



ATCO Gas and Pipelines Ltd.

Lethbridge East Lateral Pipeline

August 5, 2022

Alberta Utilities Commission
Decision 27102-D01-2022
ATCO Gas and Pipelines Ltd.
Lethbridge East Lateral Pipeline
Proceeding 27102
Application 27102-A001

August 5, 2022

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1 Decision summary

1. In this decision, the Alberta Utilities Commission considers whether to approve an application by ATCO Gas and Pipelines Ltd. to construct and operate 9.4 kilometres of new high pressure natural gas pipeline, and an associated research control and gate station. The new pipeline and research control and gate station have been proposed to provide natural gas service to customers in and near the city of Lethbridge.

2. After consideration of the record of the proceeding, and for the reasons in this decision, the Commission finds that approval of the project is in the public interest, having regard for the need for the project and the social, economic and other effects of the project, including its effects on the environment.

2 Introduction

2.1 Application details

3. ATCO Gas and Pipelines Ltd., by Application 27102-A001 registered on January 18, 2022, filed an application for approval to install approximately 9.4 kilometres of new 219.1-millimetre natural gas pipeline, under Licence 2027, to replace a section of the existing Lethbridge East Lateral Pipeline within Lethbridge County. The proposed pipeline would tie into ATCO's existing Lethbridge Mainline West Transmission Pipeline at a previously approved valve assembly location,¹ and would supply natural gas to the proposed research control and gate station (Legal Subdivision 3, Section 3, Township 9, Range 21, west of the Fourth Meridian) at the south end of the pipeline. ATCO submitted that the proposed pipeline and the research control and gate station (collectively, the project) are required to ensure safe and reliable natural gas service to the customers in and near the city of Lethbridge.

4. The proposed pipeline would replace a section of the existing 15.7-kilometre long Lethbridge East Lateral Pipeline that will eventually be transferred to ATCO Gas for conversion to low-pressure distribution service, as part of ATCO's integrity management plan for high-pressure pipelines.

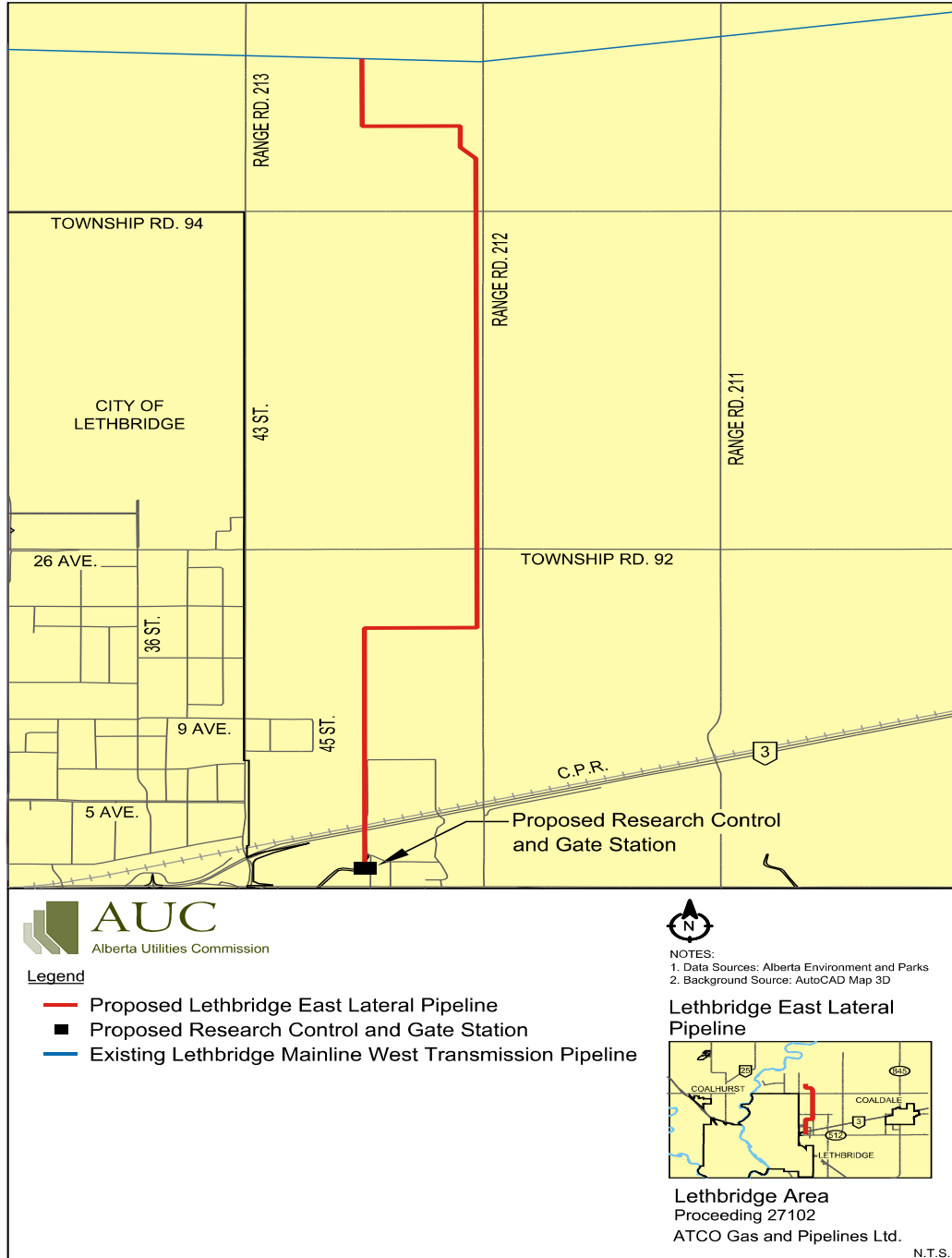
5. ATCO stated that the need for the project was established as part of ATCO's Lethbridge Urban Pipeline Upgrade (LUPU) program, approved as part of ATCO Pipeline's 2021-2023 General Rate Application in Decision 25663-D01-2021.²

