by Samson Cree Nation during the oral Indigenous knowledge session on 15 May 2019, to allow oral traditional evidence from three hunters who were not able to attend the oral session due to illness, to be submitted in writing by 29 May 2019; and</li> </ul>

Date	Filing ID	Description
		<ul style="list-style-type: none"> <li>granted NGTL's request to review that written evidence and file any questions by 6 June 2019.</li> </ul>
<b>15 May 2019</b>	A99463	<p>NEB Ruling No. 8 (from the Bench)</p> <ul style="list-style-type: none"> <li>responded to a question from Elder Leo Bruno of Samson Cree Nation during the oral Indigenous knowledge session on 15 May 2019, who asked how Samson Cree Nation is protected similar to the <i>Canada Evidence Act</i> in any given court situation or setting;</li> <li>referred to the NEB's Hearing Order for the Project and to Procedural Updates No. 1 and 2 regarding expectations for oral Indigenous knowledge sessions; and</li> <li>stated that where discussion relates to information and knowledge that can or has already been expressed in writing, that there are other steps in the NEB process where that discussion can be had (e.g., information request process, oral cross-examination and/or final examination).</li> </ul>
<b>15 May 2019</b>	A99463	<p>NEB Ruling No. 9 (from the Bench)</p> <ul style="list-style-type: none"> <li>granted a motion by Tsuut'ina Nation during the oral Indigenous knowledge session on 15 May 2019, to move Tsuut'ina Nation's originally scheduled session from 17 May 2019 to 15 May 2019.</li> </ul>
<b>15 May 2019</b>	A99463	<p>NEB Ruling No. 10 (from the Bench)</p> <ul style="list-style-type: none"> <li>responded to an objection by NGTL during the oral Indigenous knowledge session on 15 May 2019, regarding the type of information presented by Alexis Nakota Sioux Nation, which in NGTL's view consisted of explanations or discussions about written reports that were filed;</li> <li>the NEB issued a caution about the subject of questions and the information that is being shared, but allowed the continuation of the sharing of oral Indigenous knowledge; and</li> <li>the NEB noted that an oral Indigenous knowledge session is not the proper venue for legal argument, for arguments speaking to the merits of evidence already before the NEB, or for arguments concerning mitigation or the ultimate outcome of the NEB process that are drawn from evidence already before the NEB.</li> </ul>
<b>15 May 2019</b>	A99847	<p>NEB Ruling No. 11 (from the Bench)</p> <ul style="list-style-type: none"> <li>granted a motion by Piikani Nation allowing them to review, for accuracy, the transcript of their oral Indigenous knowledge evidence shared on 15 May 2019;</li> </ul>

Date	Filing ID	Description
		<ul style="list-style-type: none"> <li>• granted NGTL's request to also receive a copy of the transcript that would be reviewed by Piikani Nation, and any comments made by Piikani Nation in regards to the transcript; and</li> <li>• established a process for both Parties to comment on the transcript prior to the NEB posting the transcript on its website.</li> </ul>
<b>17 May 2019</b>	A99848	<p>NEB Ruling No. 12 (from the Bench)</p> <ul style="list-style-type: none"> <li>• granted a motion by Driftpile Cree Nation allowing them to review, for accuracy, the transcript of their oral Indigenous knowledge evidence shared on 17 May 2019;</li> <li>• granted NGTL's request to also receive a copy of the transcript that would be reviewed by Driftpile Cree Nation, and any comments made by Driftpile Cree Nation in regards to the transcript; and</li> <li>• established a process for both Parties to comment on the transcript prior to the NEB posting the transcript on its website.</li> </ul>
<b>24 May 2019</b>	A99567	<p>Update to NEB Ruling No. 6</p> <ul style="list-style-type: none"> <li>• accepted late evidence filed on 22 May 2019 by Duncan's First Nation.</li> </ul>
<b>29 May 2019</b>	A99612	<p>Update to NEB Ruling No. 4</p> <ul style="list-style-type: none"> <li>• approved redactions to the hearing transcript for 30 April 2019 as requested by Horse Lake First Nation and consented to by NGTL.</li> </ul>
<b>7 June 2019</b>	A99829	<p>Update to NEB Ruling No. 5</p> <ul style="list-style-type: none"> <li>• approved corrections to the hearing transcript of 13 May 2019 as requested by Blood Tribe; and</li> <li>• established a process for NGTL, Intervenor or NEB questions to Blood Tribe, and responses by Blood Tribe.</li> </ul>
<b>7 June 2019</b>	A99830	<p>Update to NEB Ruling No. 11</p> <ul style="list-style-type: none"> <li>• approved the hearing transcript of 15 May 2019 for posting on the NEB website, as no comments were received from Piikani Nation by the deadline.</li> </ul>
<b>7 June 2019</b>	A99831	<p>Update to NEB Ruling No. 12</p>

Date	Filing ID	Description
		<ul style="list-style-type: none"> <li>approved the hearing transcript of 17 May 2019 for posting on the NEB website, as no comments were received from Driftpile Cree Nation by the deadline.</li> </ul>
<b>7 June 2019</b>	A99828	<p>NEB Ruling No. 13</p> <ul style="list-style-type: none"> <li>denied a motion from Alexis Nakota Sioux Nation on 21 March 2019, requesting that NGTL be required to update its consultation logs filed in December 2018 to include a letter from Alexis Nakota Sioux Nation filed on 18 October 2018; and</li> <li>set out the NEB's expectations for NGTL regarding tracking and responding to concerns raised by Indigenous peoples as part of NGTL's future filings for the hearing.</li> </ul>
<b>7 June 2019</b>	A99827	<p>NEB Ruling No. 14</p> <ul style="list-style-type: none"> <li>granted a request filed by Horse Lake First Nation on 4 June 2019 for an extension of one week to respond to NGTL's questions on the oral Indigenous knowledge shared by Horse Lake First Nation on 30 April 2019.</li> </ul>
<b>25 June 2019</b>	C00125	<p>NEB Ruling No. 15</p> <ul style="list-style-type: none"> <li>granted a motion by Asini Wachi Nehiyawak Traditional Band to participate as a Commenter, and to accept a late filing of a Letter of Comment.</li> </ul>
<b>3 July 2019</b>	C00242	<p>NEB Procedural Update No. 5</p> <ul style="list-style-type: none"> <li>provided the following: <ul style="list-style-type: none"> <li>information regarding cross-examination;</li> <li>a schedule for two cross-examination sessions;</li> <li>a tentative schedule for final argument;</li> <li>an updated Timetable of Hearing Steps;</li> <li>sample written affidavits for adopting evidence; and</li> <li>an exhibit reference form</li> </ul> </li> </ul>
<b>16 July 2019</b>	C00515	<p>NEB Ruling No. 16</p> <ul style="list-style-type: none"> <li>denied a motion by Foothills First Nation to accept late evidence, in the form of a traditional land use study, on the record.</li> </ul>
<b>25 July 2019</b>	C00670	Letter to NGTL

Date	Filing ID	Description
		<ul style="list-style-type: none"> <li>the NEB determined, without prejudice, that it will not consider NGTL's proposal to use existing pipeline sections at the crossings of Brewster Creek and Baptiste River, due to the lack of information regarding the status and condition of these pre-existing crossings, and given that the engineering assessment for these pipe segments will not be available within the hearing process timeframe.</li> </ul>
<b>31 July 2019</b>	C00788	<p>NEB Ruling No. 17</p> <ul style="list-style-type: none"> <li>denied a motion by ECCC and Natural Resources Canada for a joint Government of Canada witness panel during cross-examination from 15 to 21 August 2019; and</li> <li>denied a motion by ECCC to have two of its five identified witnesses, Raymond Kotchorek and Meagan Tobin, participate remotely during oral cross-examination of ECCC's witness panel from 15 to 21 August 2019.</li> </ul>
<b>6 August 2019</b>	C00854	<p>NEB Ruling No. 18</p> <ul style="list-style-type: none"> <li>dismissed a motion by Samson Cree Nation for an Application for Review, which requested that the NEB review its 3 December 2018 decision on the <i>Determination of List of Issues and Factors and Scope of Factors for the Environmental Assessment</i>, and the NEB's decision to not expressly include greenhouse gas emissions within the List of Issues.</li> </ul>
<b>8 August 2019</b>	C00887	<p>NEB Ruling No. 19</p> <ul style="list-style-type: none"> <li>accepted a late application to participate by Gift Lake Metis Settlement, and provided options for participation as an Intervenor or a Commenter; and</li> <li>established a process for Gift Lake Metis Settlement to identify their choice of participation.</li> </ul>
<b>8 August 2019</b>	C00895	<p>NEB Ruling No. 20</p> <ul style="list-style-type: none"> <li>denied a request from Alexis Nakota Sioux Nation to move the date of their cross-examination of NGTL's witness panel from 12 August to 13 or 14 August 2019, unless Alexis Nakota Sioux Nation can come to an agreement with another Party to exchange timeslots.</li> </ul>
<b>8 August 2019</b>	C00884	<p>Corrections to NEB Procedural Update No. 5</p> <ul style="list-style-type: none"> <li>provided corrections to the Parties and/or estimated time in the schedule for Cross-Examination Session A on 15, 19, and 20 August 2019.</li> </ul>

Date	Filing ID	Description
9 August 2019	C00935	<p>NEB Ruling No. 21</p> <ul style="list-style-type: none"> <li>• granted a motion by Driftpile Cree Nation for the remote participation via teleconference by Ms. Trieneke Gastmeier during oral cross-examination of Driftpile Cree Nation’s witness panel on 26 August 2019.</li> </ul>
9 August 2019	C00936	<p>NEB Ruling No. 22</p> <ul style="list-style-type: none"> <li>• granted a motion by Blood Tribe to change the scheduled date for oral cross-examination of Blood Tribe’s witness panel by NGTL and the NEB from 26 August to 28 August 2019.</li> </ul>
9 August 2019	C00937	<p>NEB Ruling No. 23</p> <ul style="list-style-type: none"> <li>• granted a motion by Samson Cree Nation and Alexis Nakota Sioux Nation, allowing them to exchange scheduled dates for cross-examination of their respective witness panels by ECCC, such that Samson Cree Nation would seat their witness panel on 16 August 2019 and Alexis Nakota Sioux Nation would seat their witness panel on 20 August 2019.</li> <li>• stated that the NEB’s decision was conditional on confirmation from Samson Cree Nation and Alexis Nakota Sioux Nation that all Parties that may be affected by this change in schedule were agreeable, and established a process for this confirmation.</li> </ul>
9 August 2019	C00938	<p>NEB Procedural Update No. 6</p> <ul style="list-style-type: none"> <li>• provided a revised schedule for cross-examination on 12 August 2019.</li> </ul>
12 August 2019	C00950	<p>NEB Ruling No. 24 (from the Bench)</p> <ul style="list-style-type: none"> <li>• granted request from Alexis Nakota Sioux Nation and Samson Cree Nation to exchange scheduled dates for cross-examination, having received the confirmation requested in Ruling No. 23;</li> <li>• denied requests from NGTL to amend the cross-examination schedule as follows: <ul style="list-style-type: none"> <li>○ change the scheduled cross-examination of NGTL’s witness panel and NGTL’s redirect of their panel from 15 August to 14 August 2019;</li> <li>○ change the scheduled cross-examination of NRCan’s witness panel by NGTL and the NEB and NRCan’s redirect of their panel from 16 August to 15 August; and</li> </ul> </li> </ul>



Date	Filing ID	Description
		<ul style="list-style-type: none"> <li>○ change the scheduled cross-examination by NGTL and the NEB of ECCC and ECCC's redirect of their panel from 21 August to 20 August.</li> </ul>
<b>12 August 2019</b>	C00958	<p>Update to NEB Ruling No. 19</p> <ul style="list-style-type: none"> <li>• granted request by Gift Lake Metis Settlement for late participation as an Intervenor;</li> <li>• established a schedule for the participation of Gift Lake Metis Settlement in oral cross-examination on 15 August 2019 and on 21 August 2019, as well as final argument; and</li> <li>• granted permission for Gift Settlement to undertake cross-examination via teleconference.</li> </ul>
<b>12 August 2019</b>	C00961	<p>NEB Procedural Update No. 7</p> <ul style="list-style-type: none"> <li>• provided an update to the schedule for Cross-Examination Session A (13 to 21 August 2019), based on Rulings No. 20, 23, 24, 19 and Update to Ruling No. 19, and based on the withdrawal of a number of Intervenor from cross-examination of NGTL, NRCan and/or ECCC.</li> </ul>
<b>22 August 2019</b>	C01136	<p>NEB Procedural Update No. 8</p> <ul style="list-style-type: none"> <li>• provided notice of the coming into force of the CER Act on 28 August 2019 and the temporary adjournment, until further notice, of Cross-Examination Session B that was scheduled for 28 August 2019 and all process steps related to final argument;</li> <li>• granted request from Alexis Nakota Sioux Nation to have their witness panel appear at 10 am rather than 9 am on 26 August 2019, and changing the start time for Session B on 26 August 2019 to 10 am;</li> <li>• provided a revised Schedule for Cross-Examination Session B on 26 and 27 August 2019; and</li> <li>• provided notice of possible outages for certain online systems on 27-28 August 2019, associated with the transition from the NEB to the CER.</li> </ul>
<b>11 September 2019</b>	C01576	<p>CER Ruling No. 25</p> <ul style="list-style-type: none"> <li>• granted ECCC's request for an extension to file responses to NEB Information Request No. 3, from 4 September to 13 September 2019.</li> </ul>
<b>18 September 2019</b>	C01700	<ul style="list-style-type: none"> <li>• CER Procedural Update No. 9</li> </ul>

