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LETTER DECISION

File OF-Fac-Gas-F111-2020-02 02
2 March 2022

David Yee
Foothills Pipe Lines (South B.C.) Ltd.
450 – 1st Street SW
Calgary, Alberta T2P 5H1
Email david_yee@tcenergy.com

Dear David Yee:

**Foothills Pipe Lines (South B.C.) Ltd. (Foothills)
Application for the Foothills Zone 8 West Path Delivery 2023 Project (Project)
under section 214 of the *Canadian Energy Regulator Act***

**Before: M. Watton, Presiding Commissioner; D. Côté, Commissioner;
M. Chartier, Commissioner**

Disposition

The Canada Energy Regulator (**CER**) received Foothills' application, dated 4 March 2021, to construct and operate the Project (**Application**). Foothills requested an exemption, pursuant to section 214 of the *Canadian Energy Regulator Act (CER Act)*,¹ from the provisions of paragraph 180(1)(a) and section 198 in respect of the Project, as well as exemption from the requirements of paragraph 180(1)(b) and subsection 213(1) to obtain leave to open (**LTO**) from the Commission prior to the installation of the hot tap tie-in assembly.

In assessing the Application, the Commission of the CER (**Commission**) considered all submissions received from interested parties, including Elk Valley Métis Association, Western Export Group, the Nature Conservancy of Canada, and Environment and Climate Change Canada.² The Commission also considered all submissions filed by Foothills in support of its Application.³

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¹ SC 2019, c 28, s 10.

² Submissions from these parties were received on 25 March 2021, 18 April 2021, 27 April 2021, and 16 August 2021, respectively.

³ In support of its Application, Foothills filed submissions dated 8 April 2021, 23 April 2021, 20 May 2021, 15 June 2021, 7 July 2021, 8 July 2021, 11 August 2021, 27 August 2021, and 8 November 2021.

The Commission has considered all of the information on the record that appears to it to be relevant and directly related to the Project, including matters under section 56 of the CER Act. The Commission is satisfied with Foothills' engagement activities with Indigenous peoples and the public. The Commission finds that Foothills has appropriately addressed the protection of the environment and public safety in the Project Application and supporting submissions. In addition, the Commission evaluated the financial viability, economic justification, and proposed design and operations of the Project and finds that it is in the public interest to grant the requested relief.

For the reasons set out below, the Commission, through its issuance of Order XG-002-2022 (**Order**), grants an exemption under section 214 of the CER Act from the application of paragraph 180(1)(a) and section 198, the effect of which is to approve the Project. The Commission has attached 20 conditions to the Order. A copy of the Order and its Schedule A, which together outline the specifics of the Project as approved, are attached.

The Commission has also decided to grant, pursuant to section 214, an exemption from the application of paragraph 180(1)(b) and subsection 213(1), such that Foothills is not required to obtain LTO for the hot-tap tie-in for the Project prior to its installation. The Commission has further decided to grant an exemption from the LTO requirement for the Kingsgate Border Meter Station. The Commission reminds Foothills that it must apply for and receive LTO for the remaining facilities, pursuant to section 213 of the CER Act, before placing them into operation.

Application and Project Overview

Foothills' Application sought leave for the construction and operation of a single loop of approximately 32 km of 1219 mm Nominal Pipe Size (**NPS**) 48 natural gas pipeline that will loop the existing British Columbia Mainline and the Foothills South B.C. Pipeline (**Elko Section**), and an expansion of the Kingsgate Border Meter Station (**Kingsgate Border MS**).

The proposed Elko Section is located approximately 17 km east of the Town of Fernie, British Columbia. The Elko Section is contiguous with existing disturbance for 76 per cent of its length. The segment route will cross Federal Crown freehold land (90 per cent; specifically, the Dominion Coal Block parcel 82), private freehold land (8 per cent) and provincial Crown land (2 per cent). Foothills anticipates that the Project will require the acquisition of new land and temporary workspace (**TWS**). Temporary worker accommodation (one or more camps) may be required, or Foothills may use local accommodations within nearby communities, or both.

The purpose of the Project is to increase capacity on the Foothills South B.C. (Zone 8) system to meet existing and incremental contractual obligations. The Project is underpinned by approximately 162 terajoules per day (**TJ/d**) of incremental Firm Transportation – Delivery service on the Foothills South B.C. system from the Alberta-British Columbia Border to the Kingsgate Border MS.

The purpose of the Kingsgate Border MS component is to expand the capacity of existing metering facilities by replacing fourteen orifice-meter plates with larger diameter orifice-meter plates within the existing meter station site.

The Application Assessment Process

On 24 March 2021, the CER sent a Notice of Application letter to 17 Indigenous⁴ communities potentially affected by the Project. The letter included an invitation for Indigenous peoples to file a letter of comment with the CER by 23 April 2021 for any Project-related views or concerns that they had not been able to resolve with the company.

On 29 March 2021, the Commission initiated a comment process inviting shippers and interested commercial parties to comment on the Application by filing a letter with the CER on or before 18 April 2021. Foothills was given the opportunity to reply to comments received on or before 23 April 2021.

The CER received letters of comment from Elk Valley Métis Association on 25 March 2021, Western Export Group (**WEG**) on 29 March 2021, and the Nature Conservancy of Canada on 27 April 2021. Foothills replied to the letter from WEG on 23 April 2021.

On 2 June 2021, following its examination of the Application, letters of comment, and all other submissions, the Commission determined that the Application was complete and commenced its assessment. The Commission concurrently established a comment process, which asked interested persons to submit any comments by 30 June 2021, and for Foothills to file reply comments, if any, by 7 July 2021. The Commission received no comments through this process.

Also on 2 June 2021, a notice was posted on the Canadian Impact Assessment Registry, as per subsection 86(1) of the *Impact Assessment Act*,⁵ indicating that the public may file comments for the portion of the Project located on federal lands on or before 30 June 2021. No comments were filed through this process.

Pursuant to section 79 of the *Species at Risk Act*,⁶ the CER provided notifications to Environment and Climate Change Canada (**ECCC**) and Fisheries and Oceans Canada on 3 August 2021, which included lists of species that may or are likely to be affected by the Project. ECCC provided a letter of response on 16 August 2021.

On 20 October 2021, the Commission initiated a process to receive comments on two potential conditions: Condition 10 (Report on Engagement with Indigenous Peoples) and Condition 11 (Outstanding Traditional Knowledge Studies). No comments were received from interested parties. On 8 November 2021, comments were received from Foothills on the potential conditions.

Foothills' Engagement with Indigenous Peoples

Foothills began engaging with Indigenous peoples for the Project in November 2019, based on its own identification of those who could potentially be impacted. Foothills began engaging with additional Indigenous communities in December of 2019, after the CER provided a preliminary list of potentially impacted Indigenous peoples. In February of 2021, Foothills began engaging with Elk Valley Métis Association. Foothills provided a summary of

⁴ The use of the term "Indigenous" has the meaning assigned by the definition of "aboriginal peoples of Canada" in subsection 35(2) of the *Constitution Act, 1982*, which states:

In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

⁵ SC 2019, c 28, s 1.

⁶ SC 2002, c 29.

its engagement activities with Indigenous peoples in the Project application and in response to Commission information requests 2.6 and 4.3.

Foothills' engagement activities included notifying Indigenous communities and providing them with Project information for their review, follow-up phone calls and emails, providing funding for site visits, in-person and virtual open houses, and meetings that were held virtually due to the COVID-19 pandemic. Foothills invited feedback on the results of its literature reviews and provided notification of employment opportunities. Foothills has continued working with the identified Indigenous communities and organizations on Traditional Knowledge protocol study agreements and capacity funding agreements. Foothills states that it will continue to engage respectfully throughout the Project lifecycle.

Elk Valley Métis Association filed a letter with the CER expressing concerns about the Project. This letter and Foothills' response are discussed in more detail below.

Commission analysis and findings

The Commission finds that Foothills appropriately identified potentially impacted Indigenous peoples and is satisfied that all potentially impacted Indigenous peoples have been notified and given the opportunity to participate in the Commission's application assessment process. The Commission is satisfied that the design and implementation of Foothills' engagement activities were sufficient because Foothills sought to engage with all potentially affected Indigenous peoples and created opportunities for them to share any Project-related concerns and for Foothills to respond to those concerns. The Commission finds Foothills' commitment to continue engagement activities throughout the lifecycle of the Project to be appropriate, considering Foothills' plan to operate the Project over a number of years.

To obtain updates about potential issues or concerns from Indigenous peoples that may arise prior to construction of the Project and to receive information about whether and how those issues or concerns, if any, are addressed, the Commission imposes **Condition 10** (Report on Engagement with Indigenous Peoples). Condition 10 requires Foothills to file with the CER information about any ongoing engagement activities with Indigenous peoples and Foothills' responses to any concerns raised.

On 20 October 2021, the Commission invited comments on draft Condition 10. No comments were received from interested parties, but on 8 November 2021 Foothills proposed that Condition 10 be struck. Foothills stated that the CER has not issued this condition on other recent projects of comparable scope and scale and with a similar level of interest or concerns expressed by Indigenous communities.

The Commission notes that Foothills continues to engage with Indigenous communities. The Commission also notes that it typically imposes a condition requiring reporting on engagement with Indigenous peoples when engagement is ongoing at the time that the Commission approves a project. The Commission is of the view that the deciding factors in imposing this type of condition are the type of engagement by a company and whether the engagement is ongoing, rather than the particular scope and scale of a project. As such, the Commission imposes Condition 10 for the Project.

Elk Valley Métis Association Letter of Comment

On 25 March 2021, the CER received a letter from Elk Valley Métis Association. The letter outlined concerns about inadequate consultation to-date, lack of capacity to effectively participate in the Environmental and Socio-Economic Assessment (**ESA**), and lack of

capacity to undertake a traditional land use assessment. The letter also identified preliminary concerns about potential impacts of the proposed Project on the environment, traditional land and resource use, socio-economic factors, and the section 35 rights of Elk Valley Métis Association. Elk Valley Métis Association stated their view of the importance of potential employment and training benefits that could flow to Elk Valley Métis Association from the Project. Elk Valley Métis Association also stated that they saw value in having their citizens involved in projects as environmental monitors on site, because it provides confidence to all community members that work is being done correctly.

