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LETTER DECISION

File OF-Fac-Gas-N081-2018-18 01
15 October 2019

Ms. Crystal Begin
Regulatory Project Manager
NOVA Gas Transmission Ltd.
450 – 1 Street SW
Calgary, AB T2P 5H1
Email Crystal_begin@tcenergy.com

Dear Ms. Begin:

**NOVA Gas Transmission Ltd. (NGTL)
Application for North Central Corridor Loop (North Star Section 1) (Project)
under section 58 of the *National Energy Board Act* (NEB Act)**

On 30 October 2018, the National Energy Board (NEB) received an application from NGTL (the Application) for the Project. The NEB also considered all submissions received from interested parties, including the Duncan's First Nation (DFN), Dene Tha' First Nation (Dene Tha'), Environment and Climate Change Canada (ECCC) and subsequent filings from NGTL dated 21 November 2018, 21 March, 18 April, 3 May, 16 May, 6 June and 23 August 2019. On 21 June 2019, the *Canadian Energy Regulator Act* (CER Act) received Royal Assent. On 8 August 2019, the Government of Canada announced that the CER Act would come into force on 28 August 2019 (commencement day). The NEB has now been replaced by the Canada Energy Regulator (CER).

Section 36 of the transitional provisions associated with the CER Act states that applications pending before the Commission of the CER (Commission) immediately before the commencement day are to be dealt with by the Commission and continued in accordance with the NEB Act as that Act read immediately before the commencement day. This means that the assessment of NGTL's Application for the Project will be made by the Commission but will be done under and pursuant to the relevant provisions of the NEB Act.

For the reasons set out below, the Commission has decided to approve the Project. The Commission has issued Order XG-028-2019 (Order) pursuant to section 58 of the NEB Act. A copy of the Order and its Schedule A, which together, outline the specifics of the Project as approved, is attached.

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Environment Matters

The Project consists of approximately 31.1 km of Nominal Pipe Size (NPS) 48 pipe and a launcher facility for the purposes of in-line inspection. The Project will parallel existing disturbance, including the existing North Star Section pipeline, for approximately 97.7% of the Project route, starting from NGTL's existing Meikle Compressor Station and ending at an existing block valve site.

The Project will require approximately 57.5 hectares (ha) of new permanent land rights and approximately 84.3 ha for temporary workspace. The proposed Right-of-Way (ROW) crosses 11 tributaries to the Hotchkiss River, four drainages and two borrow pits that have become naturalized wetlands. Approximately 14.9 km of the Project is located within the Chinchaga Caribou Range for which Environment and Climate Change Canada's (ECCC) *Recovery Strategy for the Woodland Caribou, (Rangifer tarandus caribou), Boreal Population in Canada* (Recovery Strategy) applies. The Project parallels existing disturbance for its entire length with the range.

NGTL's Application

NGTL prepared an Environmental and Socio-economic Assessment (ESA) for the construction, operation, and decommissioning or abandonment of the Project. NGTL indicated that the ESA was prepared in accordance with the NEB Filing Manual and NGTL is of the view that the level of detail is appropriate for the nature and magnitude of predicted environmental and socio-economic effects.

Standard Mitigation

In addition to routing and scheduling, NGTL identified routine design and standard mitigation to address most of the potential adverse environmental effects of the Project.

With respect to watercourse crossings, NGTL proposed trenched open-cut methodologies as the primary method for all pipeline watercourse crossings where flow is absent and is expected to be absent for the duration of in-stream activities. NGTL proposed trenched isolated open-cut crossing methods as a contingency for watercourses with open water or under-ice flow that can be handled by isolation equipment.

NGTL submitted that the concerns identified in the ESA are not considered extraordinary and potential adverse effects arising from the Project are expected to be mitigated effectively by standard and specific environmental protection measures provided in the Environmental Protection Plan (EPP). NGTL indicated that the ESA concludes that the Project is not likely to cause significant adverse environmental or socio-economic effects, and that significant cumulative effects are also not likely.

Caribou

In addition to proposing caribou-specific mitigation, NGTL filed a Preliminary Caribou Habitat Restoration and Offset Measures Plan (CHROMP) which outlines its plan to reduce the predicted residual Project effects and offset the Project's contribution to cumulative effects on caribou and caribou habitat.

