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Regulator

Régie de l'énergie
du Canada

Canada Energy Regulator Report

NOVA Gas Transmission Ltd.

GH-001-2019

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GH-001-2019

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Glossary of Terms and Abbreviations

Accountable Officer	Person appointed by NGTL as accountable officer pursuant to section 6.2 of the <i>Canadian Energy Regulator Onshore Pipeline Regulations</i>
Applicant, NGTL or the Company	NOVA Gas Transmission Ltd.
Application	NGTL application for the Edson Mainline Expansion Project dated 3 April 2019, pursuant to sections 52 and 58 of the <i>National Energy Board Act</i> and Part IV of the NEB Act
CAPP	Canadian Association of Petroleum Producers
CEAA 2012	<i>Canadian Environmental Assessment Act, 2012</i>
CER Act	<i>Canadian Energy Regulator Act</i>
CEARIS	Canadian Environmental Assessment Registry Internet Site
Certificate	The Certificate of Public Convenience and Necessity applied for by NGTL under section 52 of the NEB Act, authorizing the construction and operation of the Section 52 Pipeline and Related Facilities
commencing construction	The clearing of vegetation, ground-breaking and other forms of right of way preparation that may have an impact on the environment (activities associated with normal surveying do not constitute commencing construction)
Commenter	A person, company or group who applied to participate in the hearing and was granted standing to provide a letter of comment
Commission	Commission of the Canada Energy Regulator
CPCN or Certificate	Certificate of Public Convenience and Necessity
CSA	Canadian Standards Association
designated project	A defined term in subsection 2(1) of CEAA 2012; this Project is a designated project pursuant to CEAA 2012 and its regulations, and is therefore subject to a federal environmental assessment under CEAA 2012
DFO	Fisheries and Oceans Canada
ECCC	Environment and Climate Change Canada

Environmental Assessment for approval	The Commission’s environmental assessment of the Project 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
GHG	greenhouse gas
Governor in Council or the GIC	The Governor General acting on the advice of the Federal Cabinet
Grizzly Bear Secondary Area (or Secondary Recovery Zone)	These are areas identified in the draft Alberta Grizzly Bear Recovery Plan (Alberta Environment and Parks 2016) which help maintain connectivity between areas with high quality grizzly bear habitat
including	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
Intervenor	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
IR or Information Request	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 filed
Key Wildlife and Biodiversity Zones	Key Wildlife and Biodiversity Zones are identified by Alberta Environment and Parks. These zones, which often encompass riparian areas, provide important winter ungulate habitat and areas of high potential for biodiversity
MPMO	Major Projects Management Office
NEB	National Energy Board
NEB Act	<i>National Energy Board Act</i>
NGTL	NOVA Gas Transmission Ltd.
NGTL System	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 by the CER

NPS	Nominal Pipe Size
NRCan	Natural Resources Canada
OPR	<i>Canadian Energy Regulator Onshore Pipeline Regulations</i>
Participant	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
Parties	Includes the Applicant and Intervenor; does not include Commenters
Peace River Project Area	Northwest of James River and West of NGTL's Meikle River Compressor Station
post-construction	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
PPBoR	Plan, Profile and Book of Reference
Process Advisor	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
Project	The proposed Edson Mainline Expansion Project as described in NGTL's 3 April 2019 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
Project Description	Information about the Project that was filed with the NEB on 8 January 2019
Recommendation	The Commission's recommendation as to whether a Certificate should be issued for the Section 52 Pipeline and Related Facilities
Report or Canada Energy Regulator Report	Report submitted by the Commission 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
ROW	Right of Way
Section 52 Pipeline and Related Facilities	The proposed construction and operation of approximately 85 kilometers of new gas pipeline and associated facilities in Alberta
Section 58 Facilities and Activities	The proposed Right of Way preparation activities and commencement of trenchless crossings in proposed select locations, the temporary infrastructure required for pipeline construction, and the installation of tie-in assemblies located within the boundaries of the existing NGTL Clearwater Compressor Station
Section 58 Order	The exemption order applied for by NGTL under section 58 of the NEB Act, authorizing the performance, construction and use of the Section 58 Facilities and Activities
SARA	<i>Species at Risk Act</i>
TLRU	Traditional Land and Resource Use

Symbols, Formulas and Units

\$	dollars (CND)
%	per cent
°C	degrees Celsius
10 ³ m ³ /day	thousand cubic metres per day
Bcf/d	billion cubic feet per day
cents/Mcf/d	cents per thousand cubic feet per day
cm	centimetre
dBA leq	average sound pressure level in decibels (adjusted for human response)
ha	hectare
km	kilometre
km ²	square kilometres
kPa	kilopascal
m	metre
m ³ /d	cubic metres per day
M	million
Mcf	thousand cubic feet
MMb/d	million barrels per day
MPa	megapascal
mm	millimetre
MMcf/d	million cubic feet per day
TJ/d	terajoule per day

Recital

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-N081-2019-01 02 on 3 April 2019;

IN THE MATTER OF the National Energy Board Hearing Order GH-001-2019 dated 26 August 2019;

HEARD in Red Deer, Alberta on 21-23 January 2020, and in Edmonton, Alberta on 25-27 February 2020;

BEFORE:

Stephania Luciuk	Presiding Commissioner
Damien Côté	Commissioner
Wilma Jacknife	Commissioner

Oral Indigenous Knowledge

Appearances

M. MacPherson
S. Shury

Parties

Stoney Nakoda Nations
representing Bearspaw First
Nation, Chiniki First Nation
and Wesley First Nation

Witnesses

B. Wesley
Elder R. Hunter
Elder R. Daniels
Elder K. Hunter
Elder C. Powderface
Elder J. Wesley
S. Abraham
Elder H. Snow
Elder S. Crawler
C. Goodstoney
B. Snow

I. Provost

Piikani Nation

I. Provost
Elder P. Provost
Elder S. Crow Shoe
Elder M. Murray

A. Lalji

Driftpile Cree Nation

K. Giroux
Elder R. Giroux Sr.

		Elder R. Okimaw Elder R. Collins
A. Lalji	Louis Bull Tribe	C. Rabbit Elder P. Shortneck Elder I. Bull V. Deschamps Elder K. White M. Daniels
S. Louden	O'Chiese First Nation	Elder E. Whitford Ironbow Elder M. Ironbow Elder P. Mackinaw Elder T. Strawberry Elder R. Desjarlais Elder J. Gladeau Elder A. Strawberry Elder C. Whitford S. Poorman T. Strawberry O. Mackinaw Elder P. Strawberry Elder M. Desjarlais
K. Bear Robe	Samson Cree Nation	K. Northwest M. Swampy Elder L. Bruno B. Buffalo K. Yellowbird Elder V. Bruno
L. Campbell-Letendre	Apetokosan (Kelly Lake Métis Settlement Society)	L. Campbell-Letendre
Chief C. Bruneau	Papaschase Cree Nation	Chief C. Bruneau D. Deschamps

Written Final Argument

NOVA Gas Transmission Ltd.
Alberta Department of Energy
Bears paw First Nation
Canadian Association of Petroleum Producers
Chiniki First Nation
Driftpile Cree Nation
Louis Bull Tribe
Michel First Nation
O'Chiese First Nation
Piikani Nation
Samson Cree Nation
Wesley First Nation

Chapter 1 – Recommendation and Decisions

This Canada Energy Regulator (CER) Report (Report) constitutes the Recommendation, decisions and reasons of the Commission of the CER (Commission) in respect of NOVA Gas Transmissions Ltd.'s¹ (NGTL) application to construct and operate the Project.

Chapter 1 is a summary of the Commission's Recommendation and decisions and is provided for convenience only. The Commission's detailed consideration of the issues is presented in the chapters that follow. If there is a discrepancy between Chapter 1 and the balance of the Report, the wording and determinations set out in the chapters that follow take precedence.

1.1 Recommendation to Governor in Council

The Commission's consideration of the Application filed by NGTL in the GH-001-2019 proceeding and the deliberations that the Commission undertook, as explained in this Report, were done pursuant to the *National Energy Board Act* (NEB Act). The *Canadian Energy Regulator Act* (CER Act) came into force on 28 August 2019 during the proceeding. Section 36 of the transitional provisions for the CER Act states that applications pending before the National Energy Board (NEB) immediately before the day on which the CER Act came into force are to be taken up before the Commission and continued in accordance with the NEB Act as it read immediately before that day.

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.² 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 Canada) as to whether or not a Certificate of Public Convenience and Necessity (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 Commission 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

¹ A wholly owned subsidiary of TransCanada PipeLines Limited (also referred to as TransCanada or TransCanada Corporation).

² Note that the summaries of evidence found throughout the Report are not exhaustive but reflect key issues that were raised in the GH-001-2019 proceeding.

Council were to direct the issuance of the Certificate, including terms or conditions relating to when the Certificate or portions of it are to come into force.

1.1.1 Public Convenience and Necessity

The various factors 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:

- maintaining access to natural gas supplies for diverse Canadian consumers;
- increased access to intra-basin markets for Canadian natural gas;
- increased training and employment opportunities for Indigenous peoples and potential contracts for Indigenous-owned businesses;
- socio-economic benefits related to the construction phase of the Project, through direct, indirect and induced employment, as well as contract and procurement opportunities for local communities and workers from elsewhere in Alberta;
- efficient use of and expansion to the NGTL System in terms of Project land requirements; and
- contributions to local, regional, provincial and federal economies.

However, the Commission is also of the view that the Project carries burdens which include:

- potential negative effects on health and well-being of Indigenous peoples and Project workers;
- limitations on access for traditional users within the Project area during active construction and during operations and maintenance activities, as well as corresponding potential socio-economic impacts to Indigenous peoples;
- potential impacts to unidentified traditional land and resource use and cultural sites;
- cultural implications stemming from potential cumulative effects on traditional land and resource use and potential negative impacts on the ability of Indigenous peoples to pass on intergenerational knowledge; and
- permanent loss of 2.4 ha of old seral stage forest, including culturally important plants.

The Commission recognizes that the Project benefits and burdens are not distributed evenly and that parties may disagree on the appropriate weighing and balancing of benefits and burdens associated with any project. As has been previously acknowledged by the Commission, reasonable people can and will disagree on what the best balance and outcome is for Canadians.

Having regard to all considerations that appear to be directly related and relevant to the Application, it is the Commission's view that 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, cognizant that the public interest is both regionally

and nationally based and inclusive of all Canadians, and requires a consideration of economic, environmental and social interests at this point in time.

The Commission recommends that a Certificate be issued under section 52 of the NEB Act for the construction and operation of the Project (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 Governor in Council.

1.1.2 Environmental Assessment

Subsections 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 Report concerning the application must also set out an environmental assessment prepared under the CEAA 2012 in respect of the project. Further details regarding the CEAA 2012 requirements are provided in subsection 2.1.5 and Chapter 8 of this Report.

Section 36.1 of the transitional provisions for the CER Act states that section 182.1 of the *Impact Assessment Act* applies to applications pending before the NEB immediately before the commencement day (28 August 2019). Section 182.1 of the *Impact Assessment Act* states that any environmental assessment of a designated project by the NEB commenced under the CEAA 2012, in respect of which a decision statement has not been issued before the day on which the *Impact Assessment Act* comes into force (28 August 2019), is to be continued under the CEAA 2012.

Having undertaken the Environmental Assessment, the Commission concludes that, with the implementation of NGTL's environmental protection procedures and mitigation measures as well as the conditions that the Commission has recommended and imposed in relation to the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities respectively, the Project is not likely to cause significant adverse environmental effects.

1.1.3 Consultation with Indigenous Peoples

The Commission has considered the views and concerns of Indigenous peoples who participated in the hearing process, the concerns documented by NGTL from potentially impacted Indigenous peoples who did not participate in the process, the potential impacts on the rights and interests of Indigenous peoples and proposed measures to avoid or mitigate those impacts.

Having assessed all of the evidence on the record, including Indigenous knowledge that was provided in confidence, and taking into account NGTL's engagement commitments and the conditions set forth in this Report, the Commission is of the view that the honour of the Crown has been upheld. 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 decisions under section 58 and Part IV of the NEB Act. The Commission is also of the view that, within this Project area, any potential Project impacts on the rights and interests of affected

Indigenous peoples are not likely to be significant with the implementation of the mitigation measures and commitments made by NGTL, as well as the conditions and accommodations recommended and imposed by the Commission.

The Commission notes that throughout the Application, NGTL emphasized its commitment to ongoing engagement with Indigenous peoples, which the Commission has formalized and expanded in a number of recommended and imposed conditions. The Commission expects that both NGTL and Indigenous peoples will work meaningfully to ensure that continued engagement efforts will be respectful, transparent, and genuine, with the aim of building and maintaining a responsive dialogue.

The Governor in Council has the responsibility of ultimately ensuring that the duty to consult has been fulfilled before a decision is made on the Project. The Crown relies on the CER to fulfill the duty to consult triggered by this Application to the extent possible. The Commission has considered those aspects of consultation which are relevant to the Project and for which evidence was provided. The Commission understands that the dialogue between Indigenous peoples, NGTL and the Government of Canada is ongoing.

Although the term “Indigenous” is used throughout this Report as an inclusive term to describe the descendants of the original inhabitants of this country now known as Canada, the Commission acknowledges that First Nations, Métis and Inuit are distinct peoples with unique histories and worldviews. The Commission recognizes the unique context and distinctiveness of the knowledge possessed and provided by all the First Nation and Métis peoples that participated in the GH-001-2019 proceeding. Within the context of its regulatory proceedings, the Commission acknowledges the importance of receiving this diversity of knowledge from potentially affected Indigenous peoples as well as understanding the different priorities and points of view related to a project that are brought forward by Indigenous peoples.

The Commission thanks all Participants in the GH-001-2019 hearing and, in particular, Driftpile Cree Nation, Apetokosan (Kelly Lake Métis Settlement Society), Louis Bull Tribe, Piikani Nation, O’Chiese First Nation, Papaschase Cree Nation, Samson Cree Nation, and Bearspaw First Nation, Chiniki First Nation and Wesley First Nation of the Stoney Nakoda Nations for sharing their knowledge during the oral Indigenous knowledge sessions. The Commission also acknowledges the participation of First Nation communities that are signatories to Treaty 6, Treaty 7, and Treaty 8, as well as Métis people whose homes and traditional lands fall within these treaty regions.

1.2 Decisions made by the Commission

1.2.1 Section 58 Facilities and Activities

NGTL stated that to achieve the proposed construction schedule and commercially required in-service date for the Project, it sought exemptions for the following facilities and activities from the detailed route process pursuant to section 58 of the NEB Act:

- temporary infrastructure required for construction of the pipeline;
- Right of Way (ROW) preparation activities (including clearing, grading, and stripping) and commencing trenchless crossings in select areas (in aggregate not exceeding 40 km in length); and

- installation of tie-in assemblies located within the boundaries of the existing Clearwater Compressor Station (together the Section 58 Facilities and Activities).

The Commission is of the view that the Section 58 Facilities and Activities would be in the public interest, should the Governor in Council direct the Commission to issue a Certificate in respect of the Section 52 Pipeline and Related Facilities. Accordingly, the Commission has decided to grant Order XG-001-2021 (Order) 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 Section 58 Facilities and Activities, subject to the attached conditions (provided as Appendix II of this Report). Should the Governor in Council direct the Commission to issue a Certificate in respect of the Section 52 Pipeline and Related Facilities, the Commission will issue the Order concurrently.

Chapter 10 sets out the reasons for the Commission's decision on section 58 matters.

1.2.2 Tolling Matters

The Commission finds NGTL's proposal to roll in the cost of the Project facilities to the rate base for the NGTL System and to apply the existing NGTL System toll methodology to be appropriate.

Further discussion of the Commission's views on NGTL's requests pursuant to Part IV of the NEB Act is contained in Chapter 3 of this Report.

1.3 Conclusion

The Commission considered and weighed all of the evidence and arguments before it 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 legislation and standards regarding pipeline integrity, safety and environmental protection to which the Project would also be subject. Should the Project be approved and completed, NGTL's Accountable Officer will be required to submit a condition compliance filing to the CER pursuant to Condition 20 for the Section 52 Pipeline and Related Facilities and the same condition for Section 58 Facilities and Activities.

The Commission carefully considered all commitments made by NGTL at various stages in this proceeding. The Commission deems the commitments to be essential to its decision and has recommended **Condition 13** for the Section 52 Pipeline and Related Facilities, and would impose **Condition 12** for the Section 58 Facilities and Activities. These conditions require NGTL to track the fulfilment of commitments it made during the proceeding. The Commission will monitor NGTL's compliance with the Commission's requirements throughout the lifecycle of the Project.



S. Luciuk
Presiding Commissioner



D. Côté
Commissioner



W. Jacknife
Commissioner

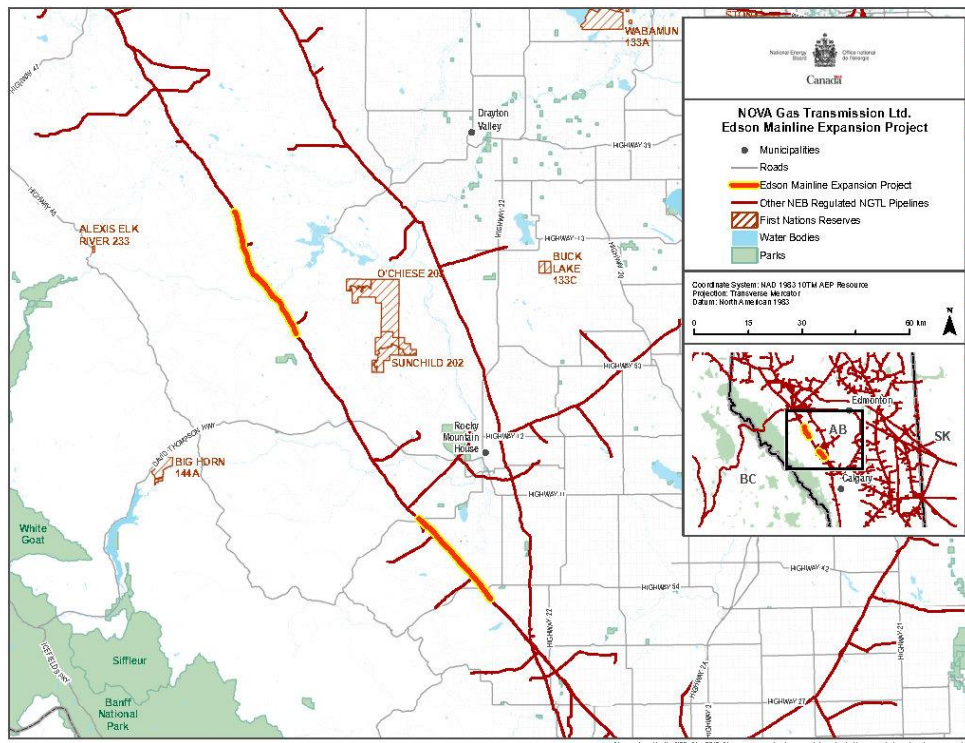
Calgary Alberta
November, 2020

Chapter 2 – Summary

2.1 What did NGTL apply for?

On 3 April 2019, NGTL filed an application for the Project. NGTL proposes to construct and operate approximately 85 km of 1,219 mm (NPS 48) outside diameter natural gas pipeline loops in two sections, and associated facilities. NGTL indicated that the Project is required to increase pipeline capacity to transport gas from the Peace River Project Area to growing intra-basin markets located in central and southern Alberta. A map of the Project is provided in Figure 2-1.

Figure 2-1: Map of the Project³



NGTL requested that a report be issued in a timely manner that would allow for a Certificate to be issued by no later than January 2021. This would allow NGTL to fulfill any pre-construction

³ Map produced by the Canada Energy Regulator for use in the GH-001-2019 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-001-2019 hearing.

conditions required under the Certificate and commence Project construction to meet the commercially required in-service date of April 2022.

2.1.1 Section 52 Pipeline and Related Facilities

The Section 52 Pipeline and Related Facilities consist of approximately 85 km of 1,219 mm (NPS 48) pipeline loops in two sections that would generally parallel the existing Edson Mainline in the Peace River Project Area, as well as construction-related temporary infrastructure, associated control valves, mainline valves, and a cathodic protection system. A summary of the Project components 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.

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

Pipeline Section	Pipe Diameter (mm)	Pipe Length (km)	MOP+ (kPa)	Contiguous*/ non-contiguous (km)	Minimum Wall Thickness (mm)
Alford Creek Section	1,219	45	8,690	39/6	13.7 to 22.0
Elk River Section	1,219	40	8,690	34/6	13.7 to 22.0

+Maximum Operating Pressure

*Contiguous with existing NGTL pipeline and other existing and/or proposed disturbance

2.1.2 Section 58 Facilities and Activities

NGTL stated that to achieve the proposed construction schedule and commercially required in-service date for the Project, its application sought exemptions from the detailed route process for certain facilities and activities pursuant to section 58 of the NEB Act. A summary of the Project components applied for in the section 58 portion of the Application are listed below:

- temporary infrastructure required for construction of the pipeline;
- ROW preparation activities (including clearing, grading, and stripping) and commencing trenchless crossings in select areas (in aggregate not exceeding 40 km in length); and
- installation of tie-in assemblies located within the boundaries of the existing Clearwater Compressor Station.

2.1.3 Part IV of the NEB Act

NGTL indicated that the Project is underpinned by incremental firm transport delivery contracts. NGTL proposed to provide services that utilize the Project under the terms and conditions established in the NGTL Gas Transportation 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.

2.1.4 Relief Requested by NGTL

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

- a report recommending the issuance of a Certificate, pursuant to section 52 of the NEB Act, authorizing construction and operation of the Project;
- an exemption from the requirements of paragraph 30(1)(b) and subsection 47(1) of the NEB Act to obtain Leave to Open from the Commission before installing certain tie-ins for the Project;
- an order, pursuant to section 58 of the NEB Act, exempting NGTL from the requirements of paragraphs 31(c), 31(d) and section 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
 - installation of tie-in assemblies located within the boundaries of the existing Clearwater Compressor Station.
- an order pursuant to Part IV of the NEB Act affirming that:
 - prudently incurred costs required to provide service on the applied-for facilities will be included in the determination of the NGTL System revenue requirement; and
 - the tolls for services on the applied-for facilities will 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.

2.1.5 *Canadian Environmental Assessment Act, 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 CEAA 2012 and requires a CEAA 2012 environmental assessment for which the Commission is the responsible authority referred to in section 15 of the CEAA 2012. 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 the CEAA 2012, is set out in Chapters 7 and 8 of this Report.

2.2 How did the Commission assess the Application?

2.2.1 Early Engagement

On 20 March 2019, the NEB issued a letter to 32 Indigenous communities potentially affected by the Project based on information provided by NGTL in its Project Description filed on 8 January 2019 in advance of the Application.

At that time, Horse Lake First Nation filed a letter of concern regarding the Project Description. Michel First Nation, Stoney Nakoda Nations and O'Chiese First Nation also filed letters regarding the consultation process and related capacity issues prior to the establishment of a formal hearing process for the Project. Discussion related to the concerns of Indigenous peoples is provided in Chapter 7.

Following NGTL's filing of the Application on 3 April 2019, the NEB issued a Notice of Hearing dated 31 May 2019, which directed NGTL to serve and publish the Notice of Hearing. The Notice of Hearing established the Application to Participate process by which interested parties could apply to participate in the GH-001-2019 hearing process. In order to be eligible to participate in the hearing, interested parties had to submit an Application to Participate form and demonstrate that they were directly affected by the proposed Project or that they had relevant information or expertise.

The Notice of Hearing indicated that Intervenor or Commenter status would be granted to Indigenous peoples potentially impacted by the Project should they choose to participate. The NEB required potentially impacted Indigenous peoples to register for the hearing by completing an Application to Participate form within the deadline period.

On 16 August 2019, the NEB issued Ruling No. 1, which determined participation (or standing) and method (or level) of participation in respect of the 31 Application to Participate forms received and the late Application to Participate request of the Canadian Association of Petroleum Producers. The NEB noted that 20 of the Application to Participate forms received were from Indigenous peoples who were granted pre-determined standing. NGTL did not have any comments with respect to the Application to Participate forms.

On 12 November 2019, the Commission issued Ruling No. 3 which accepted the late Application to Participate form of Asini Wachi Nehiyawak Traditional Band.

In all, the NEB and Commission received and assessed a total of 32 requests to participate. Of these, 29 applicants sought, and were granted, Intervenor status and 3 applicants sought, and were granted, Commenter status.

2.2.2 Participant Funding

The CER administers a Participant Funding Program, separate 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-001-2019 hearing process, all Participant Funding Program applications were filed by Indigenous peoples. Further details regarding the applications and the amounts awarded are

provided in subsection 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>.

2.2.3 Requests for Comments on the Hearing Process, Preliminary List of Issues, Preliminary Factors and Scope of Factors for the Environmental Assessment

The Notice of Hearing included a preliminary List of Issues (Appendix III), a preliminary Factors and Scope of Factors for the Environmental Assessment and a tentative hearing process (including potential hearing steps and approximate deadlines). The Notice of Hearing indicated that the NEB was considering conducting the hearing in writing, save for an opportunity for Indigenous Intervenors to share oral Indigenous knowledge. The Notice of Hearing requested that interested parties file comments on the above with their Application to Participate Form. NGTL was also provided an opportunity to comment.

After considering the comments filed and the NGTL reply, on 26 August 2019, the NEB issued Hearing Order GH-001-2019 which finalized the List of Issues and the Factors and Scope of Factors for the Environmental Assessment. Anticipating the coming into force of the CER Act on 28 August 2019, the NEB acknowledged the uncertainty the transition could have on the hearing process in the cover letter to the Hearing Order. Accordingly, the NEB set deadlines only for the initial hearing steps (i.e., Intervenor Information Requests (IRs) to NGTL and sharing of oral Indigenous knowledge). The NEB stated that these deadlines would allow the hearing process to commence while the NEB transitioned to the CER, and provide certainty to all Participants in terms of process steps and to NGTL in terms of timing of a Report. The NEB invited parties to file motions should they require additional hearing process steps.

Included in the Hearing Order was a Timetable of Events, which set the various written and oral hearing process steps and provided deadlines for the initial hearing process steps. In its letter provided with the Hearing Order, the NEB noted that the comments supported the proposed hearing process and that the Timetable of Events included hearing process steps that were requested by Intervenors, such as opportunities to provide evidence (including the sharing of oral Indigenous knowledge), to comment on proposed conditions and to provide final argument. The NEB noted that the remaining hearing steps would be finalized through future procedural updates.

Following release of the Hearing Order by the NEB, the Commission received comments from several Indigenous Intervenors on the List of Issues and Timetable of Events. In response, on 17 September 2019, the Commission provided a second comment process on hearing timelines and the List of Issues.

After reviewing comments received, the Commission released Ruling No. 2 on 15 October 2019, which extended the Timetable of Events, beginning with the deadline for Intervenors to file the first I R to NGTL, by four weeks, with similar extensions for each subsequent step in the hearing process. Ruling No. 2 also amended Issue 7 of the List of Issues to "Potential impacts of the Project on Indigenous Section 35 Rights and Interests."

2.2.4 Hearing Process Steps and Procedural Updates

The GH-001-2019 hearing process 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 or IRs). Hearing steps also included the sharing of oral Indigenous knowledge and an opportunity to provide written final argument. NGTL was granted an opportunity to file reply evidence and reply argument. In total, 14 Intervenors and NGTL filed written evidence, 15 Intervenors issued IRs to NGTL, 10 Indigenous Intervenors participated in the sharing of oral Indigenous knowledge, and 11 Intervenors and NGTL provided final argument.

Overall, a total of 9 procedural updates were issued by the NEB or the Commission prior to the close of the record on 27 August 2020. The Hearing Order and/or procedural updates outlined the expectations and requirements for parties associated with each process step. Parties were invited throughout the hearing process to comment on hearing steps. The CER made a Process Advisor available to help parties understand the process, their roles in the process and how they could participate effectively in the hearing process. The Process Advisor was also available before and after each oral Indigenous knowledge session.

2.2.4.1 The Sharing of Oral Indigenous Knowledge

In order to accommodate timing requests made by Indigenous Intervenors, the Commission held two sessions to receive oral Indigenous knowledge. From 21 to 22 January 2020, the Commission heard oral Indigenous knowledge in Red Deer, Alberta from Bearspaw First Nation, Chiniki First Nation, Wesley First Nation and Piikani Nation. From 25 to 27 February 2020, the Commission heard oral Indigenous knowledge in Edmonton, Alberta from Driftpile Cree Nation, Louis Bull Tribe, O'Chiese First Nation, Samson Cree Nation, Apetokosan (Kelly Lake Métis Settlement Society) and Papaschase Cree Nation.

Before providing Indigenous knowledge, presenters were asked to swear or affirm, including through ceremonies or prayers (e.g., smudging), that the information they were presenting was accurate and truthful to the best of their knowledge and belief. The Commission wishes to express its appreciation for the oral form of knowledge and information that was shared by Elders and Knowledge Keepers of Indigenous peoples, which was valuable for the Commission's consideration of the Application.

Further discussion regarding matters related to Indigenous peoples, including information heard during the oral Indigenous knowledge sessions, is provided in Chapter 7.

2.2.4.2 Testing of Evidence

Intervenors and NGTL were provided an opportunity to test the evidence (written and oral) through a series of IRs. Intervenors were provided an opportunity to ask three rounds of IRs to NGTL on NGTL's evidence. Intervenors and NGTL were afforded an opportunity to test Intervenor evidence through two rounds of IRs. The Timetable of Events was also updated in Procedural Update No. 7 to allow for motions to compel full and adequate responses on inadequate IR responses.

In total, 14 Intervenors issued IRs to NGTL, NGTL issued IRs to 12 Intervenors and 5 Intervenors filed motions to compel.

2.2.4.3 Cross-Examination and the COVID-19 Pandemic

In response to a request from O'Chiese First Nation on 26 September 2019 and Alexis Nakota Sioux Nation on 22 October 2019, the Commission revised the NEB-established hearing process to include oral cross-examination in Procedural Update No. 2 dated 3 December 2019.

On 11 March 2020, the World Health Organization declared COVID-19 a global pandemic. On 16 March 2020 the CER issued correspondence describing its precautionary measures and business continuity plans related to the COVID-19 pandemic.⁴ The CER confirmed that oral portions of hearings would not be held as planned, and that all adjudication processes were being examined for ways to optimize hearing participant involvement to ensure these processes could continue in a manner that was fair and transparent, while protecting the health of those involved.

On 30 March 2020, the Commission set out a comment process seeking input from parties prior to making a further determination regarding the hearing process for the Project. The Commission provided two procedural alternatives to oral cross-examination and invited parties to tender submissions on the presented alternatives, or on any other procedural options they wished the Commission to consider.

After considering the comments filed by parties, the Commission released Procedural Update No. 6 on 21 April 2020, which ruled that the remaining steps would be held in writing. The Commission stated that current pandemic challenges constituted a material change in circumstances preventing in person cross-examination from occurring for a potentially indeterminate period of time. Because a number of comments sought adjournment of the hearing process, in some cases for an indefinite period of time, in Procedural Update No. 6 the Commission also invited further submissions from all parties, with respect to when the remaining written steps for the hearing process could take place.

After carefully considering the comments received from parties and NGTL, the Commission released Procedural Update No 7 on 27 May 2020, in which it declined to adjourn the hearing and instead expanded the timelines for remaining hearing steps. The Commission was persuaded that significant potential prejudice to the Applicant and its customers, and potentially to the broad Canadian public interest, could arise if some degree of regulatory certainty was not achieved with respect to the Application. The Commission also found that, with the expanded timelines, Participants were likely to be able to complete their participation in the hearing process and that harm was unlikely to be experienced by Participants seeking adjournment, such that the balance of convenience justified an adjournment.

⁴ CER letter to regulated companies, all parties to active CER regulatory processes and other interested parties re COVID-19 Measures, available online at: <<https://www.cer-rec.gc.ca/en/about/news-room/whats-new/2020/canada-energy-regulators-precautionary-measures-business-continuity-plans-related-covid-19.html>>

2.2.4.4 Potential Conditions and Final Argument

On 9 June 2020, the Commission released for comment potential conditions that it could include in any recommendation or decision with respect to the Project under sections 52 and 58 of the NEB Act. The potential conditions were based on the Commission's initial assessment of the Application and filings on the record. NGTL and Intervenors provided comments on the proposed conditions concurrently with their final argument. NGTL and 11 Intervenors submitted written final argument. NGTL also provided a written reply.

The Commission has considered all comments received from NGTL and Intervenors before finalizing and setting out the terms and conditions it recommends or would impose on the Project. The views of the Commission in each chapter address key comments on potential conditions. Overall, the Commission has recommended the inclusion of 24 conditions in order for the Section 52 Pipeline and Related Facilities to be in the public interest, and has included 23 conditions in the XG-001-2021 Order for the Section 58 Facilities and Activities that would be issued in respect of the Project.

2.2.5 Confidentiality

The following parties provided confidential information in the GH-001-2019 proceeding under section 16.1 of the NEB Act or subsection 58(1) of the CER Act:

- Apetokosan (Kelly Lake Métis Settlement Society);
- O'Chiese First Nation;
- Papaschase Cree Nation; and
- Stoney Nakoda Nations - Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation.

In addition to Indigenous knowledge that was provided confidentially, Michel First Nation was granted a confidentiality ruling under paragraph 60(b) of the CER Act for the filing of confidential financial evidence.

While confidential information provided by the above Indigenous Intervenors has not been disclosed in the body of this Report, the Commission considered all confidential information provided in the GH-001-2019 proceeding in making its Recommendation and decision on this Project.

2.2.6 Procedural Fairness Considerations

The Commission recognizes that the transition from the National Energy Board to the Canada Energy Regulator and the COVID-19 pandemic have led to a dynamic and challenging hearing process. In particular, the Commission acknowledges that the pandemic has created extraordinary and devastating effects for all Participants and notes these effects, for Indigenous Intervenors, may be felt even more keenly.

In carrying out the assessment process, the Commission consistently sought to provide all Participants with fulsome opportunities to comment on procedural steps, including their associated timing, and made diligent efforts to address concerns that were raised. The

Commission appreciates the detailed submissions from Participants, both on procedural and substantive matters, particularly in the final hearing steps that took place after the onset of the pandemic. Despite the challenges that presented themselves during the course of this hearing, the Commission is of the view that the assessment process, as described above, fulfills its mandate under the NEB Act.

2.3 What does the Commission do next?

Should the Governor in Council accept the Commission's Recommendation, the CER would issue the required Certificate and Order at the direction of the Governor in Council. 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, throughout the lifecycle of the Project.

2.3.1 Detailed Route

While the Commission is approving the Section 58 Facilities and Activities exemption (see Chapter 10), if the Project is approved and a Certificate is issued, NGTL will be required to file its Plan, Profile and Book of Reference (PPBoR) for the portions of the route *not otherwise exempted* by section 58 of the NEB Act, potentially resulting in detailed route hearings for those non-exempted portions of the detailed route.

If the Project is approved, NGTL would 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 section 34 of the CER Act Related Provisions, the Commission will consider the PPBoR under the CER Act.

A detailed route hearing may be required, subject to subsections 203(2) and 202(6) of the CER Act, if a statement opposing the proposed detailed route 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.

The CER Act allows impacted landowners and persons who anticipate that their lands may be adversely impacted by the detailed route to oppose the detailed route. The Commission recognizes the rights of Indigenous peoples who may be impacted by a Project's proposed detailed route to make representations regarding the proposed detailed route. The Commission will generally send notices to Indigenous peoples who may be impacted by the detailed route and/or require the company, in this case, NGTL, to do same. As well, the company must publish a notice in at least one issue of a publication in general circulation within the area in which the lands are situated. The Commission generally requires that such notices be included in relevant Indigenous publications. The notice describes the detailed route and how persons can make representations regarding the proposed detailed route and oppose it.

During this time period, NGTL 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 Certificate or related Commission section 58 of the NEB Act order. 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 CER specialists would review all condition filings, those requiring approval of the Commission prior to construction would require this approval before the Project could proceed.

2.3.2 Conditions

The Commission has set out conditions that it considers necessary to, or desirable for, 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, the environment, and the rights and interests of stakeholders. Many of the conditions contain timing requirements to allow the CER to complete its assessment of submissions related to the conditions for compliance purposes.

Should the Governor in Council direct the issuance of the Certificate and the Section 58 Order is granted, NGTL must comply with all conditions, unless otherwise directed by the CER pursuant to **Condition 1** for both the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities. If construction has not commenced within three years of the issuance of these instruments, sunset **Condition 18** (Section 52 Pipeline and Related Facilities) and **Condition 16** (Section 58 Facilities and Activities) apply. Other conditions are discussed individually in the following Chapters. Appendix I lists the recommended conditions for the section 52 Certificate, and Appendix II lists the conditions the Commission would impose in a Section 58 Order.

Should the Project be approved, each NGTL filing with respect to a recommended or imposed condition and feedback received in respect of the filing are rigorously assessed by the CER for compliance purposes. The conditions, recommended and imposed, reflect the submissions received by the Commission and its consideration of the record. The Commission notes that all times, NGTL is expected to be in compliance with imposed conditions, regardless of whether filings are submitted for approval. The CER will monitor and enforce NGTL's compliance with these conditions, and any additional conditions the GIC might attach, throughout the lifecycle of the Project using audits, inspections and other compliance and enforcement tools.

2.3.3 Company Commitments

Throughout its deliberations, the Commission carefully considered all commitments made by NGTL in this proceeding. NGTL's commitments to address specific concerns are discussed in the applicable chapter. Commitments made by NGTL in its Application or in its related submissions during the proceeding also become regulatory requirements. As set out in **Condition 13** for the Section 52 Pipeline and Related Facilities and **Condition 12** for the Section 58 Facilities and Activities, related progress on commitments must be tracked and reported by NGTL.

Chapter 3 – Economic Feasibility

When making the determination regarding the economic feasibility of the Project, the Commission assessed the need for the proposed facilities and the likelihood of them being used at a reasonable level over their economic lives. Specifically, the Commission considered the supply and markets available to the pipeline, the contracts underpinning the facilities, the rationale for selecting the applied for facilities compared to alternatives and NGTL's ability to finance the Project. The Commission also considered the commercial impacts and proposed tolling of the Project.

3.1 Commercial Need

NGTL stated that the Project is needed to increase pipeline capacity to transport natural gas from the Peace River Project Area to growing intra-basin markets located in central and southern Alberta. NGTL submitted that customers have signed firm delivery contracts that provide the commercial support for the Project. Incremental firm delivery contracts totaling 323 terajoules per day (TJ/d) have been executed to support the expansion. NGTL stated that the Project is commercially required to ensure natural gas transportation capability to growing intra-basin markets in its Central Area⁵ by April 2022. NGTL stated that if it is unable to place the Project in service by April 2022, customers who are relying on incremental capacity by that date will be prejudiced because they may be unable to secure the gas supply needed for their businesses. Moreover, there may be delayed tax revenue benefits to governments, delayed return on capital investment to TC Energy's shareholders and negative effects on NGTL's reputation in the event of a delay.

Views of Participants

NorthWestern Energy stated that it has entered into a long term contract for incremental natural gas service for its Montana residential customers. NorthWestern Energy indicated that without the Project, the supply will not be available for future growth in Montana and that no other viable gas sources are available to fulfill this need.

The Alberta Department of Energy stated that the Project will provide important access to demand markets, which continues to be urgently required to prevent further harm to the Canadian natural gas industry and further insolvencies. Alberta's natural gas supplies continue to be constrained from accessing markets due to insufficient egress infrastructure and supporting market transportation contract demand. This lack of egress is adversely affecting the financial position of natural gas producers, including their ability to attract investment and sustain or create good-paying jobs for Albertans. Alberta Department of Energy further

⁵ Generally, the Central Area of the NGTL System is from the Canada/US border to the Alberta / British Columbia border south of James River to the Alberta / Saskatchewan border south of NGTL's Bens Lake Compressor Station.

submitted that there is a clear need for the increased capacity that the Project is designed to provide.

Canadian Association of Petroleum Producers (CAPP) submitted that the Project would provide required access to markets for CAPP members and other NGTL shippers. CAPP requested timely consideration of the Application based on the public and commercial interests affected by the Project.

3.2 Supply and Markets

NGTL stated that increasing volumes of natural gas are entering the NGTL System through the northwest area of the Western Canada Sedimentary Basin as a result of increasing production from the Montney and Deep Basin supply areas. This has resulted in a geographic shift of supply on the NGTL System along with the general decline of conventional supply on the remainder of the system. As a result, natural gas from growing unconventional and tight conventional supply within the Peace River Project Area of the Western Canada Sedimentary Basin needs to be transported to intra-basin delivery locations in NGTL's Central Area to meet existing firm transportation commitments and incremental long-term firm transportation contracts. NGTL submitted that the firm service contracts supporting the Project reflect the diversity of markets that are expected to have sufficient demand to absorb supply from the applied-for facilities over the long term.

NGTL expects conventional supply to continue to decline over time, with supply contributions from unconventional plays to increase. The share of natural gas to be transported by the NGTL System is forecasted to be approximately three quarters of total Western Canada Sedimentary Basin production to the end of the 2029/30 forecast period. Specifically, NGTL forecasted Western Canada Sedimentary Basin production to grow from 448 million cubic metres per day ($10^6\text{m}^3/\text{d}$) (15.8 billion cubic feet per day (Bcf/d)) in 2017/18 to approximately 637 $10^6\text{m}^3/\text{d}$ (22.5 Bcf/d) by 2029/30. During the same period, the share of Western Canada Sedimentary Basin production to be transported by the NGTL System is forecasted to increase from 346 $10^6\text{m}^3/\text{d}$ (12.2 Bcf/d) to 490 $10^6\text{m}^3/\text{d}$ (17.3 Bcf/d).

NGTL forecasted intra-basin demand served by NGTL to grow from 160 $10^6\text{m}^3/\text{d}$ (5.6 Bcf/d) in 2017/18 to 203 $10^6\text{m}^3/\text{d}$ (7.2 Bcf/d) by 2029/30⁶. NGTL indicated that the industrial sector, which includes a variety of industrials in the Central Area, and the electricity generation sector are responsible for nearly all of the intra-basin demand growth through the forecast period. NGTL submitted that policy drivers at the federal and provincial level, in combination with low natural gas prices, are influencing growing gas-fired electricity generation.

⁶ The NGTL System serves natural gas demand both within the basin and outside of it. Total NGTL System deliveries expected to grow from 349 $10^6\text{m}^3/\text{d}$ (12.3 Bcf/d) in 2018 to 490 $10^6\text{m}^3/\text{d}$ (17.3 Bcf/d) by 2030.

Views of Participants

Alberta Department of Energy noted that the Project will increase pipeline capacity to transport natural gas production from the Peace River area in northwest Alberta to utility, industrial and gas-fired electrical generation markets located in Central Alberta. Alberta Department of Energy stated that the Project will provide important access to demand markets and is a key addition to meet the aggregate forecast requirements for the overall integrated NGTL System.

3.3 Transportation

NGTL noted that the expansion is commercially supported by 14 customers who have executed 112 contracts under 25 separate Project Expenditure Authorizations for an incremental 323 TJ/d of intra-basin service. NGTL worked with intra-basin customers in the queue for new delivery service, assessed their requirements and contracted with the customers for incremental service. All queued customers were offered contracts for service. The term of service for all new contracts included a minimum term of eight years.

NGTL submitted that the Project facilities were designed to meet both incremental flow requirements at intra-basin delivery locations in the Central Area while also satisfying design conditions throughout the entire NGTL System. The Project would increase capability in the Project area to 101.7 10⁶m³/day (3.8 PJ/d), meeting the delivery design flow requirements.

NGTL described its facility planning process and the evaluation of facility alternatives for the proposed Project. NGTL considered three 30 megawatt compressor units as an alternative to this Project. When identifying facilities and planning system infrastructure, NGTL considered transport efficiency, operational flexibility and system reliability, existing ROW and disturbance, and cost (both cumulative present value cost of service and first year capital).

The cumulative present value cost of service includes annual fuel usage and greenhouse gas emissions, operating and maintenance factors, municipal and income taxes, capital costs escalated to the in-service date, annual return on investment and depreciation. The Project facilities were selected as the lowest cumulative present value cost of service option. The facilities were also preferred on the basis that they will increase transport efficiency and provide operational flexibility by reducing the length of pipelines out of service during maintenance activities or other outages, thereby reducing capacity impacts on shippers.

3.4 Ability to Finance

NGTL indicated that the estimated capital cost of the Project is \$509 million. NGTL stated that TransCanada will fund 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 December 2018, TransCanada and TransCanada Corporation, now known as TC Energy, had approximately \$446 million of cash on hand and \$10.1 billion of undrawn committed credit facilities. Over the past five years ending in 2018, TransCanada and TransCanada Corporation had generated \$25 billion in cash from operations and raised \$38 billion in the debt and equity capital markets.

NGTL stated it would have the financial resources to ensure 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. Since 11 July 2019, the NEB (now CER) has required NGTL to maintain access to at least \$200 million in financial resources to respond to a potential incident, pursuant to the *Pipeline Financial Requirements Regulations*⁷.

NGTL estimated the Abandonment Cost Estimate for the Project to be \$9.1 million, which represents less than 1.0 per cent of the Abandonment Cost Estimate for the entire NGTL System. NGTL stated that there would be a commensurate impact on its Annual Contribution Amount and abandonment surcharge calculations, which would be reflected in periodic updates filed with the CER.

3.5 Economic Benefits

NGTL submitted that the Project construction will result in a \$509 million capital expenditure. The Project is estimated to contribute a total of \$370 million to provincial Gross Domestic Product (GDP). The contribution that is expected to occur within the province of Alberta is \$285 million, with the remaining \$85 million occurring across other provinces and territories. The Project is expected to contribute \$175 million of labour income in Alberta. NGTL indicated the Project will provide contracting and employment opportunities to qualified local and Indigenous businesses and individuals near the proposed Project, and NGTL will provide support and resources to Indigenous peoples to support their long-term development and training goals. NGTL stated that, for its past projects in northern Alberta, Indigenous-owned businesses have generally represented 8 to 12 per cent of the total construction contract values. NGTL also stated that Indigenous peoples typically comprise approximately 8 to 10 per cent of the total construction workforce. NGTL stated that the majority of opportunities for economic participation through contracting and employment would occur in the construction phase of the Project.

The Project construction is estimated to generate tax revenues of approximately \$6.3 million federally, \$8.8 million provincially and \$7.1 million at the municipal level. During operations, the Project is estimated to contribute approximately \$740 thousand per year in property taxes to Clearwater County and Yellowhead County.

For additional information on the Project's potential effects on employment and economy, see Chapters 7 and 9.

3.6 Commercial Impacts

NGTL submitted that it provides notice of capacity capital projects to the Tolls, Tariffs, Facilities and Procedures Committee on an on-going basis. NGTL further submitted that at a March 2019 meeting, NGTL presented a facility notification for the Project to this committee and no concerns regarding the Project were raised. In addition to the Tolls, Tariffs, Facilities and Procedures

⁷ On 14 May 2019, NGTL submitted its Financial Resources Plan for the NGTL System, which was approved by the NEB on 26 August 2019.

Committee communications, NGTL notified other commercial third parties about the Project using a variety of communications tools.

The expected increase to NGTL's annual revenue requirement as a result of the Project is approximately \$63 million in 2023, the first full year the Project is expected to be in-service. NGTL estimated that the full-path toll impact is approximately 0.2 cents per thousand cubic feet per day (¢/Mcf/d) between 2022 and 2026.

In response to Commission IR No. 1.26, NGTL indicated that the toll impact would be 0.5 to 0.6 ¢/Mcf/d if the Project did not result in any supply response. However, NGTL submitted that it is reasonable to include a supply response in estimating Project toll impacts. NGTL's estimated Project toll impacts of approximately 0.2 ¢/Mcf/d were based on indirect receipt revenues from forecasted throughput associated with the delivery contracts, combined with a system average firm transportation receipt contract utilization rate. NGTL stated that based on past experience, the additional demand on the system will trigger a supply response of receipt contracts. NGTL indicated there are a variety of toll outcomes that can result for any project, depending on the circumstances on the NGTL System over time.

3.7 Tolling Matters

NGTL proposed to roll-in the cost of the Project to the rate base for the NGTL System, and to apply the existing NGTL System toll methodology, which may change from time to time, to the Project. NGTL stated that the Project is an expansion of the NGTL System that is required to meet the incremental demand for intra-basin delivery service. The Project would be fully integrated with the rest of the system and used to provide services under NGTL's existing tariff.

NGTL provided a list of additional planned facilities which are reflected in its forecast rate base amounts. The estimated average rate base will be \$17.0 billion in 2023, compared to a \$9.3 billion average rate base in 2019, and NGTL has provided illustrative toll rates showing rising tolls. NGTL indicated that responding to changing market and supply forces requires significant capital investment that increases its rate base. NGTL expects that both newly connected supply and established supply sources will contribute to the continued utilization of the NGTL System. This will contribute to rates remaining at competitive levels, ultimately supporting the competitiveness of the NGTL System and the Western Canada Sedimentary Basin in supplying diverse markets. Likewise, the increased competitiveness of Western Canada Sedimentary Basin gas has spurred incremental market demand, to which the Project seeks to connect, and which itself will contribute to the long-term utilization of the NGTL System.

3.8 Views of the Commission

The Commission finds the supply and demand forecasts submitted in this hearing to be reasonable, and notes 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. This finding is reinforced by the fact that NGTL is setting aside funds to meet its future abandonment costs,

as required⁸, and has financial resources available 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*. Based on these factors, the Commission finds that the applied-for facilities are economically feasible and are likely to be used at a reasonable level over their economic lives.

The Commission also finds that the Project would provide net 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. While the Commission has made its findings on a broad Canadian basis, it also acknowledges that several Indigenous peoples raised concerns that they would not see any direct or tangible benefits from the Project. The Commission addresses those issues in Chapters 7 and 9. The Commission also weighed the economic benefits to Canadians in relation to the Project's burdens, which are summarized in subsection 1.1.1.

With respect to NGTL's proposed tolling treatment of the Project, the Commission considered the degree of integration of the Project facilities to the existing system, as well as the nature of service provided on the Project facilities. The Project is comprised of two pipeline loops that expand the capacity of the existing NGTL System. The Commission therefore finds the Project to be highly 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 notes that no Participant opposed NGTL's proposed tolling treatment. Accordingly, the Commission finds NGTL's proposal to roll in the cost of the Project facilities to the rate base for the NGTL System and to apply the existing NGTL System toll methodology to be appropriate.

With respect to the Project toll impacts, the Commission agrees that there can be a variety of toll outcomes that can result for any project. To enable effective and efficient reviews, the Commission expects that NGTL will include a detailed description and discussion of the range of potential project toll impacts when submitting future applications, including all revenue and cost assumptions that support each scenario. The Commission also expects that similar information will be shared and discussed with the Tolls, Tariffs, Facilities and Procedures Committee.

The Commission notes that tolls are increasing as the NGTL System undergoes a number of large expansion projects, and that NGTL anticipates that rates will remain at competitive levels. While the Commission finds that the proposed Project toll treatment is reasonable, the Commission is in no way removing the responsibility for long-term risk from NGTL. Rather, fundamental risk remains NGTL's to manage, as discussed in the recent NGTL System Rate Design RH-001-2019 Decision.

⁸ National Energy Board, MH-001-2012 Reasons for Decision.

Chapter 4 – Facilities and Emergency Response Matters

When considering 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 *Canadian Energy Regulator Onshore Pipeline Regulations* (OPR), which includes by reference the Canadian Standards Association (CSA) Standard CSA Z662 – Oil and Gas Pipeline Systems (CSA Z662).

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

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

- emergency management program 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 peoples and the public adjacent to a 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.

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, manuals and reports. The Project would be part of the existing NGTL System which is subject to the CER's comprehensive regulatory oversight.

This chapter addresses the technical, engineering and feasibility aspects of the Project's design and construction, pipeline integrity, and matters pertaining to emergency response, safety and security.

4.1 Project Description

The Project is described in subsections 2.1.1 (Section 52 Pipeline and Related Facilities) and 2.1.2 (Section 58 Facilities and Activities). It parallels existing NGTL ROW and other existing and/or proposed linear disturbances for approximately 73 out of 85 km.

The Project would include mainline block valves as well as crossover valves to manage flow on the NGTL System. NGTL intends to utilize launcher and receiver facilities proposed to be constructed as part of the 2021 NGTL System Expansion Project and the West Path Delivery 2022 Project, respectively, to conduct in-line inspections of the Project.

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 OPR, CSA Z662-19 and various TransCanada specifications. If there are any inconsistencies between the OPR and CSA Z662-19, the OPR would govern. NGTL also provided current industry standards applicable to the Project.

Views of the Commission

The Commission is satisfied that the Project will be designed, located, constructed, installed and operated in accordance with the OPR, CSA Z662-19, TransCanada specifications and applicable industry standards. On this basis the Commission is also satisfied that the general design of the Project is appropriate for its intended use.

The Commission recommends **Condition 2** (Section 52 Pipeline and Related Facilities Design, Location, Construction and Operation) for the Section 52 Pipeline and Related Facilities and would impose **Condition 2** (Section 58 Facilities and Activities Design, Location, Construction and Operation) for the Section 58 Facilities and Activities, requiring NGTL to comply with the specifications, standards, commitments made and other information included in its Application and otherwise made on the hearing record.

4.2.2 Material Specifications

NGTL indicated that the estimated mainline pipe material grade for all pipeline sections is 483 megapascal with varying wall thicknesses and that the final grade(s) would meet or exceed minimum requirements of CSA Z662-19. NGTL further stated that industry standards applicable to the Project include 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 the Commission

The Commission is of the view that the estimated pipe grades for the Project meet the requirements set out in CSA Z662-19 and that NGTL's quality management system, including the purchasing of pipe for the Project, is appropriate. This view takes into account the quality assurance of pipe and components that are addressed in 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 Hazards and Design

NGTL specified that the geotechnical and hydrotechnical assessments would focus on: the history of landslides and the potential for reactivation of old slides along the route based on soil type and subsoil conditions; scour and erosion potential at watercourse crossings; subsurface conditions for watercourse crossings using trenchless methods; and, areas of potential stress concentrations.

NGTL submitted a trenchless crossing feasibility report for the Brazeau River crossing and stated that a desktop terrain analysis was completed. The analysis identified the slope for the entirety of the Alford Creek Section as Class 1 and Class 2, and therefore no mitigation is required. Most of the Elk River Section was characterized as Class 1 and Class 2, except two short sections of Class 3 and Class 5 respectively. NGTL anticipates standard slope mitigation measures for the Class 3 section, as well as the Class 5 section (the Brazeau River) if the open cut contingency is used instead of the primary trenchless horizontal drill crossing method. No slope mitigation would be required if the trenchless horizontal drill crossing method is employed. Final details of slope mitigation will be completed in detailed design and is expected to be complete by Q4 2020.

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 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;
- strain relief; and
- pipe realignment.

For the areas of potential muskeg terrain, 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.

Views of the Commission

The Commission is of view that NGTL is able to address all geological hazards, organic terrain and muskeg issues, considering that the proposed Project is generally in an area where NGTL has designed, constructed and operated pipelines. The Commission is satisfied with NGTL's proposed measures applied to the design, construction and operation phases of the Project to mitigate the geological hazards identified along the pipeline route and through the zones of muskeg and other organics.

4.2.4 Watercourse and Road Crossing Methods

The proposed pipeline routes cross the Elk River, Brazeau River, Nordegg River, Clearwater River, and Prairie Creek watersheds and a total of 33 watercourses (16 in Alford Creek Section and 17 in Elk River Section), as well as 9 drainages (7 in Alford Creek Section and 2 in Elk River Section). NGTL is planning a trenchless watercourse crossing at the Brazeau River, with a non-isolated open-cut crossing contingency, and an isolated open cut crossing at the Clearwater River, with a trenchless method contingency. NGTL stated that the remaining watercourses will be trenched and proposed to be crossed using an isolation or open-cut crossing method.

NGTL submitted that appropriate watercourse crossing locations and techniques were determined using industry-accepted design and installation practices, upgraded to reflect the guidance of Fisheries and Oceans Canada's (DFO) Measures to Avoid Causing Harm to Fish and Fish Habitat, Alberta Environment and Parks' *Water Act* Codes of Practice, as well as site specific assessments to minimize potential effects on fish and fish habitat.

NGTL stated that it typically considers 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 an isolated channel diversion for crossing the Clearwater River. Given the relatively small size and low flows of many of the

proposed crossings, NGTL has a high level of confidence that, if required, isolated crossing methods will be successful. NGTL proposed a trenchless method as a primary crossing method for the Brazeau River.

NGTL stated that roads and railways would be crossed using NGTL's typical road crossing design, which meets the requirements of CSA Z662-19.

Views of Participants

Indigenous parties have raised various concerns regarding watercourse crossings, which are addressed in Chapter 7 (Matters related to Indigenous Peoples) and Chapter 8 (Environment and Socio-Economic Matters).

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 proper design and planning. Accordingly, the Commission recommends **Condition 15** (Horizontal Directional Drill Execution Plan for Brazeau River) for the Section 52 Pipeline and Related Facilities, requiring NGTL to file the Horizontal Directional Drill Execution Plan for the Brazeau River crossing at least 30 days prior to the commencement of horizontal directional drill activities.

The Commission notes that should NGTL employ alternative crossing methods for watercourses, including the Brazeau River crossing, such methods would require a thorough assessment that would include feasibility and engineering studies. Accordingly, the Commission recommends **Condition 16** and would impose **Condition 17** (Contingency Watercourse Crossing Method) for the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities, respectively, which require NGTL to notify the CER whenever it proposes to employ a contingency crossing method and provide the underlying rationale. In response to various Indigenous parties' requests to be notified if contingency watercourse crossing methods are planned, these conditions require NGTL to provide copies of filings associated with these conditions to Indigenous peoples who confirm an interest in receiving them.

The Commission has further recommended **Condition 10** (Updated Environmental Protection Plan for Section 52 Pipeline and Related Facilities) and **Condition 9** (Environmental Protection Plan for Section 58 Facilities and Activities), which include the requirement that NGTL provide updated watercourse crossing inventory tables.

4.2.5 Depth of Cover

NGTL stated that the pipeline would generally have a minimum depth of cover of 0.9 metres (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;

- buried utility and foreign pipeline crossings, above or below the pipeline, would have a minimum clearance of 0.3 m; 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 the Commission

The Commission is satisfied with NGTL's proposal regarding minimum depths of cover. The Commission notes that the increased burial depths for agricultural lands, road and water crossings exceed the requirements of CSA Z662-19 and accommodate ordinary agricultural practices, as well as road and water crossings.

4.2.6 Construction

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

NGTL requested Leave to Open (LTO) exemption for several tie-ins to existing pipelines and facilities 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, but the integrity of the welds will be verified in accordance with the OPR, CSA Z662-19 and industry accepted methods and standards. NGTL indicated that the integrity of the welds would be verified by both a visual inspection and non-destructive examination that includes one or more of radiographic, ultrasonic, magnetic particle, or liquid penetration examination, depending on the size and type of weld. Inspectors would be required to 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.

NGTL confirmed it would clean the pipeline with cleaning pipeline inspection gauges 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 noted that upon the successful completion of hydrostatic testing, the pipeline would be prepared for commissioning and startup.

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 has decided to grant NGTL an exemption from the requirements of paragraph 30(1)(b) and subsection 47(1) of the NEB Act to obtain Leave to Open from the Commission before installing tie-ins to existing pipelines and facilities.

To accommodate reasonable and acceptable changes during construction, the Commission would recommend **Condition 19** (Technical Specification Updates) for the Section 52 Pipeline and Related Facilities and would impose the same condition for the Section 58 Facilities and Activities. The condition will require NGTL to file any technical specification updates concurrently with applicable Leave to Open 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 and subsequent NGTL filings. Any other changes will require advance approval from the CER. Once filed by NGTL, the CER will review all final technical specification updates and issue an amending order as appropriate.

While the conditions noted above were not included in the previously released list of potential conditions for comment, the Commission notes that these are conditions imposed frequently on projects with similar facilities and activities, including other NGTL projects. The Commission views the above conditions as necessary and in the public interest.

The Commission further recommends **Condition 23** (Pipeline Geographic Information System Data) for the Section 52 Pipeline and Related Facilities, requiring NGTL to provide geographic information system data in the form of ESRI® shapefiles.

4.2.7 Control System and Overpressure Protection

NGTL submitted that the pressure control and overpressure protection design of the Project would comply with the requirements of the OPR and CSA Z662-19. NGTL also stated that TransCanada's Gas Control Centre, which operates 24 hours a day and 7 days a week, monitors and controls real-time pipeline pressures through a supervisory control and data acquisition system. NGTL submitted that procedures are in place to ensure regular inspection, assessment and testing at the required intervals which will ensure that all facilities' pressure control and overpressure protection systems are in good operating condition and set to function at the determined pressure. Additionally, NGTL stated that the overpressure protection system will act independently, automatically and continuously.

NGTL further submitted that the installation of new pressure control and overpressure protection equipment to limit the potential of pressure-communication between the existing 8,690 Kpa and the 6,450 Kpa sections of the Alford Creek Section will be required. All facilities within the hydraulically significant area of the Elk River Section will share a common maximum operating pressure, or have existing code-compliant pressure control and overpressure protection devices between existing facilities of uncommon maximum operating pressure, such that no additional overpressure protection is required between the identified facilities. No other pressure sources were identified in the area to potentially overpressure the Elk River Section of the Project.

Views of the Commission

The Commission is satisfied that NGTL has appropriately addressed issues related to potential discrepancies in maximum operating pressure between existing connecting facilities and proposed facilities. Additionally NGTL has stated that the pressure control and overpressure protection systems will meet the requirements of the OPR and CSA-Z662-19. As such the Commission is satisfied that the Project's proposed pressure control and overpressure protection systems are appropriate.

4.3 Operations – Pipeline Integrity

4.3.1 Coating

NGTL 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 the Commission

The Commission is satisfied that NGTL has appropriately addressed 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.

4.3.2 Cathodic Protection

NGTL submitted that in addition to the pipe coating, an impressed current cathodic protection system would be installed which may consist of existing cathodic protection systems as well as new cathodic protection systems, if required. These would include groundbeds and rectifiers, as determined during detailed design and located, where practicable, 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 cathodic protection 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 cathodic protection system and to demonstrate compliance to the applicable code requirements.

Views of the Commission

The Commission is satisfied that NGTL's cathodic protection and monitoring measures are appropriate for the Project.

4.3.3 In-line Inspection

NGTL intends to utilize launcher and receiver facilities proposed to be constructed as part of the 2021 NGTL System Expansion Project and the West Path Delivery 2022 Project, respectively, to conduct in-line inspections of the Project.

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 in-line inspection using magnetic flux leakage and high-resolution caliper tool.

Views of the Commission

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

4.3.4 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 American Society of Mechanical Engineers 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 would then be used to develop recommendations on the design, construction and management of operating concerns 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 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 Integrity Management Program 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 the Commission

Section 40 of the OPR requires companies to develop, implement and maintain an integrity management program that anticipates, prevents, manages and mitigates conditions that could adversely affect safety or the environment during the design, operation, maintenance or abandonment of a pipeline. The Commission is satisfied that potential integrity threats would be identified by NGTL using a quantitative threat assessment based on preliminary

and detailed design, and data collected during operations through aerial patrols, in-line inspections, and cathodic protection monitoring. Once operations commence, the Project would be incorporated into TransCanada's Integrity Management Program, and as such the Commission is satisfied that such threats would be mitigated by NGTL.

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. This section examines NGTL's ability to anticipate, prevent and respond to emergencies.

4.4.1 Emergency Response

Views of Participants

Michel First Nation and O'Chiese First Nation raised concerns about how emergency management consultation and communication would be conducted with Indigenous peoples and how emergency response plans would consider the safety of Indigenous peoples.

Piikani Nation stated that NGTL has provided inadequate information regarding emergency response plans and/or an approach related specifically to pipeline related accidents, malfunctions, leaks or spills. Piikani Nation said emergency response plans are currently too generalized to reflect the specific geography, values and concerns held by Piikani Nation in the event of pipeline related accidents, spills and/or leaks. Similarly, the Stoney Nakoda Nations expressed concern with the lack of a formal plan to respond to accidents and safety risks, and requested the creation of an emergency response plan for the community as a whole, such as an area management plan.

During the Stoney Nakoda Nations oral Indigenous knowledge session, Ms. Seona Abraham raised concerns with emergency planning:

The Project is pretty close to Highway 11 that the Stoney rely on. The Big Horn Reserve is a semi-isolated community, and like I mentioned before, the nearest services is Rocky Mountain House, and 120 kilometers away, which is one way.

What happens if there is an emergency and the highway is closed? There is no current emergency plan in place. What will the Stoney do?

The cell service out on the Big Horn is not good, so in case of an emergency, sometimes services are not easily accessible. If the people cannot get into Rocky Mountain House, there could be potential impacts on health, and unnecessary risks, even deaths, to community members.

-- Seona Abraham, Stoney Nakoda Nation, Transcript Volume 1 [521-523]

Stoney Nakoda Nation member, Mr. Bill Snow, also raised concerns about the importance of communication during an emergency and the potential for miscommunication or misunderstanding as a result of the language barrier between community members and NGTL:

So if we imagine that a person from the proponent makes their way out on Highway 11 to Big Horn, comes up to the first house he sees, there might be an elderly woman there who's in a wheelchair who might be on dialysis who may not speak -- or may speak very little English. And that person is telling this other person, you know, "Close your doors, lock your windows, stay in place. Call this number if you're having -- if you experience any symptoms."

You know, that whole conversation might not even happen, or it may be misunderstood or miscommunicated. So right now, that's the scenario, should something happen, should the Project be approved, should all of these things continue, if we continue with the status quo.

-- Bill Snow, Stoney Nakoda Nation, Transcript Volume 1 [957-958]

General concerns surrounding engagement and the potential for accidents, malfunctions, reclamation and/or remediation were also raised by Alexis Nakota Sioux Nation, Ermineskin Cree Nation and Whitefish (Goodfish) Lake First Nation #128. Louis Bull Tribe, Samson Cree Nation and the Stoney Nakoda Nations likewise raised concerns about the potential for accidents and malfunctions, including localized spills and contamination, and including pipeline incidents.

O'Chiese First Nation stated NGTL's existing mitigation strategies and contingency plans are not adequate for addressing O'Chiese First Nation's specific needs and concerns in the event of an accident or malfunction. A similar concern was shared by Piikani Nation. Stoney Nakoda Nations stated that a Nations-specific emergency response plan is necessary since they are particularly vulnerable during any accidents or emergencies by virtue of the remoteness of Bighorn Indian Reserve 144a and the distance from nearest services. In final argument, the Stoney Nakoda Nations stated that NGTL will not create an emergency response plan specific to the community and reiterated that their distinct community conditions make them particularly vulnerable to accidents or emergencies.

In final argument, Louis Bull Tribe and Driftpile Cree Nation both stated that they must be provided with the means and resources to engage in Indigenous-led monitoring and emergency response for the lifetime of the Project.

Environment and Climate Change Canada (ECCC) stated that emergency response and spill/release plans should be based on potential accidents and malfunctions, site-specific conditions and sensitivities, as well as the assumption that a catastrophic incident is likely to occur during the lifespan of the Project.

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

Views of NGTL

NGTL stated the product to be transported by this Project is sweet natural gas not oil, liquids, or condensates. In the event of a pipeline leak or rupture, NGTL said natural gas will disperse

into the atmosphere. According to NGTL, evacuation would be limited to the immediate vicinity of the Project rather than a larger area that would be required in the case of a sour gas incident. NGTL also said the Project would not traverse any reserve or Métis settlement lands and as a result, it is anticipated that interactions between community members and a Project-related emergency, if any, are more likely to be with community land users in the Project area rather than within the community boundaries.

NGTL said project planning and design, equipment selection, hazard analysis and corrective action, emergency response planning, security management, and the implementation of established effective environmental protection measures in the Environmental Protection Plan and emergency response plan would reduce the potential for accidents and malfunctions to occur and reduce the effects of an event if it occurs. NGTL said the risk of an unplanned event occurring during construction and operations is reduced through selecting and implementing construction materials and methods that meet or exceed industry standards, regulatory requirements and TransCanada's standards and specifications, as well as implementing TransCanada's Corporate Security Policy. The risk during operations is also reduced by implementing TransCanada's Damage Prevention and Integrity Management Programs. The company stated that in the unlikely event of rupture or release, such unplanned events would be effectively managed during construction through implementation of contingency measures in the Project-specific Environmental Protection Plan and Project-specific emergency response plan. Unplanned events during operations would be effectively managed through TransCanada's overarching Emergency Management Corporate Program Manual, as well as automatic emergency shut down and facility isolation procedures that minimize the volume of potential release.

In addition, NGTL stated that during construction, each prime contractor would be responsible for ensuring the work performed is in accordance with contract documents, Project design, applicable standards, specifications and procedures, and the Project-specific quality plan. TransCanada inspectors would monitor all construction activities to ensure compliance. NGTL said the prime contractor communicates its site-specific safety plans to all personnel working on the project, including Indigenous peoples. This plan is distributed and communicated to personnel executing the field work and is available at the worksite. NGTL said the site-specific safety plans provide details of how occupational health, safety, security and emergency aspects of the construction work would be monitored/managed on the worksite. Emergency response is carried out under TC Energy's Emergency Management Response Plans (emergency response plans).

NGTL said as part of Project consultation activities, the company provides information concerning emergency preparedness and response to potentially affected stakeholders, emergency responders, landowners and Indigenous peoples. During the operational phase, TransCanada's emergency management team would liaise, collaborate and work with the emergency response agencies (fire, police, emergency medical services) in the area through tabletop and field response exercises, and other outreach activities.

In the event of an operational emergency, NGTL indicated that TransCanada's comprehensive Emergency Management Program would be activated. TransCanada employees and contractors receive training for emergency events and, if there is an incident, will work closely with landowners and impacted persons or groups, as well as authorities and emergency responders to manage the incident.

NGTL submitted that the company works closely with local first responders in its emergency preparedness and response. NGTL said that company representatives may initiate evacuations of NGTL facilities; however, local first responders must initiate and execute evacuations for potentially affected members of the public during an emergency and have the ultimate authority when it comes to ordering and communicating community or individual evacuations. Under these circumstances, TransCanada representatives may assist local first responders upon request.

Further, NGTL stated that emergency response procedures will be included in the emergency management plans for the Project. The emergency management plans will include communications protocols, including current contact information for all potentially affected Indigenous peoples. In the event of an emergency, the regionally-based Indigenous and community liaisons will contact the appropriate individuals via telephone and/or email to notify them of the nature of the emergency.

In response to the concerns expressed by Michel First Nation and O'Chiese First Nation regarding the adequacy of emergency management consultation, the extent to which the safety management plan considers the safety of Indigenous peoples and how NGTL and its contractors will ensure the safety of their members when exercising Indigenous and Treaty rights in the vicinity of the Project during construction and operation, NGTL stated that:

- the Indigenous engagement program and stakeholder engagement program are implemented during the planning, application and construction phases. NGTL said once the Project is in service and transitioned to operations, any outstanding communication commitments designed to increase awareness of the pipeline safety would be transitioned into the overall Public Awareness Program;
- threat categories are defined by the American Society of Mechanical Engineers, in response to concerns about how the concerns of Michel First Nation and O'Chiese First Nation were considered in relation to determining threat categories;
- the safety and health of TC Energy's employees, contractors and the public, including all Indigenous peoples, is paramount. The company said 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, NGTL stated all prime contractors and sub-primes are required to develop and implement safety, security and emergency management plans designed to protect employees and mitigate the risk of potential harm to communities and community members. NGTL will also provide Indigenous peoples with the proposed construction schedule and maps prior to the start of construction to avoid potential conflicts between construction crews and traditional land users. NGTL said it also collaborates with local emergency response and law enforcement agencies regarding Project plans;
- during operations the entire NGTL System is monitored and controlled by the TransCanada Operations Control Centre, which is staffed 24 hours per day, 365 days a year, and uses a computer-based supervisory control and data acquisition system to continuously monitor and control system operations; and
- in the event of an emergency, the regionally-based Indigenous and community liaisons will contact the community identified in the emergency response plan and share information related to the incident.

With respect to the language barrier concern raised by the Stoney Nakoda Nations, NGTL has stated that translating documents, such as safety materials, into Indigenous peoples' languages is an initiative that NGTL has previously considered and would consider supporting upon request or identification of interest from Indigenous peoples. NGTL stated this could facilitate broader understanding of emergency measures or signage in the event of an incident by land users who may not be fluent in English. NGTL stated that it does not have the linguistic expertise to verify the translations and would not be able to implement the emergency response plan in that language. The company said it has reached out to Stoney Nakoda Nations and O'Chiese First Nation to offer a presentation, meeting and/or further information on NGTL's emergency management and/or pipeline safety as it pertains to the NGTL System, and more directly the Project, and would work with these or other interested communities to schedule such activities at their earliest convenience. NGTL further stated that to the extent that any potentially affected community has concerns around the evacuation of its vulnerable members, including language barriers, NGTL's engagement representative is pleased to receive that information and incorporate it into any response planning as appropriate in consultation with existing community contacts, including providing such information to local first responders (as accountable evacuation authorities), during NGTL's ongoing liaison and continuing education with local first responders in accordance with sections 33-35 of the OPR.

In response to the general engagement and safety concerns raised by Alexis Nakota Sioux Nation, Ermineskin Cree Nation, Louis Bull Tribe, Samson Cree Nation, the Stoney Nakoda Nations and Whitefish (Goodfish) Lake First Nation #128, NGTL stated that the Project has been designed and will be constructed and operated following applicable standards, industry best management practices and Project-specific mitigation. NGTL also described its emergency response process and indicated that the Public Awareness Program will facilitate consistent, ongoing communication about safety, integrity and emergency response with Indigenous peoples.

Regarding the request by the Stoney Nakoda Nations for a Nations-specific emergency response plan and concerns raised by O'Chiese First Nation, Piikani Nation and the Stoney Nakoda Nations that the plans are inadequate for addressing their needs, concerns and values, NGTL said that it does not create separate Indigenous, emergency services or stakeholder-specific plans, which it submitted would give NGTL personnel inconsistent response tools that could seriously threaten life and safety during incident response. NGTL has stated that Project-specific emergency response plans are developed through a detailed and comprehensive program specific to the project and communities in which TransCanada operates, which includes gathering necessary and important feedback from local communities and emergency responders during the planning stages. NGTL therefore submitted that community-specific information is incorporated in emergency response plans and that the information is contained within a single plan that encompasses the entire Project.

In response to Louis Bull Tribe and Driftpile Cree Nation's argument that they must be provided with the means and resources to engage in Indigenous led emergency response for the lifetime of the Project and corresponding comments regarding Conditions 8 and 9, NGTL stated that they had not explained why the potential conditions as drafted were inadequate or why their proposed changes were required in the context of the Project.

In regards to the Stoney Nakoda Nation's request for an emergency response-related training session, NGTL previously stated that work with communities to understand how NGTL can support their safety initiatives, including emergency preparedness, accident prevention and education and training, is a focus area for its community investment program. NGTL said it

recognizes that each group's needs and interests are unique and that funding to communities is designed to provide flexibility in the development of initiatives that will support each group's long-term goals. NGTL said it contributes to community investment initiatives with local Indigenous peoples in the Project area and will continue to identify economic opportunities for community investment in all operating regions.

In response to Stoney Nakoda Nation's request for the creation of an emergency response plan for the community as a whole, such as an area management plan and corresponding discussions with government, NGTL submitted that the request falls outside the scope of the Project and NGTL's purview given the many variables that extend beyond NGTL's expertise and oversight. To date, NGTL said it has not received any proposal requests to fund an area management plan initiative from Stoney Nakoda Nation.

NGTL submitted that its comprehensive emergency response program is well-established, complies with all of the recommendations proposed by ECCC in this proceeding, and will provide reasonable protection for human safety, existing NGTL facilities, third party property and the environment.

In response to ECCC's recommendation that NGTL prepare emergency response plans, as well as spill and release contingency plans, NGTL said the Project will 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 from a rupture or release. NGTL further said emergency response plans contain information including providing notifications to safeguard the public, TC Energy's employees and contractors in the event of an emergency, reduce the potential for destruction of property, minimize the impact on the environment and limit interruption of service. According to NGTL, emergency preparedness is the foundation that supports NGTL's response activities. Preparedness includes hazard identification, risk assessments, response plans, training program, exercises, and public awareness elements of emergency management that considers the needs of TransCanada, its employees, the community-at-large, as well as regulatory and legislative requirements.

Views of the Commission

The Commission is of the view that NGTL is able to appropriately prevent and respond to emergencies.

With respect to prevention, the Commission is satisfied that NGTL will design, construct, and operate the Project in a manner that prevents and reduces potential hazards by, among other things:

- designing, locating, constructing, installing and operating the Project in accordance with the OPR, CSA Z662-19, TransCanada specifications and applicable industry standards;
- selecting and implementing construction materials and methods that meet or exceed industry standards, regulatory requirements and TransCanada's standards and specifications;
- implementing contingency measures in the Project-specific Environmental Protection Plan, and through implementing the Project-specific emergency response plan during construction; and

- implementing TransCanada's Corporate Security Policy and Damage Prevention and Integrity Management.

The Commission is satisfied with NGTL's commitment to monitor the integrity of the Project using a comprehensive risk-based methodology, by identifying potential integrity threats, initiating inspection and mitigation activities and developing specific integrity maintenance activities. The Commission is of the view these measures appropriately prevent and reduce potential hazards and risks to the safety and security of the public, the environment, property, as well as NGTL employees and facilities.

In regards to emergency response, the CER believes that being prepared for any situation is a critical part of energy safety. As required in section 18 of the OPR, a CER-regulated company and its contractor(s) are responsible for safety and regulatory compliance and these should be clearly defined at the beginning of a project. A company must instruct contractors in all relevant practices and procedures pertaining to their work prior to commencing construction activities. As required in section 32 of the OPR, 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.

Based on the evidence on the record, the Commission is satisfied that NGTL's emergency response planning, along with the conditions described below, is acceptable. The Commission has taken into account all evidence on the record, including the following:

- NGTL's emergency preparedness and response will be governed by the processes, procedures and guidance established in TransCanada's Emergency Management Corporate Program Manual and site-specific emergency response plans, which include communication protocols for stakeholders and Indigenous peoples;
- preventative and response measures have been prepared to address potential emergencies, including pipeline releases or ruptures, fires and hazardous materials releases;
- TransCanada employees and contractors receive training for emergency events and work closely with impacted persons or groups, as well as authorities and emergency responders, in the event of an emergency;
- NGTL liaises with local first responders and educates them about its assets and response roles in accordance with the OPR, which includes partnering and practicing with local first responders during emergency response;
- contact information for all potentially affected Indigenous peoples will be included in the emergency management plans for notification by Indigenous and community liaisons in the event of an emergency; and
- TransCanada has automatic emergency shut down and facility isolation procedures in place that reduces the effect of a potential release.

The Commission is also satisfied with NGTL's commitments to work with prime contractor(s) in developing and refining plans, such as safety and site-specific construction

emergency response plans, prior to construction and that compliance with safety, security and emergency plans will be enforced by TransCanada inspectors.

The Commission recognizes NGTL's efforts to ensure Indigenous peoples have the information they need regarding emergency response and pipeline safety and its willingness to receive information about specific evacuation concerns and incorporate it into response planning as appropriate. However the Commission takes seriously the concerns raised by Indigenous intervenors about how emergency-related notification, communication and consultation will be conducted and the importance of capacity building for Indigenous peoples. These concerns are especially pronounced for Stoney Nakoda Nations and O'Chiese First Nation given their proximity to the Project and their remoteness from nearby services.

In regards to Stoney Nakoda Nations' request for a Nations-specific emergency response plan, the Commission supports a single emergency response plan for efficiency with respect to response readiness and preparedness as well as clarity for first responders. The Commission is not persuaded that separate Indigenous community specific emergency response plans are warranted at this time.

While the Commission supports a single emergency response plan, it expects that NGTL will continue to engage Indigenous peoples with respect to evacuation and unique community needs. Any plan must be based on the particular risks - and in this case, the risks that NGTL facilities potentially pose - for the public and for Indigenous peoples who live, work and exercise their rights and interests in an area where evacuation can be necessary. NGTL is in the best position to understand the facilities' hazards and to collect feedback and input in order to inform the plan. As stated in subsection 1.1.3, the Commission expects that both NGTL and Indigenous peoples will work meaningfully to ensure that continued engagement efforts will be respectful, transparent and genuine, with the aim of building and maintaining a responsive dialogue.

To ensure that all potentially affected Indigenous peoples are notified of the Project's construction activities and receive NGTL's emergency response plan for the construction phase of the Project, the Commission recommends **Condition 8** (Construction Emergency Management Preparedness and Response Planning) and **Condition 14** (Construction Schedule) for the Section 52 Pipeline and Related Facilities and would impose the same conditions (**Conditions 8 and 15**) for the Section 58 Facilities and Activities, which require NGTL to file detailed construction schedule(s) and updates, as well as an updated emergency response plan for the construction phase of the Project, and to share them with Indigenous peoples who have confirmed an interest in receiving a copy.

The Commission further recommends **Condition 9** (Emergency Management Continuing Education Program) and would also impose **Condition 13** (Emergency Management Continuing Education Program) with respect to facilities and activities under sections 52 and 58, respectively. These conditions address safety procedures such as evacuation routes and Indigenous language translations. They require NGTL to provide a Project-specific plan for the development of its continuing education program under section 35 of the OPR, which details how information provided by potentially affected Indigenous peoples will be incorporated into the education program. While NGTL states that these conditions are unnecessary and redundant, the Commission views these conditions as important measures to address concerns of Indigenous peoples regarding communication, consultation and capacity building with respect to emergency-related matters.

The CER has a comprehensive regulatory regime in place that considers ECCC's recommendations for environmental emergencies that 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 that outlines how the prime contractor would implement, measure and review its health, safety and environment processes onsite, implementing all applicable health and safety laws and regulations, including all applicable orders, directives, codes, guidelines, permits, licenses and municipal bylaws and developing a site-specific emergency response plan. NGTL has committed to developing a safety management plan 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 applies to all of TransCanada's assets, including the proposed Project. By implementing TransCanada's Operational Management System 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 the Commission

In order to obtain confirmation that Construction Safety Manual(s) (referred to as site-specific safety procedures by NGTL) have been completed, the Commission recommends **Condition 11** (Programs and Manuals) for the Section 52 Pipeline and Related Facilities and would also impose **Condition 10** (Programs and Manuals) for the Section 58 Facilities and Activities, requiring NGTL to confirm that Construction Safety Manual(s) pursuant to section 20 of the OPR are in place for the Project. NGTL's filings will be reviewed through the CER's compliance verification. The Commission notes NGTL's commitment to continue to engage with Indigenous peoples with regards to safety during the lifecycle of the Project.

4.4.3 Security

NGTL submitted that security management during operations would be governed by TransCanada's Corporate Security Program Manual, Policy, and TransCanada's Operating Procedures which adhere to the CSA Z246.1 standard for security management and, subsequently, the OPR. NGTL also confirmed TransCanada's Corporate Security Program Manual would govern security management during construction and operations, but confirmed that prime contractor(s) would also be responsible for developing a security management plan for construction and monitoring its effectiveness.

Views of the Commission

The Commission is of the view that NGTL's proposed manual, policy and procedures to address security considerations are appropriate for the Project.

Chapter 5 – Land Matters

The Filing Manual sets out the expectations for lands information in support of applications 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.

This chapter focuses on Project routing and land requirements. Facilities-related matters, including watercourse crossing methods, are discussed in Chapter 4. Indigenous, environmental and socio-economic matters are discussed in greater detail in Chapters 7 and 8, respectively.

5.1 Project Routing

The Project components cross through Clearwater County and Yellowhead County in the Green and White areas of Alberta. The components are described in subsection 2.1.1 (Section 52 Pipeline and Related Facilities).

The Alford Creek Section is proposed to begin at NGTL's existing Clearwater Compressor Station in SE-03-36-07 W5M and end at NGTL's existing Vetchland compressor station in NE-14-39-10 W5M. The section will parallel the existing NGTL Edson Mainline pipeline ROW and other proposed linear disturbances for 88.8 per cent of the route. Descriptions of the lands and watercourses associated with the Alford Creek Section are contained in subsection 4.2.4 (Watercourse and Road Crossing Method) and Chapter 8 subsections 8.4.2 (Land, Human Occupancy, and Resource Use), 8.4.14 (Traditional Land and Resource Use) and 8.6.4.1 (Watercourse Crossings).

The Elk River Section will be constructed between SW-03-47-14 W5M and NGTL's existing Nordegg compressor station in NW-20-43-12 W5M. The section will parallel existing and proposed linear disturbances and dispositions, including the NGTL Edson Mainline ROW, for 83 per cent of the route. Descriptions of the lands and watercourses associated with the Elk River Section are contained in Chapter 8.

The proposed Project ROW is of variable width, typically using a 32 metre (m)-wide footprint, with additional temporary workspace where required (e.g., log decks, pipe bends, contractor offices and yards, storage sites for pipe and equipment, drill pads, storage of topsoil and grade material and laydown areas). NGTL has estimated that 193 ha of new permanent ROW for the pipeline components and an estimated 84.3 ha for new temporary workspace are required for construction of the pipeline components. NGTL stated that temporary workspace lands will not be required for NGTL's operational needs and will, therefore, be returned to the provincial Crown or the landowner after construction, cleanup and final reclamation.

5.1.1 Route Selection Process

NGTL stated its route selection process considers and balances numerous 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 temporary workspace 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* or *Species at Risk Act*);
- 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
- input received from potentially affected landowners, stakeholders and Indigenous peoples through various engagement activities.

NGTL submitted that once the preferred facility set for the Project was determined through its system design process, it designed the pipeline routes to minimize potential adverse effects in accordance with the above routing criteria. NGTL stated that its primary criterion was paralleling existing disturbances to the extent possible. NGTL argued that parallel routing (i) typically results in the shortest length of pipeline between the upstream and downstream “control points” on the existing system being looped; (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 noted that the proposed route for each section generally parallels the existing Edson Mainline facilities. However NGTL stated that locating the route adjacent to existing pipelines is not always feasible, such as where a parallel alignment would pose safety issues, conflict with third-party facilities or require watercourse crossings at undesirable locations. As such, new non-parallel ROW is required in exceptional cases at some locations along the proposed route.

NGTL also stated its intent to use additional permanent ROW and temporary workspace that overlap with existing dispositions associated with existing NGTL facilities, where feasible. NGTL stated that over 67 per cent of permanent ROW associated with the proposed pipeline overlaps with existing land rights. In addition, NGTL indicated that the Project’s routing is affected by the

Project's system design, which determined which sections of the Edson Mainline to loop. The location of connections for each loop section was then determined by the locations of existing mainline facilities, such as mainline block valves. NGTL stated that adding loop sections generally limits the area for routing consideration to the areas on either side of the existing pipelines, as well as constraining the locations where connections to the existing NGTL System can be made.

Since the Application was filed, NGTL indicated that Project engineering and construction planning progress has resulted in route refinements to the Project's proposed pipeline sections. NGTL stated that all route refinements are within the Project's consultation area and environmental study corridor. NGTL submitted that the proposed Project route is the most appropriate because it reasonably minimizes impacts on the environment, land owners and land users, while also providing the most efficient design for construction and operations.

NGTL noted that there may be additional route deviations in the future, in response to refinement of design and new survey, third party or geotechnical information. NGTL anticipates any such future deviations would occur within the consultation and study corridor. NGTL has also committed to continuing to consider micro-routing refinements and/or site-specific mitigation measures to address specific sites of concern that are identified by landowners and Indigenous peoples.

Views of Participants

Alexis Nakota Sioux Nation, Michel First Nation, O'Chiese First Nation and the Stoney Nakoda Nations (comprising of the Bearspaw First Nation, Chiniki First Nation and Wesley First Nation) raised questions regarding consultation on the route selection process and the Project's location being primarily on Crown land.

Alexis Nakota Sioux Nation expressed concern that trenched crossing methods increase land requirements of the Project and asked NGTL if it had considered alternative routes that would reduce the amount of watercourse crossings.

The Kainai Nation (Blood Tribe) and Siksika Nation traditional knowledge holders expressed concern that the Project would be built in parallel to existing disturbance and that this would expand the size of existing linear disturbances into adjacent forests and wetlands and reduce the availability of trees and vegetation resources in the Project Development Area. The expanded footprint will also change the pattern of access and movement by hunters in the Regional Assessment Area and Local Assessment Area. The Kainai Nation (Blood Tribe) and Siksika Nation Elders and traditional knowledge holders were also concerned about the Project contributing to increased linear disturbance along the existing pipeline corridor, increased surface area of disruption to vegetation and wetlands, as well as related effects on wildlife including those in the Local Assessment Area and Regional Assessment Area.

Michel First Nation stated that NGTL assumed that paralleling existing ROWs will reduce habitat loss or alterations but did not provide details as to how it arrived at this conclusion. Michel First Nation noted, for instance, that a wider ROW may be an ongoing deterrent for moose, a species of importance to the Nation. In addition, habitat loss or alteration and paralleling existing ROWs will both likely interfere with preferred means and increase avoidance behaviours of Michel First Nation members while exercising their rights. Michel First Nation also expressed concerns that trenched construction will increase the amount of land that is not preferred or avoided in respect of the exercise of its rights.

Piikani Nation stated that the Elk River Section crosses three watersheds of importance, including the Elk River, Brazeau River and the Nordegg River watersheds. The Alford Creek Section crosses an additional two watersheds of importance including the Clearwater River and Prairie Creek. Piikani Nation expressed concern about impacts to fish and fish habitat, which will impact its members' ability to fish. The importance of watersheds is reflected in the following knowledge received during an oral Indigenous knowledge session:

Piikani is my homeland and also here, which they call Red Deer, but we call it Ponoká'sisaahtaa, which is, you know, the Elk River.

-- Elder Shirlee Crow Shoe, Transcript Volume 2 [1064]

Samson Cree Nation expressed concern with diminishing Crown land base and stated that Project-related disturbances would exacerbate existing pressures on moose.

The Stoney Nakoda Nations submitted that NGTL's route selection criteria was determined and the route was largely selected without prior consultation. They also expressed concern that minimizing ROW length to reduce overall environmental and socio-economic footprint may exacerbate impacts to the valued components of lands by locating the route on unoccupied Crown lands. The Stoney Nakoda Nations were also concerned that paralleling the Project ROW to existing ROWs will result in a greater area of disturbance and larger avoidance buffers for their members to exercise their Section 35 rights. The Stoney Nakoda Nations further indicated that the proposed route interacted with sensitive grizzly bear habitat and requested that the Project be routed around such areas.

According to NGTL, Gunn Métis Local 55, Louis Bull Tribe, Montana First Nation, Piikani Nation, Siksika Nation and Whitefish (Goodfish) Lake First Nation #128 also expressed concerns about potential impacts to waterbodies and aquatic resources through watercourse crossings. NGTL also indicated that Gunn Métis Local 55, Apetokosan (Kelly Lake Métis Settlement Society), Montana First Nation and Piikani Nation recommended that NGTL employ community monitors at all watercourse crossings.

Views of NGTL

In response to questions raised by Alexis Sioux Nation, Michel First Nation, O'Chiese First Nation and the Stoney Nakoda Nations regarding consultation for route selection, NGTL stated that it had provided shapefiles for the proposed route, which included temporary workspace, in October 2019 but had not received specific feedback regarding the proposed route. NGTL stated that additional input will be considered in Project planning upon receipt, as appropriate.