Foothills provided detailed descriptions of its engagement with Elk Valley Métis Association and responded to the concerns raised in the letter. Foothills committed to continuing to engage with Elk Valley Métis Association and sharing Project information and receiving feedback for the purpose of identifying potential Project-related impacts on the exercise of rights within Elk Valley Métis Association's traditional territory, identifying appropriate measures to avoid or reduce adverse effects and supporting, improving, or providing benefit to the rights of Indigenous peoples. Foothills stated that information gathered through ongoing engagement is considered for incorporation into Project planning, as appropriate.

In response to Elk Valley Métis Association's concerns, Foothills submitted that, within the ESA, Foothills conservatively assumes that the right-of-way will be used by Indigenous communities over the Project lifecycle. Foothills explained that it considered in its Project planning the ability of Indigenous communities, including Elk Valley Métis Association, to continue to exercise or practice Indigenous and treaty rights along the right-of-way during all phases of the Project, including construction, when safe to do so, and operation and maintenance. Foothills further explained that the Project is designed to reduce or avoid potential Project-related effects on activities and the resources that support the exercise or practice of Indigenous and treaty rights.

In response to Elk Valley Métis Association's interest in environmental monitoring, Foothills stated that it would follow up regarding the expression of interest in construction monitoring to better understand Elk Valley Métis Association's interest and to gather further information and knowledge to inform possible next steps. In response to Elk Valley Métis Association's interest in employment and contracting opportunities, Foothills stated that its Indigenous relations business engagement activities for the Project were established to increase the participation of those Indigenous communities potentially affected by the Project. Foothills stated that business engagement activities seek to provide business opportunities for participation arising from Project-related activities to qualified Indigenous contractors, suppliers, and individuals. Foothills stated that it continues to provide information about contracting and employment opportunities and activities to potentially affected Indigenous communities and businesses, obtain information regarding Indigenous community interest, capacity, and capability relating to the Project, and discuss potential economic participation in the Project to build reciprocal business relationships.

Foothills explained that the majority of opportunities for economic participation through contracting and employment will occur in the construction phase of the Project, if approved. Foothills stated that it is not its practice to set targets for Indigenous employment and contracting; rather, it seeks to maximize economic opportunities for local Indigenous communities on all projects. Foothills submitted that it maintains an updated understanding of business capacity and capabilities by engaging with Indigenous communities local to the Project on an ongoing basis to collect and validate information.

Foothills stated that Indigenous communities and businesses that show an interest in contracting opportunities are also directed to TC Energy's online vendor registration portal to

submit business information. Foothills stated that the information received is captured in TC Energy's Indigenous Business Directory and is shared, on consent, with prime contractor(s) for consideration of contracting and employment opportunities. Foothills stated that it expects its contractors to uphold TC Energy's commitment to maximizing participation of local Indigenous communities on its Projects. Foothills stated that it outlines Indigenous sub-contracting, employment, and training expectations through its sourcing events (e.g., request for proposals), and actively monitors prime contractor implementation of its Indigenous participation commitments.

Foothills submitted that it continues to engage with Elk Valley Métis Association, including with respect to the provision of engagement capacity funding and funding for a Traditional Knowledge study.

Commission analysis and findings

The Commission has considered the concerns identified in Elk Valley Métis Association's letter of comment, Foothills' response to those concerns, and Foothills' ongoing engagement with Elk Valley Métis Association. The Commission has also considered Foothills' efforts to support Elk Valley Métis Association's Traditional Knowledge study and Foothills' commitment to evaluate and adjust its planned mitigation measures as needed upon receipt of that study. **Condition 11** will require Foothills to report on any outstanding traditional knowledge studies, including Elk Valley Métis Association's study, before construction begins. As discussed above, **Condition 10** will require Foothills to report on ongoing engagement with Indigenous peoples before construction begins. Foothills' commitment to continue to engage with Elk Valley Métis Association, including with respect to engagement capacity funding and funding for a Traditional Knowledge study, demonstrates Foothills' efforts to continue to learn about and respond to Elk Valley Métis Association's concerns with the Project. Foothills' Indigenous relations business engagement activities demonstrate Foothills' efforts to provide employment and economic opportunities for Indigenous peoples, which is responsive to the socio-economic concerns raised by Elk Valley Métis Association.

The Commission is satisfied that the concerns raised by Elk Valley Métis Association are capable of being addressed through Foothills' commitments and proposed mitigation measures, along with conditions imposed by the Commission. Some of Elk Valley Métis Association's concerns are related to potential impacts on the environment, which may in turn affect Elk Valley Métis Association's traditional use activities within the Project area. As discussed later in this decision letter, potential environmental impacts of the Project are addressed by mitigation measures proposed by Foothills and conditions imposed by the Commission. Elk Valley Métis Association's concerns related to the Project's potential to increase demand on police and emergency services are addressed through Foothills' mitigation measures, including:

- requiring prime contractors to develop a Site-Specific Safety Plan for the Project that meets regulatory requirements and addresses field health services, emergency call-out procedures, fire response plans, and other safety requirements;
- coordinating with emergency response services in the area;
- implementing a Drug and Alcohol Policy, as well as a Code of Business Ethics; and
- providing first aid and medical services at work sites and camps, as per the regulatory requirements for health and safety.

The Commission also finds that Foothills' approach to providing economic opportunities for Indigenous peoples is sufficient. The Commission is of the view that Foothills' goal to maximize economic opportunities for local Indigenous communities on all projects and not just the Project is appropriate. The Commission notes that Foothills stated that it outlines Indigenous sub-contracting, employment, and training expectations through its sourcing events (e.g., request for proposals) and plans to actively monitor prime contractor's implementation of their Indigenous participation commitments.

Elk Valley Métis Association also raised concerns about potential Project impacts on the exercise of their section 35 rights. The following section discusses potential impacts of the Project on Indigenous peoples' exercise of their section 35 rights.

Crown Consultation and Potential Impacts of the Project on the Rights of Indigenous Peoples

Subsection 10(2) of the CER Act designates the CER as an agent of the Crown, and subsection 56(1) requires the Commission, when making a decision or an order, to consider any adverse effects that the decision or order may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.

On 24 March 2021, the CER sent a Notice of Application letter to 17 Indigenous communities potentially affected by the Project. The letter provided information about the Application, invited Indigenous peoples to file a letter of comment with the CER regarding any views or concerns about the Project's potential impacts to the rights of Indigenous peoples, and advised that the Commission is the final decision maker for the Project. On 16 June 2021, in response to a letter filed on 25 March 2021 by Elk Valley Métis Association, the CER confirmed that, for CER-regulated projects where the Commission is the final decision maker, such as this one, the CER's intent is to fulfill the Crown's duty to consult through the Commission's review process. The CER's letter further stated that the Commission has the technical expertise and the mandate to consider and address Project impacts, including those affecting the rights and interests of Indigenous peoples.

Foothills submitted that, based on the Project's scope, setting, and scale, the Project has the potential to interact with the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*. More specifically, the Project may result in changes to the exercise or practice of the rights of Indigenous peoples (e.g., hunt, trap, fish, gather, and undertake other cultural pursuits), due to:

- changes to the quality, quantity, or distribution of resources involved in or required for the exercise of the right, due to loss or alteration of resources or temporary loss or alteration of the habitat supporting the resources;
- changes to access to the resources used or required to exercise the right, due to restrictions on the ability to travel or sensory disturbances that have the potential to influence the conditions for access;
- changes relating to the timing and seasonality of the exercise of rights;
- changes to specific areas of cultural importance where Indigenous rights are exercised; and
- changes to an Indigenous group's cultural traditions, laws, and governance systems that inform the manner in which they exercise their rights, due to interactions of Indigenous peoples with the Project's workforce.

Foothills stated that residual effects of the Project on the exercise or practice of the rights of Indigenous peoples are likely to occur during construction but not during operations and that

these residual adverse effects are expected to be reduced through mitigation and enhancement measures and ongoing engagement throughout the operating life of the Project. Foothills stated that it provided mitigation measures in response to concerns raised in letters of comment and in Traditional Knowledge studies and that it will continue to address questions and concerns from Indigenous communities through its ongoing engagement efforts, should any arise.

Foothills stated that it would implement a number of mitigation measures to reduce potential effects on Indigenous peoples' exercise of their section 35 rights. Key mitigation measures proposed by Foothills include:

- implementing the measures to mitigate effects on the resources relied upon for the exercise and practice of Indigenous rights that are provided in the Environmental Protection Plan (**EPP**);
- providing all workers orientation and information materials regarding environmental, health, safety expectations, and cultural awareness and sensitivity;
- providing potentially affected Indigenous groups with the proposed Project construction schedule and maps;
- notifying registered trappers at least 10 days prior to construction;
- prior to the start of construction activities, clearly marking all sensitive resources as identified on the Environmental Alignment Sheets, Environmental Figures, and/or other Project-specific environmental documents, and in the Project-specific mitigation measure tables;
- clearly delineating areas that have access restrictions and restricting access to construction personnel only;
- posting signage to discourage unauthorized public access onto the construction footprint during construction;
- restricting all construction activities to the approved construction footprint and ensuring that all construction traffic adheres to safety and road closure regulations;
- following other access measures and guidelines on the construction footprint and associated access roads, as outlined in the Traffic Control Management Plan;
- aligning and implementing access management measures on non-contiguous portions of the Project right-of-way that intersect existing access trails, if required;
- if traditional land use sites not previously identified are found on the construction footprint during construction, implementing the Cultural Resource Discovery Contingency Plan to ensure that they are properly recorded and mapped and that potential disturbance to those sites from construction activities is addressed before continuing with construction;
- implementing enhanced measures to support, improve, or provide benefit to Indigenous peoples' exercise of their rights in the Project area, including policies and procedures that encourage diversity, inclusion, and fair employment; and
- undertaking ongoing engagement with potentially affected Indigenous peoples to follow up on any issues or concerns, and incorporating the information into Project planning, as appropriate, including evaluating whether Foothills' planned mitigation measures would effectively avoid the potential interactions or whether additional or refined mitigation measures are warranted.

