



AltaLink Management Ltd.

**AltaLink L.P. Transfer of Specific Transmission Assets
to PiikaniLink L.P. and KainaiLink L.P. and the
Associated 2017-2018 General Tariff Applications**

November 13, 2018

Alberta Utilities Commission

Decision 22612-D01-2018

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and the Associated 2017-2018 General Tariff Applications

Proceeding 22612

Applications 22612-A001, 22612-A002, 22612-A003, 22612-A004

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22612-A002, 22612-A003, 22612-A004**

1 Decision summary

1. The following summary is provided for the convenience of the reader and is not intended to be comprehensive, nor does it interpret, supplement or substitute for the detailed information or findings in this decision.

2. In this decision, the Alberta Utilities Commission has approved, with conditions, the application of AltaLink Management Ltd. (AltaLink) to:

- (1) transfer specific transmission assets to PiikaniLink Limited Partnership (PLP) and to KainaiLink Limited Partnership (KLP)
- (2) create PLP and KLP as new transmission facility operators (TFOs) in Alberta
- (3) approve interim general tariffs for each of PLP and KLP

3. On April 27, 2017, AltaLink filed the below-referenced applications with the Commission:

- Application 22612-A0001 – transfer and sale to PLP of that portion of the transmission facilities pertaining to the 240 kilovolt (kV) transmission line between the Goose Lake Substation and the North Lethbridge Substation, and a portion of the Peigan 59S Substation located on Piikani Reserve No. 147;
- Application 22612-A0002 – approval of PLP’s general tariff application (GTA) for the years 2017 and 2018;
- Application 22612-A0003 – transfer and sale to KLP of that portion of the transmission facilities pertaining to the 240 kV transmission line between the Goose Lake Substation and the North Lethbridge Substation located on Blood Reserve No. 148;
- Application 22612-A0004 – approval of KLP’s GTA for the years 2017 and 2018.

4. AltaLink proposed that the acquisition by PLP and KLP of the transmission assets referenced above would be financed by AltaLink Limited Partner (AltaLink L.P.). The amounts of the proposed loans are up to \$40 million for PLP and \$31 million for KLP.

5. Notice of the applications was effected through a filing announcement to all parties registered to receive electronic filing notifications, notice posted on the Commission’s website, and notice issued to the Blood Tribe and the Piikani Nation at the mailing addresses and electronic email addresses identified for each of those parties. Notice of the applications to the

Piikani Nation and the Blood Tribe¹ members was effected through a process proposed by each First Nation and accepted by the Commission on February 5, 2018.

6. The Commission applied its traditional no-harm test to consider the applications. The no-harm test requires the Commission to determine whether the asset transfers are likely to result in any harm to ratepayers² arising from the rates paid for service or the reliability of that service. If the Commission concludes that ratepayers may be harmed, the Commission then considers whether any identified harm can be mitigated by making its approval subject to specified conditions.

7. The Commission determined that the applications violated the no-harm test because:

- Approval of the asset transfers, as proposed, would result in ongoing incremental costs to ratepayers for audit fees and hearing costs, approximated for 2017 at \$120,000 per year (\$35,000 for annual audit fees payable to external auditors, and \$25,000 associated with hearing costs, for each of PLP and KLP).
- The repayment terms as set out in the loan agreements result in financial harm to ratepayers that, on balance, leaves them worse off than they otherwise would be.

8. The Commission also determined that the offsetting benefits claimed by AltaLink do not mitigate the financial harm.

9. However, the Commission found that the identified financial harm could be mitigated through the imposition of conditions.

10. The Commission also approved the PLP and KLP general tariffs on an interim basis, effective the date of completion of the transfers.

2 Introduction

11. On April 27, 2017, AltaLink filed with the Commission the following four applications (the applications):

- Application 22612-A0001,³ brought by AltaLink, in its capacity as general partner of AltaLink L.P., and in its capacity as general partner of PLP, for certain approvals, authorizations and declarations regarding the transfer and sale by AltaLink L.P. to PLP of its right, title and interest in and to that portion of the transmission facilities pertaining to the 240 kV transmission line between the Goose Lake Substation and the North

¹ Exhibit 22612-X0029, paragraph 7: “The Blood Tribe is the body of First Nations known as the Blood Indian Band, who are represented by the Council of the Blood Tribe and it’s duly elected Chief, and who occupy the Blood Reserve.” In this decision, the Blood Limited Partner is a limited partner who will have majority ownership interest in the KainaiLink Limited Partnership (KLP).

² The term “ratepayer” has been used in this decision in place of “customer” as traditionally referenced in past no-harm decisions.

³ Exhibit 22612-X0002.

Lethbridge Substation, and a portion of the Peigan 59S Substation located on Piikani Reserve No. 147;⁴

- Application 22612-A0002,⁵ for approval of PLP’s GTA for the years 2017 and 2018;
- Application 22612-A0003,⁶ brought by AltaLink, in its capacity as general partner of AltaLink L.P., and in its capacity as general partner of PLP, for certain approvals, authorizations and declarations regarding the transfer and sale by AltaLink L.P. to KLP of its right, title and interest in and to that portion of the transmission facilities pertaining to the 240 kV transmission line between the Goose Lake Substation and the North Lethbridge Substation located on Blood Reserve No. 148; and⁷
- Application 22612-A0004,⁸ for approval of KLP’s GTA for the years 2017 and 2018.

12. For ease of reference, in this decision the Commission refers to Application 22612-A0001 and Application 22612-A0003 collectively as “the transfer applications,” and refers to Application 22612-A0002 and Application 22612-A0004 collectively as “the GTAs.”

13. As part of the transfer applications, AltaLink requested authority pursuant to Section 101(2)(a)(ii) of the *Public Utilities Act* to issue Requests for Advance under the provisions of separate, draft loan agreements between AltaLink L.P., as lender, and PLP, as borrower, and between AltaLink L.P., as lender, and KLP, as borrower.

14. The Commission issued notice of the applications on May 3, 2017.⁹ In the notice, the Commission indicated an intention to consider the applications in a single proceeding.

15. The Commission circulated the notice and filing announcement to all parties registered to receive electronic filing notifications. The Commission also posted the notice on its website. In addition, on May 3, 2017, the Commission issued a notice to the Blood Tribe and the Piikani Nation. The notices were mailed to the Piikani Consultation Office and to the Blood Tribe. An electronic version of the notice was also sent to the Blood Tribe Chief and Council and, in the case of the Piikani Nation, to its Consultation staff at the email address found on the websites of the Piikani Nation and of the Blood Tribe.¹⁰

16. Statements of intent to participate (SIPs) were received by the prescribed deadline from the Consumers’ Coalition of Alberta (CCA) and from the Office of the Utilities Consumer Advocate (UCA).

⁴ Exhibit 22612-X0023, Schedule A, PDF page 17: “Ownership transfer at the western boundary of the Piikani Indian Reserve No. 147, located at the NE [northeast] quarter of Section 35, Township 6, Range 29, West of the 4th Meridian between Altalink transmission structure number 29 and Piikanilink transmission structure number 30.”

⁵ Exhibit 22612-X0024.

⁶ Exhibit 22612-X0029.

⁷ Exhibit 22612-X0044, Schedule A, PDF page 17: “1. Ownership transfer at the high water mark on the Blood Reserve-side of the Belly River between Altalink transmission structure number 66 and Kainailink transmission structure number 67. 2. Ownership transfer at the high water mark on the Blood Reserve-side of the Oldman River between Kainailink transmission structure number 141 and Altalink transmission structure number 142.”

⁸ Exhibit 22612-X0045.

⁹ Exhibit 22612-X0055.

¹⁰ Exhibit 22612-X0058, paragraphs 2-3.

17. Through communication with the Piikani Nation, the Blood Tribe and AltaLink, further process to ensure that all members of these First Nations received notice of the applications was established with the Commission's agreement.

18. The Commission subsequently established a process schedule for the proceeding that included information requests (IRs) and responses, submissions on the need for further process, additional Commission IRs, argument and reply argument. The Commission considers the record for Proceeding 22612 to have closed on August 15, 2018, the date reply argument was received.

3 Background

19. AltaLink, in its capacity as general partner of both AltaLink L.P. and as general partner of each of PLP and KLP filed transfer applications seeking approval for the transfer and sale of a portion of AltaLink's¹¹ transmission assets pertaining to its 240 kV transmission line between the Goose Lake Substation and the North Lethbridge Substation (the "SW Line"). The portions of the SW Line that are proposed to be sold and transferred are the assets that are located on the Piikani Reserve No. 147 and on the Blood Reserve No. 148. These transmission assets are referred to as the PLP transmission assets and the KLP transmission assets, respectively.

20. In its capacity as general partner of AltaLink L.P., AltaLink applied to the Commission for the following relief:¹²

- (a) An Order, under Section 101(2)(d)(i) of the *Public Utilities Act*, authorizing the sale of the rights, title and interests, legal and beneficial, in the PLP Transmission Assets
- (b) An Order under sections 14, 15, 18 and 19 of the *Hydro and Electric Energy Act* approving the transfer of, and effecting all required amendments to, all permits, licences, authorizations, approvals and other Orders regarding the PLP Transmission Assets, including those pertaining to the construction, ownership and operation of the PLP Transmission Assets
- (c) An Order under Part 9, Division 2 of the *Electric Utilities Act*, including Section 124 thereof:
 - (i) approving the allocation of that portion of AltaLink L.P.'s closing rate base balance corresponding to the PLP Transmission Assets, as of the effective date of the completion of the proposed transfer and
 - (ii) reducing AltaLink L.P.'s rate base and amending its tariff, as of the effective date of the completion of the proposed transfer, because of the proposed transfer of the PLP Transmission Assets.
- (d) In the alternative, declarations that an authorization is not required by AltaLink L.P. in connection with the relief described in paragraphs 24 (a), (b) and (c) above; and

¹¹ AltaLink Management Ltd, in its capacity as the general partner of AltaLink L.P., is the legal owner of the AltaLink transmission business and assets.

¹² Exhibit 22612-X0002, PDF pages 6-8, and Exhibit 22612-X0029, PDF pages 6-8.

- (e) Such further and other orders, exemptions or declarations of the Commission that are within its jurisdiction and necessary to permit and facilitate the proposed transfer described in this Application.
21. In its capacity as general partner of PLP, AltaLink requested the following relief:¹³
- (a) An Order under Section 101(2)(a)(ii) of the *Public Utilities Act* authorizing AltaLink, in its capacity as general partner of PLP, to issue Requests for Advance pursuant to the provisions of the Loan Agreement;
 - (b) An Order under sections 14, 15, 18 and 19 of the *Hydro and Electric Act* approving the transfer of and effecting all required amendments to, all permits, licences, authorizations, approvals and other Orders that pertain to the PLP Transmission Assets, including those pertaining to the construction, ownership and operation of the PLP Transmission Assets, including the issuance of the necessary connection orders;
 - (c) An Order under Part 9, Division 2 of the *Electric Utilities Act*, including Section 124 thereof:
 - (i) approving the allocation of that portion of the closing rate base balance corresponding to the PLP Transmission Assets, as of the effective date of the completion of the proposed transfer;
 - (ii) directing that the closing rate base balance as allocated shall be the opening rate base balance of PLP's transmission facility utility, as of the effective date of the completion of the proposed transfer;
 - (iii) approving a tariff for PLP, for the ownership and operation by PLP of the PLP Transmission Assets, as of the effective date of the completion of the proposed transfer; and
 - (iv) confirming that the terms and conditions of service for PLP will be the same as those approved for AltaLink L.P. in AUC Decision 3524-D01-2016.
 - (d) An Order directing that any approvals and authorizations granted by the Commission are subject to the condition that for ratemaking purposes, AltaLink, in its capacity as general partner of PLP, calculate the transmission facility utility income taxes for the year 2017 and beyond using as the opening balance the amounts of undepreciated capital cost for regulatory purposes, as of January 1, 2017, pertaining to the PLP Transmission Assets, including any adjustments for additions to and dispositions of any of the PLP Transmission Assets made from January 1, 2017, until the effective date of the transfer;
 - (e) In the alternative, declarations that an authorization is not required by PLP in connection with the relief described in paragraphs 25 (a), (b), (c) and (d) above;
 - (f) An Order that AltaLink shall not be removed as the general partner of PLP without prior written approval of the Commission;
 - (g) An Order, under Section 102(1) of the *Public Utilities Act*, approving the change in control of PLP that could occur if AltaLink L.P. is required to contribute an unfunded portion of a requested capital contribution for the other limited partner;
 - (h) An Order that the Piikani Limited Partner be added to the Public Utilities Designation Regulation, Alberta Regulation 194/2006, (the "Public Utilities Designation Regulation") as owner of a public utility and that, after the proposed transfer until the

¹³ Exhibit 22612-X0002, PDF pages 6-8.

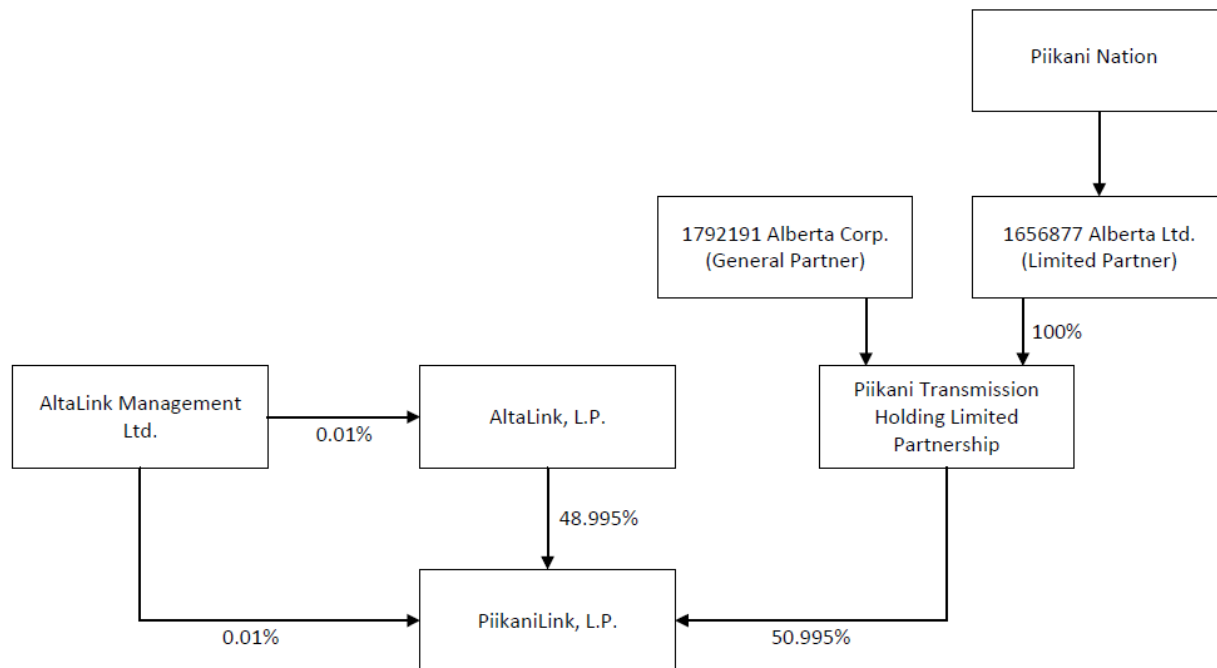
actual designation, the Piikani Limited Partner conduct itself as if it had been designated; and

- (i) Such further and other orders, exemptions or declarations of the Commission that are within its jurisdiction and necessary to permit and facilitate the proposed transfer set out in this Application.

22. Identical relief was also requested in Application 22612-A0003 with respect to KLP and the KLP transmission assets.¹⁴

23. The documents filed in support of the transfer applications are set out in Appendix 3 to this decision.

24. AltaLink proposed that the revised ownership structure of PLP would be as follows upon approval of the transfer application:

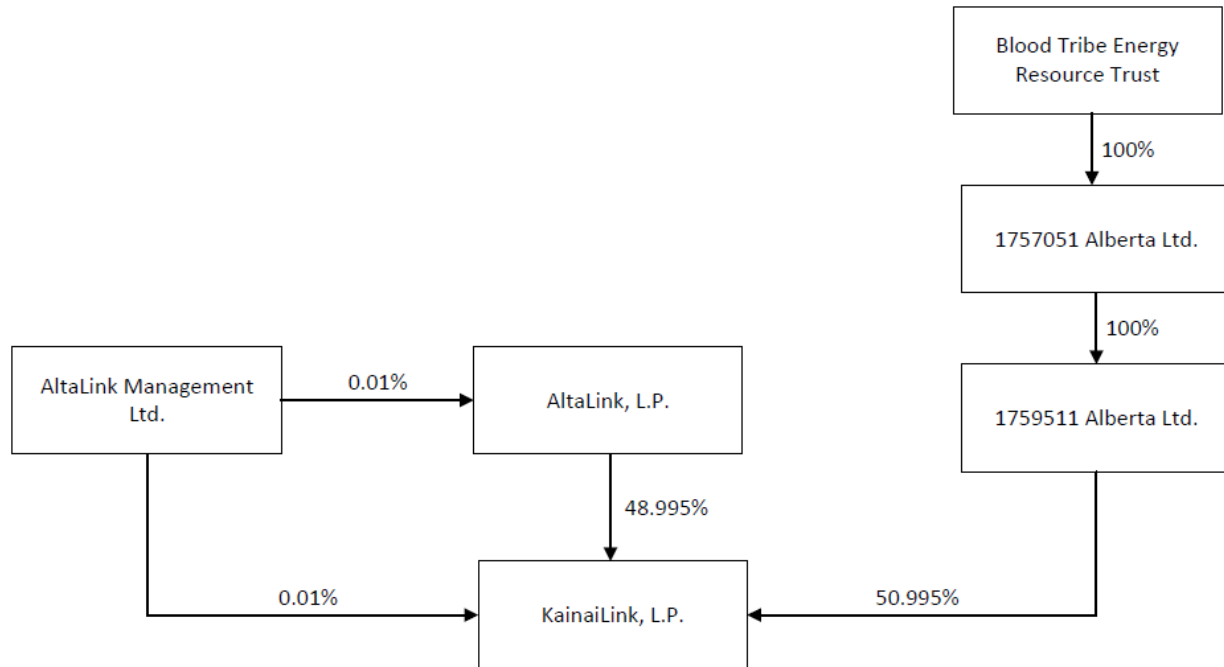


Source: Exhibit 22612-X0016.

