



## O'CHIESE FIRST NATION

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June 28, 2023

**Stephen McCarthy**  
Senior Consultation Analyst  
Prairie and Northern Region  
Impact Assessment Agency of Canada

Sent via. email: [moraine@iaac-aeic.gc.ca](mailto:moraine@iaac-aeic.gc.ca); [stephen.mccarthy@iaac-aeic.gc.ca](mailto:stephen.mccarthy@iaac-aeic.gc.ca)

Dear Mr. McCarthy,

**Re: O'Chiese First Nation Submission of Comments on the Initial Project Description for the Moraine Initiatives Ltd. Power Generation Project**

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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 O'Chiese First Nation. 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 18, 2023 the Impact Assessment Agency of Canada ("IAAC" or the "Agency") accepted the Initial Project Description ("IPD") from Moraine Initiatives Ltd. ("Moraine" or the "Proponent") for the proposed Moraine Power Generation Project (the "Project").<sup>1</sup>

As stated in the IAAC's May 18, 2023 letter to O'Chiese First Nation, the Agency is "initiating consultation activities with Indigenous groups". A public comment period on the IPD has commenced, with comments requested by June 16, 2023.<sup>2</sup> Comments received will be factored into the IAAC's Summary of Issues, which will further assist in Moraine's development of the

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<sup>1</sup> The Proponent is proposing to construct, operate, and decommission a natural gas-fired electrical generating facility with integrated carbon capture capability, located northwest of Whitecourt, Alberta. The Project would include power generation infrastructure, a natural gas pipeline, an electrical transmission line and a carbon dioxide pipeline and sequestration infrastructure.

<sup>2</sup> On June 14, 2023 O'Chiese First Nation was notified by the IAAC via email that an extension to the comment period timeline has been granted in response to the wildfires and evacuation orders currently ongoing in Alberta. Comments on the IPD may now be submitted by July 7, 2023.

Detailed Project Description; and will be further considered in the IAAC's deliberation on whether to require a federal impact assessment for the Project.

O'Chiese First Nation has conducted a review of the IPD and submits the attached table of comments (Appendix A) for further consideration by Moraine and the IAAC. For this review O'Chiese First Nation focussed attention on the accuracy of the information presented by Moraine within the IPD including Moraine's understanding of the rights held by O'Chiese First Nation and the potential impacts, or violations to O'Chiese First Nation's Inherent and Treaty rights that may occur as a result of this Project.

We acknowledge the IPD is the first stage for outlining components of the Project, and that an impact assessment under the *Impact Assessment Act* would require Moraine to conduct a more fulsome assessment of the potential Project impacts including potential impacts to O'Chiese First Nation's Inherent and Treaty rights. However, we note some early inconsistencies in Moraine's understanding of the applicability of the duty to consult on this Project, which are concerning. O'Chiese First Nation is an Indigenous Nation, with Inherent and Treaty rights that are recognized by Treaty No. 6 and protected by Section 35 of the *Constitution Act, 1982*. It is therefore important for impacts from the Project to O'Chiese First Nation Inherent and Treaty rights to be assessed with the view to avoid, mitigate, or accommodate these impacts.<sup>3</sup>

Below we outline some of our preliminary concerns; a more detailed comments table is included as Appendix A.

### **1) Engagement vs. Consultation**

- Within the IPD Moraine Initiatives has provided a summary of the Indigenous engagement conducted to date. The depiction of this engagement is concerning to O'Chiese First Nation as it appears to represent a more fulsome engagement process than what has occurred on the Project.
- There is an evident lack of information in the IPD regarding Moraine's assessment of the Project's potential to impact Indigenous Nations and Inherent and Treaty rights. This is a gap that must be addressed through a proper Impact Assessment.
- While the IPD includes a section titled "Potential Effects on Traditional Land Use, Physical and Cultural Heritage, and Historical, Archaeological and Palaeontological Resources", the focus appears to be limited to potential Project interactions with archaeological resources. This narrow view fails to consider other effect pathways that would be better suited to assess impacts to Inherent and Treaty rights.
- This fundamental lack of understanding of the nature and extent of Inherent and Treaty rights is deeply concerning. While the Crown-Indigenous consultation process is separate from the consultation process undertaken by Moraine, the

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<sup>3</sup> Guidance from the IAAC indicates that "[i]deally, early planning will identify the key issues, including potential impacts on Aboriginal and treaty rights, which will be the focus of problem-solving efforts during the subsequent phases of the impact assessment."

Crown will rely on information collected and assessed as part of Moraine's consultation process to help inform their decision. Currently there is no information collected in relation to O'Chiese First Nation's established Inherent and Treaty rights.

## **2) Sufficient Capacity to Support Nation-Specific Impact Assessment**

- Capacity funding is an important aspect of meaningful consultation.<sup>4</sup> At this time, it is unclear if Moraine understands O'Chiese First Nation's current capacity constraints, and the requirement to consult with each Indigenous Nation to support the identification of Project effects to Inherent and Treaty rights.
- O'Chiese First Nation has requested capacity to conduct a Nation-specific assessment of Impacts from the Project.<sup>5</sup> However, no confirmation on the provision of capacity funding to conduct a Nation-specific assessment has been provided by Moraine at this time.
- For consultation to be meaningful, it is important that it occurs early, and that it is not just an opportunity for O'Chiese First Nation to "blow of steam" before the decision maker- proceeds to do what they intended to do all along.<sup>6</sup>
- O'Chiese First Nation does not have any confidence in the engagement plans identified by Moraine in achieving meaningful consultation at this time.

## **3) Uncertainty around the Athabasca Banks Carbon Hub**

- The separate proposed, but not yet approved, CO<sub>2</sub> sequestration hub is currently being contemplated as a separate project yet is described by Moraine as "foundational" to the proposed power generation Project.
- Given the uncertainty surrounding the Athabasca Banks Hub, it is unclear why it is provided as a rationale for the location of the proposed Project near Whitecourt. Based on a review of publicly available information, it does not appear that the Athabasca Banks Hub has a confirmed location, nor is it clear if the Proponent has tenure for pore space in the Athabasca Banks Hub to ensure the Hub would be able to store all the captured CO<sub>2</sub> over the Project's 40+ year lifetime.
- If the Hub were not approved, it is further unclear to what extent this would alter the current Project design being contemplated.
- O'Chiese First Nation therefore requests that the Athabasca Banks Hub be considered in conjunction with the Project currently proposed as it relies on its proximity in its conception.

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<sup>4</sup> "The issue of appropriate funding is essential to a fair and balanced consultation process, to ensure a 'level playing field'. *Swan River First Nation v Alberta (Agriculture and Forestry)*, 2022 ABQB 194 at para. 25

<sup>5</sup> This request for capacity was put forward to Moraine and IAAC following the initial Project notification in November 2022.

<sup>6</sup> *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para. 54.

Following our review of the IPD, it is evident that a much more thorough assessment of impacts is required.

The lack of consultation to date, the lack of consideration for the potential impacts to Inherent and Treaty rights, and the conclusions drawn on net effects from the Project are deeply concerning.

We hope the above comments, as well as the review table in Appendix A can support further discussion between O'Chiese First Nation, Moraine, and the IAAC to ensure comments and concerns are addressed, and the appropriate time and capacity is provided to ensure a proper identification of Project effects to O'Chiese First Nation Inherent and Treaty rights is conducted.

Sincerely,

<original signed by>

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

cc: Zoe Rezac, Stantec Consulting Ltd.  
Ankur Mathur, Moraine Initiatives Ltd.  
Bridget Dougherty, Moraine Initiatives Ltd.  
Gail Matchullis, Calliou Group

## Appendix A

#	Section and Page Number	Excerpt from Initial Project Description	O’Chiese First Nation Comments
1.	<b>1 The Project’s Name, Type or Sector and Proposed Location</b>  <b>PDF Page 13</b>	<p>“The Project consists of four principal components:</p> <ol style="list-style-type: none"> <li>1. A natural gas-fueled power generation facility (PGF), consisting of a combined cycle gas turbine (CCGT) electricity generation equipped with a post-combustion integrated carbon dioxide (CO<sub>2</sub>) capture facility (ICCF), all on a common central site.</li> <li>2. A 240 kilovolt (kV) transmission line [...]</li> <li>3. A CO<sub>2</sub> pipeline [...]</li> <li>4. A natural gas pipeline [...]</li> </ol> <p>The PGF will be constructed at a brownfield site located at SW-18-60-12-W5M &amp; NW 7-60-12-W5M in Woodlands County near Whitecourt, Alberta (AB). The general locations of the Project components are shown in Figure 1.1. Natural gas from the NGTL pipeline network will be used for power generation at the PGF, which will generate approximately 465 megawatt (MW) of electricity for delivery to the AIES via the transmission line interconnect. Captured CO<sub>2</sub> will be collected and transported via a CO<sub>2</sub> pipeline for injection into a subsurface storage reservoir in a deep underground saline aquifer geological formation.”</p>	<p>The Project components outlined within the IPD present a unique case as it combines power generation, transmission, natural gas pipeline and carbon capturing technologies.</p> <p>Each of the Project components present the potential to impact O’Chiese First Nation’s Inherent and Treaty rights, which must be fully understood, assessed, and accounted for in the Impact Assessment phase of the Project. In previous regulatory processes, O’Chiese First Nation has demonstrated how components of the proposed Project, such as pipelines or transmission lines, have created deep and lasting scars on the landscapes that are vital for our Nation to live in accordance with our Natural Laws. It is imperative that these components be viewed holistically, with a cumulative effects lens, to account for the existing development that currently impedes the meaningful exercise of O’Chiese First Nation Inherent and Treaty rights.</p> <p>The Project footprint and pathway of potential impacts extend across a territory that is both historically and presently significant for O’Chiese First Nation. O’Chiese First Nation relies on these lands and waters for the exercise of our Inherent and Treaty rights, and to maintain our language, culture, and traditions in accordance with our Natural Laws.</p>
2.	<b>1 The Project’s Name, Type or Sector and Proposed Location</b>  <b>PDF Page 14</b>	<p>“Figure 1.1 Project Overview”   <i>Map Referencing Project Route</i></p>	<p>O’Chiese First Nation has noted inconsistencies in the data provided by Moraine.</p> <p>The “Summary of an Initial Project Description of a Designated Project” posted to the Impact Assessment Agency of Canada (“IAAC”) website on May 18, 2023, shows an additional section of</p>

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			<p>pipeline than the route shown in this section. The map provided in the "Summary of an Initial Project Description" shows the preferred CO<sub>2</sub> pipeline route extending an additional 2 km into the Athabasca Banks Hub location, beyond what is shown in the map provided on PDF Page 13.</p> <p><b>Please confirm the length of CO<sub>2</sub> pipeline being considered for the Project and clarify the reasons for this discrepancy.</b></p> <p>Despite O'Chiese First Nation's request for early engagement, no consultation has occurred to date between Moraine and O'Chiese First Nation regarding proposed route location or route selection criteria. To properly assess potential violations from this Project, O'Chiese First Nation will require shapefiles of all Project components to accurately assess impacts to O'Chiese First Nation Inherent and Treaty rights.</p>
3.	<p><b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b></p> <p><b>4.1 Engagement with Indigenous Groups</b></p> <p><b>PDF Page 17</b></p>	<p>"MIL acknowledges and respects the rights of Indigenous people. In the fourth quarter of 2021, MIL began identifying which Indigenous groups are located in proximity to the Project using both federal and provincial resources. Once an initial contact list was created, MIL began the early engagement process through sending letters of introduction, offering meetings, participating in meetings, and sharing Project information...</p> <p>Key themes emerging from engagement included requests for more detailed project information and further engagement opportunities, capacity funding, as well as social and economic investment opportunities.</p> <p>MIL is committed to an engagement process that incorporates input from Indigenous groups to facilitate</p>	<p>The duty to consult and accommodate carries with it the obligation to ensure adequate and sustained funding for First Nations to carry out the ongoing work of identifying and articulating their interests and to participate in decision-making processes. Capacity funding is required to support the meaningful participation of Indigenous Nations in consultation activities. Capacity funding supports meaningful participation when it is sufficient to cover the actual cost of participation and is flexible to respond to actual needs.</p> <p>O'Chiese First Nation was notified about the Project in November 2022. O'Chiese First Nation disagrees that these initial notifications should be classified as "early engagement." After receiving the initial notification, O'Chiese First Nation provided Moraine with an initial identification of concerns and outlined an approach for early engagement and the components necessary for O'Chiese First</p>

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		<p>information sharing, two-way dialogue in order to understand perceived project impacts, incorporate mitigation measures, consider Indigenous knowledge and advance reconciliation.”</p>	<p>Nation to be engaged meaningfully on this Project. Only one meeting was held with the Proponent in January 2023, and little attempt has been made to engage directly with O’Chiese First Nation on this Project to date.</p> <p>At this stage, Moraine has not demonstrated an understanding of the importance of facilitating meaningful consultation. Use of language such as “perceived project impacts” trivializes potential adverse impacts as being only “perceived.” Additionally, reference to Indigenous “groups” does not appropriately capture the nature of O’Chiese First Nation’s Inherent and Treaty rights and the responsibility for the duty to consult and accommodate.</p> <p>O’Chiese First Nation prefers the use of the term Indigenous Nation rather than “Indigenous groups” as the O’Chiese First Nation peoples, as Indigenous peoples of Canada, have the right to self-determination. While some aspects of this governance have been impaired through imposition of colonial structures, O’Chiese First Nation is a Nation to this day.</p>
4.	<p><b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b></p> <p><b>4.1 Engagement with Indigenous Groups</b></p> <p><b>4.1.1 Indigenous Groups</b></p> <p><b>4.1.1.1 Landscape Analysis Indigenous Relations Tool (LAIRT)</b></p>	<p>“In December 2021, the Project team utilized the Government of Alberta’s online LAIRT mapping tool to understand which Indigenous groups may practice rights in the project area.”</p>	<p>The Aboriginal Consultation Office’s (“ACO”) prescribed methods for identifying potentially impacted Indigenous Nations for consultation are flawed, and in this context of this Project, contributed to a delay in Moraine notifying O’Chiese First Nation about the Project. Further the LAIRT mapping tool does not accurately display the “practice of rights” by any Nation. O’Chiese First Nation would encourage Moraine to discuss the practice of rights with O’Chiese First Nation directly and not rely on flawed government mapping tools that determined consultation areas unilaterally, without proper engagement or consultation with affected Indigenous Nations.</p>

