



National Energy  
Board

Office national  
de l'énergie

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# Reasons for Decision

**NOVA Gas Transmission Ltd.**

**MH-031-2017**

**May 2018**

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**Facilities, Tolls and Tariffs**

Canada<sup>131</sup>

# National Energy Board

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## Reasons for Decision

In the Matter of

**NOVA Gas Transmission Ltd.**

Application dated 20 March 2017 for the  
North Montney Mainline Variance Application  
and Sunset Clause Extension Request

**MH-031-2017**

**May 2018**

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## Glossary of Terms and Abbreviations

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ADOE	Alberta Department of Energy
Aitken Creek Section	One of the two pipeline sections of the proposed North Montney Mainline; from an interconnection with the existing Saturn section of the Groundbirch Mainline at 14-21-80-20-W6M to a point located in Unit 44, Block L, Group 94-A-13. This section includes approximately 182 km of 1,067 mm (NPS 42) pipeline.
Alliance	Alliance Pipeline Ltd.
Applicant, NGTL or the Company	NOVA Gas Transmission Ltd.
ATCO	ATCO Gas, a division of ATCO Gas and Pipelines Ltd.
ATP	Application to Participate
BC	British Columbia
BCOGC	British Columbia Oil and Gas Commission
Black Swan	Black Swan Energy Ltd.
Blueberry	Blueberry River First Nations
Board or NEB	National Energy Board
Capex	Capital Expenditure
CAPP	Canadian Association of Petroleum Producers
Certificate GC-125 or Certificate	The Certificate of Public Convenience and Necessity issued to NGTL on 11 June 2015, pursuant to Section 52 of the <i>National Energy Board Act</i> , authorizing the construction and operation the North Montney Mainline Project, subject to terms and conditions.
Commenter	A person or group who is directly affected, has relevant information or has expertise regarding the Project and who has been approved by the Board to participate in the MH-031-2017 hearing by submitting a letter of comment.
ConocoPhillips	ConocoPhillips Canada (BRC) Partnership



COS	Cost of Service; the annual cost of providing service for a toll-regulated pipeline; includes, but is not limited to its operating costs, debt servicing costs, depreciation, income and other taxes, and a reasonable return on the pipeline investors' equity investment. Also referred to as revenue requirement.
Cost causation	A toll-making principle; to the greatest extent possible, the users of a pipeline system should bear the financial responsibility for the costs caused by the provision of services and the transportation of their product through the pipeline.
Cost pool	A cost centre to maintain separately identifiable balance sheet and income accounts in which capital expenditures, revenue, expenses and income are recorded.
Decision (or Reasons for Decision)	The document prepared by the Board that contains the Board's decisions on NGTL's Variance Application and Section 58 Projects, the reasons for decisions and the conditions that would apply if approvals were granted.
DRFN	Doig River First Nation
EA	Environmental Assessment
EPP	Environmental Protection Plan
ESA	Environmental and Socio-Economic Assessment
EUG	Export Users Group, comprised of Cascade Natural Gas Corporation, Northwest Natural Gas Company and Puget Sound Energy, Inc.
FortisBC	FortisBC Energy Inc.
FT-D	Firm Transportation – Delivery
FT-R	Firm Transportation – Receipt

GH-001-2014 proceeding or hearing	The public process that the Board held to gather and test evidence in consideration of NGTL's Original North Montney Mainline Project application.
GH-001-2014 Report	The National Energy Board Report submitted to the Minister in April 2015 that set out the Board's recommendations, decisions, and reasons in respect of NGTL's application to construct and operate the North Montney Mainline, considered by the Board in the GH-001-2014 proceeding. The majority of the Board recommended that a Certificate of Public Convenience and Necessity be issued under section 52 of the <i>National Energy Board Act</i> . The Board also issued Orders XG-N081-010-2015 and TG-002-2015.
GHG	Greenhouse Gas
Intervenor	A party (e.g. individual(s), company or group) who has applied to participate in the hearing and has been granted standing by the Board to participate as an Intervenor; has rights and obligations in the proceedings as set out in the Hearing Order.
IR or Information Request	A written question to an applicant or Intervenor in relation to its evidence, filed by the Board, an Intervenor or the applicant during the written portion of the hearing pursuant to the deadlines set out by the Board, to which a response must be subsequently filed.
Kahta Section	One of the two pipeline sections of the proposed North Montney Mainline; NGTL's Variance Application proposed to shorten the length of the Kahta Section from 119 km, of 1,067 mm (NPS 42) pipeline, to 24 km; from a point located in Unit 44, Block L, Group 94-A-13 and traverse to a point located in Unit 30, Block K, Group 94-G-7.
LAA	Local Assessment Area
LNG	Liquefied Natural Gas
Long Term Phase	Starts at the end of the Transition Period, as defined in the GH-001-2014 Report.
Mackie Creek Interconnection	A point on the Original NMML Project that NGTL proposed as a 1 delivery point through which gas would flow to the PRGT pipeline; not included in the Variance Facilities.

NEB	National Energy Board
NEB Act or Act	<i>National Energy Board Act</i> , R.S.C. 1985, c. N-7, as amended.
NGTL	NOVA Gas Transmission Ltd.
NGTL System or System	NGTL's natural gas pipeline system comprised of approximately 25,000 km of pipeline, associated compression, and other facilities located in Alberta and British Columbia; subject to federal jurisdiction and regulation by the Board.
NIT	NOVA Inventory Transfer; a natural gas trading hub.
NMML	North Montney Mainline, comprised of the Aitken Creek and Kahta Sections.
NMML Facilities	NGTL's proposal to construct and operate both the Variance Facilities and the Section 58 Projects.
NMPG	North Montney Producers Group, comprised of ARC Resources Ltd., Canbriam Energy Inc., Kelt Exploration LNG Ltd., Painted Pony Energy Ltd. and Tourmaline Oil Corp.
NPS	Nominal Pipe Size
NPV	Net Present Value
NPV COS	Net Present Value of Forecast Cost of Service
NPV Revenue	Net Present Value of Forecast Revenue
OPR	<i>National Energy Board Onshore Pipeline Regulations</i> , SOR/99-294, as amended.
Original Project or Original NMML Project	The project assessed by the Board during the GH-001-2014 proceeding and approved under Certificate GC-125 and Order XG-N081-010-2015, known as the North Montney Mainline, an extension of the NGTL System to transport sweet natural gas from the North Montney area in northeastern British Columbia.
Original Toll Order	Toll Order TG-002-2015, as amended
OTE	Oral Traditional Evidence
Part IV	Part of the NEB Act entitled "Traffic, Tolls and Tariffs"

Participant	A party (e.g. individual(s), company or group) who has applied to participate in the hearing and who has been granted standing to participate by the Board; includes the Applicant (NGTL), Intervenor and Commenters.
Parties	Includes the Applicant and Intervenor but does not include Commenters.
PDA	Project Development Area
PEA	Project Expenditure Authorization; an agreement between NGTL and a customer, prescribing terms under which new facilities are constructed on the NGTL System to meet the customer's transportation service request; remains in effect throughout Project development and construction phases of the Project and terminates when facilities are completed and put into service.
PFP	Participant Funding Program
PMC Group	Peyto Exploration and Development Corp., Modern Resources Inc., and Canlin Resources Partnership
PNW LNG Project or PNW LNG Facility	Pacific NorthWest Liquefied Natural Gas Project; a liquefied natural gas export facility that was proposed to be built by Pacific NorthWest LNG Limited Partnership to be located at the Lelu Island on the coast of British Columbia, at the terminus of the Prince Rupert Gas Transmission pipeline; cancelled as of 25 July 2017.
Post-Provisional Phase	Begins at the end of the Provisional Period.
PPTM	Post-Provisional Tolling Methodology
Progress	Progress Energy Canada Ltd.
Project Shippers	Progress, Kelt Exploration (LNG) Ltd., Aitken Creek Gas Storage ULC, Painted Pony Petroleum Ltd., ARC Resources Ltd., Saguaro Resources Ltd., Black Swan Energy Ltd., Tourmaline Oil Corp., Canbriam Energy Inc., UGR Blair Creek Ltd. and ConocoPhillips Canada BRC Partnership.
Provisional Period	A period of one year, starting from the date Governor in Council approves amendments to the Certificate for the Variance Facilities.
RAA	Regional Assessment Area

Rolled-in	Combining costs from various facilities into one cost pool with, for example, one joint revenue requirement for toll making purposes.
Saturn	Saturn Receipt Point, which is near the northern terminus of NGTL's existing Groundbirch Mainline.
Section 58 Projects	<p>Those facilities in respect of which NGTL filed (seven) applications with the Board pursuant to section 58 of the NEB Act, seeking permission to construct and operate eight receipt meter stations, namely the:</p> <ol style="list-style-type: none"> <li>1. Altares South Receipt Meter Station</li> <li>2. Gundy West Receipt Station</li> <li>3. Aitken Creek South Meter Station</li> <li>4. Aitken Creek West No. 2 Meter Station</li> <li>5. Mackie Creek North Receipt Meter Station</li> <li>6. Old Alaska Receipt Meter Station</li> <li>7. Townsend Receipt Meter Station and Townsend No. 2 Receipt Meter Station</li> </ol>
SFN	Saulteau First Nations
Stand-alone	Identifying and maintaining costs for certain facilities separately, e.g., a separate cost pool for toll making purposes.
T-North	Toll Zone 3 on the Westcoast Transmission System
Transition Period	Starts when gas begins to flow on the Project and expires when North Montney gas production is first delivered at the Mackie Creek Interconnection, as defined in the GH-001-2014 Report.
US	United States

Variance Application	<p>The application filed with the Board by NGTL on 20 March 2017 pursuant to Section 21 of the NEB Act seeking:</p> <ol style="list-style-type: none"> <li>1. a variance to Condition 4 of the NMML Certificate and Condition 4 of Order XG-N081-010-2015 to allow gas to flow through the Variance Facilities to the NOVA Inventory Transfer (NIT) hub; and</li> <li>2. an extension of the sunset clause in Condition 45 of the Certificate GC-125 and Condition 14 of Order XG-N081-010-2015 respectively: <ol style="list-style-type: none"> <li>a. on an interim basis pending adjudication of the Variance Application; and</li> <li>b. for one year from the date that the final determination is made regarding the Variance Application.</li> </ol> </li> <li>3. an amendment to Schedule A of the Certificate GC-125 to increase the size of meter and yard pipe diameter for the Blair Creek East Receipt Meter Station.</li> </ol>
Variance Facilities	<p>A subset of those facilities approved in the NMML Certificate or NMML Order, specifically:</p> <ol style="list-style-type: none"> <li>1. Aitken Creek Section (182 km NPS 42)</li> <li>2. Kahta Section (southern-most 24 km NPS 42)</li> <li>3. Two compressor stations: <ol style="list-style-type: none"> <li>a. the Saturn Compressor Station (one 15 MW unit) that will be located on the Aitken Creek Section.</li> <li>b. the Groundbirch Compressor Station (two 15 MW units) located on the existing Groundbirch Mainline.</li> </ol> </li> </ol>
WCSB	Western Canadian Sedimentary Basin
WEG	Western Export Group, comprised of Avista Corporation, Cascade Natural Gas Corporation, FortisBC Energy Inc., Northwest Natural Gas Company, Pacific Gas and Electric Company, Portland General Electric Company, Puget Sound Energy Inc., The Sacramento Utility District, San Diego Gas and Electric Company/Southern California Gas Company, and Sierra Pacific Power Company
Westcoast	Westcoast Energy Inc., carrying on business as Spectra Energy Transmission
WMFN	West Moberly First Nations

## Symbols, Formulas and Units

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\$	Dollars (CAD)
%	Percentage
$10^{12} \text{ m}^3$	Trillion cubic metres
$10^3 \text{ m}^3$	Thousand cubic metres
$10^6 \text{ m}^3$	Million cubic metres
$10^6 \text{ m}^3/\text{d}$	Million cubic metres per day
bbls/d	Barrels per day
Bcf	Billion cubic feet
Bcf/d	Billion cubic feet per day
cents/Mcf	Cents per thousand cubic feet
GJs/d	Giga joule (one billion joules) ( $1 \times 10^9$ joules) per day
ha	Hectare
km	Kilometre
m	Metre
Mcf	Thousand cubic feet
MMBoe	Million Barrels of Oil Equivalent
MMcf/d	Million cubic feet per day
MW	Megawatt
Tcf	Trillion cubic feet

## **Recital**

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**IN THE MATTER OF** the *National Energy Board Act*, R.S.C. 1985, c. N-7 as amended and the Regulations made thereunder;

**IN THE MATTER OF** an application dated 20 March 2017 by NOVA Gas Transmission Ltd. (NGTL) pursuant to section 21 of the *National Energy Board Act* for variances to Condition 4 of Certificate GC-125 (Certificate) and Condition 4 of Order XG-N081-010-2015 for a subset of the North Montney Mainline facilities, an extension to the sunset clauses included in the Certificate and Order, and approval to make minor changes to the facilities approved in the Certificate; filed with the National Energy Board under file No. OF-Fac-Gas-N081-2013-10 06;

**IN THE MATTER OF** seven applications dated 18 May 2017 and 25 May 2017 by NGTL pursuant to subsection 58(1) of the NEB Act, for the construction and operation of eight meter stations, filed under the following files: OF-Fac-Gas-N081-2017-05 01; OF-Fac-Gas-N081-2017-06 01; OF-Fac-Gas-N081-2017-07 01; OF-Fac-Gas-N081-2017-08 01; OF-Fac-Gas-N081-2017-09 01; OF-Fac-Gas-N081-2017-10 01; OF-Fac-Gas-N081-2017-11 01;

**IN THE MATTER OF** National Energy Board Hearing Order MH-031-2017 dated 26 October 2017;

**HEARD** in Calgary, Alberta, on 22 to 26 January 2018 and 6 February 2018; and in Dawson Creek, British Columbia, on 30 January 2018 to 1 February 2018;

**BEFORE:**

P. Davies	Presiding Member
S. Kelly	Member
D. Hamilton	Member

**Appearances**

S. Duncanson  
M. Graham  
K. Thrasher

**Participants**

NOVA Gas Transmission Ltd.

**Witnesses**

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K. Brink  
D. Charlton  
D. Coolidge  
P. Keys  
M. Garner  
C. MacMichael  
J. Platt  
J. J. Reed  
M. Ritsch  
B. Trout



B. Troicuk	Alliance Pipeline Ltd.	
L. E. Smith, Q.C. D. Stone	ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.	
D. Wood	Black Swan Energy Ltd.	M. Méreau D. Shirra
E. Hume	Blueberry River First Nations	
N. Schultz	Canadian Association of Petroleum Producers	
A. Ross	ConocoPhillips Canada (BRC) Partnership	
A. Rana	Doig River First Nation	G. Haines
F. J. Weisberg	Export Users Group	
J. H. Smellie	FortisBC Energy Inc.	
K. Slipp	North Montney Producers Group <ul style="list-style-type: none"> <li>• ARC Resources Ltd.</li> <li>• Canbriam Energy Inc.</li> <li>• Kelt Exploration Ltd.</li> <li>• Painted Pony Energy Ltd.</li> <li>• Tourmaline Oil Corp.</li> </ul>	
E. W. Dixon	PMC Group <ul style="list-style-type: none"> <li>• Canlin Energy Corporation</li> <li>• Modern Resources Inc.</li> <li>• Peyto Exploration &amp; Development Corp.</li> </ul>	
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K. Tokawa N. Owens	Saulteau First Nations	J. D. Hughes
M. Sawyer	Sawyer, Michael	

D. Davies, Q.C. R. Kolber	Westcoast Energy Inc., carrying on business as Spectra Energy Transmission	D. Christie G. Engbloom G. Johnson R. Priddle
R. Twyman	Western Export Group	
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K. Gunn	Wilp Luutkudziiwus/Charlie Wright	
C. Gagné M. Yuzda	National Energy Board	

### **Oral Traditional Evidence**

Doig River First Nation	Chief T. Makadahay Elder M. Davis G. Oker
-------------------------	-------------------------------------------------

### **Written Final Argument**

NOVA Gas Transmission Ltd.  
Aitken Creek Gas Storage ULC  
Alberta Department of Energy  
ATCO Gas, a division of ATCO Gas and Pipelines Ltd.  
Black Swan Energy Ltd.  
Blueberry River First Nations  
Canadian Association of Petroleum Producers  
ConocoPhillips Canada (BRC) Partnership  
Doig River First Nation  
Export Users Group  
FortisBC Energy Inc.  
North Montney Producers Group  
PMC Group  
Progress Energy Canada Ltd.  
Saulteau First Nations  
Sawyer, Michael  
West Moberly First Nations  
Westcoast Energy Inc., carrying on business as Spectra Energy Transmission  
Western Export Group  
Wilp Luutkudziiwus/Charlie Wright

## Chapter 1

# Overview of Decisions

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The Board considered and weighed all of the evidence presented in the MH-031-2017 hearing before making its decisions as described below. These *Reasons for Decision* (Reasons, or Decision) constitute the National Energy Board's (NEB or Board) decisions and reasons in respect of NOVA Gas Transmission Ltd.'s (NGTL) application to extend the sunset clause and vary Condition 4 of Certificate GC-125 (Variance Application), as well as NGTL's applications for eight additional meter stations (Section 58 Projects), all considered by the Board in the MH-031-2017 proceeding.

This overview is provided for convenience only; the Board's detailed consideration of the issues is contained in the following chapters. If there is a discrepancy between the overview and the body of the Decision, the wording and determinations set out in the chapters that follow take precedence.

## 1.1 Decisions

### 1.1.1 Variance Application

The Board finds that there are new facts and changed circumstances that have occurred since the GH-001-2014 proceeding. Although the Pacific NorthWest Liquefied Natural Gas Project is not going ahead, gas producers in the North Montney have sought incremental service. As such, the Board finds that there is a need for the facilities described in the Variance Application (the Variance Facilities<sup>1</sup>) and that the Variance Facilities are economically feasible.

The Board, pursuant to section 21 of the *National Energy Board Act* (NEB Act), has decided to vary Certificate of Public Convenience and Necessity GC-125 (Certificate) and Order XG-N081-010-2015 as follows:

- The requirements of Condition 4 of the Certificate are rescinded for the facilities described in the Variance Application;
- The sunset clauses in Condition 45 of the Certificate and Condition 14 of Order XG-N081-010-2015 are extended for one year following the Governor in Council's approval of the Variance Application; and
- Schedule A is amended to reflect the specifications of the Blair Creek East Receipt Meter Station.

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<sup>1</sup> The Variance Facilities are described in Chapter 2 of these Reasons.

### **1.1.2 Section 58 Projects**

The Board finds that, with the variance of the Certificate as requested in the Variance Application, the construction and operation of the eight meter stations are in the public interest.

The Board finds that, with the implementation of the proposed mitigations and the Board's imposed conditions, any potential adverse impacts on the interests, including rights, of affected Aboriginal groups, as a result of the Section 58 Projects are not likely to be significant and can be effectively addressed.

The Board finds that, with the implementation of the environmental protection procedures and mitigation, as well as the Board's imposed conditions, the Section 58 Projects are not likely to cause significant adverse environmental effects.

The Board is satisfied that the general design of the Section 58 Projects is appropriate for their intended use and that they will be constructed and operated in accordance with all applicable legislation and standards.

The Board, pursuant to section 58 of the NEB Act, has decided to issue Order XG-N081-015-2018 (attached as Appendix II), exempting NGTL from the requirements of paragraph 30(1)(a) and section 31 of the NEB Act, subject to conditions, the effect of which is to approve the meter stations.

### **1.1.3 Part IV Tolling Methodology**

The Board finds that, given the new facts and changed circumstances, Toll Order TG-002-2015, as amended, is not appropriate for the North Montney Mainline (NMML) facilities.

The Board finds that applying NGTL's existing tolling methodology to the NMML Facilities over the long term would not result in just and reasonable tolls. Such tolls would neither adhere to the principle of cost causation nor foster the goal of economic efficiency.

The Board directs NGTL to establish a separate cost pool and maintain separate accounting records for the NMML Facilities. For a Provisional Period,<sup>2</sup> the Board will allow NGTL to calculate its revenue requirement by combining the incremental revenue requirement of the NMML Facilities with the revenue requirement of the existing NGTL System. NGTL may calculate tolls on the NMML Facilities using its existing tolling methodology; however, it must not apply the toll ceiling to Firm Transportation – Receipt Rates on the NMML Facilities.

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<sup>2</sup> Defined by the Board in Chapter 3 of this Decision (or "these Reasons").

The Board anticipates that prior to the expiry of the Provisional Period, NGTL may apply to the Board for approval of a revised tolling methodology which would apply to the NMML Facilities. If NGTL does not apply to the Board for, and receive approval of, a revised tolling methodology by the end of the Provisional Period, NGTL must implement stand-alone tolling on the NMML Facilities. More detailed information is contained in Chapter 3, Tolling Matters, and Order TG-003-2018 (attached as Appendix III).



P. Davies  
Presiding Member



D. Hamilton  
Member



S. Kelly  
Member

Calgary, Alberta  
May 2018

## Chapter 2

# Introduction and Overview of Hearing

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## 2.1 The Variance Application

On 20 March 2017, NGTL filed an application asking the Board for approval of a variance of the Certificate and Order XG-N081-010-2015 for the Original Project pursuant to Section 21 of the NEB Act.

NGTL requested variances to Condition 4 of the Certificate and Condition 4 of Order XG-N081-010-2015 to enable NGTL to proceed with specific components of the presently-approved North Montney Mainline (NMML) independent of any final investment decision related to liquefied natural gas (LNG) exports from the west coast of Canada. NGTL requested the following specific relief to vary the Certificate and Order XG-N081-010-2015:

- Remove the requirements of Condition 4 for the Variance Facilities, which are a subset of those approved in the Certificate and Order XG-N081-010-2015 for the Original Project. Specifically, the Variance Facilities are comprised of:
  - Aitken Creek Section (182 km NPS 42)
  - Kahta Section (southern-most 24 km NPS 42, shortened by 95 km)
  - Two compressor stations:
    - The Saturn Compressor Station (one 15 MW unit) that will be located on the Aitken Creek Section.
    - The Groundbirch Compressor Station (two 15 MW units) located on the existing Groundbirch Mainline.
- Extend the sunset clause in Condition 45 of the Certificate and Condition 14 of the Order XG-N081-010-2015:
  - on an interim basis pending adjudication of the Variance Application; and
  - for one year from the date that the final determination is made regarding the Variance Application.
- Amend Schedule A to the Certificate to increase the size of meter and yard pipe diameter for the Blair Creek East Receipt Meter Station; and
- Such further and other relief as NGTL may request or the Board may consider necessary.

## 2.2 Section 58 Projects

NGTL filed applications separately for exemptions from paragraph 30(1)(a) and section 31 of the NEB Act for the following receipt meter stations, pursuant to section 58 of the NEB Act:

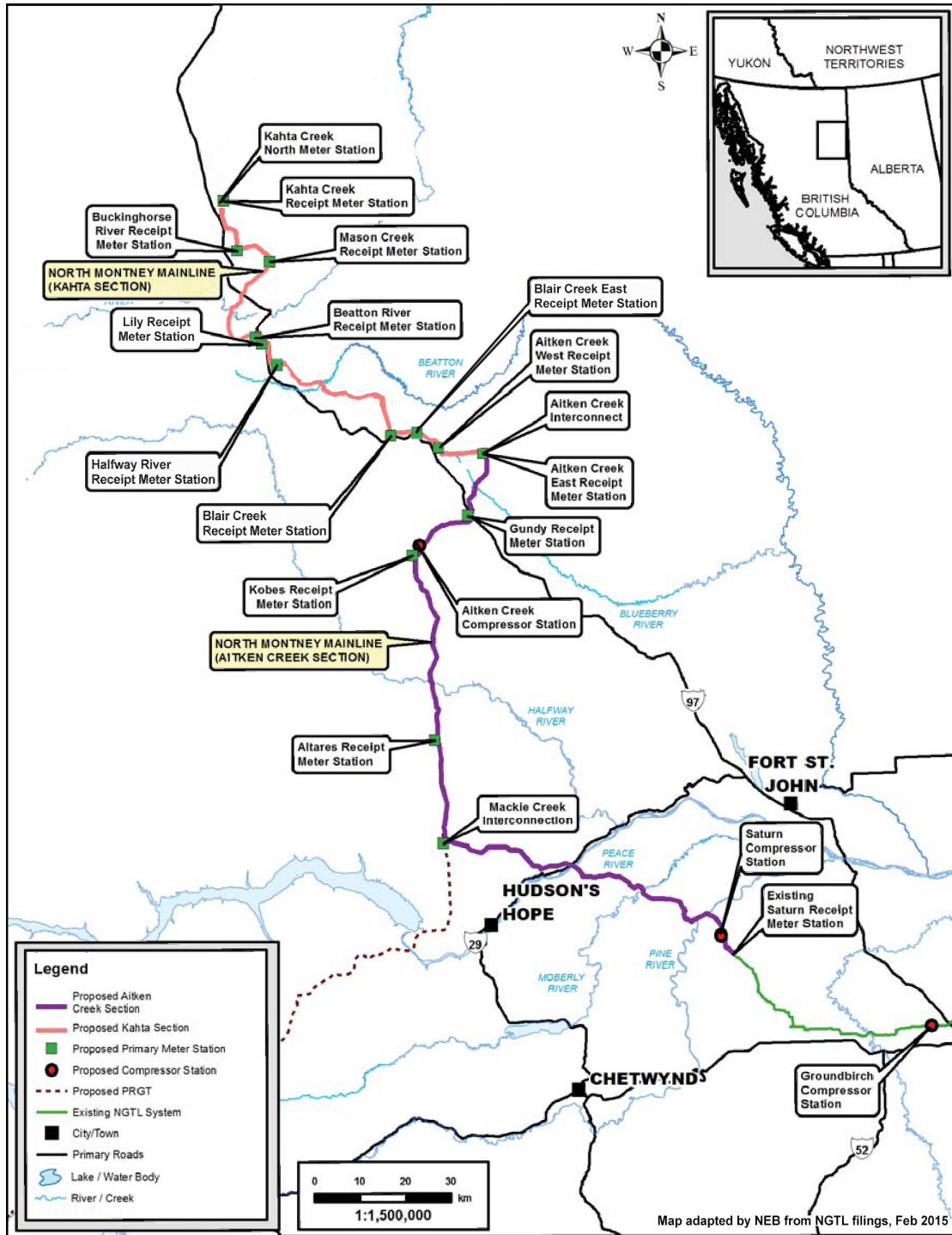
- Altares South Receipt Meter Station
- Gundy West Receipt Station
- Aitken Creek South Meter Station
- Aitken Creek West No. 2 Meter Station
- Mackie Creek North Receipt Meter Station
- Old Alaska Receipt Meter Station
- Townsend Receipt Meter Station and Townsend No. 2 Receipt Meter Station

Together, the Variance Facilities and Section 58 Projects are referred to as the NMML Facilities in this Decision.

The Board created Figure 2.1 to provide a general indication of the Original NMML Project features. Figure 2.2 shows the NMML Facilities as proposed by NGTL in its Variance Application, including amendments to the route in the Kahta Section of the NMML and the Section 58 Projects.

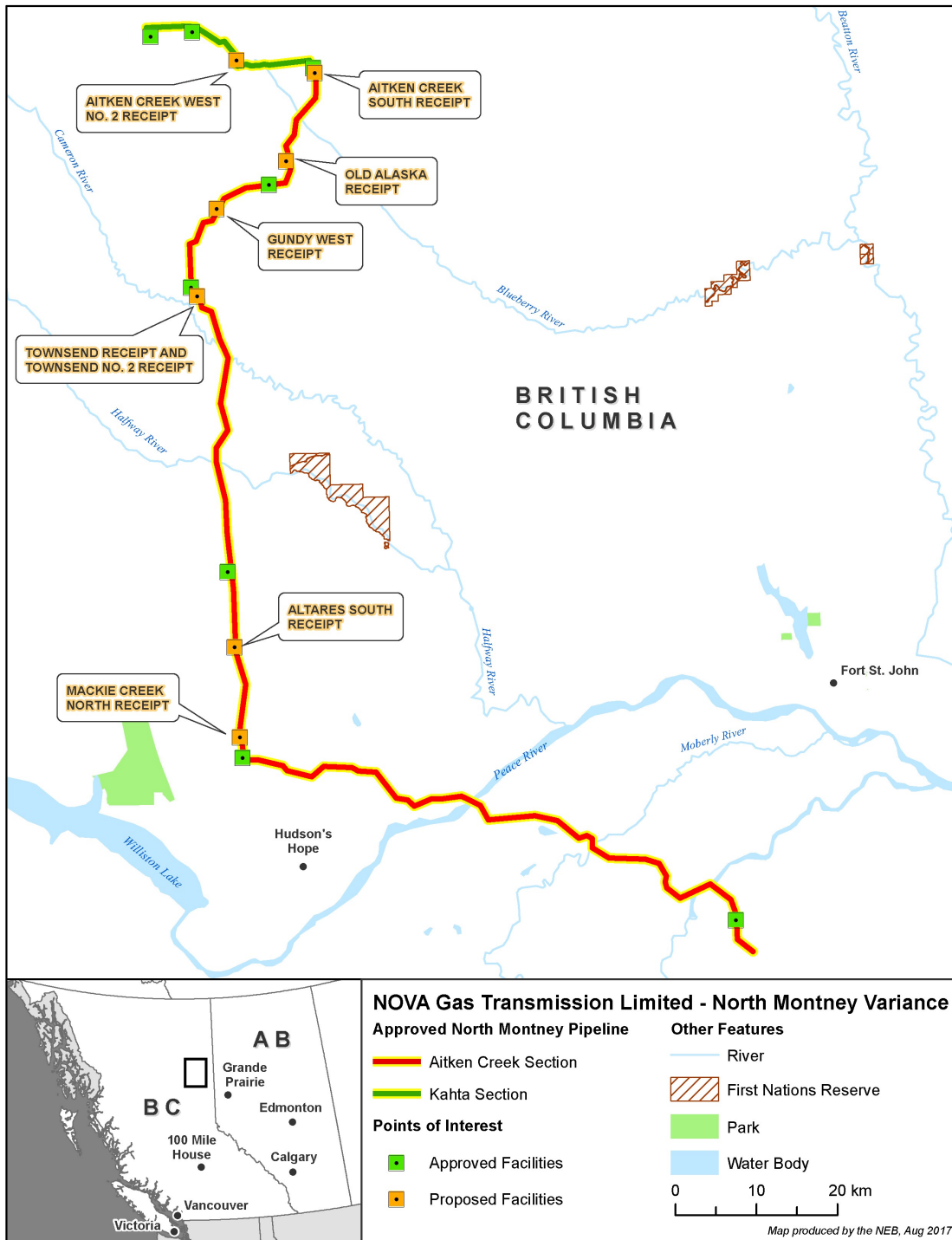
The Board's 7 September 2017 Notice of Hearing stated that the Board had sufficient information to establish a hearing process, and it would issue its report no later than 7 December 2018. It also stated that, given that the Section 58 Projects are related to the Variance Application, the Board would consider them at the same time as the Variance Application under MH-031-2017 (OF-Fac-Gas-N081-2013-10 06).

Figure 2.1: Original NMML Project Location with Overview of Facilities





**Figure 2.2: NMML Facilities - The Variance Facilities and Section 58 Projects**



## **2.3 Original NMML Project Background**

The Original NMML Project was a proposal to build and operate approximately 301 km of large diameter (up to NPS 42) natural gas pipeline in British Columbia's (BC) Peace River Regional District, along with associated metering facilities, valve sites and possible compression facilities. The proposed pipeline would consist of two sections: Aitken Creek and Kahta. Downstream, it would connect with the existing Groundbirch Mainline (Saturn Section), located about 35 km southwest of Fort St. John, BC, and, upstream, to a location about 187 km northwest of Fort St. John, BC. Once operational, it was intended to also connect to the proposed Prince Rupert Gas Transmission Line at the Mackie Creek Interconnection in order for gas supply from the North Montney area to reach the Pacific NorthWest LNG Project (PNW LNG Facility), a proposed LNG liquefaction and export facility, to be situated on the coast of BC.

The Board proceeded under Hearing Order GH-001-2014 to consider the application for the Original NMML Project. The GH-001-2014 hearing consisted of both written and oral portions. The Board conducted a thorough assessment of the issues, which included consideration of any impacts on Aboriginal interests, including rights, and an Environmental Assessment (EA). The evidentiary portion of the GH-001-2014 hearing ended on 25 November 2014, and was followed by the submission of written final and reply argument. The record closed on 5 December 2014. All documents submitted in the GH-001-2014 hearing are available on the Board's website at [www.neb-one.gc.ca](http://www.neb-one.gc.ca).

### **2.3.1 The Board's Recommendation**

The Board recommended that the Governor in Council approve the Original NMML Project on 15 April 2015. The Governor in Council approved the project on 10 June 2015 and directed the Board to issue Certificate GC-125. The Certificate included Condition 4, which is one of the subjects of NGTL's Variance Application. The Board also issued Order XG-N081-010-2015 in relation to certain temporary infrastructure associated with the Original Project.

## **2.4 MH-031-2017 Hearing**

### **2.4.1 NEB Hearing Order**

The Board received NGTL's Variance Application on 20 March 2017. On 19 April 2017, the Board established a comment period for interested persons to provide comments to the Board about NGTL's Variance Application and suggestions about the process it should use to assess it. The Board received 32 letters of comment. The Board received NGTL's applications for the Section 58 Projects on 18 and 25 May 2017.

Following its review of the Variance Application and the comments received during the comment period, the Board issued its Notice of Hearing on 7 September 2017, which stated that it was satisfied that NGTL had demonstrated changed circumstances and new facts, as set out in subparagraph 44(2)(b)(ii) of the *National Energy Board Rules of Practice and Proceeding, 1995*. The Board decided that the Variance Application and the Section 58 Projects should be considered by way of a hearing under subsection 24(3) of the NEB Act.

