



National Energy  
Board

Office national  
de l'énergie

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# National Energy Board Report

**NOVA Gas Transmission Ltd.**

**GHW-001-2016**

December 2017

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**Facilities**

**Canada**

National Energy Board

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# National Energy Board Report

In the Matter of

**NOVA Gas Transmission Ltd.**

Application dated 27 April 2016 for Albersun  
Pipeline Asset Purchase Project

**GHW-001-2016**

**December 2017**

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# Table of Contents

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<b>Chapter 1 – Recommendation and Decisions .....</b>	<b>1</b>
1.1 Background .....	1
1.2 Section 52 Certificate Recommendation requiring Governor In Council (GIC) approval	1
1.3 Decisions by the Board not requiring GIC approval.....	1
1.3.1 Leave to NGTL to purchase the Albersun pipeline pursuant to section 74 of the NEB Act.....	1
1.3.2 Leave to Open the Albersun Pipeline pursuant to section 47 of the NEB Act .....	2
1.3.3 Authorization pursuant to section 59 of the NEB Act.....	2
<b>Chapter 2 – Introduction .....</b>	<b>2</b>
2.1 The Application .....	2
2.1.1 Background.....	2
2.1.2 Assets to be Transferred.....	3
2.1.3 Timing of Approvals .....	4
2.2 GHW-001-2016 Hearing .....	5
2.2.1 Hearing Participation.....	5
2.2.2 Hearing Order .....	5
2.2.3 Written Process.....	5
2.2.4 Oral Traditional Evidence .....	6
2.3 Life Cycle Approach.....	6
2.4 Public Interest.....	6
<b>Chapter 3 – Economic, Financial and Accounting Matters.....</b>	<b>8</b>
3.1 Economic Feasibility.....	8
3.1.1 Supply, Markets, and Transportation Contracts .....	8
3.1.2 Transportation Alternatives.....	10
3.1.3 Financing.....	11
3.2 Financial Matters .....	12
3.2.1 Revenue Requirement Impacts.....	12
3.2.2 Abandonment Funding .....	15
<b>Chapter 4 – Facilities and Emergency Response Matters.....</b>	<b>16</b>
4.1 Operation.....	16
4.1.1 Design and Integrity .....	16
4.1.2 Operational History .....	19
4.1.3 Threat Assessment .....	20
4.1.4 Albersun Pipeline Slope Monitoring .....	22
4.1.5 Slope Stability.....	23
4.1.6 Mildred Lake East Sales Meter Station.....	24
4.1.7 Pressure Control and Overpressure Protection .....	25
4.2 Emergency Preparedness and Response Planning.....	26

<b>Chapter 5 – Public Consultation.....</b>	<b>28</b>
5.1 NGTL’s Public Consultation Program .....	28
5.1.1 NGTL Pipelines Stakeholder Engagement Program.....	28
5.2 Participation of Stakeholders in the Regulatory Process.....	31
<b>Chapter 6 – Aboriginal Matters.....</b>	<b>32</b>
6.1 Introduction .....	32
6.2 NGTL’s Consultation with Potentially Affected Aboriginal Groups .....	33
6.3 The Board’s Hearing Process and Participation of Aboriginal Groups .....	38
6.3.1 Aboriginal Groups Who Participated in the Board’s hearing process .....	38
6.4 Impacts of the Project on Aboriginal Groups.....	40
6.4.1 Aboriginal Groups Identified and Consulted by NGTL .....	40
6.4.2 Bigstone.....	40
6.5 NGTL’s Reply to Issues and Concerns Raised by Aboriginal Groups .....	43
6.5.1 General Comments .....	43
6.5.2 Reply to Bigstone’s Issues and Concerns.....	44
<b>Chapter 7 – Land Matters .....</b>	<b>56</b>
7.1 Communications with Landowners and Land Users .....	56
7.2 Land Information .....	57
7.3 Description of Land Rights.....	58
7.4 Review and Transfer of Land Rights.....	58
<b>Chapter 8 – Environment and Socio-Economic Matters .....</b>	<b>60</b>
8.1 The NEB’s Environmental Assessment Methodology.....	60
8.2 Project Details .....	60
8.3 Environmental Setting .....	61
8.3.1 Land Use .....	61
8.3.2 Biophysical Environment .....	61
8.3.3 Socio-economic Environment .....	61
8.4 Environmental Issues of Public Concern.....	62
8.5 Environmental Effects Analysis.....	62
8.5.1 Interactions and Potential Adverse Environmental Effects .....	62
8.5.2 Mitigation of Potential Adverse Environmental Effects.....	67
8.5.3 Mitigation of Potential Adverse Environmental and Socio-Economic Effects .....	68
8.6 Cumulative Effects Assessment.....	68
8.7 EA Conclusion.....	69
<b>Appendix I.....</b>	<b>70</b>
List of Issues.....	70
<b>Appendix II.....</b>	<b>71</b>
NEB Section 52 Certificate Conditions .....	71
<b>Certificate Conditions.....</b>	<b>72</b>

## Glossary of Terms, Abbreviations and Units

ABSA	Alberta Boilers Safety Association
ACA	Annual Contribution Amount
ACE	Abandonment Cost Estimate
AER	Alberta Energy Regulator
Application	NGTL's application to the Board, seeking leave to purchase the Albersun Pipeline from Suncor and include the cost in the NGTL System rate base, pursuant to Parts IV and V of the <i>National Energy Board Act</i> , and for a Certificate of Public Convenience and Necessity for the Albersun Pipeline, among other things, dated 27 April 2016
Albersun Pipeline	Approximately 179 km of the Suncor Pipeline with related components, including valve sites, launcher and receiver facilities, the Tar Island Sales Meter Station, and certain miscellaneous interests.
ATCO Gas	ATCO Gas and Pipelines Ltd.
ATP	Application to Participate
Bigstone	Bigstone Cree Nation
Board or NEB	National Energy Board
Certificate or CPCN	Certificate of Public Convenience and Necessity issued under section 54 of the <i>National Energy Board Act</i> authorizing the construction and operation of a pipeline
Closing	The change of ownership and possession of the Transferred Assets
Closing Date	The date when Closing occurs
CNRL	Canadian Natural Resources Limited
CP	Cathodic Protection
CPVCOS	Cumulative Present Value Cost of Service
CSA	Canadian Standards Association
CSA Z184	Canadian Standards Association, standard Z 184, <i>Gas Pipeline Systems</i>

CSA Z662-15	Canadian Standards Association, standard Z662-15, <i>Oil and Gas Pipeline Systems</i>
EA	Environmental Assessment
EMP	Emergency Management Plan
EMS	Emergency Management System
EPM	Emergency Procedures Manual
EPP	Environmental Protection Plan
ESA	Environment and Socio-Economic Assessment
FT-D	Firm Delivery Transportation
First Amending Agreement	NGTL and Suncor entered into a Transfer Agreement on November 14, 2014, and subsequently negotiated the terms of a First Amending Agreement to the Transfer Agreement, collectively referred to as the Transfer Agreement, for NGTL to purchase the majority of the Suncor Pipeline.
GIC	Governor in Council
GIS	Geographic Information System
ILI	In-Line Inspection
IMP	Integrity Management Program
IR	Information Request
MOP	Maximum Operating Pressure
NEB Act or Act	<i>National Energy Board Act</i>
NEB Report or Report	<i>National Energy Board Report</i>
NGTL, Applicant or Company	NOVA Gas Transmission Ltd.
NGTL System	An extensive natural gas pipeline system owned and operated by NGTL, comprised of approximately 24 500 kilometres of pipeline, associated compression and other facilities, located in Alberta and British Columbia
NPS	nominal pipe size (in inches)
OPP	Overpressure Protection
OPR	<i>National Energy Board Onshore Pipeline Regulations</i>
OTE	Oral Traditional Evidence
Part IV	Part IV of the NEB Act that contains provisions dealing with traffic, tolls and tariffs
PC	Pressure Control

PFP	Participant Funding Program
Project	The proposed acquisition and continued operation of approximately 179 km of pipeline, plus associated mainline valves, launcher and receiver facilities, metering facilities and rights-of-way (ROWs). After Closing, NGTL will physically isolate the Albersun Pipeline in the Crow Lake area from the CNRL-owned, southern portion of the pipeline. No further construction, decommissioning or abandonment activities associated with the Albersun Pipeline are proposed by NGTL
ROW	right-of-way
SARA	<i>Species at Risk Act</i>
SCC	Stress Corrosion Cracking
SI	Slope Inclinometer
Suncor	Suncor Energy Logistics Corporation
SYMS	Specified Minimum Yield Strength
TBO	Transportation by Others
TLU	Traditional Land Use
TransCanada	TransCanada PipeLines Limited
Transfer Agreement	An agreement, dated 14 November 2014 between NGTL and Suncor
TOPS	TransCanada Operating Procedures
TTFP	Tolls, Tariff, Facilities and Procedures Committee

**List of Units**

Bcf/d	billion cubic feet per day
kPa	kilopascal
km	kilometre
m	metre
mm	millimetre
TJ/d	Terajoule per day



## **Recital and Appearances**

**IN THE MATTER OF** the *National Energy Board Act* (NEB Act) and the regulations made thereunder; and

**IN THE MATTER OF** an application, made under file OF-Fac-Gas-N081-2016-04 01 by NOVA Gas Transmission Ltd. (NGTL), dated 27 April 2016, for the Albersun Pipeline Asset Purchase Project, which included the following relief requested:

- a) an Order under paragraph 74(1)(b) of the NEB Act, granting leave to NGTL to purchase the Albersun Pipeline from Suncor, in accordance with the Transfer Agreement;
- b) a CPCN under section 52 of the NEB Act to allow for the continued operation of the existing Albersun Pipeline, effective at Closing, and isolation of the Albersun Pipeline from the CNRL owned pipeline immediately south of NGTL's Crow Lake Sales Lateral tie-in;
- c) an Order under section 47 of the NEB Act, granting leave to NGTL to open the Albersun Pipeline;
- d) an approval under section 59 of the NEB Act to include the purchase price of the Albersun Pipeline plus adjustments in the NGTL System rate base at Closing; and
- e) any such further and other relief that the National Energy Board may consider appropriate.

**IN THE MATTER OF** National Energy Board Hearing Order GH-001-2016, dated 21 November 2016;

**HEARD** by way of written submissions

**BEFORE:**

P.H. Davies    Presiding Member

S. Parrish     Member

A. Scott       Member

## Chapter 1

# Recommendation and Decisions

---

### 1.1 Background

NOVA Gas Transmission Ltd. (NGTL, Applicant or Company) applied to the National Energy Board (Board or NEB), for leave to purchase the Albersun Pipeline from Suncor Energy Logistics Corporation (Suncor) pursuant to paragraph 74(1)(b) of the *National Energy Board Act* (Act or NEB Act) and for the Board to issue a report recommending the issuance of a Certificate, pursuant to section 52 of the NEB Act, for the continued operation of the Albersun Pipeline. The proposed acquisition and continued operation of approximately 179 km of pipeline, plus associated mainline valves, launcher and receiver facilities, metering facilities and rights-of-way (ROWs). After Closing, NGTL will physically isolate the Albersun Pipeline in the Crow Lake area from the CNRL-owned, southern portion of the pipeline. No further construction, decommissioning or abandonment activities associated with the Albersun Pipeline are proposed by NGTL (Project).

### 1.2 Section 52 Certificate Recommendation requiring Governor In Council (GIC) approval

The Board has decided to recommend that a Certificate be issued for the continued operation by NGTL of the Albersun pipeline and to allow NGTL to isolate the Albersun Pipeline from the Canadian Natural Resources Limited (CNRL) owned pipeline immediately south of NGTL's Crow Lake Sales Lateral tie-in. The Board has set out the terms and conditions, contained in Appendix II of this *National Energy Board Report* (Report or NEB Report), to which the Certificate would be subject if the GIC were to direct the Board, pursuant to section 54 of the NEB Act, to issue the Certificate. The Certificate, if issued, will be effective at Closing.

As further explained in chapter 6 of this Report, the Board found that there had been adequate consultation and accommodation for the purpose of the Board's recommendation to issue a Certificate for the operation of the Albersun pipeline.

### 1.3 Decisions by the Board not requiring GIC approval

#### 1.3.1 Leave to NGTL to purchase the Albersun pipeline pursuant to section 74 of the NEB Act

The Board has decided that it is in the public interest to grant NGTL leave to purchase the Albersun Pipeline from Suncor pursuant to paragraph 74(1)(b) of the NEB Act. This leave is subject to a Certificate being issued.

In light of the nature of the interests and the anticipated effects, the Board has evaluated the consultation undertaken with respect to this Project, including the mandated consultation performed by NGTL. The Board has also considered the mitigation measures proposed by NGTL

to address the various concerns and potential effects, and the conditions the Board proposes should the Project be approved. As further explained in chapter 6 of this Report, the Board found that there had been adequate consultation and accommodation for the purpose of the Board's decision to grant leave to purchase the Albersun pipeline.

### **1.3.2 Leave to Open the Albersun Pipeline pursuant to section 47 of the NEB Act**

NGTL requested the Board to grant leave to NGTL to open the Albersun Pipeline pursuant to section 47 of the NEB Act.

The Board is satisfied that the Albersun Pipeline meets the OPR requirements, and that the facilities are fit for their designed service. Consequently, the Board grants leave to open these facilities to NGTL pursuant to section 47 of the NEB Act, once and if a Certificate for the Project is issued.

However, the Board is of the view that 4500 kPa is the appropriate maximum operating pressure (MOP) which the Board can agree to at this time. Should a higher pressure be required, an engineering assessment demonstrating that the pipeline is safe at a higher pressure must be filed with the Board and approved by the Board (see chapter 4.1.3).

### **1.3.3 Authorization pursuant to section 59 of the NEB Act**

Should a Certificate be issued, the Board has decided to approve, pursuant to section 59 of the NEB Act, NGTL's request to include the purchase price of the Albersun Pipeline plus adjustments in the Alberta System rate base at Closing. (see chapter 3.2.1).

The above constitute our recommendation and decisions on the Project application considered by the Board in the GHW-001-2016 proceeding. This Report contains our reasons for them as well as the views of the parties and the evidence relied upon in reaching our recommendation and decisions.



P.H. Davies  
Presiding Member



S. Parrish  
Member



A. Scott  
Member

## Chapter 2

# Introduction

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## 2.1 The Application

On 27 April 2016, NGTL filed an application with the Board, seeking leave to purchase the Albersun Pipeline from Suncor Energy Logistics Corporation (Suncor) and include the cost in the NGTL System rate base, pursuant to Parts IV and V of the National Energy Board Act, and for a Certificate of Public Convenience and Necessity (CPCN) for the Albersun Pipeline, among other things, dated 27 April 2016 (Application).

NGTL requested the following from the Board:

- grant NGTL leave to purchase the Albersun Pipeline from Suncor, in accordance with the Transfer Agreement, pursuant to subsection 74(1)(b) of the NEB Act;
- issue a report recommending the issuance of a CPCN, pursuant to section 52 of the NEB Act, for the continued operation of the Albersun Pipeline effective on Closing, and isolation of the Albersun Pipeline from the CNRL owned pipeline immediately south of NGTL's Crow Lake Sales Lateral tie-in;
- authorize NGTL, pursuant to section 59 of the NEB Act, to include the purchase price of the Albersun Pipeline plus adjustments in the NGTL System rate base at Closing;
- grant leave to NGTL to open the Albersun Pipeline pursuant to section 47 of the NEB Act; and
- grant such further and other relief as NGTL may request or the Board may consider appropriate.

### 2.1.1 Background

NGTL, a wholly-owned subsidiary of TransCanada PipeLines Limited (TransCanada), owns the NGTL System, an extensive natural gas pipeline system comprising approximately 24,500 km of pipeline, associated compression and other facilities located in Alberta (AB) and British Columbia (BC) (NGTL System). The NGTL System gathers and transports natural gas produced in the Western Canadian Sedimentary Basin for delivery to intra-basin and export markets.

Suncor, a corporation incorporated under the laws of Alberta, owns and operates a natural gas pipeline in northeastern Alberta (Suncor Pipeline), which is subject to provincial jurisdiction and regulated by the Alberta Energy Regulator (AER).

On 14 November 2014, NGTL and Suncor entered into a Transfer Agreement and subsequently negotiated the terms of a First Amending Agreement to such Transfer Agreement, collectively

referred to as the Transfer Agreement, for NGTL to purchase a portion of the Suncor Pipeline. For the purposes of the Application, the portion of the pipeline NGTL is seeking to purchase is referred to as the Albersun Pipeline.

The Albersun Pipeline interconnects with the NGTL System and is used by NGTL to deliver sweet natural gas to Fort McMurray, the hamlet of Anzac and other small delivery customers (Fort McMurray area) through a transportation by others (TBO) arrangement with Suncor.

The Project comprises the acquisition and continued operation of approximately 179 km of pipeline, plus associated mainline valves, launcher and receiver facilities, metering facilities and rights-of-way (ROWs). After Closing, NGTL will physically isolate the Albersun Pipeline in the Crow Lake area from the CNRL-owned, southern portion of the pipeline. No further construction, decommissioning or abandonment activities associated with the Albersun Pipeline are proposed by NGTL.

### **2.1.2 Assets to be Transferred**

NGTL has agreed to purchase, own and operate the Albersun Pipeline pursuant to the Transfer Agreement. The purchase of the Albersun Pipeline consists of the following facilities and miscellaneous interests:

- Approximately 179 km of pipeline in total (the specifications, location and status of these sections of pipeline are detailed in AER Licence 6502, under which the Albersun Pipeline currently operates), comprised of:
  - 141 km of 273 mm (NPS 10) pipeline extending from a point in 06-13-92-10 W4M to NGTL's existing Crow Lake Sales Lateral tie-in point to the Albersun Pipeline in 08-33-79-14 W4M (Suncor Albersun Pipeline);
  - 5.8 km of 219 mm (NPS 8) pipeline extending from 04-21-92-10 W4M to a point in 06-13-92-10 W4M (Suncor Mildred Lake Lateral); and
  - 23.4 km of 168 mm (NPS 6) pipeline extending from 16-21-86-10 W4M to 07-27-85-08 W4M and 8.7 km of 89 mm (NPS 3) pipeline extending from 07-27-85-08 W4M to 10-33-85-07 W4M (both segments combined comprise the Suncor Gregoire Lateral).
- The following facilities are attached to and form part of the Albersun Pipeline:
  - Mildred Lake East Sales Meter Station at 6-13-92-10 W4M (NGTL will rename Suncor's Tar Island Sales Meter Station to the Mildred Lake East Sales Meter Station once NGTL takes ownership of the Albersun Pipeline. For the purposes of the Application, the meter station is referred to as the Mildred Lake East Sales Meter Station);
  - pipe and valve facilities at receipt and delivery taps located on the existing pipeline ROW;
  - mainline valves on the pipeline;
  - pig receiver located within Mildred Lake East Sales Meter Station site at 6-13-92-10 W4M; and

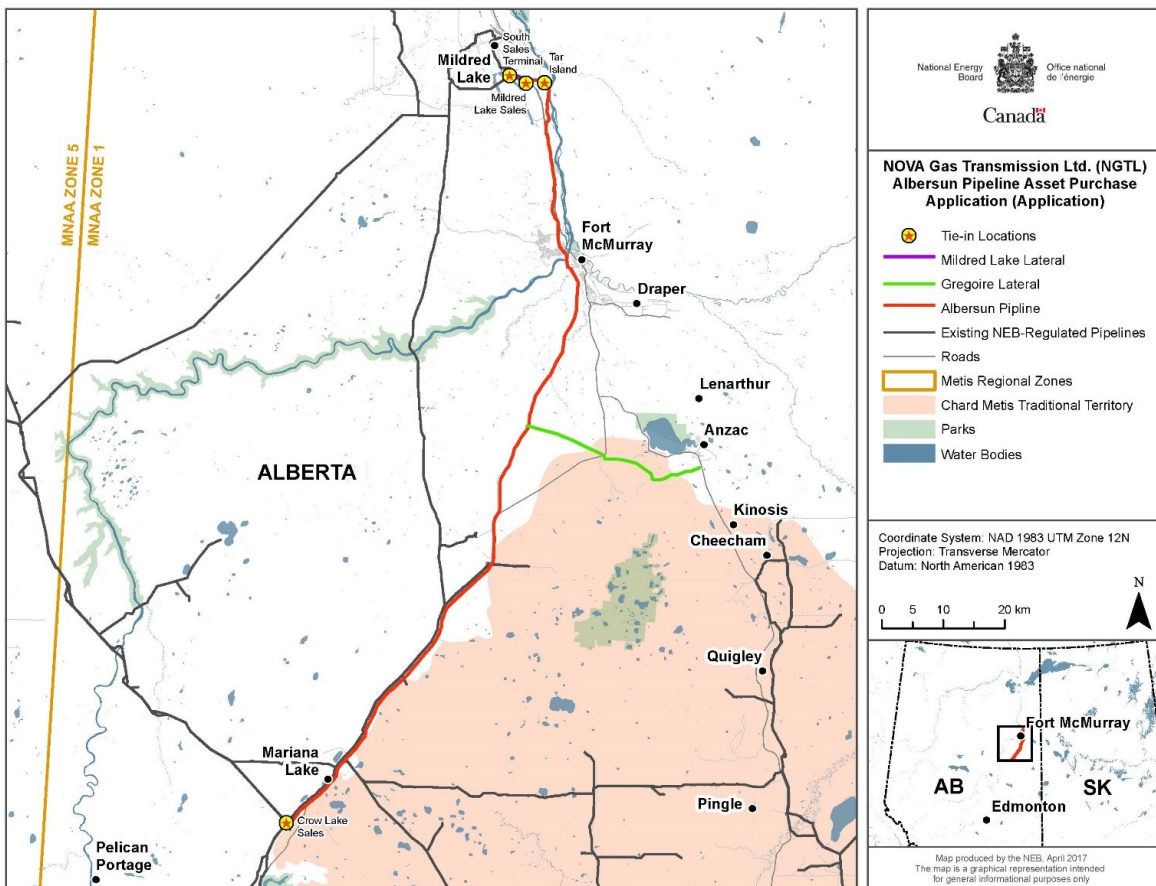
- pig launcher and receiver provisions at M/P 84.12 at 7-13-80-14 W4M;
- pig launcher at 16-21-86-10 W4M on the Gregoire Lateral.
- Miscellaneous interests of Suncor necessary for NGTL's ownership, operation and maintenance of the Albersun Pipeline, including the land rights associated with the Albersun Pipeline ROWs.

