

**NOVA Gas Transmission Ltd. (NGTL)
Section 58 of the *National Energy Board Act* Application
for the West Path Delivery Project (Project)**

**GH-002-2018
File OF-Fac-Gas-N081-2018-01 01**

**Stoney Nakoda Nations
(Bears paw, Chiniki, and Wesley First Nation)**

**Information Request No.1 to Government of Alberta –
Alberta Department of Justice**

Filed October 31, 2018

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Potential Project Effects to Stoney Nakoda Nations' (SNN) Aboriginal and Treaty Rights

1.1 Land required for Burton Creek compressor station unit addition and its alternate location

- Reference:**
- i) A93109-1, NGTL, Additional Written Evidence, Section 3.3, 4.3
 - ii) A94068-8, NGTL, Response to Stoney Nakoda Nations Information Request No.1, SNN 1.5 j), k) and l)
 - iii) A94752-2, SNN, Intervenor's Report, West Path Delivery Project, page 13
 - iv) Livingstone-Porcupine Hills Land Footprint Management Plan, Government of Alberta, Page 12, 25
 - v) A95012-1 18-10-19, GH-002-2018 Hearing Transcript Volume 4
 - vi) A94971-2, SNN, Land Disposition, Aboriginal Consultation Office Letter
 - vii) FNC201803650 ACO Consultation Notification to SNN, NGTL
 - viii) FNC201803654 ACO Consultation Notification to SNN, NGTL

Preamble: Reference i) states that NGTL has proposed and has been conducting engagement on a potential alternate location for the applied-for Burton Creek compressor station.

Reference ii) states that should NGTL construct at the Burton Creek CS Alternate Location, NGTL will require 48.57 acres of permanent land rights located on NE 13-12-2 W5M and SE 13-12-2 W5M which is unoccupied Crown land. Further, if there is insufficient space for a co-located camp at the Burton Creek CS Alternate Location, NGTL may choose to utilize the 13.34-acre temporary camp location applied-for in association with the Burton Creek CS Unit Addition.

SNN holds Section 35 Rights, including Aboriginal rights and asserted Aboriginal title; Treaty No.7 rights; and *Natural Resources Transfer Agreement, 1930 ("NRTA")* rights as recognized and affirmed by Section 35 of *the Constitution Act, 1982*. The proposed Burton Creek CS alternate location is located entirely on unoccupied Crown land that lies within traditional territory of the SNN. As such, SNN's Section 35 rights are applicable to the land in question.

Reference iii) states that the Burton Creek CS alternate location is proposed in the Porcupine Hills Public Land Use Zone ("PLUZ"). The Porcupine Hills PLUZ is legislated under the *Public Lands Administration Regulations, 2011* ("PLAR") and its management is guided by the Livingstone-Porcupine Hills Land Footprint Management Plan, 2018 ("LFMP") and the Livingstone-Porcupine Hills Recreation Management Plan, 2017 ("RMP"). The objective of creating the Porcupine Hills PLUZ is to "minimize the extent, duration and rate of cumulative footprint to achieve landscapes with healthy, functioning ecosystems..." It is further understood that SNN members have an unencumbered right of access to the Porcupine Hills PLUZ for the exercise of Section 35 rights.

Reference iv) Section 4.1.1 states that the Livingstone and Porcupine Hills areas provided sustenance, materials, medicines and sacred places for First Nations since time immemorial and is expected to continue to do so for generations yet to come. Indigenous communities are intimately connected to the land and are therefore their ancestral, traditional, and continued uses of public lands are at risk from the impacts of climate change, industrial development and unmanaged recreational use.

Reference iv) Section 1.3 states that the LFMP is also intended to implement the principles of the United Nation Declaration on the Rights of Indigenous Peoples (“UNDRIP”) in a way that is consistent with Canada’s Constitution and with Alberta law. Further, according to the South Saskatchewan Regional Plan (“SSRP”), footprint planning includes approaches and requirements related to the intensity of linear footprint and mandatory use of Integrated Land Management (“ILM”) as provincial guidance. Reference iv) goes on to state that it is the responsibility of the Government of Alberta (“GOA”) to enact decisions consistent with the priorities identified in Section 1.3.

Further, the mandatory practices of the ILM require the use of siting criteria to determine the suitability of a location when developing new footprint. Reference iv) Section 2.3 lists the elements to be considered in siting to avoid valued features, which specifically include “Indigenous Peoples ancestral, traditional and continued use sites and other sites of cultural significance”.

To provide a system to minimize rate of linear and patch footprint development, reference iv) Section 3.3 provides that “enable accessible and relevant opportunities for the participation of Indigenous peoples in land-use planning and input to decision making” as the objective. Specific actions include “partner with First Nations to appropriately collect, use and apply Traditional Ecological Information and Traditional Land Use information...” and “consider and implement buffers or other mechanisms to protect traditional use sites and sites of cultural significance while maintaining access if appropriate for the sites”.

