

OF-Fac-Gas-N081-2018-03 02

14 February 2019

FINAL CONFERENCE SUMMARY REPORT

(Final Report)

**NOVA Gas Transmission Ltd. (NGTL)
Application for the 2021 System Expansion Project (Application)
Hearing Order GH-003-2018**

Background

In a letter dated 4 December 2018 ([A96357](#)), the National Energy Board (NEB or Board) announced that it would convene a Conference to discuss how Indigenous Intervenors can meaningfully participate in the GH-003-2018 Hearing. Parties were asked to file their registration for participation in the Conference, and also to provide written comments on specific questions and topics that were included with the Board's letter, by 10 January 2019. Sturgeon Lake Cree Nation and Samson Cree Nation both filed their registrations after 10 January 2019.

An Initial Conference Summary Report (Initial Report) was created from the comments filed and was distributed to the registered Parties and filed on the public record on 18 January 2019 ([A97441](#)), in preparation for the Conference.

On 24 January 2019, the Conference was held in the Hearing Room at the Board's offices in Calgary, Alberta, from 9:15am until 3:30pm MT.

The following registered Parties attended the Conference:

- Alexis Nakota Sioux Nation (attendance by telephone)
- Bearspaw First Nation, as represented by the Stoney Nakoda Nation
- Blood Tribe
- Cadotte Lake Métis
- Chevron Canada Limited
- Chiniki First Nation, as represented by the Stoney Nakoda Nation
- Ermineskin Cree Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Métis Nation of Alberta – Region 3
- Natural Resources Canada (NRCan)
- NOVA Gas Transmission Ltd. (NGTL)
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation

- TransGas Limited
- Tsuut'ina Nation
- Wesley First Nation, as represented by the Stoney Nakoda Nation
- Whitefish Lake First Nation #128

Sturgeon Lake Cree Nation, a registered Party, did not attend the Conference.

Conference Format

The purpose of the Conference, as stated in the Board's 4 December 2018 letter, was to provide an opportunity for the Parties to come together to provide their comments and ideas in relation to meaningful participation in the Hearing process which includes all steps in the Board's assessment of the Application for the Project. The Conference was not a time for gathering or providing evidence.

The Conference was facilitated by Karla Reesor and Josie Stiles from Moving Forward Inc., a neutral third-party facilitator contracted by the Board. No transcript was created for the Conference. NEB staff were present in the room taking notes of what was said. The Panel was not in attendance.

The agenda for the Conference was divided into three general discussions. The Board's consultation approach was discussed in the morning session. In the afternoon, discussion dealt with the sharing of oral Indigenous knowledge evidence, and other discussion about oral cross-examination, final argument, and additional topics in relation to the Hearing process.

Format of Final Report

A Final Conference Summary Report – Draft for Feedback (*draft* Final Report) was produced after the Conference. The *draft* Final Report built on the Initial Report by supplementing the written comments filed by the registered Parties on or before 10 January 2019 with the views expressed by the registered Parties who attended the 24 January 2019 Conference.

The *draft* Final Report followed the structure and numbering of the discussion questions and topics set out in Appendix II of the Board's letter of 4 December 2018. It included Issues B through E and questions 3 – 14, as well as an "Other Comments Received" section which summarized comments of a more general nature that were filed or heard. Comments made at the Conference were added under each question and topic, and identified as such.

The *draft* Final Report was distributed to all registered Parties to the Conference on 31 January 2019, and those Parties were requested to file written feedback on or before 7 February 2019. Feedback was filed by 13 Indigenous Intervenors and NGTL. The following Indigenous Intervenors filed feedback on the *draft* Final Report:

- Alexis Nakota Sioux Nation
- Bearspaw First Nation, as represented by the Stoney Nakoda Nation
- Blood Tribe
- Cadotte Lake Métis
- Chiniki First Nation, as represented by the Stoney Nakoda Nation
- Ermineskin Cree Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Métis Nation of Alberta – Region 3
- O'Chiese First Nation
- Tsuut'ina Nation
- Wesley First Nation, as represented by the Stoney Nakoda Nation
- Whitefish Lake First Nation #128

This Final Report incorporates feedback on the *draft* Final Report received from the registered Parties who attended the Conference. It does not include feedback that reiterates previous written comments or comments heard at the Conference, **but includes corrections, omissions, and further clarification where Parties felt their comments were misinterpreted or taken out of context in the *draft* Final Report.**

In their feedback on the *draft* Final Report, some Indigenous Intervenors noted that the Conference ended with no resolutions, action items or commitments from the NEB to follow up on any comments or concerns voiced by Indigenous Intervenors, and that this gave the impression that the Conference was not being taken seriously by the NEB. Some Indigenous Intervenors also noted in their feedback that earlier requests for an extension of the one week deadline to provide feedback on the draft Final Report were not granted.

As the next step, and as indicated to the Parties previously in the 4 December 2018 letter, the Board will consider this Final Report and make any modifications to the Hearing process the Board deems appropriate.

Issue B: Consultation approach

3. In its letter of 20 September 2018 ([A94100-5](#)), the Board requested written comments from all Participants on the proposed hearing process and provided a number of questions to help direct the topics on which the comments were sought. Do you have anything further to say in relation to those questions?

