



Canada Energy
Regulator

Régie de l'énergie
du Canada

Office of the Chief
Executive Officer

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29 November 2022

The Honourable Steven Guilbeault, P.C., M.P.
Minister of Environment and Climate Change Canada
Fontaine Building, 12th Floor
200 Sacré-Coeur Blvd
Gatineau, QC K1A 0H3
Email: ministre-minister@ec.gc.ca

Dear Minister Guilbeault:

The Canada Energy Regulator (CER) submits, on behalf of the Indigenous communities identified below, a request for the Minister of Environment and Climate Change Canada (Minister) to conduct a Regional Assessment (RA).

The details of the request, which are attached as Appendices 1 and 2, were shared with the CER verbally and in writing during Crown consultation meetings on the NOVA Gas Transmission Ltd. (NGTL) West Path Delivery 2023 Project (the Project). The Indigenous communities requesting an RA are the following:

- Elk Valley Métis Nation
- Foothills Ojibway First Nation
- Kainai Nation (Blood Tribe)
- Métis Nation of Alberta (MNA):
 - Provincial Office
 - Region 3
 - Locals # 87 and 1880
- Nakcowinewak Nation of Canada
- O'Chiese First Nation
- Piikani Nation
- Samson Cree Nation
- Siksika Nation
- Stoney Nakoda Nations:
 - Bearspaw First Nation
 - Chiniki First Nation
 - Wesley First Nation
- Tsuut'ina Nation

.../2

In its [4 July 2022 letter](#) to the CER, the Impact Assessment Agency of Canada (Agency) confirmed its awareness of the recommendation made by the Commission of the CER (Commission) to the Minister to address various issues or concerns raised during the hearing, as outlined in Section 1.4.2 of the Commission's 24 May 2022 Recommendation Report for the Project. These issues included cumulative effects on Indigenous and/or Treaty rights in the region of the Project. In the letter, the Agency clarified that the Commission's recommendation for an RA required additional information, as outlined in the Agency's Operational Guide, in order for it to be considered a complete and formal request under subsection 97(1) of the *Impact Assessment Act (IAA)*.

The CER, as Crown Consultation Coordinator (CCC), engaged in dialogue with Indigenous communities regarding the Commission's RA recommendation during its Crown consultation process for the proposed Project. During these activities, the CCC committed to compile and send any RA request(s) and input received from Indigenous communities, un-altered, to the Minister. The intent of this letter is to submit an RA request package on the above noted Indigenous communities' behalf, to help fulfill additional information requirements identified by the Agency.

Where there may be any additional information or clarification needed as it relates to this RA request from Indigenous communities, the CER understands that the Agency will engage directly to seek any further input from the requesters. If the Agency requires additional information or advice from the CER, the Agency may contact Carly Milne, Director of Crown Consultation, at carly.milne@cer-rec.gc.ca or 403-617-1738.

The CCC would like to acknowledge and thank the Indigenous communities for their time, resources, and dedication to submitting an RA request to the Minister. The CER highlights that Indigenous communities' dialogue with the CER and feedback regarding the Commission's two recommendations, including the RA recommendation, was above and beyond the already significant efforts required to directly consult on the Project. The CER values the opportunity it had to facilitate dialogue and collection of additional information, including having a role in transmitting the request for an RA to the Minister on behalf of the interested Indigenous communities.

Best regards,

<Original signed by>

Gitane De Silva
Chief Executive Officer

Enclosures

c.c.: Indigenous community requesters:

Elk Valley Métis Nation: Jean Sulzer, President <Email address removed>
Foothills Ojibway First Nation: Chief Jim O'Chiese <Email address removed> ;
Kathleen ida Kiss, Administrative Coordinator <Email address removed>
Kainai Nation (Blood Tribe): Mike Oka, Consultation Coordinator
<Email address removed>
Métis Nation of Alberta Provincial Office: Theo Peters, Consultation Team Lead
<Email address removed>
Métis Nation of Alberta Region 3: Lawrence Gervais, President
<Email address removed>
Métis Nation of Alberta Locals 87 and 1880: Peter McPherson, President, Local
87 and Representative, Local 1880 <Email address removed>
Nakowinewak Nation of Canada: Jean Whitehorse, President
<Email address removed> William Turner, Authorized Representative
<Email address removed>
O'Chiese First Nation: Andrew Scott Consultation Coordinator
<Email address removed>
Piikani Nation: Ira Provost, Manager, Piikani Nation Consultation
<Email address removed>
Samson Cree Nation: Laurie Buffalo, Council Member
<Email address removed> ; Kaylyn Buffalo, Consultation Project Officer
<Email address removed>
Siksika Nation: Cedric Solway, Consultation Coordinator
<Email address removed>
Stoney Nakoda Nations: Bearspaw First Nation, Chiniki First Nation, and Wesley
First Nation, William (Bill) Snow, Acting Director of Consultation <Email address removed>

Tsuut'ina Nation: Violet M. Meguinis, Consultation Director
<Email address removed>

Paula Futoransky, Vice President, Energy Adjudication, CER
Carly Milne, Crown Consultation Director, CER
Stephen Bonnell, Manager, Strategic and Regional Assessments, Impact
Assessment Agency of Canada
Terence Hubbard, President, Impact Assessment Agency of Canada

Appendix 1

Indigenous communities' input shared verbally with the CER in its role as Crown Consultation Coordinator (CCC) during Crown consultation meetings in relation to the RA is provided below. Written submissions received are provided in Appendix 2.

Elk Valley Métis Nation (EVMN)

At the 14 September 2022 Crown consultation meeting on the proposed Project, EVMN acknowledged it received the CCC's questions and request for information by 31 August 2022 on the Indigenous Oversight Cooperative Committee and RA and did not confirm whether it would be submitting additional feedback. At the meeting EVMN shared that it would like to be noted as a community requesting an RA and would like to be involved in the future as relates to any further engagement on the RA with the Agency.

Siksika Nation and Kainai Nation (Blood Tribe)

In NGTL's application for the Project filed in October 2020, in the [Environmental and Socio-Economic Assessment](#), section 11.6 "Assessment of Cumulative Effects on Traditional Land and Resource Use," (page 11.48) NGTL states that through engagement with NGTL, Blood Tribe identified that, due to the number of large development projects that include metallurgical coal mines, Blood Tribe is requesting that the Alberta Government approve a Regional Impact Assessment for the entire land area that may be potentially impacted, which includes this Project.

During consultations on the Project, Siksika Nation and Blood Tribe identified a particular interest with advancing a RA in its territory and continuously identified the need throughout the Crown consultation process to protect lands and resources fundamental for the continuation of traditional land use, bundles and ceremonies still actively practiced in the community. Siksika Nation also highlighted the need to ensure proper Blackfoot Confederacy protocols are followed in Crown consultations as well as part of any potential RA process going forward.

At the 21 April 2022 Crown consultation meeting on the Project, Siksika Nation and Blood Tribe requested the CER/ CCC lead a RA request for the Project area and provided the following input:

- Blood Tribe and Siksika Nation presented a video demonstrating changes in Crown lands taken up over time in Alberta, from 1910 to 2010, and impacts to Traditional Land Use accessibility. The video was completed by Blood Tribe as part of the Grassy Mountain Coal Mine environmental assessment process. The last portion of lands where the exercise of section 35 Rights can occur is the Eastern Slopes. This area is at risk with no protection from development. Siksika Nation and Blood Tribe questioned if the Eastern Slopes were to be developed, where would Blackfoot people's Indigenous Rights be practiced in southern Alberta? Further, Blackfoot communities are surrounded by private lands with stone features on those lands that cannot be accessed by communities.
- An important element for RA activities should include a focus on diminishing Treaty rights and lands available to exercise rights.

- The communities identified potential additional cumulative effects impacts from current irrigation systems (dams) in southern Alberta, and identified concerns related to wells drying up, impacts to aquifers, and dying willow trees.
- The communities would like a cumulative effects and impact assessment on their traditional territories from past to present, identifying the growth of the province and how it relates to impacts to Indigenous communities.

At the 29 August 2022 Crown consultation meeting, Siksika Nation and Blood Tribe discussed a potential boundary for their RA request highlighting Blackfoot Confederacy Traditional Territory, but also recognized that this may be too broad and/or large an area for an RA. Both communities committed to work with their Elders to further scope the RA boundary for their request and Blood Tribe provided the following information on 24 November 2022: Consultation only considers Treaty Entitlement Land, Blood Tribe considers its Traditional Territory, including the Peace River area. Regarding the Peace River area, 7000 years ago Mount Mazama erupted, contaminating rivers and wildlife, and people had to move to find wildlife – Blood Tribe utilized those lands for nearly 800 years, which is why the Buffalo Jumps were not used during this time. Blood Tribe would like to have government and industry recognize this part of history, and Blood Tribe is hopeful we can all continue to work together to better consultation for future generations.

Blood Tribe would like to see recognition of Blood Tribe's Traditional Territory by the Government of Alberta's Indigenous Relations Ministry, acknowledgement of the prehistory of Alberta is very important to understand.

Tsuut'ina Nation

On 14 June and 14 July 2022, during Project consultation meetings with Tsuut'ina Nation, the CCC received input on the recommendation for an RA. Tsuut'ina Nation stated that larger cumulative effects studies would be of great interest to the community, as it would like to have more information on, "all these different pipelines, and what kind of effects are they having on the lands, the water and the animals." Tsuut'ina Nation stated that its members have been taught how to live and utilize the land from their ancestors. Increasing development is changing the way they are able to use these lands. Tsuut'ina Nation is participating in the Terrestrial Cumulative Effects Initiative (TCEI) with ECCC. Its focus is on gathering baseline data on plants, animals, and water quality and quantity in Tsuut'ina Nation territory.

Tsuut'ina Nation stated that the community is aware that, "things are changing on the lands" and it would be interested in seeing and being a part of a larger regional study to focus on these changes and to examine if better government coordination can help as, "it is really all about our next generations" and what kind of lands, "if any" are going to be available to their children. Additionally, Tsuut'ina Nation shared with the CCC during these meetings, as it relates to RA boundaries, the RA area could be starting at the North Saskatchewan and/or Red Deer rivers and focus on "headwaters." Tsuut'ina Nation also shared that an RA should include the study of animals and wildlife, and vegetation and look at them seasonally. Tsuut'ina Nation stated that, "it feels as though everything is a month behind in what would normally be expected in the season" and

gave the example of Saskatoon and chokecherries and the fact that harvesting now must take place in September as opposed to August, as it was traditionally done.

**Foothills Ojibwa First Nation
Response To
Final Crown Consultation Annex
October 5, 2022**

Responses to conditions 10 and 29

Regarding- local trainers

Someone is making decisions for Foothills and then responsibility is turning back for my own peopleto train my people.

Local people should be training the people in Ottawa an indigenous issues.

#4 non discrimination

“non discrimination”. this term is used and yet I am not sitting at the table to make these decisions. That is discrimination and a racist practice.

“Where possible?” What procedures to ensure fair hiring of local trainers are used from Ottawa? Who will know who is qualified.?

People who are deciding how to measure these must have cultural qualification, understanding of spirit of intent on the land and in Canada . This is about the spirit of intent of treaties. Individuals should have a cultural certificate indicating experience to the government that also gives approval at the NER. They should have the cultural certificate and should sit at the application stage all through the process. Certification is available through Yellowhead Tribal College..

