Canada Energy Regulator | Régie de l'énergie du Canada

# Canada Energy Regulator Report

NOVA Gas Transmission Ltd.
GH-002-2020

Canada

# Canada Energy Regulator Report

In the Matter of

**NOVA Gas Transmission Ltd.**

Application dated 22 October 2020 for the NGTL West Path Delivery 2023 Project

GH-002-2020
May 2022

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## Glossary of Terms and Abbreviations

| | |
|---|---|
| ABC | Alberta/British Columbia |
| AEP | Alberta Environment and Parks |
| Applicant or NGTL | NOVA Gas Transmission Ltd., a wholly owned subsidiary of TransCanada PipeLines Limited, an affiliate of TC Energy Corporation, which has submitted the Application |
| Application | NGTL's application dated 22 October 2020, and subsequently updated, for approval to construct and operate the Project |
| Bar U Ranch | Bar U Ranch National Historic Site |
| CP | cathodic protection |
| CER or the Regulator | Canada Energy Regulator |
| CER Act | *Canadian Energy Regulator Act*, SC 2019, c 28, s 10 |
| Certificate or CPCN | Certificate of Public Convenience and Necessity issued under section 186 of the CER Act |
| commencing construction | The clearing of vegetation, ground-breaking, or other forms of right of way (RoW) preparation that may have an impact on the environment; activities associated with normal surveying do not constitute commencing construction |
| commenter | A person, company, or group who registered to participate in the hearing process and who the Commission determined can provide a letter of comment |
| Commission | Commission of the CER |
| CER Crown Consultation Team | The Canada Energy Regulator is an Agent of the Crown and the CER Crown Consultation Team is the group within the CER conducting Crown consultation activities with Indigenous peoples |
| Crown Submission | The Crown Consultation Report, including its annexes, is referred to as the Crown Submission (dated 16 November 2021, C16160-1). Section 3.12 of Hearing Order GH-002-2020 sets out that the CER Crown Consultation Team, independent of the Commission, would prepare and file a Crown Consultation Report based on its consultation activities for the Commission's consideration |

| | |
|---|---|
| COSEWIC | Committee on the Status of Endangered Wildlife in Canada |
| CSA Z662-19 | *Canadian Standards Association* (CSA) *Standard CSA Z662 – Oil and Gas Pipeline Systems, 2019* |
| DFO | Fisheries and Oceans Canada |
| ERP | Emergency Response Plan |
| ESA | Environmental and Socio-Economic Assessment |
| EPP | Environmental Protection Plan |
| evidence | Reports, statements, photographs, and other material or information that participants submit as part of the record in support of their position on the Application |
| file | The formal way of submitting documents to the CER via the public registry |
| Filing Manual | The Filing Manual issued by the Canada Energy Regulator |
| final argument | The final positions of NGTL and intervenors on the recommendations and decisions the Commission should make, including conditions of approval, and the reasons why the evidence supports these positions |
| GDP | Gross Domestic Product |
| GIC | Governor in Council, meaning the Governor General of the Government of Canada, acting on the advice of the Federal Cabinet |
| hearing process or public hearing | A public process the Commission uses to gather and test evidence to make recommendations and decisions and can include both written and oral portions, as directed by the Commission |
| IAMC | Indigenous Advisory and Monitoring Committee |
| LAA | Local Assessment Area |

| | |
|---|---|
| IA Act | *Impact Assessment Act*, SC 2019, c 28, s 1 |
| Information Request or IR | A written question to seek or clarify filings on the record |
| intervenor | A person, company or group who registered to participate in the hearing process and who the Commission determined could participate as an intervenor; has rights and obligations in the hearing process as set out in Section 4 of Hearing Order GH-002-2020 |
| List of Issues | The list of issues that the Commission considered in this hearing process |
| LTO | Leave to Open |
| Îyãħé Nakoda Makochi | Stoney Nakoda Nations' traditional lands/territory |
| Minister | The member of the Queen's Privy Council for Canada designated under section 8 of the CER Act |
| NEB | National Energy Board |
| NGTL System | An integrated 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 |
| OPR | *Canadian Energy Regulator Onshore Pipeline Regulations* |
| PDA | Project Development Area |
| PFP | Participant Funding Program |
| PPBoR | Plan, Profile, and Book of Reference |
| Process Advisor | CER staff who help the public, Indigenous[1] peoples, and other participants to understand the hearing process and how to participate |

[1] 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*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, which states:

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

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|---|---|
| Project | NGTL's proposed West Path Delivery 2023 Project, comprised of three loops (Project components) along the Western Alberta System Mainline:<br>• Turner Valley Section<br>• Longview Section<br>• Lundbreck Section |
| RAA | Regional Assessment Area |
| RoW | Right-of-way |
| Potential Conditions | Conditions based on the Commission's initial assessment of the Application, which are released for comments during the hearing process |
| public registry | An online document repository for the evidence filed in the hearing process. It is the record that is available to the public<br>In most cases, the public registry and the record include the same information. However, Indigenous knowledge may be provided in confidence, or the Commission may decide in exceptional circumstances that certain information can be filed confidentially. This confidential information would be part of the record but not available on the public registry. Further information regarding confidentiality can be found on the CER's website. The CER's public registry is named RegDocs |
| Recommendation | The Commission's recommendation in regard to the Project, pursuant to paragraph 183(1)(a) of the CER Act |
| record | The record includes all relevant submissions and evidence filed or given orally in the public hearing, including documents such as the Application, rulings, and procedural updates |
| Regulatory Officer | CER staff who assist parties, manage documentation before, during and after the public hearing, perform court clerk duties for the public hearing, and manage the post hearing process |
| reply evidence | Additional information (see above: evidence) NGTL may file in reply to the Crown Submission or to evidence filed by other parties |

| | |
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| Report | This Report, which is prepared by the Commission to the Minister and that includes:<br>• The Commission's Recommendation as to whether the Certificate should be issued for the Project (taking into account whether it is required by the present and future public convenience and necessity);<br>• the reasons for the Recommendation; and<br>• all conditions the Commission considers necessary or in the public interest if GIC were to direct that the Certificate be issued |
| Rules | The *National Energy Board Rules of Practice and Procedure, 1995* provide guidance on the Commission's procedures. The Rules can be accessed on the CER's website |
| SARA | *Species at Risk Act*, SC 2002, c 29 |
| standard mitigation | Standard mitigation refers to a specification or practice that has been developed by industry, or prescribed by a government authority, that has been previously employed successfully, and that is now considered sufficiently common or routine such that it is integrated into the company's management systems and meets the expectations of the Commission |
| WAS | Western Alberta System |
| WCSB | Western Canada Sedimentary Basin |
| U.S. Pacific Census Region | The U.S. Pacific Census Region includes the Pacific Coast states Washington, Oregon, and California (source: https://www.ncdc.noaa.gov/monitoring-references/maps/us-census-divisions) |
| VC | Valued component |

## Symbols and Units

| | |
|---|---|
| $ | dollars (CND) |
| Bcf/d | billion cubic feet per day |
| ¢/Mcf/d | cents per thousand cubic feet per day |
| $CO_2e$ | carbon dioxide equivalent |
| ha | hectare |
| km | kilometre |
| kPa | kilopascal |
| kt | kilotonne |
| m | metre |
| $m^3/d$ | cubic metres per day |
| Mcf | thousand cubic feet |
| mm | millimetre |
| MMcf/d | million cubic feet per day |
| TJ/d | terajoule per day |

## Recital and Appearances

**IN THE MATTER OF** the *Canadian Energy Regulator Act*, SC 2019, c28, s10, as amended, and the regulations made thereunder;

**IN THE MATTER OF** the *Impact Assessment Act*, SC 2019, c 28, s1, 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 (**CER**) for a Certificate of Public Convenience and Necessity and other related approvals pursuant to Part 3 of the *Canadian Energy Regulator Act*, filed under File No. OF-Fac-Gas-N081-2020-07 02 on 22 October 2020;

**IN THE MATTER OF** Hearing Order GH-002-2020, dated 30 April 2021;

**HEARD** in Calgary, Alberta (via videoconference) on 9 September 2021, on 8, 9, 10, and 12 November 2021, and 1 and 2 March 2022;

**BEFORE:**

| | |
|---|---|
| Damien Côté | Presiding Commissioner |
| Mark Watton | Commissioner |
| Trena Grimoldby | Commissioner |

***Oral Indigenous knowledge***

| **Appearances** | **Parties** | **Witnesses** |
|---|---|---|
| | Piikani Nation | Ira Provost<br>Elder Shirlee Crow Shoe<br>Elder Joe Small Legs<br>Kyle Plain Eagle |
| Sara Louden | Bearspaw First Nation, Stoney Nakoda Nations | Elder Rex Daniels<br>Elder Rod Hunter<br>Elder Larry Daniels Sr.<br>Larry Daniels Jr. (translation support)<br>Elder Myron Baptiste<br>Elder Chester Daniels<br>Elder Diane Dixon |
| Sara Louden | Chiniki First Nation, Stoney Nakoda Nations | Elder Virgil Stephens<br>Elder Henry Holloway<br>Barry Wesley |
| Sara Louden | Wesley First Nation, Stoney Nakoda Nations | Elder Watson Kaquitts<br>Elder Hank Snow<br>Elder Glen Stevens<br>Chris Goodstoney (translation support)<br>Bill Snow<br>Elder John Wesley |

| | | |
|---|---|---|
| Amyn Lalji | Driftpile Cree Nation | Katie Bellett<br>Karl Giroux<br>Elder Peter Freeman<br>Elder Hank Giroux |
| | Elk Valley Métis Nation | Mick Elliott<br>Elder Edward Plessis<br>Joey Plessis<br>Elder Terry Anonson<br>Dr. Jesse Plessis<br>President Jean Sulzer |
| Kennedy Bear Robe | Samson Cree Nation | Kyra Northwest<br>Holly Johnson-Rattlesnake<br>Elder Josephine Buffalo<br>Brian Lightning<br>Kacey Yellowbird<br>Elder Arrol Crier<br>Dolphus Buffalo |

***Oral summary argument***

| **Appearances** | **Parties** |
|---|---|
| Sander Duncanson | NOVA Gas Transmission Ltd. |
| Ira Provost<br>Steven Rowe<br>Meaghan Langille | Piikani Nation |
| Laurie Buffalo<br>Chris Hummel<br>Kyra Northwest<br>Kaylyn Buffalo | Samson Cree Nation |
| Jacob Adserballe | Jacob Adserballe |
| Allan Garbutt | Livingstone Landowners Group |

***Written Argument***

NOVA Gas Transmission Ltd.
Jacob Adserballe
Alberta Department of Energy
CAEPLA-West Path Landowner Committee
Canadian Association of Petroleum Producers
Driftpile Cree Nation
Foothills Ojibway First Nation
Livingstone Landowners Group
Métis Nation of Alberta
Métis Nation of Alberta Local 1880
Métis Nation of Alberta Local 87
Métis Nation of Alberta Region 3
Nakcowinewak Nation of Canada
O'Chiese First Nation Consultation Office
Parks Canada Agency
Piikani Nation Consultation
Samson Cree Nation
Stoney Nakoda Nations, Bearspaw First Nation
Stoney Nakoda Nations, Chiniki First Nation
Stoney Nakoda Nations, Wesley First Nation

# 1 Recommendation, decisions and disposition

This Report constitutes the recommendation, decisions, and reasons of the Commission of the Canada Energy Regulator (**Commission**) in respect of NOVA Gas Transmission Ltd.'s[2] (**NGTL**) application (**Application**) to construct and operate the West Path Delivery 2023 Project (**Project**). The Application was filed pursuant to section 183 of the *Canadian Energy Regulator Act* (**CER Act**) and was considered by the Commission in the GH-002-2020 hearing process.

The Project would expand the existing NGTL System (**NGTL System)** to meet incremental delivery requirements at the Alberta/British Columbia (**ABC**) Border Export Point and would satisfy the market demand to connect the Western Canada Sedimentary Basin (**WCSB**) supply with long-term markets. The Project consists of approximately 39 kilometres of pipeline loop in three pipeline sections. The Project is located wholly in Alberta and runs south of Calgary between Turner Valley and Lundbreck. Additional Project details and a map are provided in Chapter 3.

This Report is the first recommendation made by the Commission to the Governor in Council (**GIC**) under section 183 of the CER Act (**Recommendation**) and reflects changes made to the CER Act from the repealed *National Energy Board Act*. Briefly, the CER Act designates the CER as an agent of the Crown[3] and the Government of Canada has tasked the CER to act as the Crown consultation coordinator[4] (**CER Crown Consultation Team)** for certain projects, such as this. On 16 November 2021, the CER Crown Consultation Team filed a summary of its consultations with Indigenous peoples (**Crown Submission**). The Crown Submission is reflected throughout this Report. Further, the Commission, in its assessment of the Application, considered the new factors set out in section 183, including:

- **(a)** the environmental effects, including any cumulative environmental effects;
- **(b)** the safety and security of persons and the protection of property and the environment;
- **(c)** the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;
- **(d)** the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
- **(e)** the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
- **(j)** the extent to which the effects of the pipeline hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.

Chapters 1 and 2 of this Report provide the Commission's determinations, Recommendation, and decisions, as well as the assessment methodologies followed in assessing NGTL's

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2 A wholly owned subsidiary of TransCanada PipeLines Limited, an affiliate of TC Energy Corporation.
3 Pursuant to section 10(2) of the CER Act.
4 CER – Canada Energy Regulator Approach to Crown Consultation (cer-rec.gc.ca).

Application. Chapter 3 provides a description of the Project. The chapters that follow contain the Commission's analysis and findings related to the factors listed under subsection 183(2) of the *CER Act*. They also contain the Commission's analysis of the issues identified by the Commission, as set out in the List of Issues of Hearing Order GH-002-2020. A concordance table of the chapters, factors, concerns raised, and conditions imposed is provided in Appendix I.

### 1.1 Relief requested by NGTL

In respect of the Project, NGTL requested[5] that the Commission:

- issue a report, pursuant to section 183 of the CER Act, recommending the issuance of a Certificate of Public Convenience and Necessity (**CPCN** or **Certificate**), authorizing construction and operation of the Project;[6]
- issue an exemption from the requirements of paragraph 180(1)(b) and subsection 213(1) of the CER Act to obtain Leave to Open (**LTO**) from the CER before installing certain tie-ins for the Project;
- issue an order, pursuant to section 214 of the CER Act, exempting NGTL from the requirements of subsections 214(1), 198(c), and 198(d), and section 199 of the CER Act in relation to:
    - temporary infrastructure required for construction of the pipeline
    - right of way (**RoW**) preparation activities (including clearing, grading, and stripping)[7]

      NGTL clarified that these activities would only be undertaken after the CPCN has been issued for the entire Project and after any applicable conditions for the section 214 activities are satisfied;
- issue an order pursuant to Part 3 of the CER Act affirming that:
    - prudently incurred costs required to provide service on the applied-for facilities would be included in the determination of the NGTL System revenue requirement;
    - the tolls for services on the applied-for facilities would be calculated using the same methodology used to calculate tolls for services on the NGTL System, as determined through CER order from time to time; and
- grant such further and other relief as NGTL might request or the Commission might consider appropriate.

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5 Edited for clarity and conformance.

6 In the event that the pipeline length is not 40 kilometres or more after design has progressed, NGTL reserved the right to amend its relief to request, pursuant to section 214 of the CER Act, that the CER issue an order approving the construction and operation of the Project.

7 Updated in NGTL's Request for Relief and Supplemental Filing No. 4 (C12563)

### 1.2 Commission determinations and Recommendation to Governor in Council

In its consideration of an application for a Certificate, the Commission must prepare and submit to the Minister, and make public, a report setting out:

a) its recommendation as to whether or not the Certificate should be issued for all or any part of the 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; and

b) regardless of the recommendation, all the conditions that it considers necessary or in the public interest to which the Certificate would be subject if GIC were to direct that the Certificate be issued.

In doing so, the Commission must exercise its discretion in balancing the varied interests of a diverse public. The Commission is required to consider and weigh all relevant and material evidence on the record, and must take into account – in light of, among other things, any Indigenous knowledge that has been provided to the Commission and scientific information and data – all considerations that appear to it to be relevant and directly related to the pipeline, including the factors listed under subsection 183(2) of the CER Act.

#### 1.2.1 Determination regarding the adequacy of consultation with Indigenous peoples

The Commission must perform its duties and exercise its powers in accordance with its legislative mandate, section 35 of the *Constitution Act, 1982,* and other applicable laws. In so doing, the Commission must come to a determination as to, whether or not, its Recommendation and decisions, contained in this Report, are consistent with section 35 of the *Constitution Act, 1982.*

The Commission has determined that the Recommendation and decisions contained in this Report are consistent with subsection 35(1) of the *Constitution Act, 1982* and the honour of the Crown. Ultimately, the Commission is satisfied that the consultation that has taken place to date with respect to the Project is adequate for the purpose of the Commission's Recommendation on the Application as well as its consequential decisions.

As part of its analysis, the Commission evaluated the sufficiency of NGTL's engagement with Indigenous peoples. The Commission also considered the views and concerns of Indigenous peoples participating in the hearing process through both oral Indigenous knowledge and written submissions, as well as those expressed through the Crown Submission. Further, the Commission considered the potential impacts on the Rights and interests of Indigenous peoples, and the proposed measures to avoid or mitigate those impacts.

For the purpose of the Commission's Recommendation and decisions, the Commission's Application assessment, this Report, and the activities coordinated through the CER Crown Consultation Team are designed to satisfy the Crown's duty to consult and accommodate impacts to the Rights and interests of Indigenous peoples. After the Commission submits this Report, a decision must be made by GIC regarding the Commission's Recommendation for the Project, as specified in section 186 of the CER Act. The CER Crown Consultation Team has committed to continuing two-way dialogue with Indigenous peoples on the Project, shifting from supporting the Commission's hearing process to supporting the GIC decision-making process.

The Commission understands that this ongoing dialogue between Indigenous peoples and the Government of Canada (through the activities coordinated by the CER Crown Consultation Team) has the potential to identify new and/or outstanding Project-specific impacts to and concerns about the rights of Indigenous peoples not already identified, as well as matters that are not within the Commission's mandate or scope of the public hearing.

### 1.2.2 Federal lands determination pursuant to section 82 of the *Impact Assessment Act*

Section 82 of the *Impact Assessment Act* (**IA Act**) sets out that the Commission must not exercise any power or perform any duty or function conferred on it under any Act of Parliament other than the IA Act that could permit a project to be carried out, in whole or in part, on federal lands unless the Commission determines that the carrying out of the project is not likely to cause significant adverse environmental effects, or that the significant adverse environmental effects are justified in the circumstances.

The Longview Section of the Project crosses Bar U Ranch National Historic Site (**Bar U Ranch**), which is federal lands managed by the Parks Canada Agency (**Parks Canada**). The Commission has conducted an environmental assessment including an assessment of potential cumulative effects for the Project as a whole. The portion of the project that crosses federal lands is included in that assessment. Overall, with the implementation of NGTL's environmental protection procedures and mitigation measures, as well as the Commission's imposed conditions, the Commission has determined that the carrying out of the Project is not likely to cause significant adverse environmental effects in relation to federal lands under section 82 of the IA Act.

### 1.2.3 Recommendation under section 183 of the CER Act

Having regard to all considerations that appear to be directly related and relevant to the Application, the Commission finds that the Project is and will be required by the present and future public convenience and necessity. The Commission recommends that GIC direct that a certificate be issued under section 186 of the CER Act, for the construction and operation of the Project.

The Commission's reasoning and conclusions in support of this Recommendation are contained in the chapters that follow. This Report also sets out the conditions to which the Certificate would be subject (provided in Appendix II) if GIC were to direct that the Certificate be issued.

The Commission recognizes that the Project will benefit Canadian gas producers and consumers, and governments across the NGTL System through providing:

- incremental capability to accommodate growth in both domestic gas production and export;
- important economic and employment opportunities for local and Indigenous individuals, communities, and businesses; and
- resultant federal and provincial tax revenues and property taxes paid to the municipal districts involved.

However, the Commission recognizes that realising the opportunities and benefits of the Project comes at the expense of further, albeit minimal, modifications to the landscape in the region.

This may affect the ability of Indigenous peoples to access Crown land for the exercise of rights and traditional practices. Recognizing this, the Commission not only balanced the relative magnitude of these burdens and benefits, but also considered whether and how the burdens could be reduced through additional measures such as regulatory conditions or, where matters are outside the Commission's purview, additional recommendations to GIC.

The Commission understands that sometimes parties disagree on the evidence and facts, while other times, parties agree on the facts but differ in their opinions, perspectives, or values. In carrying out the hearing process, the Commission listened carefully and took these diverse views into account. The Commission remains cognizant that the public interest is both regionally and nationally based and is, therefore, understood to be inclusive of all Canadians. It is through this holistic and contextual lens that the Commission has carried out its Project assessment, including making the findings presented herein and the determination that the Project is in the Canadian public interest.

## 1.3 Decisions made by the Commission

### 1.3.1 Section 214 exemptions

As discussed in Section 1.1 of this Report, NGTL requested an order pursuant to section 214 of the CER Act. Specifically, NGTL requested that the activities associated with temporary infrastructure,[8] as well as RoW preparation activities[9] be exempt from certain authorizations otherwise required under subsections 198(c), 198(d), and section 199 of the CER Act (collectively referred to as the detailed route process).

NGTL requested that those activities be allowed to proceed without being subject to the detailed route process so that the activities could begin prior to NGTL filing its Plan, Profile and Book of Record (**PPBoR**) explained in Section 2.3.1 below. As the activities are either unrelated to the detailed route of the pipeline (i.e., temporary infrastructure) or are localized and reversible construction preparation activities along the proposed RoW, NGTL submitted that the exemption would allow it to execute construction in a timely and efficient manner. In support of this request, NGTL noted that no parties would be prejudiced by this exemption as NGTL will only commence these activities in areas where it has secured the necessary land rights.

The Commission finds that the exemptions requested for the applied-for activities would be in the public interest. Accordingly, the Commission has decided to grant Order XG-005-2022 pursuant to subsection 214(1) of the CER Act exempting NGTL from the provisions of paragraph 180(1)(b), subsections 198(c), 198(d) and 213(1), and section 199 of the CER Act. The Commission will issue the Order concurrently, should GIC direct the Commission to issue a Certificate in respect of the Project.

### 1.3.2 CER Act Part 2 - Tolling methodology

NGTL proposed that the Project provide services under the terms and conditions established in the NGTL Gas Transportation Tariff, as amended by NGTL from time to time. NGTL proposed

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8 The temporary infrastructure required for construction of the Project could include access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, and contractor yards.

9 Preparation activities would include clearing, grading and stripping of the RoW.

to treat the costs for the Project on a rolled-in basis, and to determine the tolls for services in accordance with the existing NGTL toll design methodology in effect and as approved, at any given time.

Consistent with the analysis and findings provided in Chapter 10, the Commission:

- finds that prudently incurred costs required to provide service on the applied-for facilities may be included in the determination of the NGTL System revenue requirement; and,
- will allow the tolls for services on the applied-for facilities to be calculated using the same methodology used to calculate tolls for services on the NGTL System, as determined through CER orders from time to time.

### 1.4 Issues beyond the Commission's mandate

During the hearing process, some parties made submissions in respect of issues that went beyond the mandate of this Panel. While these submissions were not within the Panel's mandate, they may fall within the mandate of GIC and/or other government bodies, including the CER. Accordingly, the Commission has outlined two additional recommendations below.

These additional recommendations were not material to the Commission's public interest determination for this Application. To be clear, the Commission's conclusions on the Application are unaffected by whether the additional recommendations are acted upon. The Commission does, however, view these additional recommendations as important as they reflect matters of significant concern raised during the hearing process.

#### 1.4.1 Indigenous Oversight Cooperative Committee

The CER Act preamble affirms that the "Government of Canada is committed to achieving Reconciliation with First Nations, the Métis and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, co-operation and partnership." It also affirms that the "Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples". In that spirit, Commissioners Côté and Grimoldby recommend that GIC facilitate the development of a set of principles and objectives that would inform the design of - and ultimately materialize into - an Indigenous Oversight Cooperative Committee (IOCC) for the entirety of the NGTL System, as regulated by the CER.

Indigenous peoples have been knowledgeable stewards of the lands and resources within their traditional territories since time immemorial. The record of this proceeding is replete with the unique knowledge and worldviews Indigenous peoples shared with the Commission during this hearing. Drawing upon that stewardship, those worldviews and that knowledge, the direct participation of Indigenous peoples would contribute to better oversight of the NGTL System and would help foster meaningful and cooperative relationships. This cooperation would also be expected, over time, to allow NGTL to incorporate Indigenous knowledge more fully into the development and assessment of a project's design, effects, and mitigation measures, while also providing an opportunity for cooperative oversight over operations and maintenance. Increased cooperation would also allow for Indigenous peoples to see and experience their knowledge reflected within NGTL's plans and programs.

In making the recommendation for an IOCC, Commissioners Côté and Grimoldby acknowledge:

- that a number of Indigenous peoples[10] recommended the development of an Indigenous Advisory Monitoring Committees (IAMC), Indigenous Working Group, Steering Committee or other similar structure for the Project and/or the NGTL System overall, in support of a collaborative process to foster stronger relationships; and
- that the CER announced it would move away from project-by-project compliance and oversight with Indigenous peoples toward co-development of a broader, systemic model for enhanced engagement on the NGTL System.

Commissioners Côté and Grimoldby also acknowledge the submissions from the record which relate to this topic, and which are in response to the current Project's limited scale:

- the limited size and scope of the current Project (in particular when compared to the two projects where IAMCs currently exist, Enbridge Line 3 Replacement Project and the Trans Mountain Expansion Project);
- that neither the Commission, its predecessor, nor the Crown recommended creating an IAMC for the last three NGTL Certificate applications, although numerous participants had requested for the Commission to do so in those hearings, and some project specific monitoring conditions were ultimately imposed; and
- that the CER Crown Consultation Team indicated that, at the time of filing the Crown Submission, it was not aware of any outstanding impacts to Section 35 Rights of Indigenous peoples that would necessitate an IAMC specific to the Project.

Regarding the size and scope of the Project, Commissioners Côté and Grimoldby find that the comparison, noted above, is a matter of framing. The Enbridge Line 3 Replacement Project is approximately 1,659 km in length and the Trans Mountain Expansion Project involves approximately 1,150 km of pipeline. By comparison, the NGTL System, albeit already constructed, is anywhere between 15 and 22 times larger on a total kilometre count basis.

While encouraged by the CER's initiative to move toward a broader oversight model for the NGTL System, Commissioners Côté and Grimoldby cannot sufficiently assess this initiative against the multiple submissions heard from parties on this record. Specifically, Commissioners Côté and Grimoldby cannot assess whether the CER initiative is commensurate to the size, scale, and scope of the NGTL System, which consists of approximately 25,000 km in total and accounts for approximately one third of the Commission's overall jurisdiction in respect of pipelines (based on a regulated pipeline-kilometre basis). As for any NGTL-led or other initiatives, Commissioners Côté and Grimoldby note that they are aware of none which adhere to the nation-to-nation principle (from the CER Act), are co-developed, and encompass the entire scope of the NGTL System.

[10] Including Piikani Nation, Stoney Nakoda Nations, Samson Cree Nation, Elk Valley Métis Nation, Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), and Driftpile Cree Nation

Further, Indigenous peoples raised concerns during the hearing that the NGTL System as a whole has historically evolved in comparatively small, finite, and incremental segments, driven by market and shipper demands, among others. The Panel heard concerns from Indigenous peoples during this hearing that the fact that an IAMC was not implemented on previous NGTL projects, due to the scale and scope of those projects, is representative of a lack of understanding of the effects and impacts Indigenous peoples experience from the entire NGTL System. This recommendation aims to, among other things, dispel any such lack of understanding, and to empower any participants in the IOCC to co-develop an entity that increases the avenues and impetuses for cooperation and relationship-building with a view to creating a space for good relations and mutual, multi-faceted, successes.

Commissioners Côté and Grimoldby agree with the CER Crown Consultation Team in that this Project does not necessitate an IAMC (or equivalent). However, and in the spirit of Reconciliation, Commissioners Côté and Grimoldby are of the view that more can be done outside of project-level condition compliance to support ongoing, cooperative involvement of Indigenous peoples for the NGTL System. Commissioners Côté and Grimoldby also consider such an approach to align well with the United Nations Declaration on the Rights of Indigenous Peoples.

While the CER Crown Consultation Team noted that an IAMC had not been recommended for past NGTL projects, Commissioners Côté and Grimoldby note that much has changed since certificates for those projects were issued. Namely, this is the first NGTL certificate project to be assessed under the CER Act, which includes, among others, explicit reference to the rights and interests of Indigenous peoples, cooperation and partnership, Reconciliation, and the United Nations Declaration on the Rights of Indigenous Peoples.

Commissioners Côté and Grimoldby have considered Commissioner Watton's comments below, which are anchored in the Panel's mandate and scope, natural justice and procedural fairness, and setting a clear and logical path forward. Overall, Commissioners Côté and Grimoldby do not see their views as incompatible with the views of Commissioner Watton. Rather, all three Commissioners agree on the importance and necessity of advancing Reconciliation.

In respect of the Panel's mandate and scope, Commissioners Côté and Grimoldby are grounded in, and directly rely on, the CER Act references, noted above, in making this recommendation. Commissioners Côté and Grimoldby are well-aware of and understand the jurisdictional limitations invoked by Commissioner Watton. This is why a recommendation – instead of a condition – was preferred to address the multiple evidentiary submissions on this record in respect of this matter. This is a significant distinction when ascertaining natural justice and procedural fairness owed to parties.

Further, Commissioners Côté and Grimoldby find that natural justice and procedural fairness have been satisfied as the record reflects that numerous parties provided comments regarding an IAMC or similar process, and NGTL had an opportunity to respond. In particular, Commissioners Côté and Grimoldby note that both NGTL and parties offered submissions during this hearing in respect of the subject matter of this recommendation, including some that referred – directly or implicitly – to the entirety of the NGTL System.

As for specificity of execution, or what Commissioner Watton refers to as "a clear and logical path forward", Commissioners Côté and Grimoldby intentionally favored a recommendation that develops a pathway to an IOCC via a GIC-facilitated, co-developed process that is responsive,

iterative, and meets the needs of its participants. Having been persuaded by submissions of parties on this evidentiary record, Commissioners Côté and Grimoldby are of the view that it is vastly preferrable for cooperative structures such as the recommended IOCC, to be co-developed. The concerted effort and collaboration of all parties, including NGTL, the CER, and interested Indigenous peoples with support from the federal government, would create a forum for building, maintaining, and improving relationships. This, in turn, would provide for the inclusive and meaningful involvement of Indigenous peoples in environmental, safety, and socio-economic issues related to the NGTL System, over its lifecycle.

Lastly, and no less importantly, the IOCC would be directly responsive to the interests and concerns of Indigenous peoples heard during this hearing, including those shared with the CER Crown Consultation Team for this Project, thereby positively contributing to Reconciliation. Additionally, for the current Project, the CER and, where applicable, the Commission, will exercise regulatory oversight to carefully examine NGTL's various monitoring plans, how they were developed, and how they will be implemented (for example, Certificate Condition 12 – Construction Monitoring Plan for Indigenous peoples).

***Views of Commissioner Watton***

I cannot join my colleagues in this recommendation. My disagreement is not with the substance or intent of the recommendation, rather I do not feel it appropriate considering the mandate and scope of the Panel. Further, I do not think such a recommendation, coming from the Commission while fulfilling its quasi-judicial role, is in keeping with the principles of natural justice and procedural fairness.

Specifically, I believe that I have neither the mandate, nor a sufficient evidentiary record upon which to ground such a recommendation. Because the recommendation is for the entire NGTL System, I am of the view that it is beyond the scope of the Application, which consists of approximately 39.1 km of pipeline and associated facilities. To the extent that the Commission has authority to make recommendations that go beyond the scope of an application, such authority should be exercised with restraint, result in recommendations which are grounded in specific legal authority where possible, and set out a clear and logical path forward to the intended recipient(s). The Commission's second recommendation, which follows, regarding Regional Strategic Environmental Assessments, better meets these criteria in my view.

Like my colleagues, I have noted the concerns expressed by parties on this hearing record that the NGTL System is expanding incrementally. The mandate of the CER, including the Commission, is informed by legislation; Parliament has expressly removed from the CER Act the authority for the Commission to consider projects of a size comparable to that of the Enbridge Line 3 Replacement Project and the Trans Mountain Expansion Project. As the authority for larger projects now rests with the Impact Assessment Agency of Canada, the Commission's adjudicative authority is limited to smaller, more finite projects. While the recommendation of my colleagues may very well be important, and guided by a necessary interest in advancing Reconciliation, it is not clear that the Commission is the proper forum, for considering such a recommendation.

Even if this were the proper forum, such a recommendation may result in direct impacts to parties, including the proponent, Indigenous peoples, or affected stakeholders. The Commission should be mindful of its status as a quasi-judicial tribunal and consider the requirements of natural justice and procedural fairness. Given the breadth of the recommendation and the fact that it extends to the entire NGTL System, I believe natural justice would have been better

served had the Commission given sufficient notice to, and invited comments from, NGTL and the parties impacted by the entire NGTL System. NGTL should have been given some indication of the case to be met, and likewise all interested persons should have been given a fair opportunity to make submissions.

Any recommendation impacting the whole of the NGTL System would require, in my view, consultation with Indigenous peoples whose rights may be affected in areas well beyond the geographic footprint of the Project, as well as an opportunity for participation by the public.

In addition to my comments on the legal authority and evidentiary record, I offer the following practical considerations. I am not persuaded that the similarities between the Enbridge Line 3 Replacement Project and the Trans Mountain Expansion Project extend to the entire NGTL System. Not only were the hearing processes undertaken in those two instances markedly broader, but the nature of those projects, being new construction, allowed for more meaningful oversight of construction activities yet to be undertaken. It is not clear what comparable opportunity would result from the proposed oversight of already constructed NGTL System facilities.

Lastly, while I am of the view that it is not within the Commission's purview in this context to make a recommendation for the IOCC, the CER remains the lifecycle regulator for the NGTL System. The Commission received submissions on the hearing record from CER Crown Consultation Team advising the CER is moving away from project-specific compliance and oversight with Indigenous peoples, toward the co-development of a broader, systemic model for enhanced engagement on the NGTL System. I understand that this initiative is early in its development. As a result, I find it premature to presume that this initiative is insufficient. Given the CER's initiative as well as the proponent's own initiatives, (and potentially others) I would avoid recommending the establishment of additional initiatives which may be duplicative, and could result in onerous expectations on all parties, including the proponent, Indigenous peoples, and government agencies.

### 1.4.2 Regional Assessment in or around the Project area

Relying on *Yahey v. British Columbia*,[11] Piikani Nation argued that the Crown has a responsibility to take proactive measures to address and monitor cumulative effects on Section 35 Rights. Samson Cree Nation and Bearspaw, Chiniki, and Wesley First Nation (collectively the Stoney Nakoda Nations) cited the same case to suggest there are flaws in the ways in which such effects are currently assessed. In as much as these arguments relate to the Project itself, the Commission's analysis and findings are provided throughout this Report. As to a broader context of these arguments, the Commission is of the view that outcomes such as that of the *Yahey* decision can be avoided by governments taking proactive measures to address the type of holistic concerns raised here.

Section 93 of the IA Act allows the Minister of the Environment to enter into an agreement or arrangement with certain jurisdictions, including the government of a province, if the Minister is of the opinion that it is appropriate to conduct a regional assessment of the effects of existing or future physical activities carried out in a region that is outside federal lands. As the Crown exists both within federal and provincial authority (under Canada's Constitution), it is vital that any

[11] 2021 BCSC 1287 (CanLII)

meaningful regional assessment incorporate the kinds of physical activities and land uses that fall within the jurisdiction of both the federal and provincial governments.

On the limited record of this hearing, the Commission may be poorly placed to prescribe the scope, nature, or boundaries of a specific regional assessment. The Commission can, however, observe that the concerns we have heard in this hearing, and likely to repeated elsewhere in future hearings, are not simply going to fade away. As such, the Commission recommends that the Minister, in partnership with any jurisdiction referred to in paras (a) to (g) of section 2 of the IA Act, with interests in the area of the Project, or in a broader regional area which includes the area of the Project, work to establish an agreement or arrangement to conduct the type of regional assessment contemplated by the IA Act.

### 1.5 Conclusion

The Commission considered and weighed all of the evidence and arguments properly placed on the record in making its determinations, Recommendation, and decisions on this Project. When considering the balance of factors connected with the Project, the Commission finds that the Project is and will be required by the present and future public convenience and necessity and is consistent with the requirements of the CER Act. In assessing NGTL's Application, the Commission has developed conditions that it considers necessary or in the public interest to which a Certificate would be subject if GIC were to direct that the Certificate be issued. The Commission has also referenced applicable legislation and standards to which the Project would be subject, related to pipeline integrity, safety and environmental protection.

The Commission carefully considered all commitments made by NGTL at various stages in this hearing process and expects that they will be implemented. For these reasons, the Commission imposes **Certificate Condition 22** (Commitment tracking table), which requires NGTL to track the commitments it made during the hearing process. Should the Certificate be issued, NGTL is required to fulfil its commitments and satisfy the Commission's conditions. The Commission will monitor NGTL's compliance with the imposed conditions throughout the lifecycle of the Project.

Damien Côté
Presiding Commissioner

Trena Grimoldby
Commissioner

Mark Watton
Commissioner

Calgary, Alberta
May 2022

# 2 Hearing process and assessment methodology

## 2.1 How the Application was assessed – hearing process

### 2.1.1 Context and considerations

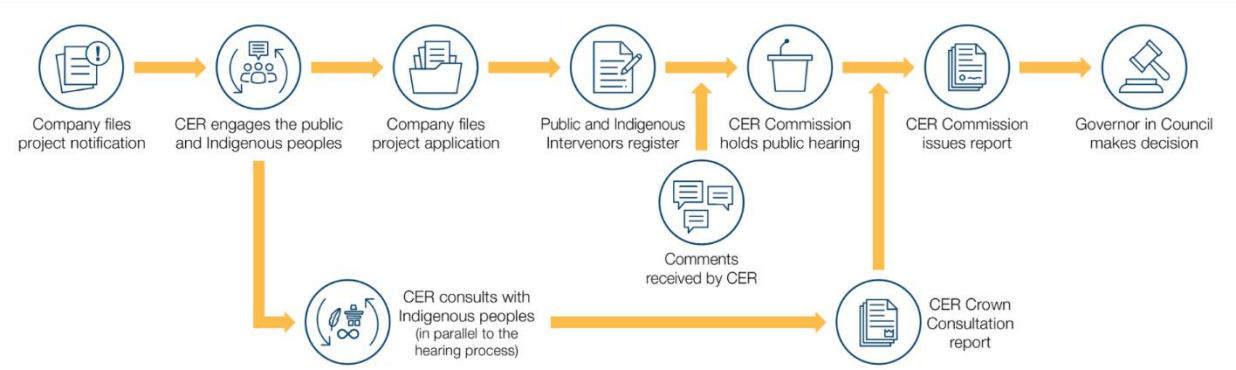
The CER Act came into force on 28 August 2019, establishing the Canada Energy Regulator. NGTL's Application for a Certificate is the first to be considered by the Commission pursuant to sections 182 and 183 of the CER Act. In considering the Project under the relevant provisions of the CER Act, the Commission also examined the Project through the lens of the CER Act's preamble. As noted in the preamble to the CER Act, the CER, including the Commission, is:

- responsible for ensuring that pipeline… projects… are constructed, operated and abandoned in a safe and secure manner that protects people, property and the environment;
- reflective and respectful of the diversity of Canada, including with respect to the Indigenous peoples of Canada; and
- committed to using transparent processes that are built on early engagement and inclusive participation and under which the best available scientific information and data as well as Indigenous knowledge are taken into account in decision-making.

The preamble to the CER Act also sets out that the Government of Canada is committed to achieving Reconciliation with Indigenous peoples as well as implementing the United Nations Declaration on the Rights of Indigenous Peoples. Within the context of its regulatory proceedings, the Commission acknowledges the importance of receiving diversity of knowledge from potentially affected Indigenous peoples as well as an understanding of the different priorities and worldviews that are brought forward by Indigenous peoples.

This section outlines the hearing process that was followed as part of the Commission's first Application assessment process pursuant to section 183 of the CER Act. This section includes a summary of how the Commission incorporated submissions from the parties in developing and modifying its hearing process, as well as how the newly established CER Crown Consultation Team supported the hearing process. The broad framework of the Commission's hearing process is shown in Figure 2.1 below.

**Figure 2-1: The hearing process**




(source: https://www.cer-rec.gc.ca/en/applications-hearings/participate-hearing/hearing-process/)

### 2.1.2 Crown consultation with Indigenous peoples

The CER tailors the scope and nature of its engagement and Crown consultation activities to the complexity of a proposed project and its potential effects, as well as the needs of potentially affected Indigenous peoples.

The hearing process was the primary forum through which the Commission consulted directly with Indigenous peoples. It included:

- Clear communication of the schedule and process steps for the hearing process, as well as modifying the steps, where warranted and in accordance with applicable rules of procedural fairness and natural justice;
- Funding available through the CER's Participant Funding Program;
- Appropriate support, through the CER's Process Advisor, to assist Indigenous peoples in their participation;
- Opportunities for Indigenous peoples participating as intervenors to test the evidence by asking Information Requests (**IRs)** of NGTL and other parties;
- Oral Indigenous knowledge sessions and other written evidence; and
- Opportunity to comment on Potential Conditions and submit final argument.

The hearing process was sufficiently thorough and accessible to Indigenous peoples so that they could make their concerns known to the Commission. The Commission encouraged all Indigenous peoples whose rights may be potentially impacted by the Project to characterize those rights, the nature of the impact(s), and the measures suggested that would reduce or eliminate, to the extent possible, the impacts on those rights. Consideration of those rights has been included in the Commission's analysis and findings presented in this Report and is reflected in the design and content of the conditions.

The Commission understands that the CER Crown Consultation Team's objective was to engage in meaningful two-way dialogue with Indigenous peoples. This two-way dialogue occurred outside of and concurrent to the Commission's adjudicative process. The Crown

Submission, filed on the record on 16 November 2021, summarized the engagement and consultation activities of the CER Crown Consultation Team with Indigenous peoples.

The Crown Submission was based on:

- Direct consultation with 20 potentially affected Indigenous communities that occurred during the early engagement phase of the Project, and continued concurrently with the GH-002-2020 hearing process, as of 15 November 2021;[12]
- Direct engagement with NGTL;
- Feedback from various federal authorities and CER technical and subject matter experts; and
- Filings on the record for the GH-002-2020 hearing process, as of 15 November 2021.

The Commission granted a motion requested by Indigenous peoples to ask questions of the CER Crown Consultation Team on the Crown Submission.

### 2.1.3 Project description, early engagement, and participation

In support of the CER Act preamble of using transparent processes built on early engagement and inclusive participation, the CER sent a letter on 5 August 2020 to 14 Indigenous peoples based on information provided by NGTL in its Project Description[13]. The purpose of the letter was to initiate early Crown consultation activities with communities that may have been impacted by the Project, to allow adequate time to share information, and to better understand concerns regarding potential impacts. CER staff reached out to municipalities, landowners, and the public in the areas surrounding the Project. CER staff also scheduled online information sessions in September 2020.

On 28 October 2020, the CER filed a letter with the Commission summarizing the results of its early engagement activities with the public and Indigenous peoples. Following the results of early engagement activities, the CER sent a letter to NGTL on 11 January 2021 updating the Crown List of potentially affected Indigenous peoples.

On 22 October 2020, NGTL filed its Application. On 25 November 2020, the Commission issued a Notice of Public Hearing and Registration to Participate. Also on that date, the Commission directed NGTL to distribute the Notice of Public hearing and publish it in specified publications pursuant to subsection 182(2) of the CER Act. The deadline to register to participate in the hearing process was originally set for 23 December 2020 and was subsequently extended to 6 January 2021.

On 21 January 2021 the Commission accepted all registrations to participate (20 registrations for intervenor status and 3 registrations for commentor status). The Commission also received and granted 9 late registrations. Table 2-1 below summarizes the participation of each intervenor.

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[12] The Commission understands that although all the potentially impacted Indigenous peoples and communities on the Crown List were contacted, not all were responsive to the CER Crown Consultation Team's outreach.

[13] Filed with the CER on 29 May 2020.

**Table 2-1: Intervenor submissions with exhibit numbers and hyperlinks**

| Intervenor[14] | Information Requests made (to NGTL or intervenors) | Written evidence | Oral Indigenous knowledge | Comments on Potential Conditions and/or Crown Submission | Responses to information requests | Affidavits | Written argument | Oral summary argument |
|---|---|---|---|---|---|---|---|---|
| Jacob Adserballe | | | | C15627 | | C17727 | C17727 | C17974 |
| Alberta Department of Energy | | | | | | | C17719 | |
| CAEPLA-West Path Landowner Committee | C13263 | C15898 | | | | | C17717 | |
| Canadian Association of Petroleum Producers | | | | | | | C17702 | |
| Driftpile Cree Nation | C13277 | C14789 | C16054 | C15724 | C15320 | | | |
| Elk Valley Métis Nation | C13279 | | C16054 | C15719 | | | | |

[14] Intervenors who registered to participate but did not file any additional information on the hearing record have not been listed. These intervenors include: Centra Gas Manitoba Inc., Hammerhead Resources, Ken and Linda McEwen, Montana First Nation, Siksika Nation, Tournaline Oil Co rp., and Tsuut'ina Nation.

| Intervenor[14] | Information Requests made (to NGTL or intervenors) | Written evidence | Oral Indigenous knowledge | Comments on Potential Conditions and/or Crown Submission | Responses to information requests | Affidavits | Written argument | Oral summary argument |
|---|---|---|---|---|---|---|---|---|
| Foothills Ojibway First Nation | | | | | | | C17764 | |
| David Harris | C11507 | | | | | | | |
| Livingstone Landowners Group | Round No. 1<br>C13247<br>C13303<br>Round No. 2<br>C16783<br>C17127<br>C17143 | C14778<br>C14779<br>C14783<br>C14796 | | C15670<br>C15674<br>C15676 | C15225 | C17397 | C17715<br>C17720<br>C17732 | C17974 |
| Métis Nation of Alberta | | C14771 | | | | C17806 | | |
| Métis Nation of Alberta Local 1880 | C13491 | C14763 | | C15709 | C15304 | C17411 | C17119 | |
| Métis Nation of Alberta Local 87 | C13490 | C14762 | | C15707 | C15303 | C17416 | C17118 | |
| Métis Nation of Alberta Region 3 | C13492 | C14760<br>C14761 | | C15706 | C15302 | C17414 | C17117 | |

| Intervenor[14] | Information Requests made (to NGTL or intervenors) | Written evidence | Oral Indigenous knowledge | Comments on Potential Conditions and/or Crown Submission | Responses to information requests | Affidavits | Written argument | Oral summary argument |
|---|---|---|---|---|---|---|---|---|
| Nakcowinewak Nation of Canada | | C14770 | | | | | | |
| O'Chiese First Nation Consultation Office | C16301 | C14776 | | C15702 | C15312 | C17406 | | |
| Parks Canada Agency | | C14765 | | | C15317 | C17415 | | |
| Piikani Nation Consultation | Round No. 1 C13280 Round No. 2 C17128 | C14764 | C14856 | C15726 | | C17410 | C17734 | C17974 |
| Samson Cree Nation | | C14780 | C16112 | C15721 | C15323 | | C17731 | C17954 |
| Stoney Nakoda Nations, Bearspaw First Nation | Round No. 1 C13273 IR to CCT C16308 Round No. 2 C17139 | C13012 C14767 | C16701 Redacted | C15711 C16738 | C15313 C16292 | C17417 | C17724 | |

| Intervenor[14] | Information Requests made (to NGTL or intervenors) | Written evidence | Oral Indigenous knowledge | Comments on Potential Conditions and/or Crown Submission | Responses to information requests | Affidavits | Written argument | Oral summary argument |
|---|---|---|---|---|---|---|---|---|
| Stoney Nakoda Nations, Chiniki First Nation | Round No. 1<br>C13275<br>IR to CCT<br>C16311<br>Round No. 2<br>C17140 | C13012<br>C14768 | C16701<br>Redacted | C15713<br>C16739 | C15314<br>C16291 | C17417 | C17724 | |
| Stoney Nakoda Nations, Wesley First Nation | Round No. 1<br>C13272<br>IR to CCT<br>C16309<br>Round No. 2<br>C17141 | C13012<br>C14769 | C16701<br>Redacted | C15714<br>C16740 | C15315<br>C16293 | C17417 | C17724 | |

### 2.1.4 Participant funding

The CER administers a Participant Funding Program (**PFP**), independent of the hearing process. PFP provides financial assistance to individuals, Indigenous peoples, landowners, and non-industry or not-for-profit groups. PFP facilitates public participation in public hearings and related CER Crown consultation activities.

Funding for early engagement activities was announced to Indigenous peoples on 5 August 2020 in the CER's letter to Indigenous peoples. Funding to participate as an intervenor for this hearing was announced to the general public via the CER website on 1 September 2020. The PFP received and awarded all requests, for a total of $1.99 million, with 92 per cent of the funding being awarded to Indigenous peoples.

Table 2-2 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 PFP section of the CER's website at http://www.cer-rec.gc.ca/pfp.

**Table 2-2: Participant funding program award amounts for GH-002-2020 hearing process**

| Applicant* | Amount awarded |
|---|---|
| Bearspaw First Nation | $120,000 |
| Blood Tribe (Kainai First Nation)* | $50,000 |
| Canadian Association of Energy and Pipeline Landowner Associations West Path Landowner Committee | $80,000 |
| Chiniki First Nation | $120,000 |
| Driftpile Cree Nation | $120,000 |
| Elk Valley Métis Association | $120,000 |
| Foothills Ojibway First Nation | $50,000 |
| Livingstone Landowners Group | $80,000 |
| Louis Bull Tribe* | $50,000 |
| Métis Nation of Alberta - Local 1880 | $120,000 |
| Métis Nation of Alberta - Local 87 | $120,000 |
| Métis Nation of Alberta - Provincial Office | $90,000 |
| Métis Nation of Alberta - Region 3 | $120,000 |
| Montana First Nation* | $50,000* |
| Nakcowinewak Nation of Canada | $120,000 |

| Applicant* | Amount awarded |
|---|---|
| O'Chiese First Nation | $120,000 |
| Piikani Nation | $120,000 |
| Samson Cree Nation | $120,000 |
| Siksika Nation* | $50,000 |
| Tsuut'ina Nation* | $50,000 |
| Wesley First Nation (SNN) | $120,000 |

*participated in the CER Crown Consultation Team process only

### 2.1.5 Workshop on the proposed hearing process and draft List of Issues

Before determining whether the Application was sufficiently complete to proceed to assessment, the Commission sought comments from registered parties on the proposed hearing process, a draft List of Issues (reflecting the factors outlined in subsection 183(2) of the CER Act), and the *Summary of CER-led Early Engagement and Crown Consultation Activities* filed by the CER Crown Consultation Team. The proposed hearing process was informed by comments received through early engagement. Comments were also sought on the timing for each of the hearing process steps proposed. The hearing process included filing written evidence, presenting oral Indigenous knowledge, testing evidence through questions (known as IRs), and providing argument orally and in writing.

Parties were able to provide comments on the proposed hearing process and draft List of Issues by either filing written comments on the record or by providing oral comments through a process workshop. The workshop was organized by CER staff, in cooperation with a third-party facilitator, and was held virtually in five sessions over three days (18 and 19 February 2021, with an extension day on 16 March 2021). Representatives from 16 parties (including NGTL) participated in the workshop. The CER compiled the comments received into the Final Workshop Report, which was filed on the record for the Commission's consideration as it designed the final hearing process.

### 2.1.6 Hearing process steps and procedural updates

On 25 March 2021, the Commission determined that the Application was sufficiently complete to proceed through the assessment process. This determination set the 450-day time limit for processing the Application (pursuant to subsection 183(4) of the CER Act).

On 30 April 2021, the Commission released the Hearing Order for the GH-002-2020 hearing. In establishing the process set out in the Hearing Order, the Commission made the following decisions in response the feedback received from parties:

- All hearing steps would occur in writing or virtually and follow all applicable public health protocols put in place to manage the risks associated with the COVID-19 pandemic.

- The schedule would generally maintain two weeks between each hearing step to the extent possible.
- Lengthen the proposed time between NGTL filing IR responses and intervenors filing evidence.
- Provide five weeks between NGTL's supplemental evidence deadline and the intervenor's written evidence deadline.
- Add an additional virtual workshop for parties, to discuss the Potential Conditions floated by the Commission in respect of the Project.
- Avoid all deadlines for intervenors between 20 December 2021 – 3 January 2022.
- Add a second round of IRs for intervenors to question NGTL in writing after NGTL filed its reply evidence.

Each of the hearing process steps was explained in detail, either initially in the GH-002-2020 Hearing Order or in subsequent procedural updates. These documents outlined the expectations and requirements for parties.

Seven procedural updates were issued by the Commission prior to the close of the hearing record on 4 March 2022. For reference, a list of all rulings and procedural updates released during the hearing process is provided in Appendix III. All filings and transcripts associated with the hearing process are available on the CER website, and oral portions of this hearing process were open to the public via audio broadcast, with exceptions in instances where confidentiality was granted. [15]

To assist parties and the public to participate effectively during the hearing process, the CER had a Process Advisor for the hearing.

#### 2.1.6.1 The sharing of oral Indigenous knowledge

The Commission heard oral Indigenous knowledge in September and November 2021. The November dates were added at the request of some parties. The receipt of this oral form of knowledge and information, as shared by the Elders and knowledge keepers, was valuable for the Commission's consideration of this Application.

The Commission heard oral Indigenous knowledge, virtually, from:

- Piikani First Nation on 9 September 2021;
- Stoney Nakoda Nations on 8 November 2021;
- Driftpile Cree Nation on 9 November 2021; and
- Samson Cree Nation on 12 November 2021.

[15] On 8 November 2021, Stoney Nakoda Nations provided oral Indigenous knowledge confidentially, under section 58 of the CER Act and on 24 November 2021, Stoney Nakoda Nations filed confidential responses to questions asked during the oral Indigenous knowledge session. On 9 March 2022, Stoney Nakoda Nations consented to release the confidential information to GIC, should it be needed.

Stoney Nakoda Nations shared their knowledge confidentially, pursuant to section 58 of the CER Act. The Commission considered this confidential knowledge in its assessment of the Application and has referenced it throughout this Report. All confidential information has been redacted in the publicly available Report. An un-redacted version of this Report will be provided to Stoney Nakoda Nations and NGTL. Additionally, the un-redacted version will be submitted to GIC so that, in deciding whether to direct the Commission to issue a Certificate, GIC has access to all the information the Commission relied upon in coming to its Recommendation.

#### 2.1.6.2 Workshop on Potential Conditions

As mentioned in Chapter 1, section 183 of the CER Act requires that all conditions that the Commission considers necessary or in the public interest, should the Project be approved by GIC, be included in its Report. To facilitate parties' submissions on such conditions, the Commission floated Potential Conditions on 16 July 2021.

Further, and in response to comments heard during the process workshop, the Commission directed CER staff to organize a Conditions Workshop. As new step in the Commission's hearing process, the Conditions Workshop provided an opportunity for parties, as well as Indigenous peoples participating in the CER Crown Consultation Team activities, to discuss the Potential Conditions.

The objectives of the Conditions Workshop were to:

- provide information about the role of conditions and how they are written;
- enhance participant-participant as well as participant-proponent dialogue with respect to Potential Conditions; and
- help workshop participants finalize their written submissions on Potential Conditions.

The workshop was held from 12 to 14 October 2021. A summary report, including the presentation slides, was subsequently filed on the hearing record. Following the workshop, intervenors and NGTL had the opportunity to file written comments on the Potential Conditions.

#### 2.1.6.3 Argument

Once the evidentiary portion of the hearing process was complete, NGTL and 14 intervenors submitted written final argument. Intervenors who submitted written final argument had an opportunity to present oral summary argument from 2 to 4 March 2022. Oral final argument was provided by NGTL, Samson Cree Nation, Jacob Adserballe, Livingstone Landowners Group, and Piikani Nation. Following which, NGTL provided oral reply argument.

### 2.2 How the Application was assessed – assessment methodology

The Commission assessed NGTL's application in consideration of the requirements outlined in the Filing Manual. The following sections outline the Commission's assessment of potential effects of the Project on the Rights and interests of Indigenous people and on the environment including any cumulative environmental effects. Where there are elements and considerations across sections (for example, impacts on Rights and interests related to potential effects on the environment), these are noted and cross-referenced.

### 2.2.1 Assessment of the Rights and interests of Indigenous peoples

In assessing the effects of the Project on the Rights and interests of Indigenous peoples, the Commission acknowledges that Indigenous peoples have a special constitutional relationship with the Crown. Indigenous and Treaty Rights are recognized and affirmed in section 35 of the *Constitution Act, 1982*. The Commission recognizes that it must uphold the honour of the Crown in all its dealings with Indigenous peoples. This includes consulting with Indigenous peoples, considering the potential effects of proposed projects on the rights of Indigenous peoples, and accommodating where necessary.

In addition to the constitutional obligation to uphold the honour of the Crown, the CER Act contains several references and requirements regarding the consideration of the Rights and interests of Canada's Indigenous peoples. For example, the preamble of the CER Act notes the Government of Canada's commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples, and sections of the CER Act such as sections 56 and 183 specifically require the Commission to consider the effects of proposed projects on the rights of Indigenous peoples.

The Filing Manual outlines the information proponents are expected to file for applications within the CER's jurisdiction. The Filing Manual also provides guidance as to the type of information the Commission would typically need to make a decision or recommendation. As set out in the Filing Manual, proponents are expected to describe how Indigenous and Treaty Rights are exercised or practiced in the project area. Further, proponents are expected to explain a project's potential effects on the exercise or practice of Indigenous and Treaty Rights in the project area that may remain after the implementation of mitigation measures, and also to describe how such effects may contribute to potential cumulative effects. The Commission gathers additional information from Indigenous peoples participating directly in the public hearing or through the CER Crown Consultation Team. The Commission then assesses whether further mitigation or accommodation is necessary or in the public interest.

### 2.2.2 Environmental and socio-economic assessment

In assessing the environmental and socio-economic effects of the Project, the Commission uses an issue-based approach, as set out in the Filing Manual.

This assessment begins with a description of the project, the environmental setting, and the environmental and socio-economic elements within that setting. Based on this information, the Commission summarizes which interactions between a project and the valued components (**VC**s) are expected to occur, including any resulting potential adverse environmental and socio-economic effects (provided in Table 3-6). For VCs where project-related environmental interactions are not expected, or where the Commission determines that project interactions with VCs would result in neutral or positive effects, the Commission does not undertake further examination.

The Commission then assesses the potential adverse environmental and socio-economic effects, as well as the adequacy of a proponent's proposed environmental protection strategies and mitigation measures for a project. The Commission considers the extent to which standard mitigation is relied on to mitigate potential adverse effects. The Commission also provides detailed analysis for issues that are of public concern or are of environmental consequence, and that may require additional mitigation. The Commission analyses and makes findings for each issue that it considers.

The Commission then assesses whether further mitigation is necessary or in the public interest by way of a condition on any potential project authorization, which must be fulfilled by the proponent. In this manner, the Commission can be satisfied that any potential environmental and socio-economic effects would not be significant.

For added transparency, Appendix IV provides the criteria, ratings, and considerations for determining the extent to which a potential effect could be considered significant. Appendix IV also provides the considerations for determining the extent to which effects to Rights and interests may be considered significant.

### 2.2.3 Cumulative effects approach

The assessment of cumulative effects considers the impacts of residual effects associated with a 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. When considering cumulative impacts on rights, the various projects or activities that may have already impacted the practice of a right in a particular area are taken into account.

A number of different types of activities and projects may be considered when assessing existing, proposed, and reasonably foreseeable projects and activities that have the potential for spatial and temporal interaction of effects, and therefore the potential for interaction of cumulative effects. These activities may include agriculture, infrastructure, residential, linear developments, industrial activities, and forestry.

The primary focus when considering cumulative effects is on total cumulative effects; however, a project's relative contribution to total cumulative effects is also relevant. If the total cumulative effects are considered to be high (e.g., exceed a relevant threshold for a particular VC), then effects on that component will generally be found to be significant unless the Project contribution to total cumulative effects is negligible. Such thresholds might include, for example:

- Pollutants exceeding established standards or guidelines.
- A species being at risk because of cumulative effects.
- Habitat disturbance for a species of conservation concern or for a valued ecosystem exceeding an established threshold (such as for linear disturbance density).

An assessment of cumulative effects must first examine the nature of a project and any potential residual effects after mitigation measures are applied. If any residual effects remain following mitigation, the assessment must then examine the potential significance of those residual effects on cumulative effects.

### 2.2.4 Environmental effects and significance determination pursuant to the *Impact Assessment Act*

Following the requirements of the IA Act, the CER posted a Notice of Commencement on the Canadian Impact Assessment Registry on 21 December 2020[16] in respect of the assessment of the portion of the Project that crosses federal lands. The CER invited interested parties to submit comments on the federal lands using the process established by the Commission.

The Commission and Parks Canada are each required to perform an assessment under section 82 of the IA Act for that portion of the Project that crosses Bar U Ranch. In addition to the Commission, Parks Canada will make its own independent determination, which will be posted to the Canadian Impact Assessment Registry. Parks Canada has indicated on the record that it would also be required to issue a land use agreement for the portion of the Project that crosses Bar U Ranch. Lastly, Parks Canada indicated that it is the competent minister under the *Species at Risk Act* (**SARA**) for any impacts on species at risk on the site resulting from the Project.

Subsection 84(1) of the *Impact Assessment Act* outlines five factors that must be considered in determining whether a project is likely to cause significant adverse environmental effects:

a) any adverse impact that the project may have on the rights of Indigenous peoples;

b) Indigenous knowledge provided with respect to the project;

c) community knowledge provided with respect to the project;

d) comments received from the public under subsection 86(1); and

e) the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented.

### 2.2.5 Summary of significance by valued component

Throughout this Report, the Commission followed the process outlined above and took into account the specific views of NGTL and the parties to the hearing process. Considering both NGTL's mitigation measures and the conditions imposed by the Commission, the Commission found that the extent to which the Project effects may be significant range from low to medium for the VCs evaluated (presented in Table 2-3).

[16] Canadian Impact Assessment Registry, reference number 812500 (https://iaac-aeic.gc.ca/050/evaluations/proj/81250)

**Table 2-3: Evaluation of significance of residual effects**

| | Valued Component | Section reference | Evaluation of significance of residual effects |
|---|---|---|---|
| Biophysical | **Vegetation** | Section 9.2.3 | Medium |
| | **Water quality and quantity** | Section 9.2.1 | Low |
| | **Fish and fish habitat** | Section 9.2.2 | Medium |
| | **Wildlife and wildlife species at risk** | Section 9.2.4 | Low to medium |
| Socio-Economic | **Human occupancy and resource use** | Section 5.2 | Medium |
| | **Heritage resources** | Section 6.3 | Low |
| | **Traditional land and resource use** | Section 6.2 | Medium |
| | **Human health** | Section 5.3 | Low |
| | **Infrastructure and services** | Section 5.4 | Low |

## 2.3 What happens next?

Should GIC direct the Commission to issue a Certificate for the Project, the Commission will also issue Order XG-005-2022 and the CER, as a lifecycle regulator, would have oversight of the Project. Throughout the lifecycle of the Project, the CER will hold NGTL accountable to fulfill its regulatory requirements.

### 2.3.1 Detailed route

If GIC directs the Commission to issue a Certificate, then, in accordance with the relevant provisions of the CER Act, NGTL would need to file the specific details of the proposed route of the pipeline. These materials are referred to as the PPBoR. NGTL would also be required to serve notices on all owners of lands proposed to be acquired, leased, taken or used, insofar as they can be ascertained; and publish a notice in at least one issue of a publication, if any, in general circulation within the area in which the lands are situated. NGTL requested, and the Commission granted, an exemption from the detailed route process for certain activities associated with the Project, explained in Section 1.3.1 above.

A person who anticipates that their lands may be adversely affected by the proposed detailed route of the pipeline, can file a statement of opposition with respect to a particular tract of land along the detailed route. In such a case, a detailed route hearing may be required, as set out in subsections 201(1) and subsections 202(1) of the CER Act. Pursuant to subsection 203(2) of the CER Act, if no statements of opposition are filed in respect of a PPBoR, the Commission may approve that PPBoR without further process.

### 2.3.2 Conditions

The Commission has determined that 34 Certificate conditions are either necessary or in the public interest if GIC were to direct that a Certificate be issued. The Commission has further imposed five standard conditions on the Order XG-005-2022, which would be issued under section 214 of the CER Act in respect of the Project. In finalizing and setting out the imposed conditions, the Commission considered all comments received from parties on the Potential Conditions.

A majority of the imposed conditions have timing requirements, both generally (e.g., prior to commencing construction, or after LTO) and specifically (e.g., 60 days, 30 days or 15 days). These timing requirements are set to allow sufficient time for the CER to evaluate the filings. In some cases, this would also include the Commission's determination, should the condition be filed for Commission approval. During the hearing process, the Commission heard from several parties that the timing requirements set out in the conditions were not sufficient to allow for public review and comment on the filings. The Commission reminds all parties and NGTL that the time for NGTL to receive and incorporate any additional information would be prior to filing with the CER.

A number of the imposed conditions include a requirement for NGTL to provide a copy of the condition filing to all Indigenous peoples who have expressed an interest in receiving a copy. In those cases, NGTL must, **within 7 days of the filing,** provide confirmation to the CER that it has done so. The Commission heard concerns from Stoney Nakoda Nations, about the requirement to express an interest in receiving copies of particular condition filings. The Commission expects NGTL to provide copies of the filings to any Indigenous peoples who have expressed an interest in receiving a copy, or an interest in a particular condition's subject matter, either through the hearing process, through feedback from or participation in CER Crown Consultation Team activities, or through direct engagement. The Commission also expects that NGTL will respect the communication preferences indicated by Indigenous peoples, including the ability to decline receipt of such filings.

The CER evaluates all condition filings. For certain conditions, approval of the Commission may be required before specific activities can proceed. The CER will monitor and enforce compliance with the conditions set out in Appendix II, as well as any additional conditions GIC might impose. The CER monitors and enforces compliance throughout the lifecycle of the Project using audits, inspections and other compliance and enforcement tools.

# 3 Project Details

To give context to the Commission's analysis and findings provided in the subsequent chapters, certain contextual details of the Application have been reproduced in this chapter. For a full understanding of the Project, please review the original filings on the hearing record, found on the CER's public repository RegDocs.

### 3.1 What did NGTL request in its application?

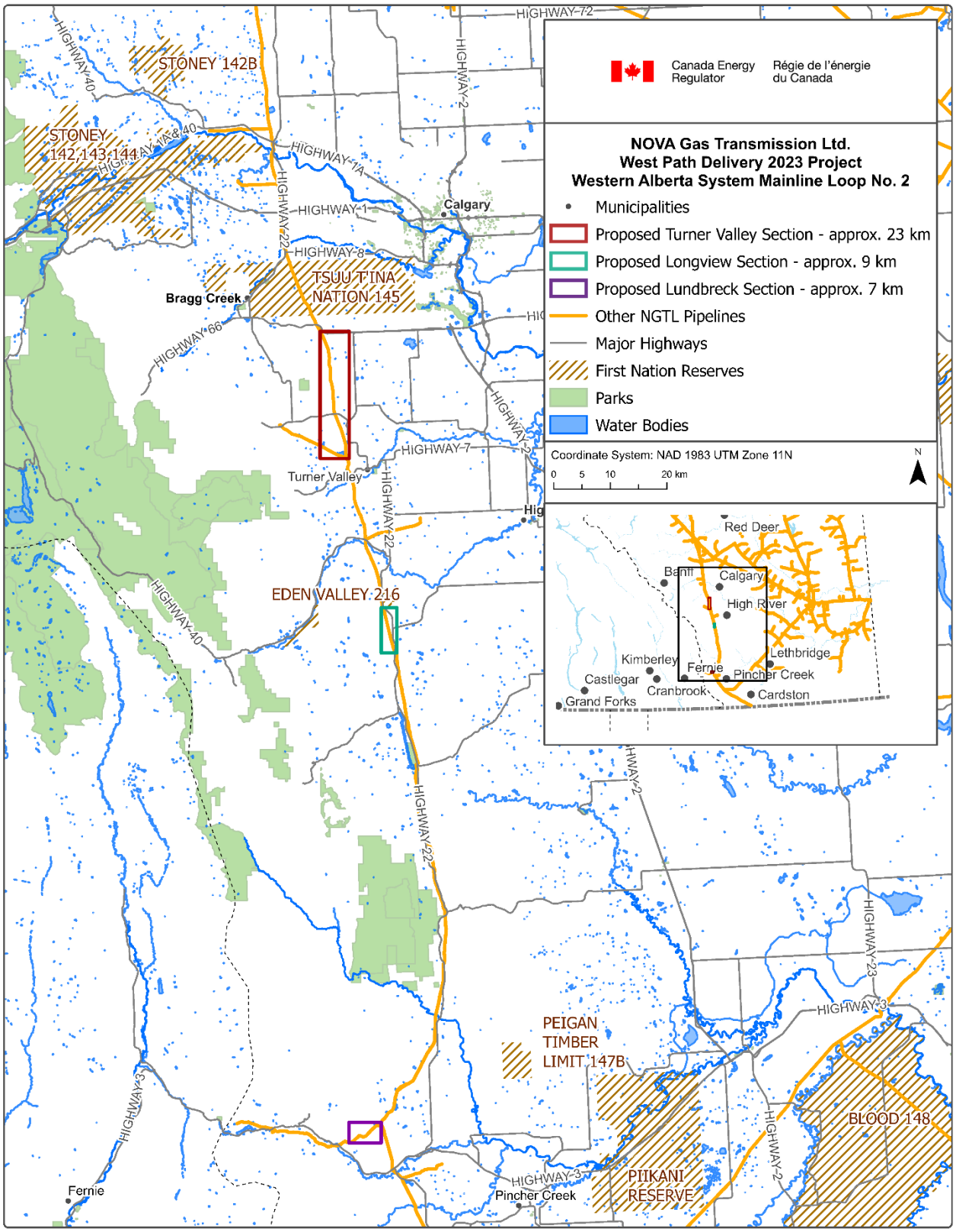
NGTL's Project is comprised of the following main components:

- Approximately 39.1[17] km of 1,219 mm (**NPS 48**) pipeline loops in three sections, shown in Figure 3-1:
  - Western Alberta System (**WAS**) Mainline Loop No. 2 Turner Valley Section (**Turner Valley Section**)
  - WAS Mainline Loop No. 2 Longview Section (**Longview Section**)
  - WAS Mainline Loop No. 2 Lundbreck Section (**Lundbreck Section**)
- mainline valve (**MLV**) sites and associated piping
- associated compressor station tie-in valves and pipe assemblies
- launcher and receiver facilities to accommodate pipeline cleaning and in-line
- construction-related temporary infrastructure such as access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, and contractor yards
- a cathodic protection (**CP**) system
- miscellaneous works, such as pipeline warning signs and aerial markers.