### 2.1.3 Timing of Approvals

Upon receipt of all material regulatory approvals, including NEB approval, NGTL will work with Suncor to transfer and integrate the Albersun Pipeline into the NGTL System in accordance with the provisions of the Transitional Operating Agreement and First Amending Agreement to the Transitional Operating Agreement, collectively the Transitional Operating Agreement. NGTL proposes to provide to the NEB written confirmation of the date when Closing occurs (Closing Date) agreed to by Suncor and NGTL, at least 30 days in advance of the Closing Date. Suncor has agreed to an interim TBO arrangement with NGTL until the transfer of the Albersun Pipeline is complete.

Figure 2-1 provides an overview of the Albersun Pipeline.

**Figure 2-1 Project Location Map**



## **2.2 GHW-001-2016 Hearing**

### **2.2.1 Hearing Participation**

On 7 October, 2016, the Board issued a Notice of Public Hearing and Application to Participate for the GHW-001-2016 hearing. Those that wished to participate in the hearing had until 31 October 2016 to apply using the Board's online Application to Participate (ATP) form which was made available. The Notice of Public Hearing and Application to Participate included the List of Issues that the Board would consider during its assessment of NGTL's Application

The Board received three ATP submissions, two of which requested Intervenor status and one of which requested commenter status. In a letter dated 16 November 2016, the Board issued its decision on participation, indicating that all three applicants had been accepted to participate in the Hearing, and provided the List of Participants for the GHW-001-2016 Hearing.

On 28 November 2016, the Board received a letter from Bigstone Cree Nation (Bigstone) requesting a late ATP. In the letter, Bigstone stated that it was not initially identified as a group to be consulted and as a result, obtained very late notice about the Project and that the Project will directly and adversely affect Bigstone. In its letter of 6 December 2016, the Board granted Bigstone standing as an intervenor, stating that there was no prejudice caused to the other applicants or NGTL by granting the late request.

On 17 January 2017, Bigstone filed its written evidence with the Board and on 12 May 2017, Bigstone filed an Information Request (IR) to NGTL with the Board.

On 26 May 2017, NGTL filed its response to Bigstone's IR with the Board and on 2 June 2017, NGTL filed its reply evidence with the Board.

On 14 June 2017, the Board heard Oral Traditional Evidence of Bigstone in Wabasca, Alberta.

On 6 July 2017, NGTL filed its final argument with the Board and on 21 July 2017, Bigstone and ATCO Gas both filed their final arguments with the Board. On 28 July 2017, NGTL filed its reply argument with the Board.

### **2.2.2 Hearing Order**

On 21 November 2016, the Board issued Hearing Order GHW-001-2016 (Hearing Order), followed by procedural updates, which established a public hearing process that encouraged and supported meaningful participation.

### **2.2.3 Written Process**

The Board conducted its public hearing primarily through a written process which included filing of evidence by NGTL and Bigstone, IRs and the submission of final argument from NGTL, ATCO Gas and Bigstone, concluding with NGTL's submission of reply argument.

The one oral component of the hearing was the collection of oral traditional evidence from Bigstone which is described in section 2.2.5 immediately below.

## **2.2.4 Oral Traditional Evidence**

The Board recognizes that Aboriginal peoples have an oral tradition for sharing information and knowledge from generation to generation and that this information cannot always be shared adequately in writing. The Board finds it valuable for its consideration of applications to gather oral traditional evidence during its proceedings from interested Aboriginal Intervenors.

As set out in Procedural Update No. 3, the Board held an oral traditional evidence session on 14 June 2017 at Wabasca Alberta where Bigstone was able to provide Oral Traditional Evidence directly to the Board. NGTL and the Board had the opportunity to ask questions on Bigstone's oral traditional evidence. See section 6.3 of Chapter 6 for further information about the oral traditional evidence.

## **2.3 Life Cycle Approach**

In considering the Project, the Board used a life cycle approach where all issues and concerns were considered with regard to the operation, maintenance, decommissioning and future abandonment of the Albersun Pipeline. The Board also considered its various regulatory roles, such as application assessment and post-decision condition compliance, with respect to each stage in the Project's life cycle.

## **2.4 Public Interest**

In considering an application for the operation of a pipeline under Part III of the NEB Act, the Board must consider the overall Canadian public interest. In doing so, the Board must, after carefully weighing all of the evidence in the proceeding, exercise its discretion in balancing the diverse interests of the public. The Board must rely only on the facts that are established to its satisfaction through the hearing process, and must also proceed in compliance with the principles of natural justice.

As well, in assessing previous applications under subsection 74(1) of the NEB Act, the Board has taken into consideration the public interest, such as in its approvals of the TransCanada Keystone transfer<sup>1</sup> and more recently, the NGTL Integrated Asset Transfer Project<sup>2</sup>. In both examples, the Board relied on the public interest as the appropriate regulatory standard, and has applied the same standard in the review of this Application.

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<sup>1</sup> National Energy Board, Reasons for Decision, TransCanada PipeLines Limited and TransCanada Keystone Pipeline GP Ltd., Application for leave to transfer pipeline facilities and for a determination of the transfer price, MH-1-2006

<sup>2</sup> National Energy Board, Report, NOVA Gas Transmission Ltd., Application for the Integration Asset Transfer Project, GH-002-2014



The Board has described the public interest in its *Pipeline Regulation in Canada: A Guide for Landowners and the Public (Revised 2010)* in the following terms:

*The public interest is inclusive of all Canadians and refers to a balance of economic, environmental, and social interests that changes as society's values and preferences evolve over time. The Board estimates the overall public good a project may create and its potential negative aspects, weighs its various impacts, and makes a decision.*

## Chapter 3

# **Economic, Financial and Accounting Matters**

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In making a recommendation on an application pursuant to section 52 of the NEB Act, the Board considers all information presented that appears to be directly related and relevant, including information provided on the economic feasibility of the project and the toll and tariff impacts. An applicant is expected to demonstrate, through its submitted evidence, the economic feasibility or need for the project, any alternatives to the project that have been evaluated and considered, the justification for the project over other possible options, the likelihood of the pipeline being used at a reasonable level over its economic life, and the justness and reasonableness of the proposed tolls. The Board's level of analysis of the issues is generally commensurate with the scope and impact of the applied-for project.

This Application is in regard to the purchase of existing assets that are currently outside of the Board's jurisdiction and the continued operation of those assets. No approvals for new construction were requested. Therefore, for this project, as far as economic, financial and accounting matters were concerned, the Board took into consideration the evidence submitted regarding the need for the assets in question, alternatives to the purchase, and the financial impacts to shippers. The Board also considered evidence regarding future abandonment of the Albersun Pipeline.

### **3.1 Economic Feasibility**

When making a determination regarding the economic feasibility of a project, the Board assesses the need for the proposed facility and the likelihood of it being used at a reasonable level over its economic life. To make this determination, the Board considers the supply of product available and the transportation contracts underpinning the facilities. The Board also considers the availability of adequate markets to receive the product to be delivered by the pipeline, and the adequacy of the pipeline's capacity. In addition, the Board considers an applicant's ability to finance the proposed facilities.

#### **3.1.1 Supply, Markets, and Transportation Contracts**

##### *Views of NGTL*

The Albersun Pipeline forms part of the larger Suncor Pipeline, which interconnects with the NGTL system. The primary markets served through the Albersun Pipeline are the Fort McMurray area markets, which are considered residential/commercial, and an industrial market primarily serving oil sands facilities. According to NGTL, the Albersun Pipeline is currently the only gas transmission system and source of sweet natural gas supply for the Fort McMurray area.

Presently, transportation capacity on the Albersun Pipeline is contracted by NGTL through a TBO arrangement with Suncor. NGTL is the only shipper on the pipeline, and it has been

providing firm delivery transportation (FT-D) service to customers through this TBO arrangement since October 2011.

Gas supply on the NGTL system is received at over 1,000 receipt points and via interconnections with other pipelines. Once on the NGTL system, natural gas is available for purchase and sale through the NOVA Inventory Transfer market hub. In 2015, on average approximately 11 Bcf/d of gas was physically received on the NGTL system, although NGTL explained that the commercial gas trading activity regularly exceeds 60 Bcf/d. After receipt, the gas can be delivered to either intra-basin or export delivery points. In a supply forecast for the period 2015-2028, NGTL illustrated that gas supplies on the NGTL system are expected to increase to over 15 Bcf/d by the end of the forecast period. In NGTL's view, this demonstrates adequate supply for the Albersun Pipeline and NGTL's other markets.

NGTL submitted that the Albersun Pipeline is required to meet aggregate FT-D contractual commitments, as well as aggregate forecast requirements, for the transportation of sweet natural gas to delivery points in the Fort McMurray area. NGTL's existing FT-D contracts consist of 53.2 TJ/d of FT-D Group 3 contracts and 40 TJ/d of FT-D Group 2 contracts. The Group 3 contracts serve residential and small commercial markets, and NGTL's TBO arrangement with Suncor is for an equivalent capacity of 53.2 TJ/d. The Group 2 contracts serve base load industrial demand.<sup>3</sup> All of the contracts expire on dates ranging from October 2017 to October 2025 and, according to NGTL, customers have expressed their intention to renew all contracted quantities for an additional five-year term upon expiry. NGTL's forecast is for slow but steady demand growth in the Fort McMurray area and NGTL observed that there is currently no alternative to the Albersun Pipeline to meet this demand. As a result, NGTL viewed the likelihood of, and risks surrounding, non-renewal of existing FT-D contracts to be minimal.

NGTL forecasted that the Albersun Pipeline has sufficient capacity to transport FT-D contract volumes and peak flows within the forecast period. NGTL expected FT-D contracts for over 100 TJ/d of the approximately 110 TJ/d capability of the Albersun Pipeline until the end of the forecast period in 2028. NGTL's peak design forecast was for approximately 80 TJ/d through 2017, but increasing to approximately 90 TJ/d by 2028. In NGTL's view, the forecast supply and market demand growth, combined with aggregate contractual underpinnings, demonstrate that the Albersun Pipeline will be used and useful over its economic life.

### ***Views of Participants***

No participants expressed concerns with the supply and markets outlooks for the Albersun Pipeline.

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<sup>3</sup> The 40 TJ/d of FT-D service is located at NGTL's South Terminal Sales Meter Station, which interconnects with the Albersun Pipeline, to satisfy industrial delivery requirements off of the Albersun Pipeline. Upon integration of the Albersun Pipeline with the NGTL system, NGTL's South Terminal Sales Meter Station would become an intermediate measurement point and would no longer be a custody transfer point. NGTL indicated that it would work with its customer(s) to relocate the 40 TJ/d of FT-D service from NGTL's South Terminal Sales Meter Station to the Mildred Lake East Meter Station, which is located on the Albersun Pipeline.

ATCO Gas supported the project, and submitted in argument that the purchase of the Albersun Pipeline by NGTL is required to supply natural gas to the Fort McMurray area. Suncor also supported the project, stating in its letter of comment that NGTL's Application demonstrated that the Albersun Pipeline is needed to meet contractual commitments and forecast requirements for transportation of natural gas.

### **3.1.2 Transportation Alternatives**

#### *Views of NGTL*

In September 2012, Suncor provided notice of its intent to terminate NGTL's TBO arrangement on the Albersun Pipeline. NGTL stated that because no lease options were available, it was necessary to evaluate the construction of new facilities (the build alternative) and the purchase of existing facilities owned by others (the purchase alternative) to determine the preferred alternative for NGTL to continue to meet its service requirements. According to NGTL, the only other alternative would result in terminating contracts that require the use of the Albersun Pipeline, which would mean significant market requirements and existing contract demand in the Fort McMurray area would not be met. This, in NGTL's opinion, would not be in the public interest.

NGTL estimated the capital cost of the purchase alternative at \$29 million, which is \$60 million less than the build alternative, which has an estimated capital cost of \$89 million. In addition, the purchase alternative's cumulative present value cost of service (CPVCOS) of \$35 million is half of the \$70 million CPVCOS of the build alternative. NGTL determined that purchasing the Albersun Pipeline was the preferred option as it was the least cost alternative and would allow NGTL to reliably meet its contractual obligations and forecast growth.

In addition to the cost savings described above, NGTL submitted that the purchase of the Albersun Pipeline is justified based on the following benefits:

- Flexibility in addressing future growth prospects in the Fort McMurray area – the Albersun Pipeline provides sufficient capacity to meet FT-D contracts and peak flows within the forecast period. If additional capacity is required in the future, NGTL would be well positioned to expand its system to effectively and efficiently meet those requirements.
- Reduced project footprint and environmental effects by eliminating or deferring incremental facilities – purchasing the Albersun Pipeline eliminates or defers the need to construct new pipeline infrastructure in the Fort McMurray area.
- Uninterrupted service to utility and industrial markets in a northern area of the NGTL system – the Albersun Pipeline is already connected to the NGTL system and NGTL currently provides FT-D service at locations connected to the Albersun Pipeline through a TBO arrangement. Therefore, no service interruptions to downstream customers will be required when ownership of the pipeline changes.

NGTL confirmed that all potentially affected commercial third parties were notified of the project, and that no comments or concerns were received by NGTL. The Tolls, Tariff, Facilities

and Procedures Committee (TTFP), a group of approximately 100 NGTL system customers and stakeholders, was among those third parties that were notified of the project. NGTL explained that the TTFP was informed of the planned purchase of the Albersun Pipeline at a TTFP meeting in April 2015, and that a facility notification for the planned acquisition was provided at a subsequent meeting in May 2015.

### ***Views of Participants***

No participants expressed concerns with NGTL's decision to pursue the purchase of the Albersun Pipeline over other transportation alternatives.

In final argument, Bigstone objected to the project being approved. However, Bigstone did not express explicit views on the build alternative versus the purchase alternative. Aboriginal matters, including any concern of the Bigstone may have over the purchase of the Albersun Pipeline, are addressed in chapter 6 of this Report.

ATCO Gas and Suncor argued that the purchase of the Albersun Pipeline by NGTL is the least cost alternative to continue to meet aggregated FT-D contractual commitments and forecast requirements in the area. Suncor also explained that the transaction requires no service interruption to customers when ownership is transferred.

### **3.1.3 Financing**

#### ***Views of NGTL***

NGTL indicated that it would fund the purchase of the Albersun Pipeline with proceeds from its parent company, TransCanada. According to NGTL, TransCanada may, from time to time, access the debt capital markets on behalf of NGTL and pass through the financing on terms and conditions consistent with those entered into with third parties. NGTL explained that TransCanada expects to fund its existing capital program in 2016 and beyond, including projects undertaken by NGTL, through a combination of cash flow from its consolidated operations, access to capital markets in Canada and the U.S., and cash on hand. In addition, NGTL submitted that as of 31 December 2015 TransCanada and other subsidiaries of TransCanada Corporation had approximately \$7.9 billion of capacity on \$8.9 billion of committed, revolving credit facilities.

#### ***Views of Participants***

No participants expressed any concerns with NGTL's financing for the Albersun Pipeline.

#### ***Views of the Board***

The Board has traditionally determined the economic feasibility of a pipeline by considering evidence on all relevant factors which impact the likelihood that the applied-for pipeline will be used at a reasonable level over its economic life and that the associated tolls will be paid.

In the Board's view, the evidence on the record of this proceeding demonstrates adequate supply and markets to support the ongoing use of the Albersun Pipeline. NGTL has served

its FT-D customers through a TBO arrangement with Suncor on the Albersun Pipeline since 2011. The NGTL system has provided sufficient supply to service these FT-D contracts over the course of the TBO arrangement, and the Board was not presented with evidence suggesting that these circumstances would change for at least the next 10 years. The Board notes that NGTL's forecasts indicate growth in gas supplies over the forecast period ending 2028. With respect to demand, the Board heard that shippers have expressed an interest in renewing their FT-D contracts for delivery to the Fort McMurray market areas served by the Albersun Pipeline, and NGTL illustrated that nearly all of the capacity available on the pipeline would be contracted over the forecast period ending 2028.

In addition to supply and market outlooks, NGTL presented convincing evidence that the purchase of the Albersun Pipeline is the least cost solution for providing delivery service to the Fort McMurray markets. The Board also notes that the purchase alternative results in no service disruptions to downstream customers and reduced project footprint and environmental effects by eliminating or deferring incremental facilities. Further, NGTL is capable of financing the purchase of the pipeline through its parent company, TransCanada, which has sufficient access to financial markets.

Finally, the Board notes that no parties to the proceeding raised concerns regarding the economic feasibility of the project. Moreover, the Board notes that all potentially affected commercial third parties were notified of the project, including the TTFP, and no comments or concerns were received by NGTL.

In view of the foregoing, the Board finds that NGTL has sufficiently demonstrated the economic feasibility of the project.

## **3.2 Financial Matters**

The Board's Filing Manual indicates that toll treatment is relevant to assess facility applications, especially with respect to financial feasibility. Matters relating to toll treatment fall under Part IV of the NEB Act, including the Board's broad authority with respect to traffic, tolls and tariffs.

### **3.2.1 Revenue Requirement Impacts**

#### *Views of NGTL*

NGTL engaged in extended commercial negotiations with Suncor for the Albersun Pipeline, and agreed to terms and a purchase price acceptable to both parties in an arm's-length transaction. The companies initially agreed to a negotiated purchase price of \$23.992 million plus adjustments; however, the purchase price was later updated to \$24.787 million to include the cost of certain facility additions undertaken by Suncor in late 2016. NGTL's costs to integrate the Albersun Pipeline into the NGTL system are estimated at \$6.0 million, and include land, signage, administration, and other operations and maintenance expenses, as well as the Mildred Lake East Sales Meter Station upgrades.

NGTL proposed and has requested leave of the Board to include the capital costs of the acquisition in its rate base. At the time of purchase, NGTL's rate base would increase by

approximately \$30 million, based on the \$24.787 million purchase price and the capital-related portion of the integration costs, estimated at \$4.5 million.<sup>4</sup> NGTL estimated that the increased return, depreciation, operating costs, income tax and municipal tax related to the rate base addition would result in an average increase of \$4.3 million in NGTL's annual revenue requirement for the first five years of service. However, NGTL indicated that the costs of the existing TBO arrangement with Suncor are currently included in NGTL's annual revenue requirement. NGTL explained that the TBO arrangement would be terminated after the purchase, resulting in a cost savings of approximately \$4.1 million. The net result, in NGTL's view, would be a negligible impact to the annual revenue requirement.

NGTL understood that the original cost of the assets to Suncor was approximately \$25.125 million in 1967 and that the assets have been fully depreciated. When questioned on the rolling in of the acquisition costs of a fully depreciated asset into its rate base, NGTL submitted that inclusion into rate base of actual costs prudently incurred to acquire the Albersun Pipeline is consistent with the cost causation principle and the prudence standard. In NGTL's view, inclusion of the purchase price of the Albersun Pipeline into rate base is also consistent with past regulatory precedents and policy of the Board, the Alberta Energy and Utilities Board (predecessor to the current Alberta Utilities Commission), and the Federal Energy Regulatory Commission. NGTL explained that all of these bodies have approved the inclusion of an acquisition premium into rate base where an applicant has demonstrated the following:

- the acquisition of the assets represents a lower cost than the least cost alternative;
- the transaction is an arm's-length sale between unaffiliated parties; and
- the existing systems' ratepayers will benefit from the acquisition.

NGTL submitted that the rolling in of the Albersun Pipeline acquisition costs into rate base is appropriate in light of the following:

- i. the purchase and related accounting treatment are the least cost alternative that allows NGTL to continue providing service;
- ii. the cost of the acquisition was negotiated between arm's-length entities and reflects fair market value; and
- iii. NGTL's shippers will benefit from the purchase.