NGTL identified the Project construction footprint area within the Chinchaga Caribou Range as 53.1 ha, of which 31.7 ha overlaps existing disturbance. NGTL stated that based on the proposed Project layout and existing disturbance, the Project construction will result in approximately 21.4 ha of incremental direct disturbance. NGTL indicated that it will implement as much onsite restoration as possible to mitigate the overall Project habitat effects and offset any remaining Project effects.

Duncan's First Nation

DFN stated it had concerns that the current EA approach and methodology contained in regulatory guidance and consultation requirements diverge from the principles and directives emerging through the common law. DFN also noted concerns with the extirpation of the Chinchaga Caribou and the impacts the proposed Project have on the population, as well as the Chinchaga, Hotchkiss, Meikle and Peace Rivers and the increased impacts to these Rivers and surrounding areas from the Project. DFN submitted by letter received on 22 August 2019 a withdrawal of their intervention with the NEB in respect of the Project. The DFN stated its intention to complete its Project reports and file these with NGTL and continue to engage with NGTL on post approval matters.

Environment and Climate Change Canada

In response to the NEB's *Species at Risk Act* (SARA) Notification, ECCC responded on 22 February 2019 that all remaining existing habitat in this range is considered potential critical habitat and thus necessary for caribou survival and recovery. ECCC submitted that existing cumulative effects on the survival and recovery of this local population of boreal caribou are adverse, high in magnitude and high in geographic extent. As a result, it is ECCC's view that any additional habitat loss in the Chinchaga range should be avoided or fully mitigated using offsets.

Further, ECCC commented that the competent minister has certain specific obligations related to species and critical habitat protection stemming from the SARA and that activities that destroy critical habitat or jeopardize the survival or recovery of a species could compel the Minister of ECCC to make a recommendation to the Governor in Council for one or several order(s) under SARA. ECCC further stated that depending on the circumstances, this recommendation could be for a section 34 "Safety Net" type order for the protection of individuals, a section 61 "Safety Net" critical habitat protection order or a section 80 emergency protection order.

On 21 March 2019, ECCC noted its concerns with the CHROMP filed by NGTL and submitted that the analysis within the CHROMP does not align with the Recovery Strategy. ECCC noted concerns with NGTL's approach to quantifying effects from the Project and in calculating the initial offset value, in particular the devaluation of habitat along the ROW when it parallels existing disturbance.

ECCC also noted that the calculation of offset ratios should consider the total disturbance area and overlapping buffered permanent alterations; time-lags associated with habitat restoration and offsetting; uncertainties of the success of habitat restoration; and the quality of the restored and offset habitats. ECCC recommended a minimum 4:1 offset ratio (habitat restored: habitat lost) for boreal caribou to account for inherent uncertainties and time-lags in reclamation.

ECCC stated that habitat restoration should be located within the range that is to be affected by the Project and in areas of the Chinchaga range that could provide the greatest benefits to the herd in order to diminish risk to the survival or recovery of this local population due to potential Project effects.

ECCC requested that it be given the opportunity to review and comment on the final CHROMP, follow-up and monitoring plans, and reports.

Dene Tha' First Nation

In response to ECCC's submission, Dene Tha' filed a letter with the NEB on 21 May 2019, expressing its concerns over NGTL's approach to caribou in relation to the Project and expressed that the Project is likely to seriously compromise caribou recovery and survival.

Dene Tha' noted ECCC's recommendations and submitted that NGTL has not demonstrated that it is prepared to meet these requirements and it appears to have dismissed all of ECCC's recommendations.

Dene Tha' stated that given the Province of Alberta's failure to create a range plan for the Chinchaga Caribou Range, the fate of caribou in the Chinchaga Caribou Range is dire. Dene Tha' submitted that caribou in the range are very likely going to become extinct if advice and recommendations of ECCC are ignored and urge the NEB to require the proponent to meet, or exceed, ECCC's recommendations if the NEB wishes to approve this Project.

NGTL's Information Request Response

In response to an Information Request from the NEB, NGTL filed a revised CHROMP upon noting that the initial submission excluded temporary existing disturbances when calculating the total amount of direct disturbance and that the revised CHROMP now included it. NGTL noted that although the revision resulted in an increase of disturbance by 0.5 ha, it would restore the additional amount and the total remaining incremental disturbance would remain the same. NGTL expressed that this aligns with its approach on CHROMPs previously filed with the NEB and that it reflects ECCC's recommendation to recalculate Project effects by only removing the permanent alterations and their buffer from the incremental Project disturbance calculation.

