



NorthRiver Midstream NEBC Connector GP Inc. NorthRiver NEBC Connector Project Workshop Summary Report

14 April 2022

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1. Background

On 18 November 2021, NorthRiver Midstream NEBC Connector GP Inc. (**NorthRiver**) filed its application (**Application**) for the NEBC Connector Project (**Project**) with the Canada Energy Regulator (**CER**) ([C16186](#)).

On 11 January 2022, the Commission of the CER (**Commission**) released the Notice of Public Hearing and information on the registration to participate process ([C17132](#)). Convening a public hearing will depend on the Commission's decision regarding the completeness of the Application.

On 14 February 2022, through Ruling No. 3, the Commission determined who could participate in the hearing as intervenors, and the List of Parties was issued ([C17709](#)).

On 17 February 2022 ([C17758](#)), the Commission announced opportunities to provide comments on a proposed Timetable of Hearing Events (**Timetable**) and a draft List of Issues. This included providing comments orally at a virtual workshop (**Workshop**) and/or in writing in advance of the Workshop. These opportunities were provided to NorthRiver, all intervenors, the Crown Consultation Coordinator (**CCC**), and any Indigenous communities on the Crown list provided by the CCC who indicated their intention to intervene, and thus become a party, prior to the Workshop occurring.

Written comments were due by 3 March 2022, while the Workshop was held over three days, on 9-11 March 2022. To aid in providing comments, the Commission provided a list of questions and discussion topics.

On 28 March 2022, the preliminary Workshop Summary Report was circulated to those that provided written comments or attended the Workshop for a two-week written comment period.

Following the comment period, CER staff incorporated the feedback received and finalized the Workshop Summary Report. It will be placed on the public record and the Commission will consider it in developing the Hearing Order and preparing the final List of Issues.

2. Workshop

The Workshop consisted of three separate sessions and was facilitated by a neutral third party, Moving Forward Ltd. The Workshop was held virtually using the Microsoft Teams platform. It was not recorded and no transcripts were produced. CER staff attended the Workshop. While Presiding Commissioner Kathy Penney welcomed participants to the session on 11 March 2022, there was no other participation or involvement of Commissioners during the Workshop. The sessions included introductions of all participants and a roundtable approach was taken for participants to ask questions and provide comments.

A brief description of each session is provided below:

9 March 2022 (1:00 – 3:00 pm MST)¹

The purpose of this introductory session was to provide an overview of the CER, the Commission, typical hearing processes, and the draft List of Issues, with a focus on Indigenous peoples' participation in the hearing process. CER staff answered questions about these topics.

10 March 2022 (9:30 – 3:00 pm MST)

The purpose of this session was to receive all parties' comments on the proposed hearing process and the draft List of Issues. This discussion was guided by Appendices 1, 2, and 3 to the Commission's 17 February 2022 letter.

11 March 2022 (9:30 – 3:00 pm MST)

The purpose of this session was to hear from Indigenous peoples and receive comments on matters relating to Indigenous peoples' participation in the hearing, including on the proposed hearing process. This discussion was guided by Appendices 1 and 4 to the Commission's 17 February 2022 letter.

3. Workshop Summary Report

This Workshop Summary Report provides a summary of the comments received by the CCC through its early engagement² and Crown consultation activities, written comments filed on the public record by 3 March 2022, and comments heard at the Workshop. Although written comments are not reiterated in their entirety in this report, the full written comments are on the public record and will be considered by the Commission. Links to these written comments are found in **Appendix 1**.

This Workshop Summary Report does not attempt to repeat all of the comments received. Rather, it is intended to capture the major themes expressed. The Workshop Summary Report is high-level, general, and does not attribute comments received to specific participants. This was done to encourage open dialogue from those participating in the Workshop.

Some perspectives included in the written comments and shared at the Workshop were outside the scope of this engagement process, which was limited to addressing the proposed hearing process, draft List of Issues, and matters relevant to Indigenous peoples' participation in the hearing. Such comments, including those regarding the adequacy or availability of participant funding, are included in **Appendix 2**.

¹ Another session was originally planned for the morning of 9 March 2022 to cover similar topics as the afternoon session, but without the focus on Indigenous peoples' participation in the hearing process. Due to the limited interest expressed in the morning session, it was combined with the afternoon session.

² This included issues raised by non-Indigenous communities found in Appendix A of the Summary of Issues document ([C15789](#)).