Date	Filing ID	Description
		<ul style="list-style-type: none"> <li>• provided the Commission’s decision on resumption of the hearing process, including a decision that it will not repeat any previous hearing steps, but will continue with the remainder of Cross-Examination Session B and the final argument process;</li> <li>• provided 2 options for dates to resume Cross-Examination Session B (8 October or 24 October), and established a process for identification by relevant Parties of preferred options; and</li> <li>• provided a revised Timetable of Hearing Steps and an updated schedule for oral final argument.</li> </ul>
<b>27 September 2019</b>	C01892	<ul style="list-style-type: none"> <li>• CER Ruling No. 26</li> <li>• granted a motion by ECCC to correct portions of its oral evidence given during cross-examination of the ECCC witness panel on 20 and 21 August 2019.</li> </ul>
<b>27 September 2019</b>	C01894	<ul style="list-style-type: none"> <li>• CER Ruling No. 27</li> <li>• granted a request by ECCC for an extension to file responses to IRs from NGTL and/or Intervenors, in relation to ECCC’s response to the NEB’s IR 3, from 3 October to 9 October 2019.</li> </ul>
<b>1 October 2019</b>	C01959	<p>Update to CER Procedural Update No. 9</p> <ul style="list-style-type: none"> <li>• provided confirmation of the following: <ul style="list-style-type: none"> <li>○ the schedule for the resumption of Cross-Examination Session B, based on responses to the process established in Procedural Update No. 9;</li> <li>○ a revised Timetable of Hearing Steps; and</li> <li>○ oral final argument schedule.</li> </ul> </li> </ul>
<b>2 October 2019</b>	C02015	<p>Letter to All Parties</p> <ul style="list-style-type: none"> <li>• provided preliminary comments in relation to requests by Stoney Nakoda Nations (representing the Intervenors Bearspaw First Nation, Chiniki First Nation and Wesley First Nation) and Driftpile Cree Nation, which included: <ul style="list-style-type: none"> <li>○ reasons for the decision to replace former presiding Member Mr. Roland George; and</li> <li>○ reasons for the decision not to repeat any of the hearing steps;</li> </ul> </li> <li>• established a process to allow Intervenors and NGTL to provide comments on the resumption of the hearing process as identified in Procedural Update No. 9, including positions</li> </ul>

Date	Filing ID	Description
		<p>on the principle of he/she who hears must decide, including applicable statutory considerations, and any proposed or requested relief regarding previously completed oral steps in the hearing process; and</p> <ul style="list-style-type: none"> <li>• confirmed that the hearing process would continue with the scheduled resumption of cross-examination Session B on 24 October 2019.</li> </ul>
<b>22 October 2019</b>	C02354	<p>Statement of Commission regarding continuation of the Hearing Process:</p> <ul style="list-style-type: none"> <li>• following the comment process set out in the Commissions letter of 2 October, and taking into consideration that no comments were received requesting the repetition of hearing process steps or challenging the composition of the new Panel, the Commission provided its views on: <ul style="list-style-type: none"> <li>○ the principle of he/she who hears must decide;</li> <li>○ the resumption of the GH-003-2018 hearing process; and</li> <li>○ additional concerns raised in the letters filed by Stoney Nakoda Nations and Driftpile Cree Nation.</li> </ul> </li> <li>• Determined that there is no prejudice to continuing with the current process, and therefore the remaining process will continue as outlined in Procedural Update No. 9 and the associated Update.</li> </ul>
<b>12 November 2019</b>	C02919	<p>CER Ruling No. 28</p> <ul style="list-style-type: none"> <li>• denied late request by Michel First Nation for Commenter status</li> </ul>
<b>12 November 2019</b>	C02946	<p>Further Update to Procedural Update No. 9</p> <ul style="list-style-type: none"> <li>• provided confirmation of oral final argument schedule</li> <li>• granted request of Alexis Nakota Sioux Nation to appear on 14 November</li> </ul>
<b>13 November 2019</b>	C02967	<p>CER Ruling No. 29 (from the Bench)</p> <ul style="list-style-type: none"> <li>• granted NGTL's request for extension of time for oral argument from 45 min to 60 min</li> <li>• granted Alexis Nakota Sioux Nation's request to present oral final argument last on 13 November, or on 14 November</li> <li>• granted Samson Cree Nation's request to accept late written final argument</li> </ul>

Date	Filing ID	Description
		<ul style="list-style-type: none"> <li>• deadline for written final argument was moved from 4 pm 7 November 2019 to 4 pm 8 November 2019, which had the effect of allowing all late filed written final argument to be properly included on the record</li> </ul>
<b>20 December 2019</b>	C03857	<p>Statement of the Commission regarding Samson Cree Nation Errata to Final Argument:</p> <ul style="list-style-type: none"> <li>• the Commission stated that it would not include Samson's Cree's Errata and Book of Authorities, filed on 29 November 2019, onto the hearing record, and will not consider this filing in its deliberation.</li> <li>• the Commission noted that the filing was received after the close of the record on 13 November, Samson Cree made no request of the Commission to accept the filings, and gave no reasons or explanation as to why the errata was being filed, nor why it should be accepted after the close of the record.</li> <li>• In addition, the Book of Authorities filed as part of the Errata contains documents and materials which appear to be substantive evidence that would have been improper for filing in final argument.</li> </ul>

## Appendix V – List of Issues

The following issues were considered in GH-003-2018 with respect to the construction and operation of the proposed Project:

1. The need for the Project.
2. The economic feasibility of the Project.
3. The potential commercial impacts of the Project, including potential economic impacts on Indigenous peoples.<sup>26</sup>
4. The appropriateness of the toll and tariff methodology of the Project.
5. The potential environmental and socio-economic effects of the Project, including any cumulative environmental effects that are likely to result from the Project as set out in the NEB's Filing Manual, as well as those to be considered under the *Canadian Environmental Assessment Act, 2012*.
6. The appropriateness of the general route and land requirements for the Project.
7. Potential impacts of the Project on the interests of Indigenous peoples, including potential impacts on Indigenous and Treaty rights.
8. Potential impacts of the Project on owners and users of lands.
9. The suitability of the design of the Project.
10. Contingency planning for leaks, accidents or malfunctions, during construction and operation of the Project.
11. Safety and security during construction and operation of the Project, including emergency response planning and third-party damage prevention.
12. The terms and conditions to be included in any recommendation or approval the Commission may issue for the Project.

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<sup>26</sup> "Indigenous" has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*:

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

## Appendix VI – Comments on Conditions

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
<b>Section 52 NEB Act Certificate</b>			
1 – Condition Compliance		n/a	n/a
2 – Section 52 Pipeline and Related Facilities Design, Location, Construction and Operation		n/a	n/a
3 – Environmental Protection		n/a	n/a
4 – Construction Emergency Management Preparedness and Response Planning	Driftpile Cree Nation Blood Tribe Piikani Nation	Driftpile Cree Nation, Blood Tribe and Piikani Nation proposed that the condition be revised to include NGTL serving copies of the Construction Emergency Response Plans to Indigenous communities and to include how Indigenous communities will be informed and involved in emergency response activities and measures.	The Commission has revised the condition to incorporate suggestions from Driftpile Cree Nation, Blood Tribe and Piikani Nation. The Commission has also recommended Condition 17 to ensure that NGTL will further consult with potentially affected Indigenous communities.
	Whitefish (Goodfish) Lake First Nation #128 Ermineskin Cree Nation Saddle Lake Cree Nation	Whitefish (Goodfish) Lake First Nation #128, Ermineskin Cree Nation and Saddle Lake Cree Nation proposed that the condition be revised to require the inclusion of Indigenous communities in terms of training and development of capacity, collection of TLU data to help inform emergency response, and to ensure proper notification procedures have been implemented.	The Commission has recommended Condition 17 to ensure that NGTL will further consult with potentially affected Indigenous communities.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
5 – Updated Environmental Protection Plan for Section 52 Pipeline and Related Facilities	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	The condition doesn't include how Indigenous peoples will be informed, consulted or involved in the updating and implementation of the EPPs. Suggestions were made to include consultation, inclusion of Indigenous communities and copies of the EPP to Indigenous communities.	The Commission has modified the condition to require NGTL to provide copies of the updated EPP to Indigenous peoples who have expressed an interest in the condition filing. The Commission notes that a draft EPP was filed with NGTL's Application, and subsequently updated during the proceeding to include supplemental survey results. The Commission is of the view that appropriate opportunities to raise specific concerns were provided through NGTL's engagement activities and the Commission's GH-003-2018 proceeding.  As per Condition 14, NGTL is required to report to the Commission any comments and/or concerns raised by Indigenous peoples and how NGTL plans to address these concerns. Therefore, the Commission finds that the Condition remains appropriate.
	NRCan	The condition does not contain a requirement to demonstrate how Indigenous peoples were engaged and how any information gained was incorporated.	
6 – Revised Caribou Habitat Restoration and Offset Measures Plan (CHR&OMP)	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Requested Indigenous Knowledge, Land Use and Occupancy information shared by Indigenous communities at any point during the process be added the revised CHR&OMP.  Also requested that the revised CHR&OMP include direction on how the objectives will be implemented, including opportunities for involvement of impacted Indigenous communities.	The Commission has revised the condition to require NGTL to provide a summary of its consultation with Indigenous communities that expressed an interest in being involved with the CHR&OMP during the hearing process. The condition also requires NGTL to provide a copy of the CHR&OMP to all interested Indigenous peoples, ECCC and all appropriate provincial authorities, and to notify the Commission within 7 days of filing the CHR&OMP that the copies have been provided.

<b>Commission's Potential Condition</b>	<b>Party</b>	<b>Summary of Comments from Parties on Commission Potential Conditions</b>	<b>Commission Response to Comments from Parties</b>
7 – Wildlife and Rare Plant Surveys		n/a	n/a
8 – Geohazards	NGTL	<p>b)iv) McLeod River Connection Section was renamed Colt Section in NGTL's Additional Written Evidence.</p> <p>b)viii) January Creek Connection Section should be removed because it is a control valve and not a pipeline section.</p>	The Commission has modified part b) of the condition to no longer refer to specific pipeline segments, and to incorporate both mitigation and monitoring requirements.
9 – Horizontal Directional Drilling Reports	NGTL	Suggested that the title be changed to "Trenchless Crossing Reports" and that the listed water crossings be referred to as "trenchless water crossings", to be inclusive of all trenchless crossing methods.	The Commission has revised the condition to include these changes.
10 – Outstanding Traditional Land and Resource Use Investigations	NGTL	Suggested the date of filing be changed from 45 days to 30 days prior to commencing construction of the section 52 Pipeline and Related Facilities.	The Commission maintains that 45 days is appropriate for this condition.
	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	<p>Recommended that the condition be amended such that the report include the following:</p> <p>a) vi) a summary of how Indigenous Knowledge, Land Use, and Occupancy (IKLUO) information was used for identifying species that would be monitored throughout the life of the Project, including protection measures within the EPP; and;</p> <p>a)vii) a summary of how IKLUO will be used to inform decisions throughout the Project lifecycle, including how communities will be</p>	In response, the Commission has made a modification to the condition. See discussion in Section 7.6.7.1.



Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		informed and consulted throughout the Project's lifecycle.	
11 – Programs and Manuals - Safety		n/a	n/a
12 – Construction Monitoring Plan for Indigenous Peoples	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Recommended that the condition be amended such that the report include the following:  a)vii) a description of potential oversight mechanisms to provide accountability and a more formal governance structure regarding the involvement of Indigenous communities in construction monitoring. Potential mechanisms to consider could include, but not be limited to:  a. Indigenous Advisory Monitoring Committee; b. Environmental Management Committee; c. Conditions Compliance Monitoring Committee; and d. Regional Environmental Monitoring Board	The Commission is not recommending that the Government of Canada create an IAMC for this Project. However, consistent with NGTL's commitment to incorporate industry accepted best practices and procedures, the Commission encourages NGTL to offer to engage with Indigenous communities that have direct experience with IAMC monitoring activities, or Indigenous Caucus members from both the Trans Mountain Expansion Project and the Enbridge Line 3 IAMCs. The purpose of such engagement would be to gather input on how meaningful monitoring opportunities can be built into NGTL's ACPP, PCM and ongoing engagement. See discussion in Section 7.6.2.  The Commission has, in Chapter 1 of the Report, made Recommendation #2 to governments and agencies for increased involvement of Indigenous peoples in pre- and post-disturbance monitoring.
	NRCan	The condition does not contain a requirement for NGTL to demonstrate how Indigenous peoples were engaged and, as relevant, how information gained through those engagements was incorporated into NGTL's plan.	The Commission has made a modification to the condition to incorporate suggestions from NRCan. See discussion in Section 7.6.2.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
13 – Report on Engagement with Indigenous Peoples	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Recommended that the condition be amended such that the report include the following:  c) The CER must provide a 21-day comment period on reports where Indigenous communities have the opportunity to comment on and verify the information provided by NGTL in the reports. In instances where inaccuracies are identified, NGTL must issue a revised version of the report within 21 days of receipt of direction from the Commission.	The Commission notes NGTL's commitment to continue to engage all identified Indigenous communities according to their level of interest in the Project and the potential adverse impact of the Project on Indigenous or Treaty rights. The Commission expects NGTL, as it does all companies, to continue to learn about the concerns that Indigenous peoples may have about a project, and to discuss ways to address those concerns to the extent possible. The Commission also encourages Indigenous peoples with an interest in the Project to continue to engage with NGTL. See discussion in Section 7.6.1.  Throughout the lifecycle of the Project the CER will hold NGTL accountable for meeting its regulatory requirements.
14 – Archaeological and Heritage Resource Clearances		n/a	n/a
15 – Commitments Tracking Table	NGTL	NGTL suggested revising the reporting period in b)ii) from quarterly to annually, as it would be more efficient for NGTL, the Commission and interested parties.	The Commission is of the view that quarterly is consistent with other NGTL projects and does not pose a regulatory burden on any of the Parties.
16 – Emergency Management Continuing Education Program	NGTL	NGTL submitted that this condition should be struck. NGTL said that TransCanada has a long-established Public Awareness Program (PA Program) which includes continuing education, public safety and liaison activities. NGTL submitted that the PA Program meets the requirements of section 35 of the <i>Onshore Pipeline Regulations</i> and the intent of	The Commission is of the view that consultation and communication between NGTL and Indigenous communities is needed. The Commission has decided not to grant NGTL's request.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		Condition 16. As a result, this condition is unnecessary and redundant.	
17 – Construction Schedule	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Suggested the condition timing be changed to give more time to ensure Indigenous monitors and guardians are informed and ready to go in the field. Suggested changing 14 days to 30 days. Also requested the condition include serving copies of the construction schedule(s) on interested Indigenous communities.	The Commission has modified the condition to require NGTL to provide a copy of the construction schedule to all Indigenous peoples who have expressed an interest in receiving a copy.  The Commission is of the view that 14 days is an appropriate amount of time for NGTL to finalize the details of the construction schedule and file it for review.
18 – Construction Progress Reports		n/a	n/a
19 – Finalized Watercourse Crossing Inventory		n/a	n/a
20 – Contingency Watercourse Crossing Method	NGTL	Suggested that the condition be specific to trenched crossing methods, and the notification period be decreased from 15 to 5 days prior to commencing the contingency crossing.	The Commission has amended the condition to be specific to contingency trenched watercourse crossing methods. However, the Commission disagrees regarding the notification period decreasing to 5 days. The Commission has revised the notification period from 15 days to 10 days.
21 – Authorizations under Paragraph 35(2)(b) of the <i>Fisheries Act</i>	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Suggested that parts a) and b) of the condition be amended to provide copies of the authorizations to interested Indigenous communities.	The Commission has amended the condition to require NGTL to provide copies of the authorizations to interested Indigenous peoples.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
22 – Working within the Little Smoky Caribou Range Restricted Activity Period	NGTL	Suggested that the condition not be for approval to avoid duplication in approval processes between the CER and Alberta Environment and Parks for working in the RAP. NGTL also proposed that telemetry data from the Province be used as NGTL has not been approved to do this type of work.	The Commission agrees that recent telemetry data from the Province would be used as part of the data to inform the caribou survey within the condition rather than NGTL collecting its own data. The Commission disagrees with removing the approval requirement of the condition. Although Alberta Environment and Parks is the decision maker for work occurring in the Little Smoky Caribou Range, the Commission maintains jurisdiction and oversight of the work being conducted on federally regulated ROWs. The Commission expects NGTL to make every effort possible to avoid work during the RAP for the Little Smoky Caribou Range.
	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	The condition should be amended to include: a description of how relevant traditional knowledge and traditional land use information received to-date, and any traditional knowledge and traditional land use outstanding information has/will be incorporated/considered; a description of sensitive sites identified by Indigenous communities in part d) ii; in part e), a description of how Indigenous monitors and Indigenous knowledge was included in the caribou survey.	The Commission is of the view that relevant traditional knowledge and traditional land use would have been collected during NGTL's engagement activities, the hearing process and NGTL's continuing consultation process leading up to construction within the Little Smoky Range.  The Commission is further of the view that Condition 12 requires the identification of Indigenous monitors and would include any work required as part of this condition.
23 – Sunset Clause		n/a	n/a
24 – Quantification of Construction-related Greenhouse Gas (GHG) Emissions	NGTL	The current timing of the condition would not allow capture of construction-related activity that would continue through to commencement of operations. NGTL suggested the timing be changed to 30 days	The Commission agrees and has made revisions to the condition. The Commission has also revised the condition to require NGTL to provide a copy of the filing to interested Indigenous peoples, and to notify the

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		after commencement of operation in order to capture all construction related data.	Commission within 7 days of filing the report that the copies have been provided.
25 – Employment, Contracting, and Procurement Report	NGTL	<p>Requested that this condition be revised for NGTL to report solely on Indigenous employment, contracting and procurement levels. NGTL notes that no parties have raised NGTL's non-Indigenous employment, contracting and procurement as an issue as part of these proceedings and therefore this is not an issue that warrants a condition.</p> <p>NGTL requested removing the word 'analysis' as disclosing details beyond a summary could potentially compromise NGTL's competitive processes on future projects, exacerbate unresolved contracting issues that may have occurred during construction, and potentially expose proprietary information of contractors.</p> <p>In part c), NGTL suggested minor wording changes, replacing "consultation" with "engagement efforts".</p>	<p>The Commission maintains that this condition be broader than only Indigenous employment to have a fuller view of NGTL's employment, contracting, and procurement practices.</p> <p>Note that the Commission has made modifications to the original condition provided for comment. This is discussed in Section 7.6.6.</p>
	Blood Tribe Driftipile Cree Nation Piikani Nation Saddle Lake Cree Nation	<p>Recommended that the condition be amended such that the report include the following:</p> <p>d) a description of training and other capacity building initiatives to increase accessibility to employment and/or business contracting opportunities related to the Project's construction and operations phases</p> <p>e) a description of the local, regional, and Indigenous hiring targets and a detailed analysis of NGTL's performance on reaching these targets. In instances where targets were</p>	<p>To increase the transparency of NGTL's commitments regarding providing contracting and employment opportunities, the Commission recommends Condition 13, requiring NGTL to file an update to its Employment, Contracting and Procurement Plan which would include the submission of its Prime Contractors Aboriginal Participation Plan, and a summary of how this Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program. See discussion in Section 7.6.6.</p>

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		not met, NGTL must provide a description of accommodation measures, a rationale as to why targets were not met, and a description of measures to be applied in the future to ensure targets will be met.	
26 – Post-Construction Monitoring Plan for Indigenous Peoples	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	<p>Recommended that the condition be amended such that the report include the following:</p> <p>a)vii) a description of potential oversight mechanisms to provide accountability and a more formal governance structure regarding the involvement of Indigenous communities in construction monitoring. Potential mechanisms to consider could include, but not be limited to:</p> <ul style="list-style-type: none"> <li>a. Indigenous Advisory Monitoring Committee;</li> <li>b. Environmental Management Committee;</li> <li>c. Conditions Compliance Monitoring Committee; and</li> <li>d. Regional Environmental Monitoring Board</li> </ul>	<p>The Commission is not recommending that the Government of Canada create an IAMC for this Project. However, consistent with NGTL's commitment to incorporate industry accepted best practices and procedures, the Commission encourages NGTL to offer to engage with Indigenous communities that have direct experience with IAMC monitoring activities, or Indigenous Caucus members from both the Trans Mountain Expansion Project and the Enbridge Line 3 IAMCs. The purpose of such engagement would be to gather input on how meaningful monitoring opportunities can be built into NGTL's ACPP, PCM and ongoing engagement. See discussion in Section 7.6.2.</p> <p>The Commission has, in Chapter 1 of the Report, made Recommendation #2 to governments and agencies for increased involvement of Indigenous peoples in pre- and post-disturbance monitoring.</p>
	NRCan	The condition does not contain a requirement for NGTL to demonstrate how Indigenous peoples were engaged and, as relevant, how information gained through those engagements was incorporated into NGTL's plan.	The Commission has made a modification to the condition to incorporate suggestions from NRCan. See discussion in Section 7.6.2.

<b>Commission's Potential Condition</b>	<b>Party</b>	<b>Summary of Comments from Parties on Commission Potential Conditions</b>	<b>Commission Response to Comments from Parties</b>
27 – Condition Compliance by the Accountable Officer		n/a	n/a
28 – Pipeline Geographic Information Systems (GIS) Data		n/a	n/a
29 – Post-Construction Environmental Monitoring Reports	NRCan	The condition does not contain a requirement to demonstrate how Indigenous peoples were engaged and how any information gained was incorporated.	<p>The Commission is of the view that Conditions 12 and 27 for Construction and Post-Construction Monitoring Plans for Indigenous Peoples, respectively, provides for potential Indigenous monitoring opportunities for the Project. The Commission expects that NGTL will provide the methodology used for all monitoring, including Indigenous monitoring if it differed from non-Indigenous monitoring, as well as all issues identified for monitoring. Therefore, the Commission has not amended these points of the condition.</p> <p>The Commission has modified the condition to require NGTL to include a summary of its consultation with affected Indigenous communities, and to provide a copy of the filing to all interested Indigenous peoples.</p>
	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Requested that the condition be modified to add as part b) a description of the methodologies applied by Indigenous monitors and the process for involving Indigenous monitors in activities. Also requested that issues identified by Indigenous monitors be included as part of c), and for Indigenous communities to be included in the consultation identified in part f) of the condition.	
30 – Caribou Habitat Restoration Implementation Report and Status Update	NRCan	The condition does not include an express requirement to demonstrate how potentially impacted Indigenous communities were engaged in the report and program, and how the information gained through consultation was incorporated.	<p>The Commission has revised the condition to require NGTL to provide a summary of consultation on this report with Indigenous peoples that expressed an interest in being involved with the CHR&amp;OMP and related filings during the hearing process. The condition also requires NGTL to provide a copy of the Caribou Habitat Restoration Implementation Report and Status Update to all interested Indigenous peoples, ECCC and all appropriate</p>
	Blood Tribe Driftpile Cree Nation	The condition should be amended to include a detailed description of how traditional knowledge/traditional land and resource use	

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
	Piikani Nation Saddle Lake Cree Nation	information was incorporated into habitat offset measures, including but not limited to sites, habitat ranges, rutting locations, and migration routes. In addition, part e) to include consultation with Indigenous groups and part g) to include traditional land and resource use information shared throughout the life of the Project.	provincial authorities, and to file confirmation with the Commission within 7 days that the copies have been provided.
31 – Caribou Habitat Offset Measures Implementation Report	NRCan	The condition does not include an express requirement to demonstrate how potentially impacted Indigenous communities were engaged in the report and program, and how the information gained through consultation was incorporated.	The Commission has revised the condition to require NGTL to provide a summary of consultation on this report with Indigenous peoples that expressed an interest in being involved with the CHR&OMP and related filings during the hearing process. The condition also requires NGTL to provide a copy of the Caribou Habitat Offset Measures Implementation Report to all interested Indigenous peoples, ECCC and all appropriate provincial authorities, and to notify the Commission within 7 days of filing the Caribou Habitat Offset Measures Implementation Report that the copies have been provided.
	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	The condition should be amended to include a detailed description of how traditional knowledge/traditional land and resource use information was incorporated into habitat offset measures, including but not limited to sites, habitat ranges, rutting locations, and migration routes. In addition, part i) to include any additional accommodation measures may be implemented.	
32 – Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP)	NRCan	The condition does not include an express requirement to demonstrate how potentially impacted Indigenous communities were engaged in the report and program, and how the information gained through consultation was incorporated.	The Commission has revised the condition to require NGTL to provide a summary of consultation on this report with Indigenous communities that expressed an interest in being involved with the CHR&OMP and related filings during the hearing process. The condition also requires NGTL to provide a copy of the Caribou Habitat Restoration and Offset Measures Monitoring Program to interested Indigenous peoples, and to notify the
	Blood Tribe Driftpile Cree Nation	The condition should be amended to include plans and protocols for how Indigenous communities will be involved in the	



