



File OF-Fac-Gas-N081-2017-04 01
22 March 2018

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Dear Mr. Ignasiak, Ms. Jin, and Ms. Chou:

**NOVA Gas Transmission Ltd. (NGTL)
Application for the Sundre Crossover Project (Project)
Hearing Order GH-002-2017
Reasons for Decision dated 28 December 2017 – Order XG-N081-030-2017 (Order)**

On 28 December 2017 the National Energy Board (NEB or Board) issued Order XG-N081-030-2017 pursuant to section (s.) 58 of the *National Energy Board Act* (NEB Act). The Board noted that written reasons for its decision would follow. This letter constitutes the Board's reasons for decision for Order XG-N081-030-2017.

1.0 Project Overview and the NEB Process

1.1 Application and Project Overview

On 24 March 2017, NGTL applied to construct and operate the Project pursuant to s. 58 of the NEB Act and s. 45.1 of the *Onshore Pipeline Regulations* (OPR) (Application). In the Application, NGTL also requested exemptions from paragraph 30(1)(a) and s. 31 of the NEB Act. On 13 April 2017, the Board determined the Application was complete and assigned the

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Application a Category B designation, which set a time limit of 210 days for the Board to make a decision on the Project.

The Project consists of approximately 21 kilometre (km) of 1,067 millimetre (NPS 42) outside diameter pipeline and is located in Mountain View County in the White Area of Alberta (AB), approximately 1 km east of the Town of Sundre . The Project begins at a tie-in point on the existing NPS 30 Edson Mainline and the NPS 42 Edson Mainline Loop, both in SW 13-33-5 W5M. When completed, it will tie-in to the existing NPS 36 Western Alberta System Mainline and existing NPS 42 Western Alberta System Mainline Loop, both in SE 23-31-5 W5M.

1.2 The NEB Process

In response to letters of comment received from potentially affected landowners during the initial assessment process of the Project, the Board established a comment process on 30 June 2017, during which the Board received additional letters of comment and determined that additional process steps were required. On 6 September 2017, the Board issued Hearing Order GH-002-2017 and established a hearing process (with both written and oral components) in respect of the Application, thereby extending the time limit for the Board to issue a decision from 210 days to 15 months. The Hearing Order set out the remaining process steps for the Board's review of NGTL's Application. Independent of the Panel's hearing process, the Board's Participant Funding Program announced a total funding envelope of \$120,000 to assist Intervenor participants participating in the hearing process.

The hearing process allowed interested persons to apply to participate as an Intervenor or Commenter. Five Intervenor participants and five Commenter participants participated in the hearing process. The Intervenor participants included: Mr. Jeffery A. Hartley, Mr. Duane Grace representing Grace Feedyards Inc. (Grace Feedyards), Mr. Lance Greer representing Mr. and Mrs. Lance and Christine Greer (Mr. and Mrs. Greer), the Alberta Department of Energy (ADOE), and the Stoney Nakoda Nations (SNN). The Commenter participants included: ARC Resources Ltd., Encana Corporation, Louis Bull Tribe, NuVista Energy Ltd., and Tourmaline Oil Corp.

An oral hearing was held in Calgary, AB on 18 December 2017, during which NGTL, Mr. Lance Greer and Grace Feedyards made submissions. While the ADOE appeared at the oral portion of the hearing, it made no oral submissions.

2.0 Assessment of the Application

2.1 Aboriginal Matters

NGTL initially identified eleven groups as potentially affected by the Project: Ermineskin Tribe, Louis Bull Tribe, Montana First Nation, O'Chiese First Nation, Samson Cree Nation, Siksika Nation, Stoney Nakoda Nation, Sunchild First Nation, Tsuut'ina Nation, Métis Nation of Alberta, and Métis Nation of Alberta – Region 3. NGTL stated that it provided notification packages to each of the above-named Aboriginal groups, which included a public notification letter, Project factsheet, information about TransCanada PipeLines Limited's (TransCanada) engagement policies, and information about the NEB process. NGTL stated that it followed up

with the groups through phone calls, emails or meetings to discuss any questions and concerns each group may have had about the Project.

NGTL stated that two of the initially identified eleven groups, O'Chiese First Nation and Samson Cree Nation, requested to meet; however, despite following up with each of these groups to arrange meetings, NGTL did not receive a response from either group to set a meeting date. NGTL indicated that it had met with nine of the initially identified eleven groups to provide a Project overview between May 2016 and February 2017. As per its process, Métis Nation of Alberta – Region 3 notified Métis Local 845 of the Project, whom NGTL also met with to provide a Project overview.

In its Application, NGTL confirmed that all but three of the groups that NGTL had met with had confirmed to NGTL that they have no Project-specific issues or concerns, and NGTL stated that no Project-specific concerns were identified by either Sunchild First Nation or Tsuut'ina Nation.