4. Summary of comments received

4.1. Proposed Timetable

Feedback on the proposed process steps

- Several Indigenous communities assert that the Project must be aligned with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (**the Declaration**) and Canada's commitment to those principles, meaning that all issues must be framed with and integrate Indigenous interests and concerns. Modifications to the hearing process are encouraged to allow for the proper consideration and assessment of the Project in the context of key Declaration principles.
- One participant expressed no major concerns with the proposed Timetable and is appreciative of the reminders of upcoming tasks and deadlines being sent by the CCC.
- Would like to reserve the right to add to the List of Issues at a later date. Suggest altering the wording of the second process step (i.e., Commission releases completeness determination, Hearing Order, and final List of Issues) to explicitly acknowledge that the List of Issues is not "final" but can be adjusted at a later date.
- Amend the Timetable to include a first and second submission from the CCC (3 March 2022 and 24 March 2022, respectively).
- With respect to the process step for filing supplementary evidence (as proposed for May 2022), further clarity is requested as to the nature of the evidence sought, given that this step is currently scheduled for after the Commission has issued its completeness determination.
- Amend the Timetable to include a process step/deadline for parties to file motions to compel further and better responses to information requests (**IRs**). This process step should occur after parties file their responses to IRs. Having a process step to consider any such motions would provide parties an opportunity to seek Commission direction regarding the adequacy of responses and would also eliminate the need for a second round of IRs. With this scenario, cross-examination would replace the second round of IRs. IRs are intended to clarify evidence and, if they occur at the end of the proceeding, it would not be clear whether the concerns have been addressed.
- The CER and NorthRiver have no process in place to consider full cumulative impacts, as this would require assessing the total disturbance from all industrial activity on the traditional territory of a First Nation, and the extent to which the remaining land base was capable of fulfilling the Treaty promise.
 - Treaty promise includes provisions contained within Section 35 of the *Canadian Constitution Act, 1982* (section 35 Aboriginal and Treaty rights); as well as the Declaration which states "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters, coastal sea, and other resources which they have traditionally owned or otherwise occupied or used; and to uphold their responsibilities for future generations in this regard...."
- If the Commission is to properly assess cumulative impacts, and, in particular from upstream development in the Montney, significant evidentiary mechanisms would be required. Time must be set aside in the hearing process for that assessment as well as related cross-examination. Suggest that a separate process and hearing for this issue be scheduled. At a minimum, the Timetable should identify times and mechanisms to test this evidence.

- Request that the CER put this process on hold and design a joint federal-provincial environmental assessment and cumulative effects process. The need to consider the requisite provincial approvals, and for the province to exercise a proper cumulative effects framework as required by the *Yahey*³ decision, would require a joint federal-provincial process.
- The current Application does not contain the facts required or that would allow the principled assessments of the impact of upstream development. The Commission must determine that the Application as filed is not complete.
- Engagement on the offset plan proposed by NorthRiver has not occurred to date. Further, it is unlikely that an “offset” approach can address the full cumulative effects.
- The design and implementation of NorthRiver’s plan to offset any residual effect of the Project and the Project’s contribution to cumulative effects on such rights and land use must be explicitly included within the Timetable and requires consent from Indigenous peoples before the Commission can move forward with a cumulative effects assessment. Prior to the workshop on cumulative effects, NorthRiver should file a progress report (and feedback received to date) relating to offset dialogues held with Indigenous communities and any other cumulative effects mitigations and/or accommodations that NorthRiver may advance.
- Amend the Timetable to replace the current second and third submission from the CCC with the third and fourth submission (note that the second submission was filed in March 2022).
- Clarification is requested on what letters of comment the Commission is referring to in the “Deadline for letters of comment” process step (proposed to occur in late June 2022).
- Please define “parties adverse in interest” as indicated in the proposed July 2022 process step regarding the filing of IRs on intervenor evidence.
- The process step in which NorthRiver files comments on potential conditions should also include comments on the input received from Indigenous communities.
- An additional step should be added to provide a comment period for Indigenous communities to share feedback on the last CCC submission. This is proposed to occur in January 2023. NorthRiver should also be provided the opportunity to comment and clarify information contained in the submission.
- The process step in which NorthRiver submits reply evidence should also include “files supplementary evidence and shares feedback on potential Indigenous community concerns and requests to date, including how they have been taken into consideration.” The proposed timing for this is January 2023 (rather than October 2022).
- The Timetable should include a step setting out when the 90-day legislated Governor in Council (**GIC**) timeframe begins (i.e., once the Commission’s Recommendation Report is released).

Feedback on the proposed schedule

- Many participants expressed concern with process steps currently scheduled for July to September (i.e., oral Indigenous knowledge sessions, filing of intervenor written evidence, intervenors filing responses to IRs, and possible workshop on potential conditions). It was suggested that these steps be moved to mid-September so as to allow for full engagement of Indigenous peoples. The summer months are generally a time when Indigenous peoples are out on the land exercising their rights and/or attending gatherings.

³ *Yahey v British Columbia*, 2021 BCSC 1287.

- One participant is wondering how realistic the timelines are, particularly given the amount of work involved. The cumulative effects issue in itself is huge.
- One participant had no concerns around timelines at this time, but wanted to reserve the right to raise concerns.
- Several parties requested that a minimum of 14 days be provided for Indigenous peoples to provide their IRs following the deadline for NorthRiver to file its supplementary evidence. This would allow Indigenous peoples the time required to thoroughly review NorthRiver's materials and to engage the requisite internal, professional, and technical expertise.
- Request that at least three weeks be provided for NorthRiver to respond to intervenor IRs.
- The third (formerly second) submission from the CCC should occur in late June 2022 (rather than early June 2022).
- The date for the Commission to issue potential conditions for comment should be revised to mid-September 2022.
- If a conditions workshop is to occur, it should be held prior to NorthRiver filing its reply evidence.
- The possible workshop on potential conditions should occur in late September or early October.
- Intervenor comments on potential conditions should be filed in late October 2022.
- NorthRiver should file comments on potential conditions, and also be required to include comments on the input received from Indigenous communities, in early November.
- The Timetable must be adjusted to allow a full cumulative effects assessment for those Indigenous peoples and communities that require it.
- The fourth (formerly third) submission from the CCC should occur in late November 2022 (rather than September/October 2022).
- The step involving either oral cross-examination or a second round of IRs (including reply evidence from NorthRiver) should be pushed back to February/March 2023.
- Written or oral final argument should be held within one to two weeks of the conclusion of cross-examination or the second round of IRs.
- Final argument from NorthRiver should occur in late February 2023.
- Suggest that the Commission explicitly set out the full regulatory timeframe (i.e., the 15-month timeline once an application has been deemed complete, when pauses can occur in the process, and the 90-day GIC process).
- Obtaining a revised schedule of events as soon as possible is critical to the planning process.