<b>Commission's Potential Condition</b>	<b>Party</b>	<b>Summary of Comments from Parties on Commission Potential Conditions</b>	<b>Commission Response to Comments from Parties</b>
	Piikani Nation Saddle Lake Cree Nation	development and implementation of the CHROMMP, including but not limited to ongoing monitoring, data collection, and the incorporation of traditional knowledge and traditional land use data.	Commission within 7 days of filing the Caribou Habitat Restoration and Offset Measures Monitoring Program that the copies have been provided.
33 – Caribou Monitoring Reports	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	The condition should be amended to include how impacted Indigenous groups were included and will continue to be involved with the CHROMMP.	The Commission has revised the condition to require NGTL to include a summary of its consultation on the report with Indigenous peoples that expressed an interest in being involved with the CHR&OMP and related filings during the hearing process. The condition also requires NGTL to provide a copy of the Caribou Monitoring Reports to all interested Indigenous peoples, and to notify the Commission within 7 days of filing the Caribou Monitoring Reports that the copies have been provided.
<b>Section 58 NEB Act Order</b>			
1 – Condition Compliance		n/a	n/a
2 – Section 58 Facilities and Activities Design, Location, Construction and Operations		n/a	n/a
3 – Environmental Protection		n/a	n/a
4 – Construction Emergency Management Preparedness and Response Planning	Driftpile Cree Nation Blood Tribe Piikani Nation	Driftpile Cree Nation, Blood Tribe and Piikani Nation proposed that the condition be revised to include NGTL serving copies of the Construction Emergency Response Plans to Indigenous communities and to include how Indigenous communities will be informed and	The Commission has revised the condition to incorporate suggestions from Driftpile Cree Nation, Blood Tribe and Piikani Nation. The Commission has also imposed Condition 15 to ensure that NGTL will further consult with potentially affected Indigenous communities.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		involved in emergency response activities and measures.	
	Whitefish (Goodfish) Lake First Nation #128  Ermineskin Cree Nation  Saddle Lake Cree Nation	Whitefish (Goodfish) Lake First Nation #128, Ermineskin Cree Nation and  Saddle Lake Cree Nation proposed that the condition be revised to require the inclusion of indigenous communities in terms of training and development of capacity, collection of TLU data to help inform emergency response, and to ensure proper notification procedures have been implemented.	The Commission has imposed Condition 15 to ensure that NGTL will further consult with potentially affected Indigenous communities.
5 – Environmental Protection Plan (EPP) for Section 58 Facilities and Activities		n/a	The Commission has modified the condition to require NGTL to provide copies of the updated EPP to Indigenous peoples who have expressed an interest in the condition filings
6 – Camp Management Plan	NGTL	NGTL suggested that this condition be applicable only to new greenfield temporary construction camps to align with Section 58 potential condition 7. NGTL commented its understanding is this condition does not apply to an expansion of an existing camp.  NGTL also requested altering the date to 30 days prior to commencing any new temporary camp construction due to the need to start this activity earlier than other Section 58 activities to have a camp in place when needed.	The Commission has modified the condition to clarify that it applies to all construction camps. Discussion in Section 7.6.4.  The Commission is of the view that 45 days is appropriate for this condition.
7 – Additional Temporary Construction Camp(s)	NGTL	NGTL commented that it would need to start construction activities for any new temporary construction camps earlier than other Section 58 activities in order to have the camp in place when it is needed. NGTL requested the	The Commission is of the view that 45 days is appropriate for this condition.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		notification timing be changed from 45 to 30 days prior to commencing construction of a new temporary construction.	
	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	The Indigenous groups identified support for this condition as it is a positive step for ensuring local Indigenous communities regarding worker camps are properly managed and addressed.	n/a
8 – Programs and Manuals – Safety		n/a	n/a
9 – Construction Monitoring Plan for Indigenous Peoples	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Recommended that the condition be amended such that the report include the following:  a)vii) a description of potential oversight mechanisms to provide accountability and a more formal governance structure regarding the involvement of Indigenous communities in construction monitoring. Potential mechanisms to consider could include, but not be limited to:  a. Indigenous Advisory Monitoring Committee;  b. Environmental Management Committee;  c. Conditions Compliance Monitoring Committee; and	The Commission is not recommending that the Government of Canada create an IAMC for this Project. However, consistent with NGTL's commitment to incorporate industry accepted best practices and procedures, the Commission encourages NGTL to offer to engage with Indigenous communities that have direct experience with IAMC monitoring activities, or Indigenous Caucus members from both the Trans Mountain Expansion Project and the Enbridge Line 3 IAMCs. The purpose of such engagement would be to gather input on how meaningful monitoring opportunities can be built into NGTL's ACPP, PCM and ongoing engagement. See discussion in Section 7.6.2.  The Commission has, in Chapter 1 of the Report, made Recommendation #2 to governments and agencies for increased

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		d. Regional Environmental Monitoring Board.	involvement of Indigenous peoples in pre- and post-disturbance monitoring.
	NRCan	The condition does not contain a requirement for NGTL to demonstrate how Indigenous peoples were engaged and, as relevant, how information gained through those engagements was incorporated into NGTL's plan.	The Commission has made a modification to the condition to incorporate suggestions from NRCan. See discussion in Section 7.6.2.
10 – Outstanding Traditional Land and Resource Use Investigations	NGTL	Suggested the date of filing be changed from 45 days to 30 days prior to commencing construction of the section 58 Facilities and Activities.	The Commission maintains that 45 days is appropriate for this condition.
	Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation	Recommended that the condition be amended such that the report include the following:  a)vi) a summary of how Indigenous Knowledge, Land Use, and Occupancy (IKLUO) information was used for identifying species that would be monitored throughout the life of the Project, including protection measures within the EPP; and  a)vii) a summary of how IKLUO will be used to inform decisions throughout the Project lifecycle, including how communities will be informed and consulted throughout the Project's lifecycle.	In response, the Commission has made a modification to the condition. See discussion in Section 7.6.7.1.
11 – Report on Engagement with Indigenous Peoples	Blood Tribe Driftpile Cree Nation Piikani Nation	Recommended that the condition be amended such that the report include the following:  c) The CER must provide a 21-day comment period on reports where Indigenous	The Commission notes NGTL's commitment to continue to engage all identified Indigenous communities according to their level of interest in the Project and the potential adverse impact of the Project on Indigenous or Treaty rights.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
	Saddle Lake Cree Nation	communities have the opportunity to comment on and verify the information provided by NGTL in the reports. In instances where inaccuracies are identified, NGTL must issue a revised version of the report within 21 days of receipt of direction from the Commission.	<p>The Commission expects NGTL, as it does all companies, to continue to learn about the concerns that Indigenous peoples may have about a project, and to discuss ways to address those concerns to the extent possible. The Commission also encourages Indigenous peoples with an interest in the Project to continue to engage with NGTL. See discussion in Section 7.6.1.</p> <p>Throughout the lifecycle of the Project the CER will hold NGTL accountable for meeting its regulatory requirements.</p>
12 – Archaeological and Heritage Resource Clearances		n/a	n/a
13 – Commitments Tracking Table	NGTL	Based on the short duration and limited nature of Section 58 activities in advance of Section 52 construction, NGTL suggested that the reporting period be revised from quarterly to annually as it would be more efficient for NGTL, the commission and interested parties. Subsequently, NGTL expects that reporting on Section 58 activities that may be in progress as of the start of Section 52 construction will be rolled into the Section 52 Construction Progress Reporting.	The Commission is of the view that quarterly is consistent with other NGTL projects and does not pose a regulatory burden on any of the parties.
14 – Construction Schedule	Blood Tribe Driftpile Cree Nation Piikani Nation	Suggested that the condition timing be changed to give more time to ensure Indigenous monitors and guardians are informed and ready to go in the field. Suggested changing 14 days to 30 days. Also requested the condition include serving copies	The Commission has modified the condition to require NGTL to provide a copy of the construction schedule to all Indigenous peoples who have expressed an interest in receiving a copy.

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
	Saddle Lake Cree Nation	of the construction schedule(s) on interested Indigenous communities.	The Commission is of the view that 14 days is an appropriate amount of time for NGTL to finalize the details of the construction schedule and file it for review.
15 – Emergency Management Continuing Education Program	NGTL	NGTL submitted that this condition should be struck. NGTL said that TransCanada has a long-established Public Awareness Program (PA Program) which includes continuing education, public safety and liaison activities. NGTL submitted that the PA Program meets the requirements of section 35 of the <i>Onshore Pipeline Regulations</i> and the intent of New Potential Condition 16. As a result, this condition is unnecessary and redundant.	<p>The Commission is of the view that consultation and communication between NGTL and Indigenous communities is needed. The Commission has decided not to grant NGTL's request.</p> <p>The Commission has modified to condition to require NGTL to provide a copy of the filing to all interested Indigenous peoples.</p>
16 – Construction Progress Reports		n/a	n/a
17 – Sunset Clause		n/a	n/a
18 – Quantification of Construction-related Greenhouse Gas (GHG) Emissions	NGTL	NGTL submitted that this condition should be struck, as the quantification of GHG emissions associated with Section 58 activities will be captured by Section 52 Condition 24.	<p>The Commission is of the view that this condition remain separate. Although the filings may be combined together, the data should be separated and clearly identified between the section 52 and section 58 activities.</p> <p>The Commission has also revised the condition to require NGTL to provide a copy of the filing to all interested Indigenous peoples, and to notify the Commission within 7 days of filing the report that the copies have been provided.</p>
	Blood Tribe Driftpile Cree Nation	Recommended that the condition be amended such that the report include the following:	The Commission is not recommending that the Government of Canada create an IAMC for this Project. However, consistent with NGTL's

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
19 – Post-Construction Monitoring Plan for Indigenous Peoples	Piikani Nation Saddle Lake Cree Nation	<p>a)vii) a description of potential oversight mechanisms to provide accountability and a more formal governance structure regarding the involvement of Indigenous communities in construction monitoring. Potential mechanisms to consider could include, but not be limited to:</p> <ul style="list-style-type: none"> <li>a. Indigenous Advisory Monitoring Committee;</li> <li>b. Environmental Management Committee;</li> <li>c. Conditions Compliance Monitoring Committee; and</li> <li>d. Regional Environmental Monitoring Board.</li> </ul>	<p>commitment to incorporate industry accepted best practices and procedures, the Commission encourages NGTL to offer to engage with Indigenous communities that have direct experience with IAMC monitoring activities, or Indigenous Caucus members from both the Trans Mountain Expansion Project and the Enbridge Line 3 IAMCs. The purpose of such engagement would be to gather input on how meaningful monitoring opportunities can be built into NGTL's ACPP, PCM and ongoing engagement. See discussion in Section 7.6.2.</p> <p>The Commission has, in Chapter 1 of the Report, made Recommendation #2 to governments and agencies for increased involvement of Indigenous peoples in pre- and post-disturbance monitoring.</p>
	NRCan	The condition does not contain a requirement for NGTL to demonstrate how Indigenous peoples were engaged and, as relevant, how information gained through those engagements was incorporated into NGTL's plan.	The Commission has made a modification to the condition to incorporate suggestions from NRCan. See discussion in Section 7.6.2.
20 – Employment, Contracting, and Procurement Report	NGTL	Requested that this condition be revised for NGTL to report solely on Indigenous employment, contracting and procurement levels. NGTL notes that no parties have raised NGTL's non-Indigenous employment, contracting and procurement as an issue as part of these proceedings and therefore this is not an issue that warrants a condition.	<p>The Commission maintains that this condition be broader than only Indigenous employment to have a fuller view of NGTL's employment, contracting, and procurement practices.</p> <p>Note that the Commission has made modifications to the original condition provided for comment. This is discussed in Section 7.6.6.</p>

Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		<p>NGTL requested removing the word 'analysis' as disclosing details beyond a summary could potentially compromise NGTL's competitive processes on future projects, exacerbate unresolved contracting issues that may have occurred during construction, and potentially expose proprietary information of contractors.</p> <p>In part c), NGTL suggested minor wording changes, replacing "consultation" with "engagement efforts".</p>	
	<p>Blood Tribe Driftpile Cree Nation Piikani Nation Saddle Lake Cree Nation</p>	<p>Recommended that the condition be amended such that the report include the following:</p> <p>d) a description of training and other capacity building initiatives to increase accessibility to employment and/or business contracting opportunities related to the Project's construction and operations phases; and</p> <p>e) a description of the local, regional, and Indigenous hiring targets and a detailed analysis of NGTL's performance on reaching these targets. In instances where targets were not met, NGTL must provide a description of accommodation measures, a rationale as to why targets were not met, and a description of measures to be applied in the future to ensure targets will be met.</p>	<p>To increase the transparency of NGTL's commitments regarding providing contracting and employment opportunities, the Commission would impose Condition 12, requiring NGTL to file an update to its Employment, Contracting and Procurement Plan which would include the submission of its Prime Contractors Aboriginal Participation Plan, and a summary of how this Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program. See discussion in Section 7.6.6.</p>
<p>21 – Condition Compliance by the Accountable Officer</p>	<p>NGTL</p>	<p>NGTL suggested removing this condition as the section 58 activities proposed largely include temporary infrastructure, ROW preparation activities, as well as trenchless crossings in select areas and will therefore not</p>	<p>The Commission is of the view that it is more appropriate to modify the condition to read "...within 30 days of the date that the approved section 58 Facilities and Activities are</p>



Commission's Potential Condition	Party	Summary of Comments from Parties on Commission Potential Conditions	Commission Response to Comments from Parties
		<p>be placed in-service. NGTL does seek an order pursuant to section 58 exempting NGTL from the requirements of subsections 31(c), 31(d) and 33 for the proposed compressor unit additions to commence construction as early as possible. The compressor unit additions will be placed into service with the balance of the Project, therefore this condition is redundant and will be covered under section 52, condition 19 for the entire Project.</p>	<p>completed, NGTL must file...", rather than deleting the condition entirely.</p>

## Appendix VII - Summary of Concerns from Indigenous Peoples, Responses from NGTL and Government of Canada, and Commission Analysis

This Appendix provides a summary of the general and specific concerns and issues raised by Indigenous peoples through this proceeding, as well as summaries of the responses to these concerns provided by NGTL and/or the Government of Canada, analysis by the Commission (including conditions), and applicable requirements provided through regulation and/or legislation. The issues and concerns include those raised directly by Indigenous peoples through their participation in the hearing, as well as summaries of Indigenous concerns and interest as recorded by NGTL in its evidence. Table 7-2 in the Report refers to the written and oral submissions by Indigenous Intervenors who participated in the hearing. The Commission notes that identifying and referring to issues and concerns as contained within the record (as provided in this Appendix) may have resulted in some issues being categorized in a summary manner. Some direct and indirect references within the record may therefore not be exhaustively listed in the issues below. Anyone wishing to fully understand the context of the information and evidence provided by Indigenous peoples, as well as the applicable responses to these concerns by NGTL and/or the Government of Canada, should therefore familiarize themselves with the entire record of the hearing.