Overarching Written Comments:

- Ermineskin Cree Nation and Whitefish Lake First Nation #128 submit that the Board should incorporate a rights-based perspective into the assessment of the Project. Other Intervenor note this point, including Cadotte Lake Métis and Duncan’s First Nation. (comments filed in October 2018)
- A number of Intervenor request that the Board clarify whether it would include the issue of Crown consultation within its assessment: Chiniki First Nation, Bearspaw First Nation, Wesley First Nation, O’Chiese First Nation, Ermineskin Cree Nation, Whitefish Lake First Nation #128, and Alexis Nakota Sioux Nation. Cadotte Lake Métis and Duncan’s First Nation made a similar request. (comments filed in October 2018)
- Ermineskin Cree Nation and Whitefish Lake First Nation #128 both submit that they are “uncertain as to how and to what degree the Board will apply the biophysical and cultural information, socio-economic effects and mitigation measures into the Hearing process and decision-making framework.” They suggest a model similar to the “Methodology for Assessing Potential Impacts on the exercise of Aboriginal and Treaty Rights of the Proposed Frontier Oil Sands Mine Project” (which was attached to their filings) developed by Mikisew Cree First Nation and the Canadian Environmental Assessment Agency.
- Chiniki First Nation, Bearspaw First Nation, Wesley First Nation, and O’Chiese First Nation submit that meaningful consultation must be nation-specific and involve both the identification of project-impacts to their section 35 rights and the explicit accommodation of those impacts.
- Chiniki First Nation, Bearspaw First Nation, and Wesley First Nation submit that it is important that the NEB play an active and ongoing role in consultation and accommodation related to the Project and that the NEB should not rely solely on NGTL to determine and provide all information on whether all aspects of consultation have been fulfilled to the appropriate level given the size and scope of the Project.
- Alexis Nakota Sioux Nation, Chiniki First Nation, Bearspaw First Nation, Wesley First Nation, and O’Chiese First Nation all note the inclusion of “impacts to Indigenous and Treaty rights” to the List of Issues and that the Board will therefore be taking into consideration potential adverse impacts on Indigenous and treaty rights within the scope of its assessment of the Project (Issue 7). However, they note they are unclear as to what process and/or methodology will be used to evaluate and assess potential impacts on Indigenous and treaty rights.

Conference Comments:

Section 35 Rights

- There was strong agreement among the Indigenous Intervenors in attendance that the Board should undertake a rights-based assessment of the Project. Such an assessment, as described by the Indigenous Intervenors, would be based upon the potential impacts of the Project on the exercise of Indigenous and treaty rights, rather than potential impacts on traditional land and resource use, and the environment.
 - O’Chiese First Nation stated they have Treaty rights, and that the NEB’s role as regulator should not be based on the assessment of traditional land use but instead should be focused on understanding the impact on Treaty rights.
 - O’Chiese First Nation said that the Crown and NEB must balance the interests of treaty rights holders, not just industry.
 - The Indigenous Intervenors also noted the inclusion of section 35 rights in the List of Issues for the Hearing process and wanted clarity on how the section 35 rights would be assessed.
 - Alexis Nakota Sioux Nation stressed the need to clarify methodology for the assessment of impacts to section 35 rights, as these methods are different from assessment methods for environmental impacts/traditional land use. They also said criteria for this methodology needs to be agreed on and that the Parties need to jointly define the extent of impacts to rights (i.e., seriousness).
 - Alexis Nakota Sioux Nation suggested that the following questions or concerns should be considered in an assessment of section 35 rights:
 - How impacts to the environment will affect rights
 - The traditional resources that are needed to exercise rights (e.g., habitat)
 - Areas where rights can be practiced
 - Whether the Project will interfere with the availability of areas to exercise rights
 - The quality and quantity of resources affected
 - Impacts to sense of place
 - Ability to practice of rights in preferred manner and preferred place
 - Ability to transfer traditional knowledge
 - Impacts of non-implementation of caribou strategy
- In its feedback on the *draft* Final Report, NGTL stated that during the Conference, it had commented that it had followed methodologies consistent with the guidance in the NEB’s Filing Manual, and that it would further be unfair to change the methodology during the process.

Environmental assessment methodology

- Cadotte Lake Métis, Duncan’s First Nation, Ermineskin Cree Nation, and Whitefish Lake First Nation #128 stated that the NEB’s environmental assessment process is deficient,

citing a lack of integration of cumulative effects, the integration of traditional ecological knowledge, and the timing of traditional ecological knowledge studies.

- Ermineskin Cree Nation said that the timing of certain environmental information collection is not optimal, stating as an example that plant surveys need to be done when plants are in bloom.
- Métis Nation of Alberta - Region 3 would like more time to collect traditional knowledge information, and noted their data agreement was only signed in 2018.
- In their feedback on the *draft* Final Report, Métis Nation of Alberta - Region 3 stated that the above is a misrepresentation of their concerns. They stated they had indicated at the Conference that environmental assessment timelines are generally a concern and must be lengthened for all projects with potential to impact Métis Nation of Alberta - Region 3.
- Ermineskin Cree Nation indicated that many Indigenous communities do not have their traditional land use studies, including mapping, completed; and that Ermineskin Cree Nation, specifically, is currently in the process of completing theirs for inclusion in the GeoDiscover Alberta database. They therefore expressed concerns that the Environmental and Socio-Economic Assessment created by NGTL for this Project is not a true reflection of Ermineskin Cree Nation's use of lands. They therefore asked for additional time in the process for their land use study to be completed and the Environmental and Socio-Economic Assessment to be updated to reflect that data.
 - In response, NGTL said that it prepared its Application according to the NEB's Filing Manual and that the NEB has stated that the Application meets the requirements set out in the Filing Manual. NGTL further asserted that the purpose of the Hearing process is to consider the Application that was filed, not to change the methodology that was used.
- In their feedback on the *draft* Final Report, Blood Tribe, Cadotte Lake Métis, Duncan's First Nation, Ermineskin Cree Nation and Whitefish Lake First Nation #128, noted that at the Conference they all stated that many Indigenous communities do not have their traditional land use studies, including mapping, completed due to temporal issues with the collection of these materials, and asserted that information collection at appropriate times is essential to the accurate environmental and socio-economic assessments and assessment of impacts to rights..
- In its feedback on the *draft* Final Report, NGTL indicated that during the Conference, it had stated in response to other Parties' concerns that certain types of traditional land use information may not be available until after the current deadline for Intervenor to file written evidence but that opportunities exist for this information to be considered in Project planning without extending the hearing process.
- O'Chiese First Nation said that the NEB should consider other NGTL applications and take them into account in the assessment of this Project.

