



**ATCO Gas and Pipelines Ltd.**

**Pipeline Transfer to NOVA Gas Transmission Ltd.**

**June 15, 2021**

**Alberta Utilities Commission**

Decision 26189-D01-2021

ATCO Gas and Pipelines Ltd.

Pipeline Transfer to NOVA Gas Transmission Ltd.

Proceeding 26189

Applications 26189-A001 and 26189-A002

June 15, 2021

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission approves applications from ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., for the sale and transfer, to NOVA Gas Transmission Ltd., of the 29.9-kilometre westerly segment of the Pioneer Pipeline Inc. pipeline and associated facilities that are within the NOVA Gas Transmission Ltd. geographic service area, and a request to amend the existing pipeline licence.

## **2 Introduction and background**

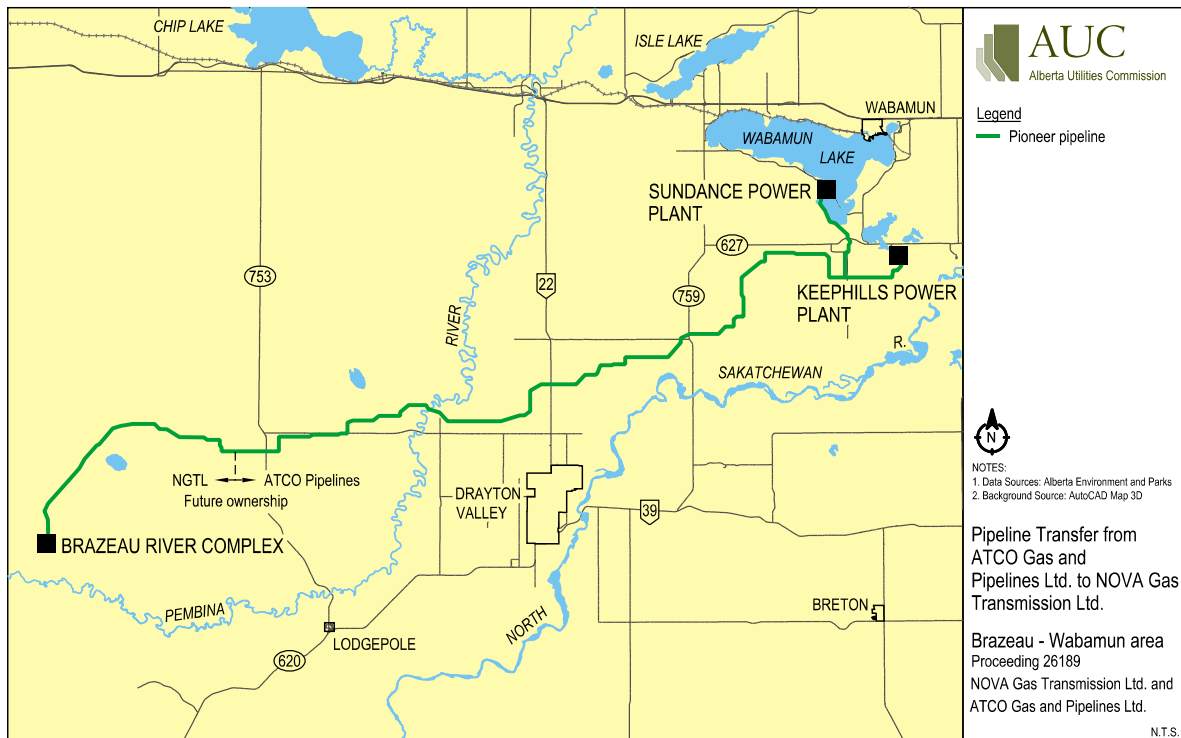
2. On December 17, 2020, ATCO Pipelines filed applications 26189-A001 and 26189-A002 requesting an exemption, pursuant to Subsection 26(4) of the *Gas Utilities Act*, from the application of the requirements of Subsection 26(2)(d) of the *Gas Utilities Act* to the sale and transfer to NOVA Gas Transmission Ltd. (NGTL) of the 29.9-kilometre (km) westerly segment of the Pioneer Pipeline Inc.'s pipeline (lines 1 and 2 under Licence 60496) (the Pioneer pipeline) and associated facilities within the NGTL geographic service area. In the alternative, should the Commission not be prepared to grant the exemption, ATCO Pipelines requested approval to sell and transfer the said segment of the Pioneer pipeline pursuant to Subsection 26(2)(d) of the *Gas Utilities Act*.