The Notice of Hearing included the List of Issues that the Board would consider during its assessment of NGTL's Application. The List of Issues is included in Appendix I of these Reasons for Decision.

On 26 October 2017, the Board issued MH-031-2017 Hearing Order which provided an overview of the hearing process steps, as well as guidance to Participants.

#### **2.4.2 Hearing Participation**

Pursuant to section 55.2 of the NEB Act, the Board must determine who may participate in a hearing for a project before the Board. To be eligible to participate, interested persons or groups must request participation and demonstrate in their application to the Board that:

- they are directly affected by the proposed project; or
- they have relevant expertise or information that will assist the Board in making its decision and recommendation in respect to a proposed project.

In its 7 September 2017 Notice of Hearing, the Board established the Application to Participate (ATP) process and granted Pre-Decided Standing to all comment process participants but required them to register to participate prior to the ATP deadline of 19 October 2017.

The Board received 40 ATPs for the MH-031-2017 proceeding. Of those ATPs, 27 were persons granted Pre-Decided Standing who registered their participation.

Of the 40 ATPs received by the Board:

- 36 requested and were granted Intervenor status;
- 4 requested and were granted Commenter status.

#### **2.4.3 Written Hearing Process**

The MH-031-2017 hearing consisted of both written and oral portions. The written portion of the hearing included the following:<sup>3</sup>

- NGTL's application, additional/supplemental and reply evidence;
- Intervenors' written evidence;
- Commenters' letters of comment;
- Board's information requests (IRs) to NGTL and Intervenors, and the corresponding responses;
- NGTL's and Intervenors' IRs to each other, and the corresponding responses;

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<sup>3</sup> This is not an exhaustive list. These steps are not listed in chronological order.

- Notices of Motion and responses;
- NGTL's and Intervenors' final argument;
- Intervenors' reply arguments; and
- NGTL's final reply.

#### **2.4.4 Oral Hearing Process**

The oral portion of the hearing was divided into two segments: the first, related to Part A of the List of Issues (Appendix I), was held in Calgary, Alberta on 22 to 26 January 2018; and the second, related to Part B of the List of Issues (Appendix I), was held in Dawson Creek, BC from 30 January to 1 February 2018. Oral Final Argument began in Dawson Creek, BC on 1 February 2018 and concluded in Calgary, Alberta on 6 February 2018.

The evidentiary portion of the MH-031-2017 hearing ended on 31 January 2018, and was followed by the submission of written final and reply argument. The record closed on 20 February 2018.

#### **2.4.5 Participant Funding**

Independent of the Panel's hearing process, on 7 September 2017, the Participant Funding Program (PFP) announced an allocation of \$250,000 to facilitate participation of individuals, Aboriginal groups, landowners, and non-industry not-for-profit groups in the MH-031-2017 hearing. The PFP received five funding applications from Aboriginal groups and one from an individual requesting a total of \$403,420. After reviewing the applications, the PFP recommended awarding funds to all six applicants. The Executive Vice President, Regulatory approved the recommendation and the total funds allocated to the hearing was increased to \$403,420. More information on PFP, including the funding report for this hearing, can be found on the Board's web-site at [www.neb-one.gc.ca/pfp](http://www.neb-one.gc.ca/pfp)

#### **2.4.6 Decisions made by the Board**

These Reasons contain the Board's decisions regarding NGTL's Variance Application and the Section 58 Projects. As explained in **Chapter 1**, the Board considered and weighed all of the evidence before making its decisions, which are summarized in that Chapter.

The Board notes the importance of the whole Reasons for Decision and cautions readers against reading individual chapters in isolation. A significant amount of time during the oral portion of the hearing was focussed on tolling matters, so these Reasons begin with the Board's findings on tolling in **Chapter 3**. Economic feasibility and the need for the NMML Facilities are discussed in **Chapter 4**. In **Chapter 5**, the potential impacts on Aboriginal interests, including rights, are discussed. **Chapter 6** discusses the potential environmental effects of the Section 58 Projects, and **Chapter 7** discusses the Section 58 Projects more generally.

## Chapter 3

# Tolling Matters

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### 3.1 Views of NGTL

#### 3.1.1 Changed Circumstances and Part IV Issues

In the GH-001-2014 proceeding, NGTL proposed the Original NMML Project in response to demand from Progress Energy Canada Ltd. (Progress) to connect large volumes of incremental gas supply from the North Montney area to the existing NGTL System and the Pacific NorthWest Liquefied Natural Gas Project (PNW LNG Facility) via the proposed Prince Rupert Gas Transmission pipeline.

The Board found that the Original NMML Project would be used in two distinct phases. First, during the Transition Period, Progress planned to sell its North Montney production in the NOVA Inventory Transfer (NIT) market, flowing gas on to the existing NGTL System. Second, during the Long Term Phase, Progress would deliver the vast majority of its gas to the PNW LNG Facility via an interconnection with the Prince Rupert Gas Transmission pipeline. Progress would continue to have access to the existing NGTL System and the NIT market to manage fluctuations in its gas production, its PNW LNG Facility operations, and offshore liquefied natural gas (LNG) markets. The bi-directional capability of the Original NMML Project would facilitate Progress receiving or delivering gas on the existing NGTL System at the Saturn terminus of the Groundbirch Mainline.

On 25 July 2017, Pacific NorthWest LNG Limited Partnership announced that the PNW LNG Facility would not proceed as previously planned.

NGTL submitted that the NMML Facilities are needed independent of LNG demand. Currently, the Variance Application is underpinned by 1,485 MMcf/d of new 20-year Firm Transportation – Receipt (FT-R) service contracts and Project Expenditure Authorization (PEA) agreements that have been executed with 11 shippers. NGTL submitted that gas received on the NMML Facilities would be transported and commingled with gas on the existing NGTL System and be made available for delivery through NIT.

The NMML Facilities are no longer associated with LNG development. NGTL stated that the facts and circumstances associated with the NMML Facilities are sufficiently different from those associated with the Original NMML Project, such that rolled-in tolling and applying the same toll design to the NMML Facilities that exists on the NGTL System is appropriate for both the Transition Period and the Long-Term Phase.

However, NGTL is not seeking to vary or amend Toll Order TG-002-2015, as amended, (Original Toll Order) nor is it seeking any Part IV Relief as part of the Variance Application. As required by the Original Toll Order, NGTL proposed it would maintain a separate NMML cost pool, compute tolls using the sum of the NMML and NGTL System revenue requirements during

the Transition Period, and record the difference between the revenues and costs of the Original NMML Project in a deferral account for disposition following the end of the Transition Period. Prior to the end of the Transition Period, NGTL proposed that it would return to the Board for approval of a tolling methodology for the Long-term Phase of the NMML Facilities.

NGTL submitted that maintaining the Original Toll Order would also provide the Board with tangible evidence of costs and revenues on the NMML Facilities for a period of four years which, based on NGTL's forecast, is expected to demonstrate that revenues on the NMML Facilities exceed costs and that the Board's concerns over excessive cross-subsidization are in fact not applicable, such that the tolling methodology implemented during the Transition Period can and should be continued over the long term.

### **3.1.2 Tolling Methodology**

While NGTL did not request any Part IV relief, as described above, NGTL recognized that the Board may conclude that there was no longer a need for two time periods supported by a deferral account. In this case, NGTL requested that the Board find it appropriate for NGTL to include the NMML Facilities in the determination of the NGTL System Revenue Requirement and to calculate the tolls for the NMML Facilities using the same methodology used to calculate tolls for all other facilities on the NGTL System.

To support this view, NGTL filed evidence to demonstrate that the Board's concerns regarding cost causation, cross subsidization, and risk have been mitigated by changed circumstances.

### **3.1.3 Cost Causation**

NGTL stated that existing shippers will not be unreasonably covering a portion of the cost of service (COS) of the NMML Facilities, but rather the incremental revenues would reasonably cover the incremental costs of the proposed facilities, and shippers on the NMML Facilities would be reasonably contributing to the cost of the existing NGTL System, thus mitigating cross-subsidization.

NGTL submitted that the receipt revenue on the NMML Facilities would now fully cover the cost of the NMML Facilities. As a result, even if none of the gas received results in incremental delivery on the existing NGTL System, which NGTL submitted is a conservative assumption, the direct revenue from service on the NMML Facilities would still fully cover the cost of the NMML Facilities. During the first four years of operation, the NMML Facilities are expected to result in \$554 million in direct FT-R revenue, exceeding the \$527 million increase in NGTL System COS by more than \$27 million and resulting in a meaningful contribution to the existing NGTL System. The NMML Facilities are also expected to result in more revenue than costs over the long term. The revenue associated with the NMML Facilities over 20 years is expected to be \$3.19 billion, while the NMML Facilities COS over the contract period is expected to be \$2.88 billion, resulting in a net benefit to the existing NGTL System of \$317 million, or an annual average of approximately \$22 million.

NGTL submitted that it is of the view that all NMML Facilities FT-R contracts and associated revenues should be considered incremental to what the total System demand charges would be

absent the NMML contracts. On average, production from existing wells in the Western Canadian Sedimentary Basin (WCSB) is declining by 18 per cent each year, which results in approximately  $56.7 \times 10^6 \text{ m}^3/\text{d}$  (or approximately 2 Bcf/d) of new supply being required annually to meet existing market requirements on the System. Given this significant annual production decline, it is essential that NGTL continues to facilitate the connection of new economic supply supported by long term FT-R contracts, not only to replace existing well declines, but also replace the associated revenue which will decline as contracts non-renew in areas of production declines. NGTL also observed that pursuant to the provision of the NGTL Tariff, shippers pay demand charges for their firm contracts regardless of whether they choose to physically flow gas. The NMML contracts are in addition to existing contracts and will therefore result in incremental revenues.

### **3.1.4 Cross-Subsidization**

NGTL submitted that the Board's concerns regarding cross-subsidization in the GH-001-2014 Report have been mitigated by the facts that support the Variance Application.

The cost estimates for the NMML Facilities are now classified as Class 4, with a potential variance of minus 15 to plus 20 per cent and the reduced scope of the NMML Facilities relative to the Original NMML Project contribute to reducing cost estimating concerns. Further, as no deliveries at the Mackie Creek Interchange are now expected, there is no longer any expectation of resulting irregular receipt tolls or change in distance path calculations associated with the Variance Facilities.

In addition, the FT-R contractual underpinning for the NMML Facilities has been enhanced. In the original application, the average contract term for FT-R was 10 years, with 25 per cent in secondary term that could be transferred to non-NMML receipt locations. FT-R contracts are now for a 20-year term, and unlike other FT-R service on the NGTL System, the NMML FT-R restricted secondary term limits transfers to other receipt locations on the NMML and prohibits transfers outside of the NMML Facilities.

NGTL stated that the FT-R contract quantity associated with the Facilities will also result in a change to the estimated revenue over the contract terms. NGTL provided Table 3.1, detailing the expected revenues and the capital cost and COS recovery ratios based on the capital cost of the Facilities and new stations, as well as associated FT-R contract quantity. On a net present value (NPV) basis, the revenues from the FT-R contracts alone equal the COS of the Facilities.

**Table 3.1: Capital and COS Recovery Ratios for the Facilities and New Stations <sup>1</sup>**

	Revenue / Cost Ratios	NPV (at 2019)
FT-R Revenue (20 year terms) <sup>2</sup>	3.19 billion	1.58 billion
COS (38 years) <sup>3</sup>	-	1.58 billion
Capital Expenditure (Capex) <sup>4</sup>	1.39 billion	–
Total Revenue to Capex Ratio	2.29	–
NPV Revenue to NPV COS Ratio	1.00	–
<p>Note:</p> <ol style="list-style-type: none"> <li>1. The revenue from the initial contract quantity and the capital cost and COS recovery ratios were shown in NMML Application Table 6-4 and NMML Additional Written Evidence Table 3-3.</li> <li>2. Based on the 2017 Interim FT-R 5-Year Ceiling Rates and a discount factor of 8.14% (pre-tax weighted-average cost of capital).</li> <li>3. Reflects timeframe for the assets to be fully depreciated.</li> <li>4. Capex is stated in escalated dollars to the year of in-service for each respective facility.</li> </ol>		

Source: Application for Variance, Table 8, page 15 of 17, A87391-4

NGTL stated that the NPV analysis presented in the Variance Application confirms there is greater coverage than in the Original NMML Project. The NPV Revenue to NPV COS Ratio for the NMML Facilities is equal to one. This analysis relies solely on the direct receipt revenues on the NMML Facilities and assumes no indirect delivery revenues, no interruptible receipt or additional FT-R service revenues, and no contract renewals.

NGTL stated that because the North Montney resource is large and cost competitive to produce, there could also be additional FT-R revenues beyond the initial term of the contracts, furthering the benefits to the existing system. However, NGTL’s revenue-to-cost comparisons exclude any such additional revenue. As such, any incremental Firm Transportation – Delivery (FT-D) revenue during the term of the 20-year FT-R contracts or additional FT-R revenue from service on the NMML Facilities after the expiration of the initial contracts would further enhance the contribution of the NMML Facilities to the existing NGTL System.

NGTL noted that like in the Original NMML Project during the Transition Period, the FT-R rates on the NMML Facilities are expected to be at or near the ceiling. The FT-R rates ceiling is an integral part of the NGTL Rate Design, which is currently undergoing a review expected to conclude in late 2017 or early 2018 through the Tolls, Tariff, Facilities and Procedures Committee. In the Variance Application, the unconstrained FT-R rate at the Blair Creek Receipt Station at the end of the Kahta Section is expected to be approximately 2.7 cents higher than the constrained FT-R rate.

Table 3.2 outlines illustrative annual FT-R tolls, using the applied-for tolling methodology, for receipt points on the Project and on the Groundbirch Mainline.



<b>Table 3.2: Illustrative Receipt Tolls (FT-R) Using NGTL's Applied-For Tolling Methodology</b>							
		2017 Interim Rates	2019	2020	2021	2022	2023
Average FT-R	\$/Mcf	0.230	0.252	0.262	0.267	0.266	0.257
	\$/10 <sup>3</sup> m <sup>3</sup>	8.12	8.90	9.25	9.43	9.39	9.07
Ceiling FT-R	\$/Mcf	0.310	0.332	0.342	0.347	0.346	0.337
	\$/10 <sup>3</sup> m <sup>3</sup>	10.94	11.72	12.07	12.25	12.21	11.90
Saturn	\$/Mcf	0.310	0.332	0.342	0.347	0.346	0.337
	\$/10 <sup>3</sup> m <sup>3</sup>	10.94	11.72	12.07	12.25	12.21	11.90
All Variance Facility Receipt Points	\$/Mcf	N/A	0.332	0.342	0.347	0.346	0.337
	\$/10 <sup>3</sup> m <sup>3</sup>	N/A	11.72	12.07	12.25	12.21	11.90

Source: NGTL response to Westcoast IR 1.7, Table 1.7-1: Illustrative Receipt Rates (A88111-12)  
Amounts converted to \$/103 m3 by multiplying \$/Mcf by 35.301

NGTL also provided estimates of stand-alone tolls for the Project that included both receipt and delivery costs in Table 3.3. The stand-alone toll would be a postage stamp toll for the NMML Facilities to access the existing NGTL System.

**Table 3.3: NGTL's Illustrative Stand-Alone Tolls Assuming a Postage Stamp Methodology**

Application For Variance:		2019	2020	2021	2022	2023	2024-2032*	2033-2041*
Stand-Alone Toll	\$/Mcf	0.362	0.299	0.259	0.254	0.258	0.253	0.481
	\$/10 <sup>3</sup> m <sup>3</sup>	12.78	10.55	9.14	8.97	9.11	8.93	16.98

Source: NGTL response to ADOE IR 1.4, Table 1.4-2, Illustrative Stand-Alone Tolls for the NMML Facilities (A88111-2)

Note\*: Period Averages

Amounts converted to \$/10<sup>3</sup> m<sup>3</sup> by multiplying \$/Mcf by 35.301

NGTL submitted that the Board previously determined that its concerns over cross-subsidization were adequately managed through the Original Toll Order based on the originally proposed facilities in GH-001-2014. If the Board were to find that NGTL's toll design when applied to the NMML Facilities results in excessive cross-subsidization, NGTL submitted that the Board should avoid denial of the application and the associated benefits to both existing and new shippers if the Board's concern is associated with an issue, such as distance sensitivity in the existing tolls, that is not caused by or limited to the NMML Facilities themselves.

In that case, NGTL requested that the Board:

- approve rolled-in tolling for the NMML Facilities based on the circumstances of the NMML Facilities and past Board precedent;
- discuss in the decision in this proceeding its concerns with the distance sensitivity in the existing tolls;
- allow the NMML Facilities to go into service subject to the tolls that are currently in effect at that time on the NGTL System, including if such tolls are on an interim basis at that time pending the outcome of a toll design review by NGTL and its shippers; and
- direct NGTL to negotiate with its stakeholders to address possible amendments to the NGTL tolling methodology that would address the Board's concerns, and to file within one year from the issuance of the Board's Decision on the Variance Application, an application for such amendments whether supported by a Settlement or not.

NGTL submitted that if the Board concluded the need for two time periods supported by a deferral account is no longer required, then the Board should order NGTL to add costs from the NMML Facilities to the NGTL System Revenue Requirement and apply the same tolling methodology to the NMML Facilities as the existing NGTL System.

### **3.1.5 Risk**

NGTL stated that in the GH-001-2014 Report the Board found that the proposed tolling methodology imposed inappropriate risk on customers of the existing NGTL System because of uncertainty about long-term utilization. Specifically, the Board was concerned over the risk resulting from the international LNG market and the possibility that only 75 per cent of Progress' FT-R contracts were attached to the proposed facilities and only for 10 years. These concerns are no longer applicable according to NGTL. Contract terms for all FT-R NMML Facilities shippers are now 20 years and 100 per cent of the contract quantity is fully attached to the NMML Facilities as a result of the restricted secondary term feature.

The longer FT-R contracts and reduced project scope both contribute to reducing the amount of undepreciated capital that would remain following expiry of the receipt contracts on the NMML Facilities for each of pipe, compression and metering facilities. NGTL submitted that, assuming the NMML FT-R contracts are not renewed after their 20-year term expires, approximately 36 per cent of the NMML costs will remain undepreciated. Assuming the current toll methodology would be in effect at the end of the 20-year contract term, the NMML costs would be allocated to ongoing receipt and delivery services. Metering facilities are expected to be fully depreciated at the end of the 20-year contract term. However, NGTL submitted that existing shippers will experience a significant toll benefit for the first 20 years of the new FT-R contracts, when the revenues of the NMML Facilities exceed the costs of those facilities, so it is not reasonable to suggest that there will be costs caused by the NMML shippers to the remainder of the System after the expiration of those contracts without also recognizing the significant FT-R revenue benefits accruing to the remainder of the System during those initial 20 years.

NGTL stated that by maintaining the deferral account in Original Toll Order, the NMML Facilities would be built and actual construction costs would be known prior to the Board subsequently determining disposition of any balance in the deferral account and its impact on tolls. This eliminates the concern previously noted by the Board with having potential variations between a cost estimate and higher actual costs of the NMML Facilities.

NGTL confirmed it would not be opposed to approval of its Variance Application with a condition that would require that, if over the life of the Project some or all of the gas transported on the NMML Facilities is delivered to service the LNG export markets not currently attached to the NGTL System, NGTL must re-apply to the Board for approval of an alternative tolling methodology on the NMML Facilities.

### **3.1.6 Integration and Services Offered**

NGTL submitted that, as in the Transition Period in GH-001-2014, the NMML Facilities are integrated with the existing NGTL System, and will provide the same service as currently provided on the existing system.

Messrs. Reed and Bishop stated that nature of service to be provided on the NMML Facilities will be the same as provided on the NGTL System. Shippers on the NMML Facilities will have the same FT-R service as provided elsewhere on the existing NGTL System – meaning none of the services provided on the NMML Facilities are custom services. In fact, the only difference

with the service to be provided on the NMML Facilities relative to elsewhere on the NGTL System are that contract terms for all FT-R NMML Facilities shippers are 20 years and 100 per cent of the contract quantity is fully attached to the NMML Facilities as a result of the restricted secondary term feature. These two contractual provisions are more restrictive than the contractual parameters of other FT-R contracts on the NGTL System, and will provide long-term assurance of the FT-R revenue to the System.

The NMML Facilities would be physically and operationally integrated with the existing NGTL System. The natural gas from the receipt points on the NMML Facilities will be physically commingled with gas from other receipt points on the existing NGTL System and ultimately delivered to points on and off the NGTL System. NGTL stated that the rest of the NGTL System is necessary in order for the service requests that drive the NMML Facilities to be met. Thus, the NMML Facilities will be used consistently and jointly – not separately and independently from – the existing NGTL System.

Messrs. Reed and Bishop stated that the Board’s findings of a lack of integration during the Long-Term Phase in GH-001-2014 is no longer applicable to the NMML Facilities, as there are no longer any planned facilities to serve export LNG markets that would interconnect with the NMML Facilities. Thus gas flows between the NMML Facilities and the existing NGTL System are not expected to be minimal or intermittent such as the Board found in GH-001-2014, but rather all gas will flow solely on the NGTL System.

### **3.1.7 Economic Efficiency**

NGTL noted that in the GH-001-2014 Report, the Board had concerns over economic efficiency related to predicted use of certain facilities. Specifically, while the Board expected the Mackie Creek to Saturn portion of the Original NMML Project to be highly utilized in the Transition Period, it found there was insufficient evidence to conclude this segment would be highly utilized after the commencement of delivery at the Mackie Creek Interconnection. The Board viewed this outcome as economically inefficient.

In contrast, all the gas received on the NMML Facilities is expected to be delivered to the existing NGTL System during the 20-year contract term and beyond if these contracts are renewed. Therefore, according to NGTL, the entirety of the NMML Facilities will be highly utilized and the Board’s concerns over economic efficiency are no longer applicable.

As the anchor-customer, Progress has a contractual right to terminate its PEA and FT-R Service up to 30 days after NGTL receives a decision from the NEB on NGTL’s application to vary its NEB Certificate by waiving, modifying or removing Condition 4 of the NEB Certificate. This termination right is not specific to Part IV matters.

If the Board had concerns about sufficient FT-R contracts if Progress terminated its PEA, then NGTL confirmed it would accept a condition from the Board to address this concern. Such a condition could require that, if Progress terminates their PEA and FT-R service, and NGTL is unable to reallocate the FT-R service to some identified minimum level, NGTL should file to the Board information demonstrating it still has sufficient FT-R contracts to underpin the NMML Facilities.

### **3.1.8 Unjust Discrimination**

NGTL noted that in the GH-001-2014 Report, the Board expressed concerns over unjust discrimination that were limited to the Long-Term Phase because receipt points with a longer distance of haul would have lower tolls even though other transportation circumstances were similar, citing the example of certain shippers that would pay a favourable toll for access to the NGTL System relative to shippers east of Saturn. NGTL stated that the Board's concerns over unjust discrimination in GH-001-2014 are no longer applicable because these concerns were directly tied to the commencement of delivery at the Mackie Creek Interconnection and designation of the delivery location as a major D1 delivery point. Neither of these events are anticipated as part of the Variance Application.

Messrs. Reed and Bishop submitted that if the Board were to conclude in this proceeding that applying the existing NGTL toll design would result in excessive cross-subsidization because the existing tolls are not deemed to be sufficiently distance-sensitive, then this conclusion would not relate to the NMML Facilities, but rather to the overall NGTL toll design that is applicable to the entire NGTL System.

In NGTL's opinion, it would be unjustly discriminatory and inappropriate as a matter of regulatory policy to impose a new tolling approach for the NMML Facilities without addressing the concerns with tolling and applying that same tolling approach elsewhere on the NGTL System. Because this issue would affect the entire NGTL System, the manner in which to resolve those concerns needs to allow the opportunity for, and benefit of, input from all of NGTL's shippers, not just the parties that are a part of the current proceeding. The appropriate forum to discuss potential modifications to the existing NGTL toll design is the Tolls, Tariff, Facilities and Procedures Committee, where all potentially impacted parties have an opportunity to participate and have their views considered. The current proceeding is an inappropriate forum to address broad system-wide tolling matters, as many NGTL stakeholders are not active in this proceeding.

### **3.1.9 Two Time Periods**

NGTL stated that the Transition Period ended either when North Montney gas production is first delivered at the Mackie Creek Interconnection or no later than 48 months after the date on which gas initially flows on the Original NMML Project. While termination of the proposed PNW LNG Project eliminated the first trigger, the second trigger is still applicable. NGTL argued that a 4-year Transition Period would allow sufficient time for all FT-R contracts on the NMML Facilities to be in effect, provide a full year of operation at the full FT-R contractual amount, and allow a regulatory process required to consider an alternative tolling methodology for the Long-Term Phase to unfold prior to the expiry of the Transition Period. Moreover, it would ensure that the outcome of the rate design review for the NGTL System as a whole, which is currently taking place, can be taken into consideration prior to this determination.

NGTL added that the need for utilizing two distinct time periods for tolling considerations of the NMML Facilities has diminished as the Board's concerns over lack of integration and different nature of service are no longer applicable since the NMML Facilities are no longer associated

with LNG development. However, the appropriateness of utilizing two distinct time periods remains as a mechanism to address any remaining concerns that led to the Original Toll Order.

### **3.1.10 Deferral Account**

NGTL stated that if the Board were to maintain a deferral account, as specified in the Original Toll Order, that tracks the difference in the revenue and costs associated with the NMML Facilities, this would provide a reasonable means of reassuring the Board and the existing shippers that there will be no excessive cross-subsidization of the NMML Facilities by the existing NGTL System.

NGTL stated that it is of the view that all NMML FT-R contract and associated revenue should be considered incremental to what the total System demand charges would be absent the NMML contracts. As described in NGTL's Variance Application, on average, production from existing wells in the WCSB is declining by 18 per cent each year, which results in approximately  $56.7 \times 10^6 \text{ m}^3/\text{d}$  (2 Bcf/d) of new supply being required annually to meet existing market requirements on the System. Given this significant annual production decline, it is essential that NGTL continue to facilitate the connection of new economic supply supported by long term FT-R contracts, not only to replace existing well declines, but also replace the associated revenue which will decline as contracts expire in areas of production decline.

### **3.1.11 Competitive Impacts**

NGTL submitted that the impacts on other natural gas pipelines in northeast BC have not changed from the impacts considered in the Original NMML Project. The Westcoast Energy Inc., carrying on business as Spectra Energy Transmission (Westcoast) and Alliance Pipeline Ltd. (Alliance) sales-gas pipelines are currently fully contracted and have no existing facilities that could receive gas for delivery to the NIT marketplace. Further, both Westcoast and Alliance have proposed or are proposing expansions to their respective sales gas transmission systems intended to facilitate the transportation of additional gas supply from northeast BC.

NGTL noted that in GH-001-2014, the Board concluded that regulated pipelines were currently competing successfully in northeast BC where Westcoast, Alliance and NGTL all currently compete with different tolling methodologies approved by the Board. The Board also observed that Westcoast advocated for stand-alone tolling on the NMML, which would be a more rigorous tolling methodology than Westcoast has in place in Zone 3 and 4 on its own system. The Board also commented that it is up to each pipeline operator in northeast BC to develop its own business model, and that it expects to see innovative services and products from competitors that comply with the Board's tolling principles.

NGTL argued that pipe-on-pipe competition is not unique to northeast BC, and that the Board has never found that this type of competition warrants deviation from the Board's established tolling principles. The existence of competition does not mean that a single tolling standard, regardless of the circumstances, should be imposed on all pipelines. According to NGTL, competitive impacts may properly be a factor for the Board to consider, but the Board should not deny or manipulate a tolling methodology that can otherwise produce just and

reasonable tolls that are not unjustly discriminatory in order to enhance the competitiveness of a third-party pipeline.

NGTL argued that Westcoast currently has about 800 MMcf/d of capacity to deliver gas to the NGTL System through T-North, even though NGTL's receipt capacity is only about two-thirds of that, and Westcoast is planning to almost double its delivery capacity through several large expansions with no corresponding increases in capacity proposed or contracted for on the NGTL side. In total, these expansions include over 900 MMcf/d of firm contracts that last until at least 2032. Despite these long-term contracts, Westcoast contends that if the NMML Facilities proceed with rolled-in tolling, its customers may enter into new contracts with NGTL to connect supply directly to the NGTL System. Westcoast then suggests that its expansion customers may divert their long-term contracts to delivery at Station 2, and then allow their existing short-term Station 2 contracts to expire. According to NGTL, these concerns are all factually unfounded, and do not rely on any supply or production forecast for the area.

NGTL argued that Westcoast has come to the Board in this proceeding complaining about competitive impacts, but its response to that competition has been to try and modify the tolling practices of its competitor. Its response has not included any new service or innovative solution. If Westcoast's concern is that shippers underpinning its recent expansions will divert their contracts such that they won't use the new expansion facilities, that is something that Westcoast can and should address through its rate design.

### **3.2 Views of Progress Energy Canada Ltd.**

Progress is the anchor shipper for the NMML Facilities, holding contracts for 700 MMcf/d of FT-R capacity on the NMML Facilities for 20 years. Progress supported NGTL's application for the NMML Facilities and submitted expert evidence from Mr. Mikkelsen of the Drazen Consulting Group, Inc.

Progress supported rolled-in tolling for the NMML Facilities. This would treat shippers on the NMML Facilities the same as similarly situated shippers on numerous other extensions on the NGTL System. If the Board were to impose stacked tolls, meaning a stand-alone toll for FT-R service on the NMML Facilities plus rolled-in tolls at the interconnection of the NMML Facilities with the existing system, then shippers on the existing NGTL System stood to benefit at the expense of NMML Facilities shippers. Imposing a stand-alone toll on the NMML Facilities would require that the NMML Facilities shippers to also sign up for FT-R service on the existing NGTL System. Receiving all volumes from the NMML Facilities at the Saturn receipt point would increase FT-R determinants on the existing NGTL System by 19 per cent and decrease FT-R tolls by 16 per cent. Existing NGTL System receipt shippers would see their tolls decreased but would bear no costs of the NMML Facilities. The costs of this FT-R toll decrease for shippers on the existing NGTL System would be borne by the Variance Facility shippers through the rolled-in toll component of their stacked tolls. Under a stacked toll, Variance Facility shippers would effectively provide a toll discount to their competitors that use the existing NGTL System. Progress views this outcome as unfair. Existing delivery shippers would similarly see an increase in billing determinants and corresponding decrease in tolls with no increase in costs as the volumes received from the shippers on the NMML Facilities are delivered to intra-Alberta or export markets.

Progress stated that in its opinion, existing NGTL shippers would not cross-subsidize shippers subscribing for receipt service on the NMML Facilities. In the present application, NGTL demonstrated that there would be no cross-subsidization in the long or short term. NGTL calculated the NPV FT-R revenue to be equal to the NPV COS in the long term. NGTL's calculations are conservative.

Mr. Mikkelsen further stated that revenue certainty has been increased through extending contract terms to twenty years and restricting secondary term FT-R contract transfers to other locations on the NMML. Cost certainty has increased, as the cost estimate is now a Class 4 estimate. Existing shippers will see lower tolls with the NMML Facilities than without, indicating no cross-subsidization of the NMML Facilities from existing shippers.

### **3.2.1 Deferral Account**

Progress stated that the deferral account creates an incremental tariff for the expansion facilities. The receipt shippers are accountable for the costs of the extension and delivery shippers provide compensation to the existing system.

In Final Argument, Progress noted that the Original Project deferral account would make NMML Facilities shippers solely responsible for cost overruns on the NMML Facilities and any potential short-term mismatch between the costs of the NMML Facilities and the ramp-up of contract volumes on the NMML Facilities. Progress submitted it would be unfair to subject NMML Facilities shippers to this type of responsibility and uncertainty when facilities used by other similarly situated shippers are not subject to a deferral account. The Original Toll Order creates uncertainty for shippers. The uncertainty arises primarily from two determinations to be made in quantifying the deferral account. Firstly, the deferral account requires that there be a determination of where NMML receipt volumes are delivered. The structure of the NIT market provides no link between specific receipts and deliveries, but the deferral account mechanism requires such a determination. It is likely that there will be a number of disparate conclusions drawn from the data to be provided to the Board. Second, the deferral account requires a determination of the degree to which NMML receipt volumes are incremental and whether some volumes displace receipt volumes elsewhere on the NGTL System.

### **3.3 Views of the Canadian Association of Petroleum Producers**

The Canadian Association of Petroleum Producers (CAPP) represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP supported NGTL's application for the NMML Facilities. CAPP argued that the evidence of the commitments by multiple shippers, longer contract terms, other more onerous terms of service, the ongoing need to add supply to the NGTL system, access by any delivery customer to these new supplies through NIT, and access of NGTL shippers to Aitken Creek storage more than resolve the concerns regarding cross-subsidization in the original NMML decision. CAPP submitted that the findings in this Variation Application should follow from the new evidence.

CAPP argued that by recommending stacked tolls for the NMML Facilities, Westcoast was seeking regulatory protection from competition. Rather than organizing itself to compete and



offer a service to NIT, the response of Westcoast is a paradigm of what is anti-competitive. Westcoast, for almost a decade now, has come running to its regulator seeking protection from competition.

### **3.4 Views of the North Montney Producers Group**

The North Montney Producers Group (NMPG) is comprised of five members: ARC Resources Ltd., Canbriam Energy Inc., Kelt Exploration LNG Ltd., Painted Pony Energy Ltd., and Tourmaline Oil Corp. NMPG submitted no evidence.

NMPG supported applying the existing NGTL tolling methodology to the NMML Facilities, arguing that this would result in tolls that meet the Board's mandate and are consistent with the cost causation principle. NMPG recommended that the Board retain its findings about integration and nature of service during the Transition Period in GH-001-2014. However, NMPG argued that, with the changed circumstances, the Board's previous determination of excessive cross-subsidization is no longer applicable and incremental revenues are expected to more than cover incremental costs, resulting in a net financial benefit to the System and lower tolls.