Once acquired, the Albersun Pipeline would be fully integrated with the rest of the NGTL system. The pipeline would be used to provide transportation services pursuant to NGTL's tariff, the same as under the current TBO arrangements. NGTL confirmed that the only amendments to the tariff associated with the purchase of the Albersun Pipeline would be the addition and

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<sup>4</sup> The capitalized integration activities include the Mildred Lake East Sales Meter Station upgrades, estimated at \$1.9 million, as well as field-related integration, such as flow computer upgrades, which is estimated at \$2.6 million. The remaining \$1.5 million in integration costs are attributable to office-related integration, such as management system updates, and are to be treated as an operations and maintenance expense.

removal of delivery points to the Table of Rates, Tolls and Charges upon closing of the transaction.

NGTL indicated that it had informed the TTFP of the planned purchase at a 14 April 2015 TTFP meeting, and that it provided a facility notification for the planned acquisition at a 12 May 2015 meeting. NGTL also confirmed that all potentially affected commercial third parties were notified of the planned purchase and that no comments or concerns were received by NGTL.

### ***Views of Participants***

No participants expressed concerns regarding NGTL's proposed tolling treatment for the Albersun Pipeline. In its letter of comment, Suncor stated that the proposed transfer will have no material impact on NGTL's tolls.

### ***Views of the Board and Board decision pursuant to section 59 of the NEB Act (not requiring GIC approval)***

In assessing a company's proposal to add the acquisition costs of a facility to its rate base, the Board considers the relevant circumstances and specific facts of the proposal. Those facts may include the purchase price of the facility in relation to its depreciated original cost, whether the negotiations for the purchase price were conducted at arm's length, the availability of lower-cost transportation alternatives, and the impacts on shippers' tolls and transportation service. While the case-specific facts may support a company's request, there are circumstances in which the Board may not allow the inclusion of all or a portion of a facility's acquisition costs in rate base.

While NGTL confirmed that the purchase price of the Albersun Pipeline exceeds its depreciated original cost, no evidence on the record suggests that the acquisition costs or resulting toll impacts are unreasonable. The purchase of the pipeline represents the least cost alternative for providing delivery service to the Fort McMurray area, and the purchase price of the pipeline was determined through arm's-length negotiations. The Board notes that the costs of the acquisition would be spread among all users of NGTL's system, with an increase to the annual revenue requirement of approximately \$4.3 million for the first five years of service; however, the increase to NGTL's revenue requirement would be almost entirely offset by the corresponding cost reduction associated with the terminated TBO arrangement.

The Board also notes that no parties to the proceeding raised concerns with the proposed tolling treatment. In addition, NGTL confirmed that all potentially affected commercial third parties were notified of the Application and voiced no concerns.

For the reasons explained above, the Board approves, pursuant to section 59 of the NEB Act, NGTL's request to include the purchase price of the Albersun Pipeline plus adjustments in the Alberta System rate base at Closing, should a Certificate be issued.



### **3.2.2 Abandonment Funding**

#### ***Views of NGTL***

NGTL provided an abandonment cost estimate (ACE) for the Albersun Pipeline, indicating that it had been calculated in accordance with the methodology prescribed in the Board's MH-001-2012 Reasons for Decision. The estimated ACE for the Albersun Pipeline is \$6.9 million, which represents approximately 0.3% of the ACE approved for the entire NGTL system. NGTL stated that the specific abandonment approach and cost estimate would be updated when an application to abandon these facilities is filed with the Board.

According to NGTL, there could be a commensurate impact on the annual contribution amount (ACA) and abandonment surcharge calculations for the NGTL system, which would be reflected in the periodic updates of NGTL's ACE, as required by the MH-001-2012 Decision, and in its annual ACA calculation filings.

#### ***Views of Participants***

No participants expressed concerns with the costs of abandonment or abandonment funding for the Albersun Pipeline.

#### ***Views of the Board***

Regarding the abandonment costs associated with the Albersun Pipeline, NGTL indicated that the \$6.9 million cost and the commensurate impacts on the ACA and abandonment surcharge calculations would be reflected in the periodic updates to NGTL's ACE and in its annual ACA calculation filings. The Board finds this proposal appropriate.

## Chapter 4

# Facilities and Emergency Response Matters

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The Board uses a risk-informed lifecycle approach to ensure that NEB-regulated facilities and activities are safe and secure from their initial construction through to their abandonment. In consideration of the safety and security of new facilities, the Board assesses, at a conceptual level, whether the facilities are appropriately designed for the properties of the product being transported, the range of operating conditions, and the human and natural environment where the facilities would be located. For new pipeline facilities, compliance with the design requirements of the prevailing regulations is normally sufficient to ensure its long term safety. Companies under NEB jurisdiction must design, construct, and operate the facilities in accordance with the NEB Act and its regulations, including the OPR, commitments made during the hearing, and the conditions attached to any approval.

In these circumstances, the facilities being assessed are already operating and were constructed under provincial jurisdiction with different regulations using construction practices, materials and coatings available at the time. Once it began operation, the pipeline was subject to potential corrosion, damage, stresses and strains related to its former operation for approximately 50 years. Therefore the Board seeks evidence demonstrating that the pipeline system was designed, constructed and tested in accordance with the prevailing regulations in force at the time and also seeks evidence that integrity management and maintenance programs were in place to maintain the safety of the pipeline by ensuring that the systems have been monitored, protected, and repaired as needed.

Prior to granting leave to open the pipeline, the safety of the existing Albersun pipeline is best assessed by a review of records, its operating performance, and the degree to which the existing owner has implemented integrity management and maintenance programs to ensure safety and regulatory compliance.

## 4.1 Operation

### 4.1.1 Design and Integrity

#### *Views of NGTL*

NGTL stated that it undertook a design and integrity review on the Albersun Pipeline to determine the current state of the Albersun Pipeline and its ability to operate and manage the Albersun Pipeline in accordance with TransCanada's Integrity Management Program (IMP).

NGTL also stated that the Albersun Pipeline currently operates under AER Licence 6502 and has been subject to the requirements of the *Pipeline Act, Revised Statutes of Alberta 2000, Chapter P-15* and its underlying regulations. NGTL noted that the regulatory regime administered by the AER requires that the design, materials, construction and established operating pressures are in accordance with the pipeline codes and standards in effect at the time. As the Albersun Pipeline

would become part of the NGTL System and accordingly federally regulated should the Board approve the purchase, NGTL stated that it would ensure that the operation, maintenance and upgrading of the pipeline would be in accordance with the OPR, TransCanada Operating Procedures (TOPs), and applicable regulatory requirements.

NGTL stated that pressure piping and meter station pressure vessels under AER regulation are designed constructed and maintained under the *Safety Codes Act* and associated regulations. NGTL noted that Alberta Boilers Safety Association (ABSA) mandates that owners and operators manage the integrity of their equipment through various Quality Management System requirements. NGTL indicated that Suncor currently satisfies ABSA's requirements by contracting a chief inspector to manage the inspection and re-certification of pressure equipment in accordance with those requirements. NGTL indicated that it has maintained a similar Quality Management System registered with ABSA and that the inspection and maintenance of pressure equipment at Mildred Lake East Sales Meter Station would continue. NGTL noted that the NEB has a similar regime to that of the province.

NGTL also stated that it conducted a review of Suncor's available records for the Albersun Pipeline with the objectives of determining the current state of the Albersun Pipeline and confirming the suitability for future operation and integrity management of the Albersun Pipeline with its current IMP. The records reviewed consisted of alignment sheets, pipeline ROW imagery, facility drawings, schematics, maps, photographs, inspection reports, pipe attribute data, interconnect locations, and interviews with Suncor engineering and operations personnel.

In addition to the review of these, NGTL stated that it conducted site visits of the Albersun Pipeline including the Mildred Lake East Sales Meter Station, valve sites and portions of pipeline ROWs through Fort McMurray.

NGTL stated that it reviewed key elements related to the line pipe, facilities, construction, operational and inspection. These included:

- Pipe wall thickness;
- Diameter;
- Manufacturing standard;
- Material properties;
- Year of installation;
- Joining method;
- Coating type;
- Regulatory permits;
- Gas quality;
- Leak/failure history;
- Cathodic protection(CP);
- In-line inspection (ILI) data;

- Excavation reports; and
- Leak surveys.

The total length of the Albersun Pipeline is approximately 179 km. NGTL stated it would acquire the Mariana North pig launcher and receiver provisions and the pig receiver at the Mildred Lake East Sales Meter Station. The total length of pigged pipeline is 133 km.

There are segments of the pipeline that are currently un-pigged. The total length of un-pigged pipe is 45.9 km, 85% of which is licensed to operate at less than 60% of specified minimum yield strength (SMYS). NGTL indicated that the Albersun Pipeline would be immediately incorporated into TransCanada's IMP upon the closing of the sale. While the Gregoire Lateral is un-pigged, NGTL stated that it would acquire a pig launcher at 16-21-86-10 W4M on the Gregoire Lateral. However Suncor does not have facility specifications for this launcher and NGTL noted that this would also be subject to TransCanada's IMP upon the closing of the sale.

NGTL stated that the diameters of the pipelines to be purchased ranges from NPS 3 to NPS 10 with approximately 80% of the pipeline being NPS 10 pipe. The operating stresses at the licensed MOP as a percentage of the pipe segment's SMYS for the pipeline:

- licensed MOP for 66% of the pipe segments is at either 60% or 61% SMYS
- licensed MOP for 34% of the pipe segments is below 60% SMYS

NGTL noted that the pipeline was constructed over several decades and that the design and construction would have been in accordance with the following codes and standards in place at that time. These were:

- American Society of Mechanical Engineers B31.8 –1967
- CSA Z184 –1973, 1992
- CSA Z662 – 1994, 2003, 2007, 2011

NGTL noted that minimal commissioning hydrostatic test data are available for the pipeline. The earliest construction year for the asset was 1967, and NGTL stated that starting in the 1960s it was industry practice to perform hydrostatic tests after construction and before operations.

NGTL stated that a yellow jacket coating was applied on the pipeline and that shrink sleeves were applied to girth welds during construction. NGTL indicated- that tape coating has also been used while performing repairs. NGTL was of the view that the issuance of the operating licences by the AER and its predecessors indicated recognition that the pipeline was designed, constructed and tested in accordance with the then-applicable codes, standards, specifications and regulatory requirements (including the Pipeline Act), in effect in Alberta.

NGTL stated that its review found nothing that was contrary to good design and construction. Based on this information, NGTL considers that the pipeline was designed, constructed and put into service using good industry practices of the day.

## 4.1.2 Operational History

### *Views of NGTL*

NGTL noted that the Albersun Pipeline has been interconnected and exchanging gas with the NGTL System for decades and, consequently, both systems have been monitored to similar gas quality specifications as those currently defined in NGTL's Tariff. Since the gas quality specifications require low allowable limits for such corrosive species as sulphur, hydrogen sulphide, carbon dioxide and water, NGTL is of the view that there was no systemic internal corrosion threat.

NGTL stated that the operating performance of the pipeline was reviewed with Suncor and noted that the lines have shown good reliability with no systemic or notable integrity concerns. A review of incidents over the past decade found only one leak and this was recorded on the Gregoire Lateral. This leak arose from a corroded valve body bleed line. The failed part was replaced.

NGTL stated that its review of Suncor's records found that prior to 2012, leak surveys had been performed on the pipeline every three years. Since 2012, leak surveys have been performed annually and visual aerial patrols of the ROW have been carried out monthly. The records of the Albersun Pipeline for valve inspections and maintenance and leak surveys were reviewed with no unresolved issues noted.

NGTL also stated that as per CP agreements with Suncor, Suncor would provide CP services for the Albersun Pipeline. NGTL indicated that representative samples of CP inspection records of Suncor were reviewed and that they indicated acceptable levels of polarization and compliance with CSA Z662 and Canadian Gas Association GA OCC-1 for the pipeline. However, NGTL noted that the Gregoire Lateral showed sub-criteria potentials and that this would be addressed by Suncor prior to the closing of the sale. NGTL stated that it would continue to monitor the CP on the Albersun Pipeline to ensure that the CP provided by Suncor is consistent with TransCanada's IMP and would request Suncor to adjust potentials and perform facility modifications as may be required.

NGTL noted that according to Suncor, the majority of the Albersun Pipeline has a Class 1 location designation with the exception of approximately 3% of the pipeline which is located in Class 3 locations designation. NGTL further noted that it would perform a class location assessment as part of its IMP after closing the sale to confirm class location designations and reclassify, as may be necessary.

NGTL reviewed geotechnical monitoring reports provided by Suncor. NGTL indicated that there were slope instability issues on a few slopes and identified areas requiring potential additional work including pipe relocation or lowering, installation of trench drains, placement of granular bedding and barriers, strain relief and erosion control. NGTL stated that it would perform a geotechnical assessment after taking possession of the Albersun Pipeline and that it would perform any necessary remediation in accordance with TransCanada's IMP.

Based on the information NGTL received from Suncor, 133 km of pipeline was inspected in 2006 and 2012 via ILI. NGTL indicated that the results from both runs were reviewed and post-

ILI confirmation and remediation digs were completed. There were twenty one post-ILI confirmation and remediation digs completed after the 2006 ILI run and eleven following the 2012 ILI run. The repair methods included recoating, and installing shrink sleeves and compression sleeves.

### **4.1.3 Threat Assessment**

#### ***Views of NGTL***

NGTL provided a pipeline threat assessment which is a critical part of an integrity management plan for a pipeline system. NGTL used the threat categories defined in ASME B31.8S as a framework for evaluating threat potential. Threat potentials were evaluated based on the operating pressure of 4,500 kPa rather than the provincially licensed MOP of the pipeline. The assessment for each threat category was a qualitative estimation based on TransCanada processes and review of key data elements. Threats were evaluated as either:

- Low – likelihood of the impact to pipeline integrity normally considered low, and data elements required for determination of likelihood available and complete.
- Medium – likelihood of the impact to pipeline integrity normally considered medium, or the likelihood is considered to be low, and data elements required for determination unavailable or incomplete.
- High – likelihood of the impact to pipeline integrity considered high, or the likelihood is considered to be medium, and the data elements required for determination unavailable or incomplete.

NGTL assessed four of the nine threat categories as being low threats, and five as being medium threats. NGTL stated it would limit the operating pressure of the pipeline to 4,500 kPa until data quality and record issues are addressed through collaboration with Suncor. It was concluded that all threats could be managed within TransCanada's existing IMP.

NGTL assessed the internal corrosion threat as medium. It noted that ILI reports for NPS 10 do not indicate occurrence of internal corrosion and that much of the gas came from the NGTL System. Following the closing of the sale all gas transported would come from the NGTL system and meet the gas quality specifications in its tariff which is non-corrosive. However, NGTL noted that on the laterals, the data required for further analysis is incomplete. This issue would be addressed and managed through its Internal Corrosion Threat Management Program and Gas Quality Monitoring Program.

NGTL stated that all pipeline segments are considered to be subject to external corrosion. Based on the information gathered from the two previous ILIs, NGTL assessed the threat level for external corrosion to be medium. NGTL indicated that while Yellow Jacket coatings typically have a low likelihood of external corrosion, the current limited external corrosion data supports a re-inspection of the condition of the pipeline with an ILI. NGTL stated that timing of re-inspection would be dependent on further review of data in collaboration with Suncor. It was noted that CP of the Gregoire Lateral showed sub-criteria potentials.

It was noted by NGTL that based on low operating pressure and historical findings, the stress corrosion cracking (SCC) threat would be considered low, however the data elements required for further analysis are incomplete. NGTL stated that Yellow Jacket coatings were installed on the entire length of the pipelines and shrink sleeves applied to girth welds however a small portion of the line consists of polyethylene tape, which occurs intermittently at repair sites. Shallow stress corrosion cracking was observed at one of these tape-coated sites. Therefore the SCC threat was assessed as medium.

NGTL stated that the pipeline was designed, constructed and tested with then applicable codes, standards, specifications and regulatory requirements. It pointed to previous approvals by the AER and its predecessors as evidence of compliance with those standards. NGTL indicated that there was minimal hydrostatic test data for the facilities found but that the operating license suggests that post-construction strength and leak pressure testing would have been completed. NGTL noted that few mid-wall laminations were identified in the ILI and dig program were subsequently mitigated. NGTL stated that this finding is not uncommon for pipe of this age and is typically benign. Nevertheless, NGTL indicated that there is a potential for hydrogen blistering based on a bulging delamination found in one excavation report. NGTL noted that this would be addressed through its Manufacturing Threat Management Program. NGTL stated that no manufacturing related failures have occurred on these lines and that no seam defects have been noted in the excavation reports provided by Suncor. NGTL concluded that manufacturing defects in this line are stable and the threat is low. NGTL has indicated that there are no known records of in-service or construction-related failures and has concluded that the threat is low.

NGTL noted that that all pipeline segments are considered to be subject to threats such as mechanical equipment failure, incorrect operations that these threats were considered low. NGTL further stated that all pipeline segments are considered to be subject to the threat of mechanical damage and assessed this threat level as medium. To mitigate this threat NGTL indicated that existing pipeline marker spacing would be augmented and Suncor pipeline signage would be replaced with NGTL signage

NGTL noted that all pipeline segments are considered to be subject to weather and outside forces. NGTL indicated that they reviewed geotechnical monitoring reports provided by Suncor which indicated slope instability issues on a few slopes and identified areas requiring potential additional work. NGTL assessed the threat as medium.

NGTL concluded that in its view that the current state of the Albersun Pipeline is fit for its required service. NGTL stated that this conclusion was based on:

- a) the approval to construct and operate the Albersun Pipeline from the AER and its predecessors;
- b) Suncor representations and warranties as set out in the Transfer Agreement including that there has been prudent operation of the facilities free from material defects and that industry standard designs were executed by Suncor personnel; and
- c) a review of pipe attribute, construction, operational and inspection data.

Based on the above and NGTL's assessment of the available pipeline integrity information and current operating conditions, NGTL has determined that it can manage all potential integrity challenges through TransCanada's IMP.

NGTL stated that upon closing, Suncor would transfer all available and relevant documentation and records including those required by section 56 of the OPR and Clause 10.4 of CSA Z662-15, to NGTL, where they would be subsequently checked for quality, and integrated into TransCanada's respective data repositories, databases and spreadsheets. The Albersun Pipeline would be managed within TransCanada's Pipeline IMP which utilizes the data to identify threats and assess risks, leading to pipeline maintenance decisions and implementation of control, monitoring and remediation programs.

***Views of the Board and decision on Leave to Open pursuant to section 47 of the NEB Act (not requiring GIC approval)***

The Board notes that in this instance, the Board's decision to approve the purchase of a pipeline system of this length also requires the issuance of a certificate by the Board and a leave to open the pipeline so that it may continue to operate. In determining an appropriate pressure, the Board notes that the threat assessment for the pipeline, performed by NGTL, assumed an operating pressure of 4,500 kPa rather than the licensed MOP. NGTL also stated that it would limit the operating pressure of the pipeline to 4,500 kPa until data quality and record issues are addressed through collaboration with Suncor. As a result, the Board is of the view that 4,500 kPa is the appropriate MOP at this time and will grant leave to open at this MOP. Should a higher pressure be required, an engineering assessment demonstrating that the pipeline is safe at a higher pressure must be filed with the Board and approved by the Board.

**4.1.4 Albersun Pipeline Slope Monitoring**

***Views of NGTL***

In response to an information request from the Board, NGTL submitted a report dated January 2016 describing Suncor's geotechnical monitoring program and Albersun Gas Pipeline's 2015 instrumentation summary. It was noted that a comprehensive geotechnical program has been implemented over the past 20 years on the Suncor pipeline system that contains the 10-inch Albersun Pipeline. The focus of that geotechnical program has been on the slope stability issues at the many river and creek valley slopes along the pipeline alignments of which a majority of the slopes are in the Fort McMurray area. Slopes that are comprised of historical landslide features dominate the region and are subject to the risk of slow but persistent slope movements. In the initial portion of Suncor's geotechnical program every slope on the system of any size was assessed at a screening level. A number of slopes that were identified as having potential issues and an extensive drilling and instrumentation program were carried out at 17 slopes. Some level of remediation was ultimately pursued at approximately half of these slopes and ongoing monitoring is conducted on all 17 slopes to monitor the effectiveness of remedial measures and to help to confirm the acceptable condition of the remaining slopes. In addition to field observations, monitoring includes semi-annual Slope Inclinator (SI) readings by Amec Foster Wheeler personnel. Prior to 2011, instrumentation readings were obtained by Suncor personnel.



Over this time period there has been a considerable history of geotechnical information compiled in the form of SI data, geotechnical observations, observations of slope movements and repair activities. It was noted in the report that several SIs have become inoperative and that there was two reasons why they became inoperative. The first was related to above-ground SI casing damage caused by ATV activity or construction equipment and the second was below-ground casing separation (shearing) caused by slope movements. It was noted that sheared SI casings typically cannot be repaired and require replacement and that ground level damage can sometimes be repaired by splicing and bracing new SI casing.