3. ATCO Pipelines is also seeking approval for an amendment to Licence 60496 pursuant to Section 11 of the *Pipeline Act* and Section 4.1 of the *Gas Utilities Act* for the following:

- length amendment of line 1 from 13.17 km to the revised length of 13.38 km
- splitting line 2 into lines 2 and 7
- lines 1 and 2 are to be transferred to NGTL and deleted from the licence
- line 7 is to remain as operating under the licence

4. ATCO Pipelines stated that the Commission's approval of the applications in this proceeding would be contingent upon the Commission approving the applications filed in Proceeding 25937, wherein ATCO Pipelines requested approval to acquire ownership of and licences for approximately 130.3 km of existing 508-millimetre outside-diameter high-pressure sweet natural gas pipeline from Pioneer.

5. ATCO Pipelines explained that the associated facilities to be sold to NGTL include an existing receipt meter station at the Brazeau River Complex and that ATCO Pipelines would retain ownership of, and continue to operate, the segment of the pipeline and associated facilities located in its footprint. The map below shows the segments of the Pioneer pipeline located in the respective footprints of NGTL and ATCO Pipelines.



6. The Commission issued a notice of applications on January 7, 2021, in accordance with the requirements of Rule 001: *Rules of Practice*. The notice was also posted in Proceeding 25937, because matters in this proceeding are directly related to the Pioneer pipeline acquisition proposed by ATCO Pipelines in that proceeding. In the notice, the Commission requested that parties with standing in Proceeding 25937 file a written submission stating whether they object to or support the Commission granting the exemption or, alternatively, the transfer approval applied for by ATCO Pipelines in this proceeding.

7. The Commission received statements of intent to participate from the Consumers' Coalition of Alberta (CCA, acting on behalf of Alberta Consumers' Association and the Alberta Council on Aging), NGTL and Western Export Group (WEG). The CCA and WEG also filed written submissions in support of their statements of intent to participate.

8. The Commission established a process schedule that duplicated the argument and reply argument filing schedule previously set in Proceeding 25937. The Commission received evidence and argument on (i) the Commission's jurisdiction and the proper timing for the Commission to consider and decide the applications, relative to Proceeding 25397, and (ii) the Commission's assessment of the no harm test. The discussion of the evidence and argument below is organized accordingly.

### 3 The Commission's jurisdiction and timing of the applications

9. As stated by ATCO Pipelines, the relevant regulatory scheme is established by legislation, namely the *Gas Utilities Act* and its regulations in respect of ATCO Pipelines, pursuant to which the Commission has jurisdiction over ATCO Gas and Pipelines Ltd. as a designated gas utility.

10. While the CCA maintained that a two-step process was required under the *Gas Utilities Act*, in which the Commission would only consider the exemption or transfer application after it issued a decision approving the acquisition application in Proceeding 25937,<sup>1</sup> WEG argued that ATCO Pipelines' exemption application was premature because the need for the transfer had not been established. WEG also submitted that the *Gas Utilities Act* does not apply to the NGTL footprint, that consideration of matters pertaining to the Alberta Integrated System (Alberta System), including NGTL's and ATCO Pipelines' systems, should be considered under the jurisdiction of the Canada Energy Regulator (CER),<sup>2</sup> as NGTL falls outside of the Commission's jurisdiction, and that it would be more efficient for the Alberta System to be overseen by one regulator.<sup>3</sup>

11. NGTL agreed with ATCO Pipelines that the exemption application should be considered concurrently with the acquisition applications, and added that a delay in considering the exemption application would be prejudicial to ATCO Pipelines, NGTL and NGTL's customers. NGTL advised that it filed its application for the acquisition of the 29.9 km western portion of the pipeline with the CER on January 15, 2021, and that it anticipated the CER's process to proceed concurrently with the AUC's process.<sup>4</sup>

12. The Commission's jurisdiction over the ATCO Pipelines system and the proposed acquisition is undisputed; the pipeline proposed to be transferred is currently licensed under provincial licensing authority (i.e., the *Pipeline Act*) and ATCO Pipelines is designated as a gas utility under the *Gas Utilities Act*. The processes initiated by ATCO Pipelines in this proceeding and in Proceeding 25937 are also consistent with previous Commission decisions that recognize and give effect to exchanges of assets under the Alberta System Integration Agreement (Integration Agreement).<sup>5</sup> As for WEG's suggestion that the Alberta System be regulated by a single (federal) regulator, the CER, the Commission observes that such a change could require amendments to existing provincial and federal legislation.

