



# O'CHIESE FIRST NATION

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**April 8, 2020**

**The Honourable Jonathan Wilkinson**  
Minister of Environment and Climate Change Canada  
200, Sacré-Coeur Blvd, 2<sup>nd</sup> Floor  
Gatineau, Quebec K1A 0H3  
Canada

Dear Minister Wilkinson,

**RE: O'Chiese First Nation Request for the Designation of West Path Delivery Program:  
West Path Delivery 2022 and West Path Delivery 2023.**

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This letter is sent on behalf of O'Chiese First Nation 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 O'Chiese First Nation. The Treaty Rights of O'Chiese First Nation are recognized by Treaty No. 6 and section 91(24) of the *British North America Act (1867)*.

O'Chiese First Nation submits this letter to request the designation of the upcoming West Path Delivery Program ("Program") under Section 9 of the *Impact Assessment Act* (S.C. 2019, c. 28, s.1).<sup>1</sup>

On November 1, 2019 TC Energy Corporation ("TC Energy") announced<sup>2</sup> the West Path Delivery Program, which proposes to expand components of both the Nova Gas Transmission Ltd. ("NGTL") and Foothills Pipeline Systems. In its announcement, TC Energy stated that in total, the West Path Delivery Program will consist of "119 km of pipeline and associated facilities".

Though TC Energy has identified this Program as a 119 km combined expansion<sup>3</sup>, TC Energy has indicated its intent to file separate, smaller applications for each of these components, therefore making the Program not subject to the integrated review process of the Canada Energy Regulator ("CER") and the Impact Assessment Agency of Canada ("IAAC")<sup>4</sup>, and not considered under the designated projects list as described by Section 41 of the Physical Activities Regulations.<sup>5</sup>

The following table provides an overview of the components considered a part of the West Path Delivery Program:<sup>6</sup>

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<sup>1</sup> <https://laws-lois.justice.gc.ca/eng/acts/l-2.75/page-3.html#docCont>

<sup>2</sup> [https://www.tcenergy.com/announcements/2019/2019-11-01tc-energy-announces-\\$1.2-billion-west-path-delivery-program/](https://www.tcenergy.com/announcements/2019/2019-11-01tc-energy-announces-$1.2-billion-west-path-delivery-program/)

<sup>3</sup> <https://majorprojects.alberta.ca/details/West-Path-Delivery-Program/3952>

<sup>4</sup> <https://www.cer-rec.gc.ca/bts/blc69/index-eng.html>

<sup>5</sup> <http://www.gazette.gc.ca/rp-pr/p2/2019/2019-08-21/html/sor-dors285-eng.html>

<sup>6</sup> <https://www.tcenergy.com/operations/natural-gas/west-path-delivery-program/>

West Path Delivery Program Components	Project Details
<b>Foothills zone 8 West Path Delivery 2022</b>	<ul style="list-style-type: none"> <li>• The British Columbia Mainline Loop 2 Crowsnest Section <ul style="list-style-type: none"> <li>○ 4.2 km of 48-inch diameter pipeline located approximately 15 km southeast of Sparwood, B.C.</li> </ul> </li> <li>• The British Columbia Mainline Loop 2 Yahk Section <ul style="list-style-type: none"> <li>○ 13 km of 48-inc diameter pipeline located approximately 25 km east of the Town of Creston, B.C.</li> </ul> </li> </ul>
<b>NGTL West Path Delivery 2022</b>	<ul style="list-style-type: none"> <li>• Edson Mainline Loop 4 Raven River Section <ul style="list-style-type: none"> <li>○ 18 km of 48-inch diameter pipeline located approximately 16 km northwest of the Town of Sunde, A.B.</li> </ul> </li> <li>• Alberta British Columbia Section <ul style="list-style-type: none"> <li>○ 5.8 km of 48-inch diameter pipeline located approximately 6 km west of Coleman, A.B.</li> </ul> </li> <li>• ABC Border Meter Station Expansion <ul style="list-style-type: none"> <li>○ Located approximately 6 km west of Coleman, A.B.</li> </ul> </li> </ul>
<b>Foothills Zone 8 West Path Delivery 2023</b>	<ul style="list-style-type: none"> <li>• The British Columbia Mainline Loop 2 Elko Section <ul style="list-style-type: none"> <li>○ 31 km of 48-inch diameter pipeline located approximately 18 km east of the City of Fernie, B.C.</li> </ul> </li> <li>• Kingsgate Border Meter Station Expansion <ul style="list-style-type: none"> <li>○ Located approximately 15 km southwest of Yahk, B.C.</li> </ul> </li> </ul>
<b>NGTL West Path Delivery 2023</b>	<ul style="list-style-type: none"> <li>• Western Alberta System Mainline Loop 2 Turner Valley Section <ul style="list-style-type: none"> <li>○ 23 km of 48-inch diameter pipeline located approximately 3 km northwest of the Town of Turner Valley, A.B.</li> </ul> </li> <li>• Western Alberta System Mainline Loop 2 Longview Section <ul style="list-style-type: none"> <li>○ 8 km of 48-inch diameter pipeline located approximately 30 km southwest of the Town of High River, A.B.</li> </ul> </li> <li>• Western Alberta System Mainline Loop 2 Lundbreck Section <ul style="list-style-type: none"> <li>○ 7 km of 48-inch diameter pipeline, located approximately 30 km northwest of the Town of Pincher Creek, A.B.</li> </ul> </li> </ul>