NGTL further described the following regarding consultation on route selection in response to the Commission's Ruling No. 15:

- NGTL's routing criteria reflect recommendations received by various Indigenous peoples over the course of TC Energy's decades of Indigenous engagement as ways by which to minimize potential effects on traditional use sites, areas and activities, which operates effectively to avoid or minimize routing alignments or facility siting that potentially interacts with Indigenous land use or sensitive features even before more specific engagement-related inputs are received;
- Alexis Nakota Sioux Nation identified 3 campsites and requested that the Project route avoid them. NGTL confirmed that the campsites are on an existing ROW and that the

proposed Project footprint avoids the campsites, so a reroute is not required. The campsite locations have been inputted into Project planning to ensure continued avoidance throughout Project execution, during activities such as the locating of temporary workspace, and additional site-specific mitigation measures may be applied as appropriate to prevent potential adverse effects to them;

- NGTL has not received any further information from O’Chiese First Nation on specific locations of culturally sensitive sites beyond what has been filed confidentially and there are no known sites of this nature within the Project Development Area or within 1 km of the development area;
- Despite seeking additional detail regarding the location of specific sites and the nature, extent and use of such areas, NGTL has not received any further information from the Stoney Nakoda Nations on specific sites or potential effects within the Cultural Resource Areas to assist in informing Project routing or mitigation measures despite request;
- No route adjustments have been required on the Project based on information received from Indigenous peoples; and
- NGTL continues to conduct micro-routing refinements and/or identify potential additional site-specific mitigation measures to avoid or reduce potential effects on traditional use sites as they are identified by Indigenous peoples to NGTL, and that upon receipt of additional information NGTL will review it in the context of the Environmental and Socio-Economic Assessment in order to determine if additional or site-specific mitigation measures may be required, including micro-routing.

NGTL stated that in the event that the Brazeau River is crossed using a trenched crossing method, there will be an incremental increase in effects on traditional land and resource use compared to the primary crossing method, including the disturbance of an additional 10.4 ha of land and water, temporary restrictions in access and sensory disturbance. This is addressed in Chapter 7.

This contingency crossing would increase the Project Development Area of the Elk River Section from 292.3 ha in area to 302.6 ha in area, as construction would include trenching of the bed and banks of the Brazeau River as opposed to drilling under the river. The difference in the area of the final pipeline easement would be approximately 0.7 ha greater on the open cut crossing alignment in comparison to the planned trenchless crossing. NGTL confirmed that the easement will be available for use following construction, and stated the overall conclusion of the Environmental and Socio-Economic Assessment on the availability of traditional resources for current use on the Elk River Section does not change if the Brazeau River is crossed using a trenched (vs. a trenchless) crossing method. NGTL further noted that while trenchless crossings avoid disturbance to the bed and banks of watercourses, it requires relatively large areas for drill entry and exit pads, associated mud systems, storage areas, drag sections and drilling waste disposal sites.

In regards to the consideration of alternative routes to reduce the number of watercourse crossings, NGTL stated that route alternatives for the Project were constrained by control points. NGTL explained that primary tie-in control points are locations that must be connected by the pipeline (i.e., start and end points), and are fixed points on already constructed infrastructure. NGTL stated that secondary control points included feasible watercourse locations, and that while the number and location of watercourse crossings were considerations, they were not the only considerations. NGTL asserted that, through the application of NGTL’s

routing criteria, highways, major water crossings and the crossing of major wetlands were minimized where possible. Additionally, as most watercourses within the area run west to east and the pipeline route is generally north to south, no alternative route that was considered resulted in fewer watercourse crossings.

In response to concerns raised by Alexis Nakota Sioux Nation and Michel First Nation about trenched crossings, NGTL stated that it determines the appropriate crossing method by considering and balancing a variety of technical, environmental, stakeholder and economic considerations, along with additional conditions. In most cases, a conventional trenched crossing is the preferred crossing method because it involves the smallest footprint, duration of installation and cost. NGTL can construct these crossings effectively and has a proven suite of mitigation measures and industry best practices to address conventional construction across most watercourses. NGTL further stated that all regulatory approvals will be obtained prior to construction of a watercourse crossing.

With respect to the Project's location on Crown lands, NGTL stated that the new pipeline and facilities need to have multiple connections to the existing NGTL System and as such, are located geographically close to the existing pipelines. These existing pipelines are primarily on provincial Crown land.

In response to concerns raised about parallel routing, NGTL submitted that the Project will have relatively minor impacts on the environment and Indigenous land users due to NGTL's efforts to locate the majority of the Project route adjacent to an existing NGTL ROW. NGTL noted that fragmentation of landscape and wildlife habitat, which parallel routing is meant to minimize, is a concern expressed by Indigenous parties such as Louis Bull Tribe, Ermineskin Cree Nation, Gunn Métis Local 55, O'Chiese First Nation, Piikani Nation, Samson Cree Nation and Whitefish (Goodfish) Lake First Nation #128.

In response to Michel First Nation's concern that a wider ROW may be an ongoing deterrent for moose, NGTL submitted that according to the Environmental and Socio-Economic Assessment the Project effects would be low in magnitude, in part because the post-reclamation Project footprint will include moose forage species, the majority of the Project route parallels existing disturbance and NGTL will implement access control measures to prevent increased access along the ROW. According to NGTL, its post-construction monitoring will assess the success of reclamation activities and mitigation practices, or identify the need for adaptive management, to achieve similar outcomes to those predicted in the Environmental and Socio-Economic Assessment.

In response to Stoney Nakoda Nations' concerns about narrowing the Project Development Area, NGTL stated that while MNP LLP asserted that it would be feasible to reduce the Project footprint from what NGTL has proposed, there is no evidence on the record to support that claim. NGTL stated that MNP LLP made this assertion without asking any questions of NGTL to determine whether, in fact, a smaller footprint for the Project would be feasible in the circumstances. NGTL submitted that due to this deficiency, the Commission should give no weight to the assertion that the Project footprint could be feasibly reduced from what NGTL proposes in the Application.

NGTL further argued that Stoney Nakoda Nations' concerns regarding avoidance by community members should be given little weight since the stated avoidance was based on preferred conditions as opposed to actual land unavailability (noting that ROWs continued to be used by Indigenous land users) and that MNP LLP overstated the Project's effects. In response to the

concern that the proposed route interacted with sensitive grizzly bear habitat, NGTL stated that no changes were required to Project routing given that it had fully considered grizzly bears during Project design, environmental assessment and mitigation development. Grizzly bear habitat is discussed in Chapter 8, subsection 8.6.3 (Standard Mitigation).

Views of the Commission

The Commission finds that NGTL's route selection process, routing criteria and proposed route are appropriate:

- The Commission finds that NGTL's route selection process for the Project, and particularly its focus on paralleling disturbances, whether existing or proposed, is appropriate given the restrictions associated with the Project's system design and control points;
- The Commission finds 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; and
- The Commission finds that the proposed route is appropriate in the circumstances and that the proposed route reasonably minimizes impacts on the environment, landowners and land users, while also providing the most efficient design for construction and operations. The Commission has also examined the Project's proposed footprint and is satisfied that it is appropriate.

The Commission finds that NGTL has established that the proposed route for the Project will deviate from paralleling disturbances only in exceptional cases and that approximately 73 km or 86 per cent of the proposed route follows an existing NGTL ROW and other existing and proposed disturbances. The Commission acknowledges NGTL's efforts to minimize the potential environmental impact of the Project by proposing a route that parallels disturbances and locating construction ROW, where possible, in existing NGTL ROW, thereby reducing the amount of new Project footprint required.

The Commission notes that NGTL took into consideration input from potentially affected landowners, Indigenous peoples and stakeholders, including government authorities, in determining the route, including watercourse crossings. The Commission also notes that Indigenous parties were provided with Project files (kmz and shapefiles) in October 2019 that include ROW, ditchline and temporary workspace for the proposed pipeline sections, as well as wetlands intersected by the Project Development Area. NGTL also provided Project shapefiles in December 2019 which detail Crown dispositions that are within 250 m of the Project centerline.

The Commission notes that routing decisions involve many considerations, including environmental, archaeological and engineering factors, as well as engagement with landowners, land users, municipalities and Indigenous peoples. The Commission strongly encourages companies, including NGTL, to 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 future looping expansion(s) is/are anticipated, the cross section of pipeline ROW should be laid out in order to accommodate the future looping expansion(s) without the requirement for additional Crown or private lands to be taken up.

5.2 Land Requirements

The pipeline components for the Project require a total length of approximately 85 km of ROW as well as associated temporary workspace. An estimated 193 ha of new permanent ROW will be required for the Project. An estimated 84.3 ha of new temporary workspace will be required for construction of the Project.

NGTL also intends to use additional permanent ROW and temporary workspace that overlap with existing land rights associated with existing NGTL facilities, where feasible. NGTL stated that over 67 per cent of permanent ROW associated with the proposed pipeline overlaps with existing land rights.

The new ROW and temporary workspace are located on both private (freehold) land and provincial Crown land in Alberta. The Elk River Section will be located entirely on provincial Crown land. NGTL stated that prior to construction, the design of temporary workspace areas will be refined and site-specific width for temporary workspace will be identified.

For the majority of the length of the pipeline components, a minimum construction ROW width (including both permanent ROW and temporary workspace) of approximately 32 m will be utilized to provide for safe and efficient workspace for construction. NGTL noted it would require a permanent ROW of varying widths along the proposed route for operations and maintenance purposes. In areas where pipeline components parallel an existing NGTL ROW, the construction ROW will, where possible, overlap the existing ROW to maximize the use of the existing NGTL footprint. Construction ROWs greater than 32 m in some instances will be required for additional temporary workspaces to accommodate for:

- safety;
- material laydown areas and staging areas;
- areas of increased depth of cover;
- crossings (e.g., roads, railroads, pipelines, utilities and watercourses with defined banks);
- pipeline deflection areas;
- surface material depth and stripping procedure;
- timber clearing and storage;
- access;
- slip-bore locations;
- trenchless crossing locations;
- final tie-in weld locations; and
- areas where geotechnical or environmental conditions warrant additional temporary workspace.

NGTL stated that temporary workspace lands will not be required for the Project's operational needs and will be returned to the provincial Crown or the landowner after construction, cleanup and final reclamation.

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

5.2.1 Alford Creek Section

The Alford Creek Section is a pipeline loop section of the Edson Mainline that is approximately 45 km long and does not include a trenchless crossing. This section would require a total of approximately 199 ha for permanent lands and temporary workspace, consisting of 91.9 ha of permanent ROW on new lands, 49.3 ha of temporary workspace on new lands and 57.8 ha of overlap⁹ with land rights associated with existing NGTL facilities. The Alford Creek Section accordingly would require the use of approximately 141.2 ha of new land.

5.2.2 Elk River Section

The Elk River Section is approximately 40 km long and includes one trenchless crossing at the Brazeau River. This section would require a total of 187 ha for permanent lands and temporary workspace, consisting of 101.1 ha of permanent ROW on new lands, 35 ha of temporary workspace on new lands and 34 ha of overlap. The Elk River Section accordingly would require the use of approximately 153 ha of new land.

5.2.3 Cathodic Protection System

NGTL stated the pipeline components will share the cathodic protection system that currently protects the NGTL System. NGTL stated that where practicable, the rectifiers and groundbeds will be located at sites where a convenient source of electrical power exists. Cathodic protection test leads will be installed where required along the pipeline and at road, foreign pipeline and utility crossings at appropriate intervals. NGTL stated this approach will allow monitoring of the effectiveness of the applied cathodic protection current.

5.2.4 Valve Sites

NGTL stated that the mainline valves for the Project will be installed at intervals as required along the proposed pipeline sections and will be located within the permanent ROW. Additional temporary workspace will be required at these sites during construction. Based on preliminary design, approximately 0.27 per cent of the 375 ha (approximately 1 ha) of the Project footprint will ultimately be new fenced valve sites and unavailable for traditional use during operations.

The Alford Creek Section includes the construction and installation of:

⁹ Overlap refers to temporary workspace and permanent ROW overlapping existing NGTL land dispositions.

- three mainline block valves:
 - one valve at the south end of the Alford Creek Section at the Clearwater Compressor Station in SE-02-36-07 W5M;
 - one valve along the Alford Creek Section in SW-11-37-08 W5M; and
 - one valve at the north end of the Alford Creek Section in NE-10-38-09 W5M;
- one control valve and bypass assembly at the Clearwater Compressor Station in SW-02-36-07 W5M; and
- four crossover/tie-in valves:
 - one crossover valve at the Clearwater Compressor Station in SE-02-36-07 W5M;
 - one tie-in valve at the Clearwater Compressor Station in SE-03-36-07 W5M; and
 - two crossover valves at the north end of the Alford Creek Section in NE-10-38-09 W5M.

No valves have been proposed for the Elk River Section.

5.2.5 Receiver Lands

NGTL stated that the permanent receiver site was planned to be located at the Clearwater Compressor Station in SE-03-36-07 W5M, in a fenced area within the boundaries of the permanent pipeline ROW. In September 2019, NGTL stated that the receiver assembly had been moved to SW-02-36-07 W5M due to required spacing and engineering requirements. In April 2020, NGTL stated that due to efficiencies with a future downstream project, the receiver assembly has been removed from the scope of the Project to avoid the unnecessary installation of duplicative infrastructure.

5.2.6 Temporary Infrastructure Locations and Workspace

NGTL identified temporary infrastructure as stockpile sites, access roads and travel lands, borrow pits/dugouts, laydown yards, and contractor yards. NGTL stated it has not finalized the locations for all temporary infrastructure and is currently investigating locations. Stockpile sites, laydown/staging yards and borrow pits/dugouts are typically planned to be in close proximity to the ROW and to utilize existing disturbed areas where feasible to minimize effects on previously undisturbed land.

NGTL stated that other temporary infrastructure would ideally be located in close proximity to the ROW, but may be further away to capitalize on existing facilities or disturbed areas or to avoid environmentally or socio-economically sensitive areas. NGTL stated that contractor yards are selected by the prime contractor(s), who are engaged prior to construction with sufficient time to complete pre-construction planning.

NGTL stated that temporary access roads are not anticipated for the Project but, if required, would be in use for approximately 7-12 months for construction and approximately 3-4 months during final cleanup. Borrow pits and dugouts would be periodically used for the approximately 6 month construction window and potentially during final cleanup if required. Stockpile sites and contractor yards would be utilized for approximately 15-16 months during construction and final cleanup.

NGTL stated that temporary workspace is required for contractor offices and yards, storage sites for pipe and equipment, drill pads, storage of topsoil and grade material, laydown areas, and temporary access (e.g., roads and travel lanes), as well as a new permanent approach at the Clearwater Compressor Station. NGTL stated that temporary workspace is selected based on requirements needed to safely install the pipeline while protecting or minimizing effects on the environment.

NGTL stated the temporary workspace requirements for the pipeline components are subject to refinement as the Project proceeds through detailed engineering, and that prior to starting construction NGTL and the prime contractor(s) will complete an additional assessment of lands required for construction activities. NGTL stated that the NGTL and prime contractor assessment may find that additional temporary workspace may be required on a site-specific basis, which will be finalized in the field before, and potentially during, construction. NGTL confirmed that these areas, if needed, are expected to be located within the lands assessed in the Environmental and Socio-Economic Assessment and, in the event that temporary workspace is required outside lands assessed in the Environmental and Socio-Economic Assessment, NGTL will conduct a desktop review and field studies if necessary, apply any necessary mitigation as detailed in the Environmental Protection Plan and obtain any permits or authorizations prior to construction in accordance with applicable legislation. NGTL further stated that if areas outside of the Environmental and Socio-Economic Assessment are required, the proposed changes will be reviewed in the context of the Environmental and Socio-Economic Assessment to determine whether it changes the assessment's conclusions, and additional mitigation will be incorporated into the Environmental Protection Plan and Environmental Alignment Sheets where applicable.

Temporary workspace lands will not be required for NGTL's operational needs and will, therefore, be returned to the provincial Crown or the landowner after construction, cleanup and final reclamation. All ROW and temporary workspaces will be subject to re-vegetation, excepting valve sites, with the objective of achieving equivalent land capability for lands within the construction footprint (excluding aboveground facilities) to support various land uses similar but not necessarily identical to the uses that existed before construction.

5.2.7 Construction Camps

NGTL does not anticipate that construction camp(s) are required and it does not intend to build or operate construction camps. NGTL stated that sufficient accommodation capacity exists in the Project component areas; however, NGTL has been evaluating potential benefits associated with use of an existing third-party commercial camp near the Project area.

NGTL has not identified construction camps as temporary infrastructure for which it seeks a section 58 exemption; accordingly the CER's prior approval must be sought if an exemption for construction camps is required.

Views of Participants

Louis Bull Tribe raised concerns about the taking up of land for industrial uses, stating that there is basically no land left for them to use to practice Indigenous and treaty rights. Driftpile Cree Nation likewise raised concerns about the significant negative impacts of industrial development:

And I've seen myself in the traplines where they've logged out all around a trapper's cabin and there's nothing left there but the cabin, trees around the cabin. There's no animals there anymore, or moose.

-- Elder Ralph Collins, Driftpile Cree Nation, Transcript Volume 3 [1517]

O'Chiese First Nation calculated that the Project will result in an increase of 281.81 ha of disturbed lands in the Project Development Area, affecting the exercise of Inherent and Treaty Rights, and a decrease of approximately 11.84 ha in the Regional Assessment and Local Assessment Areas (equivalent to approximately 22.13 football fields) for hunting purposes.

The Stoney Nakoda Nations similarly stated that there will be a 259.34 ha decrease of lands currently available for the exercise of Section 35 Rights in the Project Development Area, which will be converted to unavailable lands in the development area post-Project approval. Stoney Nakoda Nations stated that 259.34 ha is equivalent to approximately 482 football fields. Stoney Nakoda Nations also stated that since NGTL proposed to narrow the Project Development Area in sensitive areas for the NGTL 2021 Expansion Project, Stoney Nakoda Nations does not perceive a reason why NGTL cannot narrow the development area on this Project to reduce impacts to Stoney Nakoda Nations' Section 35 Rights and interests.

Samson Cree Nation expressed similar concerns about cumulative effects and diminishing Crown land base, as did Piikani Nation, which submitted that the alienation of land and reduced ability to access hunting and harvesting areas is a serious burden, which will be increased by the Project. This concern was highlighted during an oral Indigenous knowledge session as follows:

Now as Treaty Natives, we're only allowed to hunt within Crown land. Well, our Crown land is disappearing. At one time it was at Strachan. And now you have to drive 30 miles west in order to hit Crown land. Everything is owned, leased by non-Natives.

-- Elder Marvin Murray, Piikani Nation, Transcript Volume 2 [1288]

Discussion regarding impacts of the Project's land requirements on the rights and interests of Indigenous peoples, including the availability of Crown lands, access to Crown lands, and the effects on the traditional land and resource use by Indigenous peoples is discussed in Chapter 7. Environmental and socio-economic matters are addressed in Chapter 8.

Views of NGTL

NGTL stated that there is no evidence in this proceeding to suggest that NGTL is seeking to use more land than is reasonably required to safely and efficiently construct the Project.

NGTL submitted that based on preliminary design, approximately 0.27 per cent of the 375 ha (approximately 1 ha) of the Project footprint will ultimately be new fenced valve sites and unavailable for use during operations. NGTL stated the valve locations will be finalized in the detailed design phase to optimize the location based on accessibility and areas used for pre-existing facilities.

NGTL stated that, except for limited access restrictions during construction and maintenance and relatively small areas of yarded facilities, the Project lands will remain available to third-party access, including Indigenous land users.

Views of the Commission

The Commission finds that NGTL's anticipated requirements for permanent and temporary land rights are appropriate because the requested ROW and temporary workspace allow for the construction and operation of the Project in a safe and efficient manner. In arriving at this decision, the Commission notes that there is no specific evidence that NGTL is seeking to use more land than is reasonably necessary to safely and efficiently construct the Project nor any detailed submissions on what a smaller footprint would entail.

The Commission recognizes NGTL's intention to overlap permanent ROW and temporary workspace with existing dispositions associated with existing NGTL facilities, where feasible, reducing the land requirements for the Project. The Commission notes NGTL's estimate that over 67 per cent of permanent ROW associated with the proposed pipeline overlaps with existing land rights.

The Commission also observes that the majority of the ROW width for both permanent and temporary workspace will be approximately 32 m, less than the 42 m that was in place for sensitive areas in the 2021 NGTL System Expansion Project. While the ROW width may increase in certain areas, the Commission notes that the use of these lands is temporary and that they will be returned to the provincial Crown or the landowner after construction, cleanup and final reclamation, which will support various land uses similar to the uses that existed before construction.

5.3 Land Rights and Acquisition Process

The Project components would cross a total of 141 parcels of land, which include four private (freehold) quarter sections along the Alford Creek Section and 137 parcels of provincial Crown land. NGTL identified five landowners (four freehold and the Provincial Crown) and eight occupants that are potentially affected by the Project. NGTL has 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 9 registered trapping areas, 26 guide/outfitters and 12 grazing leases.

NGTL stated that as it developed the proposed pipeline section routes, 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 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. This land data was then included in a Project Line List, forming the basis of consultation and land acquisition activities.

NGTL submitted that engagement with landowners, occupants and other stakeholders was accomplished through direct engagement with interested parties, the Project telephone line and email address, and Project representation at community events. Land matters (e.g., timing of land acquisition, necessity of crossing agreements to traverse pipeline ROW) were one of the primary topics of discussion with stakeholders and NGTL indicated that land representatives would be reaching out directly to landowners and other relevant third parties to discuss the Project.

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 will 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 landowner notices, where applicable, in Q4 of 2019. The completion of freehold land rights acquisition was anticipated by end of June 2020 and the receipt of all required Crown pipeline dispositions, as well as surface installations and facilities, is anticipated by Q1 2021. NGTL further anticipates the receipt of third-party agreements by Q4 2020 and stated that the acquisition of miscellaneous leases will commence once they are identified during construction planning.

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, an option may be to engage in a NEB-led Alternative Dispute Resolution process. NGTL further stated that either party may also 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 noted that section 75 of the NEB Act requires NGTL to do as little damage as possible to landowners' property as a result of its activities, and to make full compensation to landowners for all damages sustained by them in the manner provided for in the NEB Act.

NGTL stated there are no unresolved issues or concerns relating to the acquisition of the necessary land rights for the Project as of 26 May 2020. NGTL committed that throughout the regulatory process and construction phase it will continue to engage with the affected landowners and will address any issues should they arise.

Views of the Commission

The Commission notes that NGTL anticipated completion of freehold land rights acquisition by June 2020, and the receipt of all required Crown pipeline dispositions, as well as surface installations and facilities, by Q1 2021. Third-party agreements are also estimated to be completed by Q3-Q4 2020 with the acquisition of miscellaneous leases to be determined. 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 will meet the requirements of the NEB Act (including sections 86 and 87) and the CER Act (including sections 321 to 323), as applicable.

The Commission notes that in the event NGTL and a landowner cannot agree on compensation, they may engage in a CER-provided alternative dispute resolution process under subsection 73(1) of the CER Act or apply to the Commission for a determination or direction regarding compensation pursuant to sections 327 and 334 of the CER Act.

Chapter 6 – Public Engagement

The Filing Manual sets 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. This chapter addresses NGTL's stakeholder engagement program and Project-specific engagement activities. NGTL's Indigenous engagement program and Project-specific engagement activities with Indigenous peoples are discussed in Chapter 7 (Matters Related to Indigenous Peoples).

6.1 NGTL's Stakeholder Engagement Program

NGTL stated that it has a stakeholder engagement program for the Project, which is underpinned by the principle that stakeholders will be engaged in a fair, honest, open, consistent and timely manner by NGTL and will have an opportunity to provide input into NGTL's Project planning.

NGTL stated that the purpose and goals of its 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 issues and concerns;
- provide stakeholders with ongoing Project updates, including communication about the Project and the anticipated regulatory schedule and planned application to the NEB (now the CER);
- 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 principle, purpose and goals described above, NGTL stated that it adheres to engagement goals specific to landowners (including occupants, where appropriate) 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.

6.2 Design of Public Engagement Program

According to the Application, 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 outlined that the stakeholder engagement program is undertaken in a phased approach and implemented using open communication and participatory stakeholder involvement practices. The phases of the program include:

- identification of stakeholders and development of notification materials;
- notification and engagement; and
- transition of Project from construction to operations.

NGTL stated that it identifies stakeholders potentially affected by, or have a potential interest in, the Project by compiling an initial list of potential stakeholders through a combination of desktop research, TransCanada and NGTL operating experience in the area and personal contacts with, and referrals from, stakeholders.

In its Application, NGTL 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 groups¹⁰; and
- emergency responders.

NGTL identified five landowners (four freehold owners and the Provincial Crown) and eight 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 and identified:

- 9 registered trapping areas;
- 26 guide/outfitters; and
- 12 grazing lease holders.

NGTL stated that the stakeholder list is regularly updated since the process of identifying stakeholders is ongoing and continues throughout the evolution of the Project. In addition, stakeholders can self-identify by contacting the Project email account or a toll-free telephone number and are encouraged to identify other potentially interested stakeholders for inclusion in the stakeholder engagement program.

During the notification and engagement phase, NGTL stated that it focuses on public disclosure of the Project and solicitation of stakeholder input, using 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., Indigenous Relations, Stakeholder Engagement) and the NEB brochure *Information for Proposed Pipeline or Power Line Projects that Involve a Hearing*.

¹⁰ Synergy groups are forums where multi-stakeholder roundtable discussions cover industrial development and regionally specific interests and issues.

NGTL submitted sample copies of its Project materials that were provided to stakeholders through its engagement activities.¹¹

NGTL stated that public engagement activities will continue through the regulatory and construction phases of the Project, and the primary focus will be on responding to specific questions or concerns and following up with previously engaged stakeholders.

Ongoing engagement efforts may include open house notifications, Project updates and community investment activities. NGTL stated that updates to the Project website and monitoring of the email address and toll-free telephone line will also continue until construction is complete. NGTL stated that once the Project is in-service, regionally based NGTL liaisons will continue to build and maintain relationships through consistent and ongoing communication with stakeholders. These ongoing engagement activities for the Project during operations will be conducted in accordance with the provisions of TransCanada's Public Awareness Program.

NGTL stated that the Public Awareness Program reaches potentially affected stakeholders, landowners and Indigenous peoples engaged through Project planning and construction phases and is intended to increase awareness of pipeline safety, thereby protecting the public, environment and TransCanada facilities.

6.3 Implementation of Public Engagement Activities

NGTL has contacted the following stakeholders: landowners and land users, key officials at all three levels of government (municipal, provincial and federal), community leaders, business development officers in rural municipalities, emergency response service organizations and other interested parties (e.g., synergy groups), to provide information and to address questions and concerns that may arise regarding the Project.

NGTL stated that initial implementation of the phased stakeholder engagement program began in June 2018. NGTL sent Project notifications to identified stakeholders on 1 November 2018, and included a letter from TransCanada, a fact sheet including a high-level summary of the Project, several TransCanada brochures and the NEB brochure *Information for Proposed Pipeline or Power Line Projects that Involve a Hearing*. NGTL extended open offers to meet with regional and local municipalities to further discuss the Project materials that were provided.

NGTL stated that starting in January 2019, it began to meet with representatives from the regional governments of Clearwater and Yellowhead counties, the Town of Rocky Mountain House and local synergy groups. The meetings highlighted the Project's components, additional Project information, and provided a forum for NGTL to understand and address questions and

¹¹ Sample copies of NGTL's Project materials provided to stakeholders through engagement activities were filed as Appendix 12 in its Application.

concerns. Meetings were held with representatives from the following regional governments on the following dates:

- Yellowhead County – 26 February 2019
- Clearwater County – 22 January 2019
- The Town of Rocky Mountain House – 19 February 2019

NGTL also met with Alberta Environment and Parks fisheries biologists and land managers on 22 February 2019 and 14 May 2019 in Rocky Mountain House, Alberta to discuss the Project, including planned watercourse crossings methodologies, mitigation and construction timing for the Project.

NGTL submitted that in keeping with TransCanada's commitment to ongoing engagement, NGTL Project representatives also participated in municipal conferences in November 2018 and March 2019 to provide information about the Project, receive feedback and answer any questions. NGTL said these conferences provided Project representatives with an opportunity to connect with existing stakeholders as well as meet newly elected municipal officials and other individuals representing municipalities and organizations that may have an interest in the Project.

NGTL participated in the Rural Municipalities of Alberta Fall Conference in Edmonton, Alberta on 20 November 2018 where TransCanada hosted a stakeholder reception and had NGTL staff on hand to answer questions about the Project from delegates representing municipalities from across Alberta. NGTL also participated in the Rural Municipalities of Alberta Spring Conference in Edmonton, Alberta on 18 March 2019 with a tradeshow booth.

NGTL held a Project-specific open house on 21 February 2019 in Rocky Mountain House, Alberta, which provided an opportunity for members of the public to ask questions and provide feedback on the Project. NGTL stated that 43 stakeholders and community members attended the Project-specific open house and that overall, attendees were supportive of the Project.

NGTL also stated that NGTL continues to participate in regional synergy groups, including the West Central Stakeholders Group (covering Project components in Clearwater County) and Yellowhead Synergy Group (covering Project components in Yellowhead County).

In its Application, 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 stakeholder consultation began in June 2018. These included:

- engagement-related concerns, such as the capacity of small local governments with limited staff resources to assess applications; and
- Project-specific concerns, such as:
 - community matters (e.g., effects on local infrastructure and resources, traffic management and potential effects on recreational land user groups);
 - land matters (e.g., timing of land acquisition, necessity of crossing agreements to traverse pipeline ROW);

- cumulative project effects (e.g., TransCanada’s general level of activity in western Alberta);
- economic matters (e.g., local hiring and contracting); and
- emergency response and safety (e.g., pipe integrity, emergency preparedness and response).

NGTL described how it has addressed the questions and concerns raised. For example, in response to engagement-related concerns from local governments about capacity, NGTL indicated it has made efforts to share information in a way that is consistent with the communities’ preferences, including electronic notifications. For example, presentations made to local governments have provided updates and information on multiple topics to reduce the number of meeting requests and the frequency of independent meetings. Furthermore, in regards to TransCanada’s general level of activity in western Alberta, NGTL stated it has provided Project information to regional municipal stakeholders along with information on the timing and location of other projects proposed by NGTL.

NGTL stated that feedback gathered through consultation and engagement with local governments and the general public has been incorporated into ongoing engagement and will continue to be considered for incorporation into Project planning and execution, as appropriate. NGTL indicates that no additional concerns have been raised through landowner and stakeholder consultations and that it would continue to consult with both groups to identify and address any questions and concerns throughout the regulatory process and construction phase.

More broadly, NGTL stated it would continue to engage stakeholders through all Project phases and respond appropriately, including through the regulatory review process, until completion of Project construction. Updates to the Project website and monitoring of the email address and toll-free telephone line would also continue until construction is complete. Once the Project is in-service, the stakeholder, landowner and Indigenous engagement programs for the Project would be transitioned to TransCanada’s existing Public Awareness Program and the regional community and Indigenous relations resource for the remaining lifecycle of the asset.

More information regarding Project-specific concerns may be found in the chapters noted below:

- Chapter 4 – Facilities and Emergency Response Matters - Chapter 4;
- Land Matters – Chapter 5;
- Matters Related to Indigenous Peoples – Chapter 7;
- Environmental and Socio-economic Matters (i.e., environmental assessment, acoustic environment, reclamation) and NGTL’s proposed mitigation - Chapter 8; and
- Infrastructure, Services, Employment and Economy – Chapter 9;

Views of the Commission

The Commission finds NGTL’s public engagement approach is appropriate to ensure that stakeholders receive clear, relevant and timely information regarding the Project. In assessing the public engagement undertaken by NGTL, the Commission evaluated the design and implementation of stakeholder engagement activities. The Commission notes that no Participants expressed concerns regarding NGTL’s stakeholder engagement

activities.¹² The Commission is of the view that NGTL adequately and appropriately identified stakeholders, including potentially affected landowners, as well as developed appropriate engagement materials. In addition, the implementation of engagement activities was responsive to the needs, inputs and concerns of potentially affected persons and communities. Therefore, the Commission is of the view that NGTL's design and implementation of public engagement activities for the Project was appropriate given the scope and scale of the Project.

The Commission notes that NGTL has been consulting on the Project since 2018 and committed to build and maintain relationships through consistent and ongoing communication with 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.

¹² NGTL's Indigenous engagement program and Project-specific engagement activities with Indigenous peoples are discussed in Chapter 7 (Matters Related to Indigenous Peoples).

Chapter 7 – Matters Related to Indigenous Peoples

The Commission has considered all of the evidence and arguments on the record for this hearing process provided by Indigenous¹³ 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 recommended and imposed by the Commission in the Certificate and Order that would be issued should the Project be approved.

While the Commission refers to specific passages on the record throughout this chapter, the Commission considered the entirety of the record in reaching its determination, including evidence filed in confidence, and encourages anyone who wishes to fully understand the context of the information provided by Indigenous peoples to review the entire hearing record.¹⁴ This chapter should not be considered in isolation from the Report as a whole.

Appendix IV provides a summary of the concerns and issues raised by Indigenous peoples during this hearing process, summaries of the responses to those concerns provided by NGTL and the Government of Canada, the responses by the Commission (including conditions), and the applicable requirements provided through regulation and legislation.

7.1 NGTL Project-Specific Engagement with Indigenous Peoples

7.1.1 Principles, Goals and Design of the Engagement Program

NGTL stated that TransCanada's policies, principles and practices guide the design and implementation of the Aboriginal Engagement Program for the Project, the goal of which is to provide Project information and seek feedback from Indigenous peoples in order to anticipate, prevent, mitigate and manage conditions that have the potential to affect Indigenous peoples. NGTL indicated 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

¹³ "Indigenous" has the meaning assigned by the definition of the term '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.

¹⁴ The hearing record, which can be found on the CER's REGDOCS, contains all of the evidence in this hearing except for evidence that is protected by confidentiality.

- responding to concerns raised and commitments made during engagement activities.

NGTL indicated that the design of its Aboriginal Engagement Program is consistent with the CER's guidance on consultation as set out in its Filing Manual, and 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 developed and adapted according to the nature, location and potential effects of the Project, and to the identified interests, information needs and concerns of Indigenous peoples. NGTL also 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 peoples.

NGTL stated that it recognizes that its Aboriginal Engagement Program is complementary to any Crown consultation concerning potential impacts to Indigenous and Treaty rights and that, in its view, the NEB / CER's process can be relied upon by the Crown.

NGTL stated that its Aboriginal Engagement Program for the Project is carried out according to a four-step process, which includes:

- identifying potentially affected Indigenous peoples;
- establishing the engagement approach;
- implementing engagement program activities; and
- responding to questions and concerns.

NGTL stated that it initially identified potentially affected Indigenous peoples based on the location of Project components within asserted traditional territories, regional boundaries and/or areas of interest. NGTL also stated that this initial identification involved desktop research, NGTL's own operating experience, including past projects in the region, existing agreements and an established network of contacts with Indigenous peoples in the Project area.

NGTL stated that it tailors its approach to gathering information from Indigenous peoples to meet a community's specific needs, and where appropriate, provide reasonable resources to support participation in Project engagement activities.

7.1.2 Implementation of Project-Specific Engagement Activities

NGTL stated that engagement with Indigenous peoples on potential options for the pipeline looping expansion began on 4 July 2018, when NGTL emailed potentially affected Indigenous peoples preliminary information regarding the Elk River and Alford Creek Sections, including an overview map. NGTL stated that it followed-up on that correspondence by e-mail on 11 July 2018 with KMZ (Google Earth) files and shapefiles, and again on 19 July 2018 to schedule in-person meetings or conference calls to discuss communities' interest in the Project. NGTL stated that preliminary engagement with the potentially affected Indigenous peoples also included follow-up telephone calls and emails to discuss any questions and concerns they may have about Project activities and providing an opportunity for interested Indigenous peoples to conduct a traditional knowledge study for the proposed pipeline looping options.

NGTL indicated that on 1 November 2018, Project notification packages providing notice of NGTL's intent to file a section 52 application with the NEB were sent to the following potentially affected Indigenous peoples.

- Alexander First Nation
- Alexis Nakota Sioux Nation
- Asini Wachi Nehiyawak Traditional Band
- Kainai Nation (Blood Tribe)
- Enoch Cree Nation
- Ermineskin Cree Nation
- Foothills Ojibway Society
- Gunn Métis Local 55
- Louis Bull Tribe
- Métis Nation of Alberta
- Métis Nation of Alberta Region 3
- Métis Nation of Alberta Region 4
- Montana First Nation
- Mountain Cree (Smallboy Camp)
- Nakcowinewak Nation of Canada
- O'Chiese First Nation
- Paul First Nation
- Piikani Nation
- Samson Cree Nation
- Siksika Nation
- Stoney Nakoda First Nations
- Sturgeon Lake Cree Nation
- Sunchild First Nation
- TsuuT'ina Nation

NGTL indicated that the Project notification packages included a Project introduction letter, a 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 stated that following initial identification and provision of preliminary Project information, Indigenous peoples were contacted by NGTL to confirm: receipt of the Project notification package, level of interest in the Project, and the primary point of contact for engagement. NGTL further stated that it engaged in preliminary discussions with the potentially affected Indigenous peoples to understand their specific capacity and resourcing needs. NGTL indicated that it worked with interested Indigenous peoples to develop a Project-specific workplan and budget.

On 21 January 2019, NGTL received a letter from Horse Lake First Nation requesting to be engaged on the Project. On 23 January 2019 and 2 February 2019, NGTL contacted Horse Lake First Nation to schedule a meeting to discuss the letter and better understand their interests in the Project.

NGTL noted that on 20 March 2019 the Major Projects Management Office (MPMO) of Natural Resources Canada (NRCan) provided NGTL with a list of Indigenous peoples identified for the Project, which included the following additional Nations listed below. The list included all the communities previously engaged by NGTL and the following:

- Apetokosan (Kelly Lake Métis Settlement Society)
- Aseniwuche Winewak Nation
- Horse Lake First Nation

- Kelly Lake Cree Nation
- Kelly Lake First Nation
- Michel First Nation
- Mountain Métis Nation Association

NGTL stated that it provided Project notification on 25 March 2019 to the Indigenous peoples identified by the MPMO that were not originally identified for engagement by NGTL.

NGTL stated that, following initial notifications and preliminary discussions, it implemented a wide range of activities and communication tools to engage Indigenous peoples on the Project including regulatory notifications, maps, shapefiles, Google Earth files, facts sheets, and brochures. NGTL also stated that engagement activities on the Project included, but were not limited to:

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

NGTL stated that it seeks to work collaboratively with Indigenous peoples to address Project-related questions or concerns and to provide information on how input from Indigenous peoples influenced Project design changes.

With respect to ongoing engagement throughout the life of the Project, NGTL stated that Indigenous engagement activities will continue during all Project phases. NGTL also stated that it will continue to respond to questions and concerns raised by Indigenous peoples, and engagement activities will continue with the intent to:

- address any Project-related questions or concerns;
- develop progress workplans that provide capacity funding for communities;
- understand interests in employment and contracting opportunities; and
- continue to gather input.

NGTL stated that TransCanada's Public Awareness Program will be implemented once the Project is in the operations phase. This program facilitates consistent, ongoing communication about safety, integrity and emergency response with Indigenous peoples, and key community

stakeholders and interested parties, such as landowners, the public, government representatives, and emergency response agencies.

7.1.3 Outcomes of Project-Specific Engagement Activities

NGTL noted that its analysis, discussion and conclusions of the Project's residual effects on Traditional Land and Resource Use (TLRU) are provided in Section 11 of the Project Environmental and Socio-Economic Assessment, which includes information received from potentially affected Indigenous peoples during the Project's Aboriginal Engagement Program (i.e., traditional knowledge studies, concerns, and recommendations) as well as a review of publicly available literature. NGTL stated that, in the context of the Environmental and Socio-Economic Assessment, it has reviewed the additional traditional knowledge, oral Indigenous knowledge, issues and concerns identified by potentially affected Indigenous peoples directly through engagement with NGTL or as filed through this hearing process.

NGTL stated that it is committed to working with interested Indigenous peoples to seek mutually acceptable solutions to the issues, concerns or recommendations identified and those that remain unresolved will be determined and tracked through NGTL's ongoing engagement.

NGTL stated that questions or concerns identified by Indigenous peoples during engagement activities are recorded and responded to by NGTL. As part of preparing a response, such questions or concerns will be shared with the appropriate Project technical specialists or designated environmental consultant. Once a response or resolution is developed, it is provided to Indigenous peoples for further comment or dialogue.

NGTL stated that its Project engagement activities, as well as the outcomes of those activities, have been and will continue to be tracked with a response provided, as appropriate. NGTL stated that engagement activity information is collected and managed in a database designed to support this work, and such information includes:

- a list of Indigenous peoples provided with Project-specific information;
- a description of how and when information was provided;
- dates and locations of activities throughout the engagement process;
- a summary of engagement efforts and outcomes, including information on concerns raised, and responses and measures taken to address the concerns; and
- a description of outstanding concerns and proposed follow-up with Indigenous peoples, if required.

Throughout the GH-001-2019 hearing, NGTL filed a number of engagement updates summarizing its activities with specific Indigenous peoples undertaken up to and after the filing of its Application. These updates also identified any questions and concerns communicated to NGTL, as well as the actions taken by, or planned to be taken by, NGTL to address those questions and concerns.

Table 7-1 below sets out where NGTL's engagement updates can be found on the record and for which period of time.

Table 7-1: NGTL’s Engagement Updates

NGTL Submission	Time Period
Project Application – Section 12	4 July 2018 to 1 March 2019
Additional Written Evidence – Section 6	2 March 2019 to 8 August 2019
Response to Louis Bull Tribe IR No. 1.11	8 August 2019 to 29 November 2019
Response to Commission IR No. 3.15	30 November 2019 to 27 March 2020

7.2 Government of Canada’s Consultation Process with Indigenous Peoples

The Government of Canada is committed to a renewed relationship with Indigenous peoples based on recognition, respect, cooperation and partnership. On 19 June 2019, Natural Resources Canada sent letters to all of the potentially impacted Indigenous peoples outlining the Government of Canada’s approach to fulfilling the federal duty to consult with Indigenous peoples for the Project. The letters indicated that NRCan’s MPMO will act as the Crown Consultation Coordinator for this Project and intends to draw on the CER public hearing process, as well as its own consultation process, to fulfill the Crown’s duty to consult in relation to the Project. The letter also indicated that during the CER hearing process and up until a decision by GIC, the Crown will consult with potentially impacted Indigenous peoples, and in some cases, consultation may continue post-Governor-in-Council decision. The Government of Canada strongly encouraged Indigenous peoples to participate in the CER’s public hearing process. The Crown, through NRCan, attended in person all oral Indigenous knowledge sessions.

The 19 June 2019 letter from NRCan stated that Crown consultation with potentially impacted Indigenous peoples would be guided by three key objectives:

- consult in a way that is fully consistent with meeting Canada’s obligations under Section 35 of the *Constitution Act*, 1982 and the Government’s commitments to advance reconciliation with Indigenous peoples;
- engage in substantive, meaningful two-way dialogue in order to fully understand concerns raised and the nature and seriousness of potential impacts on rights and to work collaboratively to identify and provide accommodations, where appropriate; and
- be flexible in tailoring consultation approaches, to the extent possible, in a way that is responsive to the potential impacts and capacities of each group, and to the known concerns with the project.

NRCan stated, in the 19 June 2019 letter, that in the past, the Crown has focused on consultation following the NEB Recommendation report. The letter stated that, for the Project, the Crown would like to engage early in the NEB process to better understand concerns of Indigenous peoples regarding the Project and the potential impacts on their rights. NRCan also stated that the Crown would also like to hear about any mitigation or accommodation measures

Indigenous peoples might propose that could be considered should the Project be approved. NRCan's letter also stated that a Recommendation on whether to approve the Project will only be considered by the Governor-in-Council once it is satisfied that the Crown has adequately fulfilled its duty to consult.

NRCan's MPMO was an Intervenor in the hearing process. MPMO submitted that it is coordinating Crown consultation activities for the Edson Project. MPMO stated that it takes its Indigenous consultation obligations seriously and will pursue meaningful two-way dialogue with Indigenous peoples and work together to identify appropriate accommodation measures to address potential impacts to Section 35 Aboriginal and Treaty rights that have not been fully addressed by the proponent or through the CER process. MPMO stated that, to support this work, it will be summarizing all information provided by Indigenous peoples to the CER, to Canada, or to the proponent in a Crown Consultation Report. MPMO stated that it will work directly with Indigenous peoples to ensure that views on potential impacts to rights are accurately represented in that report. MPMO stated that this Crown Consultation Report will be provided to the Governor in Council to inform Canada's decision on the Project.

7.3 The Hearing Process and Participation of Indigenous Peoples

The 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 III), and possible mitigation measures to minimize the potential adverse impacts on those rights and interests. The Commission received and considered Indigenous knowledge, information about concerns related to the Project and the measures that would be required to address those concerns, as brought forward through engagement undertaken by NGTL and through the participation of Indigenous peoples in the hearing process.

7.3.1 Enhanced Process for Engagement with Indigenous Peoples

The CER's Enhanced Indigenous Engagement program aims to provide proactive contact with Indigenous peoples that may be affected by a proposed project, and to help them understand the CER's regulatory process and how to participate in that process. The Commission assesses the completeness of the list of potentially affected Indigenous peoples identified in an applicant's project application in collaboration with the Government of Canada. The Commission then sends letters to potentially impacted Indigenous peoples on the list and any others that may have been identified, 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 the Indigenous peoples.

The NEB initiated Enhanced Indigenous Engagement activities for the Project following the receipt of the Project Description on 8 January 2019, which set out NGTL's identification of Indigenous peoples potentially affected by the Project. The NEB identified Indigenous peoples who might be potentially affected by any applied-for project through its own assessment of publicly known or asserted Indigenous traditional territory. After receiving NGTL's Project Description, the NEB reviewed the list of potentially affected Indigenous peoples identified by NGTL. The NEB, in collaboration with the Government of Canada, identified additional Indigenous peoples who may be potentially affected by the proposed Project, and also advised NGTL of these additional communities.

On 20 March 2019 the NEB sent an Enhanced Indigenous Engagement letter to each of the following potentially affected Indigenous peoples:

- Alexander First Nation
- Alexis Nakota Sioux Nation
- Apetokosan (Kelly Lake Métis Settlement Society)
- Asini Wachi Nehiyawak Traditional Band
- Kainai Nation (Blood Tribe)
- Enoch Cree Nation
- Ermineskin Cree Nation
- Foothills Ojibway Society
- Horse Lake First Nation
- Kelly Lake Cree Nation
- Kelly Lake First Nation
- Louis Bull Tribe
- Métis Nation of Alberta
- Métis Nation of Alberta Region 3
- Métis Nation of Alberta Region 4
- Michel First Nation
- Montana First Nation
- Mountain Cree (Smallboy Camp)
- Nakcowinewak Nation of Canada
- O'Chiese First Nation
- Paul First Nation
- Piikani Nation
- Samson Cree Nation
- Siksika Nation
- Stoney Nakoda First Nations
- Sturgeon Lake Cree Nation
- Sunchild First Nation
- TsuuT'ina Nation

On 22 March 2019 the NEB sent an Enhanced Indigenous Engagement letter to each of the following potentially affected Indigenous peoples:

- Gunn Métis Local 55
- Grande Cache Métis Local 1994 (also known as Mountain Métis Nation Association)

The letters described the hearing process and Participant Funding Program. The letters also included a summary of the Project, contact information on how to obtain further information, and an offer from NEB/CER staff to attend a community meeting. An information session was held with the Métis Settlements General Council on 15 May 2019 to discuss the hearing process. No other Enhanced Indigenous Engagement meetings were requested.

7.3.2 Application to Participate in the CER's Hearing Process

On 31 May 2019, the NEB issued a Notice of Public Hearing. The Notice of Public Hearing included instructions on how to apply to participate in the hearing process. The Notice of Public Hearing required NGTL to provide the Notice of Public Hearing to all potentially affected Indigenous peoples identified by NGTL as well as all Indigenous peoples addressed in the NEB's Enhanced Indigenous Engagement letters of 20 and 22 March 2019. The Notice of Public Hearing also announced the granting of Pre-Decided Standing to Indigenous peoples potentially impacted by the Project. However, potentially impacted Indigenous peoples were still

required to register via the Application to Participate system by 5 July 2019 to be included on the List of Participants.

The Application to Participate process was open between 10 June 2019 and 5 July 2019. Twenty Indigenous peoples registered via the Application to Participate system by the timeline set by the NEB.

On 16 August 2019, in Ruling No. 1, the NEB granted the following 20 Indigenous peoples Intervenor status in the hearing:

- Alexis Nakota Sioux Nation
- Apetokosan (Kelly Lake Métis Settlement Society)
- Bearspaw First Nation
- Kainai Nation (Blood Tribe)
- Chiniki First Nation
- Driftpile Cree Nation
- Ermineskin Cree Nation
- Gift Lake Métis Settlement
- Louis Bull Tribe
- Michel First Nation
- O'Chiese First Nation
- Papaschase Cree Nation
- Papaschase Nation
- Paul First Nation
- Peavine Métis Settlement
- Piikani Nation
- Samson Cree Nation
- Wesley First Nation
- Whitefish (Goodfish) Lake First Nation #128
- Whitefish Lake First Nation #459

On 5 November 2019, the CER received a late application to participate with Commenter status from Asini Wachi Nehiyawak Traditional Band. In Ruling No. 3, the CER accepted the late application to participate and granted Asini Wachi Nehiyawak Traditional Band Commenter status, as requested.

7.3.3 Participant Funding Program

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

On 31 May 2019, the NEB confirmed that funding would be available to assist individuals, groups or Nations with their participation in the hearing for the Project – funding to a maximum of \$40,000 to assist Indigenous Intervenor and \$6,000 to assist individual Intervenor with their participation in the hearing for the Project. On 17 July 2019, the funding maximums were increased for Edson to the same level as NGTL 2021 (\$80,000 for Indigenous Intervenor and \$12,000 for individual Intervenor) in response to concerns raised and a reconsideration of the factors underlying the funding assumptions (namely, section 52 of the NEB Act project with many participants and more new ROW than the NGTL North Corridor Project).

The Participant Funding Program received 20 applications and recommended awarding \$1,360,000 to 17 eligible Indigenous peoples who were Intervenor. Three applicants were not eligible because they had not applied to be Intervenor in the hearing. The NEB's Executive Vice President, Regulatory, approved the recommendation. Indigenous peoples who were Intervenor account for 100 per cent of the funding awarded. Table 7-2 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 Participant Funding Program section of the CER's website.

Table 7-2: Participant Funding Program Awarded Amounts

Applicant	Amount Awarded
Alexis Nakota Sioux Nation	\$80,000
Bearspaw First Nation	\$80,000
Chiniki First Nation	\$80,000
Driftpile Cree Nation	\$80,000
Ermineskin Cree Nation	\$80,000
Gift Lake Métis Settlement	\$80,000
Kainai Nation (Blood Tribe)	\$80,000
Apetokosan (Kelly Lake Métis Settlement Society)	\$80,000
Louis Bull Tribe	\$80,000
Michel First Nation	\$80,000
O'Chiese First Nation Consultation Office	\$80,000
Papaschase Nation	\$80,000
Peavine Métis Settlement	\$80,000
Piikani Nation	\$80,000
Wesley First Nation	\$80,000
Whitefish (Goodfish) Lake First Nation #128	\$80,000
Whitefish Lake First Nation #459	\$80,000
Total	\$1,360,000

7.3.4 Opportunities to Participate

Table 7-3 below summarizes the process steps participated in by each Indigenous peoples who were Intervenors, including the types and sources of information submitted, during the hearing process and considered by the Commission. Table 7-4 summarizes participation by Indigenous peoples who were Commenters in the hearing.

Table 7-3: Written and Oral Evidence submissions by Indigenous peoples who were Intervenorors in the hearing process

Intervenor	Oral Indigenous Knowledge	IRs directed to NGTL	Response to IRs from NGTL	Response to IRs from CER	IRs to Other Intervenorors	Written Evidence	Final Argument	Comments on Potential Conditions
Alexis Nakota Sioux Nation		C01858 C03279						
Bearspaw First Nation - distinct Nation of Stoney Nakoda Nations (Stoney Nakoda Nations)	C04245 C04167 (Aid) C04647 (Oral Indigenous Knowledge Undertaking Response)	C01864 C03291 C07119	C05460			C04027 C04078	C07992	C07992
Chiniki First Nation - distinct Nation of Stoney Nakoda Nations (Stoney Nakoda Nations)	C04245 C04166 (Aid) C04646 (Oral Indigenous Knowledge Undertaking Response)	C01866 C03290 C07118	C05461			C04029 C04079	C07988	C07988
Driftpile Cree Nation	C04828	C03263				C04016	C07985	C07985
Ermineskin Cree Nation		C01863 C03285	C05469			C04019		
Gift Lake Métis Settlement								

Intervenor	Oral Indigenous Knowledge	IRs directed to NGTL	Response to IRs from NGTL	Response to IRs from CER	IRs to Other Intervenors	Written Evidence	Final Argument	Comments on Potential Conditions
Kainai Nation (Blood Tribe)		C03287	C05471			C04022		
Apetokosan (Kelly Lake Métis Settlement Society)	C05187					C04755		
Louis Bull Tribe	C04828	C03281				C04021 C04024	C07982	C07982
Michel First Nation		C01874 C03275 C07144	C05454			C04023	C07977	C07977
O'Chiese First Nation Consultation Office (O'Chiese First Nation)	C04867 C04829 (Aid)	C01876 C03280 C07064	C05457 C07352	C07353	C05172	C04042 C04086 C06227	C07975	C07975
Papaschase Cree Nation	C05187							
Papaschase Nation								
Paul First Nation Industry Relations Corp.								
Peavine Métis Settlement						C04045		

Intervenor	Oral Indigenous Knowledge	IRs directed to NGTL	Response to IRs from NGTL	Response to IRs from CER	IRs to Other Intervenors	Written Evidence	Final Argument	Comments on Potential Conditions
Piikani Nation	C04248	C02406 C03271	C05481 C07335			C04018	C07987	C07987
Samson Cree Nation	C04846	C03295 C03336 C07114	C05473 C07355			C04043 C05110 C06881	C07983	C07983
Wesley First Nation - distinct Nation of Stoney Nakoda Nations (Stoney Nakoda Nations)	C04245 C04168 (Aid) C04648 (Oral Indigenous Knowledge Undertaking Response)	C01867 C03292 C07121	C05462			C04028 C04080	C07991	C07991
Whitefish (Goodfish) Lake First Nation #128		C01865 C03286	C05470			C04020		
Whitefish Lake First Nation #459								

Table 7-4: Letter of Comment by Indigenous peoples who were Commenters in the hearing process

Commenter	Letter of Comment
Aisini Wachi Nehiyawak Traditional Band	C01903 C02718

7.3.4.1 Oral Indigenous Knowledge Sessions

The Commission acknowledges that Indigenous peoples have an oral tradition of sharing knowledge and information from generation to generation and that this knowledge and information cannot always be shared adequately in writing. In the context of the CER's hearing processes, oral Indigenous knowledge is provided as sworn or affirmed testimony. Before providing Indigenous knowledge, presenters are asked to swear or affirm that the information they are presenting is accurate and truthful to the best of their knowledge and belief. Ceremonies or prayers (e.g., smudging) are recognized methods of affirmation.

In Procedural Update No. 1 dated 23 October 2019, the Commission extended an invitation to all Indigenous peoples who were Intervenor to share Indigenous knowledge in January 2020 in Red Deer, Alberta and in February 2020 in Edmonton, Alberta. The Commission notes that the February 2020 dates were included to accommodate the request of O'Chiese First Nation to hold Indigenous knowledge sessions in February-March 2020. Indigenous peoples who were Intervenor and who were interested in sharing Indigenous knowledge were requested to file a Notice of Intent Form with the Commission by 6 November 2019. The Commission received Notice of Intent Forms from the following eleven Indigenous peoples:

- Alexis Nakota Sioux Nation
- Bearspaw First Nation
- Kainai Nation (Blood Tribe)
- Chiniki First Nation
- Driftpile Cree Nation
- Ermineskin Cree Nation
- Louis Bull Tribe
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- Wesley First Nation

On 12 December 2019, Apetokosan (Kelly Lake Métis Settlement Society) filed a letter and Notice of Intent indicating that it wished to participate in the oral Indigenous knowledge portion of the GH-001-2019 hearing. On 6 January 2020, Papaschase Cree Nation filed a letter and Notice of Intent indicating it wished to participate in the oral Indigenous knowledge portion of the GH-001-2019 hearing. In Procedural Update No. 3 the Commission determined that, while the Apetokosan's (Kelly Lake Métis Settlement Society) and Papaschase Cree Nation's Notices of Intent were filed late, granting the requests would not be prejudicial to the Applicant or any party. As such, the Commission incorporated the requests from Apetokosan (Kelly Lake Métis Settlement Society) and Papaschase Cree Nation into the oral Indigenous knowledge schedule for the hearing process.

On 15 January 2020 Alexis Nakota Sioux Nation withdrew its intent to provide oral Indigenous knowledge. On 21 January 2020 Kainai Nation (Blood Tribe) and Ermineskin Cree Nation each withdrew their intent to provide oral Indigenous knowledge.

For oral portions of the hearing, an audio broadcast was provided and transcripts of the proceedings were filed on the Record, so that Participants who were not in attendance, and the public, could hear what was occurring during the hearing. Where Indigenous peoples requested that information be treated confidentially, and the Commission ruled it appropriate, the audio broadcasts stopped, and transcripts were redacted. The Commission, also offered remote participation to Indigenous peoples who were Intervenors and who could not attend the in-person oral Indigenous knowledge sessions. No participants requested remote participation.

During the oral Indigenous knowledge sessions, the Commission heard from several communities regarding the importance of the opportunities for sharing oral Indigenous knowledge as well as the ceremonial protocols that were followed.

During their oral Indigenous knowledge, Stoney Nakoda Nations acknowledged the opportunity to share their knowledge and to note the importance of respect:

Thank you for allowing us to say what we would like to bring out in front of you and dignitaries.

[...] I truly am glad that you are listening to us, but the most important thing of all is respect. That's what I would want. So I hope, I hope that from now on, what we would like to see could be resolved in a way that we are satisfied.

-- Elder Charles Powderface, Chiniki First Nation, Stoney Nakoda Nations, Transcript Volume 1 [386, 408]

Elder Ida Bull from Louis Bull Tribe stated the following:

And I just want to thank you for inviting us. This a great experience for me and as an Indigenous person, you make me feel important; you make me feel that you do care after all. Because our people over there, many times they say, "Oh, moniyaw don't care." But you invite us here and I realize that we can work together, that we can make things happen in all communities, especially with the impacts of pipelines.

So I thank you so much. Hai Hai.

-- Elder Ida Bull, Louis Bull Tribe, Transcript Volume 3 [1827-1828]

Mr. Ira Provost of Piikani Nation acknowledged the CER's recognition of the importance of Indigenous knowledge:

I want to thank the Canada Energy Regulator for this opportunity to speak on behalf of my Nation.

Before I begin into my presentation, into the information that I want to present, I just -- I do want to comment really quickly to the process thus taken so far. I want to applaud the CER in taking further steps to recognize Indigenous knowledge.

I think we, as Indigenous Nations, have really struggled -- and we all know this -- to legitimize our knowledge as knowledge that's equal to Western science. We've had a continual struggle that still continues to exist, where a lot of the people who are involved in traditional knowledge and then trying to find ways to incorporate it into practice have found it challenging.

I get that and I understand that, and again, I applaud the changes that are being made in real time to try to acknowledge and the knowledge that we hold, because it's not just text book. It's not just something that we read on the page. It's something that we live.

-- Mr. Ira Provost, Piikani Nation, Transcript Volume 2 [1102-1105]

Piikani Nation also emphasized the importance of the tobacco offering from the Commission:

The tobacco that you presented this morning has a lot of meaning to us. In the past and still today, as Pat said earlier, we would have -- we would smoke the pipe and we would share it between us. And that pipe represents laying a foundation of understanding and of truth that needs to pass both ways.

With this tobacco, whether you fully understand it or not, you've created that same pact, a covenant with this group of people, to say that, "We will not -- will be honest. We will be truthful. And we will carry out all that we intended to be."

...

When you come to us, a prayer isn't just a salutation, a prayer is life giving, a prayer is meaningful.

So with that I thank you. I do accept this tobacco from you.

-- Mr. Ira Provost, Piikani Nation, Transcript Volume 2 [1106-1110]

...this tobacco, when you presented it to us, in the past, tobacco, when it was presented, it was given to the leader of our societies or the leader that was leading this ceremony. And that tobacco was put into a pipe and prayed upon. That was the most sacred thing we can ever -- as Natives, when we smoke that pipe, we knew we had to be truthful.

So when we take this pipe, that means at this point, we're equals. We've been sharing our land with you people for over 100 years, 200 years. And now we're trying to be a partner in jobs, to be part of this construction work that some of these projects. And we've been pleading for them for quite a few years.

After we meet, after the meeting's over, that's it for us. We go home and then we come back to another meeting.

So let -- I sincerely ask you guys to be truthful and honest, that you are prepared to listen to our stories. They're not just stories. These are the hardships that we've been through that we're sharing today.

So with that, I'll say a prayer and ask the Creator to bless this meeting and that everything that is said here and done today would be to the benefit of both parties.

-- Elder Pat Provost, Piikani Nation, Transcript Volume 2 [1001-1005]

Samson Cree Nation noted the importance of the oral Indigenous knowledge sessions as a way for Indigenous peoples and non-Indigenous peoples to learn from each other:

Just quickly, I guess, for a brief comment to start this, I'm very grateful and appreciative of this opportunity that we have. I guess, in this process, although it may be just one of many processes, but how we can influence and inform the interactions, like, within our country.

I know there's a lot of things that are happening right now that are creating certain, how would you say, perceptions about -- it doesn't matter what side of the table you're on, whether you're First Nation or non-First Nation, but I think we always have an opportunity to change and improve those things by continually creating spaces for ourselves to have honest and open dialogue and discussions to overcome some of the, maybe, the obstacles we have, even in our own thinking. How we can, again, learn from one another.

And I just think about how we have an opportunity to influence, both at the political level but even in the daily interactions, and I think we can arrive there by these types of opportunities, where we can share, like I said, and inform one another, but to do it in a respectful process.

So we're grateful for that opportunity, and we do look forward to being able to share. Have it on record, but also to, like I said, have an opportunity to influence where we move from here.

So with that, I thank you.

-- Mr. Mario Swampy, Samson Cree Nation, Transcript Volume 5 [2372-2376]

Samson Cree Nation also noted the importance of ceremony, including at the beginning of the oral Indigenous knowledge sessions:

The nature of First Nations and the way of life, as we are reciprocal peoples and cyclical peoples. That is the nature of our traditional ecological knowledge. As in our ceremony, we are taught to commence all projects, initiatives, starting points, with ceremony. So I'm glad that we started our hearings with these ceremonies.

-- Elder Leo Bruno, Samson Cree Nation, Transcript Volume 5 [2502]

Views of the Commission

The Commission thanks all of the Elders and Knowledge Keepers who participated in the oral Indigenous knowledge portion of this Hearing. The Commission understands that our offering of tobacco, and the Elders' prayers in return, created a relationship reflective of the natural law principles of truth, honesty and respect. We understand that in prayer, the Elders asked the Creator to bless us all and that what was said and done in the hearing was for the benefit of both parties.

In fulfilling our responsibility as adjudicators, the Commission notes that whereas it was not possible to catalogue every key statement and story shared by Elders and Knowledge Keepers with us in this Report, we seriously considered and reflected on all of the

submissions. The Commission acknowledges that your participation in the hearing provided us a window into your unique perspectives and worldviews and we are grateful for that opportunity.

7.4 Issues and Concerns Raised by Indigenous Peoples

7.4.1 NGTL's Engagement with Indigenous Peoples

Over the course of the hearing process, the following Indigenous peoples commented on the meaningfulness of NGTL's engagement:

- Asini Wachi Nehiyawak Traditional Band
- Alexis Nakota Sioux Nation
- Driftpile Cree Nation
- Gunn Métis Local 55
- Louis Bull Tribe
- Michel First Nation
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- Stoney Nakoda Nations - Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation
- Whitefish (Goodfish) Lake First Nation #128

Asini Wachi Nehiyawak Traditional Band stated that NGTL failed to include them in regard to any Supreme Court mandated aspects of the duty to consult.

NGTL, in its evidence and in response to a Commission IR, noted that Alexis Nakota Sioux Nation and Gunn Métis Local 55 requested ongoing engagement and consultation for the length of the Project.

Driftpile Cree Nation stated that NGTL has undertaken minimal engagement directly with them during proposed Project assessment, and recommended that the CER require NGTL to conduct and track regular engagement throughout Project construction and operations. Driftpile Cree Nation also recommended that, prior to construction of the proposed Project, NGTL provide Driftpile Cree Nation and other potentially impacted Indigenous peoples with clear and detailed information on whether, where and how their input has been considered and addressed so that the communities can ensure that their key concerns have been addressed in a meaningful way.

Louis Bull Tribe stated that NGTL has acknowledged the concerns of the community and has fostered a positive working relationship that will support ongoing consultation throughout this Project. Louis Bull Tribe stated that through true collaboration such as this, they can ensure that their interests and rights are given due consideration and thus ensure that a high standard of environmental protection and oversight is attained.

Michel First Nation stated that they made repeated attempts to request capacity funding from NGTL to enable them to conduct an assessment of Project impacts on their rights. Michel First Nation stated that capacity funding for this purpose was not provided to them, and instead, NGTL and Michel First Nation executed a Letter of Agreement whereby NGTL provided capacity to support their engagement with NGTL, and the identification of issues and concerns they may have with the proposed Project.

O'Chiese First Nation stated that NGTL conducted its Environmental and Socio-Economic Assessment without properly consulting them and noted limited capacity from NGTL.

Piikani Nation argued that the engagement with NGTL and the CER has been one-sided. Piikani Nation stated that for them, meaningful engagement means understanding and taking the time and energy to sit with Piikani Nation to understand and address the Nation's concerns. Piikani Nation stated that "meaningful does not mean a one-sided conversation." Piikani Nation also stated that the CER process should not result in a generalized "suggestion box" approach where First Nations put their concerns about the Project before NGTL only to have NGTL decide whether those concerns should be addressed. Piikani Nation stated that NGTL's approach to engaging with Piikani Nation has been to offer vague and standardized responses. Piikani Nation stated that while some very modest capacity funding has been provided by NGTL to study the Project's Alford Creek Section only very recently did NGTL provide any capacity funding to Piikani Nation for a review of the Elk River Section of the Project, which means this information, while critical to understanding the full impacts of the Project on Piikani Nation is not part of the record. Piikani Nation stated that it is vital that the conditions for the Project include clear mechanisms to ensure meaningful Indigenous engagement for the life of Project, as appropriate for the impacted First Nations, not just as appropriate or convenient for NGTL.

Samson Cree Nation argued that NGTL's Aboriginal Engagement Program lacks sufficient detail for the Commission to determine that engagement activities have been, or will be, reasonable and appropriate for the scope and nature of the Project. Samson Cree Nation stated that they have little confidence in the effectiveness of the plan, but remain agreeable to working with NGTL to tailor a mutually-acceptable plan.

Stoney Nakoda Nations stated that, in addition to their Section 35 reports, that there is a significant amount of evidence on the record where they identified how their rights will be affected by the Project. Stoney Nakoda Nations stated that their evidence and concerns have been disregarded by NGTL. Stoney Nakoda Nations also stated that they have been unable to sufficiently study and identify the potential impacts of the Project on their Section 35 Rights as NGTL has repeatedly refused to provide Stoney Nakoda Nations with sufficient capacity funding. Stoney Nakoda Nations stated that Indigenous traditional knowledge has not been meaningfully incorporated into NGTL's Environmental and Socio-Economic Assessment or corresponding mitigation measures. Stoney Nakoda Nations stated that despite a myriad of concerns raised by them and other Indigenous Intervenors with respect to the impacts of the Project, NGTL has somehow concluded that information provided by Indigenous peoples has not required new mitigation measures or changed the conclusions of NGTL's Environmental and Socio-Economic Assessment. Stoney Nakoda Nations stated that this conclusion can only be defended if one completely ignores the Indigenous traditional knowledge placed on the record by Stoney Nakoda Nations in this and previous hearing processes.

Whitefish (Goodfish) Lake First Nation #128 stated that NGTL did not identify them as a potentially affected Indigenous people and, as a result, impacts to Treaty rights and current use

of lands and resources for traditional purposes by their members were not assessed in the Project Environmental and Socio-Economic Assessment.

7.4.2 Project Splitting

O'Chiese First Nation, Samson Cree Nation, and Stoney Nakoda Nations raised concerns about project splitting.

Samson Cree Nation and O'Chiese First Nation stated that the McLeod River North Project, 2021 NGTL System Expansion Project, and the Edson Mainline Expansion Project are all directly connected sections of pipeline that have been divided by NGTL into separate applications. Stoney Nakoda Nations and O'Chiese First Nation stated that NGTL is strategically and unnecessarily splitting integrated resource development activities into smaller regulatory applications to speed up the CER approval process. Stoney Nakoda Nations and O'Chiese First Nation stated that this strategy allows NGTL to not consider the overall impacts and may minimize the potential effects by failing to holistically consider the cumulative impacts of these projects together.

7.4.3 Social and Cultural Well-being

Impacts to social and cultural well-being, which include potential Project impacts on community life and safety, as well as the threat to Indigenous peoples' cultural existence and the ability of Elders and other Knowledge Holders to transfer their knowledge, were identified as issues by the following Indigenous peoples:

- Kainai Nation (Blood Tribe)
- Driftpile Cree Nation
- Gunn Métis Local 55
- Louis Bull Tribe
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation

This section pertains to social and cultural well-being issues and concerns specific to Indigenous peoples. For issues related to non-Indigenous communities, refer to Chapter 8.

Kainai Nation (Blood Tribe) stated that the Project would contribute to loss of places to harvest culturally important plant and animal species such as those that compose the sacred Beaver Bundle and Bear Bundle which, in turn, represents a threat to this important cultural expression. Kainai Nation (Blood Tribe) also noted the Project's contribution to cumulative cultural effects. Kainai Nation (Blood Tribe) stated that each industrial project with its additional environmental changes and reduced space and opportunities for Blackfoot people to harvest and enjoy the land contributes to the overall process designed to destroy the ties of Indigenous Blackfoot peoples to the earth.

Samson Cree Nation stated that impacts on their rights and cultural practice related to ceremony, harvesting, identity and history are significant, given conditions at baseline. Samson Cree Nation stated that within the context of existing and ongoing impacts, residual Project effects will further erode Samson Cree Nation's rights and cultural practice related to culture and heritage resources and culture and rights practices tied to cultural landscapes.

Piikani Nation stated that NGTL did not consider Project operations in its assessment of social and cultural well-being. Piikani Nation stated that, even if minor, operations related activities such as vegetation management and invasive, land-disturbing integrity digs – though intermittent – do interact with social and cultural wellbeing from an Indigenous point of view given that social and cultural well-being is tied to the land. Piikani Nation recommended that NGTL complete an assessment of operations phase activities.

Driftpile Cree Nation, Gunn Métis Local 55, Louis Bull Tribe, O'Chiese First Nation, Piikani Nation, Samson Cree Nation, and Stoney Nakoda Nations raised concerns about Project effects on intergenerational knowledge transfer. During an oral Indigenous knowledge session, Driftpile Cree Nation provided their views on the importance of inter-generational teaching and effects of development:

The impacts on the land – we do land-based teachings in our community and we use different areas of the land when we share our knowledge with our young people. We pass on our traditions and culture and our language, the hunting and the gathering of our foods and our berries, and the teachings of the hunting for survival. We pass that on to our young people.

But as I'm speaking today, that's all being taken away from us now because of the land clearing and also the disruptions from oil and gas company pipelines, the disruptions to the land.

-- Elder Ross Giroux Sr., Driftpile Cree Nation, Transcript Volume 3 [1471-1472]

In response to a Commission IR, NGTL noted that Gunn Métis Local 55 raised concerns about Project-related changes to harvesting patterns and intergenerational knowledge transfer resulting in long-term, irreversible impact to traditional land and resource use.

Louis Bull Tribe stated concerns about effects of development on inter-generational sharing of knowledge:

Current Louis Bull land users wish to pass their knowledge down to the next generations. It is becoming more and more difficult to find areas that are not disturbed where members can carry out inter-generational sharing of knowledge. All too often, Elders return to areas where they have practiced rights in the past only to find these areas developed, disturbed by development, or subject to conflicting land uses.

-- Ms. Melanie Daniels, Louis Bull Tribe, written affidavit

O'Chiese First Nation stated that they have a responsibility to ensure that younger generations are able to learn about their culture. O'Chiese First Nation stated that the ability to teach and pass on information related to *Kaa-Ke-Chi-Ko-Moo-Nan* (Great Binding Law) is critical to the survival of O'Chiese First Nation culture, and that sharing information and knowledge of the land is important for language transmission. O'Chiese First Nation stated that harvesting activities

are also essential to O'Chiese First Nation's ceremonial practices and the transmission of knowledge and *Kaa-Ke-Chi-Ko-Moo-Nan* between generations. O'Chiese First Nation stated that interference with harvesting results in interference with ceremonial and cultural activities.

Piikani Nation stated that the Project poses threats to their cultural teachings and education. Piikani Nation stated that access to sacred and cultural areas of significance to their members where cultural teaching between Knowledge Keepers, Elders, youth and community members takes place may be at risk during construction in and around the ROW and associated infrastructure and facilities. Piikani Nation stated that increased industrialization has had significant negative impacts on them, through the disruption of culture and knowledge transmission, impacts on sites of cultural importance, and alienation from patterns of being (such as being able to spend extended periods of time on the land in the area) that are consistent with the way Piikani Nation members lived for thousands of years before contact. Piikani Nation stated that the full impacts of that have not been properly assessed for this Project.

Samson Cree Nation stated that their sense of place and ability to pass on knowledge to future generations will be impacted by the Project as it will increase the extent of industrial disturbance in portions of Samson Cree Nation territory, reduce the amount of intact provincial Crown land that is still ecologically and culturally functional, further alienate Samson Cree Nation members from highly valued provincial Crown lands in their territory, and impair the sense of place and ability to transmit knowledge in these areas. Samson Cree Nation stated that they are actively working to retain the high levels of traditional knowledge of specific locations despite cumulative effects in the Project-affected area. Samson Cree Nation stated that they are concerned that if key places continue to be damaged, destroyed, or if access is lost, this knowledge will be lost to future generations.

Stoney Nakoda Nations stated the importance of being on the land for cultural purposes and noted that this is not easily done anymore. Stoney Nakoda Nations stated that there is a need to be connected to the land in order to transmit culture to younger generations. Stoney Nakoda Nations noted that their stories are often connected to a particular place and that in order to share skills and knowledge it is important to be able to access sacred and cultural places including sacred sites, ceremonial sites, cultural areas, traditional harvesting areas, family territories, and campsites.

Piikani Nation and Stoney Nakoda Nations raised concerns about disturbance during ceremonies and need for intercultural training. Piikani Nation recommended that NGTL and its prime contractors commit to having their workforce undergo intercultural training and briefing sessions that cover Section 35 rights and Blackfoot culture, values and laws. Piikani Nation also recommended that NGTL hire an Indigenous peoples' liaison to support communication and relations between the construction and operations workforce and the Indigenous rights-holding peoples in and surrounding the Project area. Piikani Nation further recommended that NGTL include socio-economic and socio-cultural mitigation, monitoring and management measures that address social- and cultural-well-being effect pathways and indicators that are relevant to Piikani Nation and other Indigenous rights holding Nations.

During an oral Indigenous knowledge session, Stoney Nakoda Nations noted issues around disturbance by companies during ceremonies in their sacred areas:

So our Elders, they go out and do ceremonies in these sacred sites. During that time out at ceremonies, sometimes we get disturbed by companies. They come out onto our ceremonies. That's unacceptable.

-- Mr. Barry Wesley, Chiniki First Nation, Stoney Nakoda Nations, Transcript Volume 1 [113-114]

...we go and offer our ribbons, and our tobacco, and our prints to Creator's helpers. But there's a lack of respect for that. My colleague, Mr. Powderface, was saying he saw some people that were working on the land, making the right of way. He took the ribbon, put it on his head, and started yahooin. You know, that's not good. It's not good to see, you know, when they disrespect our ribbons. That's our culture.

-- Elder Rod Hunter, Bearspaw First Nation, Stoney Nakoda Nations, Transcript Volume 1 [172-173]

Stoney Nakoda Nations also noted instances of disrespect shown to and victimization of Stoney Nakoda Nations community members:

We have seen projects like this in the past, which impact our community with the long-term effects of migratory of construction workers and the abuse of substance and abuse of our Stoney women.

I know of individuals that have been victimized due to construction workers that have been going through the area...

-- Ms. Seona Abraham, Wesley First Nation, Stoney Nakoda Nations, Transcript Volume 1 [172-173]

Driftpile Cree Nation, Samson Cree Nation, and Stoney Nakoda Nations noted the need for pre- and post-construction protocols should the Project be constructed.

And there's [sic] certain protocols that we have to follow...And one way that's always mentioned, before the start of a project, before your construction ... there's a certain protocol that us First Nations have to be there to give permission for this project to begin. There's a protocol.

We pray to Mother Earth because, you know, we're sorry for this disruption and we can't stop what's going to be happening to her. So we pray for her. And also at the end of the Project, there's a certain protocol we have to perform as well. And I've always mentioned that to different oil and gas companies, but I've never seen that happening yet, you know, which is very important.

-- Elder Ross Giroux Sr., Driftpile Cree Nation, Transcript Volume 3 [1590 and 1591]

Samson Cree Nation recommended that opportunities be made for their members to visit the Project Footprint prior to construction activities and that appropriate cultural protocols and ceremonies are conducted as part of, and prior to, Project activities with the involvement of Samson Cree Nation Elders.

During an oral Indigenous knowledge session, Stoney Nakoda Nations shared their views regarding protocols required prior to land development:

According to the Stoney culture and traditions, what protocols are in place for you people to come and, you know, before you can develop the land, well, you've got to have proper tobacco. First it's a discussion with an Elder. You give him tobacco. You ask him, "What do you know about this land? What can we do?"

Then usually there's a pipe ceremony. And if it's a huge development, then you've got to do a sweat lodge and make sure you have four Elders. You know, things like that. To us that's sacred. To us that means we're given – we're giving – we're getting good permissions from the Elders to be able to develop that.

Even if it's for ourselves. Like, you know, when we're going to do a Sun Dance, we take tobacco to a landowner and say, "Can we do the Sun Dance on this land?" Or else if it's like the Kootenay Plains. Nobody really owns that except for Stoney. There we go and pray on the land, ask Creator if we can borrow the land.

Even before we do the Sun Dance too, we ask Creator, "Lend us this land?" And if it's owned by somebody, then we ask them too; we give them tobacco too.

That's just our ways – that's just proper protocol.

-- Elder Rod Hunter, Bearspaw First Nation, Stoney Nakoda Nations, Transcript Volume 1 [183-187]

7.4.4 Human Health

Impacts to human health including physical, mental, and spiritual health were identified as an issue by the following Indigenous peoples:

- Ermineskin Cree Nation
- Gunn Métis Local 55
- Louis Bull Tribe
- Montana First Nation
- Piikani Nation
- Samson Cree Nation
- Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation

This section pertains to human health issues and concerns specific to Indigenous peoples. For issues related to non-Indigenous communities, refer to Chapter 8.

Ermineskin Cree Nation noted the importance of traditional foods for health. Ermineskin Cree Nation stated that since big game feed on many plants considered to hold medicinal properties by Ermineskin Cree Nation citizens, wild meat likewise contains medicinal properties and is healthier than farmed and store-bought meat.

Piikani Nation stated that activities associated with Project construction, operation and decommissioning will impair the ability of the lands and waters within Piikani Nation Territory to support critical ecological functions and will impact the abundance of wildlife, fish, birds available for traditional land use purposes, and will in turn have adverse effects on community members' health and wellbeing.

Samson Cree Nation stated that watercourses within the Regional Assessment Area are important drinking water sources for them and those sources may be contaminated during construction and operations. Samson Cree Nation stated they are further concerned that NGTL has insufficiently considered human health effects due to potential for project-related surface water contamination, especially with regard to potential for accidental release of deleterious substances during construction and operation. Samson Cree Nation stated that NGTL's surface water quality monitoring during construction will not comprehensively consider effects on human health.

During an oral Indigenous knowledge session, Chiniki First Nation stated concerns regarding existing disturbances on their land, loss of access to food, and effects on health:

Because of these disturbances, today, you know, my community is dealing with a disease. It's called diabetes. It's an illness. Because we no longer have those medicines that was provided to us by the game, the animals, the plants. So now we have to go depend on science.

-- Mr. Barry Wesley, Chiniki First Nation, Stoney Nakoda Nations, Transcript Volume 1 [110]

Ermineskin Cree Nation also stated that the use of herbicides by NGTL would affect water quality and health and safety of traditional resources in the Project area.

In response to a Commission IR, NGTL noted that Gunn Métis Local 55 and Montana First Nation raised concerns about contamination of food, medicinal, and ceremonial plants due to the use of herbicides and chemicals on the ROW. Montana First Nation requested that NGTL not use herbicides for ROW maintenance, and if they must be used, to include Montana First Nation in post-application monitoring.

Louis Bull Tribe raised concerns about herbicide use and effects on traditionally used plants. Louis Bull Tribe recommended that NGTL take into consideration the potential effects of spray drift on adjacent areas supporting traditional plants.

Piikani Nation recommended that NGTL develop a herbicide application protocol that: requires the use of low-toxicity sprays; restricts application during high winds and when prevailing winds could result in spray drifting into sensitive areas; requires the use of drift-reducing additives; and ensures personnel not involved in spray application are not in the vicinity. Piikani Nation also requested that NGTL prohibit use of herbicides within 30 metres of wetland boundaries.

Samson Cree Nation stated that herbicide and pesticide use that would result in reduction of wildlife and impact hunter confidence in the quality of game in the Project area. Samson Cree Nation recommended that NGTL avoid pesticide use along the Project ROW. Samson Cree Nation stated that cumulative effects to fish, water, wildlife and culturally important plants have severely impaired their confidence in traditional foods.

Louis Bull Tribe raised concerns about methylmercury and risk of its introduction into waterbodies through sediment release, and subsequent movement into the food chain with resulting bioaccumulation.

Ermineskin Cree Nation stated that Indigenous use of lands and resources promotes psychological health and well-being for many of its members.

Louis Bull Tribe also raised concerns related to effects of development on mental health:

I am also concerned about the impacts these projects, and in particular the visible impacts on the land, have on the mental health of the Louis Bull Elders. When Louis Bull land users and Elders find traditional land use areas have been developed, access is denied or the landscape is altered they are faced with sadness over the disregard for our Mother Earth and for the homelands on which their ancestors once freely utilized in a manner that was complimentary to the land.

I have witnessed sadness and defeat when I have taken Elders out to areas that they have not accessed recently only to find that the area is no longer the way they recall it to be (i.e., trees cleared, cattle grazing, facilities and pipelines all take the place of the sacred areas they once knew). The rate of development coupled with the lack of reclamation is rapidly eroding the aboriginal and treaty rights of the Louis Bull Tribe within Treaty 6 and beyond.

-- Ms. Melanie Daniels, Louis Bull Tribe, written affidavit

7.4.5 Heritage Resources

Impacts to heritage resources was identified as an issue by the following Indigenous peoples:

- Alexis Nakota Sioux Nation
- Driftpile Cree Nation
- Gunn Métis Local 55
- Métis Nation of Alberta, Region 3
- O'Chiese First Nation
- Samson Cree Nation

This section pertains to heritage resource issues and concerns specific to Indigenous peoples. For additional information related to heritage Resources, refer to Chapter 8.

In response to a Commission IR, NGTL noted that Gunn Métis Local 55 raised concerns about potential discovery of previously undocumented sites of historical, archaeological, or heritage interest and potential loss of those as well as areas of cultural importance. Gunn Métis Local 55 requested they be notified upon activation of NGTL's Chance Find Protocol.

In response to a Commission IR, NGTL noted that Métis Nation of Alberta, Region 3 raised concerns about Project effects on heritage resources and the preservation and protection of historically significant sites and grave sites, and stressed the importance of protecting grave sites within their territory.

In their aid to oral Indigenous knowledge filed on the public record along with their publically filed cover letter, O'Chiese First Nation raised concerns regarding potential gravesites, burial sites, and other highly sensitive cultural sites located within the Regional Assessment Area including sites located specifically within the Project Development Area and Local Assessment Area. O'Chiese First Nation stated that, due to the proximity of their Reserve No. 203A to the Project, they conducted a desktop review of culturally sensitive sites located within the Alford Creek Section of the Project. O'Chiese First Nation stated that the review revealed a culturally sensitive site within the Regional Assessment Area, of which some are categorized as grave sites by Aboriginal Heritage of the Alberta Ministry of Culture, Multiculturalism and Status of Women.

In this same aid and cover letter, O'Chiese First Nation stated that it is possible for there to be other culturally sensitive sites located within the entirety of the Regional Assessment Area, including the Elk River Section of the Project. O'Chiese First Nation also noted that in addition to the identified sites, there are more highly sensitive cultural sites, including potential grave sites, in the vicinity of Indian Reserve 203, Indian Reserve 203a, and Edson Mainline. O'Chiese First Nation requested that a more detailed field assessment be conducted to ensure O'Chiese First Nation has a proper inventory of the gravesites, burial sites, and other highly sensitive cultural sites that have the potential to be disturbed by the Project.

Samson Cree Nation stated that burial sites are sacred and need to be protected and respected. Samson Cree Nation stated that, given the extent of use in the region by their ancestors and the network of trails, it is possible that unknown or unrecorded burials and historical resources may be located within and or in proximity to the pipeline ROW.

In its evidence, NGTL noted that Alexis Nakota Sioux Nation identified potential archaeological finds and areas of high archaeological potential along the proposed pipeline ROW. Alexis Nakota Sioux Nation explained that high hills and river banks were used traditionally as burial sites, and requested that all First Nations be notified of any archaeological finds and be invited to be present at all archaeological digs.

Driftpile Cree Nation noted that NGTL's Cultural Resources Discovery Contingency Plan applies to all personnel of the company, their contractors and subcontractors. Driftpile Cree Nation raised concerns whether untrained personnel would be able to identify potential traditional land and resource use sites, heritage sites, or human remains. Driftpile Cree Nation recommended that all NGTL personnel, their contractors and subcontractors involved in construction take a mandatory training course on how to identify (at a high level) potential TLRU sites, heritage sites, or human remains and to familiarize themselves with the Cultural Resources Discovery Contingency Plan. Driftpile Cree Nation stated this training should be facilitated by Indigenous subject matter experts or a third party of their choosing.

Driftpile Cree Nation also recommended that NGTL provide a clear outline of how it will determine which Indigenous peoples to inform in the event of a chance find. Driftpile Cree Nation noted that in NGTL's Cultural Resources Discovery Contingency Plan a Heritage Resource Specialist is consulted in the plan's second step. Driftpile Cree Nation recommended that the Heritage Resource Specialist be consulted in step one of the plan and that the Specialist develop an appropriate mitigation plan in collaboration with potentially impacted Indigenous peoples rather than developing it independently and then reviewing the plan with affected Indigenous peoples.

7.4.6 Employment, Training and Community Benefits

Employment, training and benefits for Indigenous peoples, which includes contracting opportunities, education, training, and community investment as well as economic and other benefits, were identified as issues by the following Indigenous peoples:

- Alexis Nakota Sioux Nation
- Kainai Nation (Blood Tribe)
- Driftpile Cree Nation
- Gunn Métis Local 55
- Louis Bull Tribe
- Métis Nation of Alberta, Region 3
- Métis Nation of Alberta, Region 4
- Papaschase Nation
- Piikani Nation
- Samson Cree Nation
- Siksika Nation
- Stoney Nakota Nations – Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation

This section pertains to employment and benefit issues and concerns specific to Indigenous peoples. For issues related to non-Indigenous communities, refer to Chapter 9.

7.4.6.1 Employment and Contracting Opportunities

In its evidence, NGTL noted that Alexis Nakota Sioux Nation requested their active involvement in the reclamation and remediation process, and requested employment and contracting opportunities.

Driftpile Cree Nation and Louis Bull Tribe stated that it is important that their members have an opportunity to be involved in the construction and operation phases of the Project, as this will not only allow the Nations to share in economic opportunities that may flow from the Project, but ensure that the knowledge of Nation members can be utilized to protect the Nation's interests.

Piikani Nation stated that unemployment is a challenge they still experience, and their future aspirations are to break the cycle of dependence and become an economically viable and self-sufficient Nation. Piikani Nation stated that they believe that the proper use of the lands and resources in their territory could support this goal when projects are carried in a way that the health, educational, social, economic, and cultural conditions in the community are enhanced by the project. Piikani Nation recommended that NGTL train and hire Piikani Nation members for post-construction monitoring of the watercourses on the Project area.

Samson Cree Nation stated that NGTL has not provided any evidence on the potential economic impacts of the Project on Samson Cree Nation, other than generalized plans and programs that Samson Cree Nation is familiar with and that have not resulted in any economic

benefits. Samson Cree Nation recommended that Project employment opportunities extend beyond short-term labour contracts to include permanent leadership and corporate positions. Samson Cree Nation further recommended facilitated socio-cultural and economic benefits that can work towards redressing the historic issue of economic benefits by-passing Samson Cree Nation and improving Samson Cree Nation's ability to access economic benefits including employment opportunities, beneficial business opportunities; and revenue sharing.

In response to a Commission IR, NGTL noted that Métis Nation of Alberta, Region 3 stated that they are interested in business opportunities for business owners and contractors. Métis Nation of Alberta, Region 3 asked that NGTL look locally to fill contracts and staffing opportunities, make bidding process accessible for their business owners and contractors, provide feedback for unsuccessful bids, and provide an NGTL/TC Energy contact list for updates.

Driftpile Cree, Louis Bull Tribe, and Piikani Nation stated the importance of benchmarks for employment of Indigenous peoples. Driftpile Cree Nation and Louis Bull Tribe stated that, notwithstanding NGTL's assertion that it will seek to maximize Indigenous economic benefits through its Indigenous Relations Business Engagement activities, the Nations are concerned that the CER's conditions do not impose meaningful benchmarks for Indigenous participation. Driftpile Cree Nation and Louis Bull Tribe stated that they must have a clear path to participating in the economic benefits of the Project, should it ultimately be approved.

Piikani Nation stated that there is no indication of NGTL entering into binding agreements with Indigenous Nations that commit to specific hiring targets and/or capacity building to support Indigenous employment and/or business procurement. Piikani Nation stated that if the proponent does not have formal socioeconomic or impact benefit agreements in place to secure employment, contracting service agreements, training, and/or business partnerships, then these potential economic opportunities that Piikani Nation has interests in may be diminished or completely overlooked. Piikani Nation stated it is unclear how NGTL will fulfill its intention to support Indigenous participation in the potential socioeconomic benefits of the Project, and engage with interested Indigenous peoples. Piikani Nation further stated it is not clear whether the prime contractor will be held accountable for following through on agreements or commitments put into place.

In response to a Commission IR, NGTL noted that Gunn Métis Local 55 requested that they be employed as monitors alongside NGTL's environmental and field staff in pre-construction wildlife sweeps, construction and reclamation inspections, and other opportunities.

Piikani Nation noted potential effects to land and resource based eco-tourism businesses (i.e., guiding) due to environmental impacts.

7.4.6.2 Education, Training and Community Benefits

In response to a Commission IR, NGTL noted Gunn Métis Local 55's request that NGTL provide support to them for training and capacity-building initiatives and provide information on Project-specific contract, employment, training and planning opportunities prior to Project construction. NGTL also noted Gunn Métis Local 55's request that NGTL provide support for seasonal harvesting camps to promote awareness among youth about traditional harvesting and environmental stewardship.

During an oral Indigenous knowledge session, Louis Bull Tribe noted their need for capacity for land-based education:

Some of the things that worry me is the land base education that we're bringing into our school system, which is the MESC schools. And we haven't had the opportunity to have that ready-made curriculum to show our future generations how our land looked like years ago. And it would be great to have some kind of a connection to work side-by-side with your companies where we can work together and have provisions for curriculum to bring home to our children.

-- Elder Ida Bull, Louis Bull Tribe, Transcript Volume 3 [1740]

As part of measures to reduce adverse effects of the Project, Stoney Nakoda Nations recommended that NGTL provide capacity for cultural and language camps.

Piikani Nation requested that NGTL commit to providing capacity funding and industry standard job training for Piikani Nation Guardians to undertake, or at a minimum participate in, wildlife surveys, wildlife management plans, and contingency plans. Piikani Nation stated that they expect to be engaged and consulted regarding various aspects of the Project's impacts, mitigation, monitoring and management planning processes and related socioeconomic management measures including accommodations for training.

Samson Cree Nation recommended that NGTL provide training opportunities for youth and accommodation in the form of improvements to community infrastructure and services (e.g., roads, water services).