A map of the Project is shown in Figure 3-1.

[17] While the Application originally discussed a Project length of approximately 40.1 km, NGTL stated it progressed its Project engineering, construction planning, and stakeholder engagement, resulting in minor route refinements on all three Project components. The most recent update to the pipeline route provided in NGTL's reply evidence indicated that detailed design reduced the expected total length of the pipeline to 39.1 km.

## Figure 3-1: Project overview map




The map is a graphical representation intended for general informational purposes only. Map produced by the CER, May 2022, Last updated on May 13

## 3.2 Location, land requirements, rights, and acquisition

### 3.2.1 Location

The Project is located in southwestern Alberta within the boundaries of Treaty 7 and is within the area of the Métis Nation of Alberta Region 3 as well as the areas of interest of 17 potentially affected Indigenous peoples. All five of the Treaty 7 First Nations signatories were engaged by NGTL on the Project (Blood Tribe, Piikani Nation, Siksika Nation, Stoney Nakoda Nations and Tsuut'ina Nation).

Treaty 7 was signed in September of 1877 at Blackfoot Crossing, Alberta, and covers an area of approximately 130,000 square km, encompassing land from the Rocky Mountains in the west, the Cypress hills to the east, the Red Deer River in the North, and the USA border to the south. The terms of Treaty 7 permit signatory Nation members to pursue their vocations of hunting throughout the tract surrendered, though the signatories interpreted the treaty as a peace treaty, not as a land surrender.

While Treaty 7 does not specifically mention practices, such as fishing, trapping, gathering or cultural pursuits, these activities are understood to be reasonably equivalent or incidental to the expressed Treaty 7 harvesting rights, and are a means of earning a livelihood in a similar manner to those under which the treaty was signed.

The Project setting is rural. The nearest communities to each Project component are:

- Communities of Priddis and Turner Valley, Alberta, each approximately 3 km from the Turner Valley Section;
- Residences on the Eden Valley 216 reserve of Stoney Nakoda Nations and the community of Longview, Alberta, which are approximately 2 km and 8 km, respectively, from the Longview Section; and
- Community of Burmis, Alberta, approximately 9 km from the Lundbreck Section.

The Turner Valley Section is a 22.9 km-long natural gas pipeline loop within Foothills County and would be constructed between NGTL's existing Priddis Meter Station in SE 29-022-03 W5M at the north end and the Turner Valley Compressor Station in SE 15- 020-03 W5M at the south end. The hamlet of Millarville is approximately 2 km east of the Turner Valley Section PDA. Tsuut'ina Nation is the nearest Indigenous community and the closest Indigenous Reserve, the Tsuut'ina Nation 145, is located approximately 3 km north of the Project Development Area (**PDA**)[18].

The Longview Section is a 9.1 km long natural gas pipeline loop in the Foothills County and would be constructed between NGTL's existing WAS70 valve in NE 19-017-02 W5M at the north end and WAS67 valve in NW 028-16-02 W5M at the south end. The closest community is Longview, approximately 8.2 km north of the PDA and is approximately 30 km southwest of the Town of High River. Stoney Nakoda Nations are the nearest Indigenous community and the closest Indigenous Reserve lands, part of Eden Valley 216, is located approximately 0.3 km northwest of the PDA.

[18] Spatial boundaries are defined in Section 3.5.1

The Lundbreck Section is a 7.1 km-long natural gas pipeline loop in the Municipal Districts of Pincher Creek No. 9, Ranchland No. 66 and the Municipality of Crowsnest Pass. This section would be constructed between NGTL's existing CM10 valve in NE 11-008-03 W5M at the east end and the Bellevue Tap Tie-in in NW 32-007-03 W5M at the west end. The closest community is Frank, Alberta, approximately 1.9 km west of the PDA. Piikani Nation is the nearest Indigenous community and the closest Indigenous Reserve, Peigan Timber Limit 147B (part of Piikani 147), is located approximately 37 km east of the PDA.

### 3.2.2 Land requirements

***Pipeline components***

The pipeline components for the Project require a total cumulative length of approximately 39.1 km of RoW as well as associated temporary workspace, summarized in Table 3-1.

**Table 3-1: Approximate land required for permanent lands and temporary workspace**

| Project component / land type | Approximate non-overlap area (ha) | Approximate overlap* area (ha) | Approximate total area (ha) |
|---|---|---|---|
| **Turner Valley Section** | | | |
| Permanent RoW | 40.3 | 28.5 | 68.8 |
| Temporary workspace | 51.6 | 3.6 | 55.2 |
| **Total** | **91.9** | **32.1** | **124.0** |
| **Longview Section** | | | |
| Permanent RoW | 27.8 | 0.2 | 28.0 |
| Temporary workspace | 29.7 | 1.6 | 31.3 |
| **Total** | **57.5** | **1.8** | **59.3** |
| **Lundbreck Section** | | | |
| Permanent RoW | 17.4 | 0.0 | 17.4 |
| Temporary workspace | 29.8 | 16.4 | 46.2 |
| **Total** | **47.2** | **16.4** | **63.6** |
| **TOTAL** | | | |
| Permanent RoW | 85.5 | 28.7 | 114.2 |
| Temporary workspace | 111.1 | 21.6 | 132.7 |
| **Total** | **196.6** | **50.3** | **246.9** |
| *Overlap refers to temporary workspace and permanent RoW overlapping existing NGTL RoW | | | |

The RoW and temporary workspace are located on both private (freehold) land and Crown land in Alberta. Approximately 88.6 per cent of all parcels traversed by the pipeline components are on private (freehold) land, and approximately 11.4 per cent are on Crown land, as summarized in Table 3-2.

**Table 3-2: Land ownership along proposed pipeline section route RoW**

| Land type | Number of parcels | Approximate percentage of land parcels crossed (per cent) | Approximate length (km) |
|---|---|---|---|
| **Turner Valley Section** | | | |
| Private (freehold) | 2* | 100* | 22.9 |
| **Longview Section** | | | |
| Private (freehold) | 14 | 90 | 8.2 |
| Provincial (Crown) | 1 | 1 | 0.1 |
| Federal (Crown) | 1 | 9 | 0.9 |
| **Lundbreck Section** | | | |
| Private (freehold) | 4 | 36 | 2.9 |
| Provincial (Crown) | 7 | 64 | 4.1 |
| **TOTAL** | **79** | **100** | **39.1** |
| *Less than 1 per cent of the Turner Valley Section (approximately 40 m) crosses Provincial Crown land (at Threepoint Creek). | | | |

For the majority of the length of the pipeline components, NGTL would use a construction RoW width (including both permanent RoW and temporary workspace) of approximately 40 m to provide for safe and efficient workspace for construction. NGTL requires a permanent RoW of varying widths (between 18 m and 32 m) along the proposed route for operations and maintenance purposes. NGTL stated that in areas where pipeline components parallel an existing NGTL RoW, the permanent RoW would, where possible, overlap the existing RoW to reduce the new permanent footprint. Table 3-3 summarizes the RoW requirements for the Project that are parallel/non-parallel with existing disturbances.

**Table 3-3: Parallel RoW and non-parallel RoW**

| Project component | Approx. total length (km) | Approximate parallel RoW (km)* | | | Approximate non-parallel RoW (km)* | | |
|---|---|---|---|---|---|---|---|
| | | Crown land | Private land | Per cent of total length | Crown land | Private land | Per cent of total length |
| Turner Valley Section | 22.9 | 0.1 | 21.4 | 94 | 0.0 | 1.4 | 6 |
| Longview Section | 9.1 | 0.9 | 5.9 | 75 | 0.0 | 2.3 | 25 |
| Lundbreck Section | 7.1 | 4.2 | 2.9 | 100 | 0.0 | 0.0 | 0 |
| **TOTAL** | **39.1** | **5.2** | **30.2** | **90** | **0.0** | **3.7** | **10** |

*parallel/non-parallel with existing NGTL pipeline RoW, third-party pipeline RoW, powerline easements and/or road allowances.

NGTL noted that the temporary workspace requirements for the pipeline components are subject to refinement as the Project proceeds through detailed engineering. In addition, before the start of construction, NGTL and the Prime Contractor(s) for the Project would complete an additional assessment of lands required for construction activities. Once this assessment is completed, additional temporary workspace may be required on a site-specific basis, which would be finalized in the field before, and potentially, during construction.

These areas, if needed, are expected to be located within the lands assessed in NGTL's Environmental and Socio-Economic Assessment (**ESA**). In the event that temporary workspace is required outside of lands assessed in the ESA, NGTL would conduct a desktop review and field studies, if necessary, and apply any necessary mitigation as detailed in the Environmental Protection Plan (**EPP**). NGTL would also acquire any applicable permits or authorizations and/or make any required notifications based on the scope and nature of the proposed changes. In the event that site-specific concerns are identified by Indigenous peoples, NGTL stated it would engage to identify mitigation options, including potential options to adjust the construction foot print to avoid sensitive sites.

As lands used for temporary workspace would not be required for its operational needs, NGTL stated the lands would be returned to the provincial Crown or the landowner after construction, cleanup, and final reclamation. NGTL further stated that following construction, temporary workspaces would be restored to equivalent land capabilities (e.g., allowed to naturally revegetate after construction or restored to landowner specifications) and access to traditional resources or areas would return to existing conditions.

***Valve sites***

NGTL stated mainline valves would be installed at regular intervals, as required, along the Project and would be located within the permanent RoW. Additional temporary workspace would be required at these sites during construction. NGTL stated the permanent valve sites would be fenced to ensure the safety and protection of the asset and the public, as well as protection of the environment. Access to valve sites would be via the permanent RoW or permanent or temporary access roads during both construction and operations.

NGTL further stated that consideration was given to locate valves in proximity to existing above-ground infrastructure such as existing valve sites, as this approach:

- ensures adequate access to valves that already exist for improved operability and maintenance of the system,
- minimizes the safety risk to operations and the general public, and
- minimizes the required footprint of a valve site if an existing valve site can be expanded.

In addition, NGTL stated that valve sites that were identified as potential risks to environmentally sensitive locations during review have been avoided.

Finally, NGTL submitted that valve locations would be finalized in the detailed design phase to optimize the location based on accessibility and areas used for pre-existing facilities, and that the final mainline block valve spacing would adhere to TC Energy specifications, as well as to applicable industry standards.

***Launcher and receiver lands***

NGTL indicated that permanent launcher and receiver site requirements would be assessed for each pipeline component and would be located in a fenced area within the boundaries of the permanent pipeline RoW. NGTL provided a preliminary list of launcher and receiver locations in its Application. NGTL stated that additional temporary workspace may be required at these sites during construction. Access to sites would be via the permanent RoW or permanent or temporary access roads during both construction and operations.

***Land required for cathodic protection***

Included in the Project design, NGTL described how the pipeline components would share the CP system that currently protects the NGTL System. However, if required, new test stations would be installed at appropriate intervals and locations along the Project to monitor the effectiveness of the applied CP current.

***Stockpile sites and contractor yards***

Stockpile sites and contractor yards would be required for construction of the pipeline sections and NGTL indicated that that it is currently investigating potential locations for ancillary sites. NGTL stated it would use existing disturbed areas where feasible, to minimize effects on previously undisturbed areas.

### 3.2.3 Land rights and acquisition process

NGTL identified 55 landowners (53 freehold and the Provincial and Federal Crown) and two land users (e.g., grazing tenure holders) that may be potentially affected by the Project. NGTL stated it would acquire the required freehold land rights in compliance with the CER Act, using RoW and temporary workspace agreements.

Further, NGTL would apply to Alberta Environment and Parks (**AEP**) for Crown land rights through a Pipeline Agreement, Temporary Field Authorization, and Miscellaneous Lease, as required. NGTL stated it anticipated commencing the freehold land acquisition process for permanent and temporary land rights, including serving CER Act subsection 322(1) notices, in Q4 2021 and that it aims to complete land acquisitions by Q2 2022. NGTL further stated it would ensure land rights would be acquired and third-party agreements obtained in advance of the scheduled construction.

NGTL said that it bases its negotiations with landowners on fair, appropriate, industry leading practices, which consistently result in voluntary and reasonable agreements for land rights. All of NGTL's landowner engagement and acquisition programs are rooted in TC Energy's Land Guiding Principles to ensure the development of strong, long-term relationships, built on a foundation of trust and accountability. NGTL also said that its objective is to reach voluntary and reasonable agreements with landowners for land rights, including agreement on the compensation payable for such rights.

## 3.3 NGTL's public engagement[19]

### 3.3.1 NGTL's stakeholder engagement program

In its Application, NGTL explained that its engagement activities for the Project are guided by TC Energy's stakeholder engagement program, as well as community relations and communications best practices. NGTL stated that the overriding principle underpinning the stakeholder engagement program is that stakeholders would be engaged in a fair, honest, open, consistent, and timely manner by NGTL representatives, and would have the opportunity to provide input into NGTL's Project planning.

NGTL explained that the purpose and goals of the stakeholder engagement program for this Project were 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 required to address potential adverse Project effects

[19] NGTL's engagement program and Project-specific engagement activities with Indigenous peoples are discussed in Chapter 5.

    - enhancement measures, where appropriate, to improve potential positive socio-economic effects
- identify and respond to questions and concerns
- provide stakeholders with ongoing Project updates, including communication about the Project and the anticipated regulatory schedule, including the CER application timing.
- consider stakeholder questions or concerns for incorporation as part of Project planning.
- 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 stakeholder engagement principles and goals set out above, NGTL stated that the goals specific to landowner engagement are also to identify and address Project-related landowner questions and concerns and to support the acquisition of land rights necessary for the construction, operation and maintenance of the Project. NGTL explained its stakeholder engagement program is undertaken in a phased approach and implemented using open communication and participatory stakeholder involvement practices.

NGTL stated that once the Project is in-service, responsibility for ongoing landowner relations would be transitioned to NGTL operations, and that regionally based NGTL liaisons would continue to build and maintain relationships with landowners and occupants. NGTL further stated that TC Energy's Public Awareness personnel would work in collaboration with the Project team to integrate these new assets into its Public Awareness Program.

### 3.3.2 Design of public engagement activities

In addition to the 55 landowners, two occupants, and two land users potentially affected by the Project, NGTL also more broadly identified the following stakeholders for the Project:

- 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;
- emergency responders; and
- local business communities.

NGTL noted that since the process of identification is ongoing and continues throughout the evolution of the Project, the stakeholder list is regularly updated.

NGTL indicated that it used a variety of tools and activities as part of its engagement program. NGTL submitted sample copies of its Project materials provided to stakeholders during its engagement activities.[20]

NGTL noted it enacted protocols to ensure the continuation of consultation and land acquisition with stakeholders during the COVID-19 pandemic. Specifically, when social distancing measures were in place, NGTL indicated it would conduct as many consultations and follow-ups as possible via phone, electronic medium, or mail.

### 3.3.3 Implementation of engagement activities

NGTL stated it began approaching landowners with respect to survey access for the Project in July 2019. Contact was made to provide information about the Project and to discuss survey access for environmental, geotechnical, and other surveys. NGTL further stated that initial implementation of the stakeholder engagement program began in Q4 2019.

NGTL indicated that in October 2019, it reached out to representatives from four municipal districts and counties to provide information on the Project, address any questions and concerns, and set up in-person meetings. NGTL initiated follow-up communications with mayors, Chief Administrative Officers, other elected officials, staff, and emergency responders from the following local governments:

- Foothills County
- Town of Turner Valley
- Town of Black Diamond
- MD of Ranchlands No. 66
- MD of Pincher Creek No. 9
- SM of Crowsnest Pass
- Town of Pincher Creek

In keeping with TC Energy's commitment to ongoing engagement, NGTL stated that Project representatives also participated in municipal conferences to provide information about the Project, receive feedback and answer any questions.

NGTL hosted public Project-specific open house events in November and December of 2019, which provided an opportunity for area residents and stakeholders to ask questions and provide feedback on the Project. NGTL stated that representatives from Project Management, Engineering, Environment, Land, Indigenous Relations, Socio-Economics, and Public Affairs were on hand to answer questions from attendees, record feedback, and provide both Project-specific and corporate TC Energy information. The open house events took place in Turner Valley and Longview, AB and Sparwood, BC.

[20] Sample copies of NGTL's Project materials provided to stakeholders through engagement activities were filed as Appendix 11 in its Application (C09063-9).

In its Application and additional filings, NGTL described a number of questions and concerns that were raised by landowners potentially affected by the Project. These included:

- concerns about size of RoW
- pipeline routing
- hiring of local contractors
- interruption to businesses
- compensation concerns
- survey access
- general construction disturbances
- proximity to residences
- weed control
- damage and/or removal of trees
- impact to natural springs/water wells
- disruption to grazing activities
- crop loss
- post-construction reclamation
- impact to irrigation

NGTL stated that it would continue to engage stakeholders throughout all Project phases and respond appropriately, including through the regulatory review process, until completion of Project construction. NGTL commented that feedback gathered through engagement with local governments and the general public has been and will continue to be considered for incorporation into Project planning and execution, as appropriate.

## 3.4 NGTL's emergency management

### 3.4.1 CER expectations regarding emergency management

As part of its public interest mandate and under its approach to lifecycle regulation, the CER requires companies (whose facilities are regulated by the CER) to demonstrate that they can safely build and operate their facilities in a manner that protects people, the environment, and species living within a project area.

The CER holds companies responsible for ensuring that the design, specifications, programs, engineering assessments, manuals, procedures, measures, and plans are developed and implemented in accordance with the *Canadian Energy Regulator Onshore Pipeline Regulations* (**OPR**). The OPR includes, by reference, the *Canadian Standards Association* (CSA) *Standard CSA Z662 – Oil and Gas Pipeline Systems, 2019* (**CSA Z662-19**). The OPR requires companies with CER-regulated facilities 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.

### 3.4.2 Emergency management considerations

As part of Project consultation activities, NGTL indicated it provides information concerning emergency preparedness and response to various parties, which may include potentially affected stakeholders, landowners and Indigenous peoples, as appropriate. TC Energy publishes its Emergency Management Corporate Program Manual in accordance with Order AO-001-MO-006-2016. In the event of an emergency, TC Energy's comprehensive Emergency Management

Program would be activated. NGTL noted that TC Energy employees and contractors receive training for emergency events. If there is an incident, these employees and contractors would work closely with landowners and impacted persons or groups, as well as authorities and emergency responders to manage the incident.

NGTL stated that its Prime Contractor(s) would work with local emergency response providers prior to construction to ensure the emergency plans would be linked to existing plans where appropriate. These plans would be communicated to personnel at site safety orientations before site access is granted.

NGTL engaged with emergency response service organizations and confirmed that emergency management during Project construction would be governed by the site-specific Emergency Response Plan (**ERP**). During the Project's operational phase, the emergency plans would be governed by TC Energy's overarching Emergency Management Corporate Program Manual and related operating procedures. NGTL states that it would operate the Project in accordance with all applicable legislation, codes, and standards, including the OPR and CSA Z662-19, as well as the imposed conditions. The TC Energy Operational Control Centre in Calgary monitors and controls NGTL System operations.

### 3.4.3 Post-construction engagement

If approved, once the Project is placed in service NGTL indicated that its Indigenous Engagement Program[21] , and its Landowner and Stakeholder Engagement Programs for the Project would be transitioned to TC Energy's Regional Engagement Leads for the operational life of the asset and be captured under NGTL's Public Awareness Program. NGTL further stated that emergency management concerns would be addressed through its Public Awareness Program. The efforts of the Public Awareness Program would further provide opportunities for relationship building and information sharing between communities and NGTL. NGTL said the intended goals of the Public Awareness Program is to increase awareness of pipeline safety.

## 3.5 Environmental and socio-economic setting

### 3.5.1 Spatial and temporal boundaries

Throughout this Report, the Commission has adopted the spatial extent descriptors used by NGTL in its ESA. The VC-specific boundaries are summarized in Table 3-4 below.

- The Project Development Area (PDA or footprint), includes areas that are anticipated to be physically disturbed by Project construction activities and pipeline operation, including the RoW and temporary workspace.
- The PDA is a 75 m-wide assessment corridor, which conservatively includes a minimum 32 m-wide construction corridor plus up to an additional 43 m for temporary workspace to accommodate construction activities and safe vehicle and equipment movement.
- The Local Assessment Area (**LAA**) is defined as the areas in which Project-related effects (direct or indirect) are predicted to occur.

[21] Discussion regarding NGTL's Indigenous Engagement Program is provided in Chapter 5 of this Report.

- The Regional Assessment Area (**RAA**) is defined as the areas within which potential cumulative effects are assessed.

**Table 3-4: Spatial boundaries[22]**

| Valued component | Spatial boundary of Local Assessment Area | Spatial boundary of Regional Assessment Area |
|---|---|---|
| Soil capability | PDA | Same as LAA because any potential effects of the Project on soil capability would be confined to the PDA |
| Aquatics<br>a) Fish and fish habitat<br>b) Surface water quality and quantity<br>c) Ground water quality and quantity | a) PDA + 100 m upstream from each crossing and 300 m downstream from ditchline at crossing<br>b) Watercourses: PDA + 100 m upstream from each crossing and 300 m downstream from ditchline at crossing<br>Drainages (with no defined channels) and all other surface water bodies (e.g., wetlands): PDA + 100 m buffer<br>c) PDA + 200 m buffer | a) and b)<br>Area that extends 15 km upstream from each watercourse crossing or encompasses the watershed boundary upstream from each watercourse crossing, whichever is less, and the area that extends 15 km downstream from each watercourse crossing<br>c) PDA + 1 km buffer |
| Vegetation and wetlands | PDA + 1 km buffer | PDA + 15 km buffer |
| Wildlife and wildlife habitat | | |
| Human occupancy and resource use (including navigation and navigation safety) | | |
| Traditional land and resource use | | |
| Heritage resources | Same as PDA | RAA are not defined for heritage resources since the PDA/LAA are the maximum area for which effects can be predicted or measured accurately. |

[22] No LAA or RAA is used for the assessment of GHG emissions for the Project components, as the environmental effect associated with GHG emissions is a global phenomenon.

| Valued component | Spatial boundary of Local Assessment Area | Spatial boundary of Regional Assessment Area |
|---|---|---|
| Socio-economic valued components<br>a) Employment and economy<br>b) Infrastructure and services<br>c) Human health<br>d) Social and cultural well-being | a) Consist of the communities within or intersected (fully or partly) by the 50 km buffer of each PDA.[23]<br>b) to d) further refined from a) 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. | Same as LAA |
| Rights of Indigenous peoples | PDA + 1 km buffer | PDA + 15 km buffer |

### 3.5.2 Baseline conditions for valued components

#### 3.5.2.1 Land, human occupancy and resource use

- Road access to all three PDA sections is provided by Highways 3 and 22, municipal roads, industrial roads and ranching trails.

***Turner Valley Section***

- The Turner Valley Section is located within the Foothills Parkland and Montane South Natural Subregions. This area is comprised primarily of agricultural land cover, with coniferous and deciduous forest stands mostly associated with wetlands, watercourses, and slopes of the foothills. The RAA overlaps several protected areas including:
    - Brown-Lowery Provincial Park;
    - Bluerock Wildland Provincial Park;
    - Bragg Creek Provincial Park;
    - Mesa Butte Provincial Recreation Area;
    - North Fork Provincial Recreation Area;
    - OH Ranch Heritage Rangelands;
    - Sheep Creek Provincial Recreation Area;
    - Sheep River Provincial Park; and
    - Threepoint Creek Natural Area.

[23] Includes list of Statistics Canada Census Subdivisions found on in the ESA on PDF page 394 of 612 [C09063-11])

- The Turner Valley Section PDA is located on forested land (16.6 per cent), native grasslands (0.7 per cent), wetlands (6.9 per cent) and anthropogenically-altered land (73.9 per cent), including agricultural and industrial land. The Turner Valley Section traverses land used for a variety of activities including cultivation, grazing, tame pasture and hayland, oil and gas production and recreation (e.g., equestrian use).
- The Turner Valley Section crosses four named watercourses (Fish Creek, Priddis Creek, Pothole Creek, and Threepoint Creek), six unnamed tributaries, and four drainages.

***Longview Section***

- The Longview Section is located within the Foothills Fescue Natural Subregion, and the LAA is within a predominantly agricultural matrix to the east and foothills to the west. The Longview Section PDA overlaps with Bar U Ranch, while the RAA also overlaps several protected areas including Greenford Provincial Recreational Area, Emerson Creek Natural Area, and OH Ranch Heritage Rangelands.
- The Longview Section PDA is located on deciduous forest land and shrubland (9.7 per cent), wetlands (1.7 per cent) and anthropogenically-altered land (88.6 per cent), including agricultural land and industrial lands. Outside of the Bar U Ranch, the Longview Section traverses lands that are primarily used for agriculture (cultivation and grazing).
- The Longview Section crosses two named watercourses, Pekisko Creek and Stimson Creek, one Unnamed Tributary to Pekisko Creek, and four drainages.

***Lundbreck Section***

- The Lundbreck Section is located within the Montane and Subalpine Natural Subregions. The PDA is predominantly native vegetation with few anthropogenic land uses. The RAA overlaps several protected areas including:
    - Castle Provincial Park;
    - Castle Wildland Provincial Park;
    - Lundbreck Falls Provincial Recreation Area; and
    - Oldman Dam Provincial Recreation Area.
- The Lundbreck Section PDA is located on forested land (56.8 per cent), grassland (11 per cent) and wetlands (2 per cent). It traverses lands that are used predominately for pasture and rangeland.
- There is one active trapline agreement in the LAA (TPA 1677).
- The Lundbreck Section crosses nine watercourses, including one unnamed tributary to the Crowsnest River, and eight unnamed tributaries to Rock Creek.

#### 3.5.2.2 Physical and meteorological environment

- The PDA on the Turner Valley and Longview Sections are characterized by level to gently sloping terrain, with both sections having limited areas with strong slopes. The PDA on the Lundbreck Section route is characterized by strong to extreme slopes up to 70 per cent, with the remainder classified as level to strong slopes.
- The Lundbreck Section PDA has potential for acid rock drainage (ARD) shallow bedrock formations.

- The predominant soils in the Turner Valley Section footprint are well-drained Orthic Black Chernozems developed on till and glaciolacustrine deposits. The majority (86 per cent) of soils in the footprint are classified as Class 4 and considered marginal for agriculture, with the remaining soils rated as Class 5-7 and considered incapable of supporting an agricultural land use without significant inputs and management.
- Soils in the Longview Section footprint are predominantly well-drained Orthic Black Chernozems developed on till and glaciolacustrine deposits with minor inclusions of poorly drained Orthic Gleysols. The majority (93 per cent) of soils in footprint are classified as Class 4 with the remaining soils rated as Class 5.
- Lundbreck Section footprint soils are mainly well drained Orthic Dark Gray Chernozems developed on till, followed by well drained Orthic Eutric Brunisols developed on till. The majority (45 per cent) of soils in PDA are classified as Class 5, with the remaining soils rated as Class 4, 6, and 7.

#### 3.5.2.3 Soil contamination

- Review of federal and provincial databases identified:
  - several records of former well sites, one pollution break, and well sites with reclamation certificates within 50 to 100 m of the Turner Valley Section PDA; and
  - records of several pipelines and one well site in close proximity to the Longview Section and Lundbreck Section PDAs, all of which have reclamation certificates.

#### 3.5.2.4 Vegetation (including species at risk and species of management concern)

- No plant species or ecological communities of management concern were observed during field surveys on either the Turner Valley Section or Longview Section LAA.
- Field surveys identified the presence of whitebark pine and limber pine within the PDA for the Lundbreck Section. Whitebark pine is a tree species listed as endangered on Schedule 1 of the SARA and by the *Alberta Wildlife Regulation*. Limber pine is listed as endangered by the *Alberta Wildlife Regulation*. During the field surveys,16 whitebark pine trees and 377 limber pine trees were found within the PDA and an additional 178 limber pines were identified in the LAA. White pine blister rust was observed on many limber and whitebark pine trees found during the field surveys but no evidence of mountain pine beetle or spruce beetles was observed.
- Twelve additional provincially listed plant species and two ecological communities of management concern were also identified during the field surveys on the Lundbreck Section. One plant was listed S1, three S2, seven S3, and one SU. The three ecological communities of management concern are all listed as S2. Additionally, 5.3 ha of native rough fescue grassland on the Lundbreck Section are within a provincial Protective Notation disposition for Foothills rough fescue grassland.
- One prohibited noxious weed species was found during field surveys of the PDA, along with numerous occurrences of noxious weed species on all three sections.

#### 3.5.2.5 Wetlands

- The Project PDA would intersect approximately 14.2 ha of wetlands, with construction resulting in the temporary loss or alteration of 12.3 ha of wetlands for the Turner Valley Section, 0.8 ha for the Longview Section, and 1.1 ha for the Lundbreck Section.

#### 3.5.2.6 Water and water quality (surface water and groundwater)

- The Project is located within the Fish Creek, Sheep - Highwood River, and Upper Oldman River - Crowsnest Pass watersheds.
- Several shallow moderate to high yield groundwater aquifers are present in the Turner Valley RAA, three flowing wells and eight springs were mapped in the RAA, and 41 shallow water wells within the LAA are mainly used for domestic purposes.
- Two shallow moderate to high yield groundwater aquifers are present in the Longview Section RAA, no documented springs, and 10 shallow water wells within the RAA are used mainly for stock watering and domestic purposes.
- Several shallow low to moderate yield groundwater aquifers are present in the Lundbreck Section RAA, no documented springs, and three shallow water wells within the RAA are used for domestic purposes.

#### 3.5.2.7 Fish and fish habitat (including species at risk and species of management concern)

- The entire Project is located within the Eastern Slopes Fish Management Zone associated with provincial administration of fishing activities. Sportfishing is generally not permitted in rivers within the Project LAA from November 1 to June 15.

***Turner Valley Section***

- Nineteen fish species are documented in the RAA, including species that support important recreational fisheries and provide fisheries resources used for traditional purposes by Indigenous peoples. Watercourses in the RAA are documented to support habitat for sport fish including fall spawning species, including Brook Trout, Brown Trout, Bull Trout, Burbot, Cutthroat Trout, Mountain Whitefish, and Rainbow Trout.
- The Saskatchewan – Nelson Rivers populations of Bull Trout overlap with the RAA, these populations are listed as threatened on Schedule 1 of the SARA and listed as threatened under the Alberta *Wildlife Act.* Threepoint Creek is classified as critical habitat for the species under SARA.
- The RAA also includes one species of management concern, Spoonhead Sculpin, listed as may be at risk under the General Status of Alberta Wild Species.
- Whirling disease, a serious disease of salmonid fish that has infected trout and whitefish populations in Alberta, has been confirmed within the Bow River, Fish Creek, and Sheep River watersheds, and approximately one-half of the Turner Valley Section RAA is within the mapped red zone that contains positive detections of the disease.

***Longview Section***

- Twenty-one fish species are documented in the RAA, including species that support important recreational fisheries and provide fisheries resources used for traditional purposes by Indigenous peoples. Watercourses in the RAA are documented to support habitat for sport fish, including Brook Trout, Brown Trout, Bull Trout, Burbot, Cutthroat Trout, Mountain Whitefish, Northern Pike, and Rainbow Trout.
- The Saskatchewan – Nelson Rivers populations of Bull Trout overlap with the RAA, these populations are listed as threatened on Schedule 1 of the SARA and listed as threatened under the Alberta *Wildlife Act.* Pekisko Creek is classified as critical habitat for the species under SARA.
- The RAA also includes one species of management concern, Spoonhead Sculpin, listed as may be at risk under the General Status of Alberta Wild Species.
- Whirling disease has been confirmed within the Bow and Highwood River watersheds, and a portion of the RAA is within the mapped red zone for the disease.

***Lundbreck Section***

- Twenty-two fish species are documented in the RAA, including species that support important recreational fisheries and provide fisheries resources used for traditional purposes by Indigenous peoples. Five of the unnamed watercourses crossed by the LAA provide moderate spawning habitat for sport fish. Important recreational and Indigenous fisheries species documented in the RAA include Brook Trout, Brown Trout, Bull Trout, Burbot, Cutthroat Trout, Lake Trout, Lake Whitefish, Mountain Whitefish, Rainbow Trout, and Westslope Cutthroat Trout.
- The Saskatchewan – Nelson Rivers populations of Bull Trout and Westslope Cutthroat Trout overlap with the RAA, these populations are listed as threatened on Schedule 1 of the SARA and listed as threatened under the Alberta *Wildlife Act.* Eight of the unnamed watercourses are classified as critical habitat for Westslope Cutthroat Trout under SARA.
- The RAA also includes one species of management concern, Spoonhead Sculpin, listed as may be at risk under the General Status of Alberta Wild Species.
- Whirling disease has been confirmed within the Crowsnest River watersheds, and one-half of the RAA is within the mapped red zone for the disease.

#### 3.5.2.8 Wildlife and wildlife habitat (including species at risk and species of management concern)

***Turner Valley Section***

- A Sensitive Raptor Range for bald eagle, golden eagle, and prairie falcon overlaps a portion of the Turner Valley PDA. The PDA overlaps a Key Wildlife Biodiversity Zone (**KWBZ**)[24] associated with Fish Creek, while the RAA overlaps three additional KWBZs associated with the Elbow River, Sheep River and Highwood River.

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[24] KWBZs often encompass riparian areas that provide important winter ungulate (e.g., deer, moose habitat and areas of high potential for biodiversity).

- Grizzly bear (western population) is listed as a species of special concern on Schedule 1 of SARA. The southwest corner of the RAA overlaps a grizzly bear Core Recovery Zone within the Livingstone Bear Management Area (BMA 5). The PDA and LAA also overlap a grizzly bear Support Zone identified for BMA 5.
- Based on desktop studies, NGTL identified the potential for 70 wildlife species at risk and species of management concern with potential to occur within the RAA, including 20 species at risk listed on Schedule 1 of the SARA. There is no designated critical habitat for SARA-listed threatened and endangered species at risk within the RAA.
- Six species at risk (barn swallow, bobolink, evening grosbeak, olive-sided flycatcher, western tiger salamander and yellow rail) and seventeen species of management concern (alder flycatcher, American kestrel, Baltimore oriole, black tern, Cape May warbler, common yellowthroat, eastern kingbird, elk, least flycatcher, moose, mule deer, northern shrike, sandhill crane, sora, western tanager, western wood-pewee, and white-tailed deer) were observed during field studies in 2019 and 2020.

***Longview Section***

- The PDA of Longview Section is entirely within the range of sharp-tailed grouse as well as the Sensitive Raptor Range for bald eagle, golden eagle and prairie falcon. Approximately the southern half of the PDA intersects with the Sensitive Raptor Range for ferruginous hawk. The PDA and LAA do not intersect a KWBZ; however, the RAA overlaps KWBZs associated with Highwood River, Sheep River, and Mosquito Creek.
- The PDA and LAA overlap a grizzly bear Support Zone within the Livingstone Bear Management Area (BMA 5) and the Core Recovery Zone of BMA 5 overlaps the southwestern portion of the RAA.
- There is potential for 71 wildlife species at risk and species of management concern to occur within the RAA, with 21 species at risk listed on Schedule 1 of SARA with the potential to occur within the RAA. There is no designated critical habitat for SARA-listed threatened and endangered species at risk within the RAA.
- Four species at risk (barn swallow, bobolink, ferruginous hawk, and Sprague's pipit) and fifteen species of management concern (alder flycatcher, American kestrel, Baltimore oriole, bald eagle, bank swallow, black tern, eastern kingbird, great blue heron, least flycatcher, sharp-tailed grouse, sora, western wood-pewee, elk, mule deer, and white-tailed deer) were observed within the Longview Section LAA during the 2019 and 2020 field surveys. A great blue heron colony was observed within the LAA on Pekisko Creek (approximately 890 m from the PDA) and one active sharp-tailed grouse lek was observed within the PDA.

***Lundbreck Section***

- The Lundbreck Section PDA and LAA overlap with a KWBZ associated with the Crowsnest River and its tributaries at the northeastern extent of the section. The RAA overlaps with additional KWBZs associated with Daisy Creek, Goat Creek, and Crowsnest River watersheds. The remainder of the PDA outside of the KWBZ is within the Mountain Goat and Bighorn Sheep Range for the Southern Rockies population, which has a specified RAP for industrial activity.
- The LAA overlaps a grizzly bear Core Recovery Zone for the Livingstone Range (BMA 5).

- The RAA overlaps with the range of sharp-tailed grouse, and a Sensitive Raptor Range for bald eagle, golden eagle, and ferruginous hawk. There is a great blue heron nesting colony identified in the Oldman Dam River Recreational Area within the RAA.
- One species at risk (grizzly bear) and eleven species of management concern (bighorn sheep, Clark's nutcracker, Columbia spotted frog, elk, great blue heron, least flycatcher, moose, prairie falcon, sora, western tanager, and western wood-pewee) were observed in the Lundbreck Section LAA during the 2020 wildlife field surveys.

#### 3.5.2.9 Atmospheric and acoustic environment

- The Project setting is rural and not in close proximity to communities.
- NGTL did not identify noise receptors (e.g., private dwellings) in the Project PDA.

#### 3.5.2.10 Heritage resources

***Turner Valley Section***

- A desktop screening was completed for the Turner Valley Section PDA, including a 500 m buffer. With one exception, each of the sections of land crossed by the Project have areas designated on the Listing of Historic Resources as having high potential for the presence of previously unknown archaeological sites. The screening identified nine previously recorded pre-contact archaeological sites, including four within the PDA and five within 500 m of the PDA, and one historic site just outside of the PDA, which primarily traverses rolling foothills. Site locations are considered to be confidential information under the HRA.
- There are no lands within the PDA that are designated on the Listing of Historic Resources as having high paleontological resource sensitivity and no previously recorded fossil sites.

***Longview Section***

- A desktop screening was completed for the PDA of the Longview Section, including a 500 m buffer. Approximately half of the PDA crosses lands designated as HRV-4 or 5 on the Listing of Historic Resources, indicating the presence of known sites of high heritage value, or high potential for the discovery of previously unknown sites. The screening identified three pre-contact period sites within the PDA and two additional pre-contact period sites within the 500 m buffer. No provincial historic sites were identified within the PDA, however one federal historic site is within the PDA and two additional historic sites are within the 500 m buffer. Site locations are considered confidential information under the HRA. Most of these sites are associated with the Pekisko Creek valley, with a smaller cluster at Stimson Creek.
- The Longview Section has sites within the 500 m buffer of the PDA, including the Bar U Ranch, the Pekisko Creek North-West Mounted Police outpost, and a third historic site, consisting of a sandstone foundation remnant.
- There are no lands within the PDA that are designated on the Listing of Historic Resources as having high paleontological resource sensitivity and no previously recorded fossil sites.

***Lundbreck Section***

- A desktop screening was completed for the Lundbreck Section PDA, including a 500 m buffer. All sections of land crossed by the Project are designated on the Listing of Historic Resources as HRV-3, 4, or 5, indicating that the entire route intercepts lands with known sites of high heritage value, or high potential for previously unrecorded sites to be present.
- The Lundbreck Section contains the Livingstone Quarries, which are a significant historical resource and the largest single prehistoric mine known in the Alberta Rocky Mountains.
- There are lands within the PDA for the Lundbreck Section that are designated on the Listing of Historic Resources as having previously recorded fossil sites in the area. The palaeontological potential is high through the PDA area where bedrock is exposed, mainly in Sections 4 and 5 of Township 8, Range 3, West of the Fifth Meridian.

### 3.5.2.11 Navigation and navigation safety

- The Turner Valley Section does not cross any waterbodies on the *Canadian Navigable Water Act* List of Scheduled Waters. One watercourse crossed by the PDA, Fish Creek, is rated as possibly or likely to be navigable based on field assessments completed by Stantec in October 2019. Threepoint Creek is rated as possibly or likely to be navigable based on field assessments completed by Stantec in June 2020. Pothole Creek and the unnamed tributaries were rated as unlikely to be navigable due to small channel width and barriers to navigation.
- The Longview Section does not cross any waterbodies on the *Canadian Navigable Waters Act* List of Scheduled Waters. Two watercourses crossed by the PDA, Pekisko Creek and Stimson Creek, are rated as possibly or likely to be navigable based on field assessments completed by Stantec in October 2019 and June 2020. The Unnamed Tributary to Pekisko Creek is unlikely to be navigable due to small channel width and barriers to navigation.
- The Lundbreck Section does not cross any waterbodies on *the Canadian Navigable Water Act* List of Scheduled Waters. Field assessments completed in 2020 confirmed that the waterbodies are unlikely to be navigable due to small channel width and barriers to navigation.

### 3.5.2.12 Human health

- The main groups within the population that could potentially be affected by the Project for human health concerns are individuals who live near or rely on services and activities near the PDA and construction workers involved in the Project.

#### 3.5.2.13 Traditional Land and Resource Use

- NGTL stated that existing developments have already contributed substantially to effects on Traditional Land and Resource Use by altering the distribution and abundance of traditionally harvested resources, reducing the extent of lands available for traditional activities, disturbing or restricting access to sites and areas, and changing conditions such as air quality, water quality, visual aesthetics and noise that may influence Traditional Land and Resource Use.
- Through its engagement activities and literature review, results indicated that Indigenous peoples engaged on the Project continue to use Crown land within the RAA for traditional purposes, including hunting, trapping, fishing, plant gathering, travel, habitation, and cultural or spiritual activities.
- In addition to Crown land, NGTL submitted that private land could be used by Indigenous peoples for traditional purposes where landowners have granted Indigenous peoples access. However, NGTL stated it has not been made aware of any current agreements in place with landowners to access private lands intersected by the Project for traditional purposes.

### 3.5.3 Project components, activities, and interactions with valued components

Project components and activities are summarized in Table 3-5. Table 3-6 outlines how the activities associated with the Project components would interact with the VCs. Commission analysis and findings related to NGTL's mitigation of the potential adverse effects identified in Table 3-6 can be found in subsequent Chapters.

**Table 3-5: Project components and activities**

| **Project components and activities** |
|---|
| *Construction timeframe: Construction is scheduled to begin in Q1 of 2023 and be completed by Q4 of 2023* |
| RoW preparation and related infrastructure installation:<br>• Clearing, grubbing and grading RoW (typical RoW width of up to 32 m with additional temporary workspace at pipe bends, road crossings, etc.)<br>• Temporary workspace for log decks, topsoil storage, stockpile sites and laydown areas, contractor office and yards, and access roads<br>• Pipeline stringing, welding, bending, coating, trenching, installation, and backfill<br>• Watercourse crossings: trenched (isolated or open cut) crossings of 22 watercourses<br>• Trenchless crossings of roads (e.g., high-grade gravel roads)<br>• Water withdrawal and hydrostatic testing<br>• RoW clean-up, reclamation, and site restoration |
| *Operation timeframe: Service life of the Project (estimated in-service date: November 2023)* |

| Project components and activities |
| --- |
| • RoW maintenance including vegetation control, erosion control, line integrity flyovers, and third-party activity near lines |
| • Infrastructure and facility maintenance |
| *Abandonment timeframe: At the end of the service life of the Project, expected to be 30 years or more*[25] |
| • 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. |

[25] NGTL provided a Decommissioning and Abandonment appendix as part of its ESA. NGTL indicated that decommissioning or abandonment in-place will minimize ground disturbance, leaving vegetation that has become established over time to be largely undisturbed.

**Table 3-6: Project interactions**

| | Valued component | Description of interaction (or why no interaction is expected) | Potential adverse environmental or socio-economic effect |
|---|---|---|---|
| **Bio-physical** | Physical environment | • Construction activities: clearing, grading, soil handling, trenching, and backfilling | • Changes to terrain stability causing slope failure, erosion, slumping<br>• Alteration of topography (e.g., change in drainage patterns, landscape contours) |
| | Soil and soil productivity | • Construction activities: clearing, grubbing, soil stripping, soil salvage, grading, trenching, equipment movement, soil handling, clean-up and reclamation<br>• Operations and maintenance activities (excavations for integrity digs) | • Trench instability<br>• Reduced soil productivity resulting from loss of topsoil or admixing, wind or water erosion, or from compaction or rutting<br>• Reduced soil productivity due to soil contamination resulting from spot spills or exposure of already contaminated soils |
| | Vegetation | • Construction activities: clearing, grading, grubbing, trenching, equipment movement, clean-up and reclamation<br>• Potential introduction of weeds and/or non-native vegetation species from equipment movement<br>• Vegetation control activities during Project operations | • Reduction in plant species diversity, alteration of species composition of native vegetation<br>• Reduction in vegetation community diversity<br>• Loss or alteration of rare plants and rare plant communities, or culturally important plants<br>• Introduction and spread of weeds, non-native species, or forest pests |

| | Valued component | Description of interaction (or why no interaction is expected) | Potential adverse environmental or socio-economic effect |
|---|---|---|---|
| | Water quality and quantity | • Construction of trenched and/or isolated, watercourse crossings<br>• Construction activities; clearing, grading, soil handling, trenching, and backfilling<br>• Control of surface drainage during construction and operation<br>• Water withdrawal and release for hydrostatic testing during construction | • Alteration or disruption of natural surface water flow rates and patterns<br>• Alteration of natural drainage patterns<br>• Changes in groundwater flow or quantity<br>• Reduction in surface water quality and/or quantity from increased sedimentation or release of hydrostatic test water<br>• Reduction in surface water quality as a result of bank erosion during construction<br>• Reduction in groundwater quality and/or quantity due to trench dewatering<br>• Acidification of surface water in areas with potential for ARD |
| | Fish and fish habitat | • Instream construction of trenched, and isolated crossings<br>• Hydrostatic testing<br>• Installing spawning deterrents in watercourses<br>• Construction activities near watercourse crossings: clearing, grading, trenching, drilling, stringing pipe, lowering, backfilling, clean-up and restoration<br>• Bank restoration, riparian restoration, or maintenance activities | • Alteration of fish habitat quality and/or quantity, including critical habitat<br>• Increase in fish mortality risk or injury, including SARA-listed species<br>• Blockage of fish passage/movement<br>• Reduction in water quality (habitat quality) due to alteration or loss of riparian vegetation<br>• Reduction in habitat quality as a result of increased sediment load in water and sediment deposition<br>• Increased sediment deposition in watercourses and downstream of RoW<br>• Inter-basin transfer of aquatic organisms, including those that may harbor disease |

| | Valued component | Description of interaction (or why no interaction is expected) | Potential adverse environmental or socio-economic effect |
|---|---|---|---|
| | Wetlands | • Construction activities: clearing, grading, trenching, drilling, watercourse crossings, stringing pipe, lowering, backfilling, hydrostatic testing, clean-up and restoration | • Loss or alteration of wetland hydrological, habitat and/or biogeochemical function<br>• Alteration of wetland communities<br>• Loss of culturally important plants |
| | Atmospheric environment including GHG emissions | • Emissions from construction equipment and vehicles during construction<br>• Emissions from change in land cover<br>• Emissions from fugitive emissions and monitoring and surveillance vehicles during Project operations<br>• Release of upstream GHG emissions | • Increase in dust and air emissions, as well as GHG emissions, during construction<br>• Increase in air and fugitive emissions during operation of pipeline |
| | Wildlife species and habitat (including species at risk and species of management concern) | • Construction activities: clearing, grading, grubbing, soil stripping, soil salvage, grading, trenching, equipment movement, soil handling, clean-up and reclamation<br>• Operations and maintenance activities (excavations for integrity digs, vegetation control) | • Changes in wildlife habitat, including reduction in potential habitat availability for species at risk<br>• Changes in wildlife movement<br>• Wildlife mortality risk during construction and operations |

| | Valued component | Description of interaction (or why no interaction is expected) | Potential adverse environmental or socio-economic effect |
|---|---|---|---|
| **Socio-economic** | Acoustic environment | • Trenchless crossings of watercourses or roads during pipeline construction<br>• Operation of construction equipment<br>• Pipeline inspection and maintenance during operation | • Sensory disturbance to wildlife<br>• Increase in comprehensive sound levels during construction |
| | Human occupancy and resource use | • Construction activities: clearing, stripping, topsoil salvage, grading, trenching, backfilling, and watercourse crossing<br>• Construction-related sensory disturbance (e.g., noise, dust, and visual presence of construction activities)<br>• Pipeline inspection and maintenance during operations | • Disruption to Crown land activities due to a temporary alteration of land<br>• Disruption to private land activities (e.g., agriculture, grazing)<br>• Disruption to trapping, hunting, fishing and guide outfitting activities<br>• Disruption of recreational activities and land use (e.g., trail use)<br>• Disruption to parks, protected areas and environmentally significant area<br>• Disruption to access<br>• Alteration of visual landscape |
| | Heritage resources | • Construction activities: clearing, stripping, topsoil salvage, grading, trenching, backfilling, and watercourse crossing | • Loss of a historic resource sites<br>• Loss of knowledge of regional prehistory<br>• Loss of contextual data, devaluation of resources if located in the Project footprint<br>• Temporary or permanent loss of cultural and spiritual sites<br>• Temporary or permanent loss of access to cultural and spiritual sites |

| | Valued component | Description of interaction (or why no interaction is expected) | Potential adverse environmental or socio-economic effect |
|---|---|---|---|
| | Traditional Land and Resource Use | • Construction activities: clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, and clean-up<br>• Changes in access during construction<br>• Operations and maintenance activities (e.g., integrity digs, clearing, mowing and mulching) | • Disturbance to or interference with traditional uses, including hunting; trapping; fishing; plant/medicine harvesting; and habitation, cultural, and spiritual sites<br>• Avoidance of traditional use sites due to perceptions of potential impacts |
| | Navigation and navigation safety | • Construction activities at watercourse crossings: clearing, grading, trenching, drilling, backfilling, hydrostatic testing and final reclamation | • Change in movement through or access to navigable watercourses<br>• Potential harm to users on navigable watercourses<br>• Disruption of watercourse users on navigable watercourses during construction<br>• Decrease in access to navigable waters for waterway users including Indigenous Peoples |
| | Social and cultural well-being | • Construction activities and influx of temporary construction workforce<br>• Pipeline inspection and maintenance during operation | • Temporary change in socio-economic study area population<br>• Temporary change in demographics in socio-economic study area<br>• Disruption of community life by temporary workers |

| | Valued component | Description of interaction (or why no interaction is expected) | Potential adverse environmental or socio-economic effect |
|---|---|---|---|
| | Human health | • Construction activities with potential to create air emissions, dust and noise: vehicle and equipment operation, burning, and watercourse crossings<br>• Pipeline inspection and maintenance during operation | • Temporary change to health of local population related to reduced air quality (i.e., resulting from dust and changes in ambient concentrations of criteria air contaminants)<br>• Temporary changes to health of local population related to increase in comprehensive sound levels beyond provincial regulatory limits |
| | Employment and economy | • Changes in employment and economy | • Project activities would generate employment opportunities<br>• Project expenditures would generate business opportunities<br>• The Project would generate revenue for government |
| | Infrastructure and services | • Change in demand for community infrastructure and services<br>• Workforce requirements<br>• Project construction and transportation of materials | • Draws on temporary accommodations (e.g., hotels, motels or campgrounds)<br>• Workforce demands on community services, such as health, emergency and policing services, and utilities (including waste disposal)<br>• Increased demands on transportation infrastructure |

| | Valued component | Description of interaction (or why no interaction is expected) | Potential adverse environmental or socio-economic effect |
|---|---|---|---|
| **Other** | Accidents and malfunctions | • Pipeline release or rupture<br>• Fire<br>• Releases during construction<br>• Vehicle accidents during construction and operation<br>• Damage to existing utilities | • Reduction or alteration of soil productivity, surface or groundwater quality, air quality<br>• Loss of vegetation, wetlands, wildlife and wildlife habitat, aquatic species and habitat, species at risk<br>• Injury or mortality to wildlife, aquatic species, or humans<br>• Increased demand for emergency services and temporary workers<br>• Potential effects on human health |
| | Effects of the environment on the project | • Extreme temperatures<br>• Heavy precipitation events and flooding<br>• Heavy snow and ice events<br>• Lightning<br>• High winds or tornados<br>• Severe weather<br>• Wildfires<br>• Earthquakes | • Exposure of pipeline, loss of depth of cover as a result of slope instabilities, flooding, or erosion at watercourses<br>• Damage to infrastructure<br>• Impeded access to pipeline area during construction or operations |
| **Rights of Indigenous peoples** | The exercise or practice of Indigenous and Treaty Rights | • Construction activities: clearing, grading, soil handling, trenching, and backfilling<br>• Change in access and availability of land during construction<br>• Operations and maintenance activities (excavations for integrity digs)<br>• Change related to timing and seasonality of the exercise of rights | • Disturbance of cultural practices and teachings<br>• Disturbance of plant gathering sites<br>• Disturbance of hunting activities and resources<br>• Disturbance of trapping activities and resources<br>• Disturbance of gathering places and sacred sites |

# 4 Interests and concerns of Indigenous peoples

This chapter will highlight key submissions from Indigenous peoples who participated either directly in the hearing process or through activities coordinated by the CER Crown Consultation Team, as well as key submissions from NGTL. This chapter will also discuss the Commission's analysis and findings relevant to:

| | |
|---|---|
| ***CER Act 183(2) factor(s)*** | *(d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes* |
| ***List of Issues No.*** | 12. The interests and concerns of the Indigenous peoples of Canada, including with respect to their historic and current use and management of lands and resources for traditional purposes and self-governance |
| | 16. The potential impacts of the Project on owners and users of lands, including Indigenous peoples |
| ***Key conclusion(s)*** | The Commission finds that the involvement of Indigenous peoples in monitoring on the Project is valuable for all involved. It provides a meaningful opportunity for the sharing 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 also finds that the involvement of Indigenous peoples in monitoring provides important information, insight, and input in assessing the effectiveness of mitigation measures as well as other aspects of the Project, such as reclamation. |
| | The Commission finds the potential residual effects of the Project on Traditional Land and Resource Use to be of medium significance for the Lundbreck Section and low significance for the Longview and Turner Valley Sections. |
| | The Commission finds that any residual effects of the Project on heritage resources would likely be of low significance. The Commission finds that any residual effects of the Project on heritage resources would likely be short-term in duration, reversible, limited to the PDA and low in magnitude. |

## 4.1 Mitigation measures and best practices

NGTL submitted mitigation measures and best practices to address concerns and issues raised by Indigenous peoples, including:

- Choosing a pipeline route to parallel other NGTL or third-party disturbances to reduce environmental impacts and land fragmentation and to reduce or avoid new potential impacts on Indigenous peoples.

- Prohibiting use of herbicides on the Project footprint (unless otherwise approved by NGTL) to protect native vegetation.
- Restricting all construction activities to the approved construction footprint.
- Requiring all construction traffic to adhere to safety and road closure regulations.
- Providing all workers with orientation and information materials regarding environmental, health and safety expectations, as well as cultural awareness and sensitivity.
- Providing potentially affected Indigenous peoples with the Project construction schedule and maps.
- Prohibiting Project personnel from hunting or fishing on the construction footprint.
- Notifying registered trappers at least 10 days prior to construction.

Looking at the first criteria, NGTL selected a route that was largely located on private (freehold) land and minimized the impact of the Project on undisturbed Crown land. Of the 39.1 km of new pipeline RoW for the Project, only 5.2 km are located on Crown land (specifically 0.1 km on the Turner Valley Section, 0.9 km of the Longview Section, and 4.2 km on the Lundbreck Section).

Further, NGTL confirmed that of the 4.2 km of Crown land required for the Lundbreck Section RoW, 4.195 km (~99.9 per cent) is located within occupied Crown land[26], and 5 m (~0.1 per cent) traverses through non-occupied Crown land (the only non-occupied Crown land required by the Project). NGTL confirmed that the approximately 0.9 km of Crown land required for the Longview Section is located on the Bar U Ranch National Historic Site and fully parallels an existing NGTL RoW.

NGTL stated that route selection is one of the primary mitigation options for minimizing conflict between the Project and biophysical, socio-economic, and cultural resources.

In addition to route selection, a program such as NGTL's Indigenous Construction Participation Program is a best practice which can address issues and concerns raised by Indigenous peoples. NGTL stated that its Indigenous Construction Participation Program would be developed closer to construction and would be based on input and feedback received from Indigenous peoples interested in participating.

NGTL further submitted that the specifics around the Indigenous Construction Participation Program, including on which Project components it would be offered, what monitoring activities it would include, and the types of opportunities that would be available, would be based on input from Indigenous peoples interested in participating. NGTL committed to engaging with Indigenous communities to determine the final structure and best methods of implementing its Program.

Once established for the Project, NGTL submitted it would encourage Indigenous Construction Participation Program participants to meet with appropriate individuals within their respective communities, such as traditional knowledge holders and consultation departments, prior to beginning work. NGTL also said that it relies on participating Indigenous peoples to identify

[26] NGTL provided that occupied Crown land refers to Crown land on which there is a disposition registered on the land giving the holder of the disposition a right to a specified use of the land.

suitable candidates who are recognized by their community as having the ability to perform the role and duties.

In the event a previously undiscovered cultural find/site is encountered during construction, participants in the Indigenous Construction Participation Program would be provided an opportunity to observe and assist in the implementation of the Cultural Resource Discovery Contingency Plan, as appropriate. NGTL stated that in past projects, participants in the Indigenous Construction Participation Program assisted by identifying finds or sites, flagging finds or sites for avoidance, sharing information with their respective communities and gathering feedback on mitigation measures, as well as recommending, participating in or observing mitigation measures for identified finds or sites.

NGTL stated that all construction personnel, including Indigenous Construction Participation Program participants, are required to receive Project-specific environmental orientation training to ensure that all workers on the Project are informed of key environmental requirements and Project-specific sensitivities. In addition, the Indigenous Construction Participation Program crew(s) would be provided the EPP which would be reviewed with participants to provide an understanding of the information it contains, including information related to contingency plans.

**Views of Parties**

A number of Indigenous peoples raised the importance of their ability to play a role in oversight, and to be involved in monitoring activities and programs related to Project construction and post-construction. Additionally, a number of Indigenous peoples, including O'Chiese First Nation, Samson Cree Nation, Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), Stoney Nakoda Nations and Louis Bull Tribe, shared concerns with the CER Crown Consultation Team regarding capacity constraints and lack of funding required to support meaningful involvement in post-approval filings and application reviews.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations asked that NGTL employ monitors from the Stoney Nakoda Nations to monitor the Project during construction and operation to ensure health of Îyãħé Nakoda Makochi and to monitor the effectiveness of mitigation measures.

***Piikani Nation***

Piikani Nation stated that environmental stewardship of its ancestral territories is one of the Nation's sacred responsibilities and it is imperative that Piikani Nation be afforded a meaningful opportunity to conduct extensive environmental and cultural monitoring within the regions directly or indirectly impacted by the Project. Regarding the Commission's proposed conditions, Piikani Nation recommended that the proposed Construction Monitoring Plan for Indigenous Peoples condition be updated to include a requirement for NGTL to demonstrate how it integrates and advances Indigenous Nation-specific monitoring programs like Piikani Nation's Bio-Cultural and Cumulative Effects Monitoring Program. Piikani Nation also stated that they have trained environmental monitors, an established bio-cultural monitoring program, and staff who would be able to support environmental monitoring activities.

### *Driftpile Cree Nation*

Driftpile Cree Nation raised questions regarding training for participation in monitoring activities and requested a description of how Indigenous knowledge and resource use has informed the engagement and planning activities undertaken by NGTL. Driftpile Cree Nation also stated that further mechanisms should be put in place to allow impacted Indigenous communities to be involved in continued monitoring and emergency response for the lifetime of the Project.

### *Elk Valley Métis Nation*

Elk Valley Métis Nation stated that it wished to be consulted on an ongoing basis, specifically, regarding operations and maintenance activities, and how the safety and integrity of the pipeline will be assured once the Project is in operation. Elk Valley Métis Nation also requested a condition for ongoing engagement with Indigenous Peoples.

### Reply of NGTL

In its evidence, NGTL outlined its mitigation measures and its established programs designed to involve Indigenous peoples in construction and monitoring. NGTL stated that through its engagement with Indigenous peoples, it provided Project information and sought feedback from Indigenous communities. NGTL submitted that its early and proactive engagement, combined with its extensive experience implementing the environmental mitigation measures detailed in the Project EPP and ESA, help prevent, mitigate and/or manage situations with the potential to affect Indigenous peoples by the time a project reaches the operations phase of its lifecycle.

NGTL committed to ongoing engagement with Indigenous peoples regarding involvement in monitoring throughout the life of the Project. NGTL further committed to continuing to respond to any questions or concerns directly with Indigenous communities post-construction. NGTL stated that direct engagement with each Indigenous community would ensure that all communities are heard, and concerns are addressed, and would foster long-term, meaningful relationships with NGTL. Through the evidence from Indigenous peoples, NGTL heard the importance of fostering long-term, meaningful relationships. NGTL stated that the nature of monitoring activities would be determined and developed through engagement with interested Indigenous peoples.

NGTL stated that it adjusted its approach to its engagement program in light of the COVID-19 pandemic to ensure safety of its staff and the Indigenous peoples potentially affected by the Project. NGTL stated that it would continue to engage respectfully throughout the COVID-19 pandemic and the Project lifecycle.

In reply to Piikani Nation's recommendation to use their Biocultural Monitoring and Climate Adaptation plan, NGTL stated its Indigenous Construction Participation Program would facilitate the attendance of members of potentially affected Indigenous peoples to be on site and directly observe construction activities and the implementation of mitigation measures. NGTL further submitted that the specifics around the Indigenous Construction Participation Program, including on which Project components it would be offered, what monitoring activities it would include, and the types of opportunities that would be available, would be based on input from Indigenous peoples interested in participating. NGTL said that, through engagement on another NGTL project, Piikani Nation noted synergies between the Indigenous Construction Participation Program and their own program. NGTL suggested that Piikani Nations' interest in construction monitoring would be met by inclusion of a Piikani Nation participant in the Indigenous Construction Participation Program. NGTL committed to continue its engagement with Piikani

Nation regarding their program and involvement in the Indigenous Construction Participation Program on the Project.

**Commission analysis and findings**

The Commission is satisfied that Indigenous peoples were provided an opportunity through the hearing process to raise their interests and concerns, and to have them addressed by NGTL. The Commission finds that NGTL's proposed mitigation measures and best practices, such as route selection and providing Indigenous peoples with the construction schedule and maps, the Indigenous Construction Participation Program, and NGTL's commitment to ongoing engagement with Indigenous peoples, offers reasonable layers of protection to address many of the interests and concerns raised by Indigenous peoples. The Commission is satisfied that NGTL has selected its route with a view to parallel other disturbances as much as possible, thus reducing or avoiding some environmental impacts and land fragmentation and potential impacts on Indigenous peoples that may have resulted had a non-parallel route been selected

The Commission finds that the involvement of Indigenous peoples in monitoring on the Project is valuable for all involved. Specifically, it provides a meaningful opportunity for the sharing 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 also finds that the involvement of Indigenous peoples in monitoring provides important information, insight, and input in assessing the effectiveness of mitigation measures as well as other aspects of the Project, such as reclamation.

The Commission understands that NGTL would need to consult further on the structure of its Indigenous Construction Participation Program. To confirm that the Commission is satisfied with the final structure of the program and NGTL's approach to the involvement of Indigenous peoples in monitoring activities, the Commission imposes **Certificate Condition 12** (Construction Monitoring Plan for Indigenous Peoples) and **Certificate Condition 26** (Post-Construction Monitoring Plan for Indigenous Peoples). These conditions require NGTL to file its monitoring plans for Indigenous peoples related to Project construction and post-construction, including the engagement and planning activities undertaken.

The Commission finds compelling Piikani Nation's recommendation that the condition related to Construction Monitoring Plan for Indigenous Peoples be updated to include a requirement for NGTL to demonstrate how it integrates and advances Indigenous Nation-specific monitoring programs like Piikani Nation's Bio-Cultural and Cumulative Effects Monitoring Program. The Commission has amended **Certificate Condition 12** (Construction Monitoring Plan for Indigenous Peoples), to include this recommendation.

Additionally, to confirm that NGTL has thoroughly documented how it will monitor any adverse socio-economic effects and provide the Commission and interested parties, especially potentially impacted Indigenous peoples, with information on NGTL's monitoring plan, the Commission imposes **Certificate Condition 11**, requiring NGTL to file a Socio-Economic Monitoring Plan.

The Commission also imposes multiple conditions on NGTL to address concerns raised by Indigenous peoples about the ability to actively participate in and monitor project effects, and the protection of people and the environment, including the following conditions:

- **Certificate Condition 7** - Updated Environmental Protection Plan
- **Certificate Condition 9** - Emergency Response Continuing Education Program
- **Certificate Condition 11** - Socio-Economic Effects Monitoring Plan, and
- **Certificate Condition 13** - Outstanding Traditional Land and Resource Use studies

The Commission also finds compelling the arguments raised by Métis Nation of Alberta, Driftpile Cree Nation, Elk Valley Métis Nation, Piikani First Nation and Stoney Nakoda Nations for capacity funding to review certain conditions. The Commission is of the view that input from Indigenous peoples is important throughout the lifecycle of the Project, including during the condition compliance stage. Accordingly, the Commission imposes **Certificate Condition 15** (Support for Indigenous peoples to review NGTL filings related to conditions). The Commission requires that NGTL continue to engage meaningfully with Indigenous peoples when reviewing condition filings and throughout the lifecycle of the Project.

The Commission finds that NGTL's commitment to ongoing engagement with Indigenous peoples, as well as the above noted conditions is sufficient at this stage to address concerns raised by Piikani Nation, Elk Valley Métis Nation, Driftpile Cree Nation and Stoney Nakoda Nations regarding involvement in construction and post construction monitoring activities.

The Commission understands that an initiative is underway by the CER to develop an NGTL system-wide Indigenous monitoring approach, which currently applies to the NGTL 2021 System Expansion Project, the North Corridor Expansion Project, and the Edson Mainline Project. The Commission also understands, as noted in the Crown Submission, that the CER has committed to enhancing Indigenous peoples' involvement in compliance and oversight activities on the whole of the NGTL System throughout the lifecycle of a project. An additional recommendation related to such oversight is discussed in Section 1.4.1.

### 4.2 Monitoring and oversight by Indigenous peoples

Several Indigenous peoples recommended the development of, and advocated for, monitoring and oversight programs which include Indigenous peoples, NGTL and/or the CER, such as an IAMC.

With respect to the request for an IAMC, NGTL noted that the scope and scale of the projects for which IAMCs have been established (i.e., the Trans Mountain Pipeline and the Enbridge Line 3 Pipeline), including their potential impacts on Indigenous peoples, are materially different from this Project. NGTL submitted that the proponent of each of those projects is not a Committee Member of either of those IAMCs and funding was allocated by the Government of Canada. NGTL said that conditioning an IAMC is inconsistent with the CER's 'SMART' approach to condition compliance, which provides that conditions should be within the proponent's ability to satisfy. Further, NGTL argued that the primary objectives put forward by Indigenous peoples for establishing an IAMC (being oversight and fostering collaboration) are already satisfied by the established regulatory oversight of the CER and through NGTL's Indigenous Engagement Program, including its commitment to ongoing consultation over the life of the Project.

**Views of Parties**

A number of Indigenous peoples submitted that participation in monitoring activities would align with the sacred responsibilities of protection and stewardship of their territories and help promote collaboration between Indigenous peoples and NGTL. Additionally, a number of Indigenous peoples, including Piikani Nation, Stoney Nakoda Nations, Samson Cree Nation, Elk Valley Métis Nation, Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), and Driftpile Cree Nation, recommended the development of an IAMC, Indigenous Working Group, Steering Committee or other similar structure for the Project and/or the NGTL System overall. The intent of which would be to provide third-party oversight and to streamline the monitoring and oversight process for the Project.

The Crown Submission outlined proposals from several communities for a collaborative forum amongst Indigenous peoples, like the IAMCs established for the Trans Mountain Expansion Project and Enbridge Line 3 Project, and a desire to establish consultation agreements with the CER. In response, the Crown Submission stated that, at the time of filing, the CER Crown Consultation Team was not aware of any outstanding impacts to Section 35 Rights of Indigenous peoples that would necessitate the creation of an IAMC specific to the Project. The Crown Submission indicated that the CER has taken action to establish a broad framework on the NGTL System, as opposed to project-by project for ongoing dialogue between it and Indigenous peoples on matters that are relevant and important to them throughout the lifecycle of projects.

***Piikani Nation***

Piikani Nation said that an IAMC would help to make the balance of power more equitable between NGTL and Indigenous peoples, relative to NGTL's current monitoring programs. Piikani Nation also stated that they have trained environmental monitors and an established Bio-Cultural Monitoring Program, and staff which would be able to support environmental monitoring activities.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations requested that an IAMC be established for the whole NGTL System (as opposed to solely for the Project). As discussed above, Stoney Nakoda Nations asked that NGTL employ monitors from the Stoney Nakoda Nations to monitor the Project during construction and operation and to monitor the effectiveness of mitigation measures.

***Samson Cree Nation***

In light of the Commission's duty to consult, Samson Cree Nation requested that the Commission and GIC establish a cooperation committee between Samson Cree, the Commission, and other Indigenous peoples and federal authorities. Samson Cree said that the goal of this committee would be to provide effective, binding oversight over the NGTL System, in order to monitor and mitigate the ongoing cumulative effects of the NGTL System.

### *Driftpile Cree Nation*

During Driftpile Cree Nation's oral Indigenous knowledge session, Karl Giroux stated:

> *I would just like to again acknowledge the fact that we have a very important history, a very important connection to our land. And with respect to the project, we want to be there as an advisory group as well. Peter [Elder Freeman] did mention that we have Elders groups that would have interest in that as well, to be part of that monitoring and advisement, and those opportunities we could look at as well through set agreements*
> *Karl Giroux, Driftpile Cree Nation, Transcript Volume 3 [1198]*

### *Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)*

Métis Nation of Alberta stated that the provision of an IAMC for post construction and monitoring activities would allow collaboration between the Indigenous nations.

#### Commission analysis and findings

The Commission finds that the construction and operation of the Project does not create a reason to recommend the creation of a Project-level IAMC. Given the nature of the Project (e.g., most of the Project parallels existing RoW and utilizes existing disturbance, where possible), and the opportunities for monitoring by Indigenous peoples that will be created by **Certificate Condition 12** (Construction Monitoring Plan for Indigenous Peoples), the Commission will not be making a recommendation for the Government of Canada to create an IAMC specific to this Project.

An IAMC for this Project in particular would be small in scope, and arguably not responsive to the larger concerns that a number of Indigenous peoples have raised regarding the NGTL System in its entirety. An additional recommendation related to such oversight is discussed in Section 1.4.1.

## 4.3 Impacts on traditional land and resource use and access to Crown land

### *ESA methodology and Traditional Land and Resource Use*

NGTL stated that the ESA provides an assessment includes consideration for potential Project effects on sites, features, or values of interest to Indigenous peoples, land user activities, socio-economic conditions, and environmental resources. As such, NGTL's mitigation includes both biophysical and socio-economic measures to reduce potential project-related effects.