4.2. Methods of participating in oral hearings and hearing locations

Methods of participating

- Some participants indicated a preference for an in-person hearing, to the extent that it would adhere to health protocols. Virtual meetings are very difficult for Elders and key Knowledge Keepers due to mobility and accessibility issues.

- A number of participants would like to see hybrid options for virtual, written, and in-person participation made available so that participants can choose the format that best works for them, while taking into account health and safety considerations.
- Several participants would like the opportunity to participate either in-person or in writing. They also suggested that it is difficult to assess the credibility of the evidence provided without an in-person hearing (or virtual if there are COVID restrictions). Evidence should be tested through cross-examination.
- After the filing of reply evidence, strong preference would be to proceed with oral cross-examination.
- Some participants expressed the need for Indigenous interpreters.

Location

- Some suggested locations are Calgary, Edmonton, or Grande Prairie.
- A few participants indicated a preference for a location within or close to where their communities are situated in northeast British Columbia (particularly for the oral Indigenous knowledge sessions).

Format for final argument

- Prefer written final argument and oral summary final argument.
- Prefer oral argument with an option for parties to file written summaries of their oral arguments afterwards, so as to avoid the need to read references to the record into the transcript.

4.3. Draft List of Issues

Concerns with the wording of subsection 183(2) of the Canadian Energy Regulator Act (CER Act) regarding Indigenous knowledge that “appear[s] to be relevant and directly related to the pipeline.”

- Several participants are concerned with the term “directly related” in subsection 183(2) “as it is ambiguous and on its face, appears contrary to the *Yahey* decision.” The term should be defined as “including direct and cumulative effects of the Project, giving due consideration to the cumulative impacts arising from other development and pipelines in the Project area.”

Concerns with referring only to “the Project” and not to the related development

- For several of the proposed issues in the draft List of Issues (i.e., Issue Nos. 1, 2, 8, 11, and 20), reference is made only to “the Project.” In all of these cases, the upstream development associated with the Project, and on which the Project relies, must also be included.

Concerns with specific issues

Issue No. 1 The environmental effects, including any cumulative environmental effects. The assessment will include changes to the environment and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the Project, including:

- any cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out, and
- The result of any interaction between those effects.
- The effects on species at risk should be more clearly set out as British Columbia is looking at a *Species at Risk Act* subsection 11(1) conservation agreement with Canada regarding caribou.
- The matter of cumulative **environmental** effects does not specifically make reference to the inclusion of Indigenous wisdom in its analysis or mitigation/accommodation strategies.

Issue No. 5 The interests and concerns of Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes.

- Several participants asserted that the phrase “current use of lands and resources” is contrary to the *Yahey* decision and does not capture the impact of cumulative effects on Indigenous peoples’ ability to exercise their Aboriginal and treaty rights, including Aboriginal title. Limiting consideration to the concerns of Indigenous peoples regarding the “current use of lands and resources” is not sufficient. All concerns regarding the use of their land and resources to exercise their Aboriginal and treaty rights, including those rights and practices that cannot be sustained due to the cumulative effects of development, must be both considered and addressed by the CER and NorthRiver.
- Several participants asserted that reference to “traditional purposes” in Issue No. 5 is limiting and fails to recognize that Indigenous rights and practices evolve and can take on a modern form. Per the Supreme Court of Canada in *R v. Van der Peet*, Indigenous rights are “not frozen in time.”
- Several participants recommended the revision of Issue No. 5 to: The interests and concerns of Indigenous peoples, including with respect to their use of lands and resources to exercise their section 35 rights and their inherent rights as Indigenous peoples.
- The impact on Indigenous traditional rights references the ability to practice traditional ways of life. As such, impacts extend well beyond ceremonial sites and burial grounds, to include the impacts experienced through the loss of plants, animals, aqua life etc. and the taking up of land that precludes these species to flourish.

Issue No. 7 The issues summarized in the CCC’s Summary of Issues.

- Some participants were not engaged by the Crown during the early engagement phase, which resulted in the Summary of Issues not being reflective of their concerns.
- One participant had preliminary engagement with the Crown, but had not yet had an opportunity to confirm the accuracy of the issues summarized in the Summary of Issues. This participant seeks additional and meaningful consultations with the Crown in respect of the Project, including confirmation of its full list of issues and potential mitigation and accommodation measures.
- One participant asserted that the Summary of Issues provides an accurate high-level summary of the issues identified to date, but further and meaningful consultation is still required so that the participant can more fully identify its concerns and pursue appropriate accommodations.
- Need to understand precisely which additional concerns the Commission is considering that are not otherwise captured in the other issues identified in the draft List of Issues.

Issue No. 8 Mitigation measures for addressing the Project's effects.

- Several participants noted that there is no provision for the mitigation measures required to address the Project's effects on the rights and territories of Indigenous peoples.
- Need to make explicit the need for offsetting to address cumulative effects. Most offsetting plans only address residual effects, but the *Yahey* decision makes this obsolete. It might be appropriate for offsetting to be a stand-alone issue (or at least a sub-issue) and a separate workshop might be required to address offsets. There are currency, timing, scaling, and cultural effects to offsetting. Project-specific mitigation is not sufficient for addressing impacts on rights.
- Participants asserted that this deficiency is inconsistent with the Crown's constitutional obligations to Indigenous peoples, and the principles of the Declaration, which require Canada to implement appropriate measures to mitigate adverse environmental and culture impacts of development on Indigenous peoples.
- Accordingly, participants recommended that the following issues be added:
 - Mitigation measures for addressing the Project's direct adverse effects upon the Indigenous rights of several nations (as specified in the written submissions).
 - Mitigation measures for addressing the impact of cumulative effects on the Indigenous rights of several nations (as specified in the written submissions).