During an oral Indigenous knowledge session, Samson Cree Nation noted the importance of their Community Freezer Project, and recommended that NGTL support community cultural initiatives, such as this.

...we've been running a program called the Community Freezer. And what we do with this program is we go hunting with a group of young men from my community, from September to February. In fact, this weekend coming up is my last kick at it for the season. But what we do is, we go hunting, we go get some wild meat for our community, and bring it back for our Elders and our low to no income families.

[...]

...what we do is, we go hunting at least two to three times per month and we bring back maybe a moose, two moose, whatever we're fortunate enough to get while we're out there. And what we do is, we bring it back, we cut it up with our youth so we can teach our youth how to, you know, have the value of sharing, you know, and also to the – for the purpose of the – how would you say it – for the purpose of allowing our youth to take part in healing.

I say "healing" because, you know, hunting and all these traditions is healing. Like, you know, one of the best places to be out when you're stressed out is in nature. And I'm very fortunate to, you know, to be able to hunt as much as I do but, to get back to what I was saying with regards to the program, we distribute all the meat to our community members.

-- Mr. Kacey Yellowbird, Samson Cree Nation, Transcript Volume 5 [2528 and 2532-2533]

In response to a Commission IR, NGTL noted that Métis Nation of Alberta, Region 4 requested that NGTL develop ongoing Project and community engagement plans to create economic and educational opportunities for Métis Nation of Alberta, Region 4 members to offset potential negative effects to traditional lands and resource use.

Kainai Nation (Blood Tribe) stated that they wish to discuss co-ownership and cooperation of pipelines with NGTL. Kainai Nation (Blood Tribe) stated that they and Siksika Nation have not been offered any significant socioeconomic benefits for their people by proponents and operators. In response to a Commission IR, NGTL noted that Siksika Nation indicated the same interest in co-ownership and socioeconomic benefits. In response to a Commission IR, NGTL further noted that Papaschase Nation indicated interest in entering a relationship agreement with NGTL and receiving information on potential opportunities regarding community investment, education and training, and business engagement. Stoney Nakoda Nations recommended that the Commission require that NGTL enter into a Pipeline Benefit Agreement, or some similar form of agreement with the Nation, which will provide certain economic benefits for Stoney Nakoda Nations in relation to the Project, including employment opportunities, procurement opportunities, and profit sharing and/or royalty payments.

7.4.7 Monitoring by Indigenous Peoples and Indigenous Advisory Monitoring Committee

Monitoring or participation in monitoring by Indigenous peoples was identified as an issue by the following Indigenous peoples:

- Alexis Nakota Sioux Nation
- Kainai Nation (Blood Tribe)
- Driftpile Cree Nation
- Gunn Métis Local 55
- Louis Bull Tribe
- Métis Nation of Alberta, Region 3
- Michel First Nation
- Montana First Nation
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation

In its evidence, NGTL noted Alexis Nakota Sioux Nation's request that Alexis Nakota Sioux Nation be on site before, during, and after construction.

Kainai Nation (Blood Tribe) requested that NGTL establish, in collaboration with Kainai Nation (Blood Tribe) and Siksika, a traditional knowledge-based program to systematically monitor

Project environmental impacts including measures to monitor the implementation and effectiveness of mitigation.

Driftpile Cree Nation and Louis Bull Tribe stated that they must be more directly involved in the regulation and monitoring of the Project as they hold an inherent right to ensure the protection and stewardship of their territories. Driftpile Cree Nation and Louis Bull Tribe stated that this must include involvement in Project planning and environmental and cultural monitoring throughout the construction, operations, closure, and remediation phases of the Project. Driftpile Cree Nation and Louis Bull Tribe acknowledged that NGTL has included a variety of monitoring plans and engagement measures in its Project application, but they remain concerned that the proposed CER conditions primarily impose reporting requirements on NGTL rather than concrete commitments regarding Indigenous involvement.

In response to a Commission IR, NGTL noted that Gunn Métis Local 55 requested the employment of Gunn Métis Local 55 monitors alongside NGTL's environmental and field staff in pre-construction wildlife sweeps, construction and reclamation inspection and other opportunities. NGTL noted that Gunn Métis Local 55 requested that should any major river crossings require an open-cut crossing, that Gunn Métis Local 55 be notified and that an on-site Gunn Métis Local 55 monitor be present during crossing construction and reclamation.

Louis Bull Tribe stated that Indigenous environmental monitors with a familiarity of the land should be involved in onsite post-construction monitoring to ensure that mitigation measures are successful in maintaining important environmental features required for the continuation of traditional practices in the area. Louis Bull Tribe noted that NGTL and Louis Bull Tribe have come to a consensus on allowing Elders and youth from the community to be onsite during a watercourse crossing to allow the community to better understand the construction process and to ensure mitigation measures are adequate. Louis Bull Tribe recommended that NGTL determine how information and/or concerns shared during this visit may need to be incorporated into the mitigation measures, Environmental Protection Plan, or other relevant planning documents.

The Project should employ community-based monitoring to help safeguard against spills or damage to the environment from Project-related activities. There should be a system for Indigenous communities to voice complaints. First Nations should be kept regularly apprised of activities on the pipeline. Open communication is required between First Nations and Project representatives.

-- Ms. Melanie Daniels, Louis Bull Tribe, written affidavit

I do understand that NGTL is not in the practice of hiring Indigenous monitors and I can respect that, and I think that they are in agreement of allowing us an opportunity to come and see how an open cut looks, how the fish are salvaged, an opportunity for youth and for our Elders and our Knowledge Keepers to see this with their own eyes and have that assurance. But I just wanted you to have that awareness of that concern.

It leads me to an issue [sic] is challenging and it's the monitoring of these types of activities. And not even just the construction monitoring. I think we're interested in learning how we can work with governments and with industry to do some long-term, land-based, community-based monitoring on the lands, where we can help prevent these monocultures from happening. Maybe we can go out and we can help get this

right-of-way back to a native state, instead of this grass state that doesn't provide us any positive wildlife habitat or experience for us.

-- Ms. Melanie Daniels, Louis Bull Tribe, Transcript Volume 3 [1831-1832]

In response to a Commission IR, NGTL noted that Métis Nation of Alberta, Region 3, and Montana First Nation, requested that they be included in monitoring.

Michel First Nation stated that NGTL does not provide any examples or mention opportunities for the involvement of Indigenous peoples, including Michel First Nation, in participating in or informing compliance and mitigation measure monitoring prior to or during construction and operations. Specifically, Michel First Nation stated that there is no indication from NGTL of opportunities for Indigenous nations, including Michel First Nation, to participate in monitoring activities including water quality monitoring.

Piikani Nation stated that taking care of the land is one of Piikani Nation's sacred responsibilities within their territory. Piikani Nation stated they are in the process of establishing a Guardian Program to monitor environmental and cultural heritage resources within their territory. Piikani Nation stated that they see a role for themselves in the environmental and cultural heritage monitoring of the Project through training and employment of Piikani Nation Guardians or monitors to assist in monitoring requirements.

Samson Cree Nation recommended that long-term monitoring be conducted to ensure the safety of resources, and that Samson Cree Nation monitors be involved and employed throughout all Project phases, from construction and to reclamation.

Driftpile Cree Nation, Louis Bull Tribe, O'Chiese First Nation, Piikani Nation, and Stoney Nakoda Nations recommended the establishment of an Indigenous Advisory Monitoring Committee for the Project. Driftpile Cree Nation and Louis Bull Tribe stated that the Nations must be provided with the means and resources to engage in Indigenous-led monitoring and emergency response for the lifetime of the Project, and this can be facilitated by the establishment of an Indigenous Advisory Monitoring Committee and robust Phase 3 and Phase 4 Crown consultation processes. O'Chiese First Nation also recommended that an Indigenous Advisory Monitoring Committee be established to ensure all conditions and commitments for the Project are fully implemented.

Piikani Nation stated that they strongly recommend that it be a requirement for the Project to have an environmental monitoring committee structure, such as an Indigenous Advisory Monitoring Committee to provide oversight in the monitoring of the NGTL System as a way to ensure an appropriate forum exists for impacted Indigenous Nations, including Piikani Nation, to identify concerns or opportunities, and assist in monitoring activities. Piikani Nation stated that an Indigenous Advisory Monitoring Committee, or similar body, would ensure that appropriate consideration is given to Indigenous concerns through the Project's construction and operation.

Piikani Nation stated that they have recently developed a fledgling biocultural monitoring program that seeks to provide robust evidence with which they can engage their expanding network of partners to assist them to safeguard their ecological and cultural integrity and community health into the future. Piikani Nation stated that they seek to cultivate this program into a self-sustaining, holistic Biocultural Monitoring and Climate Adaptation program based around Piikani Nation's key cultural values that not only monitors and proactively mitigates impacts from development, but also monitors and successfully adapts to the impacts of climate

change. Piikani Nation stated that the environmental monitoring committee would require the training of Piikani Nation members and active collaboration with the Piikani Nation's Biocultural Monitoring and Climate Adaptation to be meaningfully involved in the monitoring of NGTL projects including the Project. Piikani Nation stated that the Indigenous Advisory Monitoring Committee, or something equivalent in nature, would help to make the balance of power more equitable between NGTL and Indigenous peoples, relative to NGTL's current monitoring programs which are entirely led by the Proponent.

Stoney Nakoda Nations recommended that an Indigenous Advisory Monitoring Committee for the Project appoint Stoney Nakoda Nations' members.

7.4.8 Traditional Land and Resource Use

7.4.8.1 NGTL's Assessment Methodology and Mitigation Measures

The adequacy of NGTL's Environmental and Socio-Economic Assessment methodology and its assessment of Project impacts to TLRU sites and activities, as well as the adequacy and effectiveness of NGTL's proposed mitigation measures to address those impacts were identified as issues by the following Indigenous peoples:

- Driftpile Cree Nation
- Michel First Nation
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation

Driftpile Cree Nation stated that the Regional Assessment Area that NGTL used for the TLRU assessment is too small and does not adequately capture the actual impact to Driftpile Cree Nation's broader system of TLRU. Driftpile Cree Nation recommended that NGTL consider a regional study area that corresponds to the unique nature of Driftpile Cree Nation's territory and core use areas. Driftpile Cree Nation recommended that the CER direct NGTL to complete a quantitative analysis of landscape fragmentation in the Regional Assessment Area as well as describe clear mitigation measures that will manage those fragmentation effects. Driftpile Cree Nation also stated that it is unclear how NGTL will evaluate the effectiveness of its mitigation measures or adapt its approach if those mitigations are ineffective.

Driftpile Cree Nation and Piikani Nation disagreed with NGTL's view that there will not be any interactions with socio-economic valued components during the operations phase of the Project. Driftpile Cree Nation stated that NGTL did not include impacts from Project operations on availability of traditional resources for current use, changes in access to traditional resources, or areas for current use, and changes in current use sites or areas. Piikani Nation stated that, given the various post-construction and operation phase activities that involve operator-led inspections, vegetation management and pipeline integrity dig activities, there is potential for Project interactions with the health and social well-being valued component specifically as it relates to Indigenous peoples with traditional territories that intersect the Project. Both Driftpile Cree Nation and Piikani Nation recommended that NGTL include operations phase activities in its assessment.

Michel First Nation stated that an assessment of impacts on their current use of lands and resources for traditional purposes was not completed for the Project Environmental and Socio-Economic Assessment because they were not provided capacity funding from NGTL to collect traditional land use information for this project. Michel First Nation stated that, although they provided preliminary traditional land use information, this information was not project-specific and was not reflected in the Project Application filed by NGTL.

O'Chiese First Nation stated that the CER's process does not acknowledge *Kaa-Ke-Chi-Ko-Moo-Nan* as the CER's process is based on western laws. O'Chiese First Nation stated that NGTL's Environmental and Socio-Economic Assessment was developed to meet criteria laid out in a regulatory process led by the NEB Act and the NEB Filing Manual that does not understand or reflect O'Chiese First Nation's Inherent and Treaty Rights, and *Kaa-Ke-Chi-Ko-Moo-Nan*. O'Chiese First Nation stated that *Kaa-Ke-Chi-Ko-Moo-Nan* is grounded in the lands and spirits that support O'Chiese First Nation's way of life. O'Chiese First Nation stated that NGTL is imposing upon O'Chiese First Nation with its proposed Project and is seeking approval to violate lands within Treaty 6. O'Chiese First Nation stated that it should not be the expectation that they conform to the western approach of impact assessments in order to defend Inherent and Treaty Rights and the land. O'Chiese First Nation stated that it should instead be the expectation that NGTL and the regulator recognize and work within *Kaa-Ke-Chi-Ko-Moo-Nan* to identify violations to O'Chiese First Nation's Inherent and Treaty Rights and the land.

O'Chiese First Nation noted that NGTL will apply their standard mitigation measures listed in the Application, Environmental and Socio-Economic Assessment, and Environmental Protection Plan, however O'Chiese First Nation stated that there is no concept or word for "mitigation" or "correction" in Anishinabe. O'Chiese First Nation stated that all violations to lands and *Kaa-Ke-Chi-Ko-Moo-Nan* cannot be accommodated nor corrected and so are permanent.

Samson Cree Nation raised concerns about the cumulative effects assessment conducted by NGTL, and stated that their Indigenous knowledge has not been properly incorporated into NGTL's cumulative effects assessment. Samson Cree Nation stated that in developing their updated Cumulative Effects Assessment Report, they adopted the position that all possible factors should be considered, within reason and constraints of this project scope, when considering change over time for valued components, including human activities and even small incremental changes that are not normally subject to environmental assessment (for example, forest harvesting cutblocks and small mine permits). Samson Cree Nation stated that the report identified a number of core Samson Cree Nation values that are already subject to substantial pressures and therefore vulnerable to any additional Project effect, including but not limited to environment, wildlife, sense of place and culture and heritage resources.

7.4.8.2 Traditional Knowledge Studies

The incorporation of information provided in Indigenous peoples' traditional knowledge studies into Project planning and mitigation management was identified as an issue by the following Indigenous peoples:

- Driftpile Cree Nation
- Louis Bull Tribe
- Michel First Nation

- Piikani Nation
- Samson Cree Nation
- Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation, Wesley First Nation

Michel First Nation stated that it was not provided funding for a traditional knowledge study despite having current use identified in the Project vicinity.

Driftpile Cree Nation, Louis Bull Tribe, and Piikani Nation disagreed with NGTL that their reports should be given less or no weight in the Commission’s Recommendation and decision. Driftpile Cree Nation and Louis Bull Tribe stated that while it may be true that many of the recommendations they proposed for the Project are similar to recommendations that have been made regarding past NGTL projects, this does not mean they should be discounted. Driftpile Cree Nation and Louis Bull Tribe stated that it underlines that similar issues arise with each expansion of the broader NGTL pipeline network and greater efforts must therefore be made to mitigate their cumulative effects. Driftpile Cree Nation and Louis Bull Tribe stated that it also highlights that the regulator has failed to adopt the proposed conditions and recommendations of Indigenous Nations into its reports, thus necessitating the need to advocate for an approach to the conditions and recommendations that gives due weight to the oral, affidavit and technical evidence of Indigenous Nations. Piikani Nation noted that their written evidence was informed by NGTL responses to information requests.

Louis Bull Tribe raised concerns about NGTL’s use of Indigenous knowledge:

Another suggested requirement that the CER should impose on NGTL is greater emphasis on employing Indigenous traditional knowledge to facilitate implementation of environmental protection goals and environmental restoration or reclamation.

-- Ms. Melanie Daniels, Louis Bull Tribe, written affidavit

Louis Bull Tribe stated that Indigenous knowledge should be incorporated into the analysis of biophysical surveys and subsequent mitigation measures. Louis Bull Tribe expressed concerns with respect to both direct and indirect effects of the Project that span both the ecological and cultural realms. Louis Bull Tribe stated that place-based traditional knowledge reflects a different understanding of environmental change that may not be apparent to western science and should not be discounted as it provides important context that requires due consideration when evaluating incremental and cumulative environmental impacts. Louis Bull Tribe stated that traditional knowledge and cultural information held by Indigenous peoples is not always recorded in a way that is accessible without direct and effective consultation that takes into consideration the need to be respectful and sensitive to how this information is collected, protected and disseminated.

Piikani Nation asked how NGTL will adequately consider traditional knowledge from Piikani Nation once their TLRU study is complete and how NGTL intends to consider information from traditional knowledge studies as equal to western science. Piikani Nation stated that it is not clear how NGTL specifically included traditional knowledge into their Project plan and design.

Piikani Nation raised concerns that the timing window for the traditional knowledge land use study (over the winter months) made it difficult to get a full picture of the impacts on their rights and interests. Piikani Nation stated that the COVID-19 situation created serious delays in their

traditional knowledge land use study because of associated safety concerns and logistical challenges. Piikani Nation stated that the CER's decision to refuse sufficient extension of time for Piikani Nation to properly and safely complete and submit all the traditional knowledge land use study information significantly limited the amount of data that will be before the decision-maker with regard to the significance of the impacts on Piikani's rights. Piikani Nation also stated that there was failure on the part of NGTL's consultants to allow Piikani Nation timely access to Project areas to be able to conduct the first round of the traditional knowledge land use study, which limited the amount of information Piikani Nation could properly gather for submission in its written evidence. Piikani Nation stated that given the challenges created by COVID-19, they recommend thorough reporting by NGTL on the impact that the COVID-19 situation has had on the gathering of traditional knowledge and land use information and steps taken by NGTL to address any barriers.

During an oral Indigenous knowledge session, Elder Leo Bruno of Samson Cree Nation noted the importance of Indigenous knowledge:

Indigenous knowledge can be described, not just as a way of life for us, but more important, as intimate relations we have with the physical, mental, emotional, and spiritual life around us.

It is the very essence that embraces every facet of our daily lives. It is that which makes us breathe, smell, taste, feel, be happy, and cry.

It is how we relate and connect to everything that surrounds our whole being. It is that which our ancestors taught us through songs, stories, dances, art, and ceremonies. These are the teachings that are written in riverbeds, landscapes, hillsides, dens, forests, animal tracks, and spiritual quests. The world is our classroom, the Creator, our teacher; the grandmother, the grandfathers' spirits are our assistant instructors, the animals and plants are our brothers and sisters.

We all respect one another and together, we will live as one, in harmony. We celebrate our victories, trials, and successes with our medicines, sacred practices, and ceremonies. Indigenous traditional knowledge, you see, is not in books for us to read, but rather, a teaching that is underneath and on top of every rock, beneath and on top of every river bed, in front and behind every blade of sweetgrass. Our educators whisper in the wind, howl at the grandmother moon, shout in the storms, laugh in the rain, and glisten in the snow.

Our knowledge is embedded in the tracks of our animal relatives and carried still on the sacred wings of the ki hew, the eagle. Our teachings call us from the songs of the loon, and the lessons hidden beneath the sound of flutter of the winged on a sunny day. Our thoughts are charted in the silent whisper of leaves above the willow branches, and marked beneath the reflections of the morning star.

In class, it is dawn who brings a new page of learning, and our Grandmother Moon overlooks our progress. In every season, a change, a new chapter of understanding, and every grandmother and grandfather spirit is a new instructor of wisdom.

-- Elder Leo Bruno, Samson Cree Nation, Transcript Volume 5 [2510-2515]

Stoney Nakoda Nations stated that, as traditional inhabitants with unique ties to the landscape, they hold knowledge that can improve the understanding of key conservation concerns from a culture viewpoint. Stoney Nakoda Nations stated that traditional ecological knowledge and expert information could be a key resource 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 Stoney Nakoda Nations Section 35 Rights. Stoney Nakoda Nations stated they would like to see more serious consideration for traditional ecological knowledge, expert information, and the land and resource use experiences.

7.4.8.3 Access to and Availability of Lands

This subsection includes issues and concerns raised by Indigenous peoples related to the reduction or perceived reduction in the availability of Crown lands for conducting TLRU activities and Section 35 Rights; restricted access to traditional use areas for Indigenous peoples; and, increased access for non-Indigenous communities.

Access to and availability of lands was identified as an issue by the following Indigenous peoples:

- Kainai Nation (Blood Tribe)
- Driftpile Cree Nation
- Ermineskin Cree Nation
- Gunn Métis Local 55
- Louis Bull Tribe
- Métis Nation of Alberta, Region 3
- Michel First Nation
- Montana First Nation
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- Siksika Nation
- Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation, Wesley First Nation
- Whitefish (Goodfish) Lake First Nation #128

Kainai Nation (Blood Tribe) and Siksika Nation stated that the expanded footprint will change the patterns of access and movement by hunters in the Regional Assessment Area and Local Assessment Area by enabling greater access by recreational users, hunters with all-terrain vehicles, and workers, thereby deterring enjoyment and use of the area by Blackfoot hunters. Kainai Nation (Blood Tribe) and Siksika Nation also stated that the Project could interfere with their members' access into hunting and gathering areas due to Project construction, noise and traffic, and seasonal access restrictions, including locked access points to the Project Development Area through private lease roads.

Kainai Nation (Blood Tribe) and Siksika Nation also stated that, if the Project Development Area is replanted with thick rye grass or other species of fescue then walking and visibility is made difficult for Blackfoot hunters on foot. In response to a Commission IR, NGTL noted that Gunn Métis Local 55 raised concerns related to access difficulties due to tall, thick grass in the existing ROW.

Ermineskin Cree Nation noted that during site visits to the Elk River and Alford Creek Sections to supplement the desktop approach to their Indigenous Knowledge and Use Report, access to the Alford Creek Section was obstructed at numerous points by fences and gates on Crown lands.

In response to a Commission IR, NGTL stated that Métis Nation of Alberta Region 3 raised concerns about lack of access to areas to carry out traditional practices due to locked gates.

Michel First Nation raised concerns about access restrictions to the pipeline ROW during construction including vehicle barriers, hunting restrictions, and general avoidance by Michel First Nation harvesters who prefer not to harvest in the vicinity of industrial development. Michel First Nation also questioned how NGTL can distinguish between Indigenous and recreational users with respect to access and what mechanisms would be in place to allow Michel First Nation harvesters access where recreational access is restricted.

O'Chiese First Nation stated that increased activity and development on the land has prevented access to the areas they once were able to access to exercise their Inherent and Treaty Rights. O'Chiese First Nation reported prosecution from their activities on public lands and frustration with an increase in physical barriers related to development such as fences, signs, and gates.

Piikani Nation stated that during construction and pipeline expansion activities, land disturbances will create barriers to travel routes and harvesting areas and harvesting areas may be compromised due to outsider hunting and fishing activities. Piikani Nation stated that the alienation of land and reduced ability to access hunting and harvesting areas is a serious burden which will be increased by the Project. Piikani Nation stated that if their members cannot, with reasonable freedom, access lands within their territory to exercise their rights, then there is no meaningful right left. Piikani Nation stated that the ability to access, use, and manage these natural resources through Piikani Nation and Blackfoot natural laws is paramount to cultural sustainability.

Samson Cree Nation stated that much of their territory is not accessible due to settlement, agriculture and industrial development.

And my concern too is about Crown land. Like, Crown land is for us, for all people, but for us First Nations, we like to use Crown land for hunting. Nowadays you can't even hunt in some of the Crown lands. They're fenced off. There's gates. Private property. And a lot of the Crown land nowadays is getting leased out, so we can't even hunt there, we can't even gather plants.

-- Mr. Besim Buffalo, Samson Cree Nation, Transcript Volume 5 [2456]

In their written affidavit, Louis Bull Tribe raised concerns about availability of land for Aboriginal and Treaty rights:

I worry about our youth. They need to learn our traditional ways and how to use our traditional medicines. I am also concerned about the taking up of land for industrial and agricultural uses. There is basically no land left for us to use to practice our Aboriginal and Treaty rights. The lands have been sold privately, have been developed by companies, or have been turned into parks or recreational use areas.

-- Mr. Clyde Rabbit, Louis Bull Tribe, written affidavit

Michel First Nation stated that an assessment of the amount of unoccupied Crown lands available for exercise of rights and a quantitative assessment of the unoccupied Crown lands left in the Regional Assessment Area, including any legal restrictions that may indicate a visible, incompatible use of land affecting access for each type of occupied Crown land is required. Michel First Nation stated that it is also unclear from the application whether NGTL understands how interruption of exercise of rights can impact Michel First Nation members and displaces these land users – sometimes permanently.

O'Chiese First Nation stated that Project, if approved, will result in an additional 281.81 hectares of land in the Project Development Area being disturbed that will lead to a decrease in lands where O'Chiese First Nation can exercise their Inherent and Treaty rights in accordance with *Kaa-Ke-Chi-Ko-Moo-Nan*. O'Chiese First Nation stated that the Project will increase the amount of land that does not meet O'Chiese First Nation Required Means (the attributes of land and resources that are necessary for the exercise of Inherent and Treaty Rights in accordance with *Kaa-Ke-Chi-Ko-Moo-Nan*) for hunting in both the Local Assessment Area and Regional Assessment Area by 11.84 hectares. O'Chiese First Nation stated that this will occur in an area where there are already minimal lands available for the exercise of Inherent and Treaty rights that meet O'Chiese First Nation Required Means. O'Chiese First Nation stated that none of NGTL's identified mitigation measures will correct the violations to O'Chiese First Nation resulting from the reduction in lands meeting their Required Means for hunting.

Samson Cree Nation stated that more than half of their territory is less than 500 m from a linear disturbance. Samson Cree Nation also stated that few intact remote areas exist in their preferred harvesting areas, and areas that do meet these criteria are highly valued due to the limited available intact Crown Land. Samson Cree Nation stated that less than 35 per cent of Crown land is unaffected by anthropogenic disturbance. Samson Cree Nation stated that they continue to travel and camp in or near the Project affected area but are often limited by fenced private lands, grazing, forestry, and industry.

Samson Cree Nation stated that the areas of Samson Cree Nation Territory where members can retain their critical connection to the land and Creator, and pass on their Indigenous knowledge and way of life to their children and grandchildren, has diminished "to an arguable point of infringement". Samson Cree Nation stated that, based on current data, they have identified that only 13.4 per cent (8,385 km²) of Samson Cree Nation Territory, where provincial Crown lands are located, remains intact to provide sufficient resources, and have the necessary conditions, required for Samson Cree Nation members to meaningfully exercise their Inherent and Treaty No. 6 rights. Samson Cree Nation recommended development of environmental stewardship initiatives that address Samson Cree Nation's interests including cumulative effects and the diminishing Crown land base for Samson Cree Nation members to meaningfully exercise their Treaty 6 rights.

Stoney Nakoda Nations stated that Project approval would result in a decrease in lands that are available to them for exercise of their Section 35 Rights, from both taking up of Crown lands for

the Project, and from disturbance of the lands so as to affect the use of the lands. Stoney Nakoda Nations stated that there are already minimal lands available for the exercise of Section 35 Rights in the area of the proposed Project. Stoney Nakoda Nations stated that the Project will reduce the amount of lands currently available in the Project Development Area for the exercise of Section 35 Rights by 259.34 hectares. Stoney Nakoda Nations noted that development has adverse effects on *Iyarhe Nakoda Makochi* (traditional territory) and their survival, even when mitigation measures such as land restoration are carried out.

Stoney Nakoda Nations stated that Section 35 Rights may only be exercised on Crown land without Crown authorizations, Crown land with Crown authorization where there is allowance for the exercise of activities related to Section 35 Rights, and private land where permission has been specifically obtained. Stoney Nakoda Nations stated that lands with Crown authorizations cannot be used by Indigenous Nations without permission, which results in Indigenous peoples' right of access being diminished in priority compared to the disposition holder or fee simple owner. Stoney Nakoda Nations stated that loss of available lands affects the ability of the Nations to hunt, fish, gather, and affects family camps, cultural events, ceremonies and sacred sites, and the transfer of knowledge to younger generations, all of which are integral to maintaining Stoney Nakoda Nations' identity and culture.

During the oral Indigenous knowledge session, Stoney Nakoda Nations stated:

And you know, these right of ways, we cannot do anything on there without permission. I mean, even just to go – I don't know if we can walk across the right of way or not. Do we need permission to do that? These are the questions that some of my children and my grandchildren have asked. "Why can't we walk there when we go walking in the trees, in the bushes, to hang up our flags and ribbons?"

I tell them, "See that sign? It says not to go there."

-- Elder Rod Hunter, Bearspaw First Nation, Stoney Nakoda Nations, Transcript Volume 1 [174-176]

Stoney Nakoda Nations also gave their views on limitations on land for use for hunting:

And as you know, a lot of land owners don't allow us to hunt on private land. We don't have much place to hunt anymore. On the Crown land we could hunt, but it's limited. Any new development, pipeline, whatever, we're not to hunt around there anymore because it's occupied.

You know, hunting is very important to survival. You look at our unemployment rate on the reserve, 90 percent unemployed. We have to get food somewhere. Thank God we could hunt. We don't target practice a lot because it takes money to buy a bullet, something that we don't have every day.

So when we're impacted by development, what are we going to do for food? You know, it's very unfair if you look at the impact it has on our hunting.

-- Elder Rex Daniels, Bearspaw First Nation, Stoney Nakoda Nations, Transcript Volume 1 [204-207]

Stoney Nakoda Nations stated that disturbances (such as clearing a pipeline ROW) remain over the lifetime of a disposition or permit and disagreed that standard environmental mitigation measures will result in equivalent land capabilities post-approval. Stoney Nakoda Nations stated that the assumption that their members can simply go elsewhere to exercise their Section 35 Rights is false given the current levels of damage and development in the Project area and within the Stoney Nakoda Nations' traditional territory. Stoney Nakoda Nations noted the need for thoughtful land use planning and regulatory processes with respect to land availability.

Stoney Nakoda Nations stated that the route selection and mitigation measures identified by NGTL will not reduce negative and adverse effects to change in legal restrictions caused by the Project. Stoney Nakoda Nations stated that reclamation of linear developments does not mitigate the legal conversion of unoccupied Crown lands to occupied Crown lands and all applicable legislation including the *Petty Trespass Act*, *Public Lands Act*, and Public Lands Administration Regulation that would apply to individuals found on lands without permission from the disposition holder.

Stoney Nakoda Nations also raised concerns about the province of Alberta's *Critical Infrastructure Defence Act* with respect to potential restriction of land access. Stoney Nakoda Nations stated that they anticipate that their members may be charged or threatened to be charged with offences under that Act for exercising Section 35 Rights within the Project Area. Stoney Nakoda Nations recommended that the Commission require a declaration that Stoney Nakoda Nations' right to access and use the Project Area for the purpose of exercising their Section 35 Rights will not be impacted by the Act.

Stoney Nakoda Nations recommended measures to eliminate or reduce Project effects on their ability to exercise their Section 35 Rights. Measures recommended by Stoney Nakoda Nations to eliminate effects included no Project approval, locating the Project on existing unavailable land/occupied Crown land, or ensuring Stoney Nakoda Nations' priority rights to exercise their Section 35 Rights on the land under the disposition sought for the Project, exempt from any offences under the *Petty Trespass Act* and *Public Lands Act*. Measures recommended by Stoney Nakoda Nations to reduce effects included reducing the amount of land subject to the increased legal restriction, minimizing the type of legal restriction on the Project Development Area, or drafting additional conditions where Stoney Nakoda Nations members are exempt from enforcement of offences under the *Petty Trespass Act* and *Public Lands Act*.

Stoney Nakoda Nations stated that the pre-existing cumulative effects on the availability of Crown lands accessible to them for the exercise of Section 35 Rights are significant, and therefore any additional loss of Crown lands available to Stoney Nakoda Nations for the exercise of their rights and title is also significant.

Whitefish (Goodfish) Lake First Nation #128 stated that Project construction will reduce access through the Elk River and Alford Creek Project Development Area and Local Assessment Area into adjacent hunting areas and reduce or restrict the movement of hunters through the Project Development Area and Local Assessment Area during construction.

In response to a Commission IR, NGTL noted Gunn Métis Local 55 raised concerns about increased land access for non-traditional land users, and that Project-related traffic would interrupt access and travel for their harvesters, particularly during construction. NGTL also noted concerns from Montana First Nation regarding potential Project effect on access and travel including use of ROWs by non-Indigenous recreationalists for poaching and harvest in areas that would otherwise be remote.

Samson Cree Nation stated that increased access caused by cumulative effect of pipelines, seismic lines, roads, transmission lines and railways have contributed to readily available access for non-resident hunters, and competition for access for harvesting resources is quite high.

Crown land offsets and compensation

Driftpile Cree Nation, Louis Bull Tribe, O'Chiese First Nation, Piikani Nation, Samson Cree Nation, and Stoney Nakoda Nations recommended that the CER should require NGTL to provide Crown land offsets to offset impacts to land availability from the Project. O'Chiese First Nation and Stoney Nakoda Nations recommended that they be provided with compensation or other benefit frameworks.

Driftpile Cree Nation and Louis Bull Tribe stated that the CER should require NGTL to implement an offset measures plan in collaboration with the Nations, and other potentially affected Indigenous peoples to offset impacts to Aboriginal and Treaty rights arising from the Project. Driftpile Cree Nation and Louis Bull Tribe stated that the plan should allow for the identification and reclamation of previously disturbed lands within the traditional territories of potentially affected Indigenous peoples.

Louis Bull Tribe recommended that offset measures be imposed to address impacts to their Aboriginal and Treaty rights:

We are asking the Canadian Energy Regulator to consider imposing offset measures to address impacts to Aboriginal and treaty rights, much like the offsets required to mitigate impacts to caribou. If proponents such as NGTL contributed to a fund that can be used to restore lands for the practice of rights, or at a minimum work directly with First Nations to restore areas, impacts could be managed and mitigated meaningfully. If development continues status quo there will be nowhere for Louis Bull members to practice their Aboriginal and treaty rights and their way of life may be all but lost.

-- Melanie Daniels, Louis Bull Tribe, written affidavit

O'Chiese First Nation recommended that the CER require that NGTL work with O'Chiese First Nation, including complying with O'Chiese First Nation Law and Governance, to identify, purchase and set aside lands for O'Chiese First Nation that meet their Required Means or to establish a compensation and benefits framework for O'Chiese First Nation which identifies spatial and temporal extent for which compensation is owed and includes compensation reflecting the constitutionally-protected nature of the rights that are impacted.

Piikani Nation stated that where impacts cannot be avoided or offset, they must be offset by mutually agreed upon accommodation measures through a formalized agreement.

Samson Cree Nation recommended off-setting measures that work towards addressing the broader issue of existing adverse effects from the NGTL System within Samson Cree Nation's Territory.

Stoney Nakoda Nations stated that to control remaining adverse effects on their ability to exercise their Section 35 Rights due to increased legal restriction, an equivalent amount of available land would have to be created or made available so that there is "No Net Loss" of lands available for the exercise of Stoney Nakoda Nations Section 35 Rights and way of life, or

Stoney Nakoda Nations would have to be compensated for the remaining effects similar to criteria set out in paragraphs 97(1)(d); (h); (i) of the NEB Act.

7.4.8.4 Potential Project-Related Effects on Traditional Land and Resource Use Sites and Activities

Project-related effects on TLRU were identified as issues by nearly all Indigenous Parties. This section discusses overall concerns related to traditional land and resource use as well as specific issues under the specific headings of hunting, fishing, gathering/harvesting, use of trails and travelways, and traditional land and resource use sites. This section discusses the specific issues and concerns by subject matter below. For a discussion of the effects of the Project on the biophysical environment including vegetation, wildlife and wildlife habitat, fish and fish habitat, and water quality see Chapter 8.

Hunting/Trapping

Kainai Nation (Blood Tribe) stated that the construction of the Project will create additional linear disturbance that will drive away wildlife. Kainai Nation (Blood Tribe) stated that Project-related deforestation, noise and increased human presence reduce opportunities for Kainai Nation (Blood Tribe) and Siksika members to hunt.

Kainai Nation (Blood Tribe), Ermineskin Cree Nation, Louis Bull Tribe, Michel First Nation, Piikani Nation, O'Chiese First Nation, Samson Cree Nation, Stoney Nakoda Nations, and Whitefish (Goodfish) Lake First Nation #128 noted concerns regarding traffic in relation to associated noise, dust, safety and the impact of increased traffic on game and therefore the Indigenous peoples' right to hunt.

Driftpile Cree Nation raised concerns about Project effects on trappers and recommended that NGTL follow up with trappers to confirm that 10 days' notice prior to construction is adequate.

Apetokosan (Kelly Lake Métis Settlement Society) stated concerns about the impact of Project construction on hunting and trapping, particularly the impacts on species such as moose and caribou, as their game trails and salt licks are located within the construction areas.

Louis Bull Tribe stated concerns regarding effects of development on hunting:

I have noticed changes to land in the Project area. [...] The grass in the ROWs are not suitable for wildlife; it is not native to the area and it grows too high. The land along the pipeline ROWs is disturbed by manmade activities and then it is further disturbed by wind, rain and snow because the land is now exposed. All the native grasses are gone and there is a lot of blown down timber.

-- Mr. Clyde Rabbit, Louis Bull Tribe, written affidavit

Now there is hardly any wildlife in the Project area since when I hunted there as a child. I am concerned that all the development in the area is causing the wildlife to leave. It is important to me to be able to teach my family and the Louis Bull youth how to hunt, but I cannot do this when all the land is impacted by development and the wildlife have left.

-- Mr. Virgil Dechamps, Louis Bull Tribe, written affidavit

O'Chiese First Nation stated that hunting is a central component of their culture, well-being, and identity. O'Chiese First Nation stated they require hunting locations away from industrial development, including related sights, noises and smells and where there are no people, including other hunters, recreational users and construction workers. O'Chiese First Nation stated that they view areas to be unclean if there is development or signs of development around such as pipelines, workers, vehicles, dust, noise, or chemicals. O'Chiese First Nation stated that pollution has an effect on wildlife, that many animals appear unhealthy, and that it is much harder to find healthy animals. O'Chiese First Nation also stated they are concerned with accidentally causing an accident or malfunction related to industrial equipment. Furthermore, O'Chiese First Nation stated that disturbed lands can increase the presence of industrial construction workers both during construction and operation phases, and increase the number of recreational users on the land. O'Chiese First Nation stated that they are afraid of unknowingly harming industrial development workers or recreational users in the vicinity of damaged lands.

Piikani Nation stated that the Brazeau River and the area west of Rocky Mountain House is and always has been Piikani Nation hunting area. Piikani Nation noted that the area along the Brazeau is the most productive area for moose in Piikani Nation Territory. Piikani Nation stated that Project threats to culturally or traditionally important animal species include mortality, loss of habitat (clearing), and loss of habitat function (sensory disturbance, habitat fragmentation). Piikani Nation stated that the loss of animals and their habitat will have an impact on Piikani Nation's ability to harvest traditionally-used species.

Piikani Nation noted that, as mitigation, NGTL has indicated that they will provide potentially affected Indigenous peoples with the proposed Project construction schedule and maps. Piikani Nation stated that, while this is a useful mitigation for harvesters who may wish to avoid the area during construction, there is no indication of how long in advance potentially affected Indigenous Nations, including Piikani Nation will be notified or how changes to the construction schedule will be provided. Piikani Nation recommended that NGTL provide mitigation that includes indication of how far in advance potentially affected Indigenous Nations, including Piikani Nation will be notified of the construction schedule and details of a contingency plan if the construction schedule changes.

Samson Cree Nation noted the importance of moose hunting for cultural continuity and knowledge transmission. Samson Cree Nation stated that there are numerous moose harvesting sites and moose hunting routes actively used by Samson Cree Nation members in the Project area. Samson Cree Nation stated they have hunted moose and other animals in the Eastern Slopes for decades and have come to rely more heavily on hunting areas in the Eastern Slopes because of land privatization and development of the prairies closer to Maskwacîs and Pigeon Lake. Samson Cree Nation stated that, in light of existing cumulative effects, compared to the pre-industrial baseline in the Project area (and elsewhere in Samson Cree Nation Territory), moose habitat is already substantially impacted at baseline, and Project-related disturbance would exacerbate existing pressures on moose. Samson Cree Nation stated that they expect the Project to result in further reductions in and displacement of animal populations valued for hunting within the Project area due to habitat loss and fragmentation, increases in local predator populations and predation success, and human activity (traffic, increased hunting pressure). Samson Cree Nation stated that these effects are expected to further constrain the ability of Samson Cree Nation members to meaningful exercise their Inherent and Treaty No. 6 rights and interests in the Project area. Samson Cree Nation stated that Project maps and schedules provided by NGTL will not address the quality and quantity of desirable animals nor will it alleviate the potential increase in travel required.

During an oral Indigenous knowledge session, Stoney Nakoda Nations provided their views on effects of development on wildlife:

You have to, first and foremost, respect the animal; respect the animal and the land. Make sure you don't destroy an area where they come all the time, because they'll never come back there again.

-- Elder Rex Daniels, Bearspaw First Nation, Stoney Nakoda Nations, Transcript Volume 1 [214]

Stoney Nakoda Nations noted that certain of NGTL's activities during Project construction and operation conflict with Stoney Nakoda Nations' Hunting Preferred Conditions required for the meaningful exercise of Stoney Nakoda Nations' Section 35 Rights (activity of hunting). These activities include the use of signs, fences, gates or flags, use of heavy equipment and vehicles, increased personnel and traffic, clearing, grading, clean up and reclamation activities; maintenance of a cleared area on either side of the pipeline during operations, and the use of mechanical and chemical clearing approaches. Stoney Nakoda Nations stated that their requirements for harvesting activities include absence of industrial development, dust or contamination, other people (including recreational users, construction workers, and other non-Stoney Nakoda Nations harvesters), and the absence of mechanical and chemically cleared areas.

Stoney Nakoda Nations outlined measures to eliminate Project effects on their hunting avoidance behaviours. Measures outlined included not approving the Project, locating the Project on existing unavailable land/occupied Crown land, or constructing and operating the Project as non-visible. Measures outlined also included constructing, operating and maintaining the Project to eliminate the changes brought to the physical and aesthetical attributes of the land avoided by Stoney Nakoda Nations for the exercise of Section 35 Rights (e.g., no clearing; no vegetation management or tree control including mechanical clearing and the application of chemicals; and no signs, fences or gates). Stoney Nakoda Nations noted that to construct and operate a project in a "non-visible" manner could include no visible clearing activities or no visible change to the land and landscape, resulting in activities that would not result in a visible disturbance to Stoney Nakoda Nations harvesters and others out on the land in the vicinity of the Project.

Measures identified by Stoney Nakoda Nations to reduce adverse effects on hunting avoidance behaviour included reducing the alteration of harvesting activities and displacement of wildlife or harvested species, and reducing negative perceptions of the Project. Stoney Nakoda Nations stated that activities that could reduce negative perceptions include monitoring and follow up to verify prediction of Project effects, public relations campaigns, and conducting long term studies in partnership with Stoney Nakoda Nations on the effects of the use of chemicals on soil, water, vegetation and animals. Stoney Nakoda Nations stated that measures to control the remaining adverse effects on hunting avoidance behaviours include compensating Stoney Nakoda Nations for reduction in their harvesting activities.

Fishing

Kainai Nation (Blood Tribe) stated that Project-related disturbance to waterways could reduce opportunities for Kainai Nation (Blood Tribe) and Siksika members to fish for food.

In response to a Commission IR, NGTL noted concerns raised by Gunn Métis Local 55 pertaining to Project effects on traditionally important species of fish and their habitat.

Louis Bull Tribe stated concerns about impacts of the Project on the quality of fish:

There are also food security issues now; I wouldn't trust the water or fish in these areas because of the pollution.

-- Elder Kenneth White, Louis Bull Tribe, written affidavit

Louis Bull Tribe stated that aquatic resources are of great concern and have significant value to Indigenous Nations, not only from the importance of this resource in supporting ecological functions and traditional use (e.g., fishing, use of medicinal plants or culturally important plants) but also in terms of the cultural importance of water as a sacred resource. Louis Bull Tribe stated that projects that cross, or otherwise impact waterbodies are of particular concern, as many fish populations are already under pressure from ongoing habitat loss and disturbance. Louis Bull Tribe stated that, as such, even the incremental addition of small projects can contribute to the overall cumulative effects that impact long-term survival of fish populations.

In response to a Commission IR, NGTL noted Montana First Nation's concern about Project-related increased access for recreationalists who would impact fish and fish habitat by traversing watercourses with off-road vehicles.

Piikani Nation stated that impacts to fish and fish habitat will impact their ability to fish since the proposed routes of both Project sections cross through fish harvesting watersheds important to Piikani Nation. Piikani Nation stated that the Elk River Section crosses three watersheds important to Piikani Nation including the Elk River, Brazeau River and the Nordegg River watersheds. Piikani Nation stated that within the Elk River Section, fifteen potential watercourse crossings were identified. Piikani Nation stated that the Alford Creek Section crosses an additional two watersheds of importance to Piikani Nation including the Clearwater River and Prairie Creek. Piikani Nation stated that within the Alford Creek Section, twenty-one potential watercourse crossings were identified.

Samson Cree Nation stated that they are concerned that the Project would further impact tangible cultural values, such as the collection of drinking water and fishing from creeks and streams, as well as intangible aspects of Samson Cree Nation culture including stewardship responsibilities and knowledge transmission. Samson Cree Nation stated that greater public access within the Regional Assessment Area, associated with Project access roads and other linear features, may increase harvesting pressure on Samson Cree Nation preferred fish species. Samson Cree Nation stated that public access also increases the risk for introduction and spread of aquatic invasive species and disease in the Regional Assessment Area.

Stoney Nakoda Nations stated that water rights, including the substantive right to fish, are a critical component of their Section 35 Rights, and so the Project should not be approved until such rights have been adequately considered and accommodated.

Gathering/Harvesting

In its evidence, NGTL noted that Alexis Nakota Sioux Nation explained that removal of soil during construction will affect the efficacy of medicinal plants and the quality of the animals that Alexis Nakota Sioux Nation harvest that eat these medicinal plants will also be reduced.

Kainai Nation (Blood Tribe) and Siksika Nation stated that the Project Regional Assessment Area is important to the Blackfoot as it is known to be a source of traditionally-used plants. Kainai Nation (Blood Tribe) stated concerns about Project impacts to plant gathering practices and less availability of species due to clearing. Kainai Nation (Blood Tribe) and Siksika Nation noted that NGTL had planted the previously disturbed ROW adjacent to the Project Development Area with non-traditional vegetation, rather than planting with sweetgrass and a variety of plants whose roots, medicines and berries that Blackfoot people use. Kainai Nation (Blood Tribe) and Siksika Nation noted the need to reclaim the Project Development Area with traditionally used native plant species and/or seed mix.

In response to a Commission IR, NGTL noted that Gunn Métis Local 55 raised concerns related to Project effects on traditionally important plant species and existing cumulative effects on food and medicinal plants. NGTL also noted Gunn Métis Local 55's request that seed mixes used in reclamation include local genetic strains of native plant species that are found along the existing ROW, or that support conditions which establish traditionally used food and medicinal plant species.

Apetokosan (Kelly Lake Métis Settlement Society) stated concerns about the impact of Project construction on vegetation and, specifically, medicines that they gather. Apetokosan (Kelly Lake Métis Settlement Society) asked that the Project follow strict guidelines provided by Indigenous peoples and government for the preservation of the lands in all phases of the Project lifecycle to be able to return the land back to its natural way.

Louis Bull Tribe stated concerns about Project impacts on traditional plants:

I am sad to see the impacts of the pipeline development in and around the Project area. It deadens our pharmacy. We now have to travel so far to practice our Aboriginal and Treaty rights and many of our people cannot afford to travel far. Therefore, I am concerned that our young people will not know our medicines. I have made recommendations to project proponents that plants used for our traditional gathering activities should be transplanted to areas that our people can readily go to harvest, but the feedback I have received is this would be too onerous of a process. Meanwhile, our plants are dying and nothing is being done by the government. I am not happy about pipeline developments because after the construction is finished and ROWs are cleared only weeds will grow. There are no berries along the edges of the ROWs. The berries that do grow near these disturbed areas are not healthy or ripe and are very small in size.

-- Elder Ida Bull, Louis Bull Tribe, written affidavit

When I was a child there was an abundance of medicinal herbs because there wasn't that much development and other human activity. Our people needed medicines and we knew what areas on the reserve and in the Project area where we could find them. Now our people cannot go to many of the areas where we used to harvest and the areas we can go are impacted by industrial activities.

-- Elder Kenneth White, Louis Bull Tribe, written affidavit

Once a site is exploited, the land is re-planted with seeds that are often not native to the land. There is no recovery of lost food that the animals need to forage on. Should the Project be approved, I encourage the CER to require NGTL to ensure that subsequent to

construction of the Project, procedures are in place to re-plant excavated areas along the ROWs with native seeds.

-- Ms. Melanie Daniels, Louis Bull Tribe, written affidavit

I harvest sweetgrass and other medicinal plants around the Project area. There are not a lot berries in the Project area anymore. I used to be able to gather berries right off the roads, but now I have a hard time finding the berry bushes.

-- Mr. Virgil Dechamps, Louis Bull Tribe, written affidavit

Louis Bull Tribe stated that traditional plant medicines play a large role in traditional practices and the availability of these plants has declined in the Louis Bull Tribe traditional territory, due in part to increased fragmentation of the landscape from linear development projects. Louis Bull Tribe stated that medicinally and culturally important plants are typically not considered during the revegetation process. Louis Bull Tribe stated that, as the primary user of the land, they should approve the content of the native seed mix to ensure areas are restored to their ecological and traditional use capacity. Louis Bull Tribe also stated that they should be consulted on areas that are left to reclaim naturally to determine whether culturally important plant species will successfully regrow in these areas. Louis Bull Tribe recommended that NGTL clarify the specific steps it will take to involve them in regeneration of culturally important plant species and decisions concerning any additional mitigation measures that may be needed to facilitate this regeneration.

Louis Bull Tribe stated that NGTL's plan to reclaim to "equivalent land capability" does not consider the length of time it takes to restore an ecological community to the conditions necessary to successfully grow medicinal plants. Louis Bull Tribe stated that pipeline reclamation is not a temporary effect from the perspective of near-term cultural use of these areas (i.e., within 5 to 10 years), and does not adequately address the concern that the Project will further reduce harvesting opportunities for culturally significant plants in the area. Louis Bull Tribe recommended that NGTL clearly outline what provisions will be put in place to implement additional mitigation measures if specific traditional use plants have been identified by the Louis Bull Tribe as occurring along the pipeline ROW that may be more sensitive to disturbance.

Michel First Nation stated that they are concerned with NGTL's proposed re-vegetation plan as it is meant to support similar but not necessarily identical plant propagation. Michel First Nation stated that this could result in a keystone species for Michel First Nation being removed from this harvesting area; particularly as no specific plan to collect harvesting information from Michel First Nation has been identified. Michel First Nation also raised concerns about the timeline for total recovery of the landscape, post-construction.

In response to a Commission IR, NGTL noted concerns raised by Montana First Nation and Métis Nation of Alberta, Region 3 as to impacts of the Project on plant species use for food, medicine, and ceremony and the effects of introduction of invasive weed species from Project traffic and equipment. NGTL further noted that Métis Nation of Alberta, Region 3 stated that they wish to be included in reclamation planning and activities and requested that NGTL strictly use certified seeds for reclamation to decrease invasive species in the seed mix.

O'Chiese First Nation stated that there is a protocol for removing plants from the ground, which includes keeping the roots intact as a necessary step to ensure proper regrowth. O'Chiese First Nation stated that once plants and medicines are removed or destroyed without

following this protocol they no longer meet the required means of O'Chiese First Nation and cannot, according to *Kaa-Ke-Chi-Ko-Moo-Nan*, be successfully replanted.

Piikani Nation stated that NGTL's assertion that because Indigenous Nations continue to harvest in the ROWs that this somehow means that harvesting in ROWs has not and will not be affected by pipelines is misleading and misguided. Piikani Nation's evidence showed that while there is harvesting in ROWs and surrounding areas, pipelines do have a big impact on the ability of Piikani Nation's members to harvest for a variety of reasons, either because species decline or because of the practical and physical restrictions on access the pipelines put in place.

Piikani Nation stated that the Project would impact culturally or traditionally important plant species through clearing, herbicide use, and changes in species composition including the introduction of non-native plant species. Piikani Nation stated that NGTL should seed areas noted by Indigenous peoples as specific areas for gathering with native seed mix that includes seeds from traditional plants to increase the likelihood that traditional plant species will recover.

Samson Cree Nation stated that as the areas closer to Maskwacis have become impaired by extensive anthropogenic change, areas to the west within the Green Zone of Alberta that have retained at least some semblance of natural conditions and as predominantly Crown land that are accessible are highly critical for Samson Cree Nation's sense of place and ability to pass on knowledge. Samson Cree Nation stated that the Project is situated in a location that is one of the few remaining areas trusted for practices such as subsistence harvesting and medicinal collection.

Samson Cree Nation stated concerns that the proposed Project will negatively impact food plants and medicines in a sensitive region of their territory known for having unique plant species. Samson Cree Nation members identified several potential Project interactions with food plant and medicine values, including destruction of valued habitat for berry picking and medicine collection due to land clearing; reduced health and power of plant and medicine resources due to the dispersion of industrial contaminants; diminished ability of Samson Cree Nation members to harvest food plants and medicines as a result of both the loss of habitat and the loss of confidence in the quality of resources. Samson Cree Nation also noted the potential impact to culturally important plants from the use of herbicides.

Samson Cree Nation stated that Project construction and operation in the Project Development Area will result in loss or alteration of native vegetation species and ecosystems, including 181.1 ha of upland forest in the Elk River Section, and approximately 232.9 ha in the Alford Creek Section, for a total of 414 ha. Samson Cree Nation stated that, while much of this is anticipated to be revegetated, in Samson Cree Nation's experience, reclaimed areas do not replace native ecosystems and culturally important plants at reasonable time scales, and often perceptions of contamination limit harvesting. Samson Cree Nation stated that invasive species are also common at reclaimed sites, and often spread into adjacent native habitat. Samson Cree Nation stated that transmission of knowledge and culture related to the plants associated with mature and old growth forests will be lost after approximately 25 years due to the lack of intergenerational transmission. Samson Cree Nation stated that transplanting or reclaiming medicines may not be effective mitigation, because plants gain their potency over time and also based on the ecology that surrounds them and the spirits within the plants lose potency when moved.

Trails and Travelways

In response to a Commission IR, NGTL noted concerns from Gunn Métis Local 55, Métis Nation of Alberta, Region 4 and Montana First Nation about Project-related loss or alteration of nearby trails and travelways.

Piikani Nation stated concerns about Project effects resulting in reduced access to historic trails and modern-day routes. Piikani Nation stated that during Project construction, associated land disturbances will create barriers to travel routes and harvesting areas.

Samson Cree Nation stated that trails and travel routes were used extensively in the past by Samson Cree Nation families and remain important cultural features for guiding land use and teaching younger generations. Samson Cree Nation stated that their ancestors travelled throughout the territory through a network of trails, including several that transect the proposed routing for both pipeline sections of the Project.

Samson Cree Nation stated that trails and preferred travel routes are impacted by cumulative effects of pipelines, roads, seismic lines, railway and land pre-emption for settlement and agriculture.

In response to a Commission IR, NGTL noted Siksika Nation's concerns about changes in access and movement patterns for their hunters.

Whitefish (Goodfish) Lake First Nation #128 stated concerns about reduced accessibility of frequented travel routes due to increased traffic. Whitefish (Goodfish) Lake First Nation #128 stated that roads, trails, cut lines, lakes, and water routes are all routes by which Whitefish (Goodfish) Lake First Nation #128 travel, and their harvesters access additional roads, trails, and cut lines on foot or on off-road vehicles.

TLRU Sites

In its evidence, NGTL noted concerns from Alexis Nakota Sioux Nation about Project effects on cultural and ceremonial sites and areas.

Ermineskin Cree Nation noted the importance of Smallboy Camp. Ermineskin stated that to this day, camp members continue to hunt and fish for subsistence, gather berries and plants for sustenance and medicinal purposes, and engage in traditional spiritual ceremonies. Ermineskin noted that the nearest point of the Project ROW is located approximately 60 km from Smallboy Camp.

In response to a Commission IR, NGTL noted concerns from Gunn Métis Local 55 about Project effects on traditional land and resource use including disruptions to or loss of use of traditional hunting, fishing, and gathering camps along the Elk River, Brazeau River, Nordegg River or to other streams in the North Saskatchewan River Watershed.

In response to a Commission IR, NGTL noted concerns from Métis Nation of Alberta, Region 4 regarding Project related loss of cultural or sacred sites and areas.

In response to a Commission IR, NGTL noted Montana First Nation's concerns about potential Project effects on occupancy, cultural and spiritual sites including impacts to occupancy values such as special sites, overnight locations, trails and travel ways. In its evidence, NGTL stated

that Montana First Nation mapped two occupancy sites, potentially associated with stove pipes, within the Local Assessment Area of the Elk River Section and Alford Creek Section.

Piikani Nation stated that the Project is proposed to be developed in very close proximity to a trading post that was established in 1799 that holds high cultural value to the Piikani people. Piikani Nation stated that new developments are proposed to occur in vital Piikani Nation territory that is central to historic and current day land-based activities for hunting, trapping, camping, gathering, ceremony, cultural and trading activities.

During an oral Indigenous knowledge session, Piikani Nation stated that there are numerous TLRU sites along the Project area:

...the four major river tributaries that are running through Piikani land was [sic] the Old Man, the Bow, the North Saskatchewan, and the Brazeau River.

[...]

The Brazeau River and the area west of Rocky Mountain House has always been our hunting area. There's [sic] numerous sites and camps along that area, teepee rings, vision-quest mountains, sweat lodges, and gathering areas along all of those four river drainages.

-- Elder Marvin Murray, Piikani Nation, Transcript Volume 2 [1265 and 1278]

Piikani Nation also noted, in final argument, that a primary campground used to be located where the pipeline crosses the Brazeau River and that camps would be used for a couple of months during the winter time.

Samson Cree Nation stated that they have identified a number of critical culture and heritage resources in the region of the Project including but not limited to: historic and important trails; burial sites / gravesites; camps, cabins and cabin remains; historic sites; oral history sites and teaching areas; ceremonial, plant, and mineral gathering sites, sweat lodge and sundance sites, buffalo and elk pounds; and cultural landscapes.

Samson Cree Nation stated that cultural and heritage resources are critical to Samson Cree Nation cultural continuity, as they are tied to their teachings and Samson Cree Nation identity. Samson Cree Nation stated that Project impacts on Samson Cree Nation specific cultural and heritage resources have not been adequately identified by NGTL (no collaborative studies undertaken) but are likely adverse.

Stoney Nakoda Nations noted that their stories are often connected to a particular place and that in order to share skills and knowledge it is important to be able to access sacred and cultural places including three cultural resource areas identified that the Project, if approved, will permanently disturb. Stoney Nakoda Nations stated that the Project will result in a decrease in their preferred conditions (preferred species and/or preferred conditions – real or perceived – necessary for meaningful exercise of Section 35 Rights) of sacred and cultural places; a negative change to biophysical conditions of cultural areas identified by Stoney Nakoda Nations; and, damage to Stoney Nakoda Nations' qualitative connection to sacred and cultural places near the Project.

Stoney Nakoda Nations recommended measures to eliminate or reduce Project effects on their sacred and cultural preferred conditions, on their qualitative connection to sacred and cultural places, and on the biophysical condition of their cultural areas. Stoney Nakoda Nations stated that measures to eliminate Project effects would include not providing Project approval, or constructing and operation the Project as non-visible. Stoney Nakoda Nations explained that to construct and operate a project in a “non-visible” manner would include no visible clearing activities or changes to the land and landscape, and result in activities that would not result in a visible disturbance to Stoney Nakoda Nations harvesters and others on the land in the vicinity of the Project. Stoney Nakoda Nations stated that other measures to eliminate Project effects would be to construct, operate and maintain the Project to eliminate changes to physical and aesthetic attributes of the land that contains preferred conditions or Stoney Nakoda Nations cultural areas, locating the Project on existing unavailable land/occupied Crown land, or locating the Project around the cultural areas.

Stoney Nakoda Nations stated that measures to reduce Project effects would include reducing the alteration of Stoney Nakoda activities and displacement of ceremonial, cultural and sacred places, sites, and activities, family territories and camps. Stoney Nakoda Nations also stated that measures to reduce effects would include providing capacity for cultural and language camps, developing and delivering cultural awareness training for NGTL staff related to Stoney Nakoda Nations culture to promote preservation of ceremonial, cultural and sacred places, and reducing the adverse effects on the negative perceptions of the Project. Stoney Nakoda Nations provided examples of ways to reduce negative perceptions of the Project. These examples included monitoring and follow-up to verify predictions of Project effects, public relations campaigns, and long-term studies in partnership with Stoney Nakoda Nations on the effects of chemical use on soil, water, vegetation and animals, and conducting consultation activities with Stoney Nakoda Nations to determine how to minimize Project activities’ interference with their preferred conditions for sacred and cultural places. Stoney Nakoda Nations stated that measures to control residual adverse effects on sacred and cultural preferred conditions, qualitative connection to sacred and cultural places, and on biophysical condition of Stoney Nakoda Nations cultural areas would be through compensation similar to criteria set out in Section 97 (1)(h); (i) of the *NEB Act*.

Whitefish (Goodfish) Lake First Nation #128 stated that their members continue to use and occupy the Project Local Assessment Area and Regional Assessment Area to exercise their constitutionally protected Aboriginal and Treaty rights and practice their traditional culture and way of life. Whitefish (Goodfish) Lake First Nation #128 stated that occupancy sites that are used include cabins, traditional camps, clearings, and creek banks. Whitefish (Goodfish) Lake First Nation #128 stated that an important traditional harvesting camp was identified in the Elk River area by Whitefish (Goodfish) Lake First Nation #128 members, which harvesters would travel long distances and in large numbers to use. Whitefish (Goodfish) Lake First Nation #128 stated that they hunt and camp in larger areas that intersect with the Alford Creek Section, and specific campsites may still be found. Whitefish (Goodfish) Lake First Nation #128 stated that Project-related loss of these sites, loss of access to these sites, or disruption of areas where these camping sites are found would disrupt the enjoyment and use of the broader local and regional study area and could risk infringement on Whitefish (Goodfish) Lake First Nation #128’s Treaty and Aboriginal rights.

7.4.8.5 Cumulative Effects on Traditional Land and Resource Use

Potential cumulative effects on TLRU were identified as issues by nearly all Indigenous Parties. Issues raised by Indigenous Parties included scarcity of traditional resources due to existing development and the need to travel further distances for TLRU.

In its evidence, NGTL noted Alexis Nakota Sioux Nation's concerns about potential cumulative effects on traditional land and resource use. Alexis Nakota Sioux Nation stated that their community is dependent upon numerous plants and wildlife which are now becoming scarce due to industrial development and that Crown lands and accessible natural areas are destroyed by each new project or development. In its evidence, NGTL also noted Alexis Nakota Sioux Nation's concern that the loss of access to these natural areas results in a slow erosion to the community's way of living and cultural and physical wellbeing. NGTL noted, in its evidence, Alexis Nakota Sioux Nation's statement that the loss of use of natural ways of healing has led to a dependence on western medicine and pharmaceuticals that do not have the healing qualities or efficacy of traditional plants and medicines.

Kainai Nation (Blood Tribe) stated concerns about cumulative effects on TLRU and requested that NGTL financially supports Kainai Nation's (Blood Tribe) and Siksika's participation in a cumulative effects study of industrial activity in Blackfoot traditional territory.

Driftpile Cree Nation and Louis Bull Tribe noted considerable and ongoing effects of decades of industrial development within their traditional territories, and the resulting erosion of the ability to exercise Aboriginal and Treaty rights. Driftpile Cree Nation and Louis Bull Tribe stated that they are concerned that NGTL's assertion that there will not be significant adverse effects reveals a lack of understanding of how development impacts Driftpile Cree Nation's and Louis Bull Tribe's way of life and community well-being, as well as their ability to exercise their Aboriginal and Treaty rights. Driftpile Cree Nation and Louis Bull Tribe stated that assessing the impacts of the Project in isolation does not adequately capture how the Project compounds the damage that has already been done by industrial development within their traditional territories.

Louis Bull Tribe stated concerns about cumulative effects on traditional use of lands and resources:

There are few berries in the Project area compared to how many there were when I first started gathering as a child. I think this decline is due to the increased human and industrial activity in the area. I am concerned that further development in the area will result in even fewer plants available [for] gathering purposes due to contamination.

-- Elder Patricia Shortneck, Louis Bull Tribe, written affidavit

Louis Bull Tribe stated that the exercise of Aboriginal and Treaty rights is essential to the health of both their members and their culture more broadly, and how the cumulative effects of industrial development is having a negative impact on both:

Today, we still do ceremonies and Sun Dances, Pow Wow, sweats. And the materials that we use are hard to come by. We have to travel a distance and go get our materials just to have a ceremony. All the medicinal herbs that we used to use within our area are hard to find. So we have to go out into the mountain areas, look for all these herbs, medicinal herbs that we use.

-- Elder Ken White, Louis Bull Tribe

Louis Bull Tribe stated that the continued encroachment and cumulative effects of industrial activity on their traditional territory is a consistent theme in its evidence, and underlines why the additional impact of the Project must be addressed through appropriate conditions.

Driftpile Cree Nation and Louis Bull Tribe also stated that continued development without the proper assessment of cumulative effects is not in keeping with the honour of the Crown, and will result in Indigenous peoples being increasingly unable to exercise their constitutionally protected Aboriginal and Treaty rights. Driftpile Cree Nation and Louis Bull Tribe stated that the diminishing areas available for them to exercise their Aboriginal and Treaty rights is a clear example of this trend, and addressing this is an urgent and necessary part of Reconciliation. Driftpile Cree Nation and Louis Bull Tribe stated that their evidence has emphasized the need to assess the Project in light of the disruption they are already experiencing as well as the need for the Regulator to exercise its discretion to propose conditions and recommendations for approval to support measures to assess and reduce these cumulative effects.

Driftpile Cree Nation and Louis Bull Tribe stated that they have to travel much further than in the past to carry out traditional activities and land use. Louis Bull Tribe noted this point in written evidence:

In my consultations with the youth in Louis Bull I am discovering that the youth are discouraged from engaging in traditional land use activities because they have to travel so far away from the Louis Bull reserve to practice these rights

-- Ms. Melanie Daniels, Louis Bull Tribe, written affidavit

Ermieskin Cree Nation stated that the Regional Assessment Area has already undergone significant cumulative effects in the previous decades, and Ermieskin Cree Nation land users have observed a decline in the availability of big game and berries in particular. Cumulative effects in the area are of great interest to Ermieskin Cree Nation harvesters who are presently experiencing intense cumulative effects in the foothills south of Hinton and who find themselves travelling increasing distances and depending upon access to private lands for the exercise of their Treaty and Aboriginal rights.

In response to a Commission IR, NGTL noted Gunn Métis Local 55's concerns about existing cumulative effects and concerns that the Project will contribute to cumulative effects on forest fragmentation, wildlife habitat, wildlife health, water quality, vegetation including medicinal plants, and fish and fish habitat. Gunn Métis Local 55 requested that there be an opportunity to mitigate cumulative effects in consultation with government and Indigenous peoples through larger-scale regional planning efforts.

In response to a Commission IR, NGTL noted Métis Nation of Alberta, Region 3's concerns that their harvesters have to travel increased distances to harvest due to cumulative effects on the environment. NGTL also noted Métis Nation of Alberta Region 3's concern that there are fewer animals and plants, and that they are especially concerned about contamination and decimation of medicinal plants that forces members to travel further for usable medicines.

O'Chiese First Nation stated they prefer to exercise their Inherent and Treaty Rights close to the reserve, however they no longer feel they are able to. O'Chiese First Nation stated that they now have to travel long distances (100+ km) in order to harvest, which has made hunting a more expensive activity. O'Chiese First Nation attributed the change in travel times for hunting to an increase in development activity and a correlated decrease in number of animals.

O'Chiese First Nation stated that not only does existing industrial development violate much of the land, but their Inherent and Treaty Rights are also violated because of damages caused by farmland and the establishment of protected areas.

Piikani Nation stated that many decades of continued land and resource development in Piikani Nation Territory has strained the ability of the Piikani Nation members to exercise their Aboriginal and treaty rights. Piikani Nation stated that industrial, agricultural, and forestry projects chip away at the health of the plant and animal species on which Piikani Nation citizens rely, and pipeline projects in particular have limited access to the territory that is left.

Piikani Nation stated that they have suffered significant negative effects from industrial development in the Project area and in Piikani Nation's territory overall. Piikani Nation stated that NGTL's approach to cumulative impacts has not addressed the issue. Piikani Nation stated that the cumulative effects on socio-economics and cultural well-being from the project have not been thoroughly considered by NGTL. Piikani Nation stated that this includes past and current impacts from the existing pipelines on land use and well-being, as well as a lack of consultation on and accommodation for these impacts when the original pipelines were first installed. Piikani Nation stated that this lack of appropriate consultation and accommodation is having a compounding effect due to the other developments in Piikani Nation's territory and are examples of issues with which Piikani Nation is already contending. Piikani Nation stated that the spatial scope of the assessment of cumulative impacts is too narrow, and that while the scope of the cumulative effect assessment may be appropriate for the purposes of the environmental perspective, it is not appropriate for the assessment on their rights. Piikani Nation stated that in order to appropriately safeguard their rights from continual piecemeal erosion, it is necessary to consider the cumulative impacts of the Project in the context of the degradation of their rights within Piikani Nation territory as a whole to provide the necessary context for the Project.

Samson Cree Nation stated that they maintain important spiritual relationships with grizzly bears, and are concerned that continued cumulative effects will contribute to further declines in local subpopulations. Samson Cree Nation also stated that within the context of existing and ongoing impacts, residual Project effects will further erode sufficiency of this resource for Samson Cree Nation rights and cultural practice related to hunting elk within the Green Zone of Samson Cree Nation territory.

Samson Cree Nation stated that the existing pre-project circumstance for many of the selected valued components specific to the Project should be considered vulnerable and that any adverse effects on these factors will limit or prevent Samson Cree Nation from meaningfully exercising their Treaty No. 6 rights in the Eastern Slopes of Samson Cree Nation Territory. Samson Cree Nation stated that they have noted a need to travel longer distances to access preferred species and they spend much more time tracking the few animals that they do see when they are hunting. Samson Cree Nation stated that the Project Application fails to properly assess cumulative effects of the NGTL Network expansion and Project on the Eastern Slopes of Samson Cree Nation territory. Samson Cree Nation stated that, so long as the Commission continues deferring to NGTL's technical consultants' opinion on cumulative effects and ignoring Samson Cree Nation's evidence on cumulative effects, as it did for NGTL 2021, there arguably isn't a need for the Project Applicant to incorporate Indigenous methodologies and knowledge into its cumulative effects assessment.

Stoney Nakoda Nations stated their concerns regarding cumulative effects including an exacerbation of negative effects from existing developments. Stoney Nakoda Nations recommended an increase in meaningful consultation and accommodation measures.

Whitefish (Goodfish) Lake First Nation #128 raised concerns about cumulative effects on TLRU and noted that the Project is proposed in an area that is already impacted by oil and gas and other development activities.

7.4.9 Subsection 35(1) of the *Constitution Act, 1982*

7.4.9.1 Government of Canada's Consultation Process with Indigenous Peoples

The meaningfulness of the Government of Canada's consultation with Indigenous peoples was identified as an issue by the following Indigenous peoples:

- Driftpile Cree Nation
- Louis Bull Tribe
- Michel First Nation
- O'Chiese First Nation
- Peavine Métis Settlement
- Samson Cree Nation

Driftpile Cree Nation and Louis Bull Tribe noted that in 2016, Canada officially adopted the United Nations Declaration on the Rights of Indigenous Peoples (United Nations Declaration). Driftpile Cree Nation and Louis Bull Tribe stated that article 32 of the United Nations Declaration provides obligations on states to "consult and cooperate in good faith" with Indigenous peoples in order to obtain their "free and informed consent prior to the approval of any project that affects their lands or territories and other resources". Driftpile Cree Nation and Louis Bull Tribe stated that this principle of seeking free prior and informed consent from impacted Indigenous groups must be considered when discharging the Crown's duty to consult and accommodate. Driftpile Cree Nation and Louis Bull Tribe also recommended that the Crown implement a robust process for Phase III and Phase IV Crown consultation activities, in the event the Regulator recommends the Project be approved.

Louis Bull Tribe stated concerns about the Crown's regulatory and consultation process:

As Indigenous communities we have to go through these regulatory processes in the hope that someone will take us seriously and address our concerns. However, the process often leaves me feeling defeated, depressed, and disheartened.

We are seeking confidence that the Crown will look out for the best interest of Indigenous peoples and uphold treaty obligations.

-- Ms. Melanie Daniels, Louis Bull Tribe, written affidavit

Michel First Nation argued that the CER record does not include information necessary to inform the Crown consultation approach. Michel First Nation stated that NGTL's exclusion of their information through the refusal of reasonable capacity funding has led Michel First Nation

to the conclusion that its constitutionally-protected rights were not meaningfully considered. Michel First Nation stated that, for the Crown to fulfill its duty to consult, the Crown must complete an assessment of the potential Project impacts on Michel First Nation's Section 35 Rights with the participation of Michel First Nation as the best and most credible source of this information. Michel First Nation noted that this can be undertaken in a supplemental assessment process by NGTL or by the Crown directly, and that sufficient capacity funding is required to allow Michel First Nation to meaningfully participate. Michel First Nation stated that should any impacts be identified through this process, direct and proportional mitigation measures must be developed in collaboration with them, and approval conditions related to those impacts must be proposed. Michel First Nation further stated that should any residual impacts be identified through this process, either NGTL or the Crown must conduct a cumulative effects assessment of impacts to Michel First Nation's Section 35 Rights, and should any residual impacts be identified, the Crown must discuss possible accommodation measures with Michel First Nation.

O'Chiese First Nation stated that neither the Commission's regulatory process under the NEB Filing Manual nor the Crown's consultation process recognize O'Chiese First Nation Law and Governance. O'Chiese First Nation also argued that, despite Canada's statement of full support and its commitment to implement the United Nations Declaration, it has not been implemented. O'Chiese First Nation stated that because the Project as currently proposed does not recognize nor respect O'Chiese First Nation's Law and Governance and further restricts their ability to live in accordance with *Kaa-Ke-Chi-Ko-Moo-Nan*, approval of the Project would not be consistent with the honour of the Crown as it relates to the implementation of the Treaty promises to O'Chiese First Nation.

Peavine Métis Settlement noted that the duty to consult should start with the application, and continue during the Project life, reclamation and years beyond to ensure the reclamation has taken effect and that the Project area been returned to its natural state.

Elder Leo Bruno of Samson Cree stated during oral Indigenous knowledge the importance of implementing the principles and aspirations of the United Nations Declaration, and the importance of good relationships:

We're here to build bridges, have good relationships with all peoples, everyone. We're not here to build barriers or boundaries.

The Samson Cree Nation wishes CER and its agencies, Boards, and Commissions, are committed to implementing the principles and aspirations of the United Nations Declarations on the Rights of Indigenous Peoples. Grounded in this commitment is the respect, considerations, and applications of Indigenous traditional knowledge in land and natural resource management and decision making.

I'm involved in the working policy with the province and it's a co-creation of this working policy with the joint working group. And I've applied this part of the mission – or policy on this mission statement.

The mission of this policy is to recognize, promote understanding, support, apply, and protect the gifts of Indigenous traditional knowledge in a good way.

"In a good way" is an expression used by many Indigenous communities to denote participation that honours tradition and spirit, embodying the teachings, the seven

teachings of Indigenous First Nations people; embodying the teachings of wisdom, love, respect, bravery, honesty, humility, and truth, the First Nations of this country.

-- Elder Leo Bruno, Samson Cree Nation, Transcript Volume 5 [2503-2507]

7.4.9.2 Potential Impacts of the Project on Indigenous and Treaty Rights

Project impacts on the Indigenous and Treaty rights of Indigenous peoples was identified as an issue by nearly all Indigenous Parties.

Kainai Nation (Blood Tribe) and Siksika Nation noted that their rights to hunt, fish and trap for food are guaranteed by Treaty 7 and the *Constitution Act, 1982*, and that these rights are still exercised on available lands within Blackfoot Traditional territory including within portions of the Project Regional Assessment Area, Local Assessment Area and Project Development Area. Kainai Nation (Blood Tribe) identified that Project impacts to the local environment and Blackfoot use of traditional lands and resources will together create a risk of potential infringement of Blood Tribe and Siksika Nation's Treaty and Aboriginal rights. Kainai Nation (Blood Tribe) and Siksika Nation noted that their analysis of Project impacts is based on the Blackfoot assessment methodology that views humans and the environment as interconnected.

Driftpile Cree Nation stated that they are a signatory of Treaty No. 8, and that Treaty No. 8 protects the traditional land use of signatory First Nations, including the activities of hunting, trapping and fishing. Driftpile Cree Nation stated that the exercise of these Treaty rights is essential to the health of both Driftpile Cree Nation members and their culture, and that they have been significantly impacted by the cumulative effects of industrial development.

Driftpile Cree Nation noted in final argument that Mr. Karl Giroux of Driftpile Cree Nation spoke during an oral Indigenous knowledge session about the scope of change within Driftpile Cree Nations' traditional territory and the challenges it poses to maintaining their identity as a community:

And my parents grew up and hunted and my grandparents hunted and took us camping in horse and wagon 20 miles south of Driftpile. And we were out in our pristine land in our camps and were able to harvest moose and do that right through the summer, and have our moose racks, the meats drying. And we would get enough moose for the winter. And we would stay a month at a time in those camps. As a kid, I was privileged enough to see that. And now you can't even do that. You go to those same camps, you're standing in a – it's like looking up out of a moon crater.

Driftpile Cree Nation noted, in final argument, that Elder Ralph Collins of Driftpile Cree Nation highlighted the profound changes he has witnessed within Driftpile Cree Nation's traditional territory:

And I've seen myself in the traplines where they've logged out all around a trapper's cabin and there's nothing left there but the cabin, trees around the cabin. There's no animals there anymore, or moose. ... we travel a couple, two to three hours to harvest the moose and go hunting.

Louis Bull Tribe stated that they hold inherent Aboriginal rights in addition to those rights it acquired as a signatory to Treaty No. 6. Louis Bull Tribe stated that, since time immemorial,

they and their ancestors have utilized lands in the immediate vicinity of the Project in order to exercise their inherent Aboriginal rights.

Driftpile Cree Nation and Louis Bull Tribe stated that Treaties No. 8 and No. 6 allow the Crown to take up land from time to time. Driftpile Cree Nation and Louis Bull Tribe noted that this power to take up land must be interpreted, however, in the context of the Crown's assurance that "the [treaties] would not lead to any forced interference with [the First Nations'] mode of life." Driftpile Cree Nation stated that the Supreme Court of Canada has ruled that the Crown has a duty to consult and accommodate First Nations that are signatories to Treaty No. 8 before the Crown takes up any Treaty No. 8 territory. Driftpile Cree Nation and Louis Bull Tribe stated that while there is recognition that preservation and exercise of Aboriginal and Treaty rights must be balanced with economic realities and the prosperity of Alberta, they have identified significant concerns regarding the direct impacts of the Project as well as the cumulative effects of industrial development more broadly. Driftpile Cree Nation and Louis Bull Tribe stated that if the Project is approved, the Regulator must make recommendations and propose conditions to avoid, mitigate and accommodate the Project's adverse impacts on these Aboriginal and Treaty rights, as well as its contribution to the broader cumulative effects of development.

Ermineskin Cree Nation stated that they are signatory to Treaty 6 and have inalienable Indigenous rights and Treaty rights pursuant to Treaty 6 to hunt, fish, trap, and carry on their way of life throughout Alberta. Ermineskin Cree Nation stated that the Project holds potential cumulative and incremental impacts to the constitutionally protected Treaty and Aboriginal rights of Ermineskin Cree Nation.

Michel First Nation stated that they are a signatory to Treaty 6 and that they have rights identified and set out under the Natural Resources Transfer Agreement, 1930 and rights protected by Section 35 of the Canadian Constitution, 1982. Michel First Nation stated that their Section 35 Rights include hunting and fishing, as laid out in Treaty No. 6; as well as trapping and gathering, which is implied through the right to pursue avocations. Further, Michel First Nation's Section 35 Rights include aspects not explicitly addressed in Treaty 6, including land and resource rights, as well as rights to self-govern, practice their culture, and speak their language. Michel First Nation noted that the Project area is a locale where Michel First Nation members have rights and exercise those rights. Michel First Nation stated that their Section 35 Rights stand to be affected by the construction, operation, and decommissioning of the Project.

Michel First Nation stated that the Project's Environmental and Socio-Economic Assessment used traditional land use as a proxy to identify impacts to Section 35 Rights. Michel First Nation stated that for Michel First Nation, Section 35 Rights include both rights to self-government, and rights to lands and resources for the purposes of subsistence harvesting, maintenance of culture, language and identity. Michel First Nation stated that limiting the assessment of impacts on Michel First Nation's rights to traditional land use, which is a narrow interpretation of those rights, is inappropriate. Michel First Nation also stated that they were not consulted on the use of that narrow assessment of impacts of this Project on Treaty rights.

O'Chiese First Nation stated that they hold Aboriginal and Treaty rights recognized and affirmed by Treaty No. 6 and section 35 of the *Constitution Act* (collectively referred to as O'Chiese First Nation's Inherent and Treaty Rights). O'Chiese First Nation noted that the Alford Section of the project is located approximately 3.8 km from Indian Reserve 203A and the Elk River Section of the Project is located approximately 17.8 km from Indian Reserve 203.

O'Chiese First Nation stated that NGTL did not assess Project impacts on their Inherent and Treaty rights, and that instead NGTL assessed potential Project effects on traditional land and resource use through an assessment of environmental and biophysical indicators including wildlife and vegetation. O'Chiese First Nation further stated that disturbances to land do violate O'Chiese First Nation Law and Governance and that disturbances do not just affect the way Inherent and Treaty Rights are exercised, but may altogether prevent O'Chiese First Nation's exercise of Inherent and Treaty Rights.

O'Chiese First Nation stated that their Law and Governance does not dictate that there can be no use of the land and resources, rather *Kaa-Ke-Chi-Ko-Moo-Nan* requires that any use of the land and resources proceed in accordance with the laws and protocols, including that such activities are carried out in a way that provides benefits for the future generations of O'Chiese First Nation. O'Chiese First Nation further stated that the Project, as currently proposed, will continue to proceed in a way that violates O'Chiese First Nation law and governance and restricts their ability to live in accordance with *Kaa-Ke-Chi-Ko-Moo-Nan*, leaving further restrictions on Inherent and Treaty Rights while providing no benefit to O'Chiese First Nation.

O'Chiese First Nation stated that the Project is proposed in an area where there are already minimal lands available for the exercise of Inherent and Treaty rights and which comply with *Kaa-Ke-Chi-Ko-Moo-Nan*. O'Chiese First Nation stated that the amount of existing development has impacted their ability to exercise their Inherent and Treaty rights. O'Chiese First Nation stated that an assessment to determine the cumulative effects of the Project on Inherent and Treaty rights has not been conducted. O'Chiese First Nation stated that, to assess the Project's effects on their Inherent and Treaty Rights, they assessed effects of the Project on lands and harvesting. O'Chiese First Nation concluded that the Project will result in additional disturbance to lands and will violate O'Chiese First Nation's Required Means for harvesting. O'Chiese First Nation stated that an interference with their required means of harvesting prevents them from living in accordance with their law and governance systems with respect to those lands and resources. *Kaa-Ke-Chi-Ko-Moo-Nan* requires specific conditions for the exercise of Inherent and Treaty Rights, and does not permit the exercise of Inherent and Treaty Rights on lands that have been damaged and disturbed by development in a way that breaches *Kaa-Ke-Chi-Ko-Moo-Nan*.

O'Chiese First Nation stated that none of NGTL's proposed mitigation measures will address the violations that will be done to *Kaa-Ke-Chi-Ko-Moo-Nan* including a reduction of lands for the exercise of Inherent and Treaty Rights, and a reduction of lands that meet O'Chiese First Nation's Required Means. O'Chiese First Nation noted that case law requires that identified impacts to Inherent and Treaty Rights must be specifically and adequately accommodated, and that mitigation of biophysical indicators is not sufficient to mitigate impacts to Aboriginal and Treaty Rights.

Piikani Nation stated that they are a signatory to the Blackfoot Treaty of 1877 (Treaty No. 7), and their Treaty rights include the right to hunt, trap and harvest natural resources within their territory, to their way of life, to the use, enjoyment and control of lands reserved for them and the right to a livelihood and cultural and spiritual practices from their traditional lands. Piikani Nation stated that, while the Crown has the ability to "take up" lands for pipelines, mining and other purposes pursuant to Treaty No. 7, this right is limited by Piikani Nation's right to sufficient lands, and access to them, within their territory, of a quality and nature sufficient to support the meaningful exercise of their treaty rights.

Piikani Nation stated that the Project area is located within Piikani Nation's territory, that their members exercise their Section 35 Rights within the wider Project area, and that Piikani Nation has deep historic ties to the area. Piikani Nation stated that the Project will likely cause disruption and impacts to an area that has historic and contemporary importance to them. Piikani Nation stated that the Project will likely have significant impacts on the exercise of their Section 35 Rights, including loss of plants and animals which they rely on, impacts to trapping and fishing, barriers to access which will inhibit the exercise of rights, and threats to cultural teachings and education of youth. Piikani Nation stated that a complete and sufficient assessment of the impact of the Project on Piikani Nation's Aboriginal and Treaty rights has not been completed.

Piikani Nation stated that impacts on their rights and interests are distinct from general environmental impacts and must therefore be assessed and addressed separately and individually. Piikani Nation further stated that assessment solely or primarily on the basis of environmental impacts will not be sufficient to satisfy the duty. Piikani Nation stated that mitigation measures that are focused on or designed for environmental mitigation will not be sufficient unless they specifically include and address mitigation for the impacts on the rights of a specific First Nation. Piikani Nation further stated that adverse impacts to rights may include not only physical impacts but also impacts on the cultural dimensions of the rights, including interference with a Nation's stewardship of the lands.

Piikani Nation stated that there has been no discussion of any mutual benefit or socio-economic agreements to be established with the Nation related to the Project by way of acknowledging the impacts to Piikani Nation's rights and in turn addressing the Nation's concerns and potential interests through accommodation measures.

Samson Cree Nation stated that they are signatory to Treaty No. 6 Samson Cree Nation stated that they have Inherent and Treaty No. 6 rights including environmental stewardship rights and incidental harvesting rights within Samson Cree Nation Territory.

Samson Cree Nation stated that their cultural continuity values comprise a suite of highly complex tangible and intangible values including sense of place and identity, knowledge transmission, ceremonies, and habitation sites and travel routes. These values are interconnected with and rely on abundant and healthy lands and resources in the traditional territory. Samson Cree Nation stated that, should the Project be approved, it would be located within the Eastern Slopes of Samson Cree Nation Territory. Samson Cree Nation noted that the Eastern Slopes of the Rockies continue to provide some of the most ecologically and culturally valued lands and waters, available to Samson Cree Nation. Samson Cree Nation stated that their cultural practices and associated Inherent and Treaty No. 6 rights depend on the cultural and ecological function of these lands and waters. Samson Cree Nation stated that the serious residual impacts caused by the Project on its Inherent and Treaty No. 6 Rights have not yet been adequately addressed or accommodated.

Stoney Nakoda Nations stated that they are signatories to Treaty No. 7 and hold inherent, Aboriginal and Treaty No. 7 rights that are recognized and affirmed under Section 35 of the *Constitution Act*. Stoney Nakoda Nations stated that their *Iyarhe Nakoda Makochi* is critically important for Stoney Nakoda Nations' exercise of their Section 35 Rights.

Stoney Nakoda Nations stated that NGTL did not conduct an assessment of Project impacts to their Section 35 Rights, but rather it conducted an assessment of effects on TLRU as a proxy for a Section 35 Rights assessment. Stoney Nakoda Nations stated that the requirement in the

NEB Filing Manual of assessments of effects to TLRU as the mechanism to assess Project impacts to Section 35 Rights is outdated and not in line with guidance of the Supreme Court of Canada regarding assessments of impacts to Indigenous and Treaty rights and the Crown's duty to consult. Stoney Nakoda Nations stated that in contrast to NGTL's conclusion that adverse effects of the Project on TLRU will not be significant, Stoney Nakoda Nations' evidence shows that the Project as currently applied for will result in adverse effects and unmitigated impacts to their Section 35 Rights. Stoney Nakoda Nations stated that NGTL's claims that feedback provided by Stoney Nakoda Nations during the hearing process is "consistent with the activities that were assessed by NGTL in the Environmental and Socio-Economic Assessment" and "that its standard mitigation, existing corporate policies and stated commitments address the potential interactions with Stoney Nakoda Nations' interests" are false.

Stoney Nakoda Nations stated that NGTL should more effectively explore the interconnected nature between the environment and Stoney Nakoda Nations' Section 35 Rights, culture, and well-being. Stoney Nakoda Nations recommended that, before formal Project approval, the Commission require NGTL or the Crown to conduct an assessment of potential Project impacts to Section 35 Rights (including, for greater certainty, potential Project impacts to Stoney Nakoda Nations' water rights within *Iyarhe Nakoda Makochi*, as well as accommodation measures hereto, with the participation of Stoney Nakoda Nations, or meaningfully include Stoney Nakoda Nations' evidence and concerns into the conditions of Project approval). Stoney Nakoda Nations also recommended that, before formal Project approval, the Commission require NGTL and the Crown to conduct an assessment of cumulative effect on the exercise of Section 35 Rights in the Project area.

Stoney Nakoda Nations stated that the suite of mitigation measures proposed by NGTL in its Environmental and Socio-Economic Assessment and Environmental Protection Plan may be effective to reduce certain adverse effects caused by the Project to the environment. However, Stoney Nakoda Nations stated that mitigation aimed at addressing environmental impacts and, by proxy, some of the resources used by Stoney Nakoda Nations is not the same as accommodation of impacts to Section 35 Rights.

Stoney Nakoda Nations stated that NGTL "requires specific locational data for traditional use and culturally important sites in order to determine if site-specific mitigation measures are required and for discussions with Indigenous peoples regarding potential mitigation options". Stoney Nakoda Nations stated that NGTL's response suggests that they must provide "site-specific" information in order for additional mitigation measures to be created and applied. Stoney Nakoda Nations stated that many Section 35 Rights do not occur only at specific sites, but rather are fluid and occur over large tracts of lands, and so requiring site specific information in order to accommodate Stoney Nakoda Nations' Section 35 Rights is unreasonable. Stoney Nakoda Nations stated that NGTL's insistence on requiring site-specific evidence of them represents a blatant refusal to recognize the collective and fluid nature of Stoney Nakoda Nations' Section 35 Rights.

Stoney Nakoda Nations noted NGTL's claim that the methods it used with respect to its Environmental and Socio-Economic Assessment and its TLRU assessment are "reasonable, defensible, and valid" because they rely on current scientific understandings of project effects and their own past experience. Stoney Nakoda Nations stated that western scientific understandings and past operating experience cannot replicate or replace Indigenous traditional knowledge. Stoney Nakoda Nations stated that, despite this, Indigenous traditional knowledge has not been incorporated, or at the least, not meaningfully incorporated, into NGTL's Environmental and Socio-Economic Assessment or corresponding mitigation measures.

Stoney Nakoda Nations noted that there is often an assumption that Stoney Nakoda Nations members can go elsewhere to exercise their Section 35 Rights, including cultural activities. The Stoney Nakoda Nations stated that given the inextricable nature of sacred and cultural places, Stoney Nakoda Nations cannot go elsewhere if the sacred or cultural place is damaged or alienated.

Whitefish (Goodfish) Lake First Nation #128 stated that they are a signatory to Treaty 6 and their members continue to exercise their Treaty and Aboriginal rights to hunt, fish, trap, gather and occupy and use Crown lands in Alberta for traditional purposes. Whitefish (Goodfish) Lake First Nation #128 stated that the Project could have potentially adverse impacts to Whitefish (Goodfish) Lake First Nation #128 hunting, fishing, trapping, plant gathering and occupancy in the foothills within the Local Assessment Area and in the surrounding Regional Assessment Area which could infringe upon Whitefish (Goodfish) Lake First Nation #128 's Treaty rights.

7.4.10 Environmental Effects

Various Indigenous Parties raised concerns about the environmental effects of the Project. See Chapter 8 for the Commission's assessment of Project effects on the environment.