29 - 33 *There* is no cultural training or certification provided for cultural values on the land at any level. This needs to happen. Cultural values must be addressed to set things on a sound basis.

Responses to Items 26 and 32 cultural

Cultural environmental qualifications are needed now. Certification is available at yellowhead tribal college

#2 example cultural / environmental impact:

Notification and cultural protocols need to be addressed. Everybody should be included that has the cultural qualification. The cultural land based monitoring should not be limited to the picconi nation cultural monitoring program

Example: if I was not there when they buried their people or transplanted medicines I would not know what to consider. Each cultural group must be considered.

There must be certification in cultural, environmental and archaeological assessment as well as cultural /environmental impact assessment

Reasons:

First Nations did not have cemeteries . FOFN believes in respecting everyone's cultural valued sites I would not speak any other.

During the enactment of the Indian act some couldn't leave the reservation, others couldn't enter, so people were buried where they passed. There are people buried across turtle island so there are cultural- ceremonial sites and pharmacy sites across turtle island.

How could I speak for someone else? I was prohibited to go to the reserve where some had cemeteries. Those of us who did not have cemeteries buried their people where they passed. These people who ran do not have cemeteries ...they were outside reserves like those buried beside residential schools.

In 1885 the pass system wouldn't allow leave for more than 24 hours. Some of us were not allowed in because we were not recognized as humans even though we secretly care for mother earth and the environment with our protocols.

In 1885 there was no consultation during the time of this act. How can you comment on graves across Canada during this time? Some of the approved projects with first people consultation resulted in bones in museums.

In 2000 consultation began but before that ...someone was comfortable in giving approval of construction. This resulted in events like the OKA crisis. Today the government still decides what is good for First Nations and which selected people are consulted.

Why have section 35 of the constitution if it does not apply that all First Nations can be heard and respected? The government now does not recognize or consult with all First Nations. There was no consent. The government ignores but consults only some.... What about those who have cultural, historical sites? Why are they not recognized? Some sites have already been destroyed by what happened in the 1800s. Government prohibited First Nations from saying anything. There were projects before 2000 without consultation. With consultation there would have been no OKA crisis.

Cumulative effect happens in all ways for all things.....like the animals and fish that are food source.... medicinal plants are affected ...and all continue to be.. due to water issues.

When I am not consulted I would not do that to any other nation and I would follow cultural protocol especially in their cultural, sacred lands.

In 2022 the government doesn't want to recognize my people.... other people are speaking for me

My question to government

Regulators should respect first people on their own cultural historic lands. What will happen from the regulators going to mitigate for my sites when the government refuses to consult FOFN in 2000

Next questions to government

How did they have a right to give approval without considering my cultural/historic sites that go back thousands of years?

Why does the government still refuse to recognize these sites?

The government decides for some nations

Have things changed since 1492 1493?

Today FOFN is not recognized in their landare they recognized as people? As human beings?..... Are they thought of in the way that animals are... So others speak for them?

This means I am nothing to the government. We can prove our sites and cultural practices. The government of the province still says that FOFN does not need to be consulted. Why have section 35 if it is not used? Where is reconciliation in this?

#8 The long term assessment goes back to the cultural- environmental impact

This requires the respect of people, wetlands, moss-lands, and all environmental components..... including medicinal plants like rat root, lily pad roots. Everything we use is in our food source... fishvegetables.... things that grow on trees everything comes through Mother Nature. Careful, qualified assessment and consultation is required in this timeline.

Miigwetch,

Chief Jim O'Chiese
FOFN

Additionally FOFN would like to be engaged in any regional assessment bodies should they occur

Recorded and submitted by Kathy Kiss at the instruction of Chief Jim OCHIESE

Additional statement received by email on 22 November 2022 from Foothills Ojibwa First Nation:

This involves more than cultural cumulative impact it is also a treaty violation as it violates the spirit of intent of nation to nation of 1613 treaty. Chief Pontiac in the treaty of Niagara, was part of the treaty making again nation to nation.

Thanks
Miigwetch

Chief Jim is pleased to be included in this publication

Métis Nation of Alberta

Regional Assessment in or around the Project area

In section 1.4.2 of its Recommendation Report for the Project, the Commission recommended that the Minister of Environment and Climate Change Canada (the Minister), in partnership with any jurisdiction referred to in paras (a) to (g) of section 2 of the *Impact Assessment Act (IAA)*, with interests in the area of the Project, or in a broader regional area which includes the area of the Project, work to establish an agreement or arrangement to conduct the type of regional assessment contemplated by the IA Act.

On 4 July 2022, in a letter to the CER (attached to this email), the Impact Assessment Agency of Canada (**the Agency**) confirmed its awareness of the Commission's recommendation to the Minister to address various issues of concern that were raised during the assessment of the proposed Project. These issues include cumulative effects on Aboriginal and/or Treaty rights in the region. In its letter, the Agency clarified with the CER that the Commission's recommendation for a RA requires additional information, as outlined in the Agency's [Operational Guide](#), in order for it to be considered a complete request under subsection 97(1) of the IAA.

Should the Agency receive a complete request for a Regional Assessment, the Agency will initiate and undertake an analysis of the information provided, to help inform the Minister's decision and eventual response to requestor(s), within 90 days of receipt of a complete request.

At any time, any community or member of the public may also request an RA.

Please also see the Agency's [Operational Guide](#), Annex I: Preparing a Request for Regional Assessment for additional information on the questions prepared by the Agency to inform RA requests, as this may be of help and relate to the questions posed below.

Scope

Boundary/Region

Note, the Commission's recommendation for the proposed Project is for an RA in or around the Project area.

1. More specifically, what regional boundary would your community like to see a potential RA completed for? Do you have a description of the region/ boundary?
The Métis people have been in Southern Alberta since the late 18th century.
 - Do you have the geographic coordinates or territory (if available)?
 - Do you have any other descriptive information about the region and the current and potential development activities within it?
 - Do you have any links to any relevant documentation? **MNA Region 3 Traditional Land Use Key Findings Table, December 2020**

Impacts of development to s. 35 Rights

2. Does development in the region have the potential to cause adverse impacts on the rights of Indigenous peoples? If so, please elaborate.
The citizens of the MNA R3, as well as Local communities are concerned that the development of the project could impact the Métis way of life by reducing the ability to practice traditional activities.

Impacts of development to the environment

3. Does current and future development in the region have the potential to cause adverse effects, including cumulative effects, including to:

Métis Nation of Alberta

- wildlife, including fish and fish habitat, aquatic species, and migratory birds;
- changes to the environment on Crown lands;
- changes to the environment that occur in a province or territory other than the one where the project is taking place;
- changes to the environment that could affect Indigenous peoples; and
- any change occurring to the health, social, economic conditions of Indigenous peoples.

These were all listed in the MNA R3 Traditional Land Use Key Findings Table – December 2020

4. Are there environmentally or otherwise sensitive areas or components located in the region that might be affected by development? If so, please elaborate

These were all listed in the MNA R3 Traditional Land Use Key Findings Table – December 2020

Need and rationale

5. Can your community please provide an explanation of why a regional assessment should be conducted in the region?

A baseline of historical and contemporary land use would be established for future assessments.

Potential objectives

6. Can you please share your communities' views about the main issues and activities to be considered in the regional assessment?

These were all listed in the MNA R3 Traditional Land Use Key Findings Table – December 2020

Outputs

7. What are your communities' views on what a regional assessment would accomplish?

A baseline of historical and contemporary land use would be established for future assessments.

8. How would it be useful in informing future impact assessments and decision?

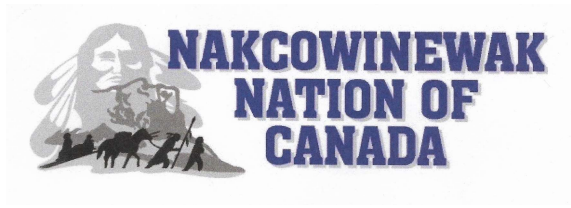
Activities

9. What engagement and technical activities and/or efforts would your community like to see occur to gather information as part of a potential RA?

These were all listed in the MNA R3 Traditional Land Use Key Findings Table – December 2020

Governance

10. What is the governance structure your community would like to see in place for engagement, guidance, and decision making on development of a potential RA, should the Minister of ECCC decide to approve the request?



Westpath Delivery 2023 Project Comments re: Commission Recommendations

The Nakcowinewak Nation of Canada is appreciative to be part of the consultation process for the above project. Below is our feedback and comments for consideration on the two recommendations by the Commission.

Indigenous Oversight & Cooperation Committee:

- A) Guiding Principles should be developed in coordination with peoples from each nation. The objectives and activities that should be focused on are proper maintenance of the pipelines and mitigating impacts to indigenous rights and practices where new projects or expansions occur. Activities that the community would like to focus on as it relates to the NGTL system are monitoring structural integrity of the systems, capacity of the systems, areas of contemplated expansions or new projects, monitoring spills.¹
- B) Indigenous monitoring pre and post-construction programs would accommodate and mitigate concerns over infringements to Indigenous rights and protecting the land. A full-time person should be on this project like a boots on the ground “indigenous ranger” on each line, (name of title to be determined).
- C) The meetings can start as fast as the designated people from communities are chosen.
- D) NGTL and Government should fund and staff it with co-chairs having their own support.
- E) Appropriate staffing: ‘On Ground Rangers 24/7’ x 2, Administrative staff x 2, Honorariums for designates, travel, per diems, etc.
- F) Funding should come from NGTL and Government but NGTL should give final approval.

¹ This type of committee would be in comparison to land and water boards in Canada’s arctic regions where indigenous peoples sit on the boards and are obliged to take into consideration the aboriginal ways of living when holding a hearing and prior to issuing permits for project applications.



G) The Chiefs themselves or their designate should sit on the committee.

H) Meetings should occur quarterly unless there is a specific projects that are being monitored and may require more attention which will meet more often as a sub-committee.

Regional Assessment Questions:

The questions are sufficient to inform a request for a Regional Assessment. We appreciate the questions are meant to inform why a regional assessment should be conducted. We would add that an open-ended question should be included to allow for more information to be included, if desired. Regional Assessments should inform future development as prior baseline studies and address concerns of cumulative effects moving forward.



O'CHIESE FIRST NATION

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September 1, 2022

Angelina Silver
Crown Consultation Coordinator
Canada Energy Regulator
210-517 10 Ave SW
Calgary AB, T2R 0A8

Sent by email to: Angelina.silver@cer-rec.gc.ca

Dear Ms. Silver,

Re: CER Request for Feedback around the Commission's Recommendation for a Regional Assessment Relating to the Nova Gas Transmission Ltd. West Path Delivery 2023 Project

This letter is sent on behalf of O'Chiese First Nation's Chief and Council. The Chief and Council of O'Chiese First Nation have the elected authority and responsibility to protect the Inherent and Treaty rights of the over 1,400 O'Chiese First Nation members. The Inherent and Treaty rights of O'Chiese First Nation are recognized by Treaty No. 6, protected by Section 35 of the *Constitution Act, 1982*, and guided by *Kaa-Ke-Chi-Ko-Moo-Nan*.