Written Comments regarding the Hearing Process Timeline:

- Several parties indicate concern about the proposed single round of Intervenor information requests (IRs):
 - Chiniki First Nation, Bearspaw First Nation, and Wesley First Nation submit that the Hearing process should include a second round of IRs directed to NGTL following the 6 June 2019 deadline for NGTL to file reply evidence.
 - Alexis Nakota Sioux Nation are concerned that if they do not receive fulsome responses to their IRs, they will be forced to make submissions by way of legal argument.
- Alexis Nakota Sioux Nation submits that the proposed Hearing process steps have limited or no opportunities for responsiveness, dialogue and genuine consultation:
 - In order to make informed IRs, they need responses from NGTL to questions asked by Alexis Nakota Sioux Nation in their October 2018 filing about gaps in the Application in relation to the assessment of impacts to rights.
 - They state they must submit IRs by 21 February 2019, but do not have the benefit of first receiving the information previously requested from NGTL; they submit that this is not meaningful dialogue or consultation.
 - They state their ability to consult under these circumstances, within the proposed time frames, is highly constrained given that the NEB has deemed the Application complete.
- Alexis Nakota Sioux Nation are concerned about the Board's proposed hearing timelines. Specifically, they note the constrained and limited opportunities for IRs (one opportunity – 21 Feb 2019), comments on consultation logs to be provided by 21 March 2019, and the need to file written evidence and share oral traditional knowledge in April 2019.
- Métis Nation of Alberta – Region 3 request an additional month for Intervenors to comment on documents prepared by NGTL (including reviewing technical documents and preparing IRs); they state that this requires coordination with Elders and land users for gathering project specific information, and requires more time than what was provided in the NEB's proposed hearing timeline. (comments filed in October 2018)
- Blood Tribe, Cadotte Lake Métis, Driftpile Cree Nation, Duncan's First Nation, and Piikani Nation all note in their October 2018 comments that the Timetable of Hearing Steps should be extended by approximately two months to provide greater time between various hearing steps, specifically: Intervenor IRs to NGTL; filing of Intervenor written evidence; the sharing of oral Indigenous knowledge; NGTL's reply evidence; cross-examination; and final argument.
- NGTL notes that the Board previously solicited comments on a draft Hearing process and timetable of events and made modifications in the Hearing Order that reflected those comments. They submit that any further modifications to be made as a result of the

Conference should take into consideration those modifications already made and ensure that the Hearing process remains fair and expeditious.

Conference Comments:

- There was agreement among Indigenous Intervenors that one round of IRs would not be enough and that two or more rounds of IRs are needed.
 - Alexis Nakota Sioux Nation said there should be at least five rounds of IRs to allow opportunities to ask clarifying questions.
 - In response, NGTL noted that there are several opportunities in the Hearing process as identified for Parties to ask questions (IRs and cross examination), and that the Board has mechanisms to address the situation of a Party not answering a question, such as motions to compel. NGTL additionally noted that the Board must establish a Hearing process that is fair for all Parties. In NGTL's view, there is no need for additional rounds of IRs.
- Alexis Nakota Sioux Nation said that they need determination of completeness regarding consultation and impacts to rights before they can submit IRs.
- Alexis Nakota Sioux Nation, Cadotte Lake Métis, Duncan's First Nation, Ermineskin Cree Nation, and Whitefish Lake First Nation #128 agreed that the Hearing process timeline does not allow for enough time between the submission of IRs by Intervenors and having to register for oral Indigenous knowledge. Specifically, they were concerned that the answers to IRs would not provide sufficient time or information to allow them to identify the appropriate Elders or knowledge keepers for the sharing of oral Indigenous knowledge.
- There was also agreement among Indigenous Intervenors that the overall Hearing process needs to be longer to allow for review of the substantial amount of material.
 - In response, NGTL expressed the view that the time currently identified for the process is sufficient.
 - In its feedback on the *draft* Final Report, NGTL noted that at the Conference it also stated that the current timing reasonably balances the interests of all parties and has taken into consideration past submissions of the parties on that point.
- A number of Indigenous Intervenors identified concerns that their ability to participate in the Hearing process steps would be diminished during the summer months.
 - Bearspaw First Nation, Chiniki First Nation and Wesley First Nation said that participating in hearing steps in June and July is not feasible for their communities and that August would be preferable.
 - O'Chiese First Nation stated that they were not available to participate in June and July due to ceremonial obligations, and that the timing of those ceremonies relates to their natural laws. They further stated that August would be preferred.

- Samson Cree Nation said that June is not a good time for them either, and additionally noted that in the event of a funeral in their community, they would be unavailable for several days.
- Alexis Nakota Sioux Nation said that September would be preferred.

4. When the Board considers a project application, input by Indigenous peoples can provide relevant biophysical and cultural information, identify potential environmental and socio-economic effects and strengthen mitigation measures. Having these types of information aids the Board in making more informed and better decisions. What, if any, comments do you have as to how the hearing process for the Project could be conducted to achieve meaningful consultation for you?

Written Comments:

- Ermineskin Cree Nation and Whitefish Lake First Nation #128 submit that the Board must work with Indigenous communities to co-develop post approval conditions that can be used to meaningfully govern the Project’s future. They further suggest a co-development strategy where Indigenous communities and the Board agree upon an assessment framework. They have filed, for the consideration of the Board and for other parties, an example of such an assessment framework.
- Ermineskin Cree Nation and Cadotte Lake Métis submit that the Board should be mindful of whether any mitigation measures proposed may themselves adversely impact any section 35 rights, whether immediately or in the future. (comments filed in October 2018)
- O’Chiese First Nation identifies a number of concerns regarding the Hearing process:
 - They request that for the Project, the NEB refer directly to Indigenous and treaty rights when discussing information and evidence being shared by Indigenous communities. They state that it is not sufficient to refer to information and evidence provided by O’Chiese First Nation as “traditional and resource use” or “cultural information” etc.; they state that the use of these terms downplays the significance and constitutional imperative of the information and evidence being shared. This position was echoed in the submissions of Chiniki First Nation, Bears paw First Nation, and Wesley First Nation.
 - O’Chiese First Nation further state that they understand meaningful consultation to extend past surface-level discussions and the reliance on biophysical-related mitigation measures.
 - They also identify concerns about the lifecycle impacts of the Project on Indigenous rights and request that the NEB require NGTL to submit additional evidence related specifically to Project impacts to those rights of each impacted Indigenous community.