7.4.11 Safety and Emergency Response

Various Indigenous Parties raised concerns about safety and emergency response related to the Project. See Chapter 4 for the Commission's assessment of the safety and security related to the Project. See Chapter 8 for a discussion of malfunctions and accidents.

7.5 NGTL's Reply to Concerns and Issues

7.5.1 NGTL's Engagement with Indigenous Peoples

NGTL stated that each Indigenous peoples may have different processes or means of gathering and sharing information, and so NGTL tailors its approach to gathering information to meet a community's specific needs and, where appropriate, provides reasonable resources to support participation in Project engagement activities.

NGTL stated that the same underlying principles were employed for the Aboriginal Engagement Program for the Project across all Indigenous peoples, and that the scope and depth of engagement may vary according to the potential for Project-related effects and the identified interests of each Indigenous peoples. NGTL also stated that it believes that its Project-specific engagement program is adequate and that its engagement approach is consistent with the scope and scale of the Project.

NGTL began engagement with potentially affected Indigenous peoples about the Project in July 2018. NGTL provided Project notification in March 2019 to Indigenous peoples identified by the NEB and the MPMO who were not originally identified by NGTL. NGTL stated that it has worked closely with each potentially affected Indigenous peoples to provide information about the Project and make opportunities available for Indigenous peoples to provide information to it about potential issues and concerns, including through traditional knowledge studies, and to discuss mitigation measures and develop mutually acceptable solutions and benefits.

NGTL stated that summaries of its engagement to date with potentially affected Indigenous peoples have been placed on the record and that these summaries demonstrate that it has made substantial efforts to provide Indigenous peoples with opportunities to participate in the planning of the Project and identify possible concerns.

NGTL stated that it considers all evidence, concerns and issues provided by Indigenous peoples, and responds to all evidence, concerns and issues through the regulatory process and ongoing engagement throughout the Project's life cycle. NGTL stated that all information shared by Indigenous peoples for consideration in Project planning is referred to various NGTL subject matter experts across multiple disciplines depending on the nature of the information, including, but not limited to, Indigenous relations, environment, engineering, and safety. NGTL stated that consideration of information shared by Indigenous peoples includes such things as: reviewing it in the context of the Environmental and Socio-Economic Assessment, determining if additional mitigation or mitigation adjustments are warranted, overlaying it with the Project Footprint to see if there are conflicts or gaps in Project planning that may require site-specific measures, and the gathering of any further information to support these assessments, including discussions with Indigenous peoples if required.

NGTL stated that once it develops a response or resolution, it is provided to the Indigenous peoples for consideration, comment or dialogue with an offer to meet to answer any questions or discuss residual concerns, if any. NGTL noted that, depending on the specific details surrounding the issue, concern or request, NGTL's proposed response may include specific ongoing or additional engagement activities, on a case-by-case basis; however, where NGTL views an issue as being fully addressed by a proposed construction technique, mitigation measure, standard operating or other procedure or practice, ongoing or further engagement activities may not be proposed.

NGTL stated that if an Indigenous people raises questions or concerns regarding its response or how it has proposed addressing a concern, including any potential ongoing engagement associated, NGTL seeks to work collaboratively with the Indigenous people to respond to any questions, discuss and develop an understanding of the concerns with the proposed response, and determine if additional measures may be appropriate to address the issue, which could include specific ongoing engagement activities. NGTL stated that the outcomes of these efforts are considered for incorporation in Project planning, as appropriate, and reported in regulatory filings.

NGTL stated that it has and will continue to review and assess the information and knowledge that Indigenous peoples have contributed through engagement with an aim to incorporating it into key Project and environmental planning tools, such as the Environmental Protection Plan and Environmental Alignment Sheets, as appropriate. NGTL also stated that once construction on a project has begun, it maintains ongoing engagement through the lifecycle and any further input or issues identified during construction will also be considered in the context of post-construction monitoring activities. NGTL stated that any issues or concerns raised during engagement, regardless of the stage of the Project, will be considered and, where appropriate, used to inform the next Project phase. NGTL stated that, for example, concerns raised by Indigenous peoples regarding potential impacts to specific sites or resources identified through engagement and traditional knowledge Reports pre-construction will be appropriately mitigated during construction, clean up and reclamation. In addition, NGTL stated it remains committed to ongoing engagement and receiving any concerns or comments about post-construction monitoring and reasonably addressing potential issues, as they are presented and understood, on a case-by-case basis.

NGTL stated that TransCanada's Public Awareness Program will be implemented once the Project is in operations phase. This program facilitates consistent, ongoing communication about safety, integrity and emergency response with Indigenous peoples, and key community stakeholders and interested parties, such as landowners, the public, government representatives, and emergency response agencies. NGTL confirmed that it conducts and tracks regular engagement with potentially affected Indigenous peoples through construction and operation of projects.

NGTL noted that O'Chiese First Nation, Piikani Nation, and Stoney Nakoda Nations, submitted that they had neither the time nor the capacity required to fully participate in the hearing or Project engagement activities. NGTL stated that, while it is not legally required to provide capacity funding, it appreciates that many Indigenous peoples face capacity constraints and it has offered potentially affected Indigenous peoples capacity funding to cover their costs of engaging with NGTL on the Project, including for the community to identify any issues and concerns they may have with the Project and discuss mitigation strategies with NGTL to address any identified issues or concerns. NGTL stated that it negotiated the appropriate amount of capacity funding for each community on a case-by-case basis, taking into account factors such as the interests in the Project expressed by the Indigenous peoples and the potential effects of the Project on the community's interests. NGTL stated that, for 19 different Indigenous peoples, NGTL's capacity funding included funding for the community to conduct a community-led Project-specific traditional knowledge study. Indigenous peoples noted by NGTL as receiving or negotiating capacity funding for traditional knowledge studies included O'Chiese First Nation, Piikani Nation, and Stoney Nakoda Nations.

NGTL noted that the CER made participant funding available for intervenors in the hearing process to cover their costs of participating in the hearing. NGTL also noted that the MPMO also offered capacity funding as part of the Crown's consultation process. NGTL stated that, through the above funding processes, all potentially affected Indigenous peoples have had a reasonable opportunity to engage with NGTL and participate in the CER's hearing process.

NGTL stated that it disagrees with Driftpile Cree Nation's recommendation that it provide Driftpile Cree Nation and other potentially impacted Indigenous peoples with clear and detailed information on whether, where and how their input has been considered and addressed, prior to Project construction, because this information is documented throughout the proceedings.

With respect to concerns raised by Michel First Nation, NGTL stated that it has been engaging Michel First Nation since March 2019. NGTL stated that the funding agreed to with Michel First Nation provided capacity for Michel First Nation's engagement with NGTL, including to identify any issues and concerns Michel First Nation may have with the proposed Project and discuss mitigation strategies to address any identified issues or concerns. NGTL stated that during engagement, Michel First Nation provided it with their Project issues and concerns and in January 2020 NGTL emailed Michel First Nation proposed mitigations in response to the Project-specific issues and concerns that Michel First Nation identified. NGTL stated that it remains committed to sharing Project information and receiving feedback from Michel First Nation for the purpose of identifying potential Project-related impacts on rights and interests within their traditional territory and to identify appropriate mitigation. NGTL stated that it will continue to address questions and concerns identified by Michel First Nation through its ongoing engagement efforts, should any arise.

In response to concerns raised by O'Chiese First Nation that NGTL conducted its Environmental and Socio-Economic Assessment without properly consulting them, NGTL stated that, within the

context of the Environmental and Socio-Economic Assessment, it has reviewed O'Chiese First Nation's written evidence and responses to NGTL's IRs for consideration in Project planning. NGTL stated that concerns and recommendations raised by O'Chiese First Nation in their written evidence is consistent with the activities that were assessed by NGTL in the Environmental and Socio-Economic Assessment and for which NGTL's suite of mitigation measures was developed. NGTL stated that it is of the view that its standard mitigation, existing corporate policies, and stated commitments address the potential interactions of the Project with O'Chiese First Nation interests. NGTL stated that its engagement with O'Chiese First Nation is ongoing and that it remains committed to further exploring an issue, concern or recommendation at the request of O'Chiese First Nation.

In response to Piikani Nation's concerns about not being identified for engagement on the Elk River Section of the Project, NGTL stated that it engages Indigenous peoples, including Piikani Nation, on the Project components that are within or proximate to identified traditional territories, regional boundaries and/or areas of interest. NGTL stated it did not have information that the Elk River Section of the Project fit that criteria for Piikani Nation. NGTL stated it has been working with Piikani Nation on creating a mutually agreed upon Traditional Knowledge Protocol Agreement.

With respect to concerns raised by Samson Cree Nation, NGTL stated its concerns that Samson Cree Nation's argument reflects fundamental misunderstandings regarding both the scope of the Project (which, contrary to Samson Cree Nation argument, does not include new compression facilities) and NGTL's evidence. NGTL stated that Samson Cree Nation's concerns with the Project are not based on a complete understanding of the record. NGTL noted that Samson Cree Nation's argument included detailed requests for additional studies, mitigation and compensation measures which were either addressed during NGTL during the hearing, or were raised for the first time in argument. NGTL argued that there is no evidentiary basis for the Commission to accept Samson Cree Nation's recommendations in its decision, but that NGTL would discuss the recommendations with Samson Cree Nation through NGTL's commitment to ongoing engagement with all potentially affected Indigenous peoples for the life of the Project.

NGTL noted Whitefish (Goodfish) Lake First Nation #128's concern that NGTL did not identify them as a potential affected Indigenous people or assess impacts to their treaty rights and current use of lands and resources for traditional purposes in the Project Environmental and Socio-Economic Assessment. NGTL stated it sought additional detail on location, nature, extent and seasonality of use of areas identified or mentioned in written evidence and oral Indigenous knowledge. NGTL stated that Whitefish (Goodfish) Lake First Nation #128 did not provide any additional information regarding locations and nature of the sites included in their written evidence and responses received from them did not provide any further detail that would assist in Project planning.

7.5.2 Project Splitting

NGTL disagreed that it split the McLeod River North Project and the NGTL 2021 System Expansion Project from the Edson Project Application. NGTL stated that all three projects have different drivers, commercial contracts, customers and required in-service dates, thereby necessitating individual applications. NGTL stated that although each project will be fully integrated parts of the NGTL System, they are separate and distinct responses to independent drivers and system requirements.

NGTL stated that its application history before the NEB demonstrates that where multiple facility components have common utility, NGTL groups them into a single application. In accordance with the NEB Act, NGTL routinely submits both section 58 and section 52 applications that have multiple facility components where those components are collectively required to respond to a System Requirement or in-service date.

NGTL stated that the Project is required to expand pipeline capacity to transport gas from the Peace River Project Area to growing intra-basin demand markets located in central and southern Alberta and is underpinned by incremental Firm Transportation-Delivery contracts with a commercially required in-service date of April 1, 2022. NGTL stated that McLeod River North Project is required to meet specific customer and system requirements in the Peace River Project Area and is proposed to be in service to meet Firm Transportation-Receipt commercial commitments that begin on 1 November 2019. NGTL noted that the NEB previously assessed allegations that NGTL engages in project splitting and found the approach followed by NGTL with regard to its project applications did not show evidence of project splitting. NGTL stated that the NGTL 2021 Project (which includes the Edson Mainline Loop No. 4 – Robb, Dismal Creek and Brewster Sections) is required to meet aggregate Firm Transportation-Delivery and Firm Transportation-Receipt service contract commitments, with a commercially required in-service date of April 1, 2021.

7.5.3 Social and Cultural Well-being

NGTL acknowledged that Indigenous peoples may have concerns with respect to potential impacts to intangible values related to use of the land. NGTL stated that its Environmental and Socio-Economic Assessment considered potential Project effects on values which often support intangible values related to use of land, such as resource harvesting, visual aesthetics, habitation sites, and cultural or spiritual sites or practices. NGTL stated that with the implementation of recommended mitigation, adverse effects of the Project on these values are predicted to be not significant. NGTL stated that it will continue to document this information as it is made available and through its Aboriginal Engagement Program, and that it will continue to seek to understand and address these concerns throughout the Project life cycle.

NGTL stated that it does not agree with the approach of assessing operations phase activities on social and cultural well-being. NGTL stated that activities associated with operation of the Elk River and Alford Creek Sections are not anticipated to interact materially with social and cultural well-being. NGTL stated that there will be no further physical disturbance following construction and reclamation activities other than vegetation management and small-scale inspection and maintenance activities. NGTL stated that any effects associated with the operation of the Project will be minor and incremental to any existing baseline effects of the existing Edson Mainline pipeline, and therefore a residual effects assessment is not warranted for the operations phase. NGTL clarified that post-construction activities, such as addressing any deficiencies in reclamation and post-construction monitoring, are considered part of the construction phase.

NGTL stated that it acknowledges the importance of inter-generational transfer of knowledge and that this is inherent in the ability to practice traditional land and resource use. NGTL stated that regarding those aspects of traditional land and resource use associated with knowledge transfer, the Project is anticipated to temporarily reduce the availability of resources for harvesting by Indigenous peoples near the Project. NGTL stated that the exercise of traditional land and resource use and associated knowledge transfer is conservatively considered in its Project planning. NGTL stated that the Project is designed to reduce or avoid potential Project-related effects on the resources that support the exercise of TLRU, to the extent feasible, as

reflected in the construction schedule, timing and location of the Project. NGTL noted that the Project parallels existing disturbances for 83 per cent and 88 per cent of its length (Elk River and Alford Creek Sections, respectively). NGTL stated that, through environmental protection measures and reclamation plans described in the Environmental and Socio-Economic Assessment, the Project Development Area will be reclaimed to equivalent land capability.

In response to recommendations that there be more fulsome, regional and culture-specific intercultural training, NGTL notes that Project Contractors are required to develop a construction orientation for all personnel to ensure safe and respectful conduct during work. NGTL stated that these orientations cover topics including safety, environment and cultural awareness. NGTL 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.

NGTL noted that its construction orientation includes topics such as safety, environmental mitigation and cultural awareness, including Indigenous culture and traditional land use. The orientation will also include information regarding Project-specific cultural and environmental sensitivities, including heritage resources and traditional land and resource use. NGTL stated that it requires that all personnel (including contractors and sub-contractors) working on the Project complete the construction orientation prior to being allowed on the Project site. NGTL stated that the prime contractor will keep a log of all personnel that have received the construction orientation.

NGTL stated that it seeks to ensure that the cultural awareness component of the construction orientation is inclusive, while not prioritizing one Indigenous peoples' culture over another. NGTL stated that due to the number of Indigenous peoples potentially affected by the Project and timing considerations during construction, NGTL and its prime contractor will deliver the construction orientation; however, available knowledge and input from Indigenous peoples will be considered in the development of the construction orientation. NGTL stated that it uses a continuous improvement process to regularly update and refine its project materials, including the construction orientation, based on its experiences across all NGTL projects. NGTL stated that the construction orientation will be updated on an as needed basis, considering NGTL's experience during construction and on other projects, input received from potentially affected Indigenous peoples and local stakeholders, and regulatory guidance.

NGTL stated that available knowledge and input provided by Indigenous peoples will be considered and incorporated into NGTL's orientation materials. NGTL stated it is willing to provide copies of the orientation materials, upon request from a potentially affected Indigenous person, and any feedback received by NGTL will be considered in the finalization of the orientation. NGTL stated that the construction orientation will be delivered via in-person training sessions and the use of materials such as presentations, video and booklets.

In response to requests for pre-construction ceremonial protocols, NGTL stated that it is open to discussing with interested and potentially affected Indigenous peoples, the opportunity to conduct appropriate cultural ceremonies prior to the start of construction activities, or upon completion of construction, and as appropriate prior to or following reclamation activities. NGTL stated that the type or nature of a ceremony would be determined through discussion with Indigenous peoples on a case-by-case basis, however the timing of such a ceremony would typically occur in advance of construction or prior to or following reclamation activities which reduces or eliminates the chance for interactions with contractors and subcontractors.

With respect to concerns regarding disturbance by workers during ceremonies in sacred areas, NGTL stated that it requires that all personnel working on the Project to complete the construction orientation which includes a cultural awareness component. NGTL stated that with the exception of localized areas during the short period of active construction, the ROW will remain available for traditional uses during construction and operation of the Project. NGTL stated that, in the past, encounters between NGTL personnel and Indigenous land users on ROWs have included respectful discussions and explanations of what activities both parties are conducting at the location.

In response to concerns about the potential for harassment of Indigenous peoples, NGTL stated that it identified potential interactions between the Project's construction workforce and Indigenous peoples in the assessment of socioeconomic valued components in the Environmental and Socio-Economic Assessment. NGTL stated that, as stated in the Environmental and Socio-Economic Assessment, "NGTL and its contractors will establish clear guidelines for behaviour in accordance with company policies and regulatory requirements, including TransCanada's Code of Business Ethics, Harassment Free Workplace and Employment Equity and Non-Discrimination policies. Contractors will enforce these policies to ensure safe and harassment-free work environments. These rules also prohibit the possession of firearms and illegal drugs, and address many other concerns including alcohol consumption." NGTL also stated that mitigation would include construction contractors discussing respectful behaviour and use of community facilities during worker orientation.

NGTL stated that it will continue to engage with residents, Indigenous peoples, landowners and local stakeholders through the Project's planned ongoing engagement activities. NGTL stated that, through this process, it will also monitor the effectiveness of the mitigation measures for social and cultural well-being and identify potential unforeseen effects or concerns.

NGTL stated that it uses a continuous improvement process to regularly update and refine its project materials, including the construction orientation, based on its experiences across all NGTL projects. NGTL stated that it will incorporate lessons learned on previous projects including additional information regarding Indigenous culture, history, traditional land use, and best practices regarding conducting work activities with integrity, mutual respect and collaboration with Indigenous peoples. NGTL stated that any updates that are made to the construction orientation as a result of NGTL's cultural awareness and sensitivity experiences on other projects will be applied to the Project.

For NGTL's reply to social and cultural well-being related to non-Indigenous communities, refer to Chapter 8.

7.5.4 Human Health

NGTL acknowledged that Project activities during construction could affect biophysical resources and could create sensory disturbances to nearby land users. NGTL stated that, with the implementation of mitigation measures, construction of the Project is unlikely to alter the health of residents of the Local Assessment Area / Regional Assessment Area. If they do occur, any residual effects on human health in the Local Assessment Area / Regional Assessment Area are predicted to be adverse, low in magnitude, occur as multiple irregular events, will be short-term in duration and reversible. NGTL stated that it does not predict interactions of the Project with human health during operation of the Project.

With respect to concerns raised by Indigenous peoples regarding resources for traditional foods and clean water and their importance for health, NGTL assessed Project effects on vegetation, wildlife and wildlife habitat, fish and fish habitat, and water quality and proposed mitigation measures. For NGTL's reply regarding Project effects on these environmental components, please see Chapter 8.

NGTL stated that access to the Project Development Area for traditional foods may be temporarily affected by construction to mitigate safety concerns. NGTL stated that where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users will not be restricted from accessing the Project area. Access issues are further discussed in subsection 7.5.8.3 of this chapter.

In response to concerns raised about use of herbicides, NGTL stated that widespread application of herbicides on TC Energy assets is not common practice. However, NGTL also stated that due to obligations under the *Alberta Weed Control Act*, TC Energy must comply with legislated requirements in the event thresholds for listed species are exceeded. NGTL stated that herbicides are used on graveled surfaces for safety purposes to reduce fire hazards. NGTL noted that, depending on the type of vegetation to be controlled, a suite of options is considered including, cultural, biological, manual/mechanical and chemical control. Along the pipeline ROW, vegetation control is typically limited to mechanical methods. NGTL stated that herbicides might be used on an as-needed basis along the pipeline ROW to control invasive species, however, herbicide application is completed by licensed contractors in accordance with applicable provincial permits.

NGTL stated that while it cannot commit to fully eliminating herbicide applications during post-construction vegetation control, it employs measures to responsibly manage the use of chemical applications such as: limiting the use of chemical applications; prohibiting the general application of herbicide near rare plants or rare ecological communities (rather spot spraying, wicking, mowing, or handpicking are considered acceptable measures for weed control in these areas); and prohibiting the use of herbicides within 30 m of an open body of water, unless the herbicide application is conducted by ground application equipment, or otherwise approved by the relevant regulatory agency. NGTL stated that should any Indigenous peoples identify a specific area of concern, NGTL is willing to discuss the potential to limit herbicide use at the identified location.

NGTL noted Louis Bull Tribe's concerns regarding bioaccumulation of methylmercury and effects on health. NGTL stated that the Project is not expected to contribute to bioaccumulation of methylmercury in fish. NGTL stated that potential pathways that could mobilize sediment during Project activities on land will be mitigated through erosion and sediment control measures employed above the high water mark, as described in its Environmental Protection Plan. NGTL stated that isolated crossing methods produce short duration sediment pulses (in the order of hours or less) when installing and removing isolation structures; however, these pulses are typically small and can be mitigated. NGTL stated that the areal extent of sediment that will be disturbed for a short duration during installation and removal of isolation structures at crossings is small in proportion of the internal sediment load of watercourses crossed by the Project. NGTL stated that the Project's potential contribution to methylmercury exposure to fish, even if methylmercury is present in the Local Assessment Area, is considered negligible.

For NGTL's reply to human health issues related to non-Indigenous communities, refer to Chapter 8.

7.5.5 Heritage Resources

In its Environmental and Socio-Economic Assessment, NGTL stated that in Alberta, heritage resources are regulated under the *Historical Resources Act*. NGTL stated that heritage resources protected under the *Historical Resources Act* include archaeological sites and artifacts, historic sites and buildings, paleontological sites, including fossils and trace fossils, and certain types of Aboriginal traditional use sites, such as trails and traditional camps.

NGTL stated that the Elk River Section and Alford Creek Section were presented to the Alberta Ministry of Culture, Multiculturalism and Status of Women for their review in a regulatory submission to determine whether any field assessment was required. NGTL stated that the Alberta Ministry of Culture, Multiculturalism and Status of Women reviewed the submission and issued requirements for a targeted Historical Resources Impact Assessment for both the Elk River and Alford Creek sections. NGTL stated that field investigations were completed in summer 2019.

NGTL stated that it engages qualified heritage consultants who undertake the necessary pre-construction desktop and field investigations as required by the Alberta Ministry of Culture, Multiculturalism and Status of Women. NGTL stated that it completed a pre-construction heritage assessment to identify potential sites prior to construction, and no heritage sites were identified in relation to the Project.

In response to concerns raised regarding potential gravesites, burial sites, and other sensitive cultural sites, NGTL stated that it does not anticipate Project interactions with heritage resource sites located outside the Project Development Area. Regardless, NGTL stated that information gathered during ongoing traditional knowledge studies and engagement will continue to be considered in Project planning, including the Environmental Protection Plan and Environmental Alignment Sheets, as appropriate.

NGTL noted on the record that on 8 May 2020, O'Chiese First Nation confidentially filed a report as additional written evidence regarding culturally sensitive sites. NGTL stated it reviewed O'Chiese First Nation's additional written evidence. NGTL stated that the *Historical Resources Act* approvals received for the Project confirm that there are no requirements for the Project associated with traditional use sites of a historic nature. NGTL stated that there are no known sites of this nature within the Project Development Area or within 1 km of the Project Development Area (i.e., the TLRU Local Assessment Area). NGTL stated that the absence of traditional use sites of a historic nature within the Project Development Area or TLRU Local Assessment Area are confirmed both by information made available to NGTL by the Alberta Ministry of Culture, Multiculturalism and Status of Women and the desktop review conducted by O'Chiese First Nation, which NGTL noted relied on similar information from the Alberta Ministry of Culture, Multiculturalism and Status of Women. Regarding the occurrence of sites of this nature within the TLRU Regional Assessment Area or elsewhere within O'Chiese First Nation's area of interest, NGTL notes that the Alberta Ministry of Culture, Multiculturalism and Status of Women may only share information about potential sites with project proponents in relation to quarter sections of land that encompass areas to be directly disturbed.

NGTL stated that, however, a lack of information on provincially listed traditional use sites of a historic nature within the TLRU Regional Assessment Area does not imply that potential effects on O'Chiese First Nation culture were not assessed. NGTL stated that its engagement process with Indigenous peoples includes seeking feedback from potentially affected Indigenous peoples to identify and advise NGTL of potential effects on that peoples' interests. NGTL stated

that it is at the priority and discretion of the respective Indigenous people to bring forward additional information on culturally sensitive sites or other matters of concern to the Indigenous people. NGTL stated it has provided numerous opportunities for Indigenous peoples, including O'Chiese First Nation, to identify and share information through ongoing engagement for the Project. NGTL stated that culturally sensitive sites are assumed as potentially occurring within the assessment areas, even if specific sites, areas, or resources have not been identified by Indigenous peoples through Project engagement or otherwise identified in publicly available information.

NGTL stated that, while the details of O'Chiese First Nation's additional written evidence have been treated by NGTL as confidential, NGTL confirms that the information in the confidential filing about culturally sensitive sites, including areas in proximity to the Project, is consistent with the activities that were assessed by NGTL in the Environmental and Socio-Economic Assessment and for which the suite of mitigation measures was developed. NGTL stated that the occurrence of traditional use sites of a historic nature within the TLRU Regional Assessment Area, as indicated by O'Chiese First Nation, confirms the conservative assumptions of the Environmental and Socio-Economic Assessment. NGTL stated that, based on this review, NGTL has determined that O'Chiese First Nation's additional written evidence does not change any of the conclusions of its Environmental and Socio-Economic Assessment.

NGTL stated that, during engagement, O'Chiese First Nation indicated to NGTL that a field assessment was not completed and is necessary to confirm the locations of the identified sites. NGTL noted that, on 12 June 2020, it and O'Chiese First Nation agreed upon the workplan and funding for a community-led traditional knowledge study for the Project which includes the opportunity to conduct fieldwork. NGTL stated that the Environmental Protection Plan will be updated prior to construction to include traditional land use sites, features and areas of use requiring site-specific mitigations, as determined with Indigenous peoples. NGTL noted that specific sites or features within O'Chiese First Nation's identified broad areas of use relative to the Project were not provided. NGTL stated it will seek specific locational data for the culturally sensitive sites identified by O'Chiese First Nation in its additional written evidence in order to determine if additional or site-specific mitigation measures are required. NGTL stated that the concerns and recommendations identified in O'Chiese First Nation's additional written evidence, including those identified as violations to O'Chiese First Nation culture, are addressed by the proposed mitigation measures described in the Environmental and Socio-Economic Assessment and Environmental Protection Plan.

NGTL stated that, upon receipt of additional information from O'Chiese First Nation, it will be reviewed in the context of the Environmental and Socio-Economic Assessment in order to determine if additional or site-specific mitigation measures may be required, including micro-routing.

NGTL stated that if site-specific information becomes available as a result of ongoing engagement with Indigenous peoples, it can be incorporated into Project planning, where appropriate. NGTL stated that consideration of this information includes evaluating whether NGTL's planned mitigation will effectively manage the identified potential interactions, or whether additional or refined mitigation is warranted. NGTL stated that it will continue to address questions and concerns from Indigenous peoples, should any arise, through its ongoing engagement efforts.

NGTL stated that the objective of mitigation is to limit the loss of heritage resource materials and sites or site context caused by Project activities. NGTL stated that standard mitigation may

include detailed site recording, collection of artifacts or fossils, controlled mitigative excavation, or monitoring during construction activities.

In response to concerns raised regarding Project effects on cultural and heritage resources, NGTL noted that its historical resources assessment was conducted in accordance with provincial requirements, whereby potential Project effects are assessed and mitigated in areas of planned ground disturbance, specifically, within the Project Development Area.

NGTL noted concerns raised regarding potential for discovery of previously undocumented sites of historical, archaeological, or heritage interest and cultural importance. NGTL stated that completion of a pre-construction heritage assessment to identify potential sites prior to construction, in conjunction with traditional knowledge shared by Indigenous field participants and any other traditional land use information shared by Indigenous peoples, reduces the likelihood that a previously unidentified significant heritage or burial site will be encountered during construction. NGTL stated that traditional use sites or features that require additional mitigation will be included in the Environmental Protection Plan and Environmental Alignment Sheets filed prior to construction. NGTL stated that in the event of an unanticipated discovery of traditional land use sites not previously identified are found during construction, it will implement the Cultural Resources Discovery Contingency Plan, as appropriate, to ensure any sites not previously identified are properly recorded and mapped, and the potential for disturbance of those sites from construction activities is addressed before continuing with construction.

In response to concerns raised regarding whether untrained personnel would be able to identify potential traditional land and resource use sites, heritage sites, or human remains, NGTL noted that all construction personnel are required to receive Project-specific environmental orientation training to ensure that they are informed of key environmental requirements and Project-specific sensitivities. NGTL stated that the environmental orientation includes materials on the Cultural Resources Discovery Contingency Plan, examples of common heritage or traditional land and resource use materials that may be encountered, the protection and cultural significance of uncovering these resources, worker obligations in the event of a find, and outlines appropriate steps to be taken by construction staff should a heritage or traditional land and resource use site be identified during construction.

In response to which communities would be notified in the event of a chance find, NGTL stated that in the event that a location is identified during Project construction and is considered likely to be a previously unreported traditional land use site, it will contact any potentially affected Indigenous peoples and would review and discuss planned mitigation strategy on a case-by-case basis. NGTL stated it will identify Indigenous peoples for this engagement based on information collected during the Aboriginal Engagement Program for the Project.

For NGTL's reply to heritage resource issues related to non-Indigenous communities, refer to Chapter 8.

7.5.6 Employment, Training and Community Benefits

For NGTL's reply to employment and benefit issues related to non-Indigenous communities, refer to Chapter 9.

7.5.6.1 Employment and Contracting Opportunities

In its Application, NGTL stated that it recognizes the importance of encouraging and enabling Indigenous participation in the Project. NGTL stated that economic activity from employment, and project expenditures on local and Indigenous-owned businesses are expected to provide positive effects during the construction period.

NGTL noted that its Indigenous Relations Business Engagement team engages with interested Indigenous peoples and businesses to provide information on how they may participate in Project opportunities. NGTL stated that the team works with NGTL's prime contractors to confirm that qualified and competitive Aboriginal businesses and individuals are considered for material and services sub-contracts in accordance with NGTL's Aboriginal Contracting and Employment Program. NGTL also noted its Aboriginal Construction Participation Program. NGTL stated that it would maximize local and hiring of Indigenous peoples from within the Local Assessment Area / Regional Assessment Area, as a first priority, and elsewhere in Alberta as a second priority.

NGTL stated that it is committed to supporting local Indigenous peoples by providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL stated that it offers and is willing to meet with any Indigenous people expressing an interest in potential contracting, employment, and training opportunities, where NGTL can discuss its contracting process and develop an understanding of the Indigenous peoples' capacities. NGTL stated that through its ongoing engagement activities, it encourages community contractors and vendors to register their businesses for Project consideration and operational requirements in the region.

NGTL stated that it includes requirements in contracts with prime contractors to hire qualified and competitive, local Indigenous contractors and employees. NGTL stated that it outlines sub-contracting, employment, and training expectations of Indigenous peoples through its sourcing events (e.g., request for proposals) and shares its current contact information and service offerings from local Indigenous peoples with the prime contractors during this process. NGTL stated that it then sets obligations in its prime contracts to ensure that contractors fulfill the commitments they made in their proposal that were a consideration in their contract award through Aboriginal Participation Plans. NGTL stated that it actively monitors prime contractor implementation of its subcontracting, employment, and training commitments.

NGTL stated that it aims to increase the participation of Indigenous peoples potentially affected by NGTL's activities by providing business opportunities arising from these activities to qualified Indigenous contractors and suppliers. NGTL stated that it would meet this objective by implementing the following activities: assessing local Indigenous peoples and business capacity and capabilities for contracting and employment opportunities and, as appropriate, aligning work packages to allow Indigenous-owned businesses to compete successfully; where opportunities exist, working with Indigenous peoples and businesses to help enhance capacity, including Project-related training and employment, if applicable; and maximizing contracting and employment opportunities for Indigenous peoples and businesses through the Project's contractors and subcontractors or contracts directly with the Project.

NGTL stated that, for projects in northern Alberta, Indigenous-owned businesses generally represent 8 to 12 per cent of the total construction contract values in past projects. NGTL stated that, additionally, Indigenous peoples typically comprise approximately 8 to 10 per cent of the total construction workforce. NGTL stated that the majority of opportunities for economic

participation through contracting and employment would occur in the construction phase of the Project.

NGTL stated that it is unwilling to set fixed targets or benchmarks for Indigenous employment or contracting because: it cannot guarantee the results from any competitive sourcing process; one of NGTL's primary considerations in any employment or contracting decision is ensuring that the selected worker or business is technically qualified to perform the work in question; and the circumstances of each Project are different, including the interest and capacity of local and qualified Aboriginal workers and businesses. NGTL stated that, while fixed targets or benchmarks may seem desirable to some parties, they may in fact result in less Indigenous employment or contracting. NGTL stated that this can be the case if the circumstances of the Project allow the targets to be achieved relatively easily (there would be less incentive to maximize remaining opportunities for Indigenous workers and businesses) and may create pressures on NGTL and its sub-contractors to hire Indigenous workers and businesses even where those workers and businesses are not technically qualified or otherwise are not the preferred choice based on NGTL's employment and contracting criteria. NGTL stated that these outcomes would not be in the public interest. NGTL argued, that its proposed process for including Indigenous workers and businesses in the Project will reasonably maximize opportunities for Indigenous employment and contracting based on the circumstances of the Project. NGTL argued that this process can and should be relied on by the Commission because it has been implemented successfully on past NGTL projects and NGTL will be required to report on the outcomes of that process through the Commission's recommended **Condition 5** (Indigenous Peoples Employment, Contracting, and Procurement Plan Update).

In response to Piikani Nation's concerns regarding Project effects on guiding, NGTL stated that it will implement the following mitigation measures to reduce the potential adverse effects of the Project on guides: notify potentially affected landowners, lessees and nearby residents of the intended Project schedule before the start of construction to prevent or reduce impacts to their operations or activities; provide potentially affected Indigenous peoples with the proposed Project construction schedule and maps; and work with Indigenous peoples regarding strategies to most effectively communicate to its members the construction schedule and work areas.

7.5.6.2 Education, Training and Community Investment

NGTL stated that it has been working with and will continue to work with Indigenous peoples to identify opportunities for capacity development and to support each community's immediate and/or long-term training needs and interests.

NGTL stated that it supports individual community members in achieving their education goals through TransCanada's Community Scholarships Program. NGTL stated that the Program delivers over 500 scholarships to students across North America, including 100 Indigenous Legacy Scholarships specifically for Indigenous students.

NGTL stated that TC Energy has supported education and training initiatives that were identified as priorities by Piikani Nation. NGTL stated that, most recently, these initiatives have included: class 7 driver training, safety ticket training, and adult education initiatives such as life skills and general education development preparation.

NGTL stated that it strives to create employment and training opportunities for Indigenous peoples and individuals in accordance with TC Energy's Indigenous Relations Policy and TC Energy's Education and Training Program. NGTL stated that, while the majority of employment

opportunities will occur during the construction phase of the Project, investments in education and training are made during all phases of the Project. NGTL stated that it will collaborate with local Indigenous peoples to identify their education and training needs and priorities. NGTL stated that it will then work with the community human resource coordinators and local economic development and education officers, education and training institutions and organizations, and prime contractors, to support the education and training requirements that have been identified through this collaborative effort, where feasible. NGTL stated that the objective of these education and training investments is to build long-term community capacity and support the development of high-demand and transferable skills. NGTL stated that the intention is to promote greater access to employment opportunities not only on the Project, but also in the broader regional economy.

In its Project Application, NGTL stated that it has identified three focus areas for community investment, in addition to education:

- **Safety:** Work with communities to understand how NGTL can support their safety initiatives, including emergency preparedness, accident prevention and education and training.
- **Community:** Support organizations and community initiatives that bring communities together through initiatives such as cultural preservation, community events, health and wellness, skills development, job readiness and career development.
- **Environment:** Work with communities to conserve important habitat, protect species at risk and the environment. NGTL recognizes that each group's needs and interests are unique. Funding to communities is designed to provide flexibility in the development of initiatives that will support each group's long-term goals.

NGTL stated that it contributes to community investment initiatives with local Indigenous peoples in the Project area and will continue to identify opportunities for community investment in the region, in the areas of education, safety, community and environment. With respect to Stoney Nakoda Nations' request for cultural and language camps, NGTL stated it is available to discuss potential opportunities with Stoney Nakoda Nations, upon request.

NGTL stated that TC Energy works closely with Indigenous peoples to identify their needs and interests for community initiatives, including education and training, and capacity development, to ensure programs are fit-for-purpose. NGTL stated that, by taking a proactive and collaborative approach to developing and identifying community programs to be supported, TC Energy is able to have an open dialogue about needs and expectations. NGTL stated that this allows TC Energy to provide funding in support of community-led initiatives identified to TC Energy by potentially affected Indigenous peoples thereby avoiding or mitigating issues or concerns with the programs. NGTL stated that TC Energy has been supporting Indigenous peoples potentially affected by their projects through community investment, education and training to support Indigenous peoples' capacity development programs since 1999. NGTL stated that TC Energy works with Indigenous peoples to identify their needs and interests for community legacy initiatives. NGTL stated that TC Energy supports community-led initiatives including, but not limited to: safety equipment and safety programs, emergency preparedness, Sun Dances, Pow Wows, Métis festivals, breakfast programs, cultural/language preservation, Elders programs, habitat conservation, species protection, and more.

NGTL noted that in 2019, TC Energy invested more than \$3.5 million with over 280 Indigenous partners and students to help build sustainable, healthy and vibrant communities where it operates. NGTL provided information on interactions with Indigenous peoples who have been identified as potentially impacted by the Project and have indicated an interest in TC Energy's Aboriginal participation, training and education to advance their capacity development. NGTL stated that it will continue to work with potentially affected Indigenous peoples to identify opportunities for community investment in all operating regions and to support the community's immediate and/or long-term training needs.

In response to Papaschase Nation's interest in entering a relationship agreement with NGTL, NGTL stated that it would work with Papaschase Nation on their community investment, education and training, and business engagement requests, and explain next steps including facilitating contact with NGTL contacts representing those disciplines.

In response to Piikani Nation's request that NGTL commit to providing capacity funding and industry standard job training for Piikani Nation Guardians, NGTL noted that if an Indigenous peoples' needs around participating in monitoring are more training and education based, it would encourage the community to work with TC Energy's Community Investment and Education and Training programs. NGTL further noted that if the request is based on increasing knowledge of pipeline construction and NGTL's practices, this can be better addressed through targeted education opportunities like a community meeting/presentation which would benefit numerous community members, as opposed to a select few who may get to participate in a monitoring opportunity.

In response to Samson Cree Nation's recommendation for NGTL to support various community initiatives, such as the Community Freezer Project, NGTL stated it works closely with Indigenous peoples through TC Energy's Community Investment program to identify their needs and interests for community initiatives to ensure programs are fit-for-purpose. NGTL stated that it is open to discussing community initiatives in this context.

NGTL stated that, while it does not participate in revenue sharing, NGTL seeks to support Indigenous peoples through Community Investment and aims to increase the participation of Indigenous peoples potentially affected by NGTL's activities by providing business and contracting opportunities arising from these activities to qualified Indigenous contractors and suppliers.

7.5.7 Monitoring by Indigenous Peoples and Indigenous Advisory Monitoring Committee

NGTL stated that it recognizes that the reason behind the recommendation or request for involvement in monitoring can vary amongst Indigenous peoples, and thus a blanket, "one-size-fits-all" approach does not always meet an Indigenous peoples' needs or interests. NGTL stated it has and will continue to follow up with Indigenous peoples regarding their request or recommendation regarding involvement in monitoring during construction to better understand and clarify the potential issues behind the recommendation, and to gather further information and knowledge to inform possible next steps for how NGTL and the community can directly work together to most effectively address each specific issue, for the benefit of both parties. Some common general concerns or interests that communities have previously identified in relation to requests for monitoring during construction include economic opportunities, training and increasing knowledge of pipeline construction and/or NGTL practices.

NGTL stated that it has committed to ongoing engagement throughout all phases of the Project and Indigenous peoples will have an opportunity to provide feedback post-construction through ongoing engagement with Regional Liaisons and TC Energy's Public Awareness Program. NGTL has committed to respond to any Indigenous peoples' concerns post-construction and address potential issues on a case-by-case basis.

NGTL stated that regarding monitoring related to particular locations, resources or activities, it is of the view that proposed mitigation and responses should be fit-for-purpose. NGTL stated that by better understanding the concern to be addressed and the desired outcome of Indigenous participation in monitoring activities, it stated it may be better able to suggest and work with the community to identify a more tailored and specific means of responding to that concern, sharing information, providing community opportunities, etc. through ongoing engagement. NGTL stated it has begun discussions of this nature with, for example, Louis Bull Tribe.

With respect to concerns raised by Michel First Nation about participation in water quality monitoring, NGTL stated that, through its ongoing engagement, any input that Michel First Nation provides regarding water quality monitoring during and post-construction will be considered in Project planning.

With regard to the development of Piikani Nation's Biocultural Monitoring and Climate Adaptation program, NGTL stated it works with each potentially affected Indigenous peoples to identify areas of interest and opportunity. NGTL stated that it remains available to discuss Piikani Nation's Biocultural Monitoring and Climate Adaptation program and potential associated opportunities.

With respect to Piikani Nation's request for employment of Piikani Nation Guardians, NGTL stated that it is committed to supporting local Indigenous peoples by providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL stated that it is willing to meet with any Indigenous peoples expressing an interest in potential contracting, employment, and training opportunities, where NGTL can discuss its processes and develop an understanding of the Indigenous peoples' capacities. NGTL stated that it encourages Piikani Nation to share information regarding the capacity and qualifications of Piikani Nation members (including guardians) for consideration in employment opportunities and remains available to further discuss this with Piikani Nation.

NGTL stated that it will continue to follow up with Samson Cree Nation regarding their recommendation regarding involvement in long-term monitoring in order to better understand and clarify the potential issues behind the recommendation, and to inform possible next steps for how NGTL and the community can directly work together to most effectively address each specific issue, for the benefit of both parties.

NGTL noted that several intervenors requested that the Commission require NGTL to develop an Indigenous Advisory Monitoring Committee. NGTL argued that details of these recommendations or why an Indigenous Advisory Monitoring Committee is warranted for the Project was not provided. NGTL noted that such a requirement has been imposed on certain other CER-regulated projects, however, NGTL argues that those projects were significantly different in scope than the Edson Mainline Expansion Project. NGTL stated that to its knowledge the only projects for which the Commission or its predecessor imposed an Indigenous Advisory Monitoring Committee were the Trans Mountain Expansion Project and Enbridge Line 3 Replacement Project, both of which were contentious oil pipeline projects of a significantly larger scope than the Edson Mainline Expansion Project. NGTL argued that each of

these projects were unique and materially different in scope than the Project. NGTL argued that these requests are not supported by the evidence or warranted in the circumstances for this Project. NGTL argued that the record demonstrates that NGTL has made extensive efforts to provide all potentially affected Indigenous peoples with opportunities to provide input into the Project and that NGTL has reasonably addressed the concerns that have been raised. NGTL has also committed to continue to work with these communities through the life of the Project to address any further issues or concerns that arise, if any.

7.5.8 Traditional Land and Resource Use

7.5.8.1 NGTL's Assessment Methodology and Mitigation Measures

NGTL noted that some Indigenous peoples who were Intervenor challenged NGTL's Environmental and Socio-Economic Assessment methodology on the basis that its assessment of potential impacts on TLRU was limited to biophysical impacts. NGTL stated that its assessment of TLRU considered potential effects on TLRU activities, not simply the environmental resources on which those activities rely.

NGTL stated that it assessed potential effects of the Project on TLRU in accordance with the NEB Filing Manual and established environmental assessment practices. NGTL maintained that its TLRU assessment for the Project is appropriate and provides sufficient information for the Commission to determine the likely effects of the Project on TLRU as well as on Aboriginal and Treaty rights.

NGTL stated that it used the best information available at the time of the Application, including Project-specific information provided by certain Indigenous peoples during engagement, as well as a comprehensive literature review which NGTL stated it provided to Indigenous peoples for their review prior to filing the Application, desktop analysis and NGTL's operating experience. NGTL stated that where Indigenous peoples had not provided Project-specific TLRU information prior to the filing of the Environmental and Socio-Economic Assessment, it did not assume that those communities did not use the area.

NGTL stated that its Environmental and Socio-Economic Assessment conservatively assumed that TLRU harvesting sites, areas, and activities have the potential to occur throughout the Project area and that traditionally-used species identified as being present within the area could be hunted, fished, trapped, or gathered by Indigenous peoples, even if information identifying specific activities, species, or sites had not been received from Indigenous peoples. NGTL stated that where specific information was provided by Indigenous peoples, NGTL considered this information in the Environmental and Socio-Economic Assessment and, where appropriate, incorporated into Project planning. NGTL stated that, as a result, to the extent Indigenous peoples provided information or expressed concerns that were unique to their community, that information was considered in the context of the Environmental and Socio-Economic Assessment. NGTL argued that this approach ensured that NGTL's assessment reasonably and conservatively assessed the full scope of potential effects of the Project on all Indigenous peoples TLRU.

With respect to Driftpile Cree Nation's request for a unique and appropriate regional study area for each Indigenous peoples, NGTL stated that it disagrees with that recommendation. NGTL stated that the primary consideration it uses is the probable geographical extent of the environmental effects (i.e., the zone of influence) on each valued component. NGTL noted that

the Regional Assessment Area is the area within which the Project's environmental effects may interact or accumulate with the environmental effects of other projects or activities that have been or will be carried out such that cumulative environmental effects may potentially occur. NGTL stated that the Regional Assessment Area is defined for each valued component depending on physical and biological conditions and the type and location of other past, present, or reasonably foreseeable projects or activities that have been or will be carried out. NGTL stated that, while physical effects of the Project are not expected to extend beyond the Regional Assessment Area, information about traditional use sites, activities, and resources, including an Indigenous peoples network of traditional land and resource use, beyond the Regional Assessment Area are considered where that information has been provided by Indigenous peoples.

In response to Samson Cree Nation's concerns about methodology used by NGTL in its cumulative effects assessment, NGTL stated that it conducted its cumulative effects assessment following methods pursuant to guidance from the NEB Filing Manual and the CEAA 2012 guidance from the Canadian Environmental Assessment Agency, currently the Impact Assessment Agency of Canada. NGTL noted that the cumulative effects assessment conducted by Samson Cree Nation is a regional cumulative effects assessment, which NGTL stated uses different spatial and temporal boundaries from a project cumulative effects assessment, and identifies valued components that reflect issues that may or may not also be affected by the project under assessment. NGTL further noted that the regional cumulative effects assessment conducted by Samson Cree Nation focuses on overall cumulative effect rather than noting incremental project contribution to total cumulative effects.

With respect to assessment of the effects of Project operations on TLRU, NGTL stated that there will be no further physical disturbance following construction and reclamation activities other than vegetation management and small-scale inspection and maintenance activities. NGTL stated that any effects associated with Project operation will be minor and incremental to any existing baseline effects of the existing Edson Mainline pipeline on traditional land and resource use, and so a residual effects assessment to traditional land and resource use is not warranted for the operations phase.

7.5.8.2 Traditional Knowledge Studies

NGTL stated that it works with interested Indigenous peoples to collect and incorporate traditional knowledge into Project planning, as appropriate. NGTL stated that it understands traditional knowledge to be knowledge held and contributed to by Indigenous peoples through generations of living in close contact with nature. NGTL stated that traditional knowledge may consist of traditional ecological knowledge and traditional land use and forms part of a larger body of information which encompasses knowledge about cultural, environmental, economic, political and spiritual interrelationships, which is typically identified by, and gathered through, engagement with Indigenous peoples. NGTL stated that, through the collection of traditional knowledge with interested communities, it seeks to:

- identify and consider potential adverse effects of the Project on the current use of lands and resources for traditional purposes;
- incorporate traditional knowledge 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 stated it has been engaging Indigenous peoples on the Project to proactively identify traditional land and resource use sites and to develop appropriate site-specific mitigation measures prior to construction to avoid or reduce effects on traditional land and resource use sites and activities. NGTL stated that information received from potentially affected Indigenous peoples, including the Project-specific traditional knowledge studies, is considered in Project planning, including route selection and refinement and the development of site-specific mitigation measures to avoid or reduce effects on traditional land and resource use sites and activities. NGTL stated that traditional land and resource use sites identified by Indigenous peoples that require site-specific mitigation will be included in the Environmental Protection Plan and Environmental Alignment Sheets filed prior to construction, as appropriate. NGTL stated that its capacity funding for 19 different Indigenous peoples included funding for each community to conduct a community-led Project-specific traditional knowledge study. NGTL noted that as of 3 April 2020, the traditional knowledge studies had been completed for 13 Indigenous peoples and were underway for 4 Indigenous peoples. NGTL stated that the traditional knowledge study was outstanding for each of O'Chiese First Nation and Paul First Nation pending agreement on appropriate scope and costs of the study, as noted in Table 7-5 below.

NGTL stated that information gathered through the Project's Aboriginal Engagement Program, including Project-specific traditional knowledge studies, and the results of publicly available literature are reviewed and incorporated into the Application. NGTL stated that as additional information or issues and concerns are made available to NGTL, the initial selection of valued components and effects pathways, spatial and temporal boundaries, and the collection of baseline information for each valued component are reviewed to confirm whether traditional knowledge information or issues and concerns were included or represented within the Environmental and Socio-Economic Assessment. NGTL stated that consideration of traditional knowledge information also includes evaluating whether NGTL's planned mitigation would effectively manage the identified potential interactions, or whether additional or refined mitigation is warranted. Ultimately, through this review, consideration of feedback from Indigenous peoples may result in changes to Project planning, including the Environmental Protection Plan and Environmental Alignment Sheets, or specific engagement activities with NGTL to further exploring an issue, concern or recommendation.

In response to Michel First Nation's concerns regarding funding for traditional knowledge studies, NGTL stated that it disagrees that it discriminated against Michel First Nation by not providing a traditional knowledge study despite Michel First Nation identifying current use in the Project vicinity. NGTL stated that it employed the same underlying principles in its Aboriginal Engagement Program for the Project across all communities, and that the scope and depth of engagement may vary according to the potential for Project-related effects and the identified interests of each Indigenous peoples. NGTL stated that the funding agreed to with Michel First Nation provided capacity for their engagement with NGTL, including to identify any issues and concerns Michel First Nation may have with the proposed Project and to discuss mitigation strategies to address any identified issues or concerns. NGTL stated that, during engagement, Michel First Nation has provided NGTL with their Project issues and concerns and NGTL has provided proposed mitigations to Michel First Nation in response. NGTL stated that it remains committed to sharing Project information, receiving feedback from Michel First Nation for the purpose of identifying potential Project-related impacts on rights and interests within their

traditional territory, and to identify appropriate mitigation. NGTL stated that it will continue to address questions and concerns identified to it by Michel First Nation, should any arise, through its ongoing engagement efforts.

NGTL stated that traditional knowledge studies are outstanding from O’Chiese First Nation, Paul First Nation, Piikani Nation, Samson Cree Nation, Stoney Nakoda Nations, and Tsuu T’ina Nation. Table 7-5 provides a summary of the status, dated 3 April 2020, of the traditional knowledge studies being completed by interested Indigenous peoples.

Table 7-5: Status of the Traditional Knowledge Studies for the Project

Indigenous Peoples	Interest in Conducting a Study	Method of Study	Status of Study
Alexander First Nation	Yes	Independent	Complete
Alexis Nakota Sioux Nation	Yes	Independent	Complete
Kainai Nation (Blood Tribe)	Yes	Independent	Complete
Enoch Cree	Yes	Independent	Complete
Gunn Métis Local 55	Yes	Independent	Complete
Louis Bull Tribe	Yes	Independent	Complete
Métis Nation of Alberta Region 3	Yes	Independent	Complete
Métis Nation of Alberta Region 4	Yes	Independent	Complete
Montana First Nation	Yes	Independent	Complete
O’Chiese First Nation	Yes	Independent	Pending agreement with NGTL on appropriate scope and costs.
Paul First Nation	Yes	Independent	Pending agreement with NGTL on appropriate scope and costs.
Piikani Nation	Yes	Independent	Underway
Samson Cree Nation	Yes	Independent	Underway
Siksika Nation	Yes	Independent	Complete

Stoney Nakoda Nations	Yes	Independent	Underway
Sturgeon Lake Cree Nation	Yes	Independent	Complete
Sunchild First Nation	Yes	Facilitated	Complete
Tsuu T'ina Nation	Yes	Independent	Underway

NGTL noted that it received, through written evidence, additional traditional knowledge information from Kainai Nation (Blood Tribe), Driftpile Cree Nation, Ermineskin, Apetokosan (Kelly Lake Métis Settlement Society), Louis Bull Tribe, Michel First Nation, O'Chiese First Nation, Peavine Métis Settlement, Piikani Nation, Samson Cree Nation, Stoney Nakoda Nations, and Whitefish (Goodfish) Lake First Nation #128. NGTL also noted that oral Indigenous knowledge was shared by Driftpile Cree Nation, Apetokosan (Kelly Lake Métis Settlement Society), Louis Bull Tribe, O'Chiese First Nation, Papaschase Cree Nation, Papaschase Nation, Piikani Nation, Samson Cree Nation and Stoney Nakoda Nations.

NGTL stated that the Commission should give little to no weight to the conclusions in technical reviews submitted by Driftpile Cree Nation, Louis Bull Tribe, and Piikani Nation. NGTL stated that the reports submitted by these parties either did not consider several material evidence filings on the record, or it was unclear if the report considered the complete hearing record. NGTL stated that each of the technical reviews consists of a third party critiquing the Project Environmental and Socio-Economic Assessment prepared by NGTL's environmental consultant, as opposed to conducting an alternative assessment of Project effects. NGTL stated that, while each of the third party consultants advocates for different assessment methodologies or environmental practices (which is not uncommon when dealing with multiple third party consultants), none of these parties demonstrated that Stantec's methodologies failed to comply with the Filing Manual or any other legal requirements. NGTL stated that Stantec's methodologies in the Environmental and Socio-Economic Assessment are consistent with industry best practices and have previously been accepted by the CER and its predecessor for past NGTL and other federal pipeline projects. NGTL stated that these methodologies produce findings that are valid, defensible and can be relied on by the Commission to make informed decisions about the likely effects of the Project.

NGTL stated that, while several of the technical reviews from Indigenous Parties include recommendations for changes to Project mitigation measures or conditions on the Certificate of Public Convenience and Necessity, they are not supported by evidence that NGTL's proposed measures are deficient or that additional conditions are warranted in the circumstances of the Project. NGTL notes that many of the recommendations in the technical reviews are similar or identical to recommendations on past NGTL projects that were not accepted by the Commission, and there is no evidence on the record of this proceeding that would justify the Commission accepting those recommendations in the context of this Project.

7.5.8.3 Access to and Availability of Lands

NGTL noted that a number of Indigenous peoples who were Intervenor suggested during the proceeding that the presence of the Project ROW will legally restrict their members from accessing those lands during construction and operation. NGTL stated that view is inconsistent

with its evidence that it will not restrict access to the ROW unless there is active construction or maintenance occurring in the area and the proposed land use poses safety risks to the workers or the land users. NGTL stated that, legally, persons exercising hunting and fishing rights in Alberta under the terms of a Treaty and Article 12 of the Natural Resources Transfer Agreement may access Crown lands where there is no “visible, incompatible use”. NGTL noted that pipeline ROWs are not a “visible, incompatible use” with TLRU activities and that the record demonstrates that TLRU activities are often carried out along existing NGTL ROWs in the area.

NGTL stated that it does not assess where a community can exercise its Section 35 Aboriginal and Treaty rights. NGTL also stated that it does not assess legal restrictions on the exercise of those rights within a community’s asserted traditional territory or within the entire Regional Assessment Area. Rather, NGTL stated it communicates the project corridor to a community, and the location of the broader Regional Assessment Area, and then asks the community to identify physical impacts on the exercise of its rights from NGTL’s proposed use of lands for the Project.

NGTL summarized Crown land crossed by the Project with respect to Crown dispositions as outlined in Table 7-6.

Table 7-6: Dispositions on Crown Land Crossed by Project

Section	Land not Subject to Any Crown Disposition (ha)	Lands Subject to One or More Disposition (ha)	Percentage of Lands Subject to One or More Disposition
Alford Creek	94.1	97.5	51
Elk River	151.5	31.8	17

NGTL argued that Stoney Nakoda Nations’ statements that Crown lands with dispositions are “like private lands held by fee simple land holders” and “cannot be used by Indigenous Nations without permission” are made without any legal support and are incorrect. NGTL explained that pipeline ROWs can be – and, in fact, are often – used by Indigenous peoples without permission.

NGTL stated that the fact that Crown land is subject to one or more dispositions does not necessarily mean that it is unavailable for use by a party other than a disposition holder. NGTL noted that with the exception of localized areas during the single season construction period, the ROW will remain available for traditional use during construction and operation of the Project. During construction, access may be temporarily affected to mitigate safety concerns. NGTL stated that, based on typical construction planning, approximately 25 per cent of the 375 ha of the Project footprint on Crown land may be under active construction at a given point in time. NGTL stated that it will provide Indigenous peoples with the proposed construction schedule and maps prior to the start of construction to avoid potential conflicts between construction crews and traditional users. NGTL stated that access to its ROW is generally unrestricted during operations and is used by third parties, including Indigenous peoples. NGTL noted that, based on preliminary design, approximately 0.27 per cent of the 375 ha (approximately 1 ha) of the Project footprint will ultimately be new fenced valve sites and unavailable for traditional use during operations.

NGTL stated that where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users will not be impeded. NGTL stated it will implement the Traffic Control Management Plan, which includes access control measures (e.g., signage, road closures, restrictions, access control) to manage and control Project-related construction traffic and to reduce unauthorized motorized access. NGTL stated that, following construction, it will implement access management measures where applicable to deter an increase in motorized public access along its ROW, on new temporary construction access, and its existing linear disturbances that intersect the Project ROW. NGTL stated that limited new permanent access is anticipated for the Project. Existing infrastructure will be used, where practical. NGTL stated 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. NGTL stated that it will implement mitigation measures relevant to access management, including: clearly delineating areas that have access restrictions; restricting access to construction personnel only; removing bar ditch ramps and reclaiming all temporary access trails and shoo-flies to stable conditions; re-contouring to preconstruction conditions and seeding accordingly; and removing all temporary vehicle crossing structures.

NGTL stated that in order to comply with pipeline standards and regulations, such as the *Pipeline Damage Prevention Regulations*, it implements TC Energy's Damage Prevention Program to ensure the safe operations of its pipelines and protection of the public. NGTL stated it requires ROWs to be unobstructed to facilitate access for maintenance and emergency response, therefore permanent structures which restrict access and travel along the corridor would not be permitted. A ROW cleared of obstructions allows NGTL to monitor the pipeline through aerial and ground patrols, looking for vegetation discoloration, signs of unsafe or unauthorized activities, as well as natural hazards within the ROW. NGTL stated that use of a pipeline ROW is generally non-restricted however it requires consultation through one-call notification for activities causing ground disturbance or vehicular access as per the *Pipeline Damage Prevention Regulations*.

In response to concerns raised by Michel First Nation about access restrictions to the pipeline ROW during construction, NGTL noted that, during construction, fencing will be used for safety around open excavations, to protect environmentally sensitive features (e.g., wetlands, rare plants) and to prevent erosion (e.g., sediment fencing). The proposed tie-in work at the Clearwater Compressor Station will require temporary fencing of the construction area during construction. During the final phases of construction, a permanent fence will be erected around that facility. During operations, valve sites will be fenced. NGTL remains available to discuss site management measures further with Michel First Nation at Michel First Nation's request.

NGTL noted that Samson Cree Nation submitted that cumulative effects have already reduced opportunities for Samson Cree Nation members to exercise their Aboriginal and treaty rights "to an arguable point of infringement". NGTL stated that Canadian courts have repeatedly held that regulatory tribunals are not the appropriate forum for determining claims of treaty rights infringement. NGTL submitted that the Commission should not evaluate whether cumulative effects have resulted in an infringement on Samson Cree Nation's rights, rather the Commission should evaluate the Project in the context of existing and reasonably foreseeable cumulative effects to determine whether approval of the Project is in the public interest. NGTL submitted that concerns and arguments that are unrelated to that question are not relevant to the Commission's process.

With respect to Stoney Nakoda Nations' concerns about avoidance of pipeline ROW, NGTL stated that should Stoney Nakoda Nations provide it with specific feedback regarding avoidance

behaviours through ongoing engagement activities it will be considered in Project planning, as appropriate.

NGTL stated that the consultant's findings in the Stoney Nakoda Nations' reports about areas of "avoidance" by community members around industrial features are misleading because the consultant quantified "avoidance" based on interviews with community members about their "preferred conditions" for land use, not actual avoidance. NGTL stated that survey participants identified that they "prefer" areas with no other people, that are quiet and that are free from any signs of human activity, but that does not mean that they have an Aboriginal or Treaty right to exercise rights under those "preferred" conditions. NGTL stated further that, just because some community members claim that they "prefer" to avoid areas with features like pipeline ROWs, the evidence is clear that, in practice, many Indigenous land users do not avoid these features; they continue to use them. NGTL stated that most Indigenous peoples who were Intervenor, including Stoney Nakoda Nations, identified that TLRU activities currently occur throughout the Project area, including along the existing NGTL ROW.

NGTL stated that Stoney Nakoda Nations' quantification of amount of land that would be converted from 'available' to 'unavailable' for the exercise of Section 35 rights, is based on the assumption that Section 35 rights cannot be exercised on any lands within the "White Area" in Alberta or any lands in the "Green Area" where Crown dispositions (such as for pipeline ROWs) exist. NGTL stated, however, that Section 35 rights can be exercised on private lands within the "White Area" with the permission of the landowner, and NGTL's evidence is that Crown dispositions such as pipeline ROWs remain available for use, except for short periods during active construction.

With respect to Stoney Nakoda Nations' recommended measures to eliminate or reduce effects of the Project on ability of Stoney Nakoda Nations to exercise their Section 35 rights due to increased legal restriction, NGTL stated that locating the Project entirely on currently unavailable land as recommended, is not practical or feasible. NGTL stated that as this is a looping project, it has overlapped with existing NGTL dispositions to the greatest extent practical given operational maintenance considerations, required pipeline spacing requirements, NGTL routing criteria and constructability to ensure safe and efficient construction.

Crown land offsets and compensation

NGTL noted that several Intervenor requested that the Commission require NGTL to develop offset plans without providing details of these recommendations or why they are warranted for the Project. NGTL stated that to its knowledge the only project for which the Commission or its predecessor required offsets for disturbances on Crown land (for the purposes of addressing impacts on Indigenous peoples, as opposed to specific biophysical impacts such as on woodland caribou) was the Manitoba-Minnesota Transmission Line Project, a high-voltage, above-ground, power transmission line in southern Manitoba that will result in a permanent footprint on the land. NGTL noted that the Commission has since held that Crown land offsets are outside its legal mandate, in its decision for the NGTL McLeod River North Project.

With respect to concerns raised by O'Chiese First Nations, NGTL argued that O'Chiese First Nation has not explained how the Project could be modified to address their concerns apart from recommendations to offset Project disturbances with new lands possessing required means or by compensating O'Chiese First Nation. NGTL stated that neither recommendation is within the Commission's jurisdiction. NGTL stated that it has reasonably avoided and minimized potential effects of the Project on all Indigenous peoples, including O'Chiese First Nation,

through routing the Project primarily adjacent to an existing NGTL ROW where NGTL notes that O’Chiese First Nation claims that required means to exercise rights have already been removed.

NGTL also noted that several of the Intervenor’s recommendations would require NGTL to enter into agreements, provide funding or otherwise provide compensation for Project impacts. NGTL argued that the Commission has no legal authority to impose these types of conditions. NGTL stated that to the extent that such recommendations would give an Indigenous peoples control over when, or whether, NGTL has satisfied Project conditions (e.g., by requiring NGTL to reach an agreement with an Indigenous peoples), those recommendations would also effectively give that group a veto over the Project which NGTL argued is contrary to law. NGTL stated that the record demonstrates that the Project has been designed to create meaningful economic benefits for Indigenous peoples by providing contracting and employment opportunities to Indigenous-owned businesses and individuals, with a view to developing a suite of participation measures appropriate for the scope and scale of the Project.

Critical Infrastructure Defence Act

With respect to Stoney Nakoda Nations’ concerns with respect to the provincial *Critical Infrastructure Defence Act*, NGTL stated that concerns with and questions of interpretation regarding the *Critical Infrastructure Defence Act* are matters between Indigenous peoples and the Crown. NGTL stated that it does not view the *Critical Infrastructure Defence Act* as changing NGTL’s previously expressed views on Indigenous peoples’ ability to use NGTL ROWs.

7.5.8.4 Potential Project-Related Effects on Traditional Land and Resource Use Sites and Activities

NGTL stated that, to date, the information provided by Indigenous peoples has confirmed its assumption in the Environmental and Socio-Economic Assessment of general use of the Project area for hunting, fishing, trapping, plant harvesting, habitation, and spiritual or cultural sites for which the suite of mitigation measures in the Environmental Protection Plan was designed. NGTL stated that, as a result, the information provided by Indigenous peoples to date has not required new mitigation measures or changed the conclusions of the Environmental and Socio-Economic Assessment.

NGTL stated that, in some cases, Indigenous peoples declined to provide specific information to NGTL about TLRU sites, despite requests for such information by NGTL. NGTL stated that, in other cases, Indigenous peoples expressed concerns with NGTL’s request for more specific information, based on an incorrect perception that NGTL limited its TLRU assessment to site-specific considerations. NGTL stated that the distinction between site specific and non-site specific information arises in the context of mitigation. NGTL stated that, for activities such as hunting and gathering in general in the Project area, NGTL’s established suite of mitigation measures in the Environmental Protection Plan will avoid or minimize potential effects on those activities and associated resources. NGTL stated that it also considers implementing additional mitigation in specific, localized areas if warranted based on site-specific details or concerns raised by Indigenous peoples. NGTL stated that if Indigenous peoples provide specific locational information on a site of cultural importance, NGTL can overlay it with the construction footprint and evaluate whether there are ways to avoid or otherwise manage effects on that site through site-specific mitigation that is not currently set out in the Environmental Protection Plan. NGTL stated that, as a result, its request for “site specific” information is not in any way intended to diminish the importance of non-site specific input provided by Indigenous peoples, but rather

to ensure that NGTL is taking all reasonable steps to avoid, minimize or otherwise address potential impacts on TLRU.

NGTL stated that its evidence demonstrates that its assessment of potential Project effects on TLRU has considered all available information to date. NGTL stated that, as new information continues to be made available, it has committed to continue to review and consider that information, and will continue to document and address traditional knowledge and related concerns identified by Indigenous peoples through the Project's ongoing Aboriginal Engagement Program. NGTL further stated that, in the unlikely event that previously unidentified cultural, heritage or TLRU sites are discovered during construction, NGTL has proposed a Cultural Resource Discovery Contingency Plan to avoid or minimize potential effects on those sites. NGTL stated that these processes provide further assurances that the Project will be constructed in a manner that reasonably avoids or minimizes potential effects on TLRU.

NGTL stated that the Project is largely routed adjacent to an existing ROW to minimize incremental effects of the Project, and both the existing ROW and the new ROW will be available for use during operations. During Project construction, where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users will not be impeded from exercising their rights within the Project ROW. NGTL reiterates that the Project has been designed, and will be constructed and operated following applicable standards, industry best management practices and Project-specific mitigation identified in the Environmental and Socio-Economic Assessment and the Environmental Protection Plan.

NGTL stated it requires its contractors to develop a construction orientation for all personnel that include all facets of interaction, including safety, environment and cultural awareness. 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, history and traditional land use.

NGTL stated that it has designed the Project to reasonably avoid or minimize impacts on traditional land use. Reclamation and cleanup will be completed to achieve 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 evaluating the effectiveness of mitigation practices to achieve equivalent land capability supports the monitoring objective of ensuring the ability of the land to support various land uses similar to the uses that existed before construction, including TLRU. NGTL has committed to ongoing engagement throughout all phases of the Project and Indigenous peoples will have an opportunity to provide feedback post-construction through ongoing engagement with Regional Liaisons and TC Energy's Public Awareness Program. NGTL has committed to respond to any Indigenous peoples' concerns post-construction and address potential issues on a case-by-case basis.

NGTL stated that, following construction, it will implement access management measures where applicable to deter an increase in motorized public access along its ROW and any temporary construction access that intersect the Project ROW. With the exception of localized areas during the short period of active construction, the ROW will remain available for traditional use during construction and operation of the Project. Limited new permanent access is anticipated for the Project. Existing infrastructure will be used, where practical. 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 ROW of others. NGTL stated it will implement mitigation measures relevant to access management.

NGTL proposed mitigation measures to reduce the potential adverse effects of the Project on hunting, trapping, fishing and plant gathering including: providing potentially affected Indigenous peoples with the proposed Project construction schedule and maps; restricting all construction activities to the approved construction footprint; ensuring that all construction traffic adhere to safety and road closure regulations; and clearly marking all sensitive resources as identified on the Environmental Alignment Sheets or other specific environmental document and in the project specific mitigation tables prior to the start of construction activities. NGTL stated that, following clearing, it would re-mark all sensitive resources as necessary and supplement markings with signage. NGTL stated that Project personnel are not permitted to hunt or fish on the construction footprint and that NGTL would notify registered trappers at least 10 days prior to construction. NGTL also stated that gaps in windrows (i.e., grubbing piles, strippings, grade spoil, rollback, snow) and strung pipe will be left at identified trails.

NGTL noted that the CER has previously conditioned NGTL to file its project construction schedule at least 14 days prior to the commencement of construction and provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy. NGTL would not be opposed to a similar condition and associated filing timeframe for this Project. Additionally, NGTL stated that it has previously been conditioned to file construction progress reports which provides updates on construction progress and activities which Indigenous peoples can access through the CER's website. With regard to provision of information, the construction schedule will be provided to the engagement contacts identified by each respective Indigenous people that NGTL has been liaising with during the Project. NGTL is also available to discuss additional construction schedule notification contacts should any Indigenous peoples' request to do so.

NGTL noted that Piikani Nation stated that there are several TLRU activities that occur along the proposed ROW. NGTL stated that it requested additional information about the location of these site-specific activities during the hearing to confirm whether there will, in fact, be any overlap between the ROW and Piikani Nation's activities, and to determine whether additional mitigation could be implemented to avoid or minimize impacts on those activities. NGTL noted that Piikani Nation chose not to provide additional information to NGTL. NGTL stated that it has reasonably avoided, minimized or otherwise addressed potential impacts of the Project on Piikani Nation's TLRU based on the best information available to NGTL.

With respect to Stoney Nakoda Nations' recommended measures to eliminate or reduce Project effects on harvesting, NGTL noted that there is no non-visible method to construct a pipeline as suggested by Stoney Nakoda Nations, however NGTL stated it has proposed measures to reduce potential effects of the Project. NGTL stated that, during operations, signage and vegetation management is required due to required regulations. Fencing of above ground facilities is required for facility safety. NGTL stated it does not fence below ground facilities (e.g., the ROW) or gate access unless required to do so by regulators. NGTL stated that private landowners or grazing leaseholders may fence and gate across NGTL's ROW as per applicable provincial land use regulations. NGTL stated it does not view its Project to conflict with Stoney Nakoda Nations' stated principle of eliminating or reducing potential Project-related effects. NGTL stated that, while it is not feasible to construct a pipeline without disturbing soil and vegetation, and aboveground facilities require signage, fencing and gates to ensure public safety, NGTL has designed the Project to reasonably avoid or minimize impacts on traditional land use such that the Project area will be available for equivalent land use following construction. NGTL stated that except for localized areas during the single season of construction, the ROW will remain available for traditional use during construction and operation of the Project; that is, Project Footprint will be available land for traditional use, except for new fenced valve sites (approximately 1 ha).

NGTL stated that Stoney Nakoda Nations is best positioned to identify their perceptions of the Project. NGTL stated it does not assess impacts on individual perceptions, as these are inherently subjective. With respect to use of herbicides, NGTL stated it does not believe long-term studies on the use of chemicals in the environment is warranted given the scope and nature of the Project. In addition, as stated in the Environmental Protection Plan, use of herbicides on the construction footprint is prohibited unless otherwise approved by the Company. Should Stoney Nakoda Nations have more specific recommendations about how to improve the perception of the Project, NGTL is willing to consider them.

NGTL stated that its assessment considered its comprehensive suite of mitigation measures to reduce the potential adverse effects of the Project on the environment and on the use of those lands and resources by Indigenous peoples. NGTL noted that these mitigation measures include providing potentially affected Indigenous peoples with the Project construction schedule and maps so that potential conflicts between the short period of Project construction and TLRU can be reasonably avoided or minimized. NGTL stated that it receives delivery receipts for notifications sent to Indigenous peoples, therefore confirming delivery. NGTL stated that, with implementation of proposed mitigation measures, the Environmental and Socio-Economic Assessment concluded that the residual effects of the Project on TLRU will not be significant. NGTL stated that this conclusion is supported by its operating experience, as well as the evidence from Indigenous peoples that they continue to undertake TLRU activities throughout the Project area, including along other existing NGTL ROWs.

Hunting/Trapping

NGTL stated that Project personnel will be prohibited from hunting on the construction footprint, and from harassing, feeding, collection or possessing wildlife species.

NGTL stated that with the exception of localized areas during the short period of active construction, the ROW will remain available for Indigenous use during construction and operation of the Project. NGTL stated that it does not have an overarching policy regarding the safe and lawful use of firearms by Indigenous peoples and stakeholders.

NGTL stated that while Project-specific information for O'Chiese First Nation regarding moose harvesting was not available for assessment at the time of Application filing, the Environmental and Socio-Economic Assessment applied conservative assumptions to the best available information when establishing existing conditions. NGTL stated that that approach identified moose as a traditionally-harvested resource and hunting as a traditional activity. NGTL stated that moose were also included in the list of key indicators selected for wildlife and wildlife habitat assessment in the Environmental and Socio-Economic Assessment due in part to their importance as a traditionally-harvested species. In addition, NGTL noted that, on 12 June 2020, it and O'Chiese First Nation agreed upon the workplan and funding for a community-led traditional knowledge study for the Project which includes the opportunity to conduct fieldwork. NGTL stated that the Environmental Protection Plan will be updated prior to construction to include traditional land use sites, features and areas of use requiring site-specific mitigations, as determined with Indigenous peoples.

In response to concerns raised about safety of hunting along the ROW, NGTL stated that, in relation to areas in the vicinity of an active construction site and during operations on or in the vicinity of Project ROWs and/or fenced facility lands (leased or freehold), all of NGTL, Indigenous peoples, and non-Indigenous stakeholders are subject to a legal framework of federal legislation, case law and provincial laws of general application around the use of

firearms and hunting that addresses the interests of all parties. NGTL stated that this framework generally prohibits and deters intentional interference with lawful hunting and hunting preparation, while at the same time ensuring both that firearms licenses are issued in a culturally appropriate and safe manner, and that hunting activities are carried out in a manner that does not endanger or disregard the safety of others. NGTL stated that it has committed to certain Project-related mitigation measures including the provision of construction schedules and maps to potentially affected Indigenous communities and land users with a view to mitigating the risk associated with potentially adverse firearm-related interactions. NGTL confirmed that it itself does not have an overarching policy regarding the safe and lawful use of firearms by Indigenous peoples and stakeholders.

NGTL stated that it would notify registered trappers at least 10 days prior to construction. NGTL stated that registered trappers are also consulted throughout the Project via mail, phone or in-person consultation as required. NGTL sends the 10-day notice via registered mail to registered trappers and tracks receipt. NGTL noted TC Energy's Trapper Compensation Plan which reimburses senior trap line holders based on the three elements of Project notification, pre-construction consultation/notification and post-construction fur loss negotiation/compensation. NGTL will contact registered trappers and offer an in-person meeting prior to construction and construction notification to: review construction plans and timing through the trapline; discuss potential impacts that the Project may have on trapping activities, such as location of trap sets, trails, etc.; if applicable, discuss the options for compensation for damages to traps, cabins and fur harvest. NGTL stated that these in-person meetings will ensure that registered trappers are aware of the tentative timing of construction and will ensure that they will understand the notification they will receive in advance of construction. NGTL will notify registered trappers via registered mail at least 10 days prior to construction. The notification will include contact information for NGTL should the registered trappers have any questions or concerns.

With respect to Stoney Nakoda Nations' proposed measure to eliminate or reduce Project effects on hunting avoidance behaviours, NGTL stated that there is no non-visible method to construct a pipeline as suggested by Stoney Nakoda Nations, however NGTL has proposed measures to reduce potential effects of the Project. NGTL stated that, during operations, signage and vegetation management is required due to required regulations. Fencing of above ground facilities is required for facility safety. NGTL does not fence below ground facilities (e.g., the ROW) or gate access unless required to do so by regulators. NGTL stated that private landowners or grazing leaseholders may fence and gate across NGTL's ROW as per applicable provincial land use regulations.

NGTL stated that locating the Project entirely on currently unavailable lands is not practical or feasible. NGTL stated that as this is a looping project, it has overlapped with existing NGTL dispositions to the greatest extent practical given operational maintenance considerations, required pipeline spacing requirements, NGTL routing criteria and constructability to ensure safe and efficient construction.

NGTL indicated it would have various mitigation measures to decrease traffic concerns, such as restricting all construction activities to the approved construction footprint, adhering to safety and road closure regulations, implementing a Traffic Control management Plan and, where practical and applicable, using multi-passenger vehicles to transport crews.

For NGTL's reply concerning Project effects on wildlife and wildlife habitat, such as effects of the Project on Caribou, refer to Chapter 8.

Fishing

NGTL stated that Project personnel are prohibited from fishing on the construction footprint.

In response to concerns raised by Montana First Nation about increased access for recreational fishing, NGTL stated that NGTL has engaged with Montana First Nation and offered opportunities to collect and submit Project-specific information that would inform its understanding of potential impacts or concerns. Information gathered through ongoing engagement will be considered for incorporation into all phases of the Project, as appropriate. NGTL is committed to continue discussions regarding the community's concern about potential impacts during construction, as well as the mitigation measures to minimize any such impacts.

NGTL stated that, in addition to resource-specific mitigation, it will provide potentially affected Indigenous peoples with the proposed Project construction schedule and maps.

For NGTL's reply concerning Project effects on fish and fish habitat, refer to Chapter 8.

Gathering/Harvesting

NGTL stated that it would provide potentially affected Indigenous peoples with the proposed Project construction schedule and maps to reduce the potential adverse effects of the Project on traditional plant gathering.

NGTL stated that it accounted for concerns regarding loss of culturally important plants, including plants used for medicinal and ceremonial purposes. NGTL stated it is planning to construct the Project in winter under frozen conditions with the intent to implement minimal surface disturbance construction techniques where suitable conditions allow. NGTL stated that these techniques will reduce potential adverse effects on culturally significant plants used for medicine or ceremony by limiting ground disturbance to the trench line and graded areas so that the vegetated root mat and seedbed remain undisturbed and any potential impacts are minimized. NGTL stated that outside trench line and graded areas, vegetation is cleared but not grubbed, and strippings are not salvaged. NGTL also stated that standard industry practices and avoidance measures, along with project-specific mitigation measures outlined in the Environmental Protection Plan will be implemented during Project activities to reduce or avoid environmental effects on culturally significant plants used for medicine or ceremony.

NGTL stated that Clearing is planned for winter construction and minimal surface disturbance construction methods will be used where grading is not needed to promote rapid natural vegetation regeneration where applied.

NGTL stated that its preferred approach for restoration in non-agricultural areas on level terrain where erosion is not expected, is through the use of natural recovery for most areas, which will promote the ingress of traditional use plants. NGTL stated that when there is a need to seed areas such as slopes for erosion control, NGTL has used seed mixes to aid in re-establishing vegetative growth on its ROWs. NGTL stated that native seed mixes for projects in Alberta are generally sourced from NGTL approved suppliers in Western Canada who seek out regionally grown sources. NGTL notes that Traditional use plant species occur naturally in a variety of habitats within the Local Assessment Area; those species identified by traditional knowledge information gathered through the Project's Aboriginal Engagement Program were listed and discussed in the Project Environmental and Socio-Economic Assessment. NGTL stated that where Indigenous peoples have provided site-specific information for current plant harvesting

sites identified as sensitive resources within the Project footprint they will be clearly marked prior to construction, as noted in the Project Environmental and Socio-Economic Assessment.

Where natural recovery is not preferred, disturbed areas will be seeded as per site requirements and as specified by the Environmental Inspector(s) or designate(s). On Crown land, native seed mixes are based on the specific ecoregion, and are approved by the Alberta Environment and Parks Land Use Officer. NGTL stated it can provide the planned seed mixes for Crown land once approved by Alberta Environment and Parks to interested Indigenous peoples upon request. For privately owned lands, seed mixes are selected based on input from landowners and availability of seed at the time of reclamation.

NGTL stated that it promotes the natural regeneration of native vegetation to encourage early successional species consistent with the surrounding vegetation community. Minimal surface disturbance construction allows for rapid regeneration of vegetation from the undisturbed roots, seeds and propagules that remain in the soil.

With respect to concerns about introduction of invasive weeds, NGTL stated that all equipment, including mats, must arrive at the Project site clean and free of soil or vegetative debris. Equipment will be inspected by the Environmental Inspector(s) or designate(s), and if deemed to be in appropriate condition will be approved for use and identified with a suitable marker or tag. Any equipment, including mats, which does not arrive in appropriate condition shall not be allowed on the construction footprint until it has been cleaned, re-inspected by the Environmental Inspector(s) or designate, and deemed suitable for use.

NGTL stated that where Indigenous peoples have provided site-specific information for current plant harvesting sites identified as sensitive resources within the Project footprint, those sites will be clearly marked prior to construction. NGTL can provide the planned seed mixes for Crown land once approved by Alberta Environment and Parks to interested Indigenous peoples upon request. NGTL stated that if previously unidentified locations with listed weed infestations are found on the construction footprint during construction, the Environmental Inspector(s) or designate(s) will be contacted and will establish the appropriate mitigation or control procedures prior to continuing construction activities in the area.

NGTL noted that construction of the Project is planned to occur under frozen ground conditions and it plans to employ minimal surface disturbance construction methods where suitable to reduce impacts to soil structure and promote rapid regeneration of native vegetation. These techniques will reduce potential adverse effects on culturally significant plants used for medicine or ceremony by limiting ground disturbance to the trench line and graded areas so that the vegetated root mat and seedbed remain undisturbed and any potential impacts are minimized. NGTL stated it will implement mitigation measures outlined in the Environmental Protection Plan for all areas to prevent the spread of weeds from one area to another as a result of the Project.

NGTL stated that the Project will follow NGTL's post-construction monitoring methodology as outlined in the Environmental and Socio-Economic Assessment and/or other Project-specific environmental documents, which ensures compliance with specific reclamation performance expectations and applicable regulatory requirements. Mitigation methods will be based on the principle that success of land reclamation is measured against adjacent representative site conditions while taking into consideration the status of reclamation of the time of assessment. NGTL noted that, in forested lands, equivalent land capability may be achieved as early as second-year post-construction, but more commonly in years four to five post construction.

NGTL stated that it will clearly mark identified rare plant locations prior to the start of Project construction. If previously unidentified rare plants or rare ecological communities are found on the construction footprint prior to or during construction, NGTL will implement the Plant Species and Ecological Communities of Concern Discovery Contingency Plan.

NGTL stated that through its adaptive management approach to reclamation, if post-construction monitoring indicates a project is not on a trajectory to reach reclamation goals, active reclamation may be considered as one potential mitigation to ensure reclamation goals are achieved.

NGTL stated that vegetation management along the existing adjacent Edson Mainline ROW, including regular brushing of woody vegetation, will continue until the existing pipelines in this corridor are decommissioned or abandoned. At that time, an assessment of vegetation recovery on the existing Edson Mainline ROWs will be completed.

NGTL stated that its objective for post-construction reclamation is to achieve equivalent land capability within the construction footprint (excluding above-ground facilities), providing the ability of the land to support various land uses similar to the uses that existed before construction, but not necessarily identical. Success of reclamation is measured during post-construction monitoring assessments against adjacent representative site conditions, while taking into consideration the status of reclamation at the time of assessment. In forested lands traversed by the Project, NGTL will reclaim the Project Construction Footprint such that early seral plant communities similar to those in adjacent forested areas are able to establish on the construction footprint to support the development of future forests. The implementation of minimal disturbance construction methods for the Project and reducing operational ROW maintenance brushing to 5 m either side of centreline on the new ROW, will allow recovering vegetation to develop a much higher diversity and cover of native species than is currently present on the existing Edson Mainline ROW leading to future forests which can support wildlife and multiple uses in the area such as recreation, hunting, trapping, gathering.

For NGTL's reply concerning Project effects on vegetation, refer to Chapter 8.

Trails and Travelways

NGTL proposed mitigation measures to reduce potential adverse effects of the Project on trails and travelways. NGTL stated it would provide Indigenous peoples with the proposed Project construction schedule and maps and restrict construction activities to the approved construction footprint. NGTL noted that prior to the start of construction activities, it would clearly mark all sensitive resources, including identified traditional use trails that intersect the Footprint. NGTL further noted that, following clearing, it would re-mark all sensitive resources as necessary and supplement markings with signage. NGTL confirmed that, following construction, it will implement access management measures where applicable to deter an increase in motorized public access along new pipeline ROW, on new temporary construction access, and into existing linear disturbances that intersect the Project ROW. NGTL stated that it will not implement access control measures on trails or travelways identified by Indigenous peoples that are intersected by the Project footprint.

TLRU Sites

NGTL stated that, through IRs to Indigenous peoples who were Intervenor, it sought additional detail regarding the location, nature, extent and seasonality of use of areas identified or

mentioned in written evidence and oral Indigenous knowledge testimony from Kainai Nation (Blood Tribe), Ermineskin Cree Nation, Michel First Nation, O'Chiese First Nation, Piikani Nation, Stoney Nakoda Nations, and Whitefish (Goodfish) Lake First Nation #128. NGTL stated that, in their written evidence and response to IRs, Kainai Nation (Blood Tribe), Michel First Nation, O'Chiese First Nation, and Piikani Nation did not provide any additional information regarding the locations and nature of the sites included in their written evidence, and the responses received did not provide any further detail that would assist in Project planning. NGTL noted that Ermineskin confirmed that the majority of the traditional use sites identified by Ermineskin Cree Nation are not intersected by the proposed Project and fall within the Local Assessment Area or Regional Assessment Area.

NGTL stated that it requires specific locational data for traditional use and culturally important sites in order to determine if site-specific mitigation measures are required and for discussions with Indigenous peoples regarding potential mitigation options. NGTL noted that if an Indigenous person has information regarding known sites within the Project area, NGTL encourages the community to share that information with it immediately so that appropriate mitigation discussions can occur, if warranted.

NGTL stated that traditional use sites or features which require additional mitigation will be included in the Environmental Protection Plan and Environmental Alignment Sheets filed prior to construction. If TLRU sites not previously identified are found on the construction footprint during construction, NGTL will implement the Cultural Resources Discovery Contingency Plan. NGTL acknowledged that Indigenous peoples may have concerns with respect to potential impacts to intangible values related to use of the land. NGTL stated that concerns of this nature that have been raised to date have been included in the Environmental and Socio-Economic Assessment. NGTL stated that it will continue to document this information as it is made available and through its Aboriginal Engagement Program, will continue to seek to understand and address these concerns throughout the life cycle of the Project. The Environmental and Socio-Economic Assessment considered potential Project effects on values which often support intangible values related to use of land, such as resource harvesting, visual aesthetics, habitation sites, and cultural or spiritual sites or practices. NGTL stated that with the implementation of recommended mitigation, adverse effects of the Project on these values are predicted to be not significant.

NGTL stated it undertakes to identify TLRU sites, including ceremonial sites, and develop appropriate site-specific mitigation measures prior to construction in order to avoid or reduce effects on active TLRU sites. NGTL stated that Project-specific mitigation measures outlined in the Environmental Protection Plan will be implemented to avoid or reduce Project-related effects on TLRU sites. NGTL stated that mitigation measures include: providing potentially affected Indigenous peoples with the proposed Project construction schedule and maps; clearly marking all sensitive resources as identified on the Environmental Alignment Sheets, Environmental Figures and/or other Project-specific environmental documents and in the Project-specific mitigation tables in the Environmental Protection Plan, prior to the start of construction activities; re-marking all sensitive resources after clearing as necessary and supplementing markings with signage. NGTL stated that in the event TLRU sites are identified by Indigenous peoples that have the potential to interact with Project activities, NGTL will engage in discussions with the appropriate Indigenous people regarding the development of site-specific mitigation measures. NGTL stated it will update the Environmental Protection Plan prior to construction to include TLRU sites requiring additional and/or site-specific mitigation measures following further discussion with appropriate Indigenous peoples. NGTL stated that mitigation to reduce effects on TLRU sites may include avoidance of the site by narrowing the construction footprint,

relocation of the site or other measures as appropriate, and as based on discussion with potentially affected Indigenous peoples. Additionally, NGTL requires that all personnel working on the Project complete the construction orientation which includes a cultural awareness component.

NGTL confirmed that a construction orientation will be delivered to all personnel working on the Project and will include information regarding the Cultural Resources Discovery Contingency Plan, including the identification of TLRU sites and activities during construction. NGTL stated that knowledge and input provided by Indigenous peoples during engagement for the Project is considered in the development of Project materials, including the construction orientation, and will include incorporation of examples provided by Indigenous peoples of known and potential TLRU sites that could be encountered during construction. NGTL stated that it is willing to provide a copy of the orientation materials, upon request from a potentially affected Indigenous person, and any feedback received by NGTL will be considered in the finalization of the orientation. NGTL stated that the construction orientation will include information regarding the potential for encountering unanticipated TLRU sites during construction, and the steps involved in implementing the Cultural Resources Discovery Contingency Plan. Known TLRU sites that require mitigation during construction will be discussed, and descriptions and pictures of potential TLRU sites that could be encountered during construction will be provided as examples. Through participation in and completion of the orientation, NGTL expects its personnel to have a base level understanding and awareness to identify potential TLRU sites during construction and to initiate the implementation of the necessary steps outlined in the Cultural Resources Discovery Contingency Plan, including suspending work immediately and informing the Environmental Inspector(s) or designate(s) of any suspected finds.

Regarding Montana First Nation stovepipes, NGTL noted that these sites are located outside the Project Development Area and physical disturbance of these sites by Project activities is not anticipated. Nevertheless, NGTL stated that it will note the presence of these sites in proximity to the Project Development Area to mitigate potential Project-related effects that may extend into the Local Assessment Area.

NGTL stated that it will provide Indigenous peoples with the proposed Project construction schedule and maps to reduce potential effects on the use of cultural and heritage resources, camps and ceremonial sites, and avoid potential conflicts between construction crews and traditional users.

In response to Kainai Nation (Blood Tribe), Samson Cree Nation, and Stoney Nakoda Nations' concerns regarding Project effects on sacred and cultural places and occupancy sites, NGTL stated that its Environmental and Socio-Economic Assessment considered potential Project effects on values which often support intangible values related to use of land, such as cultural or spiritual sites or practices. NGTL stated that with the implementation of recommended mitigation, adverse effects of the Project on these values are predicted to be not significant. NGTL acknowledged that Indigenous peoples may have concerns with respect to potential impacts to intangible values related to use of the land. NGTL stated that concerns of this nature that have been raised to date have been included in the Environmental and Socio-Economic Assessment. NGTL stated that it will continue to document this information as it is made available and through its Indigenous engagement program, it will continue to seek to understand and address these concerns throughout the life cycle of the Project.

NGTL noted that Stoney Nakoda Nations identified cultural resource areas in the vicinity of the Project in their written evidence along with a request to avoid those areas. NGTL stated that,

due to the generality of the information provided by Stoney Nakoda Nations and the location of the existing pipeline ROWs, it sought additional detail regarding the location of the specific sites and the nature, extent and use of the areas identified. NGTL stated that Stoney Nakoda Nations confirmed that Cultural Resource Area 1 had not been validated through field assessment and that the location information provided by Stoney Nakoda Nations was mapping of general areas with no site-specific details. NGTL stated that it has not received any further information from Stoney Nakoda Nations on specific sites or potential effects within their cultural resource areas that would assist in informing Project routing or mitigation measures. NGTL stated that, upon receipt of additional information from Stoney Nakoda Nations, it will be reviewed in the context of the Environmental and Socio-Economic Assessment in order to determine if additional or site-specific mitigation measures may be required, including micro-routing.