With respect to mitigation to impacts on Traditional Land and Resource Use, NGTL stated that route selection is one of the primary mitigation options for minimizing conflict between the Project and biophysical, socio-economic, and cultural resources. The proposed route was selected to parallel existing corridors wherever possible, except where there were constraints from existing industrial dispositions, or constructability constraints. This practice enables NGTL to consider overlapping the existing easement with the existing easements of parallel RoW alignments, which reduces potential effects by minimizing the area of new disturbance

### *Access to Crown land*

NGTL provided a detailed description of baseline conditions and a discussion of how past activities have modified the environment as part of the assessment of cumulative effects. NGTL noted that the Project has been designed to parallel existing disturbances (i.e., the Turner Valley, Longview, and Lundbreck Sections are designed to parallel 94 per cent, 75 per cent and 100 per cent of existing disturbances, respectively).

NGTL stated that the PDA is located within predominately freehold and occupied Crown land, both of which are Project design measures that limit the potential for Project-related effects on the exercise or practice of Indigenous and Treaty Rights and loss of accessible lands. NGTL stated it appreciates that Indigenous peoples have experienced effects from past developments in their territories and that access barriers include physical features (e.g., physical access and access management) and non-physical features (e.g., perceptions of impediments to the exercise of rights). However, NGTL argued that the types of effects experienced on past projects would not necessarily result from this Project.

Further, NGTL said that traditional access to the Project footprint may be temporarily affected by construction to mitigate safety concerns. NGTL stated that where there is no active construction or other identified safety risks (e.g., open trench or excavations), NGTL would not restrict traditional users from accessing the Project area, nor would it use permanent fencing or locked gates, unless otherwise requested by the landowner on private lands. During operations, new valve sites would be fenced, however, these areas are localized (i.e., approximately 0.27 ha on Crown land) and not anticipated to limit mobility along or across the RoW.

For the purposes of its activities (e.g., pre-construction, construction or operation), NGTL seeks permission from Crown land occupants prior to entry as required by the *Public Lands Act*. NGTL suggested that access to occupied Crown land in the Lundbreck Section by the public and Indigenous peoples may be subject to similar conditions. NGTL indicated that while it understands that access agreements between Crown land occupants and the public or Indigenous communities may be arranged, NGTL has not been made aware of such agreements on the Lundbreck Section of the Project.

## Views of Parties

### *Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)*

Stoney Nakoda Nations said that NGTL conflated many of the mitigation measures for the changes in quality, quantity, and distribution of traditional resources with the mitigation of effects on vegetation and wildlife, wildlife habitat, and aquatic resources. Stoney Nakoda Nations said that, as a result, NGTL's mitigation approach focuses heavily on the biophysical effects of the Project and does not address the rights aspect of Traditional Land and Resource Use and the effects on Nation members' abilities to hunt and harvest traditional resources. Stoney Nakoda Nations stated that any additional disturbance alters the preferred conditions of Nation members, which affects Stoney's Nakoda Nation's ability to maintain culture, transmit knowledge, and provide for families with the resources from the land.

Stoney Nakoda Nations described using areas within their delineated cultural assessment area of the Project for hunting camps, which they categorized as an exercised Section 35 Right. Stoney Nakoda Nations stated that hunting camps and family camps serve as a place to transmit harvesting knowledge and culture to youth. Many participants in the Stoney Nakoda

Nations' study recounted learning how to hunt and prepare meat and pick berries and plants from their parents and grandparents. Similarly, study participants expressed the importance of passing their knowledge of harvesting and respecting the land to their children and grandchildren.

In their Impact Assessment Report, Stoney Nakoda Nations used the following to assess impacts on their rights:

- **Access Security** The ability for Nation members to continue to have meaningful and reliable access to available lands in Îyãħé Nakoda Makochi (unoccupied Crown land and private lands with permission) so they may continue to exercise their Section 35 Rights and interests.
- **Environment and Resource Security** The ability for Nation members to connect with lands, waters, and resources in Îyãħé Nakoda Makochi and act as stewards to the lands, waters, and resources and support the maintenance of environmental integrity and healthy ecosystems and to support a continued ability to access and harvest resources (wild game, fish, plants, medicines, trees, fungi, berries) for the consumption, medical, economic, ceremonial, and cultural purposes.
- **Cultural Security and Identity** The ability for Stoney Nakada Nations' culture and identity (including cultural practices, language, transmission of culture, connection to lands, oral history, sacred and ceremonial sites etc.) to be maintained and to thrive without threats.

Stoney Nakoda Nations stated that they are concerned about impacts of the Project on the ability of Nation Members to continue to have meaningful and reliable access to available lands (unoccupied Crown land and private lands with permission) so that they may continue to exercise their Section 35 Rights and interests. Stoney Nakoda Nations said that a decrease in their preferred conditions and impacts from Project's disturbance would result in an increase in avoidance behaviours for the exercise of Stoney Section 35 Rights.

In its Impact Assessment Report, Stoney Nakoda Nations concluded that NGTL's mitigating measures are currently not sufficient in eliminating, reducing, or controlling adverse impacts to Stoney Nakoda Nations' Section 35 Rights and interests.

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

Stoney Nakoda Nations also outlined burial sites, hunting, fishing, trapping sites, gathering sites, trails and travel ways, and other cultural sites within their defined Cultural Assessment Area. Stoney Nakoda Nations provided approximate locations to NGTL for some of these sites. Stoney Nakoda Nations noted the importance of gathering berries and medicinal plants such as diamond willow, mountain sage, sweetgrass, lodgepole, choke cherries and other plants for subsistence, medicinal and other cultural purpose. Stoney Nakoda Nations identified berries and medicinal plants within the Turner Valley, Longview and Lundbreck Section PDA, LAA and RAA.

Stoney Nakoda Nations requested that the Commission recommend that GIC impose a Crown Land Offset Measure Plan. Stoney Nakoda Nations indicated that this condition is required to offset or compensate for the permanent loss of Crown land available for the exercise of Section 35 Rights. Stoney Nakoda Nations argued that, although NGTL stated that such a condition is unnecessary as the Project would have minimal overlap with Crown land, this assertion ignores the extremely limited amount of unoccupied Crown land within Treaty 7 and Stoney Nakoda Nations' traditional territory. Stoney Nakoda Nations also argued that NGTL's statement cannot be true when considering the Project as part of the broader NGTL System.

***Driftpile Cree Nation***

Driftpile Cree Nation said that their members continue to travel across Alberta seasonally to hunt, trap, fish, gather, and for ceremonial purposes, as they have done since time immemorial. Driftpile Cree Nation indicated that a significant number of their members and families live in the areas surrounding the Project. For traditional land uses purposes, those members rely substantially on lands that Driftpile Cree Nation stated are at risk of being significantly altered by the Project.

Driftpile Cree Nation requested that an effective monitoring program be implemented, which outlines how the effectiveness of mitigation strategies (specific to Traditional Land and Resource Use) would be assessed through construction as well as through Project operations.

Driftpile Cree Nation also requested support from NGTL to conduct a Traditional Land and Resource Use study in the vicinity of the Project and anticipated that such a study completed in collaboration with NGTL would adequately determine the direct and adverse effects, as well as cumulative impacts, that would flow from the Project to Driftpile Cree Nation.

Driftpile Cree Nation also proposed a Crown Land Offset Measures Plan to outline how temporary or permanent loss of Crown land available for traditional and cultural use by Indigenous peoples resulting from the Project would be offset or compensated for its loss.

### *Elk Valley Métis Nation*

During their oral Indigenous knowledge session, Elk Valley Métis Nation said that they have a stewardship responsibility towards the wildlife and environment. Specifically, Elk Valley Métis Nation raised concerns regarding increased recreation in the Project area negatively impacting harvested resources and the environment. Elk Valley Métis Nation also raised concerns regarding potential impacts on vegetation, fish and birds in the area, as well as the importance of proper restoration of habitat. Further, Elk Valley Métis Nation raised concerns regarding access restrictions and potential effects on their ability to access lands for recreation, fishing, hunting and gathering plants, as well as the importance of the area to connect to the land. They submitted that the Project RoW contains high amounts of Whitebark Pine and Clark's Nutcracker, which are important species. Elk Valley Métis Nation recommended consultation throughout the Project to ensure wildlife habitat is left improved after construction.

### *Foothills Ojibway First Nation*

In the Crown Submission, Foothills Ojibway First Nation raised concerns regarding the potential impacts of the Project on animals, medicinal plants, and traditional uses. In their written argument, Foothills Objiway First Nation submitted that it is imperative to protect their land from destruction so they may continue to practice their traditional culture and pass on their teachings to their children and other First Nations who may have lost their knowledge. Additionally, Foothills Ojibway First Nation offered that Chief Jim O'Chiese and his peoples' position toward NGTL is that they welcome, as hosts, people and activities into their territory, provided the requisite respect and recognition is forthcoming and mutual benefit is derived; not 'taking from the land without considering the spirit'.

### *Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)*

Métis Nation of Alberta stated that as noted in previous Traditional Land and Resource Use studies completed by NGTL, linear disturbances, such as RoW and access roads, create easier vehicle-access, allowing access to what would otherwise be remote, poor-access areas. Métis Nation of Alberta said that this increases human activity in the backcountry, diminishing harvesting areas which reduce the quality of medicinal and subsistence plants, and scares off animals. Métis Nation of Alberta also raised concerns regarding the limited timeframe (10 days) to notify trappers in the Project area and asked whether a longer timeline to notify trappers (30 days) may be possible.

### *Nakcowinewak Nation of Canada*

Nakcowinewak Nation of Canada stated that it has occupied the areas along the mountain ranges of the Rockies which included Grande Cache, Edson, and the town of Evansburg. Nakcowinewak Nation of Canada further explained that the community established a nomadic lifestyle to avoid the residential school system. This forced them to move south to settle near the Frank area in the Crowsnest Pass.

Nakcowinewak Nation of Canada submitted that it conducted a site visit in the Frank Slide/Lundbreck Falls area and noted the area is both historically and currently a significant site for medicinal plants. Nakcowinewak Nation of Canada requested capacity to identify and harvest medicinal plants prior to destruction of the habitat and to discuss mitigation and/or the reestablishment of the medicinal plants.

### *Piikani Nation*

Piikani Nation submitted that given the importance of the land and waters to Piikani Nation's ongoing cultural and spiritual connection to their ancestral territories, it should be assumed that Piikani Nation uses the whole of its Blackfoot territory for harvesting and other land use activities. Piikani Nation said that given this assumption, it is reasonable to assume that their rights to the lands and waters for harvesting and land use purposes will be impacted by the Project. Piikani Nation submitted that the Project will likely result in the loss of habitat supporting traditionally used plant and animal species, degradation of habitat quality, and loss of habitat function.

Piikani Nation said that their access to lands and waters within their territory would be further limited by the construction and operation of the Project. Further, during construction and pipeline expansion activities, land disturbances would create barriers to travel routes and harvesting areas. Piikani Nation said that harvesting areas may be compromised due to outsider hunting and fishing activities. Further, land and resource based eco-tourism businesses (such as guiding) may be affected due to environmental impacts.

Piikani Nation submitted the results of its preliminary field site assessments, which identified several sites of cultural and traditional significance. These sites were identified along the Lundbreck RoW, including within the RoW buffer. Specifically, Piikani Nation said that black pipe stone, Kaa'toy'is (sweet pine), kinnikinick and sage were identified along the Lundbreck RoW. Piikani Nation requested the ability to harvest these species prior to construction, as well as ongoing monitoring of these specific sites to ensure future harvesting is possible.

Piikani Nation stated that the information submitted to NGTL and the Commission regarding potential impacts of the Project are preliminary in nature, due to pandemic-related delays and capacity constraints. Piikani Nation said that, should the CER recommend the Project for approval, Piikani Nation recommends a condition be developed outlining how outstanding Traditional Land and Resource Use information will be assessed and integrated into the Project by NGTL, including the final report that will provided in relation to their TLRU study.

### *Samson Cree Nation*

Samson Cree Nation identified the following as being potentially impacted by the Project: hunting, food plants and medicines, water and fishing, and cultural continuity.

Samson Cree Nation stated that they are already constrained by the existing effects of settlement, urbanisation, recreational land use, agricultural development, and extractive industries including oil and gas, forestry, and mining in their territory. Samson Cree Nation said that impacts from these sources have already rendered many of Samson Cree Nation's cultural values vulnerable to further change in their traditional territory.

Samson Cree Nation stated that sensory disturbances (e.g., noise, increased traffic) and pollution resulting from the Project and other proposed pipelines in Samson Cree Nation's traditional territory would negatively impact their land use and way of life.

Samson Cree Nation said that reduced access to lands and resources would lead to reduced opportunities to transmit knowledge to younger generations. Samson Cree Nation also raised concerns regarding disturbance to ancestral and historically important places and landscapes negatively impacting their cultural and spiritual power, energy, and integrity.

To mitigate these concerns, Samson Cree Nation requested that NGTL collaborate on Project design decisions to reduce impacts on Indigenous land users and that NGTL identify values and sites of cultural importance. Samson Cree requested that NGTL provide signage and maps of where Samson Cree members can access Crown land. Samson Cree Nation also requested involvement and employment of Samson Cree Nation monitors from construction through reclamation.

**Reply of NGTL**

In addition to the mitigation measures and best practices summarized above, NGTL identified the following measures intended to reduce potential adverse effects of the Project on Traditional Land and Resource Use:

- Following clearing, re-mark all sensitive resources as necessary and supplement markings with signage; and
- Leave aligned gaps in windrows (e.g., topsoil/strippings, grade spoil, rollback, snow) and strung pipe at identified trails so that wildlife are not impeded.

With the implementation of standard and Project-specific mitigation measures, NGTL stated that residual effects of the Project on Traditional Land and Resource Use are anticipated to be not significant. NGTL stated that the Project would only temporarily reduce the availability of resources for harvesting by Indigenous peoples near the Project.

NGTL submitted that after mitigation, the Project is not expected to result in the long-term loss of availability of traditional resources, loss of access to lands currently relied on for traditional use practices, or the permanent loss of current use sites and areas within the PDA, LAA, and RAA. NGTL further submitted that the assessment of Project effects on Traditional Land and Resource Use included Project-specific information provided by Indigenous groups during engagement activities, as well as a comprehensive literature review and desktop analysis. NGTL also said that its assessment also included other relevant biophysical and socioeconomic information collected for the ESA and was also based on NGTL's operating experience.

In cases where Indigenous groups had not provided Project-specific Traditional Land and Resource Use information prior to the filing of the ESA, NGTL said that the ESA conservatively assumed that Traditional Land and Resource Use sites, activities and resources have the potential to occur throughout accessible land within the RAA. NGTL further said that the ESA assessed potential impacts of the Project on Traditional Land and Resource Use on that basis.

***Potential effects on Traditional Land and Resource Use***

NGTL submitted that private land could be used by Indigenous peoples for traditional purposes where landowners have granted Indigenous peoples access. However, NGTL stated it has not been made aware of any current agreements in place with landowners to access private lands intersected by the Project for traditional purposes.

NGTL further submitted that 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 land where there is no 'visible, incompatible use'. NGTL argued that pipeline RoWs are not a 'visible, incompatible use' with the exercise of most Indigenous and Treaty Rights or Traditional Land and Resource Use activities, and access to the RoW to exercise those rights

on or in the vicinity of the RoW would remain unchanged except for localized areas during a single season of active construction.

In response to the concerns raised by Piikani Nation regarding the identified culturally and traditionally significant sites, vegetation, and wildlife, NGTL outlined a number of mitigation measures, including maximizing the use of adjacent existing right-of-way, reducing the width of additional clearing as much as possible, avoiding whitebark and limber pine trees where possible, and planting seedlings to replace trees that would be removed during construction. NGTL stated that it would continue to engage Piikani Nation and remains committed to sharing Project information and receiving feedback from Piikani Nation for the purpose of identifying potential Project-related impacts on the exercise of rights within Piikani Nation territory and to identify appropriate measures to avoid or reduce adverse effects and/or support, improve or enhance Indigenous peoples' ability to exercise their rights.

Regarding Elk Valley Métis Nation and Nakcowinewak Nation of Canada's concerns about the ability to access lands for traditional purposes such as hunting, fishing and gathering, NGTL confirmed that access to the Project footprint may be temporarily affected by construction to mitigate safety concerns. However, where there is no active construction or other identified safety risks (e.g., open trench or excavations), traditional users would not be restricted from accessing the Project area by NGTL. NGTL would 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 it would limit disturbance to vegetation to the extend practical and will implement a number of mitigation measures to address impacts to whitebark pine. NGTL also confirmed that it would continue to engage with Elk Valley Métis Nation regarding Traditional Land and Resource Use.

In reply to Métis Nation of Alberta's concerns regarding trapping notification timeliness, NGTL stated that it engages with registered trappers in the months prior to construction to host pre-construction meetings to discuss impacts to trap areas. In addition to this, notification is also provided to the registered trappers a minimum of 10 days prior to construction, as required by the disposition.

In response to Samson Cree Nation's access and sensory disturbance related concerns, NGTL outlined mitigation measures that it would implement to reduce the potential adverse effects of Traditional Land and Resource Use. In response to Samson Cree's concerns including the constraints of the existing effects and disturbance to ancestral and historically important places, and ability to transmit knowledge, NGTL stated that it would continue to seek information regarding the location, nature, extent of use and potential effects on the cultural continuity site-specific values identified by Samson Cree Nation. NGTL said that except for localized areas during the short period of active construction, the RoW on Crown land would remain available for traditional use during construction as well as operation of the Project.

In reply to Driftpile Cree Nation's concern regarding the assessment and impacts of the operation of the pipeline on Traditional Land and Resource Use, NGTL stated that the operation phase activities are limited to infrequent, small scale maintenance activities such as integrity digs and vegetation management over the pipeline. Sensory-related effects above baseline levels are not anticipated during routine operation of the Project. NGTL confirmed that all information brought forward by Driftpile Cree Nation would be considered in the context of the ESA, EPP, and the Heritage Resources Discovery Contingency Plan.

Regarding Stoney Nakoda's concerns, NGTL stated that the ESA's assessment of potential Project effects on Traditional Land and Resource Use and the rights of Indigenous peoples, are based on conservative assumptions that Traditional Land and Resource Use and the exercise of Indigenous and Treaty Rights may occur at any time of the year on lands to which Indigenous peoples have access. These assessments include consideration of hunting, fishing, trapping, gathering and cultural ceremonies. NGTL also said that it supports Stoney Nakoda Nations' ongoing fieldwork related to their traditional knowledge study for the Project.

***Outstanding Traditional Land and Resource Use Studies***

In response to the concerns raised by Samson Cree Nation and Elk Valley Métis Nation, 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. Further, this data would be used for discussions with Indigenous peoples regarding potential site-specific mitigation options. If Indigenous peoples have information regarding known sites within the Project area, NGTL encouraged them to share that information with NGTL so that appropriate mitigation discussions can occur, as warranted. If sites not previously identified are found on the construction footprint during construction, the measures in the Cultural Resource Discovery Contingency Plan would be implemented.

NGTL stated that to date, Métis Nation of Alberta, Piikani Nation and Stoney Nakoda Nations have not provided NGTL with specific feedback regarding the proposed Project route. While the detailed routing process remains ongoing, NGTL's ability to refine the route without impacting the Project schedule would generally decrease over time. As a result, NGTL encouraged any potentially affected Indigenous communities to provide any specific input they may have as soon as possible.

As of the filing of its Reply Evidence, NGTL submitted a status update on the outstanding Traditional Land and Resource Use studies, presented in Table 4-1. The results of these studies, and any additional information gathered through NGTL's engagement and consultation programs, would be incorporated into Project planning. Any additional mitigation required as a result of these supplemental findings would be included in the final Environmental Alignment Sheets and EPPs, as appropriate.

**Table 4-1: Status of Traditional Land and Resource Use studies for the Project**

| Indigenous Peoples | Method of Study | Status of Study |
|---|---|---|
| Blood Tribe (Kainai Nation) | Independent | Complete |
| Driftpile Cree Nation | Independent | Pending agreement with NGTL on appropriate scope and costs. |
| Elk Valley Métis Nation | Independent | Underway (Final report anticipated in Spring 2022) |
| Foothills Ojibway Society | Independent | Pending agreement with NGTL on appropriate scope and costs. |
| Louis Bull Tribe | Independent | Complete |

| Indigenous Peoples | Method of Study | Status of Study |
|---|---|---|
| Métis Nation of Alberta Region 3 | Independent | Complete |
| Montana First Nation | Independent | Underway (Final report anticipated in Spring/Summer 2022) |
| Nakcowinewak Nation of Canada | Independent | Complete |
| O'Chiese First Nation | Independent | Complete |
| Piikani Nation | Independent | Underway (confirming if Report filed as part of written evidence is Final) |
| Samson Cree Nation | Independent | Complete |
| Siksika Nation | Independent | Complete |
| Stoney Nakoda Nations | Independent | Underway (confirming if Report filed as part of written evidence is Final) |
| Tsuut'ina Nation | Independent | Underway (Interim report received; final report anticipated in Spring/Summer 2022) |

***Cumulative Effects on Traditional Land and Resource Use***

NGTL concluded that residual cumulative effects on Traditional Land and Resource Use are predicted to be not significant.

NGTL stated that land uses such as agricultural conversion, private land conversion, forest harvesting, oil and gas production, and linear development (e.g., roads, pipelines, utilities) have altered the current regional landscape and contributed to an existing cumulative effect on Traditional Land and Resource Use in the RAA.

NGTL indicated that while residual Project effects on Traditional Land and Resource Use are possible for the Turner Valley and Longview Sections, if they do occur, they are predicted to be negligible in magnitude and largely restricted to the PDAs.

For the Turner Valley and Longview Sections, the predicted residual Project effects are short term and largely restricted to the PDA. Some short-term noise and visual disturbance may extend beyond the PDA but would be short term (during construction). Any ongoing physical activities would occur outside of the LAA. Given this, NGTL concluded that it is unlikely that there would be cumulative effects on Traditional Land and Resource Use arising from the Turner Valley Section and Longview Sections, in combination with any reasonably foreseeable projects and physical activities within the RAA (i.e., ongoing forestry).

For the Lundbreck Section, a further cumulative effects assessment was undertaken by NGTL as residual Project effects on Traditional Land and Resource Use are predicted to be moderate in magnitude and short- to long-term in duration, and because there are ongoing and reasonably foreseeable future projects and physical activities in the RAA that may also have

residual effects on Traditional Land and Resource Use. This included an assessment of residual cumulative environmental effects on the availability of traditional resources for current use, access to traditional resources or areas for current use, and current use sites and areas for the Lundbreck Section. Based on the implementation of mitigation, NGTL concluded that the Lundbreck Section would make a low contribution to cumulative alteration of Traditional Land and Resource Use at the RAA scale.

**Commission analysis and findings**

The Commission finds that the effects of the Project on Traditional Land and Resource Use for the Lundbreck Section would likely be short-term to long-term in duration, reversible in the long-term, local to regional in geographic extent, low to moderate in magnitude, and therefore, to be of medium significance. The Commission also finds that the effects of the Project on Traditional Land and Resource Use for the Longview and Turner Valley Sections would likely be short-term in duration, reversible in the long-term, local in geographic extent, low in magnitude, and therefore, to be of low significance. In reaching these conclusions, the Commission considered the land characteristics (i.e., majority privately held agricultural land and occupied Crown land, subject to grazing leased), NGTL's mitigation measures, the monitoring proposed by NGTL, as well as the imposed conditions. The Commission also finds that the Project's contribution to total cumulative effects on Traditional Land and Resources Use in the region to be negligible.

The Commission's understanding of 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, the Crown Submission, evidence submitted by Indigenous peoples, NGTL's engagement activities, and NGTL's approach to supporting traditional knowledge studies.

The Commission finds compelling NGTL's choice to locate the Project almost entirely on private land and in parallel to existing RoWs. The majority of the 39.1 km of new pipeline RoW for the Project is located on private lands, with 5.2 km being located on Crown land (of which, 5 metres traverses through non-occupied Crown land).

The Commission has assessed NGTL's proposed mitigation measures, including providing Indigenous peoples with construction schedules and maps, notifying trappers at least 10 days prior to construction, and NGTL's commitment to ongoing engagement with Indigenous peoples. The Commission considers NGTL's proposed mitigation measures to be appropriate and commensurate with the nature of the Project and its potential impacts on Traditional Land and Resource Use. The Commission finds that NGTL's proposed mitigation measures and commitments, along with the Commission's imposed conditions will adequately address potential impacts to Traditional Land and Resource Use and harvesting areas, including specific concerns regarding culturally significant vegetation, wildlife and sites raised by Piikani Nation, Stoney Nakoda Nations, Samson Cree Nation, Nakcowinewak Nation of Canada and Elk Valley Métis Nation.

For the purposes of this decision, the Commission agrees with NGTL that it is not NGTL's role to facilitate discussions between Indigenous peoples and private landowners regarding existing access and land use on private lands, as these are matters are unrelated to the Project and its potential effects.

Based on the evidentiary record, the Commission finds that NGTL has appropriately considered all available information received to date and has appropriately committed to

including Traditional Land and Resource Use studies in the final EPP. Based on the completed Traditional Land and Resource Use studies, there are no unresolved site-specific Traditional Land and Resource Use concerns from Indigenous peoples that require new mitigation measures. Further, NGTL's established non site-specific mitigation measures in the EPP will avoid or address potential effects on Traditional Land and Resource Use.

The Commission understands that, as of the time of NGTL's reply evidence, there were outstanding Traditional Land and Resource studies, including from Piikani Nation and Stoney Nakoda Nations. While the Commission recognizes the importance of the information provided through field work and studies, the Commission appreciates that the COVID-19 pandemic as well as capacity constraints may have caused potential delays in the completion of such studies. As valuable information can be gained through Traditional Land and Resource Use studies and site visits, in instances where Indigenous peoples wish to proceed with such investigations, the Commission encourages NGTL and Indigenous peoples to work toward doing so.

The Commission acknowledges NGTL's commitment that feedback received through ongoing engagement, including Traditional Land and Resource Use studies, will be considered in Project planning and incorporated into the EPP, where appropriate. The Commission expects NGTL to abide by this commitment, as well as its commitment to NGTL to continue to engage proactively with potentially affected Indigenous peoples in this regard.

The Commission heard the concerns raised by Indigenous peoples, including Piikani Nation, Stoney Nakoda Nations, and Samson Cree Nation regarding the potential effects of the Project on Traditional Land and Resource Use, such as the transfer of language, culture and knowledge. The Commission finds compelling the concerns shared by Elders and knowledge keepers during the oral Indigenous knowledge sessions and through written evidence about the importance of Traditional Land and Resource Use and the limited amount of unoccupied Crown land remaining in Treaty 7.

While NGTL has committed to incorporating any outstanding Traditional Land and Resource studies into its EPP, the Commission imposes **Certificate Condition 13**, requiring NGTL to file an update regarding the outstanding Traditional Land and Resource Use investigations**.**

The Commission observes that Piikani Nation, Nakcowinewak Nation of Canada, and Elk Valley Métis Nation have raised an interest in pre-construction harvesting and monitoring of culturally significant resources for Traditional Land and Resource Use purposes. Given the limited availability of culturally significant resources in the region, the Commission encourages NGTL to support pre-construction harvesting activities where possible. In addition, the Commission imposes **Certificate Condition 16** (Engagement report regarding pre-construction harvesting). The Commission also imposes **Certificate Condition 12** (Construction Monitoring Plan for Indigenous peoples) and **Certificate Condition 26** (Post-Construction Monitoring Plan for Indigenous Peoples) to address concerns raised by Piikani Nation, Nakcowinewak Nation of Canada, Elk Valley Métis Nation, and Stoney Nakoda Nations regarding monitoring of these culturally significant resources and sites.

Regarding the request from Samson Cree, looking to NGTL to ensure proper signage and providing maps to access Crown land, the Commission notes that NGTL confirmed sending Crown Land access maps to Samson Cree Nation.

Stoney Nakoda Nations and Driftpile Cree Nation recommended that the Commission impose a condition to offset or compensate for the loss of Crown land available for exercising Indigenous and Treaty Rights. The Commission finds that Crown land offsets are not appropriate for this Project as the Project would result in minimal new permanent footprint on non-occupied Crown land (i.e., of the 5.2 km of Crown land used, 5 m are located on non-occupied Crown land). Apart from a period of time during active construction, the RoW located on the Crown land within the Project footprint would remain available for the exercise of Indigenous and Treaty Rights, including Traditional Land and Resource Use activities. Leaving aside the question of the Commission's jurisdiction to grant such relief, the facts alone in this case were determinative to dismiss the idea of Crown land offsets.

The Commission heard the concerns raised by Indigenous peoples about the impact of cumulative effects on Traditional Land and Resource Use in the areas affected by the Project. The Commission is aware that existing cumulative effects in the area of the Project (e.g., agricultural conversion, private land conversion, forest harvesting, oil and gas production, and linear development) create challenges relative to the ability of Indigenous peoples to continue to use the lands and resources for traditional purposes. Cognizant of the existing total cumulative effects in which the Project is proposed, the Commission has assessed NGTL's mitigation measures such as restricting all construction activities to the Project footprint, implementing the Cultural Resource Discovery Contingency plan (if any unanticipated Traditional Land and Resource sites are encountered), and ongoing engagement with Indigenous peoples. These mitigation measures are intended to address effects on both the biophysical resources that support Traditional Land and Resource Use activities and the effects on Traditional Land and Resource Use activities themselves. The Commission finds NGTL's mitigation measures to be appropriate given the scope, scale and nature of the Project effects. Additionally, given the importance and potential benefits of gathering information regarding Traditional Land and Resource Use in the Project area, the Commission imposes **Certificate Condition 13**, requiring NGTL to report on the status of any outstanding Traditional Land and Resource Use investigations.

Regarding the request from Piikani Nation that NGTL report on the impact that the COVID-19 pandemic had on the ability to gather Traditional Land and Resource Use information, the Commission acknowledges the public hearing occurred during the pandemic. The Commission appreciates the significant effort and commitment by parties, including Indigenous peoples, to participate in the hearing process. The Commission finds that NGTL provided, and continues to provide, appropriate opportunities for Indigenous peoples to conduct Traditional Land and Resource Use studies, affording as much flexibility as possible to accommodate public health concerns. The Commission is satisfied that adequate Traditional Land and Resource Use information was provided in the hearing process for the Commission to make an informed Recommendation and decisions. As a result, the Commission does not require additional reporting from NGTL.

Given its location, size, scope, scale and nature, the Project itself is not anticipated to significantly impact Traditional Land and Resource Use. While total cumulative effects on Traditional Land and Resource Use in the RAA have been substantially altered by anthropogenic land uses (e.g., agricultural conversion, private land conversion, forest harvesting, oil and gas production, and linear development), the Commission finds that the Project's contributions to total cumulative effects are minimal.

**Table 4-2: Evaluation of significance of residual effects on traditional land and resource use**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term to long-term | Effects are generally considered short-term and are likely to occur as multiple irregular events during the construction period. |
| | **Reversibility** | Reversible | Effects are expected to be reversible, allowing for disturbed areas to recover to pre-construction conditions within the life of the Project. |
| | **Geographic extent** | LAA | Effects are expected to be localized to LAA. |
| | **Magnitude** | Low (Longview Section) | Effects from construction and operation of the Project on Traditional Land and Resource Use are expected to range from low to moderate in magnitude, depending on the Project segment and the resource being considered.<br><br>After considering the land characteristics (majority privately held lands), NGTL's proposed mitigation, reclamation activities, post-construction environmental and socio-economic monitoring, and the imposed conditions, the Project is expected not to exceed moderate in magnitude. |
| | | Low (Turner Valley Section) | |
| | | Moderate (Lundbreck Section) | |
| **Adverse effect** | Low significance (Longview and Turner Valley Sections)<br>Medium significance (Lundbreck Section) | | |

## 4.4 Heritage resources

NGTL indicated that the assessment of heritage resources is guided by the requirements of the CER as outlined in the Filing Manual. NGTL further indicated that historic resource impact assessments would be undertaken as directed by the Alberta Ministry of Culture, Multiculturalism and Status of Women, and Parks Canada to identify potential sites prior to construction.

NGTL identified the following mitigation measures relating to heritage resources:

- no clearing or grading in proximity to known archaeological sites unless otherwise approved by the responsible regulatory agency;
- if historical or palaeontological features (e.g., arrow heads, modified bone, pottery fragments, fossils) not previously identified are found on the construction footprint during

construction, implement the measures outlined in the Cultural Resource Discovery Contingency Plan;

- if potential human remains are found on the construction footprint during construction, implement the measures outlined in the Cultural Resource Discovery Contingency Plan;
- include known heritage resource concerns in the Project-specific environmental requirements and sensitivities covered by the environmental orientation required before being allowed access to the Project site;
- prohibit the collection of historical resources by Project personnel; and
- if a location is identified during construction and is considered likely to be a previously unreported Traditional Land and Resource Use site, NGTL would contact any potentially affected Indigenous peoples that NGTL would identify through its Indigenous Engagement Program and through the Indigenous Construction Participation Program.

NGTL stated that with the implementation of mitigation measures and Project-specific avoidance of any sites having high heritage value, and with the implementation of the EPP (including relevant contingency plans), the Project is not anticipated to have residual effects on heritage resources. NGTL said that in the case of an unanticipated cultural or heritage resource find, the implementation of a temporary protective buffer for the area would be determined on a case-by-case basis by the environmental inspector and would reflect the nature and extent of the site.

**Views of Parties**

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations raised concerns regarding the potential for the discovery of burial sites and the mitigations required by regulatory authorities. Stoney Nakoda Nations said that NGTL's Contingency Plan relies on a highly invasive response before Nations are notified and consulted for further action. For Stoney Nakoda Nations, this raises concerns regarding negative cultural impacts and situations where there is no option of reburial. The Stoney Nakoda Nations said that they are currently completing their own study to identify burial sites and that work so far indicates a higher density of burial sites in the Porcupine Hills, Longview, and Bar U Ranch areas.

Stoney Nakoda Nations proposed the following mitigation to reduce impacts on potential burial sites:

- Work in collaboration with Stoney Nakoda Nations to support the identification of burial sites prior to Project construction. Stoney Nakoda Nations notes that this work is currently underway.
- Remain open and flexible to adjusting Project route if impacts to specific burial sites are anticipated.

Stoney Nakoda Nations requested that the heritage resources clearance condition be edited to include a description of NGTL's engagement with Stoney Nakoda Nations and to include an understanding of how archaeological and historical resources relate to the Nations' Section 35 Rights. Stoney Nakoda Nations also requested that NGTL include an explanation for how the information obtained during consultation was integrated into the mitigation measures for impacts

to archaeological and historical resources or provide a rationale for why no further mitigation measures were developed.

Stoney Nakoda Nations further requested that NGTL be required to file a description, developed in consultation with Stoney Nakoda Nations, of how it will identify and handle archaeological and heritage resources of Stoney Nakoda Nations including communication plans with the Nations for any archaeological and heritage resources identified once construction has commenced.

***Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)***

Métis Nation of Alberta stated the importance of cultural and heritage resources and raised concerns regarding the management of heritage resources. Métis Nation of Alberta requested a dual clearance authorization so that Nations can also access archaeological and heritage records.

***Samson Cree Nation***

Samson Cree Nation said that chance find protocols need to be co-developed with intervenors that covers any gaps left from the *Historical Resources Act*. Samson Cree Nation also said that there needs to be process created for items beyond the provincial legislation, such as for remains and artifacts, how to avoid or mitigate impacts to those items, as well as how to report on those items. Samson Cree Nation also stated that cultural, spiritual, and ceremonial protocols need to be followed for any potential chance finds or resources.

**Reply of NGTL**

NGTL stated that it would implement all additional mitigative requirements included in any permits issued by Alberta Ministry of Culture, Multiculturalism and Status of Women and Parks Canada for the Project. These efforts, in conjunction with traditional land use information shared by Indigenous peoples, reduces the likelihood that a previously unidentified significant heritage or burial site would be encountered during construction.

NGTL stated that the ESA includes consideration for potential Project effects on sites, features, or values of interest to Indigenous groups (including Stoney Nakoda Nations), land user activities, socio-economic conditions, and environmental resources. As such, NGTL's mitigation also includes both biophysical and socio-economic measures to reduce potential Project-related effects.

NGTL also said that it is supportive of Stoney Nakoda Nations' ongoing field work related to its Traditional Land and Resource Use study for the Project, including regarding the identification of burial sites.

NGTL also stated that information gathered through ongoing engagement with Indigenous communities would be reviewed in the context of the ESA and for incorporation into Project planning, as appropriate.

NGTL advised that consideration of information from Indigenous peoples would include evaluating whether NGTL's planned mitigation would effectively avoid identified potential interactions, or whether additional or refined mitigation is warranted. Should specific sites or features be identified by Indigenous peoples that have the potential to interact with Project

activities, NGTL said that it would engage in discussions with the appropriate Indigenous peoples regarding the development of site-specific mitigation measures. NGTL committed that any traditional use sites or features which require site-specific mitigation would be included in an updated EPP and updated Environmental Alignment Sheets prior to construction.

Regarding Samson Cree Nation's concerns regarding chance find and protocols, NGTL stated that it welcomes Indigenous guidance on cultural, spiritual, and ceremonial protocols that may be applicable or appropriate for heritage resource chance finds. NGTL also invited Indigenous peoples to share this information during engagement on the Project. NGTL also stated that the EPP includes a Cultural Resource Discovery Contingency Plan, which details the steps to be implemented in the event an unanticipated cultural resource, including heritage resources, is identified during construction.

**Commission analysis and findings**

Considering the evidence on the record, NGTL's proposed mitigation measures and contingency plans, the requirements from Alberta Ministry of Culture, Multiculturalism and Status of Women and Parks Canada, and the imposed conditions, the Commission finds that any residual effects of the Project on heritage resources would likely be of low significance. The Commission finds that any residual effects of the Project on heritage resources would likely be short-term in duration, reversible, limited to the project development area and low in magnitude. The Commission is satisfied that, should any culturally significant or heritage resource sites be found as a result of field studies or chance finds during construction, the appropriate regulators would issue additional requirements for site avoidance, additional assessment, mitigative excavation, or construction monitoring. The Commission also finds that the Project's contribution to total cumulative effects on heritage resources in the region to be negligible.

In addition, the Commission finds that NGTL's commitments and mitigation measures, such as the early identification of sites, the requirements of the provincial and federal authorities for heritage resources, NGTL's ongoing engagement with Indigenous peoples regarding appropriate mitigation measures, including any required site-specific mitigationto be appropriate for the scope and scale of the Project. The Commission finds NGTL's approach of notifying Indigenous peoples in the event of a chance cultural resource finding to be appropriate. The Commission recognizes that in the event of an unanticipated heritage or cultural resource discovery during construction, NGTL will implement its Cultural Resource Discovery Contingency Plan, which includes engaging with Indigenous peoples regarding the discovery. The Commission finds that these commitments, as well as NGTL's mitigation measures and the conditions imposed by the Commission would effectively address the concerns raised by Indigenous peoples.

The Commission recognizes the value to Indigenous peoples of cultural and heritage resources preservation. The Commission appreciates 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 notes NGTL's commitment to ongoing engagement with Indigenous peoples regarding sites of cultural and heritage significance. The Commission expects NGTL to honour these commitments, both through its ongoing engagement with Indigenous peoples, and through its Indigenous Construction Participation Program.

The Commission acknowledges the commitment from NGTL that it will avoid any sites having high heritage value and implement any additional mitigative requirements included in any permits issued by Alberta Ministry of Culture, Multiculturalism and Status of Women and Parks Canada for the Project. To confirm the incorporation of these measures, the Commission imposes **Certificate Condition 20** (Heritage resource clearances) on NGTL requiring it to file confirmation that it has obtained all required archaeological and heritage resource clearances. NGTL is also required to confirm how it will meet any of that Ministry's conditions or recommendations, and how any additional mitigation measures will be incorporated into the EPP.

The Commission notes the concerns on the hearing record received from Samson Cree Nation, Métis Nation of Alberta, and Stoney Nakoda Nations, regarding the management of heritage resources and their wish for further involvement. The Commission takes no position with regards to Métis Nation of Alberta's request for a dual clearance process, as approval under the Historical Resources Act is within the jurisdiction of the Government of Alberta. The Commission is satisfied with the commitments from NGTL for ongoing engagement with Indigenous peoples and NGTL's Cultural Resources Discovery Contingency Plan which states that the find will be handled in accordance with all applicable requirements and permits, and in consideration of the recommendations of potentially affected Indigenous peoples to the degree that provincial regulations allow.

The Commission finds the existing cumulative effects on heritage resources are not likely to be significant along the pipeline corridor. The Commission further finds that NGTL has proposed appropriate mitigation measures, which are anticipated to reduce the potential for adverse cumulative effects on heritage resources. As a result, the Commission has determined the Project's contribution to cumulative effects on heritage resources is expected to be negligible.

**Table 4-3: Evaluation of significance of residual effects on heritage resources**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term | Effects are generally considered short-term and are likely to occur as multiple irregular events during the construction period. |
| | **Reversibility** | Reversible | Effects are expected to be reversible, allowing for disturbed areas to recover to pre-construction conditions within the life of the Project. |
| | **Geographic extent** | PDA | Effects are expected to be localized to the Project footprint. |
| | **Magnitude** | Low | Effects from construction and operation of the Project on heritage resources are expected to be of low magnitude, given NGTL's proposed mitigation measures, including early identification of sites and engagement with Indigenous peoples and provincial and federal authorities on appropriate mitigation measures. These mitigation measures, as well as the implementation of the EPP and Cultural Discovery Contingency Plans are expected to sufficiently address any potential residual effects. |
| **Adverse effect** | Low significance | | |

## 4.5 Other interests and concerns of Indigenous peoples

The submissions from Indigenous peoples received on the hearing record have been considered and are reflected under the consideration of each of the factors identified in the subsequent chapters of this Report, including environmental effects, social and cultural well-being, human health, and engagement with Indigenous peoples.

# 5 Effects on the Rights of the Indigenous Peoples of Canada

This Chapter will highlight key submissions from parties, the CER Crown Consultation Team, and NGTL, as well as the Commission's analysis and findings relevant to the rights of Indigenous peoples.

| | |
|---|---|
| ***CER Act 183(2) factor(s)*** | *(e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982* |
| ***List of Issues No.*** | 11. The effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982* including, without limitation, treaty rights |
| ***Key conclusion(s)*** | The Commission finds that the potential adverse effects of the Project on the exercise or practice of the rights of Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 would likely be of low significance for the Longview and Turner Valley Sections, and of medium significance for the Lundbreck Section.<br>The Commission concludes that its recommendation to GIC and the corresponding decisions on this Project are consistent with the requirements of section 35 of the Constitution Act, 1982 and the honour of the Crown. |

## 5.1 Engagement and consultation with Indigenous peoples

### 5.1.1 NGTL's engagement with Indigenous peoples

NGTL stated that its Indigenous Engagement Program is guided by its Indigenous Relations Policy. The goal of this policy is to provide project information and seek feedback from Indigenous people in order to anticipate, prevent, mitigate, and manage potential impacts to Indigenous peoples. NGTL submitted that its Indigenous Engagement Program is consistent with the CER's guidance on engagement (set out in the Filing Manual), as well as the CER's Early Engagement Guide.

NGTL confirmed that it engaged with and provided Project information packages to all Indigenous peoples that were identified by the CER as being potentially affected by the Project. NGTL then followed up with each community to determine their level of interest in the Project and to establish a primary point of contact. NGTL's engagement methods included but were not limited to:

- presentations, open houses
- face-to-face meetings
- email, telephone calls, videoconferences, text messages
- map reviews

- site visits
- sharing of traditional knowledge, including traditional knowledge studies
- review of community-specific traditional knowledge literature review results
- discussions on contracting, employment, education, and training opportunities
- community investment

NGTL stated that it has been engaging with potentially affected Indigenous peoples since November 2019 to understand their specific capacity and resourcing needs, and to develop a Project-specific workplan. This workplan was intended to formalize the engagement activities to be conducted for the Project and the associated funding. NGTL stated that it tailors its approach to engagement and the gathering of information to meet a community's specific needs and, where appropriate, provide reasonable resources to support participation in project engagement activities.

NGTL stated that multi-year capacity funding for engagement with NGTL on the Project is provided through negotiated agreements with Indigenous peoples based on the activities outlined in the workplan. NGTL said that these negotiated agreements include review of regulatory materials (e.g., conditions) and is not limited to pre-approval of the Project. The process by which the funding would be provided is determined based on specific activities, circumstances and discussions with the community. NGTL stated that additional funding may be provided through an amendment to an engagement capacity funding agreement, a separate agreement, or by NGTL paying agreed-upon invoices from a community. NGTL said that in instances where participation in a monitoring program during construction is implemented, payment is provided directly to participants doing the fieldwork or construction monitoring. Throughout the hearing process, NGTL submitted summaries of its engagement activities with Indigenous peoples. Depending on community preferences and safety protocols associated with the COVID-19 pandemic, these engagement activities were conducted via email (or hard copy), telephone calls (or conference calls), meetings (virtual or in person), and/or in the field at the Project site. The summaries of engagement activities indicated that NGTL:

- Provided Project information, notification of supplemental filings, CER process steps, and invitations to its virtual open house held on 17 February 2021, to all Indigenous communities identified by NGTL and the CER as being potentially affected by the Project
- Followed up with communities that requested meetings, capacity funding agreements, and Traditional Knowledge and Rights studies.
- Sent business capacity questionnaires to all previously engaged communities in April 2021.
- Notified communities in June 2021 that NGTL would be conducting archaeological surveys throughout the summer and there were open positions for community members to apply for.
- Held in-person meetings with Blood Tribe and Siksika Nation; Virtually met with Elk Valley Métis Nation, Louis Bull Tribe, Piikani First Nation, Samson Cree Nation, and Stoney Nakoda Nations. Met via teleconference with Nakcowinewak Nation of Canada. Topics discussed included capacity funding, Traditional Land and Resource Use studies and fieldwork, scheduling site visits, and Elder interviews.

- Emailed communities shape files and mapping documents, and Project information as requested.

NGTL committed to ongoing engagement with Indigenous peoples following the completion of the Commission's public hearing process. Specifically, NGTL committed to responding to questions and concerns with the intent to:

- address any new or outstanding Project-related questions, concerns or requests;
- complete outstanding work plans that provide capacity funding for communities or traditional knowledge studies;
- share Project updates and continue to gather input, as applicable; and
- understand interests in employment and contracting opportunities and community capacity.
- NGTL also committed to engaging with Indigenous communities on the development of condition filings, as required.

NGTL stated that it would implement its Public Awareness Program beginning at the operational phase of the Project to address issues or concerns on a case-by-case basis, if any arise. NGTL committed to ongoing engagement over the lifecycle of its projects and to supporting Indigenous peoples through continued community legacy, education and training programs, and opportunities.

### 5.1.2 CER's consultation with Indigenous peoples

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.

A number of decisions, including *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director*),[27] 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 meaningfully heard and considered, and where appropriate, accommodated. The Supreme Court of Canada has acknowledged in two decisions, *Clyde River (Hamlet) v Petroleum Geo-Services Inc* and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc*.,[28] that the National Energy Board (**NEB**), now the CER, has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures, including having the requisite technical expertise to do so.

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[27] 2004 3 SCR 550, 2004 SCC 74 (CanLII), at [40] 2004 3 SCR 550, 2004 SCC 74 (CanLII), at [40] (and reiterated in Clyde River (Hamlet) v Petroleum Geo-Services Inc., 2017 SCC 40 at [30-31] (hereinafter Clyde River).

[28] Clyde River, paras 31-34; Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., 2017 SCC 41, para 48.

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 from that project and the measures that can be implemented to minimize those impacts. In addition, the Commission has the authority to elicit commitments from the proponent, impose conditions on an approval, undertake ongoing regulatory oversight of a project, and verify a proponent's compliance.

The framework within which the CER operates (and under which decisions 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 for Indigenous peoples to raise concerns and seek resolution from the proponent or the Commission regarding project-related impacts on their Rights and interests.

Throughout its hearing processes, the Commission hears both directly and indirectly about Indigenous peoples' concerns about project-related impacts on their Rights and interests. Hearing these concerns allows the Commission to impose measures to mitigate these impacts, as well, where appropriate, to balance any residual effects with other societal interests at play when considering a project. As a result, decisions about pipeline projects can be made in a constitutionally appropriate manner consistent with the honour of the Crown. This framework provides an effective mechanism through which Indigenous peoples' concerns that are beyond the mandate of the CER can be communicated to GIC for consideration in its decision making. Additionally, the framework may also provide other government agencies with information that they may choose to use in any decisions that they may need to make, should a 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 during the hearing process. There are several points in a Commission proceeding where the existence and extent of the Rights and 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 the Commission determines are warranted. For example, such factors may be considered when:

- the proponent follows the expectations in the Filing Manual to determine who may be impacted by its proposed project (e.g., Indigenous peoples with traditional territory that is intersected by a 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 engagement expected of the proponent and the consultation by 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 peoples who are participants in either the hearing process, CER Crown Consultation Team activities, or both;
- the Commission determines what Certificate conditions are necessary or in the public interest, should GIC direct that the Certificate be issued; and
- the Commission recommends whether the Certificate should be issued for all or any part of the pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and its reasons for that recommendation.

The Commission's process is designed to be thorough and accessible to Indigenous peoples so that they may meaningfully make their concerns known to the Commission and may have those concerns addressed. In addition to the engagement that is to occur between a proponent and potentially impacted Indigenous peoples, the hearing process itself, as well as this Report, form 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 consistent with the requirements of the Filing Manual, the Commission's process served as a necessary and important check on that engagement. It also gave Indigenous peoples an avenue to explain their concerns about the Project and have those concerns meaningfully considered by the Commission. These avenues included the sharing of oral Indigenous knowledge, the filing of evidence, and the asking of Information Requests.

The hearing process for this Project included several new process steps and approaches, with a view to being responsive to the needs, concerns, and constraints faced by participants. Namely, Indigenous peoples who participated as intervenors assisted in shaping the Commission's hearing process by providing input at the process design workshop. Indigenous peoples also had an opportunity to learn about CER conditions by participating in the conditions workshop. The assessment of this Project also included the involvement of the CER Crown Consultation Team for the first time in a Certificate application. The CER Crown Consultation Team activities were designed to be complementary to the hearing process. The hearing process was also flexible and responsive, in that the Commission added process steps including Information Requests to the CER Crown Consultation Team in response to a request from Indigenous peoples participating as intervenors.

#### 5.1.2.1 Commission hearing process

Building on the process explained in Chapter 2, the Commission designed a process with a view to be open, transparent, accessible, flexible and responsive to the needs of all participants, including the individual needs of Indigenous peoples. The steps to allow for meaningful participation of Indigenous peoples in this hearing process included:

- Early engagement activities were undertaken and a Process Advisor was assigned;
- A process workshop was held and comments from the workshop on how parties wished to participate were reviewed and many of the suggestions were incorporated into the hearing schedule; the process workshop also helped inform the List of Issues;
- Two oral Indigenous knowledge sessions were offered to accommodate the schedule of parties;

- A multi-day conditions workshop was held, including a day specific for Indigenous peoples participating as intervenors;
- Motions were granted to delay hearing steps in order to accommodate intervenors impacted by the COVID-19 pandemic, forest fires, and residential school findings;
- The CER Crown Consultation Team engaged with Indigenous peoples and filed the Crown Submission on the record, and intervenors were granted an opportunity to comment on the Submission; and
- Parties were able to ask Information Requests of the parties and of the Crown Consultation Team.

#### 5.1.2.2 CER Crown Consultation Team

The CER Crown Consultation Team stated, in the Crown Submission, that in designing its consultation efforts, it strove to:

- foster informed and sound decision-making with respect to the Project;
- consult in a way that is fully consistent with meeting Canada's obligations under section 35 of *the Constitution Act, 1982* and its commitments to advancing Reconciliation with Indigenous peoples;
- engage in substantive, meaningful two-way dialogue to fully understand concerns raised and the nature and seriousness of potential Project impacts on rights, and to work collaboratively to identify potential mitigations and accommodations, where appropriate; and
- be flexible in tailoring consultation approaches to the extent possible, in a way that is responsive to each Indigenous community.

The CER Crown Consultation Team stated that its process was designed to allow it to discuss and develop potential community-specific mitigations, recommendations, and potential accommodation measures for the Commission's consideration. In the Crown Submission, the CER Crown Consultation Team advised that it facilitated a whole-of-government approach to consultation, working with other relevant federal authorities, most notably Natural Resources Canada, Environment and Climate Change Canada, and Crown-Indigenous Relations and Northern Affairs Canada to leverage federal expertise.

***CER Crown Consultation Team Activities during Early Engagement***

Based on the information provided in NGTL's Project Notification, the CER Crown Consultation Team sent a letter to each of the following Indigenous peoples potentially affected by the Project. This letter notified potentially affected Indigenous peoples that the CER had received a Project Notification from NGTL and was initiating and coordinating early Crown consultation on the Project:

- Blood Tribe (Kainai First Nation)
- Driftpile Cree Nation
- Elk Valley Métis Nation
- Ermineskin Cree Nation
- Foothills Ojibway Society

- Ktunaxa Nation Council, including the:
  - ?Aq'am (St. Mary's) First Nation
  - ?Akisq'nuk (Columbia Lake) First Nation
  - Yaqan Nukiy (Lower Kootenay) First Nation
  - Akun'kunik' (Tobacco Plains) First Nation
- Louis Bull Tribe
- Métis Nation of Alberta, Region 3 (including Métis Nation of Alberta's Provincial Office, Métis Nation of Alberta Local 87, and Métis Nation of Alberta Local 1880)
- Montana First Nation
- Nakcowinewak Nation of Canada
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- Siksika First Nation
- Stoney Nakoda Nations, comprised of:
  - Bearspaw First Nation
  - Chiniki First Nation, and
  - Wesley First Nation
- Tsuut'ina Nation

The CER Crown Consultation Team followed up with phone calls and emails to introduce itself, to begin dialogue with Indigenous peoples, to discuss the potential timeframes for consultations and the hearing process, and to begin discussions on any potential Project-specific impacts, concerns or questions. During the early engagement phase, the CER Crown Consultation Team met virtually with Louis Bull Tribe, Métis Nation of Alberta Region 3, Piikani Nation, Samson Cree Nation, and Stoney Nakoda Nations, and filed a Summary of Issues for NGTL and the Commission's consideration. The purpose of the Summary of Issues was to provide the Commission and NGTL with a description of the issues that CER Crown Consultation Team heard and to advise NGTL of the issues raised which they are expected to address during the hearing process.

***CER Crown Consultation Team Activities during the Hearing***

The CER Crown Consultation Team continued to consult with Indigenous peoples during the hearing. This consultation was done outside of and concurrent with the Commission's hearing process.

Following the release of the Summary of Issues, the CER Crown Consultation Team was made aware of additional Indigenous peoples that may be potentially affected by the Project and, as a result, updated its Crown List to include Driftpile Cree Nation, Elk Valley Métis Nation, Métis Nation of Alberta Region 3 (including Métis Nation of Alberta's Provincial Office, Métis Nation of Alberta Local 87, and Métis Nation of Alberta Local 1880) and clarified that Stoney Nakoda Nations includes Bearspaw First Nation, Chiniki First Nation and Wesley First Nation. The CER Crown Consultation team informed NGTL of these additions and clarifications and on 11 January 2021, the CER sent a Notice of Application to all of the potentially impacted Indigenous peoples and communities on the Crown List.

The CER Crown Consultation Team filed a summary for the Commission's consideration (the Crown Submission) following its consultation activities, which occurred from 28 October 2020 to

15 November 2021. The Crown Submission set out Project-specific concerns identified by potentially affected Indigenous peoples, including:

- long-term involvement of Indigenous peoples throughout the lifecycle of the Project;
- funding to support the review of condition filings,
- access to land,
- Employment and economic participation for Indigenous peoples, and
- cumulative effects and impacts on Rights.

The CER Crown Consultation Team committed to continue two-way dialogue with Indigenous peoples on the Project, as needed. The CER Crown Consultation Team explained that these continuing consultations would shift to support the GIC decision-making process.

### 5.1.3 Views of Parties

***Bearspaw, Chiniki, and Wesley First Nations (collectively, the Stoney Nakoda Nations)***

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

In the Crown Submission, Stoney Nakoda Nations stated that, in its experience, NGTL has resisted adjusting components of its Project plan, or mitigation measures as a result of its engagements with Stoney Nakoda Nations. Stoney Nakoda Nations said that they do not expect NGTL to do this without a requirement from either the CER or the Crown.

Stoney Nakoda Nations specifically raised concerns regarding the Nations' royalties, including the obligation to obtain the best available royalty price. Stoney Nakoda Nations requested that the Commission direct NGTL to provide any necessary proprietary information to Indian Oil and Gas Canada. Stoney Nakoda Nations stated that this is required to address concerns with calculating royalties owing to beneficiary First Nations, such as Stoney Nakoda Nations.

***Blood Tribe (Kainai Nation)***

In the Crown Submission, Blood Tribe raised concerns regarding the Crown consultation approach, and concerns about whether accommodations and mitigations will be included in the approach. Blood Tribe also discussed their lack of decision-making authority at the Crown consultation table and raised concerns with how issues are tracked.

The Crown Submission also identified challenges raised by Blood Tribe regarding understanding federal and provincial Crown responsibilities and how (or if) both would work together. Blood Tribe also raised concerns with funding provided by the CER for Crown consultations.

***Driftpile Cree Nation***

In their written evidence, Driftpile Cree Nation stated "Consultation must always be carried out with the intent to substantially address the concerns of the affected Indigenous group. Through the CER process, and beyond, the Crown must intend to and make all good faith efforts to understand and accommodate Driftpile Cree Nation's concerns. The Crown can, and often does, delegate procedural aspects of this duty to the proponent, such as NGTL. (…) Any environmental process and outcome must recognize and avoid or minimize risks to infringement of these rights."[29]

Additionally, during their oral Indigenous knowledge, Drfitpile Cree Nation submitted:

> *I think it's most important that the major providers to these projects, these constructions, work closely with the Elders in the area, get their knowledge from the elders and wants for the important components that we need to be protecting: our animals, (…) our berries, our medicines. …*
>
> *Therefore, one of my recommendations that should go through is have a group of Elders work closely with these major projects. …*
> Elder Peter Freeman, Driftpile Cree Nation, Transcript Volume 3 [1127-1128]

Driftpile Cree Nation requested the addition of a 21-day comment process for the review of conditions, to permit Indigenous peoples to identify any issues or concerns or verify that the filing comports with their understanding of prior communication with NGTL. Driftpile Cree Nation stated that they have developed a positive working relationship with NGTL relating to projects that have potential to impact their rights.

In the Crown Submission, Driftpile Cree Nation expressed concern that the CER led consultation process was not as fulsome as it could have been and that the process did not allow enough time to seek a satisfactory resolution.

***Elk Valley Métis Nation***

Elk Valley Métis Nation said that in their experience, NGTL's consultation efforts are positive ahead of a project's approval, but not once a project enters the operation phase.

During Elk Valley Métis Nation's oral Indigenous knowledge session, Mick Elliott, representative for Elk Valley Métis Nation stated:

> *So and I would also emphasize is that companies are once again, will come to us when they need something to be consulted on for a project approval, and you know, we would like to say that we have confidence that TC Energy will come and talk to us about that stuff, but as*

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[29] Written evidence, Driftpile Cree Nation, pg 6. C14789-1

*I stated, it's a full year that we have been requesting a regional conversation about what's in the ground, and it just isn't happening.*

*So we could actually lodge that as a condition saying, "We feel that it's appropriate and necessary for the CER to install a condition that requires continuous consultation, annual updates to make sure that those that could be impacted by the operations of the (audio skip) are being consulted and regularly updated. Without that, I think it's too easy to get in the business of being doing business and forget about those elements that you still need to keep the folks that are involved involved."*
Mick Elliott, Elk Valley Métis Nation, Transcript Volume 3 [1422-1423]

Additionally, Elk Valley Métis Nation also stated that they had been in discussions with NGTL for months regarding contracting and nothing had materialized. Elk Valley Métis Nation expressed a desire to participate in opportunities on and off of Crown land.

Elk Valley Métis Nation also indicated that over the past year, they had requested a regional focused discussion with NGTL regarding what projects are currently in operation, as well as upcoming proposed projects, but that NGTL had not, at the time of Elk Valley Métis Nation's oral Indigenous knowledge session, had that discussion with the Nation.

### *Montana First Nation*

As noted in the Crown Submission, Montana First Nation completed their Traditional Knowledge Study. Montana First Nation indicated it had a positive and productive working relationship with NGTL and felt comfortable sharing concerns directly with NGTL.

### *O'Chiese First Nation*

In their written evidence, O'Chiese First Nation stated "…in the regulatory process for this Project, the Crown is piloting an entirely new Crown consultation process without establishing a formal plan or understanding of how to meaningfully consider and incorporate evidence provided by Indigenous nations into an assessment and related decision-making actions."[30]

In the Crown Submission, O'Chiese First Nation also raised concerns regarding the CER Crown consultation process. These concerns included uncertainty as to how the Commission will consider and address impacts to O'Chiese First Nation's rights, (including those identified through the CER Crown consultation process), as well as the level of detail included in the Crown Submission.

### *Piikani Nation*

Piikani Nation stated that they are geographically closest to the Project and therefore most impacted by the Project. Piikani Nation further stated that the original line was built without Crown consultation. Piikani Nation submitted that the Crown and the CER need to improve their consultation with Piikani Nation.

Piikani Nation also stated that NGTL's consultation and funding has been consistently inadequate and not meaningful; it has not improved and that this concern has not been addressed by the Commission. In their oral Indigenous knowledge session, Piikani Nation

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30 Written evidence, O'Chiese First Nation, pg 7. C14776-1

stated that “it has been a closed door with this company” when referring to their engagement with NGTL.

> *CER has an obligation to our Nation to ensure that we are being heard. And it’s not just with our Indigenous knowledge but what does that Indigenous knowledge mean to the process.*
>
> *When you come up to your recommendations -- when you come to your conclusions, which I have read before and which have fallen short… I challenge you to do better. You need to do better. This knowledge that’s going to be shared with you is important knowledge. It’s knowledge that means something to our area, to our people, to our kids, my grandchild, my grandchildren.*
> Ira Provost, Piikani Nation, Transcript Volume 1 [111-112]

Through the Crown Submission, Piikani Nation raised concerns regarding the CER Crown consultation process occurring in parallel with the hearing process. Piikani said that in their view, the duty to consult process was yet to be adequately fulfilled for the Project, and that further meaningful engagement and relationship building on the part of the Crown and NGTL is required.

***Samson Cree Nation***

Samson Cree Nation stated their concern that the CER did not meaningfully discharge early engagement Crown consultation duties with respect to the Project prior to regulatory processes being initiated. Additionally, Samson Cree Nation raised concerns with the speed and timing of the hearing process, and stated that they did not agree with Crown consultation and ESA review being done at the same time as the hearing process. Samson Cree Nation said that these processes are colonized and imposed on Indigenous peoples without respecting Samson Cree Nation’s own processes.

In the Crown Submission, Samson Cree Nation also raised concerns regarding the CER Crown consultation process and the adequacy of consultation and accommodation.

***Tsuut’ina Nation***

As noted in the Crown Submission, Tsuut’ina Nation completed their site assessment and provided their final Traditional Land Use report to NGTL. Tsuut’ina Nation said that they are engaged with NGTL on the concerns identified in the Traditional Land Use report and are satisfied with NGTL’s engagement. Tsuut’ina Nation also said that they met with NGTL representatives to discuss concerns regarding unsuccessful business bids and barriers faced. Tsuut’ina Nation said that they and TC Energy had agreed on an approach of collaboration and established strategies that will support successful economic development and business opportunities.

### 5.1.4 Reply of NGTL

NGTL stated that it has been engaging with potentially affected Indigenous peoples regarding the Project since November 2019. NGTL also confirmed that it seeks to work collaboratively with Indigenous peoples and to provide information on how their input influenced the Project.

NGTL stated that its engagement involved numerous opportunities for Indigenous peoples to collaborate with NGTL and for Indigenous peoples to provide input and feedback into the ESA.

These opportunities included informing the literature review compiled for baseline data, conducting Indigenous peoples-led Traditional Knowledge studies, participating in biophysical fieldwork, and reviewing the ESA.

NGTL stated that ongoing engagement activities would be informed by issues, concerns, and interests raised during engagement and that the hearing process may depend on, and be informed by, condition requirements should the Project be approved. However, engagement activities that could be conducted or offered to Indigenous peoples following the completion of the hearing process may include:

- Providing Project updates and opportunities for further input in Project planning, as applicable;
- Engaging and providing notifications of condition compliance and copies of condition filings, as appropriate;
- Confirming specific interests of Indigenous peoples during construction and post-construction monitoring;
- Gathering input from interested groups to inform the development of participation in monitoring during construction and post-construction plans;
- Implementing Indigenous participation in monitoring during construction and/or post-construction, as applicable;
- Gathering information on Indigenous businesses and partnerships, sharing information, and meeting with interested groups on NGTL's employment and contracting process;
- Opportunities to conduct appropriate cultural ceremonies, upon request from Indigenous peoples;
- Providing construction updates, including notice if Contingency Plans of interest to Indigenous peoples are implemented;
- Engagement during operation; and
- Provide reasonable capacity funding to cover engagement activities for the duration of the Project, including post-approval condition filings.

### 5.1.5 Commission analysis and findings

***NGTL's engagement with Indigenous peoples***

The Commission finds that NGTL adequately designed and implemented engagement activities for the Project. In reaching this conclusion, the Commission placed substantial weight on NGTL's mitigation measures, which are being proposed to address concerns about the construction and operation of the Project, and NGTL's ongoing engagement activities with potentially affected Indigenous peoples, which will continue to inform such measures. Specifically, the Commission was satisfied with NGTL's responses to the concerns of Indigenous peoples, and NGTL's commitments to continue engagement throughout the Project lifecycle, incorporating any additional information it receives into Project planning. In addition to these commitments, the Commission imposes **Certificate Condition 11** (Socio-Economic Effects Monitoring Plan), **Certificate Condition 13** (Outstanding Traditional Land and Resource Use investigations) and **Certificate Condition 15** (Support for Indigenous peoples to review NGTL filings related to conditions).

The Commission requires NGTL to respond to the concerns of Indigenous peoples, which include any concerns about how the Project would impact Indigenous and Treaty Rights. The Commission encourages 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 expects applicants, such as NGTL, to have a company-wide engagement program that establishes a systematic, comprehensive, and proactive approach for the development and implementation of project-specific engagement activities. This engagement program is expected to anticipate, prevent, mitigate and manage conditions which have the potential to affect persons and communities. The Commission also expects applicants to continue effective engagement activities with the public and Indigenous peoples during the construction and operation phases of a project. The Commission finds that NGTL's Indigenous Engagement program meets these requirements and is an appropriate avenue for ongoing engagement between NGTL and Indigenous peoples. The Commission expects that NGTL will fulfill its commitment to ongoing engagement with Indigenous peoples, including Elk Valley Métis Nation, Piikani Nation and Stoney Nakoda Nations who raised concerns regarding NGTL's engagement throughout the hearing process.

The Commission observes that a number of Indigenous peoples participating as intervenors, including Métis Nation of Alberta, Driftpile Cree Nation, Elk Valley Métis Nation, Piikani First Nation, and Stoney Nakoda Nations, raised questions regarding their ability to participate in monitoring and condition compliance activities, as well as capacity funding to do so. In response to these concerns, the Commission imposes **Certificate Condition 15** (Support for Indigenous peoples to review NGTL filings related to conditions) to address the need to support Indigenous peoples' participation in the condition compliance stage of the Project**.** This condition requires NGTL to file a report describing its support for Indigenous peoples to review conditions and explain how any outstanding concerns have been addressed, or why the concerns will not be addressed. This condition is the first of its kind for the Commission and is intended to further support Indigenous peoples' requests to actively participate in the condition compliance phase of the Project.

The Commission acknowledges the request by Driftpile Cree Nation to establish a comment process for condition filings to allow potentially affected Indigenous peoples to identify any issues of concerns or verify that condition filings comport with their understanding of prior communication with NGTL. The Commission expects that, in line with the requirements of the Filing Manual, NGTL will continue to engage with potentially affected Indigenous peoples, including supporting condition filing reviews where appropriate.

The Commission acknowledges the request raised by Stoney Nakoda Nations regarding the calculation of royalties on reserve lands. The Commission is of the opinion that these matters relate to the IOGC. As noted by the Crown Consultation Team, its continued dialogue on the Project may include matters that are not within the Commission's mandate or the scope of its hearing. The Commission's findings regarding economic benefits for Indigenous peoples, including employment and contracting, are further discussed in Chapter 7, Section 7.6.

### *CER's consultation with Indigenous peoples*

The Commission finds that there has been adequate consultation and accommodation for the purpose of the Commission's Recommendation to GIC and its own determinations on this Project. In making this finding, the Commission has considered all relevant issues and

concerns, including the mandated engagement performed by NGTL (section 7.1.1), the CER's consultation with Indigenous peoples (section 7.1.2), the effects of the Project on the rights of Indigenous peoples (section 7.2), and the interests and the concerns expressed by Indigenous peoples (Chapter 6). The Commission finds that NGTL's mitigation measures and the imposed conditions are responsive to the concerns raised.

The Commission finds that the hearing process provided opportunities for meaningful participation of Indigenous peoples. In particular, the Commission put substantial weight on the processes described in Section 5.1.2.1 in coming to this finding.

The Commission's hearing process invited Indigenous peoples to submit written evidence and share oral Indigenous knowledge about how the Project would impact Indigenous and Treaty Rights, which was fully considered by the Commission. 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 avenue to explain their concerns about the Project and have those concerns considered by the Commission.

The Commission acknowledges that the CER Crown Consultation Team has continued the NEB's approach of beginning consultation activities prior to the hearing process. This is consistent with the preamble of the CER Act that states "the Government of Canada is committed to using transparent processes that are built on early engagement and inclusive participation". The CER Crown Consultation Team has taken the approach of continuing consultation activities with interested Indigenous peoples during the hearing process. This opportunity for concurrent consultation activities may have been helpful for communities, including those communities that choose to rely solely on the Crown consultation mechanism, rather than the Commission's hearing process. The Commission understands that the CER Crown Consultation Team will continue to consult with Indigenous peoples, as needed, in support of the GIC decision-making process. This is a role that was previously carried out by the Major Projects Management Office for large resource projects. This new process integrates the CER Crown consultation process and the Commission hearing process and is intended to provide additional opportunities for the participation of Indigenous peoples. All relevant issues and concerns brought forward by Indigenous peoples through the public hearing, and through the CER Crown Consultation Team, have been considered by the Commission with the intent that issues and concerns are mitigated, or where necessary accommodated, to the extent possible.