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5.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b>  <b>4.1 Engagement with Indigenous Groups</b>  <b>4.1.2 Engagement Activities Undertaken</b>  <b>4.1.2.2 Meetings</b>  PDF Page 21-22	<p>“Between July 2022 and January 2023 11 meetings took place between MIL and Indigenous groups... These meetings provided an opportunity for the Indigenous groups to ask questions about the Project and for MIL to learn about the Indigenous groups’ connection to the Project, how the Indigenous groups would like to be consulted, and issues of the Indigenous groups.”</p> <p>Table 4.2 Meetings with Indigenous Groups</p> <p>O’Chiese First Nation January 24, 2023</p>	<p>Following O’Chiese First Nation’s initial expression of concerns (submitted via letter on November 10, 2022), Moraine organized a meeting in January 2023 to review these concerns. On January 30, 2023, O’Chiese First Nation sent a follow-up email to Stantec, sharing information regarding the selection of valued components (VCs), indicating that O’Chiese First Nation would appreciate early engagement and the ability to help define the VCs. O’Chiese First Nation also encouraged Moraine to review O’Chiese First Nation submissions and evidence filings and provided links to further information. O’Chiese First Nation received no direct or substantive follow-up from Moraine after the meeting in January 2023.</p>
6.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b>  <b>4.1 Engagement with Indigenous Groups</b>  <b>4.1.3 Results of Engagement and Key Issues Raised</b>  <b>O’Chiese First Nation Section</b>  PDF Page 26	<p>Table 4.3 Summary of Key Issues, Concerns, and Responses</p> <p>“Issues and Concerns Raised</p> <p>O’Chiese First Nation</p> <ol style="list-style-type: none"> <li>1. Potential Project impacts due to tree and vegetation clearing, disturbance to soil, installation of signs/ fences/ gates, increased presence of people and traffic, noise, odor, dust and emissions</li> <li>2. Creating conditions that render the land and resources unavailable for exercising rights</li> <li>3. Disturbance to wildlife, fish, vegetation, and their habitats. Resulting decline in the availability of culturally critical resources</li> <li>4. Contribute to cumulative effects already experienced</li> </ol>	<p>The language in this section is misleading as it implies that Moraine has been responsive and attentive to O’Chiese First Nation’s expressed concerns. O’Chiese First Nation has not received a written response to the expressed concerns detailed in Table 4.3, nor has the Proponent sought to engage O’Chiese First Nation in the development of the IPD as we requested. Consultation has not occurred to date; there have been no further discussions since the meeting in January 2023, and no attempt to date for Moraine to identify how concerns are or will be addressed within the Project documents.</p> <p>To date, the Proponent’s responses to O’Chiese First Nation’s comments have not been substantive and do not fulfill the requirement for a meaningful exchange of information laid out in Canadian case law on consultation.<sup>7</sup> Mere “acknowledgment” of</p>

<sup>7</sup> Case law has clarified that a meaningful exchange of information is required in consultation, and that there is a “substantive” element to this exchange which cannot be met by simply exchanging and discussing information. *Sambaa K’e Dene First Nation v. Duncan*, 2012 FC 204 at para. 89; *Wii’litswx v. British Columbia (Minister of Forests)*, 2008 BCSC 1139 at para. 178.



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		<p>5. Uncertainty with carbon capture technology, cumulative effects if multiple industries adopt this technology</p> <p>6. Timeline of commencing construction in 2024 is concerning as it is unlikely sufficient or meaningful consultation can occur within this time frame</p> <p>7. Capacity funding is required for meaningful engagement and consultation</p> <p>8. Requested meeting and additional information on the project location, anticipated disturbance, anticipated access restrictions, information the company has gathered on O’Chiese First Nation, details on the valued components that will be assessed, and how O’Chiese First Nation will be involved in identifying potential impacts”</p> <p>“MIL’s Response</p> <p>MIL responded via email and met with O’Chiese First Nation. Responses to the concerns are as follows:</p> <ol style="list-style-type: none"> <li>1. Acknowledged potential impacts identified by O’Chiese</li> <li>2. Requested an introductory meeting to better understand concern about resources being unavailable for exercising rights</li> <li>3. Requested an introductory meeting to better understand concerns regarding disturbance</li> <li>4. Acknowledged concern about cumulative effects</li> <li>5. Discussed Athabasca Banks Carbon Hub proposal, MIL’s role as anchor tenant, and the Government of Alberta’s call for carbon pore space proposals</li> <li>6. Discussed Project timelines and milestones</li> <li>7. Acknowledged the request for capacity funding</li> <li>8. Scheduled introductory meeting</li> </ol>	<p>potential impacts is insufficient to meet the responsibility for consultation with Indigenous Nations.</p> <p>The Crown will rely on information collected and assessed as part of Moraine’s engagement process to inform their decision on the Project. As such it remains vital that information on engagement and consultation with O’Chiese First Nation is reviewed and validated by O’Chiese First Nation.</p> <p>Currently, there is no information collected in relation to O’Chiese First Nation’s established Inherent and Treaty rights. The IAAC must seek to confirm the narrative presented by the Proponent with O’Chiese First Nation directly.</p>

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7.	<p><b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b></p> <p><b>4.1 Engagement with Indigenous Groups</b></p> <p><b>4.1.4 Plans for Future Engagement</b></p> <p><b>PDF Page 27</b></p>	<p>9. Discussed O’Chiese’s interest in being involved in determining the valued components of the Environmental Assessment.”</p> <p>“MIL is committed to establishing meaningful engagement throughout the life of the Project to:</p> <ul style="list-style-type: none"> <li>• keep Indigenous groups informed of the Project and updates</li> <li>• understand how Indigenous groups want to be engaged</li> <li>• collect information, including Indigenous knowledge; that is relevant to the Project</li> <li>• address, mitigate, and eliminate concerns where possible</li> <li>• provide the opportunity to meet with Indigenous groups and listen/address/mitigate/resolve questions, issues, and concerns</li> <li>• Engagement will be incorporated in the Engagement plan to allow for two-way conversations to share information between Indigenous groups, interested parties, and MIL.”</li> </ul>	<p>Moraine’s approach is pan-Indigenous, not Nation-specific. The proposed Project has potential impacts extending across an area governed by two treaties (Treaty 6 and Treaty 8). The Indigenous Nations identified for engagement in this Project have differing territories, practices, laws and languages, priorities, needs and concerns. Nation-specific engagement methods are required. Moraine’s description of “meaningful engagement” is not aligned with O’Chiese First Nation’s understanding of meaningful engagement and requirements for consultation.<sup>8</sup></p> <p>IAAC guidance stipulates that proponents have a responsibility to avoid impacts where possible, to mitigate impacts that cannot be avoided, and to provide accommodation where impacts cannot be avoided or mitigated. Impacts or violations to Inherent and Treaty rights may require accommodation if the violation remains after mitigation has been applied.<sup>9</sup> Accommodation must be direct and proportionate to the impact it is seeking to address, and accommodation measures must either wholly eliminate the impact or reduce and then control for the residual impact. It will be important for Moraine to ensure their Impact Statement (“IS”) properly considers appropriate metrics to identify impacts to rights, with the intention to avoid, mitigate or control (accommodate) impacts to rights.</p>

<sup>8</sup> O’Chiese First Nation received a recent invitation for an “open house” style meeting on the Project. This invitation was provided in short notice, without much consideration for previous commitments that would limit our ability to participate in such a meeting. O’Chiese First Nation has expressed this concern with Moraine, noting the need for specific one on one consultation sessions.

<sup>9</sup> The [Impact Assessment Agency Interim Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples](#), 2020 further explains the correlation between mitigation and accommodation, which should be seen as complementary measures that share a common goal to avoid, minimize or compensate for potential adverse impacts.

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			<p>Moraine has also indicated that it intends to collect information including Indigenous Knowledge; however, Moraine has failed to provide sufficient context to explain how specific and unique protocols will be followed to ensure information is collected in a manner directed by the Indigenous Nation, including O'Chiese First Nation.</p> <p>O'Chiese First Nation believes it is best suited to identify potential impacts to O'Chiese First Nation Inherent and Treaty rights; however, appropriate time and capacity will be required to properly conduct such an assessment. More meaningful involvement with O'Chiese First Nation will be required to satisfy the requirements set out in the <i>IA Act</i>. Moraine's focus on collecting Indigenous Knowledge without mention of protocols, data stewardship, and capacity funding will not facilitate the meaningful engagement of O'Chiese First Nation.</p> <p><b>Please clarify Moraine's understanding of the "interested parties" involved in engagement with Indigenous Nations.</b></p>
8.	<p><b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b></p> <p><b>4.1 Engagement with Indigenous Groups</b></p> <p><b>4.1.4 Plans for Future Engagement</b></p>	<p>"An Engagement Plan is currently under development. MIL anticipates further discussions/ communication or meeting with Indigenous groups in the first quarter of 2023 and inviting participation in engagement activities. MIL will be seeking input on the Initial Project Description, Detailed Project Description, as well as feedback on Subsequent regulatory permits and applications.</p> <p>"The Engagement Plan will include:</p>	<p>It is important for an Indigenous Engagement Plan to incorporate the principles of what is required by law in consultation. As identified in <i>Kwikwetlem First Nation v. British Columbia</i> (2009) and <i>Squamish Indian Band v British Columbia</i> (2004), consultation must occur at the earliest possible opportunity, "when the project is being defined and continue until the project is completed,"<sup>10</sup> and it "cannot be postponed to the last and final point in a series of decisions."<sup>11</sup></p> <p>Several precedents in the case law have established that consultation cannot be a mere exchange of information, but must be</p>

<sup>10</sup> *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68, at para. 70.

<sup>11</sup> *Squamish Indian Band v British Columbia (Minister of Sustainable Resource Management)*, 2004 BCSC 1320 at para. 74.

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	PDF Page 28	<ul style="list-style-type: none"> <li>• Indigenous groups to be engaged and consulted</li> <li>• methods to generate two-way communication with Indigenous groups including one-on-one meetings, community meetings and opportunities for site visits and ceremony</li> <li>• methods to document and track information heard and committed to in the meetings with Indigenous groups</li> <li>• opportunities to undertake traditional land use studies, to the extent required.”</li> </ul>	<p>a two-way dialogue with the goal of mutual understanding.<sup>12</sup> <i>Taku River Tlingit First Nation v. British Columbia</i> (2004) further established that consultation must be approached a willingness to alter decisions based on the input of Indigenous Nations.<sup>13</sup> To meet the legal requirements for consultation, Moraine’s engagement activities to establish “two-way communication” must include the goal of mutual understanding, and must work towards concrete measures to directly and proportionally address impacts identified with each Nation. Moraine must be willing to adjust their plans in response to O’Chiese First Nation’s input and provide rationale accordingly.</p> <p><i>Swan River First Nation v Alberta</i> (2022) further established that consultation requires the provision of sufficient capacity funding to facilitate the meaningful participation of Indigenous Nations on a “level playing field.”<sup>14</sup> Capacity funding must be provided by Moraine in relation to all activities undertaken by Indigenous Nations to identify potential impacts to our Inherent and Treaty rights, including any studies or assessments (including but not limited to land use studies). Moraine should ensure capacity funding is available for all engagement invitations extended to Indigenous Nations for the proposed Project, including input on the Initial Project Description, input on the Detailed Project Description, input on subsequent regulatory permits and applications, and any other input or involvement required/ requested.</p>

<sup>12</sup> *Sambaa K’e Dene First Nation v. Duncan*, 2012 FC 204 at para. 89; *Wii’litswx v. British Columbia (Minister of Forests)*, 2008 BCSC 1139 at para. 178. *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras. 42, 49

<sup>13</sup> *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74 at paras. 25, 32; *Haida* at paras. 45-46.

<sup>14</sup> *Swan River First Nation v Alberta (Agriculture and Forestry)*, 2022 ABQB 194 at para. 25.

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			<p>Beyond the requirements for meaningful consultation established in case law, Moraine’s proposed Engagement Plan risks failing Indigenous Nations in additional ways. Moraine’s emphasis on Traditional Land Use Studies (TLUS) is concerning, as TLUS place a problematic and narrow restriction on how rights are understood and identified. This raises concerns around the protection of sensitive data (for example, the mapping of locations of sacred sites and burial grounds); the provision of such data can enable proponents to weaponize site-specific data against Indigenous Nations to restrict how impacts are characterized in Project assessments. Furthermore, the rationale for including ceremony under “two-way communication” is unclear. O’Chiese First Nation will identify any protocols or ceremonies required by our Natural Laws independently of communication with the Proponent – this is a decision for our Elders and not to be made with the Proponent as part of a two-way communication process.</p> <p><b>Please clarify how Moraine plans to adjust its Engagement Plan in response to feedback received from O’Chiese First Nation. Please clarify if Indigenous Nations will be invited to provide input on Moraine’s Engagement Plan.</b></p>
9.	<p><b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b></p> <p><b>4.1 Engagement with Indigenous Groups</b></p> <p><b>4.1.4 Plans for Future Engagement</b></p>	<p>“Information packages which explain Project related topics such as electricity generation, carbon capture and sequestration, will be distributed to the groups listed in Sections 4.1.1 and 4.1.2. The purpose of the information package is to advise each Indigenous group of the Project with sufficient information for them to determine if their Treaty or Indigenous rights may be affected by the Project and provide an opportunity for Indigenous groups to share their</p>	<p>See Comment #3 and Comment #8.</p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
	PDF Page 28	comments and concerns regarding the Project and ask or pose questions.”	
10.	<p><b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b></p> <p><b>4.1 Engagement with Indigenous Groups</b></p> <p><b>4.1.4 Plans for Future Engagement</b></p> <p>PDF Page 28</p>	<p>“The Aboriginal Consultation Office (ACO) has a template for notification packages and the Alberta Utilities Commission (ACU) Rule 7 outlines the Project and proponent information that needs to be communicated to potentially affected persons. The information from the ACO template and the AUC Rule 7 will be combined to produce an information package that compiles with various regulations and avoids the need to send duplicate information to the Indigenous groups.”</p> <p>“The information package will include maps, project components, schedule, and the Project schedule. Information that addresses the following questions will be included in the information package:</p> <ul style="list-style-type: none"> <li>• What specifically is the concern?</li> <li>• Where specifically is the concern located in relation to the proposed project/ activity footprint?</li> <li>• What is the significance of the concern?</li> <li>• How are Treaty Rights or traditional use activities impacted by the proposed project/ activity?</li> <li>• What (if any) is the First Nation proposal(s) that effectively address the concern?”</li> </ul>	<p>See Comment #4.</p> <p>O'Chiese First Nation is concerned for a convoluted impact assessment and consultation process as Moraine is seeking a variety of regulatory approvals through both provincial and federal regulatory bodies.</p> <p>It is unclear why Moraine is describing the utility of provincial templates in the IPD or how this relates to the requirements set out by IAAC.</p> <p>Currently, provincial templates and processes are flawed in their requirements and considerations for assessing impacts to Inherent and Treaty rights. Reliance on these provincial systems in the federal impact assessment process will not be sufficient, nor should two separate approaches be engaged simultaneously, as this will create undue hardship on O'Chiese First Nation to participate in two processes simultaneously.</p> <p><b>O'Chiese First Nation therefore requires further clarity on Moraine's intentions to engage both federal and provincial processes including clear timelines, information requirements, regulatory requirements etc. A detailed schedule of timelines, materials, and consultation requirements must be set out early in this process and rationale must be provided.</b></p> <p><b>Further clarity on this matter and Moraine's approach is requested by IAAC.</b></p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
11.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b>  <b>4.1 Engagement with Indigenous Groups</b>  <b>4.1.4 Plans for Future Engagement</b>  <b>PDF Page 28-29</b>	<p>“Some information pertaining to the pipelines and transmission lines routing may not be fully known at the time the information packages are distributed. Therefore, Indigenous groups will receive updated Project information as it becomes available.”</p>	<p>See Comment #2.</p>
12.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b>  <b>4.1 Engagement with Indigenous Groups</b>  <b>4.1.5 Combined Meeting of Indigenous Groups</b>  <b>PDF Page 29</b>	<p>“MIL will invite all of the Indigenous groups [...] to a meeting in proximity to the Project location [...] This meeting will address the engagement requirements of the regulators by offering the Indigenous groups the opportunity to meet with MIL to discuss the Project, have a site visit, answer questions, and provide comments.”</p>	<p>See Comment #8.</p> <p>Moraine has failed to provide O'Chiese First Nation with confidence that it understands it's duty to consult and accommodate matters that impact O'Chiese First Nation's Inherent and Treaty rights as a result of this Project. Moraine's assumption that one meeting with all potentially impacted Indigenous Nations will “address engagement requirements of the regulators” falls significantly short of the duty to consult and accommodate.</p> <p>As noted in Comment #7 Moraine has sent this invitation, in short notice to O'Chiese First Nation, without much consideration of O'Chiese First Nation's schedule or ability to participate. This meeting should not be considered as a satisfactory step in the consultation process required for this Project.</p> <p>While O'Chiese First Nation will require site visits on all Project components, site visits are not to be used by Moraine to indicate if Indigenous Nations are “concerned or not concerned” with the Project. Nor should O'Chiese First Nation's participation in site visits be understood by Moraine to be opportunities to identify site-specific concerns. O'Chiese First Nation requires that Moraine provide</p>