- Bears paw First Nation, Chiniki First Nation, and Wesley First Nation disagree with the NEB’s decision to keep impacts to section 35 rights under the “environmental effects” factor of the Environmental Assessment. They assert that section 35 rights should be reviewed by the NEB separately.
 - They further submit that they wish to see the NEB clarify that section 2 of the *Canadian Environmental Assessment Act, 2012* includes people.

Conference Comments:

- Cadotte Lake Métis, Duncan’s First Nation, Ermineskin Cree Nation, and Whitefish Lake First Nation #128 said that any conditions should be developed in conjunction with impacted Indigenous communities, and that any monitoring should involve impacted Indigenous communities.
 - In response, NGTL said that the Board typically releases draft conditions for comments, a process step which NGTL supports. NGTL said that issues regarding post-approval monitoring relate to the substance of these conditions which is outside the scope of the Conference.
- Blood Tribe and Samson Cree Nation noted that consultation and accommodation go together, and that meaningful consultation cannot be achieved without accommodation.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation said that meaningful consultation is partially based on a fiduciary role, and that the NEB should not be reliant on NGTL to fulfill all aspects of consultation. Blood Tribe agreed with this view and stated that the Crown has the duty to consult, not NGTL or Stantec.
- In their feedback on the *draft* Final Report, Blood Tribe, Cadotte Lake Métis, Duncan’s First Nation, Ermineskin Cree Nation, and Whitefish Lake First Nation #128, noted that at the Conference they stated that meaningful consultation in the NEB Hearing process requires clarifying the proponent’s obligation to track all concerns about impacts, including those raised within the NEB Hearing process, and to respond to those concerns. They said that they require procedural clarity, at the outset, about whether the NEB and/or the Crown will be evaluating the sufficiency of the proponent’s responses (or lack of responses) to concerns raised about adverse impacts to rights. They also stated that they are in agreement with Alexis Nakota Sioux Nation that there needs to be clarity from both the NEB and the Crown, on what avenues are available to them for redress during the NEB hearing process, if the proponent refuses to substantively respond to the adverse impacts raised by Indigenous Parties.

Conference Comments regarding Crown consultation

- Alexis Nakota Sioux Nation said that NEB’s completeness determination is not the same thing as the adequacy of consultation.

- O’Chiese First Nation asked whether the Crown is expecting NGTL to solely engage on this Project, or whether the Crown is going to consult ahead of the Hearing. Other Indigenous Intervenors echoed this question.
 - O’Chiese First Nation and Alexis Nakota Sioux Nation stated that NRCan cannot rely on the NEB process to adequately consult with Indigenous communities.
- A number of Indigenous Parties stated that they need certainty about the Crown’s process regarding consultation; specifically, there was a desire to know who was conducting that consultation process and according to what methodology.
 - Blood Tribe agreed with O’Chiese First Nation’s comments regarding Crown consultation. They asserted that consultation is the Crown’s duty, not the proponent’s. They said that the Crown has to come out to their community and engage.
 - Alexis Nakota Sioux Nation stated that they needed better understanding of the parallel crown process, and direct engagement from the Crown.
- NRCan made a number of statements in response to these questions:
 - NRCan said that as was done for previous NEB hearings, the Crown will carry out additional consultation and is hoping to do this earlier in the process than before. NRCan said that they sent a letter to Indigenous communities in July 2018 with offers to meet with the communities, and this offer remains open.
 - NRCan said that the NEB process supplements the Crown’s consultation, and that NRCan does not rely solely on the NEB process. NRCan noted that a recent Federal Court of Appeal decision has provided more direction to the Crown regarding the consultation process.
 - NRCan said that the timing of this consultation work is important (e.g., going out earlier). It further noted the Government’s ability to add conditions on projects, over and above the Board’s process and abilities.
- Alexis Nakota Sioux Nation asked for written responses to the following questions. All other Indigenous Intervenors present supported this request:
 1. What is the Crown’s role in evaluating the assessment of the impacts to rights and the adequacy of NGTL’s information?
 2. What is the NEB’s role in assessing the adequacy of NGTL’s information, and the responses to Indigenous peoples’ concerns?
 3. What is NGTL’s role in the NEB process? Is it only to comply with the NEB’s Filing Manual?
- An additional two questions were also asked:
 - Bearspaw First Nation, Chiniki First Nation and Wesley First Nation asked about the role of the Alberta Consultation Office.

- Tsuut'ina Nation and Alexis Nakota Sioux Nation asked what specific steps, if any, will the Crown take during the Hearing process itself, with respect to the duty to consult.
- Alexis Nakota Sioux Nation said that they want more clarity about NRCan parallel Crown consultation process as part of the *draft* Final Report.
 - NRCan, in answer to this comment, said that it would not be able to add anything to the *draft* Final Report unless directed by the NEB as it is not an NRCan document.
 - Alexis Nakota Sioux Nation said that, in that situation, NRCan can provide its comments separately in a letter of comment.
- NGTL said, in response to the discussion about direct engagement between NRCan and Indigenous communities, that natural justice must be considered and that NGTL has the right to know the case against it and have an opportunity to reply/speak to that case.
 - In its feedback on the *draft* Final Report, NGTL stated that during the Conference, it had asserted that direct engagement between the Crown and Indigenous groups needs to comply with the requirements of natural justice but that those comments were directed at engagement that may take place between the Crown and Indigenous groups regarding the NEB hearing process.
- Alexis Nakota Sioux Nation raised the idea of a written protocol about traditional knowledge sharing and how the impacts would be taken into account and integrated into Project decision making.
 - NRCan asked whether Alexis Nakota Sioux Nation had an example of such a protocol.
 - Alexis Nakota Sioux Nation's legal counsel confirmed that they have handled several past protocols and would be happy to discuss with NRCan afterwards.