Regarding the concerns raised by Indigenous peoples about the CER Crown consultation process, the Commission acknowledges that this is the first public hearing under section 183 of the CER Act and the first time Indigenous peoples have engaged with the CER Crown Consultation Team in the context of a section 183 hearing process. This approach is new and, as such, will continue to evolve. It may require adjustment, refinement, and adaptation over time. In this hearing, the Commission demonstrated flexibility where possible, including adding additional process steps to allow for Information Requests of the CER Crown Consultation Team, as well as extending timelines for oral Indigenous knowledge sessions.

Regarding the concerns from Stoney Nakoda Nations and Piikani Nation about the lack of historical consultation in Treaty 7 territory, the Commission understands that the geographic and historical context of the area is relevant for the assessment of the Project, including potential cumulative effects. The Commission accepts that existing developments have already contributed substantially to effects on the exercise of rights (as submitted by NGTL and Indigenous peoples) and the position advanced by Indigenous peoples that appropriate engagement should have begun generations prior. Even though the Commission finds the

geographic and historical context relevant, the subject of the duty to consult is the impact on the Rights of the current decision under consideration.

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 to file relevant information on the Commission's record. They also had the opportunity to comment and provide information on appropriate mitigation measures. Alberta Department of Energy filed final argument, Environment and Climate Change Canada filed a letter of comment and Parks Canada filed written evidence. In addition, the CER Crown Consultation Team facilitated a whole-of-government approach to consultation with relevant federal authorities, notably Natural Resources Canada, Environment and Climate Change Canada and Crown-Indigenous Relations and Northern Affairs Canada to leverage federal expertise. The Commission has considered the submissions and exchanges with federal government departments when making a determination about the adequacy of consultation.

## 5.2 Assessment of the Effects of the Project on the Rights of the Indigenous Peoples of Canada

### 5.2.1 Effects of the Project on the Rights of the Indigenous peoples of Canada

The effects of the Project on the ability of potentially affected First Nation and Métis people to exercise or practice their Indigenous and Treaty Rights were assessed by the Commission Wherever possible, the Commission relied on information provided directly by Indigenous peoples regarding their Indigenous and Treaty Rights, and the potential impacts of the Project on those rights. When direct information from Indigenous peoples was not available, the Commission relied on information summarized in the Crown Submission or presented in NGTL's evidence.

The summary tables outlined below highlight the Indigenous peoples who raised concerns about the effects of the Project. NGTL and the CER Crown Consultation Team attempted to engage with Ktunaxa Council, Akisq'nuk First Nation, Tobacco Plains First Nation, St. Mary's Indian Band and Lower Kootenay First Nation, but did not receive responses.

The summary tables outlined below are not intended to represent the entirety of all concerns or issues raised by Indigenous peoples in regard to their Section 35 Rights and the Project's potential impacts. Rather, these tables are intended to act as a guide and reflect the key recommendations and suggested conditions raised by Indigenous peoples. Additional details and analysis regarding these recommendations and conditions can be found in the listed section.

#### 5.2.1.1 Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)

**A. Indigenous and Treaty Rights**

Stoney Nakoda Nations is comprised of three distinct nations, Bearspaw, Chiniki, and Wesley First Nations. Their Section 35 Rights include cultural, economic, ceremonial, and sustenance practices, such as hunting, gathering, fishing, and trapping. These practices were undertaken on the traditional lands by the ancestors of Stoney Nakoda Nations' members since time immemorial and are integral to the physical and cultural survival of the Stoney Nakoda Nations. Stoney Nakoda Nations said that these Section 35 Rights continue to be practiced by Stoney

Nakoda members to this day, and remain essential to the Stoney Nakoda Nation's sustenance, identity, culture, livelihood, and spirituality.

Stoney Nakoda Nations' oral history ties them to the Eastern Slopes and the Rocky Mountains for millennia and all lands contained within the Îyãħé Nakoda Makochi are incredibly important to Stoney Nakoda culture. As big game hunters living in extended family units, they followed a seasonal round that relied upon bison and other large mammals. Stoney Nakoda Nations' hunters also fished and trapped fur bearing animals.

Stoney Nakoda Nations traditionally travelled across their territory with their families and exercised Section 35 Rights-related activities including camping, harvesting, ceremonies, preparing dry meat, and tanning hides. Stoney Nakoda Nation members referenced historical stories that were passed down from family members about how their ancestors lived off the lands and how they would travel according to season and harvesting needs

In their Written Evidence, a Stoney Nakoda Nations member spoke about the importance of hunting to the Stoney Nakoda Nations people:

> *Compared to today…now we just go to the grocery stores to buy food - you know meat, whatever it is…Back then it was all traditional food - he grew up on traditional food… wild meat, berries you know – even harvest[ed] fat from the bears…The only thing they bought back then was potatoes, turnips, you know those kinds of things…like any essentials I guess from the store - salt, sugar… But other than that everything was all traditional food growing up, when he was growing up.*
>
> *It's really important [to be able to hunt]. Because…the meat we eat. It's…safer than the beef…because you know we don't know what kind of chemicals the farmers put in the ground to grow the feed.*[31]

The Stoney Nakoda Nations are signatories to Treaty No.7, signed on the 22 September of 1877 at Blackfoot Crossing. Present at the Treaty No.7 signing were the four Chiefs of Stoney Nakoda Nations, who represented Chiniki First Nation, Bearspaw First Nation, and Wesley First Nation. Stoney Nakoda Nations' oral histories make it clear that Treaty No. 7 was understood to be a peace treaty between Canada, the Stoney Nakoda Nations, and the Blackfoot. For Stoney Nakoda Nations, Treaty No. 7 was an agreement to share the land with other Indigenous nations and the arriving settler populations. It was not an agreement to give up all their rights and title.

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

[31] Section 35 Rights Impact Assessment Report, Stoney Nakoda Nations, pg 69. C14767-2

## B. Effects of the Project on Indigenous and Treaty Rights

Stoney Nakoda Nations stated that there are multiple impacts of the Project on their ability to exercise their rights. Stoney Nakoda Nations further stated that a decrease in Stoney Nakoda Nations' preferred conditions and impacts resulting from the Project's disturbance results in an increase in avoidance behaviours for the exercise of Stoney Nakoda Nations' Section 35 Rights

Stoney Nakoda Nations stated that while NGTL claims that standard mitigation measures would be effective in eliminating or reducing the impacts experienced by Stoney Nakoda Nations, the Nations continue to be impacted by NGTL's pipeline projects.

Stoney Nakoda Nations raised concerns regarding the loss of accessible land that can be used to exercise Section 35 Rights, as well as potential Project effects on culturally significant wildlife and plants. Stoney Nakoda Nations also raised concerns regarding members' safety while exercising their Section 35 Rights close to a pipeline.

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

Stoney Nakoda Nations argued that NGTL's mitigating measures are currently not sufficient in eliminating, reducing, or controlling adverse impacts to Stoney Nakoda Nations' Section 35 Rights or interests. Stoney Nakoda Nations expect NGTL and the CER to develop appropriate mitigation and/or accommodation measures to address these impacts.

## C. Key recommendations and conditions of Stoney Nakoda Nations

| Recommendations and Conditions | Discussed in Commission Report |
|---|---|
| **Condition for a Section 35 Rights Offset Measure Plan and a Crown Land Offset Measures Plan**<br>Requested a Crown Land Offset Measures Plan condition to offset or compensate for the permanent loss of Crown land available for the exercise of Section 35 Rights, or to be otherwise compensated for loss of use of land, culture and identity | Section 4.3 |
| **Condition for an Indigenous Advisory Monitoring Committee**<br>Requested that the CER recommend to GIC that a NGTL system-wide IAMC be established (similar in scope and support that were established post approval for the Trans Mountain Expansion Project and Enbridge Line 3) | Section 1.4.1 and Section 4.2 |
| **Recommendation to employ Stoney Nakoda Nations Monitors**<br>Requested that NGTL employ Stoney Nakoda Nation monitors during construction and operation to ensure health of territory and to monitor effectiveness of mitigation | Section 4.2 |
| **Condition for Monitoring and Result Reports**<br>Requested a condition requiring a plan for monitoring potential adverse effects of the Project during construction and post-construction, including providing CER with Post-Construction Monitoring result reports | Section 4.2 and Section 9.1.2 |
| **Condition for Socio-Economic Effects Monitoring Plan**<br>Requested a condition requiring a plan for monitoring potential adverse socio-economic effects of the Project during construction and post-construction | Section 7.1 |
| **Recommendation for NGTL to create a Stoney-specific transportation plan**<br>Requested NGTL develop, in collaboration with Stoney Nakoda Nations, a transportation plan which ensures Stoney Nakoda Nation members are able to provide input as to a preferred transportation and traffic schedule | Section 7.4 |
| **Condition for NGTL to provide capacity funding**<br>Requested a condition be imposed on NGTL requiring support and funding capacity for the Nations to review and comment on NGTL filings and participate in engagement activities | Section 5.1.5 |
| **Recommendation for NGTL to share Emergency Response Plans**<br>Recommended a nation specific emergency response plan, including plans for communicating when there may be a language barrier. | Section 6.2.2 |
| **Recommendation for NGTL to ensure Indigenous Employment and Inclusion** | Section 7.6 |

| Recommendations and Conditions | Discussed in Commission Report |
|---|---|
| Recommended that NGTL support Stoney Nakoda Nations through specific local employment and training requirements | |
| **Recommendation for CER to share methodology**<br>Recommended the CER share its methodology for identifying and assessing impacts to Indigenous peoples | Section. 5.2.3 |
| **Recommendation for CER to promote two-way accountability and dialogue**<br>Recommended that the CER increased transparency of assessment processes and the expertise of those assessing the potential impacts to Indigenous and Treaty Rights | Section. 5.2.3 |

#### 5.2.1.2 Blood Tribe (Kainai Nation)

### A. Indigenous and Treaty Rights

In its ESA, NGTL said that Blood Tribe reported that trapping is an important cultural activity, and that hunting is an important part of Blood Tribe's heritage. NGTL stated that Blood Tribe has previously reported gathering berries, often stored for the winter months, and plants to supplement their diets and use lodgepole pine for making tipis and travois. In the ESA, NGTL noted the importance of harvesting medicinal plants for Blood Tribe.

### B. Effects of the Project on Indigenous and Treaty Rights

The Crown Submission stated that Blood Tribe raised concerns regarding the Crown consultation approach and funding, challenges with understanding federal and provincial responsibilities, and how (or if) both governments would work together. The Crown Submission stated that Blood Tribe also had concerns regarding multiple pipelines in the same Project corridor and impacts to harvesting and loss of medicinal plants. Additionally, Blood Tribe requested that Indigenous monitoring programs includes monitors with expertise in Blackfoot sites. Also outlined in the Crown Submission were concerns regarding the protection and mitigation for sites of cultural importance, the Government of Alberta's approach under the *Historical Resources Act,* concerns regarding lack of access to private lands for identifying and protecting culturally significant sites, and concerns regarding site visits during Traditional Land Use studies.

### C. Key recommendations and conditions of Blood Tribe

| Recommendations and Conditions | Discussed in Commission Report |
|---|---|
| **Recommendation for CER to recognize Blood Tribe sites and assist with accessing data**<br>CER needs to recognize Blackfoot Confederacy sites in western prairies, and Blood Tribe needs to identify sites and obtain data (including GIS points) | Section 5.2.3 |
| **Recommendation for protection of culturally significant sites and archeological features**<br>Recommend NGTL protect culturally significant sites and directly include Blood Tribe and Blackfoot Confederacy if/when sites identified | Section 4.3 and Section 4.4 |

#### 5.2.1.3 Driftpile Cree Nation

### A. Indigenous and Treaty Rights

Driftpile Cree Nation stated that Aboriginal rights refer to practices, traditions and customs that (…) were practiced prior to European contact. Driftpile Cree Nation stated that their ancestors have occupied the lands of current day Alberta since time immemorial. Although they are a Treaty 8 Nation and this Project occurs on Treaty 7 territory, Driftpile Cree Nation asserted that their members have historically travelled beyond Treaty 8 boundaries to collect medicine and exercise their Indigenous rights.

### B. Effects of the Project on Indigenous and Treaty Rights

Driftpile Cree Nation stated that the construction of the Project and its effects on the land would interfere with wildlife, disrupt habitats and migratory patterns, and restrict and diminish access to food for wildlife. Driftpile Cree Nation stated that it is concerned that the result of further development, such as the Project, would reduce wildlife populations and impact Driftpile Cree Nation's ability to exercise its rights in the areas surrounding the Project.

Further, Driftpile Cree Nation stated that the construction of a pipeline threatens potential loss of traditionally used plant species and reduces their quality. The impacts of the Project on Driftpile Cree Nation and the ability of its members to exercise their rights also include: land disturbances from construction; increase in human access; airborne pollutants that would contaminate the surrounding area; and the absence of plant species during the restoration process post-construction. Driftpile Cree Nation also regularly uses lands within the vicinity of the Project for ceremony, traditional dances, gatherings, and powwows.

Driftpile Cree Nation noted that they rely on hunting and trapping as a food source and for medicinal, ceremonial, and other traditional purposes. Driftpile Cree Nation stated that their access to wildlife populations for these purposes has been severely impacted by other developments, creating food insecurity, risk to economic opportunities and the ability to share and pass on Indigenous knowledge and culture.

The above-described impacts on the land would limit, impede, or restrict such traditional land use practices of Driftpile Cree Nation. Driftpile Cree Nation said that they rarely benefit socially

or economically from developments and are instead left with environmental damage and loss of traditional land use and culture.

### C. Key recommendations and conditions of Driftpile Cree Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Condition for a Crown Land Offset Measures Plan**<br>Requested a Crown Land Offset Measures Plan which outlines, in collaboration with the appropriate level of government, how temporary or permanent loss of Crown land available for traditional and cultural use by Indigenous peoples resulting from the Project will be offset or compensated | Section 4.3 |
| **Condition for Traditional Land and Resource Use Studies and Capacity Funding**<br>Requested a condition requiring NGTL to assess and accommodate findings of all Traditional Land and Resource Use studies into construction and post-construction planning, and provide capacity funding to conduct TLRU studies and participate in IAMCs | Section 4.3 |
| **Condition for an Indigenous Advisory Monitoring Committee**<br>Requested that the CER recommend that GIC establish an IAMC to facilitate Indigenous involvement and operation, reclamation of the Project, and facilitate the IAMC's oversight of NGTL activities including in relation to the evaluation of compliance with certain conditions applicable to the Project, and broader initiatives. | Section 1.4.1 and Section 4.2 |
| **Recommended Comment process for review of condition filings**<br>Requested NGTL allow a comment process (21 days) to review conditions filings, prior to submission to the CER. | Section 5.1.5 |

#### 5.2.1.4 Elk Valley Métis Nation

### A. Indigenous and Treaty Rights

The Elk Valley Métis Nation stated that its citizens have established protected right bearing interests in the Project area with historical references dating back to the 1700s. Elk Valley Métis Nation said that recent oral histories from Elk Valley Métis Nation citizens confirm the exercise of cultural and harvesting rights in the regions of the Project. It is understood that on Treaty land, the Crown has the underlying right to appropriate lands and, as such, Elk Valley Métis Nation has interests not only on Crown land but freehold land which is still under the domain of the Crown. Elk Valley Métis Nation asserted its equally held Indigenous and Treaty Rights and abilities to access Mother Earth and her gifts that sustain their citizens.

Elk Valley Métis Nation stated that their citizens harvest animals, plants, and medicines from the area on and around the pipeline. Elk Valley Métis Nation stated that the landscape is used to refocus, for walking, and for sitting to build connection to the land, and that part of this is the ability to use the land's resources. NGTL noted that Elk Valley Métis Nations traditional lifeway

is not only hunting, but is also rooted in gathering, traditional plants, and other activities enshrined in their Section 35 Rights.

### B. Effects of the Project on Indigenous and Treaty Rights

Elk Valley Métis Nation stated that the construction and operation of the Project would prohibit Elk Valley Métis Nation members from practicing their constitutionally protected right to harvest and use the land for ceremonial purposes, including on freehold lands.

NGTL stated that Elk Valley Métis Nation raised concerns regarding cumulative effects and the resulting potential effects on the exercise of Indigenous and Treaty Rights, including due to habitat fragmentation and increased recreation.

### C. Key recommendations and conditions of Elk Valley Métis Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Conditions for Monitoring of social and economic impacts**<br>Elk Valley Métis Nation requested that the CER impose specific conditions to address monitoring of social and economic impacts | Section 7.1 |
| **Condition for Indigenous Advisory Monitoring Committee**<br>Elk Valley Métis Nation requested an IAMC to guide and inform NGTL throughout the Project; the IAMC, and should be modeled on the IAMC for Trans Mountain Expansion Project and should have a meaningful role in the implementation of the project and associated conditions | Section 1.4.1 and Section 4.2 |
| **Recommendation NGTL engage Elk Valley Métis Nation to act as contractor/consultant**<br>Recommended that NGTL engage Elk Valley Métis Nation to continuously assess and provide inputs on how to improve processes, as well as vegetation health and the restoration of wildlife habitat) | Section 5.1 and Section 9.2.3 |
| **Recommendation for ongoing engagement**<br>Requested that NGTL engage Elk Valley Métis Nation during construction and throughout the Project lifecycle, including notifying of Project activities, and regarding emergency procedures and any accidents that occur | Section 5.1 and Section 6.2.2 |
| **Recommendation for NGTL to adjust employment and contracting opportunities**<br>Requested NGTL be required to explain how it made efforts to adjust contracting opportunities to match the capacity of Indigenous-owned companies. | Section 7.6 |

#### 5.2.1.5 Ermineskin Cree Nation

### A. Indigenous and Treaty Rights

The community of Maskwacîs is located approximately 90 kilometres southeast of Edmonton, Alberta, near Wetaskiwin, and is comprised of the Samson Cree Nation, Louis Bull Tribe, Ermineskin Cree Nation, and Montana First Nation. These Nations share the administration of IR 138A at Pigeon Lake and members are often related and share use of a variety of areas in the region.

### B. Effects of the Project on Indigenous and Treaty Rights

The Crown Submission states that Ermineskin Cree Nation recently completed Traditional Land and Resource Use studies for the 2021 NGTL System Expansion project and the NGTL Edson Mainline Expansion Project. Ermineskin Cree Nation indicated that a decision was made earlier not to move forward with a Traditional Land and Resource Use study for this Project, given the COVID-19 pandemic and potential health risks. According to the Crown Submission, Ermineskin Cree Nation considers the Project a smaller project with a smaller footprint.

### C. Key recommendations and conditions of Ermineskin Cree Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| No recommendations or conditions were submitted on the hearing record | Not applicable |

#### 5.2.1.6 Foothills Ojibway First Nation

### A. Indigenous and Treaty Rights

Foothills Ojibway First Nation stated that their traditional territory is located in and around the area known in English as Hinton, Alberta. The Foothills Ojibway First Nation stated that they are led by hereditary Chief Jim O'Chiese and the history of the Foothills Ojibway First Nation is unique. Chief Jim O'Chiese's grandfather, Chief John O'Chiese, decided not take treaty and fled into the foothills to hide their children from residential schools.

### B. Effects of the Project on Indigenous and Treaty Rights

Foothills Ojibway First Nation stated that they are concerned about potential Project impacts on cultural sites, and noted the importance of cultural environmental assessments to ensure the protection of educational, ceremonial, and sites of cultural importance to Indigenous communities.

### C. Key recommendations and conditions of Foothills Ojibway First Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommendation for NGTL to conduct a Cultural Environmental Impact Assessment**<br>Recommended a cultural environmental impact assessment which would include assessing cultural, spiritual and environmental impacts and not just Traditional Knowledge site visits or studies | Section 5.2.3 |
| **Recommendation for the Commission to share its methodology, experience and qualifications for assessing effects on rights**<br>Request transparency regarding CER assessment methodology and inclusivity | Section 5.2.3 |

#### 5.2.1.7 Louis Bull Tribe

### A. Indigenous and Treaty Rights

While the Project is not located within Treaty 6, NGTL stated that Louis Bull Tribe and Montana First Nation may exercise rights within these areas and similar to those specified under Treaty 7, based on the Nations' feedback to NGTL and the *Natural Resource Transfer Agreement* (Alberta 2003).

### B. Effects of the Project on Indigenous and Treaty Rights

As reported by NGTL, Louis Bull Tribe confirmed that all Project components fall within their traditional use territory. The community explained that they have an active group of hunters that use these areas for elk hunting as well as gatherers that travel to these regions and trade with other Indigenous peoples near these areas. Due to extensive development within Treaty 6, Louis Bull Tribe indicated that it is forced to travel to Treaty 7 and Treaty 8 to carry out the practice of rights in a peaceful, undisturbed manner; explaining that it is becoming increasingly difficult to do so in Alberta as Crown land is reduced and few undisturbed areas remain.

Through the Crown Submission, Louis Bull Tribe said that hunting is the primary activity in the Project area, and most hunters head west to Kootenay Plains and Rocky Mountain House. The Crown Submission further stated that Louis Bull Tribe view hunting not as site specific, but rather as a regional perspective, and that solutions are needed to ensure wildlife habitat and populations are protected.

### C. Key recommendations and conditions of Louis Bull Tribe

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommendation for the Federal Government to improve notification**<br>Recommended the federal government advocate for changes and ensure all potentially impacted Indigenous peoples are notified by province of projects with a potential impact to Indigenous nations (Cross-jurisdictional concerns) | Section 5.2.3 |
| **Recommendation for participating in NGTL's post-construction monitoring programs**<br>Recommended opportunities to participate in post-construction monitoring activities with NGTL (bringing land users, hunters and harvesters to visit area) | Section 4.1 |
| **Recommendation for NGTL to adopt additional mitigation for Limber and White Bark Pine**<br>Recommended specific pre-plan efforts, reduce stripping to protect medicinal plants and species at risk; natural reclamation; harvesting of medicinal and culturally significant plants prior to construction | Section 9.2.3 |
| **Recommendation for NGTL to offer additional Indigenous Employment and inclusion**<br>Recommended NGTL share employment opportunities with Louis Bull Tribe and change employment methods to be inclusive; requested that the Commission set employment quotas | Section 7.6 |

#### 5.2.1.8 Métis Nation of Alberta, Métis Nation of Alberta Region 3, Métis Nation of Alberta Local 1880 and Local 87

### A. Indigenous and Treaty Rights

As outlined in NGTL's ESA, Métis Nation of Alberta reported that there was historic and contemporary use and occupation throughout the region and that the region remains important for current use of lands and resources for traditional purposes. Métis Nation of Alberta stated that the bountiful natural resources found in the Rocky Mountains and foothills of southern Alberta are integral for the exercise of Métis Nation of Alberta Indigenous and Treaty Rights and support the transmission of Métis cultural heritage. Métis Nation of Alberta stated that hunting, trapping, fishing, harvesting plants for food and medicine, and firewood collection are culturally significant.

### B. Effects of the Project on Indigenous and Treaty Rights

Métis Nation of Alberta stated that linear disturbances, such as rights-of-way and access roads, create easier vehicle-access, allowing access to what would otherwise be remote, poor-access areas. This increases human activity in the backcountry, diminishing harvesting areas and reducing the quality of medicinal and subsistence plants. This reduction in the ability to gather plants results in Métis harvesters having to harvest further away. Métis Nation of Alberta stated that the development of the Project are anticipated to further contribute to these effects on Métis Nation of Alberta plant gathering activities. The Métis Nation of Alberta said that they have and

continue to experience alienation from the land because of industrial development and use, residential construction, and encroachment by non-Indigenous harvesters. Changes in access to and use of the land due to the Project would disrupt the cultural transmission of knowledge and skills between generations.

Métis Nation of Alberta also stated that locked gates along access roads that the Nation does not have access to, prohibits members from practicing traditional activities, including hunting, trapping, plant gathering, and fishing. As the health and wellbeing of Métis Nation of Alberta Region 3, Local 1880 and Local 87 members are directly tied to cultural identity, Métis Nation of Alberta stated that changes in the ability access, use and transfer cultural knowledge and skill would affect the health and wellbeing of its members

### C. Key recommendations and conditions of Métis Nation of Alberta

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommendation for NGTL to enhance Employment and Contracting Opportunities**<br>Requested NGTL provide employment and contracting opportunities to Métis Nation | Section 7.6 |
| **Recommendation for NGTL to include Métis Nation of Alberta in ongoing monitoring and reclamation**<br>Recommend NGTL include Métis Nation of Alberta in ongoing monitoring and reclamation, specifically related to environmental inspections/habitat monitoring | Section 4.2 and Section 9.1.2 |
| **Condition for Indigenous Advisory Monitoring Committee**<br>Recommended an IAMC for post construction and monitoring which would allow collaboration between the Indigenous Nations | Section 1.4.1 and Section 4.2 |
| **Recommendation for NGTL to ensure access to lands**<br>Recommended that, where possible, minimize site lines, limit vehicle access, and if locking gates, develop access agreement with Métis Nation of Alberta | Section 4.3 |

## 5.2.1.9 Montana First Nation

### A. Indigenous and Treaty Rights

NGTL noted that Montana First Nation may exercise rights within the Turner Valley, Longview, and Lundbreck Sections similar to those specified under Treaty 7. NGTL stated that although Treaty 7 does not specifically mention practices, NGTL understands these activities to be reasonably equivalent or incidental to the expressed Treaty 7 harvesting rights. NGTL said that Montana First Nation advised that it uses lands within or adjacent to the three Project Components on a year-round basis.

### B. Effects of the Project on Indigenous and Treaty Rights of Montana First Nation

In the ESA, NGTL noted concerns raised by Montana First Nation, regarding impacts to the area for the purpose of traditional and cultural use. Specifically, that Project activities have the potential to impact ecosystems and the environment in general, which may directly affect the resources communities need. The Crown Submission noted Montana First Nation's concerns about potential Project impacts to game trails on the right-of-way, and sensory disturbance to wildlife (birds, and habitat concerns). The Crown Submission also noted concerns raised by Montana First Nation regarding potential impacts of the Project on medicinal and ceremonial plants and culturally significant vegetation and trees.

### C. Key recommendations and conditions of Montana First Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommendation for NGTL to offer ongoing engagement**<br>Requested ongoing engagement opportunities with NGTL to address potential effects of the Project | Section 5.1 |

#### 5.2.1.10 Nakcowinewak Nation of Canada

### A. Indigenous and Treaty Rights

Nakcowinewak Nation of Canada indicated that hunting and trapping have been and continue to important to the community. Nakcowinewak Nation of Canada have also stated that the harvesting of medicinal plants is significant to the community.

### B. Effects of the Project on Indigenous and Treaty Rights

Nakcowinewak Nation of Canada raised concerns regarding the potential effects of the Project on their rights related to medicinal plant harvesting.

### C. Key recommendations and conditions of Nakcowinewak Nation of Canada

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommendation for NGTL to ensure involvement in pre-construction harvesting and mitigation**<br>Involve Nakcowinewak Nation of Canada in identifying medicines and identify mitigation and harvesting options | Section 4.3 |

#### 5.2.1.11 O'Chiese First Nation

### A. Indigenous and Treaty Rights

O'Chiese First Nation stated that their Inherent and Treaty Rights are recognized by Treaty 6 and section 35 of the *Constitution Act, 1982*. O'Chiese First Nation stated that they are bound by Kaa-Ke-Chi-Ko-Moo-Nan, OCFN's Great Binding Law ('Natural Laws'). As such, O'Chiese First Nation operates under its own distinct set of legal principles and laws that have been in place since time immemorial, which the Nation understands and expects are protected by Treaty 6 and section 35 of the *Constitution Act, 1982*.

### B. Effects of the Project on Indigenous and Treaty Rights

O'Chiese First Nation stated that all development projects create biophysical disturbances to the land and resources that interfere with the conditions required by O'Chiese First Nation to exercise their Inherent and Treaty rights in accordance with Natural Laws. O'Chiese First Nation stated that their members require quiet, uncontaminated, and unaltered lands, away from development and any accompanying noise, sights, or smells to exercise Inherent and Treaty Rights in accordance with Natural Laws. O'Chiese First Nation further submitted that there is a failure by western science and within western regulatory systems to understand and acknowledge that impacts classified on a project-by-project basis as 'negligible' or 'insignificant,' result in significant impacts when viewed in collection.

### C. Key recommendations and conditions of O'Chiese First Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Condition for a cumulative effects assessment on Inherent and Treaty Rights**<br>Requested a condition for an assessment and mitigation of cumulative effects on the environment and Inherent and Treaty Rights | Section 1.4.2, Section 5.2.3 and Section 9.3 |
| **Recommendation for the Federal Government to improved Crown consultation and management of cumulative effects**<br>Requested action from Crown to address larger deficiencies related to cumulative effects, management of lands, resources and regulatory processes | Section 1.4.2 |

#### 5.2.1.12 Piikani Nation

### A. Indigenous and Treaty Rights

Piikani Nation has strong contemporary and historic ties to the Project area, and states that the Project is located on Piikani ancestral lands.

> *Piikani, we are -- we were once part of a larger group. I'm properly called the Aapátohsipikáni, which means the Northern Piikani. And we were all one group with -- we're now the Amskapi Piikani, who are the southern Piikani, who are presently located on Blackfoot Reserve in Montana, U.S.A. At one point in time, we were one group of people.*

*… The Piikani Nation was also a member of the larger group of people, the Blackfoot Confederacy, which of course includes Siksika, Piikani, and along with our partners in Montana, who we refer to ourselves as Niitsitapi.*

*And the Niitsitapi, we have this unbroken alliance since time immemorial. We're commonly referred to as the Siksikaitsitapi, or the Confederacy of Blackfeet Nations.*

*…the Piikani, we entered into… the Blackfoot Treaty of 1877*

*…we have a documented understanding of that said Treaty, which is passed down through our oral tradition. And we maintain that Treaty as a peace Treaty, which was, as we know, was a never a surrender of lands.*
Ira Provost, Piikani Nation, Transcript Volume 7 [2749-2756]

Piikani Nation stated that, as beneficiaries of Treaty No.7, their treaty rights include the right to hunt, trap and harvest natural resources within their Piikani territory, as well as the right to their way of life and to the use, enjoyment and control of lands reserved for Piikani Nation. Further, Piikani Nation stated that they have 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.

In addition to the rights identified above, Piikani Nation also stated that they have the following rights, which flow from statutory and constitutional obligations:

- The right to hunt for food in all seasons pursuant to the Natural Resources Transfer Agreement (being schedule 2 of the *Constitution Act*);
- The right to be consulted and accommodated with respect to potential adverse effects on the rights and the interests;
- The right to use and enjoyment of their reserve lands pursuant to section 18(1) of the *Indian Act*;
- The statutory right to hunt, fish and trap on Crown land pursuant to the *Hunting, Fishing and Trapping Heritage Act*

Piikani Nation stated that their connections to the PDA are the process of being understood and documented through ongoing field site investigations and a Traditional Land and Resource Use Study is being led by Piikani Consultation and Traditional Knowledge Services. Current community members and their families continue to fish, hunt, trap, harvest plant medicines, and practice important cultural and spiritual activities on this land. Since this land is used by multiple generations, it also serves as a place for transfer of Traditional Knowledge as well as cultural and spiritual activities. As such, this land facilitates the sustainability and transmittal of Piikani Nation's culture, way of life, and ability to exercise their Aboriginal and Treaty Rights. This land use continues today and needs to be protected from the impacts of the Project and its related activities and facilities.

## B. Effects of the Project on Indigenous and Treaty Rights

Piikani Nation stated that the likely outcomes of the Project are the loss of fish, plant, and animal species that are culturally important to Piikani Nation. The most severe impacts would be during construction.

Piikani Nation further stated that during construction and pipeline expansion activities, land disturbances would create barriers to travel routes and harvesting areas. And further, harvesting areas may be compromised due to outsider hunting and fishing activities. Piikani Nation expressed concern that access to sacred areas and cultural areas of significance to Piikani Nation members, where cultural teaching between knowledge keepers, Elders, youth and community members take place, may be at risk during construction/conversion activities in and around the RoW and associated infrastructure and facilities.

Piikani Nation submitted that given the size, scope, and longevity of the Project and its incursion into Blackfoot and Piikani Territory, it would have long-lasting, intrusive effects on the culture of Piikani Nation. Piikani Nation argued that the Project represents an external force encroaching on the Piikani Nation's land base, and society, and therefore its right to self-determination.

## C. Key recommendations and conditions of Piikani Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Condition for Indigenous Advisory Monitoring Committee**<br>Recommend CER, in collaboration with federal government (Natural Resources Canada), with support of NGTL, create and fund an environmental monitoring committee structure, IAMC, Indigenous Working Group, Steering Committee or other similar structure to streamline the monitoring and oversight process | Section 1.4.1 and Section 4.2 |
| **Recommend CER require NGTL to report on ongoing discussions with Indigenous peoples**<br>Recommend NGTL report on discussions with Indigenous Nations regarding how impacts to Section 35 Rights will be mitigated and/or accommodated throughout the lifecycle of the Project. | Section 5.2.3 |
| **Recommend CER require NGTL to report on Project's anticipated contribution to regional cumulative effects**<br>Recommend CER require NGTL to report on Project's anticipated contribution to regional cumulative effects | Section 1.4.2 and Section 9.3 |
| **Condition for Construction Monitoring Plan to integrate nation-specific programs**<br>Recommend edit to Construction Monitoring Plan Condition to include a requirement that NGTL demonstrate how integrates and advances nation-specific monitoring programs, such as Piikani Biocultural Monitoring and Climate Adaptation Program | Section 4.1 |

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommend NGTL involve Indigenous peoples in Emergency Response and capacity building**<br>Recommend that the CER require NGTL to report on the steps to build capacity for Indigenous Nations to actively participate in post-incident monitoring and desktop exercises | Section 6.2.2 |
| **Recommend human health indicators**<br>Recommended NGTL use baseline VCs and community well-being and health indicators relevant to Indigenous population that use and/or have rights within the RAA and LAA<br>Recommended that NGTL engage with Piikani Nation to develop an understanding of the interconnected nature of human health risks and social and cultural wellbeing | Section 7.3 |
| **Recommend social and cultural wellbeing assessment**<br>Recommended the ESA needs to assess changes to social and cultural well-being through a more demographically inclusive lens. | Section 7.5 |
| **Recommend reporting on impact of pandemic on TLRU information**<br>Recommended that CER require NGTL to report on the impact the COVID-19 pandemic has on the ability to gather TLRU information and steps it has taken to address any impacts | Section 4.3 |
| **Recommend Indigenous Employment, Contracting and Employment targets**<br>Recommended that the CER set targets that NGTL must meet for Indigenous employment and contracting levels | Section 7.6 |
| **Recommend resources be provided to review and comment on authorizations (instream activities)**<br>Recommended that CER require NGTL to provide appropriate resources to review and comment on authorizations prior to instream activities | Section 9.2.2 |
| **Recommend pre-construction harvesting of culturally significant plants**<br>Identified culturally significant species during field site assessments and requested/recommended the opportunity to harvest prior to construction | Section 4.3 and Section 9.2.3 |

#### 5.2.1.13 Samson Cree Nation

### A. Indigenous and Treaty Rights

Samson Cree Nation is a Treaty 6 signatory Nation. Samson Cree Nation stated that the landscape of their traditional territory across Treaty 6, particularly in the area of Maskwacîs, has undergone a steady transformation during the post-Treaty period with increasing agricultural activity, land privatisation, and oil and gas activity.

Samson Cree Nation stated that their members continue their Cree ways of life within Samson Cree Territory including through hunting, fishing and harvesting plants and medicines.

### B. Effects of the Project on Indigenous and Treaty Rights

Samson Cree Nation stated that the eastern slopes and foothills have also been the site of significant resource developments and are rapidly accumulating impacts from extractive industries, especially oil and gas and forestry. Further, Samson Cree Nation indicated that the remaining habitat in these landscapes is highly fragmented. In the context of increasing change, Samson Cree Nation argued that remaining, accessible, and viable lands and waters in Samson Cree Nation's traditional territory (especially in the eastern slopes and foothills in the western portion of the territory, which encompasses the Study Area) are increasingly important to Samson Cree Nation members' Indigenous rights and culture.

> *So all these different areas that you have marked off in the map, it affects my hunting area. The wildlife is pretty scarce in that area now, not like a long time ago. Twenty (20) years ago, you used to go to one place. I remember going west of Rocky, going hunting one winter. The moose were out there, plenty. One trip I killed three moose. Today you would be lucky if you see one. So everything has been displaced. Even we as Native people we're being displaced from our own land and how we have our relationship with the land.*
> Elder Arrol Crier, Samson Cree Nation, Transcript Volume 5 [1919]

Samson Cree Nation stated that their members have observed an overall deterioration in the natural environment as their traditional lands have been taken up and settled and developed by extractive industries. Samson Cree Nation members are concerned that the Project would further contribute to existing negative effects, and further challenge cultural persistence

### C. Key recommendations and conditions of Samson Cree Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommendation to establish Collaboration Team and Collaboration Framework**<br>Samson Cree recommended that the CER and GIC commit to establishing a cooperation committee or collaboration team, which would include representatives from Samson Cree, the CER, other Indigenous peoples, and federal authorities to oversee the NGTL System on a territory or system-wide basis | Section 1.4.1 and Section 4.2 |
| **Recommendation for long term funding model**<br>Samson Cree recommended a long term (ongoing) funding model to support reviews of post-approval conditions, applications and filings by NGTL | Section 4.1 |
| **Recommendation for multi-level, long-term cumulative effects approach**<br>Samson Cree recommended a multi-level, long-term approach (or forum) that includes NGTL, the CER, and Samson Cree Nation to address regional cumulative effects | Section 1.4.2 |

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| **Recommendation for additional wildlife studies and monitoring**<br>Recommended installing wildlife cameras, and additional wildlife studies (pre-construction) and inform Nation members how the Project construction may interact with wildlife | Section 9.2.4 |
| **Recommendation for involvement in monitoring**<br>Samson Cree Nation requested NGTL involve the Nation in pre and post-construction monitoring | Section 4.1 |
| **Recommendation to incorporate traditional knowledge and outstanding Traditional Land and Resource Use**<br>Samson Cree Nation requested that NGTL incorporate traditional knowledge and engage knowledge holders, and that Traditional Land and Resource Use investigations be updated during each project phase (pre-construction, post construction, reclamation, etc.) | Section 4.3 |
| **Recommend NGTL provide proper signage and maps for access of Crown land**<br>Samson Cree Nation requested that NGTL ensure proper signage and provide maps of where Samson Cree Nation members can access Crown land. | Section 4.3 |

#### 5.2.1.14 Siksika Nation

### A. Indigenous and Treaty Rights

Siksika Nation is a signatory of Treaty 7 and a part of the Blackfoot Confederacy along with Blood Tribe and Piikani Nation. A Blackfoot speaking community, Siksika Nation's traditional territory extends to the Rocky Mountains to the west, the Sand Hills to the east, the North Saskatchewan region to the north, and the Yellowstone region to the south. Siksika Nation has previously expressed their right to hunt large animals (such as bison, elk, deer, antelope, and big horn sheep) for sustenance. Siksika Nation also expressed their right to fish, as well as harvesting and cultivation of plants for subsistence, medicinal and ceremonial purposes.

### B. Effects of the Project on Indigenous and Treaty Rights

As indicated in NGTL's ESA, a previous study including Siksika Nation had identified a traditional camp located in a tributary creek channel off the Elbow River, which falls within the Turner Valley Section RAA. NGTL's ESA stated that historically, the Blackfoot would camp on Bar U Ranch, and the area was identified as being Blackfoot country. The Bar U Ranch is intersected by the Longview Section PDA. No Project specific concerns, locations or areas of cultural importance where Siksika Nation's rights are exercised were identified or have been submitted on the hearing record.

### C. Key recommendations and conditions of Siksika Nation

| Recommendation or Condition | Discussed in Commission Report |
|---|---|
| No recommendations or conditions were submitted on the hearing record. | Not applicable |

#### 5.2.1.15 Tsuut'ina Nation

### A. Indigenous and Treaty Rights

Tsuut'ina Nation is a signatory of Treaty 7. As outlined in NGTL's ESA, Tsuut'ina Nation has previously stated that hunting for both food sources and to be used in traditional ceremonies is important to the Nation. Tsuut'ina Nation has previously expressed that they must travel further to access their food and medicines. Tsuut'ina Nation has also said that medicinal plant harvesting and fishing remain important. Also previously noted is the importance of clean, accessible water sources for ceremonies, songs, stories and connection to traditional culture.

### B. Effects of the Project on Indigenous and Treaty Rights

No Project specific concerns, locations or areas of cultural importance where Tsuut'ina Nation's rights are exercised were identified or have been submitted on the hearing record.

### C. Key recommendations and conditions of Tsuut'ina Nation

| Recommendation or Condition | Location in Commission Report |
|---|---|
| No recommendations or conditions were submitted on the hearing record. | Not applicable |

#### 5.2.2 Reply of NGTL

NGTL predicted that there would be:

- A change to the quality, quantity or distribution of resources involved in or required for exercise of the right due to:
  - Loss or alteration of resources
  - Loss or alteration of the habitat supporting the resources
- A change in access to the resources used or required to exercise the right due to:
  - Restriction on ability to travel
  - Sensory disturbances that have the potential to influence the conditions for access
- A change relating to timing and seasonality of the exercise of rights
- A change to specific areas of cultural importance where Indigenous and Treaty Rights are exercised

- A change to an Indigenous peoples' cultural traditions, laws, and governance systems that inform the manner in which they exercise their Indigenous and Treaty Rights.

NGTL identified the following key mitigation measures that are applicable to each Project component:

- Implement measures to mitigate effects on the resources relied upon for the exercise and practice of Indigenous and Treaty Rights that are provided in the EPP.
- Provide all personnel working on the Project an orientation and information materials regarding environmental, health, safety expectations and cultural awareness and sensitivity.
- Provide potentially affected Indigenous peoples with the proposed Project construction schedule and maps.
- Notify registered trappers at least 10 days prior to construction.
- Prior to the start of construction activities, clearly mark 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 measure tables.
- Clearly delineate areas that have access restrictions. Restrict access to construction personnel only.
- Post signage to discourage unauthorized public access onto the construction footprint during construction.
- Restrict all construction activities to the approved construction footprint. All construction traffic would adhere to safety and road closure regulations.
- If traditional land use sites not previously identified are found on the construction footprint during construction, implement the Cultural Resource Discovery Contingency Plan.
- Undertake ongoing engagement with potentially affected Indigenous peoples to follow-up on any issues or concerns.
- Implement enhancement measures to support, improve, or provide benefit to the rights exercised by Indigenous peoples in the Project area including those policies and procedures that encourage diversity, inclusion and fair employment.

NGTL stated that potentially affected Indigenous peoples had been offered the opportunity to collect Project-specific traditional knowledge upon identification of interest. NGTL indicated that site visits were completed for the Project, including by Elk Valley Métis Nation, Piikani Nation and Nakcowinewak Nation of Canada. NGTL committed to review information provided by Indigenous peoples, including Project-specific Traditional Land and Resource Use studies, in the context of the ESA and to incorporate this information into Project planning, as appropriate. NGTL also committed to continuing to engage potentially affected Indigenous communities throughout the lifecycle of the Project.

NGTL said that consideration of this information would include evaluating whether NGTL's planned mitigation would effectively avoid the identified potential interactions, or whether additional or refined mitigation is warranted. Should specific sites or features (e.g., trails or

travelways, habitation, or cultural or spiritual sites) be identified by Indigenous peoples that have the potential to interact with Project activities, NGTL said that it would engage in discussions with the appropriate Indigenous peoples regarding the development of site-specific mitigation measures, which may include avoidance of the site by narrowing or rerouting the construction footprint, relocation of the site or other measures as appropriate under the particular circumstances and based on discussion with the potentially affected Indigenous peoples. Traditional use sites or features which require site-specific mitigation would be included in the EPP and Environmental Alignment Sheets filed prior to construction.

With respect to mitigation to impacts on the rights of Indigenous peoples, including access to lands, NGTL stated that route selection is one of the primary mitigation options for minimizing conflict between the Project and biophysical, socio-economic, and cultural resources. The proposed route was selected to parallel existing corridors wherever possible, except where there were constraints from existing industrial dispositions, or constructability constraints. This practice enabled NGTL to consider overlapping the existing easement of parallel RoW alignments, which reduced potential effects by minimizing the area of new disturbance.

NGTL stated that measurable residual effects on the exercise or practice of Indigenous and Treaty Rights as a result of the Turner Valley Section and Longview Section are unlikely, and measurable residual effects of the Lundbreck Section on the exercise or practice of Indigenous and Treaty Rights are likely. If they occur, the degree to which the Turner Valley Section, Longview Section and Lundbreck Section may result in residual adverse effects on the exercise or practice of Indigenous and Treaty Rights is lessened with consideration of NGTL's commitment to mitigation and enhancement measures as well as ongoing engagement throughout construction and operation of the Project.

NGTL further submitted that these impacts would occur during the construction phase but would be negligible during the operation phase.

NGTL noted that it was encouraged by the CER Crown Consultation Team to facilitate relationships between private landowners and Indigenous peoples to mitigate impacts of the Project on the Rights and interests of Indigenous peoples. NGTL said that its ESA (Section 14) considered potential effects of the Project on the exercise or practice of the rights of Indigenous peoples and NGTL's view is that this request is outside of the role and responsibilities of NGTL and the Project.

### 5.2.3 Commission findings regarding the effects of the Project on the rights of the Indigenous Peoples of Canada

The Commission has received sufficient information during the hearing to allow it to assess the effects of the Project on the rights of Indigenous peoples. This information included evidence on the hearing record from First Nations and Métis peoples about potential effects on their rights, the mitigation measures proposed by NGTL, and the imposed conditions. In the context of this Project, the Commission finds that effects of the Project on the exercise and practice of the rights of Indigenous peoples 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. The Commission finds that the potential adverse effects of the Project on the exercise or practice of the rights of Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982* would likely be of low significance for the Longview and Turner Valley Sections, and of medium significance for the Lundbreck Section. This finding is based on the evidence submitted by Indigenous peoples regarding the Project's potential impact on their

exercise and practice of their Rights, the nature of the Project, the land characteristics of each Project section, as well as NGTL's proposed mitigation measures, and imposed conditions. The Commission concludes that its recommendation to GIC and the corresponding decisions on this Project are consistent with the requirements of section 35 of the *Constitution Act, 1982* and the honour of the Crown.

The Commission has assessed all of the information filed on the record, which includes written evidence filed by Indigenous peoples, knowledge shared in Indigenous knowledge sessions, responses to IRs, and the Crown Submission. The information evaluated by the Commission encompassed a variety of unique points of view, including those of First Nations and Métis peoples, whom the Commission recognizes as distinct peoples with unique worldviews. The participation of Indigenous peoples in this process is valued by the Commission and is essential for the Commission's understanding of how the Project impacts the rights of 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. The Commission agrees with the submissions made by Piikani Nation, Stoney Nakoda Nations and Elk Valley Métis Nation that development has the potential to adversely impact the ability of some to exercise their Indigenous and Treaty rights, particularly given the Nations' close proximity to the Project. The Commission found persuasive NGTL's evidence that it sought to minimize or avoid Project effects on Indigenous peoples through routing the Project primarily on private land, parallel to existing rights-of-way and disturbances.

While NGTL's routing reduces and, at times, eliminates adverse impacts to Section 35 Rights, the Commission finds that additional accommodation measures are necessary so that these rights, including fishing, hunting, and gathering can continue to be exercised. For that reason, the Commission imposes the following conditions:

- **Certificate Condition 9** – Emergency Management Continuing Education Program
- **Certificate Condition 10** – Employment, contracting procurement and training update
- **Certificate Condition 11** – Socio-Economic Effects Monitoring Plan
- **Certificate Condition 12** – Construction Monitoring Plan for Indigenous peoples
- **Certificate Condition 13** – Outstanding Traditional land and resource use investigations
- **Certificate Condition 15** – Support for Indigenous peoples to review NGTL Filings related to conditions
- **Certificate Condition 16** – Engagement report regarding pre-construction harvesting
- **Certificate Condition 18** – Temporary construction camp(s)
- **Certificate Condition 20** – Heritage resource clearances
- **Certificate Condition 26** – Post-Construction Monitoring Plan for Indigenous peoples
- **Certificate Condition 29** – Employment, contracting, procurement, and training report

In addition, many Indigenous peoples, including Stoney Nakoda Nations, Piikani Nation, and Foothills Ojibway First Nation raised concerns regarding the Crown's methods of assessing Project impacts to potential and established Indigenous and Treaty Rights and requested that the Commission be transparent and share its methodology for assessing Indigenous and Treaty Rights. The Commission appreciates the need for transparency and, through this Report, endeavors to provide additional clarity into its methodology for assessing Indigenous and Treaty Rights, including the criteria outlined in Appendix V. As noted above, this is the first application under section 183 of the CER Act, including the first with updated requirements in the Filing Manual regarding the Rights of Indigenous peoples. This is also the first time that the CER Crown Consultation Team has been part of a hearing process of this nature. The assessment process created by the Commission, with input from Indigenous peoples and others, is robust and inclusive. The Commission makes use of its technical expertise and has broad remedial powers with respect to Project-related matters.

The Commission understands that the CER Crown Consultation Team has committed to continuing the two-way dialogue with Indigenous peoples potentially impacted by the Project, as needed, following this Report.

Piikani Nation, Samson Cree Nation, O'Chiese First Nation raised concerns regarding NGTL's cumulative effects assessments on Indigenous and Treaty Rights. The Commission is satisfied with the cumulative effects assessment conducted by NGTL on the rights of Indigenous peoples for a project of this scope and scale. However, the Commission acknowledges that projects with a different scope and scale (e.g., greater residual cumulative effects on the rights of Indigenous peoples) would require a commensurate level of detail.

The Commission acknowledges that existing cumulative effects on the exercise and practice of rights of Indigenous peoples are already substantial in the RAA because of alterations by anthropogenic land uses (e.g., agricultural conversion, private land conversion, forest harvesting, oil and gas production, and linear development). Despite such substantial cumulative effects, given NGTL's mitigation measures and the imposed conditions (such as **Certificate Condition 12** (Construction Monitoring Plan for Indigenous peoples), **Certificate Condition 13** (Outstanding Traditional Land and Resource Use investigations), and **Certificate Condition 26** (Post-construction Monitoring Plan for Indigenous Peoples), the Commission finds that the Project's contribution to cumulative effects is expected to be relatively minor.

Regarding the request from Blood Tribe regarding recognizing and assisting in identifying sites, the Commission appreciates the importance of this information in order for Indigenous peoples to identify any site-specific concerns. The Commission also understands that the CER Crown Consultation Team has committed to using Blood Tribe's traditional territory map for future planning of consultation activities.

Regarding Louis Bull Tribe's cross-jurisdictional concerns and recommendation that that the federal government advocate for changes to provincial notifications, the Commission takes no position and finds the recommendation to be outside of its jurisdiction.

Piikani Nation recommended that NGTL be required to report on discussions with Indigenous peoples regarding how impacts to Section 35 Rights will be mitigated and/or accommodated throughout the lifecycle of the Project. The Commission requires proponents to engage with Indigenous peoples throughout construction and operation. The Commission recognizes NGTL's commitment to the ongoing engagement with Indigenous peoples, and imposes specific conditions, such as **Certificate Condition 12** (Construction Monitoring Plan for Indigenous peoples), **Certificate Condition 15** (Support for Indigenous peoples to review NGTL filings related to conditions) and **Certificate Condition 16** (Engagement report regarding pre-construction harvesting). The Commission expects NGTL will abide by its commitments to engage with Indigenous peoples and to be responsive to concerns raised. The Commission reminds NGTL and Indigenous peoples potentially affected by the Project that additional supports, such as the CER Issues Resolution and Complaint resolution process remain available should issues arise outside of the hearing process.

# 6 Safety and security of persons and the protection of property and the environment

This chapter will highlight key submissions from parties, the reply of NGTL, and the Commission's analysis and findings relevant to:

| | |
|---|---|
| ***CER Act 183(2) factor(s)*** | *(b) the safety and security of persons and the protection of property and the environment* |
| ***List of Issues No.*** | 8. The suitability of the design of the Project, including the reasonableness of any evaluation by NGTL of alternative designs of the Project |
| | 13. The safety and security of persons and the protection of property and the environment, including contingency plans, during construction and operation of the Project, and the involvement of Indigenous peoples in related planning and design |
| | 15. The appropriateness of the general route and land requirements for the Project, including the reasonableness of any evaluation by NGTL of alternative routes |
| | 16. The potential impacts of the Project on owners and users of lands, including Indigenous peoples |
| ***Key conclusion(s)*** | The Commission finds the general design of the Project appropriate for the intended use. The Commission is further satisfied that the Project would be designed, located, constructed, installed, and operated in accordance with the OPR and CSA Z662-19. Also, the Commission is satisfied with NGTL's pipeline integrity submissions and finds that NGTL has appropriately considered issues related to coating and integrity threats to the pipeline during construction and operation. |
| | The Commission finds NGTL's commitments in the ESA and EPP to be aligned with the expectations outlined in the Filing Manual and industry best practices. Similarly, the Commission finds that the environmental and socio-economic monitoring proposed by NGTL meets the expectations laid out in the Filing Manual and follows the OPR, CSA Z662-19, and other regulatory requirements during operations. |

## 6.1 Safety and security of infrastructure

In consideration of the safety and security of proposed facilities, the Commission evaluates 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 project would be located. NGTL is responsible for ensuring that the design, specifications, programs, engineering assessments, manuals, procedures, measures, and plans that are developed and implemented are done so in accordance with the OPR, which includes, by reference, CSA Z662.

The CER holds accountable those companies whose facilities are regulated by the CER so that Canadians are kept safe and secure, and that property and the environment are protected throughout the lifecycle of each project. The lifecycle includes:

- the planning and pre-application phase;
- the application evaluation and public hearing phase;
- the construction and post-construction phase;
- the operations and maintenance phase; and
- the abandonment phase.

Using a risk-informed approach, the CER conducts compliance verification activities such as audits, inspections, meetings, and evaluation of condition filings, and other manuals and reports. The Commission understands that the Project would be part of the existing NGTL System, which is subject to the CER's comprehensive regulatory oversight.

### 6.1.1 Design and construction

#### *Codes and standards*

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

#### *Material specifications*

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

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

#### *Geotechnical design*

NGTL stated that it has conducted, and would continue to conduct, terrain mapping, geohazard, hydrotechnical and geotechnical assessments, as well as field investigations along the alignment of each of the pipeline sections. NGTL indicated that the geotechnical and hydrotechnical assessments would focus on the stability of significant slopes, scour and erosion potential at watercourse crossings, and areas of potential stress concentrations. NGTL submitted a list of the identified geotechnical hazard locations for the Project including mitigations. In its Design Confirmation Letter, NGTL committed to designing the Project to account for all potential geotechnical hazards.

NGTL submitted a Seismic Hazard Assessment for the Lundbreck Section, which indicated that the expected distribution of strong earthquake shaking was obtained from the current national probabilistic seismic hazard model produced by the Natural Research Council of Canada in 2015. Additionally, NGTL indicated that in mid-2021, Natural Resources Canada released to the public, a provisional 6th generation seismic hazard model and trial values and that it (Natural Resources Canada) expects to release design products to practitioners over the coming months. NGTL further stated an intention to revise the seismic hazard assessment using this model and would update the report if major changes are noted.

***Watercourse crossing methods***

NGTL stated that trenched crossing methods would be used, and isolated or open cut would be selected based on the flow conditions at the time of construction. An isolated crossing method would be used for watercourses with open water or under-ice flow that can be handled by isolation equipment. Open cut crossings are generally used if flow is not present (i.e., dry or frozen to the bottom). A trenchless crossing method may be used as a contingency if unexpected flow conditions are encountered at the time of construction or to meet Project needs.

***Depth of cover***

NGTL noted that the pipeline would generally have a minimum depth of cover of 0.9 m which would increase when encountering agricultural lands, valve site locations, road crossings and buried utility, and foreign pipeline crossings. NGTL stated that the minimum depth of cover on the Lundbreck Section may be as shallow 0.6 m in portions of ditchline that require rock excavation with blasting or comparable means. NGTL indicated that the minimum depth of cover for pipeline crossings of watercourses with defined beds and banks would be 1.8 m. NGTL committed to evaluate the requirement for increased depth of cover at locations where there is a potential for scouring of the watercourse bed as engineering design and construction planning progresses. NGTL further submitted recommended minimum depth of cover values for identified geotechnical hazard locations.

***Construction***

NGTL stated that the joining program and non-destructive evaluation 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 the LTO exemption under the CER Act for thirteen tie-in portions to existing NGTL assets 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. 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 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 to remove construction debris prior to pressure testing. Before arriving onsite, pressure testing of prefabricated 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 start-up.

**Views of Parties**

No parties expressed concern with respect to the Project design and construction.

**Commission analysis and findings**

The Commission finds the general design of the Project appropriate for the intended use. The Commission is satisfied that the Project would be designed, located, constructed, installed, and operated in accordance with the OPR and CSA Z662-19. The Commission also finds that the selected material standards, specifications, and grades for the Project meet the requirements set out in CSA Z662-19, and as such are appropriate, including the purchasing of the pipe for the Project.

Based on these findings, the Commission grants NGTL an exemption from the requirements of paragraph 180(1)(b) and subsection 213(1) of the CER Act to obtain LTO from the Commission before installing the tie-in assemblies to existing pipelines, as set out in the Application.

The Commission is satisfied with the proposed measures, including increased depth of cover and increased wall thickness, that NGTL has applied to the design, construction, and operation phases of the Project to mitigate geological hazards.

The Commission finds that proper geological hazard management is required to identify the risk level, and the application of proper mitigations and monitoring techniques, during the different phases of the Project. Therefore, the Commission imposes **Certificate Condition 5** (Updated site-specific geohazards), which requires NGTL to confirm that it will implement adequate considerations and mitigations of the site-specific Project geohazards and mitigations prior to construction. The Commission also imposes **Certificate Condition 6** (Seismic assessment), to confirm that NGTL has implemented Natural Resources Canada's updated seismic hazard model in the seismic hazard assessment for the Project.

The Canadian public expects the CER to hold the companies it regulates accountable for the safe operation of their infrastructure. The CER's mandate to do so extends to the entire lifecycle of the assets it regulates. To assist in discharging its regulatory authorities under the CER Act, as well as the related regulations, the CER requires a robust picture of current regulated infrastructure. Therefore, the Commission imposes **Certificate Condition 30** (Pipeline Geographic Information Systems (GIS) data), requiring NGTL to provide geographic information system data in the form of ESRI® shapefiles. In this regard, the Commission notes that an Interactive Pipeline Map can be found on the CER's website showing the location of pipelines regulated by the CER.

### 6.1.2 Pipeline integrity

***Control system and overpressure protection***

NGTL stated that the maximum operating pressure for the project is 8,690 kPa. 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 stated that the pressure control and overpressure protection systems monitor and act independently of each other, automatically and continuously. NGTL committed to conducting regular inspection, assessment, and testing at the required intervals to ensure that all facilities' pressure control and overpressure protection systems are in good operating condition and set to function at the determined pressure.

NGTL stated that the TC Energy'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 remarked that system pressures are proactively monitored and trended to manage pressures and ensure operational efficiency.

***Coating***

NGTL noted 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. 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 liquid applied coating. Above-ground piping would be primed and painted.

***Cathodic protection (CP)***

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

NGTL remarked that where the pipeline route crosses or is near parallel high voltage alternating current power lines, studies would be conducted to characterize the likely impacts and determine the necessary measures required to mitigate the effects.

***In-line inspection***

NGTL submitted that it would install in-line inspection (**ILI**) facilities consisting of six launchers or receivers to allow for cleaning and ILI. NGTL committed to using a high-resolution commissioning caliper tool during Project pre-commissioning to inspect for construction related defects and indications of dents or ovalities in the pipeline as well as a baseline ILI using a magnetic flux leakage tool.

***Integrity management***

NGTL stated that potential pipeline integrity threats are initially identified prior to detailed design, where threat categories defined by the 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 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 TC Energy's Integrity Management Plan 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, while results from advanced inspections for known or suspected integrity threats are used to develop specific integrity maintenance activities.

In the operations phase of the Project, implementation of the Integrity Management Plan 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;
- CP monitoring; and
- pipeline markers at roads and pipeline watercourse crossings.

**Views of Parties**

No parties expressed concern with respect to the Project pipeline integrity.

**Commission analysis and findings**

The Commission is satisfied with NGTL's pipeline integrity submissions. The Commission finds that NGTL has appropriately considered issues related to coating and integrity threats to the pipeline during construction and operation.

The Commission is also satisfied with the pipeline integrity-related design features of the Project, which include the use of industry-accepted elements such as fusion-bonded epoxy coatings, a CP system for the prevention of external corrosion, and the installation of ILI launchers and receivers for condition monitoring. The Commission takes note of NGTL's commitment to monitor the effectiveness of the Project's proposed pressure control and overpressure protection systems as well as compliance to the applicable code requirements. Overall, the Commission finds that the integrity-related design elements of the Project

combined with NGTL's Integrity Management Plan would adequately manage the risk of potential pipeline failures.

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 ILI runs enhances a company's ability to identify potentially threatening changes to the integrity of the pipeline. The Commission recognizes that ILI is a widely used pipeline industry best practice to monitor the condition of a pipeline. The Commission is satisfied with NGTL's plans to conduct ILI baseline assessments.

The OPR requires companies to develop, implement and maintain an Integrity Management Plan that anticipates, prevents, manages, and mitigates conditions that could adversely affect safety or the environment. The Commission reminds NGTL that integrity monitoring is a continuous improvement process and is applied throughout the lifecycle of a project. The Commission is satisfied that potential integrity threats would be identified by NGTL using: 1) a qualitative threat assessment based on preliminary and detailed design and 2) data collected during operations through aerial patrols, in-line inspections, and CP monitoring.

### 6.1.3 Construction safety and contractor oversight

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

NGTL 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 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.

#### Views of Parties

No parties expressed views with respect to construction safety and contractor oversight.

#### Commission analysis and findings

The Commission is satisfied that the use of TC Energy's Operational Management System, the systematic contractor qualification and selection process, and the development of a project-specific Safety Management Plan, results in TC Energy being well-positioned to provide an adequate level of supervision and oversight of the Project's contractors. The Commission also acknowledges NGTL's commitment to continue to engage stakeholders, landowners, and Indigenous peoples about safety during the lifecycle of the Project.

The Commission imposes **Certificate Condition 19** requiring NGTL to confirm that a Construction Safety Manual(s) pursuant to section 20 of the OPR is in place for the Project.

## 6.2 Safety and security of persons

### 6.2.1 NGTL's public engagement activities

In addition to evaluating the implementation of the general engagement activities summarized in Section 3.3 of this Report, the Commission also considered relevant evidence brought by parties specific to NGTL's engagement regarding safety and security.

**Views of Parties**

***Jacob Adserballe***

Jacob Adserballe argued that the draft EPP that NGTL submitted does not include consultation with key landowners and noted that, while further work would likely be done toward completing the EPP, there has been no firm recognition as to the precise level of consultation and coordination that would take place with key landowners. He also noted that he has not been contacted with respect to providing any input for the EPP.

**Reply of NGTL**

NGTL stated that Jacob Adserballe did not file any evidence in this proceeding, nor did he provide any citations to evidence in his argument. Regarding Jacob Adserballe's concern about engagement with local landowners and their ability to provide input into the EPP, NGTL stated it has engaged with all affected landowners for the Project, and throughout that engagement, landowners have had opportunities to provide input to NGTL and to discuss specific issues of concern.

NGTL argued that intervenors in the hearing process have also had the opportunity to provide comments on the ESA and EPP through their submissions to the Commission. NGTL stated that while Jacob Adserballe has not provided any specific input into the EPP to date, the EPP is not yet finalized, and any additional input shared with NGTL would be considered for incorporation in the updated EPP that would be filed with the CER prior to construction.

NGTL encouraged Jacob Adserballe to share his concerns directly with NGTL so that they can be considered in NGTL's Project plans as appropriate.

**Commission analysis and findings**

Based on the evidence provided on NGTL's public engagement program and activities that were described in section 3.3 of this Report, the Commission finds that NGTL has adequately and appropriately identified stakeholders and potentially affected landowners, as well as developed appropriate engagement materials. The Commission also finds that NGTL's design and implementation of engagement activities for the Project were adequate and responsive to the needs, inputs, and concerns of potentially affected persons and communities.

As noted in section 3.3, the Commission recognizes that NGTL has been consulting on the Project since 2019 and is committed to building and maintaining 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.

The Commission heard Jacob Adserballe's concerns regarding NGTL's lack of consultation for landowner input into the EPP. The Commission reminds parties that the EPP is not yet finalized. Jacob Adserballe is encouraged to raise any specific issues of concern with NGTL so that these concerns may be incorporated into the updated EPP, as appropriate.

### 6.2.2 Emergency management issues of concern to Indigenous peoples and local communities

The importance of emergency management and of the relationships that need to exist to support it, was highlighted during the oral Indigenous knowledge sessions by Mick Elliott, representing the Elk Valley Métis Nation:

> *And you know, should an incident ever happen -- we know these companies do everything they can to make sure that there is no release or something like this -- the folks around the table are very interested in making sure that they understand what happens should those situations happen, and how they will be plugged in. And having that long-term relationship that's driven out of an annual requirement or a condition of an annual requirement will make those types of conversations go easier. And ultimately, I think that's better for Canada and Canadians too.*
> Mick Elliott, Elk Valley Métis Nation, Transcript Volume 3 [1424]

#### *Community-specific Emergency Response Plans*

Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87) and Stoney Nakoda Nations submitted that NGTL should create community-specific ERPs to increase community understanding of emergency management. Stoney Nakoda Nations further raised concerns with emergency management, response plans, and incident response. These concerns include wanting emergency information to be translated into their traditional language. Métis Nation of Alberta also raised issue with not being included in developing a Construction ERP.

#### Reply from NGTL

NGTL stated it would not create community-specific ERPs. NGTL explained that its main goal is safety of the public and responders and that NGTL is concerned with multiple ERPs creating inconsistency in their emergency response procedures, which would deteriorate the efficiency and safety of their response.

NGTL has committed to greater inclusion of Indigenous peoples in its emergency management planning and exercises, and to provide information sessions to communities. NGTL would draft emergency 'One Pagers' for Indigenous communities containing the emergency information communities require. The content of the One Pagers is determined by each community to increase their knowledge of emergency actions to take. These can then be translated into traditional languages as part of the company's community legacy program.

NGTL committed to further working with communities through emergency exercises, training, and information sharing, and to contribute to community-led safety initiatives, including emergency preparedness, accident prevention, education, and training. NGTL would continue to engage with interested Indigenous peoples on these matters through community investment. NGTL also stated that it uses the Incident Command System to manage any emergency response.

**Commission analysis and findings**

The Commission finds that the measures proposed by NGTL to address emergency response during construction are appropriate and imposes **Certificate Condition 8** (Construction Emergency Response Plan) to confirm that NGTL has developed and will implement construction-related ERPs for each approved Project component. Additionally, the Commission is encouraged by the related 'One Pagers' that NGTL is creating with communities and that the 'One Pagers' can be translated into traditional languages for those who request it. The Commission recognizes these steps are part of a collaborative approach for providing accessible and specific emergency information to Indigenous peoples.

To confirm that a community's ongoing improved knowledge of, and familiarity with, emergency management processes continues, the Commission imposes **Certificate Condition 9** (Emergency Management Continuing Education Program), which requires NGTL to create a project-specific emergency management education plan that is to be distributed to communities or agencies along the Project route.

While the Commission understands the concerns raised by Indigenous peoples regarding community-specific ERP's, the Commission agrees with NGTL that multiple ERPs can reduce efficiency of response which, in turn, can compromise safety. For these reasons, the Commission will not compel the creation of community-specific ERPs.

The Commission recognizes that greater public safety and community learning can be achieved by NGTL working with communities through emergency exercises, training, and workshops. The Commission accepts NGTL's commitment to ongoing engagement with Indigenous people on emergency management matters and is satisfied that NGTL will continue to work in good faith with communities to identify specific issues to safeguard greater public safety.

Lastly, the Commission is encouraged by NGTL's use of the Incident Command System. The Incident Command System contains structured processes for communities to identify specific sensitivities through exercises or during a response. These sensitivities can then be addressed during an emergency response to confirm the protection of public safety and culturally or environmentally sensitive sites.

***Emergency management capacity and inclusion of Indigenous knowledge***

Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), Stoney Nakoda Nations, Samson Cree Nation, Piikani Nation, and Elk Valley Métis Nation commented on the development of greater community capacity on emergency management topics. Requests included information sharing, exercise attendance, or specific training related to emergency management and the Incident Command System. These Nations also requested information on how local Indigenous knowledge would be incorporated into emergency planning and response aspects of the Project.

Piikani Nation requested specific reporting to Indigenous communities on spill response during construction.

**Reply from NGTL**

NGTL stated that, at the request of the Nations mentioned above, or any additional Indigenous peoples, and as part of TC Energy's ongoing Public Awareness Program, NGTL would meet, present, and/or provide information or additional details regarding NGTL's local facilities and operations. This includes TC Energy's emergency management system, safety, integrity, monitoring and public awareness programs, and TC Energy and emergency services responsibilities during emergency response.

NGTL has provided detailed accounts of its Indigenous Engagement updates. These updates outline meetings with Indigenous communities which included emergency management discussions, and NGTL's offer to continue those meetings on any Project related questions or concerns.

Regarding the inclusion of local Indigenous knowledge into planning or response efforts, NGTL stated that it evaluates community input, including traditional knowledge, on a case-by-case basis upon receipt from a community. This information may then be incorporated into plans such as the construction ERP, operational ERPs, or other relevant documents as appropriate. NGTL's ability to incorporate information into the ERP depends on the nature of the information provided, when it is received by NGTL, and whether the information provided is within the scope of the Project and NGTL's role and responsibilities.

The primary objective of NGTL's Construction ERP is to define the organizational framework to respond to an incident safely and effectively during construction. NGTL's response to Potential Condition 6 (Construction Emergency Response Plan) states that it considers traditional land use in all phases of project planning, and that construction ERPs would be developed by the Prime Contractor and would comply with provincial and federal statutory requirements.

**Commission analysis and findings**

Public safety is improved when Indigenous peoples are aware of appropriate steps and procedures that a community may need to take in the event of an emergency.

To enhance this knowledge, the Commission imposes **Certificate Condition 9** (Emergency Management Continuing Education Program). This condition compels NGTL to develop a continuing education program for the Project. The Project-specific emergency management education plan is to be distributed to Indigenous peoples who have expressed an interest in receiving a copy. Ongoing education programs are a requirement under the OPR (sections 33-35), and from the information provided in the Indigenous Engagement Updates, the Commission is satisfied that NGTL will continue to work with Indigenous peoples to increase their ability and knowledge of emergency management processes.

The Commission expects NGTL to incorporate Indigenous knowledge wherever possible, though the Commission recognizes that a document like the Construction ERP may generate limited opportunities to do so. As a result, **Certificate Condition 9** (Item iii) requires NGTL to provide a description of how information provided by potentially affected Indigenous peoples will be incorporated into the Emergency Management Continuing Education Program.