Issue No. 16 The financial resources, financial responsibility and financial structure of the applicant, the methods of financing the Project and the extent to which Canadians will have an opportunity to participate in the financing, engineering, and construction of the Project.

- Several participants noted the absence of an item providing opportunity for Indigenous peoples to participate in all phases of the Project. They asserted that priority must be provided to Indigenous peoples to engage in opportunities arising from the Project, including commercial and employment opportunities.

Issues that should be added

- See specific recommendation under Issue No. 8 above.
- Several participants noted that specific references to the Declaration are absent from the draft List of Issues and recommend the following issues be added:
 - How the Project is consistent with the Declaration and Canada's obligations under the *Declaration on the Rights of Indigenous Peoples Act (Declaration Act)*.
 - What steps the Crown will take to obtain free, prior, and informed consents of Indigenous peoples.
 - Sub-issues on cumulative effects, including, but not limited to:
 - maintaining and improving the ecological integrity of the area of the Project, including the ecological basis to sustain meaningful exercise of Indigenous rights and community health;
 - facilitating inter-generational transfer of knowledge within Indigenous communities;
 - reclamation of lands within the Project footprint;
 - adherence to Indigenous risk thresholds and ecological protection minimums;

- ongoing consultation by the CER and NorthRiver with Indigenous peoples; and
- facilitating and supporting Indigenous monitoring at every stage of the Project to mitigate and avoid adverse impacts from cumulative effects.
- The cumulative effects of upstream development.
- The number and location of new wells that will be required to supply the pipeline over time, and the impacts of those wells, well sites, roads, pipelines, and other ancillary disturbance on treaty rights.
- The location of the “wet gas” wells that will be served by this Project.
- The likelihood (or not) of provincial approvals for new wells and development.
- The viability of the Project if Blueberry River First Nations’ treaty rights are respected and there is no further development authorized by the Province.

4.4. Technical workshops

Workshop on cumulative effects

Whether a workshop on cumulative effects would be of value

- Multiple participants strongly urged the CER to conduct a technical workshop on cumulative effects. They assert that such a workshop would be consistent with the principles of the Declaration and *Yahey*.
- It was asserted that the workshop would bring value and that NorthRiver should participate so it can hear directly from impacted Indigenous communities.
- For the proposed workshop to be meaningful, Indigenous communities would need time and resources to collect information and conduct technical oversight of the cumulative effects approach.
- One participant stated that the idea of a workshop on this important issue is of little value, and insufficient to address concerns. A full and separate evidentiary hearing process is required to address this issue. A workshop is often merely an opportunity “to blow off steam” or “to check boxes.”
- The scope and scale of accessing the cumulative impacts of the project is a critical component of the process, however it is unclear as to how this will be accomplished. The assessment will take significant resources which have not been accounted for in the existing funding agreements. Funding is considered to be “unrelated to the workshop” however ensuring Indigenous communities have the necessary capacity to review and respond in a meaningful manner is fundamental to the entire process. The establishment of a working committee should be considered however, it is also recognized that each community will have its own criteria for assessment and areas of concern. Gaining consensus will be a challenge.

Whether it would be helpful for NorthRiver and/or the CER to give an overview of their cumulative effect methodology

- An overview of the cumulative effect methodology for the proposed project would be beneficial. To date, industry does not have a unified methodology on the definition, measurement, and mitigation of cumulative effects.

- It would be helpful if the cumulative effects methodologies of the CER and NorthRiver be provided in advance of the proposed workshop on cumulative effects, so that Indigenous participants can be better prepared to understand it and bring forward the Indigenous perspective.
- The workshop should be broad enough to allow time for Indigenous peoples to bring forward what they think a suggested approach and methodology should be with respect to the assessment of cumulative impacts on rights, culture, and a way of life. Presentations from Indigenous communities could be 20 minutes to half an hour. It should not be just how the CER or NorthRiver would approach it. A broader view would help determine what's in common and what gap exists. Elders' world views are holistic, which at times is at odds with the narrow view of the process. Respect should be given to this holistic view.
- It would not be enough to just receive this information (i.e., simply accepting that NorthRiver has confirmed that there will be cumulative effects). It is important to be able to verify the methodology used by NorthRiver, particularly in the context of Yahey. The principles of Yahey must inform the methodology and also the Commission's assessment of cumulative impacts. The workshop should be fulsome; it cannot separate technical from legal aspects.
- A cumulative effects assessment is an exercise that requires technical and legal expertise, and which thus must be informed by a proper understanding of Indigenous legal orders and recent developments of the common law in this area. As such, Indigenous groups should be permitted to frame their discussion at such a workshop in accordance with appropriate technical and legal considerations.
- The cumulative impacts methodology in NorthRiver's ESA documents needs to be reviewed and discussed by all participants and is likely best handled in a workshop format. Again, this will require resource capacity and capability. There is interest in incorporating the Indigenous perspective into the process.

Whether spring 2022 is good timing for the workshop and when the workshop could take place relative to other hearing steps

- Spring or early summer is a preferable timing. The topic of cumulative effects should be addressed early in the process as well as throughout the hearing and lifetime of the Project.
- It appears that a lot of work needs to be done in advance of this workshop. We would want to know the steps prior to the workshop so that data can be collected. We may not be able to pull this information together by late May.
- In order for Indigenous peoples to be adequately informed, the hearing should allow for time so they can collect this information, plan, and evaluate. It should not be too early in the process.