NMPG argued that pipeline capacity in the area is fully contracted and in at least some cases, oversubscribed. According to NMPG, there is not sufficient egress for producers to meet their long-term development plans and there are no other options available to transport gas to markets generally, let alone to NIT. This includes Westcoast's T-North as long haul service is fully contracted. NMPG stated that under the FT-R Contracts, Variance Facility Shippers must pay demand charges regardless of volumes flowed.

### **3.5 Views of Black Swan Energy Ltd.**

Black Swan Energy Ltd. (Black Swan) is an oil and gas exploration company, focused on the Montney area of northeast BC and has entered into 20 year FT-R contracts with NGTL for 229 MMcf/d of service on the Variance Project.

Black Swan agreed with NGTL that the evidence now supports the conclusion that rolled-in tolling is appropriate over the long-term. In Black Swan's submission, the Original Toll Order is appropriate and will result in just and reasonable tolls.

Black Swan argued that it is more efficient for a producer, such as Black Swan, who wants to access the NIT hub, to do so by contracting for service on NGTL directly with NGTL, rather than contracting with both Westcoast and NGTL and paying the tolls on two systems rather than one. Similarly, to get its North Montney volumes to Station 2, it makes sense for Black Swan to contract directly with Westcoast. According to Black Swan, this is not anti-competitive, and it is not unfair.

### **3.6 Views of ConocoPhillips Canada (BRC) Partnership**

ConocoPhillips Canada (BRC) Partnership (ConocoPhillips) is a natural gas producer in the North Montney region of northeast BC and has signed a PEA with NGTL for the NMML Facilities.

ConocoPhillips argued that the possible competitive disadvantages to Westcoast for any future expansion are not credible and only hypothetical at best. The primary competition between Westcoast and NGTL is market access, not tolls. Westcoast charges a postage-stamp toll that it expects to be \$0.195/Mcf in 2018. This is a much more attractive toll than the ceiling rate of approximately \$0.30/Mcf NGTL proposes to charge on the NMML Facilities. However, the shippers are willing to pay the NGTL ceiling toll to reach NIT and diversify their market access. ConocoPhillips submitted no evidence to support its position.

### **3.7 Views of the Alberta Department of Energy**

The Alberta Department of Energy (ADOE) argued that stand-alone tolling should be applied to the NMML Facilities because applying NGTL's existing toll methodology to the NMML Facilities results in negative consequences for the development and transportation of Alberta's natural gas. In the ADOE's view, a stand-alone or regional zonal toll would be more appropriate as it would better address the cost causation and cross-subsidy concerns, and allow for fair pipeline competition in the region. The ADOE also submitted that the Transition Period should be cancelled as it is no longer relevant, and if continued, would only cause unnecessary uncertainty to all existing NGTL shippers and the extension shippers.

### **3.8 Views of ATCO Gas, a division of ATCO Gas and Pipelines Ltd.**

ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (ATCO) distributes natural gas throughout most of Alberta and within its major urban centres and is a captive shipper on the NGTL System. ATCO submitted no evidence in this proceeding.

ATCO recommended that the Original Toll Order be retained, as there is a potential for overbuilding the NGTL System. ATCO expressed concerns regarding diversion of gas volumes from the NMML Facilities to a west coast LNG project. If this occurred, ATCO argued that there would be no need for the 1.485 Bcf/d of "reserved" capacity that, in part, drove the \$4.5 billion of NGTL's planned downstream capacity expansions. ATCO noted that the North Montney PEAs or FT-R contracts do not commit those shippers to ship 1.485 Bcf/d south and across Alberta over the new downstream facilities over the full contract term.

To have significant incremental northeast BC gas volumes require, even in part, major downstream expansions on the NGTL System to Alberta delivery points only to be diverted to alternative west coast markets within a very short time after the major downstream expansions go into service, raises serious concerns about the costs of underutilized capacity which would be borne in significant part by ATCO Gas' customers.

ATCO expressed concern over the potential for cross-subsidization. Though the FT-R tolls on the NMML Facilities cover the forecast costs, ATCO is of the view that little is left over to meaningfully contribute to the costs of the downstream facilities, without which, the 1.485 Bcf/d could not be transported to the export or intra-Alberta delivery points. ATCO submitted that neither NGTL's estimate of \$22 million, nor Westcoast's estimate of \$13.8 million, are a meaningful annual contribution for use of the existing system and the expansions required to transport the gas to delivery points. ATCO argued that this annual contribution is inadequate in light of the significant expansion costs incurred downstream, which are required to transport the aggregate of a multiplicity of loads, including the incremental North Montney volumes, to delivery points.

ATCO noted that at the end of the term of the North Montney FT-R contracts, fully 36 per cent of all initial project costs will still remain to be recovered. As a captive customer to NGTL, ATCO's customers will be at risk for recovery of such costs.

ATCO argued that maintaining the Original Toll Order to include the deferral account, stand-alone cost pools and stand-alone tolling will allow a subsequent accounting to be undertaken to ensure no undue cross-subsidization of Variance Facility shippers by the existing system. Variance Facility shippers must be responsible for a portion of the downstream costs of the NGTL System as it exists – that is, as it is expanded – when the successive tranches of North Montney Variance volumes commence firm service in each of 2019, 2020, and 2021.

### **3.9 Views of Peyto Exploration and Development Corp., Modern Resources Inc., and Canlin Resources Partnership**

Peyto Exploration and Development Corp., Modern Resources Inc., and Canlin Resources Partnership (PMC Group) are three Alberta-based natural gas producers. The PMC Group described its members as some of Western Canada's largest natural gas producers that operate primarily in Alberta's Deep Basin and rely on the NGTL System to meet their gas transportation needs. The PMC Group did not submit evidence in this proceeding.

The PMC Group argued that the NMML Facilities ought to be tolled on a stand-alone basis and a deferral account should be maintained until such time as NGTL returns to the Board with an acceptable tolling structure that properly complies with cost causation principles and addresses potential cross-subsidization.

The PMC Group also argued that there is no longer a case for two distinct time periods for tolling because there is no longer a proposed LNG offtake associated with the NMML Facilities.

### **3.10 Views of the Export Users Group**

The Export Users Group (EUG) includes three companies: Cascade Natural Gas Corporation, Northwest Natural Gas Company and Puget Sound Energy Inc.

EUG argued that average FT-R tolls will decrease and average FT-D tolls will increase if the costs of the NMML Facilities are rolled-in and the current rate design is applied without an

increase in deliveries, resulting in inappropriate and excessive cross-subsidization. However, EUG submitted no evidence to support this argument.

### **3.11 Views of FortisBC Energy Inc.**

FortisBC Energy Inc. (FortisBC) is the largest gas distribution utility in BC. FortisBC holds FT-D1 capacity on the NGTL System and also holds transportation capacity on the Westcoast Transmission North and Transmission South systems. FortisBC did not file evidence in this proceeding.

FortisBC does not oppose the construction of the NMML Facilities; however, FortisBC continues to believe that rolled-in tolling on the NGTL System and its current rate design, particularly as it relates to the NMML Facilities, is not appropriate to the competitive dynamic in northeast BC. FortisBC is of the view that no party should have a regulatory advantage in developing new infrastructure to bring supply to the NGTL System and at-risk and cost-of-service regulated entities should have an equal opportunity to compete in order to construct new facilities for that purpose. FortisBC viewed maintaining two time periods for tolling as inappropriate.

FortisBC argued that the needs of new receipt shippers drive the NMML Facilities and delivery shippers cannot be said to be causing any of the 50 per cent of the Variance Facility transmission-related costs that NGTL's tolling methodology would tag them with.

In FortisBC's view, the current toll methodology cannot correctly price new facilities at the far reaches of the System. FortisBC recommended that the Board direct NGTL make changes to its toll methodology to address the various deficiencies identified. During the interim, FortisBC submitted that the Board direct the NMML Facilities be tolled on an at-risk basis, such that cost responsibility for those facilities can be appropriately assigned to those whose needs are being met.

### **3.12 Views of Westcoast Energy Inc., carrying on business as Spectra Energy Transmission**

Westcoast is an NEB-regulated pipeline company with an extensive network of existing facilities that currently serves the North Montney area, including gathering and processing facilities as well as transmission pipelines. Westcoast filed expert reports from Mr. Engbloom and Mr. Priddle.

#### **3.12.1 Tolling Methodology**

Westcoast opposed the use of rolled-in tolling as proposed by NGTL on the NMML Facilities. Instead, Westcoast proposed that the Board direct NGTL to implement stand-alone tolling for the NMML Facilities, where NGTL would be at risk for the recovery of the costs of the NMML Facilities and their utilization. Mr. Engbloom stated that a stand-alone toll would prevent excessive cross-subsidization and provide a proper price signal reflecting user pay/cost causation.

### 3.12.2 Cross-subsidization

Westcoast submitted that applying NGTL's existing rolled-in tolling methodology would result in excessive cross-subsidization of the NMML Facilities shippers by shippers on the existing NGTL System. While certain features of the Variance Application concerning the level of cross-subsidization are not as troublesome as in the original North Montney case, Mr. Engbloom stated that the Board's original finding of excessive cross-subsidization remains.

Noting that all the new receipt points on the NMML Facilities will be at the ceiling toll, as will the Saturn receipt point, Westcoast argued that NGTL's FT-R toll methodology does not reflect the true costs of sourcing distant supplies. Competition cannot meaningfully occur under these conditions.

To demonstrate the cross-subsidization, Mr. Engbloom filed calculations showing that the potential cross-subsidization would be \$2.4 billion through 2041 from existing NGTL System shippers to NMML Facilities shippers. Over the term of the contracts on the NMML Facilities, rolled-in tolling would generate cumulative FT-R revenue of \$3.194 billion. The COS of the NMML Facilities would be \$2.877 billion and the COS for the existing NGTL System at Saturn would be \$3.194 billion. Subtracting the COS of the NMML Facilities and existing NGTL System from the cumulative FT-R revenue would yield a cross-subsidy over 20 years of \$2.877 billion. Westcoast further stated that this significant subsidy is the consequence of applying a toll methodology that produces a zero incremental toll to transport gas from North Montney to the existing NGTL System at Saturn.

Based on Mr. Engbloom's calculations, Westcoast submitted that over the term of the contracts, shippers on the NMML Facilities would contribute \$317 million towards the \$3.194 billion cost of transporting the contract volumes on the existing NGTL System. Westcoast argued that this by any reasonable standard constitutes excessive cross-subsidization. The NMML Facilities shippers would not be bearing the cost of transporting their gas on the existing NGTL System to the greatest extent possible, as required by the cost causation principle.

Westcoast submitted that NMML Facilities shipper volumes are as responsible for causing the costs on the existing NGTL System, including the costs related to NGTL's ongoing multi-billion dollar expansions in the Peace River Project Area as other volumes received by NGTL at Saturn.

With respect to NGTL's NPV submissions, Westcoast argued that based on the NPV revenue to NPV cost ratio of 1.00 over the 38 year depreciable life of the NMML Facilities, there is no contribution made to the costs of the existing NGTL System.

If rolled-in tolling is applied, a shipper at the Kahta end of the NMML Facilities, approximately 206 km from Saturn, would pay the same FT-R toll as a shipper at Saturn. Under stand-alone tolling, a shipper on the NMML Facilities would pay 24.6 cents/Mcf from 2019 to 2023. Then a shipper on the NMML Facilities would also pay the FT-R toll at Saturn.

Mr. Engbloom's methodology did not apportion any FT-D revenue towards mitigating the costs of transporting the gas from the NMML Facilities. According to Mr. Engbloom, the FT-R tolls must generate sufficient revenue to recover the transmission costs allocated to FT-R service.

Otherwise, there will be a shortfall in the recovery of the FT-R COS. Revenue cannot just be reallocated from FT-D service to FT-R service to make up for this shortfall.

In 2022, the first year that the FT-R contract quantity reaches 1,485 MMcf/d, under rolled-in tolls, the NMML Facilities shippers would generate \$159.7 million in revenue, while the cost of transporting their North Montney gas would be \$278.2 million, comprising the NMML Facilities COS of \$118.5 million and the cost of transporting their gas on the existing NGTL System from Saturn of \$159.7 million. This results in a revenue shortfall in 2022 of \$118.5 million and, according to Westcoast, whether the FT-R revenue is allocated to the NMML Facilities COS or to the revenue requirement of the existing NGTL System, there would be excessive cross-subsidization.

Westcoast argued that even though existing shippers' tolls will decrease, there is still cross-subsidization because if shippers on the NMML Facilities paid a toll reflecting both the cost to build the NMML Facilities and the cost to transport gas on the existing NGTL System, by paying FT-R tolls at Saturn, the existing shippers' tolls would decrease even further.

Further, Westcoast submitted that the 11 NMML Facilities shippers' need for gas transportation services from North Montney, and not the aggregate demand of all shippers on the NGTL System, triggered the need for the NMML Facilities.

Mr. Engbloom submitted that NGTL has not sufficiently mitigated concerns about the level of cross-subsidization expressed by the Board in the GH-001-2014 Report. Mr. Engbloom added that the Board's concern in GH-001-2014 regarding the amount of undepreciated costs that would remain after expiration of the receipt contracts on the NMML Facilities remains. The remaining cumulative unrecovered COS for the NMML Facilities is \$1.4 billion.

Further, Mr. Engbloom noted that the Board's concerns regarding the minus 15 to plus 20 per cent range of variance in capital cost estimates remains. Applying the 20 per cent case to the COS of the NMML Facilities would increase the cumulative COS of those facilities by \$480 million.

Ultimately, Mr. Engbloom submitted that nothing has changed with respect to the FT-R toll design; however, he noted that all the new receipt points on the NMML Facilities will be at the ceiling toll, as will the Saturn receipt point, making it even clearer that with a zero-incremental toll there is no proper price signal to achieve economic efficiency.

### **3.12.3 Two Time Periods**

Mr. Engbloom argued that there is no economic reason to utilize two distinct time periods for tolling of the NMML Facilities. The deliveries to an LNG project, which gave rise to the two periods, will not occur as planned. He stated that if the two periods are preserved, it will cause unnecessary uncertainty about the future toll design. Moreover, the excessive cross-subsidization starts from the beginning of service on the Extension Facilities, including for the entire 48-month sunset period. The level of cross-subsidy makes it inappropriate to have the FT-R toll methodology in effect at any time.

### **3.12.4 Integration and Services**

Mr. Engbloom submitted that with respect to integration and same service, caution should be used when applying those factors to an extension versus an expansion. An expansion, for example an additional compressor unit at an existing compressor station, or a loop parallel to an existing pipeline, generally involves full integration and provides the same service along an existing path. Given this level of integration, the facilities are jointly used to meet the aggregate demand of all shippers. For an extension, the presence of integration and same service factors is a necessary but insufficient condition to roll-in the costs of the extension. An extension is a new path beyond the existing system and while it can affect the throughput of the existing system, it does not increase the capacity of that system. An extension's physical facilities and associated costs are distinguishable and the shippers that request, cause and use the extension are known. All this means that the principle of user pay/cost causation can and should be applied to an extension and in particular the extent of cross-subsidization should be assessed.

Westcoast agreed that the NMML Facilities would be physically and operationally integrated with the existing NGTL System and the NMML Facilities shippers would receive similar services as the existing NGTL shippers. However, Westcoast stated that the fact remains that, as the Board found in GH-001-2014, NGTL's proposed tolling methodology does not adequately address cost causation or the excessive cross-subsidization of the NMML Facilities shippers by shippers on the existing NGTL System.

### **3.12.5 Unjust Discrimination**

Westcoast submitted that under sections 62 and 67 of the NEB Act, the Board can set different tolls for traffic of different descriptions, for traffic of similar description but which is carried over different routes, as well as for traffic which flows under substantially different circumstances, all without offending the prohibition against unjust discrimination. Westcoast argued that gas on the NMML Facilities would be transported over a different route than gas anywhere else on the NGTL System, such that charging a different toll would not offend the section 62 prohibition. Gas from receipt points on the North Montney Mainline will be transported on the NMML Facilities to the existing NGTL System at Saturn, and will not be commingled with other gas streams until it enters the existing NGTL System at Saturn. It is possible to determine the exact route taken by the volumes while they are on the NMML Facilities. Westcoast submitted that it would not be unjustly discriminatory to apply stand-alone tolling to the North Montney facilities when other receipt customers on the NGTL system are tolled on a rolled-in basis.

### **3.12.6 Deferral Account**

Westcoast quoted a letter from the Board to NGTL stating that NGTL has not persuaded the Board that allocation of indirect delivery revenue to the North Montney Cost Pool would result in adequate compensation for the use of the existing NGTL System and compliance with the cost

causation principle. Recognition of an amount of indirect delivery revenue in the deferral account would result in under-recovery of the FT-D COS by an equivalent amount.<sup>4</sup>

### **3.12.7 Competitive Impacts**

Westcoast submitted that the fact that the NGTL Extension Facilities will compete directly with Westcoast for gas supply from the NMML Drainage Area is clear. The Extension Facilities extend through the heart of a resource area already served extensively by Westcoast facilities. There is simply no way, according to Westcoast, that it will be able to compete against NGTL's zero incremental toll for transportation service from the NMML Drainage Area to the existing NGTL System. Approval of NGTL's rolled-in toll design for the Extension Facilities will provide producers with gas supply in the NMML Drainage Area with a free alternative path to the existing NGTL System – bypassing Westcoast – and result in the underutilization of Westcoast's existing pipeline and processing facilities in the area.

Westcoast stated that after the High Pine and Wyndwood projects are in service, Westcoast will have capacity and firm contracts to deliver 1,050 MMcf/d of gas to the NGTL System at Sunset and Gordondale, representing 37 per cent of T-North long haul capacity. Westcoast submitted that if rolled-in tolling is approved on the NMML, this may lead to decontracting on Westcoast, as volumes will be enticed away from the Westcoast system onto the NMML. This will affect Westcoast's ability to contract available capacity and to recontract capacity currently under contract that becomes available on the expiry of existing contracts. This will particularly be the case for the T-North capacity to deliver gas to the existing NGTL System.

Westcoast submitted that shippers who hold both longer term T-North contracts for deliveries to the NGTL System and shorter term T-North contracts for deliveries to Station 2 will be able to divert or relocate the contract delivery point under the longer term contracts from the NGTL System to Station 2 and then allow the shorter term contracts for deliveries to Station 2 to expire, thus allowing the gas originally associated with the longer term contracts to flow on NMML.

If NGTL's proposed tolling is approved, Westcoast expects that over the period 2018 to 2028 the vast majority of the 1,050 MMcf/d of firm capacity on T-North system for delivery to the existing NGTL System will become decontracted and underutilized. With regard to the McMahan and Aitken Creek plants, over 50 per cent of the firm contracts at the plants are for gas production in the NMML Drainage Area. About 322 MMcf/d of these contracts are held by shippers who have contracted for service on the NMML and these contracts will expire by 2020.

Westcoast's concerns with regard to the Extension Facilities also extend to the existing uncontracted capacity on the Extension Facilities and to NGTL's ability to expand and extend the pipeline in the future. The capacity of the proposed facilities exceeds the contracted volumes by 425 MMcf/d. NGTL can also easily expand the capacity of the pipeline by about 700 MMcf/d by adding compression.

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<sup>4</sup> NEB Letter to NGTL – Conditions 3(a) and 3 (b) Revenue, 6 May 2016, page 6, A76773-1.



Westcoast argued that NGTL's North Montney Area production forecast filed in this proceeding shows that prior to the North Montney Mainline being placed in service in 2019, production in the area being transported by Westcoast and Alliance will be about 1.5 Bcf/d. The forecast also shows that from 2020 through 2026, which is prior to the time that NGTL forecasts LNG exports, production from the area will be just over 2.2 Bcf/d. So if the North Montney Mainline transports its contract volumes of 1.485 Bcf/d during this period, the result, according to NGTL's own production forecast numbers, will be to offload Westcoast and Alliance to the tune of about 800 MMcf/d.

Westcoast argued that the open seasons for the High Pine, Jackfish Lake, Wyndwood and Spruce Ridge expansions were all conducted at a time when NGTL was unable to offer service from the North Montney area because its proposed North Montney Mainline was in abeyance pending the decision respecting the Pacific Northwest LNG Project.

Westcoast argued that it may be appropriate for the Board to tolerate non-adherence to the cost causation principle in the circumstance of a basin-opening pipeline, where no competition can reasonably be expected to occur and where there is a need to achieve economies of scale to promote gas development. It would be entirely inappropriate, though, for the Board to tolerate non-adherence to the cost causation principle in a circumstance where economies of scale have already been achieved and there exists pipeline competition to transport gas being produced in a mature supply basin to an existing market.

### **3.13 Views of the Western Export Group**

The Western Export Group (WEG) consists of Avista Corporation, Cascade Natural Gas Corporation, FortisBC Energy Inc., Northwest Natural Gas Company, Pacific Gas and Electric Company, Portland General Electric Company, Puget Sound Energy Inc., the Sacramento Municipal Utility District, San Diego Gas & Electric Company/Southern California Gas Company, and Sierra Pacific Power Company. WEG serves residential, commercial and industrial retail customers in western North America and holds approximately 62 per cent of contractible capacity at the Alberta/BC border, 26 per cent of total Group 1 (ex-Alberta) deliveries, and 10 per cent of total NGTL System deliveries. WEG did not submit evidence in this proceeding.

WEG argued that by removing Condition 4 as requested by NGTL, the Board would remove any assurance that the NMML Facilities have commercial support from delivery shippers over the long term that corresponds to the expected additional receipt volumes on the NMML Facilities. Under the Original Application, the Long-Term Phase volumes were expected to flow west after four years, and not over the existing System over the long term. While the NGTL existing System would now receive these volumes, there are no incremental delivery contracts.

WEG disagreed with NGTL's evidence that all shippers would see tolls decrease with the addition of the NMML Facilities. WEG argued that "when applying tolls calculated under NGTL's existing rate design to the NMML Facilities, it is mathematically impossible for FT-D tolls to decrease. When the System costs, allocated at 50 per cent to delivery shippers increase, but their billing determinants remain the same, then, all other things being equal, their tolls must increase." WEG argued that the current rate design unfairly burdens existing NGTL shippers.

WEG stated that NGTL benefits from attracting new customers in an area where pipelines compete and benefits from growing its rate base, while minimizing its own risk. According to WEG, existing shippers carry the cost and risk of the NMML Facilities and this is not a just and reasonable allocation.

WEG further argued that NGTL is seeking to charge the same tolls for customers under substantially different circumstances and conditions with respect to traffic of a different description carried over a different route by asking that Variance Facility shippers pay the same toll as Saturn shippers. Variance Facility shippers ship both over the NMML Facilities and the existing NGTL System while Saturn shippers use only the existing NGTL System.

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

#### **3.14.1 Disposition on Requested Relief**

The Board finds that the circumstances in the Variance Application have changed from those of the Original NMML Project. Namely, with the cancellation of the PNW LNG Facility, the development of the NMML Facilities will no longer be associated with LNG development. Gas from the NMML Facilities will flow east to the existing NGTL System or into storage at Aitken Creek. With this change in circumstances, the Original Toll Order is no longer appropriate for the NMML Facilities.

The Board finds that approving NGTL's existing tolling methodology for the NMML Facilities over the long term would not result in just and reasonable tolls, due to the lack of adherence to the cost causation principle and goal of economic efficiency.

For a Provisional Period of one year, starting from the date Governor in Council approves amendments to the Certificate for the NMML Facilities, NGTL may calculate its revenue requirement by combining the incremental revenue requirement of the NMML Facilities with the revenue requirement of the existing NGTL System. NGTL may apply its current toll methodology to the NMML Facilities, provided that the tolls charged on the NMML Facilities will be unconstrained tolls not subject to the FT-R toll ceiling. The tolls applied in the Provisional Period will be referred to as the Provisional Tolls, and the toll methodology in the Provisional Period will be referred to as the Provisional Tolling Methodology.

Upon the commencement of the Post-Provisional Phase, unless NGTL applies for, and receives approval of, a new tolling methodology, NGTL shall calculate the tolls for services on the NMML Facilities using a stand-alone tolling methodology. The stand-alone toll would be derived from a separate NMML Facilities cost pool and would recover these costs from the NMML shippers. Accordingly, NMML shippers would need to pay a stacked toll, comprised of this NMML toll, as well as the FT-R toll at Saturn.

This requirement for stand-alone tolling is not an indication that the Board favours stand-alone tolling for the Post-Provisional Phase. Rather, it reflects the Board's finding that there were no other persuasive long-term tolling alternatives proposed during this hearing. NGTL may file an

application for a new tolling methodology on the NMML Facilities that addresses the concerns outlined in “Comments Regarding Tolling for the Post-Provisional Tolling Phase” below.

The Board has issued Toll Order TG-003-2018, attached as Appendix III to this Decision.

### **3.14.2 Relevant Tolling Principles**

In the GH-001-2014 Report, the Board outlined tolling principles that were relevant to the Original NMML Project. These principles remain applicable to the Variance Application. The Board endeavours to apply these principles based on the circumstances before it in each application.

Specifically, the NEB Act requires that all tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate. The NEB Act also requires that no toll shall result in unjust discrimination.

The Board has wide discretion in choosing the method to be used by it, and the factors to be considered by it, in assessing the justness and reasonableness of tolls.

Many Board decisions also reference the principle of cost causation, which states that tolls should be, to the greatest extent possible, cost-based, and that the users of a pipeline system should bear the financial responsibility for the costs caused by the transportation of their product through the pipeline. The term “cross-subsidization” is used to denote a departure from the cost causation principle.

In many hearings, the Board has been faced with the issue of whether rolled-in or stand-alone tolls would best adhere to the principle of cost causation. In these cases, the Board examines the degree to which the proposed facilities would be integrated with the rest of the pipeline system and the nature of the service to be provided by the proposed facilities in relation to the service provided by the rest of the pipeline system.

In addition, the concept of economic efficiency has been one of the Board’s strategic goals for many years. In the context of regulated tolls, economic efficiency generally means that tolls should promote proper price signals, which will protect against over-investment and promote the efficient development and use of pipeline systems.

### **3.14.3 Reasons for Disposition**

#### **3.14.3.1 Appropriateness of Using Two Time Periods for Tolling**

The Board finds that it is no longer appropriate to use the Transition Period and Long-Term Phase as set out in the GH-001-2014 Report.

In the GH-001-2014 Report, the Board found that gas flow patterns for the Project were expected to change significantly and, as a result, it examined the Part IV questions for two distinct periods:

- the Transition Period, which would have commenced when gas began to flow on the Project and would have expired when North Montney gas production was first delivered at the Mackie Creek Interconnection; and
- the Long-Term Phase, which would have commenced at the end of the Transition Period.

With the cancellation of the PNW LNG Project, there are no longer any plans for North Montney gas production to be delivered at Mackie Creek Interconnection for delivery to the PNW LNG Facility. At this time, the evidence indicates that gas flow patterns are not expected to change significantly throughout the life of the NMML Project. No Intervenor disputed this. Therefore, the underlying logic for examining Part IV issues in two distinct time periods no longer applies.

The Original Toll Order also included a Sunset Clause by which the Transition Period was to expire no later than 48 months after the date on which gas would have initially flowed on the Project. However, the Sunset Clause was envisioned in circumstances where the PNW LNG Project was proceeding. Without a distinct LNG delivery phase to transition to, the Transition Period and its accompanying Sunset Clause are no longer appropriate.

NGTL suggested that if the Board were to find that the tolls on the NMML Facilities result in excessive cross-subsidization, the Board should:

- approve rolled-in tolling of the NMML Facilities;
- allow the NMML Facilities to go into service subject to the tolls that are currently in effect at that time on the NGTL System; and
- direct NGTL to file amendments to the NGTL toll methodology that would address the Board's concerns, within one year from the date of issuance of the Board's Decision.

With some modification, the Board finds this proposal to be acceptable.

The Board has determined that for the Provisional Period, NGTL may calculate its revenue requirement by combining the incremental revenue requirement of the NMML Facilities with the revenue requirement of the existing NGTL System. Then, NGTL may apply its current tolling methodology to the NMML Facilities, but it shall not apply the FT-R toll ceiling. The resulting Provisional Tolls will be unconstrained by the toll ceiling.

As discussed below, NGTL must establish a separate cost pool or separate cost centre for the NMML Facilities and maintain it until the Board directs otherwise. NGTL must also accumulate, in a deferral account, the difference between the NMML Facilities' COS and the incremental FT-R revenue from NMML Facilities-related transportation contracts during the Provisional Period, for disposition in a future tolls application.

The evidence presented in this proceeding did not include any toll methodologies with the characteristics described in the “Comments Regarding Tolling for the Post-Provisional Phase” section below. The Board is of the view that differing tolling solutions may be available, some of which may require revising tolls not only on the NMML Facilities, but elsewhere on the NGTL System as well, and in part for that reason, has set out two time periods for tolling purposes: the Provisional Period and the Post Provisional Phase. The Board is of the view that it is prudent in this case to provide time to NGTL and its shippers to explore various options to address the Board’s concerns.

### **3.14.3.2 Integration and Services Provided by NGTL**

The Board finds that the NMML Facilities will be integrated with the existing NGTL System and will offer similar services as those offered on the existing NGTL System. This finding echoes the finding in the GH-001-2014 Report regarding Integration and Services Provided by NGTL during the Transition Period. However, integration and similarity of services are not sufficient alone to support the use of rolled-in tolling, as applied for by NGTL, over the long-term. The Board must also consider whether the tolling methodology adequately addresses cost causation.

The NMML Facilities could not function without the existing NGTL System. Gas that enters the NMML Facilities will physically flow on to the existing NGTL System or into storage at Aitken Creek. Further, the FT-R contracts offered to NMML Shippers are substantially similar to those offered to FT-R shippers on the existing System. The NMML Facilities would also be commercially integrated with the existing System through the NIT hub. However, the Board notes that integration is a matter of degree. Unlike, for example, the addition of looping or a compressor station along existing pipeline right-of-way, which would be physically used by both new and existing system shippers, the North Montney Mainline is in a distinct right-of-way beyond the terminus of the existing NGTL system, and will only be physically utilized by an identifiable set of shippers. Accordingly, the Board finds that the degree of integration for the North Montney Mainline is less than it would be for joint-use type facilities within a system’s existing footprint – facilities physically used by both new and existing system shippers.

With regard to nature of service, the Board notes that NMML Shippers are subject to longer contract lengths and more restrictive secondary terms than other shippers on the existing NGTL System. NGTL submitted that it made these contract changes in response to Board concerns identified in the GH-001-2014 Report. The Board finds these contract changes hold the NMML Shippers more accountable for the costs from the NMML Facilities, but do not alter the nature of the service offered in a substantive way.

Some Intervenors expressed concerns regarding the potential future diversion of gas carried over the NMML Facilities to LNG projects, and the resulting potential underutilization of segments of the NMML Facilities and NGTL’s planned downstream capacity expansions, due to such a diversion. Such a scenario would call into question the Board’s findings regarding integration. Therefore, the Board is including **Condition 3** in Toll Order TG-003-2018 (Appendix III). That condition states that, if over the operating life of the NMML Facilities, some or all of the gas transported on the NMML Facilities is not delivered to markets currently attached to the NGTL System or the NMML Facilities, NGTL must re-apply to the Board for approval of a tolling

methodology on the NMML Facilities. NGTL may wish to address this potential future scenario when it applies for the Post-Provisional Tolling Methodology.

### **3.14.3.3 Cross-Subsidization**

The Board finds that applying the NGTL tolling methodology over the long term for service on the NMML Facilities would result in excessive levels of cross-subsidization of the NMML Facilities by existing NGTL shippers. However, during the Provisional Period, with the FT-R ceiling removed, the Board finds that the degree of cross-subsidization will not be excessive. For the Post-Provisional Period, the tolling methodology for the NMML Facilities must reflect greater adherence to the cost causation principle.

The Board finds that NGTL's Variance Application has not adequately addressed previous cross-subsidization concerns. The Board notes that, in its GH-001-2014 Report, it articulated similar concerns regarding cross-subsidization and cost causation during the Transition Period. The GH-001-2014 Report offered guidance that the incremental revenue from new facilities should cover a meaningful portion of the incremental COS of the new facilities, as well as contributing to the existing NGTL System.

NGTL estimated that the FT-R revenue associated with the NMML Facilities over 20 years is expected to be \$3.19 billion, while the NMML Facilities COS over the same period is expected to be \$2.88 billion. It claimed that the difference was a "net benefit" to the existing NGTL System of \$317 million, or an annual average of approximately \$22 million.

However, the Board notes that the \$317 million figure does not account for the costs that would be incurred in transporting NMML Shippers' gas on the existing NGTL System. Were one to subtract from the \$317 million, the COS associated with transporting such gas on the existing NGTL System, the "net" would in fact be a negative amount of significant value. In the Board's view, such revenue would not be adequate contribution towards the costs on the existing NGTL System caused by the NMML Shippers.

Further, it is unclear if all of the estimated NMML FT-R revenue included in the \$317 million claimed by NGTL would be entirely incremental. It is possible that some of the NMML Shippers' gas might displace gas that would otherwise be transported by NGTL on behalf of FT-R shippers on the existing NGTL System. If some of the \$317 million is made up of revenue resulting from such displacement, it follows that the analysis submitted by NGTL overstates how much FT-R revenue from the NMML Facilities would be truly incremental for the System on a net basis. This indicates that the extent of subsidization of the NMML Facilities by the shippers on the existing NGTL System may be higher than estimated by NGTL, notwithstanding the potential for additional transportation contracts.

