



## STONEY TRIBAL ADMINISTRATION

### **The Honourable Jonathan Wilkinson**

Minister of Environment and Climate Change Canada  
200, Sacré-Coeur Blvd, 2nd Floor  
Gatineau, Quebec K1A 0H3  
Canada

February 26, 2020

Dear Minister Wilkinson,

**RE: Request for Designation of Project under TC Energy's Proposed West Path Delivery Program (West Path Delivery Program 2022 and West Path Delivery Program 2023).**

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This letter is submitted to the Minister Johnathan Wilkinson and the Impact Assessment Agency ("IAAC") by the Stoney Tribal Council. The Stoney Tribal Council represents the three distinct Nations of Stoney Nakoda Nations ("SNN"): Wesley First Nation, Bearspaw First Nation and Chiniki First Nation. The Chiefs and Councils of SNN have the authority to protect the collective rights and interests of SNN as recognized by Treaty 7 and the Natural Resources Transfer Act, 1930, protected by Section 35 of the Constitution Act, 1982 ("Section 35 Rights").

This letter is regarding four upcoming projects being proposed by TC Energy through two of its subsidiaries: Foothills Pipelines Ltd. ("Foothills") and NOVA Gas Transmission Ltd. ("NGTL").

SNN requests that the Minister designate these four projects under Section 9 of the Impact Assessment Act (S.C. 2019, c. 28, s. 1).

The four projects identified by SNN that require designation under Section 9 of the *Impact Assessment Act* are:

- NGTL West Path Delivery 2022
  - An 18 km segment of nominal pipe size ("NPS") 48 pipeline located 16 km northwest of Sundre, AB.
  - An expansion of the ABC Border Meter Station located 6 km west of Coleman, AB.<sup>1</sup>
  
- Foothills Zone 8 West Path Delivery 2022

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<sup>1</sup> Proposed project details provided by TC Energy/NGTL on December 5, 2019

- A 10 km segment of NPS 48 pipeline located 15 km southeast of the District Municipality of Sparwood, BC and within both the BC and AB borders.
- A 13 km segment of NPS 48 pipeline located 25 km east of Creston, BC.<sup>2</sup>
- NGTL West Path Delivery 2023
  - A 23 km segment of NPS 48 pipeline located 3 km northwest of Turner Valley, AB.
  - An 8 km segment of NPS 48 pipeline located 30 km southwest of High River, AB.
  - A 7 km segment of NPS 48 pipeline located 7 km northwest of Pincher Creek, AB.<sup>3</sup>
- Foothills Zone 8 West Path Delivery 2023
  - A 31 km segment of NPS 48 pipeline located 18 km east of Fernie, BC.
  - A 15 km segment of NPS 48 pipeline located 37 km east of Creston, BC.
  - An expansion of the Kingsgate Border Meter Station located 15 km southwest of Yahk, BC.<sup>4</sup>

### Rationale for Request:

As per Section 9(1) and (2) of the *Impact Assessment Act*:

“(1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

(2) Before making the order, the Minister may consider adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada — including Indigenous women — recognized and affirmed by section 35 of the [Constitution Act, 1982](#) as well as any relevant assessment referred to in section 92, 93 or 95.”

SNN finds these four projects to merit designation under the *Impact Assessment Act* due to their interconnected nature, the locations of the projects, and the impacts these projects will collectively and individually have on the Section 35 Rights of SNN including impacts to Section 35 Rights; impacts to culture; impacts to health of SNN members; and, impacts to sacred and ceremonial sites.

All four projects are proposed as stand alone projects under the Canadian Energy Regulator (“CER”), despite all being a part of TC Energy’s “West Path Delivery Program” which is described by TC Energy as 119 km of pipeline and associated facilities.<sup>5</sup> Further, under the new regulations all four projects would be considered as non-designated under the *CER Act*; three of the four projects fall under the definition of a ‘small project’, with the other project falling under the definition

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<sup>2</sup> Proposed project details provided by TC Energy/Foothills on November 6, 2019

<sup>3</sup> Proposed project details provided by TC Energy/NGTL on November 7, 2019

<sup>4</sup> Proposed project details provide by TC Energy/Foothills on December 5, 2019

<sup>5</sup> <https://majorprojects.alberta.ca/details/West-Path-Delivery-Program/3952>

of a 'medium project'.<sup>6</sup> This means that **none** of these projects that fall under one "program", will be subject to the integrated review process led by the IAAC and the CER.