In response to Stoney Nakoda Nations' proposed measures to eliminate, reduce, and control Project effects to sacred and cultural places and their measure to construct, operate, and maintain the Project to eliminate the changes brought to the physical and aesthetical attributes of the land containing Stoney Nakoda Nations cultural areas, NGTL stated that there is no non-visible method to construct a pipeline as suggested by Stoney Nakoda Nations, however NGTL has proposed measures to reduce potential effects of the Project. NGTL stated that, during operations, signage and vegetation management is required due to required regulations. Fencing of above ground facilities is required for facility safety. NGTL does not fence below ground facilities (e.g., the ROW) or gate access unless required to do so by regulators. NGTL stated that private landowners or grazing leaseholders may fence and gate across NGTL's ROW as per applicable provincial land use regulations.

NGTL stated it does not view its Project to conflict with Stoney Nakoda Nations' stated principle of eliminating or reducing potential Project-related effects. NGTL stated that while it is not feasible to construct a pipeline without disturbing soil and vegetation, and above ground facilities require signage, fencing and gates to ensure public safety, it has designed the Project to reasonably avoid or minimize impacts on traditional land use such that the Project area will be available for equivalent land use following construction. NGTL stated that except for localized areas during the single season of construction, the ROW will remain available for traditional use during construction and operation of the Project. NGTL stated that the Project Footprint will be available land for traditional use, except for new fenced valve sites (approximately 1 ha).

With respect to Stoney Nakoda Nations' proposed measure to reduce adverse effects by reducing the alteration of Stoney Nakoda Nations' cultural activities, NGTL stated that it has designed the Project to reasonably avoid or minimize impacts on traditional land use.

With respect to reducing the displacement of ceremonial, cultural, and sacred sites, NGTL stated that during Project construction, where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users will not be impeded from exercising their rights within the Project ROW. NGTL stated it remains available to discuss access management planning with Stoney Nakoda Nations and once draft access management plans are available can share plans with Stoney Nakoda Nations for input, upon request.

In response to Stoney Nakoda Nations' proposed measure to reduce adverse effects on negative perceptions of the Project due to construction, operation, and maintenance activities, NGTL stated that it views that Stoney Nakoda Nations is best positioned to identify their perceptions of the Project. NGTL stated that it does not assess impacts on individual perceptions, as these are inherently subjective. NGTL stated that it does not believe long-term studies on the use of chemicals in the environment is warranted given the scope and nature of

the Project. In addition, as stated in the Environmental Protection Plan, use of herbicides on the construction footprint is prohibited unless otherwise approved by the Company. NGTL stated that should Stoney Nakoda Nations have more specific recommendations about how to improve the perception of the Project, NGTL is willing to consider them.

Regarding Stoney Nakoda Nations’ proposed measure to locate the Project on existing unavailable land/occupied Crown land, NGTL stated that locating the Project entirely on currently unavailable lands is not practical or feasible. NGTL stated that as this is a looping project, it has overlapped with existing NGTL dispositions to the greatest extent practical given operational maintenance considerations, required pipeline spacing requirements, NGTL routing criteria and constructability to ensure safe and efficient construction.

With respect to Stoney Nakoda Nations’ proposed measure to develop and deliver cultural awareness training for NGTL staff related to Stoney Nakoda Nations’ culture and to promote preservation of ceremonial, culture and sacred places, NGTL stated that Project Contractors are required to develop a construction orientation for all personnel to ensure safe and respectful conduct in all work. These orientation cover topics including safety, environment and cultural awareness. NGTL 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.

In response to Stoney Nakoda Nations’ reference to compensation, NGTL stated that compensation is outside of the scope of this proceeding.

NGTL stated that the traditional harvesting camp referenced by Whitefish (Goodfish) Lake First Nation #128 is located outside of the Project Development Area and is not anticipated to be directly affected by Project activities. NGTL stated that during construction, access 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. NGTL stated it will implement the Traffic Control Management Plan, which includes access control measures (e.g., signage, road closures, restrictions, access control) to manage and control Project-related construction traffic and to reduce unauthorized motorized access. Following construction, NGTL will implement access management measures where applicable to deter an increase in motorized public access along its pipeline ROW, and any temporary construction access that intersect the Project ROW.

7.5.8.5 Cumulative Effects on Traditional Land and Resource Use

NGTL submitted that, with the implementation of mitigation, residual cumulative effects are not expected to greatly reduce or eliminate the ability of Indigenous peoples to conduct TLRU activities in the Regional Assessment Area. NGTL submitted an assessment of the potential residual cumulative effects on TLRU as summarized in Table 7-7:

Table 7-7: Residual Cumulative Effects Characterizations

Residual Cumulative Effect	Residual Cumulative Effects Characterization
Change in Availability of Traditional Resources for Current Use	The Project will result in the direct loss or alteration of habitat that supports traditional wildlife and vegetation resources for current use. The Project will also result in effects to wildlife movement, increased mortality risk and

	indirect effects from sensory disturbance that may further alter the distribution and abundance of wildlife species. Habitat loss or alteration associated with construction of the Elk River and Alford Creek Sections will largely be temporary because areas disturbed by the Project components will be reclaimed following completion of construction activities. The Project is expected to make a low magnitude contribution to residual cumulative effects because the areas to be developed represents a minor proportion of habitat available in the Regional Assessment Area.
Change in Access to Traditional Resources or Areas for Current Use	The Project might result in changes in access conditions to traditional resources or areas through direct loss or alteration of trails and travelways, restrictions on the ability to travel to and through current use areas, or through indirect effects of sensory disturbance. Changes in access associated with construction of the Elk River and Alford Creek Sections, if they occur, will be localized and restricted to the construction phase. The Project is expected to make a low magnitude contribution to residual cumulative effects because effects will be largely short-term and localized and because the areas to be developed represent a minor proportion of the overall Regional Assessment Area and parallel existing linear corridors.
Change in Current Use Sites or Areas	The Project might result in changes in current use sites or areas as a result of vegetation clearing activities, or indirectly through sensory disturbance. Changes in current use sites or areas associated with construction of the Elk River and Alford Creek Sections will be short-term in duration and reversible following clean-up and reclamation. The Project is expected to make a low magnitude contribution to residual cumulative effects because effects will be largely short-term and localized and because the areas to be developed represent a minor proportion of the overall Regional Assessment Area and parallel existing linear corridors.

NGTL stated that its cumulative effects assessment methodology follows the Canadian Environmental Assessment Agency’s Technical Guidance for Assessing Cumulative Effects under the CEAA 2012 and the NEB Filing Manual. NGTL stated that it assumes that other companies and other NGTL projects and activities considered (i.e., not the Project itself) will employ similar mitigation measures as those proposed by NGTL to control effects on the environment from the specific project. NGTL stated that cumulative effects are minimized with the implementation of design and construction measures, when feasible, including: maximizing the use of adjacent existing ROW and reduce the width of additional clearing as much as possible (the Elk River Section and Alford Creek Sections parallel existing or proposed linear disturbances for approximately 83 per cent and 88 per cent of their lengths, respectively); avoiding construction during critical wildlife timing windows when feasible; and adhering to the approved construction footprint and access.

NGTL stated that it recognizes the interests of Indigenous peoples in all aspects of Project activities and, in particular, environmental protection. NGTL stated that information gathered through ongoing engagement will be considered for incorporation into all phases of the Project, as appropriate. NGTL stated that it is committed to continue discussions regarding the community’s concern about cumulative effects, as well as the mitigation measures to minimize any such impacts.

NGTL stated that it acknowledges that some Indigenous peoples have experienced changes in wildlife and wildlife habitat in the region over the past decades, largely due to developments such as residential and agricultural expansions, forestry and upstream oil and gas. NGTL stated that this existing baseline formed the basis for the effects assessment in its Environmental and Socio-Economic Assessment, including the cumulative effects assessment. NGTL stated that, to the extent that the Project's effects will overlap with the effects of existing or reasonably foreseeable future developments, these effects were thoroughly assessed in the cumulative effects assessment in its Environmental and Socio-Economic Assessment.

With respect to the spatial boundaries selected by NGTL for its cumulative effects assessment, NGTL stated that it selected its regional assessment area based on a boundary of predicted residual effects of the Project on a valued component. NGTL then extended that boundary to reflect potential effects on that valued component that might interact with the effects of other human activities.

NGTL stated that Samson Cree Nation submitted a regional cumulative effects assessment in their written evidence rather than a cumulative effects assessment based on the Project, and stated that project applications before the CER are not required to follow methodological conventions of regional cumulative effects assessments.

NGTL stated that, while Indigenous peoples have alleged that they have experienced significant effects from past development, NGTL's Environmental and Socio-Economic Assessment found that cumulative effects related to the Project are not significant based on accepted environmental assessment methodologies.

7.5.9 Subsection 35(1) of the *Constitution Act, 1982*

7.5.9.1 Government of Canada's Consultation Process with Indigenous Peoples

NGTL stated that it is their understanding that the MPMO is the Crown Consultation Coordinator for the Project, and that the Crown intends to build on existing relationships, and use the information submitted by Indigenous intervenors and commenters, as well as the proponent, to the hearing record to inform its consultation with Indigenous peoples.

NGTL stated that it views its engagement as distinct from and complementary to Crown consultation. NGTL stated that it provides summaries and records of its engagement to the CER in accordance with the guidance in the Filing Manual and the CER's process.

NGTL argued that the courts have been clear that the duty to consult:

- belongs to the Crown and not to the proponent, except to the extent the Crown delegates procedural aspects to the proponent;
- does not require a project proponent to offer any particular form of accommodation to Indigenous peoples;
- does not provide any Indigenous peoples with an effective veto over a proposed project; and
- includes a reciprocal onus on Indigenous peoples to carry their end of the consultation, make their concerns known, and to try to reach some mutually satisfactory solution.

NGTL also argued that Courts have also held that the Crown's fiduciary duty to Indigenous peoples must be balanced against the Crown's responsibilities to all Canadians and that decision makers should balance societal and Indigenous interests in making decisions that may affect Indigenous claims.

NGTL further noted that in *Clyde River (Hamlet) v Petroleum Geo-Services Inc. and Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, the SCC acknowledged that the NEB had the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures. NGTL noted the SCC also acknowledged that the NEB had the requisite technical expertise to assess the impacts of proposed projects and determine what accommodation measures may be available.

NGTL stated these cases acknowledge the Crown's ability to rely on the NEB (now CER) regulatory assessment process to partially or completely fulfill its duty to consult, but affirm that the ultimate responsibility for ensuring the adequacy of consultation remains with the Crown.

With respect to Driftpile Cree Nation and Louis Bull Tribe's submission that United Nations Declaration on the Rights of Indigenous Peoples informs the Crown's duty to consult with Indigenous peoples, NGTL stated that no Canadian court has found that United Nations Declaration on the Rights of Indigenous Peoples changes the scope of the duty to consult. NGTL stated that, while the duty to consult requires the Crown to make good faith attempts to understand and address an Indigenous people's concerns, with the ultimate goal of resolving those concerns, courts have continued to emphasize that Indigenous peoples do not have a veto over project developments. NGTL stated that contrary to Driftpile Cree Nation and Louis Bull Tribe's submissions, while the United Nations Declaration on the Rights of Indigenous Peoples includes a requirement for "free, prior and informed consent" from Indigenous peoples, the lack of "consent" from an Indigenous people does not necessarily mean that the Crown has failed to discharge its legal obligations to consult and, where appropriate, accommodate.

NGTL stated that it disagrees with Driftpile Cree Nation and Louis Bull Tribe's recommendation regarding the Crown's future consultation processes with Indigenous peoples. NGTL stated that the scope and process for future consultation between the Crown and Indigenous peoples should be left within the discretion of the Crown. NGTL stated that it is the Crown, not NGTL or the Commission, that owes the duty to consult. NGTL further stated that neither NGTL nor the Commission are familiar with the details of the Crown's consultation to date outside of the CER hearing process, which will inform future Crown consultation. In these circumstances, it would be inappropriate for NGTL or the Commission to direct how future Crown consultation should occur.

7.5.9.2 Potential Impacts of the Project on Indigenous and Treaty Rights

NGTL noted that neither case law nor the NEB Filing Manual require proponents to conduct an analysis of Project impacts on Section 35 rights separate from TLRU. NGTL stated its assessment complied with all applicable legal requirements, and assessed potential impacts on Indigenous peoples based on the best information available, including all information provided to date by Indigenous peoples about how they consider that they might be affected by the Project.

NGTL stated that the Project Environmental and Socio-Economic Assessment considered potential effects of the Project on Aboriginal and Treaty rights through an assessment of effects on TLRU, in accordance with the NEB Filing Manual, including indicators such as availability of

access to sites and resources as well as impacts on relevant biophysical components. NGTL stated that this assessment considered publicly available information about Aboriginal land and resource use in the Project area, as well as all information provided to NGTL through its Aboriginal Engagement Program.

NGTL stated that its assessment of TLRU considered Project effects on TLRU activities, not simply the environmental resources that those activities rely on, such as resource harvesting activities, use of trails and travelways, habitation sites, and cultural and sacred sites. NGTL disagreed with Intervenor's characterizations that its assessment was limited to biophysical impacts and argued that its assessment went far broader than biophysical impacts. NGTL stated that its assessment of Project effects on TLRU, in conjunction with the information provided directly by intervenors in this proceeding about impacts on their rights and interests, provides more than sufficient information to allow the Commission to assess how the Project will affect Aboriginal and Treaty rights. NGTL further stated that the evidence demonstrates that the Project will not have significant effects on TLRU and, by extension, the exercise of Aboriginal and Treaty rights.

NGTL argued that it has reasonably addressed potential impacts on Indigenous interests, TLRU, and by extension, Aboriginal and Treaty rights.

NGTL argued that, to the extent Indigenous peoples assert rights that might be affected by the Project and that were not captured in NGTL's TLRU assessment, the onus is on Indigenous peoples to explain what those rights are and how those rights might be affected. NGTL argued that, beyond broad assertions of rights, no intervenor provided evidence demonstrating potential effects from the Project beyond effects on TLRU.

NGTL noted O'Chiese First Nation's argument that the Project does not recognize or respect O'Chiese First Nation Law and Governance because the Project will remove the required means for their members to harvest resources. NGTL stated that, given the meaning of required means as defined by O'Chiese First Nation (perceived physical attributes required to exercise rights, including land with no disturbance, noise or other people), their argument could be applied to any incremental disturbance in their territory. NGTL argued that O'Chiese First Nation has not explained how the Project could be modified to address these concerns, apart from vague recommendations to "offset" Project disturbances with new lands possessing "Required Means" or by "compensating" O'Chiese First Nation . NGTL noted that neither option is within the Commission's jurisdiction. NGTL added that the evidence demonstrates that NGTL has already reasonably avoided and minimized potential effects of the Project on all Indigenous peoples, including O'Chiese First Nation , such as through routing the Project primarily adjacent to an existing NGTL right-of-way where O'Chiese First Nation claims the "Required Means" to exercise rights have already been removed.

7.6 Views of the Commission

The Commission values the participation, knowledge, and information that Indigenous peoples bring to the hearing process. The Commission acknowledges that the First Nation communities who participated in the hearing are signatories to Treaty 6, Treaty 7, and Treaty 8, which cover most of their traditional lands in western Canada, and the Métis peoples whose homes and traditional lands within their historic homeland also fall within those three treaty regions. The Commission thanks all participants in the GH-001-2019 hearing and, in particular, Driftpile Cree Nation, Apetokosan (Kelly Lake Métis Settlement Society), Louis Bull Tribe, O'Chiese First

Nation, Papaschase Cree Nation, Papaschase Nation, Piikani Nation, Samson Cree Nation, and Bearspaw First Nation, Chiniki First Nation and Wesley First Nation of the Stoney Nakoda Nations for sharing their knowledge during the oral Indigenous knowledge sessions.

7.6.1 NGTL's Engagement with Indigenous Peoples

The Commission finds the design and implementation of NGTL's engagement activities to this point to have been adequate. Having assessed all of the evidence on the record and taking into account NGTL's engagement commitments and the Commission's conditions, the Commission is of the view that NGTL has 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 notes that engagement efforts undertaken by a proponent with Indigenous peoples are considered within the context of the expectations set out in the Filing Manual. The requirements contained in the Filing Manual acknowledge that the 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 earlier stages of development. The Filing Manual provides the CER's expectations, and provides a baseline and consistent framework for proponents to follow. The Commission expects companies to design and implement their engagement activities with regard to the nature, scope and magnitude of a project's potential impacts. Where there is a greater risk of more serious potential impacts on the rights and interests of Indigenous peoples, the Commission has proportionally greater expectations of the companies' engagement with potentially impacted Indigenous peoples. In contrast, where there is a remote possibility of an impact on rights or interests of Indigenous peoples, or where the potential impacts are minor in nature, the proponent's engagement would generally not be expected to be as extensive. The CER also expects companies to continue effective engagement activities with Indigenous peoples during the entire Project lifecycle.

In assessing the engagement undertaken by NGTL with Indigenous peoples for the Project, 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 peoples; establishing an engagement approach tailored to meet a community's specific needs; implementing engagement activities; and, responding to questions and concerns.

In July 2018 NGTL began engaging with Indigenous peoples it identified as being potentially impacted by some portions of the Project. NGTL commenced engagement activities with additional Indigenous peoples identified by the MPMO in March 2019 (see Section 7.1). NGTL's evidence demonstrates that it engaged with all of the potentially impacted Indigenous peoples as identified on the Crown's list. The Commission notes that there were Indigenous peoples who were Intervenor status who were not identified by NGTL or the Crown (i.e., Driftpile Cree Nation, Gift Lake Métis Settlement, Papaschase Cree Nation, Papaschase Nation, Peavine Métis Settlement, Whitefish (Goodfish) Lake First Nation #128, Whitefish Lake First Nation #459). The Commission acknowledges that these communities were not originally identified as being potentially impacted by the Project or engaged during the early planning stages, but notes they were granted Intervenor status and were able to participate in the hearing and share their concerns. The Commission encourages these communities to share any information with the CER regarding their traditional territory so that they can be appropriately identified during the early planning stages on future projects (for example, the Metis Settlements General Council has recently provided the CER with a consultation protocol that will allow the Metis Settlements

to be appropriately identified). Notwithstanding their delayed participation into the consultative process for this Project, the Commission is of the view that the hearing process provided adequate opportunities for potentially affected Indigenous peoples, including those not originally identified as being impacted by the Project or engaged during the early planning stages, to raise concerns and finds that the concerns raised by these Intervenor can be adequately addressed.

The Commission's hearing process acts as a necessary and important check on the engagement conducted by NGTL by providing potentially affected Indigenous peoples an additional avenue to explain their concerns about the Project and have those concerns considered by the Commission. The Commission notes NGTL's commitment to continue to engage all identified Indigenous peoples 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 expects of all companies, to continue to learn about any concerns that Indigenous peoples may have about the Project, and to discuss ways to address those concerns. The Commission also encourages Indigenous peoples with an interest in the Project to continue to engage with NGTL. This expectation extends to all subsequently discussed issues and concerns raised by Indigenous peoples.

The Commission acknowledges concerns regarding resource capacity and consultation that were raised by Indigenous peoples during the hearing, including concerns that Indigenous peoples had neither the time nor capacity to fully participate in Project engagement activities. The Commission notes NGTL's engagement in preliminary discussions with potentially affected Indigenous peoples to understand their specific capacity and resourcing needs and to work with interested Indigenous peoples to develop Project-specific work plans and budgets. The Commission further notes that NGTL's offered capacity funding to potentially affected Indigenous peoples to cover costs of engaging, to identify any issues and concerns they may have with the Project, and to discuss mitigation strategies with NGTL. The Commission notes NGTL's statement that it negotiated the appropriate amount of capacity funding for each community on a case by case basis, and that NGTL provided capacity funding for 19 Indigenous peoples to conduct traditional knowledge studies. The Commission expects NGTL to continue with its engagement to address Indigenous people's requests for appropriate time to review Project documents, such as Environmental Protection Plans.

Overall, the Commission finds that NGTL's engagement approach is responsive to concerns raised about resource capacity and that NGTL consistently sought to provide Indigenous peoples with clear, relevant and timely information. The Commission also notes that capacity funding arrangements supported by a company are not generally shared with the CER as they may be confidential. The Commission further observes that matters of capacity funding are outside of the Commission's mandate when making a Recommendation for a certificate. The Commission notes that all Indigenous Parties who sought participant funding from the CER under its Participant Funding Program to participate in the hearing for the Edson Mainline Expansion Project were granted funding to the maximum amount offered and that the funding maximums were increased for Edson to the same level as NGTL 2021 in response to concerns raised.

Condition 4 (Reports on Engagement with Indigenous Peoples) proposed for both the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities, requires NGTL to file reports on its ongoing engagement with Indigenous peoples. Specifically, Condition 4 requires NGTL to provide a summary of concerns raised by Indigenous peoples, how NGTL has addressed or will address the concerns raised, and, if concerns are outstanding, an explanation why no further steps will be taken. The intent of the condition is to allow the Commission to

continue receiving timely and public updates about potential issues or concerns raised by Indigenous peoples and to enhance transparency and accountability in ongoing engagement.

The Commission received comments regarding this proposed condition from NGTL, Driftpile Cree Nation, Louis Bull Tribe, Piikani Nation and Samson Cree Nation. In summary, comments received from Parties were focused on reporting timing, frequency of reporting, Crown involvement, assessment of the report(s), and discussion with Indigenous peoples regarding the contents of the reports, including the imposition of a comment period.

The Commission is of the view that Condition 4 (Reports on Engagement with Indigenous Peoples) sufficiently addresses the concerns raised and promotes effective and ongoing engagement for the following reasons:

- the Commission notes that Indigenous peoples are able to provide comments on any condition filings to the CER or NGTL at any time;
- the Commission has changed the wording of the condition such that NGTL's first reporting period will include updates from 28 March 2020 onward to allow for a synopsis of NGTL's engagement activities with Indigenous peoples to date, and to determine if and how NGTL had addressed issues raised by Indigenous peoples during that time period and going forward; and
- NGTL is required to provide a summary of outstanding concerns prior to commencement of construction and how those were addressed, and provide details explaining why any outstanding concerns are not addressed.

The Commission also recommends **Condition 6** (Construction Monitoring Plan for Indigenous Peoples), **Condition 7** (Outstanding Traditional Land and Resource Use Investigation), and **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and would impose the same conditions (**Condition 6, Condition 7 and Condition 22**) for the Section 58 Facilities and Activities. These conditions require 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 will 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 Environmental Protection Plan, and, address Project-related issues that may arise throughout the Project lifecycle.

While the Commission finds NGTL's engagement adequate, the Commission encourages NGTL to consider the comments provided by Indigenous peoples during this proceeding with respect to engagement activities. The Commission further encourages NGTL to continue to improve future early engagement efforts. The Commission is of the view that robust early engagement efforts that contribute meaningfully to project planning can better facilitate the identification of opportunities for involvement of Indigenous peoples, building on the knowledge of Indigenous peoples regarding stewardship and the land.

7.6.2 Project Splitting

The Commission heard concerns raised by some Indigenous peoples who were Intervenor that NGTL is project splitting directly connected sections of pipeline into separate applications. The

Commission heard concerns that NGTL is strategically and unnecessarily splitting integrated resource development activities into smaller regulatory applications to speed up the CER approval process as well as affecting the cumulative impact assessment.

The Commission notes NGTL's submission that each project has different drivers, commercial contracts, customers, system requirements, and required in-service dates, thereby necessitating individual applications. The Commission also notes NGTL's statement that when multiple facility components have common utility and when the components are collectively required to respond to a system requirement or in-service date, NGTL consolidates them into a single application.

The Commission is of the view that the Project is designed to respond to specific system requirements independent of other projects on the system. Regarding cumulative effects, the Commission notes the Project Environmental and Socio-Economic Assessment considered other industrial infrastructure, including past and current NGTL projects. The Commission also notes that consultation is required by proponents for all project applications.

The Commission is guided by previous regulatory decisions indicating that evidence of deliberate project splitting that would constitute an abuse of process or a serious waste of resources by the Commission or other Parties, or an attempt to avoid jurisdiction, may be cogent reasons to have applications proceed in aggregate. Having considered all of the evidence filed on the record, the Commission is satisfied that NGTL's method for applying for the Project is reasonable and appropriate and based on the requirements set out in the Filing Manual and is not an attempt at project splitting in this case.

7.6.3 Social and Cultural Well-being

Having considered all of the evidence filed on the record, the Commission is of the view that the anticipated construction period for the Project is short-term in duration and that access to the ROW for Indigenous peoples would likely remain unchanged following the construction period (apart from temporary interruptions as discussed in subsection 7.6.8.3 below). On that basis, and with conditions to ensure mitigation of Project impacts, the potential adverse effects on social and cultural well-being of Indigenous peoples are not likely to be significant, in the context of this Project. Nonetheless, the Commission also acknowledges the legacy of development on the social and cultural well-being of Indigenous peoples, particularly on intergenerational transfer of knowledge, as described by many of the Intervenor.

The Commission heard concerns that NGTL did not properly consider effects of Project operations on social and cultural well-being. The Commission considered NGTL's submission that there would be no further physical disturbance during operations (following construction and reclamation activities) that would affect social and cultural well-being other than vegetation management and small-scale inspection and maintenance activities. The Commission accepts NGTL's approach of focusing its assessment of Project effects on social and cultural well-being during the construction phase because of the negligible potential adverse effects during the operations phase. Nonetheless, the Commission expects NGTL to engage parties whose rights or interests may be affected by operations and maintenance activities, prior to undertaking those activities. These expectations are described in the "Operations and Maintenance Activities on Pipelines Regulated under the *National Energy Board Act*. Requirements and Guidance Notes".

The Commission heard concerns from Indigenous peoples that the Project would affect their cultural activities and intergenerational sharing of knowledge, including language transmission.

The Commission heard how access to sacred and cultural areas could be at risk in and around the ROW.

The Commission also heard how some members of Indigenous communities have experienced harassment and disturbance during the conduct of their ceremonies. Specifically, the Commission acknowledges the concerns raised by the Stoney Nakoda Nations that company workers would disturb ceremonies or disrespect their ribbons. In Commission IR No. 4.9 and 4.10, while noting that these incidents have not been linked to any specific project, the Commission asked NGTL about its plans or procedures to manage any interactions with active TRLU sites such as ceremonial sites. The Commission notes NGTL's commitment that NGTL and its contractors will establish clear guidelines for behaviour in accordance with company policies and regulatory requirements, including TransCanada's Code of Business Ethics, Harassment Free Workplace and Employment Equity and Non-Discrimination policies. The Commission also notes NGTL's submission that contractors will enforce these policies to ensure safe and harassment-free work environments. The Commission further notes NGTL's statement that mitigation would include construction contractors discussing respectful behaviour and use of community facilities during worker orientations. The Commission expects that all interactions between Indigenous peoples and workers of federally-regulated companies will be based on mutual respect, which means that companies should be committed to a goal of zero incidents of harassment, discrimination and racism.

The Commission notes that while NGTL acknowledged the importance of inter-generational transfer of knowledge, NGTL also conceded that the Project will temporarily reduce the availability of resources for harvesting by Indigenous peoples near the Project. The Commission finds that the record supports that NGTL has taken or will take appropriate measures to reduce or avoid potential Project related effect on resources that support the exercise of traditional land and resource use, to the extent feasible, through construction schedule, timing and location of the Project adjacent to existing disturbances for 83 per cent (Elk River Section) and 88 per cent (Alford Creek Section) of its length.

The Commission recognizes that some Indigenous peoples who were Intervenor requested intercultural training and briefing sessions for NGTL staff and contractors to address effects of the Project on social and cultural well-being. The Commission is of the view that NGTL has appropriate policies and management approaches designed to ensure that worksites are operated in a safe and secure manner, and that NGTL's orientation for its construction workforce includes relevant topics such as safety, environmental mitigation and cultural awareness, including Indigenous culture, history, heritage resources, and traditional land and resource use. The Commission notes that NGTL considers and incorporates available knowledge and input provided by Indigenous peoples into these orientation materials.

The Commission notes the requests from Indigenous peoples for socio-cultural mitigation, monitoring and management measures. For the Commission's views on issues related to monitoring by Indigenous peoples, refer to subsection 7.6.7.

The Commission acknowledges the importance to many Indigenous peoples of appropriate cultural protocols and ceremonies before and after Project construction. The Commission notes that NGTL is open to discussing the opportunity to conduct appropriate cultural ceremonies prior to the start of construction activities, or upon completion of construction, and as appropriate prior to or following reclamation activities. The Commission encourages this discussion. Through the recommended **Condition 4** (Reports on Engagement with Indigenous Peoples) for the Section 52 Pipeline and Related Facilities, and imposed (**Condition 4**) for the Section 58

Facilities and Activities, discussed above, the Commission expects to receive updates on discussions regarding cultural ceremonies proposed prior to and following construction and reclamation, as requested by Indigenous peoples.

For the Commission's views on NGTL's assessment of heritage resources refer to subsection 7.6.5 and Chapter 8.

7.6.4 Human Health

Indigenous peoples raised concerns about potential impacts to the general health of their communities, including effects associated with potential contamination of drinking water and traditional foods, and concerns related to potential impacts to their mental and spiritual health. The Commission accepts the evidence provided by many Indigenous peoples that they rely on, and have a preference for, eating traditional foods, and accepts that the use of the land and traditional foods are important for the physical, mental and spiritual health of Indigenous peoples.

The Commission has considered potential exposure pathways whereby Project activities could affect biophysical resources that might affect the health of Indigenous peoples and could create sensory disturbances to nearby Indigenous peoples. Additional details about the potential environmental effects of the Project on biophysical resources relied on by Indigenous peoples are found in Chapter 8, and additional details about the potential effects of the Project on traditional land and resource use are found in subsection 7.6.8.

The Commission notes that NGTL does not practice widespread application of herbicides along the pipeline ROW (i.e., vegetation control is typically limited to mechanical methods) and that while NGTL cannot fully eliminate herbicide use post construction, it has outlined measures to responsibly manage use of chemical applications. The Commission further notes that NGTL has stated it is willing to discuss the potential to limit herbicide use at specific areas as of concern identified by Indigenous peoples. The Commission is of the view that NGTL has provided a valid explanation of Project risk related to methylmercury contamination in that the Project's potential contribution to methylmercury exposure to fish is considered negligible.

Subparagraphs 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. The Commission has also considered the mitigation measures, the nature of the Project (e.g., most of the Project parallels existing ROW and utilizes existing disturbance), and NGTL's commitment to engage with Indigenous peoples during construction and operation. The Commission is of the view that any residual effects on the health of Indigenous peoples are likely to be limited to the period during construction, restricted primarily to the Project footprint, and 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.

7.6.5 Heritage Resources

The Commission recognizes the value of heritage resources preservation to Indigenous peoples, and acknowledges the knowledge and information shared by Indigenous peoples 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 peoples regarding the potential effects of the Project on physical and cultural heritage resources, as well as the recommendations made to the Commission by Indigenous peoples, including training about identification of TLRU sites and understanding of measures contained in NGTL's Cultural Resources Discovery Contingency Plan.

The Commission notes that NGTL completed a pre-construction heritage assessment to identify potential sites prior to construction, and that no heritage resources were identified in relation to the Project. The Commission further notes the commitment from NGTL to incorporate site-specific information that becomes available as a result of ongoing engagement into Project planning, with Indigenous peoples such as O'Chiese First Nation. The Commission notes that on 12 June 2020, NGTL and O'Chiese First Nation agreed on a work-plan and funding for a community-led traditional knowledge study for the Project which includes the opportunity to conduct fieldwork. NGTL's commitment will be important to ensure that work currently being done by O'Chiese First Nation is properly incorporated into Project planning, to the extent possible.

Most types of industrial and resource-based development activities in Alberta require formal approval from the Province of Alberta under the Alberta *Historical Resources Act* prior to the onset of activities, and this is the case for this Project. Any clearance issued by the Alberta Ministry of Culture, Multiculturalism and Status of Women may identify conditions of approval or mitigation measures that NGTL would be required to meet. The Commission encourages NGTL to include participation of Indigenous Elders and Knowledge Keepers in the event of any outstanding archaeological field work and mitigation, including that as may be directed by the Alberta Ministry of Culture, Multiculturalism and Status of Women.

The Commission notes NGTL has a Cultural Resource Discovery Contingency Plan which includes informing any potentially affected Indigenous peoples of any unanticipated cultural resource site discovery, and reviewing planned mitigation strategies with potentially affected Indigenous peoples. Such contingency measures are intended to supplement the requirements of the Province of Alberta and those set out in the Filing Manual for proponents to identify and address potential effects to heritage resources prior to construction.

The Commission recommends **Condition 12** (Heritage Resource Clearances) for the Section 52 Pipeline and Related Facilities and would impose the same condition (**Condition 11**), for the Section 58 Facilities and Activities to ensure that all Parties, including potentially affected Indigenous peoples, are aware of any approvals or conditions imposed by provincial authorities for the Project. These conditions will require NGTL to file confirmation that all heritage resource clearances have been obtained from the Alberta Ministry of Culture, Multiculturalism and Status of Women 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 Environmental Protection Plan.

The Commission heard concerns from Indigenous peoples that untrained personnel might not be able to identify potential traditional land and resource use sites, heritage sites, or human remains. The Commission is of the view that NGTL has appropriately established plans for all construction personnel to receive Project-specific environmental orientation training that includes materials on the Cultural Resources Discovery Contingency Plan, examples of common heritage or traditional land and resource use materials that may be encountered, the protection and cultural significance of uncovering these resources, and worker obligations in the event of a find.

The Commission also heard concerns as to how NGTL would determine which Indigenous peoples to inform in the event of a chance find, and concerns that mitigation plans may not be developed in collaboration with potentially impacted Indigenous peoples. The Commission notes NGTL's commitment that in the event of a chance find, it will review and discuss planned mitigation strategies with potentially affected Indigenous peoples on a case-by-case basis. The Commission notes that NGTL will identify Indigenous peoples for this engagement using information collected during its Aboriginal Engagement Program for the Project. In addition, the Commission recommends **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) which is explained in subsection 7.6.7 below, for the Section 52 Pipeline and Related Facilities, and would impose the same conditions (**Conditions 6 and 22**) for the Section 58 Facilities and Activities.

Subparagraphs 5(1)(c)(ii) 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 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 potential effects of the Project on heritage resources to include all of the effects described in these subparagraphs of section 5 of the CEAA 2012 and applied the criteria defined in Appendix V to evaluate these effects.

The Commission is 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, and NGTL's commitment to include the final version of the Plan in its updated Environmental Protection Plan;
- Indigenous peoples' knowledge and evidence on potential sites of concern as provided through the proceeding;
- regulatory oversight of provincial authorities that issue final clearances for lands involved for the Project; and
- recommending **Condition 12** (Heritage Resource Clearances) for the Section 52 Pipeline and Related Facilities and imposing the same condition (**Condition 11**), for the Section 58 Facilities, and other recommended conditions,

the potential residual effects of the Project on physical and cultural heritage resources are expected to be confined to the Project footprint, would be short- to long-term, reversible (i.e., an effect expected to, at a minimum, return to baseline conditions within the lifecycle of the Project) to permanent (i.e., an effect that would persist beyond the lifecycle of the project, or last in the order of decades or generations), and of low to moderate magnitude. The Commission is of the view that the Project is not likely to result in significant adverse effects on physical and cultural heritage resources.

7.6.6 Employment, Training and Community Benefits

The Commission received submissions from a number of Indigenous peoples interested in involvement in construction, operation, and reclamation phases of the Project to both allow for economic opportunities for Indigenous peoples and to allow for use of Indigenous knowledge to

protect Indigenous interests. The Commission heard from a number of Indigenous peoples expressing interest in Project-related training and employment and expressing interest in opportunities that would extend beyond short-term labour contracts and include permanent leadership and corporate positions. Indigenous peoples also stated an interest in business opportunities for business owners and contractors, community investment, education and training and revenue sharing.

The Commission also heard from some Indigenous peoples that they believe that proper use of lands and resources can support the goal of economic viability and self-sufficiency for Indigenous peoples, when projects are carried out in a way that enhances health, education, social, cultural and economic conditions. The Commission heard some Indigenous peoples note the importance of ongoing Project and community engagement plans to create economic and educational opportunities.

The Commission considered NGTL's plans for encouraging and enabling participation of Indigenous peoples in the Project and is of the view that NGTL has provided evidence of likely employment, contracting and training benefits for Indigenous peoples, including the following:

- through its Indigenous Relations Business Engagement Team, NGTL has committed to working with interested communities to discuss and identify potential economic opportunities. NGTL stated that it has been working with and will continue to work with Indigenous peoples to identify opportunities for capacity development and to support each community's immediate and/or long-term training needs and interests;
- NGTL's stated that while the majority of employment opportunities will occur during the construction phase of the Project, investments in education and training are made during all phases of the Project, with the objective of building long-term community capacity and supporting the development of high-demand and transferable skills to promote greater access to employment opportunities not only on the Project, but also in the broader regional economy; and
- a number of relevant policies are in place, including TC Energy's Indigenous Relations Policy and TC Energy's Education and Training Program, NGTL's Aboriginal Construction Participation Program and its Aboriginal Contracting and Employment Program.

The Commission acknowledges concerns raised by Indigenous peoples regarding the actual benefits that may flow from the Project and notes that NGTL is not willing to set fixed targets or benchmarks for employment or contracting of Indigenous peoples and/or their businesses. However, the Commission is of the view that NGTL has provided other evidence to support its plans to extend employment and contracting opportunities to potentially affected Indigenous peoples. For example, the Commission notes that NGTL includes requirements in contracts with prime contractors to hire qualified and competitive, local Indigenous contractors and employees. The Commission also noted that NGTL sets obligations in its prime contracts to ensure that contractors fulfill the commitments they made in their proposal that were a consideration in their contract award through Aboriginal Participation Plans. The Commission further notes that NGTL stated that it actively monitors prime contractor implementation of its subcontracting, employment, and training commitments.

With respect to funding for community investment, the Commission notes that NGTL stated that it works closely with Indigenous peoples through TC Energy's Community Investment program

to identify needs and interests for community initiatives to ensure programs are fit-for-purpose. The Commission notes that NGTL supports many initiatives for Indigenous peoples on an annual basis such as provision of scholarships, direct community agreements regarding traditional knowledge, and TC Energy investment toward training, education, and community investment. The Commission supports these initiatives and investment.

The Commission notes that while NGTL does not participate in revenue sharing, NGTL stated that it seeks to support Indigenous peoples through community investment and aims to increase the participation of Indigenous peoples potentially affected by NGTL's activities by providing business and contracting opportunities arising from these activities to qualified Indigenous contractors and suppliers.

In order to encourage greater accountability by NGTL and to provide the Commission and potentially impacted Indigenous peoples with more transparency and specific details of on NGTL's plan for and outcomes of employment, contracting, and procurement for the Project, the Commission recommends **Condition 5** (Indigenous Peoples Employment, Contracting and Procurement Plan Update) for the Section 52 Pipeline and Related Facilities and would impose the same condition (**Condition 5**) for the Section 58 Facilities and Activities, requiring NGTL to file an update to its Employment, Contracting and Procurement Program, 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 received comments regarding the draft of **Condition 5** (Indigenous Peoples Employment, Contracting, and Procurement Plan Update), from NGTL, Driftpile Cree Nation, Louis Bull Tribe, Piikani Nation and Samson Cree Nation. In summary, comments received were focused on timelines for filing, inclusion of summaries of steps taken to implement the Aboriginal Participation Plan and the Aboriginal Contracting and Employment Plan, engagement outreach conducted by NGTL on the Aboriginal Contracting and Employment Program, inclusion of employment, contracting, and procurement targets and how NGTL met those targets, including formalized agreements, listing of Indigenous peoples and businesses expressing interest in procurement opportunities, and inclusion of training needs and how NGTL supported Indigenous peoples in meeting those needs.

The Commission notes that NGTL has stated that it is willing to meet with any Indigenous people expressing an interest in potential contracting, employment, and training opportunities, where NGTL can discuss its contracting process and develop an understanding of the Indigenous peoples' currently available capacities. The Commission expects NGTL to be proactive in encouraging this dialogue and report on any such engagement in alignment with its Reports on Engagement with Indigenous Peoples condition. The Commission is of the view that changes suggested by Intervenor for this condition, such as a requirement for NGTL to provide a summary of any training needs identified by Indigenous peoples and a description of how NGTL has or will support Indigenous peoples in meeting these training needs, are more appropriate for **Condition 21** (Training, Employment, Contracting and Procurement Report), since **Condition 5** (Indigenous Peoples Employment, Contracting and Procurement Plan Update) is meant to be an update on NGTL's employment, contracting, and procurement related to Indigenous peoples. To view the final wording of the condition, refer to Appendices I and II.

The Commission further recommends **Condition 21** (Training, Employment, Contracting and Procurement Report) for the Section 52 Pipeline and Related Facilities and would impose the same condition (**Condition 21**) for the Section 58 Facilities and Activities, requiring NGTL to file

a report once construction is complete, summarizing the training, employment, contracting, and procurement elements or indicators monitored. The Commission notes that NGTL stated Indigenous-owned businesses generally represent 8 to 12 per cent of the total construction contract values in past projects, and that Indigenous people comprise approximately 8 to 10 per cent of the total construction workforce. The Commission is interested in how many Indigenous employment and business opportunities will be created and filled during the reporting period, including the numbers of self-identified Indigenous-owned businesses and individuals employed, if any.

The Commission received comments regarding the draft of Condition 21 for the Section 52 Pipeline and Related Facilities and Condition 21 for the Section 58 Facilities and Activities (Training, Employment, Contracting and Procurement Report) from NGTL, Driftpile Cree Nation, Louis Bull Tribe, Piikani Nation and Samson Cree Nation. In summary, comments received from Participants were focused on timelines and intended scope of the filing, the inclusion of training needs identified by Indigenous peoples, a requirement for the description and analysis of NGTL's hiring targets in regard to Indigenous peoples, and a list of any outstanding concerns expressed by Indigenous peoples related to employment and procurement and how they will be addressed.

In consideration of the comments received, the Commission has modified the proposed condition to include a requirement for NGTL to provide a summary of any training needs identified by Indigenous peoples and a description of how NGTL has or will support Indigenous peoples in meeting these training needs. The Commission notes that NGTL has stated that it would maximize local and Indigenous hiring from within the Local Assessment Area/Regional Assessment Area, as a first priority, and elsewhere in Alberta as a second priority. To view the final wording of the condition, refer to Appendices I and II.

With the NGTL commitments and the Commission's recommended and imposed conditions, the Commission is of the view that NGTL has adequate policies, programs and enhancement measures (e.g., TC Energy's Indigenous Relations Policy, Education and Training Program, Aboriginal Construction Participation Program and Aboriginal Contracting and Employment Program) in place to address the issues raised by Indigenous peoples concerning employment, contracting and training for the Project. The Commission is also of the view that the Project would result in increased net employment and net economic benefits for Indigenous peoples and contracts for Indigenous-owned businesses.

7.6.7 Monitoring by Indigenous Peoples and Indigenous Advisory Monitoring Committee

The Commission heard many Indigenous peoples indicate their desire to be involved in monitoring activities and programs related to Project construction and post-construction. The Commission heard that monitoring by Indigenous peoples would align with the sacred responsibilities of protection and stewardship of their territories, and help bring back land to a native state to allow for continuation of traditional practices in the area.

The Commission notes that NGTL has committed to ongoing engagement throughout all phases of the Project and that Indigenous peoples will have an opportunity to provide feedback post-construction through ongoing engagement with Regional Liaisons and TC Energy's Public Awareness Program. NGTL has committed to respond to any Indigenous people's concerns post-construction and address potential issues on a case-by-case basis. The Commission notes that NGTL stated it has and will continue to follow up with Indigenous peoples regarding their

request or recommendation regarding involvement in monitoring during construction to better understand and clarify the potential issues behind the recommendation, and to gather further information and knowledge to inform possible next steps for how NGTL and the community can directly work together to most effectively address each specific issue, for the benefit of both parties. The Commission notes the case-by-case approach taken by NGTL, for example, the agreement with Louis Bull Tribe to allow Elders and youth from the community to be on site during a watercourse crossing to allow the community to better understand the construction process and to ensure mitigation measures are adequate. The Commission encourages NGTL to continue to be responsive to the concerns of Indigenous peoples and fully pursue these types of opportunities on the Project.

The Commission is of the view that the involvement of Indigenous peoples in monitoring is a valuable and meaningful opportunity for the sharing of and incorporation of the knowledge of Indigenous peoples in the planning, pre-construction, construction, post-construction, and operational lifecycle activities of the Project. The Commission is also of the view that the involvement of Indigenous peoples in monitoring would be of value in assessing mitigation measure effectiveness as well as other aspects of the implementation of the Project plans such as reclamation. The Commission acknowledges NGTL's approach to ongoing engagement, but is of the view that a more formal approach to monitoring by Indigenous peoples, including engagement with Indigenous peoples regarding their participation in monitoring, is appropriate for the Project. As such, the Commission recommends **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) and **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples), for the Section 52 Pipeline and Related Facilities, and would impose the same conditions (**Conditions 6 and 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 notes that these conditions require NGTL to report on its engagement with Indigenous peoples regarding the development of opportunities for their participation in monitoring activities. The Commission expects that NGTL will engage on matters of concern. The Commission is of the view that these conditions, while not imposing formal monitoring committees, would meaningfully enhance the involvement of Indigenous peoples in monitoring opportunities.

The Commission received comments regarding the draft of the two proposed conditions noted above, from NGTL, Driftpile Cree Nation, Louis Bull Tribe, Piikani Nation and Samson Cree Nation. In summary, comments received from Participants were focused on timelines for filing, oversight and accountability mechanisms, a requirement for equality and a collaborative approach in decision making between environmental and Indigenous monitors, a dispute resolution mechanism in the event of difference of opinion, care in consideration of what constitutes traditional knowledge or use, and reporting on Indigenous land use goals.

The Commission also received comments regarding the draft of the two proposed conditions noted above from NRCan. NRCan stated that Indigenous peoples have raised concerns about the need to ensure that Indigenous knowledge is considered appropriately and Aboriginal rights and interests are better protected over the lifecycle of projects, in particular as it pertains to monitoring. NRCan stated that conditions requiring a project proponent to demonstrate its engagement with Indigenous peoples on relevant plans or processes, and how this is incorporated in those plans, can be an effective means to ensure that Indigenous views are meaningfully considered. The Commission notes that NRCan stated that that the proposed **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) and the proposed **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples) could go further in this regard. NRCan stated that these conditions do not contain a requirement for the proponent

to disclose which Indigenous peoples the proponent engaged with in the development of monitoring plans nor details pertaining to the process for engaging Indigenous peoples on the monitoring plans. In response, the Commission has made relevant changes to the conditions to ensure that NGTL provides a list of Indigenous peoples engaged with and details pertaining to the engagement process.

The Commission notes that NGTL requested that **Condition 6** (Construction Monitoring Plan for Indigenous peoples) be struck. NGTL stated that it believes that a one size fits all approach to involvement in monitoring during construction would not appropriately and effectively address community-specific issues and interests. Given that NGTL's approach is fit-for-purpose by concern, interest and community, NGTL suggests removing this condition as engagement with Indigenous peoples prior to and during construction will be covered under Section 52, **Condition 4** (Reports on Engagement with Indigenous Peoples) will include details on engagement with groups for specific concerns, such as related to particular locations, resources or activities and any agreed upon tailored means of addressing the concerns through the participation of Indigenous peoples in monitoring activities during construction, as appropriate and applicable. The Commission notes that NGTL is of the opinion that **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) as proposed would result in duplication, redundancy, and administrative burden for all parties.

The Commission is not satisfied, based on its review of the application and the hearing record, that the condition is not required. The purpose of **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) is to ensure that NGTL will have a plan for the participation of monitors from interested Indigenous peoples from the commencement of construction through to final clean up and the start of reclamation and the engagement process and outcome related to the development of the plan is publicly available. The Commission is of the view that the implementation of an appropriate plan will provide further opportunities for Indigenous peoples to identify any specific adverse effects of the Project as well as mitigation measures. The Commission is therefore of the view that **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) has a completely different purpose than does **Condition 4** (Reports on Engagement with Indigenous Peoples). For the same reasons noted above with respect to the purpose of **Condition 6** (Construction Monitoring Plan for Indigenous Peoples), the Commission is not persuaded by concerns raised by Indigenous peoples that the Commission's conditions primarily impose reporting requirements on NGTL rather than concrete commitments regarding the involvement of Indigenous peoples. The Commission is of the view that the condition, as recommended, provides transparency for all parties regarding monitoring during the construction phase and, with meaningful engagement, encourages parties to contribute to a plan that appropriately recognizes the unique features of the construction phase of the Project.

In consideration of the comments received, the Commission has revised **Condition 24** for the Section 52 Pipeline and Related Facilities and **Condition 23** for the Section 58 Facilities and Activities (Post-Construction Environmental Monitoring Reports), to include requirements for NGTL to include methodology, criteria, and issues identified in **Condition 22** for the Section 52 Pipeline and Related Facilities and **Condition 22** for the Facilities and Activities (Post-Construction Monitoring Plan for Indigenous Peoples). **Condition 24** for the Section 52 Pipeline and Related Facilities and **Condition 23** for the Section 58 Facilities and Activities have also been revised to include a summary of NGTL's engagement efforts with Indigenous peoples and a description of how this engagement has informed and / or modified NGTL's environmental monitoring program. The Commission is of the view that these revisions will allow for a more transparent link between the Post-Construction Monitoring Plan for Indigenous peoples and the Post-Construction Environmental Monitoring Reports as the latter will explicitly include the

outcomes of the participation of monitors who are Indigenous peoples. For the final wording of the condition refer to Appendices I and II.

The Commission notes that Driftpile Cree, Louis Bull Tribe, O'Chiese First Nation, Piikani Nation, and Stoney Nakoda Nations recommended the establishment of an Indigenous Advisory Monitoring Committee for the Project, or something equivalent, in order to provide oversight in the monitoring of the NGTL System and to ensure an appropriate forum exists for impacted Indigenous Nations who have expressed an interest. The Commission heard from Indigenous peoples that an Indigenous Advisory Monitoring Committee would also help to make the balance of power more equitable between NGTL and Indigenous peoples, relative to NGTL's current monitoring programs. The Commission also notes that NGTL is of the view that an Indigenous Advisory Monitoring Committee is not appropriate for the scope, scale and nature of the Project given that most of the Project parallels existing ROW and utilizes existing disturbance, where possible. Given the nature of the Project and the opportunities for monitoring by Indigenous peoples that will be created by the proposed **Condition 6** (Construction Monitoring Plan for Indigenous Peoples), recommended or proposed for the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities, and the proposed **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples) recommended or proposed for the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities, respectively, the Commission is not recommending that the Government of Canada create an Indigenous Monitoring Advisory Committee for this Project; however, the Commission encourages NGTL to engage meaningfully with Indigenous peoples as intended by the above conditions and expects to see a complete summary of relevant engagement included in the condition filings.

Obiter Dictum by the Commission

Notwithstanding the Commission's findings regarding the appropriateness of an Indigenous Advisory Monitoring Committee specific to this Project, the Commission provides the following obiter dictum.

In the exercise of its decision-making functions under the CER Act, the Commission considers the best available scientific information and data as well as Indigenous knowledge. As knowledgeable stewards of the lands and resources within their traditional territories, the direct participation of Indigenous peoples contributes to the effective design, review and oversight of projects, both during the CER hearing process and throughout their lifecycle. While Indigenous peoples engage on a project-by-project basis, the Commission acknowledges that, in communities and on the land, potential impacts of industrial development are not experienced discretely on a project-by-project basis by Indigenous peoples.

The Commission heard from Indigenous peoples in this hearing regarding existing cumulative effects on traditional land and resource use and intergenerational knowledge transfer as well as broader concerns about approaches to engagement. Though specific priorities varied, the Commission also heard Indigenous peoples reiterate their desire to participate more meaningfully in projects. In the hearing, some Indigenous peoples conveyed a lack of trust about the extent to which their Inherent and Treaty Rights, not only in respect of the environment but also with respect to law and governance, are meaningfully understood and considered. These concerns, at times beyond the scope of issues to be adjudicated by this panel, transcend this hearing process and recur across different applications before the

Commission (and previously the NEB), including vis a vis NGTL given its operation of an extensive and longstanding natural gas gathering and transportation system.¹⁵

In response to similar concerns, previous CER and NEB reports and decisions have urged exploration of co-developed processes and arrangements for collaboration and engagement with Indigenous peoples, typically in the context of larger expansions or significant new projects.¹⁶ The Commission emphasizes that satisfying the regulatory requirements in relation to this or other projects should not preclude the exploration and co-development of new approaches that more holistically address common issues raised by Indigenous peoples across different hearing processes, such as cumulative impacts, protection of the environment, stewardship and more equitable sharing of benefits. We continue to encourage these efforts.

The Commission remains committed to adjudicating applications in a fair, inclusive, transparent and efficient manner and providing timely decisions on applications before it. At the same time, the Commission also reaffirms the value of co-developed, collaborative processes and arrangements between NGTL, Indigenous peoples, relevant governments and the CER outside hearing processes that leverage and value the relative expertise and interests of parties while maintaining regulatory predictability and efficiency.

7.6.8 Traditional Land and Resource Use

Subparagraphs 5(1)(c)(iii) and (iv), and 5(2)(b)(ii) and (iii) of the *Canadian Environmental Assessment Act, 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. In assessing potential impact on Indigenous rights and 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 peoples, and the measures NGTL has proposed to minimize or eliminate the Project's potential impacts on the interests of Indigenous peoples.

7.6.8.1 NGTL's Assessment Methodology and Mitigation Measures

Some Indigenous peoples who were Intervenor voices voiced concerns regarding the methodology NGTL used to assess Project impacts on TLRU. The Commission heard concerns that NGTL did not consider Project operations in its TLRU assessment, and that the assessment area used

¹⁵ See for instance: NGTL, 2021 NGTL System Expansion Project, GH-003-2018, CER Report, (19 February 2020), Sections 1.3 and 8.7.3.3; Enbridge Pipelines (NW) Inc., Line 21 Segment Replacement Project, MH-001-2017, NEB Reasons for Decision, (25 January 2018), Section 1.1; Manitoba Hydro, Manitoba-Minnesota Transmission Project, EH-001-2017, NEB Reasons for Decision, (15 November 2017), Chapter 2; Westcoast Energy Inc., doing business as Spectra Energy Transmission, Wyndwood Pipeline Expansion Project, GH-001-2017, NEB Reasons for Decision, (28 September 2017), Section 1.2.2; Enbridge Pipelines Inc., Line 3 Replacement Project, OH-002-2015, NEB Report, Volume I: Our Decisions and Recommendations, (25 April 2016), Section 1.6.2.

¹⁶ *ibid*

for NGTL's assessment of TLRU was too small. The Commission also heard that some Indigenous peoples felt that their traditional land use information was not included in NGTL's assessment due to Indigenous peoples' capacity issues. The Commission further heard that for some Indigenous peoples, the concept of mitigation does not exist, and that impacts to land cannot be accommodated. The Commission also heard that the CER process and its assessment framework does not meet Inherent and Treaty Rights of Indigenous peoples. The Commission, in accordance with the NEB Act, considers potential mitigation measures when determining whether a project is likely to cause significant adverse effects. Indigenous knowledge shared, regarding all aspects of Inherent and Treaty Rights, is considered by the Commission and serves to enhance the understanding of project effects, strengthen mitigation measures, and lead to improved project design.

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 guidance from the NEB Filing Manual and requirements of the CEEA 2012. The Commission accepts NGTL's use of a conservative approach in its Environmental and Socio-Economic Assessment whereby NGTL assumed that TLRU harvesting sites, areas, and activities have the potential to occur throughout the Project area. The Commission further notes NGTL's commitment to continue to review and consider new information as it comes in, and will continue to document and address traditional knowledge and related concerns identified by Indigenous peoples through the Project's ongoing Aboriginal Engagement Program. With respect to the size of the assessment area used by NGTL in its assessment of TLRU, the Commission notes that NGTL used the geographical extent of the effects (i.e., the zone of influence) for each valued component assessed. The Commission further notes that NGTL stated that while physical effects of the Project are not expected to extend past the Regional Assessment Area, it still considers that information where that has been provided by Indigenous peoples. For the Commission's views related to cumulative environmental assessment methodology, refer to Chapter 8.

The Commission accepts NGTL's approach of focusing its assessment of Project effects on TLRU on the construction phase because of the negligible potential adverse effects expected during the operations phase (e.g., the Project largely parallels existing infrastructure, the Project does not include any compressor stations); nonetheless, the Commission expects NGTL to engage parties whose rights or interests may be affected by operations and maintenance activities prior to undertaking those activities. These expectations are described in the "Operations and Maintenance Activities on Pipelines Regulated under the *National Energy Board Act*: Requirements and Guidance Notes".

Considering all of the above the Commission is of the view that NGTL provided opportunities for Indigenous peoples to raise concerns, and has committed to sufficient and appropriate mitigation measures, as well as best practices, to mitigate the potential adverse effects on TLRU identified such that any residual adverse Project effects on TLRU is not likely to be significant. The Commission is also of the view that NGTL has included sufficient baseline information supported by a description of the methodology used and the rationale for that methodology. The Commission is further of the view that NGTL's Environmental and Socio-Economic Assessment appropriately 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 it recommends **Condition 7** (Outstanding Traditional Land and Resource Use Investigation) for the Section 52 Pipeline and Related Facilities and would impose the same condition (**Condition 7**) for the Section 58 Facilities and Activities. 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 Environmental Protection Plan and its lifecycle oversight as a result of the investigations, and are discussed in subsection 7.6.8.2 below. Overall, based on the scope, scale and nature of the Project, 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 peoples was appropriate. For the Commission's views on issues related to NGTL's proposed mitigation measures outside of those related to TLRU, refer to Chapter 8.

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). The Commission reiterates its expectations for enhanced engagement, noting that the CER has a mandate to advance reconciliation with Indigenous peoples, and for proponents to implement continual improvements that enhance meaningful engagement with Indigenous peoples.

7.6.8.2 Traditional Knowledge Studies

The Commission heard that place-based Indigenous knowledge reflects a different understanding of environmental change that may not be apparent to western science and should not be discounted as it provides important context that requires due consideration when evaluating incremental and cumulative environmental impacts. The Commission also heard that cultural information held by Indigenous peoples is not always recorded in a way that is accessible without direct and effective consultation that takes into consideration the need to be respectful and sensitive to how this information is collected, protected and disseminated, and the information be seriously considered. The Commission notes that it is beneficial for Indigenous peoples to engage directly with proponents and encourages the sharing of Indigenous knowledge with proponents, especially where the Indigenous knowledge is site-specific and could inform project design or mitigation.

The Commission heard concerns about timing of Indigenous knowledge studies (over winter months), ability to access Project areas in a timely manner, and COVID-19 delays, and that the CER's decision to refuse sufficient time for Indigenous peoples to properly and safely complete and submit traditional knowledge studies limited the amount of data available for consideration by the decision maker.

The Commission notes NGTL's understanding of traditional knowledge as encompassing knowledge about cultural, environmental, economic, political and spiritual interrelationships, which is typically identified by, and gathered through, engagement with Indigenous peoples. The Commission also notes that NGTL seeks to incorporate traditional knowledge into Project planning in order to propose measures to avoid, mitigate or otherwise manage potential adverse Project effects on Indigenous rights and interests. The Commission further notes NGTL's understanding that consideration of feedback from Indigenous peoples may result in changes to Project planning, including the Environmental Protection Plan and Environmental Alignment Sheets, or specific engagement activities with NGTL to further explore an issue, concern or recommendation.

Regarding the timing of Indigenous knowledge studies, including delays due to COVID-19, the Commission is required to consider the Project impacts on the rights and interests of Indigenous

peoples, and also legally mandated to adjudicate a complete application submitted to it as expeditiously as circumstances of fairness permit and within the legislated time limit. In the midst of the COVID-19 pandemic, the Commission was faced with the difficult task of balancing all interests to achieve an outcome that was fair to all the parties, respects parties' rights and best serves the overall Canadian public interest in these unique circumstances. The Commission adjusted the hearing schedule and granted what it viewed as a reasonable timeline for extensions to file late evidence in response to requests from Indigenous peoples who were Intervenor, including O'Chiese First Nation, Piikani Nation, and Samson Cree Nation (e.g., Procedural Update No. 7) in an attempt to find an appropriate balance. Specifically, the Commission noted Piikani Nation's statement that their traditional knowledge and land use study was impacted by the COVID-19 pandemic, as a reason to file late evidence. While Piikani Nation did not file their late evidence by the granted timeline extension, the Commission notes that specifically as it relates to TLRU studies, the CER Filing Manual does not require their completion as a specific methodology. Rather, it requires a proponent to assess potential impacts of a project on traditional use of lands and resources by Indigenous peoples. Furthermore, the Commission can potentially address any concerns related to outstanding TLRU Studies effectively through the imposition of a condition on NGTL to file the results of any outstanding TLRU investigations or studies.

The Commission acknowledges the challenges it faces in balancing consideration of scientific information and data with Indigenous knowledge, and has made every attempt to give equal weight and consideration to these elements. The Commission considers Indigenous knowledge to be valuable, and considers and weighs all Indigenous knowledge received during the hearing process the same way it would scientific information and data. The Commission recognizes the diversity and nature of knowledge held by the First Nations and Métis peoples who have participated in this hearing process. The Commission expects Indigenous knowledge, where obtained, to be integrated, where appropriate, into the design of a project. The Commission expects that, where Indigenous knowledge is obtained, that the proponent will provide an opportunity for the individual who provided the information to confirm the interpretation of the information and how it was used in the project design.

The Commission notes that NGTL entered into agreements with some potentially impacted Indigenous peoples to conduct their own community-directed Indigenous knowledge studies for the Project and that some Indigenous knowledge studies are outstanding. The Commission notes that NGTL has committed to continue to meaningfully review and consider that information, and will continue to document and address traditional knowledge and related concerns identified by Indigenous peoples through the Project's ongoing Aboriginal Engagement Program.

The Commission notes that NGTL employs the same underlying principles in its Aboriginal Engagement Program for the Project across all communities, and that NGTL's scope and depth of engagement, including funding for Indigenous knowledge studies, may vary according to the potential for Project-related effects and the identified interests of each Indigenous people. The Commission finds that this is a reasonable approach.

The Commission has considered the technical consultant reports prepared and filed on behalf of Driftpile Cree Nation, Louis Bull Tribe and Piikani Nation and noted NGTL's argument which questioned the accuracy and reliability of these reports and how they should be given little to no weight. The Commission does not agree with NGTL that the conclusions in the above noted reports should be given little to no weight. However, the Commission finds that NGTL was more

persuasive in demonstrating to the Commission that NGTL's Environmental and Socio-Economic Assessment methodologies are appropriate.

Having considered all of this information, the Commission recommends **Condition 7** (Outstanding Traditional Land and Resource Use Investigation) for the Section 52 Pipeline and Related Facilities and would impose the same condition (**Condition 7**) for the Section 58 Facilities and Activities. 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 Environmental Protection Plan and its lifecycle oversight as a result of the investigations. The Condition 7 filing requires approval so that the Commission has an opportunity to review this key report to confirm that potential effects of the Project on the current use of lands and resources for traditional purposes have been adequately identified and assessed by NGTL, how findings from the investigations have been incorporated into the Project, or if not an explanation as to why not, and that appropriate measures are in place to effectively address identified potential impacts prior to construction. The Commission is of the view that this condition will increase both accountability and transparency regarding NGTL's ongoing commitments, and will also enhance opportunities for Indigenous peoples to contribute to decision-making with respect to NGTL's engagement with them.

The Commission received comments regarding the proposed condition noted above from NGTL, Driftpile Cree Nation, Louis Bull Tribe, Piikani Nation and Samson Cree Nation. In summary, comments received from Participants were focused on timelines for filing, inclusion of summaries of how traditional knowledge information was used to inform decisions in the Environmental Protection Plan and decision-making throughout the Project lifecycle, inclusion of current-use sites and maps, and additional engagement requirements with Indigenous peoples. The Commission notes that the condition requires NGTL to describe how it has considered and addressed information from the TLRU investigations that were not available during the hearing process as well as 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. The Commission considers Condition 7 to be particularly important and responsive to the constraints noted by some Participants regarding their ability to complete such investigations before the conclusion of the hearing process. The Commission also notes the condition requires NGTL to provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission notes that Indigenous peoples are able to provide comments on any condition filings to the CER or NGTL at any time.

7.6.8.3 Access to and Availability of Lands

The Commission heard concerns about how the Project would impact the ability of Indigenous peoples to access lands to carry out traditional activities, and how it could potentially change traditional travel routes and increase access for non-Indigenous recreational and game hunters. The Commission also heard evidence and argument from Indigenous peoples who were Intervenor that the barriers to accessing Crown land to exercise Section 35 rights were both physical and psychological. The Commission heard that, even though NGTL submitted that there would be limited lasting physical barriers to using the Crown land required for this Project, specifically at fence valve sites, the spiritual and traditional nature of the land for many would be altered as a result of the construction-related land 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 (e.g., physical access and access management) and perceived (e.g., perceptions of impediments to the exercise of rights).

The Commission notes the recommendation from some Indigenous Parties about a plan to offset or compensate for the loss of Crown lands available for exercising Indigenous and treaty rights, including 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 Crown land within the Project footprint would be available for exercising Indigenous and treaty rights, including TLRU activities, apart from a period of time during active construction. In addition, the concept of applying offsets or compensation to the loss of Crown land is a relatively new concept in Canada and would benefit from multi-party discussions outside of regulatory proceedings. Moreover, offsets are in the nature of compensation. The Commission is of the view that, while the consideration of the taking of crown land and the resulting impact on the exercise of Indigenous and Treaty rights is an important public interest consideration, the matter of awarding compensation for impacts to the exercise of Indigenous and treaty rights is not within the Commission's authority to affect and is outside the scope of this hearing. While compensation awards may now be directed by the Commission under Part 6 of the CER Act, it still remains that the Commission cannot award compensation when dealing with recommendations or decisions on facilities applications that are made under Part 4 of the CER Act, and in this case, Part III of the NEB Act. However, aggrieved parties who suffer pipeline-related damages may now apply to the Commission for compensation pursuant to section 234 of the CER Act, which is under Part 6 of CER Act. Such an application would be dealt with entirely separate from part 4 of the CER Act. The Commission notes that for the NGTL 2021 project, it recommended that the Government of Alberta investigate the creation of regional areas of Crown land that could be placed under shared stewardship with Indigenous peoples. The Commission also notes that the Governor-in-Council stated in P.C. 2020-811 dated 19 October 2020 that it had reviewed this recommendation, among others, and that it was committed to working towards responding to those recommendations that fall within federal jurisdiction.

The Commission accepts NGTL's evidence that during construction, access to the ROW for traditional users would not be physically impeded except when there is active construction or other identified safety risks (e.g., open trench or excavations). The Commission also accepts NGTL's evidence that, after construction is completed, access to the ROW would be unchanged except for temporary interruptions during brief periods of routine maintenance, and 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. The Commission notes NGTL's statement that except for localized areas during the single season of construction, the ROW will remain available for traditional use during construction and operation of the Project; that is, Project Footprint will be available land for traditional use, except for new fenced valve sites (approximately 1 ha in size).

Many of the land use barriers that were raised in this hearing process reflect apprehension about this Project and examples of issues related to pre-existing land activities of other industries or governments outside the mandate of the Commission. The Commission acknowledges the challenges identified by the Indigenous peoples who were Intervenors in this regard.

The Commission notes concerns by Stoney Nakoda Nations with respect to the provincial *Critical Infrastructure Defence Act*, and potential for that Act to result in charges or threat of

charges while exercising Section 35 Rights within the Project area. The Commission notes NGTL's statement that the impact of the *Critical Infrastructure Defence Act*, if any, on Indigenous peoples is not for NGTL to define. It is a matter between Indigenous peoples and the Crown. The Commission is of the view that it is not for NGTL to determine unlawful use and that the question of whether an area is accessed under lawful right, justification, or excuse, as defined in CIDA, may be interpreted by courts.

7.6.8.4 Potential Project-Related Effects on Traditional Land and Resource Use Sites and Activities

Throughout the hearing process, Indigenous peoples had the opportunity to make their views and concerns about the Project known to NGTL and the Commission, including what effects the Project might have on their potential and / or established rights and interests. The evidence of Indigenous peoples identified how the Project might affect their Indigenous and Treaty rights, including those related to hunting, fishing, trapping, the harvesting of plant resources for food and medicines, and the maintenance of cultural and ceremonial practices within their traditional territories. The Commission heard from Elders and Knowledge Keepers during the oral portion of the hearing regarding their views and concerns about the importance of the land and the water. Written evidence also included concerns in relation to these matters. The Commission acknowledges the concerns raised by Indigenous peoples regarding the potential effects of the Project on TLRU, including the transfer of language, culture and knowledge, as well as the recommendations made to the Commission by a number of Indigenous peoples.

The Commission notes that understanding the Project's effects on the current use of lands and resources for traditional purposes by Indigenous peoples is informed by many things, including Indigenous knowledge shared during the hearing process, NGTL's engagement activities (see subsection 7.5.1), and NGTL's approach to supporting traditional knowledge studies (see section 7.5.8.2). Based on the evidentiary record, the Commission is of the view that NGTL has appropriately considered all available information received to date. There are no unresolved site-specific TLRU concerns from Indigenous peoples that require new mitigation measures, and NGTL's established non-site specific mitigation measures in the Environmental Protection Plan will avoid or address potential effects on TLRU). That being stated, there is evidence that Indigenous peoples continue to exercise TLRU activities throughout the Project area. The Commission heard submissions from Indigenous peoples 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 **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) and **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and would impose the same conditions (**Conditions 6 and 22**) for the Section 58 Facilities and Activities, which were explained earlier in this Report. These conditions require NGTL to file its monitoring plans for Indigenous peoples related to both the Project's construction and post-construction phases. See subsection 7.6.7 for a full discussion.

The Commission notes that NGTL stated it would limit Project effects in part, by paralleling the existing ROW as much as possible. NGTL stated that the Elk River Section has been designed to parallel existing disturbances for 83 per cent of its length, while the Alford Creek Section parallels existing disturbances for 88 per cent of its length. More specific to TLRU matters, as noted earlier, NGTL proposed mitigation measures to reduce the adverse effects of the Project on TLRU. This includes, but is not limited to: clearly marking all sensitive resources as identified on the Environmental Alignment Sheets, Environmental Figures and/or other Project-specific

environmental documents and in the Project-specific mitigation tables in the Environmental Protection Plan, prior to the start of construction activities; re-marking all sensitive resources after clearing as necessary and supplementing markings with signage; 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 peoples with the proposed Project construction schedule and maps; notifying registered trappers in advance of construction; forbidding Project personnel from hunting or fishing on the construction footprint; and avoiding disturbance to environmentally sensitive features during clearing. The Commission recommends **Condition 14** (Construction Schedule) for the Section 52 Pipeline and Related Facilities and would impose the same condition (**Condition 15**) for the Section 58 Facilities and Activities. The condition requires NGTL to provide a copy of the schedule to all Indigenous peoples who have expressed an interest in receiving a copy, and provide confirmation to the CER, within 7 days of filing, that it has provided those copies.

The Commission heard from NGTL that despite having concerns about potential Project-related effects, several Indigenous peoples have chosen not to share site-specific information with NGTL. The Commission notes the commitment from NGTL to consider implementing additional mitigation in specific, localized areas if warranted based on site-specific details or concerns raised by Indigenous peoples. The Commission encourages Indigenous peoples to share site-specific information with NGTL so that it may further evaluate ways to avoid or otherwise manage effects on those sites through site-specific mitigation that is not currently set out in the Environmental Protection Plans.

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 conditions in the previous paragraph, as well as the recommended **Condition 7** (Outstanding Traditional Land and Resource Use Investigations) for the Section 52 Pipeline and Related Facilities and would impose the same condition (**Condition 7**) for the Section 58 Facilities and Activities, which was explained earlier in this Report, the Commission finds that effects of the Project on TLRU would likely be short-term to long-term in duration, reversible in the long-term, local to regional in geographic extent, and low to moderate in magnitude. Given all of the above, 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. Appendix V specifies the definitions for criteria used in this evaluation.

For the Commission's views concerning Project effects on vegetation, fish and fish habitat, and wildlife and wildlife habitat, such as effects of the Project on Caribou, refer to Chapter 8.

7.6.8.5 Cumulative Effects on Traditional Land and Resource Use

The Commission is concerned about the impacts of projects on the current use of lands and resources for traditional purposes by Indigenous peoples. The Commission notes the concerns raised by Indigenous peoples about the impact of cumulative effects on TLRU in the regions affected by the Project, and what impacts this then creates relative to the ability of Indigenous peoples to continue to use the lands and resources for traditional purposes, including impacts on quantity and quality of, and access to, traditional foods and medicines, and on the sharing of knowledge. The Commission acknowledges these concerns and recognizes that many may be longstanding unaddressed concerns, but notes that within the scope of this specific application,

the Commission only has the mandate to consider cumulative effects to which residual effects of the project before it contributes. The Commission does not have the mandate to conduct a regional cumulative effects assessment nor can the Commission require such an assessment or rule on adequacy of any regional cumulative effects assessment provided by parties. The Commission notes that regional assessments exist (e.g., regional assessments under the *Impact Assessment Act*); they go beyond project-focused impact assessments to understand the regional context and provide more comprehensive analysis to help inform future impact assessment decisions. However, this assessment is a project-level impact assessment.

The Commission recognizes that the cumulative effects of all types of developments in a given area can have lasting implications for those who live and / or hold rights and interests there. To minimize, or avoid, specific Project-related cumulative effects on 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 and imposed conditions mentioned in subsections 7.6.8.2 and 7.6.8.4. As a result, and based on TLRU information on the record, the Commission is of the view that within the scope of the Project, the Project is not likely to result in significant adverse cumulative effects on TLRU.

For the Commission's views on issues related to cumulative effects outside of TLRU, refer to Chapter 8.

7.6.9 Subsection 35(1) of the *Constitution Act, 1982*

7.6.9.1 Government of Canada's Consultation Process with Indigenous Peoples

The Commission notes that some Indigenous Parties requested that NGTL and the CER specify a robust process for Phase III and Phase IV Crown consultation. The Commission notes that, while NGTL's engagement with Indigenous peoples forms part of the overall consultative process, NGTL is not the Crown and therefore cannot specify the Crown's process for Phase III and IV Crown Consultation Activities.

The Commission notes MPMO's submission with respect to its objectives for its Crown Consultation process for the Edson Project, whereby MPMO states that it takes its consultation to consult with Indigenous peoples seriously and will pursue meaningful two-way dialogue with Indigenous peoples and work together to identify appropriate accommodation measures to address potential impacts to rights that have not been fully addressed by the proponent or through the CER process. The Commission notes that MPMO will produce the Consultation and Accommodation Report to be presented to the Governor-in-Council with this Report. The MPMO has stated that a Recommendation on whether to approve the Project will only be considered by the Governor-in-Council once it is satisfied that the Crown has adequately fulfilled its duty to consult.

7.6.9.2 Potential Impacts of the Project on Indigenous and Treaty Rights

The Commission has conducted a thorough review of the proposed Project which included the consideration of evidence based on scientific information and data as well as Indigenous knowledge. The information reviewed by the Commission included a variety of unique points of view, including those of First Nations and Métis peoples, which the Commission recognizes as distinct peoples with unique histories and worldviews. The Commission notes that participation

of Indigenous peoples in this process is highly valued and essential to help the Crown understand how the Project impacts Section 35 Indigenous and Treaty rights. The Commission recognizes the interconnected nature between the environment and Indigenous peoples.

During the hearing process the Commission heard concerns that the Project could impact the ability of Indigenous peoples to exercise their Indigenous and Treaty rights, and the Project does not respect First Nation law and governance. In addition, many Indigenous peoples indicated concern regarding NGTL's method of assessing Project impacts to potential and / or established Indigenous and Treaty rights.

The Commission understands that the Government of Canada intends to draw on the CER public hearing process, as well as its own consultation process, to fulfill the Crown's duty to consult in relation to the 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)*,¹⁷ have acknowledged the Crown's ability to rely on opportunities for consultation with Indigenous peoples that are available within existing processes for regulatory or environmental review. This is a means by which the Crown may be satisfied that an Indigenous people's concerns have been heard and considered, and where appropriate, accommodated. The Commission notes that the Supreme Court of Canada (SCC) has acknowledged in two recent decisions, *Clyde River and Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*,¹⁸ that the NEB, now the CER, 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 CER 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 (now the CER Act) provides the Commission with broad powers and expansive remedial authority to deal with the impacts of federally-regulated pipeline projects. The CER is the federal statutory body that has the most direct involvement in the assessment of applications to construct and operate pipelines. The CER 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 addition, the CER has the authority to elicit commitments from the proponent, impose conditions on an approval and undertake ongoing regulatory oversight of a project and verify a proponent's compliance. The CER also has been given the statutory mandate to impose and enforce

¹⁷ 2004 3 SCR 550, 2004 SCC 74 (CanL II), at [40] 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*)).

¹⁸ *Clyde River*, paras 31-34; *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, para 48.

mitigation measures to reduce negative project impacts and hold a proponent to the commitments made in the CER's project assessment process.

The Commission acknowledges the views shared by some Indigenous Intervenors that the Project does not respect their laws and governance. The sharing of this perspective was an important factor in the Commission's determination of the appropriate level of mitigation for this Project, and on determining the appropriate accommodation measures to recommend or impose. Sharing this perspective helped inform the Commission's ultimate Recommendation and informed which conditions to recommend imposing on NGTL. While it is beyond the Commission's jurisdiction to grant the request made by O'Chiese First Nation to require that NGTL work with O'Chiese First Nation to identify, purchase and set aside lands for O'Chiese First Nation that meet their Required Means or to establish a compensation and benefits framework for O'Chiese First Nation, the Commission is recommending conditions on NGTL to mitigate Project impacts on Indigenous peoples' rights and interests, including impacts to TLRU. The Commission also notes that NGTL did seek to avoid potential project effects on Indigenous peoples through routing the Project primarily adjacent to an existing NGTL right-of-way. By appropriately mitigating potential Project impacts to TLRU, the Commission seeks to preserve Indigenous peoples' continued stewardship of the land. While this may not be the relief requested by O'Chiese First Nation, the Commission notes that remedies such as offsets and compensation are not within the Commission's authority to impose in this hearing and strove to strike a balance to help foster the continued stewardship by Indigenous peoples over the land. Through conditions such as **Condition 4** (Reports on Engagement with Indigenous Peoples); **Condition 7** (Outstanding Traditional Land and Resource Use Investigations); **Condition 6** (Construction Monitoring Plan for Indigenous Peoples; **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples), the Commission expects the dialogue to continue between Indigenous peoples and NGTL such that NGTL can, to the extent possible, incorporate Indigenous perspectives into the design, construction, and operation of its Project. The Commission also recognizes the framework and legislation under which the CER must operate. The framework within which the CER 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 their rights and interests. 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 Governor-in-Council for consideration in its decision making. It may also provide 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 hearing process. There are several points in a CER 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 CER'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. In addition to the engagement that is to occur between a proponent and potentially impacted Indigenous peoples (described in section 7.1), it should be understood that the CER'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 as led by the CER's guidance including its Filing Manual, the Commission's 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 Intervenors assisted in shaping the Commission's hearing process by providing input to the revised hearing design in response to the pandemic, and also commenting on draft conditions.

The Commission is of the view that NGTL designed and implemented appropriate and effective engagement activities for the Project. The Commission notes that the Filing Manual requires proponents to respond to the concerns from Indigenous peoples (e.g., describe the measures that NGTL will take to address concerns, and describe how input has influenced the design, construction and operation of the Project), which includes any concerns about how the Project will impact Indigenous and treaty rights. The Commission continues to encourage NGTL and interested Indigenous peoples to work together and further discuss opportunities to ensure any potential impacts are mitigated through mutually agreeable mechanisms. The Commission is also of the view that the hearing process enhanced the information flow to potentially impacted Indigenous peoples and provided greater opportunities for meaningful participation of Indigenous peoples. For example, these opportunities allowed Indigenous peoples to submit written evidence and oral Indigenous knowledge about how the Project will impact Indigenous and treaty rights, which was fully considered by the Commission.

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 hearing record. Government departments that participated in the Commission's

proceeding by filing information included ECCC, NRCan, and Alberta Department of Energy. The federal government participants filed expert information on the Commission's hearing record, and were available to answer questions asked by the Commission, NGTL, and other Intervenor, including Indigenous peoples. The government Intervenor also had the opportunity to comment and provide information on appropriate mitigation measures, and proposed conditions.

With respect to effects of the Project on rights and interests of Indigenous peoples, the Commission is of the view that NGTL's assessment of, and proposed mitigation measures for, the potential Project impacts on the rights and interests of Indigenous peoples as well as on TLRU sites and activities were reasonable and broad enough to encompass the full scope of potential effects of the Project.

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 peoples, as discussed in this Chapter and elsewhere in 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 recommend accommodation measures in relation to the potential impacts on the rights and interests of Indigenous peoples. Specifically the Commission recommends the following conditions on the Section 52 Pipeline and Related Facilities:

- **Condition 4** (Reports on Engagement with Indigenous Peoples);
- **Condition 5** (Indigenous Peoples Employment, Contracting, and Procurement Plan Update);
- **Condition 7** (Outstanding Traditional Land and Resource Use Investigations);
- **Condition 6** (Construction Monitoring Plan for Indigenous Peoples);
- **Condition 12** (Heritage Resource Clearances);
- **Condition 14** (Construction Schedule);
- **Condition 21** (Training, Employment, Contracting, and Procurement Report);
- **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples).

The Commission would also impose the following conditions on the Section 58 Facilities and Activities:

- **Condition 4** (Reports on Engagement with Indigenous Peoples);
- **Condition 5** (Indigenous Peoples Employment, Contracting, and Procurement Plan Update);
- **Condition 7** (Outstanding Traditional Land and Resource Use Investigations);
- **Condition 6** (Construction Monitoring Plan for Indigenous Peoples);

- **Condition 11** (Heritage Resource Clearances);
- **Condition 15** (Construction Schedule);
- **Condition 21** (Training, Employment, Contracting, and Procurement Report);
- **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples).

As a result, the Commission is of the view that there has been adequate consultation and accommodation for the purpose of the Commission's recommendation and decision on this Project. In the context of this Project, the Commission is of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples, after mitigation and the Commission's accommodation measures, are not likely to be significant and can be effectively addressed.

As a result of the above, and considering all of the findings in this Report, the Commission is of the view that sufficient information has been submitted to allow the Commission to assess how the Project will affect Indigenous and treaty rights. The Commission is of the view that an approval of this Project under Section 58 of the NEB Act and recommendation to the Governor-in-Council for approval of the Project under Section 52 of the NEB Act is consistent with the requirements of section 35 of the *Constitution Act, 1982* and the honour of the Crown.

Chapter 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 to conduct an Environmental Assessment and prepare an Environmental Assessment report. The Commission also considers environmental protection as part of its broader mandate. When making its recommendation, the Commission is responsible for assessing the environmental and socio-economic effects of the Project. This chapter represents the Commission's Environmental Assessment.

8.1 The CEAA 2012 Context

The Commission posted a Notice of Commencement on the Canadian Environmental Assessment Registry Internet site, now the Canadian Impact Assessment Registry site, on 26 August 2019 and its reference number is 80173. A description of the factors to be taken into account in the Environmental Assessment and the scope of those factors as required by subsections 19(1) and 19(2) of the CEAA 2012 is available on the CER website and the Canadian Impact Assessment Registry site. 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 CER's Filing Manual.

The CEAA 2012 requires the Commission to provide opportunities for public participation and provide participant funding, which are further described in Chapters 6 and 7, respectively.

8.2 The Commission's Environmental Assessment Methodology

In assessing the environmental and socio-economic effects of the Project, the Commission used an issue-based approach as set out in the CER's Filing Manual for applicants.

This assessment begins with: a description of the Project (section 8.3), followed by a description of the setting and the environmental and socio-economic elements within that setting (section 8.4), and then a summary of the environmental and socio-economic concerns raised by the public and Indigenous peoples (section 8.5). Based on these, the Commission identified Project-environment interactions expected to occur and any resulting potential adverse environmental effects (section 8.6; Table 8-5). If there were no expected Project-environment interactions, or interactions resulted in positive or neutral effects, then no further examination was deemed necessary.

The Commission then assessed the potential adverse environmental and socio-economic effects, as well as the adequacy of the Applicant's proposed environmental protection strategies and mitigation measures (section 8.6). Subsection 8.6.3 discusses the extent to which standard mitigation is relied on to mitigate potential adverse effects. In subsection 8.6.4, the Commission provides detailed analysis for issues raised by the Participants which could potentially have an environmental consequence, and therefore require additional assessment. 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 residual environmental and socio-economic effects would not be significant. Where there are any residual effects remaining after proposed mitigation, cumulative effects are considered in section 8.7. Follow-up under the CEAA 2012 is

then discussed in section 8.8. The Commission's conclusion on significance is provided in section 8.9.

Views of Indigenous Peoples

Samson Cree Nation, Piikani Nation and Driftpile Cree Nation raised concerns regarding NGTL's Environmental and Socio-Economic Assessment scoping, methodology and selection of spatial boundaries, as well as the level of detail provided in baseline information. For example, Samson Cree Nation raised that the baseline studies contain substantial information gaps that do not allow for a sufficient evaluation of potential effects to aquatic resources. Driftpile Cree Nation stated its view that NGTL should use zones of influence to quantify avoidance distances for various wildlife species.

Many Indigenous peoples that were intervenors in the proceeding asked clarification questions through Information Requests regarding how NGTL arrived at Environmental and Socio-Economic Assessment conclusions, details of mitigation measures, and where particular information is located in NGTL's Application or subsequent filings.

Some Indigenous peoples raised concerns around the methodology used for assessing sensory disturbance on wildlife and wildlife habitat. Specifically, Driftpile Cree Nation stated its view that the use of ecologically appropriate zones of influence would allow for more accurate estimates of potential Project-related impacts on wildlife habitat loss.

Concerns were also raised regarding NGTL's methodology for assessing potential impacts on rights and interests of Indigenous peoples, including traditional land and resource use. Chapter 7 provides a discussion and the Commission's findings on these issues.

Samson Cree Nation raised concerns about NGTL's cumulative effects methodology. A discussion of cumulative effects methodology can be found in section 8.7.

Views of NGTL

NGTL provided descriptions of its Environmental and Socio-Economic Assessment methodology, including baseline data collection, spatial and temporal boundaries used in the Environmental and Socio-Economic Assessment, and rationale for the selected methodology. NGTL stated that its Environmental and Socio-Economic Assessment assessed potential Project effects in accordance with the CER's Filing Manual requirements and Canadian Environmental Assessment Agency's guidance using methodologies that have been accepted by the CER for past projects.

NGTL provided responses indicating where Intervenor could find baseline data and information within its Application, Environmental and Socio-Economic Assessment, and subsequent filings.

NGTL stated that sensory disturbance to wildlife was assessed qualitatively, rather than by applying zones of influence. NGTL further stated that sensory disturbance during Project construction (scheduled to occur in winter) is anticipated to temporarily reduce habitat availability in the Local Assessment Area.

NGTL further stated that the assessment of key indicators is an accepted approach of identifying possible effects pathways to inform environmental and socio-economic effects, not a suggestion that key indicator species are the only species that would be affected by the Project.

Additional discussion of NGTL's response to questions about incorporation of traditional land and resource use can be found in subsection 7.4.8.

Views of the Commission

The Commission finds that NGTL's methodology for assessing the Project's potential environmental and socio-economic effects is appropriate.

The Commission has considered the wide variety of concerns raised by Intervenors in regards to NGTL's environmental assessment methodology. The Commission considers that Indigenous knowledge helps provide a holistic understanding of natural and cultural ecosystems. The Commission's consideration of Indigenous knowledge in environmental assessments is integral to the identification, assessment, mitigation, and monitoring of environmental and socio-economic effects. The Commission finds that NGTL has implemented engagement that creates opportunities to receive and incorporate Indigenous knowledge and expects engagement to continue in a meaningful manner.

The Commission notes that NGTL followed both the CER's Filing Manual and the guidance provided by the Impact Assessment Agency (formerly the Canadian Environmental Assessment Agency) in designing and undertaking its Environmental and Socio-economic Assessment for the Project. With respect to the concerns raised regarding the appropriateness of baseline information, the Commission notes that the CER's Filing Manual provides guidance to applicants on what baseline information to include in an environmental and socio-economic assessment. In some cases, the effects of a project on certain environmental elements can be predicted, and appropriate mitigation proposed, regardless of the level of detail of baseline information. On balance, the Commission is of the view that NGTL's Environmental and Socio-Economic Assessment includes sufficient baseline information, adequate methodology, and rationale for that methodology.

The Commission notes, for the assessment of sensory disturbance on wildlife and wildlife habitat, NGTL did not quantitatively apply zones of influence, and rather evaluated the Project effects qualitatively on wildlife, including all key indicator species using appropriate scientific literature. The Commission is of the view that relying on the indicator species based approach is generally acceptable for species that have similar habitat or ecological function and requirements, and that are likely to respond similarly to certain effects. In addition, the Commission does not see merit in a quantitative assessment given that these temporary effects would only occur during inspections and maintenance, and any access due to recreational activities. The Commission notes that NGTL's Environmental Protection Plans include the implementation of access control measures and its Access Management Plan. The Commission recommends **Condition 10** (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose **Condition 9** (Environmental Protection Plan) for the Section 58 Facilities and Activities, requiring NGTL to submit updated Environmental Protection Plans for the Project.

Additional detail and views of the Commission regarding cumulative effects methodology are noted in subsection 8.7.1.

8.3 Project Details

Chapter 2 of this Report provides a general description of the Project. In addition, the following table provides further details on Project components and activities relevant to the Environmental Assessment.

Table 8-1: Project Components and/or Activities

Project Components and/or Activities
<i>Construction Phase – Timeframe: Construction is scheduled to begin in Q2 of 2021 and be completed by Q2 of 2022</i>
Alford Creek Pipeline Section <ul style="list-style-type: none"> • Approximately 45 km of NPS 48 pipeline looping
Elk River Pipeline Section <ul style="list-style-type: none"> • Approximately 40 km of NPS 48 pipeline looping
ROW Preparation and related infrastructure installation: <ul style="list-style-type: none"> • Clearing, grubbing and grading ROW (typical ROW width of up to 32 m with additional temporary workspace at pipe bends etc.) • Temporary infrastructure, including stockpile sites, contractor yards, access roads, borrow pits/dugouts, and laydown yards • Pipeline stringing, welding, bending, coating, trenching, installation and backfill • Watercourse crossings: <ul style="list-style-type: none"> ○ Trenchless crossing at the Brazeau River ○ Isolated open cut crossing at the Clearwater River ○ Open cut crossings at all remaining watercourses • Trenchless crossings of roads (e.g., Highway 591, Highway 752, high-grade gravel roads) • Water withdrawal and hydrostatic testing • ROW clean-up, reclamation and site restoration
<i>Operation Phase – Timeframe: Service life of the Project (estimated in-service date: April 2022)</i>
<ul style="list-style-type: none"> • ROW maintenance including vegetation control, erosion control, line integrity flyovers, and third-party activity near lines • Infrastructure/facility maintenance
<i>Abandonment Phase – Timeframe: At the end of the service life of the Project</i>
<ul style="list-style-type: none"> • To abandon the facility, an application to the CER would be required pursuant to the CER Act, at which time the environmental effects would be assessed

8.4 Environmental Setting

This section provides a description of the environmental setting for the Project. Since the information provided is from NGTL’s Application, and specifically from its Environmental and

Socio-Economic Assessment, the Commission has used the same spatial extent descriptors as used by NGTL. These include the Project Development Areas, Local Assessment Areas and Regional Assessment Areas, which are defined below. For greenhouse gas (GHG) emissions, the spatial boundary extends beyond the Regional Assessment Area and has global implications.