Issue C: Oral Cross-Examination on the List of Issues scheduled for June and July 2019

Questioning of witness panels will proceed at each location based on the List of Issues, as follows:

- *Cross-examination on Issues 5 to and including 12 will be held in Grande Prairie (Alberta) in the week of 24 June 2019. Below are the Issues that are proposed to be dealt with at that location:*

Issue 5. The potential environmental and socio-economic effects of the Project, including any cumulative environmental effects that are likely to result from the Project as set out in the NEB's Filing Manual, as well as those to be considered under the Canadian Environmental Assessment Act, 2012 (see Appendix II).

Issue 6. The appropriateness of the general route and land requirements for the Project.

Issue 7. Potential impacts of the Project on the interests of Indigenous¹ peoples, including potential impacts on Indigenous and Treaty rights.

Issue 8. Potential impacts of the Project on owners and users of lands.

Issue 9. The suitability of the design of the Project.

Issue 10. Contingency planning for leaks, accidents or malfunctions, during construction and operation of the Project.

Issue 11. Safety and security during construction and operation of the Project, including emergency response planning and third-party damage prevention.

Issue 12. The terms and conditions to be included in any recommendation or approval the Board may issue for the Project.

- *Cross-examination on Issues 1 to and including 4, and Issue 12 will be held in Calgary (Alberta) in the week of 15 July 2019. Below are the Issues that are proposed to be dealt with at that location:*

Issue 1. The need for the Project.

Issue 2. The economic feasibility of the Project.

Issue 3. The potential commercial impacts of the Project, including potential economic impacts on Indigenous peoples.

Issue 4. The appropriateness of the toll and tariff methodology of the Project.

Issue 12. The terms and conditions to be included in any recommendation or approval the Board may issue for the Project.

¹ "Indigenous" has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*:

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

5. Are there any others from the List of Issues that should be included at Grand Prairie?

Written Comments:

- No comments were provided.

Conference Comments:

- Bears paw First Nation, Chiniki First Nation, Wesley First Nation, O’Chiese First Nation, Cadotte Lake Métis, Duncan’s First Nation, Ermineskin Cree Nation, and Whitefish Lake First Nation #128 request that cross-examination of all issues be dealt with at both Grande Prairie and Calgary.
- NGTL said, in response to addressing all issues at both locations, that it would create some challenges (e.g., NGTL would have to bring all of its witnesses to both locations), and fairness issues (e.g., cross-examination by different Parties in different locations but on the same set of issues).
 - In its feedback on the *draft* Final Report, NGTL stated its concerns, as expressed at the Conference, were that NGTL’s witness panel would be subject to cross-examination in one location, and then re-seated and subject to cross-examination on the same issues at a later date after NGTL had completed its cross-examination of certain Intervenor witness panels.

6. Are there any others from the List of Issues that should be included at Calgary?

Written Comments:

- O’Chiese First Nation will be attending the oral cross-examination in Calgary and requests that the oral cross-examination in Calgary include all issues. It is O’Chiese First Nation’s preference to be able to provide evidence responding to all the listed issues in one location.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation request that all issues be included in cross-examination in Calgary, AB in the week of 15 July 2019.

Conference Comments:

- The same responses were provided by the Indigenous Intervenors and NGTL as noted directly above in reply to Question 5.
- Alexis Nakota Sioux Nation noted that the current hearing schedule calls for oral cross-examination of issues 1 to 4 to be held after issues 5-12. They submitted that issues 1 to 4 should be heard first.

7. Do you have any additional comments on the general format of cross-examination?

Written Comments:

- Cadotte Lake Métis and Whitefish Lake First Nation #128 submit that oral cross be held in August 2019 rather than June 2019. (comments filed in October 2018)
- Alexis Nakota Sioux Nation note that holding cross-examination at the end of June 2019 is of concern, given that the months of June to August are times when Alexis Nakota Sioux Nation members are busy pursuing their traditional rights and therefore the appropriate people may not be available to provide oral traditional knowledge.

Conference Comments:

- No comments provided.

Issue D: The Sharing of Oral Indigenous Knowledge Evidence

In order for the Board to fully understand the oral Indigenous knowledge shared by Indigenous Intervenors during the hearing, the Board may find that it needs further information or clarification of information shared during oral Indigenous knowledge hearings.

The Board would therefore be interested in any views on how the Board can be respectful in seeking from Elders and other knowledge keepers' further information and clarification about the oral Indigenous knowledge they have shared with the Board.

8. Would it be appropriate for the Board to ask an Elder or knowledge keeper questions after they have concluded sharing their oral Indigenous knowledge?

- a. Should the Board give its questions or requests to legal counsel for the Elder or knowledge keeper and then have a short recess so that they may confer and then have the Elder or knowledge keeper return to provide further oral evidence?**
- b. Should the questions be provided in writing and then the further information requested may be provided in writing in a short time period thereafter?**
- c. Would it be preferable for oral Indigenous knowledge evidence to be presented by an Elder or knowledge keeper who may at times answer leading questions from their legal counsel?**

Written Comments:

- O'Chiese First Nation states that it is appropriate for the NEB to ask an Elder or knowledge keeper questions following the sharing of evidence pertaining to the participants' Aboriginal and treaty rights. O'Chiese First Nation notes the Elder, knowledge keeper, or legal counsel, may determine that a break to confer is necessary on a case-by-case basis. All questions directed to O'Chiese First Nation participants must maintain a respectful manner. Clarifying questions related to oral statements can be addressed throughout the hearing by O'Chiese First Nation's appointed witness.
- O'Chiese First Nation agrees it would be preferable for oral Indigenous knowledge to be presented by a participant who may at times answer prompting questions from O'Chiese First Nation's legal counsel. In addition, certain participants may require additional support, such as a translator, family member, or community support person to assist them while providing their evidence.
- Alexis Nakota Sioux Nation submit that it is not culturally appropriate to question Elders and traditional knowledge holders directly after they have shared evidence. They state that it is more appropriate to provide questions in writing and allow opportunity for responses to be provided in writing a short time thereafter.
- Alexis Nakota Sioux Nation prefers to allow submission of oral traditional knowledge and evidence to be presented in coordination with questions from legal counsel.