Foothills also stated that the Project parallels existing disturbance for 78 per cent of its length and that the company does not anticipate that the Project will measurably increase use of the right-of-way or access to the Project area.

Foothills stated that, should Indigenous communities identify specific sites or features that have the potential to interact with Project activities (e.g., trails or travel ways, habitation, or cultural or spiritual sites), it will engage in discussions with the appropriate Indigenous communities regarding the development of site-specific mitigation measures, which may include avoidance of the site by narrowing or rerouting the construction footprint, relocation of the site, or other measures as appropriate based on the particular circumstances and discussion with the potentially affected community. Foothills also committed to including traditional use sites or features that require site-specific mitigation in the EPP and Environmental Alignment Sheets filed prior to construction.

Foothills noted that not all planned Traditional Knowledge studies for the Project have been completed and that, upon receipt of these studies, it will review the findings in the context of the ESA and consider them for incorporation into Project planning, as appropriate. Foothills stated that its consideration of information from Traditional Knowledge studies will include evaluating whether Foothills' planned mitigation would effectively avoid the identified potential interactions, or whether additional or refined mitigation is warranted.

Commission analysis and findings

The Commission is satisfied that the consultation that has taken place to-date with respect to the Project is sufficient for the purpose of the Commission's decision on the Project and that its decision is consistent with subsection 35(1) of the *Constitution Act, 1982*. In reaching this conclusion, the Commission considered the concerns raised by Indigenous peoples, Foothills' engagement activities with Indigenous peoples and information provided by Foothills based on consultation about potential impacts to the ability of Indigenous peoples to exercise their section 35 rights, the Commission's assessment process for the Application and participation opportunities within that process, mitigation measures proposed by Foothills, commitments made by Foothills, and conditions imposed by the Commission.

The Commission finds that the Project is likely to impact Indigenous peoples' ability to exercise their section 35 rights within the Project area on a temporary basis during construction, and is satisfied that Foothills has considered these potential impacts and designed the Project to minimize them, including through the implementation of appropriate mitigation measures.

The Commission notes that Foothills has entered into agreements with some potentially impacted Indigenous peoples to conduct Traditional Knowledge studies in relation to the Project, and that not all expected studies are complete. The Commission imposes **Condition 11** (Outstanding Traditional Knowledge Studies) to ensure that Foothills incorporates any revisions necessitated by the studies or follow-up activities into the EPP for the Project. The Condition 11 filing requires approval so that the Commission can review the report to confirm that Foothills has adequately identified and assessed the potential effects of the Project on the current use of lands and resources for traditional purposes; assess how findings from the studies have been incorporated into the Project or, if not, evaluate Foothills' explanation as to why not; and ensure that appropriate measures are in place to effectively address identified potential impacts prior to construction. The Condition will also ensure that Foothills has identified, or will identify, any potentially affected traditional land and resource use sites or resources if the outstanding Traditional Knowledge studies will not be completed prior to construction.

On 20 October 2021, the Commission invited comments on draft Condition 11. No comments were received. Foothills proposed edits to Condition 11 on 8 November 2021. The Commission is of the view that Foothills' proposed edits to the condition are acceptable, with

one exception. Foothills proposed to strike the wording in subparagraph (a)(i) that reads as follows: “activities relevant to potentially affected Indigenous communities.” Given that Condition 11 is focused on Indigenous communities, the Commission has decided to include the identified text in the condition.

Public Engagement

Foothills began early public engagement activities for the Project in November 2019. These activities involved notifying four potentially affected trappers, two potentially affected guide outfitters, one range tenure holder, and one forest license holder (Nupqu Community Forest) about the Project. Foothills stated that no issues or concerns have been raised.

Foothills confirmed at the time of its application that all potentially affected municipal, provincial, or territorial governments have been or would be notified, in addition to the East Kootenay Regional District, including the BC Oil and Gas Commission; the BC Environmental Assessment Office; BC Forests, Lands, and Natural Resource Operations and Rural Development; and the BC Ministry of Transportation. Foothills also confirmed that it has engaged local emergency response stakeholders by providing Project notifications and information about the Project. Foothills stated that no issues or concerns have been raised.

Foothills submitted that it also provided Project information to ECCC and the Impact Assessment Agency of Canada, and that any input received will be incorporated into Project planning and considered in the development of additional mitigation measures, if required.

Foothills also confirmed that it is continuing engagement through the COVID-19 pandemic via email, mail, telephone, and video conference, and in person when necessary, in accordance with distancing protocol measures. Foothills confirmed that it will continue to engage with landowners to address their concerns throughout the Project planning phase, regulatory process, construction and post-construction phases, as well as during Project operation.

Foothills stated that it will continue to notify all stakeholders about the Project and address issues and concerns throughout the regulatory process and construction. Foothills also stated that TC Energy’s Public Awareness Program will be implemented once the Project is in the operations phase. Foothills submitted that this program facilitates consistent, ongoing communication about safety, integrity, and emergency response with Indigenous communities and key community stakeholders and interested parties, such as landowners, the public, government representatives, and emergency response agencies.

Commission analysis and findings

Based on Foothills’ submissions, the Commission finds that all potentially impacted landowners and stakeholders have been notified and given adequate opportunity to comment on the Project. The Commission received comment letters from WEG, the Nature Conservancy of Canada, and ECCC, the contents of which are considered in the relevant subject areas discussed below.

Engineering Matters

When considering the safety and security of proposed facilities, the Commission assesses whether the facilities are appropriately designed for the properties of the product being transported, the range of operating conditions, and the human and natural environment where the facilities will be located. Foothills is responsible for ensuring that the design,

specifications, programs, engineering assessments, manuals, procedures, measures, and plans developed and implemented are in accordance with the *Canadian Energy Regulator Onshore Pipeline Regulations (OPR)*,⁷ which includes by reference the Canadian Standards Association Standard Z662 – Oil and Gas Pipeline Systems (**CSA Z662-19**). The Commission finds that the general design of the Project facilities is appropriate for their intended use. The Commission is satisfied that the Project will be designed, constructed, and operated in accordance with the OPR and CSA Z662-19.

The Commission imposes **Condition 2** (Design, Location, Construction, and Operation), requiring Foothills to construct and operate the Project in accordance with the specifications, standards, and other information referred to in its application or as otherwise agreed to in its related submissions.

The Commission also imposes **Conditions 1 and 4**, requiring Foothills to file any technical specification updates for the pipeline listed in the Application concurrently with its LTO application. Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade, or material that do not impact any other information provided in the Application. Any other changes will require advance approval from the Commission. Once filed by Foothills, the Commission will review all final technical specification updates and issue an Amending Order, as appropriate.

The Commission's assessment and findings related to Foothills' partial leave to open exemptions and geotechnical design follow.

Partial Leave to Open Exemptions

Foothills submitted that the Project will include one tie-in connection to incorporate the applied-for Project into the existing pipeline system. Foothills requested an LTO exemption, pursuant to paragraph 180(1)(b) and subsection 213(1) of the CER Act, in relation to the installation of two valve assemblies at site BCM35.

Commission analysis and findings

The Commission grants Foothills' request for an exemption from the LTO requirements for the tie-in assembly for the Project and also grants an exemption from the LTO requirements for the Kingsgate Border Meter Station.

With respect to the Project tie-in assembly, the Commission is satisfied that, prior to installation, the relevant valves and tie-in assembly will be field or shop pressure-tested in compliance with the time duration and pressure requirements of CSA Z662-19. With respect to the Kingsgate Border Meter Station, the Commission is satisfied that the facility may be opened safely based on the facts presented: the nature of fluid (non-sour natural gas) reduces the potential consequences of a release, the expansion involves the replacement of interchangeable orifice-meter plates at a metering station, the maximum operating pressure is not being increased, and the company has not had recent compliance issues with hydro testing. The Commission reminds Foothills that it must apply for and receive LTO for the remaining facilities, pursuant to section 213 of the CER Act, before placing them into operation.

⁷ SOR/99-294.

Geotechnical Design

Foothills commissioned a third-party to conduct a desktop (Phase I) Geohazards Assessment for the Project. The Phase I assessment identified the following:

- 17 segments with credible exposure to landslide threats, seven of these classified as moderate and 10 classified as low hazard.
- 62 potential hydrotechnical hazards, 24 of them classified as moderate and 38 classified as low hazard.
- 12 high seismic hazard crossings, of which eight were related to liquefaction and four to seismic-triggered landslides.
- One location was considered to present a moderate hazard potential for karst (subsidence).
- 11 areas of peat/organic soils, two of which were rated as moderate hazards with the remainder classified as low hazards.
- 20 geochemical hazard sections with one being considered high, four classified as moderate, and the remainder as low hazards, based solely on the lithologic geological descriptions.

Foothills submitted that a field assessment (Phase II Assessment) was finalized during the assessment of the Application and it focused on the moderate- and high-rated hazards from Phase I. The Phase II Assessment is intended to verify the desktop assessment, document any re-evaluation of hazard classification, and define potential monitoring and mitigation plans. Foothills explained that similar hazards are typically mitigated through standard engineering measures, which may include implementation of engineered grade plans, appropriate depth of cover, use of heavy-wall pipe, and surface erosion controls, among other mitigations. Foothills stated that, on completion of the Phase II Assessment, a geohazard mitigation and monitoring program for any moderate- or high-rated hazard will be developed and that, once in operation, those potential locations still of concern will be included within the TC Energy Pipeline Integrity Program for routine monitoring and inspection.