It was noted in the report that a condition assessment of inoperative SI casings was undertaken in 2015 and when possible, SI casings were repaired. During the condition assessment of inoperative SIs, the slopes were also assessed for signs of distress, such as cracking and slumping.

#### **4.1.5 Slope Stability**

##### *Views of NGTL*

It was noted in the report that as part of the 2015 monitoring program, a review of the historical annual precipitation data for the region was conducted using the data collected by Environment Canada at their Fort McMurray recording station, located at the Fort McMurray Airport.

Slope monitoring data measured by slope inclinometers dates back to 1991 for some of the river crossing slopes on the Albersun pipeline and seven periods of accelerated movement at different slopes were noted. The annual precipitation data shows that localized peaks in annual precipitation appeared to correspond with accelerated movement at different slopes which suggests there is likely some correlation between annual precipitation and slope movement. The report indicates that specific factors such as the seasonal distribution of precipitation, extreme precipitation events (i.e. large rainfall amounts in a short time), local drainage patterns, size of catchment area and other factors may also impact slope movement patterns.

It was noted that the measured annual precipitation has been relatively low over the past 15 years when compared to the overall average annual precipitation since measurement began in 1944. The report suggests that taking into account the variability in the historical precipitation data, it would be fair to assume that the annual precipitation would likely increase in the future to levels above the overall average. As a rough correlation appears to exist between precipitation and slope movement, the report indicates that it would be reasonable to expect that an increase in annual precipitation might create slope movement rates in excess of the levels currently reported. The report recommended that Suncor consider the implications of increased slope movement rates and increased magnitudes of slope displacement relative to the performance of their pipeline system.

Based on the assessment and recommendations presented in the report, Amec Foster Wheeler recommended that seven slope inclinometer casings be immediately installed in 2016 on five slopes that have historically been subject to high movement rates and are of higher concern with respect to pipeline integrity. It was also urgently recommended that an annual detailed reconnaissance of ten slopes be completed to assess their general condition.

Other recommendations were made in regards to slopes which are currently experiencing relatively low movement rates or pertain to actions which are not as time sensitive as the urgent actions but that nevertheless should be conducted as soon as possible.

Suncor informed NGTL that annually, it prioritizes damaged slope inclinometers and schedules any necessary repair/replacement. However, due to the 2016 wildfires, the planned slope inclinometer repairs/replacements originally scheduled for 2016 were deferred. Suncor indicated that all 10 slopes are scheduled for inclinometer repairs/replacements in 2017.

NGTL stated that the Geotechnical Monitoring Program & APL Systems 2015 Instrumentation Summary report did not determine the slopes were unstable and that Suncor has determined that the amount of movement measured is normal and within acceptable limits at the 10 slopes and does not affect the safe operation of the pipeline. Suncor was of the view that an engineering assessment in accordance with CSA Z662-15, Clause 10 is not required.

NGTL stated that it was informed by Suncor that during the fall 2016 slope inspection, it was observed that no immediate remediation was warranted as a result of the fire and that throughout the spring and summer season of 2016, the vegetation at these slopes have since grown back and that there are no serious concerns on these slopes to compromise the safe operation of the Albersun Pipeline. NGTL also stated that the geotechnical consultants have recommended continued annual reconnaissance and bi-annual inclinometer monitoring keeping specific record of long term tree damage and any changes to site drainage. NGTL further stated that upon closing of the sale, the pipeline would be managed in accordance with TransCanada's IMP.

### *Views of the Board*

The Board has concerns regarding the long term stability of certain slopes on the pipeline and notes that many of these slopes are relatively close to population or important infrastructure in Fort McMurray area. The Board notes that urgently recommended slope indicator repair and installation was deferred a year. Consequently, the Board is of the view that additional monitoring information and assessment is required to ensure that the slopes movements and potential pipe movement and deformation are assessed. The Board has added **Certificate Conditions 9 and 10** (Appendix II) in order to ensure that monitoring and assessment of the results are reported.

## **4.1.6 Mildred Lake East Sales Meter Station**

### *Views of NGTL*

The Mildred Lake East Sales Meter Station is located on land owned and to be retained by Suncor at 6-13-92-10 W4M, approximately 20 km south of Fort McKay on the north end of the pipeline and consists of four individual meters, consisting of three turbine meters and one single orifice meter run. The three turbine meters are located inside the same meter run building. The station has the capability to measure bi-directional flow; however, NGTL noted it has no plans to use it for such purpose.

NGTL stated that it reviewed the relevant records in Suncor's possession, original design conditions, and the operating history of the site. NGTL stated that it considers that the meter station was designed, constructed, and put into service using good industry practices of the day for its intended purpose. NGTL also stated that the prior approval by the AER's predecessors indicates recognition that the Mildred Lake East Sales Meter Station was designed, constructed, and tested in accordance with the applicable codes, standards, specifications, and regulatory requirements in Alberta at the time.

NGTL indicated that the meters are calibrated and sealed as per Measurement Canada requirements; and associated measurement equipment, including the flow computers and transmitters are Measurement Canada approved devices. NGTL noted that the meter station is used solely by Suncor for its own purposes and that upon transfer to the NGTL System it would then be used for natural gas custody transfer services. However, NGTL indicated that the overall design and installation of the meter runs are currently not aligned with Measurement Canada requirements for custody transfer measurement. Accordingly, the change in use of the meter station requires upgrades to the meter runs to meet Measurement Canada standards.

On April 1, 2016, NGTL obtained approval from Measurement Canada to allow NGTL to bring the meters at Mildred Lake East Sales Meter Station into custody transfer service in its current state without verification and sealing. This allows NGTL to operate the facilities in their current state for up to one year from the closing date of the sale subject to certain conditions.

#### **4.1.7 Pressure Control and Overpressure Protection**

##### ***Views of NGTL***

NGTL stated that pressure control (PC) and overpressure protection (OPP) at NGTL facilities meet the requirements of the OPR and CSA Z662-15 design standards and its design, operation, and maintenance philosophy for regular inspection, assessment, and testing. It stated that procedures are in place to maintain all facilities in good operational condition and to operate facilities at the correct pressure. NGTL noted that its PC and OPP systems operate independently from each other in a continuous and automatic manner and that it monitors system pressures 24-hour/7-days a week. NGTL stated that the Albersun Pipeline would be operated and maintained in accordance with TransCanada's Pressure Control and Overpressure Protection Philosophy for Gas Systems.

NGTL stated that it is evaluating the adequacy and effectiveness of existing PC and OPP systems for the Albersun Pipeline to ensure they meet the requirement of the OPR and clauses 4.18 and 10.9.5 of CSA Z662 prior to the Closing of the sale. The impacts of these PC and OPP systems on the NGTL System are also under evaluation to ensure effective protection.

##### ***Views of the Board***

The Board is satisfied with the arrangements made with Measurement Canada and is satisfied that the new pipeline will be incorporated safely within NGTL's system. The Board has added a **Certificate Condition 11** (Appendix II) requiring the filing of Geographic Information System (GIS) Data so that records of the pipeline and associated facilities are incorporated in the NEB's GIS database.

## **4.2 Emergency Preparedness and Response Planning**

The NEB requires pipeline companies to operate in a systematic, comprehensive and proactive manner that anticipates and manages risks. The Board also expects that companies have fully developed and implemented management systems and protection programs that provide for continuous improvement.

With respect to emergency response, and in accordance with the OPR sections 6 and 32 to 35, regulated companies are required to implement an emergency management program. An emergency management program requires that all elements be appropriate and effective throughout the lifecycle and operation of a project and the changing conditions both within and outside of a pipeline. The Board developed the OPR Guidance Notes to assist companies in understanding the requirements of the OPR. Further information on emergency management programs, including hazard assessment, the emergency procedures manuals (EPMs), agency liaison, communications, continuing education, emergency response processes and capability, emergency response exercises and equipment is provided in Annex A of the OPR Guidance Notes.

### ***Views of NGTL***

NGTL has stated that TransCanada's emergency management system will be used to manage all emergency events. TransCanada's Emergency Management Plans (EMPs) include communication protocols that include current contact information for all stakeholders and Aboriginal communities that may potentially be affected during an emergency.

NGTL has noted that TransCanada will develop new EMPs or update existing EMPs for the transferred assets. In the event of an incident NGTL has stated that TransCanada's staff are trained to implement TransCanada's EMPs. TransCanada in coordination with local first responders, conduct regular training exercises. TransCanada does not provide training to the public. In the event of an emergency the public is urged to evacuate the area and to call 911 and the TransCanada emergency hot line.

### ***Views of Participants***

In its Final Argument, Bigstone submitted that it does not possess sufficient information in order to assess the adequacy of NGTL's emergency response plans and procedures. Should the Board recommend approval of the Project, Bigstone proposed that the Board impose a condition that would require NGTL to engage on emergency response plans and procedures with Bigstone

### ***Views of the Board***

The Board is of the view that the measures proposed by NGTL to address emergency preparedness and response for the purchase of the Albersun Pipeline are appropriate. As an NEB-regulated company, NGTL must meet the requirements of the OPR. By meeting these requirements, NGTL would be able to effectively respond to an incident, helping to minimize impacts. The Board notes that sections 32 to 35 of the OPR address emergency management liaison, continuing education and consultation requirements with affected and

potentially impacted parties. Therefore, the Board does not believe that the condition proposed by Bigstone is required in this case (also, see chapter 6 for a discussion of Aboriginal Matters).

With efforts to increase transparency as a NEB-regulated company, NGTL must also meet the requirements of Order MO-006-2016 which requires companies to publicly post their EPMs online, and Order MO-002-2017 which requires companies to publicly post their Emergency Management Program information online.

The Board reminds NGTL that in accordance with the Board's EPMs letter of 26 March 2015 to all oil and gas companies under the jurisdiction of the NEB, it must submit annual updates to the EPMs as required no later than April 1 of each year. The Board also reminds NGTL to ensure the publicly accessible EPMs are also updated upon submission.

The Board has included an Emergency Management related condition for the Project. **Certificate Condition 12** (Appendix II) requires NGTL to conduct a full-scale emergency response exercise. The Board expects NGTL to ensure effective emergency management, including planning, training, communication and coordination with first responders, appropriate stakeholders and Aboriginal groups. Engagement of key stakeholders in the planning process will better ensure an efficient and effective response if an incident should occur.

The Board has a comprehensive regulatory regime in place related to pipeline design, safety, spill prevention and spill preparedness and response. NGTL will be subject to this regime.

## Chapter 5

# Public Consultation

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Public consultation involves engagement of potentially affected landowners, communities, federal and provincial departments and regulatory agencies and Aboriginal communities, as well as other stakeholders, such as landowner associations and commercial third parties. The Board's expectations of an applicant regarding its development and conduct of public consultation are set out in the Board's Filing Manual. Applicants are expected to undertake an appropriate level of public consultation, commensurate with the setting, nature and magnitude of a project. The Board considers public consultation to be a fundamental component during each phase in the life cycle of a project (namely project design, construction, operation and maintenance, and abandonment) in order to address potential impacts of that project. This chapter discusses NGTL's public consultation program except for Aboriginal engagement and consultation which is discussed in Chapter 6, Aboriginal Matters.

## 5.1 NGTL's Public Consultation Program

### 5.1.1 NGTL Pipelines Stakeholder Engagement Program

#### *Views of NGTL*

In its Application for the Project, NGTL stated that it used its stakeholder engagement program to ensure stakeholders are aware of Project plans and have an opportunity to provide input into the Project in a fair, honest, open, consistent, and timely manner.

NGTL stated that the purpose and goals of the stakeholder engagement program for the purchase of the Albersun Pipeline are to:

- formally introduce the purchase to key stakeholders;
- identify and respond to issues and concerns before filing this Application;
- provide stakeholders with ongoing updates, including communication about the proposed purchase and the anticipated regulatory schedule and planned application to the Board;
- ensure, where practical and reasonable, that stakeholder concerns or issues, if any, were incorporated in the purchase implementation; and
- communicate material changes to the Albersun Pipeline purchase, if any, to stakeholders.

NGTL indicated that its Stakeholder Engagement Program was developed and conducted in accordance with the principles of TransCanada's Stakeholder Engagement Framework and community relations best practices. The program consisted of three phases and was implemented using open communication and participatory stakeholder involvement practices. NGTL

indicated that implementation of the phased stakeholder engagement program began in April 2015 and is ongoing.

### ***Phase One***

NGTL stated that the first phase involved identifying potentially interested and affected stakeholders in the Albersun Pipeline area and developing engagement materials, including letters, maps and information fact sheets that will be used for notification purposes. For this Project, NGTL defined the key public stakeholders for the Project to include:

- landowners and occupants whose lands are traversed by the Albersun Pipeline;
- community members;
- municipal leaders and representatives;
- elected officials (provincial and federal);
- government agencies and representatives;
- non-government organizations; and
- emergency responders.

NGTL indicated that preliminary in-person notification discussions with local government and emergency response stakeholders began April 14, 2015.

NGTL stated that it held meetings with the Regional Municipality of Wood Buffalo (RMWB) on April 14, 2015, May 7, 2015, September 25, 2015, January 11, 2016, and March 2, 2016, in addition to NGTL's meeting with Lac La Biche County on March 1, 2016, introducing the purchase of the Albersun Pipeline.

NGTL developed a list of the lands directly affected by the purchase of the Albersun Pipeline based on information and route mapping provided by Suncor. NGTL indicated that all directly affected landowners and land users (such as trappers) were identified and sent an information package about the purchase as of May 4, 2015.

NGTL indicated that the process of identification is ongoing, and continues through the progress of the purchase, and that the stakeholder list is regularly updated.

### ***Phase Two***

NGTL indicated that the second phase focused on public disclosure of the purchase of the Albersun Pipeline and soliciting stakeholder input, using several engagement activities and communication tools. During this phase, NGTL sought to:

- identify and address stakeholder questions and concerns;
- provide clear, relevant and timely information about the purchase;
- answer questions that stakeholders have about NGTL/TransCanada and the purchase;

- foster relationships between NGTL and communities along the existing route;
- inform stakeholders about the Board's regulatory review process; and
- ensure the Board's engagement process requirements are met or exceeded.

NGTL indicated that it had notified RMWB and regional representatives of the Project, has engaged in follow-up phone calls and meetings, and mailed materials regarding the purchase to primary stakeholders on May 4, 2015.

Upon request by RMWB, NGTL held an open house in Fort McMurray on June 9, 2015 to allow any interested stakeholders an opportunity to meet with NGTL and discuss the purchase of the Albersun Pipeline. Invitations were sent May 21, 2015 via email to RMWB community representatives, along with key RMWB staff, including emergency response groups. The event was also advertised locally in newsprint beginning three weeks before the open house date on the *Fort McMurray Today* newspaper.

NGTL indicated that TransCanada and NGTL participated in the RMWB's Emergency Preparedness Week Kick Off event in Fort McMurray on October 2, 2015 to engage the public on the purchase and to discuss TransCanada's PA Program and share information on damage prevention and pipeline safety.

The following feedback and areas of interest have been identified by stakeholders to date:

- Albersun Pipeline history and operations in the region;
- Purchase and regulatory timelines;
- Pipeline characteristics, maintenance and safety; and
- Pipeline assets in the same corridor, not pertaining to the Albersun Pipeline.

NGTL indicated that to the date of filing the Application, no outstanding issues or concerns have been raised, and it committed to addressing any issues or concerns that may be raised in the future by landowners or land users.

NGTL indicated that it has set up a toll-free number and e-mail address to enable stakeholders to reach TransCanada and NGTL representatives at any time throughout the regulatory and engagement process to ask questions and provide feedback.

NGTL indicated that it continues to engage with stakeholders to provide updated information and to address any questions, concerns or issues that might arise. NGTL committed to resolving any stakeholder issues associated with the purchase and any additional information requests in the event that approvals for the purchase of the Albersun Pipeline are granted to NGTL.

### ***Phase Three***

NGTL indicated that the third phase focuses on the transition to operations following Closing. NGTL indicated that any ongoing stakeholder concerns or issues related to operations will be



managed through NGTL's regionally-based liaisons, which will continue to build and maintain relationships through consistent and ongoing communication with stakeholders.

## **5.2 Participation of Stakeholders in the Regulatory Process**

ATCO Gas and the Government of Alberta – Alberta Department of Justice applied to participate as Intervenors in the GHW-001-2016 proceeding and were both granted Intervenor status by the Board on the grounds that they were both directly affected by the Project. Suncor applied to participate as a Commenter and was granted Commenter status by the Board. ATCO Gas indicated in a letter to the Board that it did not intend to file written evidence in the proceeding.

### ***Views of Participants***

While concerns were expressed with respect to consultation by Bigstone (addressed in Chapter 6, Aboriginal Matters), no other Participants expressed concern with NGTL's public consultation program.

### ***Views of the Board***

The Board is of the view that NGTL has undertaken an appropriate level of public involvement, commensurate with the setting, nature and magnitude of the Project. The Board is also of the view that NGTL's public engagement meets the expectations set out in the NEB Filing Manual.

## Chapter 6

# Aboriginal Matters

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### 6.1 Introduction

The Board interprets its responsibilities in the assessment of the Project in a manner consistent with the *Constitution Act, 1982*, including section 35(1), which recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples. There was evidence filed by Aboriginal groups and others including the Applicant, NGTL, about the potential impacts of the Project on Aboriginal interests, including Aboriginal treaty rights. The Board has considered that evidence in its assessment, as well as the mitigation proposed by NGTL of the Project's potential effects, the requirements of the Board's regulatory framework, and the conditions recommended by the Board to be imposed should the Project be approved by the Governor in Council. Further discussion of the Board's role and responsibility in relation to section 35 of the *Constitution Act, 1982* is available in Section 6.6.

Having considered all of the evidence, the Board is of the view that NGTL designed and implemented appropriate consultation activities with the Aboriginal groups who could be impacted by the Project. The Board is also of the view that its hearing process was appropriate for the circumstances. The Board is of the opinion that the activities, commitments and mitigation measures proposed by NGTL, as well as the Board's process and the conditions recommended by the Board, allow the Board to make an informed decision to grant NGTL leave to purchase the Albersun pipeline. These activities and processes also allow the Board to make an informed recommendation to issue a Certificate for the continued operation of the Albersun pipeline. The Board is of the view that any potential adverse Project impacts on the interests, including rights, of potentially affected Aboriginal groups, including the Bigstone Cree Nation (Bigstone), are likely to be minimal and can be effectively addressed through the commitments and mitigation measures proposed by NGTL, and the conditions recommended by the Board.

This chapter includes summaries of evidence provided directly by Aboriginal groups through their participation in the hearing, as well as summaries of NGTL's consultation with potentially affected Aboriginal groups. The chapter sets out the concerns and interests, assessment methods and rationales, and any mitigation measures proposed by Aboriginal groups as recorded by NGTL.

To fully understand the context of the information and evidence provided by Aboriginal groups whether directly to the Board's proceedings or through NGTL's consultation activities, the Board recommends that one refer to the full record of the proceeding. The Board is of the view that identifying and referring to specific passages within the record can lead to other direct and indirect references being overlooked. This Aboriginal Matters chapter should not be considered in isolation from the Report as a whole.

## 6.2 NGTL's Consultation with Potentially Affected Aboriginal Groups

The Board's Filing Manual sets out the Board's requirements for applicants to identify and engage with potentially affected Aboriginal groups early on in the planning phase of a project and to report on these activities to the Board. The Filing Manual encourages companies to augment their applications with local and traditional knowledge, and integrate the information and knowledge, where appropriate, into the design of their projects. Aboriginal groups are also encouraged to engage with project applicants so that their concerns can be identified and considered early during the planning phase of a project, and potentially be resolved before an application is filed.

NGTL stated that the primary goals of its engagement process with Aboriginal groups for the purchase are to:

- Advise Aboriginal communities of the purchase;
- Solicit input, questions or concerns specific to the purchase and respond promptly; and
- Develop and/or maintain positive relationships with Aboriginal communities.

NGTL submitted that the Aboriginal engagement process used for the Project was guided by TransCanada's *Aboriginal Relations Policy*. According to NGTL, TransCanada's *Aboriginal Relations Policy* seeks to engage with all Aboriginal communities early and often. NGTL indicated that TransCanada shares project information, gathers input from Aboriginal communities and responds to questions. Where Aboriginal communities raise issues or concerns about a project, TransCanada considers this input and incorporates it in project planning and the implementation of appropriate mitigation measures.

NGTL stated that it identified Aboriginal communities through a combination of desktop research (e.g., NGTL's Aboriginal engagement database), adherence to TransCanada's *Aboriginal Relations Policy* and NGTL's own operating experience. NGTL confirmed that the Albersun Pipeline:

- is located within lands encompassed by Treaty 8, and within traditional land use areas identified by some Treaty 6 First Nations;
- transects large portions of muskeg and northern boreal forest environment as well as Fort McMurray;
- is located predominantly on Crown land;
- transects approximately 6 km (0.21 ha) of the Fort McMurray #468 First Nation Indian Reserve (Gregoire Lake 176); and
- crosses lands which may be currently used by Aboriginal people for traditional purposes.