Project Development Areas – encompass the areas predicted to experience physical disturbance as a result of Project construction and operation, and include the areas to be used for clearing, grading, ditch excavation, facility installation, log decks, soil stockpiles, work and travel lanes, and temporary workspace.

The Project Development Area for the Alford Creek Section is a corridor approximately 45 km long and 75 m wide, with a total area of approximately 337 ha.

The Project Development Area for the Elk River Section is a corridor approximately 40 km long and 75 m wide, with a total area of approximately 292 ha.

Local Assessment Areas – those areas within which Project-related effects, both direct and indirect, are predicted to occur. The dimensions of a Local Assessment Area are specific to each Valued Component.

Regional Assessment Areas – those areas within which potential cumulative effects are assessed. Regional Assessment Areas include both the Project Development Area and Local Assessment Area, and the dimensions are specific to each Valued Component.

Table 8-2: Study Area Descriptors for Specific Biophysical and Socio-economic Elements

Element	Spatial Boundary of Local Assessment Area	Spatial Boundary of Regional Assessment Area
Soil Capability	<p>The Project Development Areas – pipeline ROW and temporary workspace</p> <p>Elk River Section: an approximately 40 km long and 75 m wide corridor totaling 292.3 ha</p> <p>Alford Creek Section: an approximately 45 km long and 75 m wide corridor totaling 337.1 ha</p>	Same as Local Assessment Areas because any potential effects of the Project on soil capability will be confined to the Project Development Areas
<p>Aquatics</p> <p>a) Fish and Fish Habitat</p>	a) Project Development Areas + 100 to 500 m upstream from each crossing and 300 to 1500 m downstream from	a) Area that extends 15 km upstream from each watercourse crossing or encompasses the watershed boundary upstream from each

Element	Spatial Boundary of Local Assessment Area	Spatial Boundary of Regional Assessment Area
b) Surface Water Quality and Quantity c) Ground Water Quality and Quantity	the crossing, depending on the zone of influence b) Watercourses: Project Development Areas + 100 to 500 m upstream from each crossing and at least 300 to 1500 m downstream from the crossing Drainages (with no defined channels) and all other surface water bodies (e.g., wetlands): Project Development Areas + 100 m buffer c) Project Development Areas + 200 m buffer	watercourse crossing, whichever is less, and the area that extends 15 km downstream from each watercourse crossing b) Project Development Areas + 15 km buffer; ending at the upstream watershed boundary if less than 15 km from the Project Development Areas c) Project Development Areas + 1 km buffer
Atmospheric Environment	For the assessment of GHG emissions, no local spatial boundaries are used as the associated environment effect is a global phenomenon	For the assessment of GHG emissions, no regional spatial boundaries are used as the associated environment effect is a global phenomenon
Vegetation and Wetlands	Project Development Areas + 100 m buffer	Project Development Areas + 15 km buffer
Wildlife and Wildlife Habitat	Project Development Areas + 1 km buffer	Project Development Areas + 15 km buffer
Human Occupancy and Resource Use	Project Development Areas + 1 km buffer	Project Development Areas + 15 km buffer
Traditional Land and Resource Use	Project Development Areas + 1 km buffer	Project Development Areas + 15 km buffer
Heritage Resources	Project Development Areas	Not defined, since the Project Development Areas/Local Assessment Areas are the maximum area for which effects can be predicted or measured accurately
Socio-economic valued components a) Employment and Economy b) Infrastructure & Services	a) Alberta communities within a 50 km buffer of each Project Development Areas (all communities intersected by the buffer are included) b)-d) further refined from a), based on the topic, to	Same as Local Assessment Areas

Element	Spatial Boundary of Local Assessment Area	Spatial Boundary of Regional Assessment Area
c) Human Health d) Social and Cultural Well-being	capture the maximum area within which Project effects can be predicted or measured with a reasonable degree of accuracy and confidence. As such, effects on infrastructure and community services, and social and cultural well-being are most likely to occur within those communities where Project workers reside and/or use infrastructure and services	

8.4.1 Location

- The Project facilities are located within west-central Alberta. See Figure 2-1 in Chapter 2 for a map showing their locations.
- The north end of the Alford Creek Section is located approximately 28 km west of Rocky Mountain House, Alberta, within the Lower Foothills Natural Subregion and the Upper Foothills Natural Subregion.
- The north end of the Elk River Section is approximately 70 km southwest of Drayton Valley, Alberta, within the Lower Foothills Natural Subregion.

8.4.2 Land, Human Occupancy, and Resource Use

- Approximately 2 per cent of all parcels traversed by the Project are private (freehold) land and approximately 98 per cent are provincial Crown land. The new permanent ROW dimensions will vary between approximately 15 to 32 m. The Project Development Area for both sections is 75 m-wide and encompasses the pipeline ROW and the additional temporary workspace required to safely construct the Project. NGTL stated the 75 m-wide Project Development Area is conservative; the area disturbed by the Project is expected to be substantially less than 75 m but will not be confirmed until detailed engineering and ROW design is complete.
- The Green Area encompasses most of northern Alberta as well as the mountain and foothill areas along the province's western boundary. Crown lands within the Green Area are managed by the province primarily for non-agricultural uses such as forestry, grazing and recreation. Agricultural use is limited to grazing where it is compatible with other uses.
- The White Area consists of the populated central, southern and Peace River areas of the province. In the White Area, public land is part of the agricultural landscape. Most of the public land in the White Area is under disposition or is otherwise committed.
- Private dwellings are not intersected by the Project Development Area.

- There are five Wildlife Management Units in the Foothills Wildlife Management Zone (i.e., Wildlife Management Units 318, 324, 326, 328 and 339) and the Eastern Slopes Fish Management Zone that are traversed by the pipeline project components. These management units are associated with provincial regional administration of hunting and fishing activities.
- The proposed pipeline routes cross the Elk River, Brazeau River, Nordegg River, Clearwater River, and Prairie Creek watersheds and cross a total of 31 watercourses (15 in Alford Creek Section and 16 in Elk River Section) and 9 drainages (7 in Alford Creek Section and 2 in Elk River Section).
- The Project does not cross any Indian Reserves, as defined under the *Indian Act*.
- The Project is not located on any federally owned or administered land.
- The proposed new Bighorn Wildland Provincial Park will be approximately 50 km west of the Elk River Project Development Area and 70 km west of the Alford Creek Project Development Area. An approximately 17.7 km long portion of the Elk River Section of the Project south of the Brazeau River crossing is within the proposed West Country Public Land Use Zone in Bighorn County.

Elk River Section

- The Elk River Section route is located entirely on provincial Green Area Crown land within Clearwater County and Yellowhead County.
- The Project Development Area of the Elk River Section is an approximately 40 km-long and 75 meter (m) wide corridor totaling 292.3 ha in area, including the pipeline ROW and temporary workspace.
- Land use in the Project Development Area includes forested lands, and oil and gas activities. Up to 187.4 ha (62.7 per cent) of the Project Development Area is forested and meadow uplands. Other land cover types include lands previously disturbed by forestry or industrial use and roads (48.3 ha of the Project Development Area, or 16.1 per cent), and wetlands and open water (63.8 ha, 21.3 per cent of the PDA).
- The Elk River Section is within the boundaries of the Upper Athabasca Regional Planning area and the North Saskatchewan Regional Planning area.
- The Elk River Section traverses lands that are used for commercial forestry and timber harvesting, oil and gas activities, recreation (e.g., hunting, fishing, ATV/snowmobile use) and trapping.
- The nearest reserve, the O'Chiese 203 Reserve, is located approximately 18 km east of the Project Development Area.
- Local Assessment Area intersects numerous dispositions related to forestry activities, oil and gas and other industrial activities including pipeline agreements, pipeline installation leases, mineral surface leases, temporary field authorizations, licenses of occupation, and other dispositions.
- Local Assessment Area intersects the R12 and R13 Forest Management Units.
- Project Development Area intersects a Protection Notation in 21 and 28-45-13 W5M, on the north and south side of the Brazeau River.

- The Elk River Section is within Wildlife Management Units 328 and 339 used for various seasonal game (wildlife and bird) hunting.
- The Elk River Section is within the boundaries of the Eastern Slopes Fish Management Zone. Sportfishing is not generally permitted in the rivers in the Local Assessment Area from 1 November to 31 May.
- There are five active trapline agreements within the Fish Management Zone 4.
- This section crosses four named watercourses: Nordegg River, Nordegg River Oxbow, Brazeau River, Elk River, and thirteen unnamed tributaries.
- Three rivers (Nordegg River, Brazeau River, and Elk River) are rated as possibly or likely to be navigable based on field assessments.
- There are no wildlife sanctuaries or Important Bird Areas (Bird Studies Canada and Nature Canada 2018) near the Elk River Section.
- The closest protected area to the Elk River Section is the Aurora Natural Area, which is approximately 6 km south of the Project Development Area. The closest Provincial Park is Crimson Lake Provincial Park, which is approximately 48 km southeast of the Project Development Area.
- The Elk River Section overlaps with the grizzly bear secondary recovery zone identified for the Yellowhead Bear Management Area (BMA 3) in the draft Alberta Grizzly Bear Recovery Plan).

Alford Creek Section

- The route is located on Green Area Crown lands (94 per cent) and White Area freehold lands (6 per cent) within Clearwater County.
- The Project Development Area of the Alford Creek Section is an approximately 45 km-long and 75 m-wide corridor totaling 337.1 ha in area, encompassing the pipeline ROW and temporary workspace.
- Land use in the Project Development Area is primarily forested uplands (228.5 ha or 68.1 per cent). Other land cover types crossed by the Project Development Area include wetlands (13.8 ha or 4.1 per cent), lands previously disturbed for agriculture, industrial use and roads (91.6 ha or 27.3 per cent), and open water (1.6 ha or 0.5 per cent).
- There are four freehold quarter sections along the Alford Creek Section: three quarter sections (NE-09-36-07 W5M, SE- and SW-16-36-07 W5M) are located in the Green Area lands and one quarter section (SE-31-37-08 W5M) is located in the White Area.
- The Alford Creek Section is within the boundaries of the North Saskatchewan Regional Planning area.
- The Alford Creek Section traverses lands that are used for commercial forestry and timber harvesting, grazing, oil and gas activities, recreation (e.g., hunting, fishing, ATV/snowmobile use) and trapping.
- The nearest reserve, the O'Chiese 203A Reserve, is located approximately 3.7 km east of the Project Development Area.

- Local Assessment Area intersects numerous dispositions related to forestry activities, oil and gas, power transmission, surface mineral exploration and extraction, agricultural grazing and other dispositions.
- The Alford Creek Section is within the boundaries of the R10 and R01 Forest Management Units.
- The Alford Creek Section is within Wildlife Management Units 318, 324 and 326 and these Wildlife Management Units are used for various seasonal game (wildlife and bird) hunting.
- The Alford Creek Section is within Fish Management Zones 4 and 6. There are five active traplines in the Local Assessment Area.
- The Alford Creek Section is within the boundaries of the Eastern Slopes Fish Management Zone. Sportfishing is not generally permitted in the rivers in the Local Assessment Area from 1 November to 31 May.
- The Alford Creek Section crosses nine named watercourses: Clearwater River, Clearwater River side channel, Alford Creek, Matts Creek, Swan Creek, Vetch Creek, Prairie Creek, Cold Creek, and North Prairie Creek, and seven unnamed tributaries. The Alford Creek Section also crosses seven drainages.
- Two rivers rated as possibly or likely to be navigable based on field assessments: Clearwater River and Prairie Creek.
- The closest Provincial Park or protected area to the Alford Creek Section is the Phyllis Lake Provincial Recreation Area, which is approximately 150 m west of the Project Development Area, within the Local Assessment Area. The closest Provincial Park is Crimson Lake Provincial Park, located approximately 20 km northeast of the Project Development Area.
- There are no wildlife sanctuaries or Important Bird Area (Bird Studies Canada and Nature Canada 2018) near the Alford Creek Section.

Table 8-3: Land Information

Project Section	Location	Approximate Percentage and Length in Green/White Zone, FMU and WMU.	Number of Crown and Private Land parcels	Approximate amount of land base within the project footprint available
Alford Creek	Clear Hills County	99% (44.6km) of length is Green Zone 01% (00.6km) of length is White Zone 99% (44.6km) in FMU R10 01% (00.6km) in FMU R01 62% (28.2km) Prairie Creek WMU 33% (14.7km) Baseline WMU 5% (2.3km) James WMU	72 Crown Parcels 5 Private Parcels	Before Construction: Approximately 199 ha During Construction: Approximately 149 ha After Construction: 198 ha

Elk River	Clear Hills County and Yellowhead County	100% (40.0km) of length is Green Zone 0% (0km) of length is White Zone 45% (18.0km) in FMU R12 55% (22.0km) in FMU R13 66% (26.8km) Elk River WMU 34% (13.1km) Schunda WMU	64 Crown Parcels 0 Private Parcels	Before Construction: Approximately 187 ha During Construction: Approximately 140 ha After Construction: 187 ha
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8.4.3 Indigenous Peoples

- The Project components are located within Treaty 6, Treaty 7, and Treaty 8 boundaries, as well as within the lands of Métis Nation of Alberta, Region 3 and Region 4. A complete description of the potential impacts of the Project on Indigenous peoples and their interests is provided in Chapter 7 of this Report.

8.4.4 Physical and Meteorological Environment

- The Local Assessment Areas do not overlap any areas of permafrost. Much of the Project Development Areas are characterized by level, gently undulating terrain. Areas of steeper slopes are associated with watercourse crossings of an unnamed tributary to the Brazeau River, unnamed tributary to the Nordegg River, Swan Creek, Prairie Creek, and the Clearwater River, as well as some road crossings.

8.4.5 Soil and Soil Productivity

- Soils in the Alford Creek Section Project Development Area are Brunisolic Gray Luvisols developed on moderately fine till or medium textured glaciofluvial materials, with small areas of Regosolic soils developed on gravel or alluvium deposits adjacent to river and stream crossings.
- Soils in the Elk River Section Project Development Area are predominantly Podzolic Gray Luvisols developed on moderately coarse till, and Brunisolic Gray Luvisols developed on medium textured glaciolacustrine overlying till. Some areas of poorly to very poorly drained organic soils developed on fen and bog peat are present at lower and depressional slope positions, and exhibit a high compaction risk. Minor amounts of Brunisolic Gray Luvisols developed on medium textured glaciofluvial materials are found adjacent to stream channels.

Soil Contamination

- A review of federal and provincial databases was conducted to identify historical occurrences of releases which revealed one release of approximately 33.8 m³ of raw gas occurred at a compressor station within 100 m of the Elk River Section Project Development Area within 12-02-46-14 W5M. However the probability of encountering contamination on the Elk River Section Project Development Area is unlikely as it

parallels other natural gas pipelines and does not include brownfield facility development.

8.4.6 Vegetation (including Species at Risk)

- The Alford Creek Section is characterized by coniferous and mixedwood forest, existing disturbances (e.g., maintained ROWs, cutblocks), and a small amount of agricultural land use. The Elk River Section is also located predominantly within coniferous and mixedwood forest, as well as areas of existing disturbances.
- Two areas of old seral stage forest are located within the Alford Creek Local Assessment Area, and a third area was brought to NGTL's attention by Sunchild First Nation. One area of old seral stage forest is located within the Elk River Project Development Area.
- Field surveys identified 25 rare plant species listed under the Alberta Conservation Information Management System, however none are protected under the *Alberta Wildlife Act* or the federal *Species at Risk Act* (SARA).
- No prohibited noxious weed species were found during field surveys, however the following noxious weed species observed either within or outside of the Project Development Area include: Canada (creeping) thistle, tall buttercup, perennial sow thistle, and ox-eye daisy.
- Mountain pine beetle boreholes and tree mortality were observed during field surveys in both the Alford Creek and Elk River Local Assessment Areas.

8.4.7 Wetlands

- In the Alford Creek Section, wetlands are uncommon and cover 4.5 per cent of the Local Assessment Area and 4.1 per cent of the Project Development Area. Wetlands, mostly swamps, cover approximately 18 per cent of the Elk River Local Assessment Area and 23 per cent of the Elk River Project Development Area.

8.4.8 Water Quality and Quantity

Surface Water

- The Project is located within the watershed of the North Saskatchewan River. The Alford Creek Section drains into the Clearwater River and Ram River subwatersheds, while the Elk River Section drains into the Brazeau River subwatershed. All watersheds experience peak flow in June and lowest flows in winter months.
- The Project route crosses a total of 33 watercourses, 16 in the Alford Creek Section and 17 in the Elk River Section. Crossings include the Nordegg River, Brazeau River, Elk River, and Clearwater River. The Project route crosses some watercourses more than once, for a total of 38 watercourse crossings.

Groundwater

- Shallow groundwater flow systems characterize the Regional Assessment Area. There are 14 shallow water wells within the Elk River Local Assessment Area, which are used for domestic and industrial purposes. There are 17 shallow water wells within the Alford Creek Local Assessment Area, for domestic, industrial, and monitoring uses.

8.4.9 Fish and Fish Habitat (including Species at Risk)

- Database search results documented 24 fish species in the Alford Creek Regional Assessment Area and 19 fish species in the Elk River Regional Assessment Area.
- The Alford Creek Section Local Assessment Area and the Elk River Section Local Assessment Area crosses 7 and 5 watercourses, respectively that provide moderate to good spawning habitat for fish.
- The Project Regional Assessment Area supports important recreational fisheries, including species such as brook trout, brown trout, burbot, northern pike, and mountain whitefish.
- Project-specific traditional knowledge studies identified 18 important fish species in the Regional Assessment Area.
- The distribution of the Saskatchewan – Nelson Rivers populations of bull trout overlap with the Project, and these populations are listed as Threatened on Schedule 1 of the SARA and listed as threatened under the Alberta *Wildlife Act*.
- Species of Management Concern in the Alford Creek Regional Assessment Area include lake trout and northern redbelly dace (listed as sensitive under the General Status of Alberta Wild Species). Species of Management Concern in both the Alford Creek and Elk River Regional Assessment Areas include spoonhead sculpin, listed as may be at risk under the General Status of Alberta Wild Species.
- Whirling disease has been confirmed within the North Saskatchewan River watershed, including the Brazeau River, Clearwater River, and Prairie Creek watersheds which would be crossed by the Project.

8.4.10 Wildlife and Wildlife Habitat (including Species at Risk and Species of Management Concern)

- Habitat in the Regional Assessment Area is a patchwork of mature upland forest and logged areas, and has been highly modified by anthropogenic activity. The area is intersected by a network of roads, as well as cutblocks and industrial infrastructure.
- The Elk River Local Assessment Area overlaps with several Key Wildlife and Biodiversity Zones associated with the Elk, Brazeau, and Nordegg Rivers and their tributaries. The Elk River Regional Assessment Area overlaps with additional Key Wildlife and Biodiversity Zones associated with the Baptiste River. The Alford Creek Local Assessment Area falls within a large Key Wildlife and Biodiversity Zones near the Clearwater River, as well as several smaller Key Wildlife and Biodiversity Zones associated with Burnstick Lake, Lower Stony Creek, and Swan Creek. The Alford Creek Regional Assessment Area also overlaps the Clearwater Ricinus and Cow Lake Natural Areas.

- The northern portion of the Elk River Project Development Area and Local Assessment Area falls within the Secondary Recovery Zone for grizzly bear within the Yellowhead Bear Management Area (BMA 3), identified in the draft Alberta Grizzly Bear Recovery Plan. The western portion of the Elk River Regional Assessment Area overlaps with the Core Recovery Zone of grizzly bear in BMA 3. The northern portion of the Alford Creek Project Development Area overlaps with the Secondary Recovery Zone for grizzly bear within the Clearwater Grizzly Bear Management Area (BMA 4).
- There is a potential for 58 wildlife species at risk and species of management concern to occur within the Regional Assessment Area, including 41 birds, 14 mammals, 1 amphibian, and 2 reptiles.
- Seventeen species listed on Schedule 1 of the SARA have the potential to occur in the Project Regional Assessment Area: horned grebe, western grebe, common nighthawk, yellow rail, peregrine falcon, short-eared owl, olive-sided flycatcher, barn swallow, bank swallow, rusty blackbird, little brown myotis, northern myotis, grizzly bear, wolverine, American badger, western tiger salamander, and western toad. Three species at risk listed under the Alberta *Wildlife Act* have the potential to occur in the Project Regional Assessment Area: western grebe, peregrine falcon, and grizzly bear.

2018 Field Surveys

- Sixteen species at risk and species of management concern were observed in the Project Local Assessment Area: great blue heron, sandhill crane, brown creeper, western wood-peewee, pileated woodpecker, American kestrel, osprey, bald eagle, northern goshawk, barn swallow, grizzly bear, moose, beaver, long-tailed weasel, Canada lynx, and western toad.

2019 Field Surveys

- Additional species of management concern observed in the Local Assessment Area include Sora, osprey, red-tailed hawk, pileated woodpecker, eastern red bat, silver-haired bat (all listed as sensitive under the Alberta General Status of Wild Species), and little brown myotis and northern long-eared myotis (listed as Endangered on Schedule 1 of the SARA).

8.4.11 Atmospheric Environment

- GHG emission sources include combustion of fossil fuels in vehicles and equipment used in pipeline construction and vegetation maintenance along the RoW during operations.
- The estimated GHG emissions from Project construction are 14.5 kilotonnes carbon dioxide equivalent. These emissions are estimated to contribute 0.002 per cent of total emissions in Canada and 0.005 per cent of total provincial emissions (based on 2016 totals).

8.4.12 Acoustic Environment

- NGTL did not identify noise receptors (e.g., private dwellings) in the Project Development Area of either the Elk River Section or the Alford Creek Section.
- As the land is currently used for commercial forestry, oil and gas activities, and recreation, noise emissions associated with those activities are another source of noise for landowners and land users.

8.4.13 Heritage Resources

- Cultural, historic, archaeological and paleontological resources are collectively known as heritage resources and can include pre-contact and post-contact features.
- There are no known heritage resource sites of heritage value in conflict with the Project Development Areas, and most of the Project components lie within lands that are regarded by Alberta Culture, Multiculturalism and Status of Women (previously Alberta Culture and Tourism) as having low potential to affect previously unknown heritage resources, based on the limited triggers in the *Listing of Historic Resources*.

Elk River Section

- For the Elk River Section, the *Listing of Historic Resources* (ACT 2018) notes that only three quarter sections intercepted by the Project Development Area have elevated potential to contain previously unknown archaeological resources. There are no designations in the Listing for elevated paleontological potential or known traditional land use sites in the Elk River Section PDA. The Elk River, Brazeau River and Nordegg River may have elevated potential for containing unrecorded sites within the Project Development Area. No known historic trails were documented within the Project footprint.

Alford Creek Section

- For the Alford Creek Section, the *Listing of Historic Resources* (ACT 2018) includes no lands designated as having elevated potential to contain previously unknown archaeological, paleontological or traditional land use sites in the Alford Creek Section PDA. In general, the terrain consists of forested uplands of limited archaeological potential, with the exception of some river and creek crossings with moderate potential (Clearwater River, Matts Creek, Vetch Creek, Prairie Creek, Cold Creek and North Prairie Creek).

8.4.14 Traditional Land and Resource Use

- As defined in the CER's Filing Manual, traditional territory is an area where Indigenous peoples have claimed or asserted the right to use the land for traditional purposes such as hunting, fishing, trapping, gathering or spiritual and ceremonial use. One or more Indigenous peoples may claim the same lands as their traditional territory.
- A total of 33 Indigenous peoples were identified by NGTL, NRCAN and the CER as being potentially affected or having an interest in the Project; an additional 7 Indigenous

peoples applied to participate in the proceeding as potentially affected Indigenous peoples, and were granted Intervenor status.

- Approximately 94 per cent of the Alford Creek Section of the Project and 100 per cent of the Elk River Section of the Project is located on Crown land.
- Indigenous peoples have made submissions that they engage in traditional land and resource activities and practices on Crown land throughout the region, including the Project Local and Regional Assessment Areas. These activities and practices include plant/medicinal harvesting, hunting, trapping, fishing, use of trails and travelways, camping, and cultural sites. A complete description of the potential impacts of the Project on Indigenous peoples' interests including traditional land and resource use is provided in Chapter 7 of this Report.

8.4.15 Navigation and Navigation Safety

- Recreation in the Project area includes boating (e.g., guide outfitters, anglers, kayaking organizations). Consequently, NGTL conducted an assessment of how the Project might affect navigation and navigation safety.
- The Project route crosses 33 watercourses, 16 in the Alford Creek Section and 17 in the Elk River Section. NGTL stated that the watercourses crossed by the Project are not on the List of Scheduled Waters in the *Navigation Protection Act*; however, the public right to navigate applies to all navigable watercourses, including non-scheduled waters. NGTL stated that each of the 29 watercourses with defined bed and banks to be crossed by the Project were ranked for potential navigational use. The five drainages to be crossed were considered non-navigable. Three rivers crossed by the Elk River Project Development Area have been rated as possibly or likely to be navigable, and two watercourses crossed by the Alford Creek Project Development Area have been rated as possibly or likely to be navigable.

8.4.16 Human Health

- The main groups within the population that could potentially be affected by the Project for human health concerns are construction workers involved in the Project and individuals who live near or rely on services and activities near the Project Development Area. Refer to subsection 8.4.2 and subsection 8.4.3 for a description of the habitation sites, municipalities and Indigenous peoples that are in close proximity to the Project.

8.5 Environment and Socio-Economic Issues of Concern to the Public and Indigenous Peoples

A number of Participants raised particular concerns related to environmental and socio-economic issues. The table below summarizes the topics of concern.

Table 8-4: Environmental and Socio-Economic Issues Raised By Participants

Participant	Environmental and Socio-Economic Issue(s) Raised
Asini Wachi Nehiyawak Traditional Band	<ul style="list-style-type: none"> • Engagement • Heritage Resources
Alexis Nakota Sioux Nation	<ul style="list-style-type: none"> • Employment, Training, and Benefits • Engagement • Heritage Resources • Monitoring by Indigenous Peoples • Cumulative Effects • Traditional Land and Resource Use • Wildlife and Wildlife Habitat • Environmental Protection Plan • Fish and Fish Habitat • Wetlands • Species at Risk • Water Quality
Kainai Nation (Blood Tribe)	<ul style="list-style-type: none"> • Access to and Availability of Lands • Employment, Training, and Benefits • Indigenous and Treaty Rights • Monitoring by Indigenous Peoples • Social and Cultural Well-being • Cumulative Effects • Watercourse Crossings • Vegetation • Fish and Fish Habitat • Wetlands • Water Quality • Wildlife and Wildlife Habitat • Traditional Land and Resource Use • Noise • Soils • Greenhouse Gas Emissions
Driftpile Cree Nation	<ul style="list-style-type: none"> • Access to and Availability of Lands • Employment, Training, and Benefits • Engagement

Participant	Environmental and Socio-Economic Issue(s) Raised
	<ul style="list-style-type: none"> • Heritage Resources • Indigenous and Treaty Rights • Monitoring by Indigenous Peoples • Social and Cultural Well-being • Cumulative Effects • Wildlife and Wildlife Habitat • Species at Risk Habitat • Fish and Fish Habitat • Water Quality • Watercourse Crossings • Wetlands • ROW Revegetation and Post-Construction Monitoring • Traditional Land and Resource Use
Ermineskin Cree Nation	<ul style="list-style-type: none"> • Access to and Availability of Lands • Human Health • Indigenous and Treaty Rights • Wildlife and Wildlife Habitat • Vegetation • Wetlands • Fish and Fish Habitat • Use of Herbicides • Traditional Land and Resource Use • Cumulative Effects
Apetokosan (Kelly Lake Métis Settlement Society)	<ul style="list-style-type: none"> • Access to and Availability of Lands • Water Quality and Quantity • Wetlands • Wildlife and Wildlife Habitat • Vegetation • Traditional Land and Resource Use
Louis Bull Tribe	<ul style="list-style-type: none"> • Access to and Availability of Lands • Employment, Training, and Benefits • Engagement • Human Health • Indigenous and Treaty Rights

Participant	Environmental and Socio-Economic Issue(s) Raised
	<ul style="list-style-type: none"> • Monitoring by Indigenous Peoples • Social and Cultural Well-being • Traditional Land and Resource Use • Cumulative Effects • Soils • Fish and Fish Habitat • Watercourse Crossings • Wetlands • Wildlife and Wildlife Habitat • ROW Revegetation • Culturally Important Plants • Old Seral Stage Forests • Use of Herbicides
Michel First Nation	<ul style="list-style-type: none"> • Access to and Availability of Lands • Engagement • Human Health • Indigenous and Treaty Rights • Monitoring by Indigenous Peoples • Wildlife and Wildlife Habitat • Water Quality and Quantity • Fish and Fish Habitat • Vegetation • Wetlands • Traditional Land and Resource Use
O'Chiese First Nation	<ul style="list-style-type: none"> • Access to and Availability of Lands • Engagement • Heritage Resources • Indigenous and Treaty Rights • Monitoring by Indigenous Peoples • Project Splitting • Social and Cultural Well-being • Water Quality • Wildlife and Wildlife Habitat • Vegetation

Participant	Environmental and Socio-Economic Issue(s) Raised
	<ul style="list-style-type: none"> • Old Seral Stage Forests • Traditional Land and Resource Use • Wetlands • Cumulative Effects • Soil Contamination • Air Emissions
<p>Papaschase Nation Papaschase Cree Nation</p>	<ul style="list-style-type: none"> • Employment, Training, and Benefits
<p>Peavine First Nation</p>	<ul style="list-style-type: none"> • Indigenous and Treaty Rights • Wildlife and Wildlife Habitat • Water Quality and Quantity • Cumulative Effects
<p>Piikani Nation</p>	<ul style="list-style-type: none"> • Access to and Availability of Lands • Employment, Training, and Benefits • Engagement • Human Health • Indigenous and Treaty Rights • Monitoring by Indigenous Peoples • Social and Cultural Well-being • Traditional Land and Resource Use • Cumulative Effects • Watercourse Crossings • Water Quality • Wildlife and Wildlife Habitat • Species at Risk and Habitat • ROW Revegetation • Wetlands • Herbicide Use • Vegetation
<p>Samson Cree Nation</p>	<ul style="list-style-type: none"> • Access to and Availability of Lands • Employment, Training, and Benefits • Heritage Resources • Human Health

Participant	Environmental and Socio-Economic Issue(s) Raised
	<ul style="list-style-type: none"> • Indigenous and Treaty Rights • Monitoring by Indigenous Peoples • Project Splitting • Social and Cultural Well-being • Herbicide/Pesticide Use • Traditional Land and Resource Use • Wildlife and Wildlife Habitat • Species at Risk and Habitat • Water Quality • Wetlands • Fish and Fish Habitat • ROW Revegetation and Post-Construction Monitoring • Culturally Important Plants • Old Seral Stage Forests • Cumulative Effects
<p>Stoney Nakoda Nations: Bears paw First Nation Chiniki First Nation Wesley First Nation</p>	<ul style="list-style-type: none"> • Access to and Availability of Lands • Employment, Training, and Benefits • Engagement • Human Health • Indigenous and Treaty Rights • Monitoring by Indigenous Peoples • Project Splitting • Social and Cultural Well-being • Cumulative Effects • Traditional Land and Resource Use • Fish and Fish Habitat • Wildlife and Wildlife Habitat
<p>Whitefish (Goodfish) Lake First Nation #128</p>	<ul style="list-style-type: none"> • Access to and Availability of Lands • Cumulative Effects • Engagement • Indigenous and Treaty Rights • Traditional Land and Resource Use • Wildlife and Wildlife Habitat • Vegetation

Participant	Environmental and Socio-Economic Issue(s) Raised
	<ul style="list-style-type: none"> • Culturally Important Plants
Environment and Climate Change Canada (ECCC)	<ul style="list-style-type: none"> • Air Quality and Greenhouse Gases • Environmental Emergencies

8.6 Environmental Effects Analysis

8.6.1 Interactions and Potential Adverse Environmental Effects

The table below identifies the expected interactions between the Project and the environment, and the potential adverse environmental effects resulting from those interactions.

Table 8-5: Project-Environment Interactions

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
Bio-Physical	Physical Environment	<ul style="list-style-type: none"> • Construction activities: clearing, grading, soil handling, trenching, and backfilling 	<ul style="list-style-type: none"> • Changes to terrain stability causing slope failure, erosion, slumping • Alteration of topography (e.g., change in drainage patterns, landscape contours) 	8.6.3
	Soil and Soil Productivity	<ul style="list-style-type: none"> • Construction activities: clearing, grubbing, soil stripping, soil salvage, grading, trenching, equipment movement, soil handling, clean-up and reclamation • Operations and maintenance activities (excavations for integrity digs) 	<ul style="list-style-type: none"> • Trench instability • Reduced soil productivity resulting from loss of topsoil or admixing • Reduced soil productivity resulting from wind or water erosion • Reduced soil productivity resulting from soil compaction or rutting • Reduced soil productivity due to soil contamination resulting from spot spills or exposure of already contaminated soils 	8.6.3

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
	Vegetation	<ul style="list-style-type: none"> • Vegetation clearing • Construction activities: grading, grubbing, trenching, backfilling • Potential introduction of weeds and/or non-native vegetation species from equipment movement • Vegetation control activities during Project operations 	<ul style="list-style-type: none"> • Reduction in plant species diversity, alteration of species composition of native vegetation • Reduction in vegetation community diversity • Loss or alteration of rare plants and rare plant communities • Introduction and spread of weeds, non-native species, or forest pests • Loss or alteration of culturally important plants • Loss or alteration of old seral stage forest 	8.6.3, 8.6.4.2, 8.7
	Water Quality and Quantity	<ul style="list-style-type: none"> • Construction of trenched, isolated, and trenchless watercourse crossings • Construction activities; clearing, grading, soil handling, trenching, and backfilling • Control of surface drainage during construction and operation • Water withdrawal and release for hydrostatic testing during construction • Drilling mud disposal for trenchless crossing 	<ul style="list-style-type: none"> • Alteration of natural surface water flow rates and patterns • Disruption of stream flow • Alteration of natural drainage patterns • Changes in groundwater flow or quantity • Reduction in surface water quality and/or quantity from increased sedimentation or release of hydrostatic test water • Reduction in surface water quality as a result of bank erosion during construction • Reduction in groundwater quality and/or quantity due to trench dewatering 	8.6.3, 8.6.4.1

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
	Aquatic Species and Habitat	<ul style="list-style-type: none"> • Construction of trenched, isolated, trenchless watercourse crossings • Hydrostatic testing • Installing spawning deterrents in watercourses • Inadvertent drilling mud release at trenchless crossing • Construction activities near watercourse crossings: clearing, grading, trenching, drilling, stringing pipe, lowering, backfilling, clean-up and restoration) • Bank restoration, riparian restoration, or maintenance activities 	<ul style="list-style-type: none"> • Alteration of fish habitat quality and/or quantity • Increase in fish mortality risk or injury • Blockage of fish passage/movement • Reduction in water quality (habitat quality) due to alteration or loss of riparian vegetation • Reduction in habitat quality as a result of increased sediment load in water and sediment deposition • Increased sediment deposition in watercourses and downstream of ROW • Inter-basin transfer of aquatic organisms, including those that may harbor disease 	8.6.3, 8.6.4.1
	Wetlands	<ul style="list-style-type: none"> • Construction activities: clearing, grading, trenching, drilling, watercourse crossings, stringing pipe, lowering, backfilling, hydrostatic testing, clean-up and restoration) 	<ul style="list-style-type: none"> • Loss or alteration of wetland hydrological function • Loss or alteration of wetland habitat function • Loss or alteration of wetland biogeochemical function • Alteration of wetland communities • Loss of culturally important plants 	8.6.3, 8.6.4.2, 8.7

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
	Wildlife and Wildlife Habitat	<ul style="list-style-type: none"> • Construction activities: clearing, grading, trenching, backfilling, clean-up and reclamation • Vegetation control activities during Project operations (operation of equipment) 	<ul style="list-style-type: none"> • Loss or alteration of wildlife habitat, including direct disturbance of habitat as well as reduced habitat suitability • Increased risk of wildlife mortality or injury • Alterations to wildlife movement patterns 	8.6.3
	Species at Risk or Species of Special Status and Related Habitat	<ul style="list-style-type: none"> • Construction activities: clearing, grading, trenching, backfilling, hydrostatic testing, clean-up and reclamation • Construction of trenched watercourse crossings • Drilling mud release at trenchless crossing • Construction activities near watercourse crossings: clearing, grading, trenching, drilling, stringing pipe, lowering, backfilling, clean-up and restoration) • Bank restoration, riparian restoration, or maintenance activities • Vegetation control activities during Project operations 	<ul style="list-style-type: none"> • Loss or alteration of vegetation species of special concern or their habitat • Loss or alteration of wildlife or aquatic species at risk or species of special concern or species at risk or their habitat • Increased risk of wildlife and aquatic species mortality risk or injury • Reduction in habitat suitability or quality • Alterations to movement patterns of wildlife species of special concern or species at risk • Increased sediment deposition in watercourses and downstream of ROW • Inter-basin transfer of aquatic organisms, including those that may harbor disease 	8.6.3, 8.6.4.1, 8.6.4.2

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
	Atmospheric Environment	<ul style="list-style-type: none"> • Emissions from construction equipment and vehicles • Emissions from monitoring and surveillance vehicles during Project operations 	<ul style="list-style-type: none"> • Increased dust and air emissions during construction • Increased greenhouse gas emissions during maintenance activities 	8.6.3
	Acoustic Environment	<ul style="list-style-type: none"> • Trenchless watercourse crossing • Operation of construction equipment and vehicles • Pipeline inspection and maintenance during Project operations 	<ul style="list-style-type: none"> • Sensory disturbance to wildlife • Increase in comprehensive sound levels during construction 	8.6.3

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
Socio-Economic	Human Occupancy/Resource Use (including Fisheries)	<ul style="list-style-type: none"> • Construction activities (clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, clean-up) and site-specific maintenance • Construction-related sensory disturbance (e.g., noise, dust, and visual presence of construction activities) • Pipeline inspection and maintenance during operations 	<ul style="list-style-type: none"> • Loss of access to or alteration of use of land for: <ul style="list-style-type: none"> ○ agriculture, including grazing ○ forestry ○ oil and gas or other industrial uses ○ hunting, trapping or fishing ○ recreation or tourism • Sensory disturbance which results in: <ul style="list-style-type: none"> ○ decreased hunting, trapping or fishing opportunities ○ decreased recreational or tourism opportunities • Disruption to Indigenous peoples as noted below 	8.6.3
	Heritage Resources	<ul style="list-style-type: none"> • Construction activities (clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, clean-up) and site-specific maintenance 	<ul style="list-style-type: none"> • Loss or disturbance to site contents and site contexts through ground disturbance associated with brush and/ or topsoil removal, grading, trenching, vehicle traffic and use of workspaces during construction activities • Vandalism (e.g., if the Project creates new human access opportunities) or unauthorized artifact/fossil collection during construction 	Chapter 7 for cultural, historic and archaeological resources 8.6.3

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
	Current Traditional Land and Resource Use	<ul style="list-style-type: none"> • Construction activities (clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, clean-up) • Change in access and availability of land during construction • Operations and maintenance activities (e.g., integrity digs, clearing, mowing, and mulching) 	<ul style="list-style-type: none"> • Disturbance of use of trails and travelways • Disturbance of use of habitation sites • Disturbance of plant gathering activities and resources • Disturbance of hunting activities and resources • Disturbance of fishing activities and resources • Disturbance of trapping activities and resources • Disturbance of gathering places and sacred sites 	Chapter 7
	Navigation and Navigation Safety	<ul style="list-style-type: none"> • Trenched methods of crossing navigable watercourses • Trenchless crossing of the Brazeau River, including the potential use of a guide wire extending across the river 	<ul style="list-style-type: none"> • Loss or alteration of access to or through navigable waters from waterway users, including Indigenous peoples • Harm to users on navigable watercourses 	8.6.3

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
	Social and Cultural Well-Being	<ul style="list-style-type: none"> Influx of temporary construction workforce 	<ul style="list-style-type: none"> Project workers and activities interacting with community residents and affecting the social and cultural well-being of local communities Change in the social and cultural wellbeing of Indigenous peoples by temporary workers 	8.6.3 Chapter 7
	Human Health/ Aesthetics	<ul style="list-style-type: none"> Project construction activities may cause changes to soil capability, water quality and quantity, air emissions, and the acoustic environment, potentially leading to adverse effects on human health Pipeline inspection and maintenance activities 	<ul style="list-style-type: none"> Project activities could affect biophysical resources that might affect human health Project activities could create sensory disturbances to nearby residents and land users Disruptions in daily activities due to sensory disturbances, such as noise and dust, may cause nuisances to residents of Local Assessment Area/Regional Assessment Area communities Change in health of Indigenous peoples 	8.6.3 Chapter 7

	Environmental Element	Description of Interaction (or Why No Interaction is Expected)	Potential Adverse Environmental Effect	Mitigation Discussed In:
Other	Accidents/Malfunctions	<ul style="list-style-type: none"> • Product release as a result of pipeline break or leak • Hazardous materials spill • Drilling mud release during trenchless watercourse crossing • Fire • Transportation accident • Damage to foreign utilities 	<ul style="list-style-type: none"> • Reduction or alteration of soil productivity, surface or groundwater quality, air quality • Loss of vegetation, wetlands, wildlife and wildlife habitat, aquatic species and habitat, species at risk • Injury or mortality to wildlife, aquatic species, or humans • Increased demand for emergency services and temporary workers • Effects to human health 	8.6.3, Chapter 4
	Effects of the Environment on the Project	<ul style="list-style-type: none"> • Terrain instability • Seismic activity • Flooding • Forest fires • Severe weather 	<ul style="list-style-type: none"> • Exposure of pipeline, loss of depth of cover as a result of slope instabilities, flooding, or erosion at watercourses • Damage to infrastructure • Impeded access to pipeline area during construction or operations 	8.6.3

8.6.2 Mitigation of Potential Adverse Environmental Effects

NGTL has identified routine design and standard mitigation and certain best practices to mitigate most of the potential adverse environmental effects identified in Table 8-5. Details of NGTL's proposed mitigations are set out in NGTL's Application, supporting documentation, and related submissions including its Environmental Protection Plan and Environmental Alignment Sheets.

Where there are outstanding issues regarding key environmental elements, or the Applicant's proposed mitigation may not be sufficient and additional mitigation may be necessary, then a detailed analysis is presented in subsection 8.6.4.

8.6.3 Standard Mitigation

NGTL proposes standard mitigation measures to avoid or minimize potential adverse environmental effects on terrain, topography, soils, water quality and quantity, vegetation, wetlands, wildlife and wildlife habitat, aquatic species and habitat, species at risk and species of special concern, Key Wildlife and Biodiversity Zones, atmospheric and acoustic environments, and navigation and navigation safety. NGTL's standard mitigation measures are detailed in NGTL's Application, Environmental Protection Plan, Environmental Alignment Sheets, and associated filings.

To ensure the proposed mitigation measures are followed, NGTL has committed to having qualified Environmental Inspectors on site during construction to verify that all activities are carried out in compliance with regulatory commitments, in accordance with the mitigation measures as outlined in NGTL's Environmental Protection Plan, and to develop environmental orientation and training for Project personnel.

NGTL plans to construct the Project in winter under frozen conditions with the intent to implement minimal surface disturbance construction techniques where suitable conditions allow. Further, NGTL's construction schedule would avoid construction activities within migratory bird primary nesting periods, breeding periods for amphibians and active bat season. NGTL stated in circumstances where construction activities may occur during species-specific sensitive periods, it will work with the applicable regulator(s) on the inclusion of appropriate mitigation measures in the Environmental Protection Plan.

Among the mitigation strategies to avoid or minimize the effects of the Project, NGTL is relying in part on avoidance of environmental features through route and site selection, minimizing the size of the Project footprint by paralleling existing ROWs, and scheduling construction activities to avoid sensitive and restricted activity periods for species occurring in the Project area.

NGTL evaluated alternative means including route selection, construction timing and watercourse crossing methods. NGTL ultimately selected the proposed route, which would parallel existing NGTL ROWs or other linear disturbances (e.g., roads, electrical power lines, or other pipelines): 83 per cent of the Elk River Section and 88 per cent of the Alford Creek Section parallels existing and proposed disturbance.

NGTL has developed detailed, practical mitigation and contingency measures to address general and site-specific issues. These include inspection during construction to ensure that planned mitigation is implemented and effective, conducting maintenance and operation of the

pipeline according to NGTL's existing programs and procedures to protect pipeline integrity, public safety, and the environment. NGTL's contingency plans are detailed in its Environmental Protection Plan and include plans for 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 resources discovery. NGTL also provided management plans for chemicals and waste, traffic control, hydro-vac slurry handling, trenchless watercourse crossings, breeding bird and nests, Key Wildlife and Biodiversity Zones, water quality monitoring, spawning deterrent execution, and access control.

NGTL has also committed to implement various mitigation measures and construction practices to avoid or reduce potential effects on socio-economic elements, including the acoustic environment, human occupancy and resource use, heritage resources, navigation and navigation safety, social and cultural well-being and human health.

For the acoustic environment, NGTL stated that the only sources of noise are from Project vehicles and equipment during construction activities. NGTL stated that operation of the Elk River and Alford Creek Sections will not result in noise emissions.

For heritage resources, NGTL stated that in the unlikely event that an archaeological, historical or paleontological site is discovered during construction, the Cultural Resource Discovery Contingency Plan would be implemented. Heritage resource issues and concerns raised by Indigenous peoples are discussed and addressed in subsections 7.4.5, 7.5.5 and 7.6.5.

For navigation and navigation safety, NGTL stated that site-specific mitigation addressing signage and safe passage requirements are included in the Environmental Protection Plans.

For social and cultural well-being, NGTL will implement mitigation measures to reduce disruption of community life by temporary workers and Project activities. NGTL and its contractors will establish clear guidelines for behaviour in accordance with company policies and regulatory requirements, including TransCanada's Code of Business Ethics, Harassment Free Workplace and Employment Equity and Non-Discrimination policies. Contractors will enforce these policies to ensure safe and harassment-free work environments. These rules also prohibit the possession of fire arms and illegal drugs, and address many other concerns including alcohol consumption. NGTL stated that, with the implementation of the mitigation and protective measures, and following best practices to ensure public safety and consultation with residents, landowners and business owners regarding their concerns, the Elk River and Alford Creek Sections are not expected to alter the lifestyles of residents of the Local Assessment Area/Regional Assessment Areas, nor will they adversely affect social and community networks, or materially affect living or environmental conditions. Social and cultural well-being issues and concerns raised by Indigenous peoples are discussed and addressed in subsections 7.4.3, 7.5.3 and 7.6.3.

For human health, NGTL stated that with the implementation of mitigation measures, the construction of the Project is unlikely to alter the health of residents of the Local and Regional Assessment Areas. NGTL stated it will follow best practices, including measures outlined in the Environmental Protection Plan, to protect public safety and reduce the potential for sensory disturbance and other nuisance effects that might affect human health. NGTL stated it will continue to consult with residents, landowners and business owners regarding health concerns, and concluded that if any residual effects on human health do occur, they are expected to be low in magnitude, short-term in duration and reversible. Human health issues and concerns

raised by Indigenous peoples are discussed and addressed in subsections 7.4.4, 7.5.4 and 7.6.4. Concerns raised by Indigenous peoples regarding spills and emergency response measures are discussed in section 4.4.

NGTL has also committed to implementing post-construction monitoring following final clean-up, at which time NGTL would identify any outstanding environmental issues, an assessment of the effectiveness of mitigation measures, and identify recommended corrective action plans for outstanding environmental issues. NGTL noted that the post-construction monitoring report would document any issues identified during the inspections and post-construction monitoring activities, any remedial actions taken, as well as any new environmental issues identified and a plan for addressing those. NGTL stated that it will implement adaptive management measures and continue monitoring until measures are considered to be effective and the issue is resolved.

Standard Mitigation: Air Quality

Views of Participants

ECCC requested that NGTL confirm its data sources for GHG emission estimates, to quantify air pollutant emissions for the Project, and to describe how NGTL will achieve its mitigation measures for reducing GHG emissions and air pollutant emissions.

Views of NGTL

NGTL provided information on its data sources for the GHG emissions in its Environmental and Socio-Economic Assessment, quantified predicted air pollutant emissions, and described how its mitigation measures would reduce emissions, as requested by ECCC.

NGTL noted that there are no compressor stations proposed as part of the Edson Mainline Expansion Project. The primary sources of emissions are those generated during the construction of the two proposed Project components (the Elk River Section and the Alford Creek Section). The estimated GHG emissions from Project construction are 14.5 kilotonnes carbon dioxide equivalent. NGTL stated that emissions also arise from land clearing and burning of slash and non-merchantable timber, and dust generated during land clearing and earthmoving.

NGTL stated that the Project is part of the NGTL System, which is considered a single facility under the Alberta's Specified Gas Emitters Regulation. Project emissions will be included in the total emission intensity calculation of the NGTL System, and are submitted under the Specified Gas Emitters Regulation as part of the existing obligation.

Standard Mitigation: Wildlife and Wildlife Habitat

Views of Participants – Indigenous Peoples

Concerns about Project effects on wildlife and wildlife habitat were raised by many Indigenous peoples that were intervenors in the proceeding. These concerns include increased habitat fragmentation and displacement or loss of wildlife from the Project areas. Driftpile Cree Nation, Alexis Nakota Sioux Nation, Michel First Nation, O'Chiese First Nation, Samson Cree Nation, and Piikani Nation raised concerns about Project effects on moose, specifically fragmentation of moose habitat, increased mortality risk, effects on moose movement and potential habitat avoidance.

Alexis Nakota Sioux Nation, Michel First Nation, O'Chiese First Nation, Samson Cree Nation, and Piikani Nation raised concerns about a lack of assessment of Project effects on caribou, given that one incidental sighting of caribou was reported to NGTL within the Regional Assessment Area and inquired about NGTL's mitigation for minimizing Project effects on caribou.

Samson Cree Nation, Piikani Nation, Driftpile Cree Nation, Louis Bull Tribe, Michel First Nation, O'Chiese First Nation, Stoney Nakota Nations and Alexis Nakota Sioux Nation expressed concerns about Project effects on grizzly bears, grizzly bear dens, and NGTL's proposed mitigation for minimizing Project interactions with grizzly bear and its habitat.

Piikani Nation raised concerns about exclusion fencing as a mitigation measure for environmentally sensitive features or species.

Chapter 7 of this report provides a detailed overview of concerns raised by Indigenous peoples during the hearing process. For example, questions regarding how changes to environmental elements would impact Indigenous peoples' ability to practice Indigenous and Treaty Rights are discussed in Chapter 7, as are Project effects on traditional land and resource use and culturally important plants.

Appendix IV outlines concerns raised by Indigenous Participants during the hearing process, including those related to the environment.

Views of Participants – Environment and Climate Change Canada

ECCC stated that its general advice on adverse Project effects is guided by information found in recovery documents and in section 73(3) of the SARA. ECCC further provided general advice on preparation of emergency response plans, spill and release contingency plans, and storage of chemicals and hazardous materials. ECCC stated that it did not provide specific advice on any species at risk identified as having the potential to interact with the Project because they are primarily under the responsibility of the Province of Alberta.

In response to an O'Chiese First Nation's Information Request regarding grizzly bear, ECCC stated that it does not have specialist or expert information to share for grizzly bear, and that Alberta Environment and Parks, Fish and Wildlife Branch should be consulted for species-specific technical information. The national management plan for grizzly bears is in the early stages of development. ECCC is in the process of consulting and engaging with the seven provinces and territories where grizzly bears range in Canada. The federal management plan for grizzly bear will provide national direction for its conservation in Canada. The plan is not itself associated with any new/direct regulatory impact under SARA, however as it will have been developed in cooperation with the seven provinces and territories, it will align where possible with initiatives of lead jurisdictions, while making sure that conservation measures are consistent with the purpose of SARA (i.e., to prevent this species of special concern from becoming threatened or endangered). Federal consultation and engagement with land managers about the plan will consider provincial/territorial regulations that exist, as well as prior/ongoing consultation/engagement efforts by the provinces/territories in the context of various plans for grizzly bears that exist or are being developed by these jurisdictions. ECCC is undertaking to engage Indigenous peoples in Alberta in the development of the plan, with a tentative date of completion in late 2021 or early 2022.

Views of NGTL

NGTL stated its Project design aims to minimize or avoid potential effects in all phases of development, and the Project parallels existing and proposed linear disturbance for over 85 per cent of its length. NGTL further stated that while vegetation clearing would result in an increase in the combined width (i.e., expansion) of existing linear disturbances, the Project footprint would be further minimized by siting temporary workspace on adjacent existing ROWs, therefore also minimizing the fragmentation of the landscape.

NGTL stated that areas containing preferred habitat for moose would be cleared during construction, leading to a temporary loss or alteration of less than 4 per cent of preferred habitat for moose in the Local Assessment Area. NGTL does not anticipate this temporary loss to affect local moose abundance during winter construction, as there is abundant suitable forage elsewhere in the Local Assessment Area. NGTL stated that natural regeneration of vegetation post construction would provide early seral habitat that NGTL anticipates to include preferred winter forage species for moose (e.g., red osier dogwood, willow). NGTL is of the view that there would be an increase in suitable moose forage in the Local Assessment Area as a result of NGTL's revegetation practices that will persist through the operations stage.

NGTL's Environmental and Socio-Economic Assessment stated that residual Project effects on mortality risk for moose are not likely to be significant. Roads are a major source of mortality risk for moose, and no new roads would be created for the Project. NGTL anticipates a general increase in traffic and human activity in the Regional Assessment Area during construction (approximately 6 months). NGTL's standard mitigation, as outlined in the Environmental Protection Plan, is intended to minimize effects on wildlife, including mortality risk.

NGTL stated that the Project is not located within a designated caribou range, and the closest caribou habitat is approximately 85 km west of the Elk River Project Development Area. NGTL also stated that the Project Local Assessment Area does not overlap areas of known trace occurrence for caribou outside of designated ranges. The closest designated range under SARA for boreal caribou is the Little Smoky range, which is over 100 km from the Project Development Area. NGTL stated that it's highly unlikely that caribou will interact with the Project directly or indirectly and thus an assessment on caribou is not warranted. NGTL stated that its Environmental Protection Plan outlines mitigation measures in the event caribou are encountered during construction, and NGTL's operations and maintenance wildlife mitigation standards would be implemented should caribou be encountered during operations.

In response to concerns about Project effects on grizzly bear and grizzly bear dens, NGTL stated that its Project design, in paralleling existing disturbance, makes effort to minimize habitat fragmentation and disturbance as much as possible. Refinement to Project siting and design resulted in the Project route paralleling existing and proposed linear disturbance for 83 per cent in Elk River Section and 88 per cent in the Alford Creek Section, and minimizing the Project Development Area to a width of 32 m (rather than the 75 m corridor estimated in the Environmental and Socio-Economic Assessment). NGTL stated that if an active grizzly bear den is discovered within the Project Development Area prior to construction, NGTL would consult with Alberta Environment and Parks to determine appropriate mitigation, which may include establishing a protective buffer around the den site. If a previously unidentified active grizzly bear den were encountered during Project construction, work would be suspended immediately in the vicinity of the den and the den would be reported to the Environmental Inspector(s) or designate(s). NGTL stated it would implement the Wildlife Species of Concern Discovery Contingency Plan, as part of its Environmental Protection Plan, which, for an active grizzly bear

den, would include consultation with Alberta Environment and Park wildlife biologists to determine appropriate mitigation.

NGTL stated its commitment to providing its detailed construction schedule and maps to Indigenous peoples prior to the start of construction.

NGTL has stated that if construction occurs within a sensitive period for amphibians, NGTL would consult with Alberta Environment and Parks to develop and implement specific mitigation measures for amphibians, including western toad, such as the use of exclusion fencing for amphibian breeding wetlands. Further, NGTL stated that NGTL confirms that where western toad breeding ponds are identified on the ROW or temporary workspace, and where construction is scheduled during the active migration period, a qualified biologist will conduct amphibian salvage within the Project footprint according to provincial permitting requirements prior to the commencement of construction activities until such time as the biologist deems that migration is complete, or until October 31.

Views of the Commission

Overall, the Commission finds that the proposed standard mitigation, restoration and monitoring measures are appropriate and would effectively reduce the potential adverse environmental effects on the valued environmental and socio-economic components, including those on the physical environment, soil and soil productivity, wildlife and wildlife habitat, and the atmospheric environment. The Commission anticipates that many adverse environmental components will be resolved through standard mitigation. The Commission uses the term standard mitigation as 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 such that it is integrated into a company's management system. The Commission recommends **Condition 3** (Environmental Protection) for the Section 52 Pipeline and Related Facilities and would impose the same **Condition 3** (Protection of the Environment) for the Section 58 Facilities and Activities, requiring NGTL to 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 and otherwise made on the GH-001-2019 hearing record.

With respect to Watercourse Crossings and Vegetation and Wetlands, subsection 8.6.4 provides more detailed discussion on these two issues.

Air Quality

The Commission finds NGTL's air quality assessment, including the assessment of GHG emissions adequate. The Commission notes that the primary sources of combustion emissions will be from construction-related activities associated with fuel use, as well as from the operation of heavy equipment and burning of slash. The Commission notes that there are no permanent components or activities related to combustion, such as compressor stations proposed as part of the Project. The GHG emissions from the Project are estimated to contribute 14.5 kilotonnes of carbon dioxide equivalent, which amounts to 0.002 per cent of total GHG emissions in Canada and 0.005 per cent of total provincial GHG emissions.

Wildlife and Wildlife Habitat

In regards to the issues raised around the potential effects of the Project on moose, the Commission acknowledges that the Project crosses two Key Wildlife and Biodiversity Zones, which are considered important winter habitat for ungulates. The Commission notes NGTL's Key Wildlife and Biodiversity Zones Protection Plan, included in its Environmental Protection Plans. The Commission further notes that where the Project activities occur within a timing restriction, NGTL would continue to consult with Alberta Environment and Parks to determine appropriate mitigation measures. The Commission also notes NGTL's commitment to parallel existing and proposed disturbances, implement access control measures, reduce disturbance within the forested habitat, riparian areas and wetlands, and to implement minimal disturbance during construction (e.g., limited grubbing and grading). The Commission is of the view that these measures would reduce the effects of loss and alteration of moose habitat while also mitigating the Project's impacts to moose from increased human access and predation or hunting.

In regards to the Project overlap with two Grizzly Bear Secondary Areas, the Commission notes NGTL's site-specific mitigation and its commitment to implement its Wildlife Species of Concern Discovery Contingency Plan. Based on the mitigation provided and the contingency plans outlined in NGTL's EPP, the Commission is satisfied that the measures proposed by NGTL would be appropriate in minimizing Project effects on grizzly bear.

In regards to concerns about Project effects on caribou, the Commission is persuaded that it is highly unlikely that the Project would interact with caribou given that the Project is not within a designated range and that the closest designated caribou range is over 100 km from the Project Development Area. The Commission is of the view that NGTL's mitigation and contingency discovery plans would be appropriate in minimizing Project effects on caribou should caribou be encountered during construction, and that NGTL's operations and maintenance wildlife mitigation measures would be implemented during operations, if warranted.

Environmental Protection Plans

NGTL filed a draft Environmental Protection Plan for the Section 52 Pipeline and Related Facilities with its Application and in its subsequent submissions. Results from the supplemental field 2019 spring/summer surveys were also filed during the proceeding. Participants, including Indigenous peoples, had the opportunity to provide comments on these documents, specifically on locations of specific traditionally and culturally important resources during the hearing process. The Commission notes NGTL's commitment to ongoing engagement with Indigenous peoples and commitment to incorporate any additional mitigation resulting from that engagement into the updated Environmental Protection Plans and Environment Alignment Sheets for the Project.

The Commission notes that Piikani Nation, Samson Cree Nation, Louis Bull Tribe and Driftpile Cree Nation requested that the Environmental Protection Plan conditions be modified. Louis Bull Tribe and Driftpile Cree Nation asked that NGTL be required to submit the Environmental Protection Plans 90 days prior to NGTL commencing clearing and construction, to be updated based on the evidence led by potentially affected Indigenous peoples into the Project planning process, and that the Environmental Protection Plans be provided not only to Indigenous peoples who have expressed an interest in receiving it, but to all potentially affected Indigenous peoples.

NGTL requested that the timeline to submit the Environmental Protection Plans be modified to 45 days prior to commencing construction.

The Commission is of the view that the current requirement of submission 60 days prior to commencing construction is reasonable. In response to comments received from Indigenous peoples, the Commission recommends **Condition 10** (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose **Condition 9** (Environmental Protection Plan) for the Section 58 Facilities and Activities, requiring NGTL to file Project-specific Environmental Protection Plans. The Commission has deliberately made filings with respect to Condition 9 and Condition 10 subject to approval so that the Commission has an opportunity to review the finalized versions of these important plans, ensure that all of the mitigation measures NGTL committed to during the hearing have been satisfactorily captured and review how NGTL has incorporated any feedback received during engagement with Indigenous peoples. The Commission has included requirements for NGTL to provide details of consultation with Indigenous peoples on its Environmental Protection Plans, and to demonstrate how information and/or feedback from Indigenous peoples has been incorporated into NGTL's plans. The Commission also requires NGTL to provide a copy of updated Project-specific Environmental Protection Plans to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission is not persuaded that copies must be provided to all potentially affected Indigenous peoples, as the Commission has often heard that for some, receipt of unsolicited reports creates undue burden for those who receive high volumes of materials to review.

The Commission expects that the Environmental Protection Plans will set out all environmental protection procedures and mitigation measures for which employees, contractors, and on-site NGTL personnel would be responsible. These procedures and mitigation measures must be clear and unambiguous to minimize errors of interpretation. The Environmental Protection Plans must be comprehensive and cover general and specific mitigation related to all environmental elements. Updated Environment Alignment Sheets are also to be included with the Environmental Protection Plans.

Based on the measures described above and outlined in NGTL's Environmental Protection Plan, the Commission is of the view that any potential Project effects on the environment can be effectively addressed through the mitigation measures in NGTL's project-specific Environmental Protection Plans.

Post-Construction Environmental Monitoring Reports

The Commission notes NGTL's commitment to begin post-construction environmental 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.

The Commission acknowledges the comments provided by Samson Cree Nation, Louis Bull Tribe and Driftpile Cree Nation, and Piikaani Nation. Comments requested that NGTL be required to provide a detailed description of how consultation with potentially affected Indigenous peoples informed and/or modified NGTL's environmental monitoring, and that NGTL be required to provide a copy of the post-construction monitoring report to potentially affected Indigenous peoples, as well as all Indigenous peoples who have expressed an interest in receiving a copy.

The Commission has considered the comments and recommends **Condition 24** (Post-Construction Environmental Monitoring Reports) for the Section 52 Pipeline and Related Facilities and would impose **Condition 23** for the Section 58 Facilities and Activities requiring NGTL to provide post-construction environmental monitoring reports. The post-construction monitoring plan must identify the issues to be monitored, including but not limited to any issues identified in the Post-Construction Monitoring Plan for Indigenous Peoples (**Condition 22** for both the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities), as well as any unexpected issues that arose during construction, and their locations (e.g., on a map or diagram, in a table). The Commission is of the view that the comments provided by Indigenous peoples could potentially lead to improved adaptive management measures and/or techniques, and therefore recommends **Condition 22** (Post-Construction Monitoring Plan for Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and imposes **Condition 22** for the Section 58 Facilities and Activities. The Commission also included in these proposed conditions a requirement for NGTL to provide a copy of post-construction monitoring reports to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission is not persuaded that copies must be provided to all potentially affected Indigenous peoples, as the Commission has often heard that for some, receipt of unsolicited reports creates undue burden for those who receive high volumes of materials to review.

The Commission notes that NGTL is required to submit post-construction environmental monitoring reports one, three and five years post-construction. NGTL made several commitments specific to particular Project-specific elements during the hearing, and **Condition 24** (Post-Construction Environmental Monitoring Reports) for the Section 52 Pipeline and Related Facilities and **Condition 23** for the Section 58 Facilities and Activities include reference to these commitments, in addition to the elements outlined by NGTL in its Application and subsequent filings.

8.6.4 Detailed Analysis of Key Environmental Issues

This subsection provides a more detailed analysis of issues raised by the Participants which could potentially have an environmental consequence, and therefore requires additional assessment. The definitions for criteria used in evaluating the significance of residual effects, and cumulative effects are provided in Appendix V.

8.6.4.1 Watercourse Crossings

The Project route crosses 33 watercourses, 16 in the Alford Creek Section and 17 in the Elk River Section. The Project route crosses some watercourses more than once, for a total of 38 watercourse crossings. One watercourse, the Brazeau River, would be crossed using a trenchless method. NGTL plans to cross the remaining watercourses using a trenched method, either isolated (if water flow is present) or open cut (if the watercourse is dry or frozen). NGTL stated that proposed watercourse crossing methods have taken into consideration the sensitivity and fisheries values of the watercourses and the drainages, including habitat characteristics, fish species present, construction schedule (e.g., duration and season) and technical feasibility of each crossing.

Under the Memorandum of Understanding between the CER and the DFO, the CER is responsible for referring potential watercourse crossings that are likely to require a *Fisheries Act* authorization to DFO. NGTL's assessment stated that using DFO's self-assessment process

determined that the planned crossing methods for all watercourses would avoid serious harm to fish and fish habitat. NGTL stated that should the contingency crossing method for the Brazeau River be necessary, there is a potential to cause serious harm to fish, and that it may need authorization from DFO under the *Fisheries Act* prior to the construction of the contingency crossing.

NGTL stated that it would be working within the restricted activity periods for all watercourses, and at some locations there would be potential for construction activities to interact with spawning fish or incubating eggs and embryos. The Saskatchewan-Nelson River population of bull trout, which is present in watercourses that would be crossed by the Project, is listed as threatened on Schedule 1 of the SARA. Bull trout is a fall spawning species, and occurs in watercourses that NGTL intends to construct crossings over during the fall period of restricted activity. Fall spawning surveys conducted in 2019 observed spawning activity at five watercourses in the Project Local Assessment Area, at which three locations had moderate to good fall spawning habitat in the Project Development Area. Potential bull trout redds were observed within the Clearwater River Project Development Area.

Proposed Mitigation

At watercourse crossings where construction activities have the potential to interact with spawning fish or incubating eggs and embryos, NGTL proposes to implement additional mitigation in the form of spawning deterrents. Spawning deterrents are a site-specific mitigation measure with the aim of reducing or avoiding fish mortality by deterring fish spawning at a specific location. A physical barrier would be placed over spawning habitat to prevent fish from constructing redds in a location that would be disturbed by construction activity. NGTL stated that spawning deterrents would be installed at appropriate crossing locations in advance of spawning activities by fish, and would be removed immediately prior to isolating the work area. NGTL has committed to submitting the appropriate application to Alberta Environment and Parks for temporary field authorization under the *Alberta Public Lands Act* for spawning deterrent installation. NGTL has developed a Spawning Deterrent Execution and Monitoring Plan, included in its Environmental Protection Plan.

NGTL would conduct all watercourse crossing construction activities in accordance with established best management practices for instream construction, as well as for construction in and around stream environments. Environmental Inspectors onsite are also responsible for ensuring all environmental commitments are met. NGTL stated it would adhere to the mitigation measures outlined in its Application and will comply with applicable DFO Codes of Practice. NGTL's Environmental Protection Plan would include mitigation measures to address fish salvage, hydrostatic testing, preventing introduction and spread of invasive aquatic species and diseases such as whirling disease, and guidance for soil, water, and vegetation protection at watercourse crossings.

Proposed Monitoring

NGTL stated that during construction, the Environmental Inspector(s) or designate(s) will monitor watercourse crossing activities to help ensure adherence to all applicable mitigation measures in the Environmental Protection Plans. In addition, NGTL stated that it would implement a Water Quality Monitoring Plan (for both trenchless, and isolated trench watercourse crossings within a Restricted Activity Period) to monitor for sediment events during instream construction activities, where required by the applicable regulatory approvals or as identified by a Qualified Aquatic Environmental Specialist. If monitoring reveals sediment values

are approaching threshold values, NGTL stated that the water quality monitors will alert the Environmental Inspector(s) or designate(s) and work with them to develop corrective actions. NGTL noted that the framework applied builds on existing industry best management practices and regulatory guidelines.

NGTL noted that soils, vegetation, and terrain at watercourse crossing locations would also be monitored as part of NGTL's post-construction monitoring activities. NGTL stated it would complete assessments of vegetation, soil, terrain and landscape around watercourse crossings to evaluate soil productivity, re-establishment of riparian vegetation, erosion control, terrain stability, and would report on these elements to the CER.

NGTL stated that spawning deterrents are a site-specific mitigation measure to avoid or reduce risk of fish mortality by deterring spawning at watercourse crossings. These deterrent structures aim to prevent fish spawning where installed and, thereby, reduce the risk of direct mortality to incubating eggs and embryos. NGTL noted that it would implement a Spawning Deterrent Execution and Monitoring Plan, and will submit an application for temporary field authorization under the Alberta Public Lands Act from Alberta Environment and Parks for spawning deterrent installation.

Views of Participants

Several Indigenous peoples raised concerns regarding watercourse crossings.

Alexis Nakota Sioux Nation, Michel First Nation, O'Chiese First Nation, Bearspaw First Nation, Wesley First Nation, Chiniki First Nation, Louis Bull Tribe and Piikani Nation requested details on baseline water quality and quantity data, NGTL's water quality monitoring during construction and post construction, on erosion and sediment control measures, and on NGTL's decision making process for the selection of watercourse crossing methods.

Louis Bull Tribe asked NGTL to describe how its trenchless watercourse crossing methods and mitigation would minimize sedimentation and disturbance to wetlands, watercourses and riparian areas in compliance with the amended Fisheries Act. Piikani Nation raised concerns about the potential for a drilling mud release and Project effects on fish and fish habitat. Chiniki First Nation, Bearspaw First Nation, and Wesley First Nation raised concerns about Project effects on sensitive bull trout and culturally important fish species.

Several Indigenous peoples inquired about NGTL's plans for post-construction water quality monitoring at and around watercourse crossing locations. Alexis Nakota Sioux Nation questioned why NGTL is not conducting long-term water quality monitoring to ensure that the Project, if constructed, will not affect water quality and fish and fish habitat.

Samson Cree Nation asked how NGTL decided on mitigation measures for aquatic resources, and Alexis Nakota Sioux Nation and Michel First Nation also asked what type of spawning deterrents NGTL proposed, and the duration of their use.

Questions raised by Indigenous peoples regarding how changes to aquatic resources would impact Indigenous peoples' ability to practice Indigenous and Treaty Rights are discussed in subsection 7.4.9, and Project effects on traditional land and resource use for aquatic resources are discussed in subsection 7.4.8.

Views of NGTL

NGTL provided direction on where baseline water quality data was located in its Environmental and Socio-Economic Assessment, and provided justification of its baseline data collection for water quality, stating that water quality monitoring during construction will provide real-time data, which NGTL states would be more effective at detecting effects of Project construction and to assess whether mitigation is effective. NGTL stated that its Water Quality Monitoring Plan, to be implemented during construction at watercourse crossings, would be included in its Environmental Protection Plan, and provided a draft Water Quality Monitoring Plan for trenchless and trenched watercourse crossings to Driftpile Cree Nation.

NGTL stated that it does not intend to set up long-term water quality monitoring stations within the Local Assessment Area. NGTL stated that its post-construction monitoring assesses the effectiveness of reclamation and mitigation methods through inspection of the full ROW, including watercourses and wetlands, over five years. Conditions to be evaluated include terrain stability, soil productivity, success of erosion and sediment control, and success of riparian vegetation re-establishment. NGTL stated that, through assessment of mitigation measures in place respective to the above parameters, NGTL can ensure that water quality is not impacted, since pathways which would impact water quality (e.g., erosion) are being mitigated. Therefore, in absence of an issue being identified in post-construction monitoring which could have an effect on water quality, NGTL stated that it is reasonable to assume there is no impact to water quality of watercourses as a result of Project activities.

NGTL stated that its route selection has minimized disturbance to wetlands, watercourses, and riparian areas by reducing construction footprint within these areas through route selection. NGTL further stated that for the horizontal directional drill proposed at the Brazeau River, drill pads will be sited above the ordinary high water mark and away from riparian buffers, therefore avoiding instream disturbance and harmful alteration, disruption, or destruction of fish habitat. NGTL stated that its Environmental Protection Plan contains established mitigation measures that have been developed to avoid and reduce disturbance and sedimentation of wetlands, watercourses, and riparian areas. Further, NGTL committed to developing and implementing a specific Water Quality Monitoring Plan to monitor for sediment events during horizontal directional drill activities for the Brazeau River, which is included in NGTL's Environmental Protection Plans.

NGTL described the proposed spawning deterrents and stated that long-term, residual effects of their use are not expected. NGTL explained that spawning deterrents would prevent fish from spawning within the Project Development Area, where spawning deterrents would be placed. NGTL stated that potential spawning habitats are present in areas other than the Project Development Area (i.e., within the Local Assessment Area and Regional Assessment Area thus providing alternate spawning locations for redds-spawning fish to lay eggs and ultimately not result in effects to fish populations.

Views of the Commission

Based on the construction methodology, mitigation and monitoring proposed by NGTL with respect to watercourse crossings, as well as the conditions outlined below, the Commission is of the view that Project effects on water quality and quantity, and on fish and fish habitat would be moderate in magnitude, reversible in the short to medium term, restricted to the Local Assessment Area, and are therefore not likely to be significant.

The Commission notes that the Project would be located within the habitat for the Saskatchewan-Nelson populations of bull trout. The Commission further notes that DFO has released its proposed *Recovery Strategy for the Bull Trout (Salvelinus confluentus), Saskatchewan-Nelson Rivers populations, in Canada (2020-06-01)*. While the Commission recognizes that the document is not yet finalized, it nonetheless includes relevant information, including identification of critical habitat that may overlap with the Project, both within the watercourse and within riparian areas. The Commission therefore expects NGTL to consider the information within the proposed recovery strategy in order to support NGTL's compliance with the *Species at Risk Act*. The Commission reminds NGTL of its commitment to obtain all necessary permits and authorizations prior to commencing construction. The Commission notes that based on information provided in the recovery strategy, the parameters of what will require authorization may have changed since NGTL completed DFO's self-assessment process. Further, **Condition 10** (Updated Environmental Protection Plan) recommended for the Section 52 Pipeline and Related Facilities and **Condition 9** (Environmental Protection Plan) for the Section 58 Facilities and Activities, require NGTL to provide details for each watercourse crossing in its updated watercourse crossing inventory.

The Commission notes that crossing of the Brazeau River is proposed by a trenchless horizontal directional drill method. In order to ensure the execution of the horizontal directional drill is being carried out in a way that minimizes adverse effects to the environment, the Commission recommends **Condition 15** for the Section 52 Pipeline and Related Facilities, requiring NGTL to submit a Horizontal Directional Drill Execution Plan for the Brazeau River.

The Commission notes that several Indigenous peoples expressed a desire to see NGTL's Water Quality Monitoring Plan, which NGTL stated would be included in its Environmental Protection Plan. The Commission notes that pursuant to **Condition 10** (Updated Environmental Protection Plan) as recommended by the Commission for the Section 52 Pipeline and Related Facilities, NGTL is required to provide a copy of updated Project-specific Environmental Protection Plans, which would include NGTL's Water Quality Monitoring Plan, to all Indigenous peoples who have expressed an interest in receiving a copy. **Condition 10**, as recommended by the Commission, and **Condition 9** (Environmental Protection Plans) also require NGTL to indicate how its mitigation may have changed as a result of input from engagement with Indigenous peoples, which may include any comments on NGTL's Water Quality Monitoring Plan in its Environmental protection Plans.

With respect to the concerns raised by the Indigenous peoples regarding the implementation of long-term water quality monitoring stations at or around watercourse crossing locations, the Commission finds that the mitigation measures proposed, as well as surface water management or erosion control in the vicinity of each watercourse, would appropriately mitigate Project effects on water quality. The Commission is of the view that, with the implementation of its proposed mitigation measures, it is reasonable to predict there will not be a long-term impact to the water quality of watercourses as a result of Project activities, and therefore is of the view that long-term water quality monitoring stations are not required.

Condition 16 (Contingency Watercourse Crossing Method) for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and **Condition 17** for the Section 58 Facilities and Activities, require NGTL to notify the Commission of the contingency

watercourse crossing method if one is used. This requires NGTL to describe the differences from the watercourse crossing method originally proposed, as well as to 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 CER would assess the need for a *Fisheries Act* authorization.

The Commission notes that several Indigenous peoples expressed a desire to receive a copy of NGTL’s filings for **Condition 16** for the Section 52 Pipeline and Related Facilities describing any contingency watercourse crossing methods. The Commission therefore included the requirement for NGTL to provide copies of any filings required by **Condition 16** for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and **Condition 17** for the Section 58 Facilities and Activities to all Indigenous peoples who express an interest in receiving a copy.

The Commission also notes that some Indigenous peoples requested a comment period for filings associated with **Condition 16**. It is the Commission’s expectation that, prior to submitting this filing with the CER, NGTL will engage with Indigenous peoples, and incorporate to the extent possible any necessary changes arising out of engagement with Indigenous peoples. The Commission expects that this engagement will be described in Indigenous engagement reports submitted pursuant to **Condition 4** for the Section 52 Pipeline and Related Facilities and **Condition 4** for the Section 58 Facilities and Activities.

In the event that a DFO authorization is required, the Commission recommends a condition that will require NGTL to provide confirmation that any required authorizations under paragraph 35(2)(b) of the *Fisheries Act* were obtained. The particulars of this requirement are described in **Conditions 17 and 18** (Authorizations under Section 35(2)(b) of *The Fisheries Act*) for the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities, respectively.

The Commission notes NGTL’s commitment to finalize and implement a Spawning Deterrent Execution and Monitoring Plan, and requires that this plan be submitted as part of **Condition 10** for the Section 52 Pipeline and Related Facilities (updated Environmental Protection Plan), as recommended by the Commission, and **Condition 9** (Environmental Protection Plan) for the Section 58 Facilities and Activities.

The Commission’s determination of significance for the Project’s effects on water quality and quantity and on fish and fish habitat is made in the table below.

Table 8-6: Significance Determination for Project Effects on Water Quality and Quantity and on Fish and Fish Habitat

Evaluation of Significance of Residual Effects on Water Quantity and Quality and Fish and Fish Habitat arising from Watercourse Crossings	Temporal Extent	Reversibility	Geographical Extent	Magnitude
	Short- to medium-term	Reversible	Local Assessment Area	Moderate
	Adverse Effect			
Not likely to be significant				

8.6.4.2 Vegetation and Wetlands

This section provides a detailed discussion on Project effects on old seral stage forests and wetlands.

NGTL stated that Project construction would result in disturbance of up to 414 ha of upland vegetation communities, including forest, as well as a temporary loss of 80.4 ha of wetlands and, after route refinement, would require clearing 2.4 ha of old seral stage forest. NGTL's Environmental and Socio-Economic Assessment indicated that with the application of mitigation measures, residual Project effects on vegetation and wetlands are predicted to be not significant.

NGTL proposes standard and site-specific mitigation to minimize Project effects on vegetation and wetlands, which is discussed in subsection 8.6.3.

Proposed Mitigation

NGTL proposed to implement standard industry practices and avoidance measures as well as standard and site-specific mitigation measures outlined in its Environmental Protection Plan to reduce Project effects on vegetation and wetlands. NGTL indicated that it would construct during winter, under frozen ground conditions and using minimal surface disturbance techniques where suitable conditions allow. NGTL stated that use of minimal surface disturbance techniques would limit ground disturbance so that the vegetated root mat and seedbed is left intact.

NGTL stated that all wetlands disturbed during Project construction will be reclaimed. NGTL stated that the estimated area of potential wetland disturbance presented in the Environmental and Socio-Economic Assessment is conservative, and likely a substantial overestimate of the area of wetland that will be disturbed during construction. NGTL submitted that prior to construction, the design of temporary workspace areas will be refined and site-specific areas for temporary workspace will be identified

NGTL has committed to minimizing the amount of clearing in areas of old seral stage forest, and limiting the amount of temporary workspace in old seral stage forest to the greatest extent possible. NGTL has proposed natural regeneration as the preferred method of vegetation reestablishment on the Project ROW.

NGTL stated that in forested lands, it will reclaim the construction Project Development Area such that early seral plant communities similar to those adjacent to the ROW are able to establish. Upon NGTL's confirmation that this equivalent land capability has been reached, NGTL deems that the ROW is in a suitable condition to support growth of future forests. NGTL acknowledges that, at that time, these areas may not be considered a late-successional, or mature vegetation community.

Proposed Monitoring

NGTL stated that its post-construction environmental monitoring plan, outlined in its Environmental Protection Plan, describes NGTL's monitoring program and includes assessments of terrain, soils, vegetation and wetland. Post-construction monitoring assesses the effectiveness of reclamation and mitigation methods, and prescribes remedial measures for

any environmental issues observed. NGTL stated that reclamation of the Project Development Area will occur immediately following construction.

Views of Participants

Samson Cree Nation and Louis Bull Tribe, Piikani Nation and Michel First Nation raised concerns with the use of chemicals for vegetation management, and reported avoiding areas that have evidence of being sprayed with herbicides or pesticides. Intervenors expressed concern that herbicides and pesticides could pollute water, culturally important plants, and sacred sites and affect wildlife.

Piikani Nation, Samson Cree Nation, Louis Bull Tribe, and Michel First Nation expressed concerns about clearing of old seral stage forest, and about loss of culturally important plants within areas of mature forest and wetlands

...we used to collect what is called a brat root or licorice root, and it grew in swamps that was in the forest. We also used to collect wild turnips, wild onions, sweetgrass, sweet pine, and a special type of fungus -- it grew only on trees in the north... A lot of that is gone now. You can't find wild onions or turnips or anything like that along those right-of-ways of a gas pipeline.

-- Elder Marvin Murray, Piikani Nation, Transcript Volume 2 [1248-1249]

...our plants are dying and nothing is being done by the government. I am not happy about pipeline developments because after the construction is finished and ROWs are cleared, only weeds will grow.

-- Elder Ida Bull, Louis Bull Tribe, written affidavit

...we cannot replant our medicine. It's nature that grew that plant. So once it's disturbed, it's disturbed, it's not there anymore. It will never be there anymore.

-- Elder Rex Daniels, Stoney Nakoda Nations, Transcript Volume 1 [208]

O'Chiese First Nation, Driftpile Cree Nation, and Samson Cree Nation questioned NGTL's conclusion that the loss of forested lands are considered reversible.

Samson Cree Nation, Piikani Nation, Michel First Nation, and Alexis Nakota Sioux Nation raised concerns about construction methods through wetlands, potential permanent loss of wetlands, and reclamation of wetland areas that would be disturbed by the Project.

Louis Bull Tribe and Piikani Nation raised concerns about vegetation reseeding, and expressed the wish for NGTL to use native species in seed mixes.

Section 7.4 of this report gives a detailed overview of concerns raised by Indigenous Intervenors during the hearing process, including concerns related to effects on traditional land and resource use, harvesting plants, and vegetation monitoring. For example, questions raised by Indigenous peoples regarding how changes to environmental elements would impact Indigenous peoples' ability to practice Indigenous and Treaty Rights are discussed in subsection 7.4.9.

Views of NGTL

NGTL stated the use of herbicides is prohibited in the Project Development Area unless otherwise approved by NGTL, and is prohibited within 30 m of a water body unless by ground application equipment or otherwise approved by the responsible regulatory agency. NGTL's Environmental Protection Plan noted that herbicides are not used near occurrences of rare plants or rare ecological communities. NGTL noted that it will also implement the weed management procedures outlined in TransCanada Energy's Integrated Vegetation Management Program and TransCanada Energy's Operating Procedure for Invasive Vegetation Weed Control Management during operations of the Project. The Integrated Vegetation Management Program provides information to ensure environmentally sound vegetation management practices are employed in controlling undesirable vegetation. The Weed Control procedure outlines the methods used to identify, prevent and control the start or spread of undesirable invasive and restricted vegetation. The mitigation measures outlined in the Environmental Protection Plan, post-construction environmental monitoring, and operating programs and procedures will be used in areas with moderate weed infestation from progressing to an area of high invasiveness as a result of direct Project activities.

NGTL stated that all wetlands disturbed during Project construction will be reclaimed, and as such there would be no permanent wetland loss as a result of the Project. NGTL noted that development affecting wetlands is regulated in Alberta under the provincial *Water Act*, and specific guidance for permitting of development affecting wetlands is provided in the Government of Alberta's Wetland Policy. NGTL stated that the temporary effects on wetlands associated with pipeline construction would require notification under the Alberta *Water Act* Code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body and Code of Practice for Watercourse Crossings.

NGTL stated that the estimates of old seral stage forest that would be cleared (5.9 ha), as presented in its Environmental and Socio-Economic Assessment, were conservative, since they were based on a Project Development Area width of 75 m. NGTL further stated the ROW width would be up to 32 m wide. At this width, the Project would intersect with 1.3 ha of old seral stage forest in the Elk River Project Development Area and 1.1 ha of old seral stage forest in the Alford Creek Project Development Area, for a total of 2.4 ha for the entire Project. NGTL stated that change in vegetation communities and species are expected to result in medium to long term (up to or more than 25 years) residual Project effects. NGTL's mitigation would include constructing during frozen ground conditions using minimal surface disturbance construction methods. NGTL stated its Environmental Alignment Sheets show areas of old seral stage forest and the mitigations associated with these areas.

Views of the Commission

The Commission finds that the Project is not likely to cause significant adverse environmental effects on vegetation and wetlands. The Commission is of the view that residual effects of the Project on vegetation would be moderate in magnitude, limited to the Local Assessment Area, and reversible to permanent in the medium to long term. In particular, the Commission is of the view that the residual effects on old seral stage forests would be moderate in magnitude, limited to the Local Assessment Area, and permanent in the long term (definitions of these terms are provided in Appendix V). Further, the Commission is of the view that residual effects of the Project on wetlands would be moderate in magnitude, limited to the Local Assessment Area, and reversible in the medium to long term.

The Commission notes that the Project would intersect a total of 2.4 ha of old seral stage forest. The Commission recognizes NGTL's commitment to minimize clearing, limit the amount of temporary workspace, implement minimal disturbance construction methods, and reduce operational maintenance brushing in old seral stage forest. The Commission notes that NGTL has proposed natural regeneration as the preferred method of vegetation reestablishment on the Project ROW. The Commission also notes that NGTL will reclaim the construction Project Development Area such that early seral plant communities similar to those adjacent to the ROW are able to establish.

The Commission is of the view that the reestablishment of vegetation could take a long time to reach to a mature forest stage, and notes NGTL's examples of past revegetation success refer to sites that have reached only the pole/sapling structural stage 20 years after disturbance. The Commission recognizes the importance of measuring the success of reclamation during post-construction monitoring. The Commission has also considered the issues raised by the Indigenous peoples around the loss of culturally important plants within areas of mature forest and wetlands. Consequently, the Commission recommends **Condition 10** (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose **Condition 9** for the Section 58 Facilities and Activities. The Commission requires NGTL to provide specific mitigation related to old seral stage forest areas.

In addition, **Condition 24** for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and **Condition 23** for the Section 58 Facilities and Activities (Post-construction Environmental Monitoring Reports) require NGTL, for areas where old seral stage forest was cleared, to describe where the vegetation community stands on its trajectory toward the reclamation goals identified, how the outcomes arising from consultation with Indigenous peoples were considered, and provide details on any corrective actions as needed.

In regard to the issues surrounding the use of chemicals for vegetation management, and areas being sprayed with herbicides or pesticides, the Commission notes TransCanada Energy's Integrated Vegetation Management Program and TransCanada Energy's Operating Procedure for Invasive Vegetation Weed Control Management. The Commission is satisfied that NGTL's approach to vegetation and weed management is appropriate. The Commission further notes that NGTL is required to engage with Indigenous peoples pursuant to the Environmental Protection Plan conditions (**Condition 10** for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and **Condition 9** for the Section 58 Facilities and Activities), which would include NGTL's vegetation and weed management procedures.

The Commission notes that in the Alford Creek Section, wetlands are uncommon and cover 4.5 per cent of the Local Assessment Area and 4.1 per cent of the Project Development Area. In the Elk River Section, wetlands, mostly swamps, cover approximately 18 per cent of the Local Assessment Area and 23 per cent of the Project Development Area. In regards to the temporary loss and alteration of wetlands, the Commission notes NGTL's commitment to reclaim all wetlands that would be disturbed during construction. The Commission understands that development affecting wetlands is regulated in Alberta under the provincial *Water Act*, and specific guidance is provided in the Government of Alberta's Wetland Policy.

The Commission also acknowledges that while wetlands will be disturbed and will take several years to recover after Project construction, NGTL has committed to monitoring wetland reclamation and ensuring reclamation success through its post-construction environmental monitoring program. The Commission is therefore of the view that, after applying the proposed mitigation and monitoring measures, the residual effects on wetlands would be appropriately mitigated, and the Project is not likely to result in any permanent loss of wetlands.

The Commission notes NGTL’s commitment to implementing standard and site-specific mitigation measures to minimize effects on vegetation and wetlands as outlined in NGTL’s Environmental Protection Plan. In order to ensure all information, procedures, and mitigation measures included in the Environmental Protection Plan are up to date, the Commission requires NGTL to submit an updated Environmental Protection Plan for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, (**Condition 10**) and an Environmental Protection Plan for the Section 58 Facilities and Activities (**Condition 9**).

The Commission is of the view that a robust post-construction environmental 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 24** for the Section 52 Pipeline and Related Facilities and would impose **Condition 23** for the Section 58 Facilities and Activities.

The Commission requires NGTL to provide a copy of the filings for both **Conditions 10 and 24** for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and for **Conditions 9 and 23** for the Section 58 Facilities and Activities to all Indigenous peoples who have expressed an interest in receiving those filings.

As stated above, based on the standard mitigation proposed by NGTL, as well as the additional measures NGTL has agreed to undertake as a result of input provided by Indigenous peoples during the hearing process, and proposed conditions, the Commission is of the view that residual effects of the Project on vegetation and wetlands are not likely to be significant. The tables below provide the Commission’s determinations of significance of residual Project effects on wetlands and vegetation, including old stage seral forests.

Cumulative effects of the Project on vegetation and wetlands are discussed in subsection 8.7.2.

Table 8-7: Significance Determination for Project Effects on Vegetation

Evaluation of Significance of Residual Effects on Vegetation, including Old Seral Stage Forests	Temporal Extent	Reversibility	Geographical Extent	Magnitude
	Medium to long term	Reversible - Permanent	Local Assessment Area	Moderate
Adverse Effect				
Not likely to be significant				

Table 8-8: Significance Determination for Project Effects on Wetlands

Evaluation of Significance of Residual Effects on Wetlands	Temporal Extent	Reversibility	Geographical Extent	Magnitude
	Medium to long term	Reversible	Local Assessment Area	Moderate
	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. Potential residual effects of the Project on biophysical elements are associated primarily with: physical and meteorological environment, soil and soil productivity, water quantity and quality, GHG emissions, fish and fish habitat, wetlands, vegetation, wildlife and wildlife habitat and species at risk. 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 cumulative effects include: forestry, transportation infrastructure, utilities infrastructure, agriculture, residential development, mining, and oil and gas infrastructure.

Although there are possible cumulative effects for a number of biophysical and socio-economic elements, the Commission is of the view that these cumulative interactions and effects, with the exception of cumulative effects on vegetation and wetlands, are limited to the duration of construction, are localized, are minor in nature, and would be mitigated by NGTL's environmental protection and mitigation measures and the Commission's conditions. Therefore, the Commission concludes that the Project would not likely result in significant adverse cumulative effects. A discussion of the cumulative effects on vegetation and wetlands is provided in subsection 8.7.2.

8.7.1 Cumulative Effects Methodology

Views of Participants

Participants in the hearing raised a number of issues around cumulative effects. Much of the focus was around the extent of past and ongoing developments and activities, as well as how this relates to specific issues of traditional use.

In addition to concerns about cumulative effects on traditional land and resource use and on their rights and interests, many Indigenous peoples also raised concerns regarding NGTL's cumulative effects methodology for environmental components.