Foothills confirmed that a baseline In-line Inspection (ILI) will be completed after commissioning of the new pipeline sections, as per TC Energy's Integrity Management Program (IMP). The ILI run will use combination tools that include Magnetic Flux Leakage (MFL) and caliper and inertial measurement unit (IMU) components.

Commission analysis and findings

The Commission is of the view that the geohazard mitigations for the Project facilities to which Foothills committed are appropriate. The Commission expects Foothills to address all geohazards consistent with its commitments and to conduct a baseline ILI shortly after commissioning of the new pipeline sections to assist in future geohazard assessments.

Financial Matters

When making its determination regarding the economic feasibility of the Project, the Commission assessed the need for the proposed facility and the likelihood of it being used at a reasonable level over its economic life. Having considered the supply and markets available to the pipeline, the rationale for the Project, Foothills' ability to finance the Project, and the commercial impacts of the Project, the Commission finds that Foothills has demonstrated that the Project is economically feasible and is likely to be used at a reasonable level over its economic life.

Need for, and Alternatives to, the Project

Views of Foothills

Foothills stated that the Project is required to increase capacity on the Foothills System for 1 November 2023, to meet existing and incremental contract obligations to serve forecasted long-term aggregate natural gas transportation requirements on the Foothills BC System. Foothills stated that the Project is underpinned by approximately 162 TJ/d of incremental Firm Transportation – Delivery service on the Foothills South B.C. system from the Alberta-BC Border to the Kingsgate Border Meter Station.

Foothills submitted that there is a long-term need for the Project and the existing Foothills system as illustrated by:

- Various turnback and expansion capacity open seasons held between 2019 and 2021, where no shippers expressed interest in relinquishing their contracted capacity that could have reduced or eliminated the need for the Project.
- Foothills' anticipation of ongoing strong demand for service on the Foothills System, and high contract renewal rates by existing customers.

Foothills submitted that the Western Canada Sedimentary Basin (**WCSB**) continues to be a cost competitive source of natural gas for consumers in the Pacific Northwest (**PacNW**) and California who access natural gas at AECO⁸ via the Foothills System, NOVA Gas Transmission Ltd. (**NGTL**) System,⁹ and Gas Transmission Northwest Pipeline¹⁰ (**GTN**). Foothills further stated that the WCSB will continue to economically compete with other basins in serving the PacNW and California markets in the future, given that the Project is underpinned by long-term contracts with a weighted average of 30.5 years.

Foothills stated that it selected the proposed facilities based on lowest cumulative present value cost of service and lowest first year capital cost. Other factors when assessing alternatives include operability of the facilities, environmental considerations, and land access that can influence alternative selections. Foothills stated that the Elko Section was required in all alternatives because the existing pipelines along the Elko Section are experiencing high pressure drop with existing upstream compression discharging at or near maximum operating pressure; therefore, looping is required along the Elko Section.

Foothills had initially considered another section of looping in addition to the Elko Section, the Whitford Section, which would have collectively provided an additional 97 TJ/d compared to the proposed Project. Foothills submitted that the Whitford Section was cancelled following further refinement of hydraulics, when it was determined that the Whitford Section was not required to meet the contractual commitments on the Foothills South B.C. Pipeline. Foothills stated that it understands that the Foothills BC capacity aligns upstream NGTL and downstream GTN capacity.

Foothills further stated that customers awarded capacity through the open season ultimately declined due to bids being conditional on obtaining upstream and downstream capacity.

⁸ AECO is the natural gas hub in Alberta establishing a commodity price for natural gas.

⁹ The NGTL System is a large, interconnected pipeline system in Alberta and northeastern British Columbia, which gathers approximately 70% of the gas produced in the WCSB and transports it to markets in Canada and the United States.

¹⁰ The GTN is a 2,216 km pipeline system that transports Canadian natural gas to markets in Washington, Oregon, and California.

Views of WEG

WEG raised concerns that new and/or anticipated government policies in Oregon, California, and Washington to reduce greenhouse gas (**GHG**) emissions, regulations banning the use of natural gas, and increased use of renewable energy sources will have a significant impact on the demand outlook for the PacNW and California region, and in turn the long-term need for the Project.

WEG stated that, for a capacity expansion on the Full Westpath¹¹ to be useful to shippers, the capacity expansions are required to be coordinated across all three pipelines that comprise the Full Westpath. Such coordination in this instance is especially achievable given that the Foothills Westpath Project, the NGTL Westpath Project, and any expansion of the GTN System are all expected to be operated by TransCanada PipeLines Limited or a subsidiary of TC Energy.

WEG also submitted that it understood that:

- Construction of the Foothills Westpath Project, the NGTL Westpath Project, and the GTN Xpress Project are intended to be coordinated to provide additional capacity on the Full Westpath, with each project having similar service dates.
- The expansions under the Foothills Westpath Project and the NGTL Westpath Project are intended to operate in conjunction to deliver incremental volumes onto the GTN System, to access delivery markets in the Pacific Northwest and California.

WEG stated that shippers on the NGTL System and the Foothills BC System cannot make decisions about optimizing their capacity unless provided a meaningful opportunity under a process that allows shippers to consider their capacity on the Full Westpath. WEG also stated that contracting for additional capacity on either the Foothills BC System and/or the NGTL System is not useful absent a further expansion of the GTN System.

Commission analysis and findings

The Commission finds that the Project is needed to meet existing and new contracts and positions the Foothills System to meet market demand from the gas supply from the WCSB that consumers access through Foothills via AECO. The Commission also finds that Foothills adequately considered alternatives to the Project and provided sufficient rationale for selecting the applied-for Project. Consideration of governmental GHG policies is discussed later in this decision letter.

The Commission is satisfied that the Foothills BC system capacity will be aligned with its upstream and downstream connecting pipelines such that the Project will be used and useful over its economic life.

The Commission acknowledges the significant demand that was expressed through the various open seasons, which will not be addressed by this Project, and that Foothills currently does not have future expansion plans. While companies require the flexibility to operate their pipeline systems efficiently and effectively, should Foothills consider further expansions in the future, the Commission may become concerned if the demand expressed by shippers continues to significantly exceed the capacity offered by a given project or suite of projects. This could potentially lead to a string of smaller projects. Multiple projects that

¹¹ The NGTL, Foothills, and GTN Systems are collectively referred to as the Full Westpath.

are applied-for in the same temporal and geographic area place higher burdens on stakeholders for consultation and assessment of the projects, as well as participating in the regulatory processes associated with those projects. The Commission is of the view that this approach may not reflect regulatory efficiency.

This Project will not meet the demand for significant additional capacity which exists. In this case, providing additional capacity would not have aligned with upstream and downstream connecting pipeline capacities on NGTL and GTN. However, the Commission notes that NGTL and GTN are both affiliates of Foothills and, if there is a need in the future, it may be possible to coordinate expansions to effectively size future projects.

Ability to finance the construction, operation, and abandonment of the Project

Views of Foothills

Foothills is a wholly-owned subsidiary of TransCanada PipeLines Limited, an affiliate of TC Energy Corporation. Foothills indicated that TC Energy is well positioned to finance the Project through predictable and growing cash flows from operations, access to capital markets, cash on hand, and substantial committed credit facilities. Foothills submitted that the estimated cost of the Project will be \$402 million (2023 dollars).

Foothills undertook an analysis of the Project to determine the incremental cost to provide service, as well as the estimated impact on Foothills' tolls. Foothills noted that the Project's related annual incremental revenues are approximately 12 per cent of the annual incremental costs beginning in 2024, the first full year the Project is expected to be in service.

The total abandonment cost estimate (**ACE**) for the Project is \$3.6 million, which represents approximately 1.5 per cent of the ACE for the entire Foothills System, expressed in 2016 dollars. Foothills submitted that the impact of the Project on its ACE and the commensurate impacts of the Project on the Annual Contribution Amount (**ACA**) and abandonment surcharge calculations on the Foothills system will be reflected in periodic updates of the ACE filed with the CER, and in its annual ACA calculation filings.

Foothills submitted that it has considered ongoing law and policy development on carbon, as well as current climate change laws, regulations, policies, and financial risks in the economic analysis of the Project, as required by the CER Filing Manual. Foothills further stated that the drivers of the Project do not change as a result of current climate change laws, regulations, and policies. In response to WEG's concerns about the lack of sufficient considerations of a GHG Emissions Plan in the economic feasibility of the Project, Foothills indicated that, in determining potential actions to achieve net-zero emissions by 2050, it plans to balance effectiveness and efficiency with the long-term impacts to costs and services for its customers, and the safety and reliability of the Foothills System. Foothills further noted that, due to the limited direct operational emissions associated with the Project of < 0.001 kilotons of carbon dioxide equivalent (**kt CO₂e**) per year, the potential cost impacts of net-zero actions are expected to be minimal and unlikely to impact the economic feasibility of the Project.

Views of WEG

WEG expressed concerns about Foothills' commitment to reduce GHG emissions and whether Foothills sufficiently considered current and future climate change laws and

regulations, such as carbon pricing and net-zero emission by 2050 targets, on the cost and need of the Project.

Commission analysis and findings

The Commission has no concerns with Foothills' ability to finance the construction, operation, and abandonment of the Project, given the financial strength of Foothills and its affiliates. The Commission reminds Foothills that it must file an application for an updated ACE when there is a material change to its ACE.

With respect to the possible impacts of Foothills' net-zero action plan on the cost and need of the Project, Foothills has satisfactorily demonstrated that the planned actions are unlikely to have a significant impact on the economic feasibility of the Project.

Commercial Impacts

Views of Foothills

Foothills proposed to treat the costs of the Project on a rolled-in basis and to determine the tolls for service under the existing rate design of the Foothills BC System in effect at any given time. Foothills submitted that a rolled-in tolling methodology is appropriate because the Project represents an expansion of the existing system and is closely integrated with current facilities. It further noted that the Project is required to meet both existing and incremental customer demand and that the nature of the service provided is identical to the service offered prior to the Project.