O'Chiese First Nation is bound by *Kaa-Ke-Chi-Ko-Moo-Nan*, O'Chiese First Nation's Great Binding Law ("Natural Laws"). As such, O'Chiese First Nation operates under its own distinct set of legal principles and laws that have been in place since time immemorial. Our Natural Laws are the foundation for O'Chiese First Nation Peoples and our Inherent and Treaty rights.

On May 24, 2022, the Canada Energy Regulator ("CER") Commission released its Recommendation Report ("Recommendation Report") regarding the Nova Gas Transmission Ltd. ("NGTL") West Path Delivery 2023 Project (the "Project").

Within the Recommendation Report¹ the Commission acknowledged the arguments put forward by Indigenous intervenors for cumulative effects to be considered more holistically in the regulatory review process; highlighting the ruling in *Yahey (Blueberry River First Nations) v. British Columbia 2021 BCSC 1287*, which confirms that the Crown has a responsibility to take proactive measures to address and monitor cumulative effects on Section 35 Rights.

Within the Recommendation Report, the Commission put forward a recommendation for a regional assessment to be conducted:

The Minister, in partnership with any jurisdiction referred to in paragraphs (a) to (g) in section 2 of the *Impact Assessment Act*, with interests in the area of the Project, or in a broader regional area which includes the area of the Project, work to establish an

¹ Section 1.4.2 Recommendation Report

agreement or arrangement to conduct the type of regional assessment contemplated by the [*Impact Assessment Act*] *IA Act*.²

To add to the Commission's recommendation, the CER Crown Consultation Team has sought input from O'Chiese First Nation to gauge interest and/or support for a regional assessment to be conducted.

The following questions were posed to O'Chiese First Nation in July 2022:³

1. What regional boundary would your community like to see a potential regional assessment completed for? Do you have a description of the region/ boundary?
 - Do you have the geographic coordinates or territory (if available)?
 - Do you have any other descriptive information about the region and the current and potential development activities within it?
 - Do you have any links to any relevant documentation?
2. Does development in the region have the potential to cause adverse impacts on the rights of Indigenous peoples? If so, please elaborate.
3. Does current and future development in the region have the potential to cause adverse effects, including cumulative effects, including to:
 - wildlife, including fish and fish habitat, aquatic species, and migratory birds;
 - changes to the environment on Crown lands;
 - changes to the environment that occur in a province or territory other than the one where the project is taking place;
 - changes to the environment that could affect Indigenous peoples;
 - and any change occurring to the health, social, economic conditions of Indigenous peoples.
4. Are there environmentally or otherwise sensitive areas or components located in the region that might be affected by development? If so, please elaborate.
5. Can your community please provide an explanation of why a regional assessment should be conducted in the region?
6. What are your communities' views on what a regional assessment would accomplish?
7. How would it be useful in informing future impact assessments and decision?
8. What engagement and technical activities and/or efforts would your community like to see occur to gather information as part of a potential RA?
9. What is the governance structure your community would like to see in place for engagement, guidance, and decision making on development of a potential RA, should the Minister of ECCC decide to approve the request?

To support the CER Crown Consultation Team's development of a request for a regional assessment, O'Chiese First Nation defines its support and rationale for a regional assessment into the following categories:

1. Recommended Regional Assessment Boundary
2. Current Regulatory Failures in Assessing Cumulative Effects
3. Important Considerations for Conducting a Regional Assessment

² Section 1.4.2 Recommendation Report

³ Sent via email July 13, 2022.

Recommended Regional Assessment Boundary

On September 2, 2021, O’Chiese First Nation filed evidence which identified the cumulative effects and current level of lands taken up within a 100 km radius of the Project (the “Study Area”). O’Chiese First Nation’s evidence demonstrated that within the Study Area there is very little land remaining that is available and preferred for the exercise of O’Chiese First Nation Inherent and Treaty rights.

By measuring current disturbance (i.e., human footprint) O’Chiese First Nation assessed that 87% of lands are affected by human footprint and are unavailable and not preferred for the exercise of O’Chiese First Nation Inherent and Treaty rights.⁴ In measuring lands taken up (i.e., disposition data) 92% of lands within the Study Area are currently taken up, meaning they are unavailable for the exercise of O’Chiese First Nation Inherent and Treaty rights without first seeking permission.⁵

Due to the little land remaining within this Study Area for the exercise of rights, O’Chiese First Nation believes it would be important for a regional assessment boundary to expand beyond this Project Study Area.

O’Chiese First Nation has conducted similar assessments of the lands available within O’Chiese First Nation’s Consultation Area,⁶ which is an area determined by the Government of Alberta, which shows comparable results to the Project Study Area in terms of lands that remain available for the exercise of rights. These assessments further demonstrate the need for a regional assessment, as little land remains for the exercise of Inherent and Treaty rights. As projects continue to be approved without a proper assessment of cumulative effects, impacts to O’Chiese First Nation Inherent and Treaty rights continue to go unmitigated and unaccommodated.

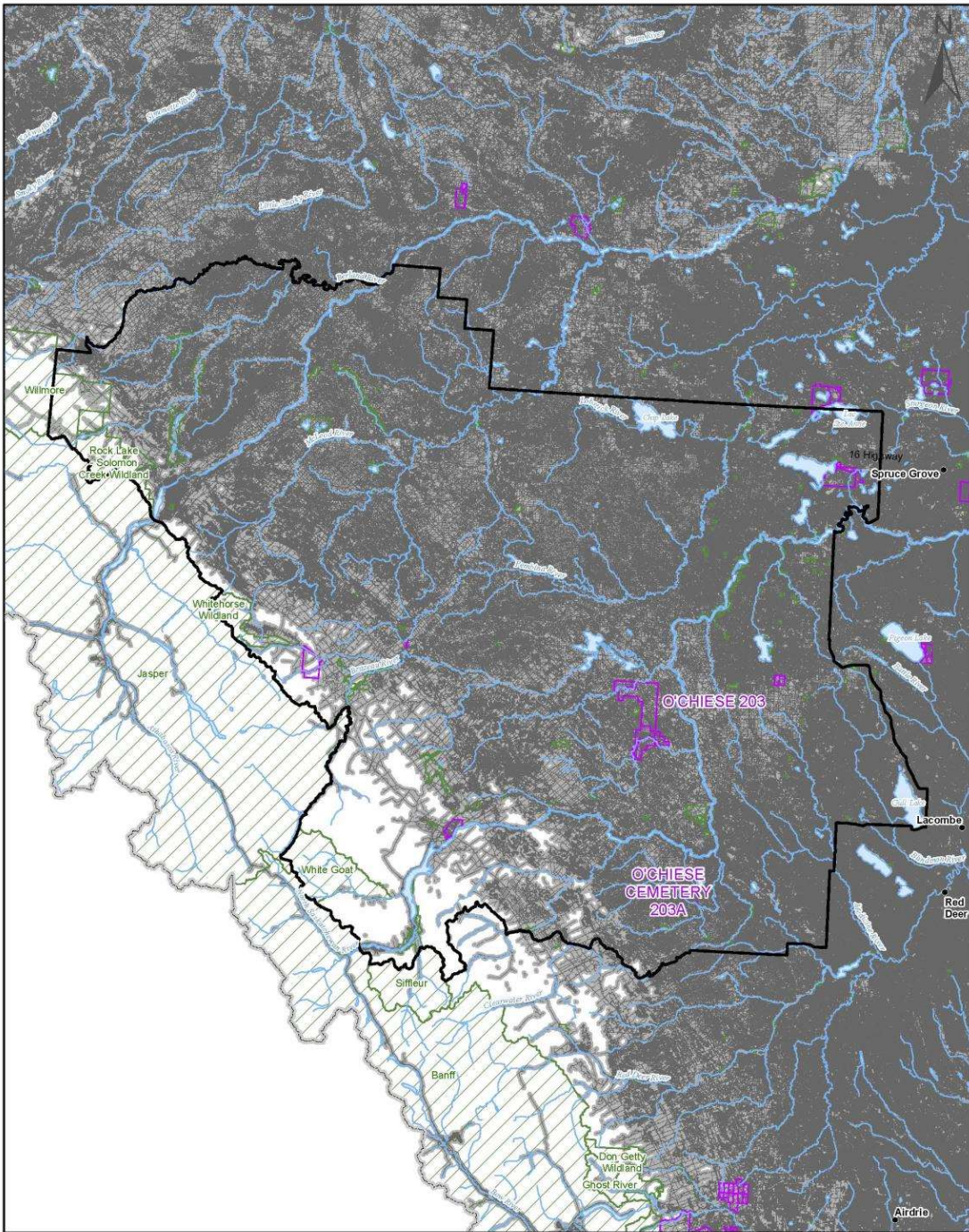
O’Chiese First Nation’s Consultation Area’s current level of disturbance, including a 500 m buffer is shown in the map below.⁷ It is O’Chiese First Nation’s request that this area be considered within the boundaries of a regional assessment.

⁴ 50% of lands within the Study Area are affected by human footprint, with an additional 37% of land within the Study Area falling within a 500 m buffer attached to each human activity to better define unsuitable lands. A 500 m buffer was placed around all dispositions and disturbances/ human activity to demonstrate avoidance of Nation members while exercising Inherent and Treaty rights. This is in keeping with the court-accepted buffers applied in the *Yahey* decision.

⁵ 88% of lands are currently taken up, with another 4% of lands in the Study Area falling within the 500 m buffer attached to each disposition or land type.

⁶ Within O’Chiese First Nation’s Consultation Area, 94% of lands have been violated (which combines lands taken up and human footprint), meaning only 6% of lands within O’Chiese First Nation’s Consultation Area remains available for the exercise of rights. Further assessment is required to define what lands are suitable for the exercise of rights.

⁷ This map is intended to visually demonstrate the level of disturbance within O’Chiese First Nation’s Consultation Area. If this submission is to be made public, O’Chiese First Nation requests this map be redacted from the public submission.



Disturbance Map: OCFN Consultation Boundary

- OCFN Consultation Area (2016)
- Human Footprint Inventory (HFI) 2018
- Human Footprint Inventory (HFI) 2018 (500m Buffer)
- Reserve Land
- Park
- City, Town, or Village
- Highway or Major Road
- Geopolitical Boundary



Created: August 2022 by Inlallawataah; Coordinate System: NAD 1983 UTM Zone 12N
 Map Scale: 1:1,233,421; Overview Map Scale: 1:20,000,000
 Data Sources: O'Chiese First Nation, AltaLis, Province of Alberta, Government of Canada



This map is a living document and is intended to be amended and refined over time. This map is the property of O'Chiese First Nation and may not be reproduced without written permission.

Current Regulatory Failures in Assessing Cumulative Effects

As demonstrated above, O’Chiese First Nation has been severely impacted by the combined effects of resource development. Industrial development (including oil and gas, mining, gravel pits, hydro electric dams, peat harvesting) agriculture, forestry, the establishment of parks and protected areas, and other government initiatives have all impacted O’Chiese First Nation Inherent and Treaty rights. Construction, operation, maintenance, closure, and reclamation create conditions and changes the legal status of lands, which diminish O’Chiese First Nation’s ability to access lands and exercise rights in a preferred manner, in accordance with O’Chiese First Nation’s Natural Laws.