25. Piikani Transmission Holding Limited Partnership is referred to in the application as Piikani Limited Partner. The voting shares of 1792191 Alberta Corp. are held solely by Piikani Resource Development Ltd., and the voting shares of Piikani Resource Development Ltd. are held solely by the Piikani Nation.

¹⁴ Exhibit 22612-X0029, PDF pages 6-8.

26. AltaLink proposed that the revised ownership structure of KLP would be as follows upon approval of the transfer application:



Source: Exhibit 22612-X0037.

27. 1759511 Alberta Ltd. is sometimes referred to in the application as Blood Limited Partner.

4 No-harm test for transfer applications

28. In fulfilling its public interest mandate when considering applications pursuant to sections 101 and 102 of the *Public Utilities Act*, the Commission has traditionally applied a no-harm test. The Commission’s predecessor, the Alberta Energy and Utilities Board (the board), in Decision 2000-41 articulated this test as follows:

... that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case. If so, then the Board considers that the transactions should be approved.¹⁵

29. In that same decision, the board elaborated upon its approach to determining whether a proposed transaction is in the public interest:

As a result, rather than simply asking whether customers will be adversely impacted by some aspect of the transactions, the Board concludes that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance

¹⁵ Decision 2000-41: TransAlta Utilities Corporation, Sale of Distribution Business, Application 2000051, File 6404-3, July 5, 2000, page 8.

favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case. If so, then the Board considers that the transactions should be approved.¹⁶

30. The board also determined that where harm is identified, some form of mitigation may be necessary in order for the transaction to proceed.

31. The no-harm test and the factors considered by the Commission have continued to evolve. In Decision 2014-326,¹⁷ regarding the sale of AltaLink L.P.'s transmission assets and business to MidAmerican (Alberta) Canada Holdings Corporation, the Commission provided its summary of the factors that may be considered when applying the no-harm test, and referenced previous Commission decisions discussing each of those factors:

The first is whether there will be any impact to the rates and charges passed on to customers, and that you'll find in Decision 2005-118,^[18] Decision 2004-[0]35^[19] and Decision 2011-374^[20].

... second, whether any operational benefit or risk arises related to the acquiring party's utility experience. That's in Decision 2005-118, 2004-[0]35, Decision 2006-38....^[21]

Third, whether the financial profile of the utility will be impacted for the purposes of attracting capital. That's in Decision 2006-56,^[22] Decision 2006-38 and Decision 2011-374.

Fourth, in the case of AltaLink, whether the utility will remain sufficiently legally, financially and operationally separate from the acquiring party, which is, of course, the ring-fencing provisions, code of conduct, et cetera, and that's in Decision 2006-56 and 2011-374.

Fifth, whether the Commission will maintain sufficient regulatory oversight of the utility; Decision 2004-[0]35, Decision 2011-374.

Sixth, whether the management and operational expertise will remain in place post transaction; Decision 2006-38, Decision 2011-374.

¹⁶ Decision 2000-41, page 8.

¹⁷ Decision 2014-326: AltaLink Investment Management Ltd. and SNC Lavalin Transmission Ltd. et al., Proposed Sale of AltaLink L.P. Transmission Assets and Business to MidAmerican (Alberta) Canada Holdings Corporation, Proceeding 3250, Applications 1610595-1, 1610596-1 and 1610597-1, November 28, 2014, paragraph 108.

¹⁸ Decision 2005-118: Upper Lakes Group Inc., Sale of Shares in Thornmark Utilities Corporation and Thornmark Waste Management Corporation, Application 1398651-1, November 2, 2005.

¹⁹ Decision 2004-035: Aquila Networks Canada Ltd. Sale of All Outstanding ANCA Shares to FortisAlberta, Applications 1318425-1 and 1317233-1, April 29, 2004.

²⁰ Decision 2011-374 (Errata): AltaLink Investment Management Ltd. et al., Application Related to Change in Ownership, Proceeding 1197, Applications 1607248-1 and 1607249-1, September 26, 2011.

²¹ Decision 2006-038: Terasen Utility Services Inc., Part 1: Proposed Transactions, Application 1443803-1, April 26, 2006.

²² Decision 2006-56: AltaLink Investment Management Ltd. and AltaLink Management Ltd., Macquarie Transmission Alberta Ltd., SNC-Lavalin Transmission Ltd., OTPPB TEP Inc., 3057246 Nova Scotia Company, SNC-Lavalin Energy Alberta Ltd. and TE-TAU, Inc., Application for Change in Ownership, Application 1434687-1, June 13, 2006.

Seventh, whether the transmission (*sic*) (transaction) will result in any cost impacts for customers relating to such things as tax and pension funds. And that's Decision 2000-41.

And eight, that the acquiring party wishes to be in the utility business in Alberta whereas the divesting party does not. That's in Decision 2005-118, Decision 2004-5 and Decision 2006-38. [footnotes omitted]

32. As stated in Decision 2014-326, in addition to the above factors, the no-harm test must also reflect that:

- Customers are, to the maximum extent possible, to be protected against any negative ramifications arising from the transactions. (Decision 2006-056)²³
- Customers are not entitled to a level of post-transaction regulatory certainty they would not have realized if the transaction had not been approved. (Decision 2006-056)²⁴
- Customers are at least no worse off after the transaction is completed after consideration of the potential positive and negative impacts of the proposed share transactions. (Decision 2011-374 (Errata))²⁵

33. The principles articulated in the cited decisions continue to guide the Commission and were applied in the Commission's consideration of the proposed transfers.

34. As noted, the Commission conducts the no-harm test in two stages. First, the Commission assesses whether the transaction results in harm to ratepayers or, at the very least, leaves them no worse off than before the transaction in terms of financial impact or reliability of service. If the Commission concludes that ratepayers may be harmed, the Commission proceeds to the second stage and considers whether any identified harm can be mitigated by making approval subject to specified conditions.²⁶

35. In the sections that follow, the Commission details its consideration of the relevant factors under the no-harm test and the reasons supporting its findings. In summary, the Commission has determined that the no-harm test has not been satisfied because:

- approval of the proposed transfers would result in ongoing incremental costs to ratepayers for annual audit fees and for fees associated with hearing costs. These costs were estimated for 2017 at approximately \$120,000 (\$35,000 for annual audit fees payable to external auditors, and \$25,000 associated with hearing costs, for each of PLP and KLP); and
- the repayment terms as set out in the loan agreements result in financial harm to ratepayers that, on balance, leaves ratepayers worse off than they otherwise would have been.

²³ Decision 2011-374, paragraph 49; Decision 2006-056, Application for a change in ownership, page 5.

²⁴ Decision 2006-056, Application for a change in ownership, pages 5-6.

²⁵ Decision 2011-374, paragraph 50; Decision 2006-056, Application for a change in ownership, pages 5-6.

²⁶ Decision 2006-056, Application for a change in ownership, pages 5-6.

36. Further, the Commission determined that the offsetting benefits claimed by AltaLink do not mitigate the financial harm.

37. However, the Commission is satisfied that the identified harm can be mitigated through the imposition of conditions. The Commission approves the applications with the following conditions:

- The incremental audit costs and hearing costs are to be removed from the KLP and PLP tariffs;
- Any unreasonable or undue financial risk to ratepayers (as more fully described below) arising from the repayment terms in the financing of the proposed transfers may not be included within the AltaLink tariff.²⁷

4.1 Financial impact

38. The Commission considered the following factors associated with or arising from the proposed transfers, in assessing whether they result in financial harm to ratepayers:

- Incremental audit fees and hearing costs for PLP and KLP TFOs.
- Financing arrangements to provide funding to acquire the transmission facilities from AltaLink L.P.
- Financial viability of PLP and KLP.
- Income tax considerations.

4.1.1 Incremental audit fees and hearing costs

39. In its application, AltaLink submitted that the proposed transfer of assets and subsequent establishment of PLP and KLP as new TFOs would “only moderately increase the costs to customers due to the incremental setup and specific administration costs.”²⁸ Specifically, AltaLink indicated that there would be a cost increase of \$35,000 for annual audit fees payable to external auditors, and an increase of \$25,000 associated with hearing costs for each of PLP and KLP, for a total cost impact of \$120,000 per year.²⁹ AltaLink acknowledged that these costs are recurring annual costs, which are expected to be recovered from customers in future tariff revenue requirements.

40. In argument, AltaLink clarified that should the actual audit fees exceed the estimated annual audit fees of \$35,000 for each of PLP and KLP for their respective 2017-2018 GTAs, “the additional costs would be borne by the equity shareholders of PLP and KLP as AltaLink did not seek deferral account treatment for audit fees.”³⁰

²⁷ AltaLink Management Ltd. is the general partner of AltaLink L.P. For the purposes of this decision, the Commission will simply refer to its tariff as the “AltaLink tariff.”

²⁸ Exhibit 22612-X0002, paragraph 46; Exhibit 22612-X0029, paragraph 46.

²⁹ Exhibit 22612-X0104, AltaLink argument, paragraph 53.

³⁰ Exhibit 22612-X0098, AML-AUC-2018JUN08-007(b), cited at Exhibit 22612-X0104, AltaLink argument, paragraph 54.

41. AltaLink argued that these incremental costs are minimal compared to the benefits that customers have obtained and are continuing to enjoy because the SW Line was routed across the Piikani Reserve and the Blood Reserve lands. It asserted the achievement of “\$32M [million] in savings by routing the SW Line across the Piikani Reserve and the Blood Reserve.”³¹

42. AltaLink also argued that approval of the proposed transfers “confers several benefits to the utility industry of Alberta, specifically in respect of access to First Nations demographics for workers, the obvious benefits of having strong relationships with First Nations in Alberta, and access to certain government programs.”³² It elaborated that:

- A significant percentage of the Piikani Nation’s and the Blood Tribe’s membership is of work-force age. AltaLink and AltaLink L.P. can benefit from the sustainable pool of personnel from the Piikani Nation and the Blood Tribe to meet their human resource needs.³³
- Strengthening AltaLink’s relationship with other First Nations in Canada and in the United States. AltaLink and AltaLink L.P. could benefit from these relationships to expand existing or initiate new projects that may involve other First Nations’ resources.³⁴
- Serving as a model for future cooperative relationships between AltaLink and First Nations in Alberta, which may in turn benefit the utility industry as a whole as AltaLink continues to build and enhance Alberta’s transmission system, which often involves engagement with First Nations.³⁵
- Allowing access to certain government programs. Provincial and federal governments from time to time implement programs and incentives that are directed towards building partnerships between mainstream business and First Nations. AltaLink and AltaLink L.P. can benefit from these programs, which may otherwise be unavailable to them, through partnership with the Piikani Nation and the Blood Tribe.³⁶
- Supporting alignment of interests between AltaLink and the First Nations to enhance the long-term safe and reliable operation of utility assets located on their reserve lands.³⁷

43. In argument, the CCA asserted that the expected increase in audit and hearing costs is significant when compared to the 2017 total forecast annual operating costs of \$724.2 thousand for PLP and \$457.6 thousand for KLP. Specifically, the CCA claimed that \$120 thousand represents 10 per cent of the combined \$1,181.8 thousand of total annual operating costs.³⁸ It considered the incremental costs resulting from the transfer application to be significant, “particularly when accumulated over the longer term, and in the CCA’s opinion result in harm to customers.”³⁹ Further, the CCA stated that AltaLink failed to address whether these costs could

³¹ Exhibit 22612-X0104, AltaLink argument, paragraph 57.

³² Exhibit 22612-X0104, AltaLink argument, paragraph 138.

³³ Exhibits 22612-X0100 and 22612-X0101.01, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 139.

³⁴ Exhibit 22612-X0100 and Exhibit 22612-X0101.01, cited at Exhibit 22612-X0104, paragraph 140.

³⁵ Exhibit 22612-X0098, PDF page 18, AML-AUC-2018JUN08-009, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 141.

³⁶ Exhibits 22612-X0100 and 22612-X0101.01, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 143.

³⁷ Exhibit 22612-X0098, PDF page 18, AML-AUC-2018JUN08-009, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 142.

³⁸ Exhibit 22612-X0105.01, CCA argument, paragraphs 14-15.

³⁹ Exhibit 22612-X0105.01, CCA argument, paragraphs 17.

be mitigated or eliminated through the imposition of conditions on the approval of the applications.⁴⁰ In particular, the CCA stated that although there might be small increases in internal regulatory costs for AltaLink to prepare future PLP and KLP GTAs, this additional cost might be minimal, such that it could be absorbed by AltaLink's existing staff.⁴¹

44. Regarding the offsetting benefits identified by AltaLink, the CCA submitted that the intangible benefits attributable to First Nations' ownership of the transferred assets, although difficult to quantify, may offset these incremental costs, either directly or indirectly. Consequently, the CCA did not recommend that these costs be removed from the GTA revenue requirement schedules provided the Commission accepted its primary recommendation (discussed in greater detail in Section 4.1.4 below) that PLP and KLP be directed to remove the income tax cost items from their tariff revenue requirements. However, if the Commission rejected its primary recommendation, the CCA proposed that these incremental operating costs be denied as AltaLink did not propose any mitigation measures to offset them.⁴²

45. In reply argument, AltaLink submitted that because the incremental costs are necessarily incurred in the operation of any utility asset, they cannot be mitigated. In addition, it asserted that hearing costs are largely outside of AltaLink's control and strongly affected by the degree of participation of interveners, such as the CCA.⁴³ AltaLink added that it made efforts to mitigate the incremental costs, as evidenced by the following:

- negotiating lower audit fees of \$35,000 for each of PLP and KLP, a decrease from the original estimate of \$57,000 for each;⁴⁴ and
- proposing to file the GTAs for AltaLink, PLP and KLP concurrently.⁴⁵

46. AltaLink submitted that if the Commission accepts the CCA's suggestion that AltaLink should absorb the hearing and audit costs incurred by PLP and KLP, customers would receive "an undeserved and unnecessary benefit."⁴⁶

47. AltaLink claimed that although the CCA alleged that the incremental costs associated with the asset transfers would result in harm to customers, the CCA also conceded⁴⁷ that the joint venture agreement with the First Nations may have been important in allowing the SW Line to be constructed. AltaLink reiterated that the anticipated incremental operating cost of approximately \$120,000 per year is not significant in light of the \$32 million cost reduction enjoyed by ratepayers as a result of routing its SW Line through First Nations land.⁴⁸

48. In reply argument, the CCA disagreed that the incremental costs to customers associated with the transfer applications were offset by the benefits claimed by AltaLink of routing the

⁴⁰ Exhibit 22612-X0105.01, CCA Argument, paragraph 13.

⁴¹ Exhibit 22612-X0105.01, CCA Argument, paragraph 16.

⁴² Exhibit 22612-X0105.01, CCA Argument, paragraph 18.

⁴³ Exhibit 22612-X0108, AltaLink Reply Argument, paragraph 9.

⁴⁴ Exhibit 22612-X0084, PDF page 13, AML-CCA-2018MAR23-003(c).

⁴⁵ Exhibit 22612-X0024, paragraph 30 and Exhibit 22612-X0045, paragraph 30.

⁴⁶ Exhibit 22612-X0108, AltaLink reply Argument paragraph 10.

⁴⁷ Exhibit 22612-X0105.01, CCA Argument, paragraph 48.

⁴⁸ Exhibit 22612-X0108, AltaLink Reply Argument, paragraph 7.

SW Line across First Nations land.⁴⁹ The CCA questioned AltaLink's valuation of \$32 million in savings and submitted that the Commission neither (1) quantified the savings from the approved route over the proxy route; nor (2) approved any quantification of higher costs as suggested in the external audit report it considered in the proceeding that led to Decision 2044-D01-2016.⁵⁰

49. The CCA submitted that it is notable that at paragraph 67 of Decision 2044-D01-2016, the Commission addressed the fact that the audit report under consideration had indicated that an alternate route would have cost approximately \$59 million less than the approved route. Accordingly, the CCA submitted that the findings of the audit report on the SW project directly conflict with AltaLink's assertion that the adoption of the approved route for the SW Line generated a \$32 million cost saving.⁵¹

50. The CCA further submitted that the approved route cost substantially more than forecast, and that any of the alternate routes, if selected, would have likely been less expensive.⁵² Accordingly, the CCA submitted that the Commission should afford no weight to AltaLink's claim that there were \$32 million in savings associated with adopting a route that crossed the Piikani Nation Reserve and Blood Tribe Reserve.⁵³

51. In reply argument, the Blood Tribe submitted that its members were adamant during consultations that their agreement to allow the SW Line to traverse reserve land was contingent on the tribe's ability to partner with AltaLink L.P.⁵⁴ The Blood Tribe also clarified that the Blood Tribe government; namely, the elected Chief and Council, cannot agree to undertakings with third parties without prior approval of the majority of Blood Tribe members.⁵⁵ The Blood Tribe submitted that without Blood Tribe membership approval, the SW Line could not have crossed Blood Tribe reserve land and, consequently, saved ratepayers costs.⁵⁶

Commission findings

52. It is undisputed that approval of the transfer applications, as proposed, would result in ongoing incremental costs to ratepayers approximated for 2017 at \$120,000. This constitutes a negative effect (harm under the no-harm test), which must be weighed against any potential positive effects of the transfer applications to determine whether the balance favours ratepayers or, at least, leaves them no worse off.

53. AltaLink claimed that the anticipated ongoing incremental costs to ratepayers are not significant in light of the \$32 million in savings enjoyed by ratepayers as a result of routing the transmission line through First Nations land.

⁴⁹ Exhibit 22612-X0106, CCA reply argument, paragraph 6.

⁵⁰ Exhibit 22612-X0106, CCA reply argument, paragraphs 7-8.

⁵¹ Exhibit 22612-X0106, CCA reply argument, paragraphs 12-13.

⁵² Exhibit 22612-X0106, CCA reply argument, paragraph 15.

⁵³ Exhibit 22612-X0106, CCA reply argument, paragraph 16.

⁵⁴ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 16.

⁵⁵ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 17.

⁵⁶ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 19.

54. The Commission acknowledges AltaLink's assertion that it negotiated an agreement with the Piikani Nation and the Blood Tribe to route the SW Line through reserve land and that various exhibits filed in this proceeding reflect the outcome of these negotiations.^{57 58 59 60 61 62}

55. The Commission further acknowledges the submission that the primary motivation of the Piikani Nation and the Blood Tribe in consenting to the SW Line traversing their land was to acquire ownership interests in the transmission assets at a future date.