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			opportunities for site visits to O’Chiese First Nation for all Project components – this would be separate from the site visit proposed for the combined meeting Moraine plans on hosting.
13.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b> <b>4.1 Engagement with Indigenous Groups</b> <b>4.1.6 One-on-one Meetings</b> <b>PDF Page 29</b>	“Stantec will organize and facilitate one-on-one meetings with MIL requested by the Indigenous groups receiving information packages. [...] All of the regulations require the opportunity to offer one-on-one meetings to Indigenous groups and stakeholders to answer questions, discuss issues and concerns, and consider potential mitigation measures.”	<p>See Comment#3, Comment #7, and Comment #8.</p> <p>Moraine is not only required to offer meetings, to answer questions, to discuss concerns, and “consider potential mitigation measures” but Moraine is required to take action to avoid, mitigate and accommodate identified impacts to O’Chiese First Nation rights.</p>
14.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b> <b>4.1 Engagement with Indigenous Groups</b> <b>4.1.7 Open House &amp; Community Meetings</b> <b>PDF Page 29</b>	“Project information will be communicated, and local information gathered through community meetings for Indigenous groups. Community meetings will be planned collaboratively with Indigenous groups to meet the individual needs of their community, provide opportunities for subject matter experts to answer questions, and provide opportunity for Indigenous groups to meet officers of MIL.”	<p>See Comment #3 and Comment #8.</p> <p>Open houses are insufficient for requirements of consultation with O’Chiese First Nation. It is unclear what Moraine is referring to as “local information gathered through community meetings for Indigenous groups.”</p>
15.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b> <b>4.1 Engagement with Indigenous Groups</b>	“Project information will be developed in plain language and communicated in graphics where appropriate to help explain technical subjects. Project information will take different forms including story boards, presentations, maps, frequently asked questions, and hand-outs.	See Comment #3 and Comment #8.



#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
	<b>4.1.8 Communication Material</b> <b>PDF Page 29</b>		
16.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b>  <b>4.1 Engagement with Indigenous Groups</b>  <b>4.1.8 Communication Material</b> <b>PDF Page 29</b>	<p>“Project information will be posted on an easy to access and easy to navigate Project website. This will also have contact information to gather questions regarding the Project.”</p>	<p>See Comment #3 and Comment #8.</p> <p>Posting information on this website does not substitute the need to contact O'Chiese First Nation directly to ensure O'Chiese First Nation is updated with any new Project information.</p>
17.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b>  <b>4.1 Engagement with Indigenous Groups</b>  <b>4.1.8 Communication Material</b> <b>PDF Page 29</b>	<p>“A Project email will be set up and monitored daily to address questions and track comments and requests. MIL will respond to questions posed directly to a Project team member or through the Project email in a timely fashion.”</p> <p>“All questions and responses will be tracked in the records of contact database.”</p> <p>“Project updates will be provided to stakeholders and Indigenous groups in the format of emails and/or newsletters.”</p>	<p>Moraine must make substantial effort to notify and engage O'Chiese First Nation. If a response is not received from O'Chiese First Nation, this cannot be taken to mean that there are no concerns. Moraine must also provide O'Chiese First Nation with opportunities to review the tracking table, clarify comments made by O'Chiese First Nation and provide input on how O'Chiese First Nation concerns are being understood and addressed by the Proponent. This must be Nation-specific and cannot be combined with comments from other Indigenous Nations.</p> <p>Please confirm if the email address referred to in this section is the same as <a href="mailto:moraine@iaac-aeic.gc.ca">moraine@iaac-aeic.gc.ca</a> or if this is a specific email to contact the company. Please confirm when this email will be shared with O'Chiese First Nation.</p>
18.	<b>4 Engagement with Indigenous Groups, Public, Other Stakeholders</b>	<p>“Feedback from meetings, and questions will be documented and used to adjust the Project, engagement tactics and communication material. Efforts will be made to identify</p>	<p>See Comment #8, Comment #13, and Comment #14.</p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
	<p><b>4.1 Engagement with Indigenous Groups</b></p> <p><b>4.1.8 Communication Material</b></p> <p><b>PDF Page 30</b></p>	<p>comments, concerns and questions with the originating stakeholder group and Indigenous group.”</p>	
19.	<p><b>5 Regional Assessments and Relevant Environmental Studies</b></p> <p><b>PDF Page 31</b></p>	<p>“There are no known regional assessments of the area in which the Project is located that were conducted under Sections 92 or 93 of the <i>Impact Assessment Act</i>; however, there have been several environmental studies conducted for projects in central Alberta that overlap portions of the Project, such as Enbridge Northern Gateway, Pembina Peace Pipelines System Expansion and Alliance Pipeline.</p> <p>Regional reports that have overlapped the project area include:</p> <ul style="list-style-type: none"> <li>• Regional Forest Landscape Assessment, Upper Athabasca Region. Prepared for: Forest Management Branch, Alberta Environment and Sustainable Resource Development. December 2012.”</li> </ul>	<p>O'Chiese First Nation previously requested that a regional assessment be conducted in O'Chiese First Nation's territory, which includes the Project area.<sup>15</sup> A regional assessment would help to:</p> <ul style="list-style-type: none"> <li>- identify gaps in Alberta's current regulatory processes,</li> <li>- provide a better understanding of cumulative effects to inform improved mitigation measures, and</li> <li>- help to establish thresholds for cumulative effects.</li> </ul> <p>This request for a regional assessment was denied.</p> <p>It is unclear what Moraine intends to do with the project reports that are mentioned within this section.</p>
20.	<p><b>6 Strategic Assessments</b></p> <p><b>PDF Page 31</b></p>	<p>“No strategic assessments have been carried out that are relevant to the Project. However, a Strategic Assessment of Climate Change (GOC 2020) conducted under Subsection 95(2) of the <i>Impact Assessment Act</i> could be applicable to the Project.”</p>	<p>It is not clear from this statement if the Proponent considers the Government of Canada's <i>Strategic Assessment of Climate Change</i> as applicable to the Project.</p> <p>The effects of climate change are very much relevant to this Project and should be properly assessed and considered as it relates to this Project. IAAC guidance requires that Proponents use the <i>Strategic Assessment of Climate Change</i> when developing the Initial Project</p>

<sup>15</sup> O'Chiese First Nation's rationale for a Regional Assessment were submitted to the Canada Energy Regulator (“CER”) in September 2022. This rationale was included in the CER's submission to the Governor In Council regarding Crown consultation which occurred on the Nova Gas Transmission Ltd. West Path Delivery 2023 project.

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			Description. <sup>16</sup> The <i>Strategic Assessment of Climate Change</i> elaborates on the <i>Information and Management of Time Limit Regulations</i> concerning information Proponents should include in the Initial Project Description. The <i>Strategic Assessment of Climate Change</i> indicates that proponents should include: “estimate of the maximum annual net GHG emissions for each phase of the project, the methodology, data, emission factors and assumptions used, a description of the activities that would result in an impact on carbon sinks, and land areas expected to be impacted by the project, by ecosystem type [...] over the course of the project lifetime, including any areas of restored or reclaimed ecosystems.” <sup>17</sup>
21.	<b>7 Project Purpose and Need</b> <b>7.1 Project Purpose</b> <b>PDF Page 33</b>	“By incorporating carbon capture and storage (CCS), the Project will produce near-zero emissions baseload electricity to meet the needs of Alberta electricity customers. The Project is planned to be compliant with the proposed Canada’s Clean Electricity Regulations, and thus is aligned with – and a material step forward in Alberta towards – Canada’s objectives of achieving net-zero emissions from the electricity grid by 2035 (GOC 2022).”	O’Chiese First Nation acknowledges the importance of Canada’s objectives of controlling and reducing emissions. However, approaches to achieve “net zero” must ensure they do not cause additional harm. The potential unintended consequences of carbon capture, transportation and sequestration must be explored prior to any Project decisions. Given the uncertainty surrounding potential emissions from the construction and operation of the CO <sub>2</sub> pipeline and carbon sequestration hub, and the lack of clarity on the Proponent’s calculations of GHG emissions (not using strategic assessment and technical guidance available), it is unclear how the Project will produce “near-zero emissions.”
22.	<b>7 Project Purpose and Need</b> <b>7.2 Project Need</b>	“With respect to the need to site the Project in the Whitecourt region of Alberta, this area of the province offers a unique coincidence of both infrastructure capacity and project	Adding additional pipeline to transport natural gas, and building new transmission lines are, in O’Chiese First Nation’s understanding,

<sup>16</sup> The Impact Assessment Agency’s “Guide to Preparing an Initial Project Description and a Detailed Project Description” specifies that the Strategic Assessment of Climate Change should be used when calculating GHG emissions for an Initial Project Description. [https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guide-preparing-project-description-detailed-project-description.html#\\_Toc17794708](https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guide-preparing-project-description-detailed-project-description.html#_Toc17794708)

<sup>17</sup> Environment and Climate Change Canada, [Strategic Assessment of Climate Change](#) (Revised October 2020), p. 11, 16 - 17

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
	PDF Page 34	<p>execution support capabilities to host the Project. This includes:</p> <ul style="list-style-type: none"> <li>• Access to over 1,000 MW of new generation interconnection capacity on the existing 240 kV transmission network in the Whitecourt area. This means there would be no expected need for transmission system expansion to accommodate the project.</li> <li>• Access to the required natural gas supply network for the Project, without system expansions on the NGTL natural gas transmission network”</li> </ul>	<p>system expansions. <b>Please clarify these statements on what expansions will or will not be considered for this Project.</b></p>
23.	<p><b>7 Project Purpose and Need</b></p> <p><b>7.2 Project Need</b></p> <p>PDF Page 34</p>	<p>“With respect to the need to site the Project in the Whitecourt region of Alberta, this area of the province offers [...]</p> <ul style="list-style-type: none"> <li>• Proximity to a proposed CO<sub>2</sub> sequestration hub, capable of permanently storing all of the Project’s captured CO<sub>2</sub>”</li> </ul>	<p>The separate proposed, but not yet approved, CO<sub>2</sub> sequestration hub is currently being contemplated as a separate project. The portrayal of this Project in proximity to a not yet approved project is misleading.</p> <p>O’Chiese First Nation requests that the Athabasca Banks Hub be considered in conjunction with the Project currently proposed as it very much relies on its proximity in its conception. To properly consider Project effects, we must be able to view and assess all Project components.</p> <p>Given the uncertainty surrounding the Athabasca Banks Hub, it is unclear why it is provided as a rationale for the location of the proposed Project near Whitecourt. Based on a review of publicly available information, it does not appear that the Athabasca Banks Hub has a confirmed location. It is also unclear if the Proponent has tenure for pore space in the Athabasca Banks Hub to ensure the Hub would be able to store all the captured CO<sub>2</sub> over the Project’s 40+ year lifetime.</p>

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24.	<b>7 Project Purpose and Need</b> <b>7.3 Project Benefits</b> <b>PDF Page 34</b>	"The Project will create substantial benefits for Albertans and other Canadians."	The potential Project benefits to Albertans and Canadians does not substitute the need for avoidance, mitigation, and accommodation for impacts to Inherent and Treaty rights. For well over a century, Canada and Alberta have been facilitating the creation of benefits for non-Indigenous peoples at the expense of the Inherent and Treaty rights of Indigenous Nations. This has resulted in cumulative, intergenerational benefits to Albertans and Canadians, and cumulative, intergenerational impacts experienced by O'Chiese First Nation.
25.	<b>7 Project Purpose and Need</b> <b>7.3 Project Benefits</b> <b>PDF Page 34</b>	"The Project will generate over one million tonnes per year of CO <sub>2</sub> sequestration offsets under Alberta's "Quantification Protocol for CO <sub>2</sub> Capture and Permanent Storage in Deep Saline Aquifers.""	See Comment #21. <b>Please explain if/how the generation of CO2 sequestration offsets provides a benefit to O'Chiese First Nation.</b>
26.	<b>7 Project Purpose and Need</b> <b>7.3 Project Benefits</b> <b>PDF Page 35</b>	"The Project will generate substantial taxes over its planned operating life. Taxes generated by the Project are valued over a 30 – year period."	<b>Please clarify whether Moraine has explored resource revenue sharing options (specifically for sharing wealth generated by the Project with Indigenous Nations).</b>  "Taxation benefits" as stated in this section are insufficient to be considered as a benefit to Indigenous Nations.  Further, the expected lifespan of the Project at 30+ years will have serious consequences for future generations, rendering areas completely inaccessible for the exercise of Inherent and Treaty rights. These impacts need to be assessed and accommodated.
27.	<b>7 Project Purpose and Need</b> <b>7.3 Project Benefits</b> <b>PDF Page 35</b>	"The Project is expected to generate considerable employment in Alberta, both during the Project development and construction stages, as well as during its operation."	It is unclear how Moraine is planning to ensure that First Nations are able to participate in the identified employment opportunities (in both the construction and operation stages). Given Moraine's lack of specificity regarding individual Nations and their pan-Indigenous approach to engagement on this Project, it is also unclear whether Moraine considers employment of First Nations from one Nation as