- Alexis Nakota Sioux Nation submit that a protocol is needed which contains commitments by the proponent and/or the Crown in relation to how traditional knowledge will be used, interpreted, relied upon or assessed and that the consultation process and traditional knowledge sharing protocols are in place prior to the sessions.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation note that Indigenous oral evidence should not be understood or considered to be a separate category of information from all the other information and evidence filed and presented by them. All Bears paw First Nation, Chiniki First Nation and Wesley First Nation information, comments and evidence are based on information obtained in part from their Elders and knowledge keepers.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation state that it can be very stressful for an Elder or knowledge keeper to present in a hearing setting, so it is important that the NEB create a space of respect and understanding. Additionally, it is important that the NEB demonstrate a commitment to both actively listening during the presentation and also to take the information shared, preserve it and bring it forward into all assessments and decisions related to the Project.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation request that Elders and knowledge keeps be allowed to have support from legal counsel who may at times ask clarifying/prompting questions for the Elder or knowledge keeper to respond to.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation are comfortable with the NEB asking respectful questions of their Elders or knowledge, and request that legal counsel and consultants be able to support their Elders or knowledge keepers to answer any questions as needed.

Conference Comments:

- Bears paw First Nation, Chiniki First Nation, Wesley First Nation, and Alexis Nakota Sioux Nation suggested that NGTL could submit its questions to Elders in writing following oral evidence; this would be a better format than asking Elders questions orally.
 - Alexis Nakota Sioux Nation suggested that the Indigenous community should have the option to respond either orally or in writing.
- Alexis Nakota Sioux Nation said it would be respectful to allow Elders to be supported by legal counsel when sharing knowledge.
- All Indigenous Intervenors stated the Board process is formal and intimidating, and creates anxiety for Elders to attend and share their oral Indigenous knowledge. Elders are sensitive about sharing their knowledge. This information is sacred and is part of prayers and ceremonies. The experience of residential school and other interactions with the Crown have made many Elders wary of sharing their knowledge in that they might be giving up their communities' rights and that their intellectual property will be used by others against them.

- Driftpile Cree Nation described how difficult it is for some knowledge keepers to share their information as it is not easy to trust due to a history of broken promises, and a need to trust who is receiving the information. Traditional knowledge is not freely given away – it must be earned.
- Samson Cree Nation said there is a need to make Elders more comfortable and that the process needs to be mindful of their anxiety. They stated that a hearing room is not an ideal setting for Elders to be sharing information as Elders end up feeling like they are fighting for their rights rather than sharing. They said that some Elders are so intimidated that they do not share all the knowledge that would be relevant or helpful. They noted that a Supreme Court hearing was held in their community, in the high school.
- Samson Cree Nation said that Elders want to be able to have pipe ceremonies and smudging before they share their knowledge, and that the NEB needs to ensure that there is space to do so.
- Tsuut'ina Nation said that the Board should provide a space that is less intimidating and more conducive to sharing information and keeping that information confidential. A hearing room or a hotel convention room is not an appropriate setting for this.
- Piikani Nation said that they want to share their knowledge and make it relevant to this process, but many Elders feel that they have not been heard in the past and that there is no two-way communication.
- Cadotte Lake Métis, Duncan's First Nation, Ermineskin Cree Nation, and Whitefish Lake First Nation #128 said that when inviting someone to present information in an intimidating forum, it may be perceived that the Elder's integrity and credentials are being questioned. They said that one needs to show deference and respect to Elders, and suggested that a more comfortable setting for oral Indigenous knowledge would help. They said that Elders are often left feeling jaded by their experiences at Board hearings.
- Blood Tribe said oral Indigenous knowledge might be interpreted incorrectly, and that Elders have to protect their intellectual property. Blood Tribe asked who will have the right to the knowledge being shared and how it will be applied to future projects. Blood Tribe said they do not want their information to be used against them.
 - Piikani Nation agreed with Blood Tribe, and added that acquiring knowledge is not haphazard or arbitrary, that Elders carry on knowledge; they do not create new knowledge and cannot discard knowledge. They said that the Elders' knowledge is equivalent to or exceeds a Ph.D. level.
- Tsuut'ina Nation said that protocol prior to the offering of traditional evidence is very important. They note that the Board sometimes makes inquiries of protocols in advance, but that the protocol is not always implemented in a respectful way. E.g., the Board giving insufficient amounts of tobacco.

- Blood Tribe agreed and stressed the importance of protocol when approaching an Elder.
- Samson Cree Nation noted that the Board must be mindful that each community has different protocols, and often there are protocols for each Elder.
- In response, NGTL said it recognizes the importance of oral Indigenous knowledge and appreciates the discussion of ways it can be facilitated and improved upon from the past. It stated specifically that:
 - NGTL would like to have an opportunity to ask questions of Elders or knowledge keepers.
 - Legal counsel for Intervenors could lead Elders through their oral Indigenous knowledge, but that legal counsel should not be speaking for the Elders.
 - Where qualifications or information about the Elder is being submitted, as that information is considered evidence the Elder should be giving that evidence, not their legal counsel.
 - Witnesses who are under oath should not be conferring with legal counsel.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation noted, in response to NGTL's comments regarding legal support to Elders, that giving oral Indigenous knowledge can be a stressful event for Elders so it is important for Elders to have a support system. They stated it is appropriate for Elders to discuss their responses with legal counsel or other community members before responding to questions.
- Indigenous Intervenors stated that the Board appears to be respectful and attentive to the sharing of oral Indigenous knowledge but does not then set out in its decisions how the Board has considered that knowledge and the weight that has been given to it. Oral Indigenous knowledge is evidence and should be discussed by the Board in its decisions.