NGTL stated that the SNN identified concerns related to burial sites and requested to undertake a field-based cultural study. NGTL confirmed that it had provided the SNN with the Project's Historic Resources Work Plan schedule, confirmed that the Project's Environmental Protection Plan (EPP) includes contingency plans to ensure potential effects on previously undiscovered heritage sites and features are avoided, and provided a summary of the Heritage Resource Impact Assessment, which showed no known areas of cultural or historical significance. NGTL stated it had received a letter from the SNN objecting to the Project on the basis that they had not been properly consulted. NGTL noted that although the Project is located within the SNN asserted traditional territory, the Project is located entirely on freehold lands and remains unavailable for the utilization of traditional activities. NGTL confirmed that it has engaged with the SNN since May 2016 by way of notification of proposed activities within their asserted traditional territory, sharing Project information, holding meetings, and responding to questions and concerns raised.

NGTL stated that it held an open house on 13 October 2016, to which each of the notified Aboriginal communities and organizations were invited to attend to receive a Project update and information in addition to the Project notification packages. Two of the notified Aboriginal groups, Sunchild First Nation and Métis Nation of Alberta, attended the open house. NGTL further stated that it had met with or provided information on the Aboriginal contracting process to five of the notified Aboriginal groups.

In its Application, NGTL confirmed that it would continue to respond to questions and concerns, and would address any Project-related interests and concerns that may be identified by Aboriginal groups through its ongoing engagement efforts during the regulatory approval and construction phases of the Project. NGTL stated that during the operational phase of the Project, it will continue to engage Aboriginal groups through TransCanada's Public Awareness Program.

In its response to the Board's Information Request No. 1.5, which identified Foothills Ojibway Society, Kainai (Blood) First Nation, and Piikani (Peigan) First Nation as also having asserted traditional territory in the Project area, NGTL confirmed that it had forwarded the Project information to each of the additional Aboriginal groups on 26 April 2017 and stated that it would engage with these groups if questions or concerns arise in the future.

2.1.1 The Board's Process and Participation by Aboriginal groups and the Federal and Provincial Crowns

The Board's hearing process was designed to obtain as much relevant evidence as possible on Aboriginal concerns regarding the Project, the potential impacts on Aboriginal interests (as noted in the Board's List of Issues), and possible mitigation measures to minimize adverse impacts on Aboriginal interests. The Board was provided with and considered information about concerns related to the Project, and the measures that would be required to address those concerns, as brought forward through consultation undertaken by NGTL and through the participation of potentially affected Aboriginal groups.

Aboriginal groups who are concerned with potential Project-related impacts on their interests, including rights, had opportunities to present their views directly to the Board. While the Board required NGTL to implement a consultation program and undertake an assessment of the Project's potential effects, including its environmental and socio-economic effects, the Board also took steps to facilitate the direct participation of these groups in its proceedings.

Two Aboriginal groups applied to participate in the hearing (Louis Bull Tribe as Commenter and the SNN as an Intervenor) and their applications were approved.

Participation of Louis Bull Tribe

Louis Bull Tribe filed an application to participate as a Commenter and was granted Commenter status. Beyond the information filed in its application to participate, Louis Bull Tribe did not file any subsequent information with the Board in relation to the Project.

Participation of the SNN

On 19 September 2017, prior to being granted Intervenor status, the SNN filed a letter with the Board which indicated that it took issue with NGTL's assertion that because the Project is located on freehold lands, it is unavailable to the SNN for the utilization of traditional activities. The SNN indicated that the Project area is adjacent to the Sundre Cultural Resource Area, an area over which the SNN specifically claim Aboriginal title, and that the Project area and corresponding freehold lands are located in an area over which the SNN assert Aboriginal rights. Further, the SNN expressed concerns with the adequacy of the Board's procedures with respect to consultation and accommodation to date, and stated that it is imperative that both NGTL and the Board understand the claims of the SNN to the traditional lands within and near the Project area.

In response to concerns raised by the SNN with respect to the Sundre Cultural Resource Area, NGTL submitted in its 25 October 2017 Reply Evidence that it is confident that the site identified by the SNN will not be affected by Project construction as it is located approximately 25 km from the Project. NGTL stated that it would continue to engage with the SNN in the unlikely event that either the Heritage Resource Discovery Contingency Plan or Traditional Land Use Sites Discovery Contingency Plan are implemented during construction, as appropriate, or to discuss further questions or concerns that may arise.

On 26 October 2017 the SNN filed a Notice of Motion (Motion) with the Board seeking a review of a Board letter dated 21 September 2017 (Extension Letter). In that letter, the Board had extended the deadline by which interested parties could file an application to participate in the Board's hearing process.