NGTL committed to using both functional (non-habitat measures) and ecological restoration methods as part of the restoration and offset measures for the Project. NGTL submitted that functional restoration includes access control measures such as the use of rollback, which will be implemented immediately following construction. NGTL is of the view that functional restoration has immediate positive effects. For example, access management limits physical disturbance and promotes the establishment and development of vegetation communities.

With respect to the 4:1 ratio recommended by ECCC, NGTL stated that it has consulted subject matter experts in industry, government and expert agencies to quantitatively evaluate the effectiveness and acceptance of caribou habitat restoration practices. NGTL also stated that the average effectiveness of habitat restoration measures, including their respective multipliers, was derived from research on restoration measures effectiveness in support of offset measure planning and includes the use of several multipliers to account for delivery, spatial and temporal risks specific to the proposed offset habitat and restoration measures, as well as an inherent effect multiplier.

NGTL noted that on past projects, it has worked collaboratively with regulators to identify, prioritize and select candidate caribou habitat restoration areas. NGTL anticipates ongoing cooperation with Alberta Environment and Parks (AEP) as part of the Project.

Views of the Commission

Standard Mitigation

The NEB's Filing Manual provides guidance to proponents on what should be included in the ESA with respect to baseline information. 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. Therefore, the Commission is of the view that NGTL's ESA methodology is acceptable.

The Commission has assessed the environmental effects of the Project and find that the standard mitigation proposed and commitments made by NGTL will minimize the environmental effects of the Project. A robust post-construction environmental monitoring program is key to ensuring that potential adverse effects will be effectively mitigated and where issues are identified, adaptive management will be employed to address them. To be satisfied that post-construction environmental monitoring is thorough and effective, the Commission has imposed **Condition 11** which sets out requirements for NGTL to implement a post-construction environmental monitoring program and submit Post-Construction Environmental Monitoring Reports.

The Commission notes that approximately 29 km of the Project is located within the Chinchaga Grizzly Bear Population Secondary Zone. The Commission also notes the commitment of NGTL to mark all sensitive environmental features prior to the start of construction activities. In order to ensure Grizzly Bear dens are identified prior to construction, the CER imposes **Condition 8** requiring NGTL to conduct grizzly bear den sweeps if construction is to occur between 15 November and 1 May.

The Commission has considered NGTL's proposed watercourse crossings and its preference to use trenched open cut technologies for crossing the first and second order tributaries to the Hotchkiss River. The Commission has reviewed the proposed mitigation from NGTL and its commitment to adhere to best management practices. The mitigation proposed for watercourse crossings is adequate. In order to ensure appropriateness and sufficiency of mitigation measures for watercourse crossings, the Commission imposes **Condition 12** (Watercourse Crossing Inventory), which requires NGTL to provide an update of all the crossings for the Project and the methods used for each. Where NGTL would employ a contingency crossing method instead of its proposed primary method, the Commission imposes **Condition 13** (Contingency Watercourse Crossings). In the event that an authorization under subsection 35(2) of the *Fisheries Act* is required, the Commission also imposes **Condition 14** (Authorizations under paragraph 35(2)(b) of the *Fisheries Act* and Species at Risk permits) requiring NGTL to provide confirmation that any such authorization is obtained.

Based on the information provided by NGTL in its Application and subsequent filings, and taking into account the mitigation proposed by NGTL and the conditions imposed

by the Commission, residual effects of the Project on the environment are likely to be localized to the Project area and reversible in the medium term.

Caribou

With respect to the portion of the Project in the Chinchaga Caribou Range, the NEB has previously commented on the importance of protecting critical habitat. Proponents are expected to preferentially avoid, and then minimize disturbance before, during and after construction. Companies have a responsibility to restore affected habitat as soon as possible and as much as possible, and residual effects must be fully offset.