The amount of development currently within O’Chiese First Nation’s Consultation Area should be a sign that the current approach in Alberta to “reduce red tape” has failed to consider cumulative effects and has failed to protect Indigenous rights.

Each year, the O’Chiese First Nation’s Consultation Office receives approximately 600-800 First Nation Consultation (“FNC”) project notifications. Additional projects and initiatives require consultation beyond these FNC notifications including D56 notifications, government consultation initiatives such as relating to Species at Risk, parks and protected areas, and land use planning. Little capacity is provided to O’Chiese First Nation to participate in consultation, review project applications, and assess potential impacts. These projects have been able to fly under the radar, with approvals sometimes happening within seven minutes of application submission, such as with project applications submitted through the Alberta Energy Regulator (“AER”) application portal.⁸

The current land use planning and regulatory approval processes in Alberta fail to consider cumulative effects appropriately. Whenever a new project is approved, it takes up land that was once previously accessible and available for the exercise of O’Chiese First Nation Inherent and Treaty rights. This has commonly been referred to as “death by a thousand cuts”. O’Chiese First Nation firmly believes that if the current project approval process continues “business as usual”, there will soon be no available land remaining for the exercise of Inherent and Treaty rights.

While any one project, when viewed in a silo is less likely to reach or surpass a threshold, the combined impacts have failed to be considered both from a biophysical and infringement of rights perspective, which exposes the government to time consuming litigation risk.

Considering the total combined impacts of expected changes in the region, through a regional assessment, will help identify the gaps in Alberta’s current regulatory processes and put forward solutions that will lead to a more comprehensive review and approval process. Conducting a regional assessment and adopting a regional management strategy can help to establish necessary thresholds, understand if these thresholds have been breached, and ensure systems are put in place to mitigate and/or accommodate impacts.

Important Considerations for Conducting a Regional Assessment

Alberta’s assessment of caribou and caribou habitat is a good example of the ability to define what a species needs in terms of available and/or suitable land to survive. The assessment of

⁸ In May 2022 O’Chiese First Nation met with an AER dispute resolution team member to understand how a project application received approval prior to it being posted publicly on the AER website. O’Chiese First Nation had full intentions of submitting a Statement of Concern for the project, however the project received approval and did not allow for O’Chiese First Nation to participate in the regulatory process steps, causing O’Chiese First Nation to have to submit a regulatory appeal. The AER team member revealed that “no human eyes” look at the routine applications that are filed, resulting in approvals being received sometimes within seven minutes of submitting an application.

caribou across Alberta has further demonstrated methods for classifying suitable habitat and defining thresholds of undisturbed habitat required to maintain caribou populations.

While these methods appear to be generally accepted for wildlife, little is understood about how to apply these methods in a more human and rights centric approach. O'Chiese First Nation argues that this form of assessment should be utilized in identifying the needs of Indigenous Nations to maintain their way of life and their ability to exercise rights as was promised in the treaties.⁹

A regional assessment in Alberta could be a steppingstone to quantifying the current state and defining the thresholds in which to assess cumulative effects to the exercise of rights moving forward. A regional assessment would inform and improve future impact assessment decisions by establishing a framework for evaluating cumulative impacts into which individual project assessments are relevant.

Without having such a framework, it will not be possible to safeguard Inherent and Treaty rights; and the responsibility to do so is a promise within the treaties and a responsibility that the Crown must take seriously.

To conduct a successful regional assessment, it will be necessary to establish a joint committee to ensure appropriate oversight to the regional assessment process. Establishing this committee and ensuring meaningful consultation will require a capacity commitment that is consistent and predictable to ensure Indigenous Nations can dedicate participants for the entirety of the regional assessment process.¹⁰

It will be further important for the regional assessment to draw upon both western and Indigenous knowledge expertise for conducting regional assessments and identifying appropriate metrics to assess cumulative effects, including cumulative effects to Inherent and Treaty rights. It is important that the regional assessment produce applicable management solutions and that it does not become another report that sits on a shelf. Its true intention must be to affect change in ongoing regulatory approval processes and identify solutions and methodologies for assessing projects through a cumulative impact lens.

We thank the CER Crown Consultation Team for its willingness to explore opportunities such as requesting a regional assessment in this region. We believe there is overwhelming evidence to support this request and we believe that Indigenous Nations deserve to know and understand the full impact of resource development in Alberta to date and understand how future developments pose further risk to the already impacted ability to exercise Inherent and Treaty rights across the province.

We look forward to hearing from your team on how this information informs your submission to the Governor in Council and your request for a regional assessment, and we hope that you will keep us informed of your progress on this matter.

⁹ Alberta's approach to establishing protections for caribou and caribou habitat has been slow and onerous, leaving O'Chiese First Nation with little confidence that appropriate protection measures will be put in place for caribou; Alberta continues to push for a "business as usual approach" and continues to prioritize economic development over conservation and restoration. While O'Chiese First Nation believes a similar approach to assessing thresholds for caribou should be conducted for assessing thresholds to rights, we lack confidence in Alberta's ability to oversee such a process, thus making a regional assessment with federal involvement necessary.

¹⁰ If a regional assessment request is accepted, O'Chiese First Nation would like to see that the Minister enter into agreements with all relevant Indigenous governments to jointly establish a committee and determine the manner in which the regional assessment should be conducted.

Sincerely,
<original signed by>

Andrew Scott
Director of Consultation
O'Chiese First Nation Consultation Office

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Carly Milne
Crown Consultation Director
Canada Energy Regulator
Carly.milne@cer-rec.gc.ca

September 2nd, 2022

RE: NGTL West Path Delivery 2023 Project (GH-002-2020)- Piikani Nation comments on the CER Recommendation Report and Crown Consultation

Oki Carly,

On May 31, 2022, the Crown Consultation Coordinator (CCC) provided Piikani Nation with the *Piikani Nation Annex* (the Annex) for Crown Consultations related to the Nova Gas Transmission Ltd (NGTL) West Path Delivery 2023 Project. The Annex reflects the dialogue and consultation activities that have taken place to date from the perspective of the CCC and includes the concerns raised by Piikani Nation and the corresponding the Crown Responses including any new or additional input the CCC has received from other government departments, agencies and NGTL. Piikani Nation's main outstanding concerns related to the Project and the Annex fall generally into three main categories: 1) the Crown Consultation process to date, 2) the project's contribution to cumulative effects within Piikani Nation's ancestral territories and 3) limited access to meaningful project-related economic benefits.

Importantly, Piikani Nation is concerned that the Crown appears to be deferring proposed accommodation measures to future processes with little to no accountability or commitment. Piikani Nation is disappointed that all that is being offered at this point is future, vague, undefined processes that lack concrete mechanisms to ensure accountability should the promises or assumptions not be met.

Our specific comments on the Annex are provided below.

1. Crown Consultation Process

Piikani Nation has been an active Intervenor within the Canada Energy Regulator (CER) Commission's Hearing process and has participated in two rounds of Information Requests (IRs); on May 27, 2021 and January 11, 2022; filed written evidence on September 2nd, 2021; provided Oral Indigenous Knowledge on September 9, 2021; commented on potential conditions on the October 26, 2021; and filed final written argument on the February 15, 2022. Piikani Nation has also met virtually with the Crown Consultation team several times following the release of the CER's Recommendation Report.

In the Annex, the CCC acknowledges that consultations are not complete at this time, and within this post-Recommendation Report phase, the CCC is prepared to hear from and meaningfully consult with communities on potentially outstanding project-related impacts or concerns. The CCC will continue to work with communities to identify community-specific solutions, mitigations, and possible accommodations, where appropriate. During the May 27, 2022 meeting between Piikani and the CCC, the CCC reiterated that it wants to hear from Piikani Nation about the Recommendation report and is committed to meaningfully consult with Piikani Nation.

Although, Piikani Nation looks forward to ongoing meetings with the Crown Consultation team regarding the Recommendation report; we note that the Crown Consultation team has yet to adequately address Piikani Nation's concerns elaborated within our final argument to claim its has adequately discharged the Crown's duty to consult and accommodate for the West Path Delivery 2023 Project.

While the Supreme Court of Canada has made it clear that while the Crown (and the proponent) may rely on a regulatory process to meet the duty to consult and accommodate, they cannot rely on it blindly (*Hamlet of Clyde River v Petroleum Geo-Services Inc.* at para 22.). As stated in our final argument, the parallel processes of engagement from the Crown Consultation team and the Hearing Process Advisory Team has not led to an adequate consultation process. In fact, the parallel processes have made things worse. Instead of providing a backstop to the hearing process, it has led to excessive consultation burden and burnout being placed on participating Indigenous Nations – with little progress being made on systemic issues which have been repeatedly raised in past consultation processes related to NGTL projects. From Piikani Nation's perspective the parallel process seems designed to advance a streamlined process which benefits the proponent and the Crown at the expense of acknowledging the rights of impacted Indigenous Nations. That the Crown Consultation for the Project has largely occurred in vigour within an extremely limited time frame following the completion of the regulatory process, would suggest that the Crown has not yet fully integrated the Supreme Court decision into its approach.

2. Contribution of Project to Regional Cumulative Effects and Impacts to Piikani Nation's s. 35 Rights

In the Annex, the CCC states that a Regional Assessment (RA) could be considered as a measure which could respond to Indigenous concerns related to cumulative effects. The CCC further states that an RA under the Impact Assessment Act is an initiative that, if pursued and approved by the Minister of Environment and Climate Change Canada, could consider some of the cumulative effects and impact

concerns and solutions identified and requested by Indigenous communities that are considered as broader or out-of-scope during regulatory processes.

On the one hand, that the Commission has raised the issue of an RA as a possible way to address concerns related to cumulative effects but on the other, the Crown is unable to actually commit to anything specific, is wholly unacceptable. It is the duty of the Crown to propose an interim plan to deal with cumulative effects in the absence of an RA. The Crown has to have a realistic and actionable plan to deal with cumulative effects and provide details to Piikani Nation about the specific mechanism by which our concerns will be addressed – that should be a bare minimum.

By delaying project-enabled cumulative effects on Indigenous Nations' s. 35 rights deemed too “*broad*” or “*out-of-scope*” to an ambiguously defined future RA, Piikani Nation has no assurance that the Crown is proposing an adequate, or even potentially viable accommodation measure to address our concerns.

3. Meaningful Economic Inclusion

Article 28 of the United Nation Declaration of the Rights of Indigenous Peoples (UNDRIP) states:

- i. Indigenous Peoples have the right to redress by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without free, prior and informed consent.*
- ii. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.*

Throughout Piikani Nation’s active participation in the hearing process for the Project and during Project-related engagement with the proponent, the proponent has yet to demonstrate an adequate understanding of Piikani Nation’s socio-economic needs, capacity and constraints with which to inform a baseline socio-economic assessment in order to advance appropriate agreements related to employment, contracting service agreements, training, and/or business partnerships. Furthermore, the prime contractors used by NGTL have historically not been obligated to the agreements made between NGTL and Piikani. As a result, those economic opportunities which are of interest to Piikani Nation and at the heart of business development interactions with NGTL, continue to remain out of reach to our Piikani Resources Development Ltd. and community entrepreneurs.