56. However, the Commission finds that factors concerning the routing of the SW Line have no bearing on the application of the no-harm test in this proceeding. This is because the Commission's assessment of harm under the no-harm test is specific to the transfers being proposed and is a forward-looking exercise. What must be considered are the negative and positive effects of the proposed transfers themselves, and not of what preceded them. An identified and quantifiable harm resulting from a proposed transaction cannot be mitigated by an alleged benefit purportedly arising from a past transaction, whether substantiated or not.⁶³ For these reasons, the Commission rejects the argument that alleged savings to ratepayers associated with the routing of the SW Line should be considered a benefit offsetting the ongoing incremental hearing and audit costs resulting from the transfer applications and the establishment of the new PLP and KLP TFOs.

57. AltaLink also argued that the proposed transfers would confer several intangible benefits to AltaLink and to the Alberta utility industry in general. The intangible benefits asserted by AltaLink included (1) access to the First Nations workforce; (2) strengthening AltaLink's relationship with other First Nations in Canada and in the United States; and (3) support for the alignment of interests between AltaLink and the First Nations to enhance the long-term safe and reliable operation of utility assets located on their reserve land.

58. Intangible benefits are, by nature, difficult to establish, much less quantify, and are necessarily subject to a measure of uncertainty. AltaLink, in both its applications and responses to the Commission's IRs, failed to provide sufficient evidence to establish that the asserted benefits are likely to materialize and, if so, when and to what extent. It also failed to provide sufficient evidence that the asserted benefits, if realized, could be objectively quantified as cost savings to ratepayers, offsetting the ongoing incremental costs resulting from the proposed transfers. While the Commission is prepared to accept the possibility that the asserted benefits to AltaLink and the utility industry in general might be realized, it cannot assess, based on the

⁵⁷ Exhibit 22612-X0002, PLP Transfer Application, paragraph 19, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 40.

⁵⁸ Exhibit 22612-X0029, KLP Transfer Application, paragraph 19, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 41.

⁵⁹ Exhibit 22612-X0022, PLP Limited Partnership Agreement, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 42.

⁶⁰ Exhibit 22612-X0023, PLP Purchase and Sale Agreement, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 42.

⁶¹ Exhibit 22612-X0043, KLP Limited Partnership Agreement, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 44.

⁶² Exhibit 22612-X0044, KLP Purchase and Sale Agreement, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 44.

⁶³ The Commission has not made any factual determination valuing a financial benefit attributable to the routing of the SW project.

evidence available to it, whether these benefits (1) also constitute forward-looking benefits for ratepayers; and (2) whether, on balance, they would equal or outweigh the ongoing incremental costs to ratepayers arising from the proposed transfers.

59. As there is insufficient evidence to substantiate the asserted intangible benefits to ratepayers resulting from the proposed transfers, the Commission finds that the identified ongoing incremental audit and hearing costs have not been demonstrably offset. In the interest of allowing the proposed transfers to proceed, the Commission finds it reasonable to impose conditions to mitigate the financial harm resulting from these costs.

60. As acknowledged by AltaLink in its response to IR AML-AUC-2018-Jun08-001, “Both First Nations recognized there was always the possibility that the Commission could deny or condition approval of the current Applications.”⁶⁴ AltaLink likewise recognized this possibility.⁶⁵

61. The Commission has therefore removed allowances for audits and funding of hearing cost reserves from the revenue requirements of the proposed PLP and KLP tariffs. Further discussion of this direction appears in Section 5.

62. The Commission is unable to accept AltaLink’s argument that if the ongoing incremental audit and hearing costs are excluded from the PLP and KLP tariffs, ratepayers will secure (without warrant or justification) the benefit of a greater level of certainty and lower risk than was available to them prior to the proposed transfers. This is because removing these incremental costs from the PLP and KLP tariffs does not confer upon ratepayers a benefit they did not previously enjoy or, equivalently, relieve ratepayers of a cost they were previously required to pay. It is an undisputed fact in this proceeding that the ongoing incremental hearing and audit costs are not amounts that ratepayers were previously obliged to pay. These incremental costs exist only as a negative effect of the proposed transfers. As they are not offset by any concurrent positive effects of the proposed transfers, they cannot be included in the PLP and KLP tariffs.

4.1.2 Financing arrangements

4.1.2.1 Loan to PLP and KLP

63. Subject to the Commission’s approval of the transfer applications, AltaLink L.P. has agreed to enter into a loan agreement with each of PLP and KLP, pursuant to which AltaLink L.P., will provide any required debt capital for PLP and KLP at AltaLink L.P.’s approved weighted average cost of debt from time to time. The amounts of the loan facilities are up to \$40 million for PLP and \$31 million for KLP (Loan Facilities).⁶⁶

64. In addition, AltaLink LP advised that it:

... has already financed the assets which are to be transferred to the First Nations Partnerships. The assets were financed as part of a portfolio of capital assets, using a mix of different long-term debt issuances and short-term debt, over a period of about five to six years. AltaLink is unable to attribute a specific debt issuance or issuances to specific

⁶⁴ Exhibit 22612-X0098, PDF page 3.

⁶⁵ Exhibit 22612-X0083, AML-AUC-2018MAR23-002(a) and Exhibit 22612-X0098, AUC-AML-2018JUN08-003.

⁶⁶ Exhibits 22612-X014 and 22612-X0035.

assets. In addition, AltaLink's rate base is financed by all of its debt and equity. Therefore, for simplicity and in order to reduce administrative time and cost, it was decided that advances under the Loan Facilities shall bear interest at the approved weighted average cost of debt (WACD). In addition, this approach ensures that the return on debt component of the Partnerships' revenue requirement is calculated using the same WACD rate as what would be used if the assets were to remain in the Lender's (AltaLink) rate base, thereby keeping the rate-payers whole. Under this approach, AltaLink carries any risks associated with differences between the approved WACD and the actual WACD.⁶⁷

65. AltaLink explained that it provided the financing for the transfers to PLP and KLP because it considered it "unlikely that they could access debt at a cost lower than ALP."⁶⁸ According to AltaLink, the Loan Facilities will be used to finance the debt component of the purchase price of the transmission assets and will be a source of needed liquidity in order for PLP and KLP to meet their ongoing financial obligations.

66. Under the loan agreements, AltaLink L.P. agreed to establish Loan Facilities in favour of PLP and KLP, with the following terms:

2.1 Relying on the representations and warranties herein contained and subject to the terms and conditions hereof, the Lender hereby agrees to establish in favour of the Borrower a loan facility of up to \$40,000,000 for the purpose of assisting the Borrower with (i) funding the debt component of the purchase price for the Piikani Line in accordance with the deemed debt-to-equity ratio approved by the Alberta Utilities Commission, and (ii) meeting its financial obligations from time to time as a transmission facility owner.

2.2 The Loan Facility is available by way of multiple advances. Each advance shall be for a minimum of \$1,000 and shall be made from time to time on written request of the Borrower in the form attached hereto as Schedule 'B'. The total principal amount outstanding shall never exceed \$40,000,000 or such other amount as may be agreed to by the Lender and the Borrower from time to time.

2.3 Each advance under the Loan Facility shall bear interest initially determined at the time of each such advance at the rate per annum equal to the Alberta Utilities Commission approved weighted average cost of debt of the Lender as set out in the Lender's then most recent compliance filing. Each party acknowledges that it may be necessary to estimate such cost of debt from time to time and that such cost of debt may change, so therefore it is agreed that there shall be an annual reconciliation and, if required, readjustment of the interest rate payable by the Borrower determined by the Lender from time to time upon notice to the Borrower.⁶⁹

67. Under the loan agreements, interest on any advances accrues as follows:

3.1 Interest shall accrue from day to day, shall be payable as well after as before maturity, default and judgment, shall be computed on the basis of a three hundred and sixty-five

⁶⁷ Exhibit 22612-X0083, PDF page 22.

⁶⁸ Exhibit 22612-X0083, PDF page 22.

⁶⁹ Exhibit 22612-X0014, PDF page 2. Similar language for the Loan Agreement with KLP is found in Exhibit 22612-X0035, but the amount is \$31 million.

(365) day year (or a three hundred and sixty-six (366) day year for leap years) and shall be calculated and payable monthly in arrears commencing on the first Business Day of the month following the initial advance under the Loan Facility, and thereafter on each successive first Business Day of each month following such month.

3.2 All interest payments shall be made without allowance or deduction for deemed re-investment or otherwise, both before and after maturity and before and after default, and such interest shall be calculated using the nominal rate method, not the effective rate method. Any interest in arrears shall accrue at the applicable rate as with principal.⁷⁰

68. Under the loan agreements, repayment of the principal amounts is specified with the following terms:

4.1 The principal amounts advanced pursuant to the Loan Facility shall be repaid by the Borrower from time to time and at any time on one (1) Business Day's written notice in the form attached hereto as Schedule "C" provided that all principal amounts outstanding under the Loan Facility, plus all interest then outstanding must be repaid by no later than December 31, 2031 unless otherwise extended in writing by the Lender in its sole discretion.

69. AltaLink stated that "as a lender, AltaLink carries the risk if the Limited Partnerships fail to honour their obligations, which includes the repayment of principal and interest on the Loan Facility".⁷¹ However, it submitted that the risk is exceedingly low, because if a partnership fails to honour its obligations, AltaLink L.P. could take action under article 10, subarticles 10.2 to 10.4 of the loan agreement. Those provisions are reproduced below:

10.2 If an Event of Default exists hereunder, the Lender, may without limiting or restricting other rights or remedies under contract, at law or in equity, by notice to the Borrower:

- (a) Declare all amounts outstanding hereunder to the Lender to be immediately due and payable;
- (b) Demand payment on the Loan Facility and all other amounts owing under this Agreement; and/or
- (c) Commence such legal actions or proceedings against the Borrower and/or the Property as may be permitted hereunder or otherwise at law or in equity.

10.3 All moneys received or recovered from the Borrower by the Lender or by any other person on behalf of the Lender, shall be applied in such manner as the Lender determines in its sole discretion.

10.4 In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, the Lender is authorized at any time or from time to time, without notice to the Borrower or to any other person, any such notice being expressly waived by the Borrower, to set-off and to appropriate and to apply any and all deposits, matured or unmatured, general or specific and any other indebtedness at any time held by or owing by the Lender to or for the credit of or the account of the Borrower

⁷⁰ Exhibit 22612-X0014, PDF page 2. Similar language for the Loan Agreement with KLP is found in Exhibit 22612-X0035.

⁷¹ Exhibit 22612-X0083, PDF page 23.

against and on account of the obligations and liabilities of the Borrower due and payable to the Lender under this Agreement.⁷²

70. In addition, AltaLink maintained that “as the sole owner of the general partner for the Partnerships, AltaLink controls the management of the Partnerships and therefore does not anticipate the non-payment of principal and interest on debt.”⁷³

71. In argument, AltaLink reiterated its view that the structure of the Loan Facilities does not create additional risk for customers.

Commission findings

72. The Commission understands that AltaLink L.P. is proposing to finance the sale of a portion of its own assets to enable PLP and KLP to purchase the assets being transferred. As such, the Commission has considered the following factors in assessing potential harm to ratepayers:

- the reasonableness of the proposed interest rates in the loan agreements; and
- the choice of lender and the reasonableness of the repayment terms in the loan agreements.

Reasonableness of interest rates

73. The Commission is satisfied that the proposed interest rates under the loan agreements do not result in increased costs to ratepayers. The Commission also accepts the explanation that because any advances under the loan agreements would bear interest at AltaLink L.P.’s approved weighted average cost of debt from time to time, which is the same rate that would be used if the assets remained in AltaLink L.P.’s rate base, ratepayers would be kept whole. Therefore, strictly as concerns the total loan amount and the interest rate, the Commission finds that ratepayers, on balance, would be no worse off than they were prior to the proposed transfers.

74. Accordingly, as further discussed in Section 5.7 below, the Commission has accepted the use of a weighted average cost of debt of 4.025 per cent for 2017, and 3.974 per cent for 2018 within the rate of return calculations used in the 2017-2018 GTAs of PLP and KLP.

Choice of lender and reasonableness of repayment terms

75. The Commission is not persuaded that, for the purposes of the transfer applications, AltaLink L.P. should be financing the purchase and ongoing financial obligations of PLP and KLP under the terms and conditions of repayment currently reflected in the loan agreements.

76. The Commission agrees with AltaLink’s assessment that neither PLP nor KLP have the financial strength to secure financing at a rate that AltaLink L.P. could obtain in the market.

77. However, the Commission disagrees with AltaLink that there is no additional risk to ratepayers if AltaLink L.P. provides the financing on the terms proposed. The loan agreements

⁷² Exhibit 22612-X0014, PDF pages 8-9. This is from the Piikani Loan Agreement. The same language is found in Exhibit 22612-X0035 regarding the Loan Agreement with KLP.

⁷³ Exhibit 22612-X0083, PDF page 24.

provide that principal and any accrued interest must be “repaid by no later than December 31, 2031 unless otherwise extended in writing.”

78. The Commission explored the extended and relatively undefined term of the repayment schedule with AltaLink by way of IRs. AltaLink acknowledged that it has “never advanced a loan of this nature or any other type of loan before” nor has it “discussed or obtained any assurance from credit rating agencies that these loans would not affect AltaLink’s credit metrics” because it expected any impact on its credit metrics to be immaterial.⁷⁴ AltaLink offered no evidence that the repayment terms of the loan agreements were either conventional or commercially reasonable. As well, although AltaLink considered the risk of PLP and/or KLP failing to repay the principal and interest to be low, it remains a fact that it is ratepayers, not AltaLink L.P. that are exposed to this risk. Further, AltaLink’s assertion that the risk is low was likewise unsupported by any evidence. Accordingly, the Commission finds that the repayment terms as set out in the loan agreements result in harm to ratepayers that, on balance, leaves ratepayers worse off than they otherwise would be.

79. For example, in the event either PLP or KLP elects to accrue debt obligations, rather than to make regular payments towards the loan, and AltaLink L.P. is required to obtain additional debt financing potentially at a higher interest rate than its approved weighted average cost of debt, these incremental higher costs would also be imposed on ratepayers. This is an undue or unreasonable financial risk that would neither be just nor reasonable for AltaLink to recover in its tariff.

80. Consequently, the Commission is prepared to approve the proposed transfers subject to the following condition:

- Any unreasonable or undue financial risk to ratepayers arising from the repayment terms in the financing of the proposed transfers may not be included within the AltaLink tariff.

4.1.3 Financial viability of PLP and KLP

81. In assessing whether a proposed sale transaction will result in financial harm to ratepayers, the Commission also considers the financial viability of the proposed new regulated utilities.

82. In argument, AltaLink submitted that the limited partnership arrangements and the loan agreements underlying the proposed transfers, ensure the financial viability of the PLP transmission assets and the KLP transmission assets, and protect customers from any issues that may arise in respect of the financial capacity of the First Nations limited partners. It added that the proposed limited partnership structure under which ownership of the PLP transmission assets and the KLP transmission assets would be acquired by the First Nations, does not, in itself, pose an impediment to the attraction of capital.

83. AltaLink further noted:

- both the PLP transmission assets and the KLP transmission assets are currently operated by AltaLink in its capacity as general partner of AltaLink L.P. After the proposed asset

⁷⁴ Exhibit 22612-X0098, PDF page 10.

transfers, the PLP transmission assets and the KLP transmission assets would continue to be operated by a limited partnership entity, only in the form of PLP and KLP, with AltaLink as general partner;

- under the terms of the respective limited partnership agreements, if capital contributions are requested by AltaLink and a limited partner does not deliver it, then the other limited partner shall contribute the unfunded portion of the requested capital contribution, and the ownership interest of the limited partners will be adjusted accordingly; and ⁷⁵
- the deemed equity and debt components of the capital structures will remain the same post-transfer.⁷⁶

84. In addition, AltaLink submitted that the proposed transfer of assets was financial in nature and that legal ownership of the PLP transmission assets and KLP transmission assets would remain with AltaLink, which is financially strong.⁷⁷

85. In argument, the CCA submitted that because financing for the acquisition of the PLP transmission assets and KLP transmission assets had already been secured, it was not aware of any concerns regarding the financial strength of the acquiring parties.⁷⁸ The CCA further maintained that because the cost of equity and debt for the new utility owners would be the same as that of AltaLink, it did not consider “the financial profile of the utility is affected by the transfer applications” nor were “there likely to be significant new additions that require the attraction of capital.”⁷⁹

Commission findings

86. Because the terms of the limited partnership agreements provide that any failure on the part of PLP and KLP to contribute capital shall be funded by AltaLink L.P. and because the deemed equity and debt components of the capital structures remain the same post-transfer, the Commission finds that ratepayers will not be harmed by the untested financial profile of the new TFOs, PLP and KLP.

4.1.4 Income taxes

4.1.4.1 Allowance for income tax in revenue requirement

87. AltaLink stated that the proposed transfers would not result in any cost impacts for ratepayers related to tax and pension funds.⁸⁰ In support of this submission, AltaLink noted that:

- both PLP and KLP will include federal and provincial income taxes on a stand-alone and flow-through basis in their respective GTAs;

⁷⁵ Exhibit 22612-X0002, PLP Transfer Application, paragraphs 25(g) and 52; Exhibit 22612-X0029, KLP Transfer Application, paragraphs 25(g) and 52, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 133.

⁷⁶ Exhibit 22612-X0104, AltaLink argument, paragraph 130.

⁷⁷ Exhibit 22612-X0104, AltaLink argument, paragraph 129.

⁷⁸ Exhibit 22612-X0105.01, CCA argument, paragraph 50.

⁷⁹ Exhibit 22612-X0105.01, CCA argument, paragraph 41.

⁸⁰ Exhibit 22612-X0104, AltaLink argument, paragraph 108.

- like AltaLink L.P. the proposed revenue requirements of PLP and KLP in the tariffs reflect the fact that PLP and KLP are not forecast to be taxable in either the 2017 or 2018 tax years; and
- neither PLP nor KLP are forecasting any taxable income during the 2017-2018 test period.⁸¹

88. In argument, AltaLink further explained that “the owners of the limited partners in the First Nations limited partnerships are fully taxable.”⁸² AltaLink described the ownership and tax status of each First Nations corporate entity as follows:

Piikani Limited Partner is a limited partnership between 1792191 Alberta Ltd. (as general partner) and 1656877 Alberta Ltd. (as limited partner), both of which are for-profit corporations and are taxable. Both 1792191 Alberta Ltd. and 1656877 Alberta Ltd. are 100% owned by the Piikani Nation.

