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28 April 2022

To: All parties to the OH-001-2022 proceeding

**NorthRiver Midstream NEBC Connector GP Inc. (NorthRiver)  
NEBC Connector Project (Project)  
Technical workshop on cumulative effects assessment**

**Before: K. Penney, Presiding Commissioner; D. Côté, Commissioner;  
W. Jacknife, Commissioner**

**A. Overview**

The Commission of the Canada Energy Regulator (**Commission**) has decided that, in advance of making its determination on the completeness of NorthRiver's Project application, it will hold a technical workshop on the cumulative effects assessment for the Project (**Technical Workshop**). The purpose of the Technical Workshop is as follows:

- a) For participants to identify, define and discuss collaboratively what additional filing requirements or guidance regarding the assessment of cumulative effects for the Project may be necessary, including but not limited to:
  - i) establishing appropriate baselines for determining cumulative effects;
  - ii) consideration of upstream development in the cumulative effects assessment for the Project;
  - iii) cumulative effects on the rights of Indigenous peoples; and
  - iv) offsets.
- b) To help inform the Commission as to whether NorthRiver's current Project-specific cumulative effects assessment is complete enough to proceed with the Project application assessment.

In advance of the Technical Workshop, participants may review and comment on the draft agenda (attached as **Appendix 2**) and file technical information on the record.

The Technical Workshop will be held virtually on **20, 22, and 23 June 2022**. These dates take into account Doig River First Nation's Treaty Land Entitlement ratification vote on 15 June 2022<sup>1</sup>, Canada's National Indigenous Peoples Day on 21 June 2022, and the fact that summer months are generally a time when Indigenous peoples are out on the land exercising their rights and attending gatherings.

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<sup>1</sup> Doig River First Nation, "Request for Extension – Proposed Timetable of Hearing Events on the NorthRiver Midstream NEBC Connector Project", Filing ID [C18785](#) (26 April 2022).

A facilitated roundtable format will be used to encourage dialogue through questions, answers, and comments, and a written transcript will be produced. While Commissioners Kathy Penney, Damien Côté, and Wilma Jacknife will be present at the Technical Workshop to hear directly from participants, their engagement will be limited to opening remarks and the seeking of clarifications.

## **B. Background**

On 17 February 2022, the Commission sought comments on the proposed hearing process and draft List of Issues ([C17758](#)). The Commission solicited specific feedback on whether a technical workshop on cumulative effects, in the context of the Project application, would bring value to the hearing process. The Commission proposed that this workshop occur after any Hearing Order was issued. The parties, and the Crown Consultation Coordinator (**CCC**), provided comments both in writing, as well as orally during a virtual process workshop held on 9 to 11 March 2022. On 14 April 2022, the Canada Energy Regulator (**CER**) released a report summarizing the submissions received on the proposed hearing process and draft List of Issues (**Workshop Summary Report**) ([C18568](#)).

The Commission values the input from the parties and considered all the comments received. Among other things, the Commission heard the following:

- Concerns regarding cumulative impacts was a common theme raised by Indigenous communities in the CCC submissions, process workshop comments, Project application and NorthRiver's response to information requests.
- Multiple workshop participants strongly urged the Commission to hold a technical workshop on cumulative effects.
- The workshop should be broad enough to allow time for Indigenous peoples to bring forward what they think a suggested methodology should be with respect to the assessment of cumulative impacts on rights, culture, and a way of life. It should not be just how the CER or NorthRiver would approach it. A broader view would help determine what is in common and what gap exists.
- It is important to be able to verify the methodology used by NorthRiver, particularly in the context of *Yahey v. British Columbia*<sup>2</sup> (**Yahey**). The principles of *Yahey* must inform the methodology as well as the Commission's cumulative effects assessment.
- Driftpile Cree Nation, Duncan's First Nation, McLeod Lake Indian Band, Sucker Creek First Nation, and Whitefish Lake First Nations submitted that the CER should use the United Nations Declaration on the Rights of Indigenous Peoples (the **Declaration**) as a lens for its hearing processes. They encouraged the CER to consider modifications to the hearing process to allow for the proper consideration and assessment of the Project in the context of key Declaration principles.
- Kelly Lake Cree Nation stated spring or summer 2022 is preferable timing for the technical workshop on cumulative effects and this topic should be covered early in the process.