The importance of economic participation in reconciliation is further emphasized in the Alberta Court of Appeal decision *AltaLink Management Ltd. v Alberta (Utilities Commission)*. As a Court of Appeals

decision, it is binding law in Alberta and helps to ensure the rights and interests of Indigenous business entities are meaningfully integrated into transmission system decisions. Ongoing reliance by proponents like NGTL on Impact and Benefit Agreements to accomplish this is problematic for several reasons, including the confidential nature of these agreements and the difficulties for Indigenous communities in enforcing them.

Page 22 of the Crown Consultation Annex acknowledges that the Commission *'is not persuaded that the Project will achieve greater levels of economic benefits in comparison to past projects'* and highlights Condition 10 which requires that NGTL publicly report on efforts related to training, employment and contracting opportunities for Indigenous Peoples. This Condition is an acknowledgement of Piikani Nation's overarching concerns about securing meaningful access to economic opportunities and provides a powerful argument for a deeper level of Indigenous oversight given NGTL's tendency to play fast and loose with economic numbers. At the very least, there should be agreement between the Crown and Piikani Nation on which economic numbers are to be tracked and how – including a process for external auditing of those numbers. There is currently no provision for that in the Commission's recommendations, nor is there a remedy if in fact Project-related economic benefits are not sufficient. This is part of Piikani Nation's broader concern of the approach advanced by the Commission and the Crown Consultation team whereby there is 'hope' that the things NGTL says will be true, but no provision of concrete remedies if they are not.

Without more active intervention by the Crown, Piikani Nation's ability to secure economic benefits from the project are diminished or completely overlooked.

Specific Observations, Issues, and Recommendations Related to the CER Recommendations Report

Upon review of the CER Recommendations Report and conditions of approval, Piikani has identified several issues requiring further consideration from the CER. In Table 2 below, Piikani outlines these issues, including how they were addressed by the CER following Piikani's initial assessment on the Project's draft conditions of approval. Final recommendations for rectifying these issues are also provided.

Within Section 1.4 of the Recommendation Report, the CER provided two additional recommendations for the Project. These recommendations include the development of an Indigenous Oversight Cooperative Committee (IOCC) and the establishment of a Regional Assessment (RA) in or around the Project area. While the recommendations are noted to reflect matters of significant concerns to participants in the hearing process, they are described by the Panel as beyond their mandate and scope. As such, the additional recommendations are to be carried forward for consideration by the GIC. Piikani Nation has completed an assessment of these additional recommendations and have outstanding questions and concerns regarding both recommendations and their ability to adequately

address specific concerns advanced by Piikani in relation to the Project's potential impacts on our Aboriginal and Treaty Rights. More details are provided below.

Indigenous Oversight Cooperative Committee

In Section 1.4.2 of the CER's Recommendation Report, Commissioners Côté and Grimoldby recommend that the GIC facilitate the development of objectives to inform the design of an Indigenous Oversight Cooperative Committee (IOCC). In the report, the Commissioners state that the Project does not necessitate an IOCC (or equivalent) and as such, their request is a recommendation (rather than a condition) in the spirit of reconciliation with Indigenous Peoples. Further, the Commissioners emphasized their preference for an IOCC to be a co-developed, cooperative involvement of Indigenous peoples whereby the IOCC would be directly responsive to the interests of Indigenous peoples involved during the Project's hearing.

As per section E, 102 of *Piikani Nation's Final Argument*, Piikani Nation strongly recommended that a *condition* for the Project includes an environmental monitoring committee structure to provide oversight in the monitoring of the NGTL system *as a whole*. This condition would ensure that an appropriate forum exists for all impacted Indigenous Nations to identify concerns and/or opportunities, and assist in monitoring/CER oversight activities. While Commissioners Côté and Grimoldby's recommendation attempts to address cooperative involvement of Indigenous nations, it fails to commit the proponent action and thereby fails to provide any assurance to Piikani and other participating Indigenous Nations that an appropriate forum for addressing our concerns will be established. For this to occur, it is paramount that this recommendation be revised to include firm commitments that such a forum will be developed regardless of the GIC's decision to implement an IOCC.

To date, Crown and proponent-led monitoring programs have proven to be inadequate vehicles for addressing the specific and unique interests of individual impacted Indigenous Nations including Piikani Nation. These programs largely focus their attention on the reporting needs of the proponent and/or the Crown at the expense of Indigenous Nations' obligation to steward and safeguard our territories for future generations. While Piikani Nation is in principle supportive of establishing an IOCC, we suggest that through the process of co-development, impacted Nations will be able to have their specific interests and objectives addressed via their participation in the program.

In addition to Indigenous participation in environmental and cultural monitoring through an IOCC, Piikani Nation has been steadfast in our commitment to achieving greater involvement in monitoring the cumulative effects of development within our ancestral territories that promotes the unique worldview and traditional Knowledge held by Piikani through the Bio-Cultural Monitoring Program (BCMP). This program seeks to provide robust evidence which is used to inform decision making within Piikani Nation and engagement with our expanding network of partners to assist in safeguarding the ecological and cultural integrity of our ancestral territories. Long-term inclusion of the BCMP in

projects within Piikani Nation's ancestral territories has been identified by Piikani Leadership, Elders, Traditional Knowledge Holders and community members as integral to the promotion and protection of Piikani natural and cultural heritage.

In previous discussions between NGTL and Piikani Nation, NGTL rejected Piikani's requests that the BCMP and Piikani-specific approaches to monitoring be incorporated within the scope of the Project and instead our interests are disregarded as we are funneled into NGTL's Aboriginal Construction Participation Program (ACPP). Commission decisions and related Conditions have generally reinforced this exclusion of our specific interests and objectives. As a result, Piikani Nation requests that the Crown dedicate space within each phase of their regulatory timeline (planning, review, construction, operations, and decommissioning) to facilitate greater grassroots involvement of impacted Indigenous peoples in setting Nation-specific Environmental/Cultural Monitoring expectations, including appropriate and workable reporting structures for Crown-mandated Indigenous monitoring programs – be they an IOCC or participation in a proponent-led program like NGTL's ACPP.

Regional Assessment in or Around the Project Area

In Section 1.4.2 of the CER's Recommendation Report, the Commission recognizes the need for the government to take proactive measures to address and monitor cumulative effects to impacted Indigenous Nations' section 35 Rights. Within this recommendation, the Commissions cited Piikani Nation's argument referencing *Yahey v. British Columbia* as precedent for the Crown's responsibility to address these effects. To enact these responsibilities, the Commission recommended that the Minister of the Environment, by way of Section 93 of the Impact Assessment Act (IAA), enter into an agreement with certain jurisdictions to conduct a RA in and around the Project area.

As per Section A3 of *Piikani Nation's Final Argument*, we note that the Project is likely to have significant and long-lasting impacts on our section 35 rights and interests, including significant cumulative impacts in the Project area, adding to an already substantial degradation of Piikani's rights within our ancestral territories. While the recommendation of a RA in and around the Project area represents one avenue for addressing Piikani Nation's concerns, the recommendation as it stands provides no assurance against further erosion of Piikani Nation's section 35 and Treaty Rights as a result of the Project's contribution to cumulative effects in our ancestral territories, as it defers the issue to a future process that may or may not happen and therefore provides zero accountability or commitment.

Importantly, the Commission - and during Crown Consultations, the CCC, provide no direction as to how specific concerns related to cumulative effects are to be addressed in the event that a RA does not move forward. As stated in para. 19 of Piikani Nation's Final Argument, Piikani must be afforded the jurisdiction to determine whether any further development on the eastern slopes and Crowsnest Pass is appropriate or warranted. The proposal to fully rely on an RA to address Piikani Nation's concerns related to the Project's contribution to cumulative effects in our ancestral territories is meaningless as

there is no assurance that it will ever occur and no back-up plan on offer from the Crown if it doesn't. Therefore, the Crown cannot premise meeting its obligations to impacted Rights-bearing Indigenous Nations on the basis of things that may never happen. As such, Piikani Nation is unable to adequately understand how an RA will address our concerns regarding cumulative impacts.

In Piikani Nation's Final Argument submission, we urged for conditions of approval that included robust measures which allow for deep, meaningful, and ongoing participation of Indigenous Nations in the oversight of aspects of the Project that have the potential to affect First Nations' rights and interests. Our recommendations are designed to address systemic issues which remain unaddressed despite our participation in numerous Crown Consultation processes. These systemic issues affect all impacted Indigenous Nations and as such, they need to be addressed otherwise they will continue to be raised during future processes and erode any claim from the Crown that it is doing better. While Piikani Nation looks forward to collaborating in good faith with the Crown in our upcoming meetings on September 13th and 21st, 2022, there remains significant issues of concern relating to Project conditions that do not meet Piikani's standards for conditions of approval described above. Creating a purposeful dialogue that allows for Piikani's meaningful participation in the crown consultation process is critical to ensuring that Piikani's rights and interests are respected. As such, we ask that the Crown to do better in upholding their duty to consult and accommodate and to seek innovative means to address Piikani Nation's concerns in a timely manner to ensure that our rights are protected before the Project is advanced.

Sincerely,


<original signed by>

Ira Provost

Manager

Piikani Nation Consultation and Traditional Knowledge Services

CC:

Megan Crowshoe, Consultation Officer, Piikani Consultation Office

Leroy Crazyboy, Community Engagement Officer, Piikani Consultation Office

Waylon Yellowhorn, Bio-Cultural Monitoring Program Coordinator, Piikani Consultation Office

Angelina Silver, Senior Consultation Advisor, Crown Consultations, Canada Energy Regulator

Matt McPherson, Legal Counsel to Piikani Nation, Olthius Kleer Townsend LLP

Steven Rowe, Senior Advisor, Shared Value Solutions Ltd.

Carrie Breneman, Senior Consultant, Shared Value Solutions Ltd.

Jenna Wolno, Regulatory Analyst, Shared Value Solutions Ltd.

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Impact Assessment Agency of Canada
Dr. Steve Bonnell, Manager of Strategic and Regional Assessments
160 Elgin Street, 22nd Floor
Ottawa, ON K1A 0H3

September 29, 2022

RE: Piikani Nation Support for the Canada Energy Regulator Commission Request for a Regional Assessment

Oki Dr. Bonnell,

Piikani Nation, located in Treaty 7 territory in southern Alberta, has been an active intervenor in the Commission of the Canada Energy Regulator (the Commission) review of the NOVA Gas Transmission Ltd. West Path Delivery 2023 Project (the Project). Piikani has also been an active participant in related Crown Consultations for the Project.

This letter is being sent to you in support of the Commission's recommendation that the Minister of Environment and Climate Change Canada (the Minister) initiate a regional assessment under the *Impact Assessment Act 2019* (IAA), in cooperation with other relevant jurisdiction(s), to address various issues of concern that were raised during the assessment of the Project. These issues are primarily related to cumulative effects on Aboriginal and Treaty rights in the region.