Regarding Métis Nation of Alberta's request to be included in developing an ERP, the requirement for input into emergency plans already exist under the OPR (sections 33-35) and that, as a result, specific inclusion is not necessary. The Commission expects NGTL to continue its consultation with Indigenous peoples and other stakeholders, as appropriate, in regard to the development of the required plans.

In response to Piikani Nation's request for specific emergency-reporting on spill response, OPR (section 34) requires a company to notify the public of any incident which may impact them. As a result, the Commission does not find it necessary to impose additional reporting requirements on NGTL.

***Inclusion of ecological sensitivities in the construction ERP***

Driftpile Cree Nation suggested that NGTL be required to include information related to rare plant species or ecological sensitivities in the Construction ERP. Driftpile Cree Nation also requested that the timeframe for NGTL to submit the Potential Condition 6 (Construction ERP) and the Potential Condition 7 (Emergency Management Continuing Education Program) be extended from 60 days before construction begins to 102 days.

**Reply from NGTL**

NGTL noted that the inclusion of ecological sensitivity data in the Construction ERP would create duplicate material. The ecological sensitivity information is addressed under Potential Condition 4 (Updated EPP), Potential Condition 5 (Rare Ecological Community and Rare Plant Population Management Plan) and Potential Condition 9 (Traditional Land and Resource Use Investigations) and is information that is more appropriately found in the EPP.

While Driftpile Cree Nation requested an extension of time for NGTL to submit its Construction ERP from 60 days to 102 days, NGTL requested this timeframe be reduced from 60 days to 30 days. NGTL further requested the Condition specify 'on each approved Project component' to accommodate each spread having different construction start dates.

In response to the suggestion made by Driftpile Cree Nation that a copy of both the Construction ERP and the Emergency Management Continuing Education Program plan should be shared 102 days prior to construction, NGTL argued this would significantly reduce its ability to incorporate additional information provided by Indigenous peoples prior to the start of construction. Furthermore, the extended time could result in unnecessary delays to construction.

**Commission analysis and findings**

The Commission is mindful of the impact that construction activities may have on sensitive habitats; however, as it is a document primarily focused on worker safety, the Commission does not support including ecological information within the Construction ERP. The EPP, by contrast, describes both general and Project-specific mitigation measures for ecologically sensitive areas. In addition, the Commission finds that the environmental alignment sheets describe specific areas of environmental sensitivity and rare plant locations, so the duplication of that information in the Construction ERP would be redundant and therefore is not required.

Having considered comments from both Driftpile Cree Nation and NGTL on the timeframe for the filing of the Construction ERPs, the Commission will retain a 60-day period for submission of the Construction ERPs. This will allow NGTL and Indigenous peoples to have a reasonable amount of time to engage. It will also allow time for Indigenous peoples to provide input where possible. The Commission encourages Indigenous peoples to be involved in this process as early as possible so that their contributions can be fully considered by NGTL.

### 6.3 Project routing

NGTL stated that to the extent possible and practical, its route selection criteria considerations are to:

- comply with applicable regulatory requirements
- minimize length to reduce overall environmental and socio-economic footprint
- parallel existing linear disturbances wherever practical to reduce the amount of new clearing and land disturbance necessary and minimize potential effects on environmental resources (e.g., native plant communities and wildlife habitat) and agricultural operations
- use temporary workspace available on existing NGTL owned RoW where feasible
- minimize the number of watercourse, road, rail and utility crossings, where practical
- avoid or reduce, where practical, sensitive environmental features (e.g., wetlands, riparian areas) and sites with known occurrences of provincially or federally listed wildlife and plant species including:
    - habitat features for species of management concern
    - provincially listed species at risk
    - species and habitats for species listed by COSEWIC or SARA
- where possible, avoid terrain subject to geotechnical and geohazard issues such as areas of unstable slopes, problem soils or known seismic activity
- avoid lands and areas of designated status, such as parks, protected areas, cemeteries, and historic, archaeological or heritage sites, where practical
- avoid land with concentrated areas of rural residences and urban developments, where practical
- consider input received from potentially affected landowners, stakeholders, and Indigenous peoples through various engagement activities to identify and minimize potential effects on socially and culturally important areas such as parks, natural areas, and traditional land and resource use sites and activities
- ensure public safety

NGTL stated its primary criterion was paralleling other NGTL or third-party disturbances to the extent practical because parallel routing:

(i) typically reduces pipeline length between upstream and downstream control points on the existing NGTL System being looped;

(ii) allows NGTL to locate a portion of the Project construction workspace on the existing NGTL RoW, thereby minimizing the amount of new Project footprint required;

(iii) reduces environmental impacts and land fragmentation associated with creating new linear features;

(iv) minimizes or avoids new potential impacts on Indigenous groups and other landowners and land users; and,

(v) is more efficient from an operations perspective.

For these reasons, NGTL stated that its proposed route for the Project deviated from paralleling existing disturbances only in exceptional cases, such as where a parallel alignment would pose safety issues, raise serious concerns for landowners, conflict with third-party facilities or existing infrastructure, or require watercourse crossings at undesirable locations. Taking into account these minor deviations, approximately 35.4 km or 90 per cent of the proposed pipeline route parallels existing NGTL RoW or other existing linear disturbances.

NGTL stated that it continues to consider minor routing refinements and/or site-specific mitigation measures to address specific sites of concern as identified by landowners and Indigenous peoples.

### 6.3.1 Routing alternatives

NGTL stated it followed its established facility planning approach when designing the Project, including evaluation of alternative means of carrying out the Project that meet the purpose of and need for the Project and that satisfy design flow requirements. NGTL determined that there are no existing pipelines or facilities with capacity that provide a feasible alternative for gas transportation that meet shipper requirements.

NGTL stated a corridor-level evaluation of pipeline route alternatives was completed for the Project and in conjunction with the progression of engineering design and the routing selection criteria listed above, a more specific route was identified and proposed for the Project. NGTL noted 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.

NGTL stated it considered several route alternatives that avoided Bar U Ranch. NGTL further stated that route alternatives did not parallel an existing NGTL RoW, were longer than the proposed route, and in very close proximity to a great blue heron colony. Furthermore, concerns were raised by stakeholders where route alternatives crossed private land. As such, NGTL determined that paralleling the existing WAS Mainline pipeline RoW through Bar U Ranch would reduce the overall Project footprint by utilizing existing RoW. This route would also reduce the route length, minimize potential effects on wildlife habitat, and better address stakeholder concerns compared to potential route alternatives around Bar U Ranch.

NGTL stated an environmental desktop review, supported by an aerial overflight, along with stakeholder engagement were undertaken to support route selection.

**Views of Parties**

David Harris expressed concerns regarding the proposed route and potential impacts to future plans for his property.

Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), Piikani Nation, and Stoney Nakoda Nations expressed concerns about the proposed route for the Project and NGTL's engagement regarding the selection of the route.

**Reply of NGTL**

In response to the concerns raised by David Harris, NGTL said that it adjusted the Project routing across his lands and confirmed that the new route would not cross over the existing pipelines.

NGTL submitted that any feedback received from Indigenous peoples engaged on the Project has informed the route and that the continued identification of areas of interest and importance would be considered by NGTL when evaluating route options. NGTL also submitted that any additional input received through ongoing engagement would be considered in Project planning, as appropriate. NGTL noted that while the detailed routing process remains ongoing, its ability to refine the route without impacting the Project schedule would generally decrease over time. As a result, NGTL encouraged Indigenous peoples to provide any specific input they may have as soon as possible.

**Commission analysis and findings**

The Commission recognizes the benefits of routing criteria, including those such as paralleling existing infrastructure, minimizing length to reduce the environmental and socio-economic footprint, and incorporating input from affected landowners, stakeholders, and Indigenous peoples. Carefully drafted routing criteria, once applied, can help minimize disturbances of a project.

Having considered the routing criteria and selection process used by NGTL and the submissions made by the parties during the hearing process, the Commission finds the proposed route to be appropriate. While NGTL did not avoid the Bar U Ranch, the Commission is satisfied that the potential effects on Bar U Ranch have been adequately assessed and mitigated by NGTL, as described further in Chapter 8.

In reaching this conclusion, the Commission placed significant weight on NGTL's efforts to minimize the potential environmental impact of the Project by proposing a route that parallels existing RoW for a majority of the Project as well as NGTL's efforts to minimize the taking of new lands. In this case, ten per cent of NGTL's proposed route for the Project deviates from paralleling existing disturbances and approximately 90 per cent of the route follows an existing RoW or existing disturbances. The Commission finds that NGTL considered input from landowners, occupants, land users, Indigenous peoples, as well as the results from environmental studies in determining the route. The Commission finds that NGTL's route selection criteria minimizes potential adverse effects, including avoiding

sensitive environmental areas and minimizes environmental and social impacts and fragmentation as much as possible.

Based on the above, the Commission finds NGTL's route selection process and the criteria used to determine the route to be reasonable and justified.

## 6.4 Protection of property and the environment

NGTL said its approach to assessing environmental and socio-economic effects and cumulative effects aligns with the Filing Manual and was undertaken in a manner consistent with other projects of similar scope and scale. NGTL identified Project routing, routine design, standard mitigation and certain best practices to mitigate most of the potential adverse environmental and socio-economic effects that were identified in Chapter 3 (Table 3-6). NGTL also considered cumulative environmental effects predicted to result from the Project's residual effects in combination with the residual effects of other past, present, and reasonably foreseeable future projects or physical activities.

### 6.4.1 Environmental assessment, including cumulative effects

#### 6.4.1.1 Environment and Socio-economic Assessment methodology

NGTL described its assessment methods in Section 4 of its ESA. The ESA was supplemented by the submission of an EPP and an ESA for the Bar U Ranch portion of the Project. NGTL said the ESA was prepared to meet the requirements of the Filing Manual.

NGTL's ESA methodology included the spatial and temporal boundaries and selection of VCs, which are environmental elements of particular value or interest to regulators, stakeholders, landowners and Indigenous peoples, and are identified based on the biophysical and socio-economic elements listed in the Filing Manual. VCs were selected based on likely interactions of the Project with the surrounding biophysical and socio-economic environment and include soil capability, vegetation and wetlands, wildlife and wildlife habitat, aquatic resources, greenhouse gas emissions, human occupancy and resource use, traditional land and resource use, heritage resources, socio-economics, and the rights of Indigenous peoples. The assessment of each VC begins with a description of the pathways whereby specific Project activities and actions could result in an environmental effect (i.e., the effect pathways). Once effect pathways are identified, one or more measurable parameter(s) are selected to facilitate quantitative (where possible) and qualitative assessment of residual project effects and residual cumulative effects.

NGTL continued that potential project-related environmental effects and the mechanisms through which they act, are discussed first, considering design and mitigation measures that help to avoid or reduce the effect. Residual Project-related environmental effects are characterized using specific criteria (e.g., direction, magnitude, geographic extent, duration, frequency, likelihood) defined for each VC included in the assessment. If there is an identified potential for adverse residual environmental effects of the Project to interact cumulatively with the residual environmental effects of other past, present, or reasonably foreseeable future projects or physical activities, these cumulative environmental effects are also assessed. The significance of residual Project and residual cumulative effects is then determined based on pre-defined criteria or thresholds.

The ESA considered both residual project and residual cumulative effects to biophysical and socio-economic elements that interact with the Project. The conclusion of the ESA is that, with the implementation of standard and Project-specific mitigation measures, adverse residual Project and residual cumulative environmental and socio-economic effects are predicted to be not significant.

NGTL said it assessed wildlife and plant species and habitats, and cultural sites of importance, as identified and described by potentially affected Indigenous peoples. It said feedback received from Indigenous peoples would be considered in Project planning, including the EPP and environmental alignment sheets, as appropriate.

**Views of Parties**

***Livingstone Landowners Group***

Livingstone Landowners Group raised concerns with NGTL's approach to assessing fescue grasslands and mitigation and post-construction monitoring. The Group questioned NGTL's approach to wildlife data collection, including how it conducted wildlife surveys. Livingstone Landowners Group also questioned NGTL's mitigation for erosion, fish and fish habitat.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations said the Impact Assessment Agency of Canada's *Guidance on Assessment Impacts to Rights*[32] states that it is important to consider both tangible values (like wildlife species or traditional plants) and intangible values (like enjoyment of the landscape or sites used for teaching). NGTL should not focus on the site-specific impacts, as mapped data is only meant to represent a snapshot of the rights exercised in the Project areas. Stoney Nakoda Nations was concerned that NGTL continued to focus on site-specific concerns.

**Reply of NGTL**

NGTL said that its standard EPP is a living document that will be updated prior to construction to include new information based on re-routes and biophysical surveys, and through its ongoing consultation with landowners and Indigenous peoples. Any material updates made to the standard EPP prior to construction would be included in the final EPP for the Project. The EPP and environmental alignment sheets would be updated prior to construction to include sites, features, and areas of use or concern requiring additional mitigation measures, as determined with Indigenous peoples.

In response to Livingstone Landowners Group's comments on ESA methodology, NGTL reiterated its mitigation measures during construction and reclamation to reduce and manage erosion and described how potential outstanding concerns related to erosion would be monitored through its post-construction monitoring. NGTL also referred to the measures it would implement to reclaim fescue grassland.

With reference to Livingstone Landowners Group's wildlife concerns, NGTL confirmed the data sources and approaches it took to assess effects on elk, sharp-tailed grouse, and American badger. NGTL also confirmed its approach to nest surveys for breeding birds and responded to

[32] https://www.canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/guidance-assessment-potential-impacts-rights-indigenous-peoples.pdf *(accessed May 2022)*

Livingstone Landowners Group's concerns about buffers and timing mitigation for other wildlife species.

In response to Stoney Nakoda Nations' concerns about NGTL's focus on site-specific mitigation, NGTL said the ESA provides an assessment that is not limited to site-specific values or features and its mitigation includes both biophysical and socio-economic measures to reduce potential Project-related effects. NGTL went on to say that, to date, Stoney Nakoda Nations has not provided NGTL with specific feedback regarding the Project route. Upon NGTL's receipt of additional input from Stoney Nakoda Nations through ongoing engagement activities it would be considered in Project planning, as appropriate. While the detailed routing process remains ongoing, NGTL's ability to refine the route without impacting the Project schedule would generally decrease over time.

NGTL said the route refinements included in its reply evidence and supplemental filings considered the same VCs, assessment methods, effects, effect pathways and mitigation measures as in the ESA and that the residual environmental and socioeconomic effects of the route refinements are not predicted to change from those predicted in the ESA.

#### 6.4.1.2 Cumulative effects methodology

NGTL submitted that residual effects are those remaining after the implementation of mitigation measures. Where residual Project effects were expected to interact with existing and reasonably foreseeable effects arising from other projects and activities (within the spatial and temporal boundaries of the Project ESA), a cumulative effects assessment was conducted.

NGTL said that two conditions must be met to pursue an assessment of cumulative environmental effects: there are predicted adverse residual Project effects on the VC, and the adverse residual Project effects act cumulatively with effects of other past, present, and reasonably foreseeable future projects or physical activities. Where either the first or the second of these conditions are not met, there is no expectation that the Project would contribute cumulatively to residual effects, and further assessment is not warranted. If both conditions are met, then the assessment of cumulative effects continues within the VC section following assessment of Project residual effects.

Where a cumulative effects assessment is completed for a VC, the focus is on those other projects and physical activities that could result in similar residual effects (e.g., change to wetlands) to those being considered for the Project. The inclusion list of future projects and physical activities includes the past, present, and reasonably foreseeable future projects and physical activities with residual effects that could overlap spatially and temporally with the Project. For the purposes of NGTL's ESA, Project and physical activities have been broadly grouped into the following types of activities: agriculture, infrastructure, residential, linear development, industrial activities, and forestry.

**Views of Parties**

Several intervenors submitted concerns that a cumulative effects assessment needed to be undertaken for the Project and that cumulative effects were not reflected in the Commission's proposed conditions.

Several Indigenous communities such as Piikani Nation, Samson Cree Nation, and Stoney Nakoda Nations raised concerns regarding the cumulative effects of projects on their traditional

territory and cumulative impacts to their rights. Specifically, Indigenous communities shared that land is continually being taken up, leaving little available land for communities to meaningfully exercise Section 35 Rights. Indigenous communities also shared that cumulative effects and cumulative impacts on their rights are inadequately assessed, largely due to an absence of thresholds, and as such, have reduced their ability to exercise their rights, such as hunting, fishing, trapping, and harvesting vegetation and medicinal plants.[33]

### *O'Chiese First Nation*

O'Chiese First Nation stated that there are flaws and deficiencies of the regulatory system in which the Project is being assessed, particularly as they relate to human activity, cumulative effects from development, and the exercise of Inherent and Treaty rights.

O'Chiese First Nation said that the CER and other Crown entities responsible for discharging the duty to consult do not assess cumulative effects to Inherent and Treaty Rights within their regulatory processes, nor do they require proponents to explicitly consider them in their impact assessments, as cumulative effects assessment only occur after a project-specific impact is determined to be significant. O'Chiese First Nation submitted that this gap in regulatory processes has resulted in lands being taken up to the point where O'Chiese First Nation's Inherent and Treaty Rights have been significantly diminished.

### *Piikani Nation*

Piikani Nation stated that the current method of assessment of cumulative effects omits consideration and analysis of cumulative effects experienced by the Indigenous population within the RAA. Piikani Nation also stated that NGTL relies heavily on guidelines in the Filing Manual, and that addressing cumulative impacts must be consistent with the Supreme Court of Canada's guidance in *Mikisew Cree First Nation v. Canada*.[34] Namely that long-term protection of Indigenous and Treaty Rights should be a factor in the consideration of the cumulative effects of a Project within the larger context of impacts of continuing land development in First Nations' territories.

Piikani Nation said that given the recent decision in *Yahey v. British Columbia*, the Crown has a responsibility to take proactive measures to address and monitor cumulative effects on the Section 35 Rights of First Nations in a comprehensive and meaningful way. Piikani Nation asked NGTL to provide more information about its plans to accommodate or compensate Piikani Nation for the cumulative impacts of its existing operating infrastructure. Piikani Nation also requested that NGTL describe its plans for developing and implementing avoidance and mitigation measures when residual effects necessitate them.

### *Samson Cree Nation*

Samson Cree Nation stated that the *Yahey v. British Columbia* decision demonstrates that there are flaws in the processes that assess cumulative effects. Samson Cree Nation said their members are experiencing cumulative effects from several stressors across their traditional

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[33] Refer to Chapters 4 and 5 for further discussion regarding interests and concerns of and impacts on Indigenous peoples.

[34] 2005 SCC 69

territory, which included oil and gas development, forestry, largescale commercial agriculture, land privatisation, settlement and urbanisation, and climate change.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, the Stoney Nakoda Nations)***

Stoney Nakoda Nations said that NGTL continues to apply for projects through a fragmented approach, which enables NGTL to bypass an assessment of cumulative effects from its projects. Stoney Nakoda Nations stated that they have raised the issue of cumulative impacts to their traditional territory from NGTL projects with the CER (and the NEB in past proceedings). Stoney Nakoda Nations stated that a coordinated monitoring approach would enable monitors to collaboratively develop NGTL related indicators and to approach monitoring of the NGTL System more holistically.

**Reply of NGTL**

NGTL submitted that cumulative effects were assessed for VCs in the ESA in accordance with the Filing Manual, and in a manner consistent with other projects of similar scope and scale. The assessment considered cumulative environmental effects predicted to result from the Project's residual effects in combination with the residual effects of other past, present, and reasonably foreseeable future projects or physical activities.

NGTL's position that the most effective way for a Project to reduce potential cumulative effects is to mitigate the direct potential effects of the Project. As such, mitigation presented in the ESA and the EPP, including routing criteria to reduce potential environmental and socio-economic effects, serve as mitigation for cumulative effects as well as mitigation for direct Project effects.

Given that reducing direct Project effects is the most effective way to reduce Project contributions to cumulative effects, monitoring both during and following construction, focuses on the effectiveness of the mitigation implemented to address direct Project effects. As such, additional monitoring of regional cumulative effects is not warranted to ensure Project effects are appropriately mitigated.

Furthermore, given that there is currently no standard regional government framework in place to capture monitoring results from multiple land uses and industries across a specified region, NGTL submitted that any additional post-construction data collection for the Project, beyond the scope of NGTL's post-construction monitoring program, would not be informative with respect to broader regional cumulative effects monitoring.

NGTL responded to concerns raised by each Indigenous community who raised concerns regarding cumulative effects methodology, indicating that as described in Section 4.7 of the ESA, the assessment considered cumulative environmental effects predicted to result from the Project's residual effects in combination with the residual effects of other past, present, and reasonably foreseeable future projects or physical activities. Specifically in response to O'Chiese First Nations' concerns, NGTL said that cumulative effects for the Project were assessed for a particular VC if there were predicted adverse residual Project effects on the VC, regardless of a determination of significance, and if those adverse effects act cumulatively with effects of other past, present and reasonably foreseeable future projects or physical activities.

In response to assertions that NGTL takes a fragmented approach to its project applications, NGTL said its cumulative effects assessment for each project ESA considers other industrial infrastructure, including past and current NGTL projects. NGTL noted that the CER

(and previously, the NEB) has assessed allegations that NGTL engages in project splitting and found that its approach to project applications did not show evidence of project splitting.

#### 6.4.1.3 Commission analysis and findings

The Commission finds that NGTL's ESA methodology, including its cumulative effects assessment, appropriately scoped the potential effects of the Project using an approach in line with the Filing Manual. The Commission further finds that NGTL has completed an acceptable cumulative effects assessment with regard to biophysical and socio-economic effects. The assessment considered the existing and reasonably foreseeable effects arising from other projects and activities in the Project RAA.

The Commission heard the concerns outlined by several Indigenous peoples regarding the impacts of cumulative effects on the ability to exercise Indigenous and Treaty Rights, the Project area. The Commission recognizes NGTL's commitment to update the EPP and environmental alignment sheets with any further mitigation measures identified through the course of the hearing process and through its ongoing consultation with landowners and Indigenous peoples.

The Commission is cognizant of the importance of the long-term protection of Indigenous and Treaty Rights in the consideration of the cumulative effects of a project, as well as the larger context of impacts of continuing land development (see Section 1.4.2).

The Commission recognizes that the vast majority of the Project footprint parallels existing pipeline RoWs or disturbances, is located on previously disturbed land, and crosses private and occupied Crown land. Having regard for NGTL's route selection criteria, which includes reducing the amount of new clearing and land disturbance, the Commission places substantial weight on NGTL's systematic consideration of crossing disturbed lands and finds that the proposed route minimizes the amount of new lands taken up. This, coupled with the standard mitigation measures, contingency plans, and management plans described in NGTL's EPP, limits the potential for this Project to result in adverse interactions with other projects and activities in the region that contribute to cumulative effects. To this end, the Commission finds NGTL's approach and rationale for assessing both environmental and socio-economic cumulative effects in the manner it did, consistent with other projects of this scope and scale.

The Commission finds that the manner in which NGTL applied for the Project to be appropriate. The Commission heard concerns about, and recommendations to address, cumulative effects in the condition compliance phase of the Project. However, the Commission considers the assessment of potential Project effects to occur based on the evidence in NGTL's ESA, submissions and replies from parties, and testing of evidence within this hearing process. The Commission finds that the condition compliance phase is not the appropriate venue to further assess potential cumulative effects as a result of the Project. Rather, the Commission considers that conditions are essential tools to help mitigate residual project effects and cumulative effects. The Commission shares NGTL's view that reducing the direct effects of the Project through standard mitigation and conditions is the most effective way to reduce cumulative effects.

### 6.4.2 Mitigation measures and best practices

NGTL said that its ESA considered both residual project and residual cumulative effects to biophysical and socio-economic elements that interact with the Project. The ESA concluded that, with the implementation of standard and Project-specific mitigation measures, adverse residual Project and residual cumulative environmental and socio-economic effects are predicted to be not significant.

NGTL's standard mitigation measures for the Project include:

- paralleling existing disturbances for the majority of the route;
- scheduling clearing and construction activities to avoid sensitive wildlife timing windows to the extent feasible;
- routing to avoid environmentally sensitive areas;
- restricting all construction activities to the approved construction footprint; and
- inspecting and monitoring for environmental concerns during construction and post-construction.

Following implementation of these measures, NGTL said that adverse residual Project and residual cumulative environmental and socio-economic effects were predicted to be not significant.

With respect to accidents and malfunctions during construction, NGTL stated that in the unlikely event of such events occurring, they are effectively managed through implementing contingency measures from the Project-specific EPP, as well as through implementing the Project-specific emergency response plans.

During operation, accidents or malfunctions are managed through TC Energy's overarching Emergency Management Corporate Program Manual, along with emergency shut down and facility isolation procedures that minimize the potential for and volume of a release. With the implementation of mitigation measures, residual effects of all Project-related accidents and malfunction scenarios on all assessed biophysical and socio-economic valued components are predicted to be not significant. No cumulative effects are predicted.

### 6.4.3 Environmental inspection

NGTL submitted that its environmental inspectors would be responsible for ensuring that environmental mitigation measures outlined in the Project-specific EPPs and environmental alignment sheets are followed during construction. Individuals responsible for inspecting the pipeline and facility construction activities would be retained before construction activities start and would possess the necessary qualifications.

To ensure that mitigation measures are followed, NGTL committed to having qualified environmental inspectors on the Project and would develop an environmental orientation for Project personnel. Socio-economic commitments and mitigation measures not included in the EPP would be monitored during construction by Project assignees such as Project Management, Construction Management and Stakeholder Engagement teams.

NGTL said environmental inspectors are hired through an independent, third-party firm. Compliance-related documentation, including daily reports prepared by the environmental inspector(s) and designate(s), are subject to review by the CER upon request. Furthermore, the construction footprint is subject to inspection by the CER and other regulatory authorities (e.g., AEP, DFO) at their discretion.

To ensure mitigation measures are followed, NGTL has committed to having qualified environmental inspectors on site during construction to verify all activities are in compliance with regulatory commitments and mitigation measures as outlined in the EPP, and to develop environmental orientation and training for Project personnel. NGTL identified the roles and responsibilities of the inspection personnel on the Project, including with respect to implementing its EPP management plans and contingency plans.

NGTL further said that socio-economic commitments and mitigation measures would be monitored throughout construction. Those commitments and mitigation measures, which are also applicable to biophysical elements, are outlined in the EPP and would be monitored through NGTL's environmental inspection program. Socio-economic commitments and mitigation measures not included in the EPP would be monitored by Project assignees such as Project Management, Construction Management and Stakeholder Engagement teams.

### 6.4.4 Post-construction monitoring programs

NGTL submitted that the Project would be designed, constructed, and tested in accordance with industry best practices and the provisions of the CER Act, the OPR, CSA Z662-19, and applicable NGTL specifications.

NGTL clarified that post-construction activities, such as addressing any deficiencies in reclamation and post-construction monitoring are considered part of the construction phase. There would be limited physical disturbance following construction and reclamation activities (other than vegetation management and small-scale inspection and maintenance activities) and no additional operations staff are required.

NGTL described its proposed monitoring programs in its ESA, stating that compliance monitoring during construction is achieved through NGTL's inspection program, which includes, but is not limited to, environmental inspection and reporting to confirm mitigation measures in the EPP are fulfilled. Post-construction monitoring activities would verify the effectiveness of mitigation measures following construction and would involve adapting the mitigation measures, if required. NGTL's post-construction monitoring activities would include an assessment of reclamation success, including identification of any environmental issues, an assessment of the effectiveness of mitigation practices, and would also identify recommended corrective actions for outstanding environmental issues.

NGTL's post-construction environmental monitoring program measures success of land reclamation against adjacent representative site conditions while taking into consideration the status of reclamation at the time of monitoring. NGTL would continue to monitor the PDA and facility sites, as needed, during Project operation to identify any issues and implement mitigation on a timely basis. Routine monitoring by NGTL personnel would be continuous for the life of the Project.

NGTL confirmed that it would need to maintain a minimum 10 m-wide RoW free of woody vegetation during operation to ensure safe, unencumbered access for inspection and maintenance activities and to follow CSA Z662-19. The minimum 10 m-wide RoW would be allowed to revegetate to nonwoody vegetation (i.e., grasses and forbs).

### Commission analysis and findings

To confirm that mitigation measures are followed, NGTL has committed to having qualified environmental inspectors onsite during construction to verify that all activities comply with regulatory commitments and mitigation measures as outlined in its EPP, and to develop environmental orientation and training for Project personnel. The Commission finds NGTL's commitments in the ESA and EPP to be aligned with the expectations outlined in the Filing Manual and with industry best practices.

Similarly, the Commission finds the environmental and socio-economic monitoring proposed by NGTL to meet the expectations laid out in the Filing Manual and to follow the OPR, CSA Z662-19, and other regulatory requirements during operations.

Post-construction environmental monitoring is discussed further in Chapter 9 and the involvement of Indigenous peoples in monitoring is discussed in Chapter 4. Socio-economic effects monitoring is discussed in Chapter 7. An additional recommendation related to monitoring is discussed in Section 1.4.1.

# 7 Health, social and economic effects of the Project

This chapter will highlight key submissions from parties, the reply of NGTL, and the Commission's analysis and findings relevant to:

| | |
|---|---|
| ***CER Act 183(2) factor(s)*** | *(c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identify factors* |
| ***List of Issues No.*** | 14. The health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors, including any such effects on Indigenous peoples |
| ***Key conclusion(s)*** | To confirm that NGTL has thoroughly documented how it will monitor any adverse socio-economic effects, and to provide the Commission and interested parties, especially potentially impacted Indigenous peoples, with information on NGTL's monitoring plan, the Commission imposes a Certificate condition requiring NGTL to file a Socio-Economic Monitoring Plan. |
| | Considering the evidence on the record, the Commission finds that adverse effects of the Project on human occupancy and resource use, including access to areas for recreational use, to be of medium significance, and on human health, and infrastructure and services to be of low significance. The Commission also finds that the effects of the Project on social and cultural well-being to be neutral, and on employment and economy to be positive. |

## 7.1 Mitigation measures and best practices

The Filing Manual requires applicants to describe the standard mitigation measures and their adequacy for addressing project effects. NGTL stated in its Application that it would implement mitigation measures and construction best practices to avoid or reduce potential effects on socio-economic elements, including the acoustic environment, human occupancy and resource use, navigation and navigation safety, human health, infrastructure and services, and social and cultural well-being.

NGTL stated that its Project-specific EPP contains standard mitigations and best practices and reflects input from TC Energy, regulators, Indigenous peoples, stakeholders, and landowners. The EPP is reviewed and updated based on continuous learnings, improvements, and feedback received through NGTL's ongoing engagement activities and experience. NGTL further stated that it incorporates into its EPP information gathered during ongoing Project engagement, as applicable.

As there are no established criteria or thresholds for the implementation of socio-economic mitigation, NGTL indicated that it instead implements all mitigation measures throughout construction and conducts an evaluation of their effectiveness. NGTL stated that throughout the course of construction, it would collect internal and external feedback to evaluate the effectiveness of mitigation measures, and if feedback suggests findings are not consistent with predictions in the ESA and/or EPP, NGTL would determine whether changes are required and/or whether new mitigation measures are warranted. NGTL noted it would consider the following in its determination: past project experience; input from stakeholders and Indigenous peoples; and current industry best management practices.

NGTL said that socio-economic commitments and mitigation measures would be monitored throughout construction. Those commitments and mitigation measures that are included in the EPP would be monitored through NGTL's environmental inspection program, as described within the EPP. Socio-economic commitments and mitigation measures not included in the EPP would be monitored for compliance by Project assignees such as Project Management, Construction Management, Socio-Economic Advisors, and Stakeholder Engagement teams. Project assignees for the socio-economic mitigation measures would work directly with the General/Prime Contractors during construction to monitor activities for compliance.

For the acoustic environment, NGTL stated that the only sources of noise would be from Project vehicles and equipment during construction activities. Any change in noise levels would be limited and short-term. NGTL also stated that interactions would be addressed using codified practices, proven effective mitigation measures, and best management practices included in the EPP, such as maintaining noise abatement equipment on machinery. NGTL advised that it would notify potentially affected landowners, lessees, and nearby residents of the intended Project schedule before the start of construction to avoid or reduce impacts to their operations or activities. NGTL submitted that should noise concerns be raised, NGTL would work with residents to identify site-specific mitigations on a case-by-case basis.

For navigation and navigation safety, NGTL indicated that, as the watercourse crossings would be constructed during a time when some watercourses are possibly navigable, it may be necessary for waterway users to portage around the watercourse crossing location. NGTL said mitigation measures in the EPP include the notification of community members and the installation of warning signs along the banks (both upstream and downstream of the crossing) to caution users of a navigational hazard.

Commitments, mitigation measures, and best practices for human occupancy and resource use, human health, infrastructure and services, and social and cultural well-being are described in subsequent sections.

**Views of Parties**

***Elk Valley Métis Nation***

Elk Valley Métis Nation submitted that it is concerned about the lack of any meaningful socio-economic monitoring requirements in the Potential Conditions. Further, Elk Valley Métis Nation stated that this lack of monitoring is not an industry best practice, nor is it consistent with conditions for other federally regulated pipelines, such as on the Trans Mountain Expansion Project. Elk Valley Métis Nation suggested that there need to be specific conditions added for the monitoring of social and economic impacts.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations recommended a condition requiring a plan for monitoring potential adverse socio-economic effects of the Project during construction and post-construction. Such a condition should include funding capacity for Stoney Nakoda Nations to develop their specific well-being and socio-economic indicators.

**Reply of NGTL**

NGTL replied that the ESA thoroughly considered the potential effects of the Project on socio-economic VCs selected based on the Filing Manual. Further, the ESA considered input from NGTL's engagement activities with Indigenous peoples, stakeholders, and landowners or other land users, as well as existing regional information and NGTL's experience working on similar projects. NGTL stated the ESA was consistent with guidance from the Filing Manual and that the standard assessment methods are appropriate for the scope and nature of the Project.

NGTL reiterated that socio-economic commitments and mitigation measures would be monitored throughout construction. NGTL submitted that those commitments and mitigation measures, which are also applicable to a biophysical element, are outlined in the EPP and would be monitored through NGTL's environmental inspection program.

When new information, issues, and concerns are brought forward by participating Indigenous peoples, NGTL indicated that it would review the VCs and effects pathways, spatial and temporal boundaries, and the collection of baseline information for each VC to confirm whether the new information was included or represented within the ESA. NGTL stated that consideration of this 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 NGTL's review, incorporation of feedback from Indigenous peoples may result in changes to Project planning, including the EPP and environmental alignment sheets, or a commitment from NGTL to further explore an issue, concern, or recommendation. NGTL stated it is committed to working with interested Indigenous peoples to seek mutually acceptable solutions to the issues, concerns or recommendations identified. NGTL advised it would conduct ongoing engagement with Indigenous peoples and consultation with non-Indigenous communities to proactively identify and address issues or concerns.

**Commission analysis and findings**

The Commission recognizes that many adverse socio-economic effects can be addressed through standard mitigation.

With respect to the proposed mitigation for acoustic environment, the Commission agrees with NGTL that the changes in noise level associated with the Project would be reversible and short-term. The Commission finds the proposed mitigation measures and best management practices, such as maintaining noise abatement equipment on machinery and the notification of potentially affected parties, offer reasonable layers of protection against any Project impacts to the acoustic environment.

Regarding navigation and navigation safety, the Commission reiterates that the Project does not cross any waterbodies on the *Canadian Navigable Water Act* of Scheduled Waters. The Commission also observes that the subject of navigation and navigation safety is not an issue which attracted any concerns from any party during the hearing process. The Commission finds that NGTL's plan for the notification of community members and the installation of warning signs along the banks, both upstream and downstream of the crossing, are appropriate to mitigate the potential effects of this Project.

To confirm that NGTL has thoroughly documented how it will monitor any adverse socio-economic effects, and to provide the Commission and interested parties, especially potentially impacted Indigenous peoples, with information on NGTL's monitoring plan, the Commission imposes **Certificate Condition 11**, requiring NGTL to file a Socio-Economic Monitoring Plan. While the Commission appreciates the information NGTL has provided regarding how it intends to monitor socio-economic effects for the Project, the Commission expects proponents to transparently and proactively analyze, monitor, and manage the intended and unintended socio-economic impacts of projects. The Commission confirms that conditions are placed on project instruments to enable the CER to monitor a company's compliance with project approvals, to confirm that the commitments made during the hearing process are adhered to, and that the mitigation measures companies have proposed are being applied.

### 7.2 Human occupancy and resource use

The Filing Manual requires applicants to describe the potential interactions of the project with local and regional human occupancy and resource development activities, and to include effects a project may have on the maintenance of those activities and on the livelihood of local workers, business owners, and operators.

NGTL submitted that during Project construction, physical activities have the potential to affect human occupancy and resource use through a change in land use. A change in land use might occur as the result of a loss of access to land available for agriculture, grazing, forestry, oil and gas, or other industrial uses, hunting, trapping, fishing, recreation, or tourism. Similarly, alteration of lands along the RoW, including ground disturbances and removal of vegetation, may affect the regrowth, ground disturbance, and access restrictions on those lands. NGTL stated that it is anticipated that landowners/users, recreational users and local community members, including residents, would experience some nuisance effects during construction, including localized increases in noise, dust and traffic volumes, as well as visual disruption. These same sensory disturbances could result in a decrease to hunting, trapping, or fishing opportunities and decreased recreational tourism opportunities. NGTL argued that recreational uses, such as hunting, are quite limited in the PDA of the Turner Valley and Longview Sections, noting the Turner Valley Section is located on private land for 99.5 per cent of its length and the Longview Section is adjacent to Highway 22 with the Project area and is on private and federal lands

NGTL stated it has established general environmental protection measures and practices, along with Project-specific mitigation measures, as listed in the EPP that would be implemented during construction of the Project. These measures would avoid or reduce potential sensory disturbance effects and access restrictions on human occupancy and resource use. Mitigation measures to reduce effects include, but are not limited to, notification of local users; engagement with stakeholders; delineating temporary access restrictions; basing final seed mix on privately-owned lands on input from landowners and the availability of seed at the time of reclamation; and, prohibiting Project personnel from hunting or fishing on the construction footprint, and from harassing, feeding, collecting or possessing wildlife species.

With the implementation of mitigation measures, NGTL stated that residual effects of the Project on land use are likely to occur, and are predicted to be adverse in direction, low in magnitude, extend into the LAA, would be short-term (related to access restrictions and sensory disturbance) to medium-term (related to regrowth of vegetation along the RoW and within

temporary workspace areas) to long-term (related to ground disturbance restrictions required for safety reasons in the permanent RoW) in duration, and are reversible.

Regarding residual cumulative effects on human occupancy and resource use in the Project RAA, NGTL said that with the implementation of mitigation measures and based on known development information for the RAA, residual cumulative effects are likely to occur. Residual cumulative effects are predicted to result in a measurable change in land use pattern and/or access but would not prevent activities from continuing elsewhere. Residual effects would occur during the construction phase to beyond the operations phase in duration and would be reversible. The Project would make a negligible contribution to cumulative alteration of land use at the RAA scale. NGTL concluded that residual Project effects and residual cumulative effects on human occupancy and resource use are predicted to be not significant.

**Views of Parties**

***Jacob Adserballe***

Jacob Adserballe expressed concern about the potential economic impact on his ability to use his land for ecotourism. He stated that due to the incredible biodiversity on his land and in the immediate area, the area is an extremely attractive location for ecotourism. Jacob Adserballe submitted that inadequate communication and lack of scheduling notifications on the part of NGTL have previously resulted in significant and costly implications for his business.

***Canadian Association of Energy and Pipeline Landowner Associations – West Path Landowner Committee***

CAEPLA-WPLC expressed concerns about the potential negative impacts of the Project on their members' properties and land use. They stated that based on the information contained in the Project Application, member concerns include: interference with agricultural and other land use; damage to soils; biosecurity; potential for abandonment in place of the pipeline; cumulative impacts of the proposed pipeline together with the existing pipelines on the affected lands; and the form of the RoW Agreement proposed for the Project.

***Driftpile Cree Nation***

Driftpile Cree Nation stated that an assessment of impacts to human occupancy and resource use should be performed in relation to the operations phase of the Project and that such an assessment should consider the possibility of impacts that could occur in circumstances where environmental accidents or malfunctions of the Project result in higher than predicted impacts. Driftpile Cree Nation further stated that given the material nature of such impacts (notwithstanding any determination that the risk of such impacts may be considered to be remote), a related assessment of impacts during operations should be required.

***Elk Valley Métis Nation***

Elk Valley Métis Nation submitted it is concerned about the potential effects on recreational land and the continued access to these areas for the purpose of recreation, fishing, and hunting for food. In their Indigenous knowledge session, Elk Valley Métis Nation also expressed the following regarding their concerns about effects on human occupancy and resource use:

*I look around our communities and we definitely have a lot of impacts on us right now on multiple projects. You know, the whole area along the pipeline area and into the Elk Valley is a high tourist attraction, so our hotels and facilities are booked out; they're filled. A project of this magnitude is going to just add extra pressure, as there isn't any rental places for workers to stay in. And if they're going to be bringing RVs, Crown land is already crowded. Some is closed. All our provincial campgrounds are booked online and booked out for the summer ahead of time. So we continually lose access to lands, it's crowded out there, and projects like these are just going to multiply. Those are facts.*
President Jean Sulzer, Elk Valley Métis Nation, Transcript Volume 3 [1435]

**Reply of NGTL**

With respect to Jacob Adserballe's concerns regarding ecotourism, NGTL stated there is no evidence on the record showing that the Project would have any effects on the ecotourism businesses. However, should Jacob Adserballe demonstrate that the Project does result in actual and verified losses to his ecotourism business, NGTL would be required to fully compensate Jacob Adserballe for those losses under the CER Act. NGTL further stated, that to the extent Jacob Adserballe has specific concerns regarding the timing of construction impacting his business, he is encouraged to share those concerns with NGTL so they can be addressed by project planning, to the extent possible.

NGTL indicated that it and CAEPLA-WPLC had reached a settlement with regard to landowner issues.

With respect to Driftpile Cree Nation's concerns, NGTL argued that the operation of the Project is not expected to result in further effects on human occupancy and resource use since the pipeline would be buried, the RoW would be reclaimed, and NGTL would not limit access to the RoW on Crown land during operations. NGTL also argued that during operation, disturbances would be minor and short-term during infrequent, small scale maintenance activities such as integrity digs and vegetation management (i.e., approximately 10 m over the center line), for which NGTL would submit notifications to the CER. No additional land disturbance is planned following completion of construction activities and no increases in sensory disturbance are expected as a result of operation of the pipeline. Therefore, operation phase effects of the Project on human occupancy and resource use were not assessed further in the ESA.

With respect to concerns raised by Elk Valley Métis Nation, NGTL reiterated that access to the Project footprint may be temporarily affected by construction to mitigate safety concerns, but that where there is no active construction or other identified safety risks (e.g., open trench or excavations). Traditional users would not be restricted from accessing the Project area by NGTL. NGTL stated it would 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.

**Commission analysis and findings**

Based on the scope and scale of the Project as well as the proposed mitigation measures to manage the impacts on human occupancy and resource use, including sensory disturbances, access restrictions and change in land use, the Commission has determined that any potential effects of the Project on human occupancy and resource use would likely occur during construction, and extend to beyond the operations phase, making them short to long-term. The Commission has determined that these potential effects would be reversible

in the long-term, as the pipeline would be buried, and the RoW would be reclaimed. Further, the geographic extent of the effects would be restricted to the RAA, and effects would be low to moderate in magnitude considering NGTL's proposed mitigation, reclamation activities, and post-construction environmental and socio-economic monitoring. When considering all of these elements together, the Commission finds that the potential effects of the Project on human occupancy and resource use, including access to areas for recreational use, are of medium significance. Table 7-1 provides details regarding the Commission's determination of significance of residual Project effects on human occupancy and resource use.

The Commission heard the concerns raised by intervenors regarding potential impacts to lands, including potential economic use, recreational use, general access, and duration of impacts. The Commission finds that these concerns have been or will be adequately addressed by NGTL.

In particular, the Commission agrees with NGTL's submission that there is no evidence on the record to indicate the Project would have any negative impacts to Jacob Adserballe's ecotourism business. Should such adverse impacts materialize, NGTL may be required to compensate Jacob Adserballe pursuant to the CER Act. The Commission is satisfied that the concerns raised by CAEPLA-WPLC have been addressed and resolved bilaterally with NGTL.

The Commission is persuaded by NGTL's argument that operational effects of the Project on human occupancy and resource use would be limited and small in scale, that the RoW would be reclaimed, and that NGTL would not limit access to the RoW on Crown land when no active construction or other identified safety risks are present, nor during operations.

The Commission finds that NGTL's proposal to provide Indigenous peoples with the construction schedule and maps prior to the start of construction is appropriate to mitigate the concerns raised by Elk Valley Métis Nation regarding their continued access to Project lands for the purposes of recreation, fishing, and hunting.

The Commission finds that residual effects from the project are expected to contribute to the cumulative effects on human occupancy and resource use and will likely result in a measurable change in land use pattern and/or access at the RAA scale but would not prevent activities from occurring elsewhere. Given NGTL's proposed mitigation measures noted above, the Commission determines that the Project's contribution to cumulative effects is expected to be negligible.

**Table 7-1: Evaluation of significance of residual effects on human occupancy and resource use**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term to long-term | Effects are generally considered short-term and mainly during construction except, in some situations, effects would be expected to be long-term duration. For example, when related to ground disturbance, restrictions would be required for safety reasons in the permanent RoW or where above-ground facilities are constructed. |
| | **Reversibility** | Reversible | Effects are expected to be reversible, allowing for disturbed areas to recover to pre-construction conditions within the life of the Project. |
| | **Geographic extent** | RAA | Effects are expected to be localized to the RAA. |
| | **Magnitude** | Low to Moderate | Effects from construction and operation of the Project are expected to be of low magnitude after considering NGTL's proposed mitigation, reclamation activities, and post-construction environmental and socio-economic monitoring. Once post-construction reclamation is complete, the Project will make a negligible contribution to cumulative alteration of land use at the RAA scale. |
| **Adverse effect** | Medium significance | | |

## 7.3 Human health

The Filing Manual requires applicants to consider the potential for effects to human health and to summarize how any effects would be mitigated. As the definition of human health includes consideration of mental and social well-being, applicants must also consider any adverse emotional or social stressors potentially resulting from the project.

NGTL stated its human health assessment used the results from the assessment of biophysical VCs. For example, Project construction activities might cause changes to soil capability and water quality and quantity potentially leading to adverse effects on human health. NGTL also stated that Project-related sensory disturbances to nearby residents and land users associated with an increase in temporary population, increased traffic, and construction activities might also have adverse effects on the health of local residents.

NGTL said it would implement mitigation measures to reduce effects on soil capability, water quality and quantity, and sensory disturbance. NGTL also said it would continue ongoing engagement with local residents, businesses, and recreational groups to promote awareness of Project construction activities that would be undertaken, the construction schedule, and who to contact with any concerns. Other proposed mitigation measures include, for example, adherence to NGTL's Health, Safety and Environment Commitment Statement; restricting all construction activities to the approved construction footprint; requiring all construction traffic to

adhere to safety and road closure regulations; and applying reasonable dust control measures on the construction footprint and access roads. NGTL submitted it would discuss any specific disruption or nuisance concerns with community members to ensure appropriate mitigation is implemented to avoid or reduce site-specific effects.

With the implementation of mitigation measures, NGTL argued that construction of the Project is unlikely to alter the health of residents of the LAA. NGTL stated that no interactions with human health are predicted during operation of the Project. NGTL submitted that if they occur, residual effects are predicted to be adverse, low in magnitude, occur as multiple irregular events, be short-term in duration, and are reversible. NGTL stated that although the effects related to sensory disturbance would likely be greater for people living close to the Project, residual effects on human health are predicted to be similarly low for all considered sub-groups in the LAA (i.e., men, women, Indigenous, non-Indigenous).

NGTL concluded that residual Project effects and residual cumulative effects on biophysical VCs that might be linked to changes in human health are not significant. In addition, NGTL stated it is expected that sensory disturbance and nuisance effects can be mitigated such that the Project would not lead to changes in human health conditions and trends. NGTL further concluded that residual Project effects on human health are therefore predicted to be not significant.

**Views of Parties**

***Driftpile Cree Nation***

Driftpile Cree Nation expressed concerns regarding impacts to human health during its Indigenous knowledge session:

> *… all this to mean we have a huge obligation, and our plights with respect to a deeper understanding of how do we move and mitigate through a process that takes Indigenous knowledge seriously, and working along the western science and the western process to make sure that we're protecting, you know, human life, and water, the sacredness of water, which is so important.*
>
> *[…]*
>
> *…And I think, you know, we've got to be very cognizant about the fact that how do we look at projects that are going to protect human interests first to make sure that the human life is going to be sustained through this process….*
> Karl Giroux, Driftpile Cree Nation, Transcript Volume 3 [1177, 1180]

***Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)***

Métis Nation of Alberta stated that the health and well-being of its members are directly tied to cultural identity and submitted that any changes in the ability to access, use and transfer cultural knowledge and skills would affect the health and well-being of its members.

***Piikani Nation***

Piikani Nation stated that the indicators used for NGTL's ESA are irrelevant for the Indigenous communities at risk of being impacted by the Project. Piikani Nation recommended that NGTL use baseline VCs and community well-being and health indicators that are relevant to the Indigenous population that use and/or have rights within the RAA and LAA. Piikani Nation submitted that explicit links need to be made between community, social, and cultural well-being and disturbances to land and water that have direct and indirect effects on the ability to access, use and/or be on the land as these elements and indicators are directly tied to (cultural/individual/familial/community) health and well-being. Piikani Nation recommended that NGTL engage with Piikani Nation to develop an understanding of the interconnected nature of human health risks and social and cultural well-being and submitted that establishing an Indigenous environmental and cultural monitoring program is critical to ensuring the safeguarding of these value components.

***Samson Cree Nation***

Samson Cree Nation identified various impacts of the Project on their rights and territories, including impacts to human health from contaminated meat.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

**Reply of NGTL**

NGTL submitted that the safety and health of TC Energy's employees, contractors and the public, including all Indigenous peoples, is paramount. NGTL agreed that health and social conditions, including perceptions of these conditions and behaviours, can play a strong role in determining the social and cultural well-being within a community. NGTL reiterated that the ESA considered potential Project effects that often influence cultural and physical well-being for Indigenous communities, such as availability and access to traditional resources, sites or areas.

NGTL argued that it does not agree with the recommendations made by Piikani Nation regarding indicators used by NGTL and pointed to NGTL's rationale regarding its socio-economic assessment approach and mitigation measures. Specifically, NGTL explained its baseline data included Statistics Canada Health and Social Indicators; however, these statistics cannot be broken down to solely reflect the Indigenous component of the population. NGTL noted the statistics were provided for the health zones which overlap the LAA/RAA and include both the Indigenous and non-Indigenous population.

In conclusion, NGTL said it remains committed to addressing questions and concerns regarding the Project. Further, it remains commitment to considering additional information brought forward for review and incorporation into Project planning, as appropriate.

**Commission analysis and findings**

The Commission understands that, for human health, NGTL is primarily relying on mitigation measures implemented for biophysical VCs,[35] as described above, as well as those that are tied to other socio-economic VCs such as acoustic environment, human occupancy and resource use and social and cultural well-being. The Commission has considered NGTL's proposed mitigation and finds any potential effects of the Project on human health would likely be limited to the period of construction, making them short-term.

The Commission determines that these potential effects would be reversible in the long-term, given that the disturbed areas could recover to their pre-construction conditions within the life of the Project. Further, the geographical extent of the effects would be restricted primarily to the PDA, and the effects would be low in magnitude considering the short duration of the construction activities, NGTL's proposed mitigation measures, and NGTL's conclusion that there would be no Project-related adverse residual effects on soil capability, water quality and quantity, or sensory disturbances that could have impacts on human health. The Commission finds the potential effects of the Project on human health to be of low significance. Table 7-2 provides details regarding the Commission's determination of significance of residual Project effects on human health.

The Commission put considerable weight on the evidence provided by Indigenous peoples on the interconnected nature of health and community well-being and the ties to cultural identity. The Commission heard from Indigenous peoples that the inability to access and use lands in the Project area could affect their ability to transfer cultural knowledge and skills, resulting in a loss of culture, language, and way of life. The Commission also considered NGTL's proposed mitigation measures, including providing notification on construction schedules and activities, the reclamation of the RoW, and the access provisions described in Section 7.2. For these reasons, the Commission is not persuaded that the Project will have a consequential impact on the ability of Indigenous peoples to use and transfer cultural knowledge and skills.

With regard to the recommendations made by Piikani Nation, specifically on the use of baseline VCs and indicators that are relevant to Indigenous peoples with rights within the RAA and LAA, the Commission is compelled by NGTL's explanation that the health and social indicators used from Statistics Canada cannot be broken down to reflect solely the

[35] Discussed in Chapter 9

Indigenous components of the population, and agrees with NGTL that the provided health zones overlap the LAA/RAA for the Project and do include Indigenous peoples.

With respect to Piikani Nation's recommendation for engagement with NGTL on the interconnected nature of human health risks and social and cultural well-being, and the need for an Indigenous environmental and cultural monitoring program, the Commission is satisfied that Piikani Nation's concerns will be addressed through NGTL's proposed mitigation measures and commitments, and the implementation of **Certificate Condition 11** (Socio-Economic Effects Monitoring Plan), **Certificate Condition 12** (Construction Monitoring Plan for Indigenous peoples), **and Certificate Condition 26** (Post-Construction Monitoring Plan for Indigenous peoples).

The Commission accepts the submissions from many Indigenous people that they rely on, and have a preference for, eating traditional foods, and that development in the Project area has given rise to concerns regarding contamination. The Commission has considered the scope, scale, location and current land uses for the Project, and finds that Project impacts to traditional foods would be minimal. The Commission has also considered both the potential effects of the Project on biophysical resources relied on by Indigenous peoples for Traditional Land and Resource Use, as well as the effects of the Project on those uses, and discusses its analysis and findings in Section 4.2.

The Commission determines that the existing cumulative effects to human health are not likely to be significant along the pipeline corridor and, given NGTL's mitigation measures, the Commission finds that the Project's contribution to cumulative effects for human health is expected to be negligible.

**Table 7-2: Evaluation of significance of residual effects on human health**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term | Effects are generally considered short-term and are likely to occur as multiple irregular events during the construction period. |
| | **Reversibility** | Reversible | Effects are expected to be reversible, allowing for disturbed areas to recover to pre-construction conditions within the life of the Project. |
| | **Geographic extent** | PDA | Effects are expected to be localized to the Project footprint |
| | **Magnitude** | Low | Effects are expected to be low in magnitude in consideration of the short duration of construction activities, NGTL's proposed mitigation measures, and NGTL's conclusion that no significant adverse residual effects are predicted on soil capability, water quality and quantity, or sensory disturbance as a result of Project construction or operation. |
| **Adverse effect** | Low significance | | |

## 7.4 Infrastructure and services

The Filing Manual sets out the expectations for applicants regarding socio-economic impacts caused by the existence of a project. Applicants are expected to identify and consider how project construction and operation activities may affect local or regional infrastructure and services.

In its ESA and EPP, NGTL provided its assessment of potential effects on infrastructure and services and discussed its proposed mitigation measures. NGTL also identified and evaluated the predicted residual and cumulative effects from the Project.

NGTL identified the interactions and potential effects on infrastructure and services resulting from Project construction and operations activities, such as increased demand on transportation infrastructure, accommodations, waste disposal sites, and emergency, health care, and social services. Specifically, NGTL submitted:

- For the Turner Valley Section, NGTL stated there would be an average workforce of 400 workers during the approximately five month-long mainline construction period (July 2023 to November 2023). Peak construction would last for approximately four weeks and require about 600 workers. NGTL submitted that between Okotoks and High River, there are approximately 400 rooms at temporary accommodations and that in Calgary alone, there are more than 14,000 hotel rooms.
- For the Longview Section, NGTL stated that construction would occur between August and November 2023 and would require an average workforce of 300. Construction would peak in September 2023 for one month and would require a peak workforce of 400. Temporary accommodations in High River and Okotoks (400 hotel and motel rooms and approximately 300 campsites) would be used for the Longview Section. Accommodations are also available in other nearby towns and within the city of Calgary.
- For the Lundbreck Section, NGTL stated that construction would occur between July and November 2023 and would require an average workforce of 300. Construction would peak in September with a workforce of 400 for four weeks. Lundbreck Section construction workers would likely use accommodations in High River, Pincher Creek, and Sparwood, which have approximately 500 hotel and motel rooms in total, as well as approximately 130 campsites. Workers may also be accommodated in hotels, motels, and campgrounds in other centres along Highway 3 near the Lundbeck Section, such as Crowsnest Pass, Blairmore, and Bellevue.

Although a temporary camp accommodation was also being considered for the Project, NGTL said that the need for temporary accommodation would be reviewed as Project planning progresses. The camp(s) would be self-contained and would not be connected to municipal infrastructure. The services that would be available at the temporary construction camp(s), such as catering and first-aid, would reduce Project demands on the municipal infrastructure within the LAA, including utilities and health and emergency infrastructure and services.

NGTL submitted that if temporary construction camp(s) would be required for the Project, siting of the construction camps would be based on ease of access to each component and on avoidance of areas with biophysical or socio-economic sensitivities, to the extent practical. NGTL's preference is to select sites previously used for this purpose (i.e., former camps), or to use otherwise disturbed areas. If a location is selected, NGTL would conduct a desktop review

and field studies as necessary, apply any necessary mitigation as detailed in the EPP, and obtain any necessary permits or authorizations prior to construction.

To reduce Project impacts on infrastructure and services, NGTL's proposed mitigation measures include:

- consulting and coordinating with local authorities, service providers, and businesses with respect to worker accommodation;
- coordinating with emergency response services in the area;
- requiring Prime Contractors to develop a Site-Specific Safety Plan that addresses field health services, emergency call-out procedures, fire response plans, and other safety requirements;
- where practical and applicable, using multi-passenger vehicles for the transport of crews to and from job sites; and,
- notifying potentially affected parties of the intended Project schedule before the start of construction to avoid or reduce impacts to their operations or activities.

NGTL indicated that with the application of mitigation measures, including the use of Waste Management and Traffic Management Plans, that infrastructure and services, (including highways, utilities, emergency, and health services), are expected to be capable of absorbing additional demands of the temporary workforce. NGTL further stated that because community services and infrastructure are expected to be sufficient to meet the needs of the local population and the Project, it is unlikely that the Project's workforce would disproportionately affect the availability of community services and infrastructure for any of the considered sub-groups in the LAA (i.e., men, women, Indigenous, non-Indigenous).

Regarding residual effects, NGTL stated that residual effects arising from the Project on infrastructure and services during construction are likely to be adverse, occur as multiple irregular events, would be of low magnitude, short-term in duration and would be reversible. NGTL further submitted that demand for community infrastructure and services are not predicted during operation of the Project, no additional operations staff would be required, and there would be very limited incremental use of infrastructure.

NGTL stated that cumulative effects would affect community services and infrastructure if the Project were to occur at the same time as other projects in the RAA. Additional workers from other projects may place further demands on community services and infrastructure, possibly beyond their capacity. NGTL further stated that projects that are most likely to act cumulatively with infrastructure and services are forestry and coal development within the RAA. NGTL stated that where community infrastructure and services improvements, such as road improvements, housing development in Calgary, High River, Okotoks and Pincher Creek, are made, all projects and users generally benefit. The occurrence of current and future road development within the RAA would most likely have positive effects on transportation infrastructure and services, because they would increase the capacity of local roads and might reduce localized traffic congestion within the RAA.

While the Project overlaps temporally with some of the other planned NGTL developments, NGTL is planning to house its workforce in several communities to ensure there are adequate rooms at commercial accommodations. NGTL submitted that no additional mitigation measures

are proposed for the Project to address potential cumulative effects in regard to infrastructure and services at this time. However, NGTL would 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 concluded that with the implementation of mitigation and other management measures, residual cumulative effects of changes in demand for community infrastructure and services within the three RAA are likely to occur, and are predicted to be adverse, have a low contribution, be short-term in duration, occur as multiple irregular events, and are reversible. NGTL further concluded that the contributions of the Turner Valley, Longview, and Lundbreck Sections to these cumulative effects is predicted to be low because of the planned mitigation, the capacity of the RAA to absorb additional Project-related demands on infrastructure and services, and the short duration of peak Project-related activities.

Overall, 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. NGTL stated residual Project effects and residual cumulative effects on infrastructure and services are therefore predicted to be not significant.

**Views of Parties**

***Livingstone Landowners Group***

Livingstone Landowners Group argued that there are no details regarding the siting of the possible temporary construction workcamp. Livingstone Landowners Group advised there have been reports in local newspapers about various sites being considered, but nothing concrete. Livingstone Landowners Group argued that it is very hard to evaluate a project when you do not know where a workforce of 600 people is going to be located. Livingstone Landowners Group further argued that due to uncertainty about whether a temporary workcamp is even required for the Project, it is difficult to assess what impacts there may be on locals in the area.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations submitted that NGTL's proposed mitigation measures are neither direct nor proportionate to the impacts identified by the Stoney Nakoda Nations. Further, they do not consider specific impacts related to traffic and noise. Stoney Nakoda Nations submitted that traffic would be a localized impact to their members residing on the nearby Eden Valley reserve, as well as members who frequently travel nearby roads while conducting rights-based activities. Stoney Nakoda Nations proposed that NGTL develop, in collaboration with the Nations, a transportation plan which would ensure its members are able to provide input as to a preferred transportation and traffic schedule.

**Reply of NGTL**

NGTL argued the socio-economic assessment considered that the workforce may be accommodated in existing commercial accommodation in nearby communities as well as temporary construction camps. The effects on relevant socio-economic VCs were discussed in the ESA. NGTL subsequently confirmed there would not be a work camp for the Project, rather all workers would be staying in local commercial accommodations.

NGTL indicated it is of the view that a transportation plan specific to Stoney Nakoda Nations is not warranted. The Project would comply with applicable traffic rules and regulations and with NGTL's policies and procedures for traffic management. NGTL further stated no access restrictions to Eden Valley 216 are anticipated as a result of the Project. NGTL advised that its engagement with Stoney Nakoda Nations is ongoing and NGTL remains committed to further exploring any issue, concern or recommendation related to traffic management at the request of Stoney Nakoda Nations.

**Commission analysis and findings**

Given that the Project is spread across multiple locations and would require a relatively small workforce, the Commission finds that any potential effects of the Project on infrastructure and services would likely be limited to the period of construction, making them short-term, and reversible given the temporary nature of the out-of-town workforce. The Commission also determines the geographical extent of the effects would be restricted to the RAA, and would be low in magnitude, given the available capacity of local infrastructure and services, along with NGTL's proposed mitigation measures, and the short construction timeframe. The Commission finds that the potential effects of the Project on infrastructure and services to be of low significance. Table 7-3 provides details regarding the Commission's determination of significance of residual Project effects on infrastructure and services.

The Commission is satisfied that the concerns raised by Livingstone Landowners Group regarding the uncertainty surrounding the use of temporary construction workcamps have been resolved by NGTL's confirmation that construction camp(s) would not be required for the Project. All workers would be staying in local commercial accommodations.

Regarding Stoney Nakoda Nations' concern related to traffic and noise near its Eden Valley reserve, the Commission is persuaded that NGTL's proposed mitigation measures, combined with the implementation of NGTL's Traffic Control Management Plan, would adequately address the potential impacts of the Project on local infrastructure and services. Specifically, the Commission is persuaded that using multi-passenger vehicles, restricting construction activities to the approved construction footprint, adhering to safety and road closure regulations, the consideration of trenchless road crossing methods to avoid road closures and associated traffic disruptions, and notifying potentially affected parties about the construction schedule would help to avoid or reduce any potential impacts.

The Commission is not persuaded that NGTL should create a transportation plan specific to Stoney Nakoda Nations but imposes **Certificate Condition 11**, requiring NGTL to file a Socio-Economic Monitoring Plan. The Commission expects traffic to be included in the Socio-Economic Monitoring Plan. The Commission has also considered NGTL's commitment for ongoing engagement. The Commission is satisfied that these measures would address Stoney Nakoda Nations' concerns related to traffic by the Eden Valley reserve by allowing their input to be heard and incorporated into the Socio-Economic Monitoring Plan, as applicable.

The Commission finds that Project demands are unlikely to exceed the available capacity of community infrastructure and services or impact the quality of local services. Given NGTL's proposed mitigation measures and commitment to notify local communities and service providers on the Project's schedule, the Commission determines that the cumulative effects

to infrastructure and services are not likely to be significant along the pipeline corridor and the Project's contribution to cumulative effects is expected to be negligible.

**Table 7-3: Evaluation of significance of residual effects on infrastructure and services**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term | Effects are generally considered short-term and are likely to occur as multiple irregular events during the construction period. Since no additional staff would be required during operations, changes in demand for community infrastructure and services are not predicted during operation of the Project. |
| | **Reversibility** | Reversible | Effects are expected to be reversible. |
| | **Geographic extent** | RAA | Effects are expected to be localized to the Project footprint and the RAA. |
| | **Magnitude** | Low | Effects from construction and operation of the Project are expected to be of low magnitude given the available capacity of local infrastructure and services, such as police and emergency services and utilities, along with NGTL's proposed mitigation measures and the short construction timeframe, infrastructure and services, including highways, utilities, emergency, and health services, are expected to be capable of absorbing additional demands of the temporary workforce. |
| **Adverse effect** | Low significance | | |

## 7.5 Social and cultural well-being

The effects of a project can impact people in different ways based on a variety of identity, social and economic factors and could include 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.

NGTL submitted that changes to social and cultural well-being may be impacted by Project-related population growth, which has the potential to change the demographics of nearby communities. Workers may interact with local communities, which has the potential to disrupt the social and cultural setting.

NGTL stated that social and cultural well-being can differ across stakeholders and is influenced by a number of factors, such as social and community networks, employment status and work environment, and access to health care and other infrastructure and services. NGTL further stated that gender was selected as an identity factor for evaluation because there might be gender-based differences in the effects of the construction workforce using accommodations in or near local communities. Additionally, Indigeneity was selected as an identity factor because Indigenous people might experience Project effects differently compared with other sub-groups of the population.

For social and cultural well-being, NGTL said that it would notify potentially affected landowners, lessees, and nearby residents of the intended Project schedule before the start of construction to avoid or reduce impacts to their operations or activities. NGTL advised it would implement the Traffic Control Management Plan and adhere to TransCanada's Alcohol and Drug Policy. NGTL also said it would provide all workers with orientation and information materials regarding environmental, health and safety expectations as well as cultural awareness and sensitivity. Project employees and contractors would adhere to TC Energy's policies and procedures on safety, responsibility, integrity, diversity, inclusion and fair employment to foster the well-being of workers and nearby communities. NGTL concluded that due to the relatively small size and temporary nature of the workforce and the adequacy of local infrastructure and services, it is unlikely that the Project's workforce and activities would disproportionately affect the social and cultural well-being for sub-groups of the population (e.g., men, women, Indigenous people, non-Indigenous people). Table 7-4 summarizes NGTL's estimated construction workforce and construction timing for the Project.

**Table 7-4: Estimated construction workforce and construction timing**

| Project component | Approximate average and peak construction workforce | Estimated construction timing |
|---|---|---|
| Turner Valley Section | 400 workers – average<br>600 workers – peak | July 2023 to November 2023 |
| Longview Section | 300 workers – average<br>400 workers – peak | August 2023 to November 2023 |
| Lundbreck Section | 300 workers – average<br>400 workers – peak | August 2023 to November 2023 |
| *Peak construction for all three Sections is expected to be in September 2023 and would last for approximately four weeks. | | |

NGTL stated it anticipates that a percentage of the Project's workforce would be hired from local communities. The number of non-local construction workers for the Project would be moderated by measures to maximize local and Indigenous hiring from within the LAA, as a first priority, and elsewhere in Alberta and BC as a second priority.

NGTL indicated that while the demographic breakdown of the construction-related workforce in LAA communities is predominantly male and non-Indigenous, NGTL requires the Prime/General Contractors to adhere to TC Energy's Equal Employment Opportunity and Non-Discrimination Policy, which requires contractors to provide equal employment opportunities and select a workforce based on qualifications, skills, and experience. The Supplier Diversity and Local Participation Policy further establishes NGTL's commitment to work with diverse individuals and businesses to support the involvement of diverse groups on the Project.

NGTL said it would implement mitigation measures to reduce disruption to community life by temporary workers and Project activities. NGTL and its contractors would establish and enforce

clear guidelines for behaviour. NGTL stated it is committed to ongoing workforce education as a primary means of promoting safety and wellness of the Project workforce and local communities. Project employees and contractors would be trained on Harassment-Free Workplace and Non-Discrimination policies and Indigenous Awareness to effectively address and mitigate potential effects to groups and sub-groups of the population. NGTL submitted that worker conduct, community sensitivities, health, wellness and other best practices would be regularly promoted and reinforced to ensure risks are front-of-mind. During construction activities, opportunities for discussion of safety and wellness would be provided at worker orientation, tailgate safety meetings, and safety orientations.

NGTL argued that in terms of economic contributions to social and cultural well-being, the effect on local economic activity is predicted to be positive. Economic activity from employment, and Project expenditures on local and Indigenous businesses are expected to have positive effects during the construction period. In addition, NGTL said 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. NGTL stated that, as a result of these positive economic effects and the implementation of Project mitigation, effects on social and cultural well-being are anticipated to be neutral.

NGTL advised that cumulative effects on social and cultural well-being were screened out for further assessment because the Project is predicted to have a neutral effect on the social and cultural well-being of residents of the RAA.

NGTL stated it would conduct ongoing engagement with Indigenous peoples and consultation with non-Indigenous communities to proactively identify and address issues or concerns.

NGTL stated that if it is determined that temporary construction camps are required for the Project, it anticipates that there would be limited potential effects from temporary construction camps on social and cultural well-being, including on diverse groups of people within the LAA. NGTL argued that this is given the relatively small size of the construction workforce relative to the population, and because the scope of services at a temporary construction camp would reduce the demand for basic services outside of the temporary construction camp. NGTL also argued the temporary construction camp(s) would operate for a short duration; crews would be transported to site primarily by multi-passenger vehicles; and there would be limited opportunity for additional pursuits outside of the work camp(s).

**Views of Parties**

A number of Indigenous peoples identified concerns regarding the potential Project impacts on social and cultural well-being, specifically including the ability to share and pass on Indigenous knowledge and culture. Other concerns identified by Indigenous peoples included the temporary increase in population; possible need for a temporary construction camp; limited/reduced access to lands; and, that cumulative effects have not been thoroughly considered.

***Foothills Ojibway First Nation***

During final argument, Foothills Ojibway First Nation recommended a cultural environmental impact assessment for the Project and all projects regulated by the CER, which would include assessing cultural, spiritual, and environmental impacts, not just Traditional Knowledge site visits or Traditional Land Use studies. Foothills Ojibway First Nation stated these kinds of

assessments would ensure the protection of sites of educational, ceremonial, and cultural importance to Indigenous communities.