Based on these factors, NGTL identified a list of potentially-impacted First Nations, Métis Settlements and Métis Nation of Alberta Regions in Alberta indicated below. NGTL submitted

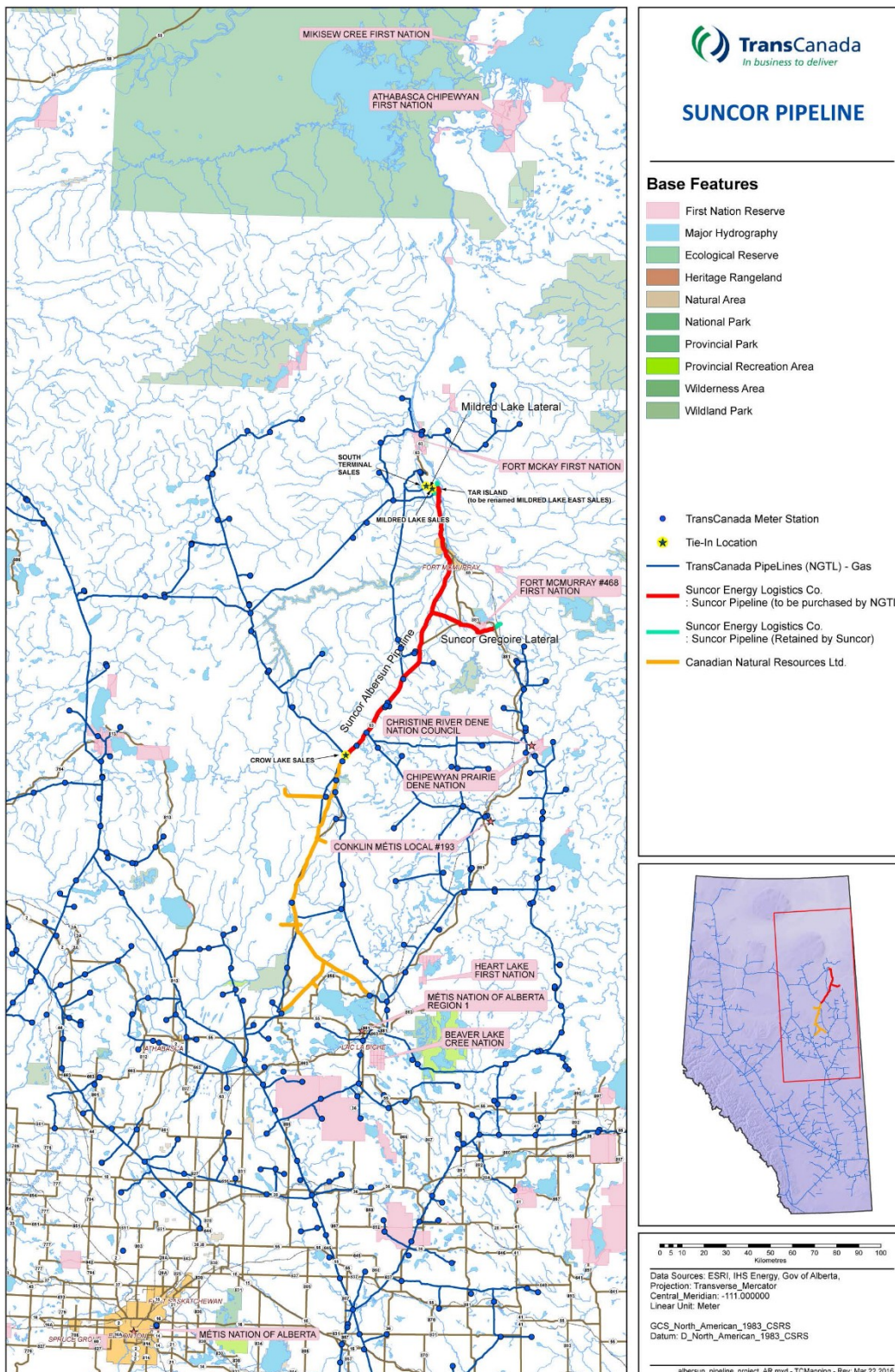
that it did not collect or incorporate traditional land use and traditional ecological knowledge for the Application because no new facilities or ground disturbance would take place.

Table 6.1 shows the Aboriginal communities that NGTL engaged with.

**Table 6.1: List of Aboriginal Communities Consulted by NGTL**

<b>Treaty 8 First Nations:</b>
Chipewyan Prairie Dene First Nation
Fort McKay First Nation
Fort McMurray #468 First Nation
Athabasca Chipewyan First Nation
Mikisew Cree First Nation
<b>Treaty 6 First Nations:</b>
Beaver Lake Cree Nation
Heart Lake First Nation
<b>Aboriginal Organization(s):</b>
Christina River Dene Nation Council
<b>Métis Communities:</b>
Métis Nation of Alberta
Métis Nation of Alberta Region 1
Conklin Métis Local 193

**Figure 6.1: TransCanada's Map of Aboriginal Communities in Relation to the Albersun Pipeline**



NGTL indicated that it provided an information package to the identified Aboriginal communities on 4 May 2015 and requested input from those communities regarding the purchase. The information package included, among other things: a summary of the details of the purchase;

- a summary of the differences between federal and provincial regulation;
- descriptions of the regulatory process for completing the purchase, including various methods for contacting NGTL, the Board, and the Alberta Energy Regulator in order to submit questions or comments; and
- TransCanada's Aboriginal Relations brochure.

NGTL indicated that on 29 May 2015, it invited all the identified Aboriginal communities to an Open House event held in Fort McMurray on 9 June 2015. The Open House was also advertised in local newspapers but no representatives of the Aboriginal communities attended with the result that there were no concerns or inquiries voiced about the purchase of the Albersun Pipeline.

NGTL stated that an updated letter and revised Asset Purchase Fact Sheet was sent to all identified Aboriginal communities on 25 February 2016. According to NGTL, the letter notified the Aboriginal communities of the revised timelines for the submission of the Application to the Board and informed the communities that NGTL would physically isolate the Albersun Pipeline from the Canadian Natural Resources Limited owned pipeline immediately south of NGTL's Crow Lake Sales Lateral tie-in after it takes ownership. The updated letter noted the Board's *Guide for Landowners and the Public* and provided information as to how to obtain that guide. It also provided contact information for the Board and the company should anyone have questions.

NGTL indicated that prior to the date of filing its Application, no issues or concerns were raised by Aboriginal communities. NGTL stated that it will continue to provide updates regarding the purchase and remains available to respond to any questions or concerns that may arise, and will work with Aboriginal communities to address any issues or concerns that may be raised.

For the operations phase, NGTL stated it will use TransCanada's Public Awareness Program and a proactive approach to Aboriginal community engagement. The approach will focus on maintaining ongoing relationships with Aboriginal communities in the area of the Albersun Pipeline through TransCanada's regionally based Aboriginal Regional Liaisons. The Aboriginal Regional Liaisons are responsible for the on-going dialogue with Aboriginal communities, for identifying and developing economic, educational and social opportunities, and for administering the TransCanada's Public Awareness Program. The Program includes addressing concerns raised by Aboriginal communities related to the operation of the TransCanada's facilities and providing opportunities for on-going public awareness.

NGTL indicated that a segment of the Albersun Pipeline of approximately 6 km in length located on the Suncor Gregoire Lateral is located on FMFN 468 reserve lands. NGTL stated that Suncor has the right to use this portion of the reserve lands through a permit granted under section 28 of the *Indian Act* (s.28 Permit). NGTL stated that it understands that Suncor is working with

FMFN 468 to update the s.28 Permit and arrange for the transfer of the Permit to NGTL as per Article 4.2(1) of Appendix 1-1.

On 1 May 2017, in response to the Board's Information Request No. 3, NGTL submitted an update on consultation with all Aboriginal groups since the filing of the Application on 27 April 2016. NGTL indicated that no additional concerns that were communicated to NGTL by potentially affected Aboriginal communities and organizations during its engagement activities from April 2016 to April 2017 remained outstanding or ongoing. NGTL indicated that since the filing of the Application, it continues to share Project information and to work to respond to requests or concerns that might be identified by Aboriginal communities and organizations engaged on the Project. In its response, NGTL set out specific information about the following Aboriginal communities:

Since the filing of the Application, NGTL submitted that it continues to share information with the Aboriginal communities it identified. On 7 July 2016, NGTL provided another copy of the notice of Project filing to the community via email and Xpresspost. NGTL indicated that there are no outstanding Project-related concerns and that it remains available to answer any questions the community has related to the Project. These letters and notices were provided by NGTL to Athabasca Chipewyan First Nation (ACFN); Beaver Lake Cree Nation (BLCN); Chipewyan Prairie Dene First Nation (CPDFN); Christina River Dene Nation Council (CRDNC); Fort McKay First Nation (FMFN); Heart Lake First Nation (HTLFN); Métis Nation of Alberta (MNA); Métis Nation of Alberta, Region 1 (MNA R1); and Conklin Métis Local 193 (CML 193).

*Bigstone Cree First Nation (Bigstone)*

On 6 December 2016, NGTL sent Bigstone the Hearing Order via email as directed by the Board. NGTL submitted that it reviewed and considered Bigstone's written Intervenor evidence as well as its oral traditional evidence and have responded to issues raised by Bigstone throughout the Board process.

*Fort McMurray #468 First Nation (FMFN 468)*

NGTL submitted that it continues to share information with FMFN 468 since the date of filing the Application. On 7 July 2016, NGTL provided another copy of the notice of Project filing to the community via email and Xpresspost. On 11 July 2016, FMFN 468 asked NGTL if there is an opportunity to enter into short- and long-term crossing agreements given that there is a segment of the pipeline located on FMFN 468 reserve lands. On 20 July 2016 NGTL explained by email that as the Project would not become part of the NGTL system until transfer of the assets is complete, discussions around crossing agreements would not be possible until such time. NGTL indicated that there are no outstanding Project-related concerns and that it remains available to answer any questions the community has related to the Project.

*Mikisew Cree First Nation (MCFN)*

Since the filing of the Application, NGTL stated that it continues to share information with MCFN. On 7 July 2016, NGTL provided another copy of the notice of Project filing to the community via email and Xpresspost. On 11 July 2016 MCFN asked what regulatory approvals

are required and by whom, and if there is a consultation requirement and by whom. On 15 July 2016 NGTL responded by email and provided an overview of the regulatory process for the Project. NGTL indicated that there are no outstanding Project-related concerns and that it remains available to answer any questions the community has related to the Project.

### **6.3 The Board's Hearing Process and Participation of Aboriginal Groups**

On 7 October 2016, the Board issued a Notice of Public Hearing and Application to Participate and directed NGTL to distribute the Notice to affected landowners, municipalities and first responders within the Project footprint, Aboriginal groups referred to in the Application, the TTFP, NGTL customers and interested persons, parties to GH-5-2008 and to persons listed on Appendix A to the letter. The Board also directed NGTL to post the Notice on its external website and to publish the Notice in The Edmonton Journal, Fort McMurray Today, Wabasca Fever, Windspeaker and Le Franco. The Board indicated in the Notice that participants to the Hearing may be eligible to receive participant funding.

On 21 November 2016, the Board issued Hearing Order GHW-001-2016 which outlined the process to be followed in the Board's assessment of NGTL's Application. The Board directed NGTL to distribute a copy of the Hearing Order and its Appendices, immediately after receiving it, to all persons or groups engaged by NGTL in its stakeholder engagement process, including all Aboriginal groups engaged by NGTL.

The NEB administers a Participant Funding Program independently of the public hearing panel. On 7 February 2017, the Participant Funding Program announced an allocation of \$80,000 to facilitate participation in the Albersun public hearing. Bigstone made a request for participant funding through the Program. On 8 February 2017, the NEB's Executive Vice President, Regulatory awarded \$30,000 to Bigstone Cree Nation.

#### **6.3.1 Aboriginal Groups Who Participated in the Board's hearing process**

##### *Bigstone Cree Nation*

On 28 November 2016, the Board received an application to participate (ATP) from Bigstone requesting intervenor status in the proceeding. Bigstone was not identified as a potentially impacted Aboriginal group by NGTL. Bigstone indicated in its ATP that the Project will directly affect its Treaty and Aboriginal territory. Bigstone members continue to use the land in and around the Project to exercise their Treaty and Aboriginal rights. As stewards of the land, Bigstone indicated that it wanted to be involved with NGTL and the Board in order to determine reasonable avoidance and mitigation strategies for the Project. The Board granted Bigstone's intervenor status on 6 December 2016.

No other Aboriginal group applied to participate in the Board's proceeding.

On 17 January 2017, the Board received written evidence from Bigstone after the deadline for filing written evidence. The Board provided a comment period in which Parties could file comments in regard to the late filed written evidence having prejudiced them, and also for Reply



comments from Bigstone. No comments were received from any of the Parties or from Bigstone. The Board accepted Bigstone's late filed written evidence in Ruling No. 3 on 13 April 2017.

The Board recognizes that Aboriginal peoples have an oral tradition for sharing information and knowledge from generation to generation and that this information cannot always be shared adequately in writing. The Board often invites Aboriginal peoples to give oral traditional evidence in its proceedings as it would assist the Board in understanding how a Project may impact Aboriginal communities' interests, including rights. On 2 February 2017, the Board issued a Notice of Intent to Provide Oral Traditional Evidence to Bigstone which invited Bigstone to provide Oral Traditional Evidence, and/or an Oral Statement either in-person or through remote means. Bigstone filed its Notice of Intent on 2 February 2017, and requested the oral traditional evidence portion of the hearing be held at Wabasca, Alberta.

The Board issued Procedural Update No. 3 on 17 May 2017 which set out details about the oral traditional evidence portion of the hearing that would be held in Wabasca, Alberta on 14 June 2017.

On 14 June 2017, the Board held the oral traditional evidence session, which included oral presentations from Elder Michael Beaver, Elder August Beaver and Elder Raymond Peters Alook. NGTL asked no questions of the Elders for Bigstone. The Board did ask a few questions. The Board provided an audio broadcast and transcripts of the oral traditional evidence portion of the hearing, so that interested parties who were not in attendance could be aware of what was occurring. Topics that were covered by the Elders during the oral traditional evidence session included, among other things:

- Cumulative impacts on traditional land and resource use;
- Lack of benefits from development of pipelines within Treaty 8 territory;
- Current and past traditional and cultural uses of the land in and around the Wabasca, Pelican River and Athabasca River areas; and
- Reclamation concerns after the transfer of assets.

Bigstone filed a motion with the Board on 10 February 2017 requesting that it be provided with a minimum of 45 days to review NGTL's filed documents, engage technical expertise, issue Information Requests and have an opportunity to file technical evidence with the Board. In its motion, Bigstone stated the request would not cause any prejudice to NGTL, and, if granted, would not compromise the ability of the Board to render its recommendation in accordance with the timelines mandated by the *National Energy Board Act*. Bigstone further submitted that the additional time would provide it with a reasonable opportunity to become substantively engaged in the regulatory process in accordance with the principles of natural justice.

On 15 February 2017, NGTL filed a response to the motion stating that in its view, Bigstone's request was unwarranted and should be denied given the nature and scope of the Project. NGTL stated that Bigstone did not bring forward its request and raise the issues in a timely fashion. NGTL stated that it relied on the Hearing Order which indicated that the Board would submit its recommendation to the Minister of Natural Resources Canada by 16 May 2017. NGTL noted

that it presumed that date would be postponed if Bigstone's motion was granted, which would be to the prejudice of both NGTL and Suncor Energy Logistics Corp., the commercial parties to the transaction.

On 17 March 2017, the Board determined that Bigstone should be provided with an opportunity to provide reply comments and granted Bigstone until 24 March 2017 to do so. Bigstone provided no reply comments.

On 28 April 2017, the Board issued Ruling No. 4 granting Bigstone the opportunity to review NGTL's filed evidence and to issue Information Requests directed to NGTL. The Board denied the remainder of the relief sought by Bigstone which was the opportunity to file relevant technical evidence. The Board noted that Bigstone had not provided any details as to the relevancy and materiality of the technical evidence it sought to file. The Board noted it found no compelling submissions before it on the motion as to how the technical evidence would relate to the section 52 *National Energy Board Act* application which is almost entirely a commercial transaction. The Board directed Bigstone to file any IRs directed to NGTL with the Board and for NGTL to file its responses to such IRs with the Board. The IRs issued by Bigstone and the responses of NGTL are discussed in the next section of this Chapter.

## **6.4 Impacts of the Project on Aboriginal Groups**

### **6.4.1 Aboriginal Groups Identified and Consulted by NGTL**

In its evidence filed with the Board, NGTL noted that there were no outstanding concerns or issues raised by Aboriginal groups it identified and consulted with as noted in Table 6.1. In section 6.2, NGTL does discuss comments made by Fort McMurray #468 First Nation and Mikisew Cree First Nation and notes NGTL's response and information provided. The Bigstone provided concerns and issues within its evidence which are discussed below.

### **6.4.2 Bigstone**

Bigstone was granted Intervenor status and was the sole Aboriginal group that participated in the Board's proceeding. Bigstone stated in its evidence and final argument that the Project has impacts on Bigstone territory, and it provided its concerns and views on a number of points which are set out below.

#### **6.4.2.1 Traditional Land Use (TLU) and Environmental Studies:**

In its IR No. 1.1 directed to NGTL, Bigstone inquired whether NGTL had plans to support the collection of Bigstone traditional use information to assist in addressing concerns raised by Bigstone. Bigstone submitted in its Final Argument that the Project triggers a new Board approval and a process of consultation and accommodation, which allows for the assessment and accommodation of Bigstone's traditional land use (TLU) studies and other concerns surrounding specific and cumulative impacts arising from the Project.

Bigstone proposed that, should the Project be recommended for approval, the Board impose a condition providing Bigstone with the opportunity to conduct its own studies or independently

verify the information contained in NGTL's Environmental and Socio-economic Assessment (ESA) and Environmental Protection Plan (EPP).

#### **6.4.2.2 Environmental Audit and Emergency Management Plan**

Bigstone inquired in its IR 2.1 and IR 3.1 respectively whether NGTL had plans to include Bigstone in its environmental audit and emergency management plan.

In its Final Argument, Bigstone submitted that it does not possess sufficient information in order to assess the adequacy of NGTL's emergency response plans and procedures. Should the Board recommend approval of the Project, Bigstone proposed that the Board impose a condition that would require NGTL to engage on emergency response plans and procedures with Bigstone.

Matters regarding the emergency management plan is discussed in section 4.2. Environmental matters are discussed in greater detail in in Chapter 8.

#### **6.4.2.3 Environmental and Cumulative Effects**

Bigstone submitted specific concerns regarding potential Project impacts on the disruption to sensitive caribou habitat and migration paths. Bigstone stated that NGTL had not provided adequate information on how the caribou would be protected given that NGTL has indicated approximately 74 km of the pipeline are in caribou range. Bigstone stated that it has already identified various cumulative effects, which include: decrease of clean water for animals, contamination of animals, increase of human activity, inability to find certain animals and distress from the irreversible changes to the land and the ability of Bigstone members to use the land for harvesting and other cultural purposes.

Bigstone submitted that the ESA and EPP which NGTL relies on to mitigate potential Project impacts fails to consider any of Bigstone's traditional evidence or other information which would assist NGTL in identifying concerns arising from the Project. Bigstone indicated that it disagreed with NGTL's decision not to use traditional land use studies or traditional ecological knowledge. Bigstone stated that NGTL's decision was based on the fact that no new facilities or ground disturbance was anticipated.

Should the Board recommend approval of the Project, Bigstone proposed that the Board impose a condition that would require NGTL to engage directly with Bigstone on environmental protection and the ESA. Bigstone requested that the Board make it a condition of any approval that NGTL be required to engage directly with Bigstone on the EPP and ESA. Bigstone indicated that it did not have the opportunity to investigate the veracity of the information contained in the EPP or ESA and believes that independent studies are required in order to ensure that the information contained in the EPP and ESA is correct and the proposed avoidance, mitigation, and response measures are appropriate.

Environmental matters including cumulative effects are discussed further in Chapter 8.

#### **6.4.2.4 Operations and Maintenance Activities**

Bigstone submitted that NGTL has not provided adequate information as to what changes will be required in order to ensure that the pipeline operation, maintenance and upgrading meets the standards as set out in Onshore Pipeline Regulations (OPR), CSA Z662-15.

Matters regarding operations and, maintenance activities are discussed further in Chapter 4.

#### **6.4.2.5 Outstanding Agreements**

Bigstone inquired as to whether there were existing contracts in place for the Albersun Pipeline, how will NGTL assume responsibility for any outstanding agreements, and whether NGTL will enter into new agreements or arrangements with Aboriginal groups to address ongoing concerns. Bigstone indicated it was interested in knowing what remains in the area after the Project or transaction has taken place and what Bigstone will be left with in terms of benefits or liabilities after the transaction.

Bigstone stated that throughout the regulatory process, NGTL did not provide adequate answers to its concerns. Bigstone submitted that NGTL has not provided adequate information on how NGTL will work with Bigstone to resolve its outstanding concerns in respect of the Project.