Splitting one large project (or program) into small project applications misrepresents the total depth and breadth of impacts, including impacts to Section 35 Rights. If each project is assessed individually by the CER and the IAAC is not involved, the collective depth and breadth of impacts to SNN Section 35 Rights from all four projects collectively identified under the West Path Delivery Program will be overlooked.

SNN recognizes this as a strategy TC Energy and its subsidiary NGTL have taken in the recent past; for example, NGTL in an August 2017 correspondence with SNN describe its McLeod River North Project<sup>7</sup> as a 47 km pipeline project. However, when this project was filed by NGTL with the CER on June 20, 2018, the McLeod River North Project was only 37 km in length. After analysis, SNN realized that 10 km of the pipeline identified the initial project outline sent to SNN by NGTL was placed into a different project application – the 2021 NGTL System Expansion Project.<sup>8</sup> The removal of the 10 km pipeline segment from the McLeod River North Project downgraded the project from a Section 52 project to a Section 58 project under the now-repealed *National Energy Board Act*. As a result, the McLeod River North Project did not warrant a hearing, and only a desktop environmental and socio-economic assessment was required.<sup>9</sup>

In addition to the problematic minimizing of impacts resulting from strategic project splitting, no participant or consultation capacity funding is offered from federal regulatory authorities for SNN to participate in consultation activities until such time that a hearing is triggered. In order for SNN to participate in early and ongoing meaningful engagement with the proponent and the Crown on a project, SNN must review project documents including project brochures, applications, maps, and records of consultation; correspond with the proponent; organize meetings with the proponent and with the community; and, conduct Section 35 Right impact assessment studies. These activities must occur regardless of the size or scope of a project in order for consultation to be meaningful.

Unlike the Government of Alberta, which offers general consultation capacity funding annually to support Indigenous Nations' Consultation Offices, federal consultation capacity funding is offered on a project-by-project basis, and only when a project triggers a federal regulatory hearing process. Further, capacity provided by federal regulatory authorities is only intended to cover costs associated with a hearing process, and not any costs accrued by a Nation in early engagement with the company prior to the hearing process commencing. This places Nations like SNN in the uncomfortable position of having to rely on capacity funding offered by a proponent, which can often take time to negotiate and is often not sufficient for meaningful and early consultation activities and does not allow for a fulsome identification of project-impacts to Section 35 Rights. SNN strives to meaningfully participate in consultation activities to ensure that SNN's Section 35 Rights are being adequately considered and any impacts are directly and

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<sup>6</sup> <https://www.cer-rec.gc.ca/bts/blc69/index-eng.html>

<sup>7</sup> Project details and filings can be found here: <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3575212>

<sup>8</sup> Project details and filings can be found here: <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3575553>

<sup>9</sup> SNN requested a hearing process and filed several pieces of evidence outlining impacts and concerns with the McLeod River North project. Despite SNN's objections and evidence, the project was approved, and a hearing process was never initiated. See project record here: <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3575212>. Because the project was a s. 58 there was no funding from the NEB available for this project.

proportionately accommodated. This is made difficult, when projects are split to down-play impacts, and sufficient consultation capacity is not provided by the company or the Crown.

SNN has corresponded with TC Energy and its subsidiaries to relate our concerns on the four projects identified above. To-date all early engagement with TC Energy and its subsidiaries has been at cost to SNN – a capacity funding agreement between SNN and TC Energy has not been reached, and none of these projects will trigger a hearing under the CER or an impact assessment under the IAAC, which means that SNN will not have access to associated participant funding under the CER or IAAC.

SNN now looks to the Honourable Minister Wilkinson and the IAAC, to review these four projects in the context of the impacts they will have and their interconnected nature and designate all four projects under Section 9 of the *Impact Assessment Act*. Designating these projects will increase the level of attention paid to the projects and the issues, concerns and impacts the projects will have individually and collectively on SNN's Section 35 Rights, and in doing so, require meaningful consultation between SNN and TC Energy and, hopefully, dissuade TC Energy and its subsidiaries from continuing their project-splitting strategies on future projects, or programs.

Sincerely,

<original signed by>

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