In its Motion, the SNN submitted that the Board erred in law, exceeded its jurisdiction, or both by:

- failing to implement measures to ensure the confidentiality of oral traditional evidence;
- failing to implement and comply with the *Aboriginal Consultation and Accommodation Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, 2011; and
- failing to implement the *United Nations Declaration on the Rights of Indigenous Peoples*.

Based on the above grounds of review, the SNN requested that the Board make the following orders:

- a) Permit the SNN to make submissions without being restricted to leading "oral traditional evidence" as defined by the Board;
- b) Include in the Board's definition of "public interest" the rights enshrined in the *Constitution Act, 1982*;
- c) Implement measures to ensure confidentiality of oral traditional evidence that are in alignment with Aboriginal customs and practices;
- d) Explicitly adopt and comply with the Federal Consultation Guidelines. That is, determine if consultation is owed, determine what level of consultation is owed and determine if consultation has been fulfilled;
- e) To the extent that the Federal Consultation Guidelines will not be adopted by the Board, explicitly delegate these matters to NGTL;
- f) Confirm that the NEB is the regulatory authority that is responsible for the duty to consult or state which regulatory authority has and will fulfill the duty;
- g) Explicitly adopt and comply with the declarations in the *United Nations Declaration on the Rights of Indigenous Peoples*; and
- h) Request that the Governor in Council appoint an SNN representative to sit on the Board for the duration of the Project Application, pursuant to subsection 4(1) of the NEB Act and for any other projects to be located within traditional SNN territory.

In a letter dated 30 October 2017, the Board established a written comment process to consider the Motion. NGTL and other Intervenors were provided with an opportunity to submit comments and the SNN was provided with an opportunity to file a reply to any comments received.

In its submission on 7 November 2017, NGTL submitted that the grounds for review raised by the SNN have no relation to the relief granted by the Board in its Extension Letter and that the Motion should be denied.

In its reply comments submitted on 14 November 2017, the SNN clarified that they do not seek to oppose the Project but seek orders that are fair and fulfill the duty to consult, the honor of the Crown, reconciliation, and the Articles enumerated under *United Nations Declaration on the Rights of Indigenous Peoples*.

In Ruling No. 4, issued on 22 November 2017, the Board denied the SNN's motion to review the Board's Extension Letter and declined to grant the SNN's requested relief. The Board determined that the grounds of review enumerated in the SNN's Motion did not raise a doubt as to the correctness of the Board's decision to extend the application to participate deadline. The Board noted that the dismissal of the Motion was without prejudice to the SNN raising any issues it wishes regarding Aboriginal consultation and accommodation in its evidence, oral traditional evidence and final argument.

While the Board determined that the concerns raised by the SNN in its Motion were unrelated to the Extension Letter, the Board nonetheless provided supplemental reasons in order to address some of those concerns, including those related to ensuring the confidentiality of oral traditional evidence as well as concerns related to the adequacy of consultation. In addition, the Board invited the SNN to indicate whether or not it would be interested in providing oral traditional evidence at the hearing. The Board noted that the opportunity to provide oral traditional evidence may be instead of, or in addition to, providing written evidence. The Board included a guidance document that provided general information on the provision of oral traditional evidence, and noted that if the SNN had any concerns with respect to the guidance document, it could present those concerns to the Board.

On 4 December 2017, the SNN filed a letter with the Board in which it reiterated its title claim, as well as its position that the majority of the Project is on freehold lands situated entirely within the SNN's traditional territory and that the SNN have the right to exercise their treaty rights and traditional activities on those lands. The SNN further submitted that the Project area is located entirely within the lands to which the SNN assert Aboriginal title. Finally, the SNN advised that it was of the view that the concerns raised in its Motion were not addressed by the Board and that accordingly, the SNN would not be filing any additional written evidence or calling any witnesses to provide oral traditional evidence for the oral portion of the hearing.

The SNN did not participate in the oral portion of the hearing.

Participation of the Federal and Provincial Crowns

In response to the SNN's Motion, the ADOE noted that the SNN's claim asserting Aboriginal rights and title is an ongoing matter that is currently before the provincial Courts and under case management. The ADOE recommended that the Board decline to provide comments in respect of matters that are ongoing before the Courts and on matters that are properly the subject of provincial legislation and jurisdiction. As mentioned above, the ADOE appeared at the oral portion of the hearing, but made no oral submissions.

As part of its process, the Board notified Natural Resources Canada (NRCan) that the Board had received NGTL's Application for the Project, and that the Application may involve Aboriginal matters. The Board noted that Guiding Principle No. 6 of the Governments of Canada's *Updated Guidelines for Federal Officials to Fulfil the Duty to Consult* (March 2011) states that the Government for 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.