Reference iv) Section 4.1.1 states that implementation of the LFMP is expected to be consistent with First Nations ability to continually exercise their treaty rights and to acknowledge and maintain the relationship that Indigenous Peoples have with the land and the importance of their activities on that land.

Reference v) states that the whole area of Porcupine Hills is a spiritual area and a harvesting area. In addition, Elder Daniels spoke about the loss of access to some of his family territories. Other Elders are concerned about the impacts to culture by being unable to be on the land.

Reference vi) states that pursuant to Treaty No. 7, “the Government of the country, acting under the authority of Her Majesty and saving and excepting such Tracts as may be required or taken up from time to time for [*sic*] settlement, mining, trading or other purposes by Her Government of Canada; or by any of Her Majesty's subjects duly authorized therefor by the said Government.” The “taking up” of the above-noted lands for the purposes of a

compressor station will eliminate SNN's ability to exercise their treaty rights on those lands. There are no longer sufficient alternative lands where the SNN members may exercise their Section 35 rights.

Reference vii) and viii) state that the GOA's Aboriginal Consultation Office has directed NGTL to consult on the proposed "*Burton Creek Compressor Station Expansion*". As the Intervenor in the Project, SNN is concerned about *Public Lands Act* disposition applications for the Burton Creek CS preferred and alternate locations that are being contemplated by the Government of Alberta.

Request:

- a) Please specify how the GOA manages for the amount of land available in the area of Porcupine Hills for the exercise of Section 35 rights.
- b) Please specify how the GOA manages for the amount of land available in Treaty No.7 for the exercise Section 35 rights.
- c) Please indicate how the GOA will identify impacts on SNN's Section 35 rights.
- d) Please describe how the GOA considers the cumulative impacts on SNN's exercise of Section 35 rights in the Porcupine Hills area.
- e) Please describe how the competent GOA departments, i.e. Alberta Environment and Parks and Aboriginal Consultation Office, will contemplate and apply the principles and mandatory practices specified in the LFMP as noted in the above preamble in the decision-making process of the *Public Lands Act* disposition application for the Burton Creek CS preferred and alternate locations? In particular, the siting criteria to avoid valued features including "Indigenous Peoples ancestral, traditional and continued use sites and other sites of cultural significance".
- f) Given that Porcupine Hills is a spiritual area and a harvesting area for SNN which is at risk for the continuous use of its future generations, what is the action plan of the GOA to protect traditional use sites and sites of cultural significance to SNN and SNN's unique cultural values?
- g) If the proposed *Public Lands Act* disposition application for the Burton Creek CS preferred and alternate locations is approved, what is the GOA's plan to mitigate and accommodate the impacts to SNN's exercise of Section 35 rights on these lands? What is the GOA's plan to renew relationships with Indigenous Peoples and to implement the principles of the UNDRIP?

1.2 Horizontal Direct Drilling (HDD) crossings of the Springbank Off-stream Reservoir Project

- Reference:**
- i) Alberta Transportation, <http://www.transportation.alberta.ca/sr1.htm>
 - ii) A89944-2, NGTL, Project Application, Section 4.1.4 and 4.1.7.6
 - iii) A94068-8, NGTL, Response to Stoney Nakoda Nations Information Request No.1, SNN 1.14

Preamble: Reference i) states that Alberta Transportation has proposed the Springbank Off-stream Reservoir (“Springbank Project”) and submitted the updated Environmental Impact Assessment (“EIA”) to the Canadian Environmental Assessment Agency (“CEAA”) at the end of March 2018.

Reference ii) states that TransCanada and Stantec (consultant for the design of the Springbank Project) have been in communication regarding the Springbank Project since 2015, as the existing Western Alberta Service Main Line (“WASML”) and Foothills Zone 7 Pipeline will be impacted by the proposed diversion channel crossing. As a result, a trenchless methodology (HDD) is proposed for the Project in order to cross the proposed diversion channel of the Springbank Project. Further, NGTL stated that the Project will continue its engagement with Alberta Transportation as the Project and the proposed Springbank Project progress to understand interaction between these two projects and identify opportunities to mitigate potential impacts.

Reference iii) states that it is unlikely any flood mitigation measures for the Bow River (the flood control reservoir) would affect the Rocky View Section crossing the Bow River.

- Request:**
- a) Given the interactions between the Springbank Project and the West Path Delivery Project in terms of crossing the diversion channel of the Springbank Project, please describe how cumulative effects to the exercise of SNN Section 35 rights in the region are considered by Alberta Transportation under the EIA.
 - b) Please provide details regarding how Alberta Transportation and NGLT plan to identify mitigations for potential impacts including cumulative impacts to SNN Section 35 rights.