While Piikani Nation is supportive of a regional assessment in areas impacted by the Project, it is important to note our concern that the Crown is deferring proposed measures to address Piikani's concerns related to the Project's contribution to cumulative effects with little to no accountability or commitment. This approach is not aligned with current legal requirements nor is it consistent with the high standards set by the *Yahey v British Columbia (2021)* decision. That the Commission has raised the prospect of a regional assessment as a possible way to address concerns related to cumulative effects while the Crown is unable to commit to anything specific should a regional assessment not occur, is wholly unacceptable. The Crown must have a realistic and actionable plan to deal with cumulative effects and provide details to Piikani Nation about the specific mechanism by which our concerns will be addressed – that should be a bare minimum.

Therefore, in keeping with Piikani Nation's independent submission to the Crown (dated September 29, 2022) and recognizing the limited resources currently available to us, we ask that the Minister proactively approve our request for a regional assessment on the merits of the sum of information brought before the CER Commission during the Project's hearing process by Piikani Nation and other impacted Indigenous Nations.

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As per Section A3 of *Piikani Nation's Final Argument*, we note that the Project is likely to have significant and long-lasting impacts on our section 35 rights and interests, including significant cumulative impacts in the Project area, adding to an already substantial degradation of Piikani's rights within our ancestral territories. Canada's adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) commits the federal government to achieving Free, Prior and Informed Consent and emphasizes the importance of recognizing and upholding the rights of Indigenous peoples and ensuring that there is effective and meaningful participation of Indigenous peoples in decisions that affect them, their communities and territories.

As stated on the Government of Canada's Justice Laws website, "*FPIC is about working together in partnership and respect. In many ways, it reflects the ideals behind the relationship with Indigenous peoples, by striving to achieve consensus as parties work together in good faith on decisions that impact Indigenous rights and interests*"¹. As stated in para. 19 of *Piikani Nation's Final Argument*, in the context of the recent *Yahey* decision, the Crown must put in place a proactive process that addresses widespread Project-related concerns about cumulative effects on Aboriginal and Treaty rights in the region and rights-bearing Nations like Piikani must be afforded the jurisdiction to have a say in whether any further development within our ancestral territories is appropriate or warranted.

In making this request for a regional assessment, Piikani Nation highlights the following issues for consideration by the Minister:

There are a multitude of existing and proposed large-scale projects within Piikani's ancestral territory that are either designated under the Impact Assessment Act 2019, have the potential to be designated, or have recently undergone reviews under the Canadian Environmental Assessment Act 2012 (CEAA 2012). These include:

1. 4 NOVA Gas Transmission Ltd. projects including the West Path 2022 and Westpath 2023, Edson Mainline and NGTL 2021 projects.
2. 3 coking coal projects (Teck Fording River, NWP Coal Crown Mountain, North Coal Michel) advanced jointly by the Impact Assessment Agency (the Agency) and the British Columbia Environmental Assessment Office (BCEAO).
3. The Montem Resources Tent Mountain Redevelopment project currently in the planning phase
4. 3 projects on the northern periphery of Piikani's ancestral territory (Vista Coal Underground Mine Project and Vista Mine Phase II Expansion, Value Chain Solutions Heartland Complex Expansion Project, and the Coalspur Vista Mine Expansion).

¹ <https://www.justice.gc.ca/eng/declaration/about-apropos.html>

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5. 1 project in the designation phase (Summit Mine 14).
6. A series of 3 reservoir expansion projects which were recently ruled by the Minister as not applicable under the Impact Assessment Act (Snake Lake Reservoir Expansion, Deadhorse Coulee Reservoir, Chin Reservoir), though still contribute to cumulative effects on Piikani's Aboriginal and Treaty rights.
7. The Diefenbaker Canal Project in southeast Saskatchewan which Western Economic Development Canada identified in its 2020 Prairie Prosperity Report as requiring an assessment under the Impact Assessment Act 2019 but which the Minister recently ruled as not yet applicable due to a lack of available information.
8. Finally, the Springbank Off-Stream Reservoir project review which was recently completed under CEAA 2012.

These projects represent a fraction of the total amount of development activities in Piikani's ancestral territories which include significant historical losses of land to oil and gas development, mining, agriculture, wind energy, municipal development, expansion of irrigation networks, transportation and communication corridors, and parks and protected areas. The cumulative effects of these developments have largely rendered Piikani's Aboriginal and Treaty rights meaningless as our land users and knowledge keepers are forced to travel great distances and often outside of our ancestral territory to hunt, gather medicines and practice other cultural activities that are integral to our way of life.

Piikani land users and Bio-Cultural Monitors note a significant degradation of fish and fish habitat, and the number of aquatic species and migratory birds typically found in our region. As Piikani's ancestral territory includes regions of 3 provinces (Alberta, Saskatchewan and British Columbia) these impacts are acutely felt across different jurisdictions in Canada and impact the livelihoods and cultural practices of all neighboring Indigenous Nations in Treaty areas 7, 6 and 4.

Any future development in Piikani Nation's ancestral territory needs to be undertaken with an accurate understanding of the baseline conditions that currently exist and the potential to further exacerbate those conditions to the detriment of the natural environment and Piikani Nation's (and others) Aboriginal and Treaty rights. A Regional Assessment would also inform an understanding of what activities and programs would be needed to address and mitigate the negative impacts of development in addition to ensuring greater participation and oversight of impacted First Nations in decision-making in relation to how future projects proceed.

While Piikani Nation's ancestral territory spans a large area (see map below), we request that the Minister initiate a regional assessment only for the Project area which includes the eastern

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slopes and foothills of the Rocky Mountains and adjacent grasslands. Aside from one or two disconnected studies being advanced with federal funding and without Indigenous participation, there are currently no coordinated federal or provincial processes assessing or addressing the issue of cumulative effects of development in our region. The *Yahey* decision explicitly highlights the need for the Crown to proactively address cumulative effects on Aboriginal and Treaty rights. Given the level and intensity of development in our ancestral territories there is a heightened requirement for the Crown to proactively address the limited availability of lands for our exercise of rights. Whatever lands remain in the heart of our ancestral territory are precious and should add to the Crown's sense of urgency to address cumulative effects in our region. To wait until our rights are no longer viable would bring dishonour to the Crown and leave us without remedy – hence the Crown's obligation to act proactively.

For the reasons outlined above, Piikani Nation submits this request for a regional assessment. Furthermore, due to our limited access to resources we urge the Minister to fully consider the input recently collected by the CER's Commission for the Project review from Piikani Nation and our neighbours in determining whether to proceed with a regional assessment. We look forward to answering any further questions the Agency might have and we will continue to assemble relevant data and visuals to support our ability to track and mitigate cumulative effects on our Aboriginal and Treaty rights.

Kind regards,

<original signed by>

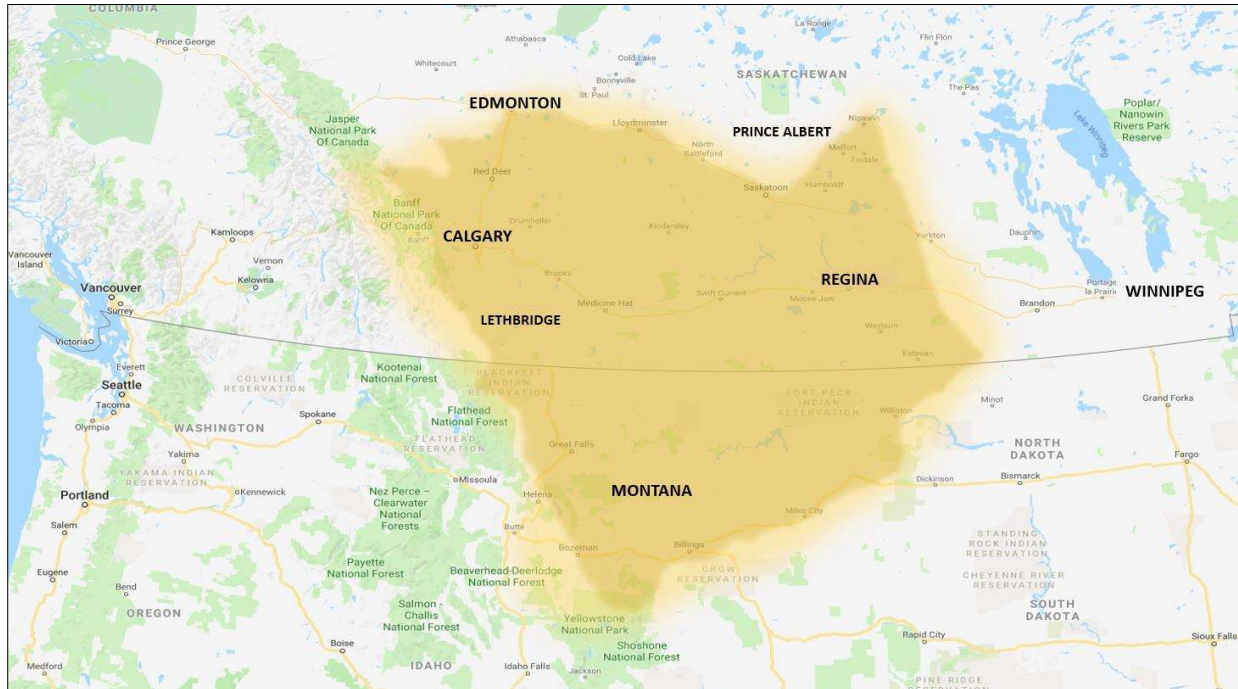
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It should be noted that the map depicting the boundaries of Piikani Nation's traditional territories should be interpreted as a snapshot in time of what is an evolving understanding of the landscapes our ancestors occupied. Maps are inherently colonial constructs that seek to delineate areas that 'belong' to one group or another. This concept of distinct and separate territories with legal boundaries is one that has been imposed on First Nations like Piikani Nation by government authorities. Both in the past and presently, Piikani Nation shares the land with many First Nations throughout the northern plains and into the Rocky Mountain landscape.



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MEMORANDUM

To: FILE
Re: Samson Cree Comments on CER's Recommendations on Regional Assessment and Indigenous Oversight Committee
Date: September 21, 2022

At Section 1.4 of the Commission's Recommendation Report for the NGTL West Path Delivery 2023 Project (May 2022), the Panel set out two additional recommendations regarding (1) an Indigenous Oversight Cooperative Committee (s. 1.4.1), and (2) a Regional Assessment (s. 1.4.2) (together, the "**Additional Recommendations**"). From the Commission's perspective, although the Additional Recommendations fall outside of the Panel's mandate, they are "important as they reflect matters of significant concern raised during the hearing process."

The Canadian Energy Regulator ("**CER**") asked Samson Cree Nation ("**Samson Cree**") to provide comments on the Additional Recommendations.

1. Indigenous Oversight Cooperative Committee ("IOCC")

Samson Cree is very pleased about this Additional Recommendation, because it aligns with the Relief Requested sought by Samson Cree in its Final Argument (February 2022). Samson Cree's Final Argument reads at paragraph 89, in part, as follows:

In the event that the Commission recommends that the Governor in Council approve this Application, Samson Cree submits that the Commission's Report recommend that the Governor-in-Council:

- (a) establish a CER-Indigenous Collaboration Committee, which includes Samson Cree, to oversee the NGTL System and CER Condition compliance ...

Furthermore, Samson Cree agrees with the Commission regarding its distinction that a NGTL system-wide IOCC is better categorized as an Additional Recommendation, instead of a Condition. Notwithstanding the distinction, Samson Cree encourages the CER to use best efforts to coordinate this laudable initiative.