#### 4 Application of the no harm test

13. When considering an application under Subsection 26(2)(d) of the *Gas Utilities Act*, the Commission typically applies a "no harm" test that considers the proposed transaction in the context of both potential financial impacts and service level impacts to customers. The test was summarized by the Energy Utilities Board in Decision 2000-41:<sup>6</sup>

The Supreme Court of Canada has stated that the Board's jurisdiction to "safeguard the public interest in the nature and quality of the service provided to the community by public utilities" is "of the widest proportions."

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<sup>1</sup> Exhibit 26189-X0021, CCA Letter to AUC – 26189, PDF pages 2-3.

<sup>2</sup> Exhibit 26189-X0028, 2021-03-04 Argument from WEG, PDF page 6.

<sup>3</sup> Exhibit 26189-X0017, Letter from WEG re AP Pipeline License 60496 Transfer to NGTL PDF pages 3-4.

<sup>4</sup> Exhibit 26189-X0020, AP Pioneer Disposition\_NGTL Comments on Further Process, PDF page 1.

<sup>5</sup> See Decision 21379-D21-2016: ATCO Gas and Pipelines Ltd. (South), Transfer of Pipelines from NOVA Gas Transmission Ltd. to ATCO Gas and Pipelines Ltd. (South), Tranche 2a, Proceeding 21379, Applications 21379-A001 to 21379-A017, November 2, 2016; and see Decision 21945-D33-2016: ATCO Gas and Pipelines Ltd. (South), Transfer of Pipelines between NOVA Gas Transmission Ltd. and ATCO Gas and Pipelines Ltd. (South), Tranche 4, Proceeding 21945, Applications 21945-A001 to 21945-A032, November 29, 2016.

<sup>6</sup> Decision 2000-41: TransAlta Utilities Corporation Sale of Distribution Business, Application No. 2000051.

....

The Board believes that its duty to ensure the provision of safe and reliable service at just and reasonable rates informs its authority to approve an asset disposition by a public utility pursuant to Section 91.1(2) of the PUB Act [*Public Utilities Act*]. Therefore, the Board is of the view that, subject to those issues which can be dealt with in future regulatory proceedings ..., it must consider whether the disposition will adversely impact the rates customers would otherwise pay and whether it will disrupt safe and reliable service to customers.

14. The no harm test was considered by the Commission when it approved the transfer of several pipeline assets between ATCO Pipelines and NGTL pursuant to an asset swap agreement entered into as part of the Integration Agreement and approved by each of the Commission and the National Energy Board. In Decision 21945-D33-2016, the Commission commented on the application of the no harm test in the earlier proceeding:

3. The asset swap was approved in principle by the Commission in Decision 2010-228 and in the National Energy Board Decision RHW-1-2010. When evaluating the asset swap and considering whether the no harm test was satisfied, the Commission weighed the overall benefits of integration against the specific costs identified in the asset transfer approval application and decided that the requirement of the no harm test was met as it relates to service quality, reliability and increased costs to customers.  
(footnotes removed)

15. ATCO Pipelines submitted that the sale and transfer of the NGTL footprint pipeline will not disrupt safe and reliable service on the Alberta System, will not adversely affect the quality and/or quantity of services provided by the Alberta System, and that it is consistent with the Integration Agreement and its overall goals and benefits, such that the “no harm” test is met.

16. ATCO Pipelines also indicated that approval of the proposed transfer would be consistent with prior transfers approved under integration<sup>7</sup> and that granting the requested approvals is in the public interest because it will provide commercial certainty for ATCO Pipelines’ sale transaction with NGTL and align the parties’ ownership interests in the Pioneer pipeline with their respective geographic footprints.<sup>8</sup>

## 5 Commission findings

17. In Decision 25937-D01-2021, the Commission approved ATCO Pipelines’ application to acquire the approximately 130.3 km-long, high-pressure sweet natural gas Pioneer pipeline and directed ATCO Pipelines to true-up its revenue requirement to reflect the approval of the acquisition in its next rates application. In doing so, it found that without the Pioneer pipeline acquisition, the capacity of the existing integrated Alberta System would be inadequate to meet the incremental contract demand and that the purchase price of the pipeline and other acquisition-related costs were prudent. The Commission was also satisfied that the cumulative present value of the revenue generated by the pipeline would exceed the cumulative present value of the revenue requirements, resulting in a net benefit to ratepayers.