The Commission acknowledges NGTL's routing of the pipeline along existing linear disturbances which avoids and minimizes disturbance to caribou habitat. The Commission has also considered NGTL's CHROMP and revised CHROMP which were filed with the NEB on 10 October 2018 and 6 June 2019. The NEB had concerns with NGTL's methodology, in calculating Project effects on existing disturbed habitat, in the initial CHROMP submission. The revised CHROMP resulted in an increase in the amount of Project disturbance by 0.5 ha. The incremental spatial loss remained the same as NGTL included the amount in its restoration commitment. However, the Recovery Strategy considers temporary disturbances as existing habitat that have the potential to become critical habitat and contribute to the attainment of 65% undisturbed habitat. The Commission requires existing temporary disturbance areas to be included as habitat when calculating Project effects so that the effects on critical habitat and subsequent offset requirements are not underestimated.

The CHROMP, as amended during this proceeding, identified goals and measureable objectives, restoration implementation plans, offset selection and implementation plans and schedules that are appropriate for a preliminary CHROMP. In order to verify the appropriateness of the restoration implemented and since an assessment of the remaining residual impacts after restoration is essential to determine the offset required, the Commission imposes **Condition 15** and **Condition 16** requiring NGTL to file for approval, a Caribou Habitat Restoration Implementation Report and Status Update and a Caribou Habitat Offset Measures Implementation Report, respectively.

In order to ensure that assumptions made are correct, that restoration is effective and, if and where it is not effective, that adaptive management is implemented, the Commission has imposed **Condition 17** for approval, requiring NGTL to develop a Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP) to monitor and verify the effectiveness of the caribou habitat restoration and offset measures. Finally, to assist its oversight of ongoing monitoring, the Commission also imposes **Condition 18** which requires NGTL to file for approval, Caribou Monitoring Reports with 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 other previous NEB pipeline project applications. The Commission also notes that the final offset value and offset ratio are derived once the restoration has been completed. 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.

The Commission notes the importance of placing offset measures in areas that provide long-term protection of those measures and the greatest likelihood of durable results. NGTL has committed to continue its discussions on identifying offset locations with AEP. The Commission notes the commitments made by NGTL to engage with ECCC on the final CHROMP and to provide filings regarding caribou concurrently to ECCC when filed with the Commission. The Commission directs NGTL to also provide filings regarding caribou concurrently to DFN and Dene Tha' along with any other Indigenous communities that express an interest, when filed with the Commission.

The Commission notes the views of ECCC; that all remaining existing habitat in the Chinchaga 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.

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 will be taken to minimize the impact of the activity on the species' critical habitat.

The CER has consulted with the competent minister and considered the impact on the species' critical habitat and is of the view that, with the mitigation proposed by NGTL and the conditions imposed by the Commission, the impacts to caribou within the Chinchaga caribou range will be minimized.

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, the CER's regulatory oversight of them, the Project's location with respect to actual caribou populations, and the level of existing disturbances, the Project's additional impacts to caribou habitat within the Chinchaga caribou range will be effectively mitigated. 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.

Indigenous Matters

NGTL's Consultation with Indigenous Peoples¹ for the Project

In its Application, NGTL stated that it notified 12 Indigenous communities about the Project, who have known asserted traditional territory in the Project area; by mail, email and follow-up phone calls and site visits as requested. Notification was sent to the following communities:

- Beaver First Nation;
- Dene Tha';
- DFN;
- Horse Lake First Nation;
- Swan River First Nation;
- Tallcree First Nation;
- Métis Nation of Alberta;
- Métis Nation of Alberta Region 6;
- Paddle Prairie Métis Settlement;
- Cadotte Lake Métis Local 1994;
- Gift Lake Métis Settlement; and
- Peavine Métis Settlement.

NGTL described its consultation with those Peoples who had an interest in the Project, including both DFN and Dene Tha'. NGTL indicated that it conducted site visits with Peoples who requested them; described how it considered Indigenous knowledge (IK) shared by Peoples that produced IK reports (specifically, Dene Tha', Gift Lake Métis Settlement, Métis Nation of Alberta Region 6, Paddle Prairie Métis Settlement, Peavine Métis Settlement, and Swan River First Nation); and noted that it provided additional information upon request, such as shapefiles, employment and education opportunity information, as well as the Environmental Assessment summary.

NGTL confirmed that its consultation activities will continue throughout the lifecycle of the Project to ensure that issues continue to be addressed. NGTL also noted that concerns about caribou and caribou habitat were raised by Dene Tha', Swan River First Nation, Métis Nation of Alberta Region 6 and Paddle Prairie Métis Settlement; and that NGTL had already addressed those concerns as outlined in their original Application (A99809-1 PDF page 23 of 139).