1759511 Alberta Ltd is a taxable for-profit corporation and created for the sole purpose of holding the limited partner units in KLP. It is 100% owned by 1757051 Alberta Ltd., which is a taxable for-profit corporation created as the umbrella management vehicle for each of the electrical energy project subsidiaries that are established in respect of each energy project. 1757051 Alberta Ltd. is 100% owned by the Blood Tribe Energy Resource Trust, a taxable business trust created to receive any ultimate net profits from energy projects. The beneficiary of the Blood Tribe Energy Resource Trust is the Blood Tribe.⁸³

89. The CCA submitted that given the taxable status of each corporation set up by the Piikani Nation and the Blood Tribe, both parties are now seeking recovery of income taxes through the revenue requirements for the tariffs of their respective utilities. The CCA indicated that it expects that all tariff revenues received by the Piikani Nation and the Blood Tribe will be taxed within their respective corporate entities. However, it understands that upon the eventual distribution of tariff revenues to the Piikani Nation and the Blood Tribe, such payments will not be taxable and, thus, both entities will receive their after-tax return on equity (ROE) as approved by the Commission. The CCA admitted that it did not engage experts to opine on this matter and, therefore, that it was ultimately unclear whether the eventual distributions would be on a before-tax or after-tax basis to the Piikani Nation and the Blood Tribe. To the extent that the distributions are on a before-tax basis, the CCA submitted that ratepayers would be overcharged resulting in a significantly grossed-up ROE for the ultimate shareholders.⁸⁴

90. While the CCA acknowledged that the amount of income taxes paid would be the same before and after the proposed transfers of transmission assets, it maintained that this fact is of limited relevance given the board’s findings in Decision 2004-007 “to not provide an income tax

⁸¹ Exhibit 22612-X0104, AltaLink argument, paragraph 109.

⁸² Exhibits 22612-X0100 and 22612-X0101.01, PDF page 2, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 121.

⁸³ Exhibits 22612-X0100 and 22612-X0101.01, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 121.

⁸⁴ Exhibit 22612-X0105.01, CCA argument, paragraph 21.

allowance to the Ontario Teachers Pension Plan Board (OTPPB).⁸⁵ The CCA quoted the following passages from Decision 2004-007:⁸⁶

The Board formed the view that, in a situation such as the OTPPB where a tax-exempt entity inexplicably creates a taxable subsidiary, it would be reasonable to assume that there is no likelihood of the OTPPB's incurring income tax expenses with respect to its investment in ALP. Hence, customers should not be expected to provide AltaLink with an income tax allowance with respect to the OTPPB's investment in ALP.

...

As a general principle, the Board considers that it would not be fair to consumers to grant a deemed income tax allowance in a utility's revenue requirement for owners that have little to benefit from tax planning because of their tax-exempt status.

91. The CCA argued that Decision 2004-007 applies equally to the circumstances in this case and that it would not be fair to customers to grant a deemed income tax allowance in a utility's revenue requirement for the Piikani Nation and the Blood Tribe, who have little to benefit from tax planning because of their tax-exempt status.⁸⁷ Further, the CCA claimed while "the form of a taxable corporation may be accommodating to the Piikani Nation and the Blood Tribe, the CCA submits that a direct ownership by the Piikani Nation and the Blood Tribe would have been equally simple and reasonable to utilize."⁸⁸

92. Finally, the CCA stated that:

... the Commission ought to weigh the reasonableness and especially the costs associated with any elective cost structure employed by a party seeking to own Alberta electric infrastructure. Where a party elects a costlier means of operating the utility than other methods that are reasonably available, then the CCA submits the Commission should factor this evidence into its consideration of whether to approve the applied for revenue requirement. As with all components of a utility's operations, while the Commission may not always be able to direct a party to act in a certain way, the Commission certainly has the authority to determine whether the costs of a party's decisions are reasonable and thus passed on to customers.⁸⁹

93. In reply argument, AltaLink submitted that because First Nations are entitled to organize their business to protect their non-transmission assets, the CCA's argument that First Nations should directly own the transferred assets so that ratepayers can take advantage of First Nations status as non-taxable entities is without merit.⁹⁰

⁸⁵ Exhibit 22612-X0105.01, CCA argument paragraph 22.

⁸⁶ Decision 2004-007: AltaLink Management Ltd. and TransAlta Utilities Corporation, Transmission Tariff for May 1, 2002 – April 30, 2004, TransAlta Utilities Corporation, Transmission Tariff for January 1, 2002 – April 30, 2002, Compliance with Board Directions in Decision 2003-061, Applications 1314521-1 and 1314520-1, January 27, 2004.

⁸⁷ Exhibit 22612-X0105.01, CCA argument, paragraph 24.

⁸⁸ Exhibit 22612-X0105.01, CCA argument, paragraph 24.

⁸⁹ Exhibit 22612-X0105.01, CCA argument, paragraph 25.

⁹⁰ Exhibit 22612-X0108, AltaLink reply argument, paragraph 15.

94. AltaLink also questioned the CCA's reliance on Decision 2004-007 on the basis that:

- the circumstances in the present applications are different, since the current applications do not involve the “inexplicable” creation of taxable entities;
- the CCA provided no basis to support its statement that direct ownership by the Piikani Nation and the Blood Tribe “would have been [as] equally simple to realize” as the proposed direct ownership by the OTPPB of a share of AltaLink would have been;
- there is no evidence that direct ownership by the Piikani Nation and the Blood Tribe would be in the interest of rate payers and the actual evidence on the present record is that the First Nations:
 - created limited liability entities to limit liability, not to avoid tax;⁹¹ and
 - believe that corporate entities are simpler organizationally, and therefore likely to provide administrative and organizational cost savings.⁹²

95. AltaLink submitted that the key finding in Decision 2004-007 was that it is unfair to consumers to grant a deemed tax allowance for owners that have little to benefit from tax planning due to their tax-exempt status.⁹³ Specifically, AltaLink submitted that the board was concerned about the creation of a taxable entity designed to enhance return on investment by capturing a tax allowance arising from revenue requirement impacts, rather than as a tax-planning vehicle.⁹⁴ AltaLink noted that in the present case, there is no evidence that the First Nations incorporated taxable entities simply to enhance their return on investment. AltaLink further claimed that tax is one of several determinants of the appropriate business structure for a given transaction,⁹⁵ and the determination of business structure is a commercial matter that should not be directed by third parties.⁹⁶

96. AltaLink also noted that the evidence of the Blood Tribe is that it establish business vehicles “to encourage strong economic development, competitiveness within industry, ability to leverage assets for access to commercial financing, and adherence to commercial standards of accountability and transparency,” and that these considerations require that there be a separation from politics and business.⁹⁷ Accordingly, AltaLink submitted that the economic entities of the First Nations have a governance structure designed to be separate and distinct from political governance bodies.⁹⁸

⁹¹ Exhibit 22612-X0084, PDF page 5, AML-CCA-2018MAR23-001(b).

⁹² Exhibit 22612-X0084, PDF page 6, AML-CCA-2018MAR23-001(e), and Exhibit 22612-X0084, PDF page 10, AML-CCA-2018MAR23-002(e).

⁹³ Decision 2004-007, PDF page 29, cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 18.

⁹⁴ Decision 2004-007, PDF page 29, cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 18.

⁹⁵ Exhibit 22612-X0084, AML-CCA-2018MAR23-001(b), cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 19.

⁹⁶ Exhibit 22612-X0084, AML-CCA-2018MAR23-001(b), cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 19.

⁹⁷ Exhibit 22612-X0100, BloodTribe-AUC-2018JUN08-001, cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 20.

⁹⁸ Exhibit 22612-X0084, AML-CCA-2018MAR23-001(e) and Exhibit 22612-X0084, AML-CCA-2018MAR23-002(e), cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 20.

97. AltaLink further submitted that the recovery of income taxes is consistent with the stand-alone principle, which provides that only the costs, risks and returns associated with delivery of regulated utility services should be included in revenue requirement.⁹⁹

98. AltaLink noted that in Decision 2003-061,¹⁰⁰ the board found that a cost is recoverable under cost-of-service regulation if there is a reasonable expectation that the cost will be incurred. AltaLink submitted that it is relevant that the ownership changes proposed in the applications do not involve any changes in the tax status of the supplier(s) of utility services,¹⁰¹ that the income tax expense pre-transfer (currently zero) is the same as post-transfer,¹⁰² and that these costs can be predicted with reasonable accuracy. As such, there is a reasonable expectation that income tax costs will be incurred in the operation of the PLP transmission assets and the KLP transmission assets, and that income taxes in the range approved by the Commission will be incurred and paid by the First Nations partners.¹⁰³

99. Finally, AltaLink noted that the Commission will continue to exercise its regulatory oversight over just and reasonable costs in future prudence reviews and rate applications.¹⁰⁴

100. Based on the above, AltaLink submitted that the decision of the First Nations to incorporate taxable subsidiaries was reasonable and well supported.¹⁰⁵

101. The Blood Tribe also filed a response to the taxation issue raised by the CCA. In reply argument, the Blood Tribe explained it is a “band,” as that term is defined in the *Indian Act*,¹⁰⁶ and that the law in Canada is unsettled as to whether a band under the *Indian Act*:

- has capacity in its own right as an independent body;
- is capable of entering into contract arrangements; and
- can sue, or be sued.¹⁰⁷

102. The Blood Tribe explained that these uncertainties have led to a long-standing practice by First Nations to create corporations to allow them to participate in the economy with other Canadian corporations. Further, First Nations’ participation in economic endeavours requires clear demarcation between political and business decisions and, therefore, First Nations Chiefs

⁹⁹ Decision 2001-92, PDF pages 36-37, cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 21.

¹⁰⁰ Decision 2003-061, PDF page 94, cited at Exhibit 22612-X0108, AltaLink reply argument, paragraph 24.

¹⁰¹ Exhibit 22612-X0108, AltaLink reply argument, paragraphs 24.

¹⁰² Exhibit 22612-X0105.01, CCA Argument paragraph 29, cited at Exhibit 22612-X0108, AltaLink Reply Argument, paragraph 25.

¹⁰³ Exhibit 22612-X0108, AltaLink reply argument, paragraphs 25.

¹⁰⁴ Exhibit 22612-X0108, AltaLink reply argument, paragraphs 26.

¹⁰⁵ Exhibit 22612-X0108, AltaLink reply argument, paragraph 27.

¹⁰⁶ The Blood Tribe provides definition of “band” from Section 2(1) of the *Indian Act*, cited at Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 1.

¹⁰⁷ *Montana Indian Band v. Canada*; *Wewayakum Indian Band v. Canada*; *Reid v. Kwanlin Dun First Nation*; *William v Lake Babine Indian Band*; *Florence v. Shackelly*; *Mintuck v. Valley River No. 63.A*; *Clow Darling Ltd. v. Big Trout Lake Band of Indians*; *R. V. Cochrane*; *R v. Beaulieu*, cited at Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 2.

and Councils have looked for ways to minimize this risk of any potential overlap.¹⁰⁸ The Blood Tribe noted that:

- Prior to using corporations, individuals elected to band councils had to be represented in legal documents.¹⁰⁹
- Individual band council members could be at personal risk long after the two- to four-year terms of band council members expire.¹¹⁰
- Naming the band in legal documents similarly prolongs the risk.¹¹¹

103. The Blood Tribe submitted that just as it is common for “mainstream citizens” to use corporations to conduct business activities,¹¹² bands have likewise recognized the social and economic benefits of using common business vehicles.¹¹³

104. With respect to other income tax considerations, the Blood Tribe noted that, as a band, it does not have the legal status to enter into a partnership with AltaLink L.P. or to enter into financing arrangements to acquire a partnership interest in KLP.¹¹⁴ Furthermore, because the primary interest is the facilitation of economic development through the generation of profit, the Blood Tribe submitted that it could not create a not-for-profit corporation to acquire the partnership interest.¹¹⁵ In any event, the Blood Tribe noted that even if it had attempted to acquire its partnership interest through a not-for-profit corporation, the Canada Revenue Agency has discretion to designate a not-for-profit entity as a profit-making entity, and to assess taxes on that entity.¹¹⁶

Commission findings

105. The primary issue raised by the CCA is whether income tax should be included in the PLP and KLP tariffs as a revenue requirement cost item. The CCA argued that the Commission ought to take into account the ownership structure and the effect that such structure has on rates in its assessment of the applications. In effect, the CCA has argued that no allowance should be made for income tax because the ultimate owners of PLP and KLP do not pay tax.

106. The CCA’s position requires the Commission to ignore the stand-alone principle and look beyond the ownership structure of the regulated entity.

107. Under the stand-alone principle, a utility is regulated as if the provision of the regulated service is the only activity in which the entity is engaged. Thus, the costs of providing utility

¹⁰⁸ Exhibit 22612-X0109, Blood Tribe reply argument, paragraphs 4 through 6

¹⁰⁹ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 1. The Blood Tribe explained that following 1951, Indians were no longer required to have a permit to leave the reserve. After the Second World War, status Indians could vote in all provincial and territorial elections. As of July 1, 1960, Indians were granted the right to vote in federal elections; *Terms of Coexistence*, S. Grammond (2003 Carswell 1st Edition), at pages 118-119. From 1951, Indians were permitted to hire legal representation for court actions.

¹¹⁰ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 2.

¹¹¹ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 3.

¹¹² Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 7.

¹¹³ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 8.

¹¹⁴ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 12.

¹¹⁵ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 13.

¹¹⁶ Exhibit 22612-X0109, Blood Tribe reply argument, paragraph 14.

service reflect only the expenses, capital costs, risk and required returns associated with the provision of the regulated service. Under the stand-alone principle, the identity of the owners of the assets is not in issue. That is, the rates that customers pay should not depend on either the incidence of ownership or the taxable status of the ultimate owners of the utility assets.

108. The Commission accepts the submissions from the Blood Tribe and AltaLink that the creation of taxable entities by the Piikani Nation and the Blood Tribe is neither “inexplicable” nor designed to enhance return on investment by avoiding tax and, therefore, Decision 2004-007 is distinguishable on its facts. The Blood Tribe and AltaLink offered reasonable explanations for why the First Nations incorporated taxable entities to enter into the proposed transactions. These included the objective of securing various social, legal and economic benefits associated with for-profit corporate status as well as being consistent with longstanding First Nations’ practice.

109. The Commission continues to rely on the stand-alone principle in assessing whether the proposed transfers are likely to harm ratepayers. As such, the Commission declines to consider the ultimate locus of ownership of PLP and KLP when applying the no-harm test in relation to potential income tax effects. On this basis, and for the reasons provided above, the Commission finds that it is reasonable to include a tax provision in the revenue requirements of the new entities. More generally, having found taxable corporate structures such as those proposed in the transfer applications to be a reasonable means of facilitating the ownership, management and operation of the transferred assets, the Commission also finds that such taxable corporate structures would leave ratepayers no worse off after the proposed asset transfers than they were before, thus satisfying the no-harm test.

4.1.4.2 Availability of unclaimed capital costs for capital cost allowance claims

110. In argument, AltaLink noted that in Decision 2000-41, the Commission cited the reduction in unclaimed capital costs (UCC) available for capital cost allowance claims as a potential risk of harm to customers.¹¹⁷ AltaLink submitted that customers would not be harmed as a result of a reduction in UCC available for capital cost allowance claims from the proposed transactions,¹¹⁸ noting that:

- the price at which PLP and KLP are purchasing the PLP transmission assets and KLP transmission assets, respectively, is based on the regulatory net book value of those assets;¹¹⁹
- PLP and KLP are electing to roll-over UCC at the amount calculated from capital cost allowance claimed by AltaLink L.P. in its GTA since the years the assets were added to capital costs;¹²⁰ and
- because capital cost allowance claims are expected to offset equity returns and depreciation costs generated by PLP and KLP in their respective 2017-2018 tariff

¹¹⁷ Decision 2000-41, section 4.1, PDF page 11, cited at Exhibit 22612-X0104, AltaLink Argument, paragraph 110.

¹¹⁸ Exhibit 22612-X0104, AltaLink Argument, paragraph 111.

¹¹⁹ Exhibit 22612-0002, PLP Transfer Application, paragraphs 23 and 76 and Exhibit 22612-0029, KLP Transfer Application, paragraphs 23 and 77, cited at Exhibit 22612-X0104, AltaLink Argument, paragraph 113.

¹²⁰ Exhibit 22612-X0002, PLP Transfer Application, paragraphs 23 and 76; Exhibit 22612-0029, KLP Transfer Application, paragraphs 23 and 77, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 113.

revenue requirements, the taxable incomes of both First Nations limited partnerships is expected to be zero.¹²¹

111. AltaLink submitted that if the Commission remained concerned with any potential risk of harm to customers, the Commission could condition any approval of the asset transfers to maintain the current level of UCC for regulatory purposes.¹²²

Commission findings

112. The Commission is satisfied with AltaLink's explanation that because PLP and KLP have decided to roll over the respective UCCs for the PLP transmission assets and the KLP transmission assets, there is no risk of harm to ratepayers as a result of a reduction in UCC available for capital cost allowance claims.

113. Further, the Commission considers that any potential effects on income tax expense related to future changes in the treatment of UCC could reasonably be addressed as part of the Commission's oversight of future AltaLink, PLP or KLP tariff applications.

114. Having regard to the foregoing, the Commission finds that the proposed transfers will not result in harm to ratepayers on this basis.

4.2 Continuity of safe and reliable service

4.2.1 Capability of acquiring entity

115. AltaLink submitted that, since its acquisition of substantially all of the transmission system of TransAlta on April 1, 2001, it has established a track record with the Commission of operating its transmission system in a safe and reliable manner including the SW Line. AltaLink explained that, following the proposed transfer, it would continue to operate the SW Line in its entirety. AltaLink further submitted that "No operational risk arises from the proposed transactions as the proposed transactions are financial, without a change in the legal ownership of the assets to be transferred."¹²³

116. AltaLink explained that both PLP and KLP were set up in order to pursue the proposed asset transfers for the purpose of allowing the First Nations to enter the utility business in Alberta through an equity ownership position.¹²⁴ In argument, AltaLink submitted that the Piikani Nation and the Blood Tribe have long demonstrated an interest in being engaged in Alberta's utility business.

117. Notwithstanding PLP's and KLP's desire to be involved in the utility business, AltaLink maintained that as the general partner of PLP and KLP, it has exclusive purview over the administration, control, management and operation of PLP's and KLP's businesses, which will include, respectively, the PLP transmission assets and the KLP transmission assets post-transfer.

¹²¹ Exhibit 22612-X0024, PLP GTA, paragraph 77; Exhibit 22612-X0045, KLP GTA, paragraph 78, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 114.

¹²² Exhibit 22612-X0104, AltaLink argument, paragraph 116.

¹²³ Exhibit 22612-X0104, AltaLink argument, paragraph 65.