### *Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)*

The Métis Nation of Alberta submitted that the preservation of cultural heritage and cultural practices is a priority for the Métis. The communities would like NGTL to work with them to identify opportunities to provide funding or support for the preservation of cultural practices.

The Métis Nation of Alberta submitted they are concerned that the social and cultural effects of industrial camps are not effectively considered by NGTL. They stated that Indigenous communities, particularly women and children, are the most vulnerable and at risk of experiencing the negative effects of industrial camps. The model of the temporary industrial camp requires a mobile workforce that is disconnected from the region, and this reinforces and recreates historical patterns of violence against Indigenous women. The Métis Nation of Alberta acknowledge these are hard topics to cover but that they would have effects on vulnerable populations that are currently not planned for.

### *Piikani Nation*

Piikani Nation stated that the ESA does an inadequate job of assessing social and cultural well-being from an Indigenous perspective. The ESA does not look at how the cumulative impacts of land and water disturbance from these projects affects Indigenous community members' social and cultural well-being. The focus is only on how the temporary workforce may put pressure on local services and infrastructure. Piikani Nation recommended that the ESA assess changes to social and cultural well-being through a more demographically inclusive lens; one that includes the Indigenous population in the Project's ESA study area and takes into account the Project's contribution to regional cumulative impacts on the environment and cultural well-being. Effect pathways and measurable parameters need to factor in how increased land and water disturbance, along with an increase in barriers to accessing traditional lands from these projects, affect Indigenous community members' social and cultural well-being as connections to the land are further fragmented. When this connection is severed, so too is the collective well-being of community members that depend on it for health and cultural sustainability.

Piikani Nation submitted that NGTL's proposed mitigations do not adequately address the various potential issues associated with a worker camp, including that the workers could interact with Piikani Nation's Traditional Territories and its community members. Piikani Nation requested that there be more fulsome, regional, and culture-specific intercultural training that takes place for workers prior to establishing themselves for work in Piikani Traditional Territories.

Piikani Nation proposed a number of recommendations regarding social and cultural well-being, including that NGTL include socio-economic and socio-cultural mitigation, monitoring, and management measures that address social and cultural well-being effect pathways and indicators. NGTL should also include an acknowledgement and consideration of the interdependent nature between biophysical, ecological health and well-being, and cultural health and well-being - the biocultural aspects of health and well-being.

During their Indigenous knowledge session, Piikani Nation indicated that over the past 10-15 years they have been reconnecting with their culture and the land and expressed that projects such as this one would affect their culture, spirituality, and identity:

> *Over the years, western world was dominating. Past 10 years now, 15 years, Piikani has been getting strong in their culture, bringing it back, living it, looking at how we ran our world, the protocols that go with all these things that we believe in. These are the things that are coming back to the young people, not just in Piikani, but in the Blackfoot territory.*
> Elder Terry Joe Small Legs, Piikani Nation, Transcript Volume 1 [144]

> *Anyway, I really go back and commend our people who are going and reconnecting back to our land. That is probably my main message that I wanted to share with you. It's really important right now. It is really important for our children that we have today. It builds that identity.*
> Elder Shirlee Crow Shoe, Piikani Nation, Transcript Volume 1 [220]

> *… I'm not just speaking out because there's one area of the line. It's through all these lines that are coming through this territory -- how it affects us culturally, how it takes our spirituality away when it affects us, and how we need to stay positive as individuals to conquer these feelings that are being taken away from us. Because they're not only taking away from us; they're taking away from our children, our future.*
> Kyle Plain Eagle, Piikani Nation, Transcript Volume 1 [255]

***Samson Cree Nation***

Samson Cree Nation summarized the impacts to its cultural continuity as including restricted access to traditional territory, reduction in harvestable resources, restricted ability for members to transmit knowledge and skills to younger generations, visual and auditory disturbances leading to detachment from the land, and a reduction in ceremonial land use due to land impacts. Samson Cree submitted that cultural continuity relies on the availability of accessible and undisturbed land where members are able to experience peaceful enjoyment and maintain a sense of place within their territory, as well as an abundance of resources. Samson Cree further submitted that integral components of its cultural continuity include a sense of place, knowledge transmission, camping, travel in and through the territory, and ceremonial and spiritual practices such as sundances, powwows, and fasting, among other activities. Samson Cree stated that disruption to any of these factors have the potential to negatively impact its tangible and intangible cultural values.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations submitted they possess a deep historical and cultural connection to the lands and resources of Îyãħé Nakoda Makochi which includes the lands intersected by the Project. Stoney Nakoda Nations further submitted the foundations of their cultural security and identity are tied to the Îyãħé Nakoda Makochi and its the lands, waters, wildlife, resources, and Stoney Nakoda Nation ancestors. Stoney Nakoda Nations also submitted that their data indicates that members will avoid areas for cultural and sacred ceremonies and practices in areas where preferred conditions no longer exist or are greatly diminished.

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

Stoney Nakoda Nations expressed concern and fear of women disappearing and asked NGTL whether it had considered and assessed potential Project effects in relation to Indigenous women and girls in the RAA.

**Reply of NGTL**

NGTL acknowledged that a number of intervenors raised concerns about the potential for a temporary workforce used during construction to disrupt community life. NGTL submitted that potential effects in this regard were considered in the ESA for the Project and for which NGTL developed mitigation measures. NGTL confirmed in its reply argument that a work camp would not be required for the Project.

NGTL stated the ESA acknowledges that change in access to traditional resources or areas for current use could be adversely affected through the loss or alteration of trails and travel ways, or restrictions on the ability to travel to and through current use areas in proximity to the Project. However, NGTL concluded that change in access would be short-term during construction, limited to the LAA, and reversible following clean-up and reclamation. NGTL stated that no changes in access to traditional resources or areas are expected during normal operations.

NGTL noted that Project Contractors are required to develop a construction orientation for all personnel to ensure safe and respectful conduct in all work. These orientations cover topics including safety, environment, and cultural awareness. NGTL stated it contributes to the development of the construction orientation and would ensure the requisite cultural sensitivity component is included so that all personnel working on the Project are informed about Indigenous culture and heritage resources.

NGTL confirmed that the assessment of effects on socio-economic VCs considered whether the effects may be experienced differently for specific population sub-groups (Indigenous, non-Indigenous, male, female).

In response to submissions filed by Driftpile Cree Nation, Elk Valley Métis Nation, Métis Nation of Alberta, Piikani Nation, Samson Cree Nation, and Stoney Nakoda Nations asserting that NGTL's socio-economic assessment for the Project with respect to Indigenous peoples and persons was inadequate, NGTL provided an overview of the socio-economic assessment for the Project, including mitigation and monitoring measures already outlined above.

**Commission analysis and findings**

Given the scope and scale of the Project, and the relatively small size and temporary nature of the workforce, the Commission finds that the effects of the Project on social and cultural well-being would likely be neutral (e.g., positive effects from employment and project expenditures on local and Indigenous businesses, combined with potential negative effects from a temporary workforce in local communities). As a result, the Commission does not consider it necessary to evaluate the extent to which these effects are significant.

With respect to the concerns raised regarding the importance of culture and its preservation, including issues related to access to lands, the Commission reiterates its findings discussed in Section 7.3 (Human Health).

With respect to Foothills Ojibway First Nations' recommendation for a cultural environmental impact assessment for the Project, the Commission is satisfied that concerns regarding the protection of site of educational, ceremonial, and cultural importance will be addressed through NGTL's proposed mitigation measures and commitments. The implementation of **Certificate Condition 11** (Socio-Economic Effects Monitoring Plan), **Certificate Condition 12** (Construction Monitoring Plan for Indigenous peoples), and **Certificate Condition 26** (Post-Construction Monitoring Plan for Indigenous peoples) will further mitigate any potential negative impacts.

As explained in Section 7.4, the Commission is satisfied that the concerns regarding the use of temporary construction camp(s) are resolved by NGTL's confirmation that all workers would be staying in local commercial accommodations. In the event that any temporary construction camps are required for the Project, NGTL must provide detailed information regarding the camps and a summary of NGTL's engagement activities with the relevant municipalities, regional authorities, and all potentially affected stakeholders and Indigenous peoples. This detailed information must include a description of how any issues and concerns identified are addressed in the EPP. To confirm that the Commission is aware of NGTL's final plans, the Commission imposes **Certificate Condition 18** requiring NGTL to confirm, at least 30 days prior to commencing construction, whether temporary construction camp(s) are needed for the Project.

Regarding the concerns raised by Indigenous peoples around potential negative impacts related to the Project's temporary workforce, including impacts to women and children, the Commission is persuaded that NGTL's proposed mitigation measures and commitments are adequate and will create awareness and sensitivities among NGTL's employees regarding their actions outside of the jobsite. These mitigation measures will also result in consequences for any actions that do not align with NGTL's established policies and management approaches. Specifically, the Commission put weight on NGTL's commitment to ongoing workforce education, and its commitment to contribute to the development of the construction orientation for all personnel regarding safety, respectful conduct, and environmental and cultural awareness, including Indigenous culture and heritage resources. The Commission finds that NGTL's statement that it considers and incorporates available knowledge and input provided by Indigenous peoples into these orientation materials, combined with the implementation of **Certificate Condition 11** (Socio-Economic Effects Monitoring Plan) will minimize any potential negative impacts to social and cultural well-being.

The Commission considered the evidence provided by Indigenous peoples asserting the inadequacy of NGTL's socio-economic assessment and mitigation regarding worker accommodations. The Commission also considered the evidence provided by NGTL on the matter. After weighing the evidence, the Commission finds that NGTL's socio-economic assessment for the Project and proposed mitigation related to worker accommodations are adequate for the scope and scale of the Project and would sufficiently capture and help reduce the potential impacts to the social and cultural well-being of parties within the RAA, including Indigenous peoples. The Commission further finds NGTL's commitment to continued engagement with Indigenous peoples regarding potential issues and concerns will help reduce the potential impacts further.

The Commission recognizes that adverse effects of a project, as well as project benefits, can impact people in different ways depending on a variety of identity factors, such as sex, gender, age, culture, Indigeneity, and ability. GBA+ can help to consider such differences. Based on the circumstances of the Project and the information provided during the hearing process, the Commission is satisfied that NGTL has provided sufficient information regarding GBA+ for the Project.

## 7.6 Employment and economy

The Filing Manual requires applicants to file a description of the local and regional employment situation in the study area, including the ability of local and Indigenous residents and businesses to provide labour, service, equipment, supplies and other contracting needs during construction, operation, and maintenance of the project. The Filing Manual further requires a description of plans and training programs to encourage employment, procurement and contracting opportunities for local residents, businesses, and Indigenous peoples.

NGTL argued that the Project would result in considerable benefits to the local, provincial and federal economies, as benefits would accrue both from Project spending and employment, and by providing necessary transport of an essential commodity. NGTL stated the Project may generate employment opportunities, business opportunities, and revenue for government. Direct, indirect, and induced economic effects were estimated for the Turner Valley, Longview, and Lundbreck Sections through a custom run of Statistics Canada's Interprovincial Input/output model. Direct, indirect, and induced economic effects are defined by:

- direct effects result from labour, materials and services demand from NGTL and its contractors during Project construction (e.g., construction labour, project management)
- indirect effects result from contractor spending on goods and services (e.g., employment with suppliers/manufacturers of materials used during construction)
- induced effects result from spending by direct and indirect workers on consumer goods and services (e.g., restaurant servers, retail positions)

NGTL indicated that it expects that Project construction would result in residual positive effects on employment, Alberta's Gross Domestic Product (**GDP**), government revenue, and business opportunities within the Turner Valley Section LAA, Longview Section LAA, and Lundbreck Section LAA. Table 7-5 summarizes NGTL's estimated construction employment and labour income for the Project.

**Table 7-5: Estimated construction employment and labour income**

| Effect | Turner Valley Section | | | Longview Section | | | Lundbreck Section | | |
|---|---|---|---|---|---|---|---|---|---|
| | Alberta | Other parts of Canada | Total | Alberta | Other parts of Canada | Total | Alberta | Other parts of Canada | Total |
| **Employment (full time equivalents*)** | | | | | | | | | |
| Direct** | 375 | 0 | **375** | 168 | 0 | **168** | 193 | 0 | **193** |
| Indirect | 240 | 156 | **396** | 90 | 58 | **148** | 95 | 62 | **156** |
| Induced | 123 | 85 | **207** | 45 | 31 | **76** | 50 | 34 | **84** |
| **Total** | **831** | **241** | **978** | **303** | **89** | **392** | **339** | **96** | **434** |
| **Labour income ($ millions)** | | | | | | | | | |
| Direct** | 35 | 0 | **35** | 13 | 0 | **13** | 15 | 0 | **15** |
| Indirect | 22 | 12 | **35** | 8 | 5 | **13** | 9 | 5 | **14** |
| Induced | 9 | 6 | **14** | 3 | 2 | **5** | 4 | 2 | **6** |
| **Total** | **66** | **18** | **84** | **24** | **7** | **31** | **27** | **7** | **34** |

*Defined as the number of hours worked by one individual on a full-time basis. Full time equivalents are used to describe the total hours worked by several part-time employees (e.g., contract, seasonal, fulltime) into the hours worked by full-time employees.

**Direct labour estimates have been adjusted from those taken from the Statistics Canada Interprovincial Input/output model run by controlling for average 2019 costs of labour for Alberta oil and gas industry workers. The model estimates labour based on 2015 labour costs (modelled to be $76,325/FTE).

NGTL's economic analysis estimated that the Project represents direct and indirect employment of about 1,161 full-time jobs during construction in Alberta. NGTL noted that no new full-time operating positions are anticipated to be necessary as a result of the Project and that operating staff requirements would be drawn from existing regional resources. NGTL stated that the construction would require personnel with various skills, ranging from entry level-labourers to highly skilled trades, and include inspection and project management staff. NGTL further stated that the Project intends to utilize qualified local labour where feasible, and that the demand for personnel and equipment would provide contracting and employment opportunities for qualified local and Indigenous businesses and individuals.

NGTL noted that depending on the availability and capacity of qualified construction contractors, up to four Prime Contractors could be retained for Project construction. NGTL stated it would award separate contracts for portions of the Project work outside the scope of the Prime Contractor construction contracts, such as construction surveying, inspection, and non-destructive examination.

NGTL indicated the degree to which residents of the LAA secure employment with the Project is dependent on several factors not limited to the extent the local labour force has the skills, education, and experience necessary to meet employment requirements, but also the extent to which local workers wish to participate in the Project, and the extent to which unionized labour is used by contractors (unionized contractors may draw on labour from other parts of the province and country). NGTL also indicated it is likely that, based on the description of existing labour force conditions, benefits of the Project, such as employment, may not be equitably distributed across the LAA and sub-groups (i.e., men, women, Indigenous, non-Indigenous).

Recognizing that the Indigenous population represents less than 11 per cent of each LAA labour force and accounts for less than 15 per cent of each LAA population with an apprenticeship or trades certificate or diploma, NGTL submitted that it is likely that the Project would employ more non-Indigenous than Indigenous persons. NGTL submitted that it is also possible that the Project could employ more males than females because most jobs associated with the Project would be in trades and construction, which are occupations and industries that have disproportionately high employment among males. NGTL and its employees and contractors adhere to TC Energy's policies and procedures that encourage safety, responsibility, integrity, diversity, inclusion, and fair employment to foster the well-being of NGTL's workers and nearby communities.

Regarding employment equity, NGTL stated it requires the Prime/General Contractors to adhere to NGTL's Equal Employment Opportunity and Non-Discrimination Policy which requires contractors to provide equal employment opportunities and select a workforce based on qualifications, skills and experience. NGTL also stated its employees and contractors would adhere to the following operating policies and procedures:

- Indigenous Relations Policy
- Supplier Diversity and Local Participation Policy
- Harassment Free Workplace Policy
- Disability Management Program

NGTL said it would outline expectations in contracts with Prime contractors to hire qualified and competitive contractors and employees. Expectations regarding local and Indigenous participation are reviewed and communicated at the Prime contractor pre- and post-award meetings. Prime contractors are required to report regularly on their performance relating to Indigenous contracting and employment. Sub-contractors are selected based on an assessment of best total value, including their qualifications, capacity, capability, safety performance, availability and price.

NGTL advised it has planned mitigations and enhancement measures to encourage Indigenous employment and that its Indigenous Business Engagement team would support the selected Prime Contractor (and Unions – if appropriate) in engaging with interested Indigenous peoples to provide information on how they may participate in Project employment opportunities. NGTL's

Indigenous Relations Business Engagement activities for the Project were established to increase the participation of those Indigenous peoples potentially affected by the Project. Business engagement activities seek to provide business opportunities for participation arising from Project-related activities to qualified Indigenous contractors, suppliers, and individuals and are designed to:

- Assess local Indigenous peoples and business capacity and capabilities for contracting and employment opportunities.
- Identify contracting and employment opportunities for Indigenous peoples and businesses through the Project's contractors and subcontractors or through contracts with NGTL.
- Provide Project Contractors with information respecting the capabilities and capacity of Indigenous peoples and businesses for inclusion in subcontracts and employment opportunities.
- Inform Project Contractors of services (sub-contracts) that are designated to be executed by qualified Indigenous Suppliers Only and those that are to be targeted for qualified Indigenous Supplier inclusion.
- Enhance capacity of Indigenous businesses and individuals to participate in the Project including education and training.
- Monitor, report and audit performance of contractor Indigenous participation plans developed and implemented by Project Contractors.

In addition, NGTL stated that it engages with Indigenous communities potentially impacted by the Project to identify their education and training priorities and provide funding and other support. NGTL stated it also supports training initiatives that would facilitate greater Indigenous participation on the Project, and in NGTL's activities more broadly. Corporate initiatives, such as TC Energy's Community Scholarship Program and the Summer Student Program, provide additional education and employment opportunities for Indigenous students.

NGTL highlighted that its education, training and community legacy programs outline its commitment to working with Indigenous peoples to identify opportunities for capacity development. As part of NGTL's ongoing broader corporate engagement program, NGTL would work with Indigenous peoples through their human resource coordinators, economic development and education officers, or other designated responsible representatives, to support the group's immediate and/or long-term training needs, thereby ensuring any support and/or associated programs are fit-for-purpose. NGTL stated it works closely with Indigenous peoples through these programs, to seek an understanding of the community-led priorities and initiatives of Indigenous peoples that focus on safety, community, environment, and education.

NGTL stated that mitigation and enhancement measures, such as encouraging the participation of local and Indigenous workers and businesses in the construction of the Project, would be implemented during construction of the Project to avoid or reduce the potential adverse effects on employment and economy and to enhance the beneficial effects. In terms of economic contributions to social and cultural well-being, the effect from local economic activity is predicted to be positive. NGTL noted that economic activity from employment, and Project expenditures on local and Indigenous businesses are expected to provide positive effects during the construction period.

With the implementation of mitigation and enhancement measures targeted at increasing beneficial effects of the Project, NGTL submitted that residual effects on employment and economy associated with construction of the Project are predicted to be positive in direction. NGTL concluded that cumulative effects related to changes in employment and economy do not require further assessment because employment and business opportunities resulting from the Project would have an overall positive effect in the RAA.

**Views of Parties**

Indigenous peoples identified a desire for economic opportunities for their communities and noted concerns regarding their ability to benefit economically from the Project, in the form of jobs, training, revenue for local businesses, or otherwise. Many Indigenous peoples, including Driftpile Cree Nation, Elk Valley Métis Nation, Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), Piikani Nation, Stoney Nakoda Nations, also indicated concern with lack of specifics or concrete agreements regarding potential benefits or employment opportunities for their communities.

A number of Indigenous peoples stated they would like to see NGTL set targets or quotas for Indigenous employment and contracting, including Driftpile Cree Nation, Elk Valley Métis Nation, Louis Bull Tribe[36], Métis Nation of Alberta ((in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), and Piikani Nation.

As detailed and addressed in Section 5.2 (Human Occupancy and Resource Use), one landowner, Jacob Adserballe, also expressed concern about the potential economic impact on the ability to use their land for ecotourism.

***Piikani Nation***

Piikani Nation submitted to the CER Crown Consultation Team that NGTL does not have an adequate understanding of the socio-economic needs and capabilities of Piikani Nation with which to inform a baseline socio-economic assessment or appropriate impact benefit agreements to secure employment, contracting service agreements, training, and/or business partnerships. Piikani Nation further submitted that, as a result, potential economic opportunities that they are interested in may be diminished or completely overlooked. During their Indigenous knowledge session, Piikani Nation members stated they were interested in employment as well as ‘a percentage’. They also stated they would like to work collaboratively as a team with NGTL.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations stated it would like to see a socio-economic study specific to employment of Indigenous people conducted before construction and post-construction on a nation-specific level to determine what kind of employment benefit, if any, an impacted nation experiences during construction of the Project.

Stoney Nakoda Nations submitted that NGTL has had operating projects within Stoney Nakoda Nations’ traditional territory since approximately the 1950s and that since this time, Stoney

[36] As identified in the Crown Submission (C16160-1)

Nakoda Nations has not seen evidence of NGTL providing education and training services as described in the Crown Report.

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

**Reply of NGTL**

In its reply, NGTL noted that a number of Indigenous intervenors raised concerns or requests relating to opportunities for economic benefits, training, and participation in the Project. NGTL noted further that the concerns and requests were general in some instances and more specific in others. As such, NGTL stated it would continue to engage with potentially affected Indigenous peoples and those intervenors who have expressed concerns or requests for such participation, to better understand their specific interests relative to the scope and scale of the Project. NGTL stated this engagement would be guided by the considerations of training, education, employment, and contracting as detailed within NGTL's Indigenous Engagement Program and with a view to developing a suite of participation measures that are appropriate for the Project.

Through its Indigenous Relations Business Engagement activities, NGTL submitted that it would seek to maximize opportunities for Indigenous businesses and individuals to benefit from the construction contracts and jobs that would be required for the Project. NGTL stated that based on its experience with past projects, Indigenous businesses generally represent 8 to 12 per cent of the total construction contract values for projects in Alberta and Indigenous people typically make up approximately 8 to 10 per cent of the total construction workforce.

Given NGTL's continual improvement in this area, NGTL argued it is reasonable to expect that NGTL would achieve similar, if not greater, levels of benefits for this Project. Further, beyond the scope of the Project, TC Energy provides financial and other support to many programs and initiatives within Indigenous communities located in the areas in which NGTL operates, including the Project area. NGTL argued that in addition to TC Energy's education and training programs, as well as its community-led initiatives, NGTL, through its Indigenous Relations Business Engagement initiative, has taken and would continue to take reasonable steps to increase opportunities for Indigenous businesses and individuals to benefit from the construction contracts and jobs required for the Project.

NGTL stated it requires the Prime Contractor(s) to complete an Indigenous Participation Plan that outlines designated and targeted services for Indigenous inclusion. NGTL stated these services are based on the known current business capacity of the Indigenous communities in the affected area and the Indigenous Participation Plan is intended to be flexible during the request for proposal process to offer other services in the future as Indigenous communities' capacity grows.

NGTL argued that with respect to targets or quotas for Indigenous employment and contracting, imposing those types of measures would not be helpful or appropriate. NGTL stated it cannot guarantee the results from any competitive sourcing process and the results from any such process are directly dependent on the level of interest and capacity from participating Indigenous peoples. NGTL argued it cannot reasonably predict these outcomes in advance. NGTL also argued that while fixed targets or benchmarks may seem desirable to some parties, they risk unintended consequences – either in setting the targets or benchmarks too low or too high.

Rather than setting arbitrary targets or quotas, NGTL submitted that the appropriate approach should instead be to strive to maximize economic opportunities for local Indigenous peoples to participate in employment and contracting for the Project. This should be based on the specific circumstances of the Project and building on the experiences and learnings from past NGTL projects. Where capacity among Indigenous businesses exists, NGTL would identify contracting opportunities best suited for competitive sourcing events to Indigenous businesses only. In addition, NGTL stated it would work with each interested Indigenous community to determine the available and qualified workforce that is suited for employment opportunities on the Project.

NGTL stated that the majority of the opportunities for Indigenous-owned entities to participate in the Project are through subcontracting opportunities under the management of the Prime Contractor(s), with specific Indigenous subcontracting opportunities identified in the Prime Contractor's Indigenous Participation Plan that is reviewed by NGTL's Indigenous Relations Business Engagement team. NGTL also stated that until the Prime Contractor(s) are identified, NGTL cannot accurately estimate the percentage of local and Indigenous-owned entities that would be contracted in all aspects of the Project. NGTL noted that sub-contractors are selected based on an assessment of best total value, including their qualifications, capacity, safety performance, availability, and price.

To maintain an updated understanding of business capacity and capabilities, NGTL stated it engages with Indigenous peoples local to the Project on an ongoing basis to collect and validate information. Indigenous peoples and businesses that show an interest in contracting opportunities are also directed to TC Energy's online vendor registration portal to submit business information. NGTL stated the information received is captured in TC Energy's Indigenous Business Directory and is shared, on consent, with Prime Contractor(s) for consideration of contracting and employment opportunities.

Regarding the provision of education and training services specific to Stoney Nakoda Nations, NGTL stated that examples of support and contributions to Stoney Nakoda Nations-led investment initiatives in 2020 and 2021, include: a donation for COVID-19 relief in the form of financial aid and a monetary donation specifically for Stoney Nakoda Nations to lease a security trailer; funding to support the Eden Valley Club; funding to support Stoney Nakoda Nations' Christmas events and dinner; funding for the Iyahre and Bearspaw Food Banks; an in-kind donation of laptops and associated computer software; financial aid for Stoney Tribal Association Staff Training; and, support for a workplace essential skills training program.

**Commission analysis and findings**

Based on NGTL's evidence highlighting the potential benefits that Project construction could have on employment, Alberta's GDP, government revenue across multiple levels, business and contacting opportunities, and an increase to the transport and availability of an essential commodity, the Commission finds that the Project would likely create economic benefits and

opportunities for local communities, Indigenous peoples, governments, customers, as well as NGTL's employees and contractors. The Commission also finds that the net socio-economic benefits related to the construction phase of the Project, through both direct and indirect employment, procurement, and contracting opportunities, would likely benefit local communities as well as workers from elsewhere in Alberta and other parts of Canada. The Commission is encouraged by NGTL's commitment to utilize qualified local labour where feasible. The Commission finds that the potential net effects of the Project on employment and the economy would likely be positive; as a result, the Commission did not evaluate the extent to which these effects are significant.

The Commission further finds that the Project would result in opportunities for increased employment for Indigenous peoples and contracts for Indigenous-owned businesses. The Commission is compelled by NGTL's commitment that qualified and competitive Indigenous peoples and businesses will be considered for material and services subcontracts. The Commission is satisfied by NGTL's commitments to work with interested Indigenous peoples to identify opportunities for education and training initiatives.

The Commission heard concerns raised by Indigenous peoples regarding the actual benefits that may flow from the Project to Indigenous peoples. While NGTL indicated it did not intend to set fixed targets or benchmarks for employment or contracting of Indigenous peoples and/or their businesses, NGTL has provided other evidence to support its plans to extend employment and contracting opportunities to potentially affected Indigenous peoples. For example, NGTL sets obligations for its Prime Contractors to ensure they fulfill the commitments made in their proposals and Indigenous Participation Plans. Additionally, NGTL's Indigenous Business Engagement team would support the Prime Contractors in engaging with interested Indigenous peoples to provide information on how they may participate in Project employment opportunities. Given this evidence , along with NGTL's statement that it actively monitors its Prime Contractors' implementation of its subcontracting, employment, and training commitments, the Commission finds that imposing targets or quotas for employment and contracting would not be an appropriate mechanism, in this case, and would not necessarily result in increased opportunities for Indigenous peoples.

The Commission is not persuaded by NGTL's statement that the Project will achieve greater levels of economic benefits in comparison to past projects, as only time will tell what level of economic benefits are achieved. Given this, the Commission cannot conclusively determine the magnitude of the benefits this Project may result in for Indigenous peoples, nor can it determine which specific Indigenous peoples will benefit and how that benefit might accrue to them. However, based on the reasons stated in the paragraph above, the Commission is satisfied that NGTL has demonstrated that the Project will likely provide some benefits for certain Indigenous peoples through employment and contracting opportunities.

The Commission believes in the importance of ensuring that proponents make available the opportunities proffered in project applications, in a timely, transparent, and clear manner, so that Indigenous peoples can choose to participate in those processes with a view to realizing those benefits, providing opportunities for self-determination and economic participation. The Commission encourages any Indigenous peoples with an interest in participating in employment, contracting, and training opportunities for the Project to continue to work with NGTL so that it can meet the specific needs, capabilities, and interests of each community.

The CER has a broad public interest mandate and seeks to increase the transparency of programs and commitments aimed at providing opportunities for Indigenous peoples to realize the benefits proffered in evidence by proponents in applications for projects before the Commission. This approach includes reporting on training, employment, contracting, and procurement for the Project which includes information on employment of Indigenous peoples as well as local and regional employment and business opportunities. In response to this reporting requirement, the Commission imposes **Certificate Condition 10** which will provide publicly available information on NGTL's efforts to provide training employment and contracting opportunities to Indigenous peoples that may be affected by the Project. The Commission also finds it necessary to require NGTL to report on the implementation of its efforts **(Certificate Condition 29)**. The Commission finds that these conditions, combined with NGTL's proposed mitigation and commitments, and the CER's compliance verification activities and enforcement actions, would be suitably responsive to the interests of Indigenous peoples related to economic opportunities.

# 8 Federal lands determination (Bar U Ranch National Historic Site)

This chapter will highlight key submissions from parties, the reply of NGTL, and the Commission's analysis and findings relevant to:

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| ***Impact Assessment Act*** | *82 An authority must not carry out a project on federal lands, exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless*<br>*a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or*<br>*b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.* |
| ***Key conclusion(s)*** | The Commission has determined that the Project is not likely to cause significant adverse environmental effects to federal lands, in accordance with section 82 of the IA Act. With respect to the federal lands, the Commission finds that, with NGTL's standard mitigation measures and the imposed conditions, there is limited potential for the Project to interact with environmental and socio-economic valued components, including potential adverse effects on the rights of Indigenous peoples. The Commission concludes that the Project's residual adverse environmental and socio-economic effects on the federal lands component, including any resulting cumulative effects, would be of low to moderate magnitude, limited in extent and duration, reversible, and of low significance. |

## 8.1 Project setting

### 8.1.1 Environmental and socio-economic setting

- The Longview Section crosses Bar U Ranch National Historic Site (**Bar U Ranch**) for 0.9 km of the route. Bar U Ranch is a designated national historic site under the *Historic Sites and Monuments Act.* It is federally owned land administered by Parks Canada under the *Federal Real Property and Federal Immovables Act*.
- Bar U Ranch is a 148.43 hectare working ranch featuring original ranch headquarters situated along Pekisko Creek. It consists of thirty-five historic structures and a visitor centre. Bar U Ranch is a popular tourist destination and is typically open daily for visitors between May and September.
- The Longview Section runs north to south on the east half of Bar U Ranch. The PDA intersects Highway 171 on the south boundary of Bar U Ranch, which provides access

to the main visitor entrance to Bar U Ranch. The PDA also intersects an internal use road, two fences, and an irrigation ditch.

- Where it crosses Bar U Ranch, the Longview Section would require a 32 m-wide construction footprint with additional temporary workspace, where required, and temporary access (e.g., roads and travel lanes).
- No watercourses are crossed on Bar U Ranch. The route crosses level to gently sloping terrain and is mainly agricultural land use.
- Bar U Ranch land use on the PDA includes tame pasture, hayland, and deciduous forest.
- There are no historical occurrences of plant species and ecological communities at risk and of management concern.
- There is no designated critical habitat for SARA-listed threatened and endangered species at risk within the LAA on Bar U Ranch. Eighteen federally listed wildlife species at risk have the potential to occur on Bar U Ranch lands based on their range.
- Bar U Ranch has a proposed Multi-species Action Plan pursuant to section 47 of SARA that includes little brown myotis.
- Oral history and archaeological records confirm that what is now Bar U Ranch was an important harvest area for Indigenous peoples. A number of Indigenous historic and precontact archaeological sites have been recorded on the Bar U Ranch site, including two pre-contact period campsites.
- Bearspaw, Chiniki, and Wesley First Nations (collectively Stoney Nakoda Nations) have previously reported that hunting groups gathered at the Highwood River which falls within the Longview Section RAA. Historically, Blackfoot peoples would camp on lands that are now part of Bar U Ranch.
- Construction for the Longview Section is planned from August to November 2023 with an in-service date of November 2023, subject to receipt of regulatory approvals.

### 8.1.2 Routing considerations

- NGTL indicated that it considered several route alternatives that avoided Bar U Ranch. All routes ultimately had the same tie-in locations and all route alternatives considered were located east of Bar U Ranch. An environmental desktop review, supported by an aerial overflight, along with stakeholder engagement were undertaken to support route selection.
- NGTL stated that the proposed route minimizes socio-economic and environmental effects, including potential impacts on wildlife habitat, human occupancy and resource use, and potential effects on the Rights and interests of Indigenous peoples. The proposed route also avoids the core visitor use areas of Bar U Ranch.
- NGTL said that the portion of the Longview Section that crosses Bar U Ranch fully parallels the existing NGTL WAS Mainline Loop No. 2 RoW. This was determined to reduce the overall Project footprint by using existing RoW, reducing route length, minimizing potential effects on wildlife habitat, and better addressing stakeholder concerns compared to potential route alternatives around Bar U Ranch.

- NGTL undertook early engagement with stakeholders on potential route options. Concerns were raised by stakeholders where route alternatives crossed private land.
- Routing criteria also considered input received from potentially affected Indigenous peoples and avoided lands of designated status such as parks and protected areas, where practical or feasible.

## 8.2 Environmental matters

NGTL said that SARA, the *Migratory Birds Convention Act*, and the Federal Policy on Wetlands Conservation all apply to Bar U Ranch. In addition, the Bar U Ranch National Historic Site of Canada Management Plan and other Parks Canada documents guide the management of the site. Regulatory permits would be required for the Project under the *Federal Real Property and Federal Immovables Act* for land use on Bar U Ranch.

NGTL's ESA for Bar U Ranch focused on little brown myotis, an endangered bat species under SARA.

- NGTL identified mitigation measures including protecting important bat sites in buildings, pesticide management, and decontamination protocols. NGTL concluded that with the implementation of standard and Project-specific mitigation measures, adverse residual Project effects are predicted to be not significant.
- NGTL said that no route could avoid the sensitive riparian areas associated with Pekisko Creek, including potential bat-roosting habitat. NGTL also said it had refined the Project schedule in Q1 2023 on the Longview Section to avoid clearing during the active bat season.
- NGTL indicated its operations and maintenance activities (including vegetation management) are not anticipated to have direct effects on little brown myotis and their potential habitat. The use of pesticide could have an indirect effect on local bat foraging opportunities as insect abundance may be temporarily reduced following its application; however, the area of vegetation management is small compared to the LAA.

NGTL confirmed it is developing mitigation measures with Parks Canada and Alberta Environmental Protection, and that any mitigation measures developed in consultation with regulatory authorities would be included in an update to the EPP and environmental alignment sheets prior to construction.

### Views of Parties

#### *Parks Canada Agency*

Parks Canada submitted that construction of the RoW is anticipated to remove 11 per cent of roosting habitat for little brown myotis within Bar U Ranch. Construction activities, including tree removal, are planned to occur during the active bat season (May to September 2023). The area around Pekisko Creek is known to be an important habitat for bats throughout the summer and during fall migration. Parks Canada committed to working with NGTL to collect additional information on bat use of the area and to identify measures to avoid impacts on little brown myotis individuals and their residences. Additional measures recommended include enhanced monitoring for bats and bat roosts, early tree clearing to avoid bat use timing windows, and pre-

clearing surveys. Parks Canada stated that if avoidance is not possible, then a SARA Permit would be required for the Project to proceed.

Parks Canada further stated it would incorporate conditions specific to Bar U Ranch within the required land use agreement including:

- measures to address potential impacts on species at risk, including little brown myotis;
- measures to protect migratory birds during migratory bird timing windows; and
- requirements related to construction and post-construction surveillance and monitoring.

**Reply of NGTL**

NGTL said it completed a bat maternity roost survey in 2021 for the Longview Section in forested areas that provide potential roosting habitat along Pekisko Creek, including areas on Bar U Ranch. NGTL said the data indicates that removal of balsam poplar at the Pekisko crossing during Project construction is unlikely to pose a risk to maternity roosts on Bar U Ranch property and adjacent lands. NGTL committed to undertaking additional surveys in 2022.

NGTL said it anticipates that final mitigation requirements would be identified in Project approvals to be issued by Parks Canada for the portion of the Project that crosses Bar U Ranch. NGTL clarified that the mitigation measures identified in the ESA and any additional site-specific mitigation measures determined in consultation with Parks Canada would be included in the updated Project EPP.

### 8.3 Rights of Indigenous peoples and heritage resources

Under the *Canada National Parks Act*, an Archaeological Impact Assessment (**AIA**) is required for all undisturbed portions of the Longview Section that cross Bar U Ranch, in accordance with the Parks Canada Cultural Resource Management Policy and the Guidelines for the Management of Archaeological Resources. Under Parks Canada's guidance, NGTL undertook an AIA of lands to be impacted by the Project at Bar U Ranch, within specific areas along the PDA in July 2020 (Permit No. WL-2020-36019). The AIA included deep shovel testing in moderate to high potential landforms and a pedestrian assessment, which evaluated landforms, exposures, and previously recorded sites within the PDA.

NGTL submitted that with the implementation of mitigation measures and avoidance of any sites having high heritage value, as specified by Parks Canada, the Project is not anticipated to have residual effects on heritage resources.

If any unanticipated cultural or heritage resources are identified during construction activities, NGLT indicated that it would implement its mitigation measures, which include the implementation of the EPP and the Cultural Resources Discovery Contingency Plan. NGTL's mitigation measures specifically include immediate notification of Parks Canada archaeologists regarding any chance finds of cultural resources during construction. Additionally, NGTL would continue to engage with Parks Canada regarding engagement with potentially impacted Indigenous peoples and heritage resources, among other topics.

If a location is identified during construction and is considered likely to be a previously unreported Traditional Land and Resource Use site, NGTL committed to contacting any

potentially affected Indigenous peoples through its Indigenous Engagement Program. NGTL also committed to fulfilling all requirements for assessment, Indigenous engagement, and mitigation, including construction monitoring issued relative to the Project by Parks Canada. NGTL said that feedback shared by Indigenous peoples is considered in all applicable planning and permitting required for the Project, inclusive of Project activities proposed within Bar U Ranch along the Longview Section.

**Views of Parties**

***Parks Canada Agency***

Parks Canada stated it has been in contact with NGTL and has provided background information, contractor guidance, and a research permit for assessing archaeology (Indigenous and historic) and cultural landscape features at Bar U Ranch. While not a designated historic feature, Parks Canada has requested that NGTL reconstruct the historic irrigation ditch feature that currently crosses the Project footprint in accordance with its current depth and alignment. Parks Canada stated that it would review the AIA report, provide comments on the report, and issue an approval and/or conditional requirements for the Project on Bar U Ranch based on the report's recommendations.

***Piikani Nation***

Piikani Nation identified nine sites of significance, all of which were animal sightings (birds, fish (minnows), elk and deer) near Bar U Ranch.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations said that Bar U Ranch was established in the 1880s shortly after the creation of Treaty 7. Stoney Nakoda Nations, specifically Bearspaw members, historically provided labour at Bar U Ranch which allowed them to earn wages into a mixed economy that lasted until the mid-20th century. Stoney Nakoda Nations stated that its members worked at Bar U Ranch, and many Nation members harvested in the nearby Porcupine Hills and Eastern Slopes. Because of the relationships established between Stoney Nakoda Nations and local ranch owners, Stoney Nakoda Nations said that their members were able to hunt, trap, fish, pick plants, and harvest berries on private lands in their traditional territory.

Stoney Nakoda Nations further said that given the community's history in Bar U Ranch, work done to date suggests that there is a higher density of burial sites in Bar U Ranch and the surrounding areas.

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

Stoney Nakoda Nations stated that NGTL's Contingency Plan for discovered burial sites relies on a highly invasive response before Nations are notified and consulted for further action. For Stoney Nakoda Nations, this creates concern over the negative cultural impacts and situations with no option for reburial.

During the hearing process, Stoney Nakoda Nations asked NGTL to provide more information on how it incorporated the Nations' identified impacts and concerns in Bar U Ranch into its assessment of impacts and development of mitigation measures. Stoney Nakoda Nations

further inquired if NGTL adjusted any of its standard mitigation after reviewing their evidence. Stoney Nakoda Nation further said:

- NGTL presents an outdated understanding that rights must be bound to 'current use' for an impact to be identified.
- NGTL's Bar U Ranch ESA filing does not consider Stoney Nakoda Nations' evidence and the significance of Bar U Ranch to Stoney Nakoda Nations.
- NGTL presents an incomplete assessment of potential impacts in relation to Bar U Ranch as it limits harvesting rights to current use and fails to consider governance, or cultural well-being. NGTL has not engaged Stoney Nakoda Nations on this, or on how impacts to other areas (i.e., wildlife) may cause secondary impacts to the Nations, which may be more heavily weighted due to impact inequity.

**Reply of NGTL**

Regarding the animal sightings raised by Piikani Nation, NGTL stated that the Longview Section parallels an already existing NGTL pipeline RoW through Bar U Ranch. This reduces the footprint and helps to minimize fragmentation of the landscape. NGTL also outlined mitigation measures that it would implement to reduce potential adverse effects of the Project on wildlife and wildlife habitat, including species identified as having socio-economic or traditional importance to Indigenous peoples.

NGTL stated that the identified concerns and interests brought forward by Stoney Nakoda Nations to date have been addressed by NGTL's proposed mitigation measures, corporate polices, and commitments described in the ESA and EPP. NGTL further stated that the information about the Indigenous and Treaty Rights exercised or practiced by Stoney Nakoda Nations throughout their traditional territory is consistent with the activities that were assessed by NGTL in the ESA and for which the suite of mitigation measures was developed.

NGTL stated that it is supportive of Stoney Nakoda Nations' ongoing field work related to its traditional knowledge study for the Project, including the identification of burial sites, and that should findings of Stoney Nakoda Nations' traditional knowledge study be received following the close of the CER proceeding, NGTL's process for receiving and reviewing supplemental information from potentially affected Indigenous peoples remains as outlined on the hearing record.

NGTL outlined its engagement activities with Stoney Nakoda Nations and stated that NGTL did not receive specific feedback from Stoney Nakoda Nations regarding the proposed route. NGTL also stated that the ability to refine the route generally decreases over time, and as such, NGTL encouraged Stoney Nakoda Nations to provide any specific input they may have as soon as possible.

### 8.4 Socio-economic matters

NGTL stated that approximately 5.1 ha of hayland and tame pasture, which may be used for grazing, would be cleared or disturbed along the PDA on Bar U Ranch. Effects are expected to be limited because the Longview Section parallels an already existing NGTL pipeline RoW through Bar U Ranch. With the implementation of mitigation measures in the EPP and

reclamation of the PDA to current land use, Project construction is not anticipated to permanently alter the rural landscape in and around Bar U Ranch.

Although construction would not occur continuously during the planned construction schedule, NGTL submitted that the proposed construction timing would partially overlap the typical visitor schedule for Bar U Ranch (May through September). Construction of the Project would result in some sensory disturbance and nuisance effects to visitors to Bar U Ranch, including localized increases in noise, dust and traffic volumes, and visual disruption. Additionally, the PDA on Bar U Ranch intersects an internal use road, and access by employees may be temporarily restricted or altered during construction.

To address safety and access issues, NGTL stated it would implement the Traffic Control Management Plan and dust control measures. NGTL would post signage to discourage unauthorized public access onto the construction footprint during construction. In addition, a Project fact sheet that Parks Canada can make available to Bar U Ranch visitors would be provided by NGTL at the request of Parks Canada. NGTL stated that once construction is complete, the construction footprint would be reclaimed and access to Bar U Ranch along Highway 171 and along the internal use road would be restored.

NGTL stated operation of the Longview Section including on Bar U Ranch is not expected to result in further effects on human occupancy and land use, since the pipeline would be buried, the RoW would be reclaimed, and NGTL would not limit access to the RoW on Bar U Ranch during operations.

With the implementation of mitigation measures and based on known development information for the RAA, NGTL stated that residual cumulative effects on human occupancy and resource use in the Project RAA are likely to occur. Residual cumulative effects are predicted to result in a measurable change in land use pattern and/or access but would not prevent activities from continuing elsewhere. Residual effects would occur during the construction phase to beyond the operations phase in duration and are reversible. NGTL also stated that the Project would make a negligible contribution to cumulative alteration of land use at the RAA scale. NGTL concluded that residual Project effects and residual cumulative effects on human occupancy and resource use are predicted to be not significant.

Through engaging with Parks Canada, NGTL indicated it is working to understand potential impacts to users and discuss detailed mitigation options. NGTL has committed to additional site-specific mitigation measures to address specific concerns of Bar U Ranch including notification, communication, signage, and fencing considerations.

NGTL stated it would continue to engage with Parks Canada and would incorporate mitigation to address any additional issues raised by interested or affected stakeholders, as applicable. NGTL further stated that where additional or site-specific mitigation measures are warranted, these would be included in an update to the EPP and environmental alignment sheets prior to construction. NGTL advised that it would work directly with Parks Canada's designated personnel to resolve any issues that may arise on Bar U Ranch.

**Views of Parties**

***Parks Canada Agency***

Parks Canada stated that the Bar U Ranch site commemorates the history of ranching in Canada. The Bar U Ranch site derives its heritage value from the integrity of its cultural landscape as a representation of Alberta ranching in the 1880-1950 period. Parks Canada also stated that Bar U Ranch continues to be an active, operational ranch and that approximately 20,000 people visit the site each year to enjoy hiking along the various trails and seasonal interpretive programming offered from mid-May to late September.

Parks Canada expressed concern that the proposed construction of the pipeline would coincide with the peak visitation season for the site and would result in reduced access to local trails, operational service roads, and the loss of hay crop in the project area for three to five years following construction. Parks Canada stated that among other proposed mitigation measures, potential conditions related to socio-economic effects that it would develop include construction monitoring and incidental find mitigation for cultural resources and measures to lessen effects on the visitors, operations and socio-economics for the site.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations stated that Bar U Ranch serves as a representative example of the evolving relationship Stoney Nakada Nations has had with private landowners and harvesting on private land ranches and is also an area where the Nations desire more autonomy and governance. Stoney Nakoda Nations expressed concern with the routing and asked NGTL whether it had considered re-routing the Project outside of Bar U Ranch.

**Reply of NGTL**

NGTL stated that, with respect to potential effects on visitor experience and ranch operations, potential mitigation currently under discussion includes measures such as public signage, staff orientations, visitor awareness materials, temporary fencing of the Project footprint, points of access to facilitate cattle movement across the Project footprint, and crop loss compensation. NGTL further stated that in its review of the proposed route and several route alternatives that would have avoided Bar U Ranch, NGTL applied its route selection criteria. This determined that the proposed route would minimize the potential effects on the Rights and interests of Indigenous peoples, as well as minimize the socio-economic and environment effects, including potential impacts on wildlife habitat. NGTL said it would continue to consider site-specific mitigation measures to address specific concerns identified by Indigenous peoples and Parks Canada with respect to the proposed route across Bar U Ranch.

## 8.5 Commission analysis and findings

The Commission has determined that the Project is not likely to cause significant adverse environmental effects to federal lands, in accordance with section 82 of the IA Act. The Commission finds that, with NGTL's standard mitigation measures and the imposed conditions, there is limited potential for the Project to interact with environmental and socio-economic VCs, including potential adverse effects on the rights of Indigenous peoples. The Commission concludes that the Project's residual adverse environmental and socio-economic effects, including any resulting cumulative effects, would be of low to moderate magnitude, limited in extent and duration, reversible, and, as a result, would be of low significance.

In making its determination with respect to the Project on federal lands, the Commission considered the factors listed in subsection 84(1) of the IA Act when weighing the Indigenous knowledge and evidence provided. The Commission also considered the submissions and evidence provided by Parks Canada and NGTL. Having assessed the potential impacts the Project may have on the rights of Indigenous peoples, the Commission finds that there is limited potential for adverse impacts on the exercise of the rights of Indigenous peoples of Canada. In coming to this conclusion, the Commission was persuaded that NGTL's route selection through Bar U Ranch aimed to parallel existing disturbances to minimize the amount of new RoW required. The route would also avoid sensitive environmental or heritage features. The Commission understands that an AIA will be undertaken by NGTL prior to construction on the portion of the Longview Section that intersects Bar U Ranch, as directed by the Archaeology and History Branch of Parks Canada.

The Commission acknowledges the ongoing work that NGTL is undertaking with Stoney Nakoda Nations to identify burial sites in the Bar U Ranch area. The Commission finds that NGTL's commitments and proposed mitigation are appropriate for the scope and scale of the expected impacts on federal lands given the nature of the environmental and socio-economic setting (i.e., a working ranch where the route crosses hayland and tame pasture which may be used for grazing). The Commission expects that if unanticipated cultural resources are identified during construction activities, NGTL will implement the Cultural Resource Discovery Contingency Plan. The Commission finds that imposing conditions requiring NGTL to file a report on any outstanding Traditional Land and Resource Use investigations for the Project **(Certificate Condition 13)**, and to provide a Construction Monitoring Plan for Indigenous peoples **(Certificate Condition 12)** would positively contribute to the protection of burial sites in the Bar U Ranch and surrounding areas. The Commission also finds NGTL's approach to notifying Indigenous peoples in the event of a chance cultural resource finding appropriate.

The Commission heard concerns from Stoney Nakoda Nations about the importance of Bar U Ranch to their Nations. However, Stoney Nakoda Nations did not raise specific concerns with the biophysical aspects of the ESA or the mitigation proposed for this area.

The Commission observes that no issues or concerns were raised by the public regarding the use of federal lands for the Project.

The Commission is satisfied that the ESA and draft EPP provided for Bar U Ranch sufficiently consider the biophysical VCs and provide appropriate mitigation to protect those VCs. The Commission finds that conditions for an updated EPP (**Certificate Condition 7**) and for pre-construction breeding bird/nesting surveys (**Certificate Condition 24**), would be required; both conditions would apply to Bar U Ranch. Additionally, the Commission imposes **Certificate Condition 32** requiring NGTL to submit the results of post-construction environmental monitoring reports in years 1, 3, and 5 following construction.

# 9 Environmental effects

This chapter will highlight key submissions from parties, the reply of NGTL, and the Commission's analysis and findings relevant to:

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| ***CER Act 183(2) factor(s)*** | *(a) the environmental effects, including any cumulative environmental effects* |
| ***List of Issues No.*** | 9. The environmental effects, including any cumulative environmental effects from interactions between the environmental effects of the Project and effects from other existing projects or activities that will be carried out.[37] |
| ***Key conclusion(s)*** | Findings of the Commission with respect to environmental effects include:<br>• Many of the environmental interactions are incremental and small in scope, will have minimal impact on the environment, and can be addressed through standard and Project-specific mitigation measures.<br>• Some interactions with the environment require additional mitigation measures to address residual effects; for these residual effects, the Commission considers Project-specific conditions necessary and in the public interest.<br>• Once NGTL's mitigation measures and the imposed conditions are considered, the Commission finds that the adverse environmental effects from the Project on key VCs would make a low contribution towards significance. |

## 9.1 Environmental effects resolved through standard mitigation

The Commission recognizes that many potential adverse environmental effects can be resolved through standard mitigation. Standard and Project-specific mitigation has been proposed by NGTL to avoid or minimize potential adverse environmental effects. NGTL's mitigation measures were included in its Application, EPP, environmental alignment sheets, and other submissions on the record.

### 9.1.1 Standard mitigation and best practices

#### 9.1.1.1 Air quality

- NGTL submitted that air quality would not be affected by the Project. Although construction of Project components would result in emissions of criteria air contaminants, for example from construction equipment and limited burning. Any change in air quality would be limited and short term and can be managed based on mitigation measures included in the EPP. Criteria air contaminants are not expected from Project operations because the Project does not include any operations-phase combustion sources other than maintenance vehicles.

[37] Wording has been updated to correct an administrative error in the Hearing Order.

- Driftpile Cree Nation and Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87) raised concerns with airborne pollutants, the effects of air and GHG emissions, and lack of monitoring for air emissions.
- ECCC recommended that NGTL, at a minimum, conduct a qualitative assessment of Project emissions from construction vehicles and equipment to confirm the potential impact on nearby communities.
- In response, NGTL said dust and noise during construction was considered in the assessment of effects on human occupancy and resource use, on traditional land and resource use, and on human health. Effects related to dust and noise are expected to be short term, intermittent during construction, localized, and expected to return to baseline conditions immediately following completion of construction.
- Livingstone Landowners Group said it previously requested data from NGTL on the intensity and severity of wind speeds in the Project area and proof that erosion control methods were sufficient for peak wind levels.
- NGTL confirmed its understanding, consistent with Livingstone Landowners Group's evidence, that the Lundbreck Section is in a very windy area and erosion is a concern. As indicated on the environmental alignment sheets, almost the entirety of the Lundbreck Section has been characterized as having potential for high or severe wind and water erosion due to high winds common to the area and steep slopes.

#### 9.1.1.2 Wetlands

- NGTL said that most of the wetlands crossed by the Project PDA are temporary and seasonal, and that wetlands within the Project area have been subject to grazing, agricultural disturbances, and development for many decades. NGTL submitted that the temporary effects on wetlands associated with pipeline construction would require notification under the Alberta *Water Act* and relevant Code of Practice. Additionally, NGTL said that wetlands disturbed during Project construction would be reclaimed to pre-construction topography and hydrological conditions, with vegetation allowed to re-establish naturally. Wetland characteristics are expected to return within one to three years following reclamation, including wetland hydrology, hydrophytic vegetation, and hydric soils.
- Piikani Nation, Samson Cree Nation, Livingstone Landowners Group, and Driftpile Cree Nation had concerns about potential permanent loss of wetlands and vegetation, and reclamation of wetland areas disturbed by the Project. Piikani Nation and Livingstone Landowners Group questioned whether the reclamation strategy of natural recovery was appropriate for wetlands in the Project area and asked how NGTL would respond if recovery was slow or unsuccessful.
- NGTL replied that it was not aware of published literature specific to natural regeneration of wetlands in southwest Alberta, stating that mitigation and reclamation of wetlands crossed by the Project is expected to be similar to wetland mitigation and reclamation identified in other parts of Alberta. NGTL also said that wetlands would be included in post-construction monitoring and that remedial measures would be undertaken if a trajectory for reaching equivalent land capability for wetlands is not achieved.

#### 9.1.1.3 Breeding bird surveys and protection

- Where clearing or construction activities are scheduled to overlap the Primary Nesting Period, including the extended period for species at risk, NGTL said a nest survey may be undertaken prior to activities, if warranted, based on recommendations from a Wildlife Resource Specialist. In the event an active nest is found, it would be subject to site-specific mitigation measures (i.e., clearly marked protective buffer around the nest and/or non-intrusive monitoring) based on the Breeding Bird and Nest Management Plan.
- Regarding Potential Condition 18 (Breeding Bird Survey and Protection), Stoney Nakoda Nations said it should be revised to prohibit vegetation clearing or topsoil removal activities during restricted activity periods. Driftpile Cree Nation proposed that surveys be required every 15 days over the period of construction, instead of just during clearing and topsoil removal activities. Driftpile Cree Nation also proposed to incorporate Indigenous knowledge and engagement with Indigenous peoples into all aspects of the condition. Livingstone Landowners Group recommended modifying the condition to state nest surveys are still required if vegetation clearing occurs when early-nesting resident species such as Clark's Nutcracker and Canada Jay may be breeding (i.e., February/March).
- Livingstone Landowners Group said it is uncertain whether NGTL has a plan to conduct migratory bird nests surveys to the standards required by ECCC. A comprehensive matrix of survey methods and a matrix to assess whether a bird nest would be considered present based only on behavior of the bird is necessary.
- In response to Livingstone Landowners Group's concerns, NGTL confirmed that the nest surveys proposed in the Breeding Bird and Nest Management Plan would consider both visual confirmation of a nest and observed behavior to identify active and suspected active nests. NGTL confirmed that the Breeding Bird and Nest Management Plan was prepared in accordance with applicable provincial and federal regulatory requirements and guidance, including guidance from ECCC such as the Guidelines to Reduce Risk to Migratory Birds (2019).

#### 9.1.1.4 Accidents, malfunctions, and potential contamination

- NGTL indicated that any hazardous material releases, if they occur, are expected to be limited in volume and area, and can typically be cleaned up over a short period of time by on-site crews using standard equipment. In the unlikely event of a release that may require more time to clean up, measures to avoid or reduce adverse effects to wildlife would be implemented on a case-by-case basis.
- Several Indigenous peoples raised concerns with contamination of game, including in their oral Indigenous knowledge submissions:

  > *And as a hunter's wife, I had the experience of witnessing some of the game that has been brought home and, you know, the discolouration, the condition of the meat. And you have to stop and wonder, you know, like, what is our food chain, our lifecycle, you know, getting contaminated in that area? And I just can't help but to think of that.* Councillor Holly Johnson-Rattlesnake, Samson Cree Nation, Transcript Volume 5 [1760]

- Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87) and Piikani Nation submitted that the potential for accidents and malfunctions, especially the release of hazardous materials within their traditional lands and waters, is of great concern to their communities. Additionally, Piikani Nation said it should play a role in monitoring for accidents and malfunctions during construction and operation.
- In response to Métis Nation of Alberta's concerns about the potential effects of the Project on water quality, NGTL re-iterated that mitigation includes equipment cleaning and maintenance, and that refuelling and equipment washing is to be conducted away from watercourses and waterbodies.
- NGTL confirmed that the Project would transport sweet natural gas and would not transport oil, liquids, or condensates. Project planning and design, equipment selection, hazard analysis and corrective action, emergency response planning, security management, and the implementation of established and effective environmental protection measures in the EPP and ERP would reduce the potential for accidents and malfunctions to occur and reduce the effects of an event should one occur.

#### 9.1.1.5 Commission analysis and findings

The Commission has considered the submissions from all parties and finds NGTL's proposed mitigation is sufficient for the interactions expected to occur between the Project and the surrounding physical environment related to air quality, wetlands, and breeding birds.

The Commission is persuaded that many adverse environmental effects resulting from the Project are resolved through standard and Project-specific mitigation and finds that NGTL has sufficiently identified the potential effects and provided appropriate mitigation to avoid or minimize adverse environmental effects.

The Commission agrees with NGTL's assessment that air quality will not be materially affected during Project construction and operation, and that any change in air quality would be managed with mitigation measures in the EPP. Construction-related air emissions will result from equipment use and burning but will be short term, and NGTL provides mitigation for dust control and for reducing vehicle use and idling, among other things. The Commission finds that NGTL adequately scoped its assessment of air quality and has identified appropriate mitigation measures for the Project.

The Commission observes that wetlands are not common in the Project area, they have been subject to past disturbances, and that most wetlands within the PDA are temporary and seasonal. The Commission finds compelling NGTL's commitment to reclaim all wetlands that would be disturbed during construction and understands that development affecting wetlands is regulated in Alberta under the provincial *Water Act* and by specific guidance provided in the Government of Alberta's Wetland Policy.

While wetlands will be disturbed by construction and will take several years to recover, the Commission finds that the effects will be minimal considering the seasonal nature of most wetlands affected by the Project. The Commission recognizes NGTL's commitment to monitoring wetland reclamation and ensuring reclamation success through its post-construction environmental monitoring program. Therefore, the Commission finds 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 is satisfied with NGTL's commitment to retain a Wildlife Resource Specialist knowledgeable about breeding birds in the Project area and who would complete breeding bird nest searches as required, and in accordance with the EPP. While NGTL's proposed construction schedule generally avoids restricted activity periods for birds, the Commission imposes **Certificate Condition 24** (Breeding bird survey and protection conditions) requiring NGTL to ensure that it will conduct breeding bird surveys ahead of clearing and topsoil removal and that it will report the results of its surveys. In considering the submissions regarding Potential Condition 18 (Breeding bird survey and protection), **Certificate Condition 24** has been modified to include the resident bird species identified by Livingstone Landowners Group and to reflect NGTL's comments on the Potential Conditions. The Commission expects that any changes to mitigation required as a result of these surveys will be incorporated into the final EPP and environmental alignment sheets.

The Commission is satisfied that NGTL has adequately identified and mitigated the effects of the environment on the Project and is also satisfied with NGTL's mitigation for accidents and malfunctions. During construction, the Commission recognizes that there is the potential for vehicle accidents, spills, and releases, but has determined that NGTL's mitigation measures will effectively minimize the risks of these occurrences.

### 9.1.2 Environmental Protection Plan, schedule, and monitoring

#### 9.1.2.1 Environmental Protection Plan and construction schedule

- NGTL's EPP included contingency plans, including for releases, adverse weather, wildlife species of concern, and species at risk. The EPP also included management plans for chemical and waste management, and traffic control among others. NGTL submitted that its proposed schedule (from Project planning to end of construction) takes environmental sensitivities into account, including migratory bird nesting periods, timing restrictions associated with watercourse crossings, and dry soil conditions.
- NGTL said that information gathered through ongoing engagement with Indigenous peoples would be considered in the EPP and environmental alignment sheets, as appropriate. For example, sites or resources of concern would be appropriately mitigated during construction, clean up and reclamation, and success would be measured in following growing seasons as appropriate.
- Intervenors provided several comments on Potential Condition 4 (Updated Environmental Protection Plan) requiring NGTL to submit an updated EPP prior to commencing construction. Indigenous peoples were specifically concerned that the EPP does not incorporate consideration of cumulative effects to the environment, or the cumulative effects of environmental impacts as they relate to Section 35 Rights.
    - Piikani Nation said Potential Condition 4 (Updated Environmental Protection Plan) should require that proponents report on how they collaborated with Indigenous peoples to determine best practices for the protection of the environment.
    - Samson Cree Nation said any plans, procedures, mitigation measures, or goals should be co-developed and confirmed with intervenors, and that the EPP should

describe why any results from its engagement with Indigenous peoples have not been incorporated.

  - Elk Valley Métis Nation said they need to have an appropriate timeline for NGTL to demonstrate how it considered and integrated Indigenous peoples' input.
  - Driftpile Cree Nation provided extensive comments on proposed changes to this condition including adding a detailed assessment of the direct and indirect residual and cumulative environmental impacts of the Project on the environment. Driftpile Cree Nation recommended including a comment period for this condition.

- Additionally, for construction progress reports, Stoney Nakoda Nations said that Potential Condition 4 (Updated Environmental Protection Plan) should include reporting on impacts to Section 35 Rights and include how the measures undertaken for resolution involved further engagement with the impacted Indigenous nation(s) to identify the appropriate measures for resolution.
- Jacob Adserballe said environmental protection procedures should include ongoing maintenance and remediation, and Potential Condition 4 (Updated Environmental Protection Plan) should require NGTL to complete all reclamation within one year of construction completion.
- Livingstone Landowners Group recommended that Potential Condition 4 (Updated Environmental Protection Plan) specifically include reclamation details for fescue grassland and ought to require NGTL to provide details on its consultation with AEP. Livingstone Landowners Group also recommended many changes to the condition to reflect wildlife buffers and mitigation, to specifically maintain identified or suspected limber or whitebark pine trees, and to reduce construction activity during the key elk migration period.
- NGTL replied that its standard EPP is reviewed and updated regularly based on continuous learnings, improvements and feedback received through NGTL's ongoing engagement activities and experience for both planned and operating projects. Any material updates made to the standard EPP prior to construction would be included in the final EPP for the Project.
- NGTL also reiterated that it would notify potentially affected landowners, lessees, and nearby residents of the intended Project schedule before the start of construction to avoid or reduce impacts to their operations or activities. Also, NGTL would provide potentially affected Indigenous peoples with the Project construction schedule and maps in advance of construction.

#### 9.1.2.2 Monitoring and post-construction monitoring

- NGTL's general approach to inspection and monitoring is summarized in Chapter 6. Following construction, NGTL would undertake environmental monitoring after final clean-up, which would include an assessment of reclamation success, identification of any environmental issues, an assessment of the effectiveness of mitigation practices, and identifying recommended corrective actions for outstanding environmental issues. Monitoring would focus on vegetation, soils, watercourse crossings, wetlands, and wildlife habitat (as a function of vegetation re-establishment).
- NGTL said it is open to sharing post-construction monitoring reports with interested Indigenous peoples and discussing any questions or issues that might arise.

- Many Indigenous peoples raised issues their involvement in post-construction monitoring, including:
    - Stoney Nakoda Nations said the post-construction environmental monitoring report must describe how impacts to Section 35 Rights resulting from the Project were taken into consideration in developing post-construction environmental monitoring and mitigation measures.
    - Elk Valley Métis Nation requested to be a part of the assessment crew to see the activities firsthand, to build capacity, and to receive a triparty presentation on these opportunities with the CER and TC [Energy].
    - Piikani Nation said Potential Condition 27 (Post-construction environmental monitoring reports) should require the proponent to provide ongoing monitoring and assessment of the Project's contribution to the cumulative effects and to share this information with Indigenous people who have expressed an interest in receiving it. Piikani Nation also said that monitors from its Biocultural Monitoring and Climate Adaptation program should be included for all phases of the Project, and that NGTL should enhance their plan for post-construction wildlife monitoring.
    - Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87) said that post-construction environmental monitoring activities and reports require Indigenous oversight.
    - Driftpile Cree Nation proposed adding a requirement to address cumulative environmental impacts and proposed additional wording around engagement and consultation. Driftpile Cree Nation also proposed adding how Indigenous knowledge was incorporated into the identification of species/communities of concern and how it has informed the post-construction monitoring.
- Livingstone Landowners Group proposed that the post-construction monitoring reports provide data rather than quantitative analyses to support evaluation of success of access control measures and effectiveness of mitigation measures for wildlife. Livingstone Landowners Group also proposed that the monitoring interval be annually, and for the condition to explicitly include fescue grassland. It also recommended a Westslope Cutthroat Trout and Bull Trout Management Plan and Riparian Habitat Management Plan be developed by NGTL as a condition of approval.
- Jacob Adserballe recommended 'impacted landowners' receive a copy of the post-construction monitoring reports and said all reclamation must be completed within one year of construction completion. If any reclamation efforts are expected to take longer than one year, NGTL must provide full assurance that there would be no adverse environmental impacts as a result of the extended reclamation period.

#### 9.1.2.3 Commission analysis and findings

The Commission recognizes the importance of the EPP as a compilation of general and Project-specific mitigation measures for use during Project construction and takes note of those additional commitments made by NGTL throughout the hearing process and as a result of its engagement activities. As such, the Commission imposes **Certificate Condition 7**, requiring NGTL to submit an updated, Project-specific EPP.

The Commission agrees with NGTL's characterization of the EPP as a key communication tool for NGTL's field staff and contractors prior to and during construction, and that the EPP is a

compilation of all relevant mitigation and commitments in one place for ease of reference in the field. The EPP is not, in and of itself, an assessment of potential Project effects. As such, the EPP is not well-suited to reflect the comments from intervenors regarding cumulative effects or the impacts of cumulative effects on Section 35 Rights. For these reasons, the Commission is not persuaded that the scope of the document should be changed.

The Commission finds that the mitigation measures and best practices proposed in NGTL's EPP reflect the current industry standards and expectations for environmental protection. The Commission observes that parties did not raise any concerns with the draft EPP content during this hearing process.

In respect of Potential Condition 4 (Updated Environmental Protection Plan), the Commission accepts NGTL's proposal to add 'on each approved Project component' to enable flexibility during construction activities, which the Commission recognizes can change quickly depending on weather conditions and other factors. The Commission has removed subsections of the condition that would have required NGTL to include a summary of environmental concerns and details on incorporating ongoing engagement results as the Commission agrees that these concerns would already be incorporated into filings for **Certificate Condition 13** (Outstanding Traditional Land and Resource Use investigations) and **Certificate Condition 26** (Post-construction monitoring plan for Indigenous peoples).

The Commission has considered the draft EPP and environmental alignment sheets that were provided on the record of this proceeding and has considered that intervenors had an opportunity to provide comments on the documents. The Commission also recognizes NGTL's commitment to continue engaging with Indigenous peoples and landowners and to incorporate any additional mitigation measures identified into the final EPP and environmental alignment sheets. In response to comments that the timing of the EPP submission should be modified, the Commission finds that it is not necessary to change the timing of the submission for the updated EPP.

### *Construction schedule and construction progress reports*

The Commission imposes **Certificate Condition 21,** requiring NGTL to provide its schedule of major construction activities and to notify the Commission and interested parties if there are any changes to the schedule. The Commission also finds it necessary for NGTL to file monthly construction progress reports for each Project component (**Certificate Condition 25**, Construction progress reports) to confirm that information on Project activities and issues of non-compliance are transparently communicated. The Commission has considered NGTL's commitment to communicate construction timing with interested parties and reminds parties that filings related to condition requirements are public and can be found on the CER's public repository, RegDocs.

### *Post-construction environmental monitoring reports*

NGTL has committed to implementing its post-construction environmental monitoring program following final clean-up, and to monitoring vegetation, soils, watercourse crossings, wetlands, and wildlife habitat. To confirm that post-construction monitoring is conducted as described and that reports would be filed, the Commission imposes **Certificate Condition 32** (Post-construction environmental monitoring reports). The Commission expects these reports will be shared with interested landowners and Indigenous peoples to transparently share the progress of reclamation and identification of any potential issues.

## 9.2 Analysis of key environmental issues requiring additional mitigation

This section discusses areas where NGTL has proposed non-standard mitigation or where the Commission has identified a need for Project-specific conditions for the following elements:

- Water quality and quantity
- Fish and fish habitat
- Vegetation
- Wildlife and wildlife species at risk

### 9.2.1 Water quality and quantity

NGTL stated that its route selection has minimized disturbance to wetlands, watercourses, and riparian areas by reducing the construction footprint within these areas. It also stated that its EPP contains established mitigation measures that have been developed to avoid and reduce disturbance and sedimentation of wetlands, watercourses, and riparian areas. A discussion of NGTL's mitigation related to wetlands was provided above.

NGTL plans to cross all watercourses using trenched methods, either isolated (if water flow is present) or open cut (if the watercourse is dry or frozen). Watercourse crossings, including bank and slope stability, erosion and sediment control, and vegetation establishment in riparian areas would be monitored as part of NGTL's post-construction monitoring activities. NGTL said that remedial actions are implemented as soon as practical during the most appropriate season, and a further assessment would be scheduled in the Fall season to ensure remedial actions are stable and successful.