Topics for discussion at a cumulative effects workshop

- Definitions of cumulative effects, appropriate baselines for determining cumulative effects, measurement of cumulative effects, mitigation, and future legislation regarding cumulative effects.
- Establishing a common understanding of the baselines with regard to impacts in and around the Project, as informed by Indigenous knowledge. A few participants agreed that the appropriate baseline would be pre-development and pre-treaty.
- How cumulative effects have impacted traditional use and Indigenous peoples' connections to the lands and waters in the territory since true baseline (which is a longer timescale than is traditionally considered).

- Should generate an understanding of how there have been impacts on Indigenous rights. How the landscape has changed over time and how the effects have been felt. How the Project can contribute to that and how the Project can help reverse cumulative effects.
- How the principles of *Yahey* should inform the methodology and the Commission's assessment of cumulative impacts.
- What an acceptable level of cumulative impact is. Is there a specific level of disturbance, measured by percentage, for different types of areas?
- The impacts of project splitting and concurrent permitting on assessing cumulative effects.
- Proximity of impact and appropriate scope of cumulative effects when there are multiple disturbances, both upstream and in the same region as the Project. This includes appropriate spatial and temporal scales. Concerns about scope being too narrow when traditional lands are quite big.
- Potential for the route becoming a major project corridor (e.g., electrifying the Montney, intense water use for fracking shale gas).
- How interacting effects are to be categorized.
- The government's role versus that of companies. It should not just be the responsibility of one company. It's the role of all companies, including existing right-of-way holders. Governments need to lead.
- What would happen if the CER found the cumulative effects assessment to be inadequate.
- Cumulative effects assessment for interacting projects should be done by all the proponents, and not just a single applicant.
- Creating penalties for cumulative effects, similar to what there is for remediation.
- What regulatory and legislated tools or other authorities the CER and federal government have to address concerns of Indigenous peoples (e.g., regarding indicators or baseline information).
- Within the possible technical workshop on cumulative effects, include potential impacts on the rights and interests of Indigenous peoples.
- The cumulative effect of doubling the width of a linear disturbance is not additive. Increasing the area of disturbance needs to be considered differently. Effects to wildlife could be far more serious than what is currently contemplated for this process as summarized in the proponent's ESA.
- There needs to be an understanding that an Impact Benefit Agreement is not a substitute for addressing cumulative effects on the land; they are two separate discussions. There is potential to address both economic benefits and cumulative effects to avoid issues of alienation. Therefore the hearing process should be designed to allow for the proper understanding of cumulative effects in the context of evidence of the Proponent, as well as evidence that may be provided by Indigenous groups, including through the Oral Indigenous Knowledge process.
- Any cumulative effects assessment need to be rights based, meaning it must include evidence from potentially impacted Indigenous communities. It is the animals and plants that sustain them. To ensure that we do not have empty rights in the future, we need to be their caretakers and concerned about the cumulative effects.
- Offsetting must be higher than 1:1 ratio; however, an off-set approach is unlikely to fully address cumulative effects. While offsets measures should be an important consideration for

the Commission of the CER, an approach simply based on off-sets will not fully address issues regarding cumulative effects.

- The former practice of the National Energy Board/CER of considering only the impact of the project footprint, then finding that to be a minimal contribution to the overall impacts, and therefore acceptable with some mitigation, is no longer enough.
- The Court in *Yahey* found that a proper cumulative effects assessment must have “thresholds” and contemplate some limits on total development (consistent with treaty rights).

Potential format and content of a workshop on cumulative effects (e.g., third-party facilitation, transcribed, etc.)

- Strike a committee of participants (who may have differing views) to organize the workshop.
- The workshop should be facilitated by a neutral third party and have both open and in-camera timeslots for discussion.
- Share the draft agenda for comment by parties. The draft agenda could also be used to solicit any further input from intervenors for the agenda.
- The workshop should be recorded or transcribed, so it can provide all parties with an objective evidentiary record that could be used during subsequent stages of the proceeding.

Whether a report should be issued by the CER after the workshop

- A report should be issued after the workshop so that it can be referenced throughout the hearing and lifetime of the Project.

Conditions workshop

Whether a workshop on potential conditions would bring value to the hearing process

- A conditions workshop would bring value as the information shared would allow for greater understanding of the Project and the protection of the Indigenous interests potentially impacted by the Project.
- The scope would need to be expanded to allow for meaningful input from Indigenous peoples. The workshop would best occur after other information (such as local impacts of the Project, contribution of cumulative effects) is better understood, including a really good understanding of potential impacts on rights. It is hard to talk about conditions until you first have a good understanding of the spatial and temporal impacts of the Project.
- A conditions workshop will require a commitment of time and capacity in order for it to be meaningful.
- Have participated in a conditions workshop for another project, and found it was helpful in allowing parties to have direct engagement on a process that would normally occur in writing. It would also help the Commission ensure that the conditions are appropriate for the requirements of Indigenous participants in this process.

Whether it would be helpful for the CER to give an overview of the potential conditions, in a workshop format or otherwise, during the hearing process

- Would be helpful for the CER to clarify what conditions it might be considering.

Whether August / September 2022 would be good timing for the workshop and when the workshop could take place relative to other hearing steps

- Agreeable to the proposed August/September 2022 timeline.
- The workshop should take place after other information (such as local impacts of the Project, contribution of cumulative effects, potential impacts on rights) is better understood, particularly across spatial and temporal scales.
- The workshop should be held prior to the filing of NorthRiver's reply evidence, so that evidence can better address any economic or technical implications of the potential conditions.