¹²⁴ Exhibit 22612-X0104, AltaLink argument paragraph 4.

AltaLink further clarified that neither PLP nor KLP can participate in the management or control of the partnership business.¹²⁵

118. Consequently, AltaLink submitted that the First Nations corporate entities' utility experience, or lack thereof, is irrelevant to the management and day-to-day operations of the PLP transmission assets and the KLP transmission assets.¹²⁶ AltaLink also noted:

The limited liability enjoyed by limited partners such as Piikani Limited Partner and Blood Limited Partner does not pose any harm to consumers. The Commission's predecessor, in Decision 2002-038, has noted that limited liability does not in itself jeopardize the provision of safe and reliable transmission services at justifiable, reasonable rates. There is no evidence to suggest that the limited liability structure as relates to the limited partner poses any harm to consumers.¹²⁷ [footnotes omitted]

119. As well, AltaLink submitted that the Commission would maintain considerable regulatory oversight over the transmission assets of PLP and KLP because all tariffs and affiliate transactions in relation to those assets would remain subject to Commission oversight after the proposed transfers. AltaLink maintained that customers would not be harmed because all existing regulatory obligations and Commission requirements would continue post-transfer.¹²⁸

120. Finally, AltaLink noted that it would not be removed as general partner of PLP and KLP unless and until the Commission was satisfied that any proposed replacement general partner was a suitable operator to ensure the continuity of safe and reliable provision of transmission services. This protection is set out in:

- sections 3.9, 3.16, and 8.14 of the PLP and KLP Limited Partnership Agreements¹²⁹ which provide that the transfer of AltaLink's interest as general partner in PLP and KLP is subject to "required Authorizations, including regulatory approvals from [or by] the AUC"; and
- the transfer applications orders.¹³⁰

121. In argument, the CCA asserted that the acquiring party's utility experience was not a relevant issue in the consideration of the approval of the transfer applications because of AltaLink's continued management and operation of the PLP transmission assets and KLP transmission assets post-transaction.¹³¹

¹²⁵ Exhibit 22612-X0104, AltaLink argument, paragraphs 68-69.

¹²⁶ Exhibit 22612-X0104, AltaLink argument, paragraph 70.

¹²⁷ Decision 2002-038, PDF page 15, cited at Exhibit 22612-X0104, AltaLink argument, paragraph 72.

¹²⁸ Exhibit 22612-X0104, AltaLink argument, paragraph 98.

¹²⁹ Exhibit 22612-X0022, Section 3.9, PDF pages 18-19; Section 3.16, PDF page 20; Section 8.14, PDF page 32. The corresponding provisions from the Kainailink, L.P. limited partnership agreement are found at Exhibit 22612-X0043, Section 3.10, PDF pages 20-21; Section 3.17, PDF page 22; and Section 8.14, PDF pages 35-36.

¹³⁰ Exhibit 22612-X0002, PLP Transfer Application, paragraph 25(f); Exhibit 22612-X0029, KLP Transfer Application, paragraph 25(f), cited at Exhibit 22612-X0104, AltaLink argument, paragraph 75.

¹³¹ Exhibit 22612-X0105.01, CCA Argument, paragraph 40.

122. In reply, AltaLink claimed that the CCA's acknowledgement that the required operational and management experience will remain in place post-transaction favoured approval of the transfer applications.¹³²

Commission findings

123. In its review of the proposed transfers, the Commission must be satisfied that ratepayers will continue to receive safe and reliable transmission service.

124. The Commission is satisfied that the proposed transfers will not harm ratepayers from the perspective of safety, reliability or the operation of the SW Line post-transfer. This is because of AltaLink's demonstrated track record as a safe and reliable operator of transmission assets since 2001 and the fact that AltaLink will continue to operate the PLP and KLP transmission assets post-transfer.

125. The Commission is satisfied that any potential future issues that may arise as a result of the proposed asset transfers can be adequately addressed in future regulatory proceedings before the Commission. Having regard to the foregoing, the Commission finds that the proposed transactions satisfy the no-harm test on this basis.

4.2.2 Control and governance matters: ring-fencing and inter-affiliate code of conduct

126. In an IR, the Commission asked AltaLink to describe the measures it had adopted to isolate the credit worthiness of the operating subsidiaries from the credit worthiness of the parent entities.¹³³ In response, AltaLink stated:

AltaLink's capital markets platform was developed with various ring-fencing measures to ensure that AltaLink, L.P. (ALP) and its parent, AltaLink Investments, L.P. (AILP), are financially, legally and operationally separated from each other, with the risks of the regulated entity, ALP, being separate and distinct from those of AILP. Credit Rating agencies have regard to these ring-fencing measures between ALP and AILP in determining the credit ratings for ALP's securities.

127. AltaLink explained that further measures in support of AltaLink's ring-fencing are not required within the PLP and KLP structures primarily because:

- PLP and KLP will receive debt financing directly from AltaLink L.P. and therefore do not need to establish credit ratings in order to raise their own public debt financing;
- AltaLink's Master Trust Indenture, which forms the basis of its capital markets platform with lenders, contemplates and allows AltaLink L.P. to carry on its regulated transmission business in Alberta through subsidiaries without the need for further measures to ensure isolation between AltaLink L.P. and AILP. In this respect:
 - PLP and KLP would be seen to be engaged in operating the same low-risk transmission businesses as AltaLink in alignment with AltaLink's existing commitments; and
 - Any distributions from PLP and KLP received by AltaLink will automatically be subject to AltaLink's existing applicable ring-fencing measures, including the permitted payment test on distributions.

¹³² Exhibit 22612-X0108, AltaLink Reply Argument, paragraphs 36 and 40.

¹³³ Exhibit 22612-X0098, AML-AUC-2018JUN08-006, PDF pages 11-13.

- AltaLink acting as the general partner of PLP and KLP continues the management separation in place between the general partners of AltaLink L.P. and AILP to the subsidiary level; and
- There is no downward-flowing cross-default between AILP, and each of AltaLink L.P., PLP and KLP. Lenders to AILP have no recourse to the business or assets of AltaLink L.P., PLP or KLP.¹³⁴

128. Finally, AltaLink noted that although further ring-fencing measures are not required at the PLP and KLP level, a number of existing measures also serve to ensure the financial viability of PLP and KLP. These include:

- AltaLink's management of PLP and KLP is separate and distinct from the management of AltaLink's owner, AILP, and the management of the First Nations limited partners in PLP and KLP.
- The businesses of PLP and KLP are restricted under the Limited Partnership Agreements to regulated transmission on their respective reserves, therefore isolating the risks of PLP and KLP to those associated with regulated transmission assets;
- Distributions from PLP and KLP are managed by AltaLink and restricted through the terms of the Limited Partnership Agreements. The loan facilities also provide for restrictions on distributions from PLP and KLP unless all payments due to the lender have been made on time;
- The PLP and KLP Limited Partnership Agreements restrict the ability of a limited partner to charge all or any portion of its interest in the Partnership (Sections 3.17 and 3.18, respectively); and
- The dissolution of PLP or KLP under the terms of the Limited Partnership Agreements likely requires the support of AltaLink, as general partner, through its independent Board of Directors, and both Limited Partners through Extraordinary Resolutions.

129. In argument, AltaLink reiterated that the ring-fencing measures currently in place for AltaLink L.P. would provide sufficient protection to shelter the KLP and PLP transmission assets from any negative ramifications arising from the financial profile of AltaLink L.P.'s parents.¹³⁵ Further, AltaLink stated that because the asset transfers are financial transactions, there is no increased risk of operational issues arising from the management structures of the entities involved and, in any case, AltaLink's role as the general partner of PLP and KLP continues the management separation in place between the general partners of AltaLink L.P. and AILP to the subsidiary level.¹³⁶

130. AltaLink also submitted that AltaLink's Inter-Affiliate Code of Conduct (IACC) addresses any ring-fencing concerns regarding the proposed transfers because "these codes reflect the regulatory principle that a decreased degree of separation is required between 'Affiliated Utilities' which are engaged in the same goal of providing utility services to Albertans."¹³⁷ It stated that AltaLink's IACC would apply to PLP and KLP to maintain the separation of the PLP transmission assets and the KLP transmission assets from the business and

¹³⁴ Exhibit 22612-X0098, PDF page 12.

¹³⁵ Exhibit 22612-X0104, AltaLink argument, paragraph 153.

¹³⁶ Exhibit 22612-X0104, AltaLink argument, paragraph 154.

¹³⁷ Exhibit 22612-X0104, AltaLink argument, paragraph 96.

affairs of AltaLink's non-utility affiliates. This would ensure that the cost of services provided to PLP and KLP by AltaLink would not exceed the fair market value of those services.

131. In argument, the CCA stated its understanding that the proposed ownership structure "will allow the utility to remain sufficiently separate from the acquiring party on a legal, financial and operational basis."¹³⁸ The CCA claimed, specifically, its understanding was that the same ring-fencing provisions, code of conduct conditions and governance provisions as used by AltaLink would be employed by the Piikani Nation and the Blood Tribe.

Commission findings

132. Ring-fencing measures are concerned with isolating the creditworthiness of the operating subsidiary from that of its parent entity.¹³⁹ The underlying purpose of ring-fencing measures is to shelter the utility and its customers from any negative ramifications arising from the activities of affiliated entities.¹⁴⁰

133. The Commission accepts AltaLink's submission that because PLP and KLP would receive debt financing directly from AltaLink L.P., establishing credit ratings for PLP and KLP in order to raise their own public debt financing under the proposed transfers is less of a concern. The Commission is satisfied that the proposed ownership structure would allow PLP and KLP to benefit from the same ring-fencing measures already in place. The Commission is also satisfied with the other measures proposed by AltaLink to ensure the financial viability of PLP and KLP including restricting the businesses of PLP and KLP under the limited partnership agreements to regulated transmission on their respective reserves, thereby restricting the risks of PLP and KLP to those associated with regulated transmission assets.

134. Accordingly, the Commission finds no harm in relation to ring-fencing measures.

135. The Commission also accepts AltaLink's submission that any inter-affiliate arrangements for products or services entered into by PLP and KLP would be subject to AltaLink's IACC and remain subject to the Commission's broad regulatory oversight. Therefore, the Commission is satisfied that this aspect of the proposed transfers satisfies the no-harm test.

136. The Commission directs AltaLink to provide any changes to its IACC to reflect the new ownership structure upon closing of the proposed transfers.

5 PLP and KLP GTAs

137. In conjunction with the applications for approval of the transfer of transmission assets and designation of PLP and KLP as TFOs, AltaLink applied for approval of a general tariff for 2017-2018 for each of PLP and KLP.

¹³⁸ Exhibit 22612-X0105.01, CCA argument, paragraph 42.

¹³⁹ Decision 2006-056, page 12.

¹⁴⁰ Decision 2011-374, paragraph 55.

138. AltaLink requested the approval of revenue requirement allowances for PLP and KLP in the amounts of \$5,218,500 and \$3,482,400 for the year 2017 and \$5,105,300 and \$3,408,200 for the year 2018, respectively.^{141 142}

139. The principal components of the proposed PLP and KLP 2017-2018 general tariff revenue requirements are set out in tables 1 and 2 below.

Table 1. Revenue requirement - PLP

Revenue requirement	2017 Forecast	2018 Forecast
	(\$000)	
Operating & Maintenance (O&M)	192.4	194.3
Annual Structure Payments	100.5	107.2
Payments in Lieu of Property Tax	214.7	214.9
General and Administrative (G&A)	216.5	195.9
Depreciation	1,482.5	1,482.5
Return on Rate Base	3,011.8	2,910.6
Income Tax Expense	0.0	0.0
Total Revenue Requirement	5,218.5	5,105.3

Source: Exhibit 22612-X0024, Table 1.1.

Table 2. Revenue requirement - KLP

Revenue requirement	2017 Forecast	2018 Forecast
	(\$000)	
Operating & Maintenance (O&M)	98.0	98.9
Annual Structure Payments	79.1	84.4
Payments in Lieu of Property Tax	64.0	65.9
General and Administrative (G&A)	216.5	195.9
Depreciation	871.3	871.3
Return on Rate Base	2,153.6	2,091.8
Income Tax Expense	0.0	0.0
Total Revenue Requirement	3,482.4	3,408.2

Source: Exhibit 22612-X0045, Table 1.1.

140. The revenue requirement allowances requested for the PLP and KLP 2017-2018 general tariffs primarily reflect an apportionment of costs arising from AltaLink's 2017-2018 GTA negotiated settlement agreement.¹⁴³ At the time of submission of this application, AltaLink's negotiated settlement agreement was before the Commission in Proceeding 21341.¹⁴⁴ Audit fees of \$35,000 per year for each of PLP and KLP were an incremental addition to this apportionment of costs.

¹⁴¹ Exhibit 22612-X0024, paragraph 2.

¹⁴² Exhibit 22612-X0045, paragraph 2.

¹⁴³ Exhibit 22612-X0024, PLP GTA, paragraph 3; Exhibit 22612-X0045, KLP GTA, paragraph 3.

¹⁴⁴ The Commission approved AltaLink's 2017-2018 GTA negotiated settlement agreement in Decision 21341-D01-2017.

141. AltaLink also sought the approval of certain deferral accounts and reserve accounts¹⁴⁵ as well as the approval of terms and conditions of service to govern the use of the PLP and KLP transmission assets by the Alberta Electric System Operator (AESO).¹⁴⁶

142. Neither the UCA nor the CCA provided any submissions regarding the proposed tariffs. The UCA examined the tariff application through IRs but submitted no evidence, argument or reply argument. The CCA's comments concerning the proposed tariffs were limited to requesting that any incremental increases to rates and charges be addressed in the tariffs.¹⁴⁷

5.1 Starting date and prorating of PLP, KLP and AltaLink tariffs

143. AltaLink prepared full-year forecasts for each of 2017 and 2018. However, it recognized that the approved revenue requirement would need to coincide with the later of the effective date of the Commission's approval or the closing of the proposed transfers. Consequently, AltaLink proposed to invoice the AESO for the approved PLP and KLP revenue requirement amounts on a prorated basis dependent on when the effective date is established.¹⁴⁸ AltaLink further explained that it would adjust AltaLink L.P.'s 2017-2018 revenue requirement in the same prorated manner.¹⁴⁹

Commission findings

144. In Section 4 above, the Commission applied the no-harm test to the proposed transfers and, having considered their positive and negative impacts, determined that it was necessary to impose conditions to mitigate financial harm to ratepayers arising from these transfers. The Commission has approved the proposed transfers subject to the conditions identified in paragraphs 59, 61 and 80 above.

145. Recognizing that the parties to the transactions may choose not to complete the transfers in view of the conditions imposed (as is their right under their respective agreements with AltaLink L.P.),¹⁵⁰ the Commission directs AltaLink to advise the Commission if the parties to the transactions intend to proceed with the proposed transfers.

146. Given the release of this decision late in 2018, the Commission has reviewed the PLP and KLP GTAs and, subject to the findings reflected in this section below, the tariffs are approved on an interim basis effective the date of completion of the transfers.

¹⁴⁵ Exhibit 22612-X0024, PLP GTA, paragraph 2; Exhibit 22612-X0045, PLP GTA, paragraph 2.

¹⁴⁶ Exhibit 22612-X0024, PLP GTA, paragraph 2; Exhibit 22612-X0045, KLP GTA, paragraph 2.

¹⁴⁷ Exhibit 22612-X0105.01, CCA argument, paragraph 39.

¹⁴⁸ Exhibit 22612-X0024, PLP GTA, paragraph 13; Exhibit 22612-X0045, KLP GTA, paragraph 13.

¹⁴⁹ Exhibit 22612-X0024, PLP GTA, paragraph 14; Exhibit 22612-X0045, KLP GTA, paragraph 14.

¹⁵⁰ Exhibit 22612-X0083, PDF page 4. "Section 4.2 of Appendix G for both the PLP transfer application (Exhibit 22612-X0019) and the KLP transfer application (Exhibit 22612-X0040) states: "In the event that the AUC does not issue the required approvals, or within fifteen (15) days of issuing such approvals, either Party notifies the other Party in writing that any terms, conditions, requirements or orders imposed by the AUC are detrimental to the transactions, then this Agreement may be rescinded upon written notice from either Party to the other, and each of the Blood Tribe and AltaLink shall be released and discharged from all obligations hereunder. Neither Party will be liable or obligated to the other for any non-approval by the AUC, or for any conditions, requirements or orders imposed by the AUC which detrimentally impact the transactions contemplated herein, and each Party hereby releases the other from any such liability."

147. The Commission accepts AltaLink's proposed pro-rata mechanism to implement the PLP and KLP tariffs and adjust the revenue requirement in AltaLink's GTA. However, because the 2018 revenue requirements of the PLP and KLP tariffs are approved only on an interim basis, AltaLink, in its capacity as the general partner of AltaLink L.P., is not required to immediately adjust its revenue requirement in the same prorated manner. Instead, the Commission directs AltaLink, in its capacity as the general partner of AltaLink L.P., to ensure that any required adjustments to AltaLink's tariff revenues are applied in a manner that does not harm ratepayers.

5.2 Rate base

148. The PLP transmission assets and KLP transmission assets are currently included in the rate base of AltaLink L.P. AltaLink explained that if the Commission approves the applications, PLP and KLP will buy the PLP and KLP transmission assets, respectively, at "net regulatory book value."¹⁵¹ AltaLink defined net regulatory book value as the original cost of the assets, less the amount of the accumulated depreciation included in AltaLink L.P.'s rate base at the time of the purchase. A breakdown of SW project gross assets, associated accumulated depreciation, and resulting net book values assigned between PLP, KLP and AltaLink L.P. is set out in Appendix A¹⁵² to the PLP and KLP tariff applications.

149. The asset valuations shown in the PLP and KLP GTAs reflect an asset valuation date of January 1, 2017. However, AltaLink proposed that the effective date of the asset transfers to PLP and KLP be "the first day of the month following the receipt of the Commission's effective approval date, or the closing of the proposed transfers, whichever comes later." AltaLink indicated that all three of PLP, KLP and AltaLink L.P. would make any required adjustments to their asset valuations, rate bases and revenue requirements to reflect final values as at the effective date.¹⁵³

150. AltaLink also requested approval to waive the half-year rule in the initial year of operations in order to apply the adjustments in proportion to the number of months in a 12-month calendar year. It submitted that waiving the half-year rule in this manner would not harm ratepayers because the transfer of the PLP and KLP assets would neither affect the services provided by the facilities nor alter the forecast tariffs to be charged.¹⁵⁴

151. In addition to the rate base arising from the transmission assets transferred into the rate bases of PLP and KLP, AltaLink proposed that the PLP and KLP rate bases also include allowances for necessary working capital. It submitted that the necessary working capital allowances are required to reflect timing differences between the receipt and disbursement of funds.