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
<b>Engagement by the Applicant</b>				
Lack of meaningful or inclusive engagement by NGTL throughout the various phases of the Project	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Gunn Métis Local 55</li> </ul>	<p>NGTL stated that engagement regarding the overall Project began in February 2018.</p> <p>NGTL indicated that its Aboriginal Engagement Program was designed, developed and adapted according to the scope, nature, location, and potential effects of the Project, and to the identified interests, information needs and concerns of Indigenous peoples.</p>	<p>The Commission finds that with its recommended conditions (Conditions 10, 12, 14, 27 for the Section 52 Pipeline and Related Facilities), imposed Conditions (conditions 6, 10, 11, 22 for the Section 58 Facilities and Activities) and NGTL's commitments, NGTL would continue to engage with Indigenous peoples to learn more about their interests and concerns; demonstrate how it has considered and addressed information provided in outstanding traditional land and resource</p>	7.6.1

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Horse Lake First Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O'Chiese First Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Siksika Nation</li> <li>• Sunchild First Nation</li> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>NGTL stated that it will continue to engage all identified Indigenous communities according to their level of interest in the Project and the potential adverse impact of the Project on Indigenous or Treaty rights.</p> <p>NGTL committed to ongoing engagement throughout all phases of the Project with potentially affected Indigenous communities, and will address potential issues on a case-by-case basis, should any arise.</p>	<p>use investigations in its EPP; and address issues that may arise throughout the lifecycle of the Project.</p>	
<p>Adequacy of Government of Canada's Consultation Process with Indigenous Peoples</p>	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Blood Tribe</li> <li>• Driftpile Cree Nation</li> <li>• O'Chiese First Nation</li> <li>• Saddle Lake Cree Nation</li> </ul>	<p>NRCAN stated that the Government intends to rely, to the extent possible, on the Regulator's assessment of the Project to fulfill any federal duty to consult related to the Project, and that during the NEB hearing process, the Crown will be tracking issues raised by Indigenous peoples.</p> <p>NRCAN stated that matters brought forward to the NEB will be assessed by NRCAN to determine whether additional consultation</p>	<p>The Commission is of the view that there has been adequate consultation and accommodation for the purpose of the Commission's decision on this Project.</p> <p>The Commission notes that NRCAN will produce the Consultation and Accommodation Report to be presented to the GiC with this Report. The GiC, in making its determination in relation to the Project, will need to determine whether the Crown's duty to consult has been satisfied.</p>	<p>7.6.8</p>

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		<p>obligations may exist after the CER issues the recommendation report on the Project.</p> <p>NRCan indicated that it will develop the Crown Consultation and Accommodation Report to support the Minister of NRCan in making a recommendation to the GiC for consideration and decisions on the Project.</p>		
<b>Environmental and socio-economic assessment (ESA) methodology</b>				
<p>Adequacy of NGTL's ESA methodology, including selection of valued components (VCs), method of assessing Project impacts to asserted and established Indigenous and treaty rights, and inclusion of traditional knowledge (TK) and Indigenous concerns</p>	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O'Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> </ul>	<p>NGTL stated that its ESA assessed the potential effects of the Project in accordance with the Filing Manual requirements, methodologies that have been accepted by the Commission for past projects, and CEAA guidance. NGTL is of the view that these methods produced conclusions that are reasonable, defensible and valid.</p> <p>NGTL indicated that it received TK through ongoing engagement, and provided participating Indigenous communities the opportunity to collect Project-specific TK. NGTL indicated that this TK information was integrated into the overall ESA and was considered in the identification of key indicators for TLRU and for relevant biophysical valued components, given the close connection to TLRU resources.</p>	<p>The Commission notes that NGTL's approach in assessing potential Project effects on the current use of lands and resources for traditional purposes by Indigenous peoples was based on the Filing Manual and CEAA 2012 requirements and guidance.</p> <p>The Commission is of the view that NGTL's approach, including its methodology, for assessing the Project's potential effects on the current use of lands and resources for traditional purposes by potentially affected Indigenous groups was appropriate.</p> <p>The Commission is of the view that NGTL has included sufficient baseline information that is supported by a description of the methodology used and the rationale for that methodology. The Commission is also of the view that NGTL's ESA properly</p>	<p>7.6.7.1</p> <p>8.6.3</p>

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>NGTL stated that Project effects on biophysical VCs were considered in the assessment of TLRU key indicators in the TLRU assessment as related to potential disturbance to harvesting areas, access to areas, and species availability and quality.</p> <p>NGTL indicated that when it received new information after the ESA was completed, it reviewed the information to determine whether it identified potential adverse effects that were not assessed in the ESA, if any new mitigation was required, and whether the results changed the conclusions of the ESA.</p> <p>NGTL indicated that it examined the interactions of the TLRU indicators, that its assessment assumes that TLRU harvesting sites, areas, and activities have the potential to occur, and that traditionally used species identified as being present within the Project regional study area could be hunted, trapped, fished, or gathered by Indigenous peoples, even if Indigenous communities did not identify specific activities, species, or sites.</p> <p>NGTL indicated that its approach to assessing potential Project effects on the current use of lands and resources for traditional purposes by Indigenous peoples</p>	<p>analyzed and characterized the level of significance of potential adverse environmental effects as a result of the Project as outlined in the Filing Manual.</p>	

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		<p>complied with the Filing Manual and CEEA 2012 requirements, and is consistent with ESAs that have been accepted by the Regulator for past projects.</p>		
<b>Effects on the rights and interests of Indigenous peoples</b>				
<p>Project impacts on the rights and interests of Indigenous peoples</p>	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan’s First Nation</li> <li>• East Prairie Métis Settlement</li> <li>• Ermineskin Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta Region 3</li> </ul>	<p>NGTL stated that the Project has been designed to parallel existing disturbances for approximately 86% of its length; allowing the Project Footprint to be reduced by utilizing temporary workspace on the adjacent disposition, and minimizing the fragmentation of the landscape.</p> <p>NGTL stated that reclamation and cleanup will be completed to maintain equivalent land capability, ensuring the ability of the land to support various land uses similar to the uses that existed before construction. NGTL stated that areas affected by current land use could be available for traditional use.</p> <p>NGTL confirmed that the ROW will remain available for use during construction and operation of the Project, save for short periods during active construction, and Indigenous members’ right of access will remain unchanged by the pipelineROW.</p>	<p>The Commission determined it is necessary to include conditions in relation to Indigenous peoples’ concerns and the potential impacts on the rights and interests of Indigenous peoples.</p> <p>The Commission recommends Conditions 10, 12, 14, 27 for the Section 52 Pipeline and Related Facilities, and would impose Conditions 6, 10, 11, 22 for the Section 58 Facilities and Activities.</p> <p>The Commission is of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples, after mitigation, are not likely to be significant and can be effectively addressed.</p> <p>The Commission has, in Chapter 1 of the Report, made Recommendation #4 to the Government of Alberta that it investigate the creation of regional areas of Crown land</p>	<p>7.6.1</p> <p>7.6.4</p> <p>7.6.7</p> <p>7.6.8</p> <p>Ch. 1</p>

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Nekaneet Cree Nation</li> <li>• O'Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>NGTL stated that it cannot restrict or limit access to Indigenous land users except in localized areas during the short periods of active construction.</p> <p>NGTL indicated that the Project will result in a total area of 0.92 ha of additional Crown land (0.04% of the total footprint) which will be unavailable for traditional use.</p> <p>NGTL submitted that the <i>Petty Trespass Act</i> does not apply to the pipelineROW.</p> <p>NGTL stated that potential effects on Indigenous and Treaty Rights were considered in the ESA through the assessment of potential Project effects on current use of lands and resources for traditional purposes, in accordance with the requirements of CEAA, 2012 and the Filing Manual.</p> <p>NRCan stated that the Crown views Indigenous participation in monitoring as an important contribution to addressing the potential impacts of the Project on section 35 Indigenous and Treaty rights.</p>	<p>that could be placed under shared stewardship with Indigenous peoples.</p>	
Project impacts on the current use of lands and resources	<ul style="list-style-type: none"> <li>• Alexander First Nation</li> </ul>	<p>NGTL indicated that it is of the view that the Project has been designed to reasonably avoid or minimize impacts on TLRU, including cultural activities: the Project is</p>	<p>The Commission notes that NGTL's Project would result in minimal new permanent footprint on Crown land and that the</p>	7.6.7.3

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
<p>for traditional purposes, including hunting, fishing, gathering, trapping, and culture</p>	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Aseniwuche Winewak Nation</li> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan’s First Nation</li> <li>• East Prairie Métis Settlement</li> <li>• Ermineskin Cree Nation</li> <li>• Gunn Métis Local 55</li> <li>• Horse Lake First Nation</li> <li>• Kelly Lake Cree Nation</li> <li>• Kelly Lake Métis Settlement Society</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta Region 3</li> </ul>	<p>designed to parallel existing linear disturbances, overlap existing rights of way to the extent practical, and to have construction activities restricted mainly to the ROW, all of which reduce the amount of Project clearing and disturbance to adjacent lands and TLRU.</p> <p>NGTL noted the EPP provides details regarding mitigation for clean-up and reclamation with an objective to maintain equivalent land capability on lands within the construction footprint (excluding aboveground facilities), ensuring the ability of the land to support various land uses similar to the uses that existed before construction.</p> <p>NGTL stated that with the exception of localized areas during the short period of active construction, the ROW will remain available for traditional use during construction of the Project.</p> <p>NGTL stated that the Project is not expected to result in impacts to the intergenerational transfer of traditional knowledge, given the construction schedule, and since residual effects for TLRU indicators were predicted by NGTL to be short-term to medium-term in duration and reversible.</p>	<p>remainder of the Project footprint would be available for TLRU activities.</p> <p>The Commission notes that NGTL proposed a comprehensive suite of mitigation measures to reduce the adverse effects of the Project on TLRU.</p> <p>The Commission recommends Conditions 10, 12, 27 for the Section 52 Pipeline and Related Facilities, and would impose Conditions 6, 10, 22 for the Section 58 Facilities and Activities.</p> <p>The Commission finds that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples are not likely to be significant.</p>	



Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Métis Nation of Alberta Region 6</li> <li>• Mountain Métis Nation Association (Grande Cache Métis Local 1994)</li> <li>• Nekaneet Cree Nation</li> <li>• O'Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Sturgeon Lake Cree Nation</li> <li>• Sunchild First Nation</li> <li>• Tsuut'ina Nation</li> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>NGTL indicated that during pipeline operations, since the Project pipeline sections will be buried and the ROW reclaimed, no effects on land and resource use are expected, and that the use of NGTL's pipeline ROW within Crown lands is generally not restricted to land users, including Indigenous communities. NGTL stated that the only activities that would not be permitted within the ROW during operations would be ones that could pose a safety risk.</p>		
Adequacy of NGTL's TLRU cumulative	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> </ul>	<p>NGTL stated that the TLRU assessment acknowledged that past and existing projects and activities in the TLRU local</p>	<p>The Commission recognizes how ongoing and potential cumulative effects can have lasting cultural implications. To minimize or avoid to the extent possible, specific</p>	7.6.7.4

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
effects assessment	<ul style="list-style-type: none"> <li>• Aseniwuche Winewak Nation</li> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• East Prairie Métis Settlement</li> <li>• Ermineskin Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• Kelly Lake Cree Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta Region 3</li> <li>• Métis Nation of Alberta Region 6</li> <li>• O'Chiese First Nation</li> <li>• Piikani Nation</li> </ul>	<p>study area have directly and indirectly affected TLRU.</p> <p>NGTL stated that the description of the existing environmental and socio-economic setting in each section of the ESA, including TLRU, reflects changes that have occurred from past developments and activities as well as current conditions and activities.</p> <p>NGTL indicated that its cumulative effects assessment conservatively assumed that past and existing disturbances represent a moderate to high change from an undisturbed landscape.</p> <p>NGTL stated the activities that have resulted in the existing disturbance are in alignment with provincial management plan goals and objectives; and that the existing landscape is not homogenous and continues to support multiple land uses and habitats and resources.</p> <p>NGTL indicated that while the cumulative effects assessment conservatively assumed that future activities will be 100% located within areas of native vegetation and for most indicators overlapping suitable habitat, some of the ongoing activities will actually be located within existing ROW or other disturbed areas, and not within native vegetation or suitable habitat for traditionally hunted species.</p>	<p>Project-related cumulative effects on the TLRU, the Commission has considered NGTL's mitigation measures to address effects on the biophysical resources that support TLRU activities, NGTL's mitigation measures to address effects on TLRU activities, and the Commission's additional related recommended Conditions (10, 12, 27 for the Section 52 Pipeline and Related Facilities), and those Conditions it would impose (6, 10, 22 for the Section 58 Facilities and Activities). As a result, the Commission is of the view that the Project would not likely result in significant adverse cumulative effects on TLRU.</p>	