Potential format and content of a workshop on potential conditions

- Prefer an option for both virtual and in-person participation, with open and in-camera timeslots for discussion.

Whether a report should be issued by the CER after the workshop

- Supportive of having a report issued, as it could provide basis for follow-up clarifications after the workshop.
- A report should be issued after the workshop so that it can be referenced throughout the hearing and lifetime of the Project.

4.5. Matters relevant to Indigenous Peoples participating in the hearing

Indigenous knowledge

How best to receive information in a way that is meaningful to Indigenous peoples

- Several participants suggested that the CER could honour and respect Indigenous Knowledge Keepers by asking each Indigenous community to advise on the appropriate protocol for that community, and then by observing it to the best of the CER's ability. This practice would also apply when conducting Indigenous knowledge sessions.
- Several participants indicated their preference for in-person Indigenous knowledge sessions, when possible.
- Sharing Indigenous knowledge in a virtual format would not be in keeping with custom and practice for the sharing of Indigenous knowledge, and would limit the availability of Elders and Knowledge Keepers to provide this evidence. An in-person hearing would allow for the proper observance of protocol (which is required in such circumstances) and also provide for a more engaging session.
- Conducting the "hearings" in or close to community is important. If Elders and Traditional Knowledge Holders are being asked to share their wisdom, it would be respectful of the CER to experience the community first-hand.
- Have interpreters available, maybe with individual microphones, as Elders prefer to speak in their own language. Speaking in one's native tongue is more relevant when it comes to sharing traditional knowledge.

How Indigenous knowledge can best be protected

- Documented Indigenous knowledge can be managed by a trusted third-party service who has a non-disclosure agreement with an Indigenous community.
- Indigenous knowledge is considered intellectual property and cannot be shared without consent.
- “Share what you want to share; keep what you want to keep.” Not all information needs to be shared; choose what you want to safeguard.
- During the public hearing, specific points along the pipeline should not be identified. In public settings, participants should make best efforts to keep it general to not inadvertently reveal traditional knowledge.
- Can sign confidentiality agreement with proponent to restrict the proponent’s use of information from traditional land use studies.

How the hearing process could be made less adversarial

- Do not like that the hearing process appears to be full of lawyers, which almost requires hiring lawyers and consultants.
- Building set-up should not be so formal. Panel should not be on a raised platform. If everyone is on the same level it is not as intimidating.
- Dress matters. If Commissioners show up in three-piece suits, it is intimidating right from the get-go.
- Be mindful of the choice of language in questions and discussions. Words like “hearing” conjure stress and fear.
- Wording and terminology is very important and needs to be modified to represent the spirit in which information is being shared. Examples are hearing, cross examination, argument etc.
- Proactively seek information on what protocol should be offered and to whom. Where possible, allow for protocol to be observed prior to a session and in the same venue that the session will be held.
- The CER could issue a personal invitation to Elders, once it is determined who will participate. This would show respect.
- Direct and personal communication with Indigenous communities is preferred and should be used as much as possible. Proactive outreach and frequent follow-up by the CCC and Process Advisors are essential.
- In other proceedings, the questioning of Knowledge Keepers (by both the Panel and the applicant), was found to be adversarial because they felt they were being challenged on whether the knowledge they were providing was in keeping with their use of the land or traditional territory. One should not challenge Elders because their knowledge is sacred and it is a gift to receive such knowledge. Elders are the guardians of traditional knowledge for their peoples and carefully consider what information should be shared. Challenging an Elder is one of the most insulting and disrespectful things that can be done. Many participants agreed with this. Follow-up questions are acceptable (and may be in writing later), so long as they are not adversarial. Either be tactful or do not say anything bad. Ensure that Elders being asked questions are comfortable in taking questions or answering them on the spot.

How the hearing process can be made more efficient while still remaining fair

- To best be able to prepare, would like additional support from the CCC on what to expect during a hearing.

How best to ask Elders or Knowledge Keepers questions after the sharing of Indigenous knowledge

- Preference is for Elders and Knowledge Keepers to have the ability to respond through written comments. This is a less adversarial process, allows Elders time to think, and feels less like an interrogation.
- Ask Elders and Knowledge Keepers individually ahead of time as to what their preference is. Some may choose to answer within the proceeding, whereas others may prefer to provide written responses afterwards. Any questioning should be respectful.
- Note that there is an inherent power dynamic in hearings. Even when an Indigenous community indicates a preference to not receive questions during the hearing, a Commissioner might still ask verbal questions. The Elder may feel pressure to respond. A better place to explore this is later, through an IR, rather than questioning an Elder in the moment.
- Be deliberate in the choice of language when communicating with Elders and Knowledge Keepers. For example, the term “cross-examination” suggests being on trial. Elders are not on trial; they are offering Indigenous knowledge. This comment was supported by other participants.
- Much can get lost in translation when asking Elders questions. Most Indigenous communities likely prefer follow-up in writing.

How the Commission can further demonstrate that it values Indigenous knowledge in its hearing process / recommendation report

- “Indigenous Knowledge is an all-encompassing body of knowledge tied to a sense of place, rooted in culture and worldviews, and encompasses closely intertwined ecological and land use knowledge. Indigenous knowledge brought forward by impacted groups should be given the same weight as technical data during the hearing, as it comes from the people most closely tied to the land.”
- Shared decision-making is key for communities within whose territories the Project will be located and would ensure that Indigenous knowledge is part of the decision-making process.
- Several parties assert that the Declaration should be used as a lens for the CER’s hearing processes. For example, topics surrounding the commercial necessity of the Project must be considered with the context of the *Declaration Act* and Declaration principles.
- “In-community” meetings, sessions, or site visits are important to ensure accuracy of what is being shared and discussed.
- Obtaining oral Indigenous knowledge best happens close to where a Knowledge Keeper would deliver that evidence and occurs in conjunction with the offering of protocol. While there should be flexibility to accommodate for varying interests and practices of different Knowledge Keepers, generally it is preferable to meet closer to or within communities.
- If Indigenous knowledge is deemed “out of scope,” the Commission should provide that feedback at the session, or in comments shortly thereafter, rather than waiting until the recommendation report.