The NMML Facilities tolls derived from NGTL's proposed single cost pool, rolled-in tolling methodology do not have a direct link with the cost of the NMML Facilities and the tolls are not adequately aligned with the cost causation principle for the NMML Facilities. Irrespective of whether the FT-R tolls are capped by the toll ceiling, applying NGTL's tolling methodology to the NMML Facilities fails to account for the fact that the primary drivers of the need for the NMML Facilities are the FT-R shippers that will physically ship gas on the facilities, and

therefore primarily cause the costs of the NMML Facilities. Existing system shippers without contracts on the NMML Facilities only indirectly contribute to the need for, and use of, the facilities, by generating demand for maintaining declining system supply. Rolling in the costs of the NMML Facilities into a single NGTL system cost pool, and allocating the costs equally to receipt and delivery shippers on the system, does not reflect this reality. The Board finds that in these circumstances the tolls charged to shippers on the NMML Facilities must be sufficient to cover the costs NMML Facilities shippers cause on the existing NGTL system, as well as costs they cause on the NMML Facilities, less any portion of the NMML Facilities costs that are caused by, and rightfully attributable to, existing system shippers.

The Board finds the application of an FT-R toll ceiling to the NMML Facilities would result in further excessive cross-subsidization. Based on the illustrative tolls provided by NGTL where the toll ceiling is applied, a NMML Facility shipper seeking to move its gas out of the region to the existing NGTL System at Saturn would pay an FT-R toll of 33.2 cents/Mcf, which is no different than the FT-R toll paid by a producer at the Saturn receipt point. This would include a NMML Facility shipper with gas supply at the north end of the NMML Facilities, approximately 200 km upstream of the Saturn interconnection. Consequently, NMML Facilities shippers would pay a zero incremental FT-R toll for transportation service on the NMML Facilities, notwithstanding the significant additional cost of the NMML Facilities required to transport the gas to Saturn. NMML Facility shippers would be receiving a significant subsidy if the existing tolling methodology were applied as proposed by NGTL. Accordingly, the tolls charged on the NMML Facilities over the Provisional Period must not be constrained by the FT-R toll ceiling.

The Board considers the risk to existing system shippers arising from any underutilization of the NMML Facilities to be closely related to cost causation. The Board notes that the Variance Application includes new facts and changed circumstances that reduce the Board's previous concerns with respect to this aspect of risk on the NMML Facilities. Examples of these new facts and changed circumstances, as described in more detail in NGTL's evidence, include:

- the reduced potential variance in cost estimates;
- the reduced scope of the NMML Facilities;
- the enhanced contractual underpinnings;
- the improved revenue recovery compared to the cost of the NMML Facilities; and
- the cancellation of deliveries at the Mackie Creek Interconnection.

The Board is encouraged by these developments, but these new facts and changed circumstances do not obviate the Board's GH-001-2014 finding that applying NGTL's toll methodology to the facilities while shipping gas primarily to the existing NGTL system – as in the Transition Period – would result in excessive cross-subsidization.

In the Board's view, limiting the Provisional Period to one year will help to ensure that any cross-subsidization is not excessive. Furthermore, by establishing a separate cost pool and associated deferral account for the NMML Facilities, any disparity between revenues and costs for service over the Provisional Period can be appropriately disposed of in the future.

#### 3.14.3.4 Economic Efficiency

The Board finds that applying the existing NGTL tolling methodology to the NMML Facilities fails to provide proper price signals, thereby failing to both protect against over-investment and promote the efficient development and use of pipeline systems. Because users of the NMML Facilities will not be charged tolls commensurate with the costs they cause on the System, the Board finds that, in this case, NGTL's tolling methodology is inconsistent with the goal of economic efficiency.

The Board recognizes that existing NGTL System users require additional supply to meet demand as existing wells in the basin decline. However, it does not follow that production declines must necessarily be offset by supply that requires significant mainline extensions of the NGTL System. FT-R renewals on the existing system, for example, could help to offset declines, as could bringing on gas from other systems, including at the interconnections with Westcoast.

NGTL's toll methodology, applied to the NMML Facilities, does not hold responsible Parties accountable for the significant incremental costs required to construct and operate the NMML Facilities. Because NGTL's toll methodology applied to the NMML Facilities results in excessive cross-subsidization, it doesn't allow for a fair comparison of various alternatives that may be available, and economic decisions may be distorted.

The toll ceiling rates employed in NGTL's toll methodology further contribute to the problematic price signals. Tolls at the Blair Creek end of the NMML Facilities, approximately 200 km upstream from Saturn, are no different than the tolls at Saturn. This is not in accordance with the goal of economic efficiency, and it is a further reason why the Board is denying the use of the FT-R toll ceiling for the Provisional Period.

Following the Provisional Period, NGTL may propose a revised tolling methodology for the NMML Facilities that better aligns with the user-pay/cost causation principle to provide a NMML Facility price signal that achieves the goal of economic efficiency.

The Board notes that only Progress has a contractual right to terminate its PEA and FT-R Service up to the Decision Date, which is defined, in the PEA, as "the date that is 30 Days after NGTL receives from the NEB or other body, as applicable, a decision on NGTL's application to vary its NEB Certificate by waiving, modifying or removing Condition 4 of the NEB Certificate". The Board is including **Condition 3** in Toll Order TG-003-2018 (Appendix III) stating in part that, if Progress exercises this termination right, NGTL shall file to the Board, within 180 days of the date of Progress's termination decision, and prior to construction, information demonstrating it has contracted sufficient new arrangements on substantially similar commercial terms to underpin NGTL's applied for 42.1 10<sup>6</sup> m<sup>3</sup>/d (1,485 MMcf/d) of FT-R service on the NMML Facilities, failing which, NGTL may not commence construction.

#### 3.14.3.5 Separate Cost Pools and Deferral Account

The Board requires NGTL to maintain separate cost pools for the NMML Facilities and the existing NGTL System. The separation of cost pools between the NMML Facilities and the existing NGTL System allows accountability for the costs related to the NMML Facilities to



clearly rest with NGTL and the NMML Facilities' shippers. The NMML Facilities cost pool will establish and maintain separate accounting records for the NMML Facilities and, during the Provisional Period, will hold in a deferral account any difference between North Montney COS related to the NMML Facilities and incremental revenue from NMML-related receipt contracts using the Provisional Tolling Methodology. The cost pool for the NMML Facilities shall be maintained for the life of the facilities, or until the Board directs otherwise. More detailed information related to the Provisional Period cost pool is contained in the attached Toll Order TG-003-2018 (Appendix III).

No more than three months following the end of the Provisional Period, Toll Order TG-003-2018 (Appendix III) directs NGTL to apply to the Board for approval of the disposition of the balance in the deferral account. If NGTL files a new tolling proposal during the Provisional Period, it must include, with that filing, a proposal for the disposition of the accumulated deferral account balance.

Due to the limited term of operation of the Provisional Tolling Methodology, concerns related to determining precise eligibility criteria for, and the impact of, amounts added to the Provisional Period cost pool related to incremental delivery revenue are diminished, compared to the importance of these concerns for the Original Project. For the Original Project, the issue of how NGTL would allocate delivery revenue to the Original Project cost pool was unresolved between the Board and NGTL.<sup>5</sup> NGTL has not persuaded the Board that the NMML Facilities will result in any objectively identifiable and significant incremental delivery revenues. Accordingly, no incremental delivery revenue may be allocated to the cost pool.

### **3.14.3.6 Unjust Discrimination**

The statutory requirement that there be no unjust discrimination in tolls is often referred to as a key tolling principle. In the RH-4-86 Decision,<sup>6</sup> the Board stated that “it can set different tolls for traffic of different descriptions; for traffic of similar description but which is carried over different routes; as well as for traffic which flows under substantially different circumstances, all without offending the prohibition against unjust discrimination. Whether or not any such circumstances should be examined in this case is a matter for the Board to decide based on the evidence before it.”

The NMML Facilities include a large diameter, high-capacity mainline extension, extending 206 km into a unique area not currently serviced by NGTL and its existing laterals. The Board finds that gas on the North Montney Mainline would be transported over a different route than gas anywhere else on the NGTL System Gas from receipt points on the North Montney Mainline will be transported on the North Montney Mainline to the existing NGTL System at Saturn, and will not be commingled with other gas streams until it enters the existing NGTL System at Saturn. It is possible to determine the exact route taken by the volumes while they are on the

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<sup>5</sup> NEB Letter to NGTL – Conditions 3(a) and 3 (b) Revenue, 6 May 2016, A76773-1.

<sup>6</sup> NEB Reasons for Decision RH-4-86 dated June 1987, Interprovincial Pipe Line Ltd. - Chapter 8, 8.1 Introduction, pages 47 and 48, PDF pages 67 and 68 of 122, (A4F4A1).

North Montney Mainline. For these reasons, charging a different toll would not offend the Section 62 prohibition.

The Board notes NGTL's submission that it would be unjustly discriminatory and inappropriate as a matter of regulatory policy to impose a new tolling approach for the NMML Facilities without addressing the concerns with tolling and possibly applying that same tolling approach elsewhere on the NGTL System. The Board is giving NGTL the opportunity to consult with shippers during the Provisional Period and to propose a tolling alternative to address the Board's concerns, while ensuring the alternative proposal does not result in unjust discrimination.

### **3.14.3.7 Competition and Commercial Impacts**

In the GH-001-2014 Report, the Board found that “[I]n the case of competition amongst regulated pipelines, the Board finds that adherence to the principle of cost causation lays the foundation for fair competition. Given the competitive environment in northeast BC, the vast potential of the resource and potential to benefit Canadians, the Board is mindful of the need to prevent competitors from gaining a regulatory advantage as a result of its tolling decisions.” These findings remain true in this Application as well.

Some circumstances have changed concerning competition from the GH-001-2014 proceeding. Primarily, with the cancellation of the PNW LNG Project, gas from the NMML Facilities will now no longer have a distinct LNG delivery market and instead will flow on to the existing NGTL System. This gas will now directly compete with gas flowing from the Westcoast System to interconnections with NGTL at Sunset and Gordondale over the long term.

The Board has found that NGTL's proposed tolling of the NMML Facilities would not respect the user pay principle, and would result in improper price signals, due to the excessive level of cross-subsidization from existing NGTL System users. Accordingly, under rolled-in tolling and applying NGTL's current toll methodology, the NMML Facilities would have an unfair advantage in attracting gas from producers in the area who wish to access NIT. This advantage could cause undue harm to competitors.

While approving NGTL's proposed tolls on the NMML Facilities could result in competitive impacts to Westcoast, such as offloading from the Westcoast System, Westcoast ultimately is accountable for its own commercial decisions. The Board understands that Westcoast undertook recent system expansions with an assumption that the NMML would only be built if the PNW LNG received a positive final investment decision. Westcoast also assumed that the NMML would not be tolled on a rolled-in basis for more than 48 months. While these assumptions may have been reasonable, some uncertainty still existed with respect to the NMML, and competition in the area from NGTL. Furthermore, Westcoast did not ensure that NGTL had corresponding capacity to receive gas that would flow to Sunset and Gordondale as a result of Westcoast's recent expansions. Nor did Westcoast eliminate diversion rights for shippers contracting on its recent expansions, to mitigate the risk of shippers diverting this gas to Station 2 and letting their existing Station 2 contracts expire. Finally, Westcoast doesn't appear to have made any significant changes to its toll design in Zone 3 to respond to competition from the NMML and NGTL.

Notwithstanding the above, the Board is of the view that the tolling methodology approved for the Provisional Period will have minimal impact on Westcoast's ability to compete. The length of time that NGTL may use this methodology is limited to one year, less than the four year Transition Period approved in the GH-001-2014 Report. Further, if NGTL fails to file a toll application that is approved by the Board, then, at the end of the Provisional Period, the NMML Facilities will be subject to stand-alone tolling.

The Board seeks to allow fair competition amongst regulated pipelines in northeast BC. Accordingly, the Board's tolerance for cross-subsidization in the area is low. However, the Board does not provide regulatory protection to any incumbent pipeline. It is the responsibility of pipeline companies to innovate, respond to competition and manage their business risks. As the Board has ruled, NGTL may return to the Board with a toll methodology that ensures users of the NMML Facilities pay a toll that is reflective of the costs they cause on the System. This could result in tolls that are competitive with or lower than Westcoast's tolls. Westcoast may need to adapt its suite of services, contracting practices and its tolling framework to remain competitive, particularly to compete with NGTL to transport gas to NIT.

### **3.14.3.8 Comments Regarding Tolling for the Post-Provisional Phase**

As noted above, NGTL has one year following the issuance of this Decision to re-apply to the Board with a new tolling methodology for the NMML Facilities before defaulting to stand-alone tolling. Such an application may be for tolling on the NMML Facilities alone, for tolling the NMML Facilities as part of a toll zone, or as part of an application for tolling on the entire NGTL System.

Any Post-Provisional Tolling Methodology (PPTM) developed by NGTL must result in tolls that are just, reasonable, and not unduly discriminatory. In this section, the Board offers some additional guidance, based on the evidence provided during the Hearing; however, none of the suggestions below imply a Board pre-disposition on any filings on tolling methodology to be made in the future.

The PPTM should reflect greater adherence to the cost causation principle. In determining if the cost causation principle is met, the Board will consider evidence such as the extent incremental revenue covers the incremental COS of the new facilities as well as the extent the revenues make a meaningful financial contribution to the cost of using services on the existing NGTL System. NGTL's application for a PPTM must also make a proposal for the disposition of costs accumulated in the deferral account for the NMML Facilities.

While some shippers have existing FT-D contracts, the NMML Facilities have no associated incremental FT-D contracts. Accordingly, the FT-R shippers underpinning the NMML Facilities are the primary drivers of the need for the NMML Facilities. To send proper price signals and adhere to the principle of cost causation, tolls charged to shippers on the NMML Facilities in the PPTM should account for: 1) the costs to use the existing NGTL System; and 2) the incremental costs caused by the construction and operation of the NMML Facilities, less the portion of the costs attributable to the existing System users' indirect use of, and need for, the NMML Facilities.

While existing FT-D shippers benefit from and contribute to the need for continued sources of gas supply, the proportion of costs from the NMML Facilities allocated to existing system shippers' tolls should reflect the fact that existing System shippers only indirectly contribute to the need for, and the use of, the NMML Facilities.

NGTL may address these concerns in the PPTM by, but is not restricted to:

- Developing a separate cost pool for the NMML Facilities, whereby the costs from the NMML Facilities are allocated to the NMML cost pool and the existing NGTL System cost pool in proportions reflecting the fact that NMML shippers are the main drivers of the costs of the NMML Facilities;
- Applying a toll surcharge to shippers on the NMML Facilities, in addition to the toll these shippers would pay under NGTL's existing toll methodology; and/or
- Creating a toll zone, including the NMML Facilities, which would result in an increased allocation of the costs caused by the NMML Facilities shippers to the FT-R tolls.

The long term financial and operational risks of the NMML Facilities should be allocated amongst those who reap the benefits – this includes FT-R shippers on the NMML Facilities, NGTL and existing shippers. However, as the FT-R shippers on the NMML Facilities and NGTL are largely the beneficiaries from the decisions that define the scope and costs of NMML Facilities, so should they bear proportionate risk for these decisions. Accordingly, the PPTM should promote efficient use of existing NGTL infrastructure and discourage overbuilding.

If NGTL applies with a PPTM as part of an application for tolling on the entire NGTL System, then the PPTM must account for the changed circumstances since the Board first approved NGTL's rate design methodology in the RHW-1-2010 Reasons for Decision<sup>7</sup>. The evidence in this proceeding indicates that there has been significant growth in volumes of gas entering the NGTL System from BC, and, with the addition of the NMML Project, more growth is projected. In the Board's view, demonstrating cost causation with the existing tolling methodology, particularly with the toll ceiling, is difficult in the case of major supply extensions, like the NMML Facilities.

In the RHW-1-2010 Reasons for Decision, the Board contemplated this issue, stating that “the Board views the issue of the footprint of the Alberta System covered by the Settlement as being closely linked to the appropriateness of the ceiling rate and floor rate of +/- 8 cents/Mcf from the average FT-R rate for service at individual receipt points.” The Board suggests NGTL evaluate and justify the appropriateness of any proposed ceiling and floor rates for its FT-R service, particularly with respect to the distance sensitivity of its tolling methodology. In the Board's view, NGTL's tolling methodology is insufficiently distance sensitive to address a major supply extension like the NMML Facilities. Simply removing the toll ceiling is not sufficient to address the deficiencies identified in this Decision.

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<sup>7</sup> NEB Reasons for Decision RHW-1-2010 dated August 2010 – NGTL Toll Methodology and Integration Application.

## Chapter 4

# Need for the North Montney Mainline Facilities

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## 4.1 New Facts and Changed Circumstances

### *Views of NGTL*

NGTL submitted that the emergence of new facts and changed circumstances remove the need for Condition 4 and justify a variance. Subsequent to the Board's approval of the Original NMML Project:

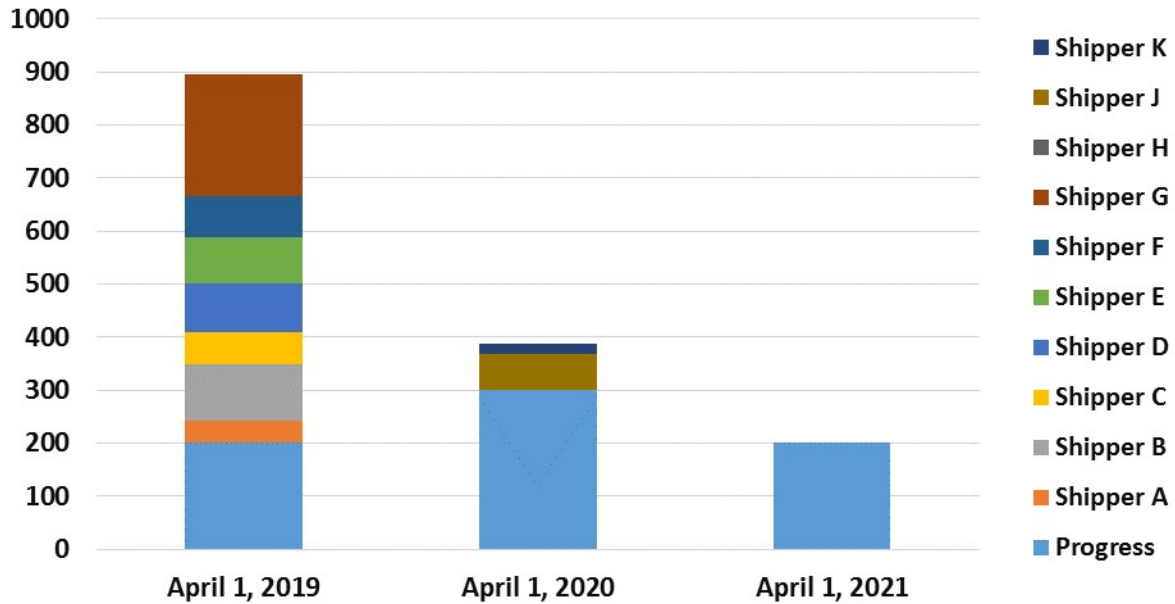
- the Pacific North West Liquefied Natural Gas Project (PNW LNG Project) experienced delays and on 25 July 2017 PNW LNG announced that it would not proceed with the PNW LNG Project;
- gas producers in the North Montney have sought incremental Firm Transportation – Receipt (FT-R) service on the NGTL System that would require the use of the applied-for Facilities;
- NGTL has restructured the commercial arrangements with the four Original NMML Project Shippers and has signed Project Expenditure Authorization (PEA) agreements with seven new customers.

NGTL submitted that these new facts and changed circumstances demonstrate an immediate and long-term need for the NMML Facilities.

NGTL entered into new or amended NMML PEAs with 11 customers seeking FT-R service, most of which starts in April 2019. Cumulatively, these FT-R service contracts represent a total volume of  $42.1 \times 10^6 \text{ m}^3$  (1.485 Bcf/d). Of this amount, Progress Energy Canada Ltd. (Progress) has contracted for  $19.8 \times 10^6 \text{ m}^3/\text{d}$  (0.7 Bcf/d) and other parties have contracted for  $22.2 \times 10^6 \text{ m}^3$  (0.785 Bcf/d).

NGTL identified the 11 customers holding the PEAs as: Progress, Kelt Exploration (LNG) Ltd., Aitken Creek Gas Storage ULC, Painted Pony Petroleum Ltd., ARC Resources Ltd., Saguaro Resources Ltd., Black Swan Energy Ltd. (Black Swan), Tourmaline Oil Corp., Canbriam Energy Inc., UGR Blair Creek Ltd. and ConocoPhillips Canada (BRC) Partnership (ConocoPhillips). NGTL advised that the FT-R contract quantity subscribed by each shipper, and the location of service, is commercially sensitive and confidential.

**Figure 4.1: FT-R Contract Quantities by Shipper, by Contract Start Date**



Source: NGTL NMML Facilities Application – Revised, Changes in Commercial Arrangements, Table 3: Summary of FT-R Contracts (A87391-4)

All FT-R contracts are for a term of 20 years, with a five-year primary term and 15-year secondary term. During the primary term, shippers cannot transfer service to another location. During the secondary term, service may be transferred to other receipt locations, but only on the NMML and subject to available capacity. In NGTL’s view, these primary and secondary term provisions will ensure that the Facilities will be supported by 1.485 Bcf/d of FT-R contracts for a term of 20 years, demonstrating the long term need and necessity of the Facilities. NGTL emphasized that the 20-year term and restricted secondary term were developed to address concerns identified by the Board in previous Board guidance.

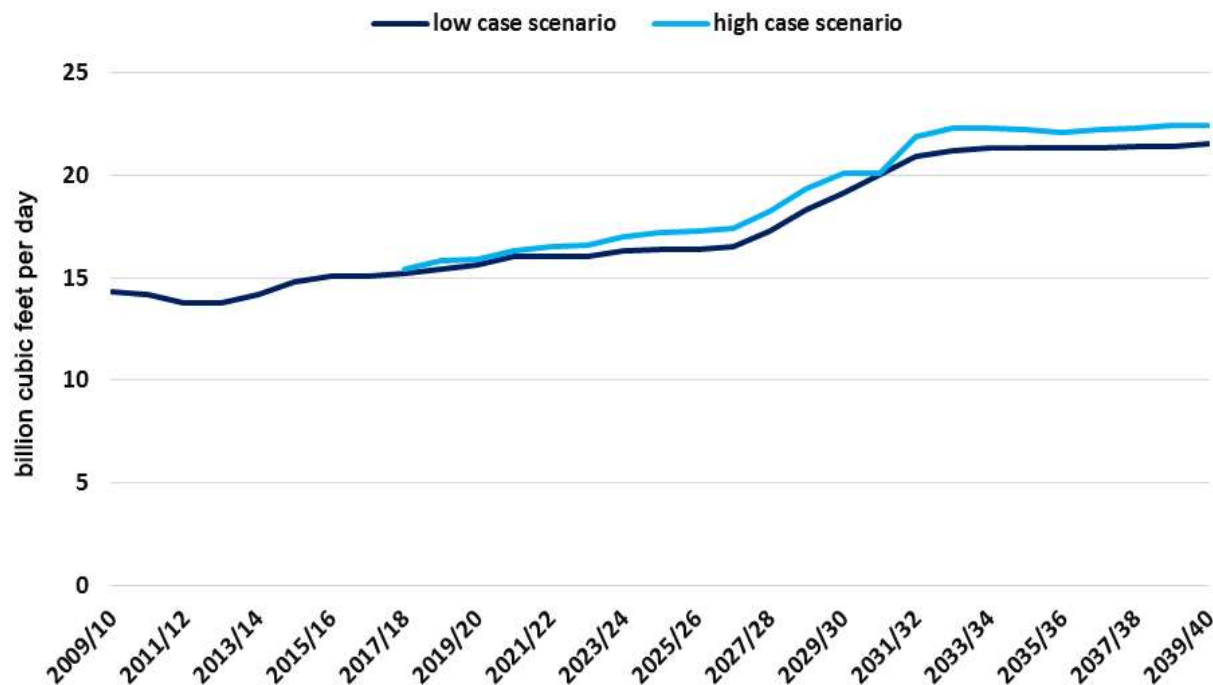
NGTL submitted that Progress had executed an amended North Montney Anchor Customer Receipt PEA (Progress Receipt PEA) and a North Montney Delivery PEA (Progress Delivery PEA). The Progress Receipt PEA provides for FT-R service that would utilize both the NMML Facilities and, subject to a positive final investment decision on the PNW LNG Project, the remaining NMML Facilities. NGTL subsequently submitted that as a result of the negative final investment decision on the PNW LNG Project, the Progress Delivery PEA is no longer expected to result in Firm Transportation – Delivery (FT-D) contracts at the Mackie Creek Interconnection.

## 4.2 Need for the NMML Facilities: Natural Gas Supply

### Views of NGTL

NGTL forecasts the Western Canadian Sedimentary Basin (WCSB) gas production to grow from approximately 15 Bcf/d currently to 21.5 Bcf/d in its low case scenario and 22.4 Bcf/d in its high case by 2040. NGTL's key assumption is that a low-price environment is expected to continue.

**Figure 4.2: WCSB Production Forecast**



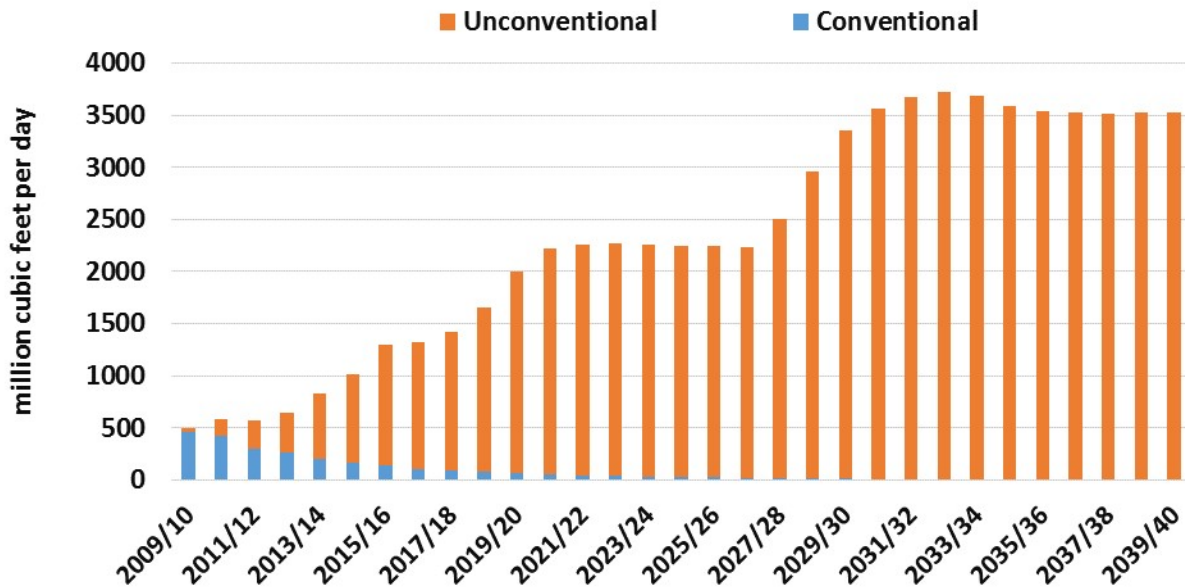
Source: NGTL Response to NEB IR 1.2 C) Table NEB 1.2-1: WCSB Supply Forecast (A87392-1)

NGTL submitted that its WCSB gas production forecasts are higher than NEB WCSB gas-production forecasts, because the NEB assumes no liquefied natural gas (LNG) exports will take place over the forecast period, whereas NGTL does assume LNG exports.

NGTL submitted that since the Board's GH-001-2014 proceeding, supply projections for the Montney basin have increased. For example, NGTL cited the Board's *Canada's Energy Future 2016* report where the Board estimated that production from the BC portion of the Montney basin will increase to  $199 \times 10^6 \text{ m}^3$  (7 Bcf/d) by 2040.

In the GH-001-2014 proceeding, NGTL submitted that marketable gas volumes attributable to the NMML drainage area were approximately  $2.4 \times 10^{12} \text{ m}^3$  (85 Tcf) and that production from the North Montney area would increase from approximately  $20.3 \times 10^6 \text{ m}^3/\text{d}$  (0.715 Bcf/d) in 2013 to  $87.3 \times 10^6 \text{ m}^3/\text{d}$  (3.1 Bcf/d) by 2035. NGTL's updated forecast demonstrated production from the North Montney area to exceed 3.5 Bcf/d by 2030.

**Figure 4.3: Montney Production Forecast**



Source: NGTL Response to Westcoast Energy Inc., IR Westcoast 1.2 C) Table Westcoast 1.2-1: Total Production in the North Montney Area (A88111-12)

NGTL submitted that its internal assessment of the North Montney suggests that the area falls within the plays with the lowest breakeven gas price and yields one of the best rates of return in the WCSB. NGTL stated that independent studies support this, suggesting full-cycle costs in the Montney Formation are competitive with the Marcellus Shale. NGTL summarized that gas produced from the North Montney area will be competitive in the North American marketplace and the NMML Facilities will continue to be used and useful in the short and long term. NGTL argued that its evidence continues to demonstrate the adequacy of supply to support the NMML Facilities.

***Views of the Export Users Group***

The Export Users Group (EUG) did not file evidence in this proceeding.

EUG argued that the current situation of oversupply is fundamentally incompatible with the notion of delivery demand driving the need for incremental supply from the Variance Facilities. Furthermore, the current situation of oversupply is in contrast with NGTL’s insistence that NMML Facilities are needed to ensure replacement of production declines elsewhere on the NGTL System. In EUG’s view, the acknowledged supply overhang could not exist unless current FT-R shippers were collectively succeeding in replacing declines with new production.

EUG argued that it is reasonable and prudent to expect that significant displacement of existing volumes is likely to result if NMML Facilities are constructed. EUG further argued that NGTL has not quantified or mitigated displacement of existing volumes that are likely to result as a result of the NMML Facilities.



### *Views of Progress Energy Ltd.*

Progress submitted it has 12 Tcf of proved plus probable reserves and 40 Tcf of contingent resource. Progress expects 400 Bcf of these reserves to be produced to meet current commitments on the Westcoast Energy Inc., carrying on business as Spectra Energy Transmission (Westcoast) System and 5 Tcf to be produced to meet Variance Facility commitments. Progress also stated that the quality of the North Montney play is competitive with the top tier plays in the United States (US).

### *Views of Black Swan Energy Ltd.*

Black Swan has 47.5 MMBoe of proved and probable reserves and, assuming egress is available, intends to produce 500 MMcf/d of gas by the end of 2022. Montney gas in Black Swan's development area is liquids rich.

### *Views of the North Montney Producers Group*

The North Montney Producers Group (NMPG) did not file evidence in this proceeding.

NMPG argued that North Montney producers have access to reserves that are capable of achieving economic returns that rival the best plays in North America. There continues to be a vast supply of gas in northeastern BC, consistent with the development plans of the Project Shippers. NMPG argued that adequacy of supply was not contested and no updated supply forecast was requested by the Board.

NMPG stated that the Board's original finding in GH-001-2014 on supply should not be disturbed. The current market over-supply situation is not determinative, and in NMPG's view, it is important to anticipate future demand and have infrastructure in place so that supply is available when required.

## **4.3 The Need for the NMML Facilities: Natural Gas Demand**

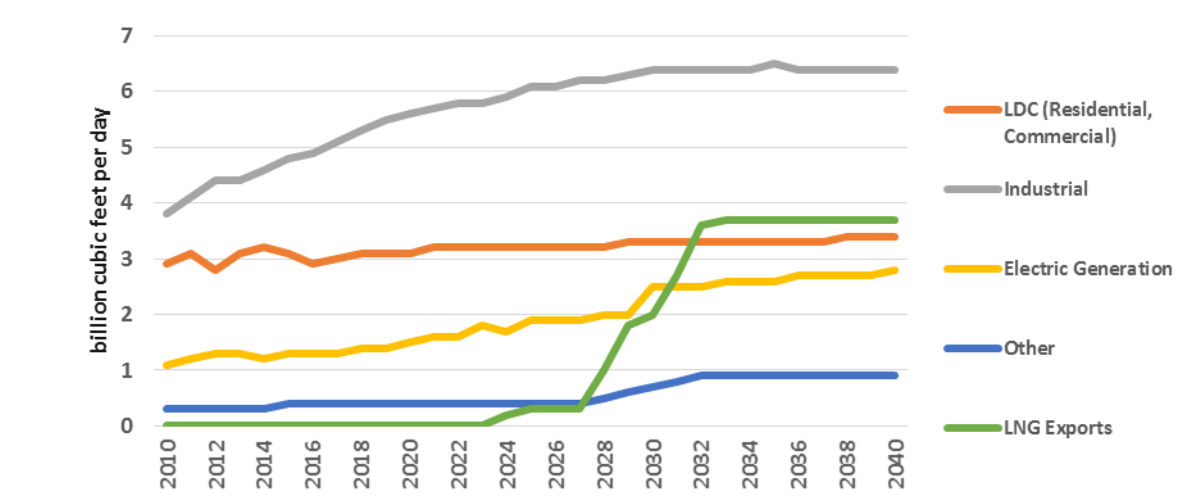
### *Views of NGTL*

NGTL submitted that the existence of LNG markets is not required to justify the need for the NMML Facilities and that there is sufficient future demand in North American markets that will require the long-term delivery of supply from the NMML Facilities.

NGTL expects demand for natural gas across North America to increase by approximately 40 per cent, from  $2,680 \times 10^6 \text{ m}^3/\text{d}$  (95 Bcf/d) in 2016 to over  $3,650 \times 10^6 \text{ m}^3/\text{d}$  (130 Bcf/d) by 2030.