Subsequently, NRCan sent a letter to each of the 14 Aboriginal groups who had been identified as potentially affected by the Project and copied the Board. For the purposes of transparency, the Board added these letters to the hearing record. NRCan stated in its letters to each of the 14 Aboriginal groups that the purpose of its letter was to clarify the federal Crown's approach to fulfilling its duty to consult Indigenous groups in respect of the Project. NRCan further stated that the Government of Canada strongly encouraged all Indigenous groups whose potential or established Aboriginal or treaty rights could be affected by the Project to apply to participate in the Board's hearing process and to engage directly with NGTL.

Views of the Board

The Board has considered all of the relevant information before it, including NGTL's activities to engage Aboriginal groups, the submissions filed by the SNN on 19 September 2017, 25 and 26 October 2017, 14 November 2017, and 4 December 2017 respectively, along with NGTL's replies to those submissions dated 25 October 2017 and 7 November 2017.

The Board's process is designed to obtain as much relevant evidence as possible on Aboriginal concerns about the Project, potential project impacts on Aboriginal interests and possible mitigation measures. In addition to providing technical information addressing impacts of the Project on, among other things, fisheries, wildlife, vegetation, and heritage resources, the applicant is required to make all reasonable efforts to consult with potentially affected Aboriginal groups and to provide information about those consultations to the Board. This includes evidence on the nature of the interests potentially affected, the concerns that were raised and the manner and degree to which those concerns have been addressed. The Board evaluates the sufficiency of an applicant's consultation process along with any other evidence of consultation it has on its record. For all applications, NGTL is expected to report on all Aboriginal concerns that were expressed to it, even if it was unable or unwilling to address those concerns. Therefore, even if Aboriginal groups chose not to participate in the subsequent hearing process, any concerns could be brought to the attention of the Board through NGTL's evidence and their filings.

In assessing the consultation undertaken by NGTL with Aboriginal groups for the Project, the Board has evaluated the design and implementation of NGTL's consultation program. The Board has considered the company's activities to engage with Aboriginal groups and to learn about their concerns and interests, as well as the concerns and views expressed by Aboriginal groups. The Board has also considered how Aboriginal groups responded to opportunities for consultation and how NGTL sought to address the concerns or potentially affected groups. In addition, the Board has considered how these inputs influenced NGTL's proposed design and operation of the Project.

The Board is of the view that NGTL's design of Project-specific consultation activities was adequate given the scope and scale of the Project. The Board notes NGTL's commitment to ongoing consultation with Aboriginal groups and has imposed Condition 11, which required NGTL to submit its consultation records to the Board prior to

construction, and further requires NGTL to submit updates periodically during construction and operations.

In addition to the one-on-one consultation that occurs between the applicant and Aboriginal groups, it should also be understood that the Board's hearing process itself is part of the overall consultative process. Aboriginal groups who are concerned with the potential impact of a proposed project on their interests were provided with an opportunity to present their views directly to the Board, and the Board considers that the Board's hearing process was adequate given the nature of the Project-related concerns that were raised by each potentially affected Aboriginal group.

In *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, the Supreme Court of Canada acknowledged that the Board has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures as well as the requisite technical expertise. The Supreme Court also acknowledged the Crown's ability to rely on the Board's regulatory assessment process to fulfill its duty to consult. The Board is the final decision-maker in relation to the Application.

The Board notes the SNN's concerns about the impact of the Project on the SNN's exercise of their activities, practices, traditions and customs. The Board notes that the Project is located entirely on freehold land. The Board further notes the evidence on the hearing record respecting the use of the lands in the Project area for agricultural and other private usage purposes and that as such, there is limited public access to the Project area. The Board has also assessed the mitigation measures proposed by NGTL related to vegetation, wildlife and wildlife habitat, and heritage and cultural resources. In addition, the Board has imposed Condition 8, which requires NGTL to confirm that it has obtained all of the required archaeological and heritage resources clearances and authorizations from the province, prior to commencing construction. The Board is of the view that with the implementation of NGTL's proposed mitigation measures and the Board's conditions, the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Aboriginal groups are not likely to be significant.

The Board acknowledges the SNN's concerns with respect to ensuring the adequacy of consultation and accommodation. The Board interprets its responsibilities, including those outlined in s. 58 of the NEB Act, in a manner consistent with the *Constitution Act, 1982*, including s. 35, which recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples.

The Board has considered the information submitted regarding the nature of potentially affected Aboriginal 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 the SNN in particular. 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 and the consultation undertaken through the Board's

Project assessment process. The Board has also considered the mitigation measures proposed to address the various concerns raised and any potential Project-related effects. The Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on this Project. The Board is of the view that any potential Project impacts on the interests, including rights, of affected Aboriginal groups are not likely to be significant and can be effectively addressed.

As a result of the above, considering all of the findings in this decision, the Board is of the view that the requirements of s. 35 of the *Constitution Act, 1982*, have been met, such that an approval of this Project is consistent with the honour of the Crown.