Should the Board approve the Project, Bigstone proposed that the Board impose a condition that would require NGTL to establish capacity funding for Bigstone with respect to consultation. Bigstone also submitted that additional standards should be established in the Board's conditions which will allow the Board to assess whether NGTL has sought to meaningfully engage with Bigstone and substantially resolve the concerns which may be raised by Bigstone.

#### **6.4.2.6 Consultation re: Section 35 Rights**

Bigstone stated the Project has impacts on Bigstone territory, that they are owed a constitutional duty of consultation by the Crown, and that neither NGTL nor the Crown have meaningfully engaged with Bigstone in respect of the proposed Project. Bigstone submitted that the Project must be considered within the context of cumulative effects arising from existing and proposed activities, which in this broader sense has impact to Bigstone Territory and to the practice of their rights. Bigstone stated that while the Project was not within its traditional territory, it was part of their traditional area and that their traditional practices are not restricted to the imaginary line of the Bigstone traditional area. Bigstone submitted that they have been actively trapping in the area for generations and that the Project is within Treaty 8 territory. Bigstone submitted that its Treaty 8 rights extend beyond the written terms of the Treaty and encompass rights that are incidental to the explicit rights granted by the Treaty, including self-governance rights and the right to promote environmental conservation, in order to ensure that Bigstone can continue to exercise its rights within its territory.

In their oral traditional evidence presented to the Board, Bigstone stated its concerns with the project are part of their broader concerns regarding benefit flowing from pipeline development within Treaty 8 territory. Elder Michael Beaver stated:

“And all the pipelines that are within Treaty 8, we should have some kind of a steady flow of funds that should be coming to us to realize the way we want to live. Because you ask any Bigstone Cree Nation member how we want to move forward – we are tired of handouts. Me, personally speaking, I never did have one of those handouts. But the pipeline that we’re talking about is not in our traditional territory, but it is within where our people have set foot, have tramped, and it is within our Treaty 8 territory.”

Should the Board approve the Project, Bigstone proposed that the Board impose a condition that would require NGTL to engage on Bigstone’s concerns in respect of the Project, that the concerns be adequately addressed, and that a report summarizing those concerns and NGTL’s efforts to resolve those concerns, including any associated timelines, be provided to the Board for review and approval.

## **6.5 NGTL’s Reply to Issues and Concerns Raised by Aboriginal Groups**

### **6.5.1 General Comments**

NGTL submitted that Albersun Pipeline is located within lands encompassed by Treaty 8 transecting approximately 0.21 hectares of Fort McMurray #468 Indian Reserve (Gregoire Lake 176), and located in Métis Nation of Alberta – Region 1. NGTL stated that the Project does not traverse any Métis Settlements or other First Nation reserves.

Following Bigstone being made an Intervenor, on 7 February 2017, NGTL confirmed in its response to the Board’s IR No. 2 that it will engage with Bigstone through the process outlined by the Board. Bigstone was not initially identified by NGTL as a potentially impacted group.

NGTL submitted that the lack of opposition raised by Aboriginal communities against the Project reflects the fact that all potentially impacted groups have been engaged throughout the process and that their questions and concerns have been addressed.

NGTL indicated that the Albersun Pipeline is already fully built and operational. Work on the Project will be limited to physically isolating the interconnection immediately south of the existing NGTL owned Crow Lake Sales Lateral tie-in as well as ongoing operation and maintenance of the existing ROWs and facility sites. NGTL submitted that the physical isolation will entail some ground disturbance, but that the limited nature of the proposed work and the location of the work within a disturbed ROW are expected to result in negligible impacts.

NGTL submitted that the Project is not expected to cause any new or increased environmental and socio-economic effects with the exception of anticipated interactions with wildlife and wildlife habitat, soil and soil productivity and vegetation due to operational maintenance activities and the activities that occur during the physical isolation. NGTL submitted that the implementation of the mitigation and environmental management practices and procedures described in its Application will result in no anticipated new or increased effects as a result of the integration of the Albersun Pipeline into the NGTL system. Based on its analysis, NGTL concludes that the environmental and socio-economic effects of the Albersun Pipeline are predicted to be not significant.

## **6.5.2 Reply to Bigstone's Issues and Concerns**

### **6.5.2.1 Traditional Land Use (TLU) and Environmental Studies**

NGTL indicated that it does not intend to support Bigstone in the collection of traditional use information. NGTL submitted that the Project is not expected to cause new or increased effects on traditional land and resource use and that NGTL's research and experience with Bigstone on other recent NGTL projects indicate that the Albersun Pipeline is not within Bigstone's traditional territory. However, NGTL submitted that Bigstone had the opportunity to ask questions on the evidence presented and that it will review and address Bigstone's concerns raised in Bigstone's written and oral traditional evidence through the hearing process outlined by the Board in Procedural Update No. 2.

NGTL stated that given it seeks approval to transfer an existing and operating facility with limited physical activity on existing disturbed ROW, its ESA is comprehensive and adequate and that there is no need for Bigstone to conduct its own studies and verify information in the ESA and EPP. NGTL submitted that its evidence indicates no potential impact to Bigstone's interests and therefore no basis on which to require NGTL to engage with Bigstone beyond its involvement as an Intervenor in the Board's proceeding, or on which to impose the proposed conditions sought by Bigstone regarding additional engagement opportunities.

### **6.5.2.2 Environmental Audit and Emergency Management Plan**

NGTL stated it does not plan to include Bigstone for the environmental audit, clarifying that the audit is not meant as an assessment of environmental effects, impacts to wildlife, or cumulative effects relating to the purchase and/or operation of the existing Albersun Pipeline. Rather, the audit serves to identify environmental liabilities that may exist relevant to the commercial transfer of the assets between Suncor and NGTL. NGTL submitted that the discovery of any previously unidentified environmental liability resulting from the environmental audit will result in appropriate mitigation and/or management as determined between Suncor and NGTL as per the terms of their Transfer Agreement.

NGTL indicated that it does not plan to include Bigstone in the Emergency Management Plan for the Project as the Project is not within or would not have any impact on Bigstone's traditional territory. NGTL submitted that it does conduct early engagement with potentially affected Aboriginal communities as part of its Emergency Response Plan. However, whether an Aboriginal community is engaged or not for an emergency event is dependent on the proximity of the event to the community's traditional territory. NGTL informed Bigstone that its staff are trained to execute TransCanada's Emergency Management Plan and that NGTL does not provide training to the public. NGTL submitted that it has addressed Bigstone's concerns on Emergency Planning in its response to Bigstone IR 3.1.

### **6.5.2.3 Environmental and Cumulative Effects**

As stated previously, NGTL maintained that the Application is essentially a paper transfer of an existing and operating pipeline with limited physical activity to implement the transfer of the

facility from the provincial regulator to the federal regulator. The Project would therefore have limited environmental and cumulative effects.

NGTL stated that it disagrees with Bigstone that its cumulative effects assessment was inadequate and unreliable. NGTL indicated that it had conducted a comprehensive ESA, which included cumulative effects and effects of physical work on caribou, and followed the Board's Filing Manual, which incorporates guidance from the *Canadian Environmental Assessment Act, 2012*. NGTL submitted that its ESA and assessment of potential impact to caribou were consistent with industry standards and typical of assessments that would be conducted for new build construction projects. NGTL submits that Bigstone failed to provide any evidence to demonstrate how the ESA falls short of what it considers should have been undertaken for the assessment of cumulative effects.

NGTL indicated that the physical isolation work proposed as part of the purchase will take place on the existing disturbed ROW and will be scheduled to occur outside of the Restricted Activity Period for caribou. Additional mitigation measures will be applied as stated in the EPP to further ensure that no disturbance to caribou and other wildlife occur. NGTL therefore concluded that no significant residual effects are expected on wildlife or wildlife habitat as a result of the Project. NGTL stated that the Project will not result in new or increased contributions to cumulative effects on wildlife or wildlife habitat and that the Project impacts are reversible following decommissioning and/or abandonment. For these reasons, NGTL is of the view that the potential contribution of the proposed purchase to cumulative effects is not significant.

NGTL stated that there is no basis to warrant a condition that NGTL engage with Bigstone on the EPP and for completion of independent studies. NGTL indicated it is unsure what is meant by Bigstone indicating that it takes issue with not having been provided direct information about the EPP and notes that Bigstone raised no questions on the EPP in its information requests to NGTL.

NGTL stated that it commits to adhering to the recommendations and mitigation measures identified in the Environment and Socio-Economic Assessment (ESA) and in the Environmental Protection Plan (EPP).

#### **6.5.2.4 Operations and Maintenance Activities**

NGTL confirmed that no upgrades to the pipeline are required to conform to all applicable federal regulatory requirements, but that certain upgrades will be conducted to allow NGTL to take ownership and operate the facilities. NGTL indicated that once it takes ownership of the Pipeline, it will be operated and maintained in accordance with TransCanada Operating Procedures which align with federal regulatory requirements. NGTL stated it will ensure compliance with the OPR, CSA Z662-15, TransCanada Operating Procedures and applicable regulatory requirements upon purchase of the Pipeline.

#### **6.5.2.5 Outstanding Agreements**

NGTL submitted that Suncor informed NGTL that it does not have contractual agreements in place with any Aboriginal groups regarding the Albersun Pipeline. However, NGTL indicated

that it will continue to provide updates to Aboriginal groups regarding the purchase and remains available to respond to any questions or concerns that may arise. NGTL filed a copy of Alberta Energy Regulator (AER) License 6502 which includes all the conditions attached to the present operating license issued by the AER. NGTL states that the license indicates that there are no outstanding conditions which would have bearing on Bigstone or any other Aboriginal group.

Approximately 6 km of the Albersun Pipeline is located on Fort McMurray #468 First Nation (FMFN 468) reserve lands. Use of the lands is subject to a permit under section 28 of the *Indian Act* (s.28 Permit), which is currently being updated by Suncor and FMFN 468. NGTL submitted that at Closing, the s.28 Permit will be assigned to NGTL as per Article 4.2(1) of Appendix 1-1.

#### **6.5.2.6 Consultation re: Section 35 Rights**

NGTL submitted that it had not engaged substantively with Bigstone outside of the Board's hearing process as NGTL views the Application as essentially a paper transaction with limited physical work and would therefore have limited potential for Project-related effects on the interests of Bigstone. Furthermore, NGTL did not previously identify the Project as being within Bigstone territory. As the Board granted Bigstone standing to participate as an Intervenor, NGTL submitted that it considers Bigstone as engaged on the Application through the regulatory process, has provided Bigstone a copy of the Hearing Order and its appendices, and has responded to information requests submitted by Bigstone.

In its response to Bigstone's IR No. 2.1, NGTL stated that it will review and consider Bigstone's written evidence and oral traditional evidence, and will respond to the issues raised including how NGTL has addressed or will address the concerns through the process outlined by the Board.

NGTL submitted in its final argument that Bigstone has not provided any evidence that would demonstrate that NGTL purchasing the Albersun Pipeline would impact the exercise of Bigstone's section 35 rights. NGTL further submitted that "in accordance with the principles set out in *Haida Nation v. British Columbia (Haida)*, the Crown's duty to consult arises where its conduct may infringe on Aboriginal rights" and that Bigstone has not provided evidence on how its rights would be infringed. NGTL indicated that "in the alternative, even if the duty to consult does arise in these circumstances, the conduct required to meet the duty is at the low end of the spectrum". NGTL submitted that "in *Haida*, the Supreme Court of Canada held that in cases where potential infringement on Aboriginal rights is minor, the only duty on the Crown may be to provide notice, disclose information and discuss any issues raised in response to the notice". Given the guidance provided by the Supreme Court of Canada in *Haida*, NGTL submitted that if the duty to consult was triggered in the present circumstances (which NGTL argued it is not), the consultation with Bigstone has been more than adequate to discharge the Crown's duty.

NGTL submitted that the evidence on record indicates no potential impact to Bigstone's interest and therefore no basis on which to require NGTL to engage with Bigstone beyond its involvement as an Intervenor and impose the proposed conditions sought by Bigstone regarding additional engagement and opportunities.



NGTL disagreed with Bigstone's suggestion that it had provided inadequate responses to the IRs directed to NGTL during the Board's proceeding. NGTL indicated that it had responded to four rounds of information requests from the Board and one from Bigstone and that it had not received further follow-up questions from Bigstone.

Regarding the Board's proposed Aboriginal Engagement Report Certificate Condition 7 (Appendix II), NGTL submitted that it was of the opinion that there are no affected Aboriginal groups and therefore reference in the condition to "affected" Aboriginal groups was inappropriate. Rather, the report should refer specifically to Aboriginal groups identified in the Application.

NGTL submitted that the Project is essentially a paper transaction and is not expected to cause new or increased effects on traditional land and resource use. NGTL indicated it remains of the view that consultation with Bigstone for this Project was not required and even if it was, Bigstone has been sufficiently engaged through the regulatory process and further consultation is not warranted.

### *Views of the Board*

#### General Comments

The Board thanks Bigstone for sharing its views, traditional, and cultural knowledge through its written evidence and IRs, its oral traditional evidence, and final argument. The Board acknowledges Elder Michael Beaver, Elder August Beaver and Elder Raymond Peters Alook who attended the oral traditional evidence hearing in Wabasca, Alberta, on 14 June 2017, and provided this context and pertinent information.

The Board notes that the Project proposed by NGTL is a purchase transaction of an existing and operational pipeline and facilities, with the intent for NGTL to continue operating the Albersun pipeline. It is different than many projects that come before the Board that require a Certificate of Public Convenience and Necessity (Certificate) as typically they entail the building of new facilities, including a pipeline (s) and associated facilities. As the Board concludes in Chapter 8, the physical works and activities and their resulting impacts for this Project will be minimal.

With this Project, the Board is making a decision on the paragraph 74 (1) (b) NEB Act application for leave to purchase the Albersun pipeline, and further is making a recommendation for a section 52 NEB Act Certificate requiring Governor in Council approval.

The Board in making its decision and its Recommendation has considered all of the evidence provided by the Bigstone and NGTL which includes its record of consultation with other Aboriginal communities regarding the potential effects of the proposed Project on Aboriginal groups within the context of the physical activities and disturbances that would be required.

## NGTL's Consultation with Aboriginal Groups

The Board through its Filing Manual requires applicants to consult with potentially impacted Aboriginal groups in a manner commensurate with the scope of the project and the potential for adverse environmental and socio-economic impacts.

The Board notes that NGTL throughout the assessment phase committed to share information with Aboriginal groups and to remain available to answer any questions that Aboriginal communities had relating to the Project. The Board also notes NGTL's commitment to continue proactive Aboriginal community engagement during the operations phase of the Project with a focus on maintaining ongoing relationships with Aboriginal communities in the area of the Albersun Pipeline.

In furtherance of this commitment for the operations phase, the Board would impose **Certificate Condition 7** (Appendix II) requiring NGTL to file an Aboriginal Engagement Report 12 months from the date of issuance of the Certificate. This report will inform the Board about any concerns raised by Aboriginal groups once the transfer of ownership transaction and physical activities are completed and how NGTL has addressed those concerns.

The Board notes NGTL's submission that the Aboriginal Engagement Report (Certificate Condition 7, Appendix II) should refer only to Aboriginal groups identified in the Application and that further consultation with Bigstone is not warranted.

While the Board recognizes that the Project is not located in Bigstone's asserted traditional territory, the Board recognizes Bigstone's assertions that it continues to use the land in and around the Project to exercise its Treaty and Aboriginal rights. The Board notes that Bigstone proposed as a condition it be identified as an Aboriginal group who should be required to be consulted on the proposed purchase and that a framework for meaningful discussion should be required. The Board is of the view that Bigstone should be included within NGTL's Aboriginal Engagement Report as required by **Certificate Condition 7** (Appendix II).

**Certificate Condition 7** (Appendix II) therefore states:

### ***Aboriginal Engagement Report***

NGTL shall file with the Board 12 months from the effective date of the Certificate, a report summarizing its engagement activities with all potentially affected Aboriginal groups identified in the Application including Bigstone Cree Nation. This report shall include:

- a) a summary of the concerns raised by Aboriginal groups;
- b) a description of how NGTL has addressed or will address the concerns raised;
- c) a description of any outstanding concerns; and

- d) a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken.

NGTL must provide a copy of the report to those Aboriginal groups identified in the Application including Bigstone Cree Nation no later than three days after the filing of the report with the Board, and file with the Board confirmation of that within one week after providing the copies.

The Board expects NGTL to continue proactive Aboriginal community engagement throughout the life cycle of the Project, and reminds NGTL of the commitment it has made to use TransCanada's Public Awareness Program and a proactive approach to Aboriginal community engagement. NGTL stated that the approach will focus on maintaining ongoing relationships with Aboriginal communities in the area of the Albersun Pipeline through TransCanada's regionally based Aboriginal Regional Liaisons. The Aboriginal Regional Liaisons are responsible for the on-going dialogue with Aboriginal communities and for addressing concerns raised by Aboriginal communities related to the operation of the TransCanada's facilities and providing opportunities for on-going public awareness.

The Board notes that NGTL undertook various consultation activities with 11 Aboriginal groups. Those groups are noted in Table 6.1. NGTL indicated that there were no outstanding Project-related concerns voiced by these Aboriginal groups except for Fort McMurray #468 First Nation and Mikisew Cree First Nation. The Board notes that Fort McMurray's questions as well as the questions asked by Mikisew Cree First Nation were also answered by NGTL. NGTL indicated that there were no outstanding Project-related concerns for either of these two Aboriginal groups, and also that it remains available to answer any questions raised by all these 11 Aboriginal groups.

Bigstone was the only Aboriginal group involved as a participant in the Board's proceedings. Through its participation, Bigstone was able to obtain further information about the Project and present their views to the Board in numerous ways. Bigstone was able to submit written evidence, provide oral traditional evidence, ask written questions of NGTL (information requests), provide comments on draft conditions and provide final argument. Bigstone was also awarded participant funding to assist its participation in the Board's process.

Considering this Project involves the transfer of ownership of existing facilities and given the limited physical activity required, and that the activity will be confined within previously disturbed right of way, the Board is of the view that NGTL has undertaken an appropriate level of consultation with potentially affected Aboriginal groups. The Board is of the view that NGTL has designed and implemented appropriate consultation activities with Aboriginal communities that meet the requirements and expectations set out in the Board's Filing Manual commensurate with the setting, nature and magnitude of this Project. The Board is also of the view that NGTL's consultation with Bigstone was adequate.

The Board notes NGTL's submission that there are no contractual agreements in place or outstanding conditions that would impact any Aboriginal group once the transfer is complete. The Board does note that the pipeline of the Project runs through the Fort

McMurray #468 First Nation reserve lands and that Suncor has the right to use this portion of reserve lands pursuant to a permit granted under section 28 of the *Indian Act*, and that Suncor is dealing with the arrangements to have this permit transferred to NGTL. The Board reminds NGTL of its responsibilities under section 78 of the *National Energy Board Act* in relation to possessing or occupying lands in an Indian reserve.

#### Impacts of the Project on Aboriginal Groups

The discussion in this section deals with concerns and impacts raised by Aboriginal groups during the Board's proceedings.

#### *Operations and Maintenance Activities*

The Board notes Bigstone's concern that NGTL has not provided adequate information to ensure that the pipeline operation, maintenance and upgrading meets the standards as set out in OPR, CSA Z662-15.

The Board notes NGTL's commitment that it will ensure compliance with the *Onshore Pipeline Regulations* (OPR), CSA Z662-15, TransCanada Operating Procedures and applicable regulatory requirements upon purchase of the Pipeline.

#### *Environmental and Cumulative Effects*

The Board notes in Chapter 8 that NGTL identified standard mitigation to address the potential adverse environmental and socio-economic effects of the Project on the biophysical and socio-economic elements. NGTL commits to adhering to the recommendations and mitigation measures identified in the Environment and Socio-Economic Assessment (ESA) and in the Environmental Protection Plan (EPP). Condition 2 requires that NGTL implement all commitments it has made.

The Board notes that Bigstone raised specific concerns regarding potential Project impacts on the disruption to sensitive caribou habitat and migration paths. As discussed in Chapter 8, the Board notes that no new access to the East Side Athabasca Caribou Range will be created.

The Board also notes the commitment of NGTL to avoid the migratory bird breeding period and the caribou restricted access period and encourages NGTL to appropriately plan for the physical isolation activities outside of these periods.

The Board notes Bigstone's proposal that it be provided with the opportunity to conduct its own studies or independently verify the information contained in NGTL's ESA and EPP. The Board notes that ESAs are prepared before the filing of an Application and included in the Application.

The Board notes NGTL's commitment to adhering to the recommendations and mitigation measures set out in the Environment and Socio-Economic Assessment (ESA) and in the Environmental Protection Plan (EPP), filed with the Board. The Board also notes that in the event any previously unidentified environmental liability resulting from the environmental

audit are discovered, NGTL committed to implement the appropriate mitigation and/or management, as determined between Suncor and NGTL as per the terms of their Transfer Agreement. The Board finds that these commitments are adequate.