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			a benefit or measure of compensation for a different Nation. <b>Please confirm what employment and training initiatives Moraine is planning to support employment of O’Chiese First Nation members.</b>
28.	<b>7 Project Purpose and Need</b> <b>7.3 Project Benefits</b> <b>PDF Page 36</b>	“[...] the interconnections of the Project to this existing infrastructure without the need for system expansion produces cost savings (tariff reductions) for all customers of these systems.”	See Comment #22. <b>Please clarify which customers Moraine is referring to in this statement and if these cost savings can be further quantified.</b>
29.	<b>9 Project Activities and Physical Works</b> <b>PDF Page 38</b>	<p>“The Project components for which approval is being sought are as follows:</p> <ul style="list-style-type: none"> <li>• PGF, consisting of a CCGT with ICCF</li> <li>• Transmission line and interconnection infrastructure (approximate length between 14 and 25 km depending on AIES connection point)</li> <li>• Natural gas pipeline from the NGTL network to the PGF site (approximate length of 30 km)</li> <li>• CO2 pipeline (estimated length of approximately 12 km)</li> </ul> <p>In addition to the above components, there is ancillary infrastructure associated with the Project, including ancillary roads and utilities (including water).”</p>	<p><b>Please provide details on the anticipated ancillary infrastructure such as roads and utilities, including if new roads will be constructed as part of this Project.</b></p> <p><b>Please clarify the provincial and federal approvals and timelines being sought for these Project components.</b></p>
30.	<b>9 Project Activities and Physical Works</b> <b>Athabasca Banks Carbon Hub Project</b> <b>PDF Page 38</b>	“MIL is planning to transport the captured CO <sub>2</sub> to a third-party CO <sub>2</sub> sequestration hub storage project. MIL is working with Vault 44.01 on evaluating and developing the Athabasca Banks Carbon Hub project. This project was selected in the second competition issued by the province of Alberta for development of open access storage hubs. [...] The Athabasca Banks Carbon Hub project is in the early stages of development, and Vault 44.01, who specialize in carbon	See Comment #23.  Detailed plans regarding the proposed Athabasca Banks Hub are not yet available. The Athabasca Banks Hub has been described by Moraine as “foundational” to the proposed power generation project. However, more information (including anticipated timespan and details on proposed site selection) is required for O’Chiese First

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		<p>storage projects, is leading the evaluation of the available subsurface information to determine its effectiveness as a CO<sub>2</sub> storage site. MIL anticipates entering into a joint venture or third-party agreement with Vault 44.01 to support the evaluation and development of the CO<sub>2</sub> storage hub. [...] The Athabasca Banks CO<sub>2</sub> Carbon Hub project sequestration boundary is shown on Figure 1-1, with a preliminary injection location located approximately 12 km from the Project. [...] A cornerstone of the hub model is that each project must provide open access to potentially allow for CO<sub>2</sub> emissions from multiple industrial sources be stored in a single CO<sub>2</sub> sequestration area. This model means that if the Athabasca Banks project is not viable, or successful for any reason, MIL can consider other hubs to sequester its CO<sub>2</sub>.”</p>	<p>Nation to be able to assess the potential impact on our Inherent and Treaty rights.</p> <p>O’Chiese First Nation has not received any communications from Vault 44.01 regarding the Athabasca Banks Hub and has not received any notifications. O’Chiese First Nation requires further information on the Athabasca Banks Hub and related infrastructure and requires clarity regarding the regulatory approvals process. The proposed carbon sequestration hub and the construction of related infrastructure (including pipelines, roads and transmission lines) will impact O’Chiese First Nation Inherent and Treaty rights. The Hub would “permanently store” CO<sub>2</sub> in a deep saline aquifer, with the potential to cause seismic events and contaminate groundwater. Additionally, the Hub is located in critical habitat for aquatic species at risk, posing a potential threat to these species during the construction and operation of the Hub, which must be further explored.<sup>18</sup></p> <p>O’Chiese First Nation is concerned that Athabasca Banks Hub is currently being considered as a separate project. Fragmenting large development projects into multiple smaller projects results in gaps in the assessment of impacts, particularly with respect to cumulative effects and impacts to Inherent and Treaty rights. Moraine has identified that their proposed power facility near Whitecourt would be a primary supplier of CO<sub>2</sub> to Athabasca Banks, and Moraine is a co-developer of the carbon storage project, so it would be prudent to consider and assess these projects together.</p> <p><b>Please clarify what safety requirements exist for the transport of CO<sub>2</sub> via. pipeline, and what mitigation measures would be put</b></p>

<sup>18</sup> Department of Fisheries and Oceans Canada, “[Aquatic species at risk map](#).” Accessed June 4, 2023.

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			<b>in place regarding potential ruptures and leaks of the CO<sub>2</sub> pipeline.</b>
31.	<b>9 Project Activities and Physical Works</b> <b>Athabasca Banks Carbon Hub Project</b> <b>PDF Page 38</b>	<p>“Once selected, each hub proponent is required to enter into an evaluation agreement with the province to further explore the project area's ability to safely store CO<sub>2</sub>. Companies will be required to demonstrate the viability of the sequestration lease to safely and permanently store CO<sub>2</sub>, and subsequently apply for the right to inject captured CO<sub>2</sub>.[...] If the evaluation findings lead to the conclusion that the Athabasca Banks Carbon Hub project will not be a suitable site to sequester the CO<sub>2</sub> from the Project, then MIL will evaluate other options to transport the captured CO<sub>2</sub> to another hub facility, which will likely be more than 25 km from the Project.”</p>	<p>The location of the proposed Athabasca Banks Hub will be important to identifying potential impacts to O'Chiese First Nation Inherent and Treaty rights, as it influences the pipeline length and routing. The type of evaluation findings which would lead Moraine to rely on other options for the transportation and storage of CO<sub>2</sub> are unknown.</p> <p><b>Please clarify when evaluation is expected to be complete for the Athabasca Banks Hub and clarify the regulatory timelines for the Athabasca Banks Hub including the provincial and federal approvals that will be required.</b></p>
32.	<b>9 Project Activities and Physical Works</b> <b>Athabasca Banks Carbon Hub Project</b> <b>PDF Page 39</b>	<p>“The awarded pore space footprint for the Hub project extends from 29.3 km west to 32.4 km east of the Moraine Project, and 20.5 km north to 13.3 km south of the MIL project, totaling 74,592 hectares (ha).”</p>	<p>See Comment #30 and Comment #31.</p> <p>The total area of the Athabasca Banks Carbon Hub is massive.</p> <p><b>Please confirm how much of this project footprint overlaps with currently unoccupied Crown land.</b></p>
33.	<b>9 Project Activities and Physical Works</b> <b>Athabasca Banks Carbon Hub Project</b> <b>PDF Page 39</b>	<p>“The details of the commercial arrangement between Vault 44.01 and MIL are not yet known and will be confidential in any event. [...] The terms and conditions of the transport, delivery, and sequestration of the CO<sub>2</sub> captured from the MIL Project will be set forth in a third-party agreement with the Athabasca Banks Carbon Hub project.”</p>	<p>Since the capture, transport and sequestration of CO<sub>2</sub> is material to the carrying out of the proposed Project, these terms and conditions should be set out in the IPD to help identify whether or not the Hub is likely to cause adverse effects and if it should be considered in conjunction with this Project. Potential impacts and mitigation strategies should be identified regarding the transport and sequestration of CO<sub>2</sub>. O'Chiese First Nation requires consultation on</p>



#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
			any terms and conditions regarding the transport and sequestration of CO <sub>2</sub> as it relates to the Hub and this Project.
34.	<b>9 Project Activities and Physical Works</b> <b>Athabasca Banks Carbon Hub Project</b> <b>PDF Page 39</b>	<p>“Capture and sequestration of CO<sub>2</sub> resulting from power generation is foundational to the MIL Project. MIL will work with the Athabasca Banks Carbon Hub project, and potentially other sequestration options, if necessary to ensure that a viable CO<sub>2</sub> sequestration site is available at the startup of the Project.”</p>	<p>See Comment #30.</p> <p>It is deeply concerning to O'Chiese First Nation that there are many uncertainties associated with the Athabasca Banks Hub and the connection to this Project. O'Chiese First Nation is not confident that enough information has been provided on a contingency plan in the case that the Athabasca Banks Hub is not approved.</p>
35.	<b>9 Project Activities and Physical Works</b> <b>9.1.1 Power Generation Facility</b> <b>9.1.1.1 Combined-Cycle Gas Turbine (CCGT)</b> <b>PDF Page 44</b>	<p>Table 9.3 Project Structures and Sub-Components</p> <p>“Permanent Facilities</p> <p>Water Supply</p> <p>The water requirement for the site is estimated at 10 litres per second (L/S) (162 gallons/min) subject to final design. It is anticipated that water will be sourced from groundwater. A groundwater investigation is planned to be conducted prior to completion of the Detailed Project Design. The water is then processed in a demineralized water facility on site to bring it up to acceptable specification.”</p>	<p>O'Chiese First Nation is concerned about potential impacts to waterbodies and groundwater as a result of the large amount of water use proposed over the lifespan of the Project. Potential Project impact to waterbodies include contamination of downstream waters by hydrocarbons and chemicals, depletion of groundwater in the area, potential impacts to natural carbon storage areas such as wetlands and peatlands, as well as potential impacts to fish, wildlife, and critical habitat. O'Chiese First Nation is also concerned about the potential impacts of the release of treated water back into the environment, and the lack of specificity in the IPD regarding what would constitute “acceptable specification” for water contamination.</p> <p>More details are required on the rationale for the water usage for this Project. Water availability and security is just as much a concern as is capturing carbon and the benefits of storing carbon must be weighed appropriately against the costs of rendering large quantities of water unavailable.</p>
36.	<b>9 Project Activities and Physical Works</b>	<p>“An amine-based CO<sub>2</sub> Absorber that removes most of the carbon dioxide from the gas turbine exhaust steam. Treated gas turbine exhaust with reduced CO<sub>2</sub> content is directed</p>	<p>The use of chemicals and generation of amine waste, contravenes O'Chiese First Nation Natural Laws and will impact Inherent and Treaty rights. O'Chiese First Nation acknowledges the importance of</p>