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<sup>2</sup> 2021 BCSC 1287 at para 1894.

- Blueberry River First Nations is of the view that a “workshop” is merely an opportunity ‘to blow off steam’. They suggested that a full and separate evidentiary hearing process is required. Blueberry River First Nations also submitted that the present application does not contain the facts required that would allow the principled assessments of the impact of upstream development. The Commission must determine that the application, as filed, is not complete. Blueberry River First Nations also commented on the adequacy of NorthRiver’s offset plan stating that the design of any such offset plan must be specifically included as a hearing step and require First Nation consent.

Given the significant concerns raised surrounding the cumulative effects assessment methodology, the Commission is of the view that a technical workshop on cumulative effects would be better placed before any completeness determination. The Filing Manual provides guidance as to the type of information the Commission would typically need to make a determination, but it does not provide a comprehensive list of requirements.<sup>3</sup> The landscape or context in which this Project is to be assessed has changed as a result of *Yahey*, implementation of the Declaration, and the CER’s commitment to Reconciliation. For example, the Court in *Yahey* declared that:

2. The Province has taken up lands to such an extent that there are not sufficient and appropriate lands in the Blueberry Claim Area to allow for Blueberry’s meaningful exercise of their treaty rights. The Province has therefore unjustifiably infringed Blueberry’s treaty rights in permitting the cumulative impacts of industrial development to meaningfully diminish Blueberry’s exercise of its treaty rights in the Blueberry Claim Area.<sup>4</sup>

The Commission is aware that the proposed Project traverses the Blueberry Claim Area. The Commission understands the importance of ensuring that it has adequate mechanisms for assessing and taking into account cumulative effects. If additional Project-specific filing requirements or guidance is necessary, it ought to be communicated to NorthRiver and other parties as soon as possible in the hearing process.

The Commission acknowledges Blueberry River First Nations’ concern that the workshop is merely an opportunity “to blow off steam”. The desire for real change is something that the Commission has heard from numerous parties. The Commission recognizes that the unique context of this Project may require things to be done differently. The Commission is designing this workshop with an intent to provide participants with a meaningful opportunity to collaborate, dialogue, and come to common understandings where possible. This is why the Technical Workshop is taking place early in the process, prior to the completeness determination. In addition to presentations from NorthRiver and the CER, interested Indigenous intervenors and other interested participants can provide presentations or other input on the Project-specific approach to cumulative effects, including methodology. The Panel of the Commission assigned to hear the OH-001-2022 proceeding (**Panel**) will also be present to hear directly from the participants. Written submissions and transcripts will form part of the record. Furthermore, participants are encouraged to comment on the proposed agenda and make any additional recommendations they may deem appropriate for a cumulative effects assessment methodology for the Project that may bring more value to the proceeding (see Section E).

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<sup>3</sup> Filing Manual, Section 1.2 at page 2.

<sup>4</sup> *Yahey* at para 1894. A map of the Blueberry Claim Area is set out in *Yahey* at para 15.

### C. Invitation to the Province of British Columbia (BC)

In *Yahey*, the Court also made the following declarations:

3. The Province may not continue to authorize activities that breach the promises included in the Treaty, including the Province's honourable and fiduciary obligations associated with the Treaty, or that unjustifiably infringe Blueberry's exercise of its treaty rights; and,
4. The parties must act with diligence to consult and negotiate for the purpose of establishing timely enforceable mechanisms to assess and manage the cumulative impact of industrial development on Blueberry's treaty rights, and to ensure these constitutional rights are respected.<sup>5</sup>

Although the Project does not require a provincial environmental assessment under the BC *Environmental Assessment Act*, various other provincial authorizations are required in order for the Project to proceed.

Blueberry River First Nations suggested that the need to consider the requisite provincial approvals, and for the province to exercise a proper cumulative effects assessment framework as required by the *Yahey* decision requires a joint provincial federal cumulative effects assessment. Blueberry River First Nations requested that the CER put this process on hold<sup>6</sup> and design a joint federal-provincial environmental assessment and cumulative effects process ([C17983](#)).