Samson Cree Nation questioned whether NGTL had incorporated Indigenous knowledge into its Environmental and Socio-Economic Assessment, particularly in its cumulative effects assessment. Samson Cree Nation provided its assessment of cumulative effects on its rights and interests, including elements of the biophysical environment. Samson Cree Nation further stated that, in its view, NGTL has failed to properly assess cumulative effects and instead focuses on project-specific effects. Samson Cree Nation states that at a “project-by-project” level, impacts that NGTL (and perhaps the Commission) would typically consider as negligible, may actually be significant from Samson Cree’s perspective.

A discussion of the cumulative effects on traditional use is provided in subsections 7.4.8.5, 7.5.8.5, and 7.6.8.5, and discussion of cumulative effects on the rights and interests of Indigenous peoples is provided in subsections 7.4.9, 7.5.9 and 7.6.9.

Views of NGTL

NGTL explained that it conducted its cumulative effects assessment in alignment with requirements and guidance provided by the CER Filing Manual and the Impact Assessment Agency (formerly the Canadian Environmental Assessment Agency). NGTL further explained its rationale for selection of spatial and temporal boundaries for its cumulative effects assessment.

NGTL noted that the cumulative effects assessment conducted by Samson Cree Nation is a regional cumulative effects assessment, which NGTL stated uses different spatial and temporal boundaries from a project cumulative effects assessment, and identifies valued components that reflect issues that may or may not also be affected by the project under assessment. NGTL further noted that the regional cumulative effects assessment conducted by Samson Cree Nation focuses on overall cumulative effect rather than noting incremental project contribution to total cumulative effects.

Views of the Commission

The Commission accepts NGTL’s cumulative effects methodology and notes that it is consistent with the CER’s Filing Manual and the CEAA 2012 requirements and guidance.

The extent to which an applicant must consider the effects associated with other existing and future physical facilities and activities and the associated depth of analysis will depend upon the relative contribution of the applied for project to the predicted cumulative effects. In this case the Commission notes the nature, scope and the ecological context of the Project: the construction and operation of a pipeline in an area of substantial existing developments.

In regards to the issues raised by Samson Cree Nation around the cumulative effects methodology NGTL used for the Project, the Commission notes that the CEAA 2012 requires that each environmental assessment of a designated project take into account any cumulative environmental effects that are likely to result from the designated project in combination with the environmental effects of other physical activities that have been or will be carried out. Samson Cree Nation references the CER Act, as well as the *Impact Assessment Act*, as new benchmarks for cumulative effects assessment. The Commission notes that NGTL’s Edson Mainline Expansion Project was submitted, and is being assessed pursuant to, the NEB Act and the CEAA 2012.

The Impact Assessment Agency of Canada website states the following:

Regional assessments allow the Government of Canada to go beyond project-focused impact assessments to understand the regional context and provide more comprehensive analyses to help inform future impact assessment decisions.¹⁹

The Commission notes that Samson Cree Nation's description of a cumulative effects assessment appears to resemble the Impact Assessment Agency's description of a Regional Assessment. The Commission is of the view that although a regional assessment could provide valuable information for decision-makers, such an assessment differs from the Project-specific cumulative effects assessment that is required by the CER's Filing Manual and the CEAA 2012 guidance. The Commission therefore finds NGTL's cumulative effects methodology appropriate.

8.7.2 Cumulative Effects on Vegetation and Wetlands

NGTL stated that residual cumulative effects on vegetation species of management concern are likely to occur in the Project Regional Assessment Area. NGTL noted that if all of the reasonably foreseeable projects and physical activities go ahead, NGTL predicts a loss of approximately 28 per cent of native upland vegetation communities in the Elk River Regional Assessment Area and 22 per cent in the Alford Creek Regional Assessment Area. NGTL estimates the Project contribution to this is 0.2 per cent of the Project Regional Assessment Area.

NGTL noted that construction of the Elk River Section and Alford River Section will result in the temporary loss or alteration of 0.1 per cent of wetlands in the Regional Assessment Area. NGTL noted that following reclamation, the Project will make a negligible contribution to wetland loss or alteration at the regional scale.

NGTL stated that other projects in the area with residual effects that may interact with the Project include forestry, transportation infrastructure, utilities infrastructure, agriculture, residential development, mining, and oil and gas infrastructure.

NGTL states that overall, the Project would result in a contribution to ongoing low to moderate cumulative environmental effects in the regional area, and that the Project's contributions to cumulative environmental effects on vegetation and wetlands would be negligible to low.

Views of Participants

Samson Cree Nation stated that it anticipates Project impacts (wetland impacts, spills, introduction of invasive species, loss of productivity) will add to existing cumulative effects on culturally important plants in the Project area and interact with climate changes causing wetlands to dry.

O'Chiese First Nation, Driftpile Cree Nation, and Samson Cree Nation questioned NGTL's conclusion that the loss of forested lands are considered reversible. Samson Cree Nation

¹⁹ Impact Assessment Agency of Canada Website, [Regional Assessments page](#)

stated, in its experience, reclaimed areas do not replace native ecosystems and culturally important plants at reasonable time scales, and often perceptions of contamination limit harvesting. Invasive species are also common at reclaimed sites, and often spread into adjacent native habitat.

O'Chiese First Nation members explained that there is no concept or word for "mitigation" or "correction" in Anishinabe. "Once a tree is terminated it cannot be replaced. It will not regrow."

Driftpile Cree Nation and Stoney Nakoda Nations (Bears paw First Nation, Chiniki First Nation, and Wesley First Nation) stated that it is not possible to replace or replant culturally important plants:

...we cannot replant our medicine. It's nature that grew that plant. So once it's disturbed, it's disturbed, it's not there anymore. It will never be there anymore.

-- Elder Rex Daniels, Stoney Nakoda Nations, Transcript Volume 1 [208]

This Project here will destroy a whole lot. My fear is, there will be no longer any medicine exist or available in those areas.

-- Elder Shane Crawler, Stoney Nakoda Nations, Transcript Volume 1 [663]

If we're looking at landscapes and understanding that everything is an object with no spirit and everything is replaceable, that's a western way of looking at it, rather than a traditional knowledge view. Certain areas are not replaceable.

-- Bill Snow, Stoney Nakoda Nations, Transcript Volume 1 [912-913]

Our wâhkôhtowin teaches us that our connection to the land is more than physical. And when you disrupt an ecosystem, you cross a waterway, you cross any bedded area, putting a pipe into the ground, there's plants, there's roots, there's a whole ecosystem below that that we understand and we have a connection with that. All the trees are connected. All the plants are connected. All the insects are connected. ... So when ... you're disrupting an area, ... you go and put a pipe in, you're disrupting a natural law and you can't reclaim that.... To try to reteach that model when it comes to reclamation, it's not just planting the tree back and saying, 'Oh, yeah. We're done.' Walk away. There's a spirit behind that that's been stripped, and that spirit will never return. It's been defiled.

-- Karl Giroux, Driftpile Cree Nation, Transcript Volume 3 [1538, 1539, 1550]

Further discussion of Project cumulative effects on traditional land and resource use and rights and interests of Indigenous peoples is provided in subsections 7.4.8.5, 7.5.8.5, and 7.6.8.5, and subsections 7.4.9, 7.5.9 and 7.6.9 respectively.

Stoney Nakoda Nations suggested that part of its problem with NGTL's cumulative effects assessment was the disparity between a 'western science' world view and a traditional knowledge world view, and suggested a potential solution in the form of a collaborative cumulative effects committee for the Project.

We do not have very many studies available on wildlife, vegetation, natural resources, from the traditional knowledge view. ...I think that if we had a cumulative effects committee within an Indigenous Advisory Monitoring Committee for Edson Mainline, that would be the work of a committee, I believe, too. I think that might work towards implementing or looking at or understanding not only wildlife, but vegetation and natural resources; understanding it differently.

-- Bill Snow, Stoney Nakoda Nations, Transcript Volume 1 [941, 943]

Views of NGTL

NGTL stated that its cumulative effects assessment defines existing disturbances by aggregating a number of land cover classes from the Alberta Biodiversity Monitoring Institute's Land Cover Classification and Alberta Merged Wetland Inventory. These land cover classes include cutblocks, agriculture and developed land. Developed land includes residential areas, industrial sites, roads and other linear features (e.g., pipelines and trails).

NGTL stated that on forested lands, the construction footprint would be reclaimed such that early seral plant communities similar to those adjacent to the ROW are able to establish on the construction footprint. Upon confirmation of equivalent land capability, the ROW would be at a condition suitable to support development of future forests, which may include multiple uses such as recreation, hunting, trapping, gathering, forestry, oil and gas development and wildlife habitat, but would not necessarily be considered a late-successional, or mature vegetation community yet at that time.

NGTL stated that overall, ongoing clearing of native vegetation communities in the Regional Assessment Areas, followed by planned reforestation, is not expected to threaten the viability of any communities in the Regional Assessment Area. NGTL stated the Project and other past, present and reasonably foreseeable future projects and physical activities will incrementally contribute to cumulative effects on vegetation and wetlands in the Regional Assessment Area. NGTL stated that with mitigation, including reclamation and revegetation, the Project will make a low magnitude contribution to residual cumulative effects on vegetation and a negligible magnitude contribution to residual cumulative effects on wetlands.

Views of the Commission

The Commission acknowledges that the Project is located in an area that is substantially altered by ongoing anthropogenic disturbance including forestry, oil and gas facilities, and linear developments such as roads, powerlines and pipeline corridors. The Commission notes Indigenous Intervenor also stated that the effects on vegetation are intrinsically linked to effects on other elements such as wildlife and wildlife habitat, traditional land and resource use, and ability to exercise Indigenous and Treaty Rights.

In regard to the old seral stage forest, as noted in subsection 8.6.4.2, the Commission is of the view that the reestablishment of vegetation could take a long time to reach to a mature forest stage, and that the success of reclamation would be measured during post-construction environmental monitoring. As previously noted, the Commission recommends **Condition 10** (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose **Condition 9** (Environmental Protection Plan) for the Section 58 Facilities and Activities. The Commission notes the concerns raised by Indigenous peoples regarding construction activities within old stage seral forests, and

requires NGTL to provide specific mitigation related to old seral stage forest areas. To be satisfied that post-construction environmental monitoring is thorough and effective and that reports would be developed and filed, the Commission recommends **Condition 24** for the Section 52 Pipeline and Related Facilities and would impose **Condition 23** for the Section 58 Facilities and Activities (Post-Construction Environmental Monitoring Reports).

The Commission also acknowledges that wetlands will be disturbed and will take several years to recover after Project construction, but notes that NGTL has committed to reclaim all wetlands, monitor wetland reclamation, and ensure reclamation success through its post-construction environmental monitoring program. The Commission also notes that development affecting wetlands is regulated in Alberta under the provincial *Water Act*, and specific guidance is provided in the Government of Alberta's Wetland Policy. The Commission is of the view that there would be no permanent loss of wetlands.

The Commission must assess cumulative effects based on the methodology outlined in section 8.1, and in accordance with the applicable legislative framework, but acknowledges that this framework does not always reconcile with an Indigenous knowledge world view. In its Environmental Assessment, the Commission has taken into account the Indigenous knowledge provided by Indigenous peoples, and notes the commitments NGTL made throughout the hearing process to incorporate the specific knowledge provided by Indigenous peoples into its ongoing Project planning, mitigation, and monitoring. In particular, the Commission notes NGTL's commitments to minimize clearing within areas of old seral stage forests, which Indigenous peoples have indicated are a source of culturally important plants. The Commission further notes NGTL's commitment to engage with Indigenous peoples regarding application of chemicals for vegetation management. The Commission expects NGTL to continue engaging with Indigenous peoples who have expressed concern over Project effects on vegetation and wetlands during this hearing process, and to incorporate Indigenous peoples' suggestions for revegetation and reclamation in the Project area where possible and applicable.

To that effect, as previously mentioned in subsection 8.6.4.2, the Commission requires NGTL to provide a copy of the filings for both **Condition 10** (Updated Environmental Protection Plan) and **Condition 24** (Post-Construction Environmental Monitoring Reports) as recommended by the Commission for the Section 52 Pipeline and Related Facilities, and for **Condition 9** (Environmental Protection Plan) and **Condition 23** (Post-Construction Environmental Monitoring Reports) for the Section 58 Facilities and Activities to Indigenous peoples who have expressed an interest in receiving those filings. In response to comments received from Intervenor, the Commission has included requirements, by way of recommended conditions or imposed conditions, for NGTL to provide evidence of consultation with Indigenous peoples on both its Environmental Protection Plans and its post-construction environmental monitoring plans, and to demonstrate how information and/or feedback from Indigenous peoples has been incorporated into NGTL's plans.

We need very strong monitoring because our ways are different than the Western ways, but we could teach each other. We could sit and share that knowledge. We could learn off one another. It's been proven that your science, your Western science, is finally catching up to Indigenous science.

-- Karl Giroux, Driftpile Cree Nation, Transcript Volume 3 [1552]

The Commission considers Indigenous knowledge to be a highly valued source of information and notes substantial evidence was received from Indigenous peoples regarding cumulative impacts in particular. The Commission acknowledges the challenges it faces in balancing consideration of scientific information and data with Indigenous knowledge, and endeavoured to meaningfully weigh and consider both.

The Commission considered all evidence submitted regarding cumulative effects on vegetation and wetlands. The Commission is of the view that residual cumulative effects of the Project on vegetation would be low to moderate in magnitude, limited to the Local Assessment Area, and reversible to permanent in the medium to long term. In particular, the Commission is of the view that the residual effects on old seral stage forests would be moderate in magnitude, limited to the Local Assessment Area, and permanent in the long term. Further, the Commission is of the view that residual cumulative effects of the Project on wetlands would be low in magnitude, limited to the Local Assessment Area, and reversible in the medium to long term. Although the Project would incrementally contribute to the residual cumulative effects to vegetation and wetlands, the Commission finds that with the implementation of NGTL's mitigation measures, the Project would not likely result in significant adverse cumulative effects on vegetation, including old seral stage forests, and wetlands.

Views of the Commission regarding cumulative effects of the Project on traditional land and resource use are provided in subsection 7.6.8.5.

8.8 Follow-Up Program

The CEEA 2012 requires a follow-up program. The Commission recommends that **Condition 24** (Post-Construction Environmental Monitoring Reports) for the Section 52 Pipeline and Related Facilities be implemented as a follow-up program. Please refer to subsections 8.6.3 and 8.7.2 for more detailed information.

8.9 Conclusions and Recommendation to GIC

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 and the Commission's recommended and imposed conditions, the Project is not likely to cause significant adverse environmental effects. Therefore, pursuant to the CEEA 2012, the Commission recommends that the Governor in Council decide that the designated project is not likely to cause significant adverse environmental effects.

Chapter 9 – Infrastructure, Services, Employment and Economy

The Filing Manual sets out the expectations of 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 measures to reduce the negative impacts and enhancement measures to increase the positive impacts of the project.

Direct and indirect socio-economic effects caused by the existence of the Project itself are discussed below. Potential socio-economic effects that are caused by changes to the environment are included in Chapter 8 (Environment and Socio-Economic Matters). Other economic effects are addressed in Chapter 3 (Economic and Financial Matters). Employment and economic benefits, as they relate to Indigenous peoples, are discussed in Chapter 7 (Matters related to Indigenous Peoples).

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 Environmental and Socio-Economic Assessment and Environmental Protection Plan. NGTL also identified and evaluated the predicted residual and cumulative effects from the Project.

NGTL stated that for the assessment of infrastructure and services, the Local Assessment Area encompasses the communities that are most likely to provide labour, goods and services required for Project construction and operation. NGTL stated the Regional Assessment Area is the same as the Local Assessment Area, which encompasses a sufficiently broad area for assessing cumulative effects, including the incremental effects of the Project.

NGTL submitted that the spatial boundaries for the Local Assessment and Regional Assessment Areas vary based on the issue being examined. With respect to employment and economy, addressed later in this Chapter, the Local Assessment and Regional Assessment Areas include Alberta communities within a 50-km buffer of each Project Development Area (all communities intersected by the buffer are included, not just those completely encompassed by the buffer). This includes the following Statistics Canada Census Subdivisions for each of the following Project components:

- Elk River Section– Brazeau County, Clearwater County and Yellowhead County
- Alford Creek Section – Clearwater County, Mountain View County, Red Deer County, Town of Rocky Mountain House, Town of Eckville, Town of Sundre and Village of Caroline

NGTL stated that the Local Assessment and Regional Assessment Areas for community infrastructure and services, human health, and social and cultural well-being draw on the above definition but are further refined, based on the topic under study, to capture the maximum area within which Project effects can be predicted or measured with a reasonable degree of accuracy and confidence. Effects on infrastructure and community services, and social and cultural well-being are most likely to occur within those communities where Project workers reside and/or

use infrastructure and services. NGTL stated that Project workers will likely rely on temporary accommodations and other infrastructure and services in nearby communities of Rocky Mountain House and Sundre.

NGTL identified the interactions and potential effects on infrastructure and services resulting from Project construction and operations activities, such as increased demand on temporary accommodations, transportation infrastructure, and community services such as health, emergency and policing services, and utilities. As part of its submissions, NGTL provided baseline conditions for community services and infrastructure.

NGTL identified the key indicators of potential effects and residual effects on community infrastructure and services including: population and workforce; Project-related demands on and changes to infrastructure and services; metrics based on affected infrastructure and services (e.g., emergency services call volumes); and availability of accommodations (e.g., vacancy rates, inventory levels). NGTL provided the baseline conditions of these indicators for communities and service providers within each Local Assessment and Regional Assessment Area.

In regards to temporary accommodations, construction of the Elk River and Alford Creek Sections will require an average workforce of 330 workers each (660 workers total), that will peak at approximately 500 workers each (1000 workers total) between November 2021 and February 2022. NGTL stated that it intended to utilize qualified local labour where feasible and, for workers from outside of the local area, accommodation for construction of the Project is anticipated to be provided through utilization of existing commercial hotel and motel facilities in nearby centres such as Rocky Mountain House and Sundre. NGTL stated that Rocky Mountain House recently had a high residential vacancy rate and has 19 hotels, motels, and bed-and-breakfasts with more than 600 rooms, as well as 12 campgrounds and recreational areas within 20 km of Rocky Mountain House that offer more than 1,000 campsites to visitors. Sundre has fewer residential vacancies but has 11 hotels, motels and bed-and-breakfasts with approximately 250 rooms, as well as seven campgrounds and RV parks near the town with more than 700 campsites. NGTL stated there is sufficient capacity in the Local Assessment and Regional Assessment Areas to house even the peak construction workforce of 1,000. Moreover, because a percentage of the workforce will already reside in the Local Assessment and Regional Assessment Area communities, the number of workers requiring accommodations during peak construction will be considerably less than 1,000. Because of the available accommodation in Rocky Mountain House and Sundre, NGTL does not intend to build or operate construction camps.

In regards to transportation infrastructure, NGTL indicated that a potential Project effect is increased demands on infrastructure as a result of increased traffic volumes transporting workers, supplies and equipment for the Project. NGTL stated that traffic will increase during construction, including higher levels of worker and vehicle traffic to and from the site, the operation of construction equipment on site and increased traffic on oilfield and forestry roads surrounding the Project.

NGTL indicated it would have various mitigation measures to decrease traffic concerns, such as restricting all construction activities to the approved construction footprint, adhering to safety and road closure regulations, implementing a Traffic Control Management Plan and, where practical and applicable, using multi-passenger vehicles to transport crews. Access to the Project will occur via existing public and private roads, including the Elk River Road, while respecting traffic safety and concern for other users. NGTL will implement the Traffic Control

Management Plan, which includes access control measures (e.g., signage, road closures, restrictions, access control) to manage and control Project-related construction traffic. NGTL concluded that with Project mitigations and the existing capacity of the local road network, increased traffic will likely be accommodated without major disruption. NGTL also stated it will coordinate traffic management efforts with other project proponents to reduce or avoid cumulative disruptive effects to local residents and businesses.

With respect to traffic safety, NGTL stated there are no other specific features of the Project, beyond increased traffic volume, that are expected to substantially increase accident rates or decrease traffic safety. NGTL stated that Project personnel, while operating Project-related vehicles, will observe all traffic rules and local, provincial, and federal highway regulations. Trucking activity for construction of the Project will take place on designated routes, will observe speed limits and weight restrictions per road use agreements, and will adhere to the measures set out in the Environmental Protection Plan and the Access Management Plan for the Project.

NGTL provided evidence with respect to potentially affected community services in the towns of Rocky Mountain House and Sundre, including information regarding:

- water, sewage and garbage collection services, noting recent upgrades to the Town of Rocky Mountain House's water treatment plant and lagoon;
- emergency and policing services; and
- health services, noting increases in family medicine physicians in the area between 2012-2016.

NGTL acknowledged that the presence of workers in local communities has the potential to increase the demand for local services and infrastructure such as water, sewer, waste, healthcare and emergency services.

However NGTL stated that, with existing upgrades to water and wastewater infrastructure and increasing numbers of physicians in Local Assessment Area communities, along with mitigation measures (including use of a Waste Management Plan and safety orientation for workers), infrastructure and services, including highways, utilities, emergency and health services, will be capable of absorbing additional demands of the temporary workforce during the construction phase. NGTL further stated that given the available capacity of the local infrastructure and services, along with the temporary nature of Project construction activities, short peak construction timeframe and duration of construction, and the implementation of the mitigation and management measures proposed, residual adverse effects arising from the Elk River and Alford Creek Sections on infrastructure and services, though likely, are expected to be of low magnitude, short-term and reversible following completion of construction activities.

NGTL stated that residual Project and cumulative effects on infrastructure and services are not expected to result in demands on services or infrastructure beyond current capacity, such that standards of service are routinely and persistently reduced below current levels for an extended period. Residual Project effects on infrastructure and services are not expected to affect the quality or sustainability of infrastructure and services.

NGTL submitted that as the Project does not overlap temporally with NGTL's other planned developments, and spatial overlap is limited to tie-in locations and use of local accommodation

in surrounding communities, no additional mitigation measures are proposed for the Elk River and Alford Creek Sections to address potential cumulative effects at this time.

NGTL met with representatives from Clearwater and Yellowhead counties, and the Town of Rocky Mountain House. Local government representatives from municipal districts, counties and municipalities were interested in effects on local infrastructure. NGTL stated that feedback gathered through engagement with local governments has been incorporated into ongoing engagement and will continue to be considered for incorporation into Project planning and execution, as appropriate. NGTL submitted that it will continue to communicate with local communities and service providers with respect to scheduling so they may prepare for potential increased demands on infrastructure and services. NGTL is also committed to regular communication with stakeholders, providing advance notice regarding Project plans, and the continuous monitoring of their mitigation and other management measures via their engagement with local infrastructure and service providers. NGTL further stated that along with the mitigation and other management measures, TransCanada has a community investment program to support local initiatives that focus on safety, education, community or the environment.

Views of the Commission

The Commission finds that the measures planned by NGTL would appropriately address the potential impacts of the Project on local infrastructure and services, including effects on traffic and accommodations as a result of temporary workforce. The Commission notes that NGTL has committed to implement mitigation and management plans, including the Traffic Control Management Plan.

Given the evidence on the record and the mitigation and management measures proposed, the Commission is satisfied that the community infrastructure and services affected by the Project, including highways, utilities, emergency and health services, will be capable of absorbing additional demands of the temporary workforce during the construction phase and that residual adverse effects arising from the Project on infrastructure and services are likely to be of low magnitude, short-term and reversible.

9.2 Employment and Economy

NGTL stated that the Project is expected to create employment and business opportunities and generate revenue for governments. Expenditures associated with Project construction will result in income for contractors, suppliers and workers. NGTL submitted that through Project design and planning, as well as the implementation of mitigation measures, no adverse residual effects are predicted for employment and economy and an assessment of cumulative effects is not warranted.

NGTL stated that Project construction will result in residual economic effects on employment, GDP, government revenue and business opportunities within the Local Assessment and Regional Assessment Areas, including direct, indirect and induced effects:

- direct effects result from labour demand from NGTL and its contractors during Project construction (e.g., construction labour, project management);
- indirect effects result from Project spending on goods and services (e.g., employment with suppliers/manufacturers of materials used during construction); and

- induced effects result from spending by direct and indirect workers on consumer goods and services (e.g., restaurant servers, retail positions).

NGTL submitted that the estimated cost to construct the Elk River and Alford Creek Sections is approximately \$408 million, excluding management allocations (e.g., escalation, contingency), allowance for funds used during construction, and land costs. Table 9-1 shows the breakdown of estimated capital expenditures.

Table 9-1: Estimated Capital Expenditures (2018 Million Dollars)²⁰

Category	Expenditures (\$ millions)			
	Alberta	Other parts of Canada	Foreign	Total
Materials	4.4	15.6	72.9	92.9
Construction and subcontracts	200.8	57.8	-	258.6
External engineering and consultants	13.9	-	-	13.9
Owner costs	42.8	-	-	42.8
Total	262.0	73.4	72.9	408.2

NGTL stated the assessment of Project effects on employment and economy focuses on the construction stage, since only minor positive effects are anticipated during operation.

NGTL stated it will implement enhancement measures during the construction stage to maximize the potential positive effects on employment and economy, such as exchanging information between local communities, businesses and individuals and prime contractors. NGTL further stated that with the implementation of mitigation and management measures targeted at increasing beneficial effects of the Project, such as encouraging the participation of local and Indigenous workers and businesses on the Project, residual effects on employment

²⁰ This table does not include management allocations (e.g., escalation, contingency), allowance for funds used during construction and land costs.

and economy associated with construction of the Elk River and Alford Creek Sections are predicted to be positive in direction.

NGTL submitted that the Project is estimated to contribute \$370 million to provincial GDP of which \$285 million (77.0 per cent) is estimated to occur within the province of Alberta with the remaining \$85 million (23.0 per cent) occurring across other provinces and territories. Project contributions to provincial GDP from construction of the Project are summarized in Table 9-2.

**Table 9-2: Estimated Project Construction Contribution to Provincial GDP
(Million Dollars)**

Effect	Alberta	Other Parts of Canada	Total
Direct	130	0	130
Indirect	105	50	155
Induced	50	35	85
Total	285	85	370

In total, Project construction is estimated to contribute \$6.3 million in federal government tax revenue, \$8.8 million in provincial government tax revenue and \$7.1 million in municipal government tax revenue. The economic analysis also estimated that during operation the Project will result in approximately \$740,000 per year in property taxes to Clearwater County and Yellowhead County.

NGTL's economic analysis estimated that the Project represents direct and indirect employment of about 1,470 full-time jobs during construction in Alberta. NGTL has estimated that a workforce of 660 trades, equipment operators, professional engineers, inspectors and general labourers will be required for six months in order to construct the Project and 1,000 workers will be needed at peak construction. NGTL stated that while a percentage of local hire has not been estimated, both the Elk River and Alford Creek Sections Local Assessment and Regional Assessment Areas labour forces are well positioned to respond to Project demand for labour notwithstanding uncertainty regarding eventual availability. NGTL committed to hiring the majority, if not all, of the construction workers from Alberta and some of these would likely be from the local communities. The number of non-local construction workers for the Project would be moderated by measures to maximize hiring of local and Indigenous peoples from within the Local Assessment and Regional Assessment Areas, as a first priority, and elsewhere in Alberta as a second priority. Although most of the opportunities will be available during the construction phase of the proposed Project, capacity in local communities for supporting operational requirements, such as ROW maintenance, will be identified in the future. NGTL stated that operating staff requirements will be drawn from existing regional resources but does not anticipate that any full-time operating positions will be necessary as a result of the Project.

NGTL stated that enhancement measures will be implemented during construction of the Project to maximize the potential positive effects on employment and economy. NGTL will seek to increase local involvement in the Project by promoting the hiring of local construction workers (subject to labour availability, cost and quality considerations), promoting procurement opportunities, and engaging with local and regional communities to discuss the Project and its requirements.

NGTL stated that economic activity from employment, and project expenditures on local and Indigenous-owned businesses are expected to provide positive effects during the construction period, and that the number of workers to be hired is not expected to result in a labour shortage or affect the supply of goods and services such that wage or price inflation occurs.

Views of Participants

The Alberta Department of Energy submitted Written Final Argument in support for the timely approval of the Project, and stated that Alberta's natural gas sector is supportive of the overall Canadian public interest and critical to Canada's economic recovery, with importance magnified since the COVID-19 pandemic.

CAPP submitted Written Final Argument in support of the Project and asked the Commission to approve the Project as applied for.

Employment, training and benefits, as well as potential adverse socio-economic impacts, related to Indigenous peoples are discussed in Chapter 7 (Matters related to Indigenous Peoples).

Reply of NGTL

NGTL submitted that the Project will result in considerable benefits to the local, provincial and the federal economies. Benefits will accrue both from Project spending and employment, and by providing necessary transport of an essential commodity.

Views of the Commission

The Commission finds that the Project would benefit local, regional, provincial and federal economies. The Commission finds that the socio-economic benefits related to the construction phase of the Project, through both direct, indirect and induced employment, and contract and procurement opportunities, would benefit local communities as well as workers from elsewhere in Alberta. The Commission is also of the view that NGTL has established appropriate mitigation and management measures to reduce negative impacts, and enhancement measures to increase the positive impacts, of the Project on employment and economy.

The Commission notes NGTL's commitment to maximize hiring of local and Indigenous peoples from within the Local Assessment and Regional Assessment Areas as a first priority, and elsewhere in Alberta as a second priority. The Commission supports this commitment because turning impacted people into beneficiaries will strengthen the human and social capital of local communities.

While NGTL requested deletion of local and regional reporting requirements in a proposed condition regarding employment, contracting and procurement activities, the Commission is of the view that appropriate reporting on these activities is valuable given its broad public

interest mandate and its desire to increase the transparency of NGTL's programs aimed at providing benefits to local and regional economies. This holistic approach includes reporting on training, employment, contracting, and procurement for the Project, which includes local and regional employment and business opportunities. As such, the Commission recommends **Condition 21** (Training, Employment, Contracting, and Procurement Report) for the Section 52 Facilities and Related Activities and would impose the same condition (**Condition 21**) for the Section 58 Facilities and Activities.

The Commission's views regarding matters related to Indigenous peoples, including conditions regarding Employment, Contracting and Procurement and potential socio-economic impacts, can be found in Chapter 7 (Matters Related to Indigenous Peoples).

Chapter 10 – Section 58 Facilities and Activities

NGTL stated that to achieve the proposed construction schedule and commercially required in-service date for the Project, exemptions from the detailed route process pursuant to section 58 of the NEB Act were being sought for the following facilities and activities:

- 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
- installation of tie-in assemblies located within the boundaries of the existing Clearwater Compressor Station (collectively, the Section 58 Facilities and Activities).

NGTL stated that all activities contemplated under section 58 of the NEB Act would not commence until after the Certificate has been issued for the entire Project and after any conditions applicable to the section 58 activities are satisfied.

Views of Participants

The Stoney Nakoda Nations did not specifically request that the exemption be denied but stated that NGTL's exemption application limits the ability of their study team to know the exact sizes of the dispositions required for the Project and the exact location of the pipeline.

The Stoney Nakoda Nations, Michel First Nation, O'Chiese First Nation, Louis Bull Tribe and Alexis Nakota Sioux Nation raised concerns about how information gained through Indigenous engagement for the Project was reflected in the route selection criteria, generally. These concerns are addressed in Chapter 5.

Piikani Nation stated that each identified site or area of interest that intersects the Project Development Area, including locations of any temporary infrastructure, must have a corresponding site-specific mitigation and, if necessary, accommodation measure that is developed in collaboration with Piikani Nation to ensure cumulative impacts to their rights are managed appropriately. Piikani Nation indicated that mitigation measures need to be appropriately reflected in the specific Environmental Protection Plan and their associated guidance materials, plans and technical data reports.

Samson Cree Nation did not make specific submissions about the section 58 of the NEB Act exemption other than to generally argue that the Commission ought to find that the Project is not in the public interest and to recommend that a certificate not be issued and to deny the exemptions and procedural orders sought by NGTL.

CAPP stated that the applied-for facilities provide necessary access to markets for CAPP members and other NGTL shippers, and that any delay in the planned commercial in-service dates could have significant financial impact for CAPP members and other NGTL shippers.

Views of NGTL

According to NGTL, shapefiles for the pipeline route, including temporary workspace, were emailed to Stoney Nakoda Nations on 4 October 2019. NGTL further stated that on

9 December 2019, NGTL provided Project shapefiles requested by the Stoney Nakoda Nations that detailed the Crown dispositions that were within 250 m of the Project centerline and that the shapefiles were mapping grade. NGTL further provided the legal location for the proposed trenchless crossing of the Brazeau River. NGTL also indicated that it had reviewed the written evidence of the Stoney Nakoda Nations and that it will provide responses and proposed mitigations for identified Project-specific issues and concerns and to meet with the Nations to answer questions or discuss concerns.

NGTL stated that it has not finalized locations for all temporary infrastructure. NGTL indicates that temporary workspace requirements for the pipeline components are subject to refinement as the Project proceeds through detailed engineering, and that prior to starting construction NGTL and the prime contractor(s) will complete an additional assessment of lands required for construction activities.

NGTL noted that as a matter of practice temporary infrastructure is not typically included in Plan, Profile and Books of References (PPBoRs). Detailed locations for this infrastructure are often not finalized until construction plans are finalized and in some cases once construction has commenced. NGTL stated that construction of temporary infrastructure must be initiated (and in some cases completed) before NGTL can commence construction of the pipeline components of the Project. As a result, delaying Project construction until the detailed locations for temporary infrastructure are finalized, and associated PPBoRs are filed and approved, would harm NGTL's ability to construct the Project in a timely and efficient manner in accordance with its current construction schedule.

NGTL submitted that it does not anticipate locating temporary workspace outside the area assessed in its Project Environmental and Socio-Economic Assessment. The Environmental and Socio-Economic Assessment assumed that all areas of the Project Development Area comprising a 75 m wide swath along the length of the route would be impacted. NGTL subsequently determined that the majority of the Project can be constructed within the 32 m wide proposed new ROW, with temporary workspace of variable width at intervals along the route, which substantially reduces the area of proposed new disturbance assumed in the Environmental and Socio-Economic Assessment.

NGTL indicated that should it require temporary workspace beyond what was assessed in the Environmental and Socio-Economic Assessment, Stantec Environmental Consultants, who prepared the Environmental and Socio-Economic Assessment, will review the proposed changes to determine whether they change the conclusions of the Environmental and Socio-Economic Assessment. Any additional mitigation will also be incorporated into updates to the Environmental Protection Plan and Environmental Alignment Sheets, where applicable.

NGTL stated that it will provide Indigenous peoples with the proposed Project construction schedule and maps and implement its Aboriginal Engagement Program to seek feedback from Indigenous peoples in order to anticipate, prevent, mitigate and manage conditions that have a potential to affect Indigenous peoples. In the event of unanticipated discovery during construction, NGTL will implement the Cultural Resource Discovery Contingency Plan, as appropriate, to ensure that any sites not previously identified are properly recorded and mapped, and the potential disturbance of those sites from construction activities is addressed before continuing with construction.

NGTL states that ROW preparation activities and trenchless crossings will take place along the proposed route. The pipeline ROW is encompassed within the Project Development Area, a 75 m corridor.

According to NGTL, the Brazeau River crossing is the only crossing for which a trenchless method is proposed but it is also the contingency crossing method for the Clearwater River. Maps with the locations of the proposed crossing were included in the Environmental and Socio-Economic Assessment, and the crossing is encompassed within the Project Development Area.

The tie-in assemblies are located within the boundaries of the existing NGTL Clearwater Compressor Station.

NGTL submitted an Environmental and Socio-Economic Assessment of the Project, which includes the assessment of potential environmental and socio-economic effects of Section 58 Facilities and Activities. NGTL stated that the nature of the activities for which NGTL is seeking section 58 relief are temporary and reversible. NGTL noted that it commits to reclaiming the disturbed lands as soon as practical to ensure any impacts to landowners and Indigenous peoples are reversed. Chapter 8 includes a detailed discussion of concerns raised by Participants regarding environmental effects, including those effects related to the exemptions sought under section 58 of the NEB Act.

NGTL indicated that the current construction schedule for the Project requires certain preliminary construction activities along the ROW and trenchless crossings to commence immediately following issuance of a Certificate, subject to clearing pre-construction conditions. According to NGTL, a delay in commencing these activities would increase the risk that Project construction would not be completed in time to meet NGTL's contractual in-service date. NGTL submitted that GIC approval takes between 3-6 months, following which it requires at least 12 months to obtain approval for a Plan, Profile and Book of Reference, satisfy pre-construction conditions, mobilize for construction, construct temporary infrastructure, construct the pipeline, conduct hydrostatic testing and conduct commissioning activities. Based on this timeline NGTL states that it is reasonably confident that it can achieve the commercial in-service date of April 2022 if it commences pipeline construction Q3 2021.

NGTL stated that while there may be steps that can be taken to accelerate certain activities, these steps are often expensive and would likely result in the Project costs exceeding the estimated cost in the Application, directionally increasing the Project's impact on NGTL System tolls and impacting toll competitiveness. Further, given the numerous variables and risks associated with each step in the Project schedule, any compression in the schedule increases the risk of NGTL not being able to meet the commercially required in-service date for the Project.

NGTL has offered commitments with respect to the Project, including the following applicable to the Section 58 Facilities and Activities:

- NGTL indicated that it will follow existing or proposed linear disturbances, which will allow the Project footprint to be reduced by utilizing temporary workspaces on the adjacent disposition as much as possible, as well as minimizing the fragmentation of the landscape;

- NGTL committed, with respect to ROW preparation, 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 committed that traditional use sites or features which require additional or site-specific mitigation will be included in the Environmental Protection Plan and Environmental Alignment Sheets filed prior to construction. If traditional land use sites not previously identified are found on the construction footprint during construction, it will implement its Cultural Resource Discovery Contingency Plan;
- NGTL committed that a Water Quality Monitoring Plan will be developed where warranted if trenchless methods are used;
- NGTL will attempt to locate temporary workspace for storage of material (e.g., grade soil storage, log decks) outside of old seral stage forest areas and will continue to look at opportunities for micro-reroutes to further reduce its disturbance, where practicable;
- NGTL will look at opportunities to modify construction practices and reduce ROW width, and reclamation techniques, where practicable, to further reduce disturbance of old seral stage forest areas;
- NGTL committed to using low-disturbance construction techniques and minimizing vegetation clearing in riparian areas, installing erosion and sediment control measures, and to implementing a site-specific riparian buffer zone of appropriate size (at least 10 m) to be determined by a qualified Environmental Inspector or designate;
- NGTL stated that it will be required to obtain the necessary land rights for the activities from the landowner (on private lands) or Alberta Environment and Parks (on Crown land) prior to commencing any construction activities. Prior to obtaining land rights from Alberta Environment and Parks, the Aboriginal Consultation Office will determine if consultation with Indigenous peoples is required, as per the Provincial process, and if so, ensure that the Indigenous peoples have been adequately consulted;
- NGTL stated that while it is not aware of any specific concerns from landowners or Indigenous peoples regarding the proposed locations, methods and timing of construction, any such concerns will be addressed through the land acquisition process; and
- NGTL stated that it would accept a condition on any section 58 of the NEB Act order that the order is not effective until NGTL demonstrates to the Commission's satisfaction that all required land rights (on private lands) or dispositions (on Crown lands) have been obtained for the affected lands.

As described below, conditions have also been imposed that relate to Section 58 Facilities and Activities.

Views of the Commission

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-001-2021, should GIC direct the Commission to issue a Certificate in respect of the Section 52 Pipeline and Related Facilities.

The Commission notes that section 58 of the NEB Act permits an exemption when it is in the public interest. In this case, the Commission has considered and weighed the following primary factors in granting the exemption:

- the specific objections raised and nature of concerns identified by Parties, or lack thereof;
- the degree to which routing could be altered given the looping nature of the Project;
- potential impacts to landowners and Indigenous peoples of the Section 58 Facilities and Activities; and
- NGTL commitments and the Commission's conditions, both recommended and imposed, as described below.

The Commission was mindful that an exemption, although permitted under the NEB Act, would affect the ability of persons potentially adversely affected by the detailed route to later oppose the route. The Commission issued IR No. 3.16 to NGTL which asked NGTL to explain how NGTL's request for exemption would not prejudice landowners or Indigenous peoples who would otherwise be able to later raise objections to the detailed route and methods and timing of Project construction. NGTL provided a detailed response (summarized in the views of the NGTL above) restating the basis for the exemption request, confirming why it was appropriate in this application and explaining why the exemption was unlikely to be prejudicial in these circumstances. The Commission's intent was to ensure the record related to the exemption request was thorough and that all parties had a meaningful opportunity to address this relief requested by NGTL. The Commission notes that there were limited objections to the exemption request and the grounds for the exemption identified by NGTL were not specifically challenged by Intervenor.

With respect to the concerns raised by some Indigenous parties, the Commission is satisfied that the Stoney Nakoda Nations have been provided adequate materials to know the general dispositions required for the Project and the location of the pipeline. The Commission recognizes that the locations of temporary workspace have yet to be finalized but notes that they are proposed to be located at intervals along the route within the Project Development Area. The Commission further notes that construction maps will be provided to the Stoney Nakoda Nations, who will have the opportunity to provide feedback to NGTL through engagement. Unanticipated discoveries during construction will be addressed through NGTL's Cultural Resource Discovery Contingency Plan, as appropriate.

The Commission is of the view that commitments from NGTL and the conditions imposed below address the issues and concerns raised by Piikani Nation and the Stoney Nakoda Nations. **Condition 2** (Section 58 Facilities and Activities Design, Location, Construction and Operation) provides that Section 58 Facilities and Activities must be constructed and located in accordance with the information included in the hearing record. **Condition 4** (Reports on Engagement with Indigenous peoples) requires NGTL to submit a report with respect to Indigenous peoples' concerns and NGTL's responses prior to construction. **Condition 7** (Outstanding Traditional Land and Resource Use Investigations) and **Condition 9** (Environmental Protection Plan for Section 58 Facilities and Activities) require NGTL to file a report on any outstanding TLRU investigations and an Environmental Protection Plan for CER approval before work is commenced, and **Condition 6** (Construction Monitoring Plan for Indigenous Peoples) will provide an opportunity for Indigenous peoples, including Piikani Nation and Stoney Nakoda Nations, to participate in

the creation of a construction monitoring plan prior to construction. These conditions, which are discussed in greater detail in Chapters 7 and 8, weigh in favour of an exemption.

The Commission's decision is also informed by the looping nature of the Project. The Commission finds that the nature of a looping project provides limited flexibility to change the routing in a later detailed route process. The record established that adding loop sections, as NGTL is proposing, generally limits the area for routing consideration to the areas on either side of the existing pipelines, as well as constraining the locations where connections to the existing NGTL System can be made. As stated in section 5.1 of the Report, the Commission approves the route selection criteria and process, and finds the proposed route to be appropriate. In addition to the looping constraints, the Commission also notes NGTL's submission that the activities for which NGTL is seeking section 58 relief are temporary and reversible. The route considerations associated with a looping project and the nature of the activities also weigh in favour of the exemption being granted in the circumstances.

However, even with the above findings, the Commission wishes to ensure that the rights of landowners, whose lands NGTL proposes to acquire, and the traditional land and resource use of Indigenous peoples on provincial lands that may be required for these Section 58 Facilities and Activities, are protected to the extent possible. Accordingly, the Commission imposes **Condition 14** which will require NGTL to file with the CER a description of what the facilities or activities are and where along the route they will take place and a confirmation that all required land rights (on private lands) or dispositions (on Crown lands) have been obtained for these lands. Through this condition, specifically as it relates to the rights and interests of Indigenous peoples, the Commission expects that adequate engagement will occur through the provincial land acquisition process and through the Commission imposed conditions noted above.

Some Indigenous parties provided comments on Condition 14. Samson Cree Nation, concerned with the loss of Crown lands, suggested requiring NGTL to provide a list of any concerns provided by Indigenous peoples specific to the Crown land obtained through disposition and requiring NGTL to explain how NGTL will address these concerns. Louis Bull Tribe and Driftpile Cree Nation asked that the dispositions be informed by engagement with potentially affected Indigenous peoples and asked for NGTL to explain what steps were taken to carry out this engagement. Piikani Nation asked that potentially affected Indigenous peoples be served with copies of this filing and that in instances where the impact to Aboriginal and Treaty Rights may be significant, that NGTL provide a modest livelihood.

The Commission cannot direct NGTL to provide compensation in this hearing. Likewise, the Commission is unable to direct the provincial process for provincial Crown land dispositions. To ensure that Section 58 Facilities and Activities continue to be informed by engagement, the Commission has imposed **Conditions 4, 6, 7 and 9** and modified Condition 14 to require NGTL to provide a copy of the filing to Indigenous peoples who request it.

Further, the Commission notes its earlier findings made regarding Project impacts, which include the potential impacts of the Section 58 Facilities and Activities, as set out in detail in Chapters 7 and 8:

- as discussed in Chapter 7 (Matters related to Indigenous Peoples), 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. In arriving at this conclusion, the Commission is satisfied 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 this exemption decision under section 58 of the NEB Act, in keeping with section 35 of the *Constitution Act, 1982*, and the honour of the Crown; and
- As discussed in Chapter 8 (Environment and Socio-Economic Matters), the Project is not likely to cause significant adverse environmental or socio-economic effects with the implementation of NGTL's proposed environmental protection procedures and mitigation measures, the commitments NGTL has made during the proceeding and the conditions recommended and imposed by the Commission.

Finally, the Commission is mindful that a denial of the requested exemptions would likely cause a significant delay of the proposed in-service date if a detailed route hearing is required, resulting in negative impacts on NGTL and its shippers.

After a careful balancing of the factors and considerations described above, and consideration of the specific evidentiary circumstances of this case, the Commission has decided that it is in the public interest to grant Order XG-001-2021 (should a Certificate be issued), exempting NGTL from the requirements of paragraphs 31(c), 31(d) and section 33 of the NEB Act with respect to:

- temporary infrastructure required for construction of the pipeline (i.e., stockpile sites, access roads and travel lanes, borrow pits/dugouts, laydown yards and contractor yards), excluding construction camps;
- 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
- installation of tie-in assemblies located within the boundaries of the existing Clearwater Compressor Station.

If a Certificate is issued, NGTL will be required to file its PPBoRs for the portions of the route where a section 58 NEB Act exemption was not granted.

Appendix I – Conditions for the Section 52 NEB Act Certificate

Unless otherwise defined, capitalized terms in the body of the conditions have the same meaning as ascribed to them in the Report.

General

1. Condition Compliance

NGTL must comply with all of the conditions contained in this Certificate, unless the Commission of the Canada Energy Regulator otherwise directs.

2. Section 52 Pipeline and Related Facilities Design, Location, Construction and Operation

Subject to Condition 19, 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 and otherwise made on the GH-001-2019 hearing record.

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 and otherwise made on the GH-001-2019 hearing record.

Prior to Construction

4. Reports on Engagement with Indigenous Peoples

- a) NGTL must file with the Canada Energy Regulator (CER), **at least 45 days prior to commencing construction of the Section 52 Pipeline and Related Facilities, and every 3 months thereafter** until completing construction, a report summarizing NGTL's engagement with all potentially affected Indigenous peoples. The first reporting period should include updates from 28 March 2020 onward. These reports must include but not be limited to:
 - i) the methods, dates, and locations of consultation 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 a detailed explanation as to why no further steps will be taken.
- b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the reports;
- ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filings of a)**, provide confirmation to the CER that it has provided those copies.

5. Indigenous Peoples Employment, Contracting, and Procurement Plan Update

- a) NGTL must file with the CER **at least 45 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, an update on employment, contracting and procurement for Indigenous peoples that includes:
 - i) a copy or copies of the prime contractor(s)' Aboriginal Participation Plan(s);
 - ii) a copy of NGTL's Aboriginal Contracting and Employment Program; and
 - iii) a summary of how the prime contractor(s)' Aboriginal Participation Plan(s) aligns with NGTL's Aboriginal Contracting and Employment Program.
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the update;
 - ii) provide a copy of the reports to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

6. Construction Monitoring Plan for Indigenous Peoples

- a) NGTL must file with the CER, **at least 45 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, a plan describing the 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 (including methods, dates and locations) undertaken with Indigenous peoples to obtain input into the monitoring plan and to develop opportunities for their participation in monitoring activities, including a list of Indigenous peoples engaged with NGTL and the process used for engagement;
 - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, and where suggestions and concerns raised by Indigenous peoples were not incorporated into the plan, an explanation as to why not;
 - 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 for the Indigenous monitors;

- 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 and incorporate the information gathered through the participation of monitors and apply it to the Project; and
 - vii) a description of how, what form, and the timeframe in which NGTL will provide the information gathered through the participation of monitors to the participating Indigenous communities.
- b) NGTL must provide a copy of the plan 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 CER that it has provided those copies.

7. Outstanding Traditional Land and Resource Use Investigations

- a) NGTL must file with the CER 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-001-2019 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 a detailed 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; and estimated completion date(s), if applicable;
 - v) 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
 - vi) 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:
- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the report;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

8. Construction Emergency Management Preparedness and Response Planning

- a) NGTL must file with the CER, **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:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the plan;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

9. Emergency Management Continuing Education Program

- a) NGTL must file with the CER, **at least 60 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 *Canadian Energy Regulator Onshore Pipeline Regulations* (SOR/2020-50). The Plan must include:
 - i) a list of potentially affected Indigenous peoples, 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 peoples, 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 peoples, first responders, and any other appropriate organizations, government authorities and agencies, including how NGTL will address any requests from potentially affected Indigenous peoples to have Program information translated into the local Indigenous language; and
 - v) a summary of the information to be included in the Program, including:
 - i. potential emergency situations involving the Section 52 Pipeline and Related Facilities;

- ii. the safety procedures to be followed in the case of an emergency including how egress route(s) and alternatives (if the main egress route is unavailable as a result of the emergency) will be determined and communicated;
- iii. a description of how NGTL will conduct annual testing of emergency contact information, including with Indigenous peoples, and how NGTL will ensure the community being contacted has up-to-date company emergency contact information as well;
- iv. the methods by which potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies can contact NGTL in the case of an emergency situation; and
- v. the methods by which NGTL can contact potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies in the case of an emergency situation.

b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the Plan;
- ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

10. Updated Environmental Protection Plan for Section 52 Pipeline and Related Facilities

- a) NGTL must file with the CER for approval, **at least 60 days prior to commencing construction**, an updated Environmental Protection Plan specific to the Section 52 Pipeline and Related Facilities. The updated version of the Environmental Protection Plan is to include revisions based on evidence provided during the hearing process. The updated Environmental Protection Plan 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) all specific mitigation related to species at risk and their habitat, Key Wildlife and Biodiversity Zones, amphibian breeding wetlands, Grizzly Bear Secondary Areas, and riparian areas;
 - v) specific mitigation related to old seral stage forest areas;
 - vi) updated watercourse crossing inventory tables;
 - vii) updated environmental alignment sheets;

- viii) evidence demonstrating that consultation took place with relevant government authorities, where applicable;
 - ix) a summary of environmental concerns discussed during ongoing engagement with Indigenous peoples;
 - x) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, or a detailed explanation as to why any results have not been incorporated; and
 - xi) 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:
- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the updated Environmental Protection Plan;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

11. Programs and Manuals

NGTL must file with the CER, **at least 30 days prior to commencing construction**, confirmation that a Construction Safety Manual(s) pursuant to section 20 of the *Canadian Energy Regulator Onshore Pipeline Regulations* that includes a description of the roles and responsibilities of the company representatives and its contractor(s) supervisory roles is in place for the Project. This confirmation must be signed by the Accountable Officer of NGTL referred to in Condition 20.

12. Heritage Resource Clearances

- a) NGTL must file with the CER, **at least 30 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**:
- i) confirmation, signed by the Accountable Officer of NGTL referred to in Condition 20, that NGTL has obtained all of the required archaeological and heritage resource clearances from the Alberta Ministry of Culture, Multiculturalism and Status of Women;
 - ii) a description of how NGTL will meet any conditions and respond to any comments and recommendations contained in the clearances referred to in a) i); and
 - iii) a description of how NGTL has incorporated additional mitigation measures into its Environmental Protection Plan as a result of conditions, comments, or recommendations referred to in a) ii).
- b) NGTL must:
- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the filing under a);
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and

- iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

13. Commitments Tracking Table

NGTL must:

- a) file with the CER and post on its Project website, **within 90 days from the date of this Certificate and at least 30 days prior to commencing construction on the Section 52 Pipeline and Related Facilities**, a commitments tracking table listing all commitments made by NGTL in its Application, and otherwise made on the GH-001-2019 hearing record, 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 documents on the hearing record);
 - ii) traditional land and resource use information from potentially affected Indigenous peoples when and if commitments are made to Indigenous peoples;
 - iii) the accountable lead for implementing each commitment; and
 - iv) the estimated timelines associated with the fulfillment of each commitment, and if some commitments are not expected to be fulfilled, an explanation as to why not.
- b) update the status of the commitments in a) on its Project website and file these updates with the CER on:
 - i) a monthly basis until commencing operations; and
 - ii) a quarterly basis until the end of the fifth year following the commencement of operations.
- c) maintain at its Project site during the lifecycle of the Project:
 - i) the commitment tracking table listing all 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).

14. 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 CER a detailed construction schedule or schedules identifying major construction activities and must notify the CER of any modifications to the schedule or schedules as they occur.
- b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the schedules;
- ii) provide a copy of the schedules to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

During Construction

15. Horizontal Directional Drill Execution Plan for Brazeau River

- a) NGTL must file with the CER, **at least 30 days prior to the commencement of horizontal directional drill activities**, the Horizontal Directional Drill Execution Plan in accordance to Clause 6.2.11.2 of CSA Z662-19.
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the plan;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

16. Contingency Watercourse Crossing Method

- a) For any fish-bearing watercourse crossing where NGTL will employ a trenched contingency crossing method 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 CER, 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 trenched contingency crossing method instead of its proposed primary method, and where there is potential harmful alteration, disruption or destruction of fish or fish habitat, as defined in the *Fisheries Act*, NGTL must file with the CER **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; and
 - ii) the following site-specific information:
 - i. detailed crossing-specific design drawings and any feasibility or engineering studies;
 - ii. photographs of the crossing location, as well as upstream and downstream;

- iii. 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;
 - iv. the site-specific mitigation and habitat enhancement measures to be used to minimize impacts;
 - v. any potential residual effects;
 - vi. proposed reclamation measures;
 - vii. a discussion of the potential impacts to local fisheries resources within the immediate area as a result of the crossing's construction; and
 - viii. a description of how NGTL has taken available and applicable Indigenous knowledge and traditional land use into consideration in developing the watercourse crossing designs and if not, an explanation as to why not; and
- iii) a summary of NGTL's consultation with appropriate government authorities and engagement with any potentially affected Indigenous peoples and stakeholders regarding the works proposed to be authorized, as well as any offsetting measures proposed, if any are 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 and if not, an explanation as to why not.
- c) In any event that a contingency crossing method is employed, NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the filings under a) and b);
 - ii) provide a copy to each of the Indigenous peoples referred to in c) i) concurrently with the filing timelines specified in a) and b); and
 - iii) **within 7 days of any filings under a) and b)**, provide confirmation to the CER that it has provided these copies.
 - d) NGTL must provide confirmation, **within 30 days after commencing operations**, to the CER and to Indigenous peoples referred to in c) i) that any contingency watercourse crossing(s) identified to the CER pursuant to a) and b) were the only contingency watercourse crossing(s) implemented for the construction of the Project.

17. Authorizations under Paragraph 35(2)(b) of the Fisheries Act

- a) For any instream activities that will require an authorization under paragraph 35(2)(b) of the *Fisheries Act*, NGTL must file with the CER, **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 CER pursuant to a), or notify the CER if no authorizations were required.

18. 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.

19. Technical Specifications Updates

NGTL must file with the CER any technical specification updates for the components of the Section 52 Pipeline and Related Facilities listed in the Application 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.

Post-Construction and Operation

20. Condition Compliance by the Accountable Officer

- a) **Within 30 days of the date that the approved Project is placed in service**, NGTL must file with the CER 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 CER 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, appointed as Accountable Officer pursuant to section 6.2 of the *Canadian Energy Regulator Onshore Pipeline Regulations*.
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the filing under a);
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

21. Training, Employment, Contracting, and Procurement Report

- a) NGTL must file with the CER, **within 3 months after the date that the last Order for Leave to Open is issued**, a report on employment, contracting, and procurement for the Project, that must include, but is not limited to:
 - i) a summary of any training needs identified by Indigenous peoples to be able to access contracting and employment opportunities for the Project, and a description of how NGTL has or will support Indigenous peoples in meeting these training needs;
 - ii) a summary of the employment, contracting, and procurement elements or indicators monitored;
 - iii) a summary of local and regional employment and business opportunities, and employment and business opportunities for Indigenous peoples specifically, created during the reporting period;

- iv) the numbers of self-identified Indigenous-owned businesses and individuals employed; and
 - v) a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous peoples and local, regional, community, and industry groups or representatives, regarding potential training, employment and business opportunities on the Project.
- b) NGTL must:
- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the report;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

22. Post-Construction Monitoring Plan for Indigenous Peoples

- a) NGTL must file with the CER, **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 (Post-Construction Monitoring Plan). The plan must include, but not be limited to:
- i) a summary of engagement and planning activities (including methods, dates, and location) undertaken with Indigenous peoples to obtain input into the monitoring plan and to develop opportunities for their participation in monitoring activities, including a list of Indigenous peoples with whom NGTL engaged and the process used for engagement;
 - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, and where suggestions and concerns raised by Indigenous peoples were not incorporated into the plan, an explanation as to why not;
 - iii) a list of the Indigenous peoples that have reached agreements 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 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 CER that it has provided those copies.

23. Pipeline Geographic Information Systems (GIS) Data

NGTL must file with the CER, **within one year after commencing operations**, as built GIS data in the form of Esri® shapefiles. This must include:

- a) a file that contains all pipeline segment center lines (with line geometry type), where each segment has unique attribute values of outside diameter, wall thickness, maximum operating pressure, external coating, field-applied girth weld coating, pipe manufacturing specification and depth of cover. If above values of the pipeline change at any point along the pipeline, the pipeline must be segmented at that point. Spatial reference specification: GCS_North_American_1983_CSRS. WKID: 4617 Authority: EPSG, Unit of Measure for linear attributes: Metric. This file must include details on the degree of accuracy of the GIS data: better than +/- 0.1m (8 Decimal Digits for geometry);
- 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 referred to in Condition 20.

24. Post-Construction Environmental Monitoring Reports for the Section 52 Pipeline and Related Facilities

- a) NGTL must file with the CER, **on or before the 31st of January following each of the first, third and fifth complete growing seasons after completing the final clean-up**, a post-construction environmental monitoring report that:
 - i) describes the methodology used for monitoring, including any relevant methodology or criteria identified in the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 22), 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 Environmental Protection Plan and the rationale for any modifications;
 - iii) identifies the issues to be monitored, including but not limited to any issues identified in the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 22), as well as any unexpected issues that arose during construction, and their locations (e.g., 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 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 a detailed description of how consultation informed and, if applicable, modified NGTL's environmental monitoring program;
 - vii) includes a detailed summary of environmental concerns discussed during ongoing engagement with Indigenous peoples;

- viii) includes a description of how NGTL incorporated information provided by Indigenous peoples into its environmental monitoring program and how concerns raised by Indigenous peoples were addressed, or a detailed explanation of why concerns were not addressed;
- ix) includes a summary of NGTL's engagement efforts with Indigenous peoples undertaken during the reporting period, including:
 - i. a summary of Indigenous monitoring opportunities that arose; and
 - ii. the numbers of self-identified Indigenous businesses and individuals employed;
- x) provides proposed measures and the schedule that NGTL would implement to address ongoing issues or concerns, or if they will not be addressed, an explanation as to why not; and
- xi) 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 and riparian areas, wetlands, including amphibian breeding wetlands, rare plants, wildlife and wildlife habitat, Key Wildlife and Biodiversity Zones, Grizzly Bear Secondary Areas, wildlife species at risk and of special concern, and fish and fish habitat. For areas where old stage seral forest was cleared, the report must also describe where the vegetation community stands on its trajectory toward the reclamation goals identified in the post-construction environmental monitoring reports, describe how the outcomes arising from consultation with Indigenous peoples were considered, and provide details on any corrective actions as needed.

b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the post-construction environmental monitoring reports;
- ii) provide a copy of the reports to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

Appendix II – Conditions for the Order pursuant to Section 58 NEB Act

Unless otherwise defined, capitalized terms in the body of the conditions have the same meaning as ascribed to them in the Report.

General

1. Condition Compliance

NGTL must comply with all of the conditions contained in this Order, unless the Commission of the Canada Energy Regulator otherwise directs.

2. Section 58 Facilities and Activities Design, Location, Construction and Operation

Subject to Condition 19, NGTL must cause the Section 58 Facilities and Activities to be designed, located, constructed, and operated in accordance with the specifications, standards, commitments made and other information included in its Application and otherwise made on the GH-001-2019 hearing record.

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 and otherwise made on the GH-001-2019 hearing record.

Prior to Construction

4. Reports on Engagement with Indigenous Peoples

- a) NGTL must file with the Canada Energy Regulator (CER), **at least 45 days prior to commencing construction of the Section 58 Facilities and Activities**, and every 3 months thereafter until completing construction, a report summarizing NGTL's engagement with all potentially affected Indigenous peoples. The first reporting period should include updates from 28 March 2020 onward. These reports must include but not be limited to:
 - i) the methods, dates, and locations of consultation 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 a detailed explanation as to why no further steps will be taken.
- b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the reports;
- ii) provide a copy of the reports to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filings of a)**, provide confirmation to the CER that it has provided those copies.

5. Indigenous Peoples Employment, Contracting, and Procurement Plan Update

- a) NGTL must file with the CER, **at least 45 days prior to commencing construction of the Section 58 Facilities and Activities**, an update on employment, contracting and procurement for Indigenous peoples that includes:
 - i) a copy or copies of the prime contractor(s) Aboriginal Participation Plan(s);
 - ii) a copy of NGTL's Aboriginal Contracting and Employment Program; and
 - iii) a summary of how the prime contractor(s)' Aboriginal Participation Plan(s) aligns with NGTL's Aboriginal Contracting and Employment Program.
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the update;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

6. Construction Monitoring Plan for Indigenous Peoples

- a) NGTL must file with the CER, **at least 45 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 and planning activities (including methods, dates and locations) undertaken with Indigenous peoples to obtain input into the monitoring plan and to develop opportunities for their participation in monitoring activities, including a list of Indigenous peoples engaged with NGTL and the process used for engagement;
 - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, and where suggestions and concerns raised by Indigenous peoples were not incorporated into the plan, an explanation as to why not;
 - iii) a list of Indigenous peoples who have reached agreements with NGTL to participate as monitors;
 - iv) a description of the anticipated training and participant requirements, including potential certifications for the Indigenous monitors;

- 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 and incorporate the information gathered through the participation of monitors and apply it to the Project; and
 - vii) a description of how, what form, and the timeframe in which NGTL will provide the information gathered through the participation of monitors to the participating Indigenous communities.
- b) NGTL must provide a copy of the plan to all Indigenous who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the CER that it has provided those copies.

7. Outstanding Traditional Land and Resource Use Investigations

- a) NGTL must file with the CER 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-001-2019 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 a detailed 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 and estimated completion date(s), if applicable;
 - v) 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
 - vi) 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:
- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the report;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

8. Construction Emergency Management Preparedness and Response Planning

- a) NGTL must file with the CER, **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:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the plan;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

9. Environmental Protection Plan for Section 58 Facilities and Activities

- a) NGTL must file with the CER for approval, **at least 60 days prior to commencing construction**, an Environmental Protection Plan specific to the Section 58 Facilities and Activities. The updated version of the Environmental Protection Plan is to include revisions based on evidence provided during the hearing process. The Environmental Protection Plan 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) all specific mitigation related to species at risk and their habitat, Key Wildlife and Biodiversity Zones, amphibian breeding wetlands, Grizzly Bear Secondary Areas, and riparian areas;
 - v) specific mitigation related to old seral stage forest areas;
 - vi) updated watercourse crossing inventory tables;
 - vii) updated environmental alignment sheets;
 - viii) evidence demonstrating that consultation took place with relevant government authorities, where applicable;
 - ix) a summary of environmental concerns discussed during ongoing engagement with Indigenous peoples;
 - x) a description of how the results from engagement with Indigenous peoples were incorporated into the plan, or a detailed explanation as to why any results have not been incorporated; and

- xi) a revision log of the updates made, if applicable, including the reference where any updates can be found in the revised document, as well as the reference from the hearing evidence for any updates.
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the Environmental Protection Plan;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

10. Programs and Manuals

NGTL must file with the CER, **at least 30 days prior to commencing construction**, confirmation that a Construction Safety Manual(s) pursuant to section 20 of the *Canadian Energy Regulator Onshore Pipeline Regulations* that includes a description of the roles and responsibilities of the company representatives and its contractor(s) supervisory roles is in place for the Project. This confirmation must be signed by the Accountable Officer of NGTL referred to in Condition 20.

11. Heritage Resource Clearance

- a) NGTL must file with the CER, **at least 30 days prior to commencing construction of the Section 58 Facilities and Activities**:
 - i) confirmation, signed by the Accountable Officer of NGTL referred to in Condition 20, that NGTL has obtained all of the required archaeological and heritage resource clearances from the Alberta Ministry of Culture, Multiculturalism and Status of Women;
 - ii) a description of how NGTL will meet any conditions and respond to any comments and recommendations contained in the clearances referred to in a) i); and
 - iii) a description of how NGTL has incorporated additional mitigation measures into its Environmental Protection Plan as a result of conditions, comments, or recommendations referred to in a) ii).
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the filing under a);
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

12. Commitments Tracking Table

NGTL must:

- a) file with the CER and post on its Project website, **within 90 days from the date of this Order and at least 30 days prior to commencing construction on the**

Section 58 Facilities and Activities, a commitments tracking table listing all commitments made by NGTL in its Application, and otherwise made on the GH-001-2019 hearing record, including all commitments made to Indigenous peoples, and that includes references to:

- i) the hearing documentation in which each commitment appears (for example, the Application, responses to information requests, hearing transcripts, permit requirements, condition filings, or other documents on the hearing record);
 - ii) traditional land and resource use information from potentially affected Indigenous peoples when and if commitments are made to Indigenous peoples;
 - iii) the accountable lead for implementing each commitment; and
 - iv) the estimated timelines associated with the fulfillment of each commitment, and if some commitments are not expected to be fulfilled, an explanation as to why not.
- b) update the status of the commitments in a) on its Project website and file these updates with the CER on:
- i) a monthly basis until commencing operations; and
 - ii) a quarterly basis until the end of the fifth year following the commencement of operations.
- c) maintain at its Project site during the lifecycle of the Project:
- i) the commitment tracking table listing all commitments and their completion status, as well as 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).

13. Emergency Management Continuing Education Program

- a) NGTL must file with the CER, **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 *Canadian Energy Regulator Onshore Pipeline Regulations* (SOR/2020-50). The Plan must include:
- i) a list of potentially affected Indigenous peoples, 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 peoples, 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 peoples to have Program information translated into the local Indigenous language; and
- v) a summary of the information to be included in the Program, including:
 - i. potential emergency situations involving the Section 58 Facilities and Activities;
 - ii. the safety procedures to be followed in the case of an emergency; including how egress route(s) and alternatives (if the main egress route is unavailable as a result of the emergency) will be determined and communicated;
 - iii. a description of how NGTL will conduct annual testing of emergency contact information, including with Indigenous peoples, and how NGTL will ensure the community being contacted has up-to-date company emergency contact information as well;
 - iv. the methods by which potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies can contact NGTL in the case of an emergency situation; and
 - v. the methods by which NGTL can contact potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies in the case of an emergency situation.

b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the Plan;
- ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

14. Land Rights or Dispositions for the Section 58 Facilities and Activities

a) NGTL must file with the CER, **at least 30 days prior to commencing construction of the Section 58 Facilities and Activities**, a description of what the facilities or activities are and where along the route they will take place and a confirmation that all required land rights (on private lands) or dispositions (on Crown lands) have been obtained for these lands.

b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the filing in a);
- ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

15. Construction Schedule

- a) NGTL must file with the CER, **at least 14 days prior to the commencement of construction of the approved Section 58 Facilities and Activities**, a detailed construction schedule or schedules identifying major construction activities and must notify the CER of any modifications to the schedule or schedules as they occur.
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the schedules;
 - ii) provide a copy of the schedules to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

During Construction

16. 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.

17. Contingency Watercourse Crossing Method

- a) For any fish-bearing watercourse crossing where NGTL will employ a trenched contingency crossing method 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 CER, 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 trenched contingency crossing method instead of its proposed primary method, and where there is potential harmful alteration, disruption or destruction of fish or fish habitat, as defined in the *Fisheries Act*, NGTL must file with the CER **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; and
 - ii) the following site-specific information:

- i. detailed crossing-specific design drawings and any feasibility or engineering studies;
 - ii. photographs of the crossing location, as well as upstream and downstream;
 - iii. 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;
 - iv. the site-specific mitigation and habitat enhancement measures to be used to minimize impacts;
 - v. any potential residual effects;
 - vi. proposed reclamation measures;
 - vii. a discussion of the potential impacts to local fisheries resources within the immediate area as a result of the crossing's 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 and if not, an explanation as to why not; and
- iii) a summary of NGTL's consultation with appropriate government authorities and engagement with any potentially affected Indigenous peoples and stakeholders regarding the works proposed to be authorized, as well as any offsetting measures proposed, if any are 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 and if not, an explanation as to why not.
- c) In any event that a contingency crossing method is employed, NGTL must:
- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the filings under a) and b);
 - ii) provide a copy to each of the Indigenous peoples referred to in c) i) concurrently with the filing timelines specified in a) and b); and
 - iii) **within 7 days of any filings under a) and b)**, provide confirmation to the CER that it has provided these copies.
- d) NGTL must provide confirmation, **within 30 days after commencing operations**, to the CER and to Indigenous peoples referred to in c) i) that any contingency watercourse crossing(s) identified to the CER pursuant to a) and b) were the only contingency watercourse crossing(s) implemented for the construction of the Project.

18. Authorizations under Paragraph 35(2)(b) of the Fisheries Act

- a) For any instream activities that will require an authorization under paragraph 35(2)(b) of the *Fisheries Act*, NGTL must file with the CER, **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 CER pursuant to a), or notify the CER if no authorizations were required.

19. Technical Specifications Update

NGTL must file with the CER any technical specification updates for the components of the Section 58 Facilities and Activities listed in the Application 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.

Post Construction and Operations

20. Condition Compliance by the Accountable Officer

- a) **Within 30 days of the date that the approved Project is placed in service**, NGTL must file with the CER confirmation that the approved Project was completed and constructed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, NGTL must file with the CER 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, appointed as Accountable Officer pursuant to section 6.2 of the *Canadian Energy Regulator Onshore Pipeline Regulations*.
- b) NGTL must:
 - i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the filing under a);
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

21. Training, Employment, Contracting, and Procurement Report

- a) NGTL must file with the CER, **within 3 months after the date that the last Order for Leave to Open is issued**, a report on all employment, contracting, and procurement for the Project, that must include, but is not limited to:
 - i) a summary of any training needs identified by Indigenous peoples to be able to access contracting and employment opportunities for the Project, and a description of how NGTL has or will support Indigenous peoples in meeting these training needs;
 - ii) a summary of the employment, contracting, and procurement elements or indicators monitored;
 - iii) a summary of local and regional employment and business opportunities, including for Indigenous peoples, created during the reporting period;
 - iv) the numbers of self-identified Indigenous-owned businesses and individuals employed; and

- v) a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous peoples and local, regional, community, and industry groups or representatives, regarding potential training, employment and business opportunities on the Project.
- b) NGTL must:
- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the report;
 - ii) provide a copy to each of the Indigenous peoples referred to in b) i); and
 - iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

22. Post-Construction Monitoring Plan for Indigenous Peoples

- a) NGTL must file with the CER, **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 58 Facilities and Activities (Post-Construction Monitoring Plan). The plan must include, but not be limited to:
- i) a summary of engagement and planning activities (including methods, dates, and locations) undertaken with Indigenous peoples to obtain input into the monitoring plan and to develop opportunities for their participation in monitoring activities, including a list of Indigenous peoples with whom NGTL engaged and the process used for engagement;
 - ii) a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, and where suggestions and concerns raised by Indigenous peoples were not incorporated into the plan, an explanation as to why not;
 - 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 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 CER that it has provided those copies.

23. Post-Construction Environmental Monitoring Reports for Section 58 Facilities and Activities

- a) NGTL must file with the CER, **on or before the 31st of 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, including any relevant methodology or criteria identified in the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 22), 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 Environmental Protection Plan, as approved by the CER, and the rationale for any modifications;
 - iii) identifies the issues to be monitored, including but not limited to any issues identified in the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 22), as well as any unexpected issues that arose during construction, and their locations (e.g., 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 a detailed description of how consultation informed or modified NGTL's environmental monitoring program;
 - vii) includes a summary of environmental concerns discussed during ongoing engagement with Indigenous peoples;
 - viii) includes a description of how NGTL incorporated information provided by Indigenous peoples into its environmental monitoring program and how concerns raised by Indigenous peoples were addressed or a detailed explanation of why concerns were not addressed;
 - ix) includes a summary of NGTL's engagement efforts with Indigenous peoples undertaken during the reporting period, including:
 - i. a summary of Indigenous monitoring opportunities that arose; and
 - ii. the numbers of self-identified Indigenous businesses and individuals employed;
 - x) provides proposed measures and the schedule that NGTL would implement to address ongoing issues or concerns, or if they will not be addressed, an explanation as to why not; and
 - xi) 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 and riparian areas, wetlands including amphibian breeding wetlands, rare plants, wildlife and wildlife habitat, wildlife species at risk and of special concern, Grizzly Bear Secondary Areas, fish and fish habitat, and Key Wildlife and Biodiversity Zones. For areas where old stage seral forest was cleared, the report must also describe where the vegetation community stands on its trajectory toward the reclamation goals

identified in the post-construction environmental monitoring reports, describe how the outcomes arising from consultation with Indigenous peoples were considered, and provide details on any corrective actions as needed.

b) NGTL must:

- i) confirm, through ongoing engagement, the Indigenous peoples who would like a copy of the post-construction environmental monitoring reports;
- ii) provide a copy of the reports to each of the Indigenous peoples referred to in b) i); and
- iii) **within 7 days of the filing of a)**, provide confirmation to the CER that it has provided those copies.

Appendix III – List of Issues

The following issues were considered in GH-001-2019 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.
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 Indigenous Section 35 Rights and interests.
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 make for the Project.

Appendix IV – 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 interests as recorded by NGTL in its evidence. Table 7-3 in the Report refers to the written and oral submissions by Indigenous peoples who were Intervenor 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 of the hearing 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. If there is a discrepancy between Appendix IV and the balance of the Report, the wording and determinations set out in the Report take precedence.

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
NGTL's Engagement with Indigenous Peoples				
Adequacy of NGTL's engagement with Indigenous Peoples throughout various Project phases	Asini Wachi Nehiyawak Traditional Band Alexis Nakota Sioux Nation Driftpile Cree Nation	NGTL began engagement with potentially affected Indigenous peoples about the Project in July 2018. NGTL provided Project notification in March 2019 to Indigenous peoples identified by the NEB and the MPMO who were not originally identified by NGTL. NGTL stated that it has worked closely with each potentially affected Indigenous peoples to provide information about the Project and make opportunities available for Indigenous	In order to allow the Commission to continue receiving timely and public updates about potential issues or concerns raised by Indigenous peoples and to enhance transparency and accountability in ongoing engagement, the Commission recommends and imposes Condition 4 (Reports on Engagement with Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and the Section 58 Facilities	7.1 7.6.1

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Gunn Métis Local 55</p> <p>Louis Bull Tribe</p> <p>Michel First Nation</p> <p>O'Chiese First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p> <p>Whitefish (Goodfish) Lake First Nation #128</p>	<p>peoples to provide information to it about potential issues and concerns, including through traditional knowledge studies, and to discuss mitigation measures and develop mutually acceptable solutions and benefits.</p> <p>NGTL stated that the same underlying principles were employed for the Aboriginal Engagement Program for the Project across all Indigenous peoples, and that the scope and depth of engagement may vary according to the potential for Project-related effects and the identified interests of each Indigenous peoples.</p> <p>NGTL indicated that the design of its Aboriginal Engagement Program is consistent with the CER's guidance on consultation as set out in its Filing Manual, and 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 developed and adapted according to the nature, location and potential effects of the Project, and to the identified interests, information needs and concerns of Indigenous peoples.</p> <p>NGTL stated that Indigenous engagement activities will continue</p>	<p>and Activities requiring NGTL to file reports on its engagement with Indigenous peoples.</p> <p>The Commission also recommends Condition 6 (Construction Monitoring Plan for Indigenous Peoples), Condition 7 (Outstanding Traditional Land and Resource Use Investigations), and Condition 22 (Post-Construction Monitoring Plan for Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and would impose the same conditions (Condition 6, Condition 7 and Condition 22) for the Section 58 Facilities and Activities. These conditions require 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.</p> <p>The Commission finds that with these conditions and NGTL's commitments, NGTL will 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 Environmental Protection Plan, and, address Project-</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>during all Project phases. NGTL also stated that it will continue to respond to questions and concerns raised by Indigenous peoples.</p>	<p>related issues that may arise throughout the Project lifecycle.</p> <p>While the Commission finds NGTL's engagement adequate, the Commission encourages NGTL to consider the comments provided by Indigenous peoples during this proceeding with respect to engagement activities. The Commission further encourages NGTL to continue to improve future early engagement efforts. The Commission is of the view that robust early engagement efforts that contribute meaningfully to project planning can better facilitate the identification of opportunities for involvement of Indigenous peoples, building on the knowledge of Indigenous peoples regarding stewardship and the land.</p>	
<p>Government of Canada's Consultation Process with Indigenous Peoples</p>				
<p>Adequacy of the Government of Canada's consultation process with Indigenous Peoples</p>	<p>Driftpile Cree Nation</p> <p>Louis Bull Tribe</p> <p>Michel First Nation</p>	<p>NGTL stated that it is their understanding that NRCan MPMO is the Crown Consultation Coordinator for the Project, and that the Crown intends to build on existing relationships, and use the information submitted by Indigenous intervenors and commenters, as well as the proponent, to the hearing record to</p>	<p>The Commission is of the view that the honour of the Crown has been upheld and 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 decisions under section 58 and Part IV of the NEB Act.</p>	<p>1.1.3</p> <p>7.2</p> <p>7.6.9.1</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>O'Chiese First Nation</p> <p>Peavine Métis Settlement</p> <p>Samson Cree Nation</p>	<p>inform its consultation with Indigenous peoples.</p> <p>NRCan's MPMO submitted that it is coordinating Crown consultation activities for the Edson Project. MPMO stated that it will pursue meaningful two-way dialogue with Indigenous peoples and work together to identify appropriate accommodation measures to address potential impacts to Section 35 Aboriginal and Treaty rights that have not been fully addressed by the proponent or through the CER process. MPMO stated that, to support this work, it will be summarizing all information provided by Indigenous peoples to the CER, to Canada, or to the proponent in a Crown Consultation Report. MPMO stated that it will work directly with Indigenous peoples to ensure that views on potential impacts to rights are accurately represented in that report. MPMO stated that this Crown Consultation Report will be provided to the Governor in Council to inform Canada's decision on the Project.</p>	<p>The Commission is also of the view that, within this Project area, any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant with the implementation of the mitigation measures and commitments made by NGTL, as well as the conditions and accommodations recommended and imposed by the Commission.</p>	
Environmental and Socio-Economic Assessment Methodology				
Adequacy of NGTL's Environmental and Socio-Economic Assessment	Driftpile Cree Nation	NGTL stated that it assessed potential effects of the Project on TLRU in accordance with the NEB Filing Manual and established environmental	The Commission is of the view that NGTL provided opportunities for Indigenous peoples to raise concerns, and has committed to sufficient and	7.6.8.1 8.2

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
<p>methodology and assessment of Project impacts to traditional land and resource use sites and activities as well as to asserted and established Indigenous and Treaty rights</p> <p>Adequacy and effectiveness of NGTL's proposed mitigation measures</p>	<p>Michel First Nation</p> <p>O'Chiese First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p>	<p>assessment practices. NGTL maintained that its TRLU assessment for the Project is appropriate and provides sufficient information for the Commission to determine the likely effects of the Project on TLRU as well as on Aboriginal and Treaty rights.</p> <p>NGTL stated that its Environmental and Socio-Economic Assessment conservatively assumed that TLRU harvesting sites, areas, and activities have the potential to occur throughout the Project area and that traditionally used species identified as being present within the area could be hunted, fished, trapped, or gathered by Indigenous peoples, even if information identifying specific activities, species, or sites had not been received from Indigenous peoples. NGTL stated that where specific information was provided by Indigenous peoples, NGTL considered this information in the Environmental and Socio-Economic Assessment and, where appropriate, incorporated into Project planning. NGTL stated that, as a result, to the extent Indigenous peoples provided information or expressed concerns that were unique to their community, that information was considered in the context of the Environmental and Socio-Economic Assessment. NGTL argued that this</p>	<p>appropriate mitigation measures, as well as best practices, to mitigate the potential adverse effects on TLRU identified such that any residual adverse Project effects on TLRU is not likely to be significant.</p> <p>The Commission is also of the view that NGTL has included sufficient baseline information supported by a description of the methodology used and the rationale for that methodology. The Commission is further of the view that NGTL's Environmental and Socio-Economic Assessment appropriately 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> <p>The Commission recommends Condition 7 (Outstanding Traditional Land and Resource Use Investigations) for the Section 52 Pipeline and Related Facilities and would impose the same condition (Condition 7) for the Section 58 Facilities and Activities. 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 Environmental Protection Plan and its lifecycle oversight as a result of the investigations.</p>	<p>8.7.1</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>approach ensured that NGTL's assessment reasonably and conservatively assessed the full scope of potential effects of the Project on all Indigenous peoples' TLRU.</p>	<p>Overall, based on the scope, scale and nature of the Project, 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 peoples was appropriate.</p>	
<p>Inclusion of traditional knowledge and Indigenous concerns into Project planning</p> <p>Concerns regarding delays in Indigenous knowledge studies due to COVID-19</p> <p>Consideration of traditional knowledge versus western science</p>	<p>Driftpile Cree Nation</p> <p>Louis Bull Tribe</p> <p>Michel First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p>	<p>NGTL stated that it works with interested Indigenous peoples to collect and incorporate traditional knowledge into Project planning, as appropriate.</p> <p>NGTL stated that information gathered through the Project's Aboriginal Engagement Program, including Project-specific traditional knowledge studies, and the results of publicly available literature are reviewed and incorporated into the Application. NGTL stated that as additional information or issues and concerns are made available to NGTL, the initial selection of valued components and effects pathways, spatial and temporal boundaries, and the collection of baseline information for each valued component are reviewed to confirm whether traditional knowledge information or issues and concerns were included or represented within the</p>	<p>Regarding the timing of Indigenous knowledge studies, including delays due to COVID-19, the Commission is required to consider the Project impacts on the rights and interests of Indigenous peoples, and also legally mandated to adjudicate a complete application submitted to it as expeditiously as circumstances of fairness permit and within the legislated time limit. In the midst of the COVID-19 pandemic, the Commission was faced with the difficult task of balancing all interests to achieve an outcome that was fair to all the parties, respects parties' rights and best serves the overall Canadian public interest in these unique circumstances. The Commission adjusted the hearing schedule and granted what it viewed as a reasonable timeline for extensions to file late evidence in response to requests</p>	<p>7.6.8.2</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>Environmental and Socio-Economic Assessment.</p> <p>NGTL stated that consideration of traditional knowledge information also includes evaluating whether NGTL's planned mitigation would effectively manage the identified potential interactions, or whether additional or refined mitigation is warranted. Ultimately, through this review, consideration of feedback from Indigenous peoples may result in changes to Project planning, including the Environmental Protection Plan and Environmental Alignment Sheets, or specific engagement activities with NGTL to further exploring an issue, concern or recommendation.</p> <p>NGTL committed to continue to document and address traditional knowledge and related concerns identified by Indigenous peoples through the Project's ongoing Aboriginal Engagement Program.</p>	<p>from Indigenous peoples who were Intervenor.</p> <p>The Commission notes that specifically as it relates to TLRU studies, the CER Filing Manual does not require their completion as a specific methodology. Rather, it requires a proponent to assess potential impacts of a project on traditional use of lands and resources by Indigenous peoples. Furthermore, the Commission can potentially address any concerns related to outstanding TLRU Studies effectively through the imposition of a condition on NGTL to file the results of any outstanding TLRU investigations or studies.</p> <p>The Commission acknowledges the challenges it faces in balancing consideration of scientific information and data with Indigenous knowledge, and has made every attempt to give equal weight and consideration to these elements. The Commission considers Indigenous knowledge to be valuable, and considers and weighs all Indigenous knowledge received during the hearing process the same way it would scientific information and data.</p> <p>The Commission recognizes the diversity and nature of knowledge held by the First Nations and Métis peoples who have</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>participated in this hearing process. The Commission expects Indigenous knowledge, where obtained, to be integrated, where appropriate, into the design of a project. The Commission expects that, where Indigenous knowledge is obtained, that the proponent will provide an opportunity for the individual who provided the information to confirm the interpretation of the information and how it was used in the project design.</p> <p>The Commission recommends Condition 7 (Outstanding Traditional Land and Resource Use Investigations) for the Section 52 Pipeline and Related Facilities and would impose the same condition (Condition 7) for the Section 58 Facilities and Activities. 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 Environmental Protection Plan and its lifecycle oversight as a result of the investigations. The Condition 7 filing requires approval so that the Commission has an opportunity to review this key report to confirm that potential effects of the Project on the current use of lands and resources for traditional purposes have been adequately identified and assessed by NGTL, how</p>	

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			<p>findings from the investigations have been incorporated into the Project, and if not an explanation as to why not, and that appropriate measures are in place to effectively address identified potential impacts prior to construction. The Commission is of the view that this condition will increase both accountability and transparency regarding NGTL's ongoing commitments, and will also enhance opportunities for Indigenous peoples to contribute to decision-making with respect to NGTL's engagement with them.</p>	
Project splitting	<p>O'Chiese First Nation</p> <p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p>	<p>NGTL disagreed that it split the McLeod River North Project and the NGTL 2021 System Expansion Project from the Edson Project Application. NGTL stated that McLeod River North Project, the NGTL 2021 System Expansion Project and the Edson Mainline Expansion Project have different drivers, commercial contracts, customers and required in-service dates, thereby necessitating individual applications. NGTL stated that although each project will be fully integrated parts of the NGTL System, they are separate and distinct responses to independent drivers and system requirements.</p>	<p>The Commission is of the view that the Project is designed to respond to specific system requirements independent of other projects on the system. Regarding cumulative effects, the Commission notes the Project Environmental and Socio-Economic Assessment considered other industrial infrastructure, including past and current NGTL projects. The Commission also notes that consultation is required by proponents for all project applications.</p> <p>The Commission is guided by previous regulatory decisions indicating that evidence of deliberate project splitting that would constitute an abuse of process or a serious waste of resources by the</p>	7.6.2