9. From your perspective what would be an appropriate amount of time in order for you to share the oral Indigenous knowledge that you believe is relevant for the Board's consideration?

Written Comments:

- O'Chiese First Nation requests that enough time be provided to the participants to ensure they are not overwhelmed, and include regular breaks as requested by legal counsel.
- O'Chiese First Nation, Bears paw First Nation, Chiniki First Nation and Wesley First Nation indicate that an hour should be provided to each Elder or knowledge keeper to appropriately share the information and knowledge they have.
- O'Chiese First Nation notes that its members may also prefer to present their oral Indigenous knowledge in a group format or setting.

Conference Comments:

- O’Chiese First Nation and Blood Tribe said that enough time should be allowed for oral Indigenous knowledge, and enough breaks provided, so that Elders and knowledge keepers are not overwhelmed.
- Tsuut’ina Nation said that the process should allow for lengthier oral Indigenous knowledge sharing. Tsuut’ina Nation said setting time restrictions for oral Indigenous knowledge can be counterproductive. There should be an openness to hear the evidence within a time frame that those sharing the evidence are comfortable with.
- Blood Tribe noted that Elders think in a holistic manner and that it often takes time to address a specific question. Blood Tribe said that Elders may take time in finding the right words to use as they are considering the consequences of their response.

10. How can you assist the Board in understanding that the Elder or knowledge keeper who is sharing the oral Indigenous knowledge is the person best suited to provide this information?

Written Comments:

- O’Chiese First Nation recommends that prior to participants providing their oral Indigenous knowledge, legal counsel or willing participants provide the NEB with greater clarity on the relevancy of the participant as a witness.
- Bearspaw First Nation, Chiniki First Nation and Wesley First Nation agree with the recommendation of O’Chiese First Nation and also state that their legal counsel give an introduction that provides details on the life of the individual and why they were asked to participate.

Conference Comments:

- Samson Cree Nation said that having to provide the oral Indigenous knowledge participant’s credentials prior to giving evidence should not be required, as they have spent their lifetime on the land and their credentials should be based on that.
- In its feedback on the *draft* Final Report, NGTL noted that its comments made at the Conference regarding question 8 above were also made in response to question 10. Those comments were:
 - NGTL recognizes the importance of oral Indigenous knowledge and appreciates the discussion of ways it can be facilitated and improved upon from the past. It stated specifically that:
 - NGTL would like to have an opportunity to ask questions of Elders or knowledge keepers.
 - Legal counsel for Intervenors could lead Elders through their oral Indigenous knowledge, but that legal counsel should not be speaking for the Elders.

- Where qualifications or information about the Elder is being submitted, as that information is considered evidence the Elder should be giving that evidence, not their legal counsel.
- Witnesses who are under oath should not be conferring with legal counsel.

11. What are your views on how this oral Indigenous knowledge can be protected when sharing it with the Board or with the Applicant?

a. How does your community safeguard the integrity of its oral Indigenous knowledge?

Written Comments:

- O’Chiese First Nation requests that in order to protect the sharing of O’Chiese First Nation’s oral Indigenous knowledge, the NEB demonstrate how the Indigenous knowledge heard at the hearing will influence the decision-making process and that the NEB require NGTL to demonstrate its incorporation of O’Chiese First Nation’s Aboriginal and treaty right oral Indigenous knowledge into the Project accommodation measures.

Conference Comments:

- Bears paw First Nation, Chiniki First Nation and Wesley First Nation said that they have always had an issue with respect to confidentiality and oral Indigenous knowledge. This aspect has not kept up with case law. They as well as Tsuut’ina Nation stated that there needs to be confidentiality of oral Indigenous knowledge. They would like the Board to explore further measures as to how confidential information can be considered and protected.
- Piikani Nation stated that the process needs to protect oral Indigenous knowledge.
- Cadotte Lake Métis, Duncan’s First Nation, Ermineskin Cree Nation, Whitefish Lake First Nation #128, Tsuut’ina Nation, Bears paw First Nation, Chiniki First Nation, Wesley First Nation and O’Chiese First Nation said that there is uncertainty about how oral Indigenous knowledge will be assessed, how much weight is given to it, and how incorporated into the Decision. They said that in their view oral Indigenous knowledge should be treated equally with other submissions.
 - Tsuut’ina Nation said that having the contribution of Indigenous knowledge to the Hearing process should be viewed as a privilege.

12. Do you have suggestions on innovative ways that oral Indigenous knowledge can be shared with the Board?

Written Comments:

- Bears paw First Nation, Chiniki First Nation and Wesley First Nation request that the NEB demonstrate its recognition of the importance of the evidence presented by pointing specifically to how it has been considered in all assessment and decision making.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation request that the NEB require NGTL to respond to their Indigenous knowledge and provide details on how it will influence the Project (design, construction, operations, monitoring, emergency response, environmental protection, mitigation, accommodation etc.).
- O’Chiese First Nation states that its written and oral evidence should be considered holistically by the NEB.

Conference Comments:

- Driftpile Cree Nation said that one way to capture traditional evidence is through video which could be shared at the Hearing.
 - NGTL said this was an interesting and creative idea, and is supportive.
- Tsuut’ina Nation said that Indigenous communities often have to use their own translator, and that it would be helpful to have the Board supply and pay for a translator.
 - Blood Tribe said that in order to fully understand the Elder’s knowledge, those receiving the knowledge need to speak the same language; too much is lost in translation of the information.
- Samson Cree Nation suggested the creation of an “ethical space”, which stems from relationship building.
- O’Chiese First Nation said that oral Indigenous knowledge could be shared in a group setting, i.e., not one person speaking at a time, but in a group so that the group could talk among themselves and decide how best to respond and who is best suited to respond.
- Several Indigenous Intervenors made comments related to the importance of the Board having first-hand knowledge of their community, both by visiting and holding portions of NEB hearings there. It was noted that except for NEB inspectors, no one from the NEB visits the project area. Piikani Nation emphasized the importance of relationship-building and meaningful dialogue, and invited Panel members to their community. Other Indigenous Parties noted the importance of the Board holding hearings in their communities so the process is more engaging and meaningful.