Foothills also submitted that, since the fall of 2020, some shippers have expressed concerns over the magnitude of the combined toll impacts associated with Foothills' 2022 and 2023 expansion projects, their associated tolling treatment, and the potential non-renewals of existing contracts on Foothills in the 2023 timeframe. Foothills further indicated that it had undertaken consultation with its shippers on the Project beginning in March 2019 through to March 2021. These consultations attempted to resolve shippers' concerns related to long-term market demand for capacity on the Foothills System and the tolling impact and treatment of the Project.

In response to concerns raised by WEG in relation to the impact of the Project on tolls, Foothills acknowledged that the Project does result in a percentage increase in tolls that is greater than the percentage increase in capacity. However, Foothills submitted that this is common for capital additions to a highly depreciated system such as the Foothills System. It further submitted that, despite the toll increase, there is no cross subsidization because both existing and new customers are equally causing the need for the Project.

Views of WEG

WEG raised concerns that the Project creates a significant increase in tolls on the Foothills System for only a small percentage increase in capacity, resulting in possible cross subsidization between existing and new shippers.

Commission analysis and findings

The Commission finds that Foothills' proposal to treat the costs of the Project on a rolled-in basis and to apply the existing toll methodology of the Foothills BC System results in tolls that are just, reasonable, and not unjustly discriminatory. The increase in tolls as a result of

the Project is cost-based and does not cause cross-subsidization, because the need for the Project has arisen due to demand by both new and existing shippers on the Foothills System. As such, the rolled-in tolling methodology remains appropriate and adheres to the principle of no acquired rights, which dictates that existing shippers and new shippers should equally pay for the increase in tolls.

Land Matters

Views of Foothills

Foothills stated that the Elko Section of the Project will likely require the acquisition of approximately 2 ha of new permanent land within provincial Crown lands, 91 ha of new permanent land within Federal Crown freehold lands, and approximately 7 ha of new permanent land within private freehold lands. Foothills also stated that the proposed Kingsgate Receipt Meter Station is located on company-owned land, such that there is no requirement for new or temporary land. Foothills stated that, of the approximate 100 ha of required new permanent land rights, approximately 2.5 ha will overlap existing disturbances.

Foothills stated that TWS requirements for the Elko Section are subject to refinement as the Project progresses through detailed design and engineering. Foothills stated that, before the start of construction, Foothills and the prime contractor for the Project will complete another assessment of lands required for construction activities. Foothills stated that, once this assessment is complete, additional TWS may be required on a site-specific basis, which will be finalized in the field before, and potentially during, construction. Foothills also stated that these areas, if needed, are expected to be located within the lands assessed in the ESA. Foothills stated that, if TWS is required outside the lands that were assessed in the ESA, it will assess the potential effects associated with the new TWS. Foothills stated that it will acquire the required freehold land rights using statutory right-of-way agreements and will apply to the BC Oil and Gas Commission for provincial Crown land rights with the necessary permits or authorizations for the pipeline. Foothills stated that it will continue ongoing discussion with permit holders and landowners to finalize any necessary agreements and consents.

Foothills stated that the proposed Kingsgate Receipt Meter Station is located on company-owned land, so there is no requirement for new permanent or temporary land rights.

Foothills stated that 28.4 km of the proposed Elko Section pipeline route goes through parcel 82 of the Dominion Coal Block, which the Federal Crown owns in fee simple. Foothills stated that it has been engaging with Natural Resources Canada (**NRCan**) personnel directly regarding the land acquisition and construction requirements for parcel 82. Foothills stated that the Project will use statutory right-of-way agreements with NRCan and other landowners, which will follow and comply with the BC Land Title Office registration process and applicable federal law.

Foothills confirmed that the land acquisition process for the Project will comply with the applicable sections of the CER Act, including sections 321 and 322.

Foothills stated that, where the Project is expected to cross or is adjacent to other existing linear facilities or developments, or where road access is required, it will obtain the necessary agreements, consents, and approvals from each owner in accordance with requirements of the applicable legislation.

Commission analysis and findings

The Commission finds that Foothills' anticipated requirements for land rights are reasonable, based on the scope and scale of the Project. The Commission also finds that the process for the acquisition of these land rights is acceptable, because it is designed to meet the requirements of the CER Act (including sections 321 to 323), as applicable.

Gender-based Analysis Plus

Views of Foothills

In its application, Foothills stated that for this Project, gender was selected as an identity factor for evaluation because potential employment opportunities during construction might affect men and women in different ways. Foothills added that there might be gender-based differences in the effects of the construction workforce using accommodations in or near local communities. Indigeneity was also selected as an identity factor because Indigenous people might experience Project effects differently compared with other sub-groups of the population.

Foothills stated that its employees and contractors adhere to TC Energy's policies and procedures that encourage safety, responsibility, integrity, diversity, inclusion, and fair employment to foster the well-being of Foothills' workers and nearby communities. Foothills stated that these policies and procedures include: Code of Business Ethics; Equal Employment and Non-Discrimination Policy; and Harassment Free Workplace Policy. Foothills also stated that, on all projects, Foothills enforces the following company standard practices that play a role in mitigating the potential for adverse effects on groups and sub-groups of the population:

- Provide all workers with orientation and information materials regarding safety expectations and cultural awareness and sensitivity.
- Require Project employees and contractors to adhere to a code of business ethics.
- Undertake ongoing engagement with local Indigenous and non-Indigenous communities to follow up on any unanticipated issues or concerns, as appropriate.

Foothills stated that it is unlikely that the Project's workforce will disproportionately affect the social and cultural well-being for any of the considered sub-groups in the local assessment area (i.e., men, women, Indigenous, non-Indigenous) given the relatively small and temporary nature of the workforce, planned accommodation strategy options, adequacy of local infrastructure and services, and implementation of mitigation and enhancement measures.

Commission analysis and findings

Given the scope and scale of the proposed Project and Foothills' proposed mitigation measures, the Commission finds that Foothills has addressed the guidance and requirements outlined in the Filing Manual regarding potential effects with respect to the intersection of sex and gender with other identity factors. The Commission finds that concerns with respect to project effects on gender and Indigeneity are particularly pertinent in relation to a temporary construction camp that may be required for the Project, as discussed later in this decision letter.

Environmental Matters

The Project Development Area (**PDA**) is approximately 236.3 hectares (**ha**) and includes native upland vegetation, which is predominantly open coniferous forest (70.7 per cent); previously disturbed or sparsely vegetated areas (e.g., industrial development, cutblocks) (26.6 per cent); and wetlands (2.7 per cent).

*Environment and Climate Change Canada's Response to Species at Risk Act (**SARA**) Notification Letter*

In response to the CER's SARA notification letter, ECCC advised that Foothills consult with ECCC for expertise and advice for the species at risk identified as potentially impacted by the Project. ECCC also identified an additional 18 SARA-listed species and one species listed by the Committee on the Status of Endangered Wildlife in Canada (**COSEWIC**) that may potentially be affected by the Project. ECCC advised that the COSEWIC-listed species may be listed on SARA within the timeframe of the Project.

Views of Foothills

Foothills stated that the Project will cross 30 classified watercourses and 13 non-classified drainages. Five watercourse crossings are located within the PDA but are not crossed by the proposed pipeline. All watercourse crossings will be completed using trenched crossing methods (e.g., isolated open-cut), which involve disturbance to bed and banks and in-stream works. Foothills stated that some of the watercourses had westslope cutthroat trout (Pacific population), a species listed as special concern on Schedule 1 of the SARA. There is no defined critical habitat for species listed as special concern. Foothills submitted that the results of a Fall spawning survey identified three watercourses with active spawning redds. Foothills committed to conduct these watercourse crossings in accordance with Fisheries and Oceans Canada's measures to protect fish and fish habitat and the associated standards and codes of practice, in addition to its own standard mitigation measures, including the use of spawning deterrents.

Foothills identified the possibility of encountering shallow bedrock that has the potential to generate acid rock drainage. Foothills stated that the chemistry of the bedrock within the PDA is currently unknown; however, there is a low to moderate potential for acid rock drainage to be generated because soils and parent materials within the PDA contain limestone and shale. Run-off from acid-generating bedrock can have adverse effects on water quality. Foothills committed to developing an Acid Rock Drainage Management Plan prior to construction for areas with shallow bedrock that have been identified as having acid-generating potential.

Foothills conducted field surveys for wildlife in 2020. Field results identified the presence of western toad, Columbia spotted frog, and long-toed salamander in the PDA. Breeding sites were confirmed for western toad and long-toed salamander. The breeding bird survey identified 45 bird species within the Project local assessment area (**LAA**), including the olive-sided flycatcher, a species listed as threatened on Schedule 1 of SARA. Foothills also noted that, although not observed during the breeding bird survey, there is potential for other bird species at risk to occur within the LAA. In its Breeding Bird and Nest Management Plan, Foothills has committed to conducting non-intrusive nest surveys seven days prior to scheduled work activities during the primary nesting season and, in its Wildlife Species of Concern Discovery Contingency Plan, Foothills has identified mitigation measures to follow in the event a nest of a species of concern is located during the surveys.

Incidental wildlife observed during the surveys included a Northern goshawk, golden eagle, rough-legged hawk, Clark's nutcracker, least chipmunk, yellow-pine chipmunk, red squirrels, moose, elk, white-tailed deer, and olive-sided flycatcher. Field surveys confirmed two significant mineral licks and identified three additional mineral licks to be surveyed in 2021. Three beaver dams, six mammal dens, and eleven wildlife trails, five of which intersect the PDA, were also identified during 2020 field surveys. Foothills provided mitigation measures for amphibians, ungulates, salt licks, and birds in its ESA and EPP. Foothills stated that, to minimize the effects on ungulates during the sensitive winter season and sensitive lambing and calving season, clearing and construction activities were scheduled to occur from July to October 2022 and July to October 2023.