To protect surface and groundwater quality and quantity potentially affected by activities associated with watercourses and riparian areas, NGTL proposes to:

- Obtain all applicable regulatory permits and approvals before the start of watercourse crossing construction following the requirements of the relevant provincial Codes of Practice.
- Develop a water quality monitoring plan where an isolated trenched construction method is proposed within the restricted activity period (**RAP**) of a watercourse that contains moderate to good fish spawning habitat.
- Follow isolated crossing methods to maintain natural stream flow, using standard mitigation measures to prevent sediment from entering the drainages and altering water quality and quantity during construction.
- Conduct temporary water diversions from watercourses for construction and hydrostatic testing, and the release of hydrostatic test water follow the appropriate Codes of Practice to mitigate potential effects on water quality and quantity.
- Should construction areas require dewatering, standard construction water management practices are included in the EPP, with additional site-specific measures potentially required in areas of high yield shallow aquifers, artesian conditions and in an unexpected situation (i.e., identified risk to nearby water wells and/or wetlands). Additionally, dewatering would be conducted for a short period of time, thereby reducing potential for effects on groundwater quality or quantity. Discharge of any pumped

groundwater would be returned to the local watershed, and the EPP includes mitigation measures to address springs and artesian flows and to maintain groundwater flow across the pipeline trench.

NGTL identified Project locations with medium to high potential for shallow bedrock and the subsequent formation of acid rock drainage (**ARD**) during construction. If bedrock is encountered during blasting or ripping of bedrock at or near surface water bodies (e.g., watercourses and wetlands), contaminants could be released from metals inside rock that may affect surface water quality both at a water body and/or downstream of a water body crossing. NGTL stated that, prior to construction, a geological hazard assessment would be conducted to assess the potential for ARD formation based on the geologic classification and properties of the shallow bedrock identified, and a plan would be developed for if and where shallow bedrock is encountered during construction. NGTL also stated that it would implement the TC Energy ARD Mitigation Measures outlined in the EPP where there is potential to encounter bedrock during construction.

NGTL stated that with the implementation of mitigation measures, residual Project effects and residual cumulative effects on aquatic resources are predicted to be not significant. Project-related residual effects are unlikely to exceed water quality thresholds (other than some potential short-term and localized changes in total suspended solids) or impact surface water or groundwater users within the RAA.

**Views of Parties**

Piikani Nation, Driftpile Cree Nation, Samson Cree Nation, and Foothills Ojibway First Nation expressed holistic concerns regarding water and water quality and the importance of water to Indigenous peoples.

> *But that, you know, like I say, overall, the impact that I see that's going to be done here is environment, you know, environment -- our animals. Our animals drink that water that comes out of the mountains. Right now our water is getting very scarce -- that those ice fields melting. You know, we're going to have to hang on to the freshest water that we have going into the future. And to me, it's on Piikani Territory. It's coming right from the mountain that the Creator gave us -- Napi.*
> Elder Joe Small Legs, Piikani Nation, Transcript Volume 1 [179]

> *… we used to have water wells that you could drink water from. Today you can't. Like, you used to be able to drink water, if you want, in a stream and today you can't. You have to be careful where you get all your water from. This way of life is contaminating the environment, the water, the wildlife, how it affects it.*
> Elder Arrol Crier, Samson Cree Nation, Transcript Volume 5 [1915]

Piikani Nation, Samson Cree Nation, and Driftpile Cree Nation requested more details on baseline water quality and quantity sampling data and NGTL's water quality monitoring during construction and post construction.

Piikani Nation, Stoney Nakoda Nations, and Elk Valley Métis Nation expressed concerns about the potential generation of ARD during construction and the potential impacts to water and communities. With respect to Potential Condition 10 concerning an ARD plan, Stoney Nakoda Nations, Samson Cree Nation, and Driftpile Cree Nation recommended more consultation with Indigenous peoples during plan development.

### *Piikani Nation*

Piikani Nation identified potential Project impacts related to surface water and groundwater quality and quantity, and raised concerns about:

- impacts to water resources including erosion and sedimentation causing damages to riverbanks and river channels, degraded water quality from increased turbidity, chemical contamination, disruption of natural surface drainage patterns, and disruption of groundwater flows, especially in wetlands, and with surface water use for hydrostatic testing and because shallow aquifers could be disturbed by construction;
- potential accidents and malfunctions within ancestral lands and waters as hazardous materials released into culturally significant rivers would impact the Rights and interests of Piikani Nation;
- land disturbances close to watercourses, an increase in the total amount of suspended sediments in waterways, erosion and sedimentation causing damages to riverbanks and river channels, and impacts to groundwater flow from trenching and dewatering; and
- cumulative impacts to water resources and critical waterways and how this affects the socioeconomic and cultural well-being of its people, and recommended that proponents be required to provide ongoing monitoring and assessment of the Project's contribution to the cumulative effects of development within the region it is operating and to share this information with Indigenous peoples who have expressed interest in receiving it.

### *Samson Cree Nation*

Samson Cree Nation expressed concerns that the Project would have deleterious effects on water quality in rivers and creeks intersected by or adjacent to the Project, potential impacts on fishing and drinking water for people and animals. Additionally, Samson Cree Nation also expressed concerns regarding contamination of water leading to a loss of confidence and use of water sources in the Crowsnest Pass area for ceremonial use. Samson Cree Nation recommended:

- A collaborative process involving Samson Cree Nation and NGTL for reaching consensus regarding key Project design elements such as water crossing techniques using a precautionary approach and that Project design decisions intend for least impact on Indigenous land users (e.g., least impact on confidence in water quality).
- That watercourse crossing areas are well-vegetated after disturbance, a clear emergency response plan, and for NGTL and the federal government to share data on specific water quality studies generally and for the proposed Project with First Nations to support increased confidence in water quality and assess outcomes of water over time.

### Reply of NGTL

In response to concerns regarding water monitoring and contamination, NGTL stated that it would develop water quality monitoring plans to monitor for sediment events during instream construction activities as required. NGTL explained that if monitoring reveals sediment values are approaching threshold values, the water quality monitors would alert the environmental inspector(s) and work with them to develop corrective actions. NGTL further explained that if corrective actions are not successful, construction activities may be temporarily suspended until

effective solutions are identified. NGTL also provided a list of standard mitigation measures to be implemented to reduce the potential of contamination-related adverse effects to water quality during construction.

NGTL pointed to baseline water quality data in its ESA and provided justification of its baseline data collection for water quality, stating that the collection of detailed baseline water quality data in advance of construction is of limited value. NGTL submitted that seasonal and year-to-year variability in water quality parameters are high due to changes in flow levels precipitation and land uses, making such water quality measurements unsuitable as background data to monitor site-specific construction activities or for post-construction monitoring. In addition, NGTL stated that the range of parameters listed by Piikani Nation far exceeds typical pipeline construction monitoring requirements or practices, and is more typical of regional baseline studies or programs employed to monitor major infrastructure or industrial projects such as mines or hydroelectric dams.

NGTL disagreed that long-term water quality monitoring is required for the Project, arguing that it would assess the success of riparian vegetation re-establishment and erosion sediment control which are the key pathways by which water quality could be affected following construction.

***Commission analysis and findings***

The Commission finds that Project effects on water quality and quantity would be low to moderate in magnitude, reversible in the short to medium term, restricted to the LAA, and be of low significance, as explained further in the table below. This finding is based on the construction methodology, mitigation, and monitoring proposed by NGTL with respect to watercourse crossings, and the imposed conditions, also outlined below.

The Commission heard the water-related concerns expressed by Indigenous peoples and expects NGTL to treat the resource with deference and respect. In addition to implementing the mitigation measures included in its Application, EPP, and subsequent filings, the Commission and other regulatory agencies require NGTL to comply with all relevant acts and regulations related to the protection of water resources, for example the Alberta *Water Act*, the *Environmental Protection and Enhancement Act,* and the *Fisheries Act.* Based on the routine nature of the construction activities, narrow scale and scope of the Project and the limited size of the watercourses crossed by the Project, the Commission determined that the industry-standard mitigation measures NGTL provided in its EPP would effectively mitigate potential adverse effects to water resources. The Commission is satisfied that the consultation requirements required by **Certificate Condition 7** (Updated Environmental Protection Plan) will provide the opportunity to incorporate further water-related mitigation measures proposed by Indigenous peoples and landowners into the final Project design.

While the Commission heard concerns raised by Piikani Nation and Samson Cree Nation regarding the need to implement a long-term water quality monitoring study to measure potential effects and concerns about the Project's contribution to cumulative effects in the region, the Commission is not persuaded by the arguments proposed. The Commission is satisfied with the degree to which NGTL has considered the protection of water resources and finds that NGTL's standard mitigation concerning surface water management and erosion control, and contingency plans (Release Contingency Plan, Adverse Weather Contingency Plan, Flood and Excessive Flow Contingency Plan, Wet Soils Contingency

Plan, Soil Erosion Contingency Plan) would appropriately mitigate potential adverse effects on water quality.

The Commission did find the concerns regarding long-term monitoring raised by Piikani Nation and Samson Cree Nation to be compelling. While NGTL committed to conduct post-construction monitoring of the RoW and watercourses in its EPP, the Commission imposes **Certificate Condition 32** (Post-construction Environmental Monitoring Reports), which requires monitoring for five years after construction. The Commission considers this to be responsive to the concerns. When considering this requirement, in addition to monitoring for the life of the Project during operation, the Commission is satisfied that long-term impacts to water quality, as a result of Project activities, are unlikely.

In response to concerns raised regarding the collection of more detailed water quality monitoring parameters prior to construction, the Commission finds that NGTL's baseline water sampling methodology was appropriate, met the Filing Manual requirements, and was commensurate with the scale and scope of the Project.

The Commission recognizes the presence of shallow ARD bedrock formations within the Lundbreck Section PDA. Given the potential for adverse effects to local water resources during construction, the Commission imposes **Certificate Condition 14** (Acid Rock Drainage Management Plan) requiring NGTL to develop and implement a plan to manage and mitigate any potential effects due to the presence of ARD-generating bedrock on the Lundbreck Section. The Commission is satisfied that the plan, along with NGTL's proposed mitigation measures, will minimize and manage the potential effects of ARD on water quality.

Table 9-1 provides details regarding the Commission's determination of significance of residual Project effects on water quality and quantity.

**Table 9-1: Evaluation of significance of residual effects on water quality and quantity**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term to medium-term | Effects are generally considered short-term and mainly during construction except, in some situations, effects would be expected to be of medium duration. For example, removal of mature riparian vegetation or disruption to a natural spring could result in effects that last in the order of several years, and as such, would be considered a medium-term effect. |
| | **Reversibility** | Reversible | Effects are expected to be reversible, allowing for disturbed areas to recover to pre-construction conditions within the life of the Project. |
| | **Geographic extent** | LAA | Effects are expected to be localized to the Project PDA and the LAA. |
| | **Magnitude** | Low to Moderate | Effects from construction and operation of the Project are expected to be of low magnitude after considering NGTL's proposed mitigation, reclamation activities and post-construction environmental monitoring. Some watercourse crossings do have the potential to result in moderate effects to water quality if vegetation establishment is delayed, and water quantity could experience moderate effects if a natural spring is disrupted. |
| **Adverse effect** | Low significance | | |

### 9.2.2 Fish and fish habitat

In addition to the measures related to Project activities and potential effects to watercourses and riparian habitat, NGTL provided additional measures to mitigate potential effects to fish and fish habitat. The Project has the potential to affect the critical habitat of the Saskatchewan-Nelson Rivers populations of Bull Trout and Westslope Cutthroat Trout in at least five watercourses, as identified in the respective federal recovery strategies.

NGTL committed to 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. NGTL stated it would adhere to the mitigation measures outlined in its Application and would comply with applicable DFO Codes of Practice. NGTL's Application and EPP included 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. Additionally, NGTL's environmental inspector(s) or designate(s) would monitor watercourse crossing activities to ensure adherence to all applicable mitigation measures in the EPPs.

NGTL stated that the potential for fish mortality (all life stages) is assessed to be low for all Project watercourse crossings with the implementation of proposed mitigation measures including: fish rescues would be conducted at isolated crossings to mitigate mortality of fish; additional measures (i.e., spawning deterrents) are proposed on the construction footprint at crossings with moderate to good spawning habitat; and water quality monitoring during isolated crossings at watercourses that provide moderate to good spawning habitat. NGTL stated that, if used, 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.

With the implementation of mitigation measures, NGTL stated that the residual Project effects and residual cumulative effects on aquatic resources are predicted to be not significant, and that Project-related residual effects are unlikely to affect the sustainability of fisheries or exceed water quality thresholds (other than some potential short-term and localized changes in total suspended solids). Additionally, NGTL submitted that by obtaining the required permits under SARA for fish handling and for watercourse crossings in critical habitat, where applicable and if approved, the Project would be consistent with the goals and objectives of the recovery strategies for species at risk.

**Views of Parties**

With respect to Potential Condition 17 concerning any authorizations issued under the *Fisheries Act*, Piikani Nation, Samson Cree Nation, and Driftpile Cree Nation recommended more process, consultation, and notification of Indigenous peoples.

***Piikani Nation***

Piikani Nation submitted that the potential for fish mortality as well as the potential for alteration, destruction or disruption of fish habitat may have direct impacts to the ability of Piikani Nation to carry out their rights on the land and waters of these valuable rivers. Piikani Nation expressed concerns about the effect of the Project on spawning habitat for Bull Trout and Westslope Cutthroat Trout populations.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations) and Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)***

Stoney Nakoda Nations and Métis Nation of Alberta identified the presence of fishing locations and use throughout the Project study area and have observed an overall decline in water quality from development activities and reduced fish populations in creeks, lakes, and rivers.

***Samson Cree Nation***

Samson Cree Nation raised concerns related to water quality and fishing, including: the potential for contamination resulting in reduced water quality in rivers and creeks; a loss of confidence in water quality leading to reduced fishing opportunities; and avoidance of water for subsistence and ceremonial purposes for current and future generations.

***Driftpile Cree Nation***

Driftpile Cree Nation raised concerns that potential effects of sedimentation on fish, fish habitat, and water quality may be significant and recommended that baseline water quality data be

collected. Additionally, Driftpile Cree Nation recommended that there be an effective and robust water quality monitoring plan, and consultation and engagement with it and other interested First Nations prior to the finalization of such water quality monitoring plans. Driftpile Cree Nation submitted that monitoring plans should include tests for the effectiveness of spawning deterrents to ensure fish are not impacted during and after construction.

***Livingstone Landowners Group***

Livingstone Landowners Group expressed a number of concerns about Project effects on fish and fish habitat, specifically on populations of SARA-listed Westslope Cutthroat Trout and Bull Trout. Livingstone Landowners Group is particularly concerned that NGTL's assessment of the population status of these two populations is inadequate, and that small increases in mortality or decreases in habitat quality could have significant impacts. Livingstone Landowners Group is also concerned about the potential effects of whirling disease on Westslope Cutthroat Trout. Livingstone Landowners Group is opposed to the Commission issuing a Certificate for the Project from a fish and fish habitat perspective until DFO issues all necessary *Fisheries Act* authorizations and SARA permits for the Project. Livingstone Landowners Group also believes the Project, as proposed, cannot receive an authorization under the federal *Fisheries Act* subsection 35(1) or a SARA permit because riparian and instream critical habitat of two aquatic species will be destroyed, which is prohibited under section 58(1) of SARA. Livingstone Landowners Group submitted that there will be both potential and realized residual effects on fish and fish habitat that cannot be avoided by mitigation, therefore a *Fisheries Act* authorization is necessary and appropriate fish habitat compensation through offsetting should be required.

***Jacob Adserballe***

Jacob Adersballe raised concerns regarding Westslope Cutthroat Trout and argued that NGTL's plans to dam up the fish-bearing creeks may impact the species, streams, and riparian zones. Jacob Adersballe stated that Rock Creek tributaries have not been adequately protected since the last pipeline installation, and the species is still impacted by washed culverts, erosion, improperly installed culverts, and lack of maintenance.

**Reply of NGTL**

In response to Information Requests, NGTL said that it completed fall spawning at relevant crossings, but no spawning activity was observed. NGTL also summarized its EPP mitigation measures to protect downstream spawning habitat during watercourse crossing construction that occurs within the RAP. Additionally, NGTL provided a draft Spawning Deterrent Execution and Monitoring Plan for the Project to be implemented where evidence of spawning is observed prior to construction, and confirmed that a final plan would be included in the EPP.

NGTL affirmed that, with the implementation of mitigation measures described in the EPP and additional measures, Project-related residual effects are unlikely to result in violation of subsection 34(1) of the *Fisheries Act* for the death of fish or subsection 35(1) for causing harmful alteration, disruption, or destruction. NGTL also affirmed that it would apply for a section 73 permit under SARA for fish salvage/rescue at watercourses where fish species at risk could be present, and that the Project is unlikely to results in harmful alteration, disruption, or destruction. NGTL stated that it would prepare and submit requests for review directly to DFO for any watercourse crossings that are proposed within critical habitat for review under the *Fisheries Act* and SARA.

In response to Livingstone Landowners Group's requests for further detailed studies and analyses relating to potential effects on fish and fish habitat, NGTL stated the additional studies requested were unnecessary and not warranted for the assessment but may be addressed by DFO in subsequent permitting processes, if deemed necessary. With respect to pre-construction testing for whirling disease on the Lundbreck Section, NGTL doesn't see the need to test as it would follow the provincial guidance for equipment cleaning and decontamination. Furthermore, testing would not help inform or mitigate the potential effects of the Project with respect to whirling disease.

***Commission analysis and findings***

The Commission finds that residual effects to fish and fish habitat (i.e., localized alteration or loss of riparian habitat, temporary alteration of instream habitat, temporary increased risk of fish mortality or injury, and combined residual effects) would be low to moderate in magnitude, reversible in the short to medium term, restricted to the LAA, and considered to be of medium significance, as explained further in the table below.

The Commission finds that NGTL has conducted a thorough assessment and an accurate characterization of the potential effects of the Project as outlined in the Filing Manual.

Pursuant to the October 2021 Addendum to the Memorandum of Understanding between the CER and DFO, NGTL must refer to DFO any works that occur within the critical habitat of listed aquatic species at risk and which may require authorization under paragraphs 34.4(2)(b) or 35(2)(b) of the *Fisheries Act*. If any DFO authorization(s) are required, the Commission imposes **Certificate Condition 23** (Authorizations under paragraph 32(2)(b) of the *Fisheries Act)***,** requiring NGTL to provide confirmation of obtaining authorizations under paragraph 35(2)(b) of the *Fisheries Act* or a permit under section 73 of SARA.

The Commission is satisfied that any potential or realized residual effects resulting from the Project will be mitigated or offset through any conditions included within any authorization(s) or permits issued by DFO. Given legislative requirements, the Commission understands that if DFO determines that authorizations(s) or permit(s) are required for any of the crossing(s), DFO will undertake any further consultation with Indigenous peoples during its review process.

The Commission heard concerns raised by Piikani Nation, Stoney Nakoda Nations, Métis Nation of Alberta, Samson Cree Nation, and Driftpile Cree Nation regarding the potential effects of the Project on fish and fish habitat, including Driftpile Cree Nation's concerns regarding the effectiveness and robustness of water sampling, spawning deterrents, and water quality monitoring. The Commission is persuaded by NGTL's response to concerns and has provided its reasons for this finding on water-related sampling and monitoring parameters in Section 9.2.1.

The Commission is also satisfied with NGTL's commitment to include a Spawning Deterrent Execution and Monitoring Plan in its updated EPP, as required by **Certificate Condition 7.** The Commission is persuaded that the use of Aquatic Resource Specialists and environmental inspectors by NGTL on site during construction will require NGTL to ensure that it appropriately implements watercourse monitoring and environmental protection measures. While the Commission had concerns regarding whirling disease, the Commission considers NGTL's measures for preventing the spread of whirling disease among susceptible trout populations in the entire Project area are appropriate.

Table 9-2 provides details regarding the Commission's determination of significance of residual Project effects on fish and fish habitat.

**Table 9-2: Evaluation of significance of residual effects on fish and fish habitat**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term to medium-term | Effects are generally considered short-term except, in some situations, effects would be expected to be of medium duration. For example, removal of mature riparian vegetation could result in effects that last in the order of several years, and as such, would be considered a medium-term effect. |
| | **Reversibility** | Reversible | Effects are mostly expected to be reversible, allowing for disturbed areas to recover to pre-construction conditions within the life of the Project. |
| | **Geographic extent** | LAA | Effects are expected to be localized to the Project PDA and the watercourse LAA |
| | **Magnitude** | Low to moderate | Effects from construction and operation of the Project are expected to be of low magnitude after considering NGTL's proposed mitigation, reclamation activities and post-construction environmental monitoring. Some individual watercourse crossings do have the potential to result in effects to critical habitat for SARA-listed species; however, in these situations, offset measures imposed by DFO through its authorization and permitting process would be required to compensate for any death of fish or the harmful alteration, disruption, or destruction of fish habitat. Therefore, the effects are expected to be of moderate magnitude. |
| **Adverse effect** | Medium significance. | | |

### 9.2.3 Vegetation

NGTL has committed to minimizing the amount of clearing and reduce disturbance in forested areas and native grassland and to limiting the amount of temporary workspace in both to the greatest extent possible. NGTL has proposed natural regeneration as the primary method of vegetation re-establishment within natural vegetation areas on the Project RoW. NGTL said it would implement standard industry practices and avoidance measures as well as standard and site-specific mitigation measures outlined in its EPP to reduce Project effects on vegetation. NGTL indicated that it would commence clearing activities during winter, under dry and frozen ground conditions to minimize potential effects to soils and vegetation.

NGTL acknowledged that Foothills rough fescue grassland is a valuable native grassland type in the Project area, is sensitive to surface disruption, and can be costly to reclaim. NGTL also noted that it would consult with AEP and address any potential conflicts with the Protective

Notation disposition. NGTL confirmed the conservation status of rough fescue, noting that the species is not listed under SARA or the Alberta *Wildlife Act,* and is not considered a species of management concern. NGTL noted that the purpose of the AEP Protective Notation is not to restrict development but to alert industry to the environmental and economic risk and to identify expectations for planning and development standards. Specifically, the purpose of the AEP Protective Notations that occur along the Lundbreck Section is to ensure that proponents consider the sensitivities of native rough fescue grasslands and engage with regulators on development that may impact fescue grasslands. NGTL understands that an AEP Rangeland Agrologist must issue clearance for the Project on lands that are designated under the AEP Protective Notations prior to AEP issuing land dispositions under the *Public Lands Act*.

NGTL submitted that there is no SARA critical habitat delineated for whitebark pine and that the Project footprint does not overlap with mapped potential critical habitat. However, NGTL stated that mitigation for whitebark and limber pine for the Lundbreck Section would be developed in consultation with responsible authorities and would be consistent with provincial and federal recovery plans for both species. NGTL's mitigation measures included:

- Collect cones from blister rust-resistant trees in and adjacent to the Project footprint prior to clearing to provide stock for future replanting projects or to donate to others.
- Protect limber and whitebark pines adjacent or in close proximity to the Project footprint with signage and barriers, tag and measure healthy trees within heavily infected stands, and add healthy tree data to Alberta's plus tree data set.
- Where cone-producing limber and whitebark pines are present adjacent or in close proximity to the Project footprint, avoid construction activity (e.g., heavy equipment working) between August 15 and September 30 when Clark's nutcrackers are collecting and caching seeds.
- Where avoidance is not practical:
    - use protective mats for vehicle traffic where grading is not required;
    - reduce topsoil stripping, grading or grubbing to the extent practical to protect tree root systems; and
    - track and record tree stem removal during construction.
- Create conditions suitable for the regeneration of limber and whitebark pine where desired and outside of the maintained permanent RoW.
- Replace stems removed with putatively blister rust-resistant nursery grown stock at 800 stems per hectare within selected areas of temporary workspace and/or RoW where woody vegetation can be re-established during operation, and off-site areas for re-planting may also be considered.

NGTL said that its revegetation measures would avoid species that would outcompete limber and whitebark pine, non-native grass and legume species, hydro seeding, and blister rust alternative host species including the currant family, Indian paintbrush, or lousewort species. Overall, NGTL said that with the implementation of mitigation measures, given that conservation-based thresholds for the species do not exist, the Project would not affect the viability of limber or whitebark pine and would not cause a conservation-based threshold specified in a recovery strategy or plan to be exceeded, or incrementally contribute to an already exceeded target.

NGTL submitted that vegetation, including fescue grassland, whitebark and limber pine, rare plants, and weeds would be monitored as part of NGTL's post-construction monitoring activities, and that, should they be needed, remedial actions would be implemented as soon as practical during the most appropriate season, and a final assessment would be scheduled for the fall to ensure remedial actions are stable and successful. NGTL stated it would record locations of issues related to listed weeds and vegetation establishment to ensure outstanding issues are investigated, resolved, and reported on during monitoring for the Project.

***Views of Parties***

Piikani Nation, Stoney Nakoda Nations, Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87), Samson Cree Nation, Driftpile Cree Nation, Nakcowinewak Nation of Canada, Elk Valley Métis Nation, and Montana First Nation expressed concerns about the loss of culturally important plants within areas disturbed by the Project.

> *… Our medicines we use, such as the sweetgrass, such as the sage, such as the sweet pine, such as the kinnikinnick, the bear root, the sting feet root, the mullein, there's all kinds of things that we use out there that we identified that feed us or that help us medically or that we use in ceremonial, which was ceremonial, medical, and medicinal plants.*
> *Kyle Plain Eagle, Piikani Nation, Transcript Volume 1 [248]*

Stoney Nakoda Nations and Samson Cree Nation expressed concerns over the changes to culturally important plants, noting that once vegetation was disturbed by development, it would not grow back the same and would no longer be good to use. Proposals to replant uprooted medicines are meaningless and render plant medicinal properties ineffective.

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

Piikani Nation, Stoney Nakoda Nations, Samson Cree Nation, and Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87) raised concerns related to invasive plants, and the use of chemicals for vegetation management and reported avoiding areas that have evidence of being sprayed with herbicides or pesticides. Indigenous peoples expressed concern that herbicides and pesticides could pollute water, culturally important plants, sacred sites, and could affect wildlife.

Through the Crown Submission, Louis Bull Tribe expressed concern about the effect of the Project on forest health, citing the need to prevent adjacent forest blow down after RoW clearing, and raised concerns about the loss of limber pine within the Project footprint. Piikani Nation is also concerned about the irreversible loss of forest habitat and the impacts of the Project on endangered limber pine and whitebark pine.

With respect to Potential Conditions 5 and 28 concerning rare ecological communities and rare plant populations, Piikani Nation, Stoney Nakoda Nations, Samson Cree Nation, and Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87) recommended more consultation with Indigenous peoples during plan development, and more emphasis on culturally important plants. Stoney Nakoda Nations and Samson Cree Nation recommended the inclusion of a condition, or amendment to an existing condition, that included specific wording supporting the protection and management of traditional use plants, including management of the quality and quantity of plants, foods and medicines needed to support the exercise of Section 35 Rights. Driftpile Cree Nation proposed the addition of additional ecological communities of concern, rare animal species, cumulative effects, and other measures.

Based on the results of Project-specific Traditional Knowledge and Use Study information provided by NGTL in its evidence, Nakcowinewak Nation of Canada, Piikani Nation, Samson Cree Nation, and Stoney Nakoda Nations identified the presence of medicinal plant harvesting sites, culturally significant areas, and vegetation within and outside of the RAA for all three sections of the Project. Piikani Nation and Stoney Nakoda Nations also identified specific Traditional Land and Resource Use locations for vegetation within the PDA for the Lundbreck Section.

Livingstone Landowners Group and Jacob Adserballe raised concerns about the restoration of rough fescue grasslands disturbed by the Project. Livingstone Landowners' Group presented evidence that identified limitations of prior attempts of propagating rough fescue from seed, the evolution of reclamation and restoration practices for rough fescue, identified new approaches to restoration, and detailed the relationships between rough fescue and the soil microbiome. Jacob Adserballe suggested that inoculation and biome studies should occur to support the restoration of rough fescue. Livingstone Landowners Group argued that the Commission should change its Potential Conditions 5 and 28 to specify that all prescribed condition measures also apply to rough fescue grasslands.

**Reply of NGTL**

NGTL responded to Indigenous peoples' concerns and recommendations regarding the Project's potential effects on traditional use plants and medicines by providing a summary of re-vegetation, reclamation, and monitoring-related mitigation measures provided in the ESA and EPP. NGTL said that in areas supporting natural vegetation (e.g., forest, wetlands), NGTL promotes the natural regeneration and establishment of native vegetation, and if previously unidentified rare plants or ecological communities are discovered, NGTL would implement the

Plant Species and Ecological Communities of Concern Discovery Contingency Plan in its EPP. NGTL stated that if traditional land use sites not previously identified were found on the construction footprint during construction, NGTL would implement its Cultural Resources Discovery Contingency Plan to ensure any sites not previously identified are properly recorded and mapped, and the potential disturbance of the sites from construction activities is addressed before continuing construction. NGTL also stated that where Indigenous peoples have provided site-specific information for current plant harvesting sites identified as sensitive resources within the Project footprint, they would be clearly marked prior to construction.

NGTL stated that it fully recognizes the special value and reclamation challenges associated with rare plant communities and species, and with respect to rough fescue grasslands that overlap the Project, NGTL has committed to several measures during construction, reclamation, and post-construction to avoid and reduce Project effects. NGTL acknowledged Livingstone Landowners Group's interest in native grassland reclamation and said it has been actively engaged with Livingstone Landowners Group to understand their interests and identify alignment and opportunities for collaboration. NGTL said that it continues to assess and develop site-specific mitigation measures using best management practices through the work of its senior grassland reclamation specialists, and consultation and permitting with AEP as the appropriate provincial regulatory authority. NGTL said it has developed and continues to discuss additional mitigation measures with AEP to avoid and minimize Project effects on whitebark pine and limber pine, and that the measures are consistent with the provincial draft guidance for these species.

NGTL maintained that mitigation measures for rough fescue grasslands are more appropriately dealt with through the provincial Protective Notation clearance process instead of Potential Conditions 5 and 28, especially given the five-year monitoring timelines on the conditions and the slow growth rate and establishment of rough fescue. With respect to comments on these conditions provided by Samson Cree Nation and Stoney Nakoda Nations, NGTL said it would integrate applicable Indigenous knowledge into the plans, but noted that many traditionally used plants are not listed as rare or at risk species and would not be included in the plans required by the condition. NGTL submitted that the Cultural Resource Discovery Contingency Plan, included in the EPP, describes measures in the event unanticipated cultural resources are identified during construction, and is the more appropriate mitigation measure to address the concerns.

NGTL said that it has reviewed the culturally important plant species occurrences identified by Indigenous peoples, stating that its Project design approach (alignment with existing disturbances to reduce clearing) and vegetation-related mitigation measures in the EPP would also mitigate effects to culturally important plants. NGTL also described further measures, including:

- completing pre-construction weed surveys;
- committing to plant whitebark and limber pine seedlings to replace those removed;
- seeding native grassland on Crown land with a native seed mix; and
- incorporating Indigenous knowledge into Potential Conditions 5 and 28.

NGTL discussed how it would incorporate the concerns of Indigenous peoples into the EPP for the Project, noting its description of reclamation goals to achieve equivalent land capability as defined by Alberta's *Environmental Protection and Enhancement Act, Conservation and Reclamation Regulation.* NGTL said that, consistent with the concept of equivalent land

capability, land reclamation success would be measured against adjacent representative site conditions, while considering the status of reclamation at the time of assessment. If post-construction monitoring indicates mitigation measures are not performing as intended, NGTL would implement adaptive management to achieve reclamation success when warranted based on the results of the monitoring.

***Commission analysis and findings***

Based on the construction methodology, mitigation and monitoring proposed by NGTL with respect to vegetation, as well as the imposed conditions (outlined below), the Commission finds that residual effects of the Project on vegetation would be of medium significance given that they are limited to the LAA, and reversible to permanent in the medium to long term, as explained further in the table below.

The Commission has considered Indigenous peoples' concerns regarding the potential loss of culturally important plants due to RoW clearing and has incorporated oral Indigenous knowledge into the analysis of Project effects. The Commission understands that temporary loss of vegetation currently available for traditional use would mainly occur on those portions of the Project footprint that are located on previously undisturbed Crown land with no access restrictions, which would include watercourse crossing locations and potentially the provincial Crown land portions on the Lundbreck Section. Based on the evidence, the Commission finds that the opportunity to harvest culturally important plants on the Project footprint is limited. This limitation is primarily due to historical provincial government land use policy related to private land ownership, the limited amount of Crown land crossed by the Project, and existing grazing dispositions on those Crown land. NGTL's selected route mainly crosses previously disturbed private lands and occupied Crown land. and as such, avoids lands that would be more accessible and valued as harvesting areas for Indigenous peoples.

Given the lack of land available for the harvesting of culturally important plants within the Project PDA, the Commission finds that further actions (for example, the imposition of a condition specific to the protection and management of culturally important plants) is not warranted. The Commission finds that NGTL's proposed mitigation measures for vegetation re-establishment to be adequate, and that the measures appropriately reduce the potential impacts of the Project on culturally important plants.

With respect to fostering opportunities for Indigenous peoples to harvest culturally important plants from the Project PDA prior to construction, the Commission recognizes NGTL's commitment to aid harvesting, where appropriate. To formalize this commitment, and in recognition of the importance of these culturally significant medicines and plants, the Commission imposes **Certificate Condition 16** (Engagement Report Regarding Pre-Construction Harvesting) which requires reporting on the consultation activities specific to the matter of pre-construction harvesting. The Commission considers the condition to be responsive to the concerns and is satisfied that the requirements will reduce the adverse effects of the Project on vegetation species that are culturally important to Indigenous peoples.

The Commission shares the view that medicinal plants and medicines are sacred and culturally vital to Indigenous peoples and heard that they must be free from contaminants and grown in a natural state. The Commission put substantial weight on NGTL's commitments to limit the use of pesticides and herbicides within the Project footprint,

promote natural regeneration in areas that support natural vegetation, use native seed sources where seeding is necessary, and consult with Indigenous peoples about re-vegetation techniques. Considering these measures and others described in the EPP, particularly the promotion of natural regeneration which propagates plant growth from existing seed stock, the Commission is persuaded that the loss of culturally important plant populations disturbed by Project will be reversible to permanent and species dependent, but that similar pre-disturbance plant communities will return over time.

The Commission finds that the Project will impact endangered whitebark pine listed under SARA, limber pine, and other provincially listed rare ecological communities and rare plant populations located on the Lundbreck Section of the Project footprint. The Commission is satisfied with NGTL's commitment to minimize clearing, limit the amount of temporary workspace, and implement mitigation measures consistent with federal and provincial recovery strategies for whitebark and limber pine.

The Commission also considered that NGTL has proposed re-planting whitebark pine and limber pine seedlings on the RoW and will use natural regeneration as the preferred method of vegetation re-establishment within natural areas. However, the Commission finds that additional measures for vegetation species of concern are required, and consequently, the Commission imposes **Certificate Condition 17** (Rare Ecological Community and Rare Plant Population Management Plan), and **Certificate Condition 33** (Final Rare Ecological Community and Rare Plant Population Offset Plan), the intent of which is for NGTL to develop additional mitigation and potentially offset rare ecological communities and rare plants that are lost. The Commission is satisfied that the aforementioned plans will appropriately mitigate residual effects on rare ecological communities and rare plants and that the Project is not likely to result in any permanent loss of vegetation species of concern.

The Commission understands that the re-establishment of vegetation, especially trees and other woody vegetation species, could take a considerable length of time to reach an appropriate stage of maturity. The Commission finds that a robust post-construction environmental monitoring program is a fundamental tool so that NGTL can ensure that potential adverse effects have been effectively mitigated. The Commission also recognizes the importance of measuring the success of reclamation during post-construction monitoring. Consequently, the Commission imposes **Certificate Condition 32** requiring NGTL to file its post-construction environmental monitoring reports. Therefore, the Commission finds that, with monitoring and adaptive management if required, the residual effects on vegetation affected by the Project would be appropriately mitigated, and the Project is not likely to result in any long-term effects on vegetation.

The Commission finds that the Project will affect areas of native grassland, including populations of rough fescue, a species not listed under SARA or the Alberta *Wildlife Act,* nor designated as a species of management concern, but nonetheless is considered as an important grassland species by the province of Alberta. The Commission takes note of NGTL's active consultation with AEP regarding further mitigation measures and the Protective Notation process, along with NGTL's commitment to engage and collaborate with Livingstone Landowners Group in the area of native grassland reclamation research. With respect to the detailed, biological restoration concerns raised by Livingstone Landowners Group, the Commission is persuaded that with NGTL's proposed mitigation measures, its engagement with a senior grassland reclamation specialist, coupled with consultation commitments to Livingstone Landowners Group and AEP, the technical matters concerning

rough fescue restoration will be addressed collaboratively and the effects of the Project on rough fescue will be minimal.

The Commission has considered NGTL's submission that the restoration of rough fescue grassland is predicted to take longer than the typical five-year post-construction monitoring period. Therefore, in response to concerns about restoration raised by Livingstone Landowners Group and other parties, for areas where rough fescue grassland was disturbed by construction, the Commission finds it to be in the public interest to require NGTL to conduct post-construction monitoring and file a report with the CER following each of the first, third, fifth, and tenth complete growing seasons after completing final cleanup for the Project, as detailed in **Certificate Condition 32** (Post-construction Environmental Monitoring Reports). The Commission considers the monitoring of rough fescue grasslands for ten years after construction to be an appropriate timeframe to manage and mitigate any residual effects to those grasslands that are disturbed by the Project.

Table 9-3 provides details regarding the Commission's determination of significance of residual Project effects on vegetation, including endangered whitebark pine and limber pine, rough fescue grassland, and rare ecological communities and rare plant species.

**Table 9-3: Evaluation of significance of residual effects on vegetation**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Medium-term to long-term | Effects are generally considered medium-term until the disturbed RoW is fully vegetated, in some situations, effects would be expected to be of long-term duration. For example, removal of rough fescue grassland or forest tree species will result in effects that last in the order of several years to decades, and as such, would be considered a long-term effect. |
| | **Reversibility** | Reversible to Permanent | Effects are expected to be reversible to permanent, depending upon the growth rate of forest tree species within the life of the Project. |
| | **Geographic extent** | LAA | Effects are expected to be localized to the Project PDA and the LAA |
| | **Magnitude** | Low to Moderate | Effects from construction and operation of the Project are expected to be of low magnitude after considering NGTL's proposed mitigation, reclamation activities and post-construction environmental monitoring. Some effects do have the potential to result in moderate effects to vegetation, for example the re-establishment of rough fescue grasslands, and populations of whitebark pine and limber pine. |
| **Adverse effect** | Medium significance. | | |

### 9.2.4 Wildlife and wildlife species at risk

NGTL identified three potential effects that could influence or affect the local and regional abundance and distribution of wildlife species: change in habitat; change in movement; and change in mortality risk. Mitigation for all three effects was detailed in the ESA and EPP. As wildlife and wildlife habitat is one of the biophysical VCs that support the exercise of Indigenous and Treaty Rights, NGTL said it assessed wildlife and plant species and habitats, and cultural sites of importance, as identified and described by potentially affected Indigenous peoples.

NGTL identified key indicators to focus its wildlife and wildlife habitat assessment (summarized in Table 9-4). Key indicators chosen are a subset of species at risk and species of management concern that have the potential to be directly or indirectly affected by Project activities based on the species' ranges, habitat associations, and baseline wildlife data collected for the Project. Priority was given to wildlife species that are either legislatively protected (i.e., species at risk), associated with habitat features that have been observed in the LAA that have established setbacks (e.g., nests), or identified as traditionally important by Indigenous peoples.

**Table 9-4: NGTL's selection of wildlife key indicators for the ESA**

| Key indicator | Turner Valley Section | Longview Section | Lundbreck Section |
|---|---|---|---|
| Grizzly bear | X | X | X |
| Moose | X | X | X |
| Bighorn sheep | | | X |
| Elk | | | X |
| Little brown myotis | X | X | X |
| Grassland birds | X | X | X |
| Forest birds | X | | X |
| Yellow rail | X | X | |
| Western tiger salamander | X | X | |
| Western toad | | | X |

NGTL conducted an aerial habitat reconnaissance survey and targeted field surveys for amphibians and breeding birds, sharp-tailed grouse leks, and raptor and colonial nests. NGTL confirmed that the results of its wildlife studies were incorporated into the ESA and associated Technical Data Report. NGTL explained that sharp-tailed grouse lek surveys were not

undertaken for the Lundbreck Section as the PDA is at least 7 km west of the provincially-identified range.

In its Additional Written Evidence and Reply Evidence, NGTL re-routed several portions of the Project route, mainly due to landowner concerns. These re-routes shortened the overall length of the route and avoided some environmental features including a sharp-tailed grouse lek on the Longview Section. NGTL also provided updates on its consultation with AEP on mitigation in the EPP specific to western tiger salamander breeding sites, raptor nests, yellow rail breeding sites, Columbia spotted frog, as well as the Breeding Bird and Nest Management Plan.

In determining potential for residual effects, NGTL examined change in habitat, change in movement and change in mortality risk for each Project component:

- Turner Valley Section: NGTL found the magnitude of change in habitat and change in movement to be low for all species considered. NGTL found the change in mortality risk to grizzly bear to be moderate but unlikely to occur and short term.
- Longview Section: NGTL found the magnitude of change in habitat and change in movement to be low for all species considered. NGTL found the change in mortality risk to grizzly bear and little brown myotis to be moderate in magnitude but unlikely to occur and short term.
- Lundbreck Section: NGTL found the magnitude of change in movement to be moderate for grizzly bear, bighorn sheep and elk, and likely to occur but only over the short term. NGTL found the change in mortality risk to grizzly bear to be moderate in magnitude but unlikely to occur, and moderate for western toad but possible.

**Views of Parties**

***Livingstone Landowners Group***

Livingstone Landowners Group questioned why NGTL did not collect local data from AEP biologists and did not complete standard surveys for such sensitive species as sharp-tailed grouse and badgers. Livingstone Landowners Group also said there is a migration route of Livingstone herd elk from east of the North Burmis Road into British Columbia documented by AEP, which also delineates important stop-overs during migration and locations of elk calving sites. Incorporating such data into the Project is required to ensure the migration is not negatively impacted, maintaining connectivity of elk in SW Alberta.

***Driftpile Cree Nation***

Driftpile Cree Nation said a more thorough analysis of the residual Project effects and residual cumulative effects to wildlife and wildlife habitat is important to inform a more detailed mitigation strategies, including wildlife-specific follow-up programs and related monitoring of residual impacts. Additionally, Kacey Yellowbird of Samson Cree Nation said:

> *… I would just like to share that, you know, a lot of the things that I see happening out there, especially where we have been hunting is -- you know, what I noticed mostly was a lot of the clearing of the trees, you know, and that that obviously disrupts the habitat of the moose, the deer, and elk which we hunt quite often. And what I have noticed is that it's getting harder and harder to find animals.*

*And I understand that animals do have different patterns, but I have hunted many years in all these areas, much like all every hunter in our community, and they can attest to you that things are changing due to not just industry, but also to clearing of the trees and environment and a whole lot of factors that come into play here.*
Kacey Yellowbird, Samson Cree Nation, Transcript Volume 5 [1856-1857]

### *Piikani Nation*

Piikani Nation are concerned with threats to culturally or traditionally important animal species including mortality, loss of habitat (clearing), and loss of habitat function (sensory disturbance, habitat fragmentation). The loss of animals and their habitat will have an impact on Piikani Nation's ability to harvest traditionally used species. During construction and pipeline expansion activities, Piikani Nation said that land disturbances will create barriers to travel routes and harvesting areas, harvesting areas may be compromised due to outsider hunting and fishing activities, and land and resource based eco-tourism businesses (such as guiding) may be affected due to environmental impacts.

Piikani Nation is concerned that the Project will likely result in the irreversible loss of forest habitat, including old seral stage forest, the loss or degradation of wetlands and watercourses and the loss or degradation of sensitive grasslands, including heritage range lands.

*…in our ways and our natural laws and in our societies, and all of the rules that we abide by in our natural laws, tell us that because you put up a fence line, nature doesn't stop. Nature's requirement for its continual existence doesn't stop. …we look at this Project area being a collective. The deer that travel through the Project area, badgers, the beavers, the ground animals don't know the Project footprint area, and nor do we.*
Elder Ira Provost, Piikani Nation, Transcript Volume 1 [93]

Regarding grizzly bear habitat, Piikani Nation said the proposed mitigation measures do not go far enough to align with Best Management Practices. Piikani Nation recommended that:

- Details about the extent of the area covered in pre-construction surveys, or setback distances from bear dens if they are discovered, should be included in the EPP.
- NGTL should establish and enforce speed limits for all motorized vehicle traffic associated with project activities to avoid potential collisions with bears and other wildlife. In addition, the Proponent should erect bear crossing signs along access routes that cross through known grizzly bear habitat.
- NGTL should make a clear commitment to provide Bear Awareness Training for working in grizzly bear zones to all workers on site.
- NGTL should integrate Best Management Practices for restoring grizzly bear habitat following disturbance for pipeline development, including reforestation within two years of pipeline construction that matches the adjacent forest type, across the entire width of pipeline cover excluding 1.5 m on each side of the buried pipeline.

### *Elk Valley Métis Nation*

Through the Crown Submission, Elk Valley Métis Nation shared concerns regarding the significant unreported activity in Elk Valley specific to water and wildlife impacts, including the declining grizzly bear population. Elk Valley Métis Nation also inquired about monitoring for

forestry activities, coal exploration programs, road development, tree harvesting, or drilling on private lands in the Elk Valley.

***Samson Cree Nation***

Samson Cree Nation, through the Crown Submission, recommended additional wildlife monitoring and studies to help inform on how the proposed Project construction may interact with wildlife.

**Reply of NGTL**

In response to Livingstone Landowners Group's concerns about the timing of construction in the Lundbreck Section in relation to sensitive wildlife periods, NGTL said where proposed clearing or construction activities overlap with a sensitive period, mitigation measures would be implemented as per the EPP. NGTL confirmed that provincially identified sharp-tailed grouse range does not overlap the LAA of the Lundbreck Section. Additional biophysical fieldwork will be conducted in 2022 to confirm information and identify site-specific wildlife features, as applicable, for re-routed portions of the Project.

NGTL responded to Driftpile Cree Nation's concerns about the wildlife assessment in the ESA, NGTL said it does not propose to undertake additional analysis of Project effects on wildlife and wildlife habitat. NGTL re-iterated that Project siting has been undertaken to reduce new disturbance, where practical, and proposed timing of Project clearing and construction has considered sensitive wildlife periods, among other factors.

In response to concerns raised by Piikani Nation about long-term effects, NGTL said operation phase activities for the Project are limited to infrequent, small-scale maintenance activities such as integrity digs and vegetation management over the pipeline. Sensory-related effects above baseline levels are not anticipated during routine operation of the Project. No interactions with the exercise or practice of Indigenous and Treaty Rights are expected during pipeline operations.

In response to Elk Valley Métis Nation's concerns about wildlife impacts, NGTL provided its mitigation measures to reduce potential adverse effects of the project on wildlife. NGTL said it would ensure that all environmentally sensitive resource locations are properly identified and marked in the field before the initiation of ground disturbance to avoid or minimize potential Project effects.

In response to Samson Cree Nation's recommendations, NGTL pointed to its mitigation measures to reduce potential adverse effects on wildlife and wildlife habitat, including sensory disturbance, and pointed to its Wildlife Species of Concern Discovery Contingency Plan.

**Commission analysis and findings**

The Commission finds that, with the application of the proposed mitigation measures and best industry practices, to which NGTL has committed, there is limited potential for the Project to interact with wildlife species and species at risk.

As shown in Table 9-5, the Commission concludes that the Project's residual adverse effects, including any resulting cumulative effects, would be low to moderate in magnitude, range from PDA to LAA in extent, of short- to long-term duration, and would be reversible.

Given all of the above, the Commission finds that the adverse effects of the Project on wildlife and wildlife habitat to be of medium significance.

Wildlife and wildlife habitat is one of the biophysical VCs that supports the exercise of Indigenous and Treaty Rights. As such, any impacts on species of interest to Indigenous peoples needs to be considered. The Commission finds that NGTL's approach in its ESA, including the use of key wildlife indicators, to be appropriate for the scale and scope of the Project.

Notwithstanding the commitments NGTL made during the hearing process and ongoing engagement, and given NGTL's anticipated results of additional wildlife surveys, the Commission imposes conditions requiring NGTL to appropriately survey, mitigate and monitor potential effects on wildlife species, both before construction through **Certificate Condition 7** (Updated EPP), and post construction through **Certificate Condition 32** (Post-construction environmental monitoring reports). The Commission expects NGTL to continue engaging with participants in this proceeding as it has committed to, and to integrate relevant feedback received into the filings related to these conditions.

Table 9-5 provides details regarding the Commission's determination of significance of residual Project effects on wildlife and wildlife habitat.

**Table 9-5: Evaluation of significance of residual effects on wildlife and wildlife habitat**

| | Criteria | Rating | Description |
|---|---|---|---|
| **Project effects** | **Temporal extent** | Short-term to long-term | Effects are generally considered short-term for sensory disturbances and long-term for forested areas for the portion of the RoW for which vegetation management will be ongoing. |
| | **Reversibility** | Reversible | Effects are expected to be reversible once reclamation of disturbed areas has been achieved. |
| | **Geographic extent** | PDA to RAA | Effects are expected to be localized to the PDA, with sensory effects extending to the LAA during construction. Residual effects on wildlife mortality may extend into the RAA along roads that will be used by Project-related traffic. |
| | **Magnitude** | Low to Moderate | Effects from construction and operation of the Project are expected to be of low to moderate magnitude after considering NGTL's proposed mitigation, reclamation activities and post-construction environmental monitoring. Some effects do have the potential to result in moderate effects to wildlife habitat for grizzly bear and ungulates on the Lundbreck Section. |
| **Adverse effect** | Low to medium significance | | |

## 9.3 Cumulative effects on biophysical valued components

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. The following considers NGTL's submissions described above.

NGTL submitted that with, the implementation of mitigation measures, residual effects and cumulative effects would be as follows:

- For soil quality, residual effects are predicted to be restricted to the PDA, short term and reversible except for soil loss in the Lundbreck Section, where the effects would be irreversible. For terrain, residual effects are predicted to be restricted to the PDA, short term and reversible on the Turner Valley and Longview Sections but irreversible on Lundbreck where many slopes are too steep to be restored to pre-construction conditions. Changes to soil capability are unlikely to overlap with the effects of other reasonably foreseeable projects and physical activities.
- Residual Project effects are likely for vegetation communities but unlikely to affect the community's sustainability in the RAA. Residual effects on vegetation species are possible in the Turner Valley and Longview Sections and likely in the Lundbreck Section. Effects on vegetation species in the Lundbreck Section are predicted to show a measurable change in the LAA but unlikely to affect sustainability in the RAA. Residual effects on wetlands would be largely restricted to the PDA but are expected to persist into the medium to long term. With the implementation of mitigation measures, residual Project effects and residual cumulative effects on vegetation and wetlands are predicted to be not significant.
- Residual Project effects on wildlife habitat and wildlife movement are likely to occur, but direct effects would be restricted to the PDA and indirect effects to the LAA, but this varies by species. Residual effects on mortality risk range from unlikely to possible. During operation, residual Project effects on the mortality risk of birds and amphibians are unlikely. Due to the ongoing nature of disturbance in the RAA, residual cumulative effects on change in habitat and wildlife movement are likely to occur but the contribution of Project components to the cumulative effects is predicted to be negligible to low. The contribution of the Project components to the cumulative effects on wildlife mortality risk is predicted to be negligible to low.
- Residual Project effects on fish habitat and fish mortality risk are likely to occur but would be medium-term in duration and reversible. The Project is expected to make a low to moderate contribution to cumulative effects on fish habitat and fish mortality risk.
- Residual Project effect on surface water and groundwater quality and quantity are expected to extend to the LAA, be restricted to the construction phase and reversible. The Project components are expected to make a negligible contribution to cumulative effects on surface water and groundwater quantity and quality at the RAA scale.
- Cumulative effects associated with the releases of Project-related GHG emissions, described in Chapter 11, are global and are not limited to provincial or national borders. The assessment of cumulative effects of Project-related GHG emissions is beyond the scope of this Project.

**Views of Parties**

Several parties indicated a general interest in environmental effects and raised concerns about the cumulative effects of the proposed pipeline together with the existing pipelines on the affected lands.

***Piikani Nation***

Piikani Nation said there is a significant (and increasing) number and scale of industrial developments occurring within Piikani Territory. The cumulative impacts of development in these areas have all but rendered Piikani Nation's Treaty Rights obsolete.

> *We have a strong understanding of our natural laws, how they have interacted with both nature and the people and the living beings upon it. We have never detoured from these beliefs. …*
> Elder Ira Provost, Piikani Nation, Transcript Volume 1 [88]

***Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)***

Métis Nation of Alberta said that cumulative effects are proven to have serious environmental degradation of the land, water, air, animals, etc. There is general concern of additional land disturbance, loss of culturally significant plants, invasive species, and unsuccessful reclamation practices. Métis Nation of Alberta also said, as noted in previous traditional land use studies completed by NGTL, linear disturbances, such as RoW and access roads create easier vehicle access, allowing access to what would otherwise be remote, poor-access areas. This increases human activity in the backcountry, diminishes harvesting areas and reduces the quality of medicinal and subsistence plants. Métis Nation of Alberta suggests NGTL minimize sight lines, limit vehicle access along the pipeline sections, and reclaim access roads after the construction to ensure access is limited to the areas around the Project components.

***Driftpile Cree Nation***

Driftpile Cree Nation said:

- While the Project is only a small part of the entire system, Driftpile Cree Nation is concerned that the cumulative effects of the entire NGTL System, as well as other industrial developments, on Driftpile Cree Nation and their traditional lands, need to be fully assessed and addressed. Driftpile Cree Nation relies on hunting and trapping as a food source and for medicinal, ceremonial, and other traditional purposes. As it is, Driftpile Cree Nation's access to wildlife populations for these purposes has been severely impacted by other developments, creating food insecurity, risk to economic opportunities and to the ability to share and pass on Indigenous knowledge and culture.
- Although the Project is not within Driftpile Cree Nation's Treaty lands, the Project would further disrupt wildlife habitats and ecosystems and interrupt the movement patterns of wildlife that Driftpile Cree Nation relies upon. Disturbing, contaminating and altering the environment in one area would impact neighbouring ecosystems. These impacts will be felt by Driftpile Cree Nation and are exacerbated by other developments that are completed or ongoing. Driftpile Cree Nation is concerned that certain cumulative impacts are already irreversible and that the environment will never recover.

***O'Chiese First Nation***

O'Chiese First Nation raised concerns with cumulative effects and submitted that the definition for human footprint used by the Alberta Biodiversity Monitoring Institute (all areas under human use that have lost their natural cover for extended periods of time, such as cities, roads, agricultural fields, and surface mines. It also includes land that is periodically reset to earlier successional conditions by industrial activities such as forestry cut blocks and seismic lines) should be used to properly assess cumulative effects on the landscape. In addition, O'Chiese First Nation recommended that the CER review all Potential Conditions to include explicit requirements pertaining to the assessment and mitigation of cumulative effects.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

*This portion is knowledge that was provided in confidence to the Commission by Indigenous peoples and is redacted.*

Stoney Nakoda Nations emphasized the importance of and need for monitoring cumulative effects, not only during the construction phase of the Project, but for the NGTL System as a whole, through the implementation of an IAMC.

**Reply of NGTL**

Regarding comments related to how baseline conditions are established, NGTL submitted that the cumulative effects assessment conducted for this Project is in accordance with regulatory requirements and acknowledges that anthropogenic changes since the signing of Treaty 7 have dramatically altered the landscape. NGTL is currently evaluating the established approach to cumulative effects assessments to determine if it can evolve and modernize best practices. NGTL has been following and considering various cumulative effects initiatives, emerging policy, recent legal decisions, as well as stakeholder and Indigenous feedback, to inform future steps in the management of cumulative effects.

In response to concerns about cumulative effects on the existing conditions for the exercise or practice of Indigenous and Treaty Rights, NGTL said the Project has been designed to parallel existing disturbances and the PDA is located within predominately freehold and occupied Crown land, both of which are Project design measures that limit the potential for Project-related effects on the exercise or practice of Indigenous and Treaty Rights and loss of accessible lands. For example, as indicated in O'Chiese First Nation's written evidence, the Project falls within lands categorized as 'lands taken up or human footprint' and does not cross lands identified by O'Chiese First Nation as 'suitable for the exercise of Inherent and Treaty rights'.

**Commission analysis and findings**

The Commission observes that NGTL's submissions are consistent with those of intervenors in that there are numerous existing impacts on the landscape. However, the Commission finds that NGTL will apply appropriate mitigation to the effects of this Project, and therefore the impacts of the Project will be small in magnitude and largely short-term and reversible. Based on the reduction of impacts after mitigation is applied, there are few residual impacts that could interact with other existing and future activities in the region.

Nevertheless, the Commission suggests that more can be done and recommends that provincial and federal governments work towards improvements in assessing the cumulative effects of developments in the region, as well as work closely with Indigenous peoples and stakeholders that live, work, and use the region (as discussed in Section 1.4.2).

The Commission heard concerns regarding cumulative effects in the Project area, and on the traditional territories surrounding the Project. The Commission recognizes the impact these activities have had on the landscape and on land use and heard from intervenors that they are particularly concerned with access, impacts on wildlife and vegetation, water quality and fish, and how these have already been impacted by past and ongoing activities. Particular concerns related to wildlife and Treaty Rights are addressed in more detail in Chapter 5.

With regard to recommendations for including cumulative effects components into conditions imposed on NGTL for this Project, as discussed in Chapter 6, the Commission is not persuaded by the arguments and finds that conditions and their associated filings are not a venue for assessing cumulative effects, as that step occurs through the ESA and throughout the Project assessment and hearing process.

The Commission agrees with NGTL that the Project impacts are incremental and small in scope in comparison to already-existing activities on the landscape in southwestern Alberta. The Commission finds that the contribution of the Project components to the cumulative effects on biophysical valued components is predicted to be negligible to low. This is largely due to the pre-existing anthropogenic disturbance in this area and large percentage of agricultural land use.

The Commission understands the inherent cumulative nature of the GHG emissions accumulated in the global atmosphere; therefore, the Commission has not assessed the other significance criteria (geographical extent, reversibility, duration) and ratings for GHG emissions. The Project's contribution to meeting Canada's climate change commitments is discussed in Chapter 11.

# 10 Economic and financial matters

This chapter will highlight key submissions from parties, the reply of NGTL, and the Commission's analysis and findings relevant to:

| | |
|---|---|
| ***CER Act 183(2) factor(s)*** | *(f) the availability of oil, gas or any other commodity to the pipeline* |
| | *(g) the existence of actual or potential markets* |
| | *(h) the economic feasibility of the pipeline* |
| | *(i) the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline.* |
| ***List of Issues No.*** | 1. The need for the Project |
| | 2. The economic feasibility of the Project |
| | 3. The potential commercial impacts of the Project, including potential commercial impacts on Indigenous peoples |
| | 4. The appropriateness of the toll and tariff methodology of the Project |
| | 5. The availability of gas to the Project |
| | 6. The existence of actual or potential markets |
| | 7. The financial resources, financial responsibility and financial structure of the applicant, the methods of financing the Project and the extent to which Canadians including Indigenous peoples will have an opportunity to participate in the financing, engineering, and construction of the Project |
| ***Key conclusion(s)*** | 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, even when taking into consideration the potential impact that climate change laws, policies, and regulations may have to the long-term feasibility of the Project. |
| | Given this and the Project's integration with the existing system, 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. |
| | The Commission finds that Canadians will have a reasonable opportunity to participate in the financing, construction, and engineering of the Project. |

## 10.1 Economic feasibility

When making its determination regarding the economic feasibility of the Project, the Commission assessed the need for the Project and the likelihood of the proposed facilities being used at a reasonable level over their economic lives. Specifically, the Commission considered the availability of gas to the Project, the existence of actual or potential markets, the likelihood that tolls will be paid, the rationale for selecting the applied for facilities compared to alternatives, and NGTL's ability to finance the Project. The Commission also considered the extent to which existing climate change laws, regulations, and policies, as well as financial risks and other uncertainties, were incorporated into NGTL's economic analysis for the Project, which are discussed in Chapter 11.

### 10.1.1 Commercial need

NGTL stated that the Project is needed to increase pipeline capacity along the WAS for natural gas to be transported to the ABC Border Export Point to meet aggregate transportation requirements. The Project is driven primarily by Western Canada Sedimentary Basin (WCSB) producers seeking increased access to export markets and the ability to compete for downstream market share. The Project would provide the opportunity for the WCSB and NGTL customers to increase their market shares in the markets served through the ABC Border Export Point, which includes the U.S. Pacific Census Region via connecting pipelines from other companies. NGTL submitted that the Project is commercially required to be in-service by November 2023 to meet aggregate transportation requirements, including incremental contracts that underpin the Project. Further, the Project is supported by NGTL's forecasts of supply and demand on the NGTL System, which account for climate change laws, policies, and regulations.

NGTL stated that the Project was designed to meet incremental flow requirements at the ABC Border Export Point, while also satisfying design conditions throughout the Project Design Area. NGTL submitted that the Project would increase capability in the Project area by 4.63 million cubic metres per day (175 TJ/d), meeting the delivery design flows requirements.

NGTL provides notice of capacity capital projects to its Tolls, Tariff, Facilities, and Procedures Committee on an on-going basis. NGTL stated that it met with this committee in October and November 2019, and September 2020, regarding the Project and no concerns were raised. In addition to these communications, NGTL stated that other commercial third parties were notified about the Project using a variety of communications tools, including a November 2019 news release and postings to the TC Energy and NGTL Customer Express websites.

NGTL executed contracts with four customers for an incremental 175 terajoules per day (TJ/d) of firm delivery service, with a weighted average term of 30.5 years, which commercially underpins the Project. The capacity for delivery service at the ABC Export Point was allocated through an expansion capacity open season that was held between July and August 2019. Four bids were allocated and awarded capacity through this open season. NGTL submitted that based on its forecasts of markets and supply, as well as the contractual commitments that underpin the Project, the applied for facilities would be used and useful throughout the economic life of the Project.

NGTL noted that the existing contracts on the NGTL System have experienced high renewal rates for the past few years with 100 per cent of the existing firm service delivery contracts at ABC Border delivery point being renewed. NGTL held two capacity optimization open seasons

to determine if customers had interest in turning back, non-renewing or deferring existing or new contracts, but no such requests were submitted for contracts at the ABC Border delivery point. NGTL also completed a turnback and expansion open season for the ABC Border delivery point that closed in June 2021. This open season was launched concurrently with a turnback and expansion open season on Foothills Zone 8 and sought to assess whether the need for the proposed expansion facilities on the NGTL System could be reduced or eliminated and/or whether any turned back or non-renewed capacity could be repurposed to accommodate expansion bids within the scope of the proposed facilities. No requests for turnback or early notification of non-renewal of billable firm service delivery contracts were received by NGTL that would reduce or eliminate the need for the Project. NGTL submitted that these recent open seasons provide support that the Project would be needed over the long term and that it is expected to have an economic life in excess of 30 years.

NGTL described its facility planning process and the evaluation of facility alternatives for the Project. NGTL examines the purchase of existing assets and transportation by others agreements prior to considering new build alternatives. NGTL submitted that no feasible alternatives were identified so new build alternatives were considered

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) when identifying new build alternatives. NGTL identified both the Project and compression facilities as an alternative to each of the facilities comprising the Project, including one 30 megawatt and two 20 megawatt compressor units.

The applied-for facilities are preferred from efficiency, operational, reliability and customer perspectives. Each of the facilities comprising the Project were selected as the lowest cumulative present value cost of service option. NGTL noted that the compression alternatives were not preferred from an engineering and hydraulic efficiency perspective.

**Views of Parties**

***Alberta Department of Energy***

The Alberta Department of Energy (ADOE) stated that the Project will provide access to premium natural gas demand markets, including the Pacific Northwest and California markets, and provide opportunities for WCSB producers to diversify their market portfolios. ADOE submitted that there is a clear need for the Project to provide for the aggregate demand of the NGTL System, including the additional commitments underpinning the Project. ADOE further submitted that the 175 TJ/d of executed firm-service delivery contracts, the 30.5 year weighted-average term of those contracts, and the results of the June 2021 turnback and expansion open season demonstrate strong commercial support for the Project.

***Canadian Association of Petroleum Producers***

The Canadian Association of Petroleum Producers (CAPP) submitted that the Project would provide necessary access to markets for CAPP members and other NGTL shippers. The evidence of market demand and adequate supply, supported by long-term contractual commitments, is clear and unchallenged.

### 10.1.2 Availability of gas

NGTL stated that natural gas supply from the WCSB is forecasted to grow from 15.4 billion cubic feet per day (Bcf/d) in 2019 to 22.8 Bcf/d in 2030 and that WCSB natural gas can compete economically to access export markets and increase downstream market share. The natural gas available to the NGTL System is expected to grow from 12.1 Bcf/d in 2019 to 17.5 Bcf/d in 2030. NGTL's access to growing supply sources from gas available in the WCSB would be economic even in lower gas price environments due to the higher liquids content in gas it has access to in the basin.

### 10.1.3 Existence of actual or potential markets

NGTL stated that the U.S. markets are expected to have sufficient demand to absorb supply from the Project over the long term. NGTL stated that exports to the U.S. Pacific Census Region from NGTL are expected to increase over time as natural gas from the WCSB is competitively priced. NGTL is the view that WCSB gas can compete economically with other basins serving the Pacific region and that this is evident through shippers that have underpinned this Project with signed long-term contracts.

NGTL provided a natural gas demand forecast of the integrated North American market, including the markets that the Project would serve. NGTL stated that this overall outlook was developed based on an internal assessment of factors including historical growth rates; new and/or anticipated growth trends; government policy; project announcements; aggregate customer confidential information; and internal analysis and assessments.

NGTL forecasted that the average flow through the ABC Border Export point on the NGTL System is expected to grow from approximately 2.4 Bcf/d in 2019, to approximately 3.0 Bcf/d in 2030. NGTL also forecasted decreased sectorial demand for natural gas in the U.S. Pacific Census Region between 2019 and 2040. NGTL assumed that legislation to increase renewable portfolio standard regulations set by the U.S. state governments will lessen natural gas demand gradually over time. However, NGTL also stated that California plans to replace at least some of its natural gas-fired electricity generation with new gas-fired electricity generation, and that there are plans in California to take the last remaining nuclear facility offline, resulting in a need to replace some gas-fired generation NGTL noted that there could be a range of outcomes different from what was forecasted in the Application.

**Views of Parties**

***Canadian Association of Petroleum Producers***

CAPP stated that NGTL's evidence of market demand, and adequate supply, supported by long-term contracts is clear and unchallenged.

***Driftpile Cree Nation***

In their Indigenous knowledge session, Driftpile Cree Nation expressed the following:

> *But at some point in time, I really believe all of us as humans, regardless of what race we are, we've got to really stop and think, and find a new way to heat our homes, power our vehicles, et cetera, because I am aware -- well, like I say, I watch the news quite a bit. I am aware how natural gas prices are going up, the demand, the shortages worldwide*

*happening….*
Elder Hank Giroux, Driftpile Cree Nation, Transcript vol. 3 [1102]

### 10.1.4 Financial resources and responsibility, financial structure, and methods of financing

NGTL estimated the capital cost of the Project to be $355.5 million ($2023). NGTL is funded through its parent companies TC Energy and TransCanada Pipelines Limited (TCPL), 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 2019, TC Energy and other subsidiaries of TC Energy had approximately $1.3 billion cash on hand, $10.1 billion of undrawn committed credit facilities and three well supported commercial paper programs. NGTL also submitted copies of four credit rating agencies' reports, and a copy of TC Energy's 2019 Annual report, as support for the financial strength of TC Energy and TCPL.

NGTL stated it would have the financial resources to ensure that it can financially sustain management of all potential risks including those liabilities that may arise from an accident or malfunction during the construction or operation of the Project. Since 11 July 2019, the CER (previously the NEB) has required NGTL to maintain access to at least $200 million in financial resources to respond to a potential incident, pursuant to the sections 137 and 138 of the CER Act and the *Pipeline Financial Requirements Regulations*. NGTL's Financial Resources Plan received approval from the NEB on August 26, 2019. NGTL's Financial Resources Plan applies to the NGTL System as a whole, including the Project.

NGTL provided an Abandonment Cost Estimate (ACE) for the Project as calculated in accordance with the methodology prescribed in the NEB's MH-001-2012 Decision. NGTL estimated the ACE for the Project to be $4.1 million ($2016). This represents less than 1 per cent of the ACE for the entire NGTL System.[38] 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.

#### Commission analysis and findings

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, even when taking into consideration the potential impact that climate change laws, policies, and regulations may have to the long-term feasibility of the Project. In coming to this determination, the Commission has placed a considerable degree of weight on the long-term contractual commitments made by shippers to underpin the Project, and the fact that NGTL System shippers did not undertake to turnback or defer existing contracts when afforded several opportunities to do so. The Commission considers NGTL's supply and markets forecasts to be within a reasonable range of outcomes. The Commission finds that there is adequate supply and markets available to support the Project. The Commission also finds there to be a high degree of likelihood that tolls will be paid. These findings are supported by the willingness of shippers to enter contracts, with a weighted-average term exceeding 30 years, to support the Project, in light of Canada's long-term climate change commitments.

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[38] On 18 April 2018, the NEB approved an ACE of $2.5353 billion ($2016) for the NGTL System.

The Commission finds that NGTL and its parent companies, TC Energy and TCPL, together, have the ability to finance the Project, including the construction and operation of the applied-for facilities. Additionally, NGTL is setting aside funds to meet its future abandonment costs, as required,[39] 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 CER Act and *Pipeline Financial Requirements Regulations*. Based on these considerations, 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.

### 10.2 Tolling matters

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 NGTL System tolling methodology is a cost-based toll methodology that reflects the integrated nature of the NGTL System where all system facilities are collectively used to provide service. The CER approved the NGTL Rate Design and Services Settlement in the RH-001-2019 Decision and Order TG-001-2020. In this Settlement, NGTL and its stakeholders agreed that NGTL would roll-in the costs of the Project facilities to the NGTL System rate base and apply the existing NGTL System as a default methodology for expansions and extensions conditional on an assessment of:

- the degree of integration,
- nature of service, and
- satisfactory determination that there is no excessive cross-subsidization having regard to project costs and associated contract revenues.

NGTL stated that the Project is an expansion of the NGTL System that is required to meet the aggregate transportation requirements, including incremental demand for export delivery service. NGTL submitted that the Project facilities would be fully integrated with the rest of the NGTL System and used to provide transportation services pursuant to NGTL's Tariff. Consistent with the above-described methodology, NGTL submitted that the capital costs associated with the Project should therefore be added to the rate base of the NGTL System, and that rate base and the prevailing toll design should be used as the basis for setting the revenue requirement and tolls.