2.2 Consultation and Land Matters

In its Application, NGTL stated that the Project is located entirely on freehold land. The preferred Project route, NGTL stated, will parallel existing linear disturbances for 26.5% of the route and will consist of new right-of-way for 73.5% of the route.

NGTL further stated in its Application that it had consulted with landowners and nearby residents, a local synergy group, and all potentially affected municipalities, provincial, and territorial governments. Project information was also provided to Environment and Climate Change Canada. NGTL indicated that at the time of its Application, no Project-specific issues or concerns had been raised.

As noted above, the Board has provided for additional opportunities for participation (namely, a comment period and additional hearing process) in response to concerns raised by the potentially affected landowners, as outlined below.

Mr. and Mrs. Karl and Gertrud Bernhardt

Mr. and Mrs. Bernhardt filed a letter of comment with the Board on 20 July 2017. In their letter, Mr. and Mrs. Bernhardt stated that they did not want a pipeline going through their property. Mr. and Mrs. Bernhardt raised several environmental and socio-economic concerns with the pipeline going through their property, including: noise, reduced visual aesthetics of the land, removal of three acres of trees and resulting increases in runoff, reduction in farmable land, devaluation of their property, accidents and malfunctions, fencing, rock and root removal, damages and weed control.

In response to the above concerns, NGTL asserted that the presence of a pipeline does not affect property value. In response to concerns about construction noise, NGTL stated that during engagement it provided information to Mr. and Mrs. Bernhardt about construction and clarified that construction and any associated noise would be temporary. The total construction period is planned to run over the course of approximately four months with construction activity on their lands occurring intermittently for approximately two to three days at a time. During that period, stated NGTL, the level of noise would vary depending on the nature of the activity. NGTL confirmed that Mr. and Mrs. Bernhardt's residence is approximately 500 metres from the proposed pipeline right-of-way with a forested area in between, which NGTL indicated should help to mitigate noise from construction. NGTL submitted that it would notify landowners and adjacent landowners along the Project route of the construction schedule before the start of

construction. Further, NGTL stated that it would ensure noise abatement equipment on machinery is in good working order and take reasonable measures to control construction related noise near residential areas.

In response to concerns expressed that the removal of the trees will impact the absorbance of water in spring fed wet area, subsequently resulting in increased seepage and runoff, NGTL confirmed that it has developed and implemented construction methodologies to reduce impacts on drainage and agricultural lands. Topsoil will be removed and stored separately during construction. Topsoil and subsoil horizons will not be mixed. The drainage plans will be developed for construction and construction will be carried out in a manner to restore surface drainage patterns to pre-construction conditions.

NGTL further confirmed that based on the field studies of the soils and vegetation in the wetlands along the route that were constructed by a third party environmental consultant, it has been determined that if there is excess surface water as a result of pipeline construction activities, it will likely not result in increased surface water runoff on Mr. and Mrs. Bernhardt's property.

Mr. and Mrs. Bernhardt did not register to participate in the oral portion of the hearing.

Grace Feedyards Ltd.

The Board heard from Grace Feedyards through written submissions filed with the Board on 16 July 2017, 30 September 2017, 12, 20, and 23 October 2017, 4 and 8 December 2017. Grace Feedyards was granted Intervenor status and participated in the oral hearing.

Grace Feedyards stated they operate a Confined Feeding Operation Beef Feedlot, located at NW-08-32-04 W5M. Grace Feedyards stated that its main concern was how the proposed Project crosses a wetland which feeds a coulee tributary of the Little Red Deer River and that the Project could affect their Diversion Licence for the water supply for the feedlot. Grace Feedyards stated that if its water supply were to be affected by the Project, it would negatively impact its farm and operations. Grace Feedyards retained a consultant to assess the potential effects of the Project on overland flows to its dugout and filed this assessment with the Board.

In response to the concerns raised by Grace Feedyards, about continuity of water flow from the fen to their properties, NGTL committed to monitoring pre- and post-construction water levels in the WL19-WL20 fen complex through the installation of eleven piezometers on either side of the pipeline right-of-way in NW-12-32-5-W5M, and to report on water levels quarterly.

Mr. and Mrs. Lance and Christine Greer

The Board heard from Mr. and Mrs. Greer through their written submissions filed on 12, 24, June 2017, 25 July 2017, 2, 24, 26 October 2017, and 4 December 2017. Mr. Lance Greer was granted Intervenor status and participated in the oral hearing.

In their written submissions, Mr. and Mrs. Greer expressed concerns that NGTL's land representatives unduly pressured landowners into signing easement agreements and that NGTL had not been forthright in its discussions around the proposed location of the Project and had used bullying tactics.