152. In Schedule 11-1 of the PLP and KLP tariff applications, AltaLink proposed necessary working capital allowances of \$500,800 and \$490,400 for the years 2017 and 2018 for PLP,¹⁵⁵ and \$334,300 and \$327,300 for the years 2017 and 2018 for KLP.¹⁵⁶ The forecast amounts of

¹⁵¹ Exhibit 22612-X0024, PLP GTA, paragraph 87; Exhibit 22612-X0045, KLP GTA, paragraph 88.

¹⁵² Exhibits 22612-X0025 and 22612-X0046.

¹⁵³ Exhibit 22612-X0024, PLP GTA, paragraph 88; Exhibit 22612-X0045, KLP GTA, paragraph 89.

¹⁵⁴ Exhibit 22612-X0024, PLP GTA, paragraphs 89-90; Exhibit 22612-X0045, KLP GTA, paragraphs 90-91.

¹⁵⁵ Exhibit 22612-X0024, Schedule 11-1, PDF page 77.

¹⁵⁶ Exhibit 22612-X0045, Schedule 11-1, PDF page 82.

necessary working capital in the PLP and KLP tariffs were based on the studies and rates utilized in the AltaLink L.P. tariff.¹⁵⁷

Commission findings

153. The Commission understands that, for simplicity, AltaLink utilized asset values as of January 1, 2017, in the application. The Commission is satisfied that the breakdown shown in Appendix A to the PLP and KLP GTAs¹⁵⁸ accurately reflects the gross value, the associated accumulated depreciation amounts, and resulting net book values for the PLP transmission assets and KLP transmission assets as at January 1, 2017.

154. The Commission directs that the effective date for the evaluation of the assets be the effective date of the asset transfers to PLP and KLP. Further, the Commission waives the application of the half-year rule in the initial year of operations for PLP and KLP to enable this adjustment. The Commission agrees that waiving this rule would not harm ratepayers. Should the parties to the transactions advise that they intend to proceed with the proposed transfers, AltaLink is directed to concurrently describe its proposals to set an initial net book value of the PLP transmission assets and KLP transmission assets for the interim tariffs.

155. As AltaLink explained in its application, the methodology used to determine the forecast for necessary working capital amounts for each of the PLP and KLP tariffs was based on AltaLink's 2017-2018 GTA lead-lag study results. AltaLink explained that "other than the O&M/G&A expense and debt interest, the other Lead/Lag Days (including the Lead/Lag Days related to Taxes Other Than Income Taxes and Annual Structure Payments shown on Schedule 11-5 of ALP's MFR schedules) are equally applicable"¹⁵⁹ to KLP and PLP.

156. Because both PLP and KLP would be new TFOs, neither would have any transaction history to perform their own lead-lag study. In this circumstance, the Commission finds that the methodology and calculations used to support necessary working capital amounts for the PLP and KLP tariffs are reasonable. Accordingly, the amounts of \$490,400 and \$327,300 may be used as the basis for the necessary working capital allowance within the interim tariffs for PLP and KLP, respectively.

5.3 Direct operation and maintenance costs

157. In accordance with the limited partnership agreements, AltaLink, as the general partner of both PLP and KLP, manages all aspects of the business of PLP and KLP. Consequently, PLP and KLP do not have direct personnel.¹⁶⁰

158. The forecasts of direct O&M costs within the PLP and KLP GTAs reflect activities associated with the following uniform system of account (USA) classifications:

- USA 560 - Supervision and Engineering
- USA 561 - O&M Control Centre Operations

¹⁵⁷ Exhibit 22612-X0024, paragraph 93; Exhibit 22612-X0045, paragraph 94.

¹⁵⁸ Exhibits 22612-X0025 and 22612-X0046.

¹⁵⁹ Exhibit 22612-X0045; paragraph 99.

¹⁶⁰ Exhibit 22612-X0024, paragraph 46; Exhibit 22612-X0045, paragraph 46.

- USA 562 - Station Equipment Maintenance¹⁶¹
- USA 563 - Overhead Line Expense
- USA 566 - O&M Miscellaneous Transmission
- USA 567 - Annual Structure Payments
- USA 571.1 - Vegetation Management
- USA 575 - Operations and Management Information Technology (IT) Support

159. Brief descriptions supporting the 2017-2018 test period forecasts for each of the above USA classifications were presented in Section 5.1 of the PLP and KLP GTAs. For most of these costs, AltaLink explained that it derived its forecasts on the basis of a determination of:

- AltaLink's average cost to maintain each of the PLP and the KLP transmission assets based on an assessment of 20 years of costs; and
- a 2X charge-out rate for labour.¹⁶²

160. AltaLink further requested that the Commission approve these charges, along with certain G&A costs, as a fixed annual fee payable from KLP or PLP, as the case may be, to AltaLink L.P.¹⁶³

161. Unlike other direct O&M costs, forecasts for USA 567 (annual structure payments) reflect forecasts of the actual costs of payments to the Crown in Right of Canada in respect of transmission structures located on the Piikani Nation Reserve and Blood Tribe Reserve.¹⁶⁴

162. AltaLink forecast PLP direct O&M costs of \$292,900 and \$301,500 for the years 2017 and 2018, respectively. AltaLink forecast KLP direct O&M costs of \$177,100 and \$183,300 for the years 2017 and 2018, respectively.

163. The components of the 2017-2018 test period forecasts of direct O&M costs for PLP and KLP are summarized below in Table 3 and Table 4, respectively:

Table 3. PLP direct O&M costs

USA Account	Description	2017 Forecast	2018 Forecast
		(\$000)	
560	Supervision & Engineering	17.2	17.4
561	Control Centre Operations	20.5	20.7
562	Station Equipment Maintenance	39.6	40.0
563	Overhead Line Expenses	15.4	15.5
566	O&M Miscellaneous Transmission	77.4	78.2
567	Annual Structure Payments	100.5	107.2
571.1	Vegetation Management	3.5	3.5
575	Operations & Maintenance IT Support	18.9	19.1
	Total direct operation and maintenance	292.9	301.5

Source: Exhibit 22612-X0024, Schedule 5-1.

¹⁶¹ Per paragraph 54 of Exhibit 22612-X0045, expenditures within the USA 562 classification were not relevant to the determination of direct O&M costs for KLP during the 2017-2018 test period.

¹⁶² Exhibit 22612-X0024, paragraph 48; Exhibit 22612-X0045, paragraph 48.

¹⁶³ Exhibit 22612-X0024, paragraph 47; Exhibit 22612-X0045, paragraph 48.

¹⁶⁴ Exhibit 22612-X0024, paragraph 61; Exhibit 22612-X0045, paragraph 62.

Table 4. KLP direct O&M costs

USA Account	Description	2017 Forecast (\$000)	2018 Forecast (\$000)
560	Supervision & Engineering	8.6	8.7
561	Control Centre Operations	20.5	20.7
563	Overhead Line Expenses	13.8	13.9
566	O&M Miscellaneous Transmission	43.0	43.4
567	Annual Structure Payments	79.1	84.4
571.1	Vegetation Management	3.4	3.4
575	Operations & Maintenance IT Support	8.6	8.7
	Total direct operation and maintenance	177.1	183.3

Source: Exhibit 22612-X0045, Schedule 5-1.

164. AltaLink proposed that with the exception of revenue requirement line items in respect of annual structure payments, any amounts for each of the other line items included as part of the direct O&M cost forecasts of PLP and KLP be deducted from AltaLink’s tariff revenue requirement as a revenue offset.¹⁶⁵ Amounts included with direct O&M costs for PLP and KLP related to annual structure payments were proposed to be transferred from AltaLink L.P. to PLP and KLP, with any amounts so transferred removed from the corresponding revenue requirement forecast in AltaLink L.P.’s 2017-2018 tariff.¹⁶⁶

Commission findings

165. Because all the direct O&M costs added to the PLP and KLP revenue requirements, other than annual structure payments, will be offset on a one-to-one basis by a revenue offset applied to AltaLink L.P.’s tariff, the Commission finds these costs to be reasonable.

166. However, the Commission notes that the mechanism proposed in respect of the transfer of annual structure payment revenues from AltaLink L.P. to PLP and KLP is structured differently. It is based on the transfer of the assets generating the costs. The Commission is not persuaded that the cost of annual structure payments will grow over time following the transfer of revenue requirement allowances to PLP and KLP at the same rate as it would have under the continuation of the AltaLink tariff. Accordingly, as discussed below in Section 5.9, the Commission has determined that additional oversight of annual structure payments is necessary.

167. This notwithstanding, the Commission is satisfied that the method employed to arrive at the forecast cost of annual structure payments for the years 2017 and 2018 for PLP and KLP is reasonable.

168. In consideration of the foregoing, the Commission hereby approves AltaLink’s forecasts of direct O&M costs for PLP and KLP for the years 2017 and 2018 as filed. Accordingly, the amounts of \$301,500 and \$183,300 may be used as the basis for revenue requirement allowances for direct O&M costs in the interim tariffs for PLP and KLP, respectively, commencing the effective date of the transfers.

¹⁶⁵ Exhibit 22612-X0024, paragraph 46; Exhibit 22612-X0045, paragraph 46.

¹⁶⁶ Exhibit 22612-X0024, paragraph 46; Exhibit 22612-X0045, paragraph 46.

5.4 Payments in lieu of property tax

169. AltaLink noted that USA Account 408.1 includes the amount of all taxes assessed by federal, provincial, municipal or other local government bodies other than income taxes, and may include payments in lieu of taxes, municipal and school taxes, property taxes, property transfer taxes, commodity taxes and franchise fees.¹⁶⁷ AltaLink also explained that Section 5 of the Facilities Operations Accords between AltaLink L.P. and the Piikani Nation and between AltaLink L.P. and the Blood Tribe set out the basis for determining costs related to payments in lieu of taxes.¹⁶⁸ A Facilities Operations Accord was signed effective September 16, 2010, and concerns, among other matters, the terms and conditions under which the Blood Tribe and Piikani Nation “will support Transmission Projects” on their reserves.¹⁶⁹

170. AltaLink explained that, in substance, payments in lieu of taxes are part of “a socio-economic mechanism to contribute to the welfare of the community who made possible the transmission services enjoyed by ratepayers” beyond the Piikani Reserve and the Blood Reserve.¹⁷⁰ AltaLink noted that it has made payments pursuant to agreements with the Piikani Nation and the Blood Tribe to locate transmission assets on the Piikani Reserve and the Blood Reserve and that these payments have been approved by the Commission. Accordingly, AltaLink submitted that, like all other Alberta communities affected by transmission assets, the Piikani and Blood communities should be appropriately compensated.¹⁷¹

171. For the PLP tariff, AltaLink explained that it calculated its forecast in respect of this item in the amounts of \$214,700 for 2017 and \$214,900 for 2018 by using a linear tax rate equivalent to the rates paid in neighbouring districts. These rates were then applied to the transmission facilities located on the Piikani Reserve.¹⁷²

172. The forecast allowances for payments in lieu of property taxes in the amounts of \$64,000 for 2017 and \$65,900 for 2018 for KLP were similarly calculated.¹⁷³

173. AltaLink proposed that upon approval of the PLP and KLP tariffs, any amounts approved would be deducted from AltaLink’s forecasts for AltaLink’s 2017-2018 tariff.¹⁷⁴ Subsequently, AltaLink noted in argument¹⁷⁵ that in its response to AML-AUC-2018MAR23-002,¹⁷⁶ it stated that if Commission approval of the applications does not occur during 2018, amendments would be made to the AltaLink GTA to reflect this timing.

¹⁶⁷ Exhibit 22612-X0024, paragraph 68; Exhibit 22612-X0045, paragraph 69.

¹⁶⁸ Exhibit 22612-X0024, paragraph 69; Exhibit 22612-X0045, paragraph 70.

¹⁶⁹ Exhibit 22612-X0020, Appendix H; Exhibit 22614-X0041.

¹⁷⁰ Exhibit 22612-X0024, paragraph 70; Exhibit 22614-X0045, paragraph 71.

¹⁷¹ Exhibit 22612-X0024, paragraph 70; Exhibit 22612-X0045, paragraph 71.

¹⁷² Exhibit 22612-X0024, paragraph 69.

¹⁷³ Exhibit 22612-X0045, paragraph 70.

¹⁷⁴ Exhibit 22612-X0024, paragraph 69; Exhibit 22612-X0045, paragraph 70.

¹⁷⁵ Exhibit 22612-X0104, AltaLink argument, paragraph 60.

¹⁷⁶ Exhibit 22612-X0083, AltaLink-AUC-2018MAR23-002(a), PDF page 5.

Commission findings

174. Unlike other operational costs that are incurred and managed by AltaLink and transferred to PLP and KLP on a proportional basis, AltaLink is proposing to transfer this cost responsibility to PLP and KLP, to be managed separately by those entities.

175. The Commission is not persuaded that the costs associated with payments in lieu of taxes will grow at the same rate following the transfer of assets to PLP and KLP as they would have if the transfers had not taken place. Accordingly, the Commission has determined that additional oversight of payments in lieu of taxes will be required, at least initially, as part of the Commission's oversight of a proposed deferral account in respect of this cost and in respect of future PLP and KLP tariffs.

176. This notwithstanding, the Commission finds the methodology used by AltaLink to forecast the cost of payments in lieu of taxes for the years 2017 and 2018 for PLP and KLP to be reasonable.

177. Accordingly, the Commission approves AltaLink's forecasts of the cost of payments in lieu of taxes for PLP and KLP for the years 2017 and 2018 as filed. AltaLink may use the amounts of \$214,900 and \$65,900 as the basis for revenue requirement allowances for the cost of payments in lieu of taxes in the interim tariffs for PLP and KLP, respectively, commencing the effective date of the transfers.

5.5 General and administrative expense

178. As set out in Section 5.3 above, PLP and KLP do not have direct personnel. Consequently, all costs incurred by AltaLink for G&A expenses would be charged through a fixed fee inter-affiliate charge from AltaLink L.P. to each of PLP and KLP.¹⁷⁷

179. AltaLink forecast G&A expense amounts of \$216,500 and \$195,900 for the years 2017 and 2018, respectively, for each of PLP and KLP.¹⁷⁸ The proposed USA account elements of G&A expense, which are identical for each of PLP and KLP, are provided in Table 5, below:

Table 5. Schedule of corporate administration and general by account for each of PLP and KLP

USA Account	Description	2017 Forecast	2018 Forecast
		(\$000)	
920	Administrative and General Salaries	191.5	195.9
928	Commission Expenses	25.0	-
	Total direct operation and maintenance	216.5	195.9

Source: Exhibit 22612-X0024, Schedule 25-1, and Exhibit 22612-X0045, Schedule 25-1.

180. AltaLink explained that activities accounted for within the G&A expense charges to PLP and KLP include accounting, treasury, audit, legal and regulatory.¹⁷⁹

181. AltaLink noted that USA Account 920 costs charged to each of PLP and KLP totalling \$191,500 for 2017 and \$195,900 for 2018 reflect the charges to recover personnel time charges,

¹⁷⁷ Exhibit 22612-X0024, paragraph 114; Exhibit 22612-X0045, paragraph 115.

¹⁷⁸ Exhibit 22612-X0024, paragraph 115; Exhibit 22612-X0045, paragraph 116.

¹⁷⁹ Exhibit 22612-X0024, paragraph 115; Exhibit 22612-X0045, paragraph 116.

charges for the use of general corporate facilities and other outside services, and the allocation of insurance premium costs.¹⁸⁰

182. AltaLink submitted that because AltaLink's tariff will treat the fixed fee amounts received from PLP and KLP in respect of G&A expenses as a revenue offset, the cost of G&A costs included in the PLP and KLP tariffs does not benefit the owners of AltaLink L.P. PLP or KLP and does not harm ratepayers.¹⁸¹

183. Further, AltaLink explained that the continuation of required insurance coverages under AltaLink L.P.'s policies would be less expensive than if PLP and KLP acquired comparable coverages on their own. Therefore, the inclusion of an AltaLink L.P. insurance cost of \$25,000 within the G&A expense charges to PLP and KLP is reasonable.¹⁸²

184. AltaLink noted that the inclusion within USA Account 928 of amounts of \$25,000 in 2017 for each of PLP and KLP within the G&A expense was proposed to fund the PLP and KLP hearing costs reserves for 2017 and 2018. AltaLink explained that this cost, to be borne by PLP and KLP, reflects the cost of regulatory proceedings outside of the control of AltaLink, PLP or KLP. AltaLink acknowledges that the hearing cost reserve funding amount represents an incremental cost to ratepayers arising from the PLP and KLP GTAs.¹⁸³

Commission findings

185. Because all G&A expenses included in the PLP and KLP revenue requirements, other than audit costs and hearing costs, will be offset on a one-to-one basis by a revenue offset applied to AltaLink's tariff, the Commission finds these costs to be reasonable.

186. The Commission is satisfied that the method employed to arrive at the forecast for G&A expenses as set out in Section 25 of the PLP and KLP GTAs¹⁸⁴ is reasonable.

187. However, further to the Commission's findings in Section 4.1.1 above, the Commission does not consider that any incremental audit costs resulting from the proposed transfers should be borne by ratepayers. Accordingly, as audit costs are included within the G&A expense forecasts of PLP and KLP,¹⁸⁵ the Commission finds that the audit costs of \$35,000 should be removed from the USA Account 920 forecasts of both PLP and KLP.

188. The Commission similarly found in Section 4.1.1 that allowances for hearing cost reserve funding arising from the applications should not be included in the revenue requirements of the PLP and KLP tariffs. Accordingly, the Commission does not approve the proposal to include hearing cost reserve funding in the amount of \$25,000 as part of the USA Account 928 forecast for the year 2017 for either of PLP or KLP.

¹⁸⁰ Exhibit 22612-X0024, paragraph 115; Exhibit 22612-X0045, paragraph 116.

¹⁸¹ Exhibit 22612-X0024, paragraph 115; Exhibit 22612-X0045, paragraph 116.

¹⁸² Exhibit 22612-X0024, paragraph 116; Exhibit 22612-X0045, paragraph 117.

¹⁸³ Exhibit 22612-X0024, paragraph 118; Exhibit 22612-X0045, paragraph 119.

¹⁸⁴ Exhibit 22612-X0024, PDF pages 96-103; Exhibit 22612-X0045, PDF pages 101-107.

