



# DONOVAN & COMPANY

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12 November 2015

**VIA ELECTRONIC FILING and EMAIL: [sher.young@neb-one.gc.ca](mailto:sher.young@neb-one.gc.ca)**

National Energy Board  
517 Tenth Avenue SW  
Calgary, AB T2R 0A8

**Attention: Sheri Young, Secretary to the Board**

Dear Ms. Young:

**Re: NOVA Gas Transmission Ltd. (NGTL) Certificate GC-125  
North Montney Mainline Project (Project)  
Request to Participate in the Public Hearing on the Proposed Detailed  
Route**

We are legal counsel to Saulteau First Nations (SFN). We write on behalf of SFN to request an opportunity for SFN to participate in the hearings ordered by the National Energy Board (Board) to receive submissions concerning statements of written opposition filed in response to the detailed route proposed by NGTL for the Project.

The Aitken Creek section of NGTL's proposed detailed route will run through the Peace Moberly Tract (PMT), the Area of Critical Community Interest (ACCI), SFN registered trap lines TR0732T006 and TR0732T005 and other areas utilized by SFN members for traditional land use purposes both north and south of the Peace River. SFN members exercise aboriginal and treaty rights in these areas and SFN rights and interests may be impacted by changes to the detailed route. SFN is concerned that changes to the route or the location of the Groundbirch Compressor Station may further impair the already diminished ability of SFN members to exercise their aboriginal and treaty rights in affected areas. SFN has a direct interest in the outcome of the public hearings on the detailed route and wishes to provide submissions to the Board to ensure that the Board has the necessary information to make an informed decision about the potential impacts of any changes on the rights and interests of SFN.

SFN has not been contacted by the British Columbia Hydro and Power Authority (BC Hydro) regarding the revisions to the detailed route that BC Hydro will be seeking at the

public hearing. SFN is concerned that the potential changes to the detailed route proposed by BC Hydro may exacerbate cumulative effects in the area or result in increased access to sensitive areas.

SFN is also concerned that if SFN is not permitted to participate in the hearings changes may be made to the detailed route without consultation with SFN on the potential adverse impacts on SFN aboriginal and treaty rights. Similar considerations may apply to potential changes to the location of the Groundbirch Compressor Station and/or the associated infrastructure.

### **Procedural Background**

On June 11, 2015, the Board issued NGTL Certificate of Public Convenience and Necessity GC-125 authorizing the construction of the Project. On June 17, 2015, NGTL filed a draft plan, profile and book of reference for the pipeline (PPBoR) pursuant to paragraph 33(1) of the *National Energy Board Act* (Act). On June 23, 2015, the Board approved NGTL's PPBoR.<sup>1</sup> NGTL then published and served public notices of the detailed route.<sup>2</sup>

Following the public notices, there was a 30-day comment period. During the comment period Mr. Brooke and Ms. Cobbaert,<sup>3</sup> BC Hydro<sup>4</sup> and the Canada Sukunka Coal Corporation (Sukunka Coal)<sup>5</sup> filed Statements of Written Opposition to the detailed route pursuant to paragraphs 34(1)(a) and (b) of the Act. NGTL responded to the submissions on July 24, 2015<sup>6</sup> and August 27, 2015.<sup>7</sup>

On October 20, 2015, the Board informed the parties that it would hold a public hearing on NGTL's proposed detailed route for the Project.<sup>8</sup> The Board granted BC Hydro and Mr. Brooke and Ms. Cobbaert the opportunity to make submissions on the detailed route. The Board rejected the relief requested in Sukunka Coal's Statement of Written Opposition on the basis that Sukunka Coal's two pending coal license applications did not satisfy the criteria for Sukunka Coal to be considered an "owner of lands" and a "person who anticipates that their lands may be adversely affected by the proposed detailed route of a pipeline" within the meaning of paragraphs 34(3) and (4) of the Act.

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<sup>1</sup> NEB Letter to NGTL (June 23, 2015), NEB Filing ID: A4Q9K7.

<sup>2</sup> NGTL Notices for Service and Publication and Covering Letter (July 24, 2015), NEB Filing ID: A4R707.