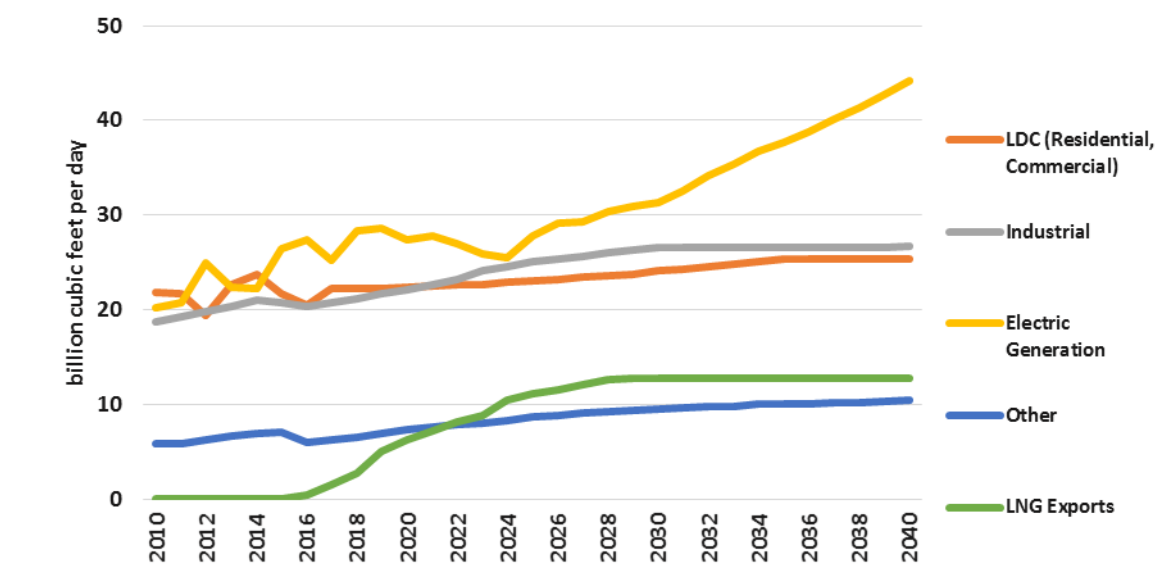
NGTL filed forecasts for natural gas demand in Western Canada, Canada and the US, all of which showed demand growth. Refer to Figure 4.4 (Canada) and Figure 4.5 (US). In the Western Canada and Canada forecasts, the largest demand growth came from LNG exports, industrial demand, and electricity generation. In the US forecast, the largest demand growth came from electricity generation and LNG exports.

**Figure 4.4: NGTL’s Canadian Natural Gas Demand Forecast (2010 to 2040)**



Source: NGTL’s Response to NEB IR 1.2 f.2), Table NEB 1.2-6: Canada Natural Gas Demand (2010-2040) (A87392-1)

**Figure 4.5: NGTL’s US Natural Gas Demand Forecast (2010 to 2040)**



Source: NGTL’s Response to NEB IR 1.2 f.3), Table NEB 1.2-7: Canada Natural Gas Demand (2010-2040) (A87392-1)

NGTL also submitted that on average, production from existing wells in the WCSB is declining by 18 per cent each year. This results in approximately 2 Bcf/d (56.7 10<sup>6</sup> m<sup>3</sup>/d) of new supply being required each year to meet existing supply and market requirements on the NGTL System. In NGTL’s view, this natural decline alone is sufficient to absorb the incremental supply associated with the NMML Facilities.

### ***Views of the Alberta Department of Energy***

The Alberta Department of Energy (ADOE) did not file evidence in this proceeding.

ADOE argued that NGTL has not adequately demonstrated that there will be sufficient incremental demand in the WCSB, Eastern Canada, or US markets to absorb the new gas supply. In ADOE's view, given the continued lack of evidence that there will be sufficient new FT-D demand, the NMML Facilities should not be allowed to displace the same supply that is subsidizing the Project. The existing production is closer to markets and less costly to transport.

ADOE disagreed with NGTL's assertion that the Project is required due to a WCSB decline rate of 18 per cent each year. As a result of the technical revolution in drilling, unconventional resource plays in proximity to the existing NGTL System can ensure that the markets are well served with low-cost supply. This would also lower the cost of facility connections. ADOE further argued that high FT-R renewal rates and the supply overhang acknowledged by NGTL is evidence that NGTL has access to cost effective supply to replace any declining well output.

### ***Views of Blueberry River First Nations***

Blueberry River First Nations argued that NGTL and the North Montney producers have not provided sufficient evidence to assess their claims and that the price signals from the oversupplied gas market do not indicate a need for the NMML Facilities. It further argued that the Westcoast System could be expanded to bring additional gas onto the NGTL System and that if the NMML Facilities are approved as proposed, the Project could divert significant volumes from Westcoast.

### ***Views of ConocoPhillips Canada (BRC) Partnership***

ConocoPhillips did not file evidence in this proceeding.

ConocoPhillips argued that there is an urgent need for the NMML Facilities notwithstanding the cancellation of the PNW LNG export project, and that the Board should grant the Application as applied for without conditions.

ConocoPhillips argued that the 11 shippers demonstrate aggregate need for the NMML Facilities and that the 20-year contracts demonstrate long-term confidence in the North Montney and the use and usefulness of the NMML Facilities. ConocoPhillips also noted that existing pipelines in the North Montney area are full and no additional capacity is available to access the NOVA Inventory Transfer (NIT).

### ***Views of the Export Users Group***

EUG argued that the Board's findings on aggregate demand in GH-001-2014 remain accurate and appropriate. In EUG's view, it is solely the small and identifiable group of shippers that assert the need for gas transportation services from North Montney, and not the aggregate demand on the existing NGTL System. No other shippers, whether FT-R or FT-D, have any commercial arrangements on the NMML Facilities.

EUG argued that the cancellation of the PNW LNG project makes the economic feasibility of the NMML Facilities less certain. Absent the PNW LNG project, the original and long term rationale for the NMML Facilities has disappeared. There is no delivery demand that necessitates the NMML Facilities in the short-term or near-term, and the prospect of North Montney area production displacing gas from other areas already connected to the NGTL System is significantly heightened. The NMML Facilities may be economically feasible, but they are much less so than if the PNW LNG project was proceeding.

EUG submitted that, given the uncertainty regarding future LNG development on the west coast of BC, it would be appropriate for the Board to add a condition that, in the event that the NMML Facilities, if approved, are intended to be connected to pipelines that transport gas to the west coast of BC, then NGTL is directed to make an application to the Board regarding the continued appropriateness of the tolling methodology.

### *Views of Saulteau First Nations*

Saulteau First Nations (SFN) argued that NGTL's forecast of US natural gas demand is higher than the forecasts of the Energy Information Agency.

SFN filed a report by J. David Hughes, which relied on Energy Information Agency data that projects the US to become a net gas exporter by 2018, and export 15.7 Bcf/d by 2040. Mr. Hughes noted that NGTL includes LNG exports in its estimate of US demand as an opportunity to market its gas. However, Mr. Hughes noted that US exports of LNG are fully covered by US production and do not offer a profitable opportunity for NGTL's gas. In Mr. Hughes' view, cheap Appalachian gas from the eastern US can be shipped to US export facilities at a fraction of the transportation costs of the Northern Montney, and therefore is a more competitive source of LNG exports. In Mr. Hughes' view, excess US production will reduce or eliminate the Canadian export opportunities alleged by NGTL.

Even if US LNG and pipeline exports are added to US domestic demand, NGTL's US demand forecast overestimates this total by 15 per cent in 2040. If US domestic demand only is considered, NGTL overestimates it by 36 per cent. In a scenario where surplus US production is diverted from exports to US domestic requirements, NGTL overestimates US domestic demand, before imports are required, by 67 per cent in 2040. In summary, in Mr. Hughes' view, there is no basis for NGTL to assume there will be a profitable US export market for its gas given the construction of NMML Facilities.

Mr. Hughes relied on published NEB forecasts of WCSB gas production to suggest WCSB gas production will grow to 16.94 Bcf/d in 2040 in the NEB's Reference Case, 15.31 Bcf/d in the NEB's Higher Carbon Price Case, and 14.76 Bcf/d in the NEB's Technology Case. Mr. Hughes concluded that given that gas production in the WCSB will be much less than NGTL forecasts, NGTL overstates the need for the project. Furthermore, Mr. Hughes submitted that when current percentages of North Montney production out of total BC Montney production are applied to NEB forecasts of BC Montney production to 2040, the NMML Facilities will be underutilized by 75 per cent in the Board's Reference Case and 89 per cent in the Board's Technology Case.

### ***Views of the North Montney Producers Group***

NMPG argued that NGTL's supply and demand forecasts, which are well-informed and have not been subject to any credible challenge, are reasonable. NMPG argued that there is no requirement that industry forecasts be in complete alignment with other forecasts, including those from the NEB or the Energy Information Agency.

NMPG noted that Mr. Hughes was the only party to file evidence that challenged NGTL's demand forecast. NMPG argued that Mr. Hughes is not an expert in market or demand forecasting and his report did not take into account a number of relevant factors. NMPG submitted that Mr. Hughes' evidence on demand should be given no weight.

### ***Views of West Moberly First Nations***

West Moberly First Nations (WMFN) argued that the Variance Application is being driven by efforts to recover investments by NGTL and Progress, and not in response to general customer demand. It also argued that increased shipping capacity will further increase the gas oversupply, and will likely put further downward pressure on natural gas prices. WMFN argued that there is currently a supply glut in the market, and that there is no need for the additional transportation capacity proposed by the NMML Facilities, despite the FT-R contracts.

### ***Reply of NGTL***

NGTL disagreed with some Intervenors' positions that the need for the NMML Facilities is driven solely by the needs of the 11 new shippers, and not the aggregate system demand. New facilities are almost always triggered by incremental contracts with identifiable shippers when all existing capacity is fully contracted. Furthermore, the Board's findings of aggregate demand in past cases were made notwithstanding the fact that the facilities were triggered by new contracts with identifiable shippers. NGTL argued that Intervenors' positions would imply that there will never be aggregate demand for new extensions. In NGTL's view, Intervenors' argue that new extensions are always separate-use facilities and therefore must be tolled on a stand-alone basis. NGTL notes that similar arguments were made by the Intervenors in past proceedings and were rejected by the Board.

In response to market demand submissions from Mr. Hughes, NGTL submitted that its US demand forecast is consistent with other leading industry forecasts.

In response to submissions from ADOE, NGTL noted that no evidence was filed that existing production is located closer to markets or is less costly to transport. NGTL advised that it is a federally regulated pipeline and cannot discriminate against producers in one province to protect producers in another.

## **4.4 Impact of the NMML Facilities on North Montney Producers**

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

NGTL submitted that there is no existing pipeline capacity that can accommodate Variance Facility volumes and no viable alternative has been or is being pursued. Gas producers in the

North Montney area have continued to advance their development plans and require timely sales gas transportation to provide access to downstream markets. The NMML Facilities are imperative to the development of the North Montney resources, which are capable of achieving economic returns that rival the best plays in North America and access to NIT is key to this production reaching markets throughout Canada and the US.

NGTL submitted that customers have committed considerable effort and spent billions of dollars in drilling and development work in anticipation of getting their North Montney production to NIT and the connected markets. Over half of the NMML Facilities shippers have also contracted for firm delivery service on the NGTL System to connect their production portfolio, including gas from the North Montney and elsewhere on the NGTL System, from NIT to downstream markets. More specifically, NGTL filed evidence to demonstrate that NMML shippers hold a combined 761,897 GJs/d in FT-D contracts, including 100,000 GJs/d to the Alberta-BC border on existing capacity, 312,982 GJs/d to the Alberta-BC border for expansion capacity, and 348,914 GJs/d to the Empress border as part of the Dawn Long Term Fixed Price service. NGTL submitted that it was holding an open season to expand export capacity at East Gate by approximately 1 Bcf/d.

#### ***Views of ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.***

ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (ATCO) did not file any evidence in this proceeding.

ATCO argued that it does not oppose approval of the NMML Facilities and believes no changes should be made to the Original Toll Order. ATCO argued the potential exists for the NMML Facilities to be used for west coast LNG deliveries as LNG export projects are still being actively pursued. If LNG projects proceed, there is potential of overbuilding NGTL's existing system. ATCO argued that facilities constructed and used to flow gas to west coast LNG plants and away from Alberta markets should not be delivery shippers' responsibility. In order to mitigate the risk of NMML Facilities volumes being used for LNG export projects, ATCO believes the Original Toll Order must be maintained unchanged.

#### ***Views of ConocoPhillips Canada (BRC) Partnership***

ConocoPhillips stated that gas producers in the North Montney have continued to advance development plans, driving the need for additional takeaway capacity, and that the NMML Facilities are required to sustain the economic viability of the North Montney and to meet market demands.

#### ***Views of Saulteau First Nations***

SFN contends that existing pipeline capacity is not currently limiting North Montney production and that there appears to be substantial existing pipeline capacity to provide takeaway capacity in the North Montney. SFN argued that the Project is redundant and that the NMML will not serve any need that is not already being served in the North Montney.

### ***Views of Progress Energy Ltd.***

Progress filed evidence to support its view that the North Montney play is one of the largest and most prolific natural gas plays in North America. Current development of the play is limited by the smaller and less liquid markets served by the Westcoast T-North and T-South Systems. While those systems will continue to play an important role in developing Progress and the North Montney Joint Venture's North Montney assets, larger markets are required to support continued development of the North Montney and recover invested capital. The NMML Facilities are required to transport gas produced by Progress and the North Montney Joint Venture to the NIT market and the markets accessible through NGTL to support the resource development. Progress stated it has invested more than \$12 billion in the North Montney since 2012.

Progress stated that the North Montney resource cannot be fully developed in the foreseeable price environment with egress only on the Westcoast and/or Alliance Pipeline Ltd. (Alliance) systems. Additional development in the North Montney play is not justified without access to the NIT market hub.

Progress stated that existing production in BC is in excess of the current needs of the province, and this has resulted in a discount at Station 2 relative to NIT. In Progress' view, development is potentially unsustainable if BC producers have no additional access to the larger and more liquid NIT market hub. Progress stated that there is currently no uncontracted capacity on Westcoast's T-South and there is no incremental capacity available at Groundbirch or Gordondale that would take additional gas from Westcoast.

Progress stated that in 2017, it held in excess of 550 MMcf/d of T-North long haul capacity on the Westcoast system and an additional 100 MMcf/d of T-North short haul capacity. In 2018, Progress holds 522 MMcf/d of T-North long haul capacity and 100 MMcf/d of T-North short haul capacity. In 2019, assuming that it does not elect to exercise renewal rights, Progress will have 541 MMcf/d of T-North long haul capacity and 50 MMcf/d of T-North short haul capacity. After 2019, Progress has no commitment to T-North short haul capacity, but will continue to hold at least 300 MMcf/d of T-North long haul capacity up to 2031.

### ***Views of Black Swan Energy Ltd.***

Black Swan currently produces 130 MMcf/d of gas and 5,000 bbls/d of liquids in the Montney area and intends to increase production to 500 MMcf/d by 2022, assuming egress is available. The company has contracted on the NMML Facilities for 229 MMcf/d.

Black Swan submitted that it had participated and acquired service in all proposed pipeline expansions servicing its area of operations since May 2015. Existing natural gas pipeline capacity (both Westcoast and Alliance) from the Aitken Creek area is fully contracted, and incremental volumes are generally only able to flow on an interruptible basis. Black Swan stated that current transportation bottlenecks have affected the rate at which it is developing its Montney lands. The company does not want to drill wells only to shut them in for lack of pipeline capacity. Black Swan submitted that it had explored options with all pipeline operators

in the area and the NMML Facilities are the only expansion option that is able to serve Black Swan's growth in the near term.

Black Swan submitted that it will continue to hold long term capacity on Alliance and Westcoast, and has no plans to surrender capacity. Further, it stated it will soon require additional capacity to get its production to diverse markets.

In response to comments from SFN that the NMML Facilities are redundant, Black Swan argued that SFN focused only on the fact that it is possible to access NIT through the T-North system, and entirely ignored the evidence that there is a shortage of transportation capacity out of the North Montney. Black Swan argued that existing capacity is sufficient for existing production, because a producer cannot produce more gas than there is available transportation capacity (and storage). It does not follow from the fact that existing capacity can accommodate existing production that additional capacity is not required to accommodate future production.

### ***Views of the North Montney Producers Group***

NMPG argued that the cancellation of the PNW LNG project had no impact on the economic feasibility of the Project and that the need for the Project is entirely independent of LNG demand. NMPG stated that the NMML Facilities are expected to be highly utilized at approximately 85 per cent, which is consistent with NGTL design criteria. Moreover, the financial commitments made by Project Shippers represent a powerful incentive to acquire adequate gas supplies to use the contracts at this high utilization level.

In response to some Intervenors' submissions on displacement, NMPG argued that the role of the pipeline is to ensure sufficient pipeline receipt facilities so that customers have the opportunity to bring the most economic supply onto the System and to compete in markets of their choosing. The pipeline should not choose winners and losers amongst producers at receipt points. Limiting receipts would curtail developments of the WCSB and reduce competition in the marketplace. If supply is not maintained, NMPG argued that demand itself would be reduced, driving down throughput. This could disconnect the WCSB from markets and negatively impact the WCSB and the NGTL System.

In response to some Intervenors' submissions that the Project is needed only by the Project Shippers, NMPG stated that Project Shippers are not driving the Project alone and that Project Shipper demand and aggregate system demand are not mutually exclusive. NMPG submitted that in the past, the Board has not required corresponding delivery contracts. In any case, Project Shippers have contracted for firm delivery service for over half of the Project volumes from their production portfolios. NMPG argued that as a result of natural production declines and forecasted demand growth, aggregate demand of all NGTL shippers contributes to Project need. NMPG argued that this finding has been accepted by the Board in the past.

### ***Views of FortisBC Energy Inc.***

FortisBC Energy Inc. (FortisBC) did not file evidence in this proceeding.

FortisBC argued that contrary to NGTL's position on displacement, it is likely that low-cost North Montney supply will displace higher cost supply from elsewhere on its System. In



FortisBC's view, NGTL's evidence on the North Montney being the lowest cost supply and its reliance on market efficiency will result in displacement of existing supply.

### ***Views of the Western Export Group***

The Western Export Group (WEG) did not file evidence in this proceeding.

WEG argued that NGTL did not demonstrate that markets served by NGTL are able to receive delivery of the NMML Facilities volumes. In WEG's view, new facts and changed circumstances do not demonstrate incremental System demand, absent any LNG deliveries. In addition, NGTL did not show any changed circumstances that could lead to the conclusion that demand for volumes taken off the NGTL System at delivery points have increased. WEG argued that the NMML Facilities may result in underutilization of the System and displacement of existing supply.

WEG argued that NGTL did not consider the need to construct other facilities required to accommodate Variance Facility flow patterns. WEG argued that when these expected cost impacts are known, they should be attributable to the NMML Facilities' cost of service.

### ***Reply of NGTL***

NGTL argued that the NMML Facilities are urgently needed to provide pipeline egress out of the North Montney area, independent of any LNG projects. There is no existing pipeline capacity that can accommodate Project volumes, and no viable alternative has been or is being pursued. Producers have made significant upstream investments, which ensure that the NMML Facilities will be used and useful. There is more than sufficient supply in the North Montney area and demand across the NGTL System and connecting markets to support the NMML Facilities. In NGTL's view, these new facts and changed circumstances from the original North Montney proceeding demonstrate an immediate and long term need for the NMML Facilities, independent of any LNG deliveries.

NGTL submitted that if the Board is concerned that the NMML Facilities may be repurposed in the future to connect to an LNG project, which is something that the Board has previously recognized could change the nature of service on the NMML Facilities relative to the existing system, NGTL advised that the Board can impose a condition to address that.

## **4.5 Impact of the NMML Facilities on the Upstream James River Shippers and the Need for the Downstream Facilities**

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

NGTL filed evidence that other than the applied-for NMML Facilities, no additional facilities on the existing NGTL System are required to accommodate the new and amended FT-R contracts. NGTL had accounted for a similar level of NMML FT-R contracts associated with the Original NMML Project since 2013, which is reflected in the overall system design for the Peace River Project Area. NGTL witnesses emphasized that the only facility that is required to move 1.485 Bcf/d of North Montney contracts out of the design area is the Groundbirch Compressor Station.

NGTL advised that from a design perspective, the System is designed to ensure that 85 per cent of all contracts in the west of Saddle Hills area can be accommodated at any one time. NGTL knows from operating experience that customers will not all be using 100 per cent of their contracts all at the same time. Applying an 85 per cent utilization assumption allows NGTL to meet all of its firm contract demand, but it also ensures that the System is not overbuilt. NGTL advised that the only times that it had to curtail firm receipt nominations in recent years has been to address unplanned operational constraints on NGTL's facilities. These events were completely unrelated to NGTL's system design process.

NGTL submitted that, if all contracts that are eligible for renewal in the Peace River Project Area were to not be renewed, by November 2019 contracts would fall below design flow requirements and by November 2021, contracts would be near 8 Bcf/d. In NGTL's view, this reinforces the need for it to continue to connect supply to the NGTL System to ensure that over the long term, markets connected to the NGTL System have access to sufficient supply. In response to information requests, NGTL advised that for eligible FT-R contracts in the Peace River Project Area with expiry dates between 1 November 2017 and 31 October 2018, 98 per cent of contracts were renewed.

NGTL argued that no party other than NGTL filed evidence about downstream facilities or system design matters. NGTL emphasized that it regularly reviews its system design process with stakeholders through forums such as the Annual Plan process. To the extent that parties believe NGTL should design its system differently, other forums are appropriate. In NGTL's view, concerns regarding NGTL's system design process are beyond the scope of this proceeding.

NGTL submitted that, although the NMML Facilities' FT-R contracts have been accounted for in the System design since 2013, the NGTL System encountered challenges that impacted capacity and the ability to provide FT-R service between early 2014 and mid-2017. For example, NGTL was required to temporarily reduce the maximum operating pressure of twenty-five unpiggable pipelines, experienced delays to significant expansion facilities coming on stream, and encountered two unanticipated major compressor station outages. These operational constraints have been resolved as of Q3 2017 and none of the constraints are expected to persist in 2019 and 2020. Since Q3 2017, there have been zero days where less than 100 per cent FT-R allowable was authorized. With the operating capacity of the NGTL System returning to its design capability, the 1.485 Bcf/d of NMML Facilities FT-R contracts are not expected to have an impact on the reliability of existing firm contracts in the Upstream of James River portion of the System.

NGTL emphasized that FT-D and FT-R transportation contracts are not commercially linked. FT-R contracts provide shippers the opportunity to deliver gas onto the NGTL System and into NIT at a receipt point on the System, whereas FT-D contracts provide the opportunity for shippers to deliver gas from NIT to system delivery points. The NGTL System functions as an integrated system and the NIT hub effectively aggregates all natural gas supplies, storage, intra-basin and export markets and interconnected pipelines to the NGTL System at a single, integrated transaction hub. NGTL advised that it has a mechanism in place to balance daily receipts and deliveries.

NGTL submitted it is in the process of expanding its system to meet significant volumes of incremental delivery contracts, including over 1 Bcf/d at East Gate.

***Views of the Alberta Department of Energy***

ADOE argued that in the GH-001-2014 decision, the Board concluded that it was the Project's need and not the aggregate demand for the facilities that drove the Project Application. ADOE concluded that the Project does not increase the throughput capacity of the existing system, but will increase system congestion.

***Views of ATCO Gas, a division of ATCO Gas and Pipelines Ltd.***

ATCO did not support NGTL's position that the NMML Facilities play no part in driving the need for downstream expansions. ATCO argued that incremental capacity is required to be added to the NGTL System in the years 2019 to 2021 to transport all incremental and existing receipt volumes to intra-Alberta and export delivery points.

***Views of the Canadian Association of Petroleum Producers***

The Canadian Association of Petroleum Producers (CAPP) did not file any evidence in this proceeding.

CAPP submitted that to deny the Application would be to preclude northeastern BC supply from competition in North American markets. In CAPP's view, new supply from northeastern BC and northwestern Alberta is creating a supply push, and this supply push drives further competition for markets.

In response to WEG's submissions, CAPP argued that WEG fails to appreciate that the NGTL service model does not call for matching receipt and delivery contracts. CAPP emphasized that Westcoast builds T-North capacity without requiring matching downstream transport.

***Views of ConocoPhillips Canada (BRC) Partnership***

In response to comments from some Intervenors that there is no need for incremental volumes from the NMML Facilities to replace declining WCSB supply because existing shippers are ready and able to fill the gap, ConocoPhillips argued that NGTL must continue to connect new supply, notwithstanding the contract renewal rates in the Peace River Project Area. ConocoPhillips submitted that Intervenors' arguments are inconsistent with past Board findings and are not based on any evidence. No existing Peace River Project Area shipper provided evidence of production ramp-ups or an ability to replace production declines.

ConocoPhillips argued that concerns regarding impacts on other pipelines are not supported by the evidentiary record, and that the NMML Facilities are economically feasible and will have no undue upstream or downstream impacts that would warrant disapproval of the Application.

### ***Views of the Export Users Group***

EUG argued that the trigger for the need of the NMML Facilities is the FT-R shippers that need gas transportation services from the North Montney, and not the aggregate system demand.

### ***Views of Peyto Exploration and Development Corp., Modern Resources Inc., and Canlin Resources Partnership***

Peyto Exploration and Development Corp., Modern Resources Inc., and Canlin Resources Partnership (PMC Group) did not file any evidence in this proceeding.

In Final Argument, the PMC Group did not support NGTL's position that NMML Variance Application volumes are needed to offset WCSB production declines and are reflective of aggregate system demand. The PMC Group argued that NGTL's position is based on dated evidence, is not reflective of connected gas reserve production and capability, and is dependent on optimistic demand forecasts.

The PMC Group argued that the additional volumes of gas proposed to be transported by the Project are likely to exacerbate service interruptions on the NGTL System, flood the NIT market with volumes of gas for which there is no market, and contribute to price instability and low prices.

The PMC Group argued that the Board should condition approval of the NMML Facilities such that the NMML cannot proceed to construction until NGTL has developed at least 1.485 Bcf/d of incremental downstream capacity over and above the volumes outlined in NGTL's 2018 Annual Plan. In the PMC Group's view, this would allow all FT-R contracts to flow on an unconstrained basis, would facilitate NGTL System egress and would provide additional market access.

The PMC Group argued that NGTL did not support the reasonableness of its forecasted 18 per cent annual decline rate.

### ***Views of Westcoast Energy Inc., carrying on business as Spectra Energy Transmission***

Westcoast submitted that the NMML Facilities are not urgently needed. In Westcoast's view, the urgent need for the NMML Facilities rests with the 11 shippers that have contracted for transportation from the North Montney area. The NGTL System has no urgent need to attach new supply and the System is awash in economic gas. In Westcoast's view, the North Montney supply will displace gas that would otherwise be delivered to the NGTL System by other producers at other receipt points.

Westcoast did not support NGTL's position that no additional downstream facilities are required on the NGTL System to accommodate the proposed 1.485 Bcf/d of North Montney contracts. NGTL argued that if the utilization of other contracts in aggregate were higher than 85 per cent, not even the design flow of 1.264 Bcf/d could be transported on the NMML Facilities. While Westcoast did not suggest that additional downstream facility costs should be directly allocated to only the North Montney shippers, Westcoast did argue that it is disingenuous for NGTL to claim that the NMML shippers bear no responsibility for any additional downstream facility

costs. To illustrate, Westcoast stated that the Saddle West Expansion Project may not be required if the NMML does not proceed.

Westcoast dismissed NGTL's arguments that existing shippers will benefit from access to new North Montney supply and that all shippers will share in the benefits of the NMML Facilities and will contribute to their need. Westcoast argued that in the GH-001-2014 Report, the Board found that it was those shippers needing gas transportation service from North Montney, and not the aggregate demand of all shippers, that triggered the need for new facilities. Westcoast argued that the NMML Facilities will not increase throughput and that the Board heard no evidence from delivery shippers indicating that they require new supply.

### ***Reply of NGTL***

In response to some Intervenors' comments that connecting low-cost North Montney supply may displace higher cost supply from elsewhere on the System, NGTL argued that no evidence was placed on the record to support this claim. NGTL maintained that the long-term viability of the NGTL System depends on continually connecting new supply projects. The fact that there is more FT-R contracts than demand is a function of the market, and can change quickly if non-renewals take place. Moreover, it would be illogical for NGTL to not enter into 20-year contracts because of short-term contracts elsewhere on the System. NGTL does not act as a gatekeeper and provides the same opportunity to all producers to compete in the market to sell their supply. NGTL intervening in the market would distort the proper functioning of the market and impact WCSB competitiveness.

NGTL argued that only constructing new facilities where both receipt and delivery contracts support the new facilities, or where there is a shortfall of supply or demand that needs to be met, is not a prudent way to operate the System. Waiting until such time as there is an actual shortfall would risk having customers curtail their demand or source supply from alternative sources until NGTL completes new facilities. This approach would not be in the best interest of NGTL or its shippers.

Given the commercial separation of receipt and delivery services on the NGTL System, and the fact that customers contract for service and not the use of specific facilities, it is rare to have equivalent amounts of both new receipt and delivery contracts to underpin any particular facility expansion. In NGTL's view, as long as existing production naturally declines, the System has a need to connect new supply. NGTL argued that the Board recognized long term need for new supply on the NGTL System in its Towerbirch decision. In NGTL's view, there is no policy reason or factual basis for the Board to make a different finding in this case.

NGTL noted that the NMML Facilities will connect NGTL to the Aitken Creek storage facility, one of the largest storage facilities in Western Canada. Any NGTL customer with a NIT account and storage service will have the opportunity to nominate gas into storage.

In response to the PMC Group's submission that there is no evidence to support NGTL's forecasted 18 per cent annual decline rate, NGTL submitted that it had provided initial decline rates for North Montney and WCSB for the years between 2010 and 2015.

## **4.6 Views of the Board**

In this Application, the Board has evaluated the new facts and changed circumstances cited by NGTL to have occurred since the GH-001-2014 proceeding and finds that there continues to be a need for the NMML Facilities. In the GH-001-2014 Report, the Board found that there was insufficient evidence to adequately assess the demand for natural gas if the NMML volumes flowed into NIT. In the current proceeding, NGTL and other parties filed evidence that allowed the Board to examine the impacts of North Montney gas flowing into NIT over the long term and how North Montney gas might serve the North American market. Although conflicting projections of natural gas production and demand were filed in this proceeding, the Board is of the view that third-party forecasts are not necessarily overestimates if they exceed NEB or Energy Information Administration projections. They are different projections using differing models and assumptions.

### **4.6.1 Supply**

Over the course of the proceeding, the Board heard extensively about a natural gas supply push in the WCSB that is driving the need for additional pipeline capacity. NGTL referred to a current supply overhang in the WCSB. In addition, NGTL filed evidence demonstrating that its System is fully contracted, including both FT-R and FT-D contracts, on various parts of the System.

The filed evidence indicates that North Montney gas production is currently cost competitive with other sources of production in the WCSB and North America. The evidence also supports that many shippers on the NMML Facilities have significant resources, have made large investments in developing their natural gas assets, and have substantial long-term growth and investment plans. The Board notes that the North Montney supply assessment has increased since the original NMML proceeding and is satisfied that there is adequate supply to support the Project.

The Board is not persuaded by SFN's lower forecasts of North Montney gas production. Production grows where capital is spent to drill wells, which is, in part, determined by whether producers have contracted to transport gas from an area.

### **4.6.2 Markets**

The Board notes that the 1.485 Bcf/d ( $42.1 \times 10^6 \text{ m}^3$ ) of natural gas expected to flow on the NMML Facilities would enter the highly competitive and integrated North American market. In all the filed demand projections, gas demand in Canada and the US is expected to increase over the long term. In addition to growing demand, the Board is mindful of annual incremental supply requirements on NGTL to offset natural production declines in the WCSB.

The Board finds that, based on evidence, the absence of the PNW LNG Project demand does not diminish the need for NMML Facilities. The North American market is significant and will be able to absorb the project volumes. The Board is of the view that NGTL System demand profiles will continue to change over the long term as North American natural gas demand continues to increase. The Board also notes that North American markets will continue to function, and that

increases in demand, including LNG for exports, from Canada or the US, will be met with increases in supply. In addition, the evidence indicates that NGTL is planning export capacity expansions on its System.

The Board is not persuaded by SFN's evidence that growing net exports from the US indicate that there are no future markets in the US for Canadian gas. There is a significant difference between net and gross exports when countries trade large volumes of natural gas and these two terms should not be used interchangeably. In addition, natural gas trade and market dynamics are often regional and must also be considered in that vein.

The Board is of the view that, in the short term, additional North Montney production would largely be used to help replace natural declines on the NGTL System and may displace other sources of gas production in the WCSB. During this period, commodity prices may experience volatility as new production enters the market. The Board notes that, based on evidence filed by NGTL, since the third quarter of 2017, operational constraints on the Upstream of James River area of its System have been resolved, and all allowable FT-R that was nominated was authorized.

In the long term, the Board expects that, as integrated North American markets continue to evolve, gas demand will continue to seek out low cost sources of gas supply. This could result in expansions on the NGTL System to accommodate North Montney production growth, as well as increases to export capacity. As the Board noted in the GH-003-2015 Report<sup>8</sup>, the NGTL System functions as a network, with various producers, marketers, intra-system and ex-system gas users relying on its integration for their needs, and benefiting from this network of connectivity. This includes access to NIT, the most liquid natural gas trading hub in Canada.

#### **4.6.3 Firm Transportation Contracts**

The Board notes that certain elements of the FT-R contracts executed to support the NMML Facilities, specifically, the 20-year durations and limits on primary and secondary terms, are supportive of long term use of the NMML Facilities. Although the original NMML Application was underpinned by over 2 Bcf/d of FT-D contracts, the Board notes that the FT-R contracts in this proceeding are not underpinned by any FT-D contracts. In the Board's view, this is consistent with the NGTL Tariff, which does not require shippers to hold reciprocal receipt and demand contracts on the NGTL system. Nonetheless, the Board notes that the NMML shippers have FT-D contracts for almost half of the NMML Facilities' capacity from their production portfolios.