Issue E: Final Argument:

13. Would you like the option to provide final argument in written format or oral format? If in oral format, would you attend in person or prefer to provide it remotely via the phone?

Written Comments:

- O’Chiese First Nation, Bearspaw First Nation, Chiniki First Nation and Wesley First Nation request the final argument be conducted in written format, as it allows for a clear and concise presentation of evidence, issues and concerns related to the Project.
- Alexis Nakota Sioux Nation states they would like to be able to make both written and oral argument.

Conference Comments:

- Driftpile Cree Nation, Tsuut’ina Nation, Cadotte Lake Métis, Duncan’s First Nation, Ermineskin Cree Nation, Whitefish Lake First Nation #128, Piikani Nation, Alexis Nakota Sioux Nation, Bearspaw First Nation, Chiniki First Nation, Wesley First Nation and Samson Cree Nation would like to see both written and oral options for final argument.
 - O’Chiese First Nation said it would prefer both options, but if timing does not permit both, then their preference would be for written final argument.

14. At which location, Grande Prairie or Calgary, would you prefer to provide oral final argument?

Written Comments:

- O’Chiese First Nation, Bearspaw First Nation, Chiniki First Nation and Wesley First Nation request to present in Calgary. Bearspaw First Nation, Chiniki First Nation and Wesley First Nation add that this would allow for attendance by Elders and their members.

a. Would you need longer than 30 minutes to provide your oral final argument?

- O’Chiese First Nation submits that 30 minutes to one hour would be required.

Conference Comments:

- No comments provided.

Other Comments Received

Written Comments:

- O’Chiese First Nation states their participation in the Conference is done in good faith that the NEB will use the discussions at the Conference to ensure meaningful consultation and accommodation occurs related to the Project. O’Chiese First Nation explains that the Conference should not be a replacement for establishing a collaborative consultation approach, but rather should be a platform to continue the discussion and obtain the necessary detail the NEB requires to move forward with a collaborative process.
- To promote meaningful discussion regarding the sharing of oral Indigenous knowledge, O’Chiese First Nation requests that the NEB compile and disseminate the comments made during the Conference so that the participants can easily understand the feedback the NEB has received.
- Alexis Nakota Sioux Nation states that the Conference utility is limited, since the Panel will not be present and the Conference is not part of the record in relation to the evidence which will be reviewed by the Panel.
- Alexis Nakota Sioux Nation states they would like NEB-led workshops on:
 - The Proponent’s presentation of how it has assessed and evaluated impacts to Indigenous and treaty rights, prior to filing evidence, including responses to issues raised to date in consultation logs; and,
 - How the NEB coordinates in relation to Crown consultation, and on the methodology that will be used to assess and evaluate impacts to rights.
- Bearspaw First Nation, Chiniki First Nation and Wesley First Nation state they accept the invitation to participate in the Conference with the expectation that discussions will drive meaningful, positive action by the NEB to actively listen to and effectively include issues, concerns and impacts to section 35 rights related to the Project presented by their Elders and knowledge holders into all assessments and decisions by the NEB related to the Project.

Conference Comments:

- Blood Tribe stated that Indigenous communities are viewed as homogenous, but are not.
- Alexis Nakota Sioux Nation, Cadotte Lake Métis, Duncan’s First Nation, Ermineskin Cree Nation, and Whitefish Lake First Nation #128 said that NGTL’s assessment of impacts to rights is not complete, therefore the Application is not complete.
 - In response, NGTL said that the term “completeness” does not suggest that the Hearing process is done, rather it means that the applicant has provided sufficient information to start the Hearing process. NGTL said it would answer all questions raised during the Hearing process.

- Bears paw First Nation, Chiniki First Nation and Wesley First Nation expressed concern about the funding process which can limit the ability of Indigenous communities to participate. There should not be an onus on Indigenous communities to front load funding.
- Tsuut'ina Nation said that they would like the Participant Funding Program to cover honoraria for Elders and knowledge keepers.
- Tsuut'ina Nation and Blood Tribe said that Elders might be more comfortable appearing before the Panel and sharing their oral Indigenous knowledge if there was an independent Indigenous member as one of the Panel members.
 - Alexis Nakota Sioux Nation added that an Indigenous Panel member would also contribute to proper assessment of impacts to section 35 rights.
- O'Chiese First Nation said that NGTL should consider bundling all of their projects into one, as NGTL has more capacity and resources than Indigenous communities, who are challenged by the costs of participation in these processes.
- Bears paw First Nation, Chiniki First Nation and Wesley First Nation are interested in how NEB Modernization will be taken into account with respect to meaningful consultation for this Project.
- Blood Tribe said that Indigenous communities have a right to share in the revenues from natural resources.
- Alexis Nakota Sioux Nation expressed concerns about transparency and said they would like a copy of discussions between the Crown and NGTL with respect to the Caribou Recovery Strategy and offsets.
 - In response, NGTL said that this information is available on the Board's public record.
 - In its feedback on the *draft* Final Report, NGTL noted that at the Conference it also stated that summaries of all engagement between NGTL and government agencies were included in the Application, and that updates had been provided in NGTL's supplemental environmental report and additional written evidence. NGTL also asserted they would be willing to engage inside or outside the hearing process to share information, as appropriate.
- There was agreement among Indigenous Intervenors that one week was not enough time to review the *draft* Final Report. Most stated that one or two additional weeks were preferred.
 - Alexis Nakota Sioux Nation noted that they want the responses from NGTL and the Crown, including clarification of the parallel process before commenting on the *draft* Final Report.
- In response, NGTL said that it thinks one week is sufficient, that it is of the understanding that this is an opportunity for participants to review and acknowledge whether their views are accurately reflected.

- Driftpile Cree Nation stated that the Board cannot understand their Nation's process, ways or their people without true engagement.