NEB and Commission's Assessment Process and Participation of Indigenous Peoples

The NEB also directly notified the same 12 Indigenous communities of NGTL's application on 21 November 2018. The NEB's notification indicated that these Indigenous peoples could provide comments by 11 December 2018 regarding any concerns or views they may have regarding the Project. In follow-up to the notice of application, on 17 April 2019, the NEB

¹ The use of the term "Indigenous" has the meaning assigned by the definition of "aboriginal peoples of Canada" in section 35(2) of the *Constitution Act, 1982* which states: In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.

provided a letter from Natural Resources Canada to the 12 Indigenous communities, clarifying the federal Crown's approach to fulfilling any potential duty to consult that may arise on projects regulated by the NEB, including those for which the NEB and now the Commission is the final decision maker.

On 14 November 2018, DFN wrote a letter of comment to the NEB in regards to the Project. In its letter, DFN provided a description of its concerns in respect of the Project. DFN outlined its asserted Treaty rights which included fishing, hunting, gathering, trade and engagement with other Indigenous peoples and non-Indigenous peoples. DFN relied upon a 2009 Traditional Land Use (TLU) Study conducted with DFN community participants, and further on a 2012 TLU Survey, which included up to 46 community participants, to outline where in their territory frequent traditional activities have, and continue to, occur; this included, among others, the Chinchaga and Paddle Prairie areas. DFN also provided a summary of the types of traditional use (TU) and Indigenous knowledge that were of importance to its community. DFN also raised procedural concerns including that NGTL may be "project splitting."

On 21 November 2018, NGTL replied to DFN's letter of comment; and on 28 February 2019, the NEB issued its letter on the Legislated Time Limit and Decision on Process. The NEB also sent a letter to DFN advising them of the NEB's process. The letter also notified DFN that they had an opportunity to reply to NGTL's response to DFN's letter of comment by 15 March 2019. DFN did not submit any further comments by this deadline.

On 25 June 2019, the NEB sent a letter to DFN, responding to the project-splitting concerns raised in DFN's letter of comment of 14 November 2018, indicating there was insufficient evidence of project integration to support a decision to combine the assessment of the Project with NGTL's subsequent application for the North Corridor Expansion Project.

On 21 May 2019, the NEB received a letter from Dene Tha', as noted in the Environment section of this letter.

The NEB also received a letter filed 2 July 2019 from DFN stating DFN "wishes to obtain clarification from the NEB on the deadline that has been set for interested parties, Indigenous Groups and the DFN to submit filings/written evidence in relation to the above referenced Project." Finally, as stated, DFN subsequently filed a letter, on 22 August 2019, withdrawing their intervention in this process and the Project.

Issues and Concerns Raised by Indigenous Peoples

Procedural Concerns:

Views of DFN

DFN stated it had concerns with the EA approach and methodology contained in regulatory guidance and consultation requirements which diverge from the principles and directives emerging through the common law. DFN argued that "the woeful inadequacies of the current EA based system and the extolled features and improvements of the system to be as described by the Government of Canada, ... [begs] the question of whether the public interest and the DFN's rights and interests would be better served by a review under the new regime that will be in effect in a matter of weeks."

DFN stated it was concerned about the manner in which the applied for “North Star Section 1” project given “North Star Section 2” would be advanced and applied for on a separate and discreet basis. DFN stated it was concerned that this amounted to “project splitting” and would subsequently have a potential impact on the scope of the Project and the related environmental assessment.

Views of NGTL

In its response to DFN’s initial letter, NGTL stated that it had been engaging with DFN on the Project since March 2018 which NGTL confirmed included providing DFN with an initial notification package on 20 March 2018, follow-up e-mails, a face-to-face meeting on 10 May 2018, facilitating and funding a Project-specific Indigenous knowledge study, including fieldwork completed in September 2018, and providing notification that the Project application was filed.

NGTL stated that it prepared the Application in accordance with the Filing Manual and all applicable legal requirements. NGTL noted that it expected that DFN’s Letter and any additional information DFN provides to the NEB during the review process will be considered by the NEB prior to making a decision on the Application.

NGTL argued that given the proposed Project route parallels existing disturbances for approximately 98% of its route, and would be situated in an area where there is already considerable existing infrastructure, leads NGTL to believe that the NEB’s standard review process for section 58 applications could adequately deal with DFN’s concerns regarding the potential effects of the Project.