The Board notes that Bigstone identified various concerns regarding cumulative effects, which include: decrease of clean water for animals, contamination of animals, increase of human activity, inability to find certain animals and distress from the irreversible changes to the land and the ability of Bigstone members to use the land for harvesting and other cultural purposes. The Board has considered the potential for cumulative effects and has determined in Chapter 8 that any cumulative effects arising as a result of operations and maintenance activities undertaken by NGTL are expected to be temporary, localized and minor in magnitude.

### *Traditional Land and Resource Use*

The Board notes that the NEB Filing Manual requires companies to describe how lands and resources in the study area are currently used by Aboriginal persons or groups for traditional purposes, including the spatial and temporal extent of use and how a project could impact this use. Companies are also required to describe the measures that would be taken to mitigate a project's impacts on Aboriginal traditional land and resource use.

The Board considered all the information provided on the projects potential impacts on the interests, including the rights, of Aboriginal groups, the concerns raised by Aboriginal groups, and the measures NGTL has proposed to minimize or eliminate the Project's potential impacts.

Through the review process, Aboriginal groups had the opportunity to make known to NGTL and the Board their views and concerns about the Project, including what effects it might have on their potential or established interests. Bigstone expressed its views and concerns about how the Project might affect their Aboriginal and treaty rights.

The Board notes Bigstone's concern that the Project was not supported by an independent TLUS by Bigstone and that NGTL's ESA does not consider Bigstone's TLUS, or TLUS generally. The Board notes that NGTL indicated the Project would not cause any new or increased effects on traditional land and resource use.

The Board notes in the event that a Traditional Land Use site is discovered prior to or during the physical isolation construction activities or during maintenance activities, that NGTL will implement its TLU Sites Discovery Contingency Plan as referenced in its EPP.

In Chapter 8, the Board has concluded that there would be no additional or increased interactions with biophysical or socio-economic elements as a result of continued operation of the Albersun Pipeline under NGTL ownership. The Board also concluded that no new or increased residual effects would be expected as a result of the Project including on traditional land and resource use. Therefore, the Board is of the view that additional information or studies with respect to the Project's potential effects on traditional land and resource use are not needed.

### *Emergency Response Plan*

The Board notes that Bigstone requested a condition be included whereby Bigstone would be consulted by NGTL on emergency response plans and procedures. As noted in Chapter 4, the Board is of the view that the measures proposed by NGTL to address emergency preparedness and response for the purchase of the Albersun Pipeline are appropriate. As an NEB-regulated company, NGTL must meet the requirements of the OPR.

### *Capacity Funding*

Bigstone had requested that a condition be made whereby capacity funding would be established for Bigstone in respect to consultation, and that standards would be established in a condition whereby the Board would assess whether NGTL had sought meaningful engagement with the Bigstone.

The Board is of the view that through Bigstone's participation in the hearing process, Bigstone had an opportunity to have its concerns heard and to present its views on the Project. The Board notes that Bigstone was provided with participant funding to assist it in participating in the Board's process. The Board also notes NGTL's commitment to continue proactive Aboriginal community engagement during the operations phase of the Project with a focus on maintaining ongoing relationships with Aboriginal communities in the area of the Albersun Pipeline. **Certificate Condition 7** (Appendix II) requires NGTL to file an Aboriginal Engagement Report 12 months from the effective date of the Certificate which will include the company's engagement with Bigstone Cree Nation.

The Board notes that Bigstone in its Final Argument indicated its support for the Board's proposed conditions, including conditions relating to condition compliance (**Certificate Condition 1**), commitments tracking (**Certificate Condition 6**), geotechnical evaluations (**Certificate Conditions 9 and 10**) among others. The Board considered all of the evidence submitted by NGTL and Bigstone, including the potential environmental and socio-economic effects of the Project. The Board is of the view that based on all the evidence, the potential impacts of the Project on the interests, including rights, of all Aboriginal groups, including Bigstone, are likely to be minimal and can be effectively addressed.

### Section 35(1) Constitution Act, 1982

Submissions were made during the hearing process by Bigstone regarding the adequacy of consultation to meet the requirements of section 35 of the Constitution Act, 1982 and the need for an assessment of consultation.

Bigstone stated in its final argument that other than through the Board hearing process, it had not been directly consulted by the Crown in respect of the Project, and that its involvement in the Board's process in and of itself was not sufficient to discharge the Crown's duty to consult.

The Board notes that two recent Supreme Court of Canada decisions, *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, have acknowledged the Crown's ability to rely on the

Board's regulatory assessment process to fulfill its duty to consult when the Board is the final decision-maker. The Board is the decision-maker in relation to the paragraph 74 (1) (b) application for leave to purchase the Albersun pipeline. In relation to the application for a Certificate for the operation of the Albersun pipeline, the Board provides a recommendation requiring Governor in Council approval.

Administrative tribunals play an essential role in the execution of the federal or provincial constitutional powers. Through their legislative mandates, they are charged with performing duties and exercising the powers that fall within the executive branch of government. Administrative tribunals such as the Board must perform those duties and exercise those powers, not only in accordance with their legislative mandates, but also in accordance with section 35 of the *Constitution Act, 1982* and other applicable laws.

The Board notes that there is no information on the Board's record of this proceeding that the Government of Canada will rely on the Board's process to satisfy the duty to consult. The Board does note that Guiding Principle No. 6 of the Government of Canada's "Updated Guidelines for Federal Officials to Fulfil the Duty to Consult" (March 2011) states that the Government of Canada will use and rely on existing consultation mechanisms, processes and expertise, such as environmental assessment and regulatory approval processes. The Guidelines further state that agencies, boards, commissions and tribunals, including the Board have a role to play in assisting the Crown in discharging, in whole or in part, the duty to consult. Further, the Board notes that after it submits its recommendation, the Governor in Council may direct the Board to issue a certificate and make it subject to terms and conditions, or direct the Board to dismiss the application.

The NEB Act provides the Board with broad powers and expansive remedial authority to deal with the impacts of federally-regulated pipeline projects. The Board is the federal statutory body that has the most direct involvement in the assessment of applications to construct and operate interprovincial and international pipelines. The Board also has the technical expertise and the regulatory experience to understand a project, the likelihood of effects and the measures that can be implemented to minimize effects. In addition, the Board has the authority to elicit commitments from the applicant, recommend conditions that would be attached should the Project receive approval from the Governor in Council, and ensure ongoing regulatory oversight of a project and a proponent's compliance. The Board also has been given the statutory mandate to impose and enforce mitigation measures to reduce negative project effects and hold a proponent to the commitments made in the Board's project assessment process to enhance benefits.

The framework within which the Board operates and decisions under the NEB Act are made, which includes the requirement that a project assessment process be conducted in a procedurally fair manner, can provide a practical, effective and efficient way within which an Aboriginal group can request and receive meaningful assurances from the proponent or the Board about project-related effects on Aboriginal interests, including rights. Hearing directly and indirectly about an Aboriginal group's concerns about project-related impacts on its interests allows the Board to impose measures to mitigate the impacts and balance, as appropriate, any residual effects with the other societal interests at play when assessing a

project. As a result, decisions on pipeline projects can be made in a constitutionally-appropriate manner consistent with the honour of the Crown.

It should be understood that the Board's consideration of what is required in terms of consultation with Aboriginal groups is a fluid process as more information is obtained and assessed in the Board's proceeding. There are several points in a Board proceeding where the existence and extent of an Aboriginal interest and the potential impact on that interest will be considered with a view to determining the procedural opportunities that must be provided and the substantive outcomes that are warranted. For example, such factors may be considered when:

- the proponent determines who may be impacted by its proposed project;
- the Board considers the type of Board process that should be employed;
- the Board decides who should be allowed to participate in the proceeding and to what extent;
- the Board assesses the level of consultation expected of the proponent and any others who may have authority to deal with an issue;
- the Board considers the amount of information required from the proponent regarding potential impacts and proposed mitigation measures;
- the Board considers the amount of information required by and from Aboriginal participants;
- the Board determines what conditions would need to be imposed if the Project is approved; and
- the Board determines whether the Board should recommend approval of the Project.

The Board's process is designed to be thorough and accessible to Aboriginal groups so that they may make their concerns known to the Board and have those concerns addressed as appropriate. In addition to the mandated one-on-one consultation that is to occur between an applicant and potentially impacted Aboriginal groups, it should be understood that the Board's hearing process itself, including this Recommendation, is part of the overall consultative process.

In relation to this Project, while much of the early consultation was performed by NGTL, the Board process acted as a necessary and important check on that consultation and gave Aboriginal groups an additional avenue to explain their concerns about the Project and have those concerns considered by the Board. The fact that only one Aboriginal group, Bigstone, participated in the Board's proceeding does not diminish the Board's process as an added venue for consultation. The Board is of the view that the Board process was appropriate for the circumstances of this Project assessment.

The Board has considered the information submitted by NGTL and the Bigstone Cree Nation regarding the nature of potentially affected Aboriginal groups' interests in the Project area, including information on constitutionally protected Aboriginal and Treaty rights. The



Board has also considered the anticipated effects of the Project on those interests and the concerns expressed by Aboriginal groups, including the Bigstone, as discussed in this Chapter and this Recommendation and decision, in this regard.

The Board notes Bigstone Cree Nation's concerns regarding consultation for the Project. The Board also notes Bigstone Cree Nation's concerns, as described by Elder Michael Beaver, regarding the flow of benefits from the development of pipelines within Treaty 8 territory. With respect to the benefits of other pipeline projects, the Board is only able to review the application that is before it, the rights that have been noted and the potential impacts of the Project on those rights.

The Board has considered the nature of the interests and the anticipated effects, and the fact that the Project as proposed by NGTL is a purchase transaction of an existing and operational pipeline and facilities that NGTL intends to continue to operate. The Board has evaluated the consultation undertaken with respect to this Project, in light of the Project's nature and anticipated effects including the mandated consultation performed by NGTL. The Board has also considered the mitigation measures proposed by NGTL to address the various concerns and potential effects, and the conditions the Board proposes should the Project be approved. The Board is of the view that there has been adequate consultation and accommodation for the purposes of the Board's decision to grant NGTL leave to purchase the Albersun pipeline in this case. Further, the Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's Recommendation on this Project. The Board is of the view that any potential Project impacts on the interests, including rights, of affected Aboriginal groups, including the Bigstone, are likely to be minimal and can be effectively addressed.

As a result of the above, considering all of the findings in this decision and Recommendation, the Board is of the view that the requirements of section 35 of the *Constitution Act, 1982* have been met, such that a decision granting leave to purchase the Albersun pipeline and a recommendation to issue a Certificate for the operation of the Albersun pipeline in this case, are in keeping with the honour of the Crown.

## Chapter 7

# Land Matters

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The Board's Filing Manual sets out the expectations for lands information to support an application for a Certificate under section 52 of the NEB Act. Applicants are expected to provide a description and rationale for the proposed route of a pipeline, and the location of associated facilities. The Project involves the transfer of existing facilities from Suncor to NGTL, and does not require any new construction since the facilities are already in place. Therefore, a description of the routes and locations of facilities, typically included as part of a section 52 application, were not included in this Application.

NGTL is applying to purchase the Albersun Pipeline, which consists of approximately 179 km of pipe, the Mildred Lake East Sales Meter Station, pipe and valve facilities, mainline valves, a pig receiver located within the meter station, among other miscellaneous interests. The Mildred Lake East Sales Meter Station is located on land owned and retained by Suncor at 6-13-92-10 W4M, approximately 20 km south of Fort McKay. NGTL is also applying to physically isolate a section of pipe in SE-33-79-14 W4M, immediately south of the existing NGTL owned Crow Lake Sales Lateral tie-in. No further construction, decommissioning or abandonment activities are part of the acquisition of the Albersun Pipeline.

In its Application, NGTL indicated that the Transferred Assets are located partially on the Fort McMurray 468 First Nation Indian Reserve (Gregoire Lake 176) as well as through the city of Fort McMurray, but are not located within a National Park, Canadian Forces Base, or other specially-protected areas. The Pipeline is located near the Fort McKay Reserve (Fort McKay 174). Approximately 74 km of the Pipeline is located in caribou range.

NGTL stated that the Pipeline currently operates under AER License 6502 and that the Pipeline will continue to be subject to the requirements of the Pipeline Act, Revised Statutes of Alberta 2000, Chapter P-15 and its underlying regulations until Closing of the transfer of ownership transaction. As the Albersun Pipeline will become part of the NGTL System pending the asset purchase, the Pipeline will become part of the NGTL System and accordingly will be federally regulated. NGTL stated it will ensure compliance with the OPR, CSA Z662-15, TOPS and applicable regulatory requirements upon purchase of the Pipeline.

## 7.1 Communications with Landowners and Land Users

### *Views of NGTL*

NGTL submitted that it developed a list of the lands directly affected by the purchase of the Albersun Pipeline and sent an information package to all directly affected landowners and land users on 4 May 2015. NGTL held an open house in Fort McMurray to allow any interested stakeholders, including landowners and land users, an opportunity to meet with NGTL and discuss the purchase of the Albersun Pipeline. NGTL submitted that no outstanding issues or

concerns have been raised to the date of the filing of the Application and that NGTL will work with landowners and land users should any issues or concerns arise.

### ***Views of Participants***

No Intervenor or Commenters expressed concern with respect to NGTL's communication with landowners and land users.

### ***Views of the Board***

As a result of the Albersun Pipeline coming under federal jurisdiction upon Project approval and due to the differences between provincial and federal regulation, the Board was of the view that landowners could be impacted as expressed in Appendix I of the Hearing Order. The Board notes that no participants expressed concern with respect to NGTL's consultation with landowners and land users. The Board also notes that the Project would have limited impact on landowners and land users given that there will be limited physical activity required and that such activity will be confined within previously-disturbed right of way. Accordingly, it is the Board's view that NGTL's communications with landowners and land users has been appropriate. The Board is of the view that NGTL's process for the acquisition of the land rights is satisfactory.

## **7.2 Land Information**

### ***Views of NGTL***

NGTL stated that no portion of the Project to be transferred from Suncor to NGTL are located on federal land.

On 29 November 2016, NGTL provided in its additional written evidence that it will acquire as part of the purchase the tap connection to a new meter station which will be installed by Suncor in late 2016 to service the temporary housing in the Parsons Creek subdivision in Fort McMurray. The Tap is required as the forecast demand growth is beyond the capability of the existing ATCO meter stations in the Fort McMurray area. NGTL indicated that this new purchase has no impact on any other information provided by NGTL in its Application.

### ***Views of Participants***

No participants expressed any concerns with respect to the lands currently being used for the Project.

### **7.3 Description of Land Rights**

Land ownership of the Albersun Pipeline is as follows:

- 83% (148 km) on provincially owned Crown lands
- 14% (25 km) on privately owned freehold lands
- 3% (6 km) within an Indian Reserve

NGTL stated that Suncor currently holds the surface rights required for the facilities located on Alberta's provincially-owned Crown lands, pursuant to various forms of Alberta Crown dispositions, including pipeline agreements and pipeline installation agreements for above-ground facilities. NGTL reviewed the surface rights to determine if they were valid and subsisting.

With respect to the pipeline facilities located on freehold lands, Suncor currently holds the surface rights required for these assets pursuant to various types of contractual agreements or regulatory orders. NGTL stated that, prior to filing this Application, it obtained and reviewed searches of Alberta land titles to confirm the current registered surface owner(s) and Suncor's registered instruments filed against the lands for the pipeline facilities.

Approximately 6 km of the Pipeline is located on the Fort McMurray First Nation 468 (FMFN 468) reserve lands. Use of the lands is subject to a permit under section 28 of the *Indian Act* (s.28 Permit), which is currently being updated by Suncor and FMFN 468. NGTL submitted that at Closing, the s.28 Permit will be assigned to NGTL as per Article 4.2(1) of Appendix 1-1.

### **7.4 Review and Transfer of Land Rights**

#### ***Views of NGTL***

NGTL indicated that, pursuant to the Transfer Agreement, Suncor provided NGTL a list of land rights together with the underlying documents associated with those land rights. NGTL stated that it reviewed the land right lists and underlying agreements to determine the specific conveyancing required to properly assign the land rights. NGTL indicated that during the review, any land rights determined to be non-assignable were identified and Suncor will undertake to remedy the situation before or at Closing.

NGTL stated that specific conveyances would be prepared and signed by the parties to assign the surface rights required by NGTL at Closing. NGTL also stated that transfers of Alberta Land Title registrations regarding surface rights will be prepared, signed and registered with Alberta Land Titles. NGTL stated that at Closing, assignment of land rights on provincial Crown-owned lands will be accomplished electronically through the Alberta Energy Electronic Transfer System. NGTL indicated that Suncor's land rights could be affected by third-party activity or facilities and that consents addressing these situations will be transferred by Notification to the third-party and/or execution of an Assignment or Assignment and Novation by all Parties, as

contractually required. NGTL stated that freehold surface owners will be notified of the completion of Assignment of the surface rights affecting their land at Closing.

In those cases where existing land rights are currently not assignable, NGTL indicated that Suncor will negotiate a new contractual agreement for the surface rights required to be transferred to NGTL at Closing.

NGTL submitted that Suncor will discharge the obsolete securities from landowner titles as part of the Transfer Agreement and as soon as practicable after the closing date. NGTL stated that the completion of the transfer to and acceptance by NGTL of the Albersun Pipeline is scheduled to occur on March 1, 2017. NGTL proposed to provide the NEB written confirmation of the Closing Date agreed to by Suncor and NGTL, at least 30 days in advance of the Closing Date.

### ***Views of Participants***

No participants expressed any concerns with respect to the transfer of land rights involved.

### ***Views of the Board***

The Board is of the view that NGTL's commitment towards discharging obsolete securities from landowner titles is a positive and proactive approach which would address any future concerns on this matter voiced by landowners.

The Board notes that this Recommendation is beyond the proposed 1 March 2017 closing date, and further notes that NGTL will provide the Board with written confirmation of the new closing date at least 30 days in advance of that date.

## Chapter 8

# Environment and Socio-Economic Matters

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Under the NEB Act, the Board considers environmental protection as a component of the public interest. When making its recommendations, the Board is responsible for assessing the environmental and socio-economic effects of the Project throughout the life of the Project. This chapter represents the NEB's environmental assessment (EA). An application under section 74 of the NEB Act is not a designated project under the *Canadian Environment Assessment Act, 2012* (CEAA, 2012) and therefore the CEAA, 2012 does not apply.

### 8.1 The NEB's Environmental Assessment Methodology

In assessing the environmental and socio-economic effects of the Project, the Board used an issue-based approach as set out in the NEB's Filing Manual.

This assessment begins with: (a) a description of the Project, (b) a description of the setting and the environmental and socio-economic elements within that setting, and (c) a summary of those environmental and socio-economic concerns raised by the public. Based on these, the Board identified Project-environment interactions expected to occur (Table 8-1). If there were no expected Project-environment interactions (or interactions would be positive or neutral), no further examination was deemed necessary.

The Board then assessed the potential adverse environmental and socio-economic effects, as well as the adequacy of the Applicant's proposed environmental protection strategies and mitigation measures. Where there are any residual effects remaining after proposed mitigation, cumulative effects are considered. Finally, the Board's conclusion on significance is given.

### 8.2 Project Details

The Project consists of the acquisition and continued operation of approximately 179 km of pipeline, plus associated mainline valves, launcher and receiver facilities, metering facilities and ROWs. Activities include the physical isolation of the Albersun Pipeline in the Crow Lake area from CNRL-owned southern portion of the pipeline, and ongoing operation and maintenance of the Albersun Pipeline. No further construction, decommissioning or abandonment activities associated with the Albersun Pipeline are proposed by NGTL.

Pursuant to the NEB Act, an application would be required to decommission and/or abandon any facility, at which time the environmental effects would be assessed by the Board.

## **8.3 Environmental Setting**

### **8.3.1 Land Use**

The Albersun Pipeline is located entirely in the Province of Alberta, and consists of approximately 179 km of pipe and related facilities, including the Mildred Lake East Sales Meter Station.

Land disposition of the Albersun Pipeline is as follows:

- 83% (148 km) on provincially owned Crown lands
- 14% (25 km) on privately owned freehold lands
- 3% (6 km) within Indian Reserve.

### **8.3.2 Biophysical Environment**

The Albersun Pipeline is located in the Central Mixedwood and Lower Boreal Highlands subregions of the Boreal Forest Natural Region (BFNR). The BFNR experiences a range of climate, moisture and vegetation conditions and is characterized by level to gently undulating plains and aspen, mixedwood, black and white spruce and jackpine uplands with extensive wetlands, lakes and streams. Wetlands in low lying areas are often shrubby fens or marshes.

The BFNR consists of Gray Luvisolic soils in uplands areas, Brunisols on sands lowlands and Organic soils in poorly drained lowlands. The BFNR hosts a wide range of mammals, birds, fish, and plant species, including over 500 species of vascular plants. Mammals characteristic of the BFNR are black bear, moose, ermine, deer, wolves, muskrats, lynx and woodland caribou. Whooping crane and wood bison are both found within the BFNR; whooping cranes are listed as endangered under the federal Species at Risk Act (SARA) and the provincial *Wildlife Act* and wood bison are listed as “special concern” under SARA and endangered provincially. The Project Woodland Caribou are listed as threatened under SARA and the provincial *Wildlife Act*. The Project occurs within the East Side Athabasca Caribou Range, defined as critical habitat by Environment and Climate Change Canada (ECCC).