Samson Cree looks forward to helping the CER frame “a pathway to an IOCC via a GIC-facilitated, co-developed process that is responsive, iterative, and meets the needs of its participants.” Samson Cree extends its gratitude to Commissioners Côté and Grimoldby for their views and willingness to learn and listen to Indigenous Groups, including Samson Cree, on ways the CER and the Commission and Canada can take steps to advance reconciliation.

2. Regional Assessment (“RA”)

The CER asked Samson Cree to provide comments on the RA framework, and not whether it agrees with the Panel’s approach to assessing cumulative environmental impacts. These comments are focused solely on RAs, and are without prejudice to any position that Samson Cree may take on the cumulative effects issue including the Commission’s current approach to assessing cumulative environmental impacts.

Section 183(2) of the CER Act sets out a list of considerations that the Commission must take into account prior to making its Recommendation pursuant to Section 184 of the CER Act. Section 183(2), in part, requires the Commission to take into account:

- (a) the environmental effects, including any cumulative environmental effects;
- ...
- (d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
- (e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;
- ...
- (k) any relevant assessment referred to in section 92, 93 [regional assessments] or 95 of the Impact Assessment Act;
- ...

The CER Act already prescribes that one of the Commission’s assessment objectives is cumulative environmental effects. Section 183(2)(k) allows the Commission to take into account a superadded regional assessment, should one be available and related to a Recommendation Report. Although Samson Cree shares the Panel’s view that “outcomes such as that of the Yahey decision can be avoided by governments taking proactive measures”, punting the cumulative environmental effects issue to another federal regulator could limit the Commission’s own ability to taking proactive measures.

That being said, Samson Cree acknowledges that the CER is taking laudable, proactive steps towards collaboration and enhanced engagement. In particular, as you know, Samson Cree’s Final Argument (February 2022) at paragraphs 87 – 88 stated “in the event that the Commission recommends approval, that it also recommends conditions to address these cumulative effects and negotiate a Collaboration Framework with Samson Cree...”. Samson Cree and the CER are working on a Collaboration and Engagement Framework.

However, Samson Cree remains concerned regarding the Commission’s current approach to assessing cumulative effects in a culturally-appropriate manner and taking into account Samson Cree’s inherent and Treaty No. 6 rights, Nipishihkopahk Knowledge, and its *Cumulative Effects on the Aboriginal Rights and Interests of Samson Cree Nation* study, as updated from time to time.

Based on the limited amount of examples, Samson Cree agrees that RAs could inform project reviews in a superadded way by looking at crosscutting issues and cumulative impacts, those that go beyond any one project, assuming that they are based on the best available scientific advice and fully take into account Nipishihkopahk Knowledge and Indigenous Knowledge in a culturally-appropriate manner.

It is in this context that Samson Cree provides the follow comments on the RAs, as requested:

- concurrent with coordinating an Application for a Regional Assessment and notwithstanding the outcome of that Application, the Commission and CER should consider more immediate and direct measures to incorporate Nipishihkopahk Knowledge vis-à-vis cumulative effects and the findings in Samson Cree's *Cumulative Effects on the Aboriginal Rights and Interests of Samson Cree Nation* study
- assuming that the RA would cover topics within the CER's jurisdiction, for which the Commission noted "accounts for approximately one third of the Commission's overall jurisdiction in respect of pipelines" in its Recommendation Report, the RA should be conducted via Committee and the CER and Samson Cree, among others, should be parties to that committee and agreement to establish that committee given their respective expertise
- based on the limited amount of completed RA precedents, the Agency should carefully scope and adopt a step-wise approach to framing the RA – in particular, similar to the Regional Assessment of Offshore Oil and Gas Exploratory Drilling of Newfoundland and Labrador, the initial scope should start by focusing the RA from a planning perspective, with the outcome of a suggested mechanism by which cumulative effects might best be managed¹

Please let Kyra Northwest (kyra@consultsamson.com) and Kaylyn Buffalo (kaylyn@consultsamson.com) know if you have any questions regarding these comments.

¹ Regional Assessment Committee, [Regional assessment of offshore oil and gas exploratory drilling east of Newfoundland and Labrador: Final Report](#), February 29, 2020 at p. 196.



STONEY TRIBAL ADMINISTRATION

Angelina Silver
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Britany Ostridge
Email: britany.ostridge@cer-rec.gc.ca

August 9, 2022

Dear Ms. Silver and Ms. Ostridge,

Re: Stoney Nakoda Nations Comments on the CER Commission Recommendations for an IOCC and RA on the NGTL WestPath Delivery 2023 Project

This letter is sent on behalf of Bearspaw, Wesley, and Chiniki First Nation - the three unique nations that together form the Stoney Nakoda Nations (“SNN”). SNN holds collective rights and interests as recognized by Treaty 7 and the *Natural Resources Transfer Act*, 1930 and protected by Section 35 of the *Constitution Act*, 1982 (“Section 35 rights”).

On July 13, 2022 the CER Crown Consultation Coordinator (“CCC”) requested input from SNN¹ on two recommendations set out by the CER Commission in their *Canada Energy Regulator Report*² (the “Recommendation Report”) on the NGTL WestPath Delivery 2023 Project (the “WestPath 2023 Project”). SNN has reviewed the Recommendation Report and shared preliminary input with the CCC on July 18, 2022 . SNN is now providing written comment on the Commission’s recommendations for an Indigenous Oversight Cooperative Committee (“IOCC”), and a Regional Assessment (“RA”) in the Project area for the CCC’s consideration.

It is SNN’s understanding that the input provided will be shared with the Governor in Council (“GiC”) to inform the decision-making process on the WestPath 2023 Project, and the Impact Assessment Agency of Canada for information surrounding a Regional Assessment in the WestPath 2023 Project area. It is SNN’s expectation that these comments will also foster further dialogue and engagement with the CER and CCC as part of the WestPath 2023 decision-making process.

Indigenous Oversight Cooperative Committee

Firstly, in order for the IOCC to be successful the “oversight” involved must be designated some level of enforceable authority. The outcomes of monitoring activities conducted by the IOCC must bear weight and influence on the operations and management of the NGTL system. This needs to be properly balanced between the CER and Indigenous groups, in a manner that ensures

¹ Via Email

² CER Filing No. C19229-1

Indigenous groups are independent in monitoring activities (i.e., not “employees” of the CER), while being adequately funded and supported by the CER.

Second, SNN has previously experienced challenges in monitoring and oversight groups where processes are proponent led.³ We are concerned that proponent-led processes can compromise the objectivity of monitoring activities. In our experience, pipeline companies can be large organizations with siloed teams of employees; as an example SNN typically deals with different representatives during the hearing process versus the post-approval process. As a result, the same context and understandings of community needs and concerns from the hearing process is lost in the post-approval process. This creates inconsistency between the pre and post-approval stages. As such, SNN suggests that the CER provide more structured, hands-on support in the development of the IOCC to ensure recommendations and guidelines receive follow through and to ensure consistency across the CER’s different processes. To maintain objectivity, the role of NGTL in the IOCC should be limited to facilitating access required for monitoring activities and providing information and project updates as required.

Third, the IOCC must include subcommittees related to emergency preparedness, socio-economic impact monitoring, and cumulative effects. These subcommittees must be focused on incorporating Indigenous knowledge and community needs into oversight and monitoring. These subcommittees must enable the development of plans that address community safety, socio-economic concerns related to the NGTL system, and the cooperative development of cumulative effects monitoring to address any NGTL-related contributions to existing cumulative effects.

Lastly, sufficient capacity is required for Indigenous groups to effectively participate in any oversight and monitoring activities. The NGTL system is extensive and creates a significant consultation burden for SNN to manage the post-approval filings on all projects, in addition to all engagement activities for new NGTL applications and hearings. NGTL’s post-approval capacity must be sufficient for SNN to review and engage on all post-approval activities. Additionally, due to the consultation burden created by the numerous post-approval and regulatory filings from NGTL, it would not be unreasonable for SNN to designate one staff member, or a small team of staff to manage engagement and consultation activities from NGTL’s projects alone. This would require support by NGTL’s post-approval capacity, as well as capacity from the CER that allows for salaried staff time. The CER is currently the only regulatory body that does not allow the use of capacity to fund salaried staff time, which severely limits SNN’s ability to engage and participate in the regulatory process. With respect to the IOCC, such capacity restrictions will limit SNN’s ability to participate in meetings and monitoring and oversight activities. Similarly, if the IOCC is to have different subcommittees (as referenced above for emergency preparedness, socio-economic concerns, and cumulative effects) then the CER must provide funding for the specific programming and tasks within each of these subcommittees.

Regional Assessment

The recommendation by the Commission for an RA will provide important context on cumulative effects in the WestPath 2023 Project area going forward; however, for SNN this does not mitigate

³ SNN cites the Indigenous Working Group (IWG) on caribou as an example. The IWG was struck as a condition on the NGTL 2021 Expansion Project.

impacts or contributions to cumulative effects resulting from the WestPath 2023 Project, if approved.

Another concern for SNN is the time that will be required to scope and complete the RA. SNN recognizes that the CER is taking time to understand the needs and expectations of different Indigenous groups in scoping the RA, however the time required to scope and subsequently complete an RA will take years. As such, it is reasonable to assume that more project applications will be submitted to the CER during this time. The CER must determine how to reconcile an RA in progress with new applications for development in the area. Project applications and assessments may be limited without the complete information and context provided by the RA. This must include consideration for pausing applications until results from the RA become available and requiring proponents to utilize RA results in their Project Applications and Environmental and Socio-Economic Assessments (“ESA”). Otherwise, projects and their potential contributions to cumulative effects will be inaccurately contextualized and predicted, resulting in more a severe cumulation of impacts to the land and SNN’s Section 35 rights.

Most importantly, the RA must be **completed to inform the planning and management of** cumulative effects experienced by Indigenous groups resulting from substantial existing development in their traditional territories; it must be a **comprehensive analysis** that contemplates **and informs** future projects and the interactions with existing cumulative effects **to produce a fulsome baseline**. In its request for feedback to SNN, the CCC provided questions to address the informational requirements in the Impact Assessment Agency’s *Operational Guide: Requesting a Regional or Strategic Assessment under the Impact Assessment Act*. In addition to the comments above, SNN has provided input on these questions below.

1. *What regional boundary would your community like to see a potential RA completed for?*

SNN is in the process of defining a cultural assessment area for use and context in the regulatory impact assessment process. Any regional boundary for the RA should encompass SNN’s cultural assessment area. Additionally, SNN suggests that the CER work with NGTL’s to understand their short and long-term development plans. The CER, in collaboration with Indigenous groups, can identify the areas between the 5- and ten-year range where the most development is anticipated to occur, and execute the RA in those areas. For SNN it would be essential to assess areas that fall within SNN’s cultural assessment area. The results of the RA can then apply broadly to the NGTL system in the future.