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Sunchild First Nation</li> <li>• Tsuut'ina Nation</li> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>NGTL stated that the cumulative effects assessment methodology follows the Canadian Environmental Assessment Agency's Operational Policy Statement for Assessing Cumulative Environmental Effects under the CEAA, 2012 and the Filing Manual.</p>		
Project impacts on heritage resources	<ul style="list-style-type: none"> <li>• Alexander First Nation</li> <li>• Alexis Nakota Sioux Nation</li> <li>• Asini Wachi Nehiyawak Traditional Band</li> <li>• Blood Tribe</li> <li>• Driftpile Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• Mountain Métis Nation Association</li> </ul>	<p>NGTL indicated that its route selection process for the Project considered and balanced several criteria when evaluating route options, including, avoiding heritage resources.</p> <p>NGTL stated that it will comply with any approval conditions and requirements, including mitigation, issued under the <i>Historical Resources Act</i> by ACMSW before construction and any future ground disturbance activities.</p> <p>NGTL indicated that if a chance discovery of a new historic resource is encountered during construction, NGTL will implement its Cultural Resource Discovery Contingency Plan, as described in the EPP.</p>	<p>To ensure that the Commission and all Parties, including potentially affected Indigenous peoples, are aware of any approvals or conditions imposed by provincial authorities for the Project, the Commission recommends Condition 15 for the Section 52 Pipeline and Related Facilities and would impose Condition 13, for the Section 58 Facilities and Activities.</p> <p>The Commission is of the view that the potential adverse effects of the Project on heritage resources are not likely to be significant.</p>	7.6.3

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	(Grande Cache Métis Local 1994) <ul style="list-style-type: none"> <li>• Paul First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> </ul>			
Opportunities for Indigenous peoples to monitor the Project	<ul style="list-style-type: none"> <li>• Alexander First Nation</li> <li>• Alexis Nakota Sioux Nation</li> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• Kelly Lake Cree Nation</li> <li>• Métis Nation of Alberta Region 3</li> </ul>	<p>NGTL stated that it will be developing an Aboriginal Construction Participation Program (ACPP) for the Project which will provide employment opportunities for individuals from participating Indigenous communities to “grow their skills and understanding of NGTL’s construction activities and environmental protection measures through observation and discussion of Project construction activities”.</p> <p>NGTL stated that it will provide the opportunity to participate in the ACPP to all potentially affected Indigenous communities that identify interest in participating.</p> <p>NGTL stated that engagement with Indigenous communities is an input into developing the ACPP Plan for the Project, allowing for integration of Indigenous concerns that pertain to construction into the plan, as applicable.</p>	<p>The Commission recommends Condition 12 and Condition 27, for the Section 52 Pipeline and Related Facilities, and would impose Condition 10 and Condition 22 for the Section 58 Facilities and Activities. The Commission is of the view that these conditions would enhance the involvement of Indigenous peoples to participate more meaningfully in monitoring opportunities.</p>	7.6.2

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Wesley First Nation</li> </ul>	<p>NGTL stated that the Project will implement Post-construction Monitoring (PCM) activities, which include an assessment of reclamation success.</p> <p>NGTL stated that PCM activities will identify recommended corrective actions for outstanding environmental issues.</p> <p>NGTL stated that it requires additional information from Indigenous communities to understand the interest in and specific issues to be addressed by involvement in PCM activities before it can determine Indigenous involvement opportunities to best address post-construction specific issues, if any.</p>		
Indigenous Advisory Monitoring Committee	<ul style="list-style-type: none"> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• O'Chiese First Nation</li> <li>• Piikani Nation</li> </ul>	<p>NGTL stated that it disagrees with the recommendation that the CER establish an IAMC for the Project, indicating that the goal of NGTL's Aboriginal Engagement Program for the Project is to provide Project information and seek feedback from Indigenous communities in order to anticipate, prevent, mitigate and manage situations that have the potential to affect Indigenous communities.</p> <p>NGTL stated that IAMCs should be reserved for exceptional projects, like the Trans Mountain Expansion Project or the</p>	The Commission is not recommending that the Government of Canada create an IAMC for this Project. However, consistent with NGTL's commitment to incorporate industry accepted best practices and procedures, the Commission encourages NGTL to offer to engage with Indigenous communities that have direct experience with IAMC monitoring activities, or Indigenous Caucus members from both the Trans Mountain Expansion Project and the Enbridge Line 3 IAMCs. The purpose of such engagement would be to gather input on how meaningful monitoring opportunities can be built into	7.6.2

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Saddle Lake Cree Nation</li> <li>• Wesley First Nation</li> </ul>	<p>Enbridge Line 3 Project, and that if an IAMC is required for the Project, NGTL is concerned that most CER-regulated projects would require similar conditions. NGTL stated that such conditions would create significant regulatory burden for proponents, the Regulator, and Indigenous communities that, in its view, is disproportionate to the benefits any such committee would have. NGTL also indicated that there is a lack of important details on how the IAMC would be structured, its functions, and its decision-making process.</p> <p>In response to the suggestion that an IAMC should be created for the entire NGTL system, NGTL stated that this is a matter that extends beyond the Commission's jurisdiction in this hearing.</p>	<p>NGTL's ACPP, PCM and ongoing engagement.</p> <p>The Commission has, in Chapter 1 of the Report, made Recommendation #2 to governments and agencies for increased involvement of Indigenous peoples in pre- and post-disturbance monitoring.</p>	
Restricted access to traditional use areas, increased access by general public	<ul style="list-style-type: none"> <li>• Alexander First Nation</li> <li>• Alexis Nakota Sioux Nation</li> <li>• Blood Tribe</li> <li>• Driftpile Cree Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Gunn Métis Local 55</li> </ul>	<p>NGTL stated that no new permanent access is anticipated for the Project, and that existing infrastructure will be used, where practical. NGTL noted that access to the Project will be from existing public and private access points and roads, respecting traffic safety and concern for other users, and controlled existing access and rights of way of others.</p> <p>NGTL noted that with the exception of the January Creek control valve, which will be constructed on a proposed site of 0.4 ha, no</p>	<p>The Commission accepts that during construction, access for traditional users would not be impeded except when there is active construction or other identified safety risks (e.g., open trench or excavations). The Commission also accepts that, after construction is completed, access to the ROW would be unchanged (except for access control management measures where applicable to deter an increase in motorized public access along new pipeline ROWs, on new temporary construction access, and into existing linear disturbances</p>	7.6.7.2 Ch. 1

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Horse Lake First Nation</li> <li>• Kelly Lake Cree Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O'Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Sunchild First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>new gates or fences will be constructed for the Project on Crown land where they do not already exist, and that any existing access control (e.g., gates, signage, fenced locations) will be maintained.</p> <p>NGTL stated that during construction, access will not be restricted but may be temporarily affected to mitigate safety concerns: where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users will not be impeded.</p> <p>NGTL indicated that it will not implement access control measures on trails or travelways that are intersected by the Project Footprint if any are identified by Indigenous communities.</p> <p>NGTL indicated that following construction, it will only implement access control management measures where applicable to deter an increase in motorized public access along new pipeline ROWs, on new temporary construction access, and into existing linear disturbances that intersect the Project ROW.</p>	<p>that intersect the Project ROW) and plant harvesting, fishing, hunting, trapping, ceremonial practices, travel, and use of cultural sites would still be possible.</p> <p>The Commission has, in Chapter 1 of the Report, made Recommendation #6 to governments to review their policies regarding access for Indigenous peoples to Crown lands so that they are not hindered in exercising their rights.</p>	
<b>Social and cultural well-being</b>				

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
<p>Project impacts on community safety as a result of Project contractors and workers, construction camp(s), and traffic</p>	<ul style="list-style-type: none"> <li>• Alexander First Nation</li> <li>• Blood Tribe</li> <li>• Driftpile Cree Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Gunn Métis Local 55</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O'Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> </ul>	<p>NGTL stated that it plans to use existing open camps in combination with existing local accommodations for the purposes of pipeline construction activities.</p> <p>NGTL stated that an existing NGTL camp near the Nordegg Compressor Station, with a capacity of 210 people, is expected to be used for the Nordegg Compressor Station Unit Addition, supplemented where needed by local accommodation.</p> <p>NGTL stated that a camp management plan will be developed.</p> <p>NGTL stated that the unit additions at the Didsbury and Beiseker Compressor Stations are expected to rely on local accommodation.</p> <p>NGTL stated that Project contractors are required to:</p> <ul style="list-style-type: none"> <li>• have their own Site-Specific Safety Plans;</li> <li>• have their own Emergency Response Plans;</li> <li>• provide their own medical staff to address minor medical issues and first aid incidents; and</li> </ul>	<p>To ensure that the Commission is aware of NGTL's plans regarding construction camps, the Commission would impose Conditions 7 and 8 for the Section 58 Facilities. The Commission expects the Camp Management Plan to include gender-specific training, and a cultural awareness program that is developed and delivered with input from local Indigenous communities.</p> <p>The Commission also recommends Condition 14 for the Section 52 Pipeline and Related Facilities, and would impose Condition 11 for the Section 58 Facilities and Activities.</p> <p>The Commission is satisfied with NGTL's approach to assessing concerns related to the social and cultural well-being of Indigenous peoples.</p>	<p>7.6.4</p>



Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		<ul style="list-style-type: none"> <li>• develop a construction orientation for all personnel to ensure safe and respectful conduct in all work.</li> </ul> <p>NGTL stated that it contributes to the development of the construction orientation and will ensure the requisite cultural sensitivity component is included so that all personnel working on the Project are informed about Indigenous culture and heritage resources.</p> <p>NGTL stated that Project employees and contractors will adhere to:</p> <ul style="list-style-type: none"> <li>• a Code of Conduct</li> <li>• TransCanada's Alcohol and Drug Policy.</li> <li>• TransCanada's Health, Safety and Environment Commitment Statement</li> </ul> <p>NGTL stated that it will implement a Traffic Control Management Plan.</p>		
<b>Human health</b>				
Project impacts on human health	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> </ul>	NGTL indicated that potential changes to the health of local Indigenous populations related to changes in water quality beyond the range of guideline values, reduced air quality and increased comprehensive sound	The Commission is of the view that any residual effect is likely to be limited to the period during construction, restricted primarily to the Project footprint, and is low in magnitude. The Commission is of the view that the potential adverse effects of the	7.6.5

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> <li>• O'Chiese First Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Wesley First Nation</li> </ul>	<p>levels were assessed and that no residual effects to human health were predicted.</p> <p>NGTL indicated that it considered how the Project might affect the health of those using traditional areas for traditional activities. NGTL stated that Project effects to traditional hunting, trapping, fishing and plant gathering were predicted to be not significant.</p> <p>NGTL stated that the Project is not anticipated to measurably affect groundwater quantity or quality, and that mitigation would protect groundwater wells.</p> <p>NGTL stated that an unignited release or rupture would quickly dissipate in the atmosphere, resulting in minimal risk to the environment or to human health in the vicinity of the release.</p>	<p>Project on human health are not likely to be significant.</p>	
<b>Employment and procurement</b>				
<p>Opportunities for employment, contracting, training, and economic benefits for Indigenous</p>	<ul style="list-style-type: none"> <li>• Alexander First Nation</li> <li>• Alexis Nakota Sioux Nation</li> <li>• Bearspaw First Nation</li> </ul>	<p>NGTL stated that projects contribute economic benefits to local communities through employing qualified Indigenous businesses and individuals that are affiliated with Indigenous communities.</p> <p>NGTL stated that it works directly with Indigenous communities through community</p>	<p>To increase the transparency of NGTL's commitments regarding providing contracting and employment opportunities, the Commission recommends Condition 13 for the Section 52 Pipeline and Related Facilities and would impose Condition 12 for the Section 58 Facilities and Activities.</p>	<p>7.6.6</p> <p>Ch. 1</p>