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	<b>9.1.1 Power Generation Facility</b> <b>9.1.1.2 Integrated CO2 Capture Capabilities</b> <b>PDF Page 46</b>	back to its exhaust path to atmosphere from this component step.”	Canada’s objectives of controlling and reducing emissions. However, approaches to achieve “net zero” must ensure they do not cause additional harm. Additional information is required on the generation of waste and the proper disposal of this waste.
37.	<b>9 Project Activities and Physical Works</b> <b>9.1.1 Power Generation Facility</b> <b>9.1.1.2 Integrated CO2 Capture Capabilities</b> <b>PDF Page 48</b>	<p>“Plant Makeup Water: Optimization of water supply will continue through project development. The scope of the PGF, presently, is based on water sourced from groundwater. [...] Water reuse will be optimized in the ICCF process, based on final design, to reduce the amount of plant makeup water where possible.</p> <p>Cooling Water: The CO<sub>2</sub> capture equipment will include a separate, ACHE system dedicated to the ICCF. Water recovered from the gas turbine exhaust in the Quencher may be used as makeup and will set the sizing basis for the colling process.</p> <p>Process water: [...] Water reuse will be optimized in the ICCF processes, based on final design, to reduce the amount of process water from the ICCF, where possible.”</p>	See Comment #35.
38.	<b>9 Project Activities and Physical Works</b> <b>9.1.1 Power Generation Facility</b> <b>9.1.1.2 Integrated CO2 Capture Capabilities</b> <b>PDF Page 50</b>	“Typically, collected amine solvent waste will be disposed of separately at an appropriate third-party facility.”	<p>See Comment #36.</p> <p>The disposal of amine waste has the potential to impact O’Chiese First Nation Inherent and Treaty rights.</p> <p><b>Please clarify how much amine waste is expected to be generated and the location of the third-party facility.</b></p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
39.	<p><b>9 Project Activities and Physical Works</b></p> <p><b>9.1.2 Power Transmission Line and Interconnection</b></p> <p><b>PDF Page 50</b></p>	<p>“two proposed interconnection options [...]”</p> <ul style="list-style-type: none"> <li>• Add a 240 kV circuit, approximately 10 km in length, to connect the PGF to the existing 240 kV transmission line [...] using a T-tap configuration.</li> <li>• Add a 240 kV circuit, approximately 20 km in length to connect the PGF to the existing Sagitawah 77S switchyard using a radial configuration [...]”</li> </ul>	<p>O'Chiese First Nation was not consulted on the identification of the two proposed interconnection options detailed in this section.</p> <p>Additional information regarding the criteria for how these options were identified is required, including routing options and how potential impacts to O'Chiese First Nation Inherent and Treaty rights were considered in the identification of these to options.</p>
40.	<p><b>9 Project Activities and Physical Works</b></p> <p><b>9.1.3 CO<sub>2</sub> pipeline</b></p> <p><b>PDF Page 51</b></p>	<p>“While the pipeline routing is in development, it is anticipated to parallel existing disturbances to the extent possible, including existing natural gas pipeline rights-of-way (ROWs) and Highway 43. The CO<sub>2</sub> pipeline and the natural gas pipeline components of the Project are anticipated to be built parallel to each other to the extent possible. The pipeline will be regulated by the AER. See Figure 1.1 for the proposed route.”</p>	<p>While paralleling existing disturbance helps to minimize impacts, it does not eliminate additional disturbance, nor is it always the best choice for minimizing impacts to Inherent and Treaty rights. The disturbance caused by the Project, therefore, must be properly mitigated and accommodated.</p> <p>Unoccupied Crown land is critical to O'Chiese First Nation as it is the only unencumbered land where O'Chiese First Nation can exercise their rights without permission. The taking up of any additional Crown land or expansion of ROWs for this Project will impact O'Chiese First Nation Inherent and Treaty rights.</p> <p><b>Please provide a calculation of the total amount (ha) of Unoccupied Crown Land taken up by the Project areas (e.g., land with disturbance or land to be placed under visible and incompatible use through fencing or signage).</b></p>
41.	<p><b>9 Project Activities and Physical Works</b></p> <p><b>9.1.3 Natural Gas Pipeline</b></p> <p><b>PDF Page 51</b></p>	<p>“The pipeline routing is in development; however, it is anticipated to parallel existing disturbances for the majority of the length of the pipeline route, including ROWs.”</p>	<p>See Comment #40.</p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
42.	<b>9 Project Activities and Physical Works</b> <b>9.2 Ancillary Infrastructure</b> <b>9.2.1 Water Supply</b> <b>PDF Page 51</b>	<p>“The maximum raw water use for the PGF is estimated to be 883 cubic metres per day (m<sup>3</sup>/d) [...] When in full operation, final raw water usage for the PGF is expected to be significantly reduced below 883 m<sup>3</sup>/d [...] through design coordination with the ICCF original equipment manufacturer (ICCF OEM). Water supply for the PGF, presently, is expected to be sourced from groundwater wells installed at or near the PGF site. Further evaluation of the hydrogeological conditions of the area is needed to assess the location, number, and density of the water wells necessary to achieve a sustainable yield.”</p>	<p>See comment 35 for concerns regarding potential impacts to Inherent and Treaty rights from the water use described.</p>
43.	<b>9 Project Activities and Physical Works</b> <b>9.2 Ancillary Infrastructure</b> <b>9.2.2 Ancillary Roads and Utilities</b> <b>PDF Page 51-52</b>	<p>“Access to the PGF will be from the existing Alberta Highway 43 connection to the industrial area roadways that bound the proposed facility site to the west and north.”</p> <p>“The proposed CO2 pipeline will carry CO2 to the proposed third-party Athabasca Banks facility, which is an independent development and is not part of the Project.”</p>	<p>See Comment #29 and Comment #30.</p>
44.	<b>9 Project Activities and Physical Works</b> <b>9.3 Description of Project Activities</b> <b>9.3.1 Construction</b> <b>PDF Page 52</b>	<p>“Construction activities will include clearing vegetation, access road construction, surface preparation, installation of major equipment, connection of process and ancillary equipment, site drainage and erosion control, and site clean-up and restoration. [...] Following construction, waste materials will be removed, stored soil replaced on areas not covered by asphalt or structures and then the area will be revegetated. Construction waste will be collected and disposed of at licensed waste facilities.”</p> <p>“Pre-construction geotechnical investigation will be required”</p>	<p>Construction activities proposed will violate the lands and resources within O'Chiese First Nation's territory. The violation of lands and resources by this Project will convert lands into lands that are incompatible for O'Chiese First Nation's exercise of Inherent and Treaty rights in accordance with our Natural Laws.</p> <p>These disturbance activities will impact wildlife, fish, and vegetation resources and their habitats, which will lead to a decline in availability of culturally critical resources required by O'Chiese First Nation for the continued exercise of Inherent and Treaty rights and our way of life.</p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
45.	<b>9 Project Activities and Physical Works</b> <b>9.3 Description of Project Activities</b> <b>9.3.3 Decommissioning and Abandonment</b> <b>PDF Page 53</b>	<p>“all relevant environmental regulations in existence at the time of decommissioning will be adhered to”</p> <p>“A Decommissioning and Reclamation Plan will be developed for the Project prior to the PGF site closure and will include habitat restoration in the Project Area.”</p>	<p>It is important that reclamation activities consider an end land use that is compatible with the exercise of Inherent and Treaty rights. Reclamation planning and monitoring must involve input from impacted Indigenous Nations.</p>
46.	<b>10 Estimated Maximum Project Capacity</b> <b>PDF Page 54</b>	<p>“The ICCF will capture approximately 4,000 tonnes/d of CO<sub>2</sub>. This CO<sub>2</sub> will be transported by pipeline to the proposed Athabasca Banks Carbon Hub facility for deep geological sequestration.”</p>	<p>O'Chiese First Nation is concerned about potential long-term and adverse impacts from storing an estimated 50 million tonnes of CO<sub>2</sub> in deep saline aquifer pore space.<sup>19</sup></p> <p>The long-term effects of storing CO<sub>2</sub> have not been properly assessed, including the potential for cumulative effects of storage as the approach becomes more widely utilized across the Province. More recently in Alberta, fracking has been proven to induce seismic activity, and the potential for seismic activity to increase as a result of CO<sub>2</sub> storage must be reviewed thoroughly.</p>
47.	<b>11 Project Schedule</b> <b>PDF Page 55</b>	<p>“Q2 and Q3 2023   Field Surveys and Technical Studies</p> <p>Q3 2023 – Q2 2024   Preliminary engineering</p> <p>Q4 2024 start   Construction</p> <p>Q3 2027   Start up / commissioning”</p>	<p>The dates outlined in the IPD do not align with the time required to undergo a federal impact assessment.</p> <p>It is important for Moraine to leave sufficient time for adequate consultation to take place.</p> <p>It is unclear when Moraine would finalize and build the CO<sub>2</sub> pipeline, as this would be dependent upon the approval for the Athabasca</p>

<sup>19</sup> 4,000 tonnes per day of CO<sub>2</sub> would amount to over 50 million tonnes of CO<sub>2</sub> over the 40-year lifetime of the project. This is an estimate based on information in the Initial Project Description provided by Moraine.

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
			Banks Hub. <b>Please clarify if this timeline accounts for all components of the Project as currently proposed</b>
48.	<b>12 Project Alternatives</b> <b>12.1 Alternative Means of Carrying Out the Project</b> <b>12.1.1 Facility Siting</b> <b>PDF Page 56</b>	<p>“MIL considered six potential sites in north-central Alberta for the PGF. All potential PGF sites, as shown in Figure 12.1, are located within Woodlands County, near Whitecourt”</p>	<p>It appears that the site selection criteria did not contemplate selecting a site that contemplates a reduction in impacts to Inherent and Treaty rights. This is concerning as O'Chiese First Nation was not engaged on route or site selection.</p>
49.	<b>12 Project Alternatives</b> <b>12.1 Alternative Means of Carrying Out the Project</b> <b>12.1.2 Power Transmission Line and Pipeline Routing</b> <b>PDF Page 61</b>	<p>“Inputs to route refinement include considerations of safety, constructability, cost, land use, environment and stakeholder input.”</p> <p>“Of particular interest are potential impacts of routing on key environmental features, including the Athabasca River, as well as on existing infrastructure such as Highway 43, the Town of Whitecourt and nearby Indigenous communities.”</p>	<p>See Comment #7 and Comment #48.</p> <p>This statement gives the impression that Moraine is primarily concerned with impacts only to “nearby Indigenous communities” and that Moraine understands these impacts as being impacts “on existing infrastructure.”</p> <p>This approach illustrates an impoverished view of Indigenous rights. Traditional lands in proximity to the Project should not act as a trigger for consultation, rather, the assertion of established rights should trigger consultation. Rights, in essence, are not ‘use it or lose it’ and the presence or absence of traditional use in an area does not improve or diminish rights assertions by Nations.</p> <p>Consideration of impacts must include all Indigenous Nations impacted by the Project, not only those with settlements or reserve land in geographic proximity to the project footprint. This reliance on proximity rather than on the established or asserted rights of Indigenous Nations is inappropriate and will not ensure information is collected which can be used to discharge the Crown’s duty to consult.</p>

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50.	<b>13 Geographic Information</b>  <b>PDF Page 63-64</b>	<p>“The PGF location is zoned by Woodlands County as Natural Resources Extraction – Direct Control., within an area used by the County for industrial development. The location is a brownfield site that currently serves as a gravel pit for aggregate extraction and processing and is Alberta Crown land currently leased by another company.”</p> <p>“The Project will be located on provincial public land and will not overlap any federally owned lands. The Project is proximal to Indigenous groups and organizations, as shown in Figure 4.1, and distances to nearby reserve lands is provided below in Section 20. Traditional land uses by Indigenous groups will be confirmed during engagement...however it is anticipated that the linear Project components will overlap areas that may have been on continue to be used for traditional practices based on baseline settings of the regional location and wildlife use. As the PGF is within an area that is currently zoned for industrial use and has been cleared, the use of this area would not be considered for traditional practices.</p> <p>The nearest federally owned lands that are the closest to the Project include Jasper National Park (approximately 170 km) and Canadian Forces base (CFB) Edmonton Garrison (approximately 160 km).”</p>	<p>See Comment #7, Comment #8, and Comment #49.</p> <p>Despite O'Chiese First Nation identifying to Moraine that they have established rights in the Project area, Moraine has chosen to assume that <u>use</u> of the area is the only metric to be assessed and that the use of O'Chiese First Nation is not an issue as the area has been “zoned for industrial use”.</p> <p>The significant problems with this position are:</p> <ul style="list-style-type: none"> <li>• It focuses on ‘use’ rather than rights;</li> <li>• There are assumption-based conclusions listed by Moraine rather than based on material information from O'Chiese First Nation;</li> <li>• There is expectation of information provision without capacity to collect it.</li> </ul>
51.	<b>14 Physical Environment</b>  <b>14.1 Project Environmental Setting</b>  <b>14.1.1 Setting</b>	<p>“The area has historically been used by many Indigenous groups, and the area was named “Sagitawah – the place where the rivers meet” by the Woodland Cree Nation (Town of Whitecourt). The rivers in the area were used for transportation and sustenance for early residents and has continued to be historically supported by the softwood lumber</p>	<p>Prior to European contact, and up until the signing of treaties. Indigenous peoples in Canada were part of self-governing nations. Section 35(1) is not limited to Treaty rights and recognizes and affirms “...the existing aboriginal and treaty rights of the aboriginal peoples of Canada...”</p>

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	<p><b>PDF Page 65</b></p>	<p>sector, although the western portion of the region also supports the coal mining sector.”</p>	<p>These existing rights included elements of their society (practices, traditions and customs) that made them self-governing nations such as their own laws and justice, language rights, governance rights, rights to control membership, education rights, wealth and health care distribution rights as well as lands and resource rights.</p> <p>This section misrepresents the history and present-day reality of ongoing colonialism and cumulative effects to Indigenous Nations from industrial development. It is irresponsible for the Proponent to characterize forestry and coal mining as simple continuations of Indigenous way of life in the Project area. Forestry and coal mining have significantly impacted O’Chiese First Nation’s Inherent and Treaty rights.</p>
<p><b>52.</b></p>	<p><b>14 Physical Environment</b>  <b>14.1 Project Environmental Setting</b>  <b>14.1.2 Air Quality</b>  <b>PDF Page 65</b></p>	<p>“The Project is located in a rural area with few nearby industrial emission sources other than the adjacent Alberta Newsprint Company (ANC) facility. [...] The combined effects of the ANC facility and the Project are evaluated in Section 19.2.”</p>	<p>The combined effects of the CO2 storage hub should be considered in the overall assessment of nearby emission sources in the context of this Project. The consideration of the “combined effects of the ANC facility and the Project” on air quality are insufficient to assess cumulative effects to Inherent and Treaty rights.</p> <p>It is unclear from these statements where Moraine set up air quality monitoring receptors to conclude that no other emission sources should be considered.</p>
<p><b>53.</b></p>	<p><b>14 Physical Environment</b>  <b>14.1 Project Environmental Setting</b>  <b>14.1.3 Geology and Hydrology</b>  <b>PDF Page 67</b></p>	<p>“using groundwater from below the base of groundwater protection”</p> <p>“Deeper aquifer may be able to provide sufficient groundwater production. However, there is insufficient information to determine if this is a feasible water supply alternative given the groundwater geochemistry from deep</p>	<p>See Comment #35.</p>



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		regional aquifer units. The first available bedrock aquifer that may yield sufficient groundwater is the Brazeau Formation”	
54.	<b>14 Physical Environment</b> <b>14.1 Project Environmental Setting</b> <b>14.1.4 Surface Water and Fish and Fish Habitat</b> <b>PDF Page 67-68</b>	<p>“Fisheries and Oceans Canada (DFO) has identified the Athabasca River and its tributaries in this area as being with range of distribution for bull trout (<i>Salvelinus confluentus</i>; Western Arctic population listed as Special Concern under Schedule 1 of <i>Species at Risk Act</i> (SARA)), and as critical habitat for rainbow trout (<i>Oncorhynchus mykiss</i>; Athabasca River population listed as Endangered under Schedule 1 of SARA)”</p>	<p>The potential effects to critical fish and fish habitat is a concern for O'Chiese First Nation and the protection and maintenance of O'Chiese First Nation's right to fish. These impacts to fish and fish habitat must be fully quantified and offsets should be examined to avoid, mitigate or eliminate the impacts identified. Input from Indigenous Nations should be incorporated into this assessment and the development of offsets.</p>
55.	<b>14 Physical Environment</b> <b>14.1 Project Environmental Setting</b> <b>14.1.5 Vegetation and Wetlands</b> <b>PDF Page 68 - 69</b>	<p>“Vegetation in the regional area surrounding the Project components contains a variety of upland and wetland plant communities, as well as many existing disturbed areas including roads, forestry cut blocks and industrial sites. [...] Wetlands do not appear to be present at the site. [...] The natural gas pipeline, CO2 pipeline, and power transmission line will cross a variety of upland vegetation types, including coniferous, deciduous and mixed wood forest, shrubland and riparian vegetation associated with watercourses. They may also intersect with a variety of wetlands, largely fens and swamps. As the pipelines will cross areas recently logged and will parallel existing pipeline ROWs, powerline easements and roads, areas of open, regenerating, and non-native vegetation will also be encountered.”</p> <p>“A timber volume (coniferous and deciduous) of 75 m3 was estimated for the PGF site”</p>	<p>The changes to spatial distribution of traditional use species should be explored as a potential impact resulting from the Project. The location-based nature of the exercise of rights for gathering vegetation are important to identify as these locales can be used in teaching and transmitting knowledge to the younger generations.</p> <p>Additionally, with the consideration of the above noted effects on Indigenous rights with respect to vegetation, there is potential for there to be a significant Project residual effects as the long-term viability of wetland functions and vegetation species of interest to Indigenous communities will be threatened.</p>

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56.	<p><b>14 Physical Environment</b></p> <p><b>14.1 Project Environmental Setting</b></p> <p><b>14.1.6 Wildlife and Wildlife Habitat</b></p> <p><b>PDF Page 70</b></p>	<p>“The Project falls within the range of distribution of species protected under SARA...indicating that there is potential for interactions with species at risk during Project construction and operation if suitable habitat is available”</p> <p>“As the site is largely disturbed by aggregate operations, it is unlikely that it contains high quality habitat for wildlife, including species at risk.”</p> <p>“The PGF site, CO2 pipeline route and portions of the natural gas pipeline and power transmission line routes occur within a KWBZ.”</p> <p>“The Project does not intercept [...] federally-designated critical habitat for SARA-listed wildlife species. Similarly, the Project does not intersect areas that are mapped for bird conservation (Bird Studies Canada and Nature Canada 2015).”</p>	<p>Changes to the distribution and abundance of wildlife species has the potential to adversely impact Indigenous rights through changes to species of cultural importance, through changes in perception, changes in preferred conditions and changes in sense of place. The language and assessment within this section should be updated to reflect these considerations.</p> <p>There appear to be contradictory statements in this section regarding species at risk. While Moraine notes that the project falls within a range of distribution of species protected under SARA, Moraine discounts these potential interactions by claiming that Project does not intersect with critical habitat, and only appears to be describing the part of the Project that overlaps existing aggregate operations rather than contemplating all components including the pipeline, transmission line, and the potential connection to the Athabasca Banks Hub that will further fragment the landscape.</p> <p>It is further unclear what Moraine means by “if suitable habitat is available”.</p> <p>Project interactions with any species have the potential to add stress and cause unnecessary harm to species where populations and habitats have already been significantly diminished.</p> <p><b>Please confirm if routing options have been explored that diminish possible interactions with species at risk or which do not intersect with KWBZ.<sup>20</sup></b></p>

<sup>20</sup> In the recent *Yahey (Blueberry River First Nations) v. British Columbia* 2021 BCSC 1287 decision, a 500 m buffer or ‘zone of influence’ was accepted around all dispositions and disturbance (or human activity) to demonstrate avoidance of Nation members while exercising their rights. This buffer was adapted from wildlife zone of influence research, which acknowledge that wildlife, tend to avoid an area around physical disturbances such as roads, pipelines, seismic lines etc. This is a conservative estimated as “avoidance is generally related to the level of activity rather than the features themselves” (para. 1054).