In light of these circumstances, the Commission invites the Province of BC to actively participate in the Technical Workshop and hearing process. This is an excellent opportunity for increased transparency, efficiency, and coordination of the federal and provincial cumulative effects assessment for this Project. In particular, a presentation at the Technical Workshop on the status of negotiations arising from *Yahey* and the Province of BC's general approach to authorizing upstream activities and Project-related construction and operation would be very helpful information for the Commission and the participants. As a current intervenor, the BC Ministry of Energy, Mines and Low Carbon Innovation can liaise with the appropriate parts of the BC government, particularly those involved in the management of cumulative impacts. Relevant departments or ministries from the Province of BC can also, and are encouraged to, participate directly and will be automatically granted intervenor status upon their registration for the Technical Workshop.

### D. Participation

The Commission invites NorthRiver, the Province of BC, and all parties, or their authorized representatives, if applicable, to attend the Technical Workshop. Also invited are the Crown Consultation Coordinator (**CCC**) and any Indigenous<sup>7</sup> communities on the Crown list provided by the CCC who indicate their intention to intervene, and thus become a party, prior to the Technical Workshop occurring, as per the Commission's Ruling No. 3 dated 14 February 2022 ([C17709](#)).

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<sup>5</sup> Ibid.

<sup>6</sup> The Commission's reasons for not placing the Project application on hold were set out in Ruling No. 1.

<sup>7</sup> The use of the term "Indigenous" has the meaning assigned by the definition of "aboriginal peoples of Canada" in subsection 35(2) of the *Constitution Act, 1982* which states:

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

Those wanting to attend the Technical Workshop must register in advance. The registration form is attached as **Appendix 1** to this letter. Participants who want to attend the Technical Workshop are required to complete and submit the registration form by **13 May 2022** through the participation portal at [www.cer-rec.gc.ca/participate](http://www.cer-rec.gc.ca/participate).

The Panel will attend the Technical Workshop to hear participants firsthand and may ask questions of clarification throughout.

### **E. Agenda**

In its letter dated 17 February 2022, the Commission sought comments on topics for discussion during a potential technical workshop on cumulative effects. The draft agenda incorporates various topics raised in written comments and the Workshop Summary Report (**Appendix 2**).

The Workshop Summary Report also indicated that participants would like the Commission to share the draft agenda of the Technical Workshop for comment. In response, the Commission is seeking comments from Technical Workshop participants on the draft agenda for the Technical Workshop. As mentioned above in Section B, participants can make any additional recommendation to the agenda they deem appropriate for a cumulative effects assessment methodology for the Project that may bring more value to the hearing.

Comments on the draft agenda must be received by **13 May 2022** and can be submitted, in conjunction with the registration form, through the participation portal at [www.cer-rec.gc.ca/participate](http://www.cer-rec.gc.ca/participate).

The Commission will then issue a finalized agenda, including any procedural updates, required for the Technical Workshop.

### **F. Written Submissions**

Workshop participants must submit any technical information to be discussed prior to the Technical Workshop. Technical information must be filed by **3 June 2022**.

Written submissions, including technical information, should focus primarily on the cumulative effects methodology in relation to the Project. The draft agenda outlines specific topics the Commission is interested in hearing more on. However, the purpose of the Technical Workshop is not to file any substantive assessment on cumulative effects from the Project. There will be a subsequent step in the hearing process for parties to file evidence, such as cumulative effects assessment results, should the Project application be found complete.

If a party files written submissions, including technical information, the party will be expected to attend the Technical Workshop and potentially answer questions at the virtual Technical Workshop on those written submissions.

### **G. Technical Workshop Preparation and Logistics**

On 11 March 2022, NorthRiver filed the applicable hyperlinks and page references to its cumulative effects methodology in the Environmental and Socio-Economic Assessment included in its Project application ([C18118](#)). It should be noted that while not referenced by NorthRiver in its 11 March 2022 filing, Sections 10.7 and 10.8 of the Project application also

describes NorthRiver's assessment of potential Project impacts on the exercise of asserted or established Indigenous and Treaty rights and proposed mitigation measures ([C16186-2](#)).

The CER's approach to cumulative effects assessment is outlined in Subsection A.2.7 and Tables A-2 and A-3 of the [Filing Manual](#). CER staff will present a short overview of this approach at the Technical Workshop.