Foothills stated that field surveys also identified the presence of whitebark pine, a species listed as endangered on Schedule 1 of SARA. Foothills noted that the Project falls within mapped critical habitat included in the Proposed Recovery Strategy for Whitebark Pine (*Pinus albicaulis*) in Canada; however, field results confirmed that the habitat in the PDA does not meet the critical habitat definition. Foothills confirmed that it has applied to ECCC for a permit under section 73 of SARA. Foothills provided a description of the proposed mitigation measures to be implemented to minimize the effects on whitebark pine, including measures to aid in the recovery of the species.

In response to the additional 18 species at risk identified in ECCC's response to the CER SARA notification letter, Foothills stated that the likelihood of most of the additional species interacting with the Project LAA is limited because the Project regional assessment area (RAA) is outside of the currently understood distribution range of the species and/or suitable habitat for the species does not occur in the LAA. Foothills further stated that five of the additional species listed by ECCC have the potential to occur within the RAA and were not considered in the ESA, specifically the magnum mantleslug, bobolink, flammulated owl, rusty blackbird, and Western painted turtle. Foothills identified that it has subsequently assessed these five additional species and there is no suitable habitat (including breeding and/or nesting habitat) for four of the species within the LAA. Foothills identified that there are historic records of magnum mantleslug within the RAA and the LAA contains habitat that is suitable for this species. Foothills stated that the wildlife and wildlife habitat related mitigation measures and the Wildlife Species of Concern Discovery Contingency Plan included in the EPP will address the potential effects on these five species and, therefore, no additional species-specific mitigation is required.

Foothills committed to conducting post-construction monitoring of the PDA, including the right-of-way and temporary workspace, to assess reclamation success. This includes identifying any environmental issues, assessing the effectiveness of mitigation practices, and identifying recommended corrective actions for outstanding environmental issues.

Foothills stated that its environmental and socio-economic assessment for the Project determined that, with the implementation of standard and Project-specific mitigation measures, adverse residual Project and residual cumulative environmental and socio-economic effects were predicted to be not significant.

Views of Participants

Elk Valley Métis Association identified the following environmental concerns with the proposed Project: removal and storage of soil along the pipeline, loss of vegetation and wetlands, loss of wildlife and wildlife habitat, loss of traditionally used plants and medicines, loss of fish and fish habitat, and impacts to surface and groundwater quality.

The Nature Conservancy of Canada submitted a letter advising that a portion of the Project is located within its lands, specifically within the Mount Broadwood Heritage Conservation Area. According to the Nature Conservancy of Canada's letter, the Mount Broadwood Heritage Conservation Area is an important natural area for which the Nature Conservancy of Canada is obligated to ensure that the natural features, including wildlife habitats and vegetation communities, are not diminished or destroyed.

Commission analysis and findings

The Commission finds that, with the implementation of Foothills' proposed mitigation measures and environmental protection procedures and the Commission's imposed conditions (as described below), the Project is not likely to cause significant adverse environmental effects. Similarly, the Commission finds that the Project's contribution to existing and reasonably foreseeable cumulative effects will not be significant.

The Commission acknowledges Foothills' commitment to follow Fisheries and Oceans Canada's measures to protect fish and fish habitat and the associated standards and codes of practice, in addition to its own standard mitigation measures to protect fish and fish habitat. Pursuant to the Memorandum of Understanding between the CER and Fisheries and Oceans Canada, the CER reviews Project activities and refers to Fisheries and Oceans Canada any works that would likely result in harmful alteration, disruption, or destruction to fish and fish habitat, and therefore require authorization under paragraph 35(2)(b) of the *Fisheries Act*.¹² The Commission imposes **Condition 14**, which requires Foothills to provide confirmation that it obtained any required authorizations under paragraph 35(2)(b) of the *Fisheries Act*.

The Commission notes that Foothills identified the potential for encountering shallow bedrock that has the potential to generate acid rock drainage. The Commission is of the view that, due to the potential for encountering shallow bedrock with acid-generating potential, mitigation should be in place before the start of construction. Therefore, the Commission imposes a condition requiring Foothills to file an Acid Rock Drainage Mitigation Plan (**Condition 7**) prior to construction. In addition, the Commission imposes **Condition 15**, Acid Rock Drainage Mitigation Plan Reports, which requires Foothills to file report(s) on the progress and success of the mitigation and any contingency measures required to meet the mitigation goals outlined in the Acid Rock Drainage Mitigation Plan (**Condition 7**).

The Commission acknowledges Foothills' statement regarding the mitigation measures and the Wildlife Species of Concern Discovery Contingency Plan included in the EPP addressing the potential effects on the species identified in ECCC's response to the SARA notification letter. The Commission notes that Foothills provided a list of mitigation measures to protect whitebark pine in its response to a Commission information request but did not include these mitigation measures in the EPP provided in the Application. The Commission further notes that Foothills committed to update the EPP with the mitigation measures identified in the final SARA permit. In order to ensure that the additional site-specific mitigation measures identified for whitebark pine within a permit under section 73 of SARA, as well as the consultation with the responsible regulators, is incorporated into the EPP, the Commission has imposed **Condition 6** for an updated EPP.

¹² RSC 1985, c F-14.

Foothills identified that clearing and construction activities were scheduled to occur from July to October 2022 and July to October 2023 to minimize the effects on ungulates during the sensitive winter season and sensitive lambing and calving season. The Commission notes that the timeframe for the clearing activities is scheduled to overlap with the primary bird nesting season. The Commission further notes that Foothills has committed, in its Breeding Bird and Nest Management Plan, to conduct non-intrusive nest surveys seven days prior to scheduled work activities during the primary nesting season and, in its Wildlife Species of Concern Discovery Contingency Plan, Foothills has identified mitigation measures to follow in the event a nest of a species of concern is located during the surveys. The Commission imposes a Breeding Bird Survey and Protection condition (**Condition 13**) requiring Foothills to conduct pre-construction surveys when conducting vegetation clearing or topsoil removal during the primary nesting season. The condition requires Foothills to consult with provincial and federal regulators on developing the appropriate mitigation and monitoring to protect the identified migratory bird and non-migratory bird species and their nests during construction activities.

The Commission notes Foothills' commitment to conduct post-construction monitoring. The Commission is of the view that a robust post-construction environmental monitoring program is key to Foothills ensuring that potential adverse effects of the Project have been effectively mitigated and, where issues are identified post-construction, require that Foothills implements adaptive management to address them. To be satisfied that post-construction environmental monitoring is thorough and effective, the Commission has imposed **Condition 19**, which sets out requirements for Foothills to implement a post-construction environmental monitoring program for a five-year period and submit post-construction environmental monitoring reports to the CER for years one, three, and five. At a minimum, the post-construction monitoring reports will include information specific to the effectiveness of mitigation applied to minimize effects to species at risk, soils, vegetation, weeds, wildlife, watercourse crossings, and wetlands.

The Commission has reviewed Foothills' estimated GHG emissions for the Project and notes that the estimated GHG emissions during Project construction are 147.0 kt CO₂e. The Commission notes that there are no federal or provincial reporting or offsetting mechanisms in place for construction-related GHG emissions. The concern regarding GHG emissions is their long-term accumulation in the global atmosphere. The Commission imposes **Condition 5**, requiring Foothills to develop a GHG Mitigation Measures Plan for construction-related Project emissions. The Commission also imposes **Condition 17** to quantify total net GHG emissions after all construction activities are complete and mitigation measures have been implemented.

The Commission is aware that guidance and policies with respect to GHG emissions continue to evolve. In light of guidance contained in ECCC's Strategic Assessment of Climate Change and Foothills' commitment towards net-zero GHG emissions by 2050, the Commission imposes **Condition 18**, requiring Foothills to file a Net-Zero GHG Emissions Plan for operational emissions. The Net-Zero GHG Emissions Plan would outline the proposed actions to achieve net-zero GHG emissions for the operating Project, including any maintenance activities.

Federal Lands

The Project is partially located on the Dominion Coal Block parcel 82, which is federally-owned land managed by NRCan, southeast of Fernie, British Columbia. Section 82 of the *Impact Assessment Act (IA Act)* requires that, for projects being carried out on federal

lands, the Commission must determine whether carrying out the Project is likely to cause significant adverse environmental effects.¹³

Subsection 84(1) of the IA Act lists the factors that the Commission must consider when making its determination:

- (a) any adverse impact that the Project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- (b) Indigenous knowledge provided with respect to the Project;
- (c) community knowledge provided with respect to the Project;
- (d) comments received from the public under subsection 86(1); and
- (e) the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project that the authority is satisfied will be implemented.

The Commission's assessment of the Project pursuant to the CER Act satisfied the requirements of section 82 and subsection 84(1) of the IA Act, with the exception of paragraph 84(1)(d). On 2 June 2021, as per subsection 86(1) of the IA Act, the CER posted a description of the Project (Reference No. 81683) and a notice inviting public comment on the Impact Assessment Agency's online Registry. The public comment period closed on 30 June 2021. The CER received no comments from the public or from Indigenous peoples.

The Commission assessed the portion of the proposed Project located on federal lands and noted that potential effects of the Project may occur on soils, water quality and quantity, fish and fish habitat, wetlands, vegetation, wildlife and wildlife habitat, species at risk, and air quality as a result of GHG emissions. The Commission notes that Foothills provided standard mitigation measures to address the potential effects, as well as site-specific mitigation measures for species at risk, wildlife and wildlife habitat, fish and fish habitat, and soils located in areas with whitebark pine trees. The Commission has imposed several conditions to further minimize the potential environmental effects from the Project. The Environment Matters section of this decision letter provides a detailed assessment of these valued components and imposed conditions.

Commission analysis and findings

Pursuant to section 82 of the IA Act, the Commission finds that, with Foothills' Project design and proposed mitigation measures, as well as the conditions imposed by the Commission, the carrying out of the Project is not likely to cause significant adverse environmental effects to federal lands.