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57.	<p><b>14 Physical Environment</b></p> <p><b>14.1 Project Environmental Setting</b></p> <p><b>14.1.7 Historical Resources</b></p> <p>PDF Page 73</p>	<p>"The proposed pipelines and power transmission line may cross quarter sections with designated historical resource values (HRV)."</p> <p>"It is possible that the areas near the Athabasca River crossing could have additional historical importance, which would be determined during AC review."</p>	<p>This section only focuses on non-Indigenous details and a westernized understanding of sites of cultural importance to Indigenous Nations. It is also unclear if the heritage assessment included the location of the proposed Athabasca Banks Hub and the full extent of the proposed CO2 pipeline. <b>Please clarify what is meant by "areas near the Athabasca River crossing."</b></p>
58.	<p><b>15 Health, Social and Economics of Woodlands County and the Town of Whitecourt</b></p> <p>PDF Page 75</p>	<p>"A summary of the community health profile [...] is presented in Table 15.1"</p>	<p>Moraine's assessment does not consider how health and well-being may be impacted beyond the immediate Project footprint. The health and well-being of O'Chiese First Nation members is impacted by resource development and cumulative effects, which extends beyond the immediate footprint of this Project. Activities described by Moraine are consistent with activities known to impact O'Chiese First Nation rights and health and well-being.</p> <p>O'Chiese First Nation is concerned about the risks to human health posed by potential contamination of groundwater and potential impacts to groundwater from the drilling of multiple well sites. O'Chiese First Nation is further concerned with the potential contamination of plant and animal species, which could impact the health of our Nation members. Emissions and air pollution pose a further risk to the health of our Nation members, and these emissions must be considered in the context of the total sum of existing cumulative effects in the region.</p>
59.	<p><b>18 Jurisdictions That Have Powers, Duties or Functions in Relation to an Assessment of the Project's Environmental Effects</b></p>	<p>"If the Project has the potential to interact with fish and fish habitat through interactions pipeline and transmission line watercourse crossings, including for the Athabasca River and its tributaries, through other potential interactions with groundwater or tributaries to fish bearing streams, Project-</p>	<p>See Comment #54.</p> <p>O'Chiese First Nation has an established right to fish in the Project area. The potential impacts to Fish and Fish Habitat will require full consultation with O'Chiese First Nation and a proper baseline</p>

#	Section and Page Number	Excerpt from Initial Project Description	O’Chiese First Nation Comments
	<b>18.1 Federal Regulatory Requirements</b> <b>18.1.1 Fisheries Act</b> <b>PDF Page 80</b>	related interactions with fish and fish habitat could require authorizations under the Fisheries Act.”	assessment of the fish required by Indigenous peoples for subsistence.
60.	<b>18 Jurisdictions That Have Powers, Duties or Functions in Relation to an Assessment of the Project’s Environmental Effects</b> <b>18.1 Federal Regulatory Requirements</b> <b>18.1.3 Species at Risk Act (SARA)</b> <b>PDF Page 81</b>	“Project activities are not anticipated to result in any violations to SARA.”	See Comment #56.  Without conducting a fulsome impact assessment it is unclear how Moraine can draw such conclusions at this time.
61.	<b>18 Jurisdictions That Have Powers, Duties or Functions in Relation to an Assessment of the Project’s Environmental Effects</b> <b>18.2 Provincial Regulatory Requirements</b> <b>18.2.4 Water Act</b> <b>PDF Page 82</b>	“Effects on wetlands associated with long-term disturbance of topography or hydrology of wetlands, such as those caused by the construction of above-ground facilities or permanent access roads, require approvals under the <i>Water Act</i> from the authorizing regulator before construction via a <i>Water Act</i> Application supported by a Wetland Assessment Impact Report (WAIR). Effects on wetlands associated with short-term/ temporary disturbances caused by the construction of a pipeline or temporary access roads shall follow the standard operating practices as outlined in the code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body, and the Code of Practice for Watercourse Crossings. A notification form supported by a	See Comment #55.  Standard operating procedures are ineffective at mitigating and accommodating impacts to O’Chiese First Nation Inherent and Treaty rights.  The <i>Water Act</i> and provincial assessment processes for impacts to wetlands do not adequately protect waterbodies and wildlife from biophysical effects and offer no protection to O’Chiese First Nation Inherent and Treaty rights.

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		Wetland Assessment and Impact Form (WAIF) (where applicable) shall be submitted to AEP 14 days prior to starting work.”	
62.	<b>18 Jurisdictions That Have Powers, Duties or Functions in Relation to an Assessment of the Project’s Environmental Effects</b>  <b>18.2 Provincial Regulatory Requirements</b>  <b>18.2.5 Historical Resources Act</b>  <b>PDF Page 83</b>	“Heritage resources are regulated under the Alberta HRA and administered by the Historical Resources Management Branch of Alberta Ministry of Culture (AC). The need for, and scope of, heritage resource assessments is determined by AC based on their guidelines and requirements. AC independently assesses the scientific value of heritage resource sites and determines the need for any mitigation or avoidance measures. Project approval is required from AC prior to construction and is received as clearance under the HRA.”	<p>See Comment #57.</p> <p>The identification of important historical and cultural sites should be done in consultation with Indigenous Nations. Without consultation, there is the potential for important historically and culturally significant sites to be missed.</p> <p>The emphasis on an “independent assessment of scientific value” undermines Indigenous stewardship and governance of our heritage resources. O’Chiese First Nation requires involvement in the assessment and determination of mitigation or avoidance measures for any heritage resources potentially impacted by the Project.</p>
63.	<b>18 Jurisdictions That Have Powers, Duties or Functions in Relation to an Assessment of the Project’s Environmental Effects</b>  <b>18.2 Provincial Regulatory Requirements</b>  <b>18.2.6 Public Lands Act</b>  <b>PDF Page 83</b>	“The <i>Public Lands Act</i> does not apply to construction on private property but does apply to all works on Crown land including the defined bed and shore of Crown-owned wetlands and other bodies on site. As the Project area overlaps Crown land including pipelines, access or utilities will require dispositions.”	See Comment #40.
64.	<b>18 Jurisdictions That Have Powers, Duties or Functions in Relation to an Assessment of</b>	“The Project is in the Upper Athabasca Region; work on a land use plan (under the <i>Alberta Land Stewardship Act</i> ) or	To characterize the lack of a regional land use plan as “not yet started” is an understatement.

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
	<p><b>the Project's Environmental Effects</b></p> <p><b>18.4 Regional Plans and Management Frameworks</b></p> <p><b>PDF Page 84</b></p>	<p>management framework (under Alberta Environment and Protected Areas) for the region has not yet started.”</p>	<p>The Government of Alberta has only developed two regional plans to date, which have been criticized for their failure to consider Inherent and Treaty rights. The Government of Alberta has been unsuccessful in completing the other regional plans contemplated in legislation, including a regional plan for the Upper Athabasca Region. Consultation on these regional planning processes has been limited, with no indication from the Government of Alberta that planning will restart.</p> <p>The lack of a regional plan for the Project areas leaves a significant gap in planning, land use management and addressing cumulative effects.</p>
65.	<p><b>19 Potential Effects</b></p> <p><b>19.2 Air Quality</b></p> <p><b>19.2.1 Effect Pathways</b></p> <p><b>PDF Page 85 - 86</b></p>	<p>“Air emissions during the construction phase result from construction equipment exhaust and from fugitive dust associated with construction activities.”</p> <p>Table 19.1 Potential Construction Phase Effects on Air Quality</p> <p>“Effect Pathways</p> <ul style="list-style-type: none"> <li>• Air contaminant emissions from equipment and vehicles burning hydrocarbon fuel...</li> <li>• Dust generated during soil stripping and grading and through vehicle and equipment movement...”</li> </ul> <p>Table 19.2 Potential Operation Phase Effects on Air Quality</p> <p>“Effect Pathways</p> <ul style="list-style-type: none"> <li>• Air contaminant emissions from hydrocarbon-fueled equipment (e.g. combustion turbine) during operation”</li> </ul>	<p>Described effects on air quality during construction, operations, and decommissioning/ abandonment, including dust, emissions, the presence vehicles and other equipment, emissions from the power generation facility, violate O'Chiese First Nation members required means for the exercise of Inherent and Treaty rights.</p> <p>The management and/or suppression of dust will be important to ensure subsistence vegetation and harvesting activities are not impacted by the Project.</p> <p>Air quality monitoring should be set up in the vicinity of the Project to establish a proper baseline which can be assessed against the Project if approved and constructed. Consultation on air quality monitoring and the location of the monitoring devices should be conducted.</p> <p>Air quality should be assessed based on its importance to Indigenous Nations as a linkage to Indigenous rights through</p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
		<p>“Atmospheric emissions during the abandonment phase would be similar or less than those associated with construction”</p>	<p>preferred conditions of use and ability to impact Nations through perception and /or avoidance behaviors.</p>
66.	<p><b>19 Potential Effects</b> <b>19.2 Air Quality</b> <b>19.2.2 Mitigation</b> <b>PDF Page 87</b></p>	<p>Mitigation measures that may be implemented during construction to address potential effects on air quality are listed in Table 19.4 and are typical to facility, pipeline and transmission line construction projects.</p>	<p>O'Chiese First Nation requires involvement in the development of mitigation strategies as a result of the change in landscape diversity. Where effects can be anticipated in relation to Indigenous rights, O'Chiese First Nation would like involvement in the development; where the effects are unrelated to Indigenous rights, O'Chiese First Nation requires review of adaptive management procedures prior to their implementation.</p> <p>The effects of industrial development to O'Chiese First Nation Inherent and Treaty rights today is proof that “standard” or “typical” mitigation measures have not successfully addressed impacts to rights, nor have these impacts been appropriately accommodated.</p>
67.	<p><b>19 Potential Effects</b> <b>19.2 Air Quality</b> <b>19.2.2 Mitigation</b> <b>PDF Page 87 – 89</b></p>	<p>“Due to the short-term nature and small magnitude of the Project construction emissions, it is unlikely that the increase in emissions due to the Project will cause a substantial change to ambient air quality in the area.”</p> <p>“Maximum contaminant concentrations are predicted to occur near the Project and decrease with increasing distance from the Project. The dispersion modelling indicates that the operation of the Project is not expected to cause or contribute to a substantial degradation of ambient air quality.”</p> <p>Table 19.5 Potential Operation Phase Mitigation Measures for Air Quality</p>	<p>O'Chiese First Nation does not have confidence in Moraine's assessments to date. Terminology such as “unlikely” do not provide enough certainty that Project impacts, including impacts to Inherent and Treaty rights will be fully addressed. A fulsome impact assessment is required to identify the potential impacts and appropriate mitigation and accommodation for the Project.</p>

#	Section and Page Number	Excerpt from Initial Project Description	O'Chiese First Nation Comments
68.	<b>19 Potential Effects</b> <b>19.3 Acoustic Environment</b> <b>19.3.1 Effect Pathways</b> <b>PDF Page 90 – 91</b>	<p>Table 19.6 Potential Construction Phase Effects on the Acoustic Environment</p> <p>“Potential Effect</p> <p>Change in existing sound levels”</p> <p>“Neither the AUC Rule 12 nor AER Directive 38 are applicable to construction noise.”</p> <p>“No noise emissions are anticipated for operations of the buried pipelines and overhead transmission line.”</p> <p>Table 19.7 Potential Operations Phase Effects on the Acoustic Environment</p> <p>“A noise impact assessment (NIA) will be completed for the Project, as compliant with AUC Rule 12. The NIA will quantify the Project’s noise contribution within the acoustic study area and will be compared to the requirements under AUC Rule 12: Noise Control (AUC 2021) which set permissible Sound Levels (PSLs) for a Project.”</p>	<p>There is no description within this section about how noise emissions from equipment and vehicles used to construct facilities and Project components were considered in relation to Inherent and Treaty rights. Noise receptor locations should be identified in consultation with Indigenous Nations and the potential impacts from noise on Inherent and Treaty rights must be considered within the full impact assessment.</p>
69.	<b>19 Potential Effects</b> <b>19.3 Acoustic Environment</b> <b>19.3.2 Mitigation</b> <b>PDF Page 91 – 92</b>	<p>“Mitigation measures that may be implemented during construction to address potential effects on the acoustic environment are listed in Table 19.8 and are typical to power plant, pipeline and transmission line construction projects.”</p> <p>“Acoustic emissions from construction equipment will be limited, transient, and short-term and addressed through the use of codified practices, proven effective mitigation measures, and best management practices.”</p>	<p>See Comment #66.</p> <p>None of the identified mitigation measures address cumulative effects pathways and impacts to O'Chiese First Nation Inherent and Treaty rights. O'Chiese First Nation requires consultation on the development of mitigation and monitoring plans for the Project.</p>