Workshop participants are encouraged to review all technical information submitted by other participants as well as the guidance in the Filing Manual to ensure productive and valuable discussions during the virtual component of the Technical Workshop.

The Commission acknowledges that some parties have expressed a desire for in-person or hybrid meetings. While the Commission looks forward to in-person meetings, this Workshop will be held virtually due to the technical nature of the workshop itself and because several health restrictions such as social distancing and masking are still in effect, making face-to-face engagement less meaningful. The Commission is hopeful that in-person meetings will be possible for future process steps, such as oral Indigenous knowledge, if the Application is determined to be complete. Microsoft Teams is the platform that will be used for the Technical Workshop; all necessary information will be provided to participants in due course. Participants do not need to acquire Microsoft Teams software to participate in a meeting hosted on Microsoft Teams.

The CER has retained the services of a neutral third party to facilitate the Technical Workshop in a roundtable format. During the Technical Workshop questions may be asked on what participants have heard in the Technical Workshop or what has been filed in writing ahead of the Technical Workshop. CER staff may be asked questions of clarification on their overview presentation. The Panel, while in attendance, may also ask clarification questions of participants; however, the Panel will not take questions as its role is to neutrally hear from parties and ultimately make a recommendation (assuming first that the Project application is determined complete).

The oral portion of the Technical Workshop will be transcribed daily and electronic versions of the transcripts will be made available on the online public registry. It will be streamed in audio over the internet to allow those not participating to listen in.

The Commission has proposed three days for the virtual component of the Technical Workshop but does not want time to artificially constrain productive discussions on a very important issue for this hearing. Therefore, the specific dates and times for each session for the Technical Workshop are subject to change. Depending on the number of presentations and depth of discussions, it is possible that the Technical Workshop continue later into the week if needed, and all participants should be prepared for this possibility.

#### **H. Outcomes of the Technical Workshop**

There will be daily transcripts of the Technical Workshop. All technical information submitted in writing and the transcripts from the Technical Workshop will form part of the record for the hearing. These will be available electronically on the [online public registry](#) (subject to confidentiality under sections 58, 60, and 61 of the *Canadian Energy Regulator Act*), and can be used and/or referred to in subsequent hearing steps.

Following the Technical Workshop, the Commission will determine if additional filing requirements or guidance is necessary for the Project application. The Commission will release a document outlining any additional filing requirements or guidance, if any, and next process steps.

The Commission will also separately continue to assess whether the Project application is complete enough to proceed with assessment and proceed to the hearing. Should the Project application be deemed complete, a Hearing Order will then be released. This will include a Timetable of Events for next hearing steps.

Additional guidance being required at the end of the workshop does not mean that the Project application cannot be determined sufficiently complete to proceed to assessment and proceed to a hearing. However, if the result of the workshop is that key information is needed in order for parties and the Commission to proceed for a meaningful assessment of the Project application, then, it is possible that the Commission may determine the Project application to be incomplete.

The Commission may also ask information requests throughout the Application assessment process.

#### **I. Next steps for parties and, as applicable, the CCC**

In summary, the next steps are as follows:

- 1) Review this letter and Appendix 2.
- 2) If you wish to participate in the Technical Workshop, file a registration form (**Appendix 1**) by **13 May 2022**;
- 3) If you wish to submit comments or propose changes to the draft agenda (Appendix 2), file these by **13 May 2022**.
- 4) File any technical information with the CER by **3 June 2022**.

When filing their registration, comments on the draft agenda or technical information with the CER, workshop participants must also serve their documents on all parties from the [List of Parties](#). Participants are encouraged to file documents and use the automated service provided through the [CER Participation Portal](#). Alternatively, participants who are unable to access the participation portal may file documents using e-file and must serve their documents on others using email (i.e., create a list of email addresses from the [List of Parties](#) and send an email to this list indicating that the filing is available on the CER's website).

For assistance, participants may contact the Process Advisory Team by email at [NEBCConnectorProject@cer-rec.gc.ca](mailto:NEBCConnectorProject@cer-rec.gc.ca) or by telephone at 1-800-899-1265.