Views of the Commission

On 28 February 2019, the NEB determined that the North Central Corridor (North Star Section 1) Loop Project section 58 Application was complete for the purpose of proceeding to assessment. The NEB wrote separately to DFN on 28 November 2018 and provided DFN with another opportunity to reply to NGTL’s 21 November 2018 response. With respect to DFN’s concerns about the adequacy of the current statutory regime, the NEB explained that it was obliged to apply the law as currently in force and could not speculate about or apply laws that may be in force in the future.

The 14 November 2018 letter of comment indicated that resulting data and information, from DFN’s fieldwork, would be filed by December 2018. However, no reply to NGTL’s response was received from DFN, and the NEB received no further submissions from DFN on the record until DFN’s 2 July 2019 letter of comment.

In the 2 July 2019 filing, DFN states it “is moving its Indigenous Knowledge information gathering and analysis forward specific to the Project, and having a known timeline/deadline for filing of written evidence would be helpful to the DFN.” DFN subsequently withdrew from this process, prior to the NEB being able to respond to the request for a deadline. As a result of DFN’s withdrawal, the Commission does not find it necessary to respond to DFN’s request.

The Commission expects that NGTL's commitment to ongoing consultation with Indigenous peoples includes responding to additional project-specific concerns from DFN and other Indigenous peoples as they arise, including in relation to the letter of comment filed by Dene Tha' on this proceeding. For this reason, the Commission has attached both **Condition 9**, requiring a consultation update with all Indigenous peoples consulted on the Project, along with **Condition 10** requiring a detailed update on any outstanding or updated Indigenous Studies and NGTL's response, prior to commencing construction. The Commission requires NGTL to keep Indigenous peoples abreast of the Project construction schedule and notify each within a reasonable timeframe before construction is to commence such that they can be prepared to meet this time limit.

The Commission has reviewed and considered NGTL's activities to engage Indigenous peoples and learn about their respective concerns and interests. The Commission is satisfied that all potentially-impacted Indigenous peoples have been notified and given the opportunity to comment on the Project. Further, the Commission is of the view that the process provided for here was appropriate to the scope and scale of the Project and that there has been adequate consultation for the purpose of the Commission's decision on this Project.

With respect to the "project splitting" concern raised by DFN, the NEB provided its decision on the matter, with reasons, on 25 June 2019.

Traditional Land and Resource Use

Views of DFN

DFN stated that NGTL has provided some funding to the DFN to support research of the current lands and resource use specific to the Project and the Project area. DFN confirmed that it was able to implement the field work portion in September 2018. DFN stated that when they realized more time was going to be needed to confirm whether other NGTL projects would be proceeding, DFN opted to move forward with the field work and that the resulting data and information was being reviewed and would be submitted in a report to NGTL, the NEB and Government of Alberta permitting agencies in December 2018.

Subsequently, DFN submitted by letter dated 22 August 2019 that they were withdrawing their intervention with the NEB in respect of the Project. The DFN stated its intention to complete its Project reports and file these with NGTL and continue to engage with NGTL on post approval matters.

Views of NGTL

NGTL stated that the Project is looping an existing NGTL pipeline and that the ESA completed for the Project concluded that the Project is not likely to cause significant environmental or socio-economic effects and that significant cumulative effects are also not likely, with one exception. The exception relates to woodland caribou mortality risk which is a pre-existing significant effect that will be addressed for the Project-specific effects within the Project Caribou Habitat Restoration and Offset Measures Plan (as outlined above in the Environment section of this letter). NGTL noted that DFN's Letter does not identify any

site-specific information about potential Project impacts and that the types of impacts identified by DFN were considered and assessed in NGTL's ESA in support of the Project Application.