#	Section and Page Number	Excerpt from Initial Project Description	O’Chiese First Nation Comments
		<p>“As engineering progresses, further mitigation measures, including facility-specific mitigation measures, may be developed.”</p>	
70.	<p><b>19 Potential Effects</b>  <b>19.4 Groundwater</b>  <b>19.4.1 Effect Pathways</b>  <b>PDF Page 93-94</b></p>	<p>“Groundwater in the Project area is mapped as relatively high and the potential for interaction with excavation from project construction of the power plant, pipelines, and transmission line has the potential to occur.”</p> <p>“During construction of the PGF, pipelines, and transmission line, the Project has the potential to change groundwater quantity and quality as a result of drilling of extraction wells, excavation and potential dewatering activities, and from accidental spills in areas where groundwater is shallow.”</p> <p>“During operation of the PGF, the Project has the potential to result in a change to groundwater quantity as CCGT make up water supply for the operation of the PGF could include groundwater diversion. A change in groundwater quality could also occur as a result of accidental spills during operation, although the effect of accidental spills is expected to be limited based on the planned design and operation of the facility and types of fluids within the PGF.”</p> <p>“Following completion of pipeline and transmission line construction and post-construction reclamation of the pipeline and transmission line ROWs, no new operations phase effects on groundwater are anticipated.”</p> <p>“A neutral effect on groundwater may occur when the PGF is removed as groundwater diversion will cease. With regards to the pipelines and transmission line, typical decommissioning or abandonment activities involve limited</p>	<p>See Comment #35.</p> <p>There is no listed linkage between groundwater and the assessment of potential effects to Indigenous peoples. Changes in groundwater quality or quantity can affect the exercise of Inherent and Treaty rights and their ability or desire to exercise those rights in the Project vicinity.</p> <p>Please clarify what constitutes a “neutral effect” on groundwater.</p> <p>Effects on groundwater from the carbon storage facility are not accounted for in this section. See Comment #30 regarding the Athabasca Banks Hub.</p>

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		ground disturbance, which might temporarily affect groundwater within the ROWs where dewatering and excavation occurs. Effects would be limited to short duration and any dewatered groundwater would be expected to be discharged to the surface where it would likely infiltrate back into the ground.”	
71.	<b>19 Potential Effects</b> <b>19.4 Groundwater</b> <b>19.4.2 Mitigation</b> <b>PDF Page 94 – 96</b>	“Standard construction practices and best management plans will be implemented during dewatering are effective mitigation measures to limit disturbances to the local groundwater system.”	<p>See Comment #66.</p> <p>None of the identified mitigation measures address cumulative effects pathways and impacts to O’Chiese First Nation Inherent and Treaty rights. O’Chiese First Nation requires consultation on all Project mitigation measures.</p>
72.	<b>19 Potential Effects</b> <b>19.5 Soils</b> <b>19.5.1 Effect Pathways</b> <b>PDF Page 96 – 97</b>	<p>“The Facility site is largely disturbed, and sand and gravel extraction has occurred over 90% of the site, so little to no topsoil or subsoil is present. The natural gas pipeline, CO2 pipeline, and power transmission line will cross a variety of luvisol-dominated mineral soils and organic soils associated with depressional areas and watercourses.”</p> <p>“Limited effects on native soils associated with construction of the PGF are anticipated as the majority of the site has been stripped during quarrying and only a small patch of undisturbed land remains.”</p> <p>“Following completion of PGF, pipeline and transmission line construction and post-construction reclamation of the pipeline and transmission line ROWs, no effects on soil are anticipated.”</p> <p>“An adverse effect on soil may occur where the PGF is removed and the site is restored, as soil loss through erosion</p>	<p>The Proponent assumes biophysical effects and other potential impacts (including impacts to Inherent and Treaty rights) will be limited as “only a small patch of undisturbed land remains.” Impacts to Inherent and Treaty rights must be understood in the context of cumulative effects. The fact that rights are already significantly impacted by activities in the area does not mean there will not be additional impacts to rights from the construction, operation and decommissioning of the Project. Impacts to rights also must be assessed by all Project components.</p> <p>Given the lack of regional land use planning and gaps in the provincial regulatory process with respect to identifying and accommodating impacts to Inherent and Treaty rights, described effects will violate O’Chiese First Nation Inherent and Treaty rights. O’Chiese First Nation requires a Nation-specific assessment of impacts to Inherent and Treaty rights.</p>

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		<p>or previous site uses may have occurred prior to the Project initiation, leaving less soil for final reclamation.</p> <p>With regard to the pipelines and transmission line, typical decommissioning or abandonment activities involve vehicle movement and ground disturbance which might temporarily affect soils within the ROWs, however these would be managed through proven soil handling measures and over a short term that the change would be negligible.”</p>	<p>Additionally, effects on soils from the carbon storage facility do not appear to be contemplated within this section and remain a gap in characterizing the impacts from the Project.</p> <p>In regards to abandonment of the linear features of this Project, please confirm if Moraine will seek full reclamation of the pipeline disposition. Please further indicate if Moraine considers this disposition to be a temporary or permanent impact of the Project.</p>
73.	<p><b>19 Potential Effects</b></p> <p><b>19.5 Soils</b></p> <p><b>19.5.2 Mitigation</b></p> <p><b>PDF Page 97 - 99</b></p>	<p>Table 19.14 Potential Construction Phase Mitigation Measures for Soils.</p> <p>“Wetland soils will be stripped during dry or frozen conditions, stockpiled separately from other soil stockpiles and returned to the wetland they were removed from whenever possible.”</p> <p>“Following implementation of mitigation measures, Project construction is not anticipated to have adverse effects on soil where they are disturbed.”</p> <p>“pipelines would be abandoned in place”</p>	<p>See Comment #55.</p> <p>O'Chiese First Nation is firmly opposed to the destruction of wetland areas. O'Chiese First Nation requires consultation on all Project mitigation measures.</p> <p>In regards to abandonment of the linear features of this Project, please confirm if Moraine will seek a full reclamation certificate of the pipeline disposition. Please further indicate if Moraine considers this disposition to be a temporary or permanent impact of the Project.</p>
74.	<p><b>19 Potential Effects</b></p> <p><b>19.6 Vegetation and Wetlands</b></p> <p><b>19.6.1 Effect Pathways</b></p> <p><b>PDF Page 99 -100</b></p>	<p>“While there are no known wetlands within the PGF site, wetlands will be crossed by the natural gas pipeline, CO2 pipeline and power transmission line. No federally-listed vegetation species at risk are known to occur in the project area. Limited effects on native vegetation and wetlands are associated with construction of the PGR are anticipated as the majority of the site has been stripped during quarrying and only a small patch of native vegetation remains. During construction of the pipelines and transmission line, natural</p>	<p>See Comment #55 and Comment #72.</p> <p>Moraine’s messaging around wetlands is misleading. A more fulsome assessment of impacts from the Project to wetlands must be conducted so appropriate mitigation measures can be identified.</p> <p>Not only are wetlands vital carbon sinks and important to biodiversity in this region, but the described effects to wetlands during construction, operation and decommissioning/ abandonment will violate O'Chiese First Nation Inherent and Treaty rights. O'Chiese First Nation members have already noted impacts to wetlands,</p>

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		<p>vegetation will be cleared, and wetlands may be temporarily disturbed.”</p> <p>Table 19.15 Potential Construction Phase Effects on Vegetation and Wetlands</p> <p>“Effect Pathways</p> <p>Direct loss and/or alteration of native vegetation communities or plant species of management concern (including species at risk) arising from clearing and ground disturbance [...]</p> <p>Alteration or loss of wetland vegetation arising from vegetation clearing and ground disturbance.</p> <p>Change in hydrological regime, storage capacity or overall function.”</p>	<p>which have resulted in impacts to wildlife and plants significant for O’Chiese First Nation and have impacted the exercise of rights.</p> <p>Loss of vegetation and plants during construction, operation and decommissioning/ abandonment will also violate O’Chiese First Nation Inherent and Treaty rights. Any removal or destruction of sacred plants, medicines and berries is permanent, as these plants cannot be replanted according to O’Chiese First Nation Natural Laws.</p>
75.	<p><b>19 Potential Effects</b></p> <p><b>19.6 Vegetation and Wetlands</b></p> <p><b>19.6.1 Effect Pathways</b></p> <p>PDF Page 100</p>	<p>“A net positive effect on vegetation may occur where the PGF is removed and the site is restored. [...] A net positive effect on vegetation may occur when vegetation management under active power lines and over active pipelines ceases following abandonment.”</p>	<p>Conclusions regarding “net positive effect on vegetation” are premature as there has been no consideration for the potential effects to Inherent and Treaty rights.</p> <p><b>Please confirm the temporal parameters of the Project including estimated timeframe for restoration of the Project components and the mitigation measures proposed to address impacts to Inherent and Treaty rights.</b></p>
76.	<p><b>19 Potential Effects</b></p> <p><b>19.6 Vegetation and Wetlands</b></p> <p><b>19.6.2 Mitigation</b></p>	<p>Table 19.16 Potential Construction Phase Mitigation Measures for Vegetation and Wetlands</p> <ul style="list-style-type: none"> <li>• “Salvage merchantable timber according to the requirements of the forest management agreement holder”</li> </ul>	<p>See Comment #55.</p> <p>Please clarify how it was assessed that no effects to wetlands and vegetation are anticipated during operation of all Project components. For example, are there no anticipated effects from vegetation management activities along the pipeline and transmission line routes?</p>

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	PDF Page 100 - 102	<ul style="list-style-type: none"> <li>• “Reclaim disturbed areas according to requirements of the land manager. This may include natural revegetation, seeding and/or shrub staking.”</li> <li>• “During construction, monitor topsoil windrows for weed growth during nonfrozen soil conditions and implement corrective measures, if warranted.”</li> <li>• “Natural recovery is the preferred method of reclamation in wetlands.”</li> </ul> <p>“No additional mitigation measures are required as no operations phase effects on native vegetation and wetlands are anticipated.”</p> <p>“Decommissioning/ Abandonment</p> <p>Potential residual effects are reversible following reclamation for vegetation.”</p>	<p>The Proponent must avoid impacts to wetlands where possible. It is unclear how Moraine has attempted to avoid impacts to wetlands as part of its determination of site selection. According to the Alberta Wetland Mitigation Directive (2018), the Proponent must restore any impacts to wetlands that cannot be avoided or minimized.<sup>21</sup></p> <p>The Proponent also has requirements with respect to avoiding, mitigating, and accommodating impacts to Inherent and Treaty rights which may occur as a result of Project effects on wetlands. The Proponent has a further responsibility to ensure mitigation measures do not impact O’Chiese First Nation Inherent and Treaty rights. According to O’Chiese First Nation’s Natural Laws, once a sacred plant or medicine is destroyed, it cannot be successfully regrown. All violations are permanent – the potential impacts to and destruction of wetlands described by the Proponent will result in permanent and irreversible violations of O’Chiese First Nation Inherent and Treaty rights.</p> <p><b>Please clarify whether offset measures are being considered in relation to impacts to Inherent and Treaty rights from the destruction of wetlands.</b></p> <p>O’Chiese First Nation requires consultation on all mitigation and reclamation measures.</p>
77.	<b>19 Potential Effects</b>  <b>19.7 Surface Water and Fish and Fish Habitat</b>  <b>19.7.1 Effect Pathways</b>	<p>“The proposed PGF site is located approximately 800 m north of the Athabasca River, which is the closest watercourse. As there are no watercourses in proximity to the PGF site, it is unlikely that the PGF construction will affect surface water, fish or fish habitat.”</p>	<p>See Comment #54.</p> <p>Described effects during construction and abandonment, including water contamination, impacts to fish habitat and fish mortality, will violate O’Chiese First Nation Inherent and Treaty rights. O’Chiese First Nation members have already identified impacts to fish habitat</p>

<sup>21</sup> Government of Alberta, “Alberta Wetland Mitigation Directive” (December 1, 2018) <https://open.alberta.ca/publications/9781460130025>

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	<p><b>PDF Page 103 - 105</b></p>	<p>“The proposed pipelines and transmission line cross the Athabasca River and its tributaries, including Chickadee Creek.”</p> <p>“All crossing locations will be assessed for fish and fish habitat, prior to finalizing crossing methods and to identify potential effects and appropriate mitigation.”</p> <p>“temporary vehicle/equipment watercourse crossings will consist of a clear-span bridge, or ice bridge and snow fill during frozen conditions.”</p> <p>“temporary water diversions will be required”</p> <p>Table 19.17 Potential Construction Phase Effects on Surface Water, Fish and Fish Habitat</p> <p>“Potential Effect</p> <p>Change in surface water quality</p> <p>Change in surface water quantity</p> <p>Change in fish habitat (including critical habitat for species at risk)</p> <p>Change in fish mortality risk”</p> <p>“There are no anticipated effects to surface water or fish and fish habitat based on water use for Project operations and with the planned source water”</p> <p>“No effects on surface water, fish or fish habitat would be anticipated as a result of PGF decommissioning/abandonment activities. It is assumed that the pipelines</p>	<p>from industrial development and declines in water quality and quantity. Furthermore, an 800 m distance between the power generation facility and the Athabasca River does not exclude potential impacts to fish and fish habitat.</p> <p><b>Please confirm the watershed(s) where the Project is located, and how Moraine evaluated potential watershed impacts.</b></p>

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		<p>would be abandoned in-place under watercourses; as a result, no direct effects on watercourses would be anticipated. Typical decommissioning or abandonment activities for the pipelines and transmission line would likely involve vehicle/ equipment movement to complete abandonment activities, which might temporarily affect surface water, fish and fish habitat at temporary crossings.”</p>	
78.	<p><b>19 Potential Effects</b>  <b>19.7 Surface Water and Fish and Fish Habitat</b>  <b>19.7.2 Mitigation</b>  <b>PDF Page 105 - 110</b></p>	<p>Table 19.18 Potential Construction Phase Mitigation Measures for Surface Water, Fish and Fish Habitat</p> <p>“Implement measures associated with the following federal and provincial guidance”</p> <p>“Pipeline construction activities and temporary vehicle/ equipment crossings will be reviewed by a Qualified Aquatic Environmental Specialist...”</p> <p>“Due to the presence of mapped critical habitat for Athabasca rainbow trout... a request for review will be submitted to DFO prior to construction activities to avoid non-compliance with the <i>Fisheries Act</i> and SARA.”</p> <p>“Following implementation of mitigation measures, Project construction could have limited residual effects on water quality and fish and fish habitat that would be low in magnitude, local to crossing locations, occur as a single event and be reversible.”</p> <p>“No additional mitigation measures are required as no operations phase effects on surface water, fish and fish habitat are anticipated.”</p>	<p>See Comment #54 and Comment #59.</p>