The Board heard extensively from parties on the issue of whether the NMML Facilities are supported by the aggregate system demand of the NGTL System. The Board notes that the NGTL System planning occurs on an aggregate system basis and it agrees with NGTL that matters related to its system design process are beyond the scope of this proceeding. However, the Board notes that throughputs have increased on the System since NMML volumes were

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<sup>8</sup> NEB Report GH-003-2015 dated October 2016 – Towerbirch Expansion Project.

incorporated into NGTL's system design process, particularly in the Upstream James River Area. The Board heard extensively about a current supply overhang on the NGTL System and notes the high contract renewal rates in the Upstream James River Area. The Board is of the view that shippers and NGTL should continue to explore optimal system design processes as production in the Basin continues to evolve.

The Board considered the evidence filed by SFN, which advanced the position that there is excess pipeline capacity in the North Montney. There is abundant evidence on the record that pipelines in the North Montney area do not have excess capacity available, contrary to the position that SFN tried to advance. The Board notes that it does not pick market winners and losers and it is not the Board's responsibility to protect producers in one area of the WCSB from competition from potentially lower cost sources of gas supply in other areas. As discussed in Chapter 3, as long as the tolls set on the NMML Facilities respect the cost causation principle and are set in a way that promotes proper price signals, the Board is of the view that producers in differing areas of the WCSB can compete on a level playing field.

#### **4.6.4 Economic Feasibility**

Given the Board's views on natural gas supply, markets, and the existence of 20-year FT-R contracts, the Board finds that the NMML Facilities are expected to be used at a reasonable level over their economic life, and that demand charges are likely to be paid. As a result, the Board finds that the NMML facilities are economically feasible. Based on this finding and the new facts and changed circumstances, Condition 4 is no longer required.

As discussed in Chapter 3, the Board has set a Condition such that if, over the operating life of the Project, some or all of the gas transported on NMML Facilities does not continue to travel eastward on the Groundbirch Mainline to delivery points on the NGTL System in Alberta, and instead is delivered to markets not currently attached to the NGTL System, then NGTL must re-apply to the Board for approval of a tolling methodology on the NMML Facilities.



## Chapter 5

# Aboriginal Matters

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The Board has considered all of the evidence provided by Aboriginal groups and others, including NGTL, about the potential impacts of the NMML Facilities on Aboriginal interests, including rights. The Board has also considered NGTL's proposed mitigations of those potential effects, the requirements in the regulatory framework and the conditions imposed by the Board in Order XG-N081-010-2015 and Certificate GC-125.

For the reasons outlined in this chapter, the Board is of the view that any potential adverse impacts on the interests, including rights, of affected Aboriginal groups as a result of the NMML Facilities are not likely to be significant and can be effectively addressed.

### 5.1 NGTL's Consultation with Aboriginal Groups for the NMML Facilities

NGTL was required to make all reasonable efforts to consult with potentially affected Aboriginal groups and to provide information about those consultations to the Board as per the Board's Filing Manual. This included 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. NGTL was expected to report to the Board on all concerns that were expressed to it by Aboriginal groups, even if it was unable or unwilling to address those concerns. Therefore, even if an Aboriginal group chose not to participate in the subsequent hearing process, any concerns could be brought to the attention of the Board through the applicant's evidence.

#### *Views of NGTL*

##### *Variance Application*

NGTL stated that it notified potentially affected Aboriginal groups about the Variance Application on 23 March 2017. NGTL submitted that this notification indicated that it had applied for a Variance Application with the NEB and explained the purpose of the Variance Application, indicating that the changes to the NMML Project proposed in the Variance Application are related to commercial aspects of the NMML Project.

NGTL noted that on 12 September 2017 it distributed copies of the Notice of Public Hearing MH-031-2017, List of Issues, and Application to Participate (ATP) to each Aboriginal group engaged by NGTL, and those that the NEB corresponded with during the GH-001-2014 proceeding.

##### *Section 58 Projects*

NGTL stated that its Aboriginal engagement program for the Section 58 Projects was guided by TransCanada's *Aboriginal Relations Policy*. NGTL further stated that, for the Section 58

Projects, its initial engagement of potentially affected Aboriginal groups and organizations began in April 2017. Notification was sent to the following groups:

- Blueberry River First Nations (Blueberry)
- Dene Tha' First Nation
- Doig River First Nation (DRFN)
- Horse Lake First Nation
- Halfway River First Nation
- McLeod Lake Indian Band
- Saulteau First Nations (SFN)
- West Moberly First Nations (WMFN)
- Prophet River First Nation
- Kelly Lake Cree Nation
- Kelly Lake First Nation
- Treaty 8 Tribal Association
- Kelly Lake Métis Settlement Society
- Métis Nation British Columbia
- British Columbia Métis Federation

NGTL submitted that after initial notification and provision of project information for community review, engagement activities with the Aboriginal communities included phone calls, emails and meetings to discuss any questions and concerns raised regarding the Section 58 Projects. NGTL stated that it continued to share information about each of the Section 58 Projects with potentially affected Aboriginal groups, including information specific to each proposed receipt meter station, links to the NEB website where the applications were filed and NEB Filing IDs.

NGTL stated that no Project-specific issues or concerns have been identified by the potentially affected Aboriginal groups engaged on the Section 58 Projects and no other comments, questions or concerns were received by NGTL following the Notice of Hearing. NGTL committed to continue to follow-up with each of the Aboriginal groups noted above to determine if additional information is required and remains available to discuss any concerns.

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

The Board's hearing process was designed to obtain as much relevant evidence as possible on concerns regarding the NMML Facilities, the potential impacts on Aboriginal interests (as noted in Part B of the Board's List of Issues), and possible mitigation measures to minimize adverse impacts on Aboriginal interests.

On 30 March 2017, the Board received a letter of comment from Blueberry requesting that a full review and assessment process be established to consider NGTL's application with respect to the Variance Application, including the opportunity to submit evidence, test evidence through information requests (IRs) and cross-examination, and make submissions to the Board.

On 19 April 2017, the Board established a comment period for interested persons to provide comments to the Board about NGTL's Variance Application and suggestions about the process it should use to assess it. The Board noted that it would consider the comment letter already received from Blueberry dated 30 March 2017. The letter also directed NGTL to serve a copy of the letter on all parties of the GH-001-2014 proceeding, and any other interested parties. The Board received comments from the following Aboriginal groups: DRFN, SFN, WMFN, and Simogyet Luutkudziiwus (Mr. Charlie Wright).

Although the NEB Act does not mandate a public hearing for section 21 or 58 applications, the Board decided to hold a public hearing with oral portions for the Variance Application and Section 58 Projects, given the interest in the NMML Facilities and feedback it received in response to its 19 April 2017 letter. On 7 September 2017, the Board directed NGTL to serve the Notice of Public Hearing and ATP to all Aboriginal groups engaged by NGTL, and those that the NEB corresponded with during the GH-001-2014 proceeding. Included in the Notice of Public Hearing was the List of Issues related to the Variance Application, to enable people who were directly affected by the proposed variances to determine if they wanted to participate in the public hearing to express their concerns or interests.

The Board was provided with and considered information about concerns related to the NMML Facilities, 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.

### **5.2.1 Participant Funding Program**

The NEB has a Participant Funding Program (PFP), which is administered independently of the Panel's hearing process, to assist Intervenors with their participation.

For the MH-031-2017 proceeding, funding opportunities were announced on 7 September 2017 with a funding envelope of \$250,000. After reviewing the applications, the NEB Executive Vice President, Regulatory increased the total funding allocated to the hearing to \$403,420. Five Aboriginal groups applied for funding and were awarded the amounts shown in Table 5.1.

**Table 5.1: Participant Funding Program Awarded Amounts**

Aboriginal group	Amount awarded
Blueberry	\$80,000
DRFN	\$80,000
SFN	\$79,870
WMFN	\$80,000
Wilp Luutkudziiwus / Charlie Wright	\$71,550

### 5.2.2 Participation of Aboriginal Groups

Aboriginal groups who are concerned with potential NMML Facilities-related impacts on their interests, including rights, had opportunities to present their views directly to the Board. While the Board required the Applicant to implement a consultation program and undertake an assessment of the Section 58 Projects' potential effects, including its environmental and socio-economic effects, the Board also took steps to facilitate the direct participation of these groups in the proceeding.

Section 55.2 of the NEB Act requires the Board to hear any person who is directly affected by the granting or refusing of an Application. The Board decided to grant standing to all persons and Aboriginal groups who provided comments in response to the Board's 19 April 2017 letter. The following five Aboriginal groups were granted Intervenor status, as requested:

- Blueberry
- DRFN
- SFN
- WMFN
- Wilp Luutkudziiwus / Charlie Wright

On 26 October 2017, the Board issued Hearing Order MH-031-2017 which outlined the process to be followed in the Board's adjudication of NGTL's Applications. As described in Section 3.11 and Appendix IV of the Hearing Order, the Board planned to have an oral portion of the hearing in January 2018.

During the proceeding, Aboriginal Intervenors were able to obtain further information about the NMML Facilities and present their views to the Board in numerous ways. Aboriginal Intervenors could submit written evidence, provide Oral Traditional Evidence (OTE), ask written questions of NGTL and other parties (IRs), respond to any written questions asked of them by the Board and NGTL, conduct oral cross-examination of NGTL, provide comments on draft conditions and

provide final argument. Table 5.2 below summarizes the process steps participated in by Aboriginal Intervenors, including the types and sources of information submitted by them during the proceeding and considered by the Board.

**Table 5.2: Written and Oral Submissions by Aboriginal Intervenors by Exhibit Number**

<b>Intervenor Name</b>	<b>Information Requests made (to applicant or intervenor)</b>	<b>Written Evidence submitted</b>	<b>OTE provided</b>	<b>Final Argument</b>
Blueberry	<a href="#"><u>A87785</u></a> <a href="#"><u>A88742</u></a>	<a href="#"><u>A88380</u></a>		Written Final: <a href="#"><u>A89882</u></a>
DRFN	<a href="#"><u>A87806</u></a>	<a href="#"><u>A88379</u></a>	<a href="#"><u>A89678</u></a>	Written Final: <a href="#"><u>A89868</u></a>
SFN	<a href="#"><u>A87784</u></a> <a href="#"><u>A87786</u></a> <a href="#"><u>A88528</u></a> <a href="#"><u>A88728</u></a> <a href="#"><u>A88730</u></a> <a href="#"><u>A88731</u></a>	<a href="#"><u>A88368</u></a>		Oral Final: <a href="#"><u>A89753</u></a> Written Final: <a href="#"><u>A89896</u></a> Written Reply: <a href="#"><u>A89967</u></a>
WMFN	<a href="#"><u>A87797</u></a>	<a href="#"><u>A88382</u></a>		Written Final: <a href="#"><u>A89887</u></a>
Wilp Luutkudziiwus / Charlie Wright	<a href="#"><u>A87773</u></a>	<a href="#"><u>A88365</u></a>		Written Final: <a href="#"><u>A89873</u></a>

The Board understands that many 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 opportunity to provide OTE was unique to Aboriginal intervenors. On 10 November 2017, the Board issued a letter, which extended an invitation to all Aboriginal Intervenors in the proceeding to provide OTE in-person or remotely. The Board held an oral portion of the hearing in Dawson Creek, BC, a location near those interested in the NMML Facilities. The Board received notices of intent to present OTE from DRFN and Mr. Wright. On 16 January 2018, Mr. Wright withdrew his request to participate in OTE.

The Board thanks DRFN for sharing their local, traditional, and cultural knowledge during the oral portion of the Hearing. The Board acknowledges Chief Trevor Makadahay, Councillor Garry Oker and Elder Margaret Davis for providing this important context. The Board also thanks Dane-zaa drummers, Mr. Sammy Acko, Mr. Les Davis and Councillor Garry Oker, for presenting songs passed on from the Dane-zaa dreamers to the Board to open and close the DRFN OTE.

The Board received a number of motions from Aboriginal Intervenors relating to the timing and accessibility of the Board’s hearing process, including the filing of written evidence. The Board strives to make its hearing processes flexible in order to facilitate the full participation of all

parties, while balancing the need for efficiency. A summary of the motions raised and the Board's rulings are found in Appendix IV.

For all oral portions of its hearing, the Board provided an audio broadcast, as well as transcripts of its proceedings, so that interested parties who were not in attendance could be aware of what was occurring during the hearing. In an effort to make the hearing as accessible as possible, the Board also offered remote participation, which WMFN and Blueberry used for their cross-examination.

## **5.3 Issues and Concerns Raised by Aboriginal Groups**

### **5.3.1 NGTL's Consultation with Aboriginal Groups**

#### ***Blueberry River First Nations***

Blueberry stated that NGTL did not consult with Blueberry on the Variance Application, despite the fact that the Variance Application would shorten the length of the NMML and concentrate development in the fragile core of Blueberry's territory, and create momentum for a new level of development in Blueberry's core territory for decades to come. Blueberry suggested that the email addresses NGTL used to provide notification of the Variance Application to Blueberry were not correct and that email notification is not an accepted form of communication for these types of projects.

Blueberry stated that the location of the proposed receipt meter stations was unilaterally determined by NGTL, with no advance consultation or discussion with Blueberry. Blueberry submitted that NGTL assumed that impacts of the Section 58 Projects on Blueberry would be the same as the impacts of the Original NMML Project in 2014, without consulting them or even undertaking an assessment of traditional land and resource, including an assessment specific to Blueberry's rights.

In addition, Blueberry noted that NGTL refused to provide information on the upstream and induced development that would result from the Variance Application, including failing to identify the area within which that development would take place, and taking the unreasonable position that a four-year old desktop analysis of the impacts of future development from a project with a very different geographical scope continued to apply.

### **5.3.2 Constraints of the Hearing Process**

#### ***Blueberry River First Nations***

Blueberry submitted that they faced constrained timelines set by the NEB, and as a result, the evidence they prepared was without time to undertake requisite studies and investigations with respect to the Variance Application, including a traditional land use study, socio-economic study or cumulative effects study. They further submitted that they have not been able to, within the time allowed, hear from their members about the potential impacts of the Variance on their treaty

rights and interests. Blueberry noted that they requested additional time to prepare and submit evidence, which was not granted by the NEB.

Blueberry stated that full information about the proposed Variance, and its impacts on Blueberry's territory remains unavailable, despite their requests. Blueberry stated that the lack of any Variance-specific study means that substantial gaps exist in existing documentation about the extent and nature of Blueberry's historical and current use of the lands impacted by the proposed Project.

Blueberry also expressed concerns about a lack of information relating to cumulative effects and existing and future development that would result from the proposed Project. A summary of their concerns and the views of the Board on this matter is provided in Chapter 6.

### ***Saulteau First Nations***

Through IRs and Notices of Motion, SFN sought further information about existing development and future development that would result from the proposed Variance Application. A summary of the motions raised and the Board's rulings are found in Appendix IV.

### ***West Moberly First Nations***

WMFN expressed concern that the narrow scoping of the hearing process has limited the ability of the Variance Application to be properly considered and should therefore be denied, or only granted on conditions to address those concerns. WMFN stated the scoping restricted any consideration of environmental and socio-economic effects from the Variance Application itself, and only allowed such consideration of the Section 58 Projects. WMFN submitted that by definition, considering only the environmental and socio-economic effects of the Section 58 Projects, the NEB has failed to consider the cumulative effects of the Variance Application, as it has failed to take into consideration changes in combination with other past, present and future human actions.

WMFN submitted that the narrow scope of the hearing issues also failed to provide reconsideration of the adequacy of the Peace Moberly Tract Protection Plan to meet Condition 11 of Certificate GC-125. WMFN explained that the Peace Moberly Tract Protection Plan already includes a commitment not to construct any commercial tie-ins, including receipt stations, within the Peace Moberly Tract. WMFN stated that they seek to expand this commitment to restrict any further disturbance in the Peace Moberly Tract. WMFN further stated that given that the Variance Application failed to consider alternatives, such as route and pipe size, they were denied the opportunity to test whether the design is the most efficient and least disruptive approach to constructing a pipeline across the Peace Moberly Tract. WMFN requested the Board impose a condition requiring NGTL to commit to not looping, twinning, or constructing any further pipeline facilities within the Peace Moberly Tract.

WMFN expressed concerns related to upstream cumulative impacts. This is discussed in Chapter 6.

### **5.3.3 Need for the Variance Facilities**

Blueberry, SFN and WMFN questioned the need for the Variance Facilities. A summary of their concerns and the views of the Board on these matters is provided in Chapter 4.

### **5.3.4 Traditional Land and Resource Use: Effects of Section 58 Projects**

#### ***Blueberry River First Nations***

Blueberry stated that NGTL failed to consider how Blueberry's unique treaty rights and interests stand to be affected by the Section 58 Projects, but rather only assessed the environmental effects of the meter receipt stations on soil capability, water quality and quantity, vegetation, wildlife and wildlife habitat and human occupancy and resource use.

### **5.3.5 Traditional Land and Resource Use: Cumulative Effects**

#### ***Blueberry River First Nations***

Blueberry submitted that, if approved, the Variance Application would result in more densely concentrated and increased development in a particularly fragile part of Blueberry's core territory than was approved under the Original NMML Project, including areas that hold critical environmental, social or cultural values important in exercising of their Treaty Rights.

Blueberry expressed concern regarding the cumulative industrial impacts on their land. Blueberry stated that there are very few places left for them to exercise their rights to hunt, fish and trap, and support their traditional mode of life. Blueberry noted that the situation is growing worse with time, and since the filing of NGTL's application for the NMML Project in November 2013 and Blueberry's evidence on the NMML Project, filed in July 2014, the industrialization of their territory has continued unabated. Blueberry provided several maps showing the extent of industrial development, including pipelines, roads and wells, that has been authorized in their territory in proximity to the Variance Facilities since 2013.

Blueberry stated that the lands and resources that once sustained their vibrant culture and economy are increasingly under threat and they experience the impacts of development in their Territory every day, even when they are not out on the land. Blueberry explained that the loss of a place or harvesting site is the loss of the knowledge that goes with the area and their use of it, and that as places are destroyed the threads that weave their culture and way of life rupture and their culture, community and health suffers. Blueberry indicated that with this, they lose part of who they are, and that, in turn impacts a sense of self and well-being.

Blueberry explained that there are also impacts to its members' socio-economic and cultural well-being, including social and family cohesion, inequality, cultural continuity, education, mental and physical health and language retention. Blueberry submitted that direct impacts of resource development include the influx of largely male workers and a great wealth inequality, particularly between men and women, and indirect impacts including undermining foundations of well-being in Indigenous communities, higher crime rates and dangerously high costs of living, creating economic insecurity.



Blueberry noted that there is still no regional plan in place to manage cumulative impacts in their territory and treaty rights, and that critical areas in their territory have not been protected by the Crown, despite their repeated requests. Blueberry stated that rather than take steps to remediate or better manage their lands and resources, the Crown has authorized more industrial development.

### ***Doig River First Nation***

DRFN expressed concern about the lack of balance in the Crown's management of resource development in Treaty No. 8 territory. DRFN indicated that through their respective constitutional and legislative authority, both the provincial and federal governments have contributed to the development of a highly fractured landscape, with negative consequences to the members of DRFN whose culture and spirituality is intimately connected to the land. DRFN described that these negative consequences are experienced by Indigenous people in the form of "death by a thousand cuts".

During OTE, DRFN summarized its experience with cumulative impacts as including, but not being limited to, disturbance to the land and traditional practices, and decreased access and connection to the land. DRFN submitted that impacts from resource development have forced the community to travel much further to exercise their Treaty rights than ever before. Chief Trevor Makadahay testified that:

*"We have to travel three, four hours just to see something that's untouched."*

DRFN indicated concerns about food and water contamination. DRFN submitted that their worldview and spirituality is deeply connected to the land, and that land fragmentation, development, and other landscape changes threaten their essential well-being as a people. Councillor Garry Oker stated:

*"Really, all we want is to have healthy communities, healthy land so that we can continue looking at ways to overcome some of these barriers such as, you know, poison gas on our land. Really look at those things and say, "Why are these people talking like this?" Well, I don't want to recommend anybody drinking water if it's -- if I'm not too sure if it's poisoned or anything, or contaminated."*

*"So even the land and things that come from there, it's a critical piece for our survival. Basically, that's what we want you to consider, the survival of the Dane-zaa people."*

Councillor Garry Oker further explained:

*"So if we wipe out everything out on the land, what are we going to -- like, what kind of ancestors are we going to be? I don't want to be remembered as somebody that just wipe out and leave nothing. Our ancestors left us something. The important thing is that we have to have connection to that land, because that's who we are as people."*

DRFN submitted that the Dane-zaa mode of life embodies a culture that is intimately connected to the land and depends on that connection for its very survival. DRFN described the importance of both songs and stories to support the preservation of Dane-zaa culture in the DRFN community. DRFN noted that each song and story is connected to a particular place on the

land, and loss and fragmentation of the landscape disconnects Dane-zaa history from its roots. DRFN submitted that resource development has legally and physically transferred significant portions of its land out of the category of land that can be accessed for the exercise of the mode of life and into the category in which it cannot. DRFN stated that the sustainability of Dane-zaa culture and worldview is also threatened by the challenges DRFN is facing in preserving the Dane-zaa language.

DRFN acknowledged that much of the information that the Board will be considering in its deliberations over the Variance Application is technical, and not environmental, social or cultural, however, urged the Board to not to lose sight of the fact that each project approval further displaces the Dane-zaa in their own territory and further challenges their ongoing efforts to pass down their culture to future generations as their ancestors did for them. DRFN stated that it does not want to see unnecessary development and pipeline redundancy. Elder Margaret Davis asked the Board to consider balance and collaboration:

*“I like to see balance, so you guys work together with us, respect what we say, what we're asking for or whatever, and we'll work it out somehow, even.”*

Councillor Garry Oker stated:

*“It is in between your reality and imagination that we can create new solutions, and it's through collaboration with one another that we can support people to develop things in the community.”*

### ***Saulteau First Nations***

SFN argued that the need for the Variance Facilities is not sufficient to justify exacerbating cumulative damages to the constitutionally protected treaty lands and rights of SFN. SFN noted that although the Variance Application leaves the footprint of the project unvaried, the following impacts will still occur: creating new access to traditional use land areas relied on by SFN; disturbance of potential burials located along the pipeline route; cumulative effects on the quality of wildlife habitat; cumulative effects specifically on moose; and reduced access to potable water.

### ***West Moberly First Nations***

WMFN expressed concern with the cumulative impacts arising from gas development adversely affecting the resource base that supports Aboriginal cultural and traditional activities. WMFN submitted that as a result of the proposed changes to the Variance Application, including shortening the length of the Kahta Section of pipeline and increasing the number of receipt meter stations in the Aitken Creek Section from five to eleven, the location and intensity of the impact of the project itself, as well as the upstream and cumulative impacts will increase.

### ***Simogyet Luutkudziiwus (Mr. Charlie Wright)***

Mr. Wright stated that there are significant concerns about the NMML Project, including the Variance Facilities and Section 58 Projects, contributing to the existing cumulative effects of resource development and climate change in Luutkudziiwus territories, including impacts on the

forests, fish and animals on which they rely, and that this in turn will make it more difficult for Luutkudziiwus to exercise their rights and maintain their connection to their lands and culture.

Mr. Wright submitted that Luutkudziiwus members carry out traditional activities in their territories including hunting for black bears, moose, deer, groundhogs, and game birds; fishing for a variety of salmon and freshwater residents; gathering forest tree barks; harvesting trees particularly cedar for a variety of cultural and building purposes; and gathering plants, berries, and fungus. He stated that they rely on these activities for food, ceremonial purposes and to support their local economy. Mr. Wright noted that activities are also a critical part of the cultural and social identity. Mr. Wright stated that if the NMML Project and Variance Application are allowed to proceed, they will adversely affect Luutkudziiwus territories and the exercise of Luutkudziiwus title and rights by contributing to the cumulative effects of resource development, including climate change.

A further discussion of concerns regarding greenhouse gas emissions and the views of the Board are discussed in Chapter 6.

### **5.3.6 Subsection 35(1), Constitution Act, 1982**

#### ***Blueberry River First Nations***

Blueberry alleged that the Crown has infringed on Blueberry's rights under Treaty No. 8. Blueberry stated that the cumulative impacts of industrial development authorized by the Crown in and around Blueberry territory are so severe that Blueberry members no longer have a meaningful ability to exercise their treaty rights. Blueberry further stated the Variance Facilities and Section 58 Projects would add to that infringement and further undermine Blueberry's traditional mode of life.

Blueberry stated that the duty to consult has not been discharged and that ongoing procedural fairness issues which occurred during the GH-001-2014 proceeding have continued in this hearing. Blueberry submitted that the Board failed to establish a process that enabled meaningful consultation on the Variance Application and then reinforced NGTL's consultation failures and consistently refused to consider and address Blueberry's concerns about cumulative impacts. Specifically, Blueberry submitted that the Board failed to establish a meaningful consultation process, and unilaterally set rushed deadlines. In addition, Blueberry argued that the Board fundamentally erred in finding the induced and upstream development from the Variance Application irrelevant to the environmental assessment or assessment of impacts on Blueberry's treaty rights.

#### ***Doig River First Nation***

In its written argument, DRFN stated that it is concerned that Crown decision-makers, including the Board, are not attributing sufficient weight to the concerns raised by First Nations in response to resource development applications, and that the "public interest" has become synonymous with the "business interest" of proponents. DRFN submitted that their perception is that this is largely the outcome of the failure of the process to accord sufficient weight to the Indigenous perspective often brought forward by First Nation interveners. DRFN alleged that project

approvals are a foregone conclusion and, even where a regulatory hearing results in a report that concludes that there will be significant adverse effects on the use of lands and resources by First Nations and that those effects cannot be mitigated, Crown decision-makers inevitably issue the approval in spite of the recognized impacts.

DRFN asked that the Board seriously consider the concerns they have raised through this intervention, including the concerns about the continued existence of the Dane-zaa mode of life, as promised under the Treaty, and concerns about the failure of the Crown and industry to hear and respect their voices when seeking to develop Dane-zaa *nane*.

## **5.4 NGTL's Reply to Issues and Concerns Raised by Aboriginal Groups**

### **5.4.1 NGTL's Consultation with Aboriginal Groups**

NGTL stated that it believes that its engagement with Aboriginal groups on the Variance Application and the Section 58 Projects is adequate and that its engagement approach is consistent with the scope and scale of the Variance Application and the Section 58 Projects.

NGTL stated that in its 23 March 2017 notification regarding the Variance Application to Aboriginal groups, including Blueberry, it indicated that the previously approved NMML route, environmental assessment and extensive engagement that were conducted previously all remain relevant as it is the same project. NGTL noted that one of the email addresses it used to provide the Variance Application notification was identical to one Blueberry used in its ATP in this proceeding. NGTL further noted that it was apparent Blueberry was aware of the Variance Application when legal counsel for Blueberry filed their first submission on process with the Board on 30 March 2017, only a week after the Variance Application was filed.

With respect to the concern Blueberry expressed about email notification not being an accepted form of communication for these types of projects, NGTL submitted that no concerns had been previously raised by Blueberry regarding this form of communication.

With respect to Blueberry's concern that NGTL did not engage with Blueberry before determining the locations of the proposed meter stations, NGTL stated that its extensive engagement efforts on the NMML Project were considered in the design of the Section 58 Projects. NGTL further stated that it considered the input from Blueberry that had been provided previously through the original NMML proceeding, including the revised Knowledge and Use Study that was provided to NGTL after that proceeding had closed.

NGTL submitted that it engaged with Blueberry through notifications prior to filing the Section 58 Project Applications and specifically invited Blueberry to provide input, however, no input was provided. NGTL noted that Blueberry has also had opportunities through this hearing process to raise concerns with the specific locations of the proposed meter stations, however, it has not done so.

#### **5.4.2 Constraints of the Hearing Process**

NGTL stated that the Variance Facilities are a subset of the original approved North Montney facilities and do not require any additional disturbance. NGTL further stated the scope of the Variance Facilities is considerably reduced as compared to the original approved project, so any environmental effects resulting from the Variance Facilities will, if anything, be less than what the Board previously considered. NGTL noted that this includes the types of impacts described in Blueberry's evidence, as well as WMFN's concerns regarding the Peace Moberly Tract, which were all previously considered and assessed as part of the GH-001-2014 proceeding. NGTL argued that it would be extremely inefficient and counter-productive to re-litigate matters that the Board has already decided in the GH-001-2014 decision and, in fact, the Board has already ruled that these matters are not to be re-heard again in this proceeding.

#### **5.4.3 Traditional Land and Resource Use: Effects of Section 58 Projects**

NGTL stated that traditional resource use, such as berry picking and plant harvesting, was scoped out of the Section 58 Projects' Environmental and Socio-Economic Assessment (ESA) as a Valued Component, as the Section 58 Projects are located entirely within the NMML Project footprint, including partially within the permanent footprint, that has already been assessed fully in the NMML Project's ESA and will have been cleared at the time of construction of the Section 58 Projects. NGTL indicated that hunting and trapping, including traditional hunting and trapping, was considered under Human Occupancy and Resource Use. NGTL concluded that, with the implementation of mitigation measures, the proposed Section 58 Projects are predicted to result in no significant residual effects on hunting and trapping activities.

NGTL stated that it disagrees that there is a need for a new traditional land use study for the Section 58 Projects. NGTL noted that the Section 58 Projects are located on lands previously assessed and approved by the Board and no new land disturbance is required to construct and operate the Section 58 Projects. NGTL further stated that the previously approved NMML route, environmental assessment and extensive engagement that were conducted previously all remain relevant as it is the same project.

NGTL stated that when preliminary sites were first selected for the Section 58 Projects, it considered the input from Blueberry that had been provided previously through the original NMML proceeding, including Blueberry's revised Knowledge and Use Study that was provided to NGTL after that proceeding had closed. NGTL submitted that the types of traditional land use activities that Blueberry indicated its members engage in throughout its traditional territory are consistent with the activities that were assessed by NGTL in the NMML Application and for which the suite of mitigation measures was developed.

NGTL noted that Blueberry's final Knowledge and Use Study Report did not identify any new locations along the NMML where particular resources or features required additional mitigation. NGTL stated that it believes it has demonstrated in its evidence that the use of resource-specific mitigation, as it has proposed, is the best way to address potential effects to environmental resources or features, on which Blueberry relies to exercise their traditional activities.

#### **5.4.4 Traditional Land and Resource Use: Cumulative Effects**

NGTL submitted that potential environmental effects of the NMML Project, including cumulative effects, were thoroughly assessed as part of the original proceeding, which included an environmental assessment pursuant to the *Canadian Environmental Assessment Act, 2012*. NGTL noted that in its decision on the original application, the Board concluded that, with the implementation of NGTL's environmental protection procedures and mitigation, the NMML Project is not likely to cause significant adverse environmental effects. NGTL argued that nothing in the Variance Application has the potential to affect that conclusion.

In response to concerns raised that upstream development in northeast BC has continued to advance since 2013 when the original environmental assessment was done, and the changes to the commercial underpinnings for the North Montney facilities will result in more intensive development within the Aitken Creek portion of the North Montney area, NGTL confirmed that in the original proceeding it assessed the cumulative effects of a full build-out of the North Montney play. NGTL noted that, in that assessment, it assumed even and uniform upstream development throughout the entire play area and that the key assumptions that were used in that assessment remain valid, and the upstream development that has taken place since 2013 is generally consistent with NGTL's assessment in the original proceeding.

NGTL asserted that a change to the intensity of upstream development is not supported by the evidence. NGTL stated that the locations of the Section 58 Projects are generally tied to the locations of the producers' upstream plants, but the actual drilling and gathering upstream of the plants may be located a significant distance from the plants and NGTL does not have visibility to those aspects of the producers' developments.

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

#### **5.5.1 NGTL's Consultation with Aboriginal Groups**

##### **5.5.1.1 Variance Application**

Considering that the Variance Application involves changes to the previously assessed and approved NMML Project related to commercial aspects, and does not require any additional land, the Board is of the view that NGTL has undertaken an appropriate level of consultation with potentially affected Aboriginal groups. The Board is also 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 the Variance Application.

The Board notes NGTL's commitment during the GH-001-2014 proceeding to continue to engage with potentially affected Aboriginal communities throughout the life of the Original Project. The Board fully expects NGTL to not only continue to engage with potentially affected Aboriginal groups, but to engage in a process of meaningful discussion to understand any concerns that are brought forward, and to address them to the extent possible.

### **5.5.1.2 Section 58 Projects**

The Board is of the view that potentially affected Aboriginal groups were appropriately identified and provided information about the Section 58 Projects. The Board notes that NGTL was responsive to the requests of Aboriginal communities and conducted additional engagement with several Aboriginal groups when they requested further information.

The Board notes NGTL's commitment to continue to work with Aboriginal groups through ongoing engagement, throughout the lifecycle of a project, to understand and address concerns related to this proceeding. The Board expects companies to continue to learn about the concerns that groups may have about a project, and to discuss ways to address those concerns to the extent possible. The Board also encourages Aboriginal groups with an interest in the Section 58 Projects to continue to engage with NGTL.

Regarding NGTL's consultation with Blueberry, the Board notes that NGTL has actively engaged with potentially impacted Aboriginal groups, including Blueberry, as part of its engagement efforts on the Original NMML Project, and that the outcome of those engagements was considered in the design of the Section 58 Projects. The Board also notes that Blueberry was provided the opportunity to make their views and concerns about the Section 58 Projects, including what effects it might have on their potential or established interests, known to both NGTL and the Board. The Board is therefore of the view that Blueberry has been offered sufficient and varied opportunities by NGTL to engage in the Section 58 Projects. Having assessed all of the evidence, the Board is of the view that NGTL has designed and implemented appropriate and effective consultation activities that meet the requirements and expectations set out in the Board's Filing Manual.