Mr. and Mrs. Greer also raised concerns around the Project's impacts on a future development on their land that includes restoring a lake and subdividing multiple residential lots, and that the Project would impact their plans. Finally, Mr. and Mrs. Greer expressed concerns that the Project would impact the wetland and its drainage and filed written evidence related to wetland impacts.

In response to Mr. and Mrs. Greer's concerns surrounding its engagement, NGTL stated that it strongly disagrees with Mr. and Mrs. Greer assertions that NGTL had been misleading and not forthright in its engagement and that it had used bullying tactics. NGTL stated that it had engaged with Mr. and Mrs. Greer on the Project since June 2016 and has had numerous discussions and meetings with them regarding the Project route, provided updates on the Project developments, and discussions regarding compensation and other concerns. NGTL stated that it served Mr. and Mrs. Greer notice pursuant to s. 87 of the NEB Act on 2 February 2017 and in this manner officially confirmed with Mr. and Mrs. Greer that the proposed pipeline route would cross their lands. NGTL stated that Mr. and Mrs. Greer were then notified by mail the week of 27 March 2017 that the Application had been filed with the Board.

In its evidence, NGTL stated that it takes the allegations of bullying seriously and that the allegations were immediately investigated. In response to Mr. and Mrs. Greer's concerns about the Project's impact to their plans for future development on their property, NGTL stated that Mr. and Mrs. Greer have not shared specific development plans with NGTL, and that NGTL understands that no permits have been applied for by Mr. and Mrs. Greer for this development. NGTL stated that because Mr. and Mrs. Greer's future development plans are still preliminary with no certainty on timing and details, Mr. and Mrs. Greer's plans are too tentative to determine that the Project would impact their future plans if pursued.

In response to concerns regarding wetland impacts, NGTL stated that a deep drilling program was completed and the results confirm NGTL's understanding of the subsurface soil layers in the WL19-WL20 fen complex. The soil investigations undertaken on NGTL's behalf indicate that the excavation of the trench will not result in water loss due to penetration of the clay layer underlying the fen complex. NGTL confirmed that it is not expected that water will be lost from the fen into lower permeable layers as a result of the Project's trench excavation.

At the oral hearing in response to requests made by Mr. Lance Greer, NGTL committed to allowing Mr. Lance Greer and/or his representative escorted access to the Project right-of-way on his land during the pipeline excavation and backfilling process during the construction phase for inspection purposes. NGTL also committed to make best efforts to obtain consent from the adjacent landowner for permission to allow Mr. Lance Greer and/or his representative escorted access to the right-of-way on the adjacent landowner's land during construction for inspection purposes.

Mr. Jeffrey A. Hartley

The Board heard from Mr. Hartley through written submissions filed with the Board on 7 and 14 June 2017, 27 and 29 September 2017, and 11 October 2017. In his submissions to the Board, Mr. Hartley outlined his concerns related to consultation, safety, economics, and the impact to the land of the proposed Project.

With respect to consultation, Mr. Hartley raised concerns about the level of detail he was provided about the Project as well as NGTL's consultation methods, stating that he felt bullied by NGTL's representatives.

With respect to routing, Mr. Hartley raised concerns that the proposed routing of the Project crosses about 200 metres east of his house, and a few metres from his barn, paddocks, and arena. He also raised concerns with the safety, economics, and the impact to the land of the proposed route. Mr. Hartley proposed a route that would continue south along the west side of Range Road 51 all the way to the proposed valve site.

In its response to Mr. Hartley, NGTL noted that the pipeline route runs adjacent to Mr. Hartley's property. Because the proposed route does not cross Mr. Hartley's lands, NGTL stated that any disturbance of lands experienced by Mr. Hartley will be temporary during construction, following which the land is returned to as close to pre-construction conditions as possible to allow for equivalent land capability and uses, including continued agricultural operations.

With respect to the suggested alternate route proposed by Mr. Hartley, NGTL stated that Mr. Hartley's proposed route would result in the pipeline crossing the McDougal Coulee at undesirable construction locations, which the proposed pipeline route avoids. NGTL stated that in addition, Mr. Hartley's proposed route would impact more local residences as well as the access to multiple residences, including Mr. Hartley's, during construction. As such, NGTL stated that the applied-for route is preferable to Mr. Hartley's proposed route.

In its response to Mr. Hartley's allegations of bullying, NGTL stated that it strongly disagreed with Mr. Hartley's allegations that NGTL or its land agents lied or bullied any of the landowners. NGTL stated that it takes Mr. Hartley's allegations seriously and immediately investigated his allegation of bullying. NGTL stated that Mr. Hartley's allegations of bullying landowners and lying were without merit and that it continues to work with landowners who have outstanding issues and concerns.

Mr. Hartley did not participate in the oral portion of the hearing.