On November 7, 2019 O'Chiese First Nation was notified<sup>7</sup> by TC Energy of the NGTL West Path Delivery 2022 Project. As originally proposed, West Path Delivery 2022 consisted of:

- Edson Mainline Loop 4 Raven River Section- 18 km 48-inch diameter (nominal pipe size) pipeline located in Alberta, approximately 16 km northwest of the Town of Sundre.

Since this initial notification NGTL further updated the Project to include the ABC Boarder Meter Station Expansion<sup>8</sup> and the Western Alberta System Mainline Loop 2 Alberta British Columbia Section.<sup>9</sup>

O'Chiese First Nation has yet to receive any notification about the remaining Program components listed in the above table, even though O'Chiese First Nation has specifically indicated to TC Energy its concern in the past for TC Energy's attempts to split projects into smaller sections.<sup>10</sup> The splitting of this Program into multiple components appears to be a purposeful attempt by TC Energy to constrain the identification of violations to rights and speed up the approval process by evading important steps that would be included if the Program were to be listed as a designated project in an IAAC review process.

By limiting the CER's review process to the individual components of this Program, the IAAC will not be provided with the information necessary to have a fulsome understanding of the Program's collective impacts to O'Chiese First Nation Inherent and Treaty Rights.

It is therefore imperative that this Program be designated under the *Impact Assessment Act*. The Minister has the right to designate this project, despite it not being on the project list as stated in Section 9(1) of the *Impact Assessment Act*<sup>11</sup>:

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

As opposed to the provincial consultation process where some funding is provided to support our consultation office, federally regulated projects are typically only funded if a hearing is triggered, leaving many projects without the appropriate participation of Indigenous groups. O'Chiese First Nation has conducted an initial review of this Program without any capacity funding being provided by the proponent or the CER. Without a hearing process being triggered for this Program, O'Chiese First Nation will be unable to meaningfully engage with TC Energy and provide input as to how this Program impacts O'Chiese First Nation Inherent and Treaty Rights.

Due to the similarity of the Program components' attributes, locations, and the potential violations of O'Chiese First Nation's Inherent and Treaty Rights O'Chiese First Nation urges the Honourable Minister Wilkinson and the IAAC to consider this request for the designation of the above-mentioned Program under the *Impact Assessment Act*. O'Chiese First Nation asks the

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<sup>7</sup> TC Energy Letter sent to O'Chiese First Nation on November 7, 2019

<sup>8</sup> TC Energy Project Update sent to O'Chiese First Nation on December 5, 2020

<sup>9</sup> TC Energy Project Update sent to O'Chiese First Nation on February 6, 2020

<sup>10</sup> May 11, 2018 Letter to the National Energy Board Requesting Consultation on NGTL Projects (see attached); November 14, 2018 Letter to NGTL on the McLeod River North Project (see attached); November 21, 2018 Letter to the National Energy Board on the McLeod River North Project (see attached).

<sup>11</sup> <https://laws-lois.justice.gc.ca/eng/acts/I-2.75/page-3.html#h-1160225>

Honourable Minister Wilkinson and the IAAC to consider sections 9(1) and 9(2) of the *Impact Assessment Act* as justification for designation of the Project.

Sincerely,

<Original signed by>

Andrew Scott  
Consultation Director  
O'Chiese Consultation Office