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79.	<p><b>19 Potential Effects</b></p> <p><b>19.8 Wildlife and Wildlife habitat, including Species at Risk and Migratory Birds</b></p> <p><b>19.8.1 Effect Pathways</b></p> <p><b>PDF Page 111 - 113</b></p>	<p>“Limited effects on wildlife habitat associated with construction of the Facility are anticipated as the majority of the site has been stripped during quarrying and only a small patch of native vegetation remains.”</p> <p>“A net positive effect on wildlife and habitat may occur when the PGF ceases operations (i.e., cessation of sensory disturbances), and where the PGF is removed, and the site is restored.”</p> <p>“With regard to the pipelines and transmission line, typical decommissioning or abandonment activities involve vehicle movement and ground disturbance, which might temporarily affect wildlife habitat within the ROWs and could lead to increased wildlife mortality risk. A net positive effect on habitat may occur when vegetation management under active power lines and over active pipelines ceases following abandonment.”</p>	<p>See Comment #56.</p> <p>Conclusions regarding “net positive effect on wildlife and habitat” are premature as there has been no consideration for the potential effects to Inherent and Treaty rights.</p> <p>The potential displacement of wildlife impacted by the Project must be assessed further. Changes to the distribution and abundance of wildlife species has the potential to adversely impact Inherent and Treaty rights through changes in preferred conditions and changes in sense of place.</p> <p>An effect pathway should be added to the potential environmental effect of change in wildlife health. The effect pathway should be based on the following wording:</p> <ul style="list-style-type: none"> <li>• Loss of wildlife species that support the exercise of Indigenous rights.</li> </ul> <p>This would ensure specific consideration.</p>
80.	<p><b>19 Potential Effects</b></p> <p><b>19.8 Wildlife and Wildlife habitat, including Species at Risk and Migratory Birds</b></p> <p><b>19.8.2 Mitigation</b></p> <p><b>PDF Page 113 - 117</b></p>	<p>“As project planning progresses, further mitigation measures, including site-specific mitigation measures for sensitive resources, will be developed.”</p> <p>Table 19.21 Potential Construction Phase Mitigation Measures for Wildlife and Wildlife Habitat</p> <p>“Prior to the start of clearing, clearly mark all sensitive resources and associated buffer areas according to Project-specific documentation.”</p>	<p>See Comment #56 and Comment #61.</p> <p>A site-specific approach to mitigation will limit the effectiveness of the mitigation measures to avoid, reduce or control Project impacts.</p>



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		<p>“Prior to beginning Project construction activities within a KWBZ, consult with AEPA biologists to determine if site-specific plans or mitigation measures are required.”</p> <p>“Following implementation of mitigation measures, Project construction will have negligible residual effects on wildlife and wildlife habitat and wildlife mortality as there is little habitat to support wildlife in the PGF, and the pipelines and transmission line will be constructed adjacent to existing disturbance. Residual effects are anticipated to be short-term and irregular frequency and reversible, except in relation to mortality, which is irreversible.”</p> <p>“Following implementation of mitigation measures, Project operation will have negligible residual effects on wildlife and wildlife habitat that are low in magnitude, long-term and reversible. As the PGF will be void of vegetation, wildlife use is anticipated to be low and temporary.”</p>	
81.	<b>20 Potential Effects on Extra-Provincial and Federal Lands</b>  <b>PDF Page 118</b>	<p>“Given the distances to most reserves, changes to federal lands by the Project are not anticipated.”</p>	<p>See Comment #49 and Comment #50.</p>
82.	<b>21 Potential Effects on Traditional Land Use, Physical and Cultural Heritage</b>  <b>PDF Page 119</b>	<p>“Currently there are no sites or structures of historical, archaeological, paleontological, or historical significance on record in the proposed PGF site.”</p> <p>“Electrical transmission Interconnection Option 1 crosses the Sakwatamu River valley, as well as other tributary creeks, with a high potential for archaeological sites. It also traverses lands included in the Alberta <i>Listing</i> with HRVs of 4a and 5a, indicating a known and significant archaeological site</p>	<p>See Comment #62.</p> <p>The IAA requires this section to describe potential impacts to Indigenous Peoples. Moraine has instead used the Government of Alberta’s Heritage Resources regulatory framework to describe potential impacts to pre-contact sites and paleontological sites. This is inappropriate and insufficient as an assessment of Indigenous rights. It is inappropriate to equate potential impacts to Indigenous Nations and Indigenous rights with archaeology. The Proponent has</p>

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		<p>(precontact artifact/ lithic scatter) in proximity and associated areas of high archaeological site potential. An additional precontact lithic artifact site is within 30 m of the proposed alignment and may be impacted; this site lies within a developed right-of-way, however, and has an HRV of 0, indicating little to no remaining archaeological value based on the AC regulatory system. This Option also traverse lands included in the <i>Listing</i> with HRVs of 4c. This may trigger engagement with Indigenous Nations relative to the <i>Historical Resources Act</i> (HRA). Portions of these lands may be related to nearby HRV of 4h lands which include an area of protective notification for “Native Burial Grounds.” This area is within 350 m of the proposed alignment.”</p> <p>“Electrical transmission Interconnection Option 2 extends south and crosses the Athabasca River valley – an area of high archaeological and palaeontological site potential. The Athabasca River crossing area has HRVs of 5a (high potential for archaeological sites) with HRVs of 4a (known and significant archaeological site within LSD) and 5a further south. The HRV 4a site, a precontact campsite, is not in conflict with the proposed alignment. The Athabasca River crossing area has HRVs of 4p (known and significant paleontological site) and 5p (high potential for paleontological resources).”</p> <p>“The proposed alignment of the CO2 pipeline northwest section traverses lands with HRV of 5a (high potential for archaeological sites) but does not intersect with known or</p>	<p>not articulated an understanding of the potential for the project to impact the Inherent and Treaty rights of O’Chiese First Nation.</p> <p>Traditional land and resource use is a representative aspect of the exercise of Inherent and Treaty rights which are in the vicinity of the Project. Instead of focusing on land use Moraine should initiate assessments of Indigenous Nations rights and interests. Should Valued Components (VCs) related to TLRU be selected for study, then this information can be collected. However, it should not act as a proxy for all information about rights.</p> <p>The Impact Assessment Agency, as a federal body, can require studies to be undertaken and impose preconditions to approval<sup>22</sup> and O’Chiese First Nation recommends this power be exercised to ensure the Crown-Indigenous consultation process is not unfairly weighted by the power differential between O’Chiese First Nation and Moraine that is created by a lack of capacity.</p>

<sup>22</sup> *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* 2017 SCC 40 at para 31

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		<p>recorded sites. The alignment also traverses lands with HRV of 5p, along the Chickadee Creek valley.”</p> <p>“The remaining portion of the CO2 pipeline and the paralleling portion of the natural gas pipeline do not cross lands with HRVs for archaeology or paleontology, but do intersect with HRV 4c lands, with the potential to trigger Indigenous Nation engagement under the <i>HRA</i>. [...] Lands with HRVs of 4a and 5a are crossed, with two significant precontact artifact scatter sites in proximity (within 70 m and 125 m).”</p>	
83.	<p><b>21 Potential Effects on Traditional Land Use, Physical and Cultural Heritage</b></p> <p><b>PDF Page 120</b></p>	<p>“As the Project footprint is further defined, a Historic Resources Application will be prepared and submitted to AC for review. The regulator will review the Project relative to anticipated impacts to historical resources and cultural aspects. Conditions may include engagement with Indigenous groups in order to acquire project approval. Mitigation measures will be completed as directed by AC, including activities such as avoidance of impact through project redesign, field-based impact assessments (archaeology and/or paleontology), site-specific mitigation measures (e.g. controlled surface collection of cultural material, archaeological excavation, documentation of historical structures activities.”</p>	<p>See Comment #62.</p> <p>Consultation is required prior to conditions for approval being determined.</p>
84.	<p><b>21 Potential Effects on Traditional Land Use, Physical and Cultural Heritage</b></p> <p><b>PDF Page 120</b></p>	<p>“In addition, if an Historic Resources Impact Assessment (HRIA) is required and is possible that Traditional Land Use (TLU) sites are encountered, they will be reported to AC [...] If these sites are culturally sensitive areas (e.g., offering, poss. burial, etc.), these would be discussed with MIL, AC</p>	<p>See Comment #82.</p> <p>This approach illustrates an impoverished view of Indigenous rights. Traditional lands in proximity to the Project should not act as a trigger for consultation, rather, the assertion of established rights should trigger consultation. Rights, in essence, are not ‘use it or lose it’ and</p>

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		<p>and identified Indigenous groups, prior to including in any report.”</p> <p>“Traditional land and resource use that is currently practiced by Indigenous groups in the vicinity of the Project include hunting, fishing, trapping, traditional plant uses and cultural transmission (e.g., spiritual growth). While there may be overlap between the linear project components and these traditional uses, the effects are anticipated to be limited to construction and are expected to be temporary. Construction will occur over several months to three years; limiting access to areas where construction activities are occurring will be necessary for the safety of the public.”</p>	<p>the presence or absence of traditional use in an area does not improve or diminish rights assertions by Nations.</p> <p>It is unclear how Moraine can conclude that Project effects would be limited to construction without consulting with O’Chiese First Nation or supporting Nation-specific impact assessments.</p>
85.	<p><b>21 Potential Effects on Traditional Land Use, Physical and Cultural Heritage</b></p> <p>PDF Page 120</p>	<p>“Communication will be ongoing with all land users including those who may engage in traditional practices to identify areas of concern and overlap. During engagement, we will discuss the timing of activities so that we can find a time that is mutually beneficial to both MIL and Indigenous groups who practice in the vicinity, while also adhering to environmental restricted activity periods as described in Section 19.”</p>	<p>See Comment #3.</p> <p>Consultation is required with O’Chiese First Nation.</p> <p>Communication of construction schedules is insufficient as a mitigation measure to address impacts to rights. Additionally, communication with individual Nation members is not a substitute for engagement with O’Chiese First Nation and is insufficient to identify potential impacts to Inherent and Treaty rights.</p>
86.	<p><b>21 Potential Effects on Traditional Land Use, Physical and Cultural Heritage</b></p> <p>PDF Page 120</p>	<p>“Adverse effects to current use of lands and resources for traditional purposes are not anticipated for the PGF site, as this area is already zoned for industrial use by Woodlands County and in operation for natural resource extraction. Access is limited to the site by way of the <i>Public Lands Act</i> disposition that is currently held by another company and the land is cleared of more than 90% of the natural vegetation,</p>	<p>It is unclear how Moraine could conclude that “adverse effects to currently use of lands and resources for traditional purposes are not anticipated” without consulting with Indigenous Nations, including O’Chiese First Nation.</p> <p>The Proponent’s assumption that there will <i>not</i> be adverse effects to Inherent and Treaty rights because the area is “already zoned for industrial use” is problematic. Impacts cannot be excluded simply because an area is already zoned for industrial purposes. Each</p>

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		which provides limited natural vegetation and habitat for wildlife and also traditional land uses.”	Project component must be reviewed thoroughly for their potential to impact Inherent and Treaty rights. This has not been examined and further, Nation-specific assessment of potential impacts is required.
87.	<b>22 Potential Effects on Indigenous Health, Social, and Economic Conditions</b>  PDF Page 121	<p>“The Project is within the traditional lands of 32 Indigenous groups, as described in Section 4.1”</p> <p>“The natural gas pipeline, CO2 pipeline and power transmission line will be constructed on land outside of Indigenous reserve lands.”</p> <p>“Based on the site being a brownfield site, the environmental effects from the construction and operation of the PGF are expected to be not significant and localized and therefore adverse effects to Indigenous peoples are also expected to be minimal.”</p>	<p>See Comment #49 and Comment #50.</p> <p>Moraine has failed to provide O’Chiese First Nation with confidence that it understands it’s duty to consult and accommodate matters that impact O’Chiese First Nation’s Inherent and Treaty rights as a result of this Project.</p> <p>Moraine’s focus on the potential physical impact to federal reserve lands, disregards the potential impacts caused by the Project on Inherent and Treaty rights exercised outside of the reserve lands.</p>
88.	<b>22 Potential Effects on Indigenous Health, Social, and Economic Conditions</b>  PDF Page 121	“Effects on the environment are expected to be limited to changes in air quality and noise at the PGF site; however, these changes are within the respective guidelines for air quality and noise within the site... and therefore, within guidelines for nearby receptors, including traditional lands of Indigenous groups and their uses (e.g., hunting, fishing, plant harvesting).”	<p>It is unclear how Moraine could come to these conclusions without consulting with Indigenous Nations, including O’Chiese First Nation.</p> <p>The use of biophysical components as a proxy for assessing impacts to rights was struck down in <i>Clyde River (Hamlet) v Petroleum Geo-Services Inc.</i> 2017 SCC 40:</p> <p>“...the consultative inquiry is not properly into environmental effects per se. Rather, it inquires into the impact on the right. No consideration was given in the NEB’s environmental assessment to the source – in a treaty – of the appellants’ rights to harvest marine mammals, nor to the impact of the proposed testing on those rights.” (para 45)</p> <p>Provincial guidelines cannot be used as a substitute for determining thresholds and impacts to Inherent and Treaty rights and cannot be</p>

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			considered to be sufficient for addressing impacts identified by O'Chiese First Nation.
89.	<b>22 Potential Effects on Indigenous Health, Social, and Economic Conditions</b> PDF Page 121	<p>“MIL is developing an Engagement Plan... that includes identifying and participating in meaningful processes to promote economic prosperity for the Indigenous groups. Socio-economic effects are anticipated to be positive for Indigenous groups due to opportunities for employment during construction and operations of the PGF. Opportunities for socio-economic effects will be further evaluated in the DPD based on engagement with Indigenous groups...”</p>	<p>See Comment #3 and Comment #5.</p> <p>This approach is not Nation-specific and includes problematic assumptions concerning the aspirations of diverse Indigenous Nations, without consultation. The Proponent does not consider health and social and cultural prosperity or impacts within the IPD yet assumes net benefits without identifying potential impacts.</p> <p>The potential for employment does not replace the need for impacts to Inherent and Treaty rights to be identified and accommodated.</p>
90.	<b>24 Waste and Emissions Generated by the Project</b> <b>24.4 Other Waste Types</b> PDF Page 125	<p>“Hazardous Waste (paint, solvents, batteries, fluorescent light bulbs, herbicides, etc.”</p> <p>“Wastes will be stored in appropriate receptacles or containment areas and will be removed from site for disposal at licensed disposal facilities.”</p>	<p>It will be important for the Proponent to identify and mitigate any impacts to Inherent and Treaty rights from waste storage and disposal.</p>
91.	<b>Appendix A Photos</b> PDF Page 132 -134	<i>Photos</i>	<p>It is not possible to view the photos included due to low quality.</p> <p>Further, the entire IPD PDF was low quality. This must be addressed for future submissions.</p>