### **5.5.2 Constraints of the Hearing Process**

The Board, as a regulatory tribunal, is bound by the common law requirements related to procedural fairness when making decisions that have the potential to impact rights. Appendix IV highlights the Board's rulings and procedural updates in this proceeding. The Board designed the process to be as fair as possible to all parties, given the nature and magnitude of the Variance Application and Section 58 Projects.

Regarding the concerns with respect to information about existing development and future upstream development that may be facilitated by the proposed Variance Facilities, the Board notes that the British Columbia Oil and Gas Commission has plans in place to address the regional and landscape level effects in its Area Based Analysis initiative. Additional views of the Board on these matters are provided in Chapter 6.

In its Notice of Public Hearing dated 7 September 2017, the Board included the List of Issues focussed on the Variance Facilities and the Section 58 Projects. The hearing was not intended to duplicate matters considered in or rehear the GH-001-2014 hearing. In the Board's view, the potential environmental and socio-economic effects associated with the Variance Facilities, including potential effects to traditional land and resource use and cumulative effects have already been assessed by the Board. Similarly, matters regarding the Peace Moberly Tract were considered in the GH-001-2014 proceeding.

### **5.5.3 Traditional Land and Resource Use: Effects of Section 58 Projects**

In assessing potential impacts on Aboriginal interests, the Board considered all of the evidence provided. The Board assessed how NGTL identified and evaluated the potential impacts on the interests, including rights, of Aboriginal groups, the concerns raised by Aboriginal groups, and the measures NGTL has proposed to minimize or eliminate the Section 58 Projects' potential impacts on the interests of Aboriginal groups.

Through NGTL's consultation and the Board's assessment process, Aboriginal groups had the opportunity to make known to NGTL and the Board their views and concerns about the Section 58 Projects, including what effects it might have on their potential or established interests. The Board acknowledges the importance that Aboriginal groups place on being able to exercise their Aboriginal and treaty rights, and continue their traditional activities, uses and practices within the entire area of their traditional territories, including access to resources and areas and sites of cultural importance and significance.

The Board notes that NGTL relied on information provided through the original NMML proceeding to assess the potential impacts of the Section 58 Projects on traditional land and resource use, including the previously approved environmental assessment, engagement activities and completed traditional land use studies, including Blueberry's Knowledge and Use Study. The Board finds NGTL's approach for the assessment of the Projects' potential effects on traditional land and resource use acceptable.

The Board notes that the Section 58 Projects will occur entirely within the Original NMML Project footprint, including partially within the permanent footprint that was already assessed and will have been cleared at the time of construction of the Section 58 Projects. The Board finds that there will be no new residual effects from the Section 58 Projects on traditional land and resource use beyond those that were considered and assessed in the original North Montney application. Given all of the above, in the Board's view, the potential adverse effects of the Section 58 Projects on the current use of lands and resources for traditional purposes by Aboriginal persons are not likely to be significant.

### **5.5.4 Traditional Land and Resource Use: Cumulative Effects**

Given the Board's finding that there will be no new residual effects from the Section 58 Projects on traditional land and resource use beyond those that were considered and assessed in the GH-001-2014 hearing, the Board is of the view that there will be no residual cumulative effects from the Section 58 Projects on traditional land and resource use.

Notwithstanding, the Board notes the concerns expressed by a number of Aboriginal groups in this proceeding about the extent of development in the NMML Project area, and the overall effects that previous and continuing development and resource extraction is having on the ability of Aboriginal groups to continue to use the lands and resources for traditional purposes. However, the Board further notes that this hearing was not intended to duplicate matters considered in or rehear the GH-001-2014 hearing. In the Board's view, the potential environmental and socio-economic effects associated with the Variance Facilities, including



potential effects to traditional land and resource use and cumulative effects have already been assessed by the Board. In its NEB Report for the GH-001-2014 proceeding, the Board stated:

The Board acknowledges that development at the regional level in the Project area involves areas of provincial jurisdiction, both for approving development across a number of sectors, as well the regional and provincial land use planning process. The Board encourages the Province of BC to seek continuous improvements to these processes, in response to the evolving demands and interests associated with the assessment and management of cumulative effects.

The Board has a desire to see continuing improvement in the area of regional and strategic assessments and planning. The Board encourages all interested stakeholders, including NGTL and other governing bodies, to contribute towards ensuring a more integrated and holistic approach towards addressing cumulative effects.

Additional views of the Board on cumulative effects are provided in Chapter 6.

### **5.5.5 Subsection 35(1), Constitution Act, 1982**

The Board interprets its responsibilities in a manner consistent with the *Constitution Act*, 1982, including section 35, which recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal peoples.

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 notes 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.

It should therefore be understood that the Board's hearing process itself (described in Section 5.2), including these Reasons, is part of the overall consultative process, in addition to the mandated one-on-one consultation that is to occur between an applicant and potentially impacted Aboriginal groups (described in Section 5.1). The Board is of the view that the Board process was appropriate in these circumstances.

The Board has considered the information submitted regarding the nature of potentially affected Aboriginal groups' interests in the NMML Facilities area, including information on constitutionally protected Aboriginal and treaty rights. The Board has also considered the anticipated effects of the NMML Facilities on those interests and the concerns expressed by

Aboriginal groups, as discussed in this Chapter and this Decision, in this regard. In light of the nature of the interests and the anticipated effects, the Board has evaluated the consultation undertaken with respect to the NMML Facilities, 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 and potential effects. Having assessed all of the evidence, the Board is of the view that there has been adequate consultation and accommodation for the purpose of the Board's decision on the NMML Facilities. The Board is also of the view that any potential adverse impacts as a result of the NMML Facilities 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 section 35 of the *Constitution Act*, 1982 have been met, such that an approval of the NMML Facilities is in keeping with the honour of the Crown.

## Chapter 6

# 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 decisions, the Board is responsible for assessing the potential environmental and socio-economic effects throughout the life of a project. This chapter represents the NEB's environmental assessment (EA) for the Section 58 Projects and the Board's views on the potential cumulative effects as a result of the Variance Facilities.

The Board has considered all of the evidence, including the requirements in the regulatory framework and the conditions imposed by the Board in Certificate GC-125. For the reasons outlined in this chapter, the Board is of the view that overall, with the implementation of NGTL's environmental protection procedures and mitigation, as well as the conditions imposed in Order XG-N081-015-2018 (Appendix II), the NMML Facilities are not likely to cause significant adverse environmental effects.

Other socio-economic effects arising directly from the Section 58 Projects are discussed in Chapter 7, Section 58 Projects. Aboriginal matters arising from the Section 58 Projects and the Variance Facilities are discussed in Chapter 5. For information regarding the original EA conducted for the NMML Project, see Chapter 9 of the NEB Report for the GH-001-2014 proceeding.

### 6.1 The Board's EA Methodology

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

This assessment begins with: (a) a description of the NMML Facilities (Section 6.2), (b) a description of the setting and the environmental and socio-economic elements within that setting (Section 6.3), and (c) a summary of those environmental and socio-economic concerns raised by the public (Section 6.4). Based on these, the NEB identified interactions between the NMML Facilities and the environment that are expected to occur (Section 6.5). If there were no expected interactions, or interactions would be positive or neutral, then no further examination was deemed necessary.

The NEB 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 (Section 6.5). Section 6.5.2 discusses the extent to which standard mitigation is relied on to mitigate potential adverse effects. In Section 6.5, the NEB provides detailed analysis for issues that are of public concern or of environmental consequence, and that may require additional mitigation. For each issue considered in detail, Views of the Board are provided and the Board assesses whether further mitigation is recommended by way of condition on any potential project authorization, in order to ensure any potential environmental and socio-

economic effects would not be significant. Where there are any residual effects remaining after proposed mitigation, cumulative effects are considered in Section 6.6.

## **6.2 NMML Facilities Details**

Chapter 2 of these Reasons provides a general description of the NMML Facilities. As noted in Chapter 2, the Variance Application includes a shortening of the Kahta Section from the Original NMML Project by 95 km, while the length of the Aitken Creek Section remains unchanged. During the initial proceeding for the NMML Project, the Board thoroughly assessed the environmental effects of the Original NMML Project facilities and has therefore not reconsidered those effects here.

The Section 58 Project applications would result in seven additional receipt meter station on the Aitken Creek Section and one additional receipt meter station on the remaining portion of the Kahta Section. NGTL stated that all of the Section 58 Projects would be located within the previously assessed and originally approved footprint of the Original NMML Project and no additional temporary workspace is required to construct the Section 58 Projects. The disturbance footprint for the Original NMML Project consists of a 55 m wide construction corridor including a 32 m construction right-of-way and temporary workspace. The Section 58 Projects are proposed to be located within this corridor.

NGTL submitted that the combined temporary disturbance and permanent footprint for all seven Section 58 Projects sites is approximately 3.63 ha, however, only approximately 1.03 ha is required for the operation of the meter stations. The following table provides the location, description, and land requirements for each of the Section 58 Project meter stations.

**Table 6.1: Location and Description of Section 58 Project Meter Stations**

<b>Meter Station</b>	<b>Legal Location</b>	<b>Site Description</b>	<b>Temporary disturbance (ha)</b>	<b>Permanent footprint (ha)</b>
Aitken Creek South	D-034-L/094-A-13 and A-034-L/094-A-13	Single meter station	0.76	0.21
Old Alaska	D-019-E/94-A-13	Single meter station	0.60	0.12
Gundy West	C-060-A/94-B-16	Single meter station	0.34	0.09
Townsend and Townsend No. 2	B-043-J/094-B-09	Two meter stations co-located within one site	0.40	0.20
Altares South	B-078-A/94-B-08	Single meter station	0.60	0.10
Mackie Creek North	B-057-I/94-B-01	Single meter station	0.42	0.09
Aitken Creek West No. 2	B-056-I/094-B-16 and A-057-I/094-B-16	Located on meter station site (Aitken Creek West) approved for NMML Project	0.51	0.22
Totals			3.63	1.03

The following table provides further details on the Section 58 Projects components and activities relevant to the EA. Clearing for the Section 58 Projects would occur as part of the Original NMML Project in advance of construction.

**Table 6.2: Section 58 Projects Components and/or Activities**

<b>Project Components and/or Activities</b>
Construction Phase – Timeframe: December 2018 to March 2019 and December 2019 to March 2020 for Aitken Creek West No. 2
All of the Section 58 Project meter stations will be located within the previously assessed and originally approved footprint of the NMML Project.
Site preparation including soil salvage and stockpiling, vegetation clearing and grubbing, and grading.
Installation of new infrastructure on driven pile foundations and supports.
Construction of short driveways to each site, but no construction of any new access roads
Clean up and final reclamation activity.
Operation Phase – Timeframe: Service life of the Project (estimated in-service date: April 2019 and April 2020 for Aitken Creek West No. 2)
Inspection and maintenance.
Abandonment Phase – Timeframe: At the end of the service life of the Project
Pursuant to the NEB Act, an application would be required to abandon the facility, at which time the environmental effects would be assessed by the NEB.

### **6.3 Environmental Setting**

NGTL identified the following three spatial boundaries for assessing effects in its Environmental and Socio-Economic Assessment (ESA). The Board notes that the spatial boundaries for the Section 58 Projects are all located within the boundaries assessed for the Original NMML Project.

- Project Development Area (PDA) - includes the area of physical disturbance associated with the construction and operation of the Section 58 Projects. The size of the PDAs, including temporary disturbance and permanent footprint are provided in Table 6.1.
- Local Assessment Area (LAA) - encompasses the PDA for each Section 58 Project and is valued component specific:
  - for vegetation, and wildlife and wildlife habitat, the LAA includes the PDA with a 1 km buffer;
  - for water quality and quantity, the LAA includes a 100 m buffer centered on the PDA; and,
  - for soils, the LAA is the same area as the PDA.

- Regional Assessment Area (RAA) - encompasses the PDA and LAA and is valued component specific:
  - for vegetation, and wildlife and wildlife habitat, the RAA includes a 15 km buffer from the PDA;
  - for water quality and quantity, the RAA includes a 500 m buffer centered on the PDA; and,
  - no RAA was defined for soils.

#### *Land Use and Human Occupancy*

- The Section 58 Projects are located in northeast BC in the Peace River Regional District.
- Land use in the area includes oil and gas, industrial, agriculture, and forestry. Activities associated with oil and gas, such as access roads, pipelines, facilities, are found extensively throughout the LAAs for the Section 58 Projects.
- One mineral tenure, subtype C (claim), is located within the LAA of Aitken Creek South.
- Nine registered trapping areas are within the LAAs for the Section 58 Projects.
- The Section 58 Projects are not located on any federal lands or provincial parks.

#### *Soil and Soil Productivity*

- All Section 58 Project sites are located on ground that is nearly level to gently sloping.
- Soils within the LAAs for the Section 58 Projects are classified as moderately fine-textured, imperfectly to poorly drained, and developed on morainal deposits. Exposed subsurface soils will have a generally low to moderate risk for compaction and wind and water erosion during construction.

#### *Vegetation*

- Four of the Section 58 Projects (Gundy West, Aitken Creek South, Old Alaska and Aitken Creek West No. 2) are located in the Wet Cool Boreal White and Black Spruce subzone, which is dominated by white spruce in moister areas with lodgepole pine as the dominant seral species, and black spruce on organic soils.
- The remaining Section 58 Project sites (Townsend and Townsend No. 2, Mackie Creek North and Altares South) are located in the Moist Warm Boreal White and Black Spruce subzone, which is characterized by dominant aspen stands, balsam poplar in lower slope and riparian areas, with lodgepole pine on drier sites, and black spruce and larch on organic soils.

- The PDAs for six of the Section 58 Project locations are on lands approved to be cleared for the NMML Project footprint, prior to construction of the Section 58 Projects. The PDA for Aitken Creek West No. 2 is also located on lands to be cleared for the Original NMML Project footprint. However, it is scheduled to be constructed before the Aitken Creek West Meter Station as approved in the Original NMML Project. The Aitken Creek West No. 2 site will include clearing of 0.19 ha of coniferous old growth forest. This meter station is located within a landscape unit that legally establishes old growth forest objectives in BC.
- Two occurrences of a provincially red-listed species (rusty wood-rush) were identified in the PDA and LAA of Aitken Creek West No. 2.
- There are no documented occurrences of noxious or prohibited noxious weeds within any of the Section 58 Projects PDA or LAA.

#### *Water Quality and Quantity*

- The PDA of the Aitken Creek South Meter Station contains a non-classified drainage which was assessed to have no defined channel, absence of defined bed and banks, and was non fish-bearing with no fish habitat present.
- The remaining Section 58 Project sites are more than 100 m away from defined watercourses and water bodies.
- There are no documented water wells within 200 m of the PDAs; no wetlands within 100 m; and no water withdrawals are required for construction or operation.

#### Wildlife and Wildlife Habitat

- Occurrences of thirteen species of management concern are documented in the Section 58 Projects RAAs, including:
  - ten species on the provincial Red and Blue lists;
  - seven species identified by the Committee on the Status of Endangered Wildlife in Canada; and,
  - five species listed on Schedule 1 of federal *Species at Risk Act* as either Threatened or Special Concern. The five species include olive-sided flycatcher, Canada warbler, woodland caribou, common nighthawk, and western toad.
- The RAA for the Altares South and LAA for the Mackie Creek North sites fall within designated range for the Graham caribou herd. However, the PDAs for both Section 58 Projects are outside of the range. The Graham caribou herd is part of the Woodland Caribou, Southern Mountain Population and is designated as Threatened on Schedule 1 of the *Species at Risk Act*.
- The Variance Application would eliminate the disturbance within the Pink Mountain caribou herd range that was proposed in the Original NMML Project. The Pink Mountain Caribou herd is part of the Woodland Caribou, Northern Mountain Population and is designated as Special Concern of the *Species at Risk Act*.



- All of the Section 58 Projects are located within provincial Grizzly Bear Protection Units and active bear dens might be encountered during initial vegetation clearing at the Aitken Creek West No. 2 location.

#### *Heritage Resources*

- Two previously recorded archaeological sites were identified within 200 m of the seven proposed meter station sites.
- All of the Section 58 Projects are located entirely within the approved and permitted footprint of the Original NMML Project. Archaeological Impact Assessments have been conducted for the Original NMML Project, which are relevant to the seven currently proposed meter station sites (no additional archaeological assessments were required).

#### *Current Traditional Land and Resource Use*

- The area supports traditional land and resource uses.
- All of the Section 58 Projects are located entirely within the approved and permitted footprint of the Original NMML Project. Traditional land use studies have been conducted for the Original NMML Project, which are relevant to the seven currently proposed meter station sites (no additional traditional land use studies were required).

#### *Navigation and Navigation Safety*

- The Section 58 Projects are not near a navigable waterway.

## **6.4 Environmental Issues of Public Concern**

The Board received a number of submissions from participants that raised particular concerns related to environmental issues.

**Table 6.3: Environmental Issues Raised By Participants**

<b>Participant</b>	<b>Environmental Issue(s) Raised</b>	<b>Addressed in Section</b>
Blueberry River First Nations (Blueberry)	Cumulative effects of upstream production and development Project effects on old growth forest	Section 6.6.2
Doig River First Nation (DRFN)	Cumulative effects of upstream production and development	Section 6.6.2
Mr. Michael Sawyer	Scope of the Proponent’s ESA and Environmental Protection Plan (EPP) Adequacy of the Proponent’s cumulative effects assessment methodology Cumulative effects of upstream production and development Project effects on woodland caribou	Section 6.5.2 Section 6.6.1 Section 6.6.2
Saulteau First Nations (SFN)	Cumulative effects of upstream production and development	Section 6.6.2
West Moberly First Nations (WMFN)	Cumulative effects of upstream production and development	Section 6.6.2
Charlie Wright	Cumulative effects of upstream production and development	Section 6.6.2

## 6.5 Environmental Effects Analysis

The Board has reviewed the Section 58 Projects and identified interactions expected to occur between the proposed activities and the surrounding bio-physical and socio-economic elements. In assessing the effects of the Section 58 Projects, the Board considered interactions with the following elements:

- Soil and Soil Productivity
- Vegetation
- Water and Water Quality
- Wildlife and Wildlife Habitat
- Wildlife Species at Risk
- Atmospheric and Acoustic Environment
- Human Occupancy and Resource Use
- Heritage Resources
- Current Traditional Land and Resource Use

The Board also considered the potential accidents and malfunctions that may occur due to the Section 58 Projects, and any change to the Section 58 Projects that may be caused by the environment. For those elements where interactions with the Section 58 Projects were predicted, the Board then considered any potential adverse effects.

The majority of bio-physical and socio-economic interactions and effects, excluding accidents and malfunctions, are expected to be negligible or managed effectively through standard mitigation so as to be insignificant. Standard mitigation is discussed in Section 6.5.2 below.

The Board's detailed analysis of the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples, including a determination of significance, is discussed in Chapter 5, Aboriginal Matters.

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

In its applications, NGTL identified routine design and standard mitigation to mitigate most of the potential adverse environmental effects identified. NGTL's applications, supporting documentation, and EPP filed for the Original NMML Project contain details on NGTL's planned mitigation<sup>9</sup>. NGTL has also updated its EPP and confirmed mitigation in its filings associated with the Section 58 Projects.

### **6.5.2 Standard Mitigation**

The NEB recognizes that many adverse environmental effects are resolved through standard mitigation. Standard mitigation refers to a specification or practice that has been developed by industry, or prescribed by a government authority, that has been previously employed successfully and is now considered sufficiently common or routine that it is integrated into the company's management systems and meets the expectations of the NEB.

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

In addition to siting the Section 58 Projects within previously disturbed footprints, NGTL would implement measures to mitigate the potential environmental effects of construction and operation, including:

- site-specific and established industry practices;
- compliance with legislation, regulations, and guidelines;
- planning considerations, such as timing windows; and,
- other applicable measures.

NGTL committed to update and implement the EPP filed for the Original NMML Project to include the Section 58 Projects. NGTL stated that monitoring procedures and follow-up programs for the Section 58 Projects would be consistent with those detailed in the Original NMML Project EPP. For example, the Original NMML Project includes Condition 17 that requires the filing of a Grizzly Bear Report that will summarize the results of pre-construction

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<sup>9</sup> For further information on mitigation and conditions imposed by the Board for the Original NMML Project, refer to the NEB Report and Certificate GC-125 for the GH-001-2014 proceeding

grizzly bear den sweeps and any new mitigation to be implemented. NGTL said that it would conduct a bear den survey prior to construction of the Aitken Creek West No. 2 Meter Station if clearing activities are initiated during the restricted activity period between November 15 and May 1.

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

#### ***Blueberry River First Nations***

Blueberry expressed concerns regarding the potential loss of old growth forest due to clearing at the Aitken Creek West No. 2 Meter Station. Blueberry sought clarification that no additional clearing of old growth forest would occur as a result of the Section 58 Projects.

#### ***Mr. Michael Sawyer***

Mr. Sawyer recommended that the Board include a condition to require NGTL to file an updated and revised EPP for the Original NMML Project because the current EPP does not adequately address prevention and mitigation of effects, in particular the cumulative effects of upstream activities.

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

The Board finds that the potential effects associated with the Section 58 Projects are minor in nature, as construction activities would occur within areas which would have been disturbed by the Original NMML Project construction. Further, the majority of these effects are temporary (confined to the construction period) and most of the proposed work would be above-ground. The Board is of the view that the potential effects can be resolved through the use of standard design or routine procedures, as outlined in NGTL's applications and related filings, and by the Board's conditions in Certificate GC-125 for the Original NMML Project. For example, the bear den sweeps required for the Original NMML Project Condition 17 will necessarily include the area affected by the Section 58 Projects.

With respect to old growth forest, the Board notes that although the construction of the Aitken Creek West No. 2 would require the clearing of a small area of old growth forest, the clearing is within the Original NMML Project footprint, and covered by existing mitigation and conditions. Given that the residual effect of the clearing has been previously assessed, the Board finds that the residual effects and mitigation measures associated with the permanent loss of old growth forest have been sufficiently addressed in the Original NMML Project proceeding.

The Board notes that NGTL has committed to update its Original NMML Project EPP, previously approved by the Board, to include the Section 58 Projects. The Board directs NGTL to file an updated EPP, prior to construction, as set out in **Condition 4** of the Section 58 Order (Appendix II). The updated EPP must include all information relevant to the Section 58 Projects, and identify the revisions and additions based on the modifications in the Variance Application, including the removal of the specified Kahta Section pipeline. The EPP must describe all environmental protection procedures, and mitigation and monitoring commitments, as set out in NGTL's application or as otherwise agreed to during questioning or in its related submissions.

## **6.6 Cumulative Effects Assessment**

The assessment of cumulative effects considers the impacts of the predicted likely residual effects associated with the Projects in combination with the likely residual effects from other projects and activities that have been or will be carried out, within the appropriate temporal and spatial boundaries and ecological context. The Board considers cumulative effects in four steps by:

1. First, considering the environmental effects of the Projects and whether, after the applicant implements mitigation, residual effects are likely.
2. If no likely residual effects from the Project are predicted, further analysis of cumulative effects is not required.
3. If likely residual effects are predicted, the Board considers the potential for those effects to interact both temporally and geographically with the likely effects of other past, present and reasonably foreseeable future projects and activities.
4. If there is interaction, the combined effects are considered along with the proposed mitigation, and the significance and the relative contribution of the residual project effect of the cumulative effect will be considered.

Cumulative effects assessment differs from conventional project-specific effects assessments by considering larger geographic study areas, longer time frames and unrelated projects or activities.

### **6.6.1 Section 58 Projects**

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

NGTL stated that the Section 58 Projects are located within the footprint and study areas of lands that were assessed for the Original NMML Project and that there would be no new clearing beyond areas that were previously assessed. NGTL submitted that the residual effects of the Section 58 Projects are negligible and entirely restricted to the PDA for each meter station. NGTL acknowledged that new industrial infrastructure development activities surrounding the Section 58 Projects might occur in the future, including customer tie-ins, pipelines, highways, access roads, and transmission lines. NGTL concluded that because the Section 58 Projects will

not further contribute to effects on any of the valued components previously assessed, no further cumulative effects assessment was warranted.

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

#### ***Blueberry River First Nations***

Blueberry submitted that the construction and operation of the Section 58 Projects would result in new and different impacts than were considered in the Original NMML Project, including:

- sensory disturbance during construction,
- permanent industrialization of lands, and,
- concentration of further development in the vicinity of the meter stations, through induced development.

#### ***Mr. Michael Sawyer***

Mr. Sawyer was critical of the methodology that NGTL used to assess the potential effects and cumulative impacts of the Section 58 Projects. Mr. Sawyer submitted that NGTL's cumulative effects assessment for the Section 58 Projects did not meet the requirements of the NEB Filing Manual in the areas of considering other projects and activities, identifying the spatial boundaries of assessment areas, and consideration of non-significant residual effects. In his comments on the Board's draft conditions, Mr. Sawyer recommended that any approval should include a condition for NGTL to file a new ESA for the revised project that meets the NEB Filing Manual requirements, particularly in the area of cumulative effects assessment.

Mr. Sawyer was critical of NGTL's assessment regarding the location of two meter stations (Mackie Creek North and Altares South) located in close proximity to the Graham caribou herd range boundary. Mr. Sawyer argued that NGTL did not provide the necessary evidence to demonstrate that the two meter stations were outside of caribou ranges, nor did they assess the upstream cumulative effects of the meter stations on caribou habitat.

Mr. Sawyer expressed concerns that NGTL had not conducted an evaluation of direct and upstream greenhouse gas (GHG) emissions linked to the Section 58 Projects, as recommended by the Federal Government's Interim Measures for Pipeline Reviews. Mr. Sawyer also said that GHG emissions reduction objectives and mechanisms have become more stringent since the Board approved the Original NMML Project, and recommended that any approval include a condition that required an assessment of upstream GHG emissions in the context of current GHG emissions reductions objectives.

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

The Board notes that the Section 58 Projects are located within the footprint and project assessment areas of the Original NMML Project and that no additional land disturbance is required for the resultant construction and operation of the meter stations. As such, the Board finds that while residual effects of the proposed works and activities may act

cumulatively with other nearby activities ongoing at the time of construction, the Board is of the view that the Section 58 Projects are not likely to contribute to effects above and beyond the effects assessed during the Original NMML Project proceeding that relate to the facilities in the Variance Application. The Board finds that there are no new residual effects from the Section 58 Projects on environmental and socio-economic elements beyond those that were considered and assessed in the Original NMML Project. Therefore, the Board is of the view that there will be no residual cumulative effects from the Section 58 Projects.

Based on evidence provided, including Environment and Climate Change Canada's *Recovery Strategy for the Woodland Caribou, Southern Mountain population*<sup>10</sup>, the Board is not persuaded by arguments suggesting the Mackie Creek North and Altares South Meter Stations are located within the Graham caribou herd range, as the locations are outside of the identified critical habitat range. The Board also notes that the Variance Facilities, specifically the removal of 95 km of the Kahta Section pipeline, would result in an overall reduction of environmental effects of the Original NMML Project, including eliminating any project-related disturbance to the Pink Mountain caribou herd range.

Regarding GHG emissions, the Board notes that the likely residual effects related to the construction of the Section 58 Projects are associated with temporary and localized increases in air emissions, including GHGs due to the use of vehicles and equipment. The Board is of the view that the associated effects of construction-related air emissions are temporary and relatively minor in nature, and levels would return to current baseline following completion of construction. Any interactions of these emissions with those from other projects and activities in the vicinity would also be temporary. Such unavoidable, temporary, and relatively minor construction-related emissions would be negligible and not likely to significantly contribute to cumulative effects. Further, the Board notes that the Original NMML Project (Certificate GC-125) included Conditions 32 and 33 to quantify and describe mitigation measures for both construction and operation related GHG emissions. The Board expects any Section 58 Project-related GHG emission quantification to be included in the filings for Conditions 32 and 33, which remain in effect.

## **6.6.2 Induced development and upstream production**

As described in Chapter 2, before determining how to process the Variance Application, the Board requested comments from the Parties of the Original NMML Project. The issue of cumulative effects related to upstream production and development was then raised by several Parties. The Board heard further concerns in this regard once the MH-031-2017 proceeding was established.

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<sup>10</sup> Environment Canada. 2014. *Recovery Strategy for the Woodland Caribou, Southern Mountain population (Rangifer tarandus caribou)* in Canada. *Species at Risk Act Recovery Strategy Series*. Environment Canada, Ottawa. viii + 103 pp.

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

In response to comments that the Board should re-assess cumulative effects in its consideration of the Variance Application, NGTL said that the scope and assessment of the Original NMML Project facilities would not change as a result of the Variance Application. NGTL acknowledged that although supply would be received from additional producers as compared with the Original NMML Project, the upstream effects considered in its original cumulative assessment assumed upstream development throughout the North Montney supply area. NGTL has maintained that the conclusions and assumptions used in the Original NMML Project assessment remain valid and that no further assessment of cumulative effects in the North Montney supply area was necessary.

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

#### ***Simogyet Luutkudziiwus (Mr. Charlie Wright)***

Mr. Wright said that resource development and climate change in and around Luutkudziiwus territories has significantly affected the ability to carry out traditional practices and to rely on the territories for food, cultural, and spiritual practices. The changes to the territories from the cumulative effects of resource development and climate change have created complex challenges for Luutkudziiwus, including in relation to the exercise of title and rights and its ability to fulfill stewardship responsibilities on its territories. Mr. Wright is deeply concerned that the Original NMML Project, as well as the NMML Facilities, will contribute to the existing cumulative effects of resource development and climate change in its territories, including impacts on forest, fish, and animals which it relies on. Mr. Wright submits that the Original NMML Project is no longer in the public interest and the proposed Variance Application should be rejected.

Mr. Wright requested the Board, should it not reject the Variance Application, impose a condition requiring NGTL to provide the quantification of GHG emissions in respect of the NMML Facilities. This condition should include a requirement for consultation with affected Aboriginal groups, including a summary of consultation undertaken with Aboriginal groups with respect of GHG emissions and a summary of activities undertaken to develop and implement plans for monitoring and mitigation measures in relation to GHG emissions by or with Aboriginal groups.

#### ***West Moberly First Nations***

WMFN argued that the Board's scoping of the NMML Facilities resulted in the Board failing to consider the cumulative effects of upstream development and induced or future activities that result. WMFN stated that the approximate doubling of the number of receipt points on the Aitken Creek Section likely indicates that the intensity of gas extraction activity will also double, so the cumulative effects of gas extraction will likely also intensify. WMFN suggested that the Board include an approval condition that requires NGTL to complete a comprehensive cumulative impacts assessment of the direct and upstream impacts (including environmental and socio-economic) resulting from the location and density of the Section 58 Project receipt stations.



### ***Blueberry River First Nations***

Blueberry described the impacts of upstream industrial development and timber harvest on lands and resources, including;

- fragmentation of the landscape and wildlife habitat and corridors by connected linear and areal disturbances;
- sensory disturbance for wildlife including increased noise, vibration, smells, and alterations to the visual landscape;
- increased traffic and number of people on the land;
- increased use of water and fracking chemicals, with associated disposal requirements;
- increased accidents and malfunctions, frac sand mine development;
- increased GHG emissions; and
- local and regional air quality degradation.

Blueberry submitted that the cumulative effect of development in its territory has dramatically altered the landscape at an increasing rate. In 2011, Blueberry said that 66% of its core territory was either directly disturbed by industrial activities, or within 250 m of an industrial feature. Since 2016, Blueberry said that more than 74% of its territory is now within 250 m of an industrial feature. Blueberry argued that the Board fundamentally erred in finding that the induced and upstream development from the NMML Facilities were irrelevant to the environmental assessment or assessment of impacts on Blueberry's treaty rights.

### ***Mr. Michael Sawyer***

Mr. Sawyer argued that NGTL's applications for the Section 58 Projects did not meet the NEB Filing Manual requirements for the assessment of cumulative effects. Mr. Sawyer specifically identified issues with the assessment of the effects of incremental increase in upstream development, effects of upstream effects on woodland caribou populations, and GHG emissions related to upstream production and development.

### ***Reply of NGTL***

NGTL stated that arguments of a higher intensity of upstream development in the southern portion of the North Montney area as a result of the NMML Facilities are contrary to the evidence. NGTL explained that the locations of meter stations are generally tied to the locations of the producers' upstream plants, but the actual drilling and gathering upstream of the plants may be located a significant distance from the plants and NGTL does not have visibility to those aspects of the producers' developments. NGTL also reiterated that the Original NMML Project was contracted for 2.078 Bcf/d of supply, which has been reduced to 1.485 Bcf/d. Therefore, the gas production connected to the facilities would be reduced relative to the original application, and that NGTL continues to expect upstream development to be distributed reasonably equally over the entire North Montney supply area. NGTL concluded that assertions related to the intensity of upstream development are not supported by the evidence and should be disregarded.

### *Views of the Board*

Notwithstanding the Board's conclusion that there will be no residual cumulative effects from the Section 58 Projects, and the Board's Rulings No. 4 and 6 on motions from SFN and Blueberry that requested further consideration of upstream production effects, the Board considered the concerns expressed regarding the cumulative effects of upstream or induced development.

During its assessment of the Original NMML Project, the Board found NGTL's additional modelling assumptions and analysis of future development effects to reflect a reasonable model of potential trends in the North Montney area. The Board also acknowledged the British Columbia Oil and Gas Commission's (BCOGC) responsibility for regulating future development activity in the area and expressed support for its Area Based Analysis framework, which aims to address industrial development cumulative effects issues in northeast British Columbia. Based on the evidence provided in this proceeding, the Board is of the view that the findings of the upstream cumulative effects assessment submitted for the Original NMML Project remain valid and have already been assessed by the Board. The Board continues to recognize and support the BCOGC initiatives to manage the impacts of cumulative effects of development under its regulatory control.

The Board has considered the potential for cumulative environmental effects and determined that they would be temporary, localized, and minor in magnitude. Therefore, it is unlikely that there would be any significant cumulative environmental effects resulting from this Project.