Mr. Alan Stone

Mr. Stone filed a letter of comment with the Board on 20 July 2017. Mr. Stone is a resident of James River Bridge, AB, and lives approximately 5 km east of NGTL's Schrader Creek Compressor Station (Compressor Station) and 12 km north of the Project. In his letter, Mr. Stone expressed concern over the impact the Project will have on noise disturbances, in that increased gas through the Compressor Station as a result of the Project will result in more noise emanating from the Compressor Station.

In response to Mr. Stone's concerns about increased noise, NGTL clarified that gas transported by the Project will bypass the Compressor Station, and therefore the Project will not increase the level of noise associated with the Compressor Station. NGTL noted that this has been confirmed by a third party noise expert.

Mr. Stone did not apply to participate in the Board's hearing.

Views of the Board

The Board recognizes that public involvement is a fundamental component during each phase throughout the life cycle of a project in order to address potential impacts.

The Board notes the additional opportunities for participation in the hearing process that it made available in response to concerns raised by parties potentially affected by the Project. The Board acknowledges all of the interested parties who provided comments to the Board and acknowledges the efforts made by Mr. Lance Greer and Grace Feedyards to participate in and attend the oral portion of the hearing. The Board is satisfied that anyone potentially affected by the Project had the opportunity to voice their concerns.

With respect to the concerns raised by Mr. and Mrs. Greer and Mr. Hartley regarding land agent conduct, the Board has considered all information provided on the record during the assessment and hearing process. The Board is of the view that concerns from landowners regarding NGTL's approach to consultation have been sufficiently addressed in NGTL's response to Information Requests, its reply evidence, as well as evidence provided during the oral portion of the hearing. Further, the Board is of the view that the design and implementation of NGTL's Project-specific public and landowner consultation activities were adequate given the scope and scale of the Project. The Board encourages NGTL to continue to provide appropriate oversight and training to its land agents in order to work towards continual improvement in the performance of its land agents.

With respect to the concerns expressed regarding routing, the Board is of the view that the provision of its Route Alternative Matrix outlining 16 different route alternatives, as well as the additional details provided during the oral portion of the hearing in regards to its route selection methodology, sufficiently addressed the concerns raised. The Board notes that routing decisions involve the consideration of many factors, including archaeological, environmental and engineering factors, and consultation with landowners and Aboriginal groups. Considering all of the evidence on the record with respect to the proposed route of the pipeline, the Board has found that NGTL has undertaken sufficient analysis on routing and that its approach to selecting the proposed route, and the route itself, are reasonable. Further, the Board has found NGTL's land rights documentation and acquisition process to be acceptable.

The Board notes NGTL's commitment to ongoing engagement and expects NGTL to continue its engagement with landowners, stakeholders and Aboriginal groups throughout the lifecycle of the Project, and notes that pursuant to Condition 11, NGTL was required to submit its consultation records to the Board prior to construction and must continue to submit such records periodically during construction and in the post-construction monitoring period.

The Board also notes that Condition 12 requires NGTL to create and maintain complaint tracking records that can be audited by the Board and/or accessed by a complainant on request. Finally, the Board reminds NGTL that companies are expected to identify issues and concerns raised by landowners, stakeholders and Aboriginal groups throughout the

entire lifecycle of the Project, and work to address these issues and concerns before they become complaints.

2.3 *Engineering Matters*

In consideration of the safety and security of proposed facilities, the Board assesses whether the facilities are appropriately designed for the properties of the product being transported, the range of operating conditions, and the human and natural environment where the facilities will be located. NGTL is responsible for ensuring that the design, specifications, programs, manuals, procedures, measures, and plans developed and implemented by NGTL are in accordance with the OPR, which includes by reference the Canadian Standards Association (CSA) Standard CSA Z662 – Oil and Gas Pipeline Systems (CSA Z662). Throughout the lifecycle of a pipeline, the Board holds pipeline companies accountable for meeting their regulatory requirements through compliance verification activities such as audits, inspections, meetings, and review of condition filings, and other manuals and reports.

Regarding the operation of the Project, NGTL stated that it will implement TransCanada's comprehensive Integrity Management Program (IMP) to identify, monitor and mitigate potential integrity threats, using a risk-based methodology. TransCanada's IMP includes regular preventative maintenance activities such as in-line inspections, aerial patrols, cathodic protection monitoring, and pipeline markers at roads and watercourse crossings.

Views of the Board

The Board is of the view that the general design of the Project facilities is appropriate for the intended use, and that the facilities will be constructed in accordance with accepted standards for design, construction and operation, including the mandatory OPR and CSA Z662 requirements, as well as NGTL's standards and guidelines referenced therein. The Board reminds NGTL to apply for Leave to Open pursuant to s. 47 of the NEB Act, prior to the facilities being placed in operation.