NGTL provided an analysis of the overall impact the Project would have on the existing cost of service. From this, the estimated increase in NGTL's annual revenue requirement due to the Project is approximately $43 million in 2024, the first full year that the Project would be expected to be in-service. NGTL also provided a range of illustrative toll impacts under two scenarios reflecting indirect supply response equal to 100 per cent of incremental delivery contract demand and zero incremental supply response. The estimated full toll path increase is less than 0.5 cents per thousand cubic feet per day (¢/Mcf/d), or alternatively, a 0.8 per cent increase of the full toll path. NGTL provided updated toll impact estimates under a revised assumption that

[39] National Energy Board, MH-001-2012 Reasons for Decision.

the federal carbon levy would increase by $15 per tonne $CO_2e$ per year starting in 2023, until it reaches $170 per tonne $CO_2e$ in 2030. The updated full toll impact estimates continue to result in a toll increase of less than 0.5 ¢/Mcf/d.

As described above, NGTL met with the Tolls, Tariff, Facilities and Procedures Committee on three occasions between October and September 2020 to discuss the Project and notified commercial third parties about the Project through a variety of communication tools, with no concerns being raised.

**Views of Parties**

***Canadian Association of Petroleum Producers***

CAPP supports the applied-for rolled in treatment of costs associated with the Project.

**Commission analysis and findings**

No party opposed NGTL's proposed tolling treatment, and the contractual agreements underpinning the Project are for transportation services identical to those already offered on the NGTL System. Given this and the Project's integration with the existing system, 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.

## 10.3 Opportunity for Canadians to participate

NGTL commissioned an economic effects analysis prepared by Stantec Consulting Ltd. to understand the estimates of the potential economic effects of the $355.5 million project capital expenditure in Canada. The economic analysis estimated that the Project would directly increase Alberta's GDP by approximately $80 million during construction, with the total economic impact (direct, indirect and induced) on Alberta estimated to be approximately $181 million in GDP, including $117 million in labour income. The analysis also estimated that the Project would represent direct and indirect employment of about 1,161 full-time jobs during construction in Alberta and is further estimated to generate approximately $4.2 million in federal and $6.2 million in provincial tax revenue during construction.

NGTL submitted that during operations, the Project is estimated to contribute annual property tax payments as follows:

- $345,000 to Foothills County
- $12,000 to the Municipal District of Pincher Creek
- $10,000 to the Municipal District of Ranchland
- $90,000 to the Specialized Municipality of Crowsnest Pass

NGTL stated that it would implement several measures to support the potential economic benefits for local and Indigenous communities. These measures include encouraging the participation of local and Indigenous businesses and employees and working with local Indigenous peoples to identify opportunities for capacity development.

NGTL described the extent to which Canadians would have an opportunity to participate in the financing, engineering and construction of the Project.

- **Financing** – NGTL is funded through its parent companies TC Energy and TCPL. TC Energy is a publicly traded company whose shares trade on the TSX in Canada and on the NYSE in the United States. TCPL is a frequent issuer of public debt in the capital markets, the proceeds from which contribute to the funding of the Project. NGTL submitted that through the capital markets, Canadians can participate in the funding of the Project by investing in TC Energy's and TCPL's debt and equity instruments.
- **Engineering** – NGTL stated that it leveraged internal TC Energy engineering groups based in Canada when conducting the preliminary engineering for the Project. Following completion of the preliminary engineering, NGTL stated that it conducted numerous competitive requests for proposal (RFP) processes to subcontract out various engineering service scopes on the Project. NGTL explained that the RFPs were only released to proponents with offices located in Canada that predominately employ Canadian based resources and, as a result, NGTL stated that Canadians had and will have the opportunity to participate in the engineering of the Project.
- **Construction** – NGTL stated that it anticipates releasing RFPs to prime construction contractor proponents based out of, or with offices located in, Canada that will mainly employ Canadian based resources to satisfy the construction labour requirements. In addition to construction, NGTL stated that construction activities will draw ancillary suppliers for various services to which NGTL expects that the labour requirements to satisfy such ancillary services will be mainly comprised of individuals residing within Canada. Finally, NGTL stated that it proposed in the ESA for the Project several measures to encourage local and Indigenous employment such as outlining expectations for Prime Contractors to support local and Indigenous participation, collecting information from local and Indigenous suppliers and sharing that information with Prime Contractors, and providing support and resources to Indigenous peoples to increase their ability to participate in Project activities. NGTL stated that through these activities, Canadians will have an opportunity to participate in the construction of the Project.

**Views of Parties**

Several Indigenous peoples raised concerns in this hearing regarding opportunities for employment and contracting of Indigenous peoples and business, as summarized in Chapter 7.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

Stoney Nakoda Nations submitted that NGTL did not include in its economic effects analysis the anticipated economic expenditures of the Project on Indigenous-owned entities.

**Reply of NGTL**

NGTL submitted that through its Indigenous Relations Business Engagement activities, NGTL would seek to maximize opportunities for Indigenous businesses and individuals to benefit from the construction contracts and jobs that would be required for the Project. Based on NGTL's experience with past projects, Indigenous businesses generally represent 8 to 12 per cent of the total construction contract values for projects in Alberta and Indigenous people typically make

up approximately 8 to 10 per cent of the total construction workforce. NGTL submitted that it is reasonable to expect that NGTL would achieve similar, if not greater, levels of benefits for this Project. NGTL further submitted that, beyond the scope of the Project, TC Energy provides financial and other support to many programs and initiatives within Indigenous communities located in the areas in which NGTL operates, including the Project area.

In response to concerns raised by Indigenous peoples, NGTL stated it has planned mitigations and enhancement measures to encourage Indigenous employment. NGTL's Indigenous Business Engagement team would support the selected Prime Contractor in engaging with interested Indigenous peoples to provide information on how they may participate in Project employment opportunities. NGTL submitted that the majority of the opportunities for Indigenous-owned entities to participate in the Project is through subcontracting opportunities under the management of Prime Contractors, with specific opportunities identified in NGTL's Indigenous Participation Plan, which is reviewed by NGTL's Indigenous Relations Business Team.

**Commission analysis and findings**

The Commission finds that Canadians will have a reasonable opportunity to participate in the financing, construction and engineering of the Project. 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 increase municipal, provincial, and federal tax revenues, which has the potential to benefit all Canadians through further contributions made to a variety of public programs and services.

As discussed in Chapter 7, the Commission was not persuaded by NGTL's claim that the Project will achieve similar, if not greater, levels of economic benefits in comparison to past projects, as only time will tell what level of economic benefits are achieved. The Commission acknowledges the concerns raised by Indigenous peoples regarding employment and contracting opportunities. As outlined in Chapter 7, the Commission imposes **Certificate Conditions 10** (Employment, contracting, procurement, and training update) and **Certificate Condition 29** (Employment, contracting, procurement, and training report) on NGTL to address the concerns raised by Indigenous peoples in this regard.

# 11 Climate change and environmental obligations

This chapter will highlight key submissions from parties, the reply of NGTL, and the Commission's analysis and findings relevant to:

| | |
|---|---|
| ***CER Act 183(2) factor(s)*** | *(j) the extent to which the effects of the pipeline hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change* |
| | *(k) any relevant assessment referred to in section 92, 93 or 95 of the Impact Assessment Act* |
| ***List of Issues No.*** | 10. The extent to which the effects of the Project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change |
| | 17. The application of the Strategic Assessment on Climate Change that was conducted under section 95 of the *Impact Assessment Act* |
| ***Key conclusion(s)*** | The Commission finds that the Project will not materially hinder Canada's commitment to meet its environmental obligations. The Commission further finds that the magnitude of the direct GHG emissions from the Project will be sufficiently mitigated through the measures proposed by NGTL and the conditions imposed so as to not materially hinder Canada's ability to meet its climate change commitments. |

## 11.1 Canada's environmental obligations

NGTL stated the Project would adhere to the requirements set out in applicable federal environmental acts and regulations and would be informed by the guidance set out in applicable federal environmental policies and programs. NGTL said adherence to these requirements would assist the Government of Canada in achieving or abiding by its environmental obligations.

NGTL submitted that all non-CER regulatory permits and authorizations are planned to be in place, as required, to meet the construction schedule and in-service dates for the Project. NGTL said it would comply with relevant and applicable provincial and municipal laws, to the extent those laws do not conflict with or frustrate the purpose and intention of any federal approval for the Project.

Views of Parties

No parties expressed views with respect to meeting Canada's environmental obligations.

### Commission analysis and findings

The Commission finds that the Project will not materially hinder Canada's commitment to meet its environmental obligations. NGTL has appropriately identified and described the instruments and laws to which it is required to abide during construction and operation of the Project. NGTL has further committed to having the appropriate permits and authorizations in

place for the construction phase, and to meeting the requirements for operations, including reporting GHG emissions from operations under provincial and federal requirements.

Broadly, Canada's environmental obligations referred to by NGTL in Table 1-1 of its ESA are the various legal instruments and guidance that apply to the Project. The Commission has considered NGTL's commitments related to federally regulated VCs in Chapter 9, including migratory birds, wetlands, and species listed under Schedule 1 of SARA. NGTL demonstrated an understanding of how the Project relates to these key pieces of legislation and guidance and the Commission is satisfied that NGTL commits to adhering to these requirements. NGTL's standard mitigation in the draft EPP reflects its commitments to meet the environmental obligations that apply to the Project. The Commission will consider any additional changes in an updated EPP as required by **Certificate Condition 7**.

### 11.2 Consideration of climate change laws, regulations and policies

Applicants are required to explain how current climate change laws, regulations and policies, and financial risks or other uncertainties around future changes to climate change laws, regulations and policies, have been incorporated into the economic analysis for the project. The depth of analysis is expected to be commensurate with the nature of the project and the potential for effects.

NGTL stated that the need for the Project does not change as a result of current climate change laws, regulations, and policies. TC Energy tracks energy supply and demand fundamentals on an ongoing basis and analyzed the resiliency of its portfolio under several long-term energy scenarios, including a scenario that reflects a pathway to meeting the Paris Agreement (2°Celsius Scenario). This analysis was relied on in the assessment of the Project and related financial risks. NGTL expects demand for its transportation services, and the need for the Project, to remain robust over time, as illustrated by the long-term contractual commitments made in support of the Project. NGTL monitors and incorporates new information related to climate change laws, regulations and policies as it becomes available in its economic analysis and related financial risk of new projects.

For new project applications, including the applied-for Project, NGTL relies on internally developed forecasts on supply, markets, and throughput that are reflected in its Annual Plan. NGTL's Annual Plan considers all relevant climate change laws, regulations and policies that are understood by NGTL at the time of the Annual Plan's development. The following climate change laws, regulations and policies were considered at the time of the 2020 Annual Plan forecast update:

- the strengthened federal climate plan;
- A Healthy Environment and A Healthy Economy Plan;
- the proposed Climate Accountability Legislation (Bill C-12, as it was known then);
- the Technology Innovation and Emissions Reduction Regulation in Alberta and its effects on the gas market; and
- the federally announced level of emission compliance costs.

NGTL reiterated that it has and will continue to monitor, announcements and developments related to climate change laws, regulations, and policies.

To assess financial risks or other uncertainties around future changes to climate change laws, regulations and policies, NGTL stated that TC Energy uses scenario analysis as a foundational component in strategic planning at a corporate level across TC Energy's North American business activities. To this end, TC Energy assessed several third-party energy forecasts to better understand various scenarios, including a scenario that contemplates a pathway for North America to meet Paris Agreement obligations. NGTL submitted that the overall body of these analyses are considered in the development of TC Energy's corporate forecasts, which are used to develop a qualitative assessment of long-term outlooks across TC Energy's entire portfolio of assets.

As described in Chapter 10, NGTL submitted that the Project is supported by existing and incremental demand at the ABC Border Export point, with incremental contracts executed with a weighted average term of 30.5 years. NGTL discussed the extent to which the potential non-renewal contracts may be impacted by future uncertainties surrounding climate change laws, regulations and policies, specifically noting that:

- NGTL did not receive any turnback or deferral requests for ABC contracts through its Capacity Optimization Open Season;
- NGTL has experienced 100 per cent contract renewal in the past three years;
- NGTL would seek to remarket or repurpose any capacity made available through contracting changes; and
- NGTL is of the view that the WCSB can compete economically with other basins in serving Pacific region markets in the future based on forecast outlooks that include carbon price assumptions.

NGTL made several assumptions in calculating the estimated toll impact resulting from the Project. With respect to carbon pricing, NGTL initially assumed a federal carbon levy of $50 per tonne $CO_2e$. NGTL also provided revised toll impact estimates under the assumption that the federal carbon levy would increase by $15 per tonne $CO_2e$ per year starting in 2023, until it reaches $170 per tonne $CO_2e$ in 2030. NGTL submitted that its revised carbon pricing assumption was based on proposed changes to the federal carbon levy that were provided by the federal government in its Healthy Environment and Healthy Economy Plan.

**Views of Parties**

No parties expressed views with respect to the consideration of climate change laws, regulations and policies.

**Commission analysis and findings**

The Commission finds that NGTL incorporated climate change laws, regulations and policies, and financial risks or other uncertainties around future changes to climate change laws, regulations and policies, both existing and those reasonably expected to be[40], in its economic analysis for the Project. The Commission finds NGTL to have demonstrated that the economic feasibility of the Project is unlikely to be significantly impacted by climate

[40] Climate change laws, regulations and policies that have been drafted and tabled at a provincial or federal level but which although not yet in force, may reasonably become so and are not purely speculative. (*Filing Manual*, Guide A, Section A.3 – Economics and Financing, Table A-4, Link)

change laws, regulations and policies that are currently in existence or are reasonably expected to be.

The Commission is satisfied with the degree to which NGTL considered climate change laws, regulations and policies in the supply and markets forecasts that are reflected in NGTL's Annual Plan, and observes that NGTL provided the specific laws, regulations and policies that were considered. In Section 10.1, the Commission considered these forecasts to be within a reasonable range of outcomes and found there to be adequate supply and markets available to support the Project.

The Commission is also satisfied with the degree to which future changes to climate change laws, regulations and policies were considered by NGTL in its updated estimates for toll impacts resulting from the Project. The estimated full toll impact resulting from the Project is less than 0.5 ¢/Mcf/d under both the initial and revised carbon pricing assumptions. The Commission heard no concerns from commercial third parties or shippers about these estimates in this proceeding. The Commission reiterates its Section 10.1 finding, that there is a high degree of likelihood that tolls will be paid, which is supported by the long-term contractual commitments underpinning the Project.

The Commission considers NGTL's rationale to be appropriate regarding the extent to which the renewal of firm transportation contracts may be impacted by uncertainties surrounding climate change laws, regulations and policies. In coming to this determination, the Commission has placed significant weight on the 30.5 year weighted average term of the contractual commitments made by shippers to underpin the Project, as well as NGTL System shippers not submitting any requests for turnback of existing contracts or deferral of pending contracts, despite NGTL having afforded several opportunities to do so (as described in Section 10.1).

### 11.3 Greenhouse gas emissions and climate change

NGTL submitted that the majority of the GHG emissions related to the construction of the Project would result from land clearing. Project construction GHG emissions are estimated to be 178.2 kt $CO_2e$ in total, of which 169.8 kt $CO_2e$ (i.e., 95 per cent) are from land clearing, burning and decay. NGTL said it adopted emission factors from BC due to a lack of publicly available land clearing emission factors specific to Alberta. NGTL also said its selected emission factors account for decay emissions and that it conservatively estimates the emissions during construction activities.

Mitigation measures during construction include vehicle and equipment maintenance and using appropriate timber and brush disposal and burning. NGTL stated it would undertake limited burning of non-salvageable timber (i.e., anything that is not able to be used is burned, chipped or mulched, depending on the terms of NGTL's provincial permits.)

While NGTL said it did not have concerns with Potential Condition 22 to quantify GHG emissions from construction, it recommended striking Potential Condition 24 for offsetting construction emissions, because:

- The SACC, its related draft technical guidance, and the Filing Manual do not require projects to achieve net-zero GHG emissions until the year 2050. Construction of the Project is planned to occur throughout 2023, well in advance of this legal obligation taking effect.

- NGTL's construction contractors are not required to report GHG emissions to federal or provincial reporting bodies. NGTL also said offset credits and carbon pricing do not apply to construction emissions, nor have offset measures been considered in estimates of construction emissions.
- While offsets could be purchased now (with the costs associated with the offsets contributing to higher tolls for NGTL's customers), NGTL said this short-term solution would redirect funds needed to identify long-term decarbonization pathways.

NGTL said that GHG emissions from operations would be negligible (0.0004 kt $CO_2e$/year). Involuntary fugitive emissions from valve sites are the only expected source of GHG emissions during operations and are anticipated to be minimal. These are estimated to contribute negligible annual GHG emission contributions to the Canada, Alberta, and Canadian sector GHG emission totals.

Mitigation measures during operation include implementing TC Energy's leak detection and repair program to identify and reduce fugitive emissions. NGTL said the predicted fugitive emissions included in the ESA are conservative, as leaks would be detected and, where required, repaired. NGTL said it reports annually its emissions generated by operating facilities, including fugitive emissions, under Alberta's *Technology Innovation and Emissions Reduction Regulation.*

The operation of the Project is anticipated to be at least 30 years. The construction and operation emissions would be accounted for in annual provincial and federal GHG totals. The direct GHG emissions released during operation of the Project comprise less than a ten millionth of a per cent of the Government of Canada's emission reduction target.

The Pan-Canadian Framework is a comprehensive plan to reduce GHG emissions across all sectors of the economy in Canada. With this federal framework in place, the Project, as part of the larger NGTL System, would comply with applicable policies and regulatory requirements under this framework, and in so doing would not contribute to or materially hinder Canada's efforts to reduce GHG emissions.

NGTL has committed to achieve net-zero emissions by 2050, though clarified that the Project would rely on its broad corporate (TC Energy) plan. In assessing potential actions to achieve net-zero Project emissions by 2050, NGTL said that it would balance the effectiveness and efficiency of the potential actions with the long-term impacts to costs and service for its customers, and the safety and reliability of the NGTL System. NGTL also said that its net-zero plan for the Project does not describe specific technologies and practices that would be implemented over time, but rather focuses on describing the process NGTL would follow to make the decisions and investments required to achieve net-zero operational emissions by 2050 for the Project. Lastly, NGTL committed to providing the CER with an update on its planned actions, including the expected intervals for emissions reductions, within one year of the Project being placed into operation and every five years thereafter until net-zero emissions for the Project are achieved.

A screening assessment of upstream GHG emissions associated with the Project was also undertaken. NGTL submitted that the Project would result in an incremental increase in throughput of approximately 2,385 $e^3m^3$/d (83.7 MMcf/d), which would result in less than 500 kt $CO_2e$ of upstream emissions per year so no further assessment of upstream emissions is required.

**Views of Parties**

***Métis Nation of Alberta (in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87)***

Métis Nation of Alberta said it is concerned with the effects of air and GHG emissions and lack of monitoring air emissions.

***Elk Valley Métis Nation***

Through the Crown Submission, Elk Valley Métis Nation said so long as an approach is taken where the holistic/entirety of activity is not evaluated, their Nation's commitment to climate change is undermined.

***Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)***

In response to Potential Conditions related to GHG emissions, Stoney Nakoda Nations said, if the calculated GHG emissions differ from the predicted emissions in NGTL's Project Application, NGTL should provide the comparison and discussion relating to how/why this discrepancy has occurred. NGTL should also provide what, if any, impacts to Section 35 Rights this may have as a result.

***Samson Cree Nation***

Samson Cree Nation commented that it would like to be included in the co-development of the plans.

***Environment and Climate Change Canada***

To align with the SACC, ECCC recommended that NGTL provide more detailed information on GHG emissions, for example to quantify the net GHG emissions by year for each phase of the Project, to provide a qualitative description of the project's impact on carbon sinks, and to conduct a Best Available Technology/Best Environmental Practices Determination process in accordance with the SACC.

**Reply of NGTL**

With respect to Métis Nation of Alberta and Elk Valley Métis Nation's concerns about GHG emissions and air monitoring, NGTL outlined some of its mitigation measures to reduce both air emissions and GHG emissions from the Project, including reducing idling, maintaining vehicles, and implementing NGTL's fugitive emission detection and repair program during operations.

In response to Stoney Nakoda Nations' concerns, NGTL said it does not anticipate material changes in impacts as a result of revisiting the construction-related GHG emissions. Recalculating the construction GHG emissions is not likely to impact Section 35 Rights; however, NGTL said it can provide the updated quantitative assessment of construction GHG emissions to Stoney Nakoda Nations.

In response to Samson Cree Nation's request to be included in the co-development of plans, NGTL said there would be no need to develop plans to comply with the Potential Condition for quantification of construction GHG emissions.

NGTL said the comments raised by ECCC with respect to the SACC were addressed through NGTL's supplemental filings and responses to IRs. NGTL said its focus remains on compliance with the Filing Manual and relying on the SACC as guidance, where applicable. NGTL also notes that, at the time of filing its Reply Evidence, the Draft Technical Guides related to the SACC remained open for comment and had not been finalized. As a result, the methodology proposed in the Technical Guidance was not incorporated in the Project Application.

**Commission analysis and findings**

In determining whether the project will hinder or contribute to the Government of Canada's ability to meet its climate change commitments, the Commission considered the following: the magnitude of GHG emissions;[41] NGTL's proposed mitigation measures; the relevant laws, regulations, and policies; NGTL's net-zero plan; and the upstream emissions associated with the Project.

With the application of the mitigation measures and best environmental practices proposed by NGTL and the conditions imposed, the Commission finds that the magnitude of the direct GHG emissions from the Project will be sufficiently mitigated so as to not materially hinder Canada's ability to meet its climate change commitments. Overall, the Commission finds the magnitude of GHG emissions from the Project to be small. Further, the Commission accepts NGTL's commitment to meeting the appropriate laws, regulations, and policies related to GHG emissions that were in place prior to the close of this record.

Recognizing the uncertainty in estimating GHG emissions from construction activities, the Commission imposes **Certificate Condition 28** (Quantification of construction-related greenhouse gas emissions), which requires NGTL to validate the predicted net GHG emissions resulting from the construction of the Project, after mitigation measures have been implemented. This filing would verify and describe the land use change, equipment use, and total direct GHG emissions resulting from construction. The Commission agrees with NGTL that updating the quantification of GHG emissions from construction is not likely to impact Section 35 Rights. Nonetheless, the Commission notes NGTL's comment that it can provide the updated quantitative assessment of construction GHG emissions to Stoney Nakoda Nations.

NGTL stated that purchasing offsets for GHG emissions produced during the construction of the Project would redirect funds needed to identify long-term decarbonization pathways. NGTL also stated that the costs incurred from purchasing offsets for GHG emissions would contribute to higher tolls that would be paid for by NGTL System shippers. The Commission is not persuaded by these statements. NGTL did not explain specifically how incurring such costs would cause funds to be redirected away from alternative long-term decarbonization pathways. Further, NGTL did not provide estimates for the degree of potential toll impacts that would result from purchasing GHG emissions offsets, the potential impacts to shippers' ability to pay tolls, or impacts to the competitiveness of toll levels.

Notwithstanding the Commission's views on the above matters, the Commission recognizes that compliance with Potential Condition 24 to offset these construction emissions would

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41 The Project is designed to increase NGTL System capability in the Project area by 4.63 million cubic metres per day (175 TJ/d). NGTL estimated GHG emissions during construction of the Project to be 178.2 kt $CO_2e$ in total, and GHG emissions during operation to be 0.0004 kt $CO_2e$/ per year. NGTL expects the Project to have an economic life in excess of 30 years.

pose an unreasonable challenge to NGTL at this time, given that there is no federal or provincial framework for offsetting GHG emissions from construction projects. As a result, the Commission has modified the requirement for what would be **Certificate Condition 4** (GHG Emissions Mitigation Measures Plan – Project construction). Specifically, this condition would require NGTL to file a GHG mitigation measures plan for construction GHG emissions prior to construction, in which NGTL must elaborate on the measures it has proposed in its Application and related filings. The Commission expects that any proposed offset measures would go above and beyond the standard and Project-specific mitigation identified in NGTL's Application and draft EPP.

The Commission recognizes the evolving nature of GHG policy and regulation in Canada and has considered the SACC as a framework, guiding the assessment of GHG emissions on CER-regulated projects. The Commission finds that the Project's operational emissions would be limited to fugitive emissions and that NGTL has committed to complying with the applicable policies and regulatory requirements. The Commission recognizes that the approach taken by NGTL with respect to achieving net-zero emissions is in line with best available practices and is consistent with the SACC.

Notwithstanding NGTL's commitment to update the CER regarding its net-zero plans, the Commission finds necessary **Certificate Condition 31,** requiring NGTL to file a net-zero plan for the Project that would describe how it will bring the GHG emissions from the Project to net-zero by the year 2050**,** including emissions resulting from the Project's operations and routine maintenance activities.

For the potential upstream emissions associated with the Project, the Commission accepts NGTL's calculation that an incremental increase in throughput will result in less than 500 kt $CO_2e$ of upstream emissions per year. As such, and in line with the SACC guidance and the Filing Manual, further assessment of the upstream emissions is not required.

# Appendix I – Roadmap for the GH-002-2020 CER Recommendation Report

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| Chapter 1 | *Summary conclusion considering all of the factors set out in subsection 183(2) of the CER Act* | Summary conclusion considering all of the issues from the List of Issues | • Relief requested by NGTL<br>• Commission determinations and Recommendation<br>• Decisions made by the Commission<br>• Issues beyond the Commission's mandate (additional recommendations)<br>• Conclusion | *n/a* | • Certificate Condition 22 - Commitments Tracking Table |
| Chapter 2 | *n/a* | *n/a* | • Hearing process<br>• Assessment methodology<br>• Detailed route and lifecycle oversight | *n/a* | *n/a* |
| Chapter 3 | *n/a* | *n/a* | • Project details and environmental setting | *n/a* | *n/a* |
| Chapter 4 | *(d) the interests and concerns of* | 12. The interests and concerns of the | • Mitigation measures and best practices | • Stoney Nakoda Nations[42] | • Certificate Condition 12 - |

[42] Bearspaw, Chiniki, and Wesley First Nations (collectively, Stoney Nakoda Nations)

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | *the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes* | Indigenous peoples of Canada, including with respect to their historic and current use and management of lands and resources for traditional purposes and self-governance<br>16. The potential impacts of the Project on owners and users of lands, including Indigenous peoples | | • Louis Bull Tribe<br>• Piikani Nation<br>• Driftpile Cree Nation<br>• Elk Valley Métis Nation | Construction monitoring plan for Indigenous peoples<br>• Certificate Condition 26 - Post-construction monitoring plan for Indigenous peoples<br>• Certificate Condition 13 - Outstanding Traditional Land and Resource Use investigations<br>• Certificate Condition 16 – Engagement report regarding pre-construction harvesting<br>• Certificate Condition 20 - Heritage resource clearances |
| | | | • Monitoring and oversight by Indigenous peoples | • Piikani Nation<br>• Stoney Nakoda Nations<br>• Samson Cree Nation<br>• Elk Valley Métis Nation<br>• Driftpile Cree Nation<br>• Métis Nation of Alberta[43] | |
| | | | • Heritage resources | • Stoney Nakoda Nations<br>• Métis Nation of Alberta<br>• Samson Cree Nation | |
| | | | • Impacts on Traditional Land and Resource Use and access to Crown land | • Stoney Nakoda Nations<br>• Driftpile Cree Nation<br>• Elk Valley Métis Nation<br>• Foothills Ojibway First Nation | |

[43] Métis Nation of Alberta in collaboration with Métis Nation of Alberta Region 3, Local 1880, and Local 87

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
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| | | | | • Métis Nation of Alberta<br>• Nakcowinewak Nation of Canada<br>• Piikani Nation<br>• Samson Cree Nation | |
| Chapter 5 | *(e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982* | 11. The effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982* including, without limitation, treaty rights | • Engagement and consultation with Indigenous peoples | • Stoney Nakoda Nations<br>• Blood Tribe (Kainai Nation)<br>• Driftpile Cree Nation<br>• Elk Valley Métis Nation<br>• Montana First Nation<br>• O'Chiese First Nation<br>• Piikani Nation<br>• Samson Cree Nation<br>• Tsuut'ina Nation | • Certificate Condition 15 - Support for Indigenous peoples to review NGTL filings related to conditions<br><br>Conditions that address effects on the rights of Indigenous peoples are found throughout the Report. |
| | | | • Assessment of effects of the Project on the rights of Indigenous peoples | • Stoney Nakoda Nations<br>• Blood Tribe (Kainai Nation)<br>• Driftpile Cree Nation<br>• Elk Valley Métis Nation<br>• Ermineskin Cree Nation<br>• Foothills Ojibway First Nation | |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
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| | | | | • Louis Bull Tribe<br>• Métis Nation of Alberta<br>• Montana First Nation<br>• Nakcowinewak Nation of Canada<br>• O'Chiese First Nation<br>• Piikani Nation<br>• Samson Cree Nation<br>• Siksika Nation<br>• Tsuut'ina Nation | |
| Chapter 6 | *(b) the safety and security of persons and the protection of property and the environment* | 8. The suitability of the design of the Project, including the reasonableness of any evaluation by NGTL of alternative designs of the Project<br>13. The safety and security of persons and the protection of property and the environment, including contingency plans, during construction and | • Safety and security of infrastructure | • *n/a* | • Certification Condition 5 - Updated site-specific geohazards<br>• Certificate Condition 6 - Seismic assessment<br>• Certificate Condition 30 - Pipeline Geographic Information System |
| | | | • Safety and security of persons | • Métis Nation of Alberta<br>• Stoney Nakoda Nations<br>• Samson Cree Nation<br>• Piikani Naiton<br>• Elk Valley Métis Nation<br>• Driftpile Cree Nation<br>• Jacob Adserballe | |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | | operation of the Project, and the involvement of Indigenous peoples in related planning and design<br><br>15. The appropriateness of the general route and land requirements for the Project, including the reasonableness of any evaluation by NGTL of alternative routes<br><br>16. The potential impacts of the Project on owners and users of lands, including Indigenous peoples | • Project footprint and routing details | • Métis Nation of Alberta<br>• Piikani Naiton<br>• Stoney Nakoda Nations<br>• David Harris | data<br>• Certificate Condition 8 – Construction Emergency Response Plan<br>• Certificate Condition 19 - Construction safety manuals<br>• Certificate Condition 9 - Emergency management continuing education program |
| | | | • Protection of property and the environment | • Stoney Nakoda Nations<br>• O'Chiese First Nation<br>• Piikani Nation<br>• Samson Cree Nation<br>• Livingstone Landowners Group | |
| Chapter 7 | *(c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identify factors* | 14. The health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors, including any such effects on Indigenous | • Mitigation measures and best practices | • Elk Valley Métis Nation<br>• Stoney Nakoda Nations | • Certificate Condition 11 - Socio-Economic Effects Monitoring Plan<br>• Certificate Condition 18 - Temporary |
| | | | • Human occupancy and resource use | • Drfitpile Cree Nation<br>• Elk Valley Métis Nation<br>• Jacob Adserballe | |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
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| | | peoples | | • CAEPLA-WPLC[44] | Construction Camp(s)<br>• Certificate Condition 10 - Employment, contracting, procurement and training update<br>• Certificate Condition 29 - Employment, contracting, procurement and training report |
| | | | • Human health | • Driftpile Cree Nation<br>• Métis Nation of Alberta<br>• Piikani Nation<br>• Samson Cree Nation<br>• Stoney Nakoda Nations | |
| | | | • Infrastructure and services | • Stoney Nakoda Nations<br>• Livingstone Landowners Group | |
| | | | • Social and cultural well being | • Foothills Ojibway First Nation<br>• Métis Nation of Alberta<br>• Piikani Nation<br>• Samson Cree Nation<br>• Stoney Nakoda Nations | |

[44] Canadian Association of Energy and Pipeline Landowner Associations – West Path Landowner Committee

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | | | • Employment and economy | • Piikani Nation<br>• Stoney Nakoda Nations<br>• Driftpile Cree Nation<br>• Elk Valley Métis Nation<br>• Louis Bull Tribe<br>• Métis Nation of Alberta | |
| Chapter 8 | *Impact Assessment Act:*<br>*82 An authority must not carry out a project on federal lands, exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless*<br>*a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or*<br>*b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects* | | • Environmental matters | • Parks Canada Agency | Conditions imposed cover the entire Project including effects on federal lands. Specifically, conditions that would apply are addressed in Chapters 4, 5 and 9. |
| | | | • Rights of Indigenous peoples and heritage resources | • Piikani Nation<br>• Stoney Nakoda Nations<br>• Parks Canada Agency | |
| | | | • Socio-economic matters | • Stoney Nakoda Nations<br>• Parks Canada Agency | |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
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| | *and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.* | | | | |
| Chapter 9 | *(a) the environmental effects, including any cumulative environmental effects* | 9. The environmental effects, including any cumulative environmental effects from interactions between the environmental effects of the Project and effects from other existing projects or activities or some that will be carried out | • Environmental effects resolved through standard mitigation | • Driftpile Cree Nation<br>• Métis Nation of Alberta<br>• Piikani Nation<br>• Samson Cree Nation<br>• Elk Valley Métis Nation<br>• Stoney Nakoda Nations<br>• Métis Nation of Alberta<br>• Environment and Climate Change Canada<br>• Livingstone Landowners Group<br>• Jacob Adserballe | • Certificate Condition 24 - Breeding bird survey and protection<br>• Certificate Condition 7 - Updated Environmental Protection Plan<br>• Certificate Condition 21 – Construction schedule<br>• Certificate Condition 25 – |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | | | • Analysis of key environmental issues requiring additional mitigation | • Piikani Nation<br>• Driftpile Cree Nation<br>• Samson Cree Nation<br>• Foothills Ojibway First Nation<br>• Stoney Nakoda Nations<br>• Elk Valley Métis Nation<br>• Métis Nation of Alberta<br>• Nakcowinewak Nation of Canada<br>• Montana First Nation<br>• Louis Bull Tribe<br>• Livingstone Landowners Group<br>• Jacob Adserballe | Construction progress reports<br>• Certificate Condition 32 - Post-construction environmental monitoring reports<br>• Certificate Condition 14 - Acid rock drainage mitigation plan<br>• Certificate Condition 23 - Authorizations under paragraph 35(2)(b) of the *Fisheries Act*<br>• Certificate Condition 17 - Rare ecological community and rare plant population management plan<br>• Certificate Condition 33 - Final rare ecological |
| | | | • Cumulative effects on biophysical valued components | • Piikani Nation<br>• Métis Nation of Alberta<br>• Driftpile Cree Nation<br>• O'Chiese First Nation<br>• Stoney Nakoda Nations | |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | | | | | community and rare plant population offset plan |
| Chapter 10 | *(f) the availability of oil, gas or any other commodity to the pipeline*<br>*(g) the existence of actual or potential markets*<br>*(h) the economic feasibility of the pipeline*<br>*(i) the financial* | 1. The need for the Project<br>2. The economic feasibility of the Project<br>3. The potential commercial impacts of the Project, including potential commercial impacts on | • Economic feasibility | • Driftpile Cree Nation<br>• Alberta Department of Energy<br>• Canadian Association of Petroleum Producers | Conditions discussed in this Chapter were initially raised in Chapter 7. |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | *resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline.* | Indigenous peoples<br>4. The appropriateness of the toll and tariff methodology of the Project<br>5. The availability of gas to the Project<br>6. The existence of actual or potential markets<br>7. The financial resources, financial responsibility and financial structure of the applicant, the methods of financing the Project and the extent to which Canadians including Indigenous peoples will have an opportunity to participate in the financing, | • Tolling matters | • Canadian Association of Petroleum Producers | |
| | | | • Opportunity for Canadians to participate | • Stoney Nakoda Nations | |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | | engineering and construction of the Project | | | |
| Chapter 11 | *(j) the extent to which the effects of the pipeline hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change*<br>*(k) any relevant* | 10. The extent to which the effects of the Project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change<br>17. The application of the Strategic | • Canada's environmental obligations | *n/a* | • Certificate Condition 28 - Quantification of construction-related GHG emissions<br>• Certificate Condition 4 - GHG Emissions Mitigation Measures Plan – Project construction |
| | | | • Consideration of climate change laws, regulations, and policies | *n/a* | |

| Chapter | Factor from the CER Act | Relevant Issue from the List of Issues | Topics, concerns or valued components addressed | Parties, including Indigenous peoples who provided related evidence or argument | Relevant Conditions that would be imposed on a Certificate |
|---|---|---|---|---|---|
| | *assessment referred to in section 92, 93 or 95 of the Impact Assessment Act* | Assessment on Climate Change that was conducted under section 95 of the *Impact Assessment Act* | • Greenhouse gas emissions and climate change | • Métis Nation of Alberta<br>• Elk Valley Métis Nation<br>• Stoney Nakoda Nations<br>• Samson Cree Nation<br>• Environment and Climate Change Canada | • Certificate Condition 31 - Net-zero GHG emissions plan – Project operations |

# Appendix II – Certificate Conditions

## General

### 1. Condition compliance

NGTL must comply with all conditions contained in this Certificate, unless the Commission otherwise directs.

### 2. Design, location, construction, and operation

NGTL must cause the approved Project to be designed, located, constructed, and operated in accordance with the specifications, standards, commitments made and other information referred to in its Application or in its related submissions.

### 3. Environmental protection

NGTL must implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its Application or in its related submissions.

## Prior to construction

### 4. Greenhouse gas (GHG) Emissions Mitigation Measures Plan – Project construction

NGTL must file with the CER, at least **90 days prior to commencing construction**, a GHG Emissions Mitigation Measures Plan for the direct GHG emissions generated from Project construction (including all temporary activities and RoW preparation). The Plan must include:

a) measures that will be implemented to salvage timber, including a description of how much timber will be salvaged during construction;

b) a discussion of all possible mitigation measures, including offset measures, considered to reduce GHG emissions during the construction phase;

c) a rationale for not selecting any of the mitigation measures, including offset measures identified in part b);

d) a description of mitigation and any offset measures (e.g., carbon capture and storage, corporate-level initiatives or actions, etc.) selected for minimizing direct GHG emissions generated from Project construction, and the rationale for selecting these measures; and

e) a description of how NGTL has considered the guidance in the most recent version of Environment and Climate Change Canada's Strategic Assessment of Climate Change document in the identification of any offset measures.

**5. Updated site-specific geohazards**

NGTL must file with the CER, **at least 60 days prior to commencing construction**, updated tables containing the identified geohazard locations for the Project. The updated version of these tables is to include revisions as engineering progresses through detailed design, and must include the following:

a) the name of the Project component;
b) the geohazard identifier;
c) the unique location identifier;
d) the associated KP range;
e) the hazard type;
f) the unmitigated hazard rating;
g) the recommended mitigation (if applicable);
h) the mitigated hazard rating (if applicable); and
i) the final design depth of cover.

**6. Seismic assessment**

NGTL must file with the CER, **at least 60 days prior to commencing construction**, an updated seismic hazard assessment for the Lundbreck Section and any other section where Natural Resources Canada's updated seismic hazard model might have an impact on the previous assessment. The update should confirm that NGTL has implemented the latest national probabilistic seismic hazard model produced by Natural Resources Canada and should highlight any changes to the Project.

**7. Updated Environmental Protection Plan**

a) NGTL must file with the CER, at least 60 days prior to commencing construction on each approved Project component, for Commission approval, an updated Environmental Protection Plan (EPP) specific to the Project. The updated version of the EPP is to include revisions based on evidence and commitments provided during the hearing process. The updated EPP must include 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 RoW, 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, including Key Wildlife and Biodiversity Zones, Grizzly Bear Core Recovery Zones and Grizzly Bear Support Zones;
    v. updated watercourse crossing inventory tables;
    vi. updated environmental alignment sheets;

vii. evidence demonstrating that consultation took place with relevant government authorities, where applicable; and

viii. a revision log of the updates made, the reference where the updates can be found in the revised document, as well as the reference from the hearing evidence for each update.

b) NGTL must also provide a copy of the updated EPP 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 provided those copies.

**8. Construction Emergency Response Plan**

a) NGTL must file with the CER, **at least 60 days prior to commencing construction**, on each approved Project component, the Project-specific emergency response plan (**ERP**) that will be implemented during the construction phase of the Project. 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. This plan should also include areas of unique risk (e.g., Eden Valley).

b) NGTL must also provide a copy of the ERP to all Indigenous peoples and landowners 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 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, landowners 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 will 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

1. a summary of the information to be included in the Program, including:

2. potential emergency situations involving the Project;

3. 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;

4. 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;

5. the methods by which potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies can contact NGTL in an emergency; and

6. 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 also 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 provided those copies.

**10. Employment, contracting, procurement, and training update**

a) NGTL must file with the CER at least 60 days prior to commencing construction, for Commission approval, an update on employment, contracting and procurement, carried out prior to the start of construction, that includes:

i. a summary of NGTL's engagement efforts, including those performed by its Prime Contractor(s), with Indigenous peoples, as well as local, regional, community, and industry groups or representatives, and other diverse groups of people, regarding potential employment, contracting, and procurement opportunities on the Project for self-identified Indigenous peoples, women, or other diverse groups of people;

ii. a description of the anticipated opportunities for employment, contracting and procurement for the Project, including for self-identified Indigenous peoples, women, other diverse groups of people, and local individuals and/or businesses;

iii. a description of the measures NGTL will use to ensure self-identified Indigenous peoples, women, other diverse groups of people, and local individuals and/or businesses can take advantage of these employment, contracting and procurement opportunities; and

iv. a description of the oversight measures NGTL will use to ensure that its Prime Contractor(s) are adhering to NGTL's Equal Employment Opportunity and Non-Discrimination Policy, its Supplier Diversity and Local Participation Policy, as well as any other policies and procedures that encourage safety, responsibility, integrity, diversity, inclusion and fair employment to foster the well-being of NGTL's workers and nearby communities.

b) NGTL must also file with the CER **at least 60 days prior to commencing construction**, an update on training, carried out prior to the start of construction, that includes:

i. a summary of NGTL's engagement efforts, including those performed by its Prime Contractor(s), with Indigenous peoples, as well as local, regional, community, and industry groups or representatives, and other diverse groups of people, regarding potential training opportunities on the Project for self-identified Indigenous peoples, women, or other diverse groups of people;

ii. a description of the anticipated opportunities for training for the Project, including for self-identified Indigenous peoples, women, other diverse groups of people, and local individuals and/or businesses; and

iii. a description of the measures NGTL will use to ensure self-identified Indigenous peoples, women, other diverse groups of people, and local individuals and/or businesses can take advantage of these training opportunities.

c) NGTL must also provide a copy the filing to all those who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filings in a) and b)**, provide confirmation to the CER that it provided those copies.

**11. Socio-Economic Effects Monitoring Plan**

NGTL must file with the CER, **at least 45 days prior to commencing construction, for Commission approval,** a plan for monitoring potential adverse socio-economic effects of the Project during construction. The plan must include the following:

a) the factors or indicators to be monitored;

b) the methods and rationale for selecting the factors or indicators;

c) a description of the baseline, pre-construction socio-economic conditions;

d) the monitoring methods and schedule;

e) a discussion of how mitigation measures will be implemented to address any identified adverse effects, including:

i. the criteria or thresholds that will require mitigation measures to be implemented;

ii. how monitoring methods and mitigation measures are incorporated into the EPP (Condition 7); and

iii. a description of the roles and responsibilities of the construction Prime Contractor(s), subcontractors, and Project assignees for monitoring activities for compliance during construction;

f) a summary of how the results of NGTL's engagement with potentially affected Indigenous peoples, and affected landowners/tenants/land users has been incorporated into this plan and/or the EPP;

g) NGTL's plans for regular engagement and reporting on effects during construction with potentially affected Indigenous peoples, communities, local and regional authorities, and service providers; and,

h) NGTL must also 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) through g)**, provide confirmation to the CER that it provided those copies.

**12. Construction Monitoring Plan for Indigenous peoples**

a) NGTL must file with the CER, at **least 45 days prior to commencing construction**, a plan describing the participation of Indigenous peoples in monitoring activities during construction. Activities may include monitoring the Project's potential adverse effects on: the rights of Indigenous peoples; the environment; heritage resources; areas related to traditional land and resource uses; and, areas of cultural significance. The plan must include:

   i. summary of engagement and planning activities undertaken with Indigenous peoples to develop opportunities for their participation in monitoring activities;

   ii. a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, including existing community based monitoring programs, such as the Piikani Nation Bio-Cultural Monitoring Program, or an explanation as to why any results have not been incorporated;

   iii. a list of Indigenous peoples who have reached an agreement with NGTL to participate as monitors;

   iv. a description of the anticipated training and participant requirements, including potential certifications for the Indigenous peoples monitors and training on NGTL's Cultural Resources Discovery Contingency Plan;

   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, such as preconstruction activities (e.g., clearing activities);

   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 peoples.

b) NGTL must also provide a copy of the plan to those 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 provided those copies.

**13. Outstanding Traditional Land and Resource Use investigations**

a) NGTL must file with the CER, **at least 45 days prior to commencing construction**, a report on any outstanding traditional land and resource use investigations for the Project. The report must include:

   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 integrated, where warranted, incorporated and addressed information from any investigations on which it did not report during the GH-002-2020 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; including an estimated completion date, if applicable;

   v. a description of how NGTL has already identified, or will identify, any potentially affected 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 EPP (Condition 7), or, if appropriate, into NGTL lifecycle oversight.

b) NGTL must provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the CER that it provided the copies.

**14. Acid Rock Drainage Management Plan**

NGTL must file with the CER, **at least 45 days prior to commencing construction**, a Project-specific Acid Rock Drainage Management Plan for the Lundbreck Section that includes:

a) NGTL's methods to be followed during construction to verify results of acid rock drainage characterization and engineering assessments regarding the Acid Rock Drainage Management Plan;

b) the process outlining material handling steps for confirming acid rock drainage material;

c) the decision-making process for selecting mitigation options; and typical drawings and typical specifications for potential mitigation options such as soil covers and rock slope face barriers.

Should implementation of the Acid Rock Drainage Management Plan indicate the need for additional mitigation measures, NGTL must:

d) implement monitoring activities along the RoW and in temporary workspaces, as developed by a Qualified Professional and based on the circumstances and site-specific conditions at the time of construction;

e) identify and implement contingency measures to be applied, as required, should monitoring indicate the selected measures not be sufficient;

f) include progress and success of the measures implemented in the Construction Progress Reports (Condition 25); and

g) provide evidence of consultation with relevant regulatory authorities regarding the proposed mitigation and any follow-up monitoring in the Post-Construction Environmental Monitoring Reports (Condition 32).

**15. Support for Indigenous peoples to review NGTL filings related to conditions**

NGTL must file with the CER, **at least 45 days prior to commencing construction**, a capacity-funding report that describes NGTL's support for Indigenous peoples to review NGTL's filings related to conditions. The report should include:

a) a list of potentially affected Indigenous peoples that were offered capacity funding to support the review of NGTL's condition filings;
b) a list of the conditions that potentially affected Indigenous peoples are interested in reviewing; and
c) a summary of any outstanding concerns raised by Indigenous peoples regarding NGTL's offer of funding to support review of filings by Indigenous peoples, including a description of how these concerns have been or will be addressed by NGTL, or a detailed explanation of why these concerns will not be addressed by NGTL.

**16. Engagement report regarding pre-construction harvesting**

NGTL must file with the CER, **at least 45 days prior to commencing construction**, an engagement report related to pre-construction harvesting by Indigenous peoples. The report should include:

a) any relevant outcomes of Project-specific engagement activities with Piikani Nation, Nakcowinewak Nation of Canada and Elk Valley Métis Nation and any other Indigenous peoples who have raised an interest in pre-construction harvesting for Traditional and Land and Resource Use purposes on any of the Project components;
b) a summary of NGTL's approach to facilitate pre-construction harvesting by Indigenous peoples for the Project comprising:
    i. a summary of any comments and concerns raised by the above-noted Indigenous peoples;
    ii. a description of how NGTL has addressed or will address the concerns or comments raised;
    iii. a description of any outstanding concerns;
    iv. a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken; and
c) NGTL must also provide a copy of the filing to Piikani Nation, Nakcowinewak Nation of Canada and Elk Valley Métis Nation, if desired, and any other Indigenous peoples who have 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 provided those copies.

**17. Rare Ecological Community and Rare Plant Population Management Plan**

NGTL must file with the CER, **at least 45 days prior to commencing construction for Commission approval**, a Rare Ecological Community and Rare Plant Population Management Plan for the Lundbreck Section that includes rare ecological communities of concern; rare plant populations (i.e., listed as threatened or endangered under federal or provincial legislation for protection or that have a Provincial at-risk status of S1 or S2); and draft, candidate, proposed, or final critical habitat for plant species under the *Species at Risk Act* that are potentially affected by the Project during construction or operations. The Plan must include the following:

a) a summary of any supplementary survey results;

b) mitigation measures to be implemented during construction, including all relevant measures committed to throughout the GH-002-2020 proceeding, any new mitigation measures resulting from supplementary surveys, detailed criteria using clear and unambiguous language that describes the circumstances under which each measure will be applied, and measurable objectives for evaluating mitigation success;

c) a description of how the mitigation hierarchy framework (e.g., avoidance, mitigation, offset) was considered in developing the plan;

d) details on post-construction monitoring, including potential corrective measures, and a process for determining under what circumstances measures will be applied;

e) a Preliminary Rare Ecological Community and Rare Plant Population Offset Plan for ecological communities and rare plant species that have a Provincial at-risk status of S1 or S2 or that are listed as endangered under federal or provincial legislation for protection that, after five years of operations, have not achieved reclamation success. This preliminary plan must include the following:

   i. an explanation of how the need for offset measures will be determined and quantified, including offset ratios;

   ii. the potential offset measures, the process for selecting which will be implemented, and an evaluation of the probability of their success; and

   iii. a discussion of how the effectiveness of offsets measures will be monitored, assessed, and reported on.

f) a summary of NGTL's consultation concerning a) to e) with appropriate government authorities, species experts, and any potentially affected Indigenous peoples, including any issues or concerns raised and how NGTL has addressed or responded to them;

g) a description of how NGTL has taken available and applicable Indigenous traditional land use and traditional ecological knowledge into consideration in developing the plans; and

h) confirmation that the updated EPP (Condition 7) has been updated to include all relevant information from the Rare Ecological Community and Rare Plant Population Management Plan.

**18. Temporary construction camp(s)**

NGTL must file with the CER, **at least 30 days prior to commencing construction**:

a) confirmation that no temporary construction camp(s) are needed for the Project; or

b) in the event that any temporary construction camp(s) are required for the Project, NGTL must provide the following:

   i. the physical size and location of each camp; a description of the environmental setting; the potential environmental and socio-economic effects, including effects on the rights of Indigenous peoples, from utilizing each camp; and the mitigation measures that will be implemented to address these potential effects;

   ii. details regarding the integration and accommodation of Indigenous knowledge into the design and operation of each camp;

   iii. the proposed schedule for constructing, operating and dismantling each camp(s);

   iv. the proposed method for dismantling the camp and remediating the lands it previously occupied;

   v. the predicted human occupancy of each camp, including the number of people accommodated at the camp, the number of camp staff, and a summary of the diverse identity factors as referenced by NGTL;

   vi. a summary of NGTL's engagement activities with the relevant municipalities, regional authorities, and all potentially affected landowners, stakeholders and Indigenous peoples;

   vii. a description of any issues or concerns raised by municipalities, regional authorities, and all potentially affected landowners, stakeholders and Indigenous peoples; including a list of those who raised issues or concerns; and

   viii. a description of how the issues and concerns identified in v. are addressed in the environment and socio-economic protection plan for the camp(s), or if not addressed, an explanation as to why not.

**19. Construction Safety Manual(s)**

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 the Company.

**20. Heritage resource clearances**

a) NGTL must file with the CER, **at least 30 days prior to commencing construction on each approved Project component**:

   i. confirmation, signed by the Accountable Officer of the company, that NGTL has obtained all of the required archaeological and heritage resource clearances from the Alberta Ministry of Culture, Multiculturalism and Status of Women for the Project's permanent and temporary land requirements, based on NGTL's understanding of land requirements at the time of filing

ii. a description of how NGTL will meet any conditions and respond to any comments and recommendations contained in the clearances referred to in i.; and

iii. a description of how NGTL has incorporated additional mitigation measures into its EPP as a result of conditions, comments, or recommendations referred to in ii.

b) NGTL must also provide a copy of this filing to those 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 provided those copies.

For additional permanent lands identified during construction, if any, NGTL must obtain the clearances referred to in (a) prior to using those lands.

**21. Construction schedule**

NGTL must file with the CER**, at least 15 days prior to commencing construction on each approved Project component**, a detailed construction schedule(s) identifying major construction activities and must notify the CER of any modifications to the schedule(s) as they occur.

**22. Commitments tracking table**

NGTL must:

a) File with the CER and post on its Project website, **at least 15 days prior to commencing construction**, a Commitments tracking table listing all commitments made by NGTL, including all commitments made to Indigenous peoples, in its Application, and otherwise made by NGTL on the hearing record, including references to:

i. the documentation in which the commitment appears (for example, the Application, responses to Information Requests, permit requirements, condition filings, or other);

ii. traditional land and resource use information from potentially affected Indigenous peoples;

iii. the accountable lead for implementing each commitment; and

iv. the estimated timelines associated with the fulfillment of each commitment.

b) Update the status of the commitments in a) on its Project website and file these updates with the CER:

i. every six months until commencing operations; and

ii. every six months until the end of the fifth year following the commencement of operations.

c) Maintain at its Project site during the construction phase of the Project (until the final Leave to Open is issued):

i. the Commitments Tracking Table listing all regulatory commitments and their completion status, including those commitments resulting from NGTL's Application and subsequent filings and conditions from permits, authorizations and approvals;

ii. copies of any permits, approvals or authorizations issued by federal, provincial or other permitting authorities, which include environmental conditions or site specific mitigation or monitoring measures; and

iii. any subsequent variances to permits, approvals or authorizations in c) ii.

**During construction**

**23. Authorizations under paragraph 35(2)(b) of the *Fisheries Act***

For any instream activities that may require an authorization under paragraph 35(2)(b) of the *Fisheries Act*:

a) NGTL must file with the CER, **at least 14 days prior to commencing the respective instream activities**, a copy of the authorization granted under paragraph 35(2)(b) of the *Fisheries Act*; or

b) NGTL must notify the CER, **within 30 days after commencing operations**, that no authorizations under paragraph 35(2)(b) of the *Fisheries Act* were required.

**24. Breeding bird survey and protection**

NGTL must file with the CER, **every 15 days when NGTL is actively clearing or removing topsoil during the applicable breeding bird restricted activity periods**, the following:

a) a summary of survey methods, including references to best practices, and confirmation that the survey methods satisfy applicable regulatory requirements;

b) the results of the survey(s); and,

c) any mitigation implemented, including monitoring as applicable, developed under the direction of a Wildlife Resource Specialist and in accordance with applicable regulatory requirements, to protect any migratory and non-migratory birds and their nests identified in the survey(s), including any birds listed under the *Species at Risk Act*.

**25. Construction progress reports**

NGTL must file with the CER, **by the 16th day and by the last day of each month during construction**, construction progress reports. The report must include:

a) information on the activities carried out during the reporting period;

b) any environmental, socio-economic, safety and security issues and issues of non-compliance;

c) the measures undertaken for the resolution of each issue and non-compliance; and

d) information on safety performance indicator trends, such as, but not limited to:

i. cumulative total and Contractor recordable injury rates and/or frequency;

ii. total and Contractor lost time injury rates and/or frequency,

iii. total and Contractor preventable motor vehicle incident rates and/or frequency, and

iv. respective benchmarks for all safety performance indicators submitted, as set by NGTL.

**Post-construction and operational phase**

**26. Post-Construction Monitoring Plan for Indigenous peoples**

a) NGTL must file with the CER, **within 45 days after the date NGTL files its first Leave to Open application**, a plan describing participation by Indigenous peoples in monitoring activities during post-construction of the Project. Activities may include monitoring the Project's potential adverse effects on: the rights of Indigenous peoples; the environment; heritage resources; areas related to traditional land and resource uses; and areas of cultural significance. The plan must include:

   i. a summary of engagement and planning activities undertaken with Indigenous peoples to develop opportunities for their participation in monitoring activities;

   ii. a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, or an explanation as to why any results have not been incorporated;

   iii. a list of the Indigenous peoples that have reached agreement with NGTL to participate as monitors;

   iv. a description of the anticipated training and participant requirements, including potential certifications;

   v. the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii., including those elements of post-construction and operation, and geographic locations that will involve monitor(s);

   vi. a description of how NGTL will use the information gathered through the participation of monitors; and

   vii. a description of how NGTL will provide the information gathered through the participation of monitors to the participating Indigenous community.

b) NGTL must provide a copy of the plan to those Indigenous peoples 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 provided those copies.

**27. Condition compliance by the Accountable Officer**

**Within 30 days of the date that the approved Project is placed in service (i.e., the final Leave to Open has been issued)**, 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*.

**28. Quantification of construction-related GHG emissions**

NGTL must file with the CER, **within 60 days of commencing operations**, a quantitative assessment of the actual GHG emissions directly related to the construction of the Project (including all temporary infrastructure and RoW preparation). The assessment must include:

a) the methodology used for the assessment, including the sources of GHG emissions, assumptions, and methods of estimation;

b) the total direct GHG emissions generated from Project construction, including emissions generated by vehicles and equipment, land clearing, slash burning and decay; and

c) a comparison and discussion of the direct GHG emissions calculated in b) with the predicted emissions in the Application.

**29. Employment, contracting, procurement, and training report**

a) NGTL must file with the CER, **within 3 months from the date that the last Project component commences operation**, a report on all employment, contracting, procurement, and training since the start of construction for the Project that must include, but is not limited to:

   i. a summary of NGTL's engagement efforts, including those performed by its Prime Contractor(s), carried out for the Project with self-identified Indigenous peoples, local, regional, community, and industry groups or representatives, and other diverse groups of people regarding potential employment, contracting, and procurement opportunities on the Project;

   ii. the results of the employment, contracting, and procurement efforts for self-identified Indigenous peoples, women, and local individuals and/or businesses;

   iii. a summary of NGTL's engagement efforts, including those performed by its Prime Contractor(s), carried out with self-identified Indigenous peoples, regional, community, and industry groups or representatives, and other diverse groups of people regarding potential training opportunities, including any training needs, identified for the Project; and

   iv. the results for the Project for training, including a description of how NGTL supported those self-identified Indigenous peoples, women, and local individuals and/or businesses.

b) NGTL must also provide a copy of this report to all those 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 provided those copies.

**30. Pipeline Geographic Information Systems (GIS) data**

NGTL must file with the CER, **within one year of the Project commencing operations**, as-built GIS data in the form of Esri® shapefiles. This must include:

a) a file that contains pipeline segment centre lines (with geometry type), where each segment has a 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 the above values of the pipeline change at any point along the length of 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); and

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.

**31. Net-zero GHG Emissions Plan – Project operations**

NGTL must file with the CER, **within one year of the Project commencing operations**, a Net-zero GHG Emissions Plan outlining its proposed actions to achieve net-zero GHG emissions for the operating Project, including from maintenance activities. The Plan must include the following:

a) a description of NGTL's strategies to reduce emissions to achieve net-zero GHG emissions through either Project-specific improvements, or system-wide initiatives at a corporate level, or a mix of Project-specific and system-wide reductions, including how these strategies will be accounted for in achieving net-zero GHG emissions for the Project's operational emissions; and

b) a description of how NGTL proposes to update its Plan periodically to reflect any changes to applicable provincial and federal regulations and policies regarding net-zero GHG emissions that apply to the ongoing operations of the Project.

**32. Post-Construction Environmental Monitoring Reports**

a) NGTL must file with the CER, **on or before 31 January following each of the first, third, and fifth complete growing seasons after completing final clean-up of the last Project component**, a Post-Construction Environmental Monitoring Report that:

i. describes the methodology used for monitoring, the criteria established for evaluating success and the results found;

ii. identifies any modifications to the criteria established for evaluating reclamation success described in its updated EPPs, as approved by the Commission, and the rationale for any modifications;

iii. identifies the issues to be monitored, including unexpected issues that arose during construction, and their locations (for example, on a map or diagram, in a table);

iv. describes the current status of the issues (resolved or unresolved), any deviations from Commission-approved plans, and corrective actions undertaken;

v. assesses the effectiveness of the mitigation measures, both planned and corrective, applied against the criteria for success;

vi. includes a detailed summary of NGTL's consultation undertaken with the appropriate provincial and federal authorities, and affected Indigenous communities;

vii. provides proposed measures and the schedule that NGTL would implement to address ongoing issues or concerns; and

viii. includes an evaluation of the effectiveness of access control measures.

The report must include, but is not limited to, information specific to the effectiveness of mitigation applied to minimize effects on soils, weeds, watercourse crossings, wetlands, rare plants, wildlife and wildlife habitat, and wildlife species at risk and of special concern.

b) For areas where Foothills rough fescue grassland was disturbed, in addition to the reporting schedule described above, NGTL must file with the CER, **on or before 31 January following the tenth complete growing season after completing final clean-up of the last Project component**, a Post-Construction Environmental Monitoring Report that meets the relevant objectives described in part a). This report must also describe where the Foothills rough fescue grassland stands on its trajectory towards the reclamation goals described in the post-construction monitoring reports, describe how the outcomes arising from consultation with Indigenous peoples and other parties were considered, and provide details on any corrective actions as needed.

c) NGTL must also provide a copy of the report to all Indigenous peoples and impacted landowners who have expressed an interest in receiving a copy (through ongoing engagement); and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the CER that it provided those copies.

**33. Final Rare Ecological Community and Rare Plant Population Offset Plan**

NGTL must file with the CER, **on or before 31 January following the fifth complete growing season after completing final clean-up, for Commission approval**, a Final Rare Ecological Community and Rare Plant Population Offset Plan for the Lundbreck Section that includes:

a) for ecological communities of concern; rare plants; and draft, candidate, proposed, or final critical habitat for plant species under the *Species at Risk Act*, an evaluation of mitigation success with reference to the measurable objectives outlined in the Rare Ecological Community and Rare Plant Population Management Plan required by Condition 17;

b) identification of any residual effects on ecological communities and rare plant species identified in the Rare Ecological Community and Rare Plant Population Management Plan required by Condition 17;

c) for the residual effects identified in b), a Final Rare Ecological Community and Rare Plant Population Offset Plan that updates the preliminary plan(s) required by Condition 17, and that also includes details on the amount and type of offsets required, if applicable, and on the offset measures to be implemented, including a timeline for their implementation and monitoring;

d) a description of how NGTL has taken available and applicable Indigenous traditional land use and traditional ecological knowledge into consideration; and

e) a summary of NGTL's consultation concerning a) to d) with appropriate government authorities, species experts, and any potentially affected communities of Indigenous peoples, including any issues or concerns raised and how NGTL has addressed or responded to them.

## Sunset

### 34. Sunset clause

This Certificate will expire on **XX Month 202X**, [*three years from date of issue*] unless construction of the Project has commenced by that date.

# Appendix III – Rulings, Procedural Updates and other Commission statements

| Date | Filing ID | Description |
|---|---|---|
| 25 November 2020 | C09884 | Commission Letter<br>• Notice of Public Hearing and Registration to Participate |
| 30 November 2020 | C10030 | Ruling No. 1<br>• extend publication and participant registration deadlines |
| 21 December 2020 | C10550 | Ruling No. 2<br>• request for relief as locations for hard copies of the application are closed due to COVID-19 |
| 22 December 2020 | C10574 | Ruling No. 3<br>• extension of Registration to Participate deadline over the holiday season |
| 21 January 2021 | C11063<br><br>C11064 | Ruling No. 4<br>• hearing participation, comments on process and List of Issues<br>Commission Letter<br>• comment period on Hearing Process and List of Issues |
| 27 January 2021 | C11225 | Ruling No. 5<br>• accepting late registration (Tsuut'ina First Nation and Métis Nation of Alberta) |
| 2 February 2021 | C11398 | Ruling No. 6<br>• accepting late registration (Canadian Association of Energy and Pipeline Landowners Associations West Path Landowner Committee) |
| 5 March 2021 | C11832 | Commission Letter<br>• continuation of Process Workshop and revised dates for the Workshop Report |
| 25 March 2021 | C12141 | Commission Letter<br>• completeness determination |
| 16 April 2021 | C12441<br>C12442 | Ruling No. 7<br>• accepting late registration and comments (Elk Valley Métis)<br>Ruling No. 8 |

| Date | Filing ID | Description |
|---|---|---|
| | | • accepting late comments (Métis Nation of Alberta) |
| 30 April 2021 | C12754 | Commission Letter<br>• Hearing Order GH-002-2020 |
| 20 May 2021 | C13191 | Ruling No. 9<br>• accepting late registration (Environment and Climate Change Canada) |
| 3 June 2021 | C13405 | Ruling No. 10<br>• accepting late registration (Montana First Nation) |
| 4 June 2021 | C13418 | Ruling No. 11<br>• IR deadline extension granted (Métis Nation of Alberta) |
| 16 July 2021 | C14115 | Commission Procedural Update No.1<br>• floating Potential Conditions and details regarding the Conditions Workshop |
| 19 August 2021 | C14539 | Commission Letter<br>• response regarding in-person Indigenous knowledge session |
| 26 August 2021 | C14639 | Commission Procedural Update No.2<br>• details for oral Indigenous knowledge sessions |
| 30 August 2021 | C14707 | Ruling No. 12 and Commission Procedural Update No.3<br>• granting extension (Stoney Nakoda Nations) and updated timetable of events |
| 13 September 2021 | C14885 | Commission Letter<br>• update to the September schedule for oral Indigenous knowledge sessions |
| 16 September 2021 | C14966 | Ruling No. 13<br>• allowing affidavit evidence related to Indigenous knowledge (Driftpile Cree Nation) |
| 29 October 2021 | C15788 | Commission Procedural Update No. 4<br>• details for final argument |
| 1 November 2021 | C15838 | Commission Procedural Update No. 5<br>• oral Indigenous knowledge sessions the week of 8 November 2021 |

| Date | Filing ID | Description |
|---|---|---|
| 19 November 2021 | C16200 | Ruling No. 14 and Commission Procedural Update No.6<br>• granting IRs to CER Crown Consultation Team (Stoney Nakoda Nations) |
| 27 January 2022 | C17404 | Ruling No. 15<br>• accepting late registration (Foothills Ojibway First Nation) |
| 8 February 2022 | C17631 | Commission Procedural Update No.7<br>• schedule for oral summary argument |

# Appendix IV – Significant effects evaluation criteria

| Criteria | Rating | Definitions used in evaluating biophysical and socio-economic effects | Considerations for evaluating effects the rights of Indigenous peoples |
|---|---|---|---|
| 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. | Is the total duration of the effect relatively short-term and limited to or less than the duration of construction, or one that usually recovers immediately after construction? This may vary depending on the receptor or activity (e.g., an effect lasting in the order of weeks or months)?<br>Does the timing of the effect overlap with critical timing for the exercise of a right (for example, with the migration of a species that Indigenous peoples in a certain community have the right to harvest)? |
| | 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. | Is the total duration of the effect not likely to be long-term (but may last in the order of months or years)?<br>Is there an exercise of a right that occurs less frequently/more intermittently and therefore may be more vulnerable to interruption? |

| Criteria | Rating | Definitions used in evaluating biophysical and socio-economic effects | Considerations for evaluating effects the rights of Indigenous peoples |
|---|---|---|---|
| | 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. | Would the 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 – result in interactions throughout the life of the project (e.g., an effect lasting in the order of years or decades?<br><br>Do the time scales Indigenous peoples are using to articulate impacts on their rights align with those assumed by assessment measures (such as short-term or long-term)? Where these may not align, does this require any explanation (for example, regarding the predicted efficacy of effects, or additional measures or analysis to address uncertainty)?<br><br>Is the length of time it may take to resume the practice or exercise of a right the same as, or potentially different from (either shorter or longer) the return to baseline conditions for affected biophysical resources? |
| Reversibility | Reversible | An effect expected to, at a minimum, return to baseline conditions within the lifecycle of the Project. | Would the effect return to baseline or preferred conditions within the lifecycle of the Project?<br><br>Have Indigenous peoples expressed or described what they consider to be a reversible effect? |

| Criteria | Rating | Definitions used in evaluating biophysical and socio-economic effects | Considerations for evaluating effects the rights of Indigenous peoples |
|---|---|---|---|
| | 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. | Would the effect persist beyond the lifecycle of the project, or last in the order of decades or generations? If so, would some social or cultural effects that persist beyond a single generation potentially become permanent (e.g., would the effect on the exercise of a right persist more than one generation and potentially become permanent)? |
| Geographic Extent | Project Development Area (PDA) | Effect would be limited to the area directly disturbed by the Project development, including the width of the RoW and the temporary workspace. | Would the effect be limited to the area directly disturbed by the Project development, including the width of the right-of-way (and/or the temporary workspaces needed to construct the project)? |
| | Local Assessment Area (LAA) | 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., PDA plus a 1 km buffer for vegetation and wetlands). | Would the effect 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 may vary relative to the receptor or activity involved in the exercise of a right being considered. |
| | Regional Assessment Area (RAA) | 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., PDA plus a 15 km buffer for wildlife and wildlife habitat). | Would the effect be recognized on the landscape level (e.g., an effect extending tens of kilometres from the right-of-way)?<br>Have Indigenous peoples described the geographic extent of practices and customs that are involved in the exercise of their rights? Do these align, or are they different from, descriptions used within the environmental and socio-economic assessment? |

| Criteria | Rating | Definitions used in evaluating biophysical and socio-economic effects | Considerations for evaluating effects the rights of Indigenous peoples |
|---|---|---|---|
| | Global | Effects would be recognized at the global level. | Would the effect be recognized at the global level? |
| Magnitude | Low | Effect is negligible, if any; restricted to a few individuals/species or only slightly affects the resource or parties involved; and would impact quality of life for some, but individuals commonly adapt or become habituated, and the effect is widely accepted by society. | Would no or negligible effect be expected to occur within areas of preferred use or known areas for the exercise of rights?<br>Would mitigation allow for the practice of the right to continue in the same of similar manner as before any impact? |
| | 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. | Would the effect have a moderate likelihood of occurring within areas of preferred use or known areas for the exercise of rights?<br>Would the effect be potentially incompatible with aspects of land use plans or application of traditional laws and governance; would vulnerable segments of the community be likely to experience higher impact on their ability to exercise rights; would mitigation not fully ameliorate impact but still enable Indigenous peoples to continue exercising their rights in a similar or modified way? |
| | 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. | Would the effect have a high likelihood of occurring within areas of preferred or exclusive use are known areas for the exercise of rights?<br>Is mitigation unable to fully address impacts such that the practice of the right is substantively diminished or lost? |
| | None | No or negligible adverse project effects. | |

| Criteria | Rating | Definitions used in evaluating biophysical and socio-economic effects | Considerations for evaluating effects the rights of Indigenous peoples |
|---|---|---|---|
| Evaluation of significance | Low | Adverse project effects that are short-term, reversible, project area or local, and of low magnitude; in the context of low cumulative effects. | |
| | Medium | Any adverse effect that does not meet the criteria for either “low” or “high”. | |
| | High | Adverse effects that are either: (1) of high magnitude project effects; or (2) long-term, permanent, and beyond local project effects; or (3) non-negligible project effects in the context of high cumulative effects. | |