



Canada Energy
Regulator

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File OF-Fac-Gas-F111-2020-02 02
20 October 2021

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 Project (Project)
under section 214 of the *Canadian Energy Regulator Act* (CER Act)
Commission of the Canada Energy Regulator Potential Conditions for
Comment**

The Commission of the Canada Energy Regulator (**Commission**) is continuing its assessment of the Project application filed by Foothills on 4 March 2021. The Commission is circulating two potential conditions (**Potential Conditions**) to provide an opportunity for interested persons and Foothills to comment, should they wish to do so. If the Commission approves the Project, the Commission may consider imposing other conditions in addition to the Potential Conditions discussed in this letter. The Commission is not seeking comments on any other potential conditions at this time.

Background

Conditions are legal requirements that a company must meet to be allowed to construct and operate a project. If the Project is approved, the order may be subject to conditions that must be satisfied prior to and during the construction and operation of the Project. The Commission applies standard conditions to many section 214 orders, such as the one sought by Foothills in this application. The Commission often includes additional conditions to address issues specific to each project. Conditions imposed by the Commission are enforceable pursuant to the CER Act.

The primary purpose of conditions is to mitigate potential risks and effects posed by a pipeline project throughout its lifecycle so that it is designed, constructed, operated, maintained, and abandoned in a manner that protects property and the environment and promotes the safety and security of the public. Conditions work in combination with a variety of statutes, codes, and regulations to enhance legal and regulatory requirements. Conditions are important tools in the responsible development of pipeline projects through all lifecycle phases (i.e., prior to and during construction, post-construction, operation and maintenance, and abandonment).

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Potential Conditions

Appendix II sets out two Potential Conditions that the Commission may include in its decision with respect to the Project under section 214 of the CER Act. These Potential Conditions are based on the Commission's initial assessment of the Project application and should not be taken to imply that the Commission has reached any determination on whether the Commission will approve or deny the Project application.

The Potential Conditions, as set out in Appendix II, include **Condition 1** (Report on Engagement with Indigenous Peoples) and **Condition 2** (Outstanding Traditional Knowledge Studies).

The Commission is considering imposing Condition 1 to obtain updates about potential issues or concerns raised by Indigenous peoples after the approval of the Project (if approved) but prior to construction of the Project and Foothills' responses to those issues and concerns. Condition 1 would require Foothills to file with the Canada Energy Regulator (**CER**) information about any ongoing engagement activities with Indigenous peoples.

The Commission is considering imposing Condition 2 to ensure that Foothills incorporates any revisions necessitated by traditional knowledge studies received after the approval of the Project (if approved) or follow-up activities into the environmental protection plan (**EPP**) for the Project. The Condition 2 filing would require the Commission's approval to enable the Commission to confirm that Foothills had adequately identified and assessed potential effects of the Project on the current use of lands and resources for traditional purposes; assess Foothills' plans to incorporate findings from the studies into the Project or, if not, why not; and assess whether Foothills' planned measures were appropriate to effectively mitigate identified potential impacts prior to construction. Condition 2 would also ensure that Foothills had identified, or would identify, any potentially affected traditional land and resource use sites or resources, if the outstanding traditional knowledge studies would not be completed prior to construction.

The Potential Conditions may be revised or removed, and further conditions may be added, after the Commission has considered all of the evidence and any comments from interested persons and Foothills on the Potential Conditions.

Opportunity to provide comments

Interested persons who wish to file comments on the Potential Conditions may do so on or before 3 November 2021. Foothills may file responses to comments received and comments on the Potential Conditions on or before 10 November 2021. Appendix I sets out the deadlines for comment.

Subject to any further information required by the Commission, the record for the Project application will close on 10 November 2021.

General

The CER is dedicated to the safety and well-being of its staff, Indigenous peoples, the public, and all those with whom we work closely. For more information on how the CER is continuing its regulatory oversight during the COVID-19 pandemic, please refer to the following update issued 27 August 2021: www.cer-rec.gc.ca/CovidProcessUpdate.

The CER's preferred filing method is online through its e-filing tool, which provides step-by-step instructions. If unable to file a document online, it may be filed by email to Secretary@cer-rec.gc.ca.

The Commission directs Foothills to publish a copy of this letter on its Project website and also serve a copy of this letter on all potentially affected Indigenous communities, by **22 October 2021**.

Please contact Suzanne Brown, Director, at 403-465-1787 or 1-800-899-1265, if you have any questions.

Yours sincerely,

Signed by

Jean-Denis Charlebois
Secretary of the Commission

Attachments

cc: Mick Elliott, Elk Valley Métis Association, Email mick@elkvalleymetis.com

Paul Peterson, Nature Conservancy of Canada, Email
Paul.Peterson@natureconservancy.ca

Rosa Twyman, Western Export Group, Email Rosa.Twyman@RLChambers.ca

Appendix I – Timetable of Events

Event	Responsible	Deadline
Interested persons file comments on Potential Conditions	Interested Persons	3 November 2021
Foothills files comments on Potential Conditions	Foothills	10 November 2021
Close of Record* *(subject to any additional information required by the Commission)	Commission	10 November 2021

Appendix II – Potential Conditions for an order pursuant to section 214 of the Canadian Energy Regulator Act (CER Act), if granted

These potential conditions may be revised or removed and further conditions may be added by the Commission.

In this document, the terms and expressions below (in bold) have the following meaning:

Application	Foothills' application dated 4 March 2021, and filed pursuant to section 214 of the CER Act.
Commencing construction	The clearing of vegetation, ground-breaking, and other forms of right-of-way preparation that may have an impact on the environment (activities associated with normal surveying do not constitute commencing construction).
for approval	When a condition requires a filing with the CER "for approval," Foothills must not commence the indicated action or activity until the Commission issues its written approval of the filing.
including	Use of this term, or any variant of it, is not intended to limit the elements to just those listed. Rather, it implies minimum requirements with the potential for augmentation, as appropriate.
CER	Canada Energy Regulator
Commission	Commission of the Canada Energy Regulator
Order	The exemption order applied for by Foothills under section 214 of the CER Act, authorizing the construction and use of the section 214 facilities and activities.
Foothills	Foothills Pipe Lines (South B.C.) Ltd.
Project	The proposed Foothills Zone 8 West Path Delivery 2023 Project, as described in Foothills' Application.

Prior to Construction

1) 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.

2) Outstanding Traditional Knowledge Studies

- a) Foothills must file with the CER **at least 30 days prior to commencing construction of the Project**, for Commission 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 physical, bio-physical, and heritage resource field investigation or reconnaissance activities relevant to potentially affected Indigenous communities;
 - ii) a summary of the effects of the Project on the current use of lands and resources for traditional purposes identified in the traditional knowledge studies;
 - iii) a summary of the mitigation measures proposed by Foothills or by affected Indigenous communities to address Project effects identified in the traditional knowledge studies;
 - 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.