## Chapter 7

### Section 58 Projects

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#### 7.1 Application for Section 58 Meter Station Projects

NGTL separately submitted seven Section 58 Applications for the construction and operation of eight additional meter stations that would be required to flow the gas eastward into NGTL's existing NOVA Inventory Transfer hub if the Variance Application is approved. The Board decided on 7 September 2017 to consider the meter station applications (Section 58 Projects) as part of the MH-031-2017 hearing. Detailed information about Aboriginal Matters related to the Section 58 Projects can be found in Chapter 5, and the Board's Environmental Assessment can be found in Chapter 6.

For the reasons outlined in this chapter and Decision, the Board is of the view that the Section 58 Projects are in the public interest.

##### 7.1.1 Economic and Financial Matters

###### *Views of NGTL*

NGTL submitted the estimated cost to construct the eight new meter stations as indicated in Table 7.1 below.

**Table 7.1: Estimated Cost of Section 58 Projects**

<b>Project</b>	<b>Estimated Cost (\$)</b>
Aitken Creek West No. 2 Receipt Meter Station	2,827,440
Aitken Creek South Receipt Meter Station	5,316,960
Old Alaska Receipt Meter Station	3,416,380
Gundy West Receipt Meter Station	3,416,380
Townsend Receipt Meter Station and Townsend No. 2 Receipt Meter Station	6,908,984
Altares South Receipt Meter Station	3,416,380
Mackie Creek North Receipt Meter Station	2,949,980
Total	28,252,504

In its applications, NGTL stated that for each meter station there is or there will be adequate supply to support the use of the applied-for facilities and that they are likely to be used at a reasonable level over their economic life. NGTL further stated that adequate markets exist for the volumes that would be available as a result of the applied-for facilities and that it is able to finance the applied-for facilities, and safely operate, maintain and abandon the facilities. NGTL stated that it notified third party shippers about the Section 58 Projects and they do not have any outstanding concerns about the impact of the projects on tolls, tariffs, access or service. NGTL also stated that it has notified commercial third parties about the Section 58 Projects and they do not have any outstanding concerns about their impact. NGTL stated that it has undertaken an assessment to determine the impact the proposed facilities will have on its Abandonment Cost Estimate total for its NEB-regulated pipelines.

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

The Board is satisfied that NGTL has demonstrated that it has fully considered the relevant economic and financial impacts of the Section 58 Projects.

The Variance Facilities will require the Section 58 Projects to receive gas on to the NGTL System. The NMML Facilities are underpinned by twenty year contracts for 1.485 Bcf/d. Therefore, the Board finds that the Section 58 facilities are likely to be used at a reasonable level over their economic life.

## **7.1.2 Engineering Matters**

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

NGTL stated that the Section 58 Projects will be designed, constructed, tested and operated in accordance with industry best practices and the provisions of the NEB Act, the *National Energy Board Onshore Pipeline Regulations* (OPR), applicable NGTL specifications and *Canadian Standards Association Z662-15*.

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

The Board is satisfied that the Section 58 Projects will be designed, constructed, and operated in accordance with applicable legislative requirements, commitments made in its application, and the conditions attached to any approval. In the Section 58 Applications, NGTL committed to complying with the OPR. The OPR references various engineering codes and standards including *Canadian Standards Association Z662-15*. NGTL is responsible for ensuring that it follows the design, specifications, programs, manuals, procedures, measures, and plans developed and implemented by the company in accordance with legislative requirements.

### **7.1.3 Consultation Matters**

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

NGTL stated that the consultation program for the Section 58 Projects was guided by TransCanada's *Stakeholder Engagement Commitment Statement* and its corporate values of safety, integrity, collaboration and responsibility. NGTL further stated that it undertook public consultation to inform potentially affected parties about the Section 58 Projects and to understand concerns or issues that may arise from the proposed construction.

NGTL submitted that engagement with land interest holders regarding each of the Section 58 Projects commenced in April 2017. NGTL noted that there were no private landowners directly affected by any of the Section 58 Projects, however directly affected Crown land interest holders plus those within 200 m of each of the Section 58 Projects were provided a notification with an invitation to respond in April 2017. NGTL noted that this was followed by notifications of the Section 58 Projects applications being filed (May 2017), and the Notice of a Hearing (September 2017).

NGTL confirmed that all potentially-affected municipalities and the provincial government have been notified of the Section 58 Projects and that no issues or concerns have been raised.

NGTL stated that as of 25 October 2017, no concerns regarding the Section 58 Projects have been communicated to NGTL.

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

The Board expects regulated companies to conduct an appropriate level of public involvement activities, commensurate with the nature, scope and setting of each project. The Board is satisfied that all potentially affected stakeholders were adequately consulted given the nature, scope, and setting of the Section 58 Projects and that interested persons had a sufficient opportunity to provide comments on the proposed Section 58 Projects.

### **7.1.4 Land Matters**

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

NGTL stated that the locations of each of the Section 58 Projects was determined so as to minimize any impacts to the environment, Aboriginal groups and stakeholders, while ensuring that the stations can be constructed and operated safely.

NGTL noted that the site selection criteria for the meter stations included:

- proximity to producer tie-in locations, minimizing incremental facilities required to connect to the pipeline;
- environmental considerations which may impact wetlands, watercourses, or plant and animal species, as well as information on areas of known cultural importance to Aboriginal groups identified through the GH-001-2014 proceeding;

- use of previously disturbed footprints, such as planned temporary work space locations;
- accessibility of the sites from existing roads or trails; and
- the general topography of the sites, including slopes and adjacent grades, which may impact construction and operation of the site.

NGTL submitted that following the above criteria, each of the Section 58 Projects would be located entirely on land to be cleared within the existing approved footprint of the Original NMML Project and no additional temporary workspace is required to construct the Section 58 Projects. NGTL noted that the combined temporary disturbance and permanent footprint for all seven meter station sites would be approximately 3.63 ha, however, only approximately 1.03 ha is required for the operation of the meter stations.

NGTL confirmed that the land acquisition process for the Section 58 Projects would comply with the applicable sections of the NEB Act, including sections 86 and 87.

#### *Views of the Board*

The Board acknowledges NGTL's efforts to minimize the potential impact of the Section 58 Projects on the environment and stakeholders by proposing that they be located entirely on land to be cleared within the existing approved footprint of the Original NMML Project. The Board considers NGTL's land area, land requirements and land acquisition process to be acceptable.

### **7.1.5 Infrastructure, Services, Employment and Economy**

#### *Views of NGTL*

NGTL stated that the Section 58 Projects would have a limited scope, relatively small workforce of approximately 25 workers, and a short duration of construction (approximately 3 to 6 weeks per meter station and approximately 4 to 6 weeks for the Townsend and Townsend No. 2 Meter Station site). NGTL further stated that the Section 58 Projects would have a limited road use requirements and the workers would stay in work camps associated with the NMML Project, open camps available within the area of construction or in local commercial accommodations. NGTL noted that the meter station construction would occur in conjunction with various other construction activities associated with the NMML Project and would share a work force.

NGTL concluded that any effects to employment or economy are expected to be positive but not large enough to result in changes to local employment or economy. NGTL further concluded that there are limited predicted interactions with infrastructure and services.

#### *Views of the Board*

Given the limited scope and scale of the Section 58 Projects, the Board is of the view that the potential impacts to infrastructure, services, employment and economy will be limited.

# Appendix I – List of Issues

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The Board considered the following issues in the hearing:

## A) Issues Relating to the Variance Application and Sunset Clause

1. The need for the Variance Facilities.
2. The impact of the cancellation of the Pacific Northwest Liquefied Natural Gas Project (PNW LNG Project) on the economic feasibility of the Variance Facilities if the Variance is approved, including:
  - The impacts on other natural gas pipelines in Northeastern BC, such as those owned by Westcoast Energy Inc. and Alliance Pipeline Ltd.
3. The potential commercial impacts of the Variance Facilities and Section 58 Projects including:
  - Direct market impacts resulting from the cancellation of the PNW LNG Project.
  - The ability of downstream pipelines to accommodate the additional natural gas volumes from the Variance Facilities in the long-term, including an overview of current and proposed expansion projects on the NGTL system in the Peace River Project Area.
  - The impacts to current shippers on the Upstream James River portion of the NGTL system if the additional volumes from the Facilities flow on the NGTL system.
  - The impacts on North Montney producers seeking access to diversified markets in a timely manner.
4. The potential impacts of the Variance Facilities and the Section 58 Projects on the following tolling matters:
  - The continued appropriateness of utilizing two distinct time periods for tolling considerations for the Variance Facilities.
  - The continued appropriateness of applying NGTL's existing rolled-in tolling methodology for an interim period.
  - Consideration of potential cross-subsidization impacts on current shippers and Variance Facilities shippers on the NGTL system.
5. The terms and conditions to be included in any approval the Board may issue including terms and conditions with respect to the Variance Application and Sunset Clause including the Variance Facilities.

## B) Issues Relating to the Section 58 Projects

1. The need for the Projects.
2. The potential environmental and socio-economic effects of the Projects, including any cumulative environmental effects that are likely to result from the Projects and comprising of those required to be considered by the NEB's Filing Manual.
3. The appropriateness of the siting and land requirements, including wherever the land requirements extend beyond the corridor approved in GH-001-2014, and requirements for the right of way and temporary workspace.
4. The engineering design and integrity of the construction and operation of the Projects.
5. Potential impacts of the Projects on Aboriginal interests.
6. Potential impacts of the Projects on directly affected landowners and their land use.
7. The terms and conditions to be included in any approval the Board may issue with respect to the Projects.



## Appendix II – Section 58 Order

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### ORDER XG-N081-015-2018

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

**IN THE MATTER OF** seven applications, dated 18 May 2017 and 25 May 2017, by NOVA Gas Transmission Ltd. (NGTL) pursuant to subsection 58(1) of the NEB Act, for the construction and operation of eight meter stations, under the following files:  
OF-Fac-Gas-N081-2017-05 01; OF-Fac-Gas-N081-2017-06 01;  
OF-Fac-Gas-N081-2017-07 01; OF-Fac-Gas-N081-2017-08 01;  
OF-Fac-Gas-N081-2017-09 01; OF-Fac-Gas-N081-2017-10 01;  
OF-Fac-Gas-N081-2017-11 01 (Section 58 Projects);

**BEFORE** the Board on 20 April 2018.

**WHEREAS** NGTL filed seven separate applications dated 18 May 2017 and 25 May 2017 for eight meter stations;

**AND WHEREAS** the information about the Section 58 Projects is set out in Schedule A, attached to and forming part of this Order;

**AND WHEREAS** NGTL applied for a Variance to Certificate GC-125 on 20 March 2017 which would include changes to a subset of the previously-approved North Montney Mainline Project (the Variance Application);

**AND WHEREAS** the Board decided on 7 September 2017 that the Section 58 Projects would be heard at the same time as the Variance Application under File OF-Fac-Gas-N081-2013-10 06;

**AND WHEREAS** the Board held a public hearing pursuant to Hearing Order MH-031-2017 in Calgary, Alberta on 22-26 January 2018, and 6 February 2018; and in Dawson Creek, British Columbia from 30 January to 1 February 2018;

**AND WHEREAS** the Board had regard to all considerations that are directly related to the Section 58 Projects and were relevant, including environmental matters pursuant to Part III of the NEB Act, and conducted an environmental assessment of the Section 58 Projects;

**AND WHEREAS** the Board's decisions on the applications, and reasons, are set out in the MH-031-2017 National Energy Board Reasons for Decision;

**IT IS ORDERED** that, pursuant to subsection 19(1) of the NEB Act, this Order takes effect only upon the approval by the Governor in Council, as set out in subsection 21(1) of the NEB Act, for amendments to Certificate GC-125;

**IT IS FURTHER ORDERED** that, pursuant to subsection 58(1) of the NEB Act, the Section 58 Projects are exempted from the requirements of paragraph 30(1)(a) and section 31 of the NEB Act, subject to the following conditions:

**General**

***1. Condition Compliance***

NGTL shall comply with all the conditions contained in this Order unless the Board directs otherwise.

***2. Design, Construction, and Operation***

NGTL shall cause the Section 58 Projects to be designed, located, constructed, installed, operated and decommissioned in accordance with the specifications, standards, commitments made and other information referred to in its application or in 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 the application or in related submissions.

**Prior to Construction**

***4. Updated Environmental Protection Plan (EPP)***

NGTL shall include information relevant to the Section 58 Projects in the updated project-specific Environmental Protection Plan (EPP) that is required to be filed at least 60 days prior to commencing construction pursuant to condition 14 of Certificate GC-125.

**Post-Construction and Operation**

***5. Condition Compliance by an Accountable Officer***

Within 30 days of the date that the construction of the Section 58 Projects are completed, NGTL shall file with the Board a confirmation that the Section 58 Projects were completed and constructed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, NGTL 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 the accountable officer of NGTL, appointed as Accountable Officer pursuant to section 6.2 of the *National Energy Board Onshore Pipeline Regulations*.

**6. *Sunset Clause***

This Order shall expire on 30 June 2019, unless construction of the Section 58 Projects has commenced by that date.

NATIONAL ENERGY BOARD

Sheri Young  
Secretary of the Board

## Appendix III – Part IV Order

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### ORDER TG-003-2018

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

**AND IN THE MATTER OF** an application dated 20 March 2017 by NOVA Gas Transmission Ltd. (NGTL) pursuant to section 21 of the NEB Act for variances to Condition 4 of Certificate GC-125 (Certificate) and Condition 4 of Order XG-N081-010-2015 for a subset of the North Montney Mainline facilities, an extension to the sunset clauses included in the Certificate and Order, and approval to make changes to the facilities approved in the Certificate (Variance Application), filed with the National Energy Board (the Board) under file No. OF-Fac-Gas-N081-2013-10 06.

**BEFORE** the Board on 20 April 2018

**WHEREAS** on 11 June 2015, the Board issued the Certificate to NGTL, authorizing construction and operation of the North Montney Mainline (the Project);

**AND WHEREAS** on 20 March 2017, the Board received the Variance Application from NGTL;

**AND WHEREAS** the Board held a public hearing pursuant to Hearing Order MH-031-2017 in Calgary, Alberta on 22 to 26 January 2018 and 6 February 2018, and in Dawson Creek, British Columbia on 30 January 2018 to 1 February 2018;

**AND WHEREAS** the Board's decisions on the Variance Application, and the associated reasons are set out in the MH-031-2017 National Energy Board Reasons for Decision;

**AND WHEREAS** the variances to the Certificate granted under subsection 21(1) of the NEB Act are subject to the approval of the Governor in Council and that the Governor in Council's approval is pending;

**IT IS ORDERED** that, pursuant to subsection 21(1) of the NEB Act, Toll Order TG-002-2015 is hereby rescinded;

**IT IS FURTHER ORDERED** that, pursuant to subsection 21(1) of the NEB Act, Amended Toll Order AO-001-TG-002-2015 is hereby rescinded;

**IT IS FURTHER ORDERED** that, pursuant to subsection 19(1) of the NEB Act, the present Order takes effect only upon the approval by the Governor in Council as set out in subsection 21(1) of the NEB Act for amendments to the Certificate;

**IT IS FURTHER ORDERED** that pursuant to subsection 20(1) and Part IV of the NEB Act:

***1. North Montney Cost Pool***

**Before commencing construction**, as that term is defined in the Certificate conditions, NGTL must establish a cost pool for the NMML Facilities, as that term is defined in MH-031-2017, which is separate from the cost pool for the existing NGTL System (NMML Cost Pool). In particular:

- a) NGTL must maintain accounting records capable of providing separate and verifiable information in support of the amounts reported for the NMML Cost Pool;
- b) The NMML Cost Pool accounting records must be maintained for the life of the Project, unless otherwise directed by the Board, in a manner consistent with NGTL's system of accounts and corporate accounting policies;
- c) NGTL must record sufficient information in the plant and other balance sheet accounts and income and expense accounts in the NMML Cost Pool accounting records so that NGTL can provide the Board with the following information:
  - i) revenue requirement summary, including operating expense components and depreciation;
  - ii) income summary;
  - iii) rate base summary;
  - iv) return on rate base, including cost of debt and equity components;
  - v) abandonment accounts;
  - vi) summary of revenue by class of service;
  - vii) inter-cost pool transactions; and
  - viii) any balances held in deferral accounts.

NGTL must file the information set out in 1c) at the same time that NGTL files its Quarterly Surveillance Report.

***2. Tolling Methodology for the Provisional Period***

The term of the Provisional Period is twelve months, and it commences upon the date Governor in Council approves amendments to the Certificate. The Post-Provisional Phase begins at the end of the Provisional Period.

- a) During the Provisional Period, NGTL may calculate its revenue requirement by combining the incremental revenue requirement of the NMML Facilities with the revenue requirement of the existing NGTL System and applying its current toll methodology, with the exception that the FT-R toll ceiling will not be applied to the NMML Facilities;

- b) During the Provisional Period, NGTL must record the difference between the NMML Facilities revenue and NMML Facilities revenue requirement (cost of service) in a deferral account;
- c) If NGTL does not file, and receive approval of, an application with the Board for a new tolling methodology for the NMML Facilities prior to the expiry of the Provisional Period, NGTL must calculate tolls for services on the NMML Facilities for the Post-Provisional Phase using a stand-alone tolling methodology, and NGTL must apply to the Board for approval of the disposition of the balance in the deferral account no later than three months after the expiration of the Provisional Period. The stand-alone toll must be derived from the NMML Facilities Cost Pool and must recover these costs from the NMML shippers. At the same time that NGTL files its Quarterly Surveillance Reports, NGTL must file similar information for the NMML Facilities, using the NMML Cost Pool accounting records.
- d) If NGTL does file an application with the Board prior to the expiry of the Provisional Period for a new tolling methodology on the NMML Facilities, this new tolling application must also include a proposal for the disposition of the balance in the deferral account.

**3. *Additional Conditions:***

- a) If, over the operating life of the NMML Facilities, some or all of the gas transported on NMML Facilities is not delivered to markets currently attached to the NGTL System or the NMML Facilities, NGTL must re-apply to the Board for approval of a tolling methodology on the NMML Facilities.
- b) Within 180 days of the date this Order takes effect, and prior to commencing construction, as that term is defined in the Certificate, NGTL must file either:
  - i) A letter with the Board stating that Progress no longer has the right to terminate its North Montney Anchor Customer Receipt Project Expenditure Authorization (Progress Receipt PEA) and FT-R service; or
  - ii) Alternatively, if Progress terminates its Progress Receipt PEA and FT-R service, information demonstrating NGTL has new and restructured substantially similar commercial arrangements to underpin NGTL's applied-for 42.1  $10^6$  m<sup>3</sup>/d (1,485 MMcf/d) of FT-R service on the NMML Facilities, for Board approval. If NGTL is unable to demonstrate substantially similar commercial arrangements for 42.1  $10^6$  m<sup>3</sup>/d (1,485 MMcf/d) of FT-R service on the NMML Facilities, then NGTL may not commence construction.

NATIONAL ENERGY BOARD

Sheri Young  
Secretary of the Board

## Appendix IV – Rulings and Procedural Update

Date	Filing ID	Description
7 September 2017	A85897	<b>Board Notice of Hearing</b> – determined that the application was complete enough to proceed through the hearing process, identified the List of Issues, and granted Pre-Decided Standing to comment process participants.
10 October 2017	A87135	<b>Board Ruling No. 1</b> – established the List of Parties (comprised of NGTL and Intervenor) and the List of Commenters for the MH-031-2017 hearing.
3 November 2017	A87564	<b>Board Ruling No. 2</b> – denied an extension to the timelines in the Hearing Order to DRFN and Blueberry.
10 November 2017	A89287	<b>Board Procedural Update No. 1</b> – provided information about the oral portions of the hearing held in Calgary, Alberta on 22 to 26 January 2018 and 6 February 2018, and in Dawson Creek, BC on 30 January 2018 to 1 February 2018.
17 November 2017	A87917	<b>Board Ruling No. 3</b> – denied an extension to the timelines in the Hearing Order to Wilp Luutkudziwus and SFN.
20 December 2017	A88821	<b>Board Ruling No. 4</b> – following a comment period, the Board denied SFN’s motion to compel Intervenor to file responses to their Information Requests.
22 December 2017	A88887	<b>Board Procedural Update No. 2</b> – provided information about the oral portions of the hearing in Calgary, Alberta on 22 to 26 January 2018 and 6 February 2018, and in Dawson Creek, BC on 30 January 2018 to 1 February 2018.
12 January 2018	A89201	<b>Board Procedural Update No. 3</b> – clarified the dates that Intervenor’s written final argument and NGTL’s written reply argument was due and granted SFN’s motion to remove certain evidence from the record.
17 January 2018	A88821	<b>Board Ruling No.5</b> – denied FortisBC’s motion to extend the time limit to provide oral argument.
19 January 2018	A89414	<b>Board Ruling No. 6</b> – denied Blueberry’s motion to compel Intervenor and NGTL to file responses to their Information Requests.
25 January 2018	Transcript Vol.4 A89562	<b>Board Ruling No. 7</b> – denied SFN’s motion to ask Information Requests of an Intervenor.
24 January 2018	A89521	<b>Board Procedural Update No. 4</b> - provided updated information about the oral portions of the hearing in Dawson Creek, BC on 30 January 2018 to 1 February 2018.
29 January 2018	A89613	<b>Board Procedural Update No. 5</b> – granted an opportunity for Intervenor to reply in writing to arguments raised by other Intervenor, and for NGTL to write a final reply.
9 February 2018	A89917	<b>Board Ruling No.8</b> – denied SFN’s motion to add late evidence to the record.

## Appendix V – Summary of Aboriginal concerns, and Applicant and NEB responses

This appendix provides a summary of the general and specific concerns and issues raised by Aboriginal groups through this proceeding, as well as summaries of the responses to these concerns provided by the applicant, responses by the Board (including recommended conditions), and applicable requirements provided through regulation and/or legislation. The issues and concerns include those raised directly by Aboriginal groups through their participation in the hearing, as well as summaries of Aboriginal concerns and interests as recorded by the applicant in its evidence. Table 5.2 in this Decision refers to the written and oral submissions by Aboriginal Intervenors who participated in the hearing. The Board notes that identifying and referring to issues and concerns as contained within the record (as provided in this appendix) may have resulted in some issues being categorized in a summary manner. Some direct and indirect references within the record of the hearing may therefore not be exhaustively listed in the issues below. Anyone wishing to fully understand the context of the information and evidence provided by Aboriginal groups, as well as the applicable responses to these concerns by the applicant, should therefore familiarize themselves with the entire record of the hearing. Where there is an inconsistency with this Summary and the Decision, the Decision will prevail.

Concern	Group(s)	Company response	NEB response (including recommended conditions, and applicable regulatory and legislative requirements)	Concordance (in Decision)
<b>Need for the Variance Facilities</b>				
Variance Facilities are not needed, because existing pipeline capacity is sufficient	Blueberry SFN WMFN	<ul style="list-style-type: none"> <li>• NGTL argued that the Variance Facilities are urgently needed to provide pipeline egress out of the North Montney area independent of any LNG projects. There is no existing pipeline capacity that can accommodate Project volumes, and no viable alternative has been or is being pursued. There is more than sufficient supply in the North Montney area and demand across the NGTL system and connecting markets to support the Variance Facilities.</li> </ul>	<ul style="list-style-type: none"> <li>• The Board finds that the increased supply in the North Montney and the lack of pipeline egress out of the basin, necessitates the need for NMML Facilities despite the absence of the PNW LNG export project. The Board is of the view that the annual natural decline rate of 18% on the NGTL System and increased demand in the integrated North American market provide a need for the NMML Facilities in the long term.</li> <li>• The Board is not persuaded that there is excess capacity to accommodate additional North Montney production.</li> </ul>	4.6



Concern	Group(s)	Company response	NEB response (including recommended conditions, and applicable regulatory and legislative requirements)	Concordance (in Decision)
<b>Consultation by the Proponent</b>				
Lack of meaningful or inclusive consultation by NGTL throughout the various phases of the Variance Application and the Section 58 Projects	Blueberry	<ul style="list-style-type: none"> <li>• NGTL stated that it believes that its engagement with Aboriginal groups, including Blueberry, on the Variance Application and the Section 58 Projects is adequate and that its engagement approach is consistent with the scope and scale of the Variance Application and the Section 58 Projects.</li> </ul>	<ul style="list-style-type: none"> <li>• 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 the Variance Application and Section 58 Projects.</li> <li>• The Board notes that NGTL provided information about the Variance Application and Section 58 Projects to potentially affected Aboriginal groups and was responsive to the requests of Aboriginal communities and conducted additional engagement with several Aboriginal groups when they requested further information.</li> </ul>	5.5.1
Short timetables as barriers to meaningful participation	Blueberry	<ul style="list-style-type: none"> <li>• NGTL stated that the Variance Facilities are a subset of the original approved North Montney facilities and do not require any additional disturbance. NGTL stated that it would be extremely inefficient and counter-productive to re-litigate matters that the Board has already decided in the GH-001-2014 decision and, in fact, the Board has already ruled that these matters are not to be re-heard again this proceeding.</li> </ul>	<ul style="list-style-type: none"> <li>• 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 the Variance Application and Section 58 Projects.</li> <li>• The Board, as a regulatory tribunal, is bound by the common law requirements related to procedural fairness when making decisions that have the potential to impact rights. Appendix IV highlights some of the Board’s rulings. The Board designed the process to be as fair as possible to all parties, given the nature and magnitude of the Variance Application and Section 58 Projects.</li> </ul>	5.5.2 Appendix IV

Concern	Group(s)	Company response	NEB response (including recommended conditions, and applicable regulatory and legislative requirements)	Concordance (in Decision)
<b>Constraints of Hearing Process</b>				
Adequacy of Board's hearing process to properly consider the cumulative effects of the Variance Facilities	Blueberry	<ul style="list-style-type: none"> <li>• NGTL stated that the Variance Facilities are a subset of the original approved North Montney facilities and do not require any additional disturbance. NGTL stated that it would be extremely inefficient and counter-productive to re-litigate matters that the Board has already decided in the GH-001-2014 decision and, in fact, the Board has already ruled that these matters are not to be re-heard again this proceeding.</li> </ul>	<ul style="list-style-type: none"> <li>• Based on the evidence provided in this (MH-031-2017) proceeding, the Board is of the view that the findings of the cumulative effects assessment submitted for the Original NMML Project remain valid and have already been assessed by the Board.</li> <li>• The Board continues to recognize and support the BCOGC's initiatives to manage the impacts of cumulative effects of development under its regulatory control.</li> <li>• The Board, as a regulatory tribunal, is bound by the common law requirements related to procedural fairness when making decisions that have the potential to impact rights. Appendix IV highlights some of the Board's rulings. The Board designed the process to be as fair as possible to all parties, given the nature and magnitude of the Variance Application and Section 58 Projects.</li> </ul>	5.5.2
	SFN			5.5.4
	WMFN			6.6.2
<b>Consultation by Government(s)</b>				
Adequacy of consultation by government	Blueberry DRFN	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Considering all of the findings in this Decision, the Board is of the view that the requirements of section 35 of the <i>Constitution Act</i>, 1982 have been met, such that an approval of the NMML Facilities is in keeping with the honour of the Crown.</li> <li>• The Board administered its Participant Funding Program for this (MH-031-2017) proceeding, which provides financial assistance to support participation of Aboriginal and other affected groups.</li> <li>• The Board notes that the Supreme Court of Canada has 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.</li> </ul>	5.2 5.5.5

Concern	Group(s)	Company response	NEB response (including recommended conditions, and applicable regulatory and legislative requirements)	Concordance (in Decision)
			<ul style="list-style-type: none"> <li>The Board also notes 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 of Canada will use and rely on existing consultation mechanisms, processes and expertise, such as environmental assessment and regulatory approval processes.</li> </ul>	
<b>Environmental and Socio-Economic Assessment (ESA) Methodology</b>				
Adequacy of the Section 58 Projects’ ESA methodology and incorporation of treaty rights and interests and Aboriginal concerns	Blueberry	<ul style="list-style-type: none"> <li>NGTL stated that it disagrees that there is a need for a new traditional land use study for the Section 58 Projects. NGTL noted that the Section 58 Projects are located on lands previously assessed and approved by the Board and no new land disturbance is required to construct and operate the Section 58 Projects.</li> <li>NGTL further stated that the previously approved NMML route, environmental assessment and extensive engagement that were conducted previously all remain relevant as it is the same project.</li> </ul>	<ul style="list-style-type: none"> <li>The Board notes NGTL relied on information provided through the original NMML proceeding to assess the potential impacts of the Section 58 Projects on traditional land and resource use, including the previously approved environmental assessment, engagement activities and completed traditional land use studies, including Blueberry’s Knowledge and Use Study. The Board finds NGTL’s approach for the assessment of the Section 58 Projects’ potential effects on traditional land and resource use acceptable.</li> </ul>	5.5.3
Adequacy of the Proponent’s cumulative effects assessment methodology and conclusion(s), including significance	Blueberry WMFN	<ul style="list-style-type: none"> <li>NGTL acknowledged that new industrial infrastructure development activities surrounding the Section 58 Projects might occur in the future, including customer ties, pipelines, highways, access roads, and transmission lines. NGTL concluded that because the Section 58 Projects will not further contribute to effects on any of the valued components previously assessed, no further cumulative effects assessment was warranted.</li> </ul>	<ul style="list-style-type: none"> <li>The Board finds that while residual effects of the proposed works and activities may act cumulatively with other nearby activities ongoing at the time of construction, the Board is of the view that the Section 58 Projects are not likely to contribute to effects above and beyond the effects assessed during the Original NMML Project proceeding that relate to the Variance Facilities. The Board finds that there are no new residual effects from the Section 58 Projects on environmental and socio-economic elements beyond those that were considered and assessed in the Original NMML Project. Therefore, the Board is of the view that there will be no residual cumulative effects from the Section 58 Projects.</li> </ul>	6.6.1

Concern	Group(s)	Company response	NEB response (including recommended conditions, and applicable regulatory and legislative requirements)	Concordance (in Decision)
<b>Effects on the interests, including asserted and established treaty and Aboriginal rights, of Aboriginal people</b>				
<p>Cumulative effects of the NMML Facilities on:</p> <ul style="list-style-type: none"> <li>• current use of lands and resources for traditional purposes;</li> <li>• specific right, or asserted or established Aboriginal or Treaty right;</li> <li>• social and cultural well-being; and/or</li> <li>• contamination or perceptions of contamination of country foods, contamination of drinking water and diet</li> </ul>	<p>Blueberry DRFN SFN WMFN Mr. Wright</p>	<ul style="list-style-type: none"> <li>• NGTL confirmed that in the original proceeding it assessed the cumulative effects of a full build-out of the North Montney play. NGTL noted that, in that assessment, it assumed even and uniform upstream development throughout the entire play area and that the key assumptions that were used in that assessment remain valid, and the upstream development that has taken place since 2013 is generally consistent with NGTL's assessment in the original proceeding.</li> <li>• NGTL noted that in its decision on the original application, the Board concluded that with the implementation of NGTL's environmental protection procedures and mitigation the Project is not likely to cause significant adverse environmental effects. NGTL argued that nothing in the Variance Application has the potential to affect that conclusion.</li> </ul>	<ul style="list-style-type: none"> <li>• Given the Board's finding that there will be no new residual effects from the Section 58 Projects on traditional land and resource use beyond those that were considered and assessed in the original North Montney application, the Board is of the view that there will be no residual cumulative effects from the Section 58 Projects on traditional land and resource use.</li> <li>• Based on the evidence provided in this (MH-031-2017) proceeding, the Board is of the view that the findings of the cumulative effects assessment submitted for the Original NMML Project remain valid and have already been assessed by the Board. The Board continues to recognize and support the BCOGC's initiatives to manage the impacts of cumulative effects of development under its regulatory control.</li> </ul>	<p>5.5.4 6.6.2</p>

Concern	Group(s)	Company response	NEB response (including recommended conditions, and applicable regulatory and legislative requirements)	Concordance (in Decision)
<b>Environmental Effects</b>				
Vegetation, including adequacy of the Proponent's conclusion(s) on effects (including significance)	Blueberry	<ul style="list-style-type: none"> <li>• NGTL explained that old growth forest was considered for the assessment of the Aitken Creek West No. 2 Meter Station because clearing for the site, located within the Original NMML Project footprint, would be conducted in advance of clearing for the approved meter station located on the same site. The Aitken Creek West No. 2 Meter Station would have sat within the boundary of the cleared footprint.</li> </ul>	<ul style="list-style-type: none"> <li>• The Board notes that although the construction of the Aitken Creek West No. 2 would require the clearing of a small area of old growth forest, the clearing is within the Original NMML Project footprint, and covered by existing mitigation and conditions. Given that the residual effect of the clearing has been previously assessed, the Board finds that the residual effects and mitigation measures associated with the permanent loss of old growth forest were sufficiently addressed in the Original NMML Project proceeding.</li> </ul>	6.5.2
GHG Emissions, including adequacy of the Proponent's conclusion(s) on effects (including significance)	Mr. Wright	<ul style="list-style-type: none"> <li>• NGTL submitted that increased GHG emissions could occur due to vehicle and equipment use during construction. In describing the residual effects after mitigation, NGTL stated that effects are predicted to be negligible.</li> </ul>	<ul style="list-style-type: none"> <li>• The Board notes that the likely residual effects related to construction of the Section 58 Projects are associated with temporary and localized increases in air emissions, including GHGs due to the use of vehicles and equipment. The Board is of the view that the associated effects of construction-related air emissions are temporary and relatively minor in nature, and levels would return to current baseline following completion of construction. Any interactions of these emissions with those from other projects and activities in the vicinity would also be temporary. Such unavoidable, temporary, and relatively minor construction-related emissions would be negligible and not likely to significantly contribute to cumulative effects.</li> </ul>	6.6.1