2. *Does development in the region have the potential to cause adverse impacts to the rights of Indigenous peoples? If so, please elaborate.*

SNN understands that the CER is attempting to engage on the IAAC’s information requirements for an RA application, however SNN rejects the premise of this question. This region has already been recognized by the CER as significantly disturbed, and adverse impacts to the rights of Indigenous peoples already exist. The CER recognized the significant disturbance in NGTL’s system expansion areas in the WestPath 2023 Recommendation Report. Here, the Commission notes:

The Commission accepts that existing developments have already contributed significantly to effects on the exercise of rights (as submitted by NGTL and Indigenous peoples) and the

position advanced by Indigenous peoples that appropriate engagement should have begun generations prior. (p. 97)

Notwithstanding, this project was recommended for approval.

Similarly, in the Commission's Recommendation Report for the 2021 NGTL System Expansion Project from 2020⁴, the Commission states:

The Commission is of the view that the existing cumulative effects on TLRU could be significant in certain areas of high development. The Commission recognises how ongoing and potential cumulative effects can have lasting cultural implications.... the Commission notes that the nature of the Project [NGTL 2021] and the environmental context- multiple looping of an existing pipeline, in an area of substantial developments from a number of industries. (p. 145)

This project was still recommended for approval, and later received a certificate of approval from the GiC.

Similarly, in their Recommendation Report for the NGTL Edson Mainline Expansion project in 2021⁵, the Commission noted:

The Commission notes the concerns raised by Indigenous peoples about the impact of cumulative effects on TLRU in the regions affected by the Project, and what impacts this then creates relative to the ability of Indigenous peoples to continue to use the lands and resources for traditional purposes...The Commission acknowledges these concerns and recognizes that many may be longstanding unaddressed concerns...(p. 188)

This project was still recommended for approval, and later received a certificate of approval from the GiC.

In *Yahey v. British Columbia (2021 BSCS 1287)*, the Court found that the Province of British Columbia had failed to adequately manage the cumulative effects in Treaty 8 to Section 35 rights resulting from unfettered development of the area; as a result, the Court found that treaty was infringed. The situation is not different in Treaty 7; the federal government and Province of Alberta have not adequately managed cumulative impacts to Section 35 rights and have continued to approve development activities that continue to impact these rights. Any new development creates significant strain on SNN's ability to exercise their Section 35 rights in their preferred manner. SNN has also identified at numerous times throughout these different projects that members are finding it increasingly difficult to exercise their Section 35 rights due to the extensive development in SNN's traditional territory:

...but this new generation...new ranchers, new owners, they don't understand nothing about our rights in this country. So, that hurts us a lot cause before – the ranchers that were there before – we used to work with them. We used to cooperate with them really good. (SNN Section 35 Impact Assessment Report⁶, p.62)

He says it's totally different from when he was younger...today it's more strict, a lot [more] difficult to hunt, even to get to the animals. And that sometimes wardens will ticket them, then they'll lose the meat too. They just don't consider that that's food for their family. So,

⁴ CER Filing No. C04761-1

⁵ CER Filing No. C09740-1

⁶ CER Filing No. C14767-2

it's a lot strict, a lot [more] difficult than it was 50 years ago. (SNN Section 35 Impact Assessment Report, p.62)

Well, I think I really shared that it took away my Family camping area that has been there forever. When people come here, like your people, they assure us "No we aren't going to bother you – you can hunt there all that you want". But, they put restrictions behind our back. (Stoney Nakoda Nations - Bearspaw First Nations, Chiniki First Nation, Wesley First Nation Section 35 Rights Assessment Report for the Nova Gas Transmission Ltd. NGTL 2021 System Expansion Project)

The Stoney people are scared to go out on the lands due to the unknown risks of being fined or charged. Currently, areas such as outlined on this map are not accessible by Stoney, because it would be a trespassing zone. And these lands were our once traditional lands. (Canada Energy Regulator Hearing Transcript for the NGTL Edson Mainline Expansion Project⁷, para 525)

SNN's Impact Assessment Report for the WestPath 2023 project also identifies how SNN members have experienced impacts to their Section 35 rights as a result of environmental changes and increased land disturbance. Potential adverse impacts to SNN's Section 35 rights are detailed through an effects assessment to SNN-specific VCs in Section 5 of SNN's Report. Broadly, SNN found that further reduction to the limited availability of lands, a decrease in preferred conditions of members to exercise Section 35 rights, and subsequent increase in avoidance behaviours create significant long-term impacts that are felt across generations.

3. *Does current and future development in the region have the potential to cause adverse effects, including cumulative effects, to:*
 - a. *Wildlife*
 - b. *Changes to environment on Crown lands*
 - c. *Changes to the environment that occur in a province or territory other than the one where the project is taking place*
 - d. *Changes to the environment that could affect Indigenous peoples*
 - e. *Any changes occurring to health, social, economic conditions of Indigenous peoples.*

As in question #2, SNN also rejects the premise of this question. The CER is already aware of and has evidence of impacts to wildlife such as caribou, as evidenced by the IWG as a condition of approval on the NGTL 2021 Expansion Project. SNN remains concerned about changes in the safety of other culturally significant species such as moose and bears and members continue to experience increasing difficulty in accessing wildlife and other harvested resources. This is due to an increase in land dispositions within SNN's traditional territory and increased disturbance-related avoidance buffers. This increase in avoidance negatively impacts SNN's ability to access important cultural sites to exercise Section 35 rights (see Sections 5.3 Cultural Security and Identity in SNN's Impact Assessment Report). The significant disturbance on Crown land and increase in land dispositions negatively impacts SNN's ability to access areas that are important for this exercise of Section 35 rights; this was also recognized by the Commission in its Recommendation Report for the WestPath 2023 Project:

The Commission acknowledges that existing cumulative effects on the exercise and practice of rights of Indigenous peoples are already substantial in the RAA because of

⁷ CER Filing No. C04245-1

alterations by anthropogenic land uses (e.g., agricultural conversion, private land conversion, forest harvesting, oil and gas production, and linear development). (p. 121)

Importantly, SNN's Report also identifies how current development creates concerns for the health and safety of SNN members. SNN has experienced pipeline accidents in 2009 and 2010, where high concentrations of H₂S and natural gas were released into the atmosphere and blown into SNN's reserves. Given the remote nature of some of SNN's reserves, the lack of cellular reception on reserve and off reserve while exercising Section 35 rights, and the fact that many SNN members' primary language is Îyethka, the impacts to SNN health and safety are significant. See Section 6.1 Accidents and Safety of SNN's Report for more details.

4. Are there environmentally or otherwise sensitive areas or components in the region that might be affected by development? If so, please elaborate.

It is SNN's experience that the entire ecosystem within the area is under significant stress due to over-development in the region, and SNN is concerned with the ecosystem's ability to support the exercise of Section 35 rights in the present day and for future generations.

5. Can your community please provide an explanation of why a regional assessment should be conducted in the region?

In their Recommendation Report on the WestPath 2023 project, the CER Commission justified the necessity for an RA by acknowledging the significance of the *Yahey* decision and the concerns related to cumulative effects heard from different participating nations:

[SNN] cited the same case [*Yahey*] to suggest there are flaws in the ways in which such effects [cumulative effects] are currently assessed...As to a broader context of these arguments, the Commission is of the view that outcomes such as that of the *Yahey* decision can be avoided by governments taking proactive measures to address the type of holistic concerns raised here. (p. 10)

The Commission can...observe that the concerns we have heard in this hearing, and likely to repeated elsewhere in future hearings, are not simply going to fade away. (p. 11)

Yahey v. British Columbia (2021 BSCS 1287) has set a legal precedent that recognizes the significant adverse cumulative effects in Treaty 8 territory that breach Crown promises made in treaty and calls on the Crown to halt unfettered taking up of lands and develop an appropriate means of assessing cumulative effects. The cumulative effects to SNN's Section 35 rights as a result of extensive, unconstrained development in Treaty 7 and SNN's traditional territory are deeply felt by SNN's members. The Crown, at both federal and provincial levels, must act beyond recognition of these significant cumulative effects and develop a process to address these cumulative effects in collaboration with Indigenous groups, as well as a process to begin ameliorating these impacts (such as Crown land offsetting or the designation of protected cultural areas).

6. Can you please share you communities' views about the main issues and activities to be considered in the regional assessment?

For SNN, an issue of priority is the excess of disturbance and land dispositions and how these bar SNN members from accessing important harvesting and cultural sites for the exercise of Section 35 rights. The RA must consider existing land dispositions and private land titles, and how further development will interact with these existing disturbances to exacerbate impacts to

SNN's Section 35 rights. This includes impacts to safe, undisturbed access to spiritual sites, family camps, and harvesting sites.

7. What are your communities' views on what a regional assessment would accomplish?

As previously stated, an RA would provide an appropriate and realistic context for existing cumulative effects in the region by which proponents propose future development in the area must be required to utilize in their project impact assessments. Additionally, results from an RA can help inform programs and initiatives to begin ameliorating existing impacts in the region in consultation with Indigenous groups (i.e., Crown land offsetting, the designation of protected cultural areas, etc.).

8. How would it be useful in informing future impact assessments and decision?

See response to Question #7. Proponents must be required to incorporate the results from the RA into their applications to ensure existing cumulative effects are accurately contextualized and represented. Additionally, these results will provide important information for proponents to understand the significant existing impacts to SNN's Section 35 rights and inform mitigation and accommodation measures. In terms of decision-making, an RA must be used by the CER Commission and GiC to consider the significance of impacts to Indigenous Section 35 rights and how these are weighed against western values such as economic development.

9. What engagement and technical activities and/or efforts would your community like to see occur to gather information as part of a potential RA?

As outlined in Question #1, in order for SNN to participate effectively there must be adequate capacity provided by the CER that accounts for salaried staff time. Similarly, funding should also be provided to Indigenous groups to conduct cumulative effects assessments on their Section 35 rights, which will ensure SNN can identify historic baselines relevant to their Section 35 rights and ensure that existing cumulative effects to SNN's Section 35 rights are accurately represented and contextualized. The accurate representation of impacts to Section 35 rights can also be supported through a Technical Advisory Committee that includes the review and input from impacted Indigenous groups on any benchmark deliverables throughout the process.

10. What is the governance structure your community would like to see in place for engagement, guidance, and decision making on development of a potential RA, should the Minister of ECCC decide to approve the request?

SNN would like to see collaborative decision-making between Indigenous groups, the IAAC, and the CER with respect to the development of an RA, provided for by a partnership agreement (see Section 114(1)(e) of the *Impact Assessment Act*), and defined within a Terms of Reference. Indigenous groups must be given decision-making power in the RA process to support Indigenous self-governance and self-determination, and to ensure the RA accurately reflects cumulative effects to Section 35 rights, as well as accommodations for impacts to these rights.

Conclusion

Generally, while SNN is pleased to see recommendations for an IOCC and RA in the Commission's Recommendation Report, SNN also recognizes that the Commission has stopped

short of making these conditions of approval. Further, SNN notes, that neither an IOCC nor an RA are a means of accommodating the impacts to Section 35 rights. The IOCC and RA must be carried out in a manner that promotes the understanding of impacts to Section 35 rights to support mitigation and accommodation. It is SNN's hope that the comments provided above will be used to inform the collaborative development of the IOCC and RA and foster further communication with the CER and CCC.

Sincerely,

<original signed by>

William Snow

Acting Director of Consultation
Stoney Tribal Administration

Cc: Doug Rae – Rae and Company via Email