Temporary construction camp – additional considerations

Foothills submitted that it is considering the use of a temporary camp to accommodate workers for Project construction, specifically to support steep slope construction. Foothills stated that should it determine that the camp is required, the camp would accommodate 40 people and would be installed in July 2023, with demobilization after mainline construction is complete.

¹³ Section 81 of the IA Act defines "environmental effects" as changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social, or economic conditions.

Foothills stated that areas previously used as former camps or areas that are already disturbed are preferred as temporary camp locations, and that siting of the temporary construction camp would be based, to the extent practical, on avoiding areas of native vegetation and high-quality wildlife habitat. Foothills committed to conducting a desktop review and field studies, implementing any necessary mitigation as per the EPP, and obtaining any necessary permits or authorizations prior to construction, should a temporary construction camp be required.

Foothills stated that it provides all workers with orientation and information materials regarding environmental, health, and safety expectations, and cultural awareness and sensitivity, and that it would ensure that the camp was developed to industry standards.

Foothills confirmed that it would undertake ongoing engagement with local Indigenous and non-Indigenous communities to follow up on any unanticipated issues or concerns, as appropriate. Foothills stated that, regardless of whether the workforce is accommodated in communities or in construction camps, with the implementation of mitigation measures and TC Energy's policies, standards, and procedures, construction of the Project is unlikely to alter the lifestyles of residents of the LAA, nor will it adversely affect social and community networks or materially affect living or environmental conditions.

Commission analysis and findings

The Commission notes Foothills' commitment to conduct a desktop review and field studies, as well as implement any necessary mitigation measures, should a temporary construction camp be used for the Project. The Commission imposes **Condition 8**, requiring Foothills to file a camp-specific environmental and socio-economic protection plan for approval, prior to construction of the temporary construction camp. The Commission expects that Foothills would consider selecting a location that maximizes the use of previously disturbed land and avoids sensitive environmental features.

Conclusion

The Commission directs Foothills to serve a copy of this letter, the attached Order, and its Schedule A on all interested persons.

Yours sincerely,

Signed by

Ramona Sladic
Secretary of the Commission

Attachment



ORDER XG-002-2022

IN THE MATTER OF the *Canadian Energy Regulator Act (CER Act)* and the regulations made thereunder; and

IN THE MATTER OF an application made by Foothills Pipe Lines (South B.C.) Ltd. (**Foothills**), pursuant to section 214 of the CER Act, dated 4 March 2021, filed with the Canada Energy Regulator (**CER**) under File OF-Fac-Gas-F111-2020-02 02.

BEFORE the Commission of the CER (**Commission**) on 7 February 2022.

WHEREAS Foothills filed an application pursuant to section 214 of the CER Act, dated 4 March 2021, to construct and operate the Foothills Zone 8 West Path Delivery 2023 Project (**Project**);

AND WHEREAS Foothills requested exemption from the requirements of paragraph 180(1)(b) and subsection 213(1) of the CER Act to obtain Leave to Open prior to installing a tie-in assembly for the Project;

AND WHEREAS the information about the Project is set out in Schedule A, attached to and forming part of this Order;

AND WHEREAS Foothills filed subsequent submissions dated 8 April 2021, 23 April 2021, 20 May 2021, 15 June 2021, 7 July 2021, 8 July 2021, 11 August 2021, 27 August 2021, and 8 November 2021;

AND WHEREAS the Commission has considered the comments dated 25 March 2021 from Elk Valley Métis Association, 18 April 2021 from Western Export Group, 27 April 2021 from the Nature Conservancy of Canada, and 17 August 2021 from Environment and Climate Change Canada;

AND WHEREAS the Commission has had regard to all considerations that are relevant and directly related to the Project, including matters under section 56 of the CER Act, and environmental matters pursuant to Part 3 of that Act;

AND WHEREAS the Commission has examined the application and subsequent filings and considers it to be in the public interest to grant the following relief;

IT IS ORDERED that, pursuant to section 214 of the CER Act:

- the applied-for Project, as specified in Schedule A, is exempt from the provisions of paragraph 180(1)(a), and section 198 of the CER Act;

.../2

- the installation of two hot-tap tie-in assemblies and the applied-for work at the Kingsgate Border Meter Station is exempt from the provisions of paragraph 180(1)(b) and subsection 213(1) of the CER Act;
- the effect of which is to approve the Project subject to the following conditions:

1. Condition Compliance

Foothills must comply with all of the conditions contained in this Order unless the Commission otherwise directs.

2. Design, Location, Construction and Operation

Subject to Condition 4, Foothills must cause the approved Project to be designed, located, constructed, installed, and operated in accordance with the specifications, standards, commitments made, and other information referred to in its application or in its related submissions.

3. Environmental Protection

Foothills must implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures, and its commitments for the protection of the environment included in or referred to in its application or in its related submissions.

4. Technical Specifications

Foothills must file with the CER any technical specification updates for the Project components listed in the Application concurrently with its final Leave to Open application. Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade, or material that do not impact any other aspect of the Project as approved.

5. GHG Emissions Mitigation Measures Plan – Project construction

Foothills must file with the CER, **at least 90 days prior to commencing construction**, a GHG Emissions Mitigation Measures Plan for the direct GHG emissions generated from Project construction (including all temporary activities and right-of-way preparation). The plan must include:

- a) measures that will be implemented to salvage timber, including a description of how much timber will be salvaged during construction;
- b) a discussion of all possible mitigation measures, including offset measures considered to reduce GHG emissions during the construction phase;
- c) a rationale for not selecting any of the mitigation measures, including offset measures identified in part b);
- d) a description of mitigation and any offset measures selected for minimizing direct GHG emissions generated from Project construction, and the rationale for selecting these measures; and
- e) a description of how Foothills has considered the guidance in the most recent version of Environment and Climate Change Canada's Strategic Assessment of Climate Change document in the identification of any offset measures.

6. Updated Environmental Protection Plan

Foothills must file with the CER, **at least 60 days prior to commencing construction, for approval**, an updated Project-specific Environmental Protection Plan (**EPP**), which Foothills must implement. The updated EPP must include, but not be limited to, the following:

- a) environmental protection procedures (including site-specific plans), criteria for implementing these procedures, mitigation measures, and monitoring applicable to all Project phases and activities;
- b) any updates to contingency plans and management plans;
- c) a description of the condition to which Foothills intends to reclaim and maintain the rights-of-way, once construction has been completed, and a description of measurable goals for reclamation;
- d) all specific mitigation related to species at risk, including whitebark pine and their habitat, ungulate wintering range, bighorn sheep range, and species identified through field surveys;
- e) a watercourse crossing inventory table including a description of fish habitat and fish presence;
- f) updated environmental alignment sheets;
- g) evidence demonstrating that consultation took place with relevant government authorities, where applicable; and
- h) a revision log of the updates made, with a reference to where the updates can be found in the revised document.

7. Acid Rock Drainage Mitigation Plan

Foothills must file with the CER, **at least 60 days prior to commencing construction, for approval**, a Project-specific Acid Rock Drainage Mitigation Plan. The plan must be incorporated and filed as an appendix to the EPP, and must include:

- a) goals and measurable objectives regarding the Acid Rock Drainage Mitigation Plan;
- b) the methods and procedures to be used to achieve the mitigation goals;
- c) the criteria to determine if the mitigation goals have been met;
- d) each location the acid rock mitigation measures will be implemented, the purpose for the locations selected, and the timing for installation;
- e) the frequency of monitoring activities along the right-of-way and in temporary workspaces;
- f) a description of contingency measures to be applied, should the selected mitigation measures not be sufficient;
- g) a schedule of expected reporting to the CER on the progress and success of the measures implemented; and
- h) evidence of consultation with relevant regulatory authorities regarding the proposed mitigation.

8. Temporary Construction Camp

- a) In the event that Foothills requires a temporary construction camp, Foothills must file with the CER, **at least 45 days prior to commencing construction of the Camp, for approval**, an environmental and socio-economic protection plan for the camp that includes the following:
 - i) the location of the camp and a description of the environmental setting;
 - ii) a suitably-scaled plot plan that includes satellite imagery showing land use in the immediate and surrounding areas;
 - iii) the size of the camp in hectares;
 - iv) the predicted human occupancy of the camp including the number of people to be accommodated at the camp and the number of camp staff;
 - v) the proposed schedule for constructing, operating, and dismantling the camp;
 - vi) identification of the environmental and socio-economic effects of constructing, operating, and dismantling the camp;
 - vii) a description of all proposed mitigation measures associated with vi);
 - viii) documentation describing Foothills' consultation with the relevant municipalities, regional authorities, and all potentially affected stakeholders and Indigenous peoples;
 - ix) a summary of any issues or concerns raised by municipalities, regional authorities, and all potentially affected stakeholders and Indigenous peoples; and
 - x) a description of how the issues and concerns identified in ix) are addressed in the environmental and socio-economic protection plan for the camp or, if not addressed, an explanation as to why not; and
- b) Foothills must provide a copy of the environmental and socio-economic protection plan to anyone who raised issues or concerns in a) ix) and, **within 7 days of the filing in a)**, provide confirmation to the CER that it provided those copies; or
- c) If no camp is required, Foothills must file with the CER, **within 30 days after commencing operations**, confirmation that no camp was constructed.