Yours sincerely,

*Signed by*

Ramona Sladic  
Secretary of the Commission

## Attachments

- c.c. Crown Consultation Coordinator, [ConsultationNEBCCconnector@cer-rec.gc.ca](mailto:ConsultationNEBCCconnector@cer-rec.gc.ca)  
Justin Anderson, BC Oil and Gas Commission, [Justin.Anderson@bcogc.ca](mailto:Justin.Anderson@bcogc.ca)  
Sara Dickinson, BC Oil and Gas Commission, [Sara.Dickinson@bcogc.ca](mailto:Sara.Dickinson@bcogc.ca)  
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Alanya Smith, BC Ministry of Indigenous Relations and Reconciliation, [Alanya.Smith@gov.bc.ca](mailto:Alanya.Smith@gov.bc.ca)

**Appendix 1 Registration for the Technical Workshop**

Please complete and file your registration form as early as possible. Workshop registration closes **13 May 2022**.

If you have any questions or require assistance in filling your Registration Form, please contact the Process Advisory Team by email at [NEBCConnectorProject@cer-rec.gc.ca](mailto:NEBCConnectorProject@cer-rec.gc.ca) or by telephone at 1-800-899-1265.

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**Registration Form – NEBC Connector Project  
Technical Workshop – 20, 22, and 23 June 2022<sup>8</sup>**

<b>Registrant:</b>			
<b>Name:</b>			
<b>Email:</b>		<b>Phone:</b>	

<b>List all participants if registering as a company, government organization or group:</b>		
<b>Name:</b>	<b>Title:</b>	<b>Email:</b>
1		
2		
3		
4		
5		
6		
7		

<b>Do you intend to present in Part 1 (see draft Agenda in Appendix 2):</b>	
<b>Yes/No:</b>	
<b>Approximate Time Required:</b>	

\* Following the receipt of the registration forms, the Commission will communicate participation details to all who registered

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<sup>8</sup> Dates may be extended.

## **Appendix 2      Draft agenda for the Technical Workshop**

In light of *Yahey v. British Columbia*<sup>9</sup>, implementation of the United Nations Declaration on the Rights of Indigenous Peoples, and the Canada Energy Regulator's (CER) commitment to Reconciliation, this workshop is intended to provide parties with a meaningful opportunity to collaborate, dialogue, and come to common understandings where possible on the cumulative effects assessment methodology for the Project application.

The Technical Workshop will consist of two parts over three days<sup>10</sup>:

**Part 1 (Day 1)**                      Introductions and overview of cumulative effects assessment

**Part 2 (Days 2 and 3)**      Topic-by-topic facilitated discussion on:

- establishing appropriate baselines for determining cumulative effects;
- consideration of upstream development in the cumulative effects assessment for this Project;
- cumulative effects on the rights of Indigenous peoples; and
- offsets

Participants may make comments and ask questions directly of other participants in attendance, through a facilitated roundtable format. Questions may be asked on what participants have heard in the Technical Workshop or what has been filed in writing ahead of the Technical Workshop. CER staff may be asked questions on clarification on their overview presentation. The Panel, while in attendance, may also ask clarification questions of participants.

All times below are Mountain Time. Each day will involve a one-hour break for lunch, and health breaks at appropriate intervals.

**Day 1                      Monday, 20 June 2022                      9:30 am – 4:30 pm**

**9:30 am – 10:30 am                      Opening remarks and introductions**

Welcome, introductions, purpose of the Technical Workshop, expectations for the discussions, and review of logistics

- i) Opening prayer and/or ceremony (if desired)
- ii) Participants introduce themselves
- iii) Welcoming remarks by Kathy Penney, Presiding Commissioner
- iv) Panel Members introduce themselves
- v) Remarks by facilitator(s) on logistics

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<sup>9</sup> 2021 BCSC 1287 at para 1894.

<sup>10</sup> Dates may be extended later into the week if needed, depending on the number of presentations and depth of discussions.

**10:30 am – 4:30 pm      Part 1 – Overview of cumulative effects assessment methodology**

- i) CER staff share a brief overview of current Filing Manual requirements for cumulative effects assessment.
- ii) NorthRiver shares a brief overview of its cumulative effects assessment, including methodology.
- iii) Interested Indigenous intervenors and other interested participants provide input on the Project-specific approach to cumulative effects assessment, including methodology, and what an assessment of cumulative effects ought to address. This will include presentations from those who have indicated an intention to present in their registration form, followed by a general discussion amongst Indigenous intervenors and other participants.

