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February 15, 2017

Filed Electronically

National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

Attention: Ms. Sheri Young, Secretary of the Board

Dear Ms. Young:

**Re: NOVA Gas Transmission Ltd. (NGTL)
Albersun Pipeline Asset Purchase (Application or Acquisition)
Hearing Order GHW-001-2016 (Hearing Order)
Board File OF-Fac-Gas-N081-2016-04 01
Response to Bigstone Cree Nation (BCN) Request for Extension of Time**

NGTL is writing in response to BCN's letter of February 10, 2017 seeking an extension of time to review the documents, engage technical expertise, file Information Requests (IRs) and file technical evidence.¹ NGTL is of the view that BCN's request is unwarranted for the reasons below and should be denied given the nature and scope of the Acquisition. BCN has already had an opportunity to file evidence and its request for an extension of time was not brought forward in a timely manner. Granting BCN's request would lead to further delay, beyond that arising from BCN's opportunity to submit oral traditional evidence. If BCN's request is granted, the resulting delay to the schedule will prejudice NGTL and Suncor.

Nature and Scope of Acquisition

NGTL's Application is for the approval of the purchase of the Albersun Pipeline, which has been operating since the 1960s. The Application is essentially a paper transaction, transferring ownership of the facility from Suncor to NGTL. As noted in the Application, the assets being purchased are located on an existing right-of-way (ROW) and brown field site. The limited physical work required by NGTL to complete the transfer of the facility is a small excavation to facilitate a cut and cap of the pipeline at one location. Based on the findings in the Environmental and Socio-economic Assessment, the purchase and associated NGTL activities are not expected to have a significant adverse effect on any biophysical or socio-economic elements. The limited physical isolation work proposed as part of the Application will take place

¹ NEB Filing ID: A81700.

on previously disturbed ROW. Given this and the limited spatial and temporal extent of the works, including mitigation measures to be applied, no significant residual effects are expected in the vicinity of the Albersun Pipeline.²

Issues Could Have Been Raised Earlier and BCN Has Filed Evidence

The Board set a deadline of October 31, 2016 for interested parties to seek Intervenor status. On November 21, 2016, the Board issued Hearing Order GHW-001-2016 which set out the hearing process. On November 28, 2016, nearly one month after the deadline, BCN sought late Intervenor status for the Application. On December 6, 2016, the Board granted BCN's late request for Intervenor status, and NGTL subsequently provided BCN a copy of the Hearing Order and its appendices as per the direction of the Board. In the Board's Ruling granting BCN Intervenor status, the Board noted that there would be no prejudice to NGTL or other Participants if BCN's request was granted.

BCN has been aware of the deadlines in the Hearing Order since at least December 6, 2016 and BCN did not bring forward this concern or request at the time. BCN filed its written evidence on January 17, 2017, and again it did not raise any concerns with the hearing schedule. NGTL submits that BCN has had an opportunity to review the documents, engage technical expertise, seek to ask IRs and file evidence since December 6, 2016. NGTL is of the view that BCN did not bring forward their request and raise issues in a timely fashion. In addition, on February 2, 2016 the Board offered BCN the opportunity to provide oral traditional evidence. As BCN has already filed its written evidence outlining its concern, approval of BCN's request would, in effect, give BCN an additional opportunity to supplement its evidence. As such, an approval would undermine the certainty of process and the principles of procedural fairness.

Materiality and Relevance of Proposed Evidence Not Established

NGTL has engaged with numerous stakeholders regarding the Application and 11 Aboriginal communities who were identified as having a potential interest in the commercial transfer. NGTL's understanding is that the Albersun Pipeline is not within BCN's traditional territory. BCN seeks further process and a delay of 45 days at a minimum, and potentially much longer given the process they are seeking (opportunity to engage expert, review of documents, IRs and provide evidence), without clearly identifying the nature of the technical evidence it seeks to provide and how the evidence relates to the potential impact of a commercial exchange on BCN. While BCN makes general statements of its interest in hiring experts to provide technical evidence in its February 10, 2017 letter, it has not sufficiently demonstrated in its request the materiality and relevance of the proposed evidence to the Acquisition.

² As noted in NGTL's response to NEB IR 2.1 (NEB Filing ID: A81654), it will further address issues raised by BCN at the appropriate stage once the Board provides its pending Procedural Update.

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Prejudice to NGTL and Suncor

The Board in its Hearing Order noted that it would submit its recommendation to the Minister of Natural Resources Canada on May 16, 2017. NGTL presumes this date would be postponed if BCN's request is granted, which would be to the prejudice of both NGTL and Suncor, the commercial parties to the transaction.

NGTL and Suncor have relied on May 16, 2017 (Board's recommendation date to the Minister) to revise and plan for the Closing of the transfer of the Albersun Pipeline. As indicated in the Transfer Agreement, certain steps and transition activities need to be conducted to ensure the smooth transition of ownership of the facility, including the integration of the assets into TransCanada's management systems and processes. Without certainty of Board process, it is challenging for commercial parties to carry out the intent of commercial agreements. As indicated in the Application, the current Transportation by Others arrangement with Suncor is a temporary agreement which Suncor has been planning to extend for a limited period until the Closing of the commercial transaction. The evidence is clear that Suncor has taken active steps to dispose of its interest in the Albersun Pipeline as it no longer seeks to continue operation of the Albersun Pipeline. Accordingly, further and significant delay to the closing of the transaction will prejudice Suncor and NGTL.

For these reasons, NGTL requests that BCN's request for an extension of time to review the documents, engage technical expertise, file IRs and file relevant technical evidence be denied.

Should the Board require additional information with respect to this filing, please contact me at (250) 686-2870 or by email at azalea_jin@transcanada.com.

Yours truly,

NOVA Gas Transmission Ltd.

Original Signed by

Azalea Jin
Senior Legal Counsel
Canadian Natural Gas Pipelines Law

cc: GHW-001-2016 List of Participants