### **8.3.3 Socio-economic Environment**

The Albersun Pipeline is located within the RMWB, in northeastern Alberta. The Pipeline goes through the city of Fort McMurray and serves gas to the Village of Anzac. Five Treaty 8 First Nations with more than 2,500 Cree and Chipewyan people live in the RMWB. Seven Métis Groups are also found in the RMWB. For a list of the Aboriginal groups NGTL identified as potentially affected and with whom NGTL consulted for the Project, please refer to Chapter 6 of this Report.

The Project intersects approximately 6 km (0.21 ha) of the Fort McMurray 468 First Nation Indian Reserve (Gregoire Lake 176). The Project is located predominately on provincially-owned Crown land which may be currently used by Aboriginal people for traditional purposes.

The Albersun Pipeline does not cross any Métis Settlements. Discussion of the Project's potential impacts on Aboriginal people is found in Chapter 6.

NGTL indicated that that the Project is not expected to have a significant adverse effect on any biophysical or socio-economic element

## **8.4 Environmental Issues of Public Concern**

The Board received submissions from Bigstone noting concerns with cumulative environmental impacts to the area.

## **8.5 Environmental Effects Analysis**

### **8.5.1 Interactions and Potential Adverse Environmental Effects**

Table 8-1 identifies the expected interactions between the Project and the environment, and the potential adverse environmental effects resulting from those interactions. Since no new construction is associated with the Project, other than the isolation activity, the interactions are mainly associated with facilities operations.



**Table 8-1 Project-Environment Interactions**

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
<b>Bio-Physical</b>	Physical Environment	<ul style="list-style-type: none"> <li>• Random mass-movement event on existing ROW</li> </ul>	<ul style="list-style-type: none"> <li>• Slumping</li> <li>• Soil erosion</li> <li>• Loss or alteration of pipeline integrity</li> </ul>	8.5.2
	Soil and Soil Productivity	<ul style="list-style-type: none"> <li>• Random slope erosion on existing ROW</li> <li>• Air emissions from compressor station may contribute to acid input</li> <li>• Maintenance activities on existing ROW</li> <li>• Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>• Soil erosion, compaction, rutting and/or admixing</li> <li>• Soil contamination and/or discovery of historic soil contamination</li> </ul>	8.5.2
	Vegetation	<ul style="list-style-type: none"> <li>• Random slope erosion or mass-movement event on existing ROW</li> <li>• Vegetation and weed management activities on existing ROW</li> <li>• Air emissions from compressor station may contribute to acid input</li> <li>• Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or alteration of native vegetation or communities</li> </ul>	8.5.2
	Water Quality and Quantity	<ul style="list-style-type: none"> <li>• Random slope erosion or mass-movement event on existing ROW</li> <li>• Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or alteration of surface or groundwater quality or quantity</li> </ul>	8.5.2
	Aquatic Species and Habitat	<ul style="list-style-type: none"> <li>• Random slope erosion or mass-movement event on existing ROW</li> <li>• Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>• Degradation or loss of fish habitat</li> <li>• Fish mortality</li> <li>• Changes to watercourse flow characteristics</li> </ul>	8.5.2

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
	Wetlands	<ul style="list-style-type: none"> <li>• Random slope erosion or mass-movement event on existing ROW</li> <li>• Vegetation and weed management activities on existing ROW</li> <li>• Air emissions from compressor station may contribute to acid input</li> <li>• Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>• Loss or alteration of wetland habitat</li> <li>• Changes to wetland hydrological functions</li> <li>• Loss or alteration of native vegetation</li> <li>• Contamination of soil and/or water quality</li> </ul>	8.5.2
	Wildlife and Wildlife Habitat	<ul style="list-style-type: none"> <li>• Operation and maintenance activities may cause sensory disturbance</li> <li>• Vegetation and weed management activities on existing ROW</li> <li>• Intermittent facility blowdowns may cause short-term sensory disturbance</li> <li>• Long-term sensory disturbance surrounding the compressor station</li> <li>• Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>• Changes to wildlife movement and habitat use patterns</li> <li>• Displacement of wildlife</li> <li>• Loss or alteration of wildlife habitat</li> <li>• Wildlife mortality</li> </ul>	8.5.2
	Wildlife Species at Risk or Species of Special Status and related habitat	<ul style="list-style-type: none"> <li>• Operation and maintenance activities may cause sensory disturbance</li> <li>• Vegetation and weed management activities on existing ROW</li> <li>• Intermittent facility blowdowns may cause short-term sensory disturbance</li> <li>• Long-term sensory disturbance surrounding the compressor station</li> <li>• Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>• Changes to wildlife species at risk movement and habitat use pattern</li> <li>• Displacement of wildlife</li> <li>• Loss or alteration of wildlife habitat for species at risk</li> <li>• Wildlife species at risk of mortality</li> </ul>	8.5.2

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
	Vegetation Species at Risk or Species of Special Status and related habitat	<ul style="list-style-type: none"> <li>Vegetation and weed management activities on existing ROW</li> <li>Air emissions from compressor station may contribute to acid input</li> <li>Hazardous material spill</li> </ul>	<ul style="list-style-type: none"> <li>Loss or alteration of native vegetation species or communities at risk</li> </ul>	8.5.2
	Air Quality	<ul style="list-style-type: none"> <li>Compressor station would produce ongoing air emissions</li> <li>Intermittent facility blowdowns may cause short-term air quality issues</li> <li>Accident or malfunction event</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>Increase in Criteria Air Contaminants, dust and/or particulates</li> <li>Increase in greenhouse gas emissions</li> </ul>	8.5.2
	Acoustic Environment	<ul style="list-style-type: none"> <li>Compressor station would cause ongoing sensory disturbance</li> <li>Operation and maintenance activities may cause temporary sensory disturbance</li> <li>Intermittent facility blowdowns may cause short-term sensory disturbance</li> <li>Accident or malfunction event</li> </ul>	<ul style="list-style-type: none"> <li>Changes to wildlife movement and habitat use patterns</li> <li>Displacement of wildlife</li> <li>Nearby residents may be bothered by noise</li> </ul>	8.5.2
<b>Socio-Economic</b>	Human Occupancy/Resource Use (including Fisheries)	<ul style="list-style-type: none"> <li>The change in regulatory oversight from the AUC to the NEB may cause uncertainty with communities, landowners and stakeholders</li> <li>Demands on human occupancy or resource use</li> </ul>	<ul style="list-style-type: none"> <li>Disruption of farming and ranching operations and land uses during maintenance activities</li> <li>Disruption of outfitting, hunting and fishing activities during maintenance activities</li> </ul>	8.5.2
	Heritage Resources	<ul style="list-style-type: none"> <li>Operation and maintenance activities may expose previously undiscovered heritage resources</li> </ul>	<ul style="list-style-type: none"> <li>Disruption of previously unidentified heritage resource sites</li> </ul>	8.5.2
	Current Traditional Land and Resource Use	<ul style="list-style-type: none"> <li>Some of the pipeline may traverse asserted traditional territories of Aboriginal groups</li> </ul>	<ul style="list-style-type: none"> <li>Disruption of traditional activities during maintenance activities</li> </ul>	8.5.2

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in:</b>
	Navigation and Navigation Safety	<ul style="list-style-type: none"> <li>• Effects on navigation or navigation safety during maintenance activities</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary disruption of or interference with navigation during maintenance activities</li> </ul>	8.5.2
	Social and Cultural Well-being	<ul style="list-style-type: none"> <li>• Demands on social and cultural wellbeing of local residents or communities</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary alterations of community life during maintenance activities</li> </ul>	8.5.2
	Employment and Economy	<ul style="list-style-type: none"> <li>• Demands on local and regional employment, procurement and contracting conditions or government revenues</li> </ul>	<ul style="list-style-type: none"> <li>• Changes in suppliers or goods and services</li> </ul>	8.5.2
<b>Other</b>	Accidents/Malfunctions	<ul style="list-style-type: none"> <li>• Accidental spill or release of hazardous materials</li> <li>• Equipment failure or material fire</li> <li>• Transportation accident</li> <li>• Pipeline failure or facility explosion</li> </ul>	<ul style="list-style-type: none"> <li>• Adverse health effects for humans and/or animals</li> <li>• Mortality of humans and/or animals</li> <li>• Damage or destruction of property</li> <li>• Damage or destruction of natural features and habitat</li> </ul>	8.5.2
	Effects of the Environment on the Project	<ul style="list-style-type: none"> <li>• Severe weather</li> <li>• Wildfire</li> </ul>	<ul style="list-style-type: none"> <li>• Damage or destruction of facilities</li> <li>• Mortality of humans and/or animals</li> <li>• Disruption of service to end users</li> </ul>	8.5.2

## **8.5.2 Mitigation of Potential Adverse Environmental Effects**

In its Application, NGTL identified standard mitigation to mitigate the potential adverse environmental effects of the Project on the biophysical and socio-economic elements. 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 is now considered sufficiently common or routine that it is integrated into the company's management systems and meets the expectations of the NEB. NGTL commits to adhering to the recommendations and mitigation measures identified in the ESA and in the EPP.

### ***Views of NGTL***

NGTL noted that any Project interactions that would occur during operations under NGTL ownership are interactions that already occur, other than the physical isolation, under Suncor's ownership, and that no new interactions or increased effects from these interactions would be expected to occur as a result of the change in ownership. These interactions would continue until such time as the facilities are decommissioned.

NGTL also stated that the physical activities should occur outside the migratory bird breeding period of May 1 to August 10. Preconstruction nest surveys will be completed and setback buffers will be applied to any active nests that are recorded. NGTL also committed to avoiding activity within the East Side Athabasca Caribou Range between February 15 and July 15 and that no new access will be created.

NGTL identified few expected residual effects; those identified relate to the operation of above-ground facilities or maintenance activities on the ROW. NGTL stated that the effects started when the facilities were commissioned and are expected to be reversible once the facilities are decommissioned.

### ***Views of the Board***

The Board notes the commitment of NGTL to avoid the migratory bird breeding period and the caribou restricted access period and encourages NGTL to appropriately plan for the physical isolation activities outside of these periods. On that basis, should the Board issue a Certificate, NGTL will be authorized to isolate the Albersun Pipeline from the CNRL-owned pipeline. The Board also notes the commitment from NGTL that no new access to the East Side Athabasca Caribou Range will be created. The Board agrees that there would be no additional or increased interactions with biophysical or socio-economic elements as a result of continued operation of the Albersun Pipeline under NGTL ownership. The Board also agrees that no new or increased residual effects would be expected as a result of the Project.

The Board notes NGTL's commitment to adhering to the recommendations and mitigation measures set out in the Environment and Socio-Economic Assessment (ESA) and in the Environmental Protection Plan (EPP), filed with the Board. The Board finds that this commitment is adequate

The Board's regulatory oversight will contribute to environmental protection through the life of the Project through various compliance verification activities related to operation, safety and security, pipeline integrity, and emergency preparedness and response programs. These are discussed in Chapter 4. With this oversight, the Board is confident that the Albersun Pipeline can continue to operate as part of the NGTL System in a manner that would not likely result in impacts to the environment.

### **8.5.3 Mitigation of Potential Adverse Environmental and Socio-Economic Effects**

In its Application, NGTL identified standard mitigation to mitigate the potential adverse environmental effects of the Project on the biophysical and socio-economic elements. 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 is now considered sufficiently common or routine that it is integrated into the company's management systems and meets the expectations of the NEB. NGTL commits to adhering to the recommendations and mitigation measures identified in the ESA and in the EPP.

## **8.6 Cumulative Effects Assessment**

### *Views of NGTL*

NGTL predicted no new or increased residual effects for the integration and continued operation of the Albersun Pipeline. Accordingly, NGTL determined that no new or increased contributions to cumulative effects are expected. NGTL also submitted that once the facilities are decommissioned, any adverse residual effects are expected to be reversible. For these reasons, NGTL determined that the potential contribution of the Project to cumulative effects is not significant.

### *Views of Participants*

Bigstone expressed concerns regarding the potential contribution of the Project to cumulative effects. Those concerns are addressed in Chapter 6.

### *Views of the Board*

The Board agrees that no new or increased contributions to cumulative effects are likely to occur as a result of the Project.

The Board has considered the potential for cumulative effects and has determined that any cumulative effects arising as a result of operations and maintenance activities undertaken by NGTL are expected to be temporary, localized, and minor in magnitude. Furthermore, the Board's compliance verification approach to regulatory oversight through the life cycle of the Project is expected to help mitigate cumulative effects occurring as a result of the continued operation of the facilities. Therefore, it is unlikely that there would be any significant cumulative effects resulting from this Project.

## **8.7 EA Conclusion**

The Board is of the view that the Project is unlikely to result in new or increased interactions between the Project and the environment, new or increased environmental or socio-economic effects, and new or increased contributions to cumulative effects.

The Board is of the view that overall, with the implementation of NGTL's environmental protection procedures and mitigation and the NEB's recommended conditions, the Project is not likely to cause significant adverse environmental effects.

# Appendix I

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## List of Issues

The Board has identified but does not limit itself to the following issues for consideration in the proceeding:

1. The need for the proposed project.
2. The valuation, tolls and financing for the proposed project.
3. The current condition of the pipeline facilities and request for leave to open the Albersun Pipeline.
4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.
5. Potential impacts of the project on Aboriginal interests.
6. Potential impacts of the project on landowners and land use.
7. The terms and conditions to be included in any approval the Board may issue.



## Appendix II

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### NEB Section 52 Certificate Conditions

In these conditions, where any condition requires a filing with the National Energy Board (Board or NEB) “for approval”, NGTL must not commence that action until the approval is issued.

In this document, the terms below (in bold) have the following meanings:

**Certificate:** Certificate of Public Convenience and Necessity, pursuant to section 52 of the *National Energy Board Act* (NEB Act), authorizing the continued operation of the Pipeline.

**Closing:** When the change of ownership and possession of the Pipeline occurs.

**Closing Date:** The date when the Closing occurs.

**Pipeline Or Albersun pipeline:** The Albersun pipeline facilities and miscellaneous interests.

**Project or Project Application:** The purchase and continued operation by NGTL of the Albersun pipeline, as applied- for by NGTL in its 27 April 2016 Application.

## **Certificate Conditions**

### ***1. Condition Compliance***

NGTL shall comply with all of the conditions contained in this Certificate, unless the Board otherwise directs.

### ***2. Facilities Construction and Operation***

NGTL shall cause the approved Project to be carried-out in accordance with the specifications, standards and other information referred to in its Project Application and its related submissions.

### ***3. Implementation of Environmental Protection***

NGTL shall 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 Project Application or in its related submissions.

### ***4. Notification of Closing***

NGTL shall provide the Board with a notice of the anticipated Closing Date at least 30 days before the anticipated Closing Date and again, immediately upon actual Closing.

### ***5. Effective Date of the Certificate***

The Certificate shall come into force at the Closing Date.

### ***6. Commitments Tracking Tables***

NGTL shall file with the Board and post on file with the Board and post on its Project website, at least 30 days before the Closing, a Commitments Tracking Table listing all commitments made by NGTL in its Project Application, and in its related submissions, including reference to:

- a) the documentation in which the commitment appears (for example, the Application, responses to information requests, hearing transcripts, permit requirements, condition filings, or other);
- b) the accountable lead for implementing each commitment; and
- c) the estimated timelines associated with the fulfillment of each commitment.

### ***7. Aboriginal Engagement Report***

NGTL shall file with the Board 12 months from the effective date of the Certificate Certificate, a report summarizing its engagement activities with all potentially affected Aboriginal groups identified in the Application including Bigstone Cree Nation. This report shall include:

- a) a summary of the concerns raised by Aboriginal groups;
- b) a description of how NGTL has addressed or will address the concerns raised;
- c) a description of any outstanding concerns; and
- d) a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken.

NGTL must provide a copy of the report to those Aboriginal groups identified in the Application including Bigstone Cree Nation no later than three days after the filing of the report with the Board, and file with the Board confirmation of that within one week after providing the copies.

#### **8. *In-line Inspection***

NGTL shall conduct the following Pipeline inspections on the piggable pipeline sections of the Albersun pipeline at the times indicated:

- a) a high-resolution in-line caliper inspection (i.e., a GEOPIG™ inspection) for the pipelines with a diameter of NPS 10 within 12 months from the effective date of the Certificate to establish accurate pipeline position and to detect pipe deformations;
- b) a high-resolution in-line caliper inspection (i.e., a GEOPIG™ inspection) for the pipelines with a diameter of NPS 10 within 48 months from the effective date of the Certificate to characterize and assess any ongoing pipe deformations due to slope movement; and
- c) an in-line corrosion inspection for pipelines with a diameter of NPS 10 within 12 months of the effective date of the Certificate.

NGTL must file with the Board, within 6 months after completing each inspection, a report that includes a summary of the inspection results and mitigation measures undertaken, if any are required, for the anomalies detected through any of the inspections.

For all unpiggable pipelines with a diameter of NPS 4 or greater, NGTL will confirm they have been incorporated into the TransCanada's Corrective Action Plan (CAP) for unpiggable lines within 12 months of the effective date of the Certificate.

**9. *Repair and Installation of Slope Indicator Casings and Geotechnical Evaluation of Slope stability***

NGTL shall perform a geotechnical assessment in accordance with TransCanada's Integrity Management Plan (IMP) within 90 days of the effective date of the Certificate and shall file with the Board, a report of the results. All slope indicators identified for replacement or repair in the geotechnical assessment report, if any, shall be replaced or repaired within 12 months of the report being submitted to the Board.

**10. *Geotechnical Evaluation of Slope Stability***

NGTL shall file with the Board a geotechnical evaluation report within 12 months of the date of the completion of all slope indicator replacements or repairs, if any, conducted pursuant to Condition 9 for the Albersun pipeline, providing an assessment of the current stability of the slopes.

**11. *Pipeline Geographic Information System (GIS) Information***

NGTL shall file with the Board, within 12 months of the effective date of the Certificate:

- a) Geographic Information System data in the form of Esri® shape files that contain pipe segment centre lines, where each pipe segment has a unique outside diameter, wall thickness, maximum operating pressure (MOP), external coating, field-applied girth weld coating, and pipe manufacturing specification. If the above values of the pipe change at any point along the length of the Pipeline, the Pipeline should be segmented at that point. NGTL must also provide Geographic Information System locations and names for the Pipeline, all custody transfer meters, and all mainline block valves as applicable. The datum must be NAD83 and projection must be geographic (latitudes and longitudes). Spatial information related to this condition will be provided to the NEB as loaded and maintained in NGTL's GIS repository; and
- b) information on the right of way boundaries and location and names of the launchers and receivers for the Pipeline.

**12. *Emergency Response***

NGTL shall, within 18 months from the effective date of the Certificate:

- a) conduct a full-scale emergency response exercise for the Pipeline. The objective of the emergency response exercises shall be to test the effectiveness and adequacy of the:
  - i. Emergency Procedures Manual;
  - ii. training of company personnel;

- iii. communications systems;
  - iv. coordination of emergency response activities with responders, mutual aid partners and other agencies;
  - v. response equipment;
  - vi. safety procedures; and
  - vii. exercise debrief process.
- b) notify the Board in writing, at least 45 days prior to the date of the emergency response exercise referred to in a), of the following:
- i. location of the exercise;
  - ii. exercise coordinator;
  - iii. date of the exercise;
  - iv. duration of the exercise;
  - v. the name and organization of each individual invited to participate in the exercise including first responders, stakeholders and Aboriginal group; and
  - vi. the goals (for example, focus of exercise, scope, scale, extent of play, format, evaluation method), and how success is measured.
- c) file with the Board, within 90 days of completion of the emergency response exercise referred to in a), a report that documents the results of the exercise including:
- i. how the exercise achieved the stated goals;
  - ii. participant feedback and areas for improvement; and
  - iii. a corrective action plan to address the findings from the exercise.

### ***13. Facility Signage***

NGTL shall file with the Board, no later than 90 days from the effective date of the Certificate, confirmation that all Pipeline signage has been changed to reflect new ownership and include current emergency response numbers.

### ***14. Emergency Response Numbers***

NGTL shall file with the Board, no later than 45 days from the effective date of the Certificate, confirmation that all agencies that may be involved in an emergency response on the Pipeline have been notified of the change of ownership.

### ***15. Transfer of Records***

NGTL shall file with the Board, no later than 150 days from the effective date of the Certificate, confirmation that all records in Suncor's possession pursuant to CSA Z662 and paragraphs 56(e) to 56(g) of the *National Energy Board Onshore Pipeline Regulations* have been received from Suncor Energy Logistics Corporation.

### ***16. Condition Compliance by a Company Officer***

Within 30 days of the effective date of the Certificate, NGTL shall file with the Board a confirmation, by an officer of the company that the approved Project is in compliance with all applicable conditions in this Certificate. If compliance with any of these conditions cannot be confirmed, the officer of the company shall file with the Board details as to why compliance cannot be confirmed. The filing required by this condition shall include a statement confirming that the signatory to the filing is an officer of the company.