2.4 *Environment Matters*

The Project crosses 33 wetlands, including marshes, fens, and swamps. Residual effects of the Project on wetlands could include loss of wetlands and alteration of wetland function. NGTL has proposed to minimize the removal of vegetation in wetland areas, and has incorporated several site-specific measures in the Project-specific EPP. Included in the EPP is a Peatland Materials Conservation Procedure for the wetland located in NW-12-032-05 W5M, which is of particular concern to Grace Feedyards and Mr. and Mrs. Greer. NGTL committed to having a qualified soil specialist on site during construction in wetlands to provide guidance on soil handling in the wetland areas of concern to Grace Feedyards and Mr. and Mrs. Greer, and to provide guidance during clean-up and reclamation activities. NGTL committed to returning the right-of-way to pre-construction conditions.

Further, NGTL installed eleven piezometers within the wetland at NW-12-032-05 W5M to collect baseline data on water levels, and stated it will continue to monitor the piezometers after construction for three years to verify that the Project did not negatively impact the wetlands. During the proceeding, Mr. Lance Greer submitted that if there were three years of drought, the

piezometer monitoring may not be able to determine if residual effects from the Project on the wetland exist.

Views of the Board

The Board has assessed the effects of the Project on the environment. In considering the evidence, the Board is of the view that the mitigation proposed and commitments made by NGTL will minimize the environmental effects of the Project. With respect to the piezometer monitoring, the Board was convinced that in the event of a multi-year drought, effects on the wetland may not be apparent. As such, the Board has imposed Condition 9 which requires NGTL to continue monitoring in the fourth and fifth years unless an average or above-average year of water levels has been demonstrated and the monitoring data shows that the water levels are restored to baseline conditions. The Board has also imposed Conditions 6 and 7, which requires NGTL to provide updated information related to survey results and an updated Project-specific EPP prior to the commencement of construction. The Board has also imposed Condition 10, which requires NGTL to submit post-construction monitoring reports that include all post-construction monitoring outlined in the Application and discussed during the NEB Process.

Based on the information provided by NGTL in its Application and subsequent filings, and taking into account the mitigation proposed by NGTL and the conditions imposed by the Board, the Board has determined that residual effects of the Project on the environment are likely to be localized to the Project area and reversible in the medium term. Therefore, the Board has further determined that Project effects on the environment are not likely to be significant.

2.5 *Economic Matters*

In its Application, NGTL submitted that the Project is needed to meet the requirements of four executed contracts to commence service on 1 April 2018. NGTL described the four contracts as totaling 245 TJ/d of incremental Firm Transportation - Delivery at the AB/British Columbia export delivery point. The design of the Project, NGTL submitted, is based on its Facility Design Methodology Document and the applied-for-facilities were selected as the most efficient and practical solution for the design flow requirements resulting from the incremental contracts.

NGTL described the Project as critical infrastructure that would provide service enabling shippers to access crucial markets in an efficient and costs effective manner. NGTL submitted that the evidence in the proceeding, in its view, clearly establishes that the timely approval, construction and operation of the Project is in the public interest. In support of the Project, NGTL submitted that the applied-for-facilities would improve the access that the Western Canadian Sedimentary Basin (WCSB) shippers have to markets in the western United States (U.S.). NGTL suggested that access to these markets is particularly critical during the summer season as gas demand is low in AB relative to western U.S. markets. Further, the movement of WCSB supply to downstream markets, NGTL suggested, will help to balance gas supply and demand, and support AB gas prices. NGTL submitted that an in-service date of 1 April 2018 would allow the applied-for-facilities to be operational prior to the summer season.

NuVista Energy Ltd. (NuVista), ARC Resources Ltd. (ARC), Encana Corporation (Encana) and Tourmaline Oil Corp. (Tourmaline) submitted letters of comment in support of the Application and NGTL's requested 1 April 2018 in-service date.

Views of the Board

The Board notes that no party contested the economic feasibility of the Project or NGTL's ability to finance the Project. The Board further notes that no concerns were raised with respect to abandonment funding matters relating to the Project. The Board recognizes the need for the applied-for facilities as described by NGTL and the support of the Project provided by NuVista, ARC, Encana, and Tourmaline in their letters of comment. The Board has determined that the Project is economically feasible and has no concerns with NGTL's ability to finance the Project.

3.0 Conclusion

The Board has determined that it is in the public interest to approve NGTL's Application to construct and operate the Project, pursuant to s. 58 of the NEB Act and s. 45.1 of the OPR, and to grant the relief requested with respect to paragraph 30(1)(a) and s. 31 of the NEB Act.

All of the above constitute the Board's reasons for decision for Order XG-N081-030-2017 issued on 28 December 2017. The Board directs NGTL to serve a copy of these reasons on all interested parties.



R. R. George
Presiding Member



P. Davies
Member



M. Lytle
Member