- Request that some Project conditions be community-specific and have real inclusion for those communities to review and be a part of. It was suggested that this would allow for greater involvement in the determination of community-specific conditions, oversight, and/or necessary community-specific accommodations.
- One participant felt that the last hearing they went to did not amount to much. Wondered if it was worth the time or an exercise in futility.
- The CER could provide a clearer explanation in the recommendation report of how it assessed Indigenous knowledge, how Indigenous knowledge was assessed against the proponent's evidence, how the CER made a determination of whether there is an impact, and how mitigation is to be applied. The recommendation report should provide less reliance solely on the proponent's evidence, and more emphasis on where the proponent can use Indigenous knowledge and further mitigate Project impacts. In its report, the CER should show how it assessed Indigenous knowledge against the evidence of the applicant, and assess if there is an impact and whether standard mitigation is enough. It should not be a regurgitation of the applicant's evidence.
- Concerns with focus on the "national interest."

CCC submissions

Feedback regarding the timing of CCC submissions/updates

- Before commenting, would need a clearer understanding of how the CCC would interact with the community, and what goes on behind the scenes in the CCC's interactions with both the CER and NorthRiver.
- For really significant issues such as cumulative effects or offsetting accommodations, would it be possible for an Indigenous community to file stand-alone or additional submissions from what will be filed by the CCC?

Whether the hearing process should include an opportunity to ask questions of the CCC on its submissions

- No need for questions to be asked of the CCC if there is an opportunity for Indigenous communities and NorthRiver to give feedback on the last submission made by the CCC.
- It would be very beneficial to be able to ask questions related to the CCC's submissions. Indigenous peoples are not able to question the Commission directly. Lots of good work and dialogue can happen at the Crown consultation table, but the CCC sometimes is unable to say what the impacts will be or whether they will be appropriately mitigated. It is important to show the Commission that there is not always agreement. Regardless of whether the CCC is an intervenor, they're the only entity that Indigenous peoples can ask questions of to have a two-way dialogue and accountability on the record. Others supported these comments.

5. NorthRiver's response to comments from participants⁴

- NorthRiver agrees with the Commission's Ruling No. 1 that it is within the CER's jurisdiction to consider the effects of the Project on the exercise of Indigenous rights. This is supported by sections 56 and 183 of the CER Act.
- With regard to the question of whether it is appropriate for the Commission to consider cumulative effects, it is within the draft List of Issues and within the Commission's jurisdiction to consider. There is a mandatory obligation for the Commission to consider cumulative effects, as per section 183 of the CER Act. This is also reflected in Filing Manual requirements. NorthRiver is supportive of a workshop to discuss those cumulative effects.
- With respect to the proposal to have a separate hearing to deal with cumulative effects, NorthRiver feels that it could be quite complicated to compartmentalize, as there could also be effects on traditional land and resource use, effects on Indigenous rights, how those rights would be mitigated/accommodated, what consultation occurred, etc. NorthRiver is not in favour of a separate hearing on cumulative effects. Rather, NorthRiver feels this issue should be considered as part of the Commission's determination of the broader public interest.
- With regard to whether it would be helpful for NorthRiver to give an overview of their cumulative effects methodology, NorthRiver indicated it has no concerns with participating and providing parties with an overview of the cumulative effects methodology undertaken in the Environmental and Socio-Economic Assessment (ESA); however, the authors of the ESA are not legal counsel and should not be expected to take legal positions in the context of such a potential workshop. The most appropriate forum for such legal positions/submission would be in final argument. The authors of the ESA could explain how the ESA was conducted to address cumulative effects (including the baseline conditions used in the analysis).
- Regarding comments pertaining to upstream effects, NorthRiver understands that, if the Project is scoped too narrowly, the conclusion may be that the cumulative effects are not significant. However, the significance determination has already been made for wildlife, fish, and traditional land use as a result of *Yahey*. It is NorthRiver's view that there is no need to look at any upstream development because the ESA already agrees that those effects have been significant.
- While NorthRiver believes that the Commission should not have to assess upstream effects as part of this proceeding, concerns around upstream development could relate to the Commission's assessment of the need for the Project. The Commission can look at the committed capacity for the proposed pipeline and condition the approval of that pipeline on a certain contracted capacity.
- With respect to provincial approvals, NorthRiver would have to comply with BC Oil and Gas Commission and other approvals.
- Indigenous consultation has not yet occurred on an offset plan. NorthRiver's offset plan is not intended to include all cumulative effects from all projects. Rather, it would include the residual effects from the applied-for Project. The offset plan is also not meant to be a

⁴ Blueberry River First Nations' filed written comments to the Preliminary Workshop Summary Report also included several comments to address parts of NorthRiver's verbal responses given at the virtual Process Workshop. Blueberry took issue with NorthRiver's response that its offset plan is meant to include only the Project's residual effects. Blueberry River First Nations disagreed with NorthRiver that having a separate hearing would be complicated. Blueberry River First Nations also disagreed with NorthRiver's response that NorthRiver did not need to look at upstream development. Blueberry River First Nations' full filing is on the record at [C18464](#).

substitute for the discussions that Indigenous peoples are having with the provincial Crown as a result of the *Yahey* decision. NorthRiver does not believe it would be practical to start implementing an offset plan until such time as the Project is approved by Cabinet.