¹⁸⁵ Exhibit 22612-X0024, paragraph 115; Exhibit 22612-X0045, paragraph 116.

189. In consideration of the above-noted findings, the Commission hereby approves G&A expense forecasts of \$156,500 for 2017 and \$160,900 for 2018¹⁸⁶ within the interim tariffs for each of PLP and KLP commencing the effective date of the transfers.

5.6 Depreciation expense

190. AltaLink proposed to use the same depreciation rates established for AltaLink's 2017-2018 GTA for the PLP and KLP tariffs. It indicated that upon approval of the PLP and KLP transfer applications and the PLP and KLP GTAs, AltaLink L.P.'s rate base and associated depreciation expense from its 2017-2018 revenue requirement would be reduced.¹⁸⁷

191. Based on this approach, AltaLink proposed depreciation expense amounts of \$1,482,500 for each of 2017 and 2018 for PLP,¹⁸⁸ and \$871,300 for each of 2017 and 2018 for KLP.¹⁸⁹

Commission findings

192. The Commission considers AltaLink's proposal for determining depreciation expense for the PLP and KLP tariffs to be reasonable. The Commission approves AltaLink's depreciation expense forecasts of \$1,482,500 for each of 2017 and 2018 for PLP, and \$871,300 for each of 2017 and 2018 for KLP, as filed. In light of this finding, the amounts of \$1,482,500 and \$871,300 may be used as the basis for the interim tariffs for PLP and KLP, respectively, commencing the effective date of the transfers.

5.7 Return on rate base

193. AltaLink requested that the Commission approve the use of the same capital structure and return on equity awarded to AltaLink L.P. for the year 2017 in the Commission's generic cost of capital (GCOC) decision (Decision 20622-D01-2016¹⁹⁰) and the Commission's eventual determination of the 2018 capital structure and return on equity for AltaLink L.P. for the 2017-2018 PLP and KLP GTAs.¹⁹¹ Based on this approach, AltaLink proposed capital structures of 63 per cent debt and 37 per cent equity, and a deemed ROE of 8.5 per cent for each of PLP and KLP.¹⁹²

194. AltaLink noted that although PLP and KLP were not TFOs when Decision 20662-D01-2016 was issued, in order to provide revenue neutrality to ratepayers, the same capital structure and rates of return should be applied to AltaLink L.P. PLP and KLP.¹⁹³

195. For the 2017-2018 test period, AltaLink proposed to use an embedded cost of debt rate reflecting the weighted average cost of debt used in AltaLink's most recently approved GTA, consistent with the Loan Agreements between AltaLink L.P. and PLP/KLP. Based on this

¹⁸⁶ Note that because proposed hearing cost reserve funding in the amount of \$25,000 was applied to 2017 G&A expense forecasts of PLP and KLP but not to the 2018 forecasts, the Commission has only reduced the G&A expense forecasts by \$35,000, not \$60,000.

¹⁸⁷ Exhibit 22612-X0024, paragraphs 74-75; Exhibit 22612-X0045, paragraphs 74-75.

¹⁸⁸ Exhibit 22612-X0024, paragraph 74.

¹⁸⁹ Exhibit 22612-X0045, paragraph 75.

¹⁹⁰ Decision 20622-D01-2016: 2016 Generic Cost of Capital, Proceeding 20622, October 7, 2016.

¹⁹¹ Exhibit 22612-X0024, paragraph 125; Exhibit 22612-X0045, paragraph 125.

¹⁹² Exhibit 22612-X0024, PDF page 108; Exhibit 22612-X0045, PDF page 112.

¹⁹³ Exhibit 22612-X0024, paragraph 126; Exhibit 22612-X0045, paragraph 126.

approach, AltaLink proposed embedded cost of debt rates of 4.025 per cent for 2017, and 3.974¹⁹⁴ per cent for 2018 for the PLP and KLP 2017-2018 GTAs.

196. Based on the foregoing, AltaLink proposed revenue requirement allowances for return in the amounts of \$3,011,800 and \$2,910,600 for the years 2017 and 2018, respectively, for PLP.¹⁹⁵ AltaLink similarly proposed return allowances in the amounts of \$2,153,600 and \$2,091,800 for the years 2017 and 2018, respectively, for KLP.¹⁹⁶

Commission findings

197. The Commission agrees with AltaLink's proposal that the same capital structure and rates of return be applied to AltaLink L.P., PLP and KLP.

198. Although the PLP and KLP GTAs were filed before Decision 22570-D01-2018¹⁹⁷ (2018 GCOC) was released, that decision approved a generic cost of equity rate of 8.5 per cent and a capital structure for AltaLink L.P. of 63 per cent debt and 37 per cent equity. As these parameters are consistent with parameters used in the preparation of the 2017-2018 return forecasts for PLP and KLP, no adjustments are required.

199. Similarly, further to the Commission's finding in Section 4.1.2.1, the Commission has approved the proposal that the same embedded cost of debt calculated for the AltaLink tariff for the years 2017 and 2018 should also be used as the embedded cost of debt for the purposes of the PLP and KLP GTAs.

200. Given these findings, the proposed revenue requirement allowances for return in the amounts of \$3,011,800 and \$2,910,600 for the years 2017 and 2018, respectively, for PLP, and \$2,153,600 and \$2,091,800 for the years 2017 and 2018, respectively, for KLP, are approved as filed. The amounts of \$2,910,600 and \$2,091,800 may be utilized as the basis for revenue requirement allowances for return in the interim tariffs for PLP and KLP, respectively, commencing the effective date of the transfers.

5.8 Income tax expense

201. AltaLink proposed that income tax expense for the PLP and KLP tariffs should include allowances for federal and provincial income taxes, calculated on a stand-alone and flow-through basis. However, because no taxable income for either PLP or KLP was forecast for either 2017 or 2018, AltaLink did not forecast any income tax expense for the 2017-2018 test period revenue requirements.

202. The CCA provided a proxy calculation of income tax expense in 2017-2018 under the future income tax method to demonstrate potential tax savings that it considered would be possible through the adoption of a direct ownership structure.¹⁹⁸ However, the CCA did not

¹⁹⁴ Exhibit 22612-X0024, PDF page 108; Exhibit 22612-X0045, PDF page 112.

¹⁹⁵ Exhibit 22612-X0024, paragraph 83, derived at Exhibit 22612-X0024, PDF page 108.

¹⁹⁶ Exhibit 22612-X0045, paragraph 84, derived at Exhibit 22612-X0045, PDF page 112.

¹⁹⁷ Decision 22570-D01-2018: 2018 Generic Cost of Capital, Proceeding 22570, August 2, 2018.

¹⁹⁸ Exhibit 22612-X0105.01, paragraphs 29-35.

object to the use of the flow-through method to calculate income tax expense for the years 2017 and 2018 for the PLP and KLP tariffs.

Commission findings

203. As set out in its findings in Section 4.1.4.1, the Commission rejects the CCA's argument that approval of the proposed transfers should be conditional on the Piikani Nation and the Blood Tribe adopting a direct ownership structure.

204. The Commission considers the use of the flow-through method for the calculation of income tax expense within the applied-for PLP and KLP tariffs to be reasonable because it mirrors the methodology adopted and approved by the Commission for AltaLink's tariff.

205. The schedules provided in Section 7 of the PLP and KLP GTAs,¹⁹⁹ applying the flow-through methodology, result in an income tax of zero for the years 2017-2018 for both the PLP and KLP tariffs. Accordingly, the Commission approves the use of a zero income tax expense within the interim PLP and KLP tariff to commence the effective date of the transfers.

5.9 Deferral account reserve accounts

206. AltaLink requested approval of the following deferral or reserve accounts for PLP and KLP:

- a self-insurance reserve (SIR) account
- a hearing cost reserve account
- a deferral account for payments in lieu of property taxes
- a deferral account for annual structure payments
- a direct assign capital deferral account (DACDA)²⁰⁰

207. AltaLink explained that, as is the case for other utilities in the province, because the commercial insurance costs for transmission assets is prohibitively high, it is reasonable for PLP and KLP to have a SIR account structured on the same basis as the SIR account approved for AltaLink L.P.²⁰¹ AltaLink did not forecast any SIR funding amounts for either PLP or KLP for the 2017-2018 test period.²⁰²

208. Regarding hearing costs, AltaLink submitted that because these costs are beyond the control of PLP and KLP, a hearing cost reserve should be established. However, AltaLink noted that because it expects to file future PLP and KLP GTAs concurrently with AltaLink's tariff application, it should be expected that the majority of PLP's and KLP's costs of service would be included in AltaLink's forecast.²⁰³ As discussed above in relation to the G&A expense forecast of PLP and KLP, AltaLink included hearing cost reserve revenue requirement allowances of \$25,000 for the year 2017 for both PLP and KLP.

¹⁹⁹ Exhibit 22612-X0024, PDF pages 46-52; Exhibit 22612-X0045, PDF pages 46-52.

²⁰⁰ Exhibit 22612-X0024, paragraph 30; Exhibit 22612-X0045, paragraph 30.

²⁰¹ Exhibit 22612-X0024, paragraph 30; Exhibit 22612-X0045, paragraph 30.

²⁰² Exhibit 22612-X0024, paragraph 131; Exhibit 22612-X0045, paragraph 131.

²⁰³ Exhibit 22612-X0024, paragraph 30; Exhibit 22612-X0045, paragraph 30.

209. The proposed treatment for payments in lieu of taxes was addressed in detail in Section 5.4 above. As set out in that section, AltaLink has argued that these payments are outside the control of PLP and KLP and are subject to provisions in the Facilities Operation Accords²⁰⁴ which address potential disallowances of payments in lieu of taxes by the Commission.

210. Similarly, AltaLink submitted that as the rates of annual structure payments are beyond the control of PLP and KLP and could be material, the Commission should approve a deferral account of annual structure payments.²⁰⁵

211. AltaLink noted that, as is the case for other Alberta TFOs, PLP and KLP will be subject to the direct assignment of capital projects by the AESO. Given the small size of PLP and KLP, and the fact that the direct assignment of transmission projects is beyond the control of PLP and KLP, AltaLink submitted that the Commission should approve the establishment of DACDAs for PLP and KLP.²⁰⁶

Commission findings

212. For the reasons described below, the Commission's finding regarding each of the requested deferral accounts is as follows:

- a self-insurance reserve (SIR) account: approved
- a hearing cost reserve account: denied
- a deferral account for payments in lieu of property taxes: deferred
- a deferral account for annual structure payments: deferred
- a DACDA: approved

213. The Commission accepts AltaLink's submission that the cost of commercial insurance for transmission assets is prohibitively high. This has been recognized by the Commission with the creation of a SIR account that has been in operation under AltaLink L.P.'s ownership of the transmission assets to be transferred to PLP and KLP. It is reasonable that such treatment should continue following a transfer of the transmission assets to PLP and KLP. Accordingly, AltaLink's proposal to establish a SIR account in respect of the PLP transmission assets and KLP transmission assets is approved. The Commission further finds that the SIR policies set out in Appendix B²⁰⁷ to the PLP and KLP GTAs should apply, as warranted, to the PLP transmission assets and KLP transmission assets.

214. The Commission also agrees to the establishment of a DACDA as set out in the PLP and KLP tariffs.

215. With regard to a hearing costs reserve account, in Section 4.1.1, the Commission found that the incremental hearing costs associated with the establishment of the PLP and KLP TFOs would be a harm to ratepayers and these costs are not included within the revenue requirements

²⁰⁴ Exhibit 22612-X0024, paragraph 69, referencing Exhibit 22612-X0020, PDF page 10; Exhibit 22612-X0045, paragraph 70, referencing Exhibit 22612-X0041, PDF pages 10-11.

²⁰⁵ Exhibit 22612-X0024, paragraph 30; Exhibit 22612-X0045, paragraph 30.

²⁰⁶ Exhibit 22612-X0024, paragraph 30; Exhibit 22612-X0045, paragraph 30.

²⁰⁷ Exhibit 22612-X0025; Exhibit 22612-X0047.

of PLP and KLP. In view of this, the Commission denies the establishment of a hearing cost reserve account.

216. Because forecast costs within the PLP and KLP 2017-2018 GTAs applied linear tax rates from neighbouring districts to the transmission facilities located on the Piikani Reserve and Blood Reserve,²⁰⁸ the Commission currently has no information on how payments in lieu of tax amounts would be affected by the proposed transfers.

217. In IR AML-AUC-2018MAR23-009(b) the Commission asked:

Does AML agree that to the extent that the deferral account treatment for structure payments and PILOT costs proposed in the applications provides for a “one-for-one” match between the annual structure payment and PILOT amounts negotiated between the owners of PLP and KLP and representatives of the Piikani and Blood reserves, there may be an incentive to increase these costs that would not exist under the continuation of AML’s existing tariff. If AML does not agree, please fully explain your position.

218. AltaLink’s response was as follows:

AltaLink does not agree. The First Nations currently have the ability to pass a taxation bylaw and this is not impacted by the transfer of assets. In addition, AltaLink has no incentive to see ASP [annual structure payments] and PILOT [payment in lieu of tax] costs increase. It would derive no benefit should these costs increase. Both ASP and PILOT costs are defined by agreement and modelled after what AltaLink currently pays on its 100% owned assets. Any change in the current regime would be subject to AUC approval. Refer to AML-UCA-2018MAR23-010.²⁰⁹ [footnotes omitted]

219. AltaLink’s response does not completely address the concern articulated in AML-AUC-2018MAR23-009. The Commission accepts AltaLink’s statement that AltaLink has no incentive to seek increases in annual structure payments and payments in lieu of taxes. However, AltaLink’s response does not address the concern that the Piikani Nation and the Blood Tribe might have this incentive, at least theoretically. As well, although Section 5.3 of the Facilities Operation Accords²¹⁰ appears to provide a means by which concerns with excessive payments in lieu of taxes may be addressed, it does not appear to extend to annual structure payment amounts.

220. The Commission finds that its concerns may be addressed in future PLP and KLP GTAs when the actual payments in lieu of taxes and annual structure payments are tested. Consequently, the Commission has deferred its decision to approve the establishment of deferral accounts for payments in lieu of taxes and annual structure payments for the PLP and KLP tariffs.

5.10 Terms and conditions of service

221. AltaLink indicated that following approval of the PLP and KLP GTAs, PLP and KLP would adopt the Alberta TFO terms and conditions (T&Cs) approved in Decision 2010-116. In

²⁰⁸ Exhibit 22612-X0024, paragraph 69; Exhibit 22612-X0045, paragraph 69; Exhibit 22612-X0087, AltaLink-UCA-2018MAR23-010; Exhibit 22612-X0090, AltaLink-UCA-2018MAR23-010 Attachment.

²⁰⁹ Exhibit 22612-X0083, AltaLink-AUC-2018MAR23-009(b).

²¹⁰ Exhibit 22612-X0020, PDF pages 10-11; Exhibit 22612-X0041, PDF page 11.

addition, AltaLink indicated that PLP and KLP would adopt any further T&C changes approved by the Commission in Proceeding 22073.²¹¹

Commission findings

222. The Commission issued Decision 22073-D01-2017 approving amendments to TFO T&Cs of service on June 26, 2017. The Commission approves revised T&Cs of service for PLP and KLP that comply with Decision 22073-D01-2017.

6 Designation and implementation matters

223. In the PLP Transfer Application, AltaLink requested an order that the Piikani Limited Partner be added to the *Public Utilities Designation Regulation*, Alberta Regulation 194/2006, as owner of a public utility and that, after the proposed transfer until the actual designation, the Piikani Limited Partner conduct itself as if it had been designated.²¹²

224. Similarly, in the KLP Transfer Application, AltaLink requested an order that the Blood Limited Partner be added to the *Public Utilities Designation Regulation*, Alberta Regulation 194/2006, as owner of a public utility and that, after the proposed transfer until the actual designation, the Blood Limited Partner conduct itself as if it had been designated.²¹³

225. Currently, under Section 1(1)(d) of the *Public Utilities Designation Regulation*, AltaLink is designated as an owner of a public utility to which Section 101 of the *Public Utilities Act* applies.

226. Under Section 101(2)(d)(i) of the *Public Utilities Act*, no owner of a public utility designated under the *Public Utilities Designation Regulation* shall, without the approval of the Commission, sell or otherwise dispose of its property, franchises, privileges or rights, or any part of them, out of the ordinary course of the owner's business.

227. AltaLink submitted that the transfer will not substantively change the Commission's regulatory authority over designated owners of public utilities in relation to AltaLink's Transmission Assets. AltaLink submitted that with the Piikani Limited Partner and Blood Limited Partner being designated, the Commission would maintain considerable regulatory oversight over both PLP transmission assets and KLP transmission assets. All tariffs and affiliate transactions in respect of the PLP transmission assets and KLP transmission assets would remain subject to Commission oversight after the proposed transfers. As such, AltaLink maintained, customers would not be harmed because all existing regulatory obligations and Commission requirements would continue post-transfer.²¹⁴

228. AltaLink's proposed ownership structure of PLP and KLP upon approval of the transfer applications is provided in Section 3 above.

²¹¹ Exhibit 22612-X0024, PLP GTA, paragraph 39; Exhibit 22612-X0045, PLP GTA, paragraph 39.

²¹² Exhibit 22612-X0002, paragraph 25(h).

²¹³ Exhibit 22612-X0029, paragraph 25(h).

²¹⁴ Exhibit 22612-X0104, AltaLink argument, paragraph 98.

Commission findings

229. The provisions set out in sections 101, 102 and 109 of the *Public Utilities Act* restrict the activities of parties who have been designated under the *Public Utilities Designation Regulation*. However, a review of these provisions suggests that they are applicable to corporations but not to partnerships. Further, there are no partnerships that have been designated under the regulation.

230. As stated in Decision 23010-D01-2018,²¹⁵ at paragraphs 43 and 44:

43. The Commission's general practice has been to designate "both the utility itself (as the utility operator or owner of the utility assets) and the direct owner, or parent of the utility" in order to ensure that there is sufficient oversight for the protection of the integrity of the utility system and customers from negative impacts that might result from a company's financial and share issuance activities described in sections 26 and 27 of the *Gas Utilities Act* and Section 109 of the *Public Utilities Act*. This means that the corporate entity that legally owns, manages and operates the utility assets (i.e., pipelines, compressor stations, buildings vehicle fleet), as well as the shareholder which controls the operating business through the election of directors, often a holding company or companies, have been designated owners of utilities.