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
individuals, communities, and businesses	<ul style="list-style-type: none"> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Gunn Métis Local 55</li> <li>• Horse Lake First Nation</li> <li>• Kelly Lake Cree Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• Mountain Métis Nation Association (Grande Cache Métis Local 1994)</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Sturgeon Lake Cree Nation</li> <li>• Wesley First Nation</li> </ul>	<p>investment, education and training, and project-related employment and contracting, to promote and enhance long-term benefits for Indigenous communities.</p> <p>NGTL stated it will continue to identify opportunities for community investment in the region, in the areas of safety, community and environment.</p> <p>NGTL stated that it will be developing an ACPP for the Project, and that individuals employed in the ACPP will receive compensation for their employment which will include on the job training.</p> <p>NGTL stated that it has an Aboriginal Contracting and Employment Program to maximize employment and contracting opportunities for the local Indigenous communities potentially affected by the Project.</p> <p>NGTL stated that its Prime Contractor would submit an Aboriginal Participation plan to NGTL which would align with NGTL's Aboriginal Contracting and Employment program.</p> <p>NGTL stated that it will develop and maintain a list of contracting opportunities</p>	<p>The Commission also recommends Condition 28 for the Section 52 Pipeline and Related Facilities, and would impose Condition 23 for the Section 58 Facilities and Activities.</p> <p>The Commission is of the view that the Project would benefit local, regional, and provincial economies. The Commission is also of the view that the Project would result in increased employment for Indigenous individuals and contracts for Indigenous-owned businesses.</p> <p>The Commission has, in Chapter 1 of the Report, made Recommendation #5 to the Government of Alberta that it investigate the establishment of an Indigenous peoples' educational endowment based on the capital value of any new industrial construction in the Province.</p>	

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<ul style="list-style-type: none"> <li>Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>that are within the capacity of Indigenous and local contractors in the area.</p> <p>NGTL stated that it will prepare an Aboriginal and local participation plan for the Project. NGTL stated that this plan will include the processes used to make contracting and employment opportunities available to Indigenous and local contractors.</p>		
<b>Environmental effects</b>				
<p>Effects on wildlife and wildlife habitat, including amphibians, breeding birds and species at risk due to habitat loss, change in movement patterns and noise.</p> <p>Protection of bird species of cultural importance</p>	<ul style="list-style-type: none"> <li>Alexis Nakota Sioux Nation</li> <li>Bearspaw First Nation</li> <li>Blood Tribe</li> <li>Chiniki First Nation</li> <li>Driftpile Cree Nation</li> <li>Ermineskin Cree Nation</li> <li>Horse Lake First Nation</li> <li>Métis Nation of Alberta Region 3</li> <li>O'Chiese First Nation</li> </ul>	<p>NGTL has relied in part on avoidance through route and site selection; minimizing the footprint by paralleling existing ROWs; and scheduling activities to avoid species-specific sensitive and restricted activity periods as mitigation to minimize effects on wildlife and wildlife habitat. NGTL has also relied on the development of detailed, practical, effective mitigation and contingency measures to address site-specific and general issues; inspection during construction to ensure that planned mitigation is implemented and effective and conducting the maintenance and operation of the pipeline system implementing NGTL's existing programs and procedures to ensure pipeline integrity, public safety and environmental protection.</p>	<p>The Commission acknowledges the planning of NGTL in routing the Project along existing NGTL and third party ROWs to minimize disturbance to wildlife and wildlife habitat. The Commission is of the view that with NGTL's proposed mitigation measures and the Commission imposed conditions, significant adverse effects on breeding birds, wildlife and wildlife habitat are not likely to occur due to Project activities.</p> <p>The Commission recommends the following Conditions:</p> <p>Condition 5 for the Section 52 Pipeline and Related Facilities to file an updated EPP and would impose Condition 5 for the Section 58 Facilities and Activities, requiring</p>	<p>8.6.3</p> <p>8.7.3.2</p>

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
Wildlife travel corridors	<ul style="list-style-type: none"> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>NGTL committed to follow mitigation identified in its ESA, EPP and environmental alignment sheets. NGTL has also developed and committed to implement Management Plans for amphibians, breeding birds, bears and Key Wildlife Biodiversity Zones; and its Wildlife Species of Concern Discovery Contingency Plan in the event of a sighting of a wildlife species of concern during clearing and construction activities. For caribou habitat in the Little Smoky Range, NGTL has committed to its Caribou Habitat Restoration and Offsets Measures Plan to restore woodland caribou habitat along the Project ROW, and offset the loss of habitat due to the Project.</p> <p>NGTL stated that it would adhere to both the <i>Migratory Bird Convention Act</i> and the <i>Alberta Wildlife Act</i>, both of which are expected to include birds of cultural importance to Indigenous Peoples.</p> <p>NGTL stated that to reduce potential barriers to wildlife, it would leave gaps in windrows (e.g., topsoil/strippings, grade spoil, rollback, snow) and strung pipe at obvious drainages and wildlife trails, and to allow for livestock and vehicle/machinery passage across the construction footprint. Locations where wildlife gaps are appropriate would be determined in the field</p>	<p>NGTL to file an EPP for the Section 58 Facilities and Activities;</p> <p>Condition 30 for the Section 52 Pipeline and Related Facilities, requiring NGTL to submit a Post-Construction Environmental Monitoring Report;</p> <p>Condition 6, for the Section 52 Pipeline and Related Facilities requiring NGTL to submit a Final Caribou Habitat Restoration and Offsets Measures Plan;</p> <p>Condition 23 for the Section 52 Pipeline and Related Facilities requiring NGTL to submit results from a recent caribou survey, details around remaining work to be completed within the Little Smoky Caribou Range, and documentation from Province approving work within the Little Smoky Caribou Range during the restricted access period.</p>	

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		by the Environmental Inspector(s) or designate(s). These gaps should align.		
Effects on water quality and quantity including herbicide use, potential leaks and ruptures, and hydrostatic testing	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Blood Tribe</li> <li>• Bearspaw First Nation</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O' Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Wesley First Nation</li> </ul>	<p>NGTL stated its EPP provided mitigation measures for hydrostatic testing, including testing water prior to discharge, discharging into the same drainage basin withdrawn from, discharge into a well-vegetated area, provide scour protection and an energy diffuser at the discharge site, and monitor for erosion and sedimentation.</p> <p>NGTL stated that the use of herbicide is prohibited on the Project footprint unless otherwise approved by NGTL, and is also prohibited within 30 m of an open body of water unless the application is done by ground application equipment or otherwise approved by the responsible regulatory agency.</p> <p>In its EPP, NGTL provided mitigation measure to help prevent spills as well as a Release Contingency Plan and a Chemical and Waste Management Plan to deal with potential spills and releases on land and in or near water.</p>	<p>The Commission is of the view that with NGTL's proposed mitigation measures and the Commission recommended conditions, significant adverse effects on water quality and quantity are not likely. The Commission recommends:</p> <p>Condition 5 for the Section 52 Pipeline and Related Facilities to file an updated EPP and would impose Condition 5 for the Section 58 Facilities and Activities, requiring NGTL to file an EPP for the Section 58 Facilities and Activities; and</p> <p>Condition 30, for the Section 52 Pipeline and Related Facilities requiring NGTL to submit a Post-Construction Environmental Monitoring Report</p>	<p>8.6.3</p> <p>8.6.4.1</p>
Effects on aquatic resources,	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> </ul>	NGTL stated it used DFO's self-assessment process and determined that the planned crossing methods for all watercourse	The Commission is of the view that with NGTL's proposed mitigation measures and the Commission imposed conditions,	8.6.3

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
including fish and fish habitat and aquatic species at risk	<ul style="list-style-type: none"> <li>• Bearspaw First Nation</li> <li>• Blood Tribe</li> <li>• Chiniki First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O' Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> </ul>	<p>crossings would avoid serious harm to fish. However, the contingency plan crossing methods for the Wapiti River, Smoky River, Little Smoky River, McLeod River, Pembina River, and the North Saskatchewan River would potentially cause serious harm if they were implemented.</p> <p>NGTL's application and EPP provided mitigation measures to address fish stranding and impingement, hydrostatic testing, prevention of potential introduction of invasive aquatic species, activities adjacent to flowing waters, and releases of drilling mud. The EPP includes a Drilling Mud Release Contingency Plan.</p> <p>NGTL stated that water quality monitoring plans to monitor for sediment events during instream construction activities would be developed, where required by the applicable regulatory approvals or as identified by an Aquatic Resource Specialist, using a control station upstream of the watercourse crossing for comparison to treatment stations within the zone of influence. If monitoring were to reveal suspended sediment values are approaching threshold values, the water quality monitors would notify the Environmental Inspector(s) and work with them to develop corrective actions. If corrective actions were not successful,</p>	<p>significant adverse effects on aquatic resources are not likely to occur due to Project activities. The Commission recommends:</p> <p>Condition 5 for the Section 52 Pipeline and Related Facilities to file an updated EPP and would impose Condition 5 for the Section 58 Facilities and Activities, requiring NGTL to file an EPP for the Section 58 Facilities and Activities; and</p> <p>Condition 30, for the Section 52 Pipeline and Related Facilities requiring NGTL to submit a Post-Construction Environmental Monitoring Report.</p> <p>Under the Memorandum of Understanding between the Commission and DFO, the CER is responsible for referring potential watercourse crossings that are likely to require a <i>Fisheries Act</i> authorization to DFO. The Commission recommends:</p> <p>Condition 20 for the Section 52 Pipeline and Related Facilities, which requires NGTL to file its finalized site-specific watercourse crossing information;</p> <p>Condition 21 for the Section 52 Pipeline and Related Facilities, requiring NGTL notify the</p>	8.6.4.1

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		<p>construction activities would be temporarily suspended until effective solutions are identified.</p> <p>NGTL stated that its EPP contained Trenchless Crossing Management Plan which includes proactive mitigation measures for potential releases of drilling mud. In addition, the EPP includes a Drilling Mud Release Contingency Plan.</p>	<p>Commission of any switch to a contingency crossing method;</p> <p>Condition 22 for the Section 52 Pipeline and Related Facilities requiring NGTL to provide confirmation that any required authorizations under paragraph 35(2)(b) of the <i>Fisheries Act</i> were obtained.</p>	
<p>Effects on vegetation and wetlands, including, vegetation (including traditional plant species) clearing and use of herbicides</p>	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Bearspaw First Nation</li> <li>• Chiniki First Nation</li> <li>• Ermineskin Cree Nation</li> <li>• Horse Lake First Nation</li> <li>• O' Chiese First Nation</li> <li>• Samson Cree Nation</li> <li>• Wesley First Nation</li> <li>• Whitefish (Goodfish) lake First Nation #128</li> </ul>	<p>To avoid or minimize the effects of the Project, NGTL has relied in part on avoidance through route and site selection and minimizing the footprint by paralleling existing ROWs. NGTL has also relied on the development of detailed, practical, effective mitigation and contingency measures to address site-specific and general issues; inspection during construction to ensure that planned mitigation is implemented and effective and conducting the maintenance and operation of the pipeline system implementing NGTL's existing programs and procedures to ensure pipeline integrity, public safety and environmental protection.</p> <p>NGTL stated that it would provide potentially affected Indigenous communities with the proposed construction schedule and pipeline route maps to allow for interested Indigenous communities the</p>	<p>The Commission notes that NGTL has committed to implementing standard mitigation and best practices for vegetation (including traditional plants) and wetlands, as well as providing the affected Indigenous communities with the Project schedule to allow for the communities to conduct harvesting of medicinal and traditional plants prior to the start of Project construction. The Commission is of the view that with NGTL's proposed mitigation measures, best practices and the Commission's recommended conditions, significant adverse effects to vegetation and wetlands are not likely. The Commission recommends:</p> <p>Condition 30, for the Section 52 Pipeline and Related Facilities requiring NGTL to submit a Post-Construction Environmental Monitoring Report.</p>	<p>8.6.3</p>



Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		<p>opportunity to harvest medicinal and traditional plants prior to construction.</p> <p>NGTL stated that the use of herbicide would be prohibited on the Project footprint unless it otherwise approves, and would be prohibited within 30 m of an open body of water unless the application is done by ground application equipment or otherwise approved by the responsible regulatory agency. NGTL's draft EPP requires that herbicide not be used near occurrences of rare plant species or rare ecological communities.</p> <p>NGTL committed to implementing post-construction monitoring following final clean-up, where it would identify an environmental issues list based on reports documented during construction and reclamation phases of the Project. These issues and any mitigation and/or remedial actions taken, as well as any new environmental issues and required remedial actions identified and implemented would be reported in post-construction monitoring reports including any regulatory and landowner consultation conducted.</p>		
Effects on Air Quality, including	<ul style="list-style-type: none"> <li>• Blood Tribe</li> <li>• Driftpile Cree Nation</li> </ul>	NGTL stated it is not practical to monitor pipeline construction emission as the emissions are small and occur over long distances. NGTL submitted that the change	The Commission notes that NGTL is required to meet the provincial air quality standards for this Project, and is therefore	8.6.4.2