**Day 2      Wednesday, 22 June 2022      9:30 am – 4:30 pm**

**9:30 am – 4:30 pm      Part 2 – Topic-by-topic facilitated discussion**

Four topics are proposed to help focus the discussion. As explained, these topics are not meant to be exhaustive, and additional topics can be recommended. The facilitator will lead a discussion through questions, answers and comments.

**Topic 1      Establishing appropriate baselines for determining cumulative effects**

In relation to this topic, we may discuss the following, as applicable:

- What are the key purposes of establishing a baseline when considering cumulative effects
- What is the appropriate date for such a baseline
- What information is required in such a baseline
- How can Indigenous knowledge be incorporated into the baseline
- To what extent does finding the existing cumulative effects to already be significant affect the need to look at baselines
- How would establishing an appropriate baseline aid in setting thresholds and indicators for limits on development
- If additional information is required, how much time would be needed to prepare this information

**Topic 2      Consideration of upstream development in the cumulative effects assessment for this Project**

In relation to this topic, we may discuss the following, as applicable:

- To what extent should upstream development (i.e., development related to the supply of product to be transported by the proposed Project) be considered in the cumulative effects assessment of the Project
- What level of detail is required regarding such upstream development
- How should a lack of certainty (e.g., regarding the exact location and timing of such upstream development) be considered

- What key measurements of such upstream development should be estimated (e.g., area of disturbance or fragmentation, new kilometers of roads and pipelines)
- To what extent does finding the existing cumulative effects to already be significant affect the need to look at upstream development
- How much time is needed to prepare information on upstream development and at what step in the hearing process this information should be filed

**Day 3 Thursday, 23 June 2022 9:30 am – 4:30 pm**

**9:30 am – 4:00 pm Part 2 – Topic-by-topic facilitated discussion  
(continued from Day 2)**

**Topic 3 Cumulative effects on the rights of Indigenous peoples**

In relation to this topic, we may discuss the following, as applicable:

- What approach and methodology should be used to assess cumulative effects on the rights of Indigenous peoples
- How can Indigenous knowledge be incorporated in this approach and methodology
- What are appropriate spatial and temporal boundaries to assess cumulative effects on the rights of Indigenous peoples (e.g., certain land area; traditional territory; Treaty area)
- What are some general and specific mitigation measures, beyond project-specific mitigation, that should be considered to address cumulative effects on the rights of Indigenous peoples
- How can a cumulative effects assessment take into account the exercise or practice of Indigenous rights of each of the potentially impacted Indigenous communities
- What are methods and criteria for determining the significance of cumulative effects on the rights of Indigenous peoples (e.g., thresholds or indicators)
- How much time is needed to prepare such information and at what step in the hearing process this information should be filed

**Topic 4 Offsets**

In relation to this topic, we may discuss the following, as applicable:

- What should offsets apply to biophysical resources (e.g., to specific species, or more generally to offsetting land disturbance)
- What should offsets apply to for the rights of Indigenous peoples (e.g., Treaty area)
- To what extent can offsets for biophysical resources (e.g., replacing habitat for a particular species) help to offset impacts on the rights of Indigenous peoples

- What information is necessary to determine the potential effectiveness of offsets, both biophysical offsets and those applied to rights of Indigenous peoples
- How much time is required to generate such information and at what step in the hearing process this information should be filed
- Should a preliminary offset plan be required, and if so, what should be the minimal contents
- How can Indigenous knowledge be incorporated into the development of offsets
- What principles should drive an effective offsets plan (e.g., equivalency, additionality, locations, timing, permanence, accountability, others)

**3:00 pm – 4:30 pm      Closing remarks**

A review of the roundtable and next steps in the hearing process:

- i) Brief oral summary of views from all parties on what the cumulative effects assessment methodology ought to be and what additional filing requirements or guidance is necessary
- ii) Closing remarks by Commissioner Penney
- iii) Closing prayer and/or ceremony (if desired)