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>NGTL stated that its application history before the NEB demonstrates that where multiple facility components have common utility, NGTL groups them into a single application. In accordance with the NEB Act, NGTL routinely submits both section 58 and section 52 applications that have multiple facility components where those components are collectively required to respond to a System Requirement or in-service date.</p>	<p>Commission or other Parties, or an attempt to avoid jurisdiction, may be cogent reasons to have applications proceed in aggregate. Having considered all of the evidence filed on the record, the Commission is satisfied that NGTL's method for applying for the Project is reasonable and appropriate and based on the requirements set out in the Filing Manual and is not an attempt at project splitting in this case.</p>	
Effects on the Rights and Interests of Indigenous Peoples				
<p>Project impacts on the rights and interests of Indigenous peoples</p>	<p>Kainai Nation (Blood Tribe) Driftpile Cree Nation Ermineskin Cree Nation Louis Bull Tribe Michel First Nation O'Chiese First Nation Piikani Nation</p>	<p>NGTL stated its assessment complied with all applicable legal requirements, and assessed potential impacts on Indigenous peoples based on the best information available, including all information provided to date by Indigenous peoples about how they consider that they might be affected by the Project.</p> <p>NGTL stated that the Project Environmental and Socio-Economic Assessment considered potential effects of the Project on Aboriginal and Treaty rights through an assessment of effects on TLRU, in accordance with the NEB Filing Manual, including indicators such as availability of access to sites and</p>	<p>The Commission is of the view that NGTL designed and implemented appropriate and effective engagement activities for the Project. The Commission notes that the Filing Manual requires proponents to respond to the concerns from Indigenous peoples (e.g., describe the measures that NGTL will take to address concerns, and describe how input has influenced the design, construction and operation of the Project), which includes any concerns about how the Project will impact Indigenous and treaty rights. The Commission continues to encourage NGTL and interested Indigenous peoples to work together and further discuss opportunities to ensure any potential</p>	<p>7.6.9.2</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Samson Cree Nation</p> <p>Siksika Nation</p> <p>Stoney Nakoda Nations</p> <p>Whitefish (Goodfish) Lake First Nation #128</p>	<p>resources as well as impacts on relevant biophysical components. NGTL stated that this assessment considered publicly available information about Aboriginal land and resource use in the Project area, as well as all information provided to NGTL through its Aboriginal Engagement Program.</p> <p>NGTL stated that its assessment of TLRU considered Project effects on TLRU activities, not simply the environmental resources that those activities rely on, such as resource harvesting activities, use of trails and travelways, habitation sites, and cultural and sacred sites, not simply the environmental resources that those activities rely on. NGTL disagreed with intervenor's characterizations that its assessment was limited to biophysical impacts and argued that its assessment went far broader than biophysical impacts.</p> <p>NGTL stated that its assessment of Project effects on TLRU, in conjunction with the information provided directly by intervenors in this proceeding about impacts on their rights and interests, provides more than sufficient information to allow the Commission to assess how the Project will affect Aboriginal and Treaty rights. NGTL further stated that</p>	<p>impacts are mitigated through mutually agreeable mechanisms. The Commission is also of the view that the hearing process enhanced the information flow to potentially impacted Indigenous peoples and provided greater opportunities for meaningful participation of Indigenous peoples. For example, these opportunities allowed Indigenous peoples to submit written evidence and oral Indigenous knowledge about how the Project will impact Indigenous and treaty rights, which was fully considered by the Commission.</p> <p>The Commission is of the view that NGTL's assessment of, and proposed mitigation measures for, the potential Project impacts on the rights and interests of Indigenous peoples as well as on TLRU sites and activities were reasonable and broad enough to encompass the full scope of potential effects of the Project.</p> <p>The Commission is of the view that there has been adequate consultation and accommodation for the purpose of the Commission's recommendation and decision on this Project. In the context of this Project, the Commission is of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples, after mitigation and</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>the evidence demonstrates that the Project will not have significant effects on TLRU and, by extension, the exercise of Aboriginal and Treaty rights.</p>	<p>the Commission's accommodation measures, are not likely to be significant and can be effectively addressed.</p> <p>Considering all of the findings in this Report, the Commission is of the view that sufficient information has been submitted to allow the Commission to assess how the Project will affect Indigenous and treaty rights. The Commission is of the view that an approval of this Project under Section 58 of the NEB Act and recommendation to the Governor in Council for approval of the Project under Section 52 of the NEB Act is consistent with the requirements of section 35 of the <i>Constitution Act, 1982</i> and the honour of the Crown.</p>	
<p>Project impacts on traditional land and resource use activities including Project impacts on the current use of lands and resources for traditional purposes, including, but not limited to hunting, fishing, trapping, gathering, culture</p> <p>Project impacts on traditional land and</p>	<p>Alexis Nakota Sioux Nation</p> <p>Kainai Nation (Blood Tribe)</p> <p>Driftpile Cree Nation</p> <p>Ermineskin Cree Nation</p> <p>Gunn Métis Local 55</p>	<p>NGTL stated that, to date, the information provided by Indigenous peoples has confirmed its assumption in the Environmental and Socio-Economic Assessment of general use of the Project area for hunting, fishing, trapping, plant harvesting, habitation, and spiritual or cultural sites for which the suite of mitigation measures in the Environmental Protection Plan was designed. NGTL stated that, as a result, the information provided by Indigenous peoples to date has not required new mitigation measures or changed the conclusions of</p>	<p>The Commission is of the view that NGTL has appropriately considered all available information received to date. There are no unresolved site-specific TLRU concerns from Indigenous peoples that require new mitigation measures, and NGTL's established non-site specific mitigation measures in the Environmental Protection Plan will avoid or address potential effects on TLRU).</p> <p>In relation to this, the Commission recommends Condition 6 (Construction Monitoring Plan for Indigenous Peoples)</p>	<p>7.6.8</p> <p>8.6</p> <p>8.6.3</p> <p>8.6.4</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
<p>resource use sites including Project impacts on the current use of lands and resources used for, but not limited to ceremonial, habitation, plant gathering, burial, spiritual, historical and other cultural sites</p>	<p>Apetokosan (Kelly Lake Métis Settlement Society)</p> <p>Louis Bull Tribe</p> <p>Métis Nation of Alberta, Region 3</p> <p>Métis Nation of Alberta, Region 4</p> <p>Michel First Nation</p> <p>Montana First Nation</p> <p>O'Chiese First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p> <p>Siksika Nation</p> <p>Stoney Nakoda Nations</p>	<p>the Environmental and Socio-Economic Assessment.</p> <p>NGTL stated that, as new information continues to be made available, it has committed to continue to review and consider that information, and will continue to document and address traditional knowledge and related concerns identified by Indigenous peoples through the Project's ongoing Aboriginal Engagement Program. NGTL further stated that, in the unlikely event that previously unidentified cultural, heritage or TLRU sites are discovered during construction, NGTL has proposed a Cultural Resource Discovery Contingency Plan to avoid or minimize potential effects on those sites. NGTL stated that these processes provide further assurances that the Project will be constructed in a manner that reasonably avoids or minimizes potential effects on TLRU.</p> <p>NGTL stated that it also considers implementing additional mitigation in specific, localized areas if warranted based on site-specific details or concerns raised by Indigenous peoples. NGTL stated that if Indigenous peoples provide specific locational information on a site of cultural importance, NGTL can overlay it with the construction footprint and</p>	<p>and Condition 22 (Post-Construction Monitoring Plan for Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and would impose the same conditions (Conditions 6 and 22) for the Section 58 Facilities and Activities that require NGTL to file its monitoring plans for Indigenous peoples related to both the Project's construction and post-construction phases.</p> <p>The Commission recommends Condition 14 (Construction Schedule) for the Section 52 Pipeline and Related Facilities and would impose the same condition (Condition 15) for the Section 58 Facilities and Activities, which requires NGTL to provide a copy of the schedule to all Indigenous peoples who have expressed an interest in receiving a copy, and provide confirmation to the CER, within 7 days of filing, that it has provided those copies.</p> <p>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 conditions in the previous paragraph, as well as the recommended Condition 7 (Outstanding Traditional Land and Resource Use Investigations) for the Section 52 Pipeline and Related Facilities and would impose</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Whitefish (Goodfish) Lake First Nation #128</p>	<p>evaluate whether there are ways to avoid or otherwise manage effects on that site through site-specific mitigation that is not currently set out in the Environmental Protection Plan.</p> <p>NGTL stated that the Project is largely routed adjacent to an existing ROW to minimize incremental effects of the Project, and both the existing ROW and the new ROW will be available for use during operations. During Project construction, where there is no active construction or other identified safety risk (e.g., open trench or excavations), traditional users will not be impeded from exercising their rights within the Project ROW. NGTL stated that the Project has been designed, and will be constructed and operated following applicable standards, industry best management practices and Project-specific mitigation identified in the Environmental and Socio-Economic Assessment and the Environmental Protection Plan.</p> <p>NGTL stated that it has designed the Project to reasonably avoid or minimize impacts on traditional land use. Reclamation and cleanup will be completed to achieve equivalent land capability, ensuring the ability of the land to support various land uses similar to the uses that existed before construction.</p>	<p>the same condition (Condition 7) for the Section 58 Facilities and Activities, which was explained earlier in this Report, the Commission finds that effects of the Project on TLRU would likely be short-term to long-term in duration, reversible in the long-term, local to regional in geographic extent, and low to moderate in magnitude. Given all of the above, 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.</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>NGTL stated that evaluating the effectiveness of mitigation practices to achieve equivalent land capability supports the monitoring objective of ensuring the ability of the land to support various land uses similar to the uses that existed before construction, including TLRU. NGTL has committed to ongoing engagement throughout all phases of the Project and Indigenous peoples will have an opportunity to provide feedback post-construction through ongoing engagement with Regional Liaisons and TC Energy's Public Awareness Program. NGTL has committed to respond to any Indigenous peoples' concerns post-construction and address potential issues on a case-by-case basis.</p>		
<p>Project-related cumulative effects on traditional land and resource use</p> <p>Post-contact, historical cumulative effects on traditional land and resource use</p> <p>Adequacy of NGTL's cumulative effects assessment for</p>	<p>Alexis Nakota Sioux Nation</p> <p>Kainai Nation (Blood Tribe)</p> <p>Driftpile Cree Nation</p> <p>Ermineskin Cree Nation</p> <p>Gunn Métis Local 55</p>	<p>NGTL submitted that, with the implementation of mitigation, residual cumulative effects are not expected to greatly reduce or eliminate the ability of Indigenous peoples to conduct TLRU activities in the Regional Assessment Area.</p> <p>NGTL stated that its cumulative effects assessment methodology follows CEEA 2012 and the NEB Filing Manual. NGTL stated that it assumes that other companies and other NGTL projects and activities considered (i.e., not the Project</p>	<p>The Commission recognizes that the cumulative effects of all types of developments in a given area can have lasting implications for those who live and / or hold rights and interests there. To minimize, or avoid, specific Project-related cumulative effects on 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 and</p>	<p>7.6.8.5</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
traditional land and resource use	Louis Bull Tribe Métis Nation of Alberta, Region 3 O’Chiese First Nation Piikani Nation Samson Cree Nation Stoney Nakoda Nations Whitefish (Goodfish) Lake First Nation #128	<p>itself) will employ similar mitigation measures as those proposed by NGTL to control effects on the environment from the specific project.</p> <p>NGTL stated that cumulative effects are minimized with the implementation of design and construction measures, when feasible, including: maximizing the use of adjacent existing ROW and reduce the width of additional clearing as much as possible (the Elk River Section and Alford Creek Sections parallel existing or proposed linear disturbances for approximately 83 per cent and 88 per cent of their lengths, respectively); avoiding construction during critical wildlife timing windows when feasible; and adhering to the approved construction footprint and access.</p>	<p>imposed conditions mentioned in subsections 7.6.8.2 and 7.6.8.4. As a result, and based on TLRU information on the record, the Commission is of the view that within the scope of the Project, the Project is not likely to result in significant adverse cumulative effects on TLRU.</p>	
Project impacts on heritage resources	Alexis Nakota Sioux Nation Driftpile Cree Nation Gunn Métis Local 55	<p>NGTL noted that its historical resources assessment was conducted in accordance with provincial requirements, whereby potential Project effects are assessed and mitigated in areas of planned ground disturbance, specifically, within the Project Development Area.</p> <p>NGTL stated that completion of a pre-construction heritage assessment to identify potential sites prior to construction, in conjunction with</p>	<p>The Commission is of the view that, with the following:</p> <ul style="list-style-type: none"> measures and commitments made by NGTL to avoid all heritage resource 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, and 	7.6.5 8.4.13

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Métis Nation of Alberta, Region 3</p> <p>O'Chiese First Nation</p> <p>Samson Cree Nation</p>	<p>traditional knowledge shared by Indigenous field participants and any other traditional land use information shared by Indigenous peoples, reduces the likelihood that a previously unidentified significant heritage or burial site will be encountered during construction. NGTL stated that traditional use sites or features that require additional mitigation will be included in the Environmental Protection Plan and Environmental Alignment Sheets filed prior to construction.</p> <p>NGTL noted that all construction personnel are required to receive Project-specific environmental orientation training to ensure that they are informed of key environmental requirements and Project-specific sensitivities. NGTL stated that the environmental orientation includes materials on the Cultural Resources Discovery Contingency Plan, examples of common heritage or traditional land and resource use materials that may be encountered, the protection and cultural significance of uncovering these resources, worker obligations in the event of a find, and outlines appropriate steps to be taken by construction staff should a heritage or traditional land and resource use site be identified during construction.</p>	<p>NGTL's commitment to include the final version of the Plan in its updated Environmental Protection Plan;</p> <ul style="list-style-type: none"> • Indigenous peoples' knowledge and evidence on potential sites of concern as provided through the proceeding; • regulatory oversight of provincial authorities that issue final clearances for lands involved for the Project; and • recommending Condition 12 (Heritage Resource Clearances) for the Section 52 Pipeline and Related Facilities and imposing the same condition (Condition 11), for the Section 58 Facilities, and other recommended conditions, <p>the potential residual effects of the Project on physical and cultural heritage resources are expected to be confined to the Project footprint, would be short- to long-term, reversible (i.e., an effect expected to, at a minimum, return to baseline conditions within the lifecycle of the Project) to permanent (i.e., an effect that would persist beyond the lifecycle of the project, or last in the order of decades or generations), and of low to moderate magnitude. The Commission is of the view that the Project is not likely to</p> 	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			result in significant adverse effects on physical and cultural heritage resources.	
<p>Reduction in the availability of Crown lands for conducting traditional land and resource use activities</p> <p>Restricted access to traditional use areas for Indigenous peoples</p> <p>Increased access by non-Indigenous peoples</p> <p>Reduction in hunting success due to increased ease of access by non-Indigenous hunters</p> <p>Request for Crown land offsets and compensation</p> <p>Concern regarding provincial <i>Critical Infrastructure Defence Act</i></p>	<p>Kainai Nation (Blood Tribe)</p> <p>Driftpile Cree Nation</p> <p>Ermineskin Cree Nation</p> <p>Gunn Métis Local 55</p> <p>Louis Bull Tribe</p> <p>Métis Nation of Alberta, Region 3</p> <p>Michel First Nation</p> <p>Montana First Nation</p> <p>O'Chiese First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p>	<p>NGTL stated that traditional access to the Project Development Area may be temporarily affected by construction to mitigate safety concerns.</p> <p>NGTL stated that, following construction, it will implement access management measures where applicable to deter an increase in motorized public access along its ROW, on new temporary construction access, and its existing linear disturbances that intersect the Project ROW. NGTL stated that limited new permanent access is anticipated for the Project.</p> <p>NGTL stated that in order to comply with pipeline standards and regulations, such as the <i>Pipeline Damage Prevention Regulations</i>, it implements TC Energy's Damage Prevention Program to ensure the safe operations of its pipelines and protection of the public. NGTL stated it requires ROWs to be unobstructed to facilitate access for maintenance and emergency response, therefore permanent structures which restrict access and travel along the corridor would not be permitted. A ROW cleared of obstructions allows NGTL to monitor</p>	<p>The Commission is of the view that, while the consideration of the taking of Crown land and the resulting impact on the exercise of Indigenous and Treaty rights is an important public interest consideration, the matter of awarding compensation for impacts to the exercise of Indigenous and treaty rights is not within the Commission's authority to affect and is outside the scope of this hearing. While compensation awards may now be directed by the Commission under Part 6 of the CER Act, it still remains that the Commission cannot award compensation when dealing with recommendations or decisions on facilities applications that are made under Part 4 of the CER Act, and in this case, Part III of the NEB Act. However, aggrieved parties who suffer pipeline-related damages may now apply to the Commission for compensation pursuant to section 234 of the CER Act, which is under Part 6 of the CER Act. Such an application would be dealt with entirely separate from part 4 of the CER Act. The Commission notes that for the NGTL 2021 project, it recommended that the Government of Alberta investigate the creation of regional areas of Crown land</p>	<p>7.6.8.3</p> <p>8.6.3</p>

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	<p>Siksika Nation</p> <p>Stoney Nakoda Nations</p> <p>Whitefish (Goodfish) Lake First Nation #128</p>	<p>the pipeline through aerial and ground patrols, looking for vegetation discoloration, signs of unsafe or unauthorized activities, as well as natural hazards within the ROW. NGTL stated that use of a pipeline ROW is generally non-restricted however it requires consultation through one-call notification for activities causing ground disturbance or vehicular access as per the <i>Pipeline Damage Prevention Regulations</i>.</p> <p>NGTL stated that it will implement its Traffic Control Management Plan which includes access control measures (e.g., signage, road closures, restrictions, access control) to manage and control Project-related construction traffic and to reduce unauthorized motorized access.</p> <p>NGTL stated that neither Crown land offsets nor compensation is within the Commission's jurisdiction.</p> <p>NGTL stated that concerns with and questions of interpretation regarding the <i>Critical Infrastructure Defence Act</i> are matters between Indigenous peoples and the Crown. NGTL stated that it does not view the <i>Critical Infrastructure Defence Act</i> as changing NGTL's previously expressed views on Indigenous peoples' ability to use NGTL ROWs.</p>	<p>that could be placed under shared stewardship with Indigenous peoples. The Commission also notes that the Governor in Council stated in P.C. 2020-811 dated 19 October 2020 that it had reviewed this recommendation, among others, and that it was committed to working towards responding to those recommendations that fall within federal jurisdiction.</p> <p>The Commission accepts NGTL's evidence that during construction, access to the ROW for traditional users would not be physically impeded except when there is active construction or other identified safety risks (e.g., open trench or excavations). The Commission also accepts NGTL's evidence that, after construction is completed, access to the ROW would be unchanged except for temporary interruptions during brief periods of routine maintenance, and 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.</p> <p>The Commission is of the view that it is not for NGTL to determine unlawful use and that the question of whether an area</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			is accessed under lawful right, justification, or excuse, as defined in <i>Critical Infrastructure Defence Act</i> , may be interpreted by courts.	
Project monitoring and opportunities for monitoring by Indigenous Peoples Indigenous Advisory Monitoring Committee	Alexis Nakota Sioux Nation Kainai Nation (Blood Tribe) Driftpile Cree Nation Gunn Métis Local 55 Louis Bull Tribe Métis Nation of Alberta, Region 3 Michel First Nation Montana First Nation O'Chiese First Nation Piikani Nation	NGTL stated it has and will continue to follow up with Indigenous peoples regarding their request or recommendation regarding involvement in monitoring during construction to better understand and clarify the potential issues behind the recommendation, and to gather further information and knowledge to inform possible next steps for how NGTL and the community can directly work together to most effectively address each specific issue, for the benefit of both parties. NGTL noted that several intervenors requested that the Commission require NGTL to develop an Indigenous Advisory Monitoring Committee. NGTL argued that details of these recommendations or why an Indigenous Advisory Monitoring Committee is warranted for the Project was not provided. NGTL noted that such a requirement has been imposed on certain other CER-regulated projects, however, NGTL argues that those projects were significantly different in scope than the Edson Mainline Expansion Project. NGTL stated that to	The Commission is of the view that the involvement of Indigenous peoples in monitoring is a valuable and meaningful opportunity for the sharing of and incorporation of the knowledge of Indigenous peoples in the planning, pre-construction, construction, post-construction, and operational lifecycle activities of the Project. The Commission is also of the view that the involvement of Indigenous peoples in monitoring would be of value in assessing mitigation measure effectiveness as well as other aspects of the implementation of the Project plans such as reclamation. The Commission acknowledges NGTL's approach to ongoing engagement, but is of the view that a more formal approach to monitoring by Indigenous peoples, including engagement with Indigenous peoples regarding their participation in monitoring, is appropriate for the Project. As such, the Commission recommends Condition 6 (Construction Monitoring Plan for Indigenous Peoples) and Condition 22 (Post-Construction Monitoring Plan for Indigenous Peoples), for the Section 52 Pipeline and Related	7.6.7

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p>	<p>its knowledge the only projects for which the Commission or its predecessor imposed an Indigenous Advisory Monitoring Committee were the Trans Mountain Expansion Project and Enbridge Line 3 Replacement Project, both of which were contentious oil pipeline projects of a significantly larger scope than the Edson Mainline Expansion Project. NGTL argued that each of these projects were unique and materially different in scope than the Project.</p>	<p>Facilities, and would impose the same conditions (Conditions 6 and 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 notes that these conditions require NGTL to report on its engagement with Indigenous peoples regarding the development of opportunities for their participation in monitoring activities. The Commission expects that NGTL will engage on matters of concern. The Commission is of the view that these conditions, while not imposing formal monitoring committees, would meaningfully enhance the involvement of Indigenous peoples in monitoring opportunities.</p> <p>Given the nature of the Project and the opportunities for monitoring by Indigenous peoples that will be created by the proposed Condition 6 (Construction Monitoring Plan for Indigenous Peoples), recommended or proposed for the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities, and the proposed Condition 22 (Post-Construction Monitoring Plan for Indigenous Peoples) recommended or proposed for the Section 52 Pipeline and Related Facilities and Section 58 Facilities and Activities,</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>respectively, the Commission is not recommending that the Government of Canada create an Indigenous Monitoring Advisory Committee for this Project; however, the Commission encourages NGTL to engage meaningfully with Indigenous peoples as intended by the above conditions and expects to see a complete summary of relevant engagement included in the condition filings.</p> <p>Notwithstanding the Commission's findings above, the Commission heard from Indigenous peoples in this Hearing regarding issues related to existing cumulative effects on traditional land and resource use and effects on intergenerational knowledge transfer as well as broader concerns about approaches to engagement. The Commission emphasizes that satisfying the regulatory requirements in relation to this or other projects should not preclude the exploration and co-development of new approaches that more holistically address common issues raised by Indigenous peoples across different hearing processes, such as cumulative impacts, protection of the environment, stewardship and more equitable sharing of benefits. The Commission continues to encourage these efforts.</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
Social and Cultural Well-being				
<p>Project impacts on the transfer of knowledge, including language</p> <p>Threat to cultural existence</p> <p>Ceremonial protocols</p> <p>Project impacts on community life and safety as a result of Project contractors and workers, and traffic</p>	<p>Kainai Nation (Blood Tribe)</p> <p>Driftpile Cree Nation</p> <p>Gunn Métis Local 55</p> <p>Louis Bull Tribe</p> <p>O'Chiese First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p>	<p>NGTL stated that it acknowledges the importance of inter-generational transfer of knowledge and that this is inherent in the ability to practice traditional land and resource use.</p> <p>NGTL stated that the Project is anticipated to temporarily reduce the availability of resources for harvesting by Indigenous peoples near the Project. NGTL stated that the exercise of traditional land and resource use and associated knowledge transfer is conservatively considered in its Project planning.</p> <p>NGTL notes that Project Contractors are required to develop a construction orientation for all personnel to ensure safe and respectful conduct in all work. NGTL stated that these orientations cover topics including safety, environment and cultural awareness.</p> <p>NGTL 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>The Commission is of the view that the anticipated construction period for the Project is short-term in duration and that access to the ROW for Indigenous peoples would likely remain unchanged following the construction period. On that basis, and with conditions to ensure mitigation of Project impacts, the potential adverse effects on social and cultural well-being of Indigenous peoples are not likely to be significant, in the context of this Project. Nonetheless, the Commission also acknowledges the legacy of development on the social and cultural well-being of Indigenous peoples, particularly on intergenerational transfer of knowledge, as described by many of the Intervenors.</p> <p>The Commission is of the view that NGTL has appropriate policies and management approaches designed to ensure that worksites are operated in a safe and secure manner, and that NGTL's orientation for its construction workforce includes relevant topics such as safety, environmental mitigation and cultural awareness, including Indigenous culture, history, heritage resources, and traditional land and resource use. The Commission notes that NGTL considers</p>	<p>7.6.3</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>NGTL and its contractors will establish clear guidelines for behaviour in accordance with company policies and regulatory requirements, including TransCanada's Code of Business Ethics, Harassment Free Workplace and Employment Equity and Non-Discrimination policies. Contractors will enforce these policies to ensure safe and harassment-free work environments. These rules also prohibit the possession of firearms and illegal drugs, and address many other concerns including alcohol consumption.</p>	<p>and incorporates available knowledge and input provided by Indigenous peoples into these orientation materials.</p> <p>The Commission notes that while NGTL acknowledged the importance of inter-generational transfer of knowledge, NGTL also conceded that the Project will temporarily reduce the availability of resources for harvesting by Indigenous peoples near the Project. The Commission finds that the record supports that NGTL has taken or will take appropriate measures to reduce or avoid potential Project related effect on resources that support the exercise of traditional land and resource use, to the extent feasible, through construction schedule, timing and location of the Project adjacent to existing disturbances for 83 per cent (Elk River Section) and 88 per cent (Alford Creek Section) of its length.</p>	
Human Health				
Project impacts on human health, including physical, mental, and spiritual health	<p>Ermineskin Cree Nation</p> <p>Gunn Métis Local 55</p>	<p>NGTL stated that Project activities during construction could affect biophysical resources and could create sensory disturbances to nearby land users. NGTL stated that, with the implementation of mitigation measures, construction of the Project is unlikely to alter the health of</p>	<p>The Commission accepts the evidence provided by many Indigenous peoples that they rely on, and have a preference for, eating traditional foods, and accepts that the use of the land and traditional foods are important for the physical,</p>	7.6.4

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
Potential Project effects on fish, wildlife, and food and medicinal plants	<p>Louis Bull Tribe</p> <p>Montana First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p>	<p>residents of the Local Assessment Area / Regional Assessment Area. If they do occur, any residual effects on human health in the Local Assessment Area / Regional Assessment Area are predicted to be adverse, low in magnitude, occur as multiple irregular events, will be short-term in duration and reversible. NGTL stated that it does not predict interactions of the Project with human health during operation of the Project.</p> <p>NGTL stated that the Project is not expected to contribute to bioaccumulation of methylmercury in fish. NGTL stated that potential pathways that could mobilize sediment during Project activities on land will be mitigated through erosion and sediment control measures employed above the high water mark, as described in its Environmental Protection Plan.</p> <p>NGTL stated that widespread application of herbicides on TC Energy assets is not common practice. However, NGTL also stated that due to obligations under the <i>Alberta Weed Control Act</i>, TC Energy must comply with legislated requirements in the event thresholds for listed species are exceeded. NGTL stated that should an Indigenous people identify a specific area of concern, NGTL is willing to</p>	<p>mental and spiritual health of Indigenous peoples.</p> <p>The Commission notes that NGTL does not practice widespread application of herbicides along the pipeline ROW (i.e., vegetation control is typically limited to mechanical methods) and that while NGTL cannot fully eliminate herbicide use post construction, it has outlined measures to responsibly manage use of chemical applications. The Commission further notes that NGTL has stated it is willing to discuss the potential to limit herbicide use at specific areas as of concern identified by Indigenous peoples. The Commission is of the view that NGTL has provided a valid explanation of Project risk related to methylmercury contamination in that the Project's potential contribution to methylmercury exposure to fish is considered negligible.</p> <p>The Commission is of the view that any residual effects on the health of Indigenous peoples are likely to be limited to the period during construction, restricted primarily to the Project footprint, and 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.</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		discuss the potential to limit herbicide use at the identified location.		
Employment and Benefits				
Opportunities for employment, contracting, training, economic, and community benefits for Indigenous peoples, communities, and businesses	<p>Alexis Nakota Sioux Nation</p> <p>Kainai Nation (Blood Tribe)</p> <p>Driftpile Cree Nation</p> <p>Gunn Métis Local 55</p> <p>Louis Bull Tribe</p> <p>Métis Nation of Alberta, Region 3</p> <p>Métis Nation of Alberta, Region 4</p> <p>Papaschase Nation</p> <p>Piikani Nation</p>	<p>NGTL stated that it is committed to supporting local Indigenous peoples by providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL stated that it is willing to meet with any Indigenous people expressing an interest in potential contracting, employment, and training opportunities, where NGTL can discuss its contracting process and develop an understanding of the Indigenous peoples' capacities. NGTL stated that through its ongoing engagement activities, it encourages community contractors and vendors to register their businesses for Project consideration and operational requirements in the region.</p> <p>NGTL noted that its Indigenous Relations Business Engagement team engages with interested Indigenous peoples and businesses to provide information on how they may participate in Project opportunities. NGTL stated that the team works with NGTL's prime contractors to confirm that qualified and competitive Aboriginal businesses and individuals are</p>	<p>The Commission considered NGTL's plans for encouraging and enabling participation of Indigenous peoples in the Project and is of the view that NGTL has provided evidence of likely employment, contracting and training benefits for Indigenous peoples.</p> <p>The Commission notes that NGTL supports many initiatives for Indigenous peoples on an annual basis such as provision of scholarships, direct community agreements regarding traditional knowledge, and TC Energy investment toward training, education, and community investment. The Commission supports these initiatives and investment.</p> <p>In order to encourage greater accountability by NGTL and to provide the Commission and potentially impacted Indigenous peoples with more transparency and specific details of on NGTL's plan for and outcomes of employment, contracting, and procurement for the Project, the Commission recommends Condition 5</p>	7.6.6

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Samson Cree Nation</p> <p>Siksika Nation</p> <p>Stoney Nakoda Nations</p>	<p>considered for material and services sub-contracts in accordance with NGTL's Aboriginal Contracting and Employment Program. NGTL also noted its Aboriginal Construction Participation Program. NGTL stated that it would maximize local and Indigenous hiring from within the Local Assessment Area / Regional Assessment Area, as a first priority, and elsewhere in Alberta as a second priority.</p> <p>NGTL stated that it includes requirements in contracts with prime contractors to hire qualified and competitive, local Indigenous contractors and employees. NGTL stated that it outlines Indigenous sub-contracting, employment, and training expectations through its sourcing events (e.g., request for proposals) and shares its current contact information and service offerings from local Indigenous peoples with the prime contractors during this process. NGTL stated that it then sets obligations in its prime contracts to ensure that contractors fulfill the commitments they made in their proposal that were a consideration in their contract award through Aboriginal Participation Plans. NGTL stated that it actively monitors prime contractor implementation of its subcontracting, employment, and training commitments.</p>	<p>(Indigenous Peoples Employment, Contracting and Procurement Plan Update) for the Section 52 Pipeline and Related Facilities and would impose the same condition (Condition 5) for the Section 58 Facilities and Activities, requiring NGTL to file an update to its Employment, Contracting and Procurement Program, 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.</p> <p>The Commission further recommends Condition 21 (Training, Employment, Contracting and Procurement Report) for the Section 52 Pipeline and Related Facilities and would impose the same condition (Condition 21) for the Section 58 Facilities and Activities, requiring NGTL to file a report once construction is complete, summarizing the training, employment, contracting, and procurement elements or indicators monitored. The Commission notes that NGTL stated Indigenous-owned businesses generally represent 8 to 12 per cent of the total construction contract values in past projects, and that Indigenous people comprise approximately 8 to 10 per cent of the total</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>NGTL stated that it contributes to community investment initiatives with local Indigenous peoples in the Project area and will continue to identify opportunities for community investment in the region, in the areas of education, safety, community and environment.</p> <p>NGTL stated that that it strives to create employment and training opportunities for Indigenous peoples and individuals in accordance with TC Energy's Indigenous Relations Policy and TC Energy's Education and Training Program. NGTL stated that, while the majority of employment opportunities will occur during the construction phase of the Project, investments in education and training are made during all phases of the Project. NGTL stated that it will collaborate with local Indigenous peoples to identify their education and training needs and priorities. NGTL stated that it will then work with the community human resource coordinators and local economic development and education officers, education and training institutions and organizations, and prime contractors, to support the education and training requirements that have been identified through this collaborative effort, where feasible. NGTL stated that the objective of these education and training investments is to build long-term</p>	<p>construction workforce. The Commission is interested in how many Indigenous employment and business opportunities will be created and filled during the reporting period, including the numbers of self-identified Indigenous-owned businesses and individuals employed, if any.</p> <p>With the NGTL commitments and the Commission's recommended and imposed conditions, the Commission is of the view that NGTL has adequate policies, programs and enhancement measures (e.g., TC Energy's Indigenous Relations Policy, Education and Training Program, Aboriginal Construction Participation Program and Aboriginal Contracting and Employment Program) in place to address the issues raised by Indigenous peoples concerning employment, contracting and training for the Project. The Commission is also of the view that the Project would result in increased net employment and net economic benefits for Indigenous peoples and contracts for Indigenous-owned businesses.</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		community capacity and support the development of high-demand and transferable skills. NGTL stated that the intention is to promote greater access to employment opportunities not only on the Project, but also in the broader regional economy.		
Environmental Effects				
Environmental and socio-economic assessment methodology	Driftpile Cree Nation Samson Cree Nation Piikani Nation	<p>NGTL provided descriptions of its Environmental and Socio-Economic Assessment methodology, including baseline data collection, spatial and temporal boundaries used in the Environmental and Socio-Economic Assessment, and rationale for the selected methodology. NGTL stated that its Environmental and Socio-economic Assessment assessed potential Project effects in accordance with the CER's Filing Manual requirements and Canadian Environmental Assessment Agency's guidance using methodologies that have been accepted by the CER for past projects.</p> <p>NGTL stated that sensory disturbance to wildlife was assessed qualitatively, rather than by applying zones of influence. NGTL further stated that sensory disturbance during Project construction (scheduled to occur in winter) is</p>	<p>The Commission finds that NGTL's methodology for assessing the Project's potential environmental and socio-economic effects is appropriate.</p> <p>The Commission has considered the wide variety of concerns raised by Intervenor in regards to NGTL's environmental assessment methodology. The Commission considers that Indigenous knowledge helps provide a holistic understanding of natural and cultural ecosystems. The Commission's consideration of Indigenous knowledge in environmental assessments is integral to the identification, assessment, mitigation, and monitoring of environmental and socio-economic effects. The Commission finds that NGTL has implemented engagement that creates opportunities to receive and incorporate Indigenous</p>	8.2

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>anticipated to temporarily reduce habitat availability in the Local Assessment Area.</p> <p>NGTL further stated that the assessment of key indicators is an accepted approach of identifying possible effects pathways to inform Environmental and Socio-Economic Effects, not a suggestion that key indicator species are the only species that would be affected by the Project.</p>	<p>knowledge and expects engagement to continue in a meaningful manner.</p> <p>The Commission notes that NGTL followed both the CER's Filing Manual and the guidance provided by the Impact Assessment Agency (formerly the Canadian Environmental Assessment Agency) in designing and undertaking its Environmental and Socio-economic Assessment for the Project. With respect to the concerns raised regarding the appropriateness of baseline information, the Commission notes that the CER's Filing Manual provides guidance to applicants on what baseline information to include in an Environmental and Socio-Economic Assessment. In some cases, the effects of a project on certain environmental elements can be predicted, and appropriate mitigation proposed, regardless of the level of detail of baseline information. On balance, the Commission is of the view that NGTL's Environmental and Socio-Economic Assessment includes sufficient baseline information, adequate methodology, and rationale for that methodology.</p> <p>The Commission notes, for the assessment of sensory disturbance on wildlife and wildlife habitat, NGTL did not quantitatively apply Zones of Influence, and rather evaluated the Project effects</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>qualitatively on wildlife, including all key indicator species using appropriate scientific literature. The Commission is of the view that relying on the indicator species based approach is generally acceptable for species that have similar habitat or ecological function and requirements, and that are likely to respond similarly to certain effects. In addition, the Commission does not see merit in a quantitative assessment given that these temporary effects would only occur during inspections and maintenance, and any access due to recreational activities. The Commission notes that NGTL's Environmental Protection Plans include the implementation of access control measures and its Access Management Plan. The Commission recommends Condition 10 (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose Condition 9 (Environmental Protection Plan) for the Section 58 Facilities and Activities, requiring NGTL to submit updated Environmental Protection Plans for the Project.</p>	
Fish and fish habitat, water quality and	Alexis Nakota Sioux Nation	NGTL stated it would conduct all watercourse crossing construction activities in accordance with established best management practices for instream	Based on the construction methodology, mitigation and monitoring proposed by NGTL with respect to watercourse crossings, as well as the conditions	8.6.3

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
quantity, and watercourse crossings	Driftpile Cree Nation Ermineskin Cree Nation Kainai Nation (Blood Tribe) Louis Bull Tribe Michel First Nation O'Chiese First Nation Peavine First Nation Piikani Nation Samson Cree Nation Stoney Nakoda Nations	<p>construction, as well as for construction in and around stream environments. Environmental Inspectors onsite would be responsible for ensuring all environmental commitments are met. NGTL stated it would adhere to the mitigation measures outlined in its Application and will comply with applicable DFO Codes of Practice.</p> <p>NGTL's Environmental Protection Plan would include mitigation measures to address fish salvage, hydrostatic testing, preventing introduction and spread of invasive aquatic species and diseases such as whirling disease, placement, maintenance, and removal of spawning deterrents, and guidance for soil, water, and vegetation protection at watercourse crossings.</p> <p>NGTL stated that its post-construction monitoring assesses the effectiveness of reclamation and mitigation methods through inspection of the full ROW, including watercourses and wetlands, over five years. Conditions to be evaluated include terrain stability, soil productivity, success of erosion and sediment control, and success of riparian vegetation re-establishment. NGTL stated that, through assessment of mitigation measures in place respective to the above parameters, NGTL can</p>	<p>outlined below, the Commission is of the view that Project effects on water quality and quantity, and on fish and fish habitat would be moderate in magnitude, reversible in the short to medium term, restricted to the Local Assessment Area, and are therefore not likely to be significant.</p> <p>The Commission notes that the Project would be located within the habitat for the Saskatchewan-Nelson populations of bull trout. The Commission further notes that DFO has released its proposed <i>Recovery Strategy for the Bull Trout (Salvelinus confluentus), Saskatchewan—Nelson Rivers populations, in Canada (2020-06-01)</i>. While the Commission recognizes that the document is not yet finalized, it nonetheless includes relevant information, including identification of critical habitat that may overlap with the Project, both within the watercourse and within riparian areas. The Commission therefore expects NGTL to consider the information within the proposed recovery strategy in order to support NGTL's compliance with the <i>Species at Risk Act</i>. The Commission reminds NGTL of its commitment to obtain all necessary permits and authorizations prior to commencing construction. The Commission notes that based on information provided in the recovery</p>	8.6.4.1

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>ensure that water quality is not impacted, since pathways which would impact water quality (e.g., erosion) are being mitigated. Therefore, in absence of an issue being identified in post-construction monitoring which could have effect on water quality, NGTL stated that it is reasonable to assume there is no impact to water quality of watercourses as a result of Project activities.</p> <p>NGTL stated that its route selection has minimized disturbance to watercourses and riparian areas by reducing construction footprint within these areas through route selection.</p> <p>NGTL further stated that for the horizontal directional drill proposed at the Brazeau River, drill pads will be sited above the ordinary high water mark and away from riparian buffers, therefore avoiding instream disturbance and harmful alteration, disruption, or destruction of fish habitat.</p> <p>NGTL stated that its Environmental Protection Plan contains established mitigation measures that have been developed to avoid and reduce disturbance and sedimentation of wetlands, watercourses, and riparian areas. Further, NGTL committed to developing and implementing a specific</p>	<p>strategy, the parameters of what will require authorization may have changed since NGTL completed DFO's self-assessment process. Further, Condition 10 (Updated Environmental Protection Plan) recommended for the Section 52 Pipeline and Related Facilities and Condition 9 (Environmental Protection Plan) for the Section 58 Facilities and Activities, require NGTL to provide details for each watercourse crossing in its updated watercourse crossing inventory.</p> <p>The Commission notes that crossing of the Brazeau River is proposed by a trenchless horizontal directional drill method. In order to ensure the execution of the horizontal directional drill is being carried out in a way that minimizes adverse effects to the environment, the Commission recommends Condition 15 for the Section 52 Pipeline and Related Facilities, requiring NGTL to submit a Horizontal Directional Drill Execution Plan for the Brazeau River.</p> <p>The Commission notes that several Indigenous peoples expressed a desire to see NGTL's Water Quality Monitoring Plan, which NGTL stated would be included in its Environmental Protection Plan. The Commission notes that pursuant to Condition 10 (Updated</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>Water Quality Monitoring Plan to monitor for sediment events during horizontal directional drill activities for the Brazeau River, which is included in NGTL's Environmental Protection Plans.</p> <p>NGTL described the proposed spawning deterrents and stated that long-term, residual effects of their use are not expected. NGTL explained that spawning deterrents would prevent fish from spawning within the Project Development Area, where spawning deterrents would be placed.</p> <p>NGTL stated that potential spawning habitats are present in areas other than the Project development Area (i.e., within the Local Assessment Area and Regional Assessment Area thus providing alternate spawning locations for redd-spawning fish to lay eggs and ultimately not result in effects to fish populations.</p>	<p>Environmental Protection Plan) as recommended by the Commission for the Section 52 Pipeline and Related Facilities, NGTL is required to provide a copy of updated Project-specific Environmental Protection Plans, which would include NGTL's Water Quality Monitoring Plan, to all Indigenous peoples who have expressed an interest in receiving a copy. Condition 10, as recommended by the Commission, and Condition 9 (Environmental Protection Plans) also require NGTL to indicate how its mitigation may have changed as a result of input from engagement with Indigenous peoples, which may include any comments on NGTL's Water Quality Monitoring Plan in its Environmental protection Plans.</p> <p>With respect to the concerns raised by the Indigenous peoples regarding the implementation of long-term water quality monitoring stations at or around watercourse crossing locations, the Commission finds that the mitigation measures proposed, as well as surface water management or erosion control in the vicinity of each watercourse, would appropriately mitigate Project effects on water quality. The Commission is of the view that, with the implementation of its proposed mitigation measures, it is reasonable to predict there will not be a</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>long-term impact to the water quality of watercourses as a result of Project activities, and therefore is of the view that long-term water quality monitoring stations are not required.</p> <p>Condition 16 (Contingency Watercourse Crossing Method) for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and Condition 17 for the Section 58 Facilities and Activities, require NGTL to notify the Commission of the contingency watercourse crossing method if one is used. This requires NGTL to describe the differences from the watercourse crossing method originally proposed, as well as to 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 CER would assess the need for a <i>Fisheries Act</i> authorization.</p> <p>The Commission notes that several Indigenous peoples expressed a desire to receive a copy of NGTL's filings for Condition 16 for the Section 52 Pipeline and Related Facilities describing any contingency watercourse crossing methods. The Commission therefore included the requirement for NGTL to provide copies of any filings required by</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>Condition 16 for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and Condition 17 for the Section 58 Facilities and Activities to all Indigenous peoples who express an interest in receiving a copy.</p> <p>The Commission also notes that some Indigenous peoples requested a comment period for filings associated with Condition 16. It is the Commission's expectation that, prior to submitting this filing with the CER, NGTL will engage with Indigenous peoples, and incorporate to the extent possible any necessary changes arising out of engagement with Indigenous peoples. The Commission expects that this engagement will be described in Indigenous engagement reports submitted pursuant to Condition 4 for the Section 52 Pipeline and Related Facilities and Condition 4 for the Section 58 Facilities and Activities.</p> <p>In the event that a DFO authorization is required, the Commission is recommending a condition that will require NGTL to provide confirmation that any required authorizations under paragraph 35(2)(b) of the Fisheries Act were obtained. The particulars of this requirement are described in Conditions 17 and 18 (Authorizations under Section 35(2)(b) of The Fisheries Act) for the</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities, respectively.</p> <p>The Commission notes NGTL's commitment to finalize and implement a Spawning Deterrent Execution and Monitoring Plan, and requires that this plan be submitted as part of Condition 10 for the Section 52 Pipeline and Related Facilities (updated Environmental Protection Plan), as recommended by the Commission, and Condition 9 (Environmental Protection Plan) for the Section 58 Facilities and Activities.</p>	
Vegetation, including species at risk and species of management concern	Driftpile Cree Nation Ermineskin Cree Nation Kainai Nation (Blood Tribe) Apetokosan (Kelly Lake Métis Settlement Society)	NGTL proposes standard and site-specific mitigation to minimize Project effects on vegetation, as outlined in its Environmental Protection Plans and Post-Construction Monitoring Plans. NGTL stated the use of herbicides is prohibited in the Project Development Area unless otherwise approved by NGTL, and is prohibited within 30 m of a water body unless by ground application equipment or otherwise approved by the responsible regulatory agency. NGTL's Environmental Protection Plan noted that herbicides are not used near occurrences of rare plants or rare ecological communities. NGTL stated that it will also	<p>The Commission finds that the Project is not likely to cause significant adverse environmental effects on vegetation or wetlands.</p> <p>The Commission is of the view that residual effects of the Project on vegetation would be moderate in magnitude, limited to the Local Assessment Area, and reversible to permanent in the medium to long term. In particular, the Commission is of the view that the residual effects on old seral stage forests would be moderate in magnitude, limited to the Local Assessment Area, and permanent in the</p>	8.6.4.2

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Louis Bull Tribe</p> <p>Michel First Nation</p> <p>O'Chiese First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p>	<p>implement the weed management procedures outlined in TransCanada Energy's Integrated Vegetation Management Program and TransCanada Energy's Operating Procedure for Invasive Vegetation Weed Control Management during operations of the Project. The Integrated Vegetation Management Program provides information to ensure environmentally sound vegetation management practices are employed in controlling undesirable vegetation. The Weed Control procedure outlines the methods used to identify, prevent and control the start or spread of undesirable invasive and restricted vegetation. The mitigation measures outlined in the Environmental Protection Plan, post-construction environmental monitoring, and operating programs and procedures will be used in areas with moderate weed infestation from progressing to an area of high invasiveness as a result of direct Project activities.</p> <p>NGTL stated that the estimates of old seral stage forest that would be cleared (5.9 ha), as presented in its Environmental and Socio-Economic Assessment, were conservative, since they were based on a Project Development Area width of 75 m. NGTL further stated the ROW width would be</p>	<p>long term (definitions of these terms are provided in Appendix V).</p> <p>The Commission notes that the Project would intersect a total of 2.4 ha of old seral stage forest. The Commission recognizes NGTL's commitment to minimize clearing, limit the amount of temporary workspace, implement minimal disturbance construction methods, and reduce operational maintenance brushing in old seral stage forest. The Commission notes that NGTL has proposed natural regeneration as the preferred method of vegetation reestablishment on the Project ROW. The Commission also notes that NGTL will reclaim the construction Project Development Area such that early seral plant communities similar to those adjacent to the ROW are able to establish.</p> <p>The Commission is of the view that the reestablishment of vegetation could take a long time to reach to a mature forest stage, and notes NGTL's examples of past revegetation success refer to sites that have reached only the pole/sapling structural stage 20 years after disturbance. The Commission recognizes the importance of measuring the success of reclamation during post-construction monitoring. The Commission has also</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>up to 32 m wide. At this width, the Project would intersect with 1.3 ha of old seral stage forest in the Elk River Project Development Area and 1.1 ha of old seral stage forest in the Alford Creek Project Development Area, for a total of 2.4 ha for the entire Project. NGTL stated that change in vegetation communities and species are expected to result in medium to long term (up to or more than 25 years) residual project effects. NGTL's mitigation would include constructing during frozen ground conditions using minimal surface disturbance construction methods. NGTL stated its Environmental Alignment Sheets show areas of old seral stage forest and the mitigations associated with these areas.</p>	<p>considered the issues raised by the Indigenous peoples around the loss of culturally important plants within areas of mature forest and wetlands. Consequently, the Commission recommends Condition 10 (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose Condition 9 for the Section 58 Facilities and Activities. The Commission requires NGTL to provide specific mitigation related to old seral stage forest areas.</p> <p>In addition, Condition 24 for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and Condition 23 for the Section 58 Facilities and Activities (Post-construction Environmental Monitoring Reports) require NGTL, for areas where old seral stage forest was cleared, to describe where the vegetation community stands on its trajectory toward the reclamation goals identified, how the outcomes arising from consultation with Indigenous peoples were considered, and provide details on any corrective actions as needed.</p> <p>In regard to the issues surrounding the use of chemicals for vegetation management, and areas being sprayed with herbicides or pesticides, the</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>Commission notes TransCanada Energy's Integrated Vegetation Management Program and TransCanada Energy's Operating Procedure for Invasive Vegetation Weed Control Management. The Commission is satisfied that NGTL's approach to vegetation and weed management is appropriate. The Commission further notes that NGTL is required to engage with Indigenous peoples pursuant to the Environmental Protection Plan conditions (Condition 10 for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and Condition 9 for the Section 58 Facilities and Activities), which would include NGTL's vegetation and weed management procedures.</p> <p>The Commission notes NGTL's commitment to implementing standard and site-specific mitigation measures to minimize effects on vegetation, which are outlined in NGTL's Environmental Protection Plan. In order to ensure all information, procedures, and mitigation measures included in the Environmental Protection Plan are up to date, the Commission requires NGTL to submit an updated Environmental Protection Plan for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, (Condition 10) and an Environmental Protection Plan for the</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>Section 58 Facilities and Activities (Condition 9).</p> <p>The Commission is of the view that a robust post-construction environmental 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 24 for the Section 52 Pipeline and Related Facilities and would impose Condition 23 for the Section 58 Facilities and Activities.</p> <p>The Commission requires NGTL to provide a copy of the filings for both Conditions 10 and 24 for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and for Conditions 9 and 23 for the Section 58 Facilities and Activities to all Indigenous peoples who have expressed an interested in receiving those filings.</p>	
Wetlands	<p>Alexis Nakota Sioux Nation</p> <p>Driftpile Cree Nation</p>	<p>NGTL stated that its route selection has minimized disturbance to wetlands by reducing construction footprint within these areas through route selection.</p> <p>NGTL stated that all wetlands disturbed during Project construction will be</p>	<p>The Commission finds that the Project is not likely to cause significant adverse environmental effects on wetlands. Further, the Commission is of the view that residual effects of the Project on wetlands would be moderate in</p>	8.6.4.2

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Ermineskin Cree Nation</p> <p>Kainai Nation (Blood Tribe)</p> <p>Michel First Nation</p> <p>Apetokosan (Kelly Lake Métis Settlement Society)</p> <p>Louis Bull Tribe</p> <p>O'Chiese First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p>	<p>reclaimed, and as such there would be no permanent wetland loss as a result of the Project. NGTL noted that development affecting wetlands is regulated in Alberta under the provincial <i>Water Act</i>, and specific guidance for permitting of development affecting wetlands is provided in the Government of Alberta's Wetland Policy. NGTL stated that the temporary effects on wetlands associated with pipeline construction would require notification under the Alberta <i>Water Act</i> Code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body and Code of Practice for Watercourse Crossings</p>	<p>magnitude, limited to the Local Assessment Area, and reversible in the medium to long term.</p> <p>The Commission notes that in the Alford Creek Section, wetlands are uncommon and cover 4.5 per cent of the Local Assessment Area and 4.1 per cent of the Project Development Area. In the Elk River section, wetlands, mostly swamps, cover approximately 18 per cent of the Local Assessment Area and 23 per cent of the Project Development Area. In regards to the temporary loss and alteration of wetlands, the Commission notes NGTL's commitment to reclaim all wetlands that would be disturbed during construction. The Commission understands that the development affecting wetlands is regulated in Alberta under the provincial <i>Water Act</i>, and specific guidance is provided in the Government of Alberta's Wetland Policy.</p> <p>The Commission also acknowledges that, while wetlands will be disturbed and will take several years to recover after Project construction, NGTL has committed to monitoring wetland reclamation and ensuring reclamation success through its post-construction environmental monitoring program. The Commission is therefore of the view that, after applying the proposed mitigation</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>and monitoring measures, the residual effects on wetlands would be appropriately mitigated, and the Project is not likely to result in any permanent loss of wetlands.</p> <p>In regard to the issues surrounding the use of chemicals for vegetation management, and areas being sprayed with herbicides or pesticides, the Commission notes TransCanada Energy's Integrated Vegetation Management Program and TransCanada Energy's Operating Procedure for Invasive Vegetation Weed Control Management. The Commission is satisfied that NGTL's approach to vegetation and weed management is appropriate. The Commission further notes that NGTL is required to engage with Indigenous peoples pursuant to the Environmental Protection Plan conditions (Condition 10 for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and Condition 9 for the Section 58 Facilities and Activities), which would include NGTL's vegetation and weed management procedures.</p> <p>The Commission notes NGTL's commitment to implementing standard and site-specific mitigation measures to minimize effects on vegetation and wetlands, which are outlined in NGTL's Environmental Protection Plan. In order</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>to ensure all information, procedures, and mitigation measures included in the Environmental Protection Plan are up to date, the Commission requires NGTL to submit an updated Environmental Protection Plan for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, (Condition 10) and an Environmental Protection Plan for the Section 58 Facilities and Activities (Condition 9).</p> <p>The Commission is of the view that a robust post-construction environmental 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 24 for the Section 52 Pipeline and Related Facilities and would impose Condition 23 for the Section 58 Facilities and Activities.</p> <p>The Commission requires NGTL to provide a copy of the filings for both Conditions 10 and 24 for the Section 52 Pipeline and Related Facilities, as recommended by the Commission, and for Conditions 9 and 23 for the Section 58 Facilities and Activities to all</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			Indigenous peoples who have expressed an interested in receiving those filings.	
Wildlife and wildlife habitat, including species at risk and species of management concern	<p>Alexis Nakota Sioux Nation</p> <p>Driftpile Cree Nation</p> <p>Ermineskin Cree Nation</p> <p>Kainai Nation (Blood Tribe)</p> <p>Apetokosan (Kelly Lake Métis Settlement Society)</p> <p>Louis Bull Tribe</p> <p>Michel First Nation</p> <p>O'Chiese First Nation</p> <p>Peavine First Nation</p>	<p>NGTL has included both standard and site-specific mitigation in its Environmental Protection Plan to minimize Project effects on wildlife and wildlife habitat. The Project parallels existing linear disturbance for over 90 per cent of its length. NGTL further stated that while vegetation clearing would result in an increase in the combined width (i.e., expansion) of existing linear disturbances, the Project footprint would be further minimized by siting temporary workspace on adjacent existing ROWs, therefore also minimizing the fragmentation of the landscape.</p> <p>NGTL stated that areas containing preferred habitat for moose would be cleared during construction, leading to a temporary loss or alteration of less than four per cent of preferred habitat for moose in the Local Assessment Area. NGTL does not anticipate this temporary loss to affect local moose abundance during winter construction, as there is abundant suitable forage elsewhere in the Local Assessment Area. NGTL stated that natural regeneration of vegetation post construction would provide early seral habitat that NGTL anticipates to</p>	<p>In regards to the issues raised around the potential effects of the Project on moose, the Commission acknowledges that the Project crosses two Key Wildlife and Biodiversity Zones, which are considered important winter habitat for ungulates. The Commission notes NGTL's Key Wildlife and Biodiversity Zones Protection Plan, included in NGTL's Environmental Protection Plans. The Commission further notes that where the Project activities occur within a timing restriction, NGTL would continue to consult with Alberta Environment and Parks to determine appropriate mitigation measures. The Commission also notes NGTL's commitment to parallel existing disturbances, implement access control measures, reduce disturbance within the forested habitat, riparian areas and wetlands, and to implement minimal disturbance during construction (e.g., limited grubbing and grading). The Commission is of the view that these measures would reduce the effects of loss and alteration of moose habitat while also mitigating the Project's impacts to moose from increased human access and predation or hunting.</p>	8.6.3

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Piikani Nation</p> <p>Samson Cree Nation</p>	<p>include preferred winter forage species for moose (e.g., red osier dogwood, willow). NGTL is of the view that there would be an increase in suitable moose forage in the LAA as a result of NGTL's revegetation practices that will persist through the operations stage.</p> <p>NGTL's Environmental and Socio-Economic Assessment stated that residual Project effects on mortality risk for moose are not likely to be significant. Roads are a major source of mortality risk for moose, and no new roads would be created for the Project. NGTL anticipates a general increase in traffic and human activity in the Regional Assessment Area during construction (approximately 6 months). NGTL's standard mitigation, as outlined in the Environmental Protection Plan, is intended to minimize effects on wildlife, including mortality risk.</p> <p>NGTL stated that the Project is not located within a designated caribou range, and the closest caribou habitat is approximately 85 km west of the Elk River Project Development Area. NGTL also stated that the Project Local Assessment Area does not overlap areas of known trace occurrence for caribou outside of designated ranges. The closest designated range under SARA for</p>	<p>In regards to the Project overlap with two Grizzly Bear Secondary Areas, the Commission notes NGTL's site-specific mitigation and its commitment to implement Wildlife Species of Concern Discovery Contingency Plan. Based on the mitigation provided and the contingency plans outlined in NGTL's Environmental Protection Plan, the Commission is satisfied that the commitments made and measures proposed by NGTL would be appropriate in minimizing Project effects on grizzly bear.</p> <p>In regards to concerns about Project effects on caribou, the Commission is persuaded that it is highly unlikely the Project would interact with caribou given that the Project is not within a designated range and that the closest designated caribou range is over 100 km from the Project Development Area. The Commission is of the view that NGTL's mitigation and contingency discovery plans would be appropriate in minimizing project effects on caribou should caribou be encountered during construction, and that NGTL's operations and maintenance wildlife mitigation measures would be implemented during operations, if warranted.</p>	

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		<p>boreal caribou is Little Smoky range, which is over 100 km from the Project Development Area.</p> <p>NGTL stated that it's highly unlikely that caribou will interact with the Project directly or indirectly and thus an assessment on caribou is not warranted. NGTL stated that its Environmental Protection Plan outlines mitigation measures in the event caribou be encountered during construction, and NGTL's operations and maintenance wildlife mitigation standards would be implemented should caribou be encountered during operations.</p> <p>In response to concerns about Project effects on grizzly bear and grizzly bear dens, NGTL stated that its Project design, in paralleling existing disturbance, makes effort to minimize habitat fragmentation and disturbance as much as possible. Refinement to Project siting and design resulted in the Project route paralleling existing linear disturbance for 92 per cent in Elk River section and 90 per cent in the Alford Creek section, and minimizing the Project development Area to a width of 32 m (rather than the 74 m corridor estimated in the Environmental and Socio-Economic Assessment). NGTL stated that if an active grizzly bear den is</p>	<p>The Commission recommends Condition 10 (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose Condition 9 (Environmental Protection Plan) for the Section 58 Facilities and Activities, requiring NGTL to file Project-specific Environmental Protection Plans for approval. The Commission has included requirements for NGTL to provide details of consultation with Indigenous peoples on its Environmental Protection Plans, and to demonstrate how information and/or feedback from Indigenous peoples has been incorporated into NGTL's plans. The Commission also requires NGTL to provide a copy of updated Project-specific Environmental Protection Plans to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission is not persuaded that copies must be provided to all potentially affected Indigenous peoples, as the Commission has often heard that for some, receipt of unsolicited reports creates undue burden for those who receive high volumes of materials to review.</p> <p>The Commission expects that the Environmental Protection Plans will set out all environmental protection procedures and mitigation measures for</p>	

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		<p>discovered within the Project Development Area prior to construction, NGTL would consult with Alberta Environment and Parks to determine appropriate mitigation, which may include establishing a protective buffer around the den site. If a previously unidentified active grizzly bear den were encountered during Project construction, work would be suspended immediately in the vicinity of the den and the den would be reported to the Environmental Inspector(s) or designate(s). NGTL stated it would implement the Wildlife Species of Concern Discovery Contingency Plan, as part of its Environmental Protection Plan, which, for an active grizzly bear den, would include consultation with Alberta Environment and Park wildlife biologists to determine appropriate mitigation.</p> <p>NGTL stated its commitment to providing its detailed construction schedule and maps to Indigenous groups prior to the start of construction.</p> <p>NGTL has stated that if construction occurs within a sensitive period for amphibians, NGTL would consult with Alberta Environment and Parks to develop and implement specific mitigation measures for amphibians, including western toad, such as the use</p>	<p>which employees, contractors, and on-site NGTL personnel would be responsible. These procedures and mitigation measures must be clear and unambiguous to minimize errors of interpretation. The Environmental Protection Plans must be comprehensive and cover general and specific mitigation related to all environmental elements. Updated Environment Alignment Sheets are also to be included with the Environmental Protection Plans.</p> <p>Based on the measures described above and outlined in NGTL's Environmental Protection Plan, the Commission is of the view that any potential Project effects on wildlife and wildlife habitat can be effectively addressed through the mitigation measures in NGTL's project-specific Environmental Protection Plans.</p> <p><u>Post-Construction Environmental Monitoring Reports</u></p> <p>The Commission notes NGTL's commitment to begin post-construction environmental 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.</p>	

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		<p>of exclusion fencing for amphibian breeding wetlands.</p> <p>Further, NGTL confirms that where western toad breeding ponds are identified on the ROW or temporary workspace, and where construction is scheduled during the active migration period, a qualified biologist will conduct amphibian salvage within the Project footprint according to provincial permitting requirements prior to the commencement of construction activities until such time as the biologist deems that migration is complete, or until October 31.</p> <p>ECCC stated that its general advice on adverse Project effects is guided by information found in recovery documents and in section 73(3) of the <i>Species at Risk Act</i>. ECCC further provided general advice on preparation of emergency response plans, spill and release contingency plans, and storage of chemicals and hazardous materials. ECCC did not provide specific advice on any species at risk identified as having the potential to interact with the Project because they are primarily under responsibility of the Province of Alberta.</p>	<p>The Commission acknowledges the comments provided by Samson Cree Nation, Louis Bull Tribe and Driftpile Cree Nation, and Piikani Nation. Comments include requiring NGTL to provide a detailed description of how consultation with potentially affected Indigenous peoples informed and/or modified NGTL's environmental monitoring, and that NGTL should be required to provide a copy of the post-construction monitoring report to potentially affected Indigenous peoples, as well as all Indigenous peoples who have expressed an interest in receiving a copy.</p> <p>The Commission has considered the comments and subsequently recommends Condition 24 (Post-Construction Environmental Monitoring Reports) for the Section 52 Pipeline and Related Facilities and would impose Condition 23 for the Section 58 Facilities and Activities requiring NGTL to provide post-construction environmental monitoring reports.</p> <p>The post-construction monitoring plan must identify the issues to be monitored, including but not limited to any issues identified in the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 22 for both the Section 52 Pipeline and Related Facilities and the</p>	

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		<p>In response to an O’Chiese First Nation’s Information Request regarding grizzly bear, ECCC stated that it does not have specialist or expert information to share for grizzly bear, and that Alberta Environment and Parks, Fish and Wildlife Branch should be consulted for species-specific technical information. The national management plan for grizzly bears is in the early stages of development. ECCC is in the process of consulting and engaging with the seven provinces and territories where grizzly bears range in Canada. The federal management plan for grizzly bear will provide national direction for its conservation in Canada. The plan is not itself associated with any new/direct regulatory impact under SARA, however as it will have been developed in cooperation with the seven provinces and territories, it will align where possible with initiatives of lead jurisdictions, while making sure that conservation measures are consistent with the purpose of SARA (i.e., to prevent this species of special concern from becoming threatened or endangered). Federal consultation and engagement with land managers about the plan will consider provincial/ territorial regulations that exist, as well as prior/ ongoing consultation/ engagement efforts by the provinces/ territories in context of various plans for grizzly bears that exist</p>	<p>Section 58 Facilities and Activities), as well as any unexpected issues that arose during construction, and their locations (e.g., on a map or diagram, in a table).The Commission is of the view that the comments provided by Indigenous peoples could potentially lead to improved adaptive management measures and/or techniques, and therefore recommends Condition 22 (Post-Construction Monitoring Plan for Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and imposes Condition 22 for the Section 58 Facilities and Activities. The Commission also included in these proposed conditions a requirement for NGTL to provide a copy of post-construction monitoring reports to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission is not persuaded that copies must be provided to all potentially affected Indigenous peoples, as the Commission has often heard that for some, receipt of unsolicited reports creates undue burden for those who receive high volumes of materials to review.</p> <p>The Commission notes that NGTL is required to submit post-construction environmental monitoring reports one, three and five years post construction. NGTL made several commitments</p>	

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		<p>or are being developed by these jurisdictions. ECCC is undertaking to engage Indigenous peoples in Alberta in the development of the plan, with a tentative date of completion in late 2021 or early 2022. ECCC further stated that determining whether NGTL has considered all reasonable alternatives that would reduce the impact on the species falls under the responsibility of the Commission.</p>	<p>specific to particular Project-specific elements during the Hearing, and Condition 24 (Post-Construction Environmental Monitoring Reports) for the Section 52 Pipeline and Related Facilities and Condition 23 for the Section 58 Facilities and Activities include reference to these commitments, in addition to the elements outlined by NGTL in its Application and subsequent filings.</p>	
<p>Cumulative effects on vegetation and wetlands</p>	<p>Alexis Nakota Sioux Nation Driftpile Cree Nation Ermineskin Cree Nation Kainai Nation (Blood Tribe) Louis Bull Tribe Michel First Nation O'Chiese First Nation</p>	<p>NGTL explained that it conducted its cumulative effects assessment in alignment with requirements and guidance provided by the CER Filing Manual and the Impact Assessment Agency (formerly the Canadian Environmental Assessment Agency). NGTL further explained its rationale for selection of spatial and temporal boundaries for its cumulative effects assessment.</p> <p>NGTL stated that its cumulative effects assessment defines existing disturbances by aggregating a number of land cover classes from the Alberta Biodiversity Monitoring Institute's Land Cover Classification and Alberta Merged Wetland Inventory. These land cover classes include cutblocks, agriculture and developed land. Developed land includes</p>	<p>The Commission accepts NGTL's cumulative effects methodology and notes that it is consistent with the CER's Filing Manual and CEEA 2012 requirements and guidance.</p> <p>The extent to which an applicant must consider the effects associated with other existing and future physical facilities and activities and the associated depth of analysis will depend upon the relative contribution of the applied for project to the predicted cumulative effects. In this case the Commission notes the nature, scope and the ecological context of the Project: the construction and operation of a pipeline in an area of substantial existing developments.</p> <p>In regards to the issues raised by Samson Cree Nation around the</p>	<p>8.7.2</p>

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	<p>Peavine First Nation</p> <p>Piikani Nation</p> <p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p>	<p>residential areas, industrial sites, roads and other linear features (e.g., pipelines and trails).</p> <p>NGTL stated that on forested lands, construction footprint would be reclaimed such that early seral plant communities similar to those adjacent to the ROW are able to establish on the construction footprint. Upon confirmation of equivalent land capability, the ROW would be at a condition suitable to support development of future forests, which may include multiple uses such as recreation, hunting, trapping, gathering, forestry, oil and gas development and wildlife habitat, but at that time, would not necessarily be considered a late-successional, or mature vegetation community.</p> <p>NGTL stated that overall, ongoing clearing of native vegetation communities in the Regional Assessment Areas, followed by planned reforestation, is not expected to threaten the viability of any communities in the Regional Assessment Area. NGTL stated the Project and other past, present and reasonably foreseeable future projects and physical activities will incrementally contribute to cumulative effects on vegetation and wetlands in the Regional Assessment Area. NGTL stated that with mitigation, including reclamation and revegetation, the Project will make a</p>	<p>cumulative effects methodology NGTL used for the Project, the Commission notes that CEAA 2012 requires that each environmental assessment of a designated project take into account any cumulative environmental effects that are likely to result from the designated project in combination with the environmental effects of other physical activities that have been or will be carried out. Samson Cree Nation references the CER Act, as well as the Impact Assessment Act, as new benchmarks for cumulative effects assessment. The Commission notes that NGTL's Edson Mainline Expansion Project was submitted, and is being assessed pursuant to, the NEB Act and CEAA 2012.</p> <p>The Impact Assessment Agency of Canada website states the following:</p> <p>Regional assessments allow the Government of Canada to go beyond project-focused impact assessments to understand the regional context and provide more comprehensive analyses</p>	

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		<p>low magnitude contribution to residual cumulative effects on vegetation and a negligible magnitude contribution to residual cumulative effects on wetlands.</p>	<p>to help inform future impact assessment decisions.²¹</p> <p>The Commission notes that Samson Cree Nation's description of a cumulative effects assessment appears to resemble the Impact Assessment Agency's description of a Regional Assessment. The Commission is of the view that although a regional assessment could provide valuable information for decision-makers, such an assessment differs from the Project-specific cumulative effects assessment that is required by the CER's Filing Manual and CEAA 2012 guidance. The Commission therefore finds NGTL's cumulative effects methodology appropriate.</p> <p>The Commission acknowledges that the Project is located in an area that is substantially altered by ongoing anthropogenic disturbance including forestry, oil and gas facilities, and linear developments such as roads, powerlines and pipeline corridors. The Commission</p>	

²¹ IAA Website, [Regional Assessments page](#)

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			<p>notes Indigenous Intervenors also stated that the effects on vegetation are intrinsically linked to effects on other elements such as wildlife and wildlife habitat, traditional land and resource use, and ability to exercise Indigenous and Treaty Rights.</p> <p>In regard to old seral stage forests, the Commission is of the view that the reestablishment of vegetation could take a long time to reach to a mature forest stage, and that the success of reclamation would be measured during post-construction environmental monitoring. As previously noted, the Commission recommends Condition 10 (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose Condition 9 (Environmental Protection Plan) for the Section 58 Facilities and Activities. The Commission notes the concerns raised by Indigenous peoples regarding construction activities within old stage seral forests, and requires NGTL to provide specific mitigation related to old seral stage forest areas. To be satisfied that post-construction environmental monitoring is thorough and effective and that reports would be developed and filed, the Commission recommends Condition 24 for the Section 52 Pipeline and Related Facilities and would impose</p>	

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			<p>Condition 23 for the Section 58 Facilities and Activities (Post-Construction Environmental Monitoring Reports).</p> <p>The Commission also acknowledges that wetlands will be disturbed and will take several years to recover after Project construction, but notes that NGTL has committed to reclaim all wetlands, monitor wetland reclamation, and ensure reclamation success through its post-construction environmental monitoring program. The Commission also notes that development affecting wetlands is regulated in Alberta under the provincial <i>Water Act</i>, and specific guidance is provided in the Government of Alberta's Wetland Policy. The Commission is of the view that there would be no permanent loss of wetlands.</p> <p>The Commission must assess cumulative effects based on the methodology outlined in section 8.1 of this report, and in accordance with the applicable legislative framework, but acknowledges that this framework does not always reconcile with an Indigenous knowledge world view. In its Environmental Assessment, the Commission has taken into account the Indigenous knowledge provided by Indigenous peoples, and notes the commitments NGTL made throughout the hearing process to</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>incorporate the specific knowledge provided by Indigenous peoples into its ongoing Project planning, mitigation, and monitoring. In particular, the Commission notes NGTL's commitments to minimize clearing within areas of old seral stage forests, which Indigenous peoples have indicated are a source of culturally important plants. The Commission further notes NGTL's commitment to engage with Indigenous peoples regarding application of chemicals for vegetation management. The Commission expects NGTL to continue engaging with Indigenous peoples who have expressed concern over Project effects on vegetation and wetlands during this hearing process, and to incorporate Indigenous peoples' suggestions for revegetation and reclamation in the Project area where possible and applicable.</p> <p>To that effect, the Commission requires NGTL to provide a copy of the filings for both Condition 10 (Updated Environmental Protection Plan) and Condition 24 (Post-Construction Environmental Monitoring Reports) as recommended by the Commission for the Section 52 Pipeline and Related Facilities, and for Condition 9 (Environmental Protection Plan) and Condition 23 (Post-Construction</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>Environmental Monitoring Reports) for the Section 58 Facilities and Activities to Indigenous peoples who have expressed an interested in receiving those filings. In response to comments received from Intervenors, the Commission has included requirements, by way of recommended conditions or imposed conditions, for NGTL to provide evidence of consultation with Indigenous peoples on both its Environmental Protection Plans and its post-construction environmental monitoring plans, and to demonstrate how information and/or feedback from Indigenous peoples has been incorporated into NGTL's plans.</p> <p><i>We need very strong monitoring because our ways are different than the Western ways, but we could teach each other. We could sit and share that knowledge. We could learn off one another. It's been proven that your science, your Western science, is finally catching up to Indigenous science.</i></p> <p>-- Karl Giroux, Driftpile Cree Nation, Transcript Volume 3 [1552]</p> <p>The Commission considers Indigenous knowledge to be a highly valued source of information and notes substantial evidence was received from Indigenous peoples regarding cumulative impacts in</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>particular. The Commission acknowledges the challenges it faces in balancing consideration of western science with Indigenous knowledge, and endeavoured to meaningfully weigh and consider both.</p> <p>The Commission considered all evidence submitted regarding cumulative effects on vegetation and wetlands. The Commission is of the view that residual cumulative effects of the Project on vegetation would be low to moderate in magnitude, limited to the Local Assessment Area, and reversible to permanent in the medium to long term. In particular, the Commission is of the view that the residual effects on old seral stage forests would be moderate in magnitude, limited to the Local Assessment Area, and permanent in the long term. Further, the Commission is of the view that residual cumulative effects of the Project on wetlands would be low in magnitude, limited to the Local Assessment Area, and reversible in the medium to long term. Although the Project would incrementally contribute to the residual cumulative effects to vegetation and wetlands, the Commission finds that with the implementation of NGTL's mitigation measures, the Project would not likely result in significant adverse cumulative</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			effects on vegetation, including old seral stage forests, and wetlands.	
Soils	Kainai Nation (Blood Tribe) Louis Bull Tribe O'Chiese First Nation	<p>NGTL plans to construct the Project in winter under frozen conditions with the intent to implement minimal surface disturbance construction techniques where suitable conditions allow. NGTL proposes standard mitigation measures to avoid or minimize potential adverse environmental effects on terrain, topography, and soils.</p> <p>NGTL's mitigation measures include inspection during construction to ensure that planned mitigation is implemented and effective, conducting maintenance the maintenance and operation of the pipeline according to NGTL's existing programs and procedures to protect pipeline integrity, public safety, and the environment. NGTL's contingency plans are detailed in its Environmental Protection Plan and include plans for accidental spill release, adverse weather, wet soils, soil handling, soil erosion, and contaminated soils.</p>	<p>Overall, the Commission finds that the proposed standard mitigation, restoration and monitoring measures are appropriate and would effectively reduce the potential adverse environmental effects on the valued environmental and socio-economic components, including those on the physical environment, soil and soil productivity.</p> <p>The Commission anticipates that many adverse environmental effects will be resolved through standard mitigation. The Commission uses the term standard mitigation as 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 such that it is integrated into a company's management system.</p> <p>The Commission recommends Condition 10 (Updated Environmental Protection Plan) for the Section 52 Pipeline and Related Facilities and would impose Condition 9 (Environmental Protection Plan) for the Section 58 Facilities and Activities, requiring NGTL</p>	8.6.3

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>to file Project-specific Environmental Protection Plans for approval. The Commission has deliberately made filings with respect to Condition 9 and Condition 10 subject to approval so that the Commission has an opportunity to review the finalized versions of these important plans, ensure that all of the mitigation measures NGTL committed to during the hearing have been satisfactorily captured and review how NGTL has incorporated any feedback received during engagement with Indigenous peoples. The Commission has included requirements for NGTL to provide details of consultation with Indigenous peoples on its Environmental Protection Plans, and to demonstrate how information and/or feedback from Indigenous peoples has been incorporated into NGTL's plans. The Commission also requires NGTL to provide a copy of updated Project-specific Environmental Protection Plans to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission is not persuaded that copies must be provided to all potentially affected Indigenous peoples, as the Commission has often heard that for some, receipt of unsolicited reports creates undue burden for those who receive high volumes of materials to review.</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>The Commission expects that the Environmental Protection Plans will set out all environmental protection procedures and mitigation measures for which employees, contractors, and on-site NGTL personnel would be responsible. These procedures and mitigation measures must be clear and unambiguous to minimize errors of interpretation. The Environmental Protection Plans must be comprehensive and cover general and specific mitigation related to all environmental elements. Updated Environment Alignment Sheets are also to be included with the Environmental Protection Plans.</p> <p>Based on the measures described above and outlined in NGTL's Environmental Protection Plan, the Commission is of the view that any potential Project impacts effects on the environment can be effectively addressed through the mitigation measures in NGTL's project-specific Environmental Protection Plans.</p> <p>The Commission notes NGTL's commitment to begin post-construction environmental monitoring after final clean-up. The Commission is of the view that a robust post-construction monitoring program is a fundamental tool to</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>ensuring that potential adverse effects have been effectively mitigated.</p> <p>The Commission acknowledges the comments provided by Samson Cree Nation, Louis Bull Tribe and Driftpile Cree Nation, and Piikani Nation. Comments include requiring NGTL to provide a detailed description of how consultation with potentially affected Indigenous peoples informed and/or modified NGTL's environmental monitoring, and that NGTL should be required to provide a copy of the post-construction monitoring report to potentially affected Indigenous peoples, as well as all Indigenous peoples who have expressed an interest in receiving a copy.</p> <p>The Commission has considered the comments and recommends Condition 24 (Post-Construction Environmental Monitoring Reports) for the Section 52 Pipeline and Related Facilities and would impose Condition 23 for the Section 58 Facilities and Activities requiring NGTL to provide post-construction environmental monitoring reports.</p> <p>The post-construction monitoring plan must identify the issues to be monitored, including but not limited to any issues identified in the Post-Construction</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>Monitoring Plan for Indigenous Peoples (Condition 22 for both the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities), as well as any unexpected issues that arose during construction, and their locations (e.g., on a map or diagram, in a table). The Commission is of the view that the comments provided by Indigenous peoples could potentially lead to improved adaptive management measures and/or techniques, and therefore recommends Condition 22 (Post-Construction Monitoring Plan for Indigenous Peoples) for the Section 52 Pipeline and Related Facilities and imposes Condition 22 for the Section 58 Facilities and Activities. The Commission also included in these proposed conditions a requirement for NGTL to provide a copy of post-construction monitoring reports to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission is not persuaded that copies must be provided to all potentially affected Indigenous peoples, as the Commission has often heard that for some, receipt of unsolicited reports creates undue burden for those who receive high volumes of materials to review.</p> <p>The Commission notes that NGTL is required to submit post-construction</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
			<p>environmental monitoring reports 1, 3 and 5 years post construction. NGTL made several commitments specific to particular Project-specific elements during the Hearing, and Condition 24 (Post-Construction Environmental Monitoring Reports) for the Section 52 Pipeline and Related Facilities and Condition 23 for the Section 58 Facilities and Activities include reference to these commitments, in addition to the elements outlined by NGTL in its Application and subsequent filings.</p>	
Emergency Management				
<p>Informing, educating, language barriers, emergency response readiness, consulting and involving Indigenous communities in Emergency Management Preparedness and Response Planning during the Project and during an emergency</p>	<p>Alexis Nakota Sioux Nation Ermineskin Cree Nation Louis Bull Tribe Michel First Nation O'Chiese First Nation Piikani Nation</p>	<p>NGTL said as part of Project consultation activities, the company provides information concerning emergency preparedness and response to potentially affected stakeholders, emergency responders, landowners and Indigenous peoples. During the operational phase, TransCanada's emergency management team would liaise, collaborate and work with the emergency response agencies (fire, police, emergency medical services) in the area through tabletop and field response exercises, and other outreach activities.</p>	<p>The Commission recognizes NGTL's efforts to ensure Indigenous peoples have the information they need regarding emergency response and pipeline safety and its willingness to receive information about specific evacuation concerns and incorporate it into response planning as appropriate. However the Commission takes seriously the concerns raised by Indigenous intervenors about how emergency-related notification, communication and consultation will be conducted and the importance of capacity building for Indigenous peoples. These concerns are especially pronounced for Stoney Nakota Nations and O'Chiese First Nation given their</p>	<p>4.4.1</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	<p>Samson Cree Nation</p> <p>Stoney Nakoda Nations</p> <p>Whitefish Lake (Goodfish) First Nation #128</p>	<p>With respect to the language barrier concern raised by the Stoney Nakoda Nations, NGTL has stated that translating documents, such as safety materials, into Indigenous peoples' languages is an initiative that NGTL has previously considered and would consider supporting upon request or identification of interest from Indigenous peoples. NGTL stated this could facilitate broader understanding of emergency measures or signage in the event of an incident by land users who may not be fluent in English. NGTL stated that it does not have the linguistic expertise to verify the translations and would not be able to implement the emergency response plan in that language. The company said it has reached out to Stoney Nakoda Nations and O'Chiese First Nation to offer a presentation, meeting and/or further information on NGTL's emergency management and/or pipeline safety as it pertains to the NGTL System, and more directly the Project, and would work with these or other interested communities to schedule such activities at their earliest convenience.</p> <p>In response to the general engagement and safety concerns raised by Alexis Nakota Sioux Nation, Ermineskin Cree</p>	<p>proximity to the Project and their remoteness from nearby services.</p> <p>In regards to Stoney Nakoda Nations' request for a Nations-specific emergency response plan, the Commission supports a single emergency response plan for efficiency with respect to response readiness and preparedness as well as clarity for first responders. The Commission is not persuaded that separate Indigenous community specific emergency response plans are warranted at this time.</p> <p>While the Commission supports a single emergency response plan, it expects that NGTL will continue to engage Indigenous peoples with respect to evacuation and unique community needs. Any plan must be based on the particular risks - and in this case, the risks that NGTL facilities potentially pose - for the public and for Indigenous peoples who live, work and exercise their rights and interests in an area where evacuation can be necessary. NGTL is in the best position to understand the facilities' hazards and to collect feedback and input in order to inform the plan. As stated in subsection 1.1.3, the Commission expects that both NGTL and Indigenous peoples will work meaningfully to ensure that continued engagement efforts will be respectful,</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>Nation, Louis Bull Tribe, Samson Cree Nation, the Stoney Nakoda Nations and Whitefish (Goodfish) Lake First Nation #128, NGTL stated that the Project has been designed and will be constructed and operated following applicable standards, industry best management practices and Project-specific mitigation. NGTL also described its emergency response process and indicated that the Public Awareness Program will facilitate consistent, ongoing communication about safety, integrity and emergency response with Indigenous peoples. Regarding the request by the Stoney Nakoda Nations for a Nations-specific emergency response plan and concerns raised by O'Chiese First Nation, Piikani Nation and the Stoney Nakoda Nations that the plans are inadequate for addressing their needs, concerns and values, NGTL said that it does not create separate Indigenous, emergency services or stakeholder-specific plans, which it submitted would give NGTL personnel inconsistent response tools that could seriously threaten life and safety during incident response. NGTL has stated that Project-specific emergency response plans are developed through a detailed and comprehensive program specific to the project and communities in which TransCanada operates, which includes gathering necessary and important</p>	<p>transparent and genuine, with the aim of building and maintaining a responsive dialogue.</p> <p>To ensure that all potentially affected Indigenous peoples are notified of the Project's construction activities and receive NGTL's emergency response plan for the construction phase of the Project, the Commission recommends Condition 8 (Construction Emergency Management Preparedness and Response Planning) and Condition 14 (Construction Schedule) for the Section 52 Pipeline and Related Facilities and would impose the same conditions (Conditions 8 and 15) for the Section 58 Facilities and Activities, which require NGTL to file detailed construction schedule(s) and updates, as well as an updated emergency response plan for the construction phase of the Project, and to share them with Indigenous peoples who have confirmed an interest in receiving a copy.</p> <p>The Commission further recommends Condition 9 (Emergency Management Continuing Education Program) and would also impose Condition 13 (Emergency Management Continuing Education Program) with respect to facilities and activities under sections 52 and 58, respectively. These conditions</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>feedback from local communities and emergency responders during the planning stages. NGTL therefore submitted that community-specific information is incorporated in emergency response plans and that the information is contained within a single plan that encompasses the entire Project.</p> <p>In regards to the Stoney Nakoda Nations' request for an emergency response-related training session, NGTL previously stated that work with communities to understand how NGTL can support their safety initiatives, including emergency preparedness, accident prevention and education and training, is a focus area for its community investment program. NGTL said it recognizes that each group's needs and interests are unique and that funding to communities is designed to provide flexibility in the development of initiatives that will support each group's long-term goals. NGTL said it contributes to community investment initiatives with local Indigenous peoples in the Project area and will continue to identify economic opportunities for community investment in all operating regions.</p> <p>NGTL stated that emergency response procedures will be included in the emergency management plans for the</p>	<p>address safety procedures such as evacuation routes and Indigenous language translations. They require NGTL to provide a Project-specific plan for the development of its continuing education program under section 35 of the OPR, which details how information provided by potentially affected Indigenous peoples will be incorporated into the education program. While NGTL states that these conditions are unnecessary and redundant, the Commission views these conditions as important measures to address concerns of Indigenous peoples regarding communication, consultation and capacity building with respect to emergency-related matters.</p> <p>The CER has a comprehensive regulatory regime in place that considers ECCC's recommendations for environmental emergencies that 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.</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>Project. The emergency management plans will include communications protocols, including current contact information for all potentially affected Indigenous peoples. In the event of an emergency, the regionally-based Indigenous and community liaisons will contact the appropriate individuals via telephone and/or email to notify them of the nature of the emergency.</p> <p>In response to the concerns regarding the adequacy of emergency management consultation, the extent to which the safety management plan considers the safety of Indigenous peoples and how NGTL and its contractors will ensure the safety of their members when exercising Indigenous and Treaty rights in the vicinity of the Project during construction and operation, NGTL stated that:</p> <ul style="list-style-type: none"> the Indigenous engagement program and stakeholder engagement program are implemented during the planning, application and construction phases. NGTL said once the Project is in service and transitioned to operations, any outstanding communication commitments designed to increase awareness of the pipeline safety 		

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		<p>would be transitioned into the overall Public Awareness Program;</p> <ul style="list-style-type: none"> • threat categories are defined by the American Society of Mechanical Engineers, in response to concerns about how the concerns of Michel First Nation and O'Chiese First Nation were considered in relation to determining threat categories; • the safety and health of TC Energy's employees, contractors and the public, including all Indigenous peoples, is paramount. The company said 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, NGTL stated all prime contractors and sub-primes are required to develop and implement safety, security and emergency management plans designed to protect employees and mitigate the risk of potential harm to communities and community members. NGTL will also provide Indigenous peoples with the proposed construction schedule and maps prior to the start of construction 		

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>to avoid potential conflicts between construction crews and traditional land users. NGTL said it also collaborates with local emergency response and law enforcement agencies regarding Project plans;</p> <ul style="list-style-type: none"> • during operations the entire NGTL system is monitored and controlled by the TransCanada Operations Control Centre, which is staffed 24 hours per day, 365 days a year, and uses a computer-based supervisory control and data acquisition system to continuously monitor and control system operations; and • in the event of an emergency, the regionally-based Indigenous and community liaisons will contact the community identified in the emergency response plan and share information related to the incident. <p>ECCC recommended NGTL commit to developing mitigation strategies, contingency plans and response capabilities commensurate with the Project's environmental risks and that the plans include, but not be limited to, contingency plans based on worst-case and alternative accident scenarios; staff and contractor training programs; staff and contractor certification and continuous improvement programs;</p>		

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>community awareness and education initiatives; and community notification and communications procedures.</p> <p>NGTL submitted that its comprehensive emergency response program is well-established, complies with all of the recommendations proposed by ECCC in this proceeding, and will provide reasonable protection for human safety, existing NGTL facilities, third party property and the environment.</p> <p>In response to ECCC's recommendation that NGTL prepare emergency response plans, as well as spill and release contingency plans, NGTL said the Project will 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 from a rupture or release. NGTL further said emergency response plans contain information including providing notifications to safeguard the public, TC Energy's employees and contractors in the event of an emergency, reduce the potential for destruction of property, minimize the impact on the environment and limit interruption of service. According to NGTL, emergency preparedness is the foundation that supports NGTL's</p>		

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>response activities. Preparedness includes hazard identification, risk assessments, response plans, training program, exercises, and public awareness elements of emergency management that considers the needs of TransCanada, its employees, the community-at-large, as well as regulatory and legislative requirements.</p>		
<p>Potential for leaks and ruptures</p>	<p>Alexis Nakota Sioux Nation Ermineskin Cree Nation Louis Bull Tribe Michel First Nation O'Chiese First Nation Piikani Nation Samson Cree Nation Stoney Nakota Nations Whitefish (Goodfish) Lake</p>	<p>NGTL said project planning and design, equipment selection, hazard analysis and corrective action, emergency response planning, security management, and the implementation of established effective environmental protection measures in the Environmental Protection Plan and emergency response plan would reduce the potential for accidents and malfunctions to occur and reduce the effects of an event if it occurs. NGTL said the risk of an unplanned event occurring during construction and operations is reduced through selecting and implementing construction materials and methods that meet or exceed industry standards, regulatory requirements and TransCanada's standards and specifications, as well as implementing TransCanada's Corporate Security Policy. The risk during operations is also reduced by implementing TransCanada's Damage Prevention and Integrity</p>	<p>The Commission is of the view that NGTL is able to appropriately prevent and respond to emergencies.</p> <p>With respect to prevention, the Commission is satisfied that NGTL will design, construct, and operate the Project in a manner that prevents and reduces potential hazards by, among other things:</p> <ul style="list-style-type: none"> • designing, locating, constructing, installing and operating the Project in accordance with the OPR, CSA Z662-19, TransCanada specifications and applicable industry standards; • selecting and implementing construction materials and methods that meet or exceed industry standards, regulatory requirements and TransCanada's standards and specifications; 	<p>4.4.1</p>

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
	First Nation #128	<p>Management Programs. The company stated that in the unlikely event of rupture or release, such unplanned events would be effectively managed during construction through implementation of contingency measures in the Project-specific Environmental Protection Plan and Project-specific emergency response plan. Unplanned events during operations would be effectively managed through TransCanada's overarching Emergency Management Corporate Program Manual, as well as automatic emergency shut down and facility isolation procedures that minimize the volume of potential release.</p> <p>NGTL stated that during construction, each prime contractor would be responsible for ensuring the work performed is in accordance with contract documents, Project design, applicable standards, specifications and procedures, and the Project-specific quality plan. TransCanada inspectors would monitor all construction activities to ensure compliance. NGTL said the prime contractor communicates its site-specific safety plans to all personnel working on the project, including Indigenous peoples. This plan is distributed and communicated to personnel executing the field work and is available at the worksite. NGTL said the site-specific</p>	<ul style="list-style-type: none"> implementing contingency measures in the Project-specific Environmental Protection Plan, and through implementing the Project-specific emergency response plan during construction; and implementing TransCanada's Corporate Security Policy and Damage Prevention and Integrity Management Programs. <p>The Commission is satisfied with NGTL's commitment to monitor the integrity of the Project using a comprehensive risk-based methodology, by identifying potential integrity threats, initiating inspection and mitigation activities and developing specific integrity maintenance activities. The Commission is of the view these measures appropriately prevent and reduce potential hazards and risks to the safety and security of the public, the environment, property, as well as NGTL employees and facilities.</p> <p>In regards to emergency response, the CER believes that being prepared for any situation is a critical part of energy safety. As required in section 18 of the OPR, a CER-regulated company and its contractor(s) are responsible for safety and regulatory compliance and these should be clearly defined at the beginning of a project. A company must</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>safety plans provides details of how occupational health, safety, security and emergency aspects of the construction work would be monitored/managed on the worksite. Emergency response is carried out under TC Energy's Emergency Management Response Plans (emergency response plans).</p> <p>NGTL submitted that its comprehensive emergency response program is well-established, complies with all of the recommendations proposed by ECCC in this proceeding, and will provide reasonable protection for human safety, existing NGTL facilities, third party property and the environment.</p> <p>ECCC stated that emergency response and spill/release plans should be based on potential accidents and malfunctions, site-specific conditions and sensitivities, as well as the assumption that a catastrophic incident is likely to occur during the lifespan of the Project.</p> <p>In response to ECCC's recommendation that NGTL prepare emergency response plans, as well as spill and release contingency plans, NGTL said the Project will be designed, constructed, and operated in a manner that prevents and reduces potential hazards and risks to the safety and security of the public,</p>	<p>instruct contractors in all relevant practices and procedures pertaining to their work prior to commencing construction activities. As required in section 32 of the OPR, 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.</p> <p>The Commission is satisfied that NGTL's emergency response planning, along with the conditions described below, is acceptable. The Commission has taken into account all evidence on the record, including the following:</p> <ul style="list-style-type: none"> • NGTL's emergency preparedness and response will be governed by the processes, procedures and guidance established in TransCanada's Emergency Management Corporate Program Manual and site-specific emergency response plans, which include communication protocols for stakeholders and Indigenous peoples; • Preventative and response measures have been prepared to address potential emergencies, including 	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>employees, property, NGTL facilities and the environment from a rupture or release. NGTL further said emergency response plans contain information including providing notifications to safeguard the public, TC Energy's employees and contractors in the event of an emergency, reduce the potential for destruction of property, minimize the impact on the environment and limit interruption of service. According to NGTL, emergency preparedness is the foundation that supports NGTL's response activities. Preparedness includes hazard identification, risk assessments, response plans, training program, exercises, and public awareness elements of emergency management that considers the needs of TransCanada, its employees, the community-at-large, as well as regulatory and legislative requirements.</p>	<p>pipeline releases or ruptures, fires and hazardous materials releases;</p> <ul style="list-style-type: none"> • TransCanada employees and contractors receive training for emergency events and work closely with impacted persons or groups, as well as authorities and emergency responders, in the event of an emergency; • NGTL liaises with local first responders and educates them about its assets and response roles in accordance with the OPR, which includes partnering and practicing with local first responders during emergency response exercises; • contact information for all potentially affected Indigenous peoples will be included in the emergency management plans for notification by Indigenous and community liaisons in the event of an emergency; and • TransCanada has automatic emergency shut down and facility isolation procedures in place that reduces the effect of a potential release. 	
Evacuation	Stoney Nakoda Nations	NGTL submitted that the company works closely with local first responders in its emergency preparedness and response.	While the Commission supports a single emergency response plan, it expects that NGTL will continue to engage Indigenous	4.4.1

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>NGTL said that company representatives may initiate evacuations of NGTL facilities; however, local first responders must initiate and execute evacuations for potentially affected members of the public during an emergency and have the ultimate authority when it comes to ordering and communicating community or individual evacuations. Under these circumstances, TransCanada representatives may assist local first responders upon request.</p> <p>NGTL stated the product to be transported by this Project is sweet natural gas not oil, liquids, or condensates. In the event of a pipeline leak or rupture, NGTL said natural gas will disperse into the atmosphere. NGTL said evacuation would be limited to the immediate vicinity of the Project rather than a larger area that would be required in the case of a sour gas incident. NGTL also said the Project would not traverse any reserve or Métis settlement lands and as a result, it is anticipated that interactions between community members and a Project-related emergency, if any, are more likely to be with community land users in the Project area rather than within the community boundaries.</p>	<p>peoples with respect to evacuation and unique community needs. Any plan must be based on the particular risks - and in this case, the risks that NGTL facilities potentially pose - for the public and for Indigenous peoples who live, work and exercise their rights and interests in an area where evacuation can be necessary. NGTL is in the best position to understand the facilities' hazards and to collect feedback and input in order to inform the plan. As stated in subsection 1.1.3, the Commission expects that both NGTL and Indigenous peoples will work meaningfully to ensure that continued engagement efforts will be respectful, transparent and genuine, with the aim of building and maintaining a responsive dialogue.</p> <p>The Commission further recommends Condition 9 (Emergency Management Continuing Education Program) and would also impose Condition 13 (Emergency Management Continuing Education Program) with respect to facilities and activities under sections 52 and 58, respectively. These conditions address safety procedures such as evacuation routes and Indigenous language translations. They require NGTL to provide a Project-specific plan for the development of its continuing education program under section 35 of</p>	

Concern	Indigenous Peoples	NGTL and Government of Canada response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
		<p>NGTL further stated that to the extent that any potentially-affected community has concerns around the evacuation of its vulnerable members, including language barriers, NGTL's engagement representative is pleased to receive that information and incorporate it into any response planning as appropriate in consultation with existing community contacts, including providing such information to local first responders (as accountable evacuation authorities), during NGTL's ongoing liaison and continuing education with local first responders in accordance with sections 33-35 of the OPR.</p>	<p>the OPR, which details how information provided by potentially affected Indigenous peoples will be incorporated into the education program. While NGTL states that these conditions are unnecessary and redundant, the Commission views these conditions as important measures to address concerns of Indigenous peoples regarding communication, consultation and capacity building with respect to emergency-related matters.</p>	

Appendix V – 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 Development Area	Effect would be limited to the area directly disturbed by the Project development, including the width of the ROW and the temporary workspace.
	Local Assessment Area	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., 1 km wide buffer beyond the Project Development Areas for wildlife).

Criteria	Rating	Definition
	Regional Assessment Area	Effect would be recognized in the area beyond the Local Assessment Area that might be affected on the landscape level. This area also varies relative to the receptor being considered (e.g., a 15 km buffer beyond the Project Development Areas for wildlife).
	Global	Effects would be recognized globally.
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 a geographic extent beyond the Regional Assessment Area.
	Not likely to be significant	Any adverse effect that does not meet the above criteria for "significant".