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
<p>greenhouse gases</p> <p>Comprehensive air quality monitoring program</p>	<ul style="list-style-type: none"> <li>• Horse Lake First Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O' Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> </ul>	<p>in emissions at the proposed compressor station unit additions are also small and the Project is predicted to meet the provincial air quality standards to the nearest receptors.</p> <p>NGTL stated that TC Energy is currently developing a Fugitive Emissions Management Plan for its Canadian Gas operations system, and that it would submit a synopsis of the Plan relative to the Project prior to the commencement of operations.</p> <p>In response to requests to conduct an upstream GHG assessment, NGTL declined. NGTL stated that upstream GHG emissions are not included in the List of Issues for the proceeding, and are generally regulated by provincial regulatory authorities. NGTL indicated it was willing to work with ECCC outside the hearing process to assist ECCC in estimating upstream GHG emissions under the Interim Measures for Major Project Reviews, which would be consistent with ECCC's approach to previous CER regulated projects.</p>	<p>satisfied that a comprehensive air quality monitoring program is not required.</p> <p>The Commission is of the view that with NGTL's proposed mitigation measures and the Commission's recommended conditions, significant adverse effects to air quality are not likely.</p> <p>The Commission acknowledges that the methodology used by NGTL to estimate the construction-related emissions is valid, though is concerned that it relies on emission factors that were calculated prior to 2010, and may soon be out of date and therefore recommends Condition 26 for the Section 52 Pipeline and Related Facilities and would impose Condition 21 for the Section 58 Facilities and Activities, requiring NGTL to file a quantitative assessment of the actual GHG emissions directly related to the construction of the Section 52 Pipeline and Related Facilities, and the Section 58 Facilities and Activities respectively.</p> <p>For operation-related emissions, the Commission is satisfied that the facilities are subject to the federal regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds and that NGTL has committed to file a synopsis of how the Project fits into the new TC Energy Fugitive Emissions</p>	

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
			Management Plan for the Canadian Gas Operations system.	
<b>Cumulative effects</b>				
Effects on woodland caribou and its habitat in the Little Smoky Caribou Range	<ul style="list-style-type: none"> <li>• Alexis Nakota Sioux Nation</li> <li>• Blood Tribe</li> <li>• Driftpile Cree Nation</li> <li>• Métis Nation of Alberta Region 3</li> <li>• O' Chiese First Nation</li> <li>• Piikani Nation</li> <li>• Saddle Lake Cree Nation</li> <li>• Samson Cree Nation</li> </ul>	NGTL stated that the pre-existing cumulative effects on the Little Smoky Caribou Range are already significant as there is already greater than 65% undisturbed habitat threshold. NGTL also stated that any additional loss of habitat within the Little Smoky Caribou Range is also significant unless a Caribou Habitat Restoration and Offset Measures Plan is implemented. NGTL has committed to implementing a Caribou Habitat Restoration and Offset Measures Plan to restore and offset the Project's effects to caribou habitat.	<p>The Commission is of the view that given the already substantial ongoing cumulative effects on the landscape and on caribou in the Little Smoky Caribou Range due to both direct and indirect habitat disturbance, all residual effects on caribou habitat should be considered and fully offset to avoid additional cumulative effects on the Little Smoky Caribou Range. The Commission expects NGTL to offset all potential direct and indirect residual effects of the Project in order to ensure no net loss of caribou habitat and no incremental increase in adverse cumulative effects on habitat.</p> <p>The Commission recommends the following conditions:</p> <p>Condition 6, for the Section 52 Pipeline and Related Facilities, requiring NGTL to submit a Final Caribou Habitat Restoration and Offsets Measures Plan;</p> <p>Condition 23, for the Section 52 Pipeline and Related Facilities, requiring NGTL to submit results from a recent caribou survey, details around remaining work to be</p>	8.7.3.2  Ch. 1

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
			<p>completed within the Little Smoky Caribou Range, and documentation from Province approving work within the Little Smoky Caribou Range during the restricted access period;</p> <p>Condition 31 for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a Caribou Habitat Restoration Implementation Report and Status Update;</p> <p>Condition 32 for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a Caribou Habitat Offset Measures Implementation Report;</p> <p>Condition 33 for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a Caribou Habitat Restoration and Offset Measures Monitoring Program; and</p> <p>Condition 34 for the Section 52 Pipeline and Related Facilities, to file Caribou Monitoring Reports.</p> <p>The Commission has made Recommendation # 1 to the GiC that it should expedite the finalizing of the draft Agreement for the Conservation and Recovery of the Woodland Caribou in Alberta with a focus on the immediate implementation of the first year deliverables,</p>	

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
			including those stated for the Little Smoky Caribou Range. The Commission also made Recommendation #3 to the GiC that it should develop a comprehensive and detailed Offsets Framework for linear projects in caribou critical habitat in conjunction with ECCC, provincial governments, Indigenous peoples and other stakeholders.	
<b>Emergency response</b>				
Distinct and community-based needs for Emergency Response Plan (ERP).	<ul style="list-style-type: none"> <li>• Stoney Nakoda Nations (representing the Intervenors Bears paw First Nation, Chiniki First Nation, and Wesley First Nation)</li> <li>• O'Chiese First Nation</li> </ul>	<p>NGTL said response personnel are best able to protect the safety of Indigenous communities when they are equipped with consistent response tools. NGTL said the company would value contributions from Indigenous communities' fire department for its ERP. However, development of multiple internal ERPs would provide NGTL personnel with inconsistent response tools, which could seriously threaten life safety during incident response.</p> <p>NGTL said in the event of an emergency, NGTL Aboriginal and Community Liaisons will be available to notify and establish contact with the Indigenous community representative listed in NGTL's ERP. Once contact is established, NGTL will share incident and safety information to ensure that life safety remains the top priority during response. NGTL said the company's</p>	<p>The Commission is of the view that engagement and communication between NGTL and Indigenous communities is needed. This engagement and communication must be transparent, genuine, ongoing, structured, collaborative and respectful.</p> <p>The Commission is satisfied with NGTL's commitment to ensure Indigenous communities are aware of their roles and responsibilities during emergency incidents, receive adequate information on the procedures to follow during emergency incidents that could occur along the pipeline, and have the opportunity to consult and provide input with respect to ERPs.</p> <p>The Commission recommends Condition 17 for the Section 52 Pipeline and Related</p>	4.4.1

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		Regional Liaison is available to answer any specific questions O’Chiese First Nation and Stoney Nakoda Nations may have regarding emergency response, including reviewing the appropriate contact information, and is open to meeting with O’Chiese First Nation and Stoney Nakoda Nations, at the communities’ earliest convenience, to discuss emergency response, contingency plans and accidents or malfunctions.	Facilities, and would impose Condition 15 for the Section 58 Facilities and Activities, to confirm that the company proactively plans to incorporate Project-specific elements within its continuing education program required by section 35 of the OPR. Among other things, NGTL would be required to proactively consult with potentially affected parties.	
Informing, consulting and involving Indigenous communities in Emergency Management Preparedness and Response Planning.	<ul style="list-style-type: none"> <li>• Stoney Nakoda Nations (representing the Intervenors Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation)</li> <li>• Piikani Nation</li> <li>• Blood Tribe</li> <li>• Whitefish (Goodfish) Lake First Nation #128</li> <li>• Ermineskin Cree Nation</li> </ul>	<p>NGTL said it will use TransCanada’s existing EMS and will develop specific ERPs for the Project in accordance with TransCanada’s EMS. The ERPs will be developed in consultation with emergency service agencies, including Indigenous first responders. The ERPs will be finalized, submitted to the NEB [Commission] and distributed to applicable emergency service agencies, as necessary, before the start of operations.</p> <p>NGTL said its emergency response procedures will be included in the Emergency Management Plans for the Project. NGTL said the Emergency Management Plans will include communications protocols, including current contact information for all potentially affected Indigenous communities. In the event of an emergency, NGTL said the</p>	<p>The Commission is of the view that engagement and communication between NGTL and Indigenous communities is needed. This engagement and communication must be transparent, genuine, ongoing, structured, collaborative and respectful.</p> <p>The Commission is satisfied with NGTL’s commitment to ensure Indigenous communities are aware of their roles and responsibilities during emergency incidents, receive adequate information on the procedures to follow during emergency incidents that could occur along the pipeline, and have the opportunity to consult and provide input with respect to ERPs. Pursuant to section 32 of the OPR and the CER’s Emergency Procedures Manual Letter to All Oil and Gas Companies (26 March 2015), the CER expects CER-</p>	4.4.1

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
		regionally-based Indigenous and Community Liaisons will contact the appropriate individual via telephone and/or email to notify them of the nature of the emergency.	<p>regulated companies to provide annual updates to their respective Emergency Procedures Manual including roles and responsibilities in the event of an emergency, response procedures, up-to-date internal and external contact lists and relevant documentation such as maps, agreements, and forms and records. Specific to internal and external contact lists, the CER expects NGTL to conduct annual testing of emergency contact information, including with Indigenous communities, and to ensure the group being contacted has up-to-date company emergency contact information as well.</p> <p>The Commission recommends Condition 17 for the Section 52 Pipeline and Related Facilities, and would impose Condition 15 for the Section 58 Facilities and Activities, to confirm that the company proactively plans to incorporate Project-specific elements within its continuing education program required by section 35 of the OPR. Among other things, NGTL would be required to proactively consult with potentially affected parties.</p>	
Capacity funding levels for ERP translation.	<ul style="list-style-type: none"> <li>Stoney Nakoda Nations (representing the Intervenors Bears paw First</li> </ul>	NGTL said that community investment and education and training and capacity development described in its Application are the proposed mechanisms that would likely be used to fund the Indigenous	The Commission is of the view that engagement and communication between NGTL and Indigenous communities is needed. This engagement and communication must be transparent,	4.4.1

Concern	Indigenous peoples	NGTL response and/or Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section
	<p>Nation, Chiniki First Nation, and Wesley First Nation)</p> <ul style="list-style-type: none"> <li>• O'Chiese First Nation</li> </ul>	<p>community-led translation of the Project-specific ERP, upon request or identification of interest from an Indigenous group. NGTL said the company has not pre-determined a communication and distribution process for a translated Project-specific ERP, once created. NGTL said it would work with Indigenous communities that have requested or identified an interest in translation to understand the groups' specific needs and requirements during the consideration of the request.</p>	<p>genuine, ongoing, structured, collaborative and respectful.</p> <p>The Commission recommends Condition 17 for the Section 52 Pipeline and Related Facilities, and would impose Condition 15 for the Section 58 Facilities and Activities, to confirm that the company proactively plans to incorporate Project-specific elements within its continuing education program required by section 35 of the OPR. Among other things, NGTL would be required to describe how it would address any requests from potentially affected Indigenous communities to have emergency management information translated into the local Indigenous language.</p>	



## Appendix VIII – Criteria, Ratings and Definitions Used in Evaluating the Likelihood of Significant Effects

Criteria	Rating	Definition
All criteria	Uncertain	When no other criteria rating descriptor is applicable due to either lack of information or inability to predict.
Temporal Extent	Short-term	An effect, either resulting from a single project interaction or from infrequent multiple ones, whose total duration is usually relatively short-term and limited to or less than the duration of construction, or one that usually recovers immediately after construction. An effect usually lasting in the order of weeks or months.
	Medium-term	An effect, either resulting from a single or infrequent project interaction or from multiple project interactions each of short duration and whose total duration may not be long-term but for which the resulting effect may last in the order of months or years.
	Long-term	An effect, either resulting from a single project interaction of long lasting effect; or from multiple project interactions each of short duration but whose total results in a long lasting effect; or from continuous interaction throughout the life of the project. An effect usually lasting in the order of years or decades.
Reversibility	Reversible	An effect expected to, at a minimum, return to baseline conditions within the lifecycle of the Project.
	Permanent	An effect that would persist beyond the lifecycle of the project, or last in the order of decades or generations. Some social or cultural effects that persist beyond a single generation may become permanent.
Geographic Extent	Project Footprint	Effect would be limited to the area directly disturbed by the Project development, including the width of the ROW and the TWS.

Criteria	Rating	Definition
	Local Study Area (LSA)	Effect would generally be limited to the area in relation to the Project where direct interaction with the biophysical and human environment could occur as a result of construction or reclamation activities. This area varies relative to the receptor being considered (e.g., LSA for pipeline sections is a 1.1 km wide corridor centered over the proposed centerline and expanded to an approximate 2 km square at the Wapiti River, Smoky River, Latornell River, Simonette River, Deep Valley River, Little Smoky River, McLeod River, Pembina River, and North Saskatchewan River; LSA for compressor stations includes an approximate 50 m radius from the proposed fence line of each compressor station unit addition.
	Regional Study Area (RSA)	Effect would be recognized in the area beyond the LSA, that might be affected on the landscape level. This area also varies relative to the receptor being considered (e.g., RSA for pipeline sections, a 20 km corridor extending approximately 10 km on each side of the proposed centerline; compressor stations RSA includes a 10 km radius extending from the proposed fence line of each compressor station unit addition.
	Global	Effects would be recognized at the global level.
Magnitude	Low	Effect is negligible, if any; restricted to a few individuals/species or only slightly affects the resource or parties involved; and would impact quality of life for some, but individuals commonly adapt or become habituated, and the effect is widely accepted by society.
	Moderate	Effect would impact many individuals/species or noticeably affect the resource or parties involved; is detectable but below environmental, regulatory or social standards or tolerance; and would impact quality of life but the effect is normally accepted by society.
	High	Effect would affect numerous individuals or affect the resource or parties involved in a substantial manner; is beyond environmental, regulatory or social standards or tolerance; and would impact quality of life, result in lasting stress and is generally not accepted by society.
Evaluation of Significance	Likely to be significant	Effects that are either: (1) of high magnitude; or (2) long-term, permanent, and of regional scale.
	Not likely to be significant	Any adverse effect that does not meet the above criteria for "significant".