- With respect to mitigation measures, while they are clearly contemplated within Issue No. 8, NorthRiver has no concern in having them expressed more explicitly within the List of Issues (i.e., that there should be mitigation measures to address any adverse impacts on Indigenous rights).
- NorthRiver committed to filing a letter on the record containing links to the cumulative effects methodology in the ESA. This letter was subsequently filed on 11 March 2022 ([C18118](#)).

Appendix 1 Participants in the Workshop

Participants who filed written comments:

Participant name	Filing ID
Blueberry River First Nations	C17983
Kelly Lake Cree Nation	C17989
Driftpile Cree Nation	C18007
McLeod Lake Indian Band	C18008
Duncan's First Nation	C18009
Sucker Creek First Nation	C18010
Whitefish Lake First Nation	C18011
NorthRiver Midstream	C17985
Crown Consultation Coordinator	C18006

Participants who took part in one or more Workshop sessions:

Participant name	Organization
Matt Munson	Dene Tha' First Nation
Fred Didzena	
Shauna McGarvey	Doig River First Nation
Brian Milakovic	
Wes Rothlisberger	
Kieran Broderick	Horse Lake First Nation
Erin McWillis	Kelly Lake Cree Nation
Marnie Sutor	Kelly Lake First Nation
Chief Norman Calliou	
Dezmar Campbell	
Paul Anderson	Kelly Lake Métis Settlement Society
Shaun Raine	Louis Bull Tribe
Shaleigh Raine	
Nathan Prince	McLeod Lake Indian Band
Stephanie Rocheleau	
Eran Spence	
Lynn Smith	Peavine Métis Settlement
Steve Noskey	Sucker Creek First Nation
Norman Helewa	BC Ministry of Energy, Mines and Low Carbon Innovation
Cari-Lyn Epp	Environment and Climate Change Canada
Gillian Brown	
Abigayle Blackmore	
Ian Parsons	
Andrée McCracken	Natural Resources Canada

Participant name	Organization
Marit Heideman	
Martha Peden	NorthRiver
Aimee Giesbrecht	
Brenden Hunter	Fasken (counsel for NorthRiver)
Amy Barrington	
Amy Laji	MLT Aikins LLP (counsel for Driftpile Cree Nation, Sucker Creek First Nation, Duncan's First Nation, Louis Bull Tribe, McLeod Lake Indian Band, and Whitefish Lake First Nation #459)
Sarah Bidniak	
Katherine Bellett	
Carly Milne	Crown Consultation Coordinator
Brett Maracle	
Angelina Silver	
Britany Ostridge	
Rebecca Brown	
Karine Johnson	
Nick Thomas	Canada Energy Regulator
Suzanne Brown	
Christine Beauchemin	
Jessica Lim	
Tony Epp	
Natalia Churilova	
Marc Boucher	
John Nelson	Moving Forward Ltd. (facilitator)
Karla Reesor	
Melanie Gnyp	

Appendix 2 Other comments

The following comments, provided either in writing or orally during the Workshop, are considered to be unrelated to the purpose of the Workshop. However, they are included in this appendix for documentation purposes. During the Workshop, CER staff also answered questions regarding confidentiality, Indigenous knowledge, the *Canadian Energy Regulator Onshore Pipeline Regulations* review, Crown consultation, GIC process, and filing government correspondence as evidence. Participants are encouraged to file substantive comments related to the Project as evidence during the hearing, should it proceed.

Concerns with the CER's Participant Funding Program (PFP)

The PFP is not administered by the Commission. However, these concerns were passed along to the appropriate CER PFP staff. More information about funding can be found on the PFP page of the CER's [website](#). Please direct any questions about funding by email at PFP.PAFP@cer-rec.gc.ca or by phone at 1-800-899-1265 (toll-free).

- The practice of seeking reimbursement after the fact with receipts and invoices is onerous, cumbersome, and time intensive and, as a result, may be resulting in reduced engagement.
- The inability for staff to have time covered (with the exception of travel) is problematic and limiting.
- CER participant funding practices depart from those of former NRCan funding, as well as other federal government departments. The CER has the most cumbersome funding process and catch up is required.
- If the funding process continues in the current format, then meaningful participation of Indigenous peoples will be limited.
- Recommend grant funding with some level of reporting that is not too burdensome. One participant suggested a 15% administration fee.
- When participant funding was originally considered, were the types of workshops that we have been discussing contemplated? Given that there may be additional meetings and research amount of funding should be reconsidered.

Suggestions for NorthRiver

- With respect to traditional knowledge work, it is not appropriate for NorthRiver to have pre-determined locations as to where to look. It should be realized that there is private farmland, but they only own the top surface. There could be archaeological finds deeper. We wanted to fly the line with drones or walk the length of the line, but were not able to because there were already predetermined stops.
- Perhaps NorthRiver could make a deal with the existing companies and try to have predator/prey breaks every so often on the right-of-way. Could also account for existing game trails.

Other

- Cumulative effects go from 0% to 100%. At some point, there will be division among Indigenous communities because some are more economic development inclined, whereas others are not. The loss of the land, whether good or bad, still contributes toward alienation. Another participant agreed.
- While viewed as an unrelated to this project, The Indigenous Monitoring program recently introduced by the CER should be developed in parallel to this project. It has been some time since being first approached to participate and no updates have been provided.