<sup>3</sup> Brooke and Cobbaert Statement of Written Opposition, NEB Filing ID: A4R7C2.

<sup>4</sup> BC Hydro Statement of Written Opposition, NEB Filing ID: A4S8A6.

<sup>5</sup> Sukunka Coal Statement of Written Opposition, NEB Filing ID: A4S8S9.

<sup>6</sup> NGTL Response to Brooke and Cobbaert, NEB Filing ID: A4R7C2.

<sup>7</sup> NGTL Response to BC Hydro, NEB Filing ID: A4S9R4; NGTL Response to Sukunka Coal NEB Filing ID: A4S9R6.

<sup>8</sup> NEB Letter to Brooke and Cobbaert (Oct. 20, 2015), NEB Filing ID: A4U6F0; NEB Letter to BC Hydro (Oct. 20, 2015), NEB Filing ID: A4U6E8.

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**Proposed Aitkin Creek Section and Groundbirch Compressor Station**

The proposed Aitkin Creek section of the Project traverses the PMT, the ACCI and other lands relied upon by SFN for traditional land use purposes. Many SFN members rely on treaty-protected practices for subsistence and a significant portion of their household income.<sup>9</sup> SFN has filed extensive written evidence with the Board concerning SFN traditional land use in areas proximate to the proposed detailed route.<sup>10</sup> The SFN evidence provides high level information to the Board about SFN traditional land use in areas that may be impacted by the Project. SFN wishes to have the opportunity to supplement that information with additional information specific to possible changes to the detailed route of the Project. As the sole source of information about SFN traditional land use, SFN is in a unique position to assist the Board to reach a determination on the “best possible detailed route” as required pursuant to paragraph 36(1) of the *Act* by providing the Board with information relating to the potential impacts of changes to the detailed route on SFN rights and interests.

SFN notes that BC Hydro’s Written Statement of Opposition expresses concerns relating to the impacts of the proposed route of the Aitkin Creek section. In particular, BC Hydro is concerned about the impact of erosion where the pipeline crosses the Peace River:

Where the proposed route crosses the south bank of the Peace River, the pipeline is in the erosion impact line and below the Maximum Normal Reservoir level. Adequate erosion protection measures must be implemented and include measures that address the potential for erosion to undermine soils under the line.<sup>11</sup>

It is possible that adjustments to the Peace River crossing may impact the horizontal directional drilling entry and exit points or the location of Project components within the PMT. SFN has stressed the importance of protecting the PMT throughout the hearings and changes to the detailed route of the pipeline may have direct impacts on the PMT. SFN is also concerned the modifications to the Project north of the Peace River such as increased separation distances or the development of permanent crossings and access points may have adverse effects on SFN traditional land use.

BC Hydro has also raised concerns relating to the potential interaction of the Project with the construction of the Site C hydroelectric project. On this point, SFN is concerned about the effects of the interaction between the Project and BC Hydro Site C project on SFN’s community land use and access to traditional land use areas. Changes in the

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<sup>9</sup> SFN Written Evidence, C31-04-03, Report of the Joint Review Panel, Site C Clean Energy Project at p 137.

<sup>10</sup> See SFN Interim Knowledge and Use Review at Exhibits C31-12-38 to C31-12-42, SFN Knowledge and Use Study Exhibits C31-36-3 to C31-36-14 and transcript evidence of Saulteau First Nations members.

<sup>11</sup> BC Hydro Letter, Aug 20, 2015, Written Statement of Opposition at p 4.

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detailed route of the pipeline may open up new access to areas of concern to SFN and SFN wishes to provide submissions relating to the potential impacts of any changes on SFN rights and interests and possible mitigation measures.

As the location and time of the hearing have yet to be determined, SFN requests that the Board forward SFN this information when it becomes available. SFN also requests the opportunity to participate in any pre-hearing information or alternative dispute sessions that may be organized by the Board.

We thank the Board for its consideration of this request.

Yours truly,

DONOVAN & COMPANY



Jesse McCormick  
JM/mav

cc: Naomi Owens, Treaty & Lands Director and Biologist Saulteau First Nations  
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