44. The designations of AltaGas Utilities, AltaGas Holdings and AltaGas Group but not AltaGas Ltd., illustrate the point that the Commission has not always restricted the designation to the operating company and its direct parent. It was in EUB Decision 2005-112, a decision in which an earlier AltaGas corporate reorganization was considered, that the Commission designated AltaGas Group (then called Newco), in circumstances where AltaGas Group indirectly acquired ownership of AltaGas Utilities through its acquisition of all the AltaGas Holdings shares. [footnotes omitted]

231. The Commission notes, with regard to AltaLink's partnership structure, that it is the general partner, AltaLink, that has been designated along with the corporate entities that are partners.²¹⁶ The limited partnership entities have not been designated.

232. Regarding the proposed ownership structure for KLP and PLP, the Commission has approved a similar approach. The Commission will approve designations for the corporate entities that are the partners of each of the Piikani Limited Partner and the Blood Limited Partner. In the event that AltaLink advises that the parties to the transactions intend to proceed with the transfers, the Commission will recommend to the Lieutenant-Governor in Council that the following entities be designated as an owner of a public utility under the *Public Utilities Regulation*:

- 1792191 Alberta Corp.
- 1656877 Alberta Ltd.
- 1759511 Alberta Ltd.

²¹⁵ Decision 23010-D01-2018: AltaGas Utilities Group Inc., Application for the Sale and Transfer of Capital Stock, Proceeding 23010, January 30, 2018.

²¹⁶ Under the regulation, the designated entities are AltaLink Investment Management Ltd., AltaLink Management Ltd., BHE Alberta Ltd., BHE AltaLink Ltd., and BHE GP Holdings Ltd.

233. Until the designation has been completed, each of 1792191 Alberta Corp., 1656877 Alberta Ltd. and 1759511 Alberta Ltd. shall conduct itself as if it had been designated.

7 Order

234. It is hereby ordered that:

- (1) AltaLink Management Ltd. advise the Commission on or before December 4, 2018, if the parties to the transactions intend to proceed with the proposed transfers.

PLP

- (2) In the event that the parties to transactions proceed with the proposed transfers, the Commission provides the following orders to AltaLink, in its capacity as general partner of AltaLink L.P.:
 - (a) Pursuant to Section 101(2)(d)(i) of the *Public Utilities Act*, authorization of the sale of the rights, title and interests, legal and beneficial, in the PLP transmission assets, by AltaLink, in its capacity as general partner of AltaLink L.P., and by AltaLink L.P., to AltaLink, in its capacity as general partner of PLP, and to PLP.
 - (b) Pursuant to sections 14, 15, 18 and 19 of the *Hydro and Electric Energy Act* approval for the transfer of, and effecting all required amendments to, all permits, licences, authorizations, approvals and other Orders regarding the PLP transmission assets, as set out in Appendices A-1 to A-8²¹⁷ to the application,²¹⁸ including those pertaining to the construction, ownership and operation of the PLP transmission assets, from AltaLink in its capacity as general partner of AltaLink L.P., to AltaLink in its capacity as general partner of PLP;
 - (c) Pursuant to Part 9, Division 2 of the *Electric Utilities Act*, approval of:
 - (i) the allocation of that portion of AltaLink L.P.'s closing rate base balance corresponding to the PLP transmission assets, as described in the PLP 2017-2018 GTA, as of the effective date of the completion of the proposed transfers, as described in Section 5 of this decision.
 - (ii) a reduction to AltaLink L.P.'s rate base and amendment to its tariff as described in Section 5 of this decision, as of the effective date of the completion of the proposed transfer of the PLP transmission assets.

²¹⁷ Exhibits 22612-X0003 to 22612-X0010.

²¹⁸ Exhibit 22612-X0002.

- (3) In the event that the parties to the transactions proceed with the proposed transfers, the Commission provides the following orders to AltaLink, in its capacity as general partner of PLP:
- (a) Pursuant to section 101(2)(a)(ii) of the *Public Utilities Act*, authorization to AltaLink, in its capacity as general partner of PLP, to issue Requests for Advance pursuant to the provisions of the Loan Agreement;
 - (b) Pursuant to sections 14, 15, 18 and 19 of the *Hydro Electric Energy Act* approval for the transfer of and effecting all required amendments to, all permits, licences, authorizations, approvals and other Orders regarding the PLP transmission assets, as set out in Appendices A-1 to A-8²¹⁹ to the application,²²⁰ including those pertaining to the construction, ownership and operation of the PLP transmission assets, from AltaLink in its capacity as general partner of AltaLink L.P., to AltaLink in its capacity as general partner of PLP including the issuance of the necessary connection orders;
 - (c) Pursuant to Part 9, Division 2 of the *Electric Utilities Act* approval of:
 - (i) the allocation of that portion of the closing rate base balance corresponding to the PLP transmission assets, as described in the PLP 2017-2018 GTA, as of the effective date of the completion of the proposed transfer, as described in Section 5 of this decision.
 - (ii) allocating that closing rate base balance as the opening rate base balance of PLP's transmission facility utility, as described in the PLP 2017-2018 GTA, as of the effective date of the completion of the proposed transfer, as described in Section 5 of this decision;
 - (iii) approval of an interim tariff for PLP, as described in Section 5 of this decision, for the ownership and operation by PLP of the PLP transmission assets, as of the effective date of the completion of the proposed transfer; and
 - (iv) approval of the terms and conditions of service for PLP as described in Section 5 of this decision.
 - (d) Following completion of the proposed transfers, designation of 1792191 Alberta Corp. and 1656877 Alberta Ltd. as owners of a public utility pursuant to the *Public Utilities Designation Regulation*, and until the actual designation, 1792191 Alberta Corp. and 1656877 Alberta Ltd. shall conduct themselves as if each had been designated.
 - (e) AltaLink shall not be removed as the general partner of PLP without prior written approval of the Commission.

²¹⁹ Exhibits 22612-X0003 to 22612-X0010.

²²⁰ Exhibit 22612-X0002.

- (f) Pursuant to Section 102(1) of the *Public Utilities Act*, an order approving the change in control of PLP that could occur if AltaLink L.P. is required to contribute an unfunded portion of a requested capital contribution for the Piikani Limited Partner.

KLP

- (4) In the event that the parties to the transactions proceed with the proposed transfers, the Commission provides the following orders to AltaLink, in its capacity as general partner of AltaLink L.P.:
 - (a) Pursuant to Section 101(2)(d)(i) of the *Public Utilities Act*, authorization of the sale of the rights, title and interests, legal and beneficial, in the KLP transmission assets, by AltaLink, in its capacity as general partner of AltaLink L.P., and by AltaLink L.P., to AltaLink, in its capacity as general partner of KLP, and to KLP.
 - (b) Pursuant to sections 14, 15, 18 and 19 of the *Hydro and Electric Energy Act* approval for the transfer of, and effecting all required amendments to, all permits, licences, authorizations, approvals and other Orders regarding the PLP transmission assets, as set out in Appendices A-1 to A-4²²¹ to the application,²²² including those pertaining to the construction, ownership and operation of the KLP transmission assets, from AltaLink in its capacity as general partner of AltaLink L.P., to AltaLink in its capacity as general partner of KLP;
 - (c) Pursuant to Part 9, Division 2 of the *Electric Utilities Act*, approval of:
 - (i) the allocation of that portion of AltaLink L.P.'s closing rate base balance corresponding to the KLP transmission assets, as described in the PLP 2017-2018 GTA, as of the effective date of the completion of the proposed transfers, as described in Section 5 of this decision.
 - (ii) a reduction to AltaLink L.P.'s rate base and amendment to its tariff as described in Section 5 of this decision, as of the effective date of the completion of the proposed transfer of the KLP transmission assets.
- (5) In the event that the parties proceed with the proposed transfers, the Commission provides the following orders to AltaLink, in its capacity as general partner of KLP:
 - (a) Pursuant to section 101(2)(a)(ii) of the *Public Utilities Act* authorization to AltaLink, in its capacity as general partner of KLP, to issue Requests for Advance pursuant to the provisions of the Loan Agreement;

²²¹ Exhibits 22612-X0030 to 22612-X0033.

²²² Exhibit 22612-X0029.

- (b) Pursuant to sections 14, 15, 18 and 19 of the *Hydro Electric Energy Act* approval for the transfer of and effecting all required amendments to, all permits, licences, authorizations, approvals and other Orders regarding the KLP transmission assets, as set out in Appendices A-1 to A-4²²³ to the application,²²⁴ including those pertaining to the construction, ownership and operation of the KLP transmission assets, from AltaLink in its capacity as general partner of AltaLink L.P., to AltaLink in its capacity as general partner of KLP including the issuance of the necessary connection orders;
- (c) Pursuant to Part 9, Division 2 of the *Electric Utilities Act*, approval of:
 - (i) the allocation of that portion of the closing rate base balance corresponding to the KLP transmission assets, as described in the KLP 2017-2018 GTA, as of the effective date of the completion of the proposed transfer, as described in Section 5 of this decision.
 - (ii) allocating that closing rate base balance as the opening rate base balance of KLP's transmission facility utility, as described in the KLP 2017-2018 GTA, as of the effective date of the completion of the proposed transfer, as described in Section 5 of this decision;
 - (iii) approval of an interim tariff for KLP, as described in Section 5 of this decision, for the ownership and operation by KLP of the KLP transmission assets, as of the effective date of the completion of the proposed transfer; and
 - (iv) approval of the terms and conditions of service for KLP as described in Section 5 of this decision.
- (d) Following completion of the proposed transfers, designation of 1759511 Alberta Ltd. as an owner of a public utility pursuant to the *Public Utilities Designation Regulation*, and until the actual designation, 1759511 Alberta Ltd. shall conduct itself as if it had been designated.
- (e) AltaLink shall not be removed as the general partner of KLP without prior written approval of the Commission.
- (f) Pursuant to Section 102(1) of the *Public Utilities Act*, an order approving the change in control of KLP that could occur if AltaLink L.P. is required to contribute an unfunded portion of a requested capital contribution for the Blood Limited Partner.

²²³ Exhibits 22612-X0030 to 22612-X0033.

²²⁴ Exhibit 22612-X0029.

Dated on November 13, 2018.

Alberta Utilities Commission

(original signed by)

Bohdan (Don) Romaniuk
Acting Commission Member

(original signed by)

Tracee Collins
Commission Member

(original signed by)

Carolyn Hutniak
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
AltaLink Management Ltd. (AltaLink or AML) Borden, Ladner Gervais LLP
Blood Tribe Economic Development Office (Blood Tribe) Walsh LLP
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP
Piikani Resource Development Ltd. (PRDL) Rae and Company

Alberta Utilities Commission
Commission panel
D. Romaniuk, Acting Commission Member
T. Collins, Commission Member
C. Hutniak, Commission Member
Commission staff
C. Wall (Commission counsel)
L. Desaulniers (Commission counsel)
J. Halls
S. Karim
A. Anderson

Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. The Commission directs AltaLink to provide any changes to its IACC to reflect the new ownership structure upon closing of the proposed transfers. Paragraph 136
2. Recognizing that the parties to the transactions may choose not to complete the transfers in view of the conditions imposed (as is their right under their respective agreements with AltaLink L.P.), the Commission directs AltaLink to advise the Commission if the parties to the transactions intend to proceed with the proposed transfers. Paragraph 145
3. The Commission accepts AltaLink’s proposed pro-rata mechanism to implement the PLP and KLP tariffs and adjust the revenue requirement in AltaLink’s GTA. However, because the 2018 revenue requirements of the PLP and KLP tariffs are approved only on an interim basis, AltaLink, in its capacity as the general partner of AltaLink L.P., is not required to immediately adjust its revenue requirement in the same prorated manner. Instead, the Commission directs AltaLink, in its capacity as the general partner of AltaLink L.P, to ensure that any required adjustments to AltaLink’s tariff revenues are applied in a manner that does not harm ratepayers..... Paragraph 147
4. The Commission directs that the effective date for the evaluation of the assets be the effective date of the asset transfers to PLP and KLP. Further, the Commission waives the application of the half-year rule in the initial year of operations for PLP and KLP to enable this adjustment. The Commission agrees that waiving this rule would not harm ratepayers. Should the parties to the transactions advise that they intend to proceed with the proposed transfers, AltaLink is directed to concurrently describe its proposals to set an initial net book value of the PLP transmission assets and KLP transmission assets for the interim tariffs..... Paragraph 154

Appendix 3 – Documents supporting transfer applications

[\(return to text\)](#)

The following documents were filed in support of the PLP Transfer Application:

- (a) The primary PLP Transfer Application document;²²⁵
- (b) Appendix A, including:
 - Appendix A-1 consisting of the existing permits and licences (P&Ls) for the transmission facilities to be transferred to PLP;²²⁶
 - Appendices A-2 through A-6 providing draft versions of successor P&Ls following the transfer to PLP; and²²⁷
 - Appendices A-7 through A-11 containing draft connection orders in respect of transmission facilities to be transferred to PLP;²²⁸
- (c) Appendix B to the PLP Transfer Application containing an undated draft loan agreement between AltaLink L.P., as lender, and PLP, as borrower;²²⁹
- (d) Appendix C containing selected extracts from the Alberta *Public Utilities Act*;²³⁰
- (e) Appendix D consisting of a chart showing the proposed ownership structure of PLP following the completion of PLP Transfer Application;²³¹
- (f) Appendix E consisting of a permit dated July 25, 2008, issued to AML by the Minister of Indian Affairs and Northern Development in respect of developments located on Piikani Indian Reserve No. 147;²³²
- (g) Appendix F, containing selected extracts from the federal *Indian Act*;²³³
- (h) Appendix G, an agreement entitled “Project Commitment and Option Agreement” (the PLP Project Commitment and Option Agreement, or PLP PCOA) dated September 16, 2010, between the duly elected Chief and Council of the Piikani Nation and AltaLink L.P.;²³⁴
- (i) Appendix H, an agreement entitled “Facilities Operations Accord” (PLP Facilities Operations Accord, or PLP FOA), dated September 16, 2010, between the duly elected Chief and Council of the Piikani Nation and AltaLink L.P.;²³⁵

²²⁵ Exhibit 22612-X0002.

²²⁶ Exhibit 22612-X0003.

²²⁷ Exhibits 22612-X0004 through 22612-X0008.

²²⁸ Exhibits 22612-X0009 through 22612-X0013.

²²⁹ Exhibit 22612-X0014.

²³⁰ Exhibit 22612-X0015.

²³¹ Exhibit 22612-X0016.

²³² Exhibit 22612-X0017.

²³³ Exhibit 22612-X0018.

²³⁴ Exhibit 22612-X0019.

²³⁵ Exhibit 22612-X0020.

- (j) Appendix I, containing certain documents filed in support of the Southwest Alberta 240kV Transmission Development;²³⁶
- (k) Appendix J, an agreement dated March 6, 2017, entitled “PiikaniLink, L.P. Limited Partnership Agreement among AltaLink Management Ltd. and Piikani Transmission Holding L.P. and AltaLink L.P.” (PLP Limited Partnership Agreement, or PLP LPA);²³⁷ and
- (l) Appendix K, an agreement dated April 24, 2017, entitled “Purchase Agreement (240 kV Transmission Facilities located on the Piikani Reserve) between AltaLink L.P. and PiikaniLink, L.P.” (PLP Purchase and Sale Agreement, or PLP PSA).²³⁸

The following documents were filed in support of the KLP Transfer Application:

- (a) The primary KLP Transfer Application document;²³⁹
- (b) Appendix A, including:
 - Appendix A-1 consisting of the existing P&Ls for the transmission facilities to be transferred to KLP;²⁴⁰
 - Appendices A-2 and A-3 providing draft versions of successor P&Ls following the transfer to KLP; and²⁴¹
 - Appendices A-4 and A-5 draft connection orders in respect of transmission facilities to be transferred to KLP;²⁴²
- (c) Appendix B to the KLP Transfer Application containing an undated draft loan agreement as between AltaLink L.P., as lender, and KLP, as borrower;²⁴³
- (d) Appendix C containing selected extracts from the Alberta *Public Utilities Act*;²⁴⁴
- (e) Appendix D consisting of a chart showing the proposed ownership structure of KLP following the completion of KLP Transfer Application;²⁴⁵
- (f) Appendix E consisting of a permit dated July 25, 2008 issued to AML by the Minister of Indian Affairs and Northern Development in respect of developments located on Blood Indian Reserve No. 148;²⁴⁶
- (g) Appendix F, containing selected extracts from the federal *Indian Act*;²⁴⁷

²³⁶ Exhibit 22612-X0021.

²³⁷ Exhibit 22612-X0022.

²³⁸ Exhibit 22612-X0023.

²³⁹ Exhibit 22612-X0029.

²⁴⁰ Exhibit 22612-X0030.

²⁴¹ Exhibits 22612-X0031 and 22612-X0032.

²⁴² Exhibits 22612-X0033 and 22612-X0034.

²⁴³ Exhibit 22612-X0035.

²⁴⁴ Exhibit 22612-X0036.

²⁴⁵ Exhibit 22612-X0037.

²⁴⁶ Exhibit 22612-X0038.

²⁴⁷ Exhibit 22612-X0039.

- (h) Appendix G, an agreement entitled “Project Commitment and Option Agreement” (hereinafter KLP Project Commitment and Option Agreement or KLP PCOA) dated May 27, 2010 between the duly elected Chief and Council of the Blood Tribe and AltaLink L.P.;²⁴⁸
- (i) Appendix H, an agreement entitled “Facilities Operations Accord” (hereinafter “KLP Facilities Operations Accord” or “KLP FOA”) dated May 27, 2010 between the duly elected Chief and Council of the Blood Tribe and AltaLink L.P.;²⁴⁹
- (j) Appendix I, containing certain documents filed in support of the Southwest Alberta 240kV Transmission Development;²⁵⁰
- (k) Appendix J, an agreement dated March 6, 2017 entitled “KainaiLink, L.P. Limited Partnership Agreement among AltaLink Management Ltd. and 1759511 Alberta Ltd. and AltaLink L.P. (hereinafter “KLP Limited Partnership Agreement” or “KLP LPA”)²⁵¹ and
- (l) Appendix K, an agreement dated April 24, 2017 entitled “Purchase Agreement (240 kV Transmission Facilities located on the Blood Reserve) between AltaLink L.P. and KainaiLink, L.P. (hereinafter “KLP Purchase and Sale Agreement” or “KLP PSA”).²⁵²

²⁴⁸ Exhibit 22612-X0040.

²⁴⁹ Exhibit 22612-X0041.

²⁵⁰ Exhibit 22612-X0042.

²⁵¹ Exhibit 22612-X0043.

²⁵² Exhibit 22612-X0044.