NGTL proposed a suite of mitigation measures to address the potential effects of the Project in its EPP. Some examples of these mitigation measures include, but are not limited to the following:

- NGTL has minimized the amount of area required for Project construction and operation by constructing within existing disturbance for approximately 63% of the area of the Project Footprint;
- NGTL will provide potentially affected Indigenous peoples with the proposed Project construction schedule and maps;
- NGTL will clearly mark all sensitive resources, such as wetlands, as identified on the Environmental Alignment Sheets, Environmental Figures and/or other Project-specific environmental documents and in the Project-specific mitigation tables;
- NGTL will restrict all construction activities to the approved construction footprint;
- NGTL will implement standard mitigation measures for wildlife, and wildlife habitat including restricting all construction activities to the approved construction footprint, and prohibiting Project personnel from hunting or fishing on the construction footprint, and from harassing, feeding, collecting or possessing wildlife species;
- NGTL will implement standard mitigation measures for vegetation including restricting all construction activities to the approved construction footprint, and implement post-construction monitoring activities;
- All motorized vehicle traffic, including ATV, Argo and snowmobile traffic, will be confined to the approved route, access roads or trails except where specifically authorized by the appropriate authority;
- NGTL is required to consider for incorporation into Project planning, including the EPP and environmental alignment sheets, as appropriate, any additional issues or concerns, traditional use sites or features that may be identified through ongoing engagement with potentially affected Indigenous peoples; and
- If traditional land use sites, historical or palaeontological features not previously identified are found on the construction footprint during construction, NGTL will implement the Cultural Resource Discovery Contingency Plan.

Views of the Commission

In assessing potential impacts on traditional land use, the Commission considered all of the evidence provided. The Commission assessed the information provided in NGTL's ESA on potential impacts on the interests, including the rights of Indigenous peoples, the concerns raised by Indigenous peoples, and the measures NGTL has proposed to minimize or eliminate the Project's potential impacts on the rights and interests of Indigenous peoples. Through the assessment process, Indigenous peoples 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 or established interests.

The Commission reviewed all the evidence, including the letter of comment received from DFN and NGTL's response of 21 November 2018. The Commission has also

considered NGTL's mitigation measures proposed to address the potential effects of the Project as presented in the EPP, and finds them to be adequate.

The Commission agrees that NGTL made reasonable opportunities (e.g., facilitating and funding Project-specific Indigenous knowledge studies, including fieldwork) available to potentially affected Indigenous peoples to identify any concerns regarding Project impacts to traditional land and resource use. Indigenous peoples have not raised any outstanding specific sites, resources or activities within the Project footprint that would require specific mitigation beyond what NGTL is proposing in its EPPs. The Commission expects that NGTL will effectively implement the suite of mitigation measures proposed in the EPPs to reduce any potential Project impacts on traditional land use, harvesting, gathering and sacred sites.

NGTL made a commitment to work with Indigenous peoples to address any further concerns that may arise. The Commission has imposed **Condition 9** and **Condition 10** requiring NGTL to file an updated Indigenous people consultation summary with the Commission and to file any outstanding Indigenous knowledge studies, both at least 7 days prior to commencing construction. As noted above, the Commission requires NGTL to keep Indigenous peoples abreast of the Project construction schedule and notify them within a reasonable timeframe before construction is to commence such that they can be prepared to meet this time limit.

With the addition of **Condition 9** and **Condition 10**, the proposed mitigation measures and commitments, and given NGTL's confirmation that it will continue consultation activities throughout the lifecycle of the Project, the Commission is of the view 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.

Operations

The Commission has considered NGTL's request for an exemption from the requirements of paragraph 30(1)(b) and subsection 47(1) of the NEB Act to obtain leave to open (LTO) from the Commission prior to installing and placing into operation three tie-in assemblies. NGTL's request for a partial exemption from applying for LTO is approved.

The Commission reminds NGTL to apply for and receive LTO for the remaining facilities pursuant to section 213 of the CER Act, prior to those remaining facilities being placed into operation.

Pursuant to Conditions 1 and 4 of the Order, NGTL must file any technical specification updates for the Project components listed in the Application concurrently with its final 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 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.

Financial Matters

NGTL submitted that the purpose of the Project is to meet North Central Corridor Loop design flow requirements which have been determined to exceed the capacity of the NGTL

System in 2020. In the Application, NGTL confirmed that adequate supply and markets exist to support the Project and that the Project is likely to be used at a reasonable level over its economic life. Further, NGTL confirmed that it has notified both third party shippers and commercial third parties of the Project and neither group has outstanding concerns relating to the Project.

The Commission directs NGTL to serve a copy of this letter, the attached Order and its Schedule A on all interested parties.

Yours sincerely,

Original signed by S. Wong for

L. George
Secretary of the Commission

Attachment

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