9. Commitments Tracking Table

Foothills must:

- a) File with the CER, post on Foothills' website, and notify all potentially affected Indigenous peoples who have expressed to Foothills an interest in this Project, **at least 30 days prior to commencing construction of the Project**, a Commitments Tracking Table (CTT) listing all commitments made by Foothills in its Project Application or in its related submissions, including reference to:

- i) the documentation in which the commitment appears (for example, the Project Application, responses to information requests, permit requirements, or other);
 - ii) traditional land and resource use information from potentially affected Indigenous peoples;
 - iii) the accountable lead for implementing each commitment; and
 - iv) the estimated timelines associated with the fulfillment of each commitment.
- b) Update the status of the commitments in a) on its Project website and file these updates with the CER and all potentially affected Indigenous peoples who have expressed to Foothills an interest in this Project on:
- i) a monthly basis until commencing operations; and**
 - ii) a quarterly basis until the end of the first year following the commencement of operations.**
- c) Maintain at its Project site during the life cycle of the Project:
- i) the CTT listing all regulatory commitments and their completion status, including, but not limited to, those commitments resulting from Foothills' Project Application and subsequent filings and conditions from permits, authorizations, and approvals;
 - ii) copies of any permits, approvals, or authorization issued by federal, provincial, or other permitting authorities, which include environmental conditions or site-specific mitigation or monitoring measures; and
 - iii) any subsequent variances to any permits, approvals, or authorizations in c)ii).

10. Report on Engagement with Indigenous Peoples

- a) Foothills must file with the CER, **at least 30 days prior to commencing construction of the Project**, a report summarizing Foothills' engagement with all potentially affected Indigenous peoples after 28 July 2021. This report must include but not be limited to:
- i) the methods, dates, and locations of consultation activities, including site visits;
 - ii) a summary of the concerns raised by Indigenous peoples;
 - iii) a description of how Foothills has addressed or will address the concerns raised;
 - iv) a description of any outstanding concerns; and
 - v) a description of how Foothills intends to address any outstanding concerns, or an explanation as to why no further steps will be taken.
- b) Foothills must also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and Foothills must, **within 7 days of the filing in a)**, provide confirmation to the CER that it has provided those copies.

11. Outstanding Traditional Knowledge Studies

- a) Foothills must file with the CER, **at least 30 days prior to commencing construction of the Project, for approval**, a report on any outstanding traditional knowledge studies for the Project. The report must include, but not be limited to:
 - i) a summary of the status of traditional knowledge studies undertaken for the Project, including Indigenous community-specific traditional land and resource use or culture and traditions studies and any supplementary field investigation or reconnaissance activities relevant to potentially affected Indigenous communities;
 - ii) a summary of the concerns and/or effects of the Project on the current use of lands and resources for traditional purposes identified in the traditional knowledge studies completed since Foothills' last update;
 - iii) a summary of the mitigation measures proposed by Foothills or by affected Indigenous communities to address concerns and Project effects identified in the traditional knowledge studies completed since Foothills' last update;
 - iv) a description of how Foothills has considered and addressed information from any studies that it did not report on the CER's record for the Project;
 - v) a description of any outstanding concerns raised by potentially affected Indigenous peoples regarding potential effects of the Project on the current use of lands and resources for traditional purposes, including a description of how these concerns have been or will be addressed by Foothills, or a detailed explanation of why these concerns will not be addressed by Foothills;
 - vi) a summary of any outstanding traditional knowledge studies or follow-up activities that will not be completed prior to commencing construction, including an explanation of why they are not being completed prior to construction;
 - vii) estimated completion dates for any outstanding studies, if applicable, and a description of how Foothills has already identified, or will identify, any potentially affected traditional land and resource use sites or resources if the outstanding studies will not be completed prior to construction; and
 - viii) a description of how Foothills has incorporated any revisions necessitated by the studies or follow-up activities into the EPP for the Project or, if appropriate, into Foothills' lifecycle oversight.
- b) Foothills must also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and Foothills must, **within 7 days of the filing in a)**, provide confirmation to the CER that it provided those copies.

12. Construction Schedule

Foothills must, **at least 14 days prior to commencing construction** of the approved facilities, file with the CER a detailed construction schedule or schedules identifying major construction activities and must notify the CER of any modifications to the schedule or schedules as they occur.

13. Breeding Bird Survey and Protection

In the event that vegetation will be cleared or topsoil will be removed during restricted activity periods for non-migratory birds protected under provincial jurisdiction and for migratory birds, Foothills must retain a qualified avian biologist to carry out a survey or surveys prior to these activities to identify any birds and active nests located within the Local Assessment Area. Foothills must file with the CER, **every 15 days when Foothills is actively clearing or removing topsoil during the breeding bird restricted activity period**, the following:

- a) results of the survey(s);
- b) site-specific mitigation and monitoring implemented, including:
 - i) mitigation and monitoring developed in consultation with Environment and Climate Change Canada and the appropriate provincial government authorities to protect any identified migratory and non-migratory birds and their nests;
 - ii) mitigation and monitoring developed in consultation with Environment and Climate Change Canada to protect any birds listed under the *Species at Risk Act* identified in the survey(s) and their nests; and
- c) evidence to confirm that the appropriate provincial and federal government authorities were consulted about the proposed methodology for the survey, the results from the survey, and the mitigation and monitoring to be used; and a description of any outstanding concerns they may have.

14. Fisheries Act Authorizations

- a) For any instream activities that will require an authorization under paragraph 35(2)(b) of the *Fisheries Act*, Foothills must file with the CER, **at least 14 days prior to commencing the respective instream activities**, a copy of the authorizations; or
- b) **within 30 days after commencing operations**, Foothills must file confirmation that no authorizations were required for any instream activities.

15. Acid Rock Drainage Mitigation Plan Reports

Foothills must file with the CER:

- a) **based on the schedule referred to in Condition 7 part g)**, Acid Rock Drainage Mitigation Report(s) that identify the progress and success of the mitigation measures and any contingency measures implemented for locations where acid rock was encountered; or
- b) **within 30 days of completing construction**, confirmation that no bedrock with acid generating potential was encountered.

16. Condition Compliance by the Accountable Officer

Within 30 days of the date that the approved Project is placed in service, Foothills must file with the CER a confirmation that the approved Project was completed and constructed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, Foothills must file with the CER details as to why compliance cannot be confirmed. The filing required by this condition shall include a statement confirming that the signatory to the filing is the accountable officer of Foothills, appointed as Accountable Officer pursuant to section 6.2 of the *Canadian Energy Regulator Onshore Pipeline Regulations*.

17. Quantification of construction-related greenhouse gas (GHG) emissions

Foothills must file with the CER, **within 2 months after commencing operations,** a quantitative assessment of the actual GHG emissions directly related to the construction of the Project, including all temporary infrastructure and right-of-way preparation (i.e., a refined estimate based on vehicles and equipment used, as well as fuel consumption, land clearing, and timber salvage). The assessment must include:

- a) the methodology used for the assessment, including the sources of GHG emissions, assumptions, and methods of estimation;
- b) confirmation that Foothills has implemented mitigation and offset measures (if any) to minimize GHG emissions during the construction phase, as described in Condition 5;
- c) the total net GHG emissions generated from Project construction, including emissions generated by vehicles and equipment, land clearing, slash burning, and decay, after the implementation of any mitigation and offset measures; and
- d) a comparison and discussion of the net GHG emissions calculated in part c) with the predicted emissions in Foothills' Project Application.

18. Net-zero Operational Greenhouse Gas Emissions Plan

Foothills must file with the CER, **within one year after commencing operations,** a Net-zero Operational GHG Emissions Plan outlining its proposed actions to achieve net-zero GHG emissions for the operating Project, including from routine maintenance activities. The plan must include the following:

- a) a description of Foothills' strategies to reduce emissions to achieve net-zero operational GHG emissions through either Project-specific improvements or system-wide actions at a corporate level, or a mix of Project-specific, system-wide, or corporate actions, including a description of how these strategies will be accounted for in achieving net-zero GHG emissions for the Project's operational emissions; and
- b) a description of how Foothills proposes to update its plan periodically to reflect any material changes to applicable provincial and federal legislation and policies regarding net-zero GHG emissions that apply to the ongoing operations of the Project.

19. Post-Construction Environmental Monitoring Reports

On or before 31 January after each of the first, third, and fifth complete growing seasons following completion of final cleanup of the Project, Foothills must file with the CER a post-construction environmental monitoring report that:

- a) describes the methodology used for monitoring, the criteria established for evaluating success, and the results found;
- b) identifies any modifications for the criteria established for evaluating reclamation success described in its EPP and the rationale for any modifications;
- c) identifies the issues to be monitored, including but not limited to unexpected issues that arose during construction and their locations (for example, on a map or diagram or in a table);
- d) describes the current status of the issues (resolved or unresolved), any deviations from plans, and corrective actions undertaken;
- e) assesses the effectiveness of the planned and corrective mitigation measures applied against the criteria for success;
- f) provides proposed measures and the schedule that Foothills plans to implement to address ongoing issues; and
- g) includes a detailed summary of Foothills' consultation undertaken with the appropriate provincial and federal authorities, and with affected Indigenous communities.
- h) The report must include, but not be limited to, the issues pertaining to species at risk, soils, vegetation, wildlife, weeds, watercourse crossings, and wetlands.

20. Sunset Clause

This Order shall expire on 2 March 2024 unless construction of the Project has commenced by that date.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

Signed by

Ramona Sladic
Secretary of the Commission

SCHEDULE A
Order XG-002-2022

Foothills Pipe Lines (South B.C.) Ltd.
Application dated 4 March 2021
assessed pursuant to section 214 of the *Canadian Energy Regulator Act*

Foothills Zone 8 West Path Delivery 2023 Project
File OF-Fac-Gas-F111-2020-02 02

Pipeline Specifications – British Columbia Mainline Loop No. 2 – Elko Section

Project Type	New construction
Location (endpoints)	From a-26-C / 82-G-10 to b-84-D / 82-G-7 (British Columbia)
Approximate Length	32 km
Outside Diameter	1219 mm (NPS 48)
Wall Thickness	13.7 mm (15.2 mm, 18.3 mm, 25.4 mm)
Pipe Material	Steel
Pipe Material Standard	CSA Z245.1
Pipe Grade	Grade 483 MPa
External Coating Type	Fusion-bond epoxy
Maximum Operating Pressure	8,690 kPa
Product	Non-sour natural gas