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<sup>7</sup> Exhibit 26189-X0026, AP Pioneer Pipeline Disposition Argument, PDF page 9.

<sup>8</sup> Exhibit 26189-X0026, AP Pioneer Pipeline Disposition Argument, PDF page 4.

18. In this proceeding, ATCO Pipelines requested that the Commission issue a declaration, pursuant to Subsection 26(4) of the *Gas Utilities Act*, that Subsection 26(2)(d) does not apply to the proposed transfer to NGTL of the 29.9-km westerly segment of the Pioneer pipeline and associated facilities that are within NGTL's geographic service area. In the alternative, ATCO Pipelines requested approval to transfer that portion of the pipeline to NGTL, pursuant to Subsection 26(2)(d) of the *Gas Utilities Act*.

19. The Commission finds that granting ATCO Pipelines an approval under Subsection 26(2)(d) is the proper form of relief in these circumstances. In considering whether approval of the applications is in the public interest, the Commission has relied upon ATCO Pipelines' description of the terms and conditions of the proposed transaction with NGTL. Granting an approval under Subsection 26(2)(d) ensures that the material terms of the proposed transaction upon which the Commission has relied will remain unaltered, whereas granting a declaration that Subsection 26(2)(d) does not apply to "any transaction" concerning the sale of the pipeline segment may allow ATCO Pipelines to alter a material term of the proposed transaction without notice to or approval from the Commission.

20. The Pioneer pipeline has been under the regulatory oversight of the Alberta Energy Regulator, pursuant to the *Pipeline Act* and its regulations, since it was constructed in 2018-2019. The Commission considers that the pipeline would have been constructed, and has been operated, in accordance with modern construction practices, sound engineering principles, and all regulatory requirements. None of the parties who participated in this proceeding suggested otherwise or that any harm or adverse effects would result from a transfer of the 29.9 km western portion of the existing pipeline to NGTL.

21. The Commission considers that because the NGTL and ATCO Pipelines systems are operated collaboratively as an integrated system, the service quality and reliability will be unchanged due to the asset transfer. Under integration, assets are typically transferred between NGTL and ATCO Pipelines to align with each utility's geographic service footprint. In this instance, ATCO Pipelines is proposing to sell and transfer assets (and related revenue requirement) that fall into NGTL's footprint, on a cost recovery basis. NGTL's ownership portion of the acquired pipeline facilities is \$62,500,000, plus \$218,000 in due diligence and commercial activities costs and its portion of capital upgrade costs. As both NGTL and ATCO Pipelines are subject to regulatory oversight by their respective regulatory agencies, the Commission is satisfied that the ownership transfer will not affect service quality or reliability and there will be no negative rate impacts to ratepayers.

22. The Commission agrees that the proposed ownership transfer to NGTL is consistent with previously approved asset swaps under integration found by the Commission to meet the no harm test, and that the transfer will align the parties' interests with their respective geographic footprints with no adverse effects to customers.

23. In light of the foregoing, the Commission finds that the proposed transfer to NGTL of the 29.9 km western portion of the existing pipeline that is within NGTL's footprint meets the no harm test, is consistent with the Integration Agreement, and supports the overall benefits of integration as identified by the Commission in previous decisions.

24. For the reasons previously discussed, the Commission finds that the pipeline transfer is in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*.

## 6 Decision

25. Pursuant to Subsection 26(2)(d) of the *Gas Utilities Act*, the Commission approves the transfer of lines 1 and 2 under Licence 60496, as amended, from ATCO Gas and Pipelines Ltd. to NOVA Gas Transmission Ltd. The Commission approves the amendment to Licence 60496 pursuant to Section 11 of the *Pipeline Act* and Section 4.1 of the *Gas Utilities Act*.

26. The amended licence will be issued subsequent to the issuance of those in Proceeding 25937.

Dated on June 15, 2021.

### Alberta Utilities Commission

*(original signed by)*

Anne Michaud  
Vice-Chair

*(original signed by)*

Cairns Price  
Commission Member