¹ Decision 27074-D01-2022: ATCO Gas and Pipelines Ltd. – Lethbridge Urban Pipeline Upgrade, Proceeding 27074, Application 27074-A001, January 11, 2022.

² Decision 25663-D01-2021: ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. 2021-2023 General Rate Application, Proceeding 25663, March 1, 2021.

6. Figure 1 below depicts the applied-for route and the location of the research control and gate station proposed in the application.

Figure 1: Proposed project



7. A participant involvement program was completed for this project in accordance with Section 13 of Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines.*

8. ATCO retained Acoustical Consultants Inc. to prepare a noise impact assessment for the proposed research control and gate station.³ The assessment indicated that noise levels would be in compliance with Rule 012: *Noise Control*.
9. ATCO retained CH2M Hill Canada Ltd. (Jacobs) to prepare an environmental evaluation report, preconstruction site assessment and environment protection plan for the project. ATCO stated that during construction it would comply with the requirements of the *Guide for Pipelines Pursuant to the Environmental Protection and Enhancement Act and Regulations* and with industry best practices.
10. ATCO confirmed that it has executed a temporary license of occupation agreement with Agricultural and Agri-Food Canada for the project, specific to the federal lands impacted by the project.
11. A *Historical Resources Act* clearance was received for the proposed construction activities.
12. ATCO indicated that:
 - a. A *Water Act Code of Practice* notification would be submitted to the Alberta Energy Regulator at least 14 days prior to construction.
 - b. A highway crossing permit would be obtained prior to the installation of the proposed pipeline. A railroad crossing agreement is already in place.

2.2 Commission process for assessing new gas utility pipeline applications

13. Approval for new gas utility pipelines in Alberta generally follows two separate application processes. In the first application process (rates process) in which the gas utility seeks approval of rates to recover its prudently incurred costs, the gas utility requests the Commission's approval of forecast capital expenditures for new pipeline facilities in the context of a general rate application made pursuant to the *Gas Utilities Act*. In its general rate application, the gas utility includes a business case for the proposed new pipeline that describes the need or justification for the project, the alternatives available to meet that need, and the utility's choice of the best alternative to meet the need. In Decision 23799-D01-2019, the Commission described how it assesses the need for new gas utility pipelines proposed in a general rate application:

The Commission's assessment of the business case is economic in nature and includes a cost benefit analysis, supply-demand forecasts, safety and security of supply and rate impact analyses. However, there is generally little consideration of site-specific impacts and, consequently, potentially-affected landowners do not usually participate in the general rate application process.⁴

14. In the second application process (facility process), the gas utility seeks the Commission's approval to construct and operate new pipeline facilities, pursuant to the

³ Exhibit 27102-X0010, ATCO Lethbridge Research Control Gate Station Noise assessment.

⁴ Decision 23799-D01-2019: ATCO Gas and Pipelines Ltd., Pembina-Keephills Transmission Pipeline Project, Proceeding 23799, Application 23799-A001, August 6, 2019, paragraph 8.

Pipeline Act and the *Gas Utilities Act*. The facility application generally focuses on the site-specific impacts of the project. When deciding whether to approve the facility application, the Commission must first determine if the facilities proposed in the application satisfy the need or justification for a new gas utility pipeline that was identified and approved in the rates process. If so, then the site-specific impacts of the proposed facilities are assessed, in particular any adverse social, economic or environmental effects arising from the facility application, to determine if approval of the proposed facilities is in the public interest.

15. In this proceeding, ATCO requested approval to construct and operate the project in order to meet the need that was previously approved by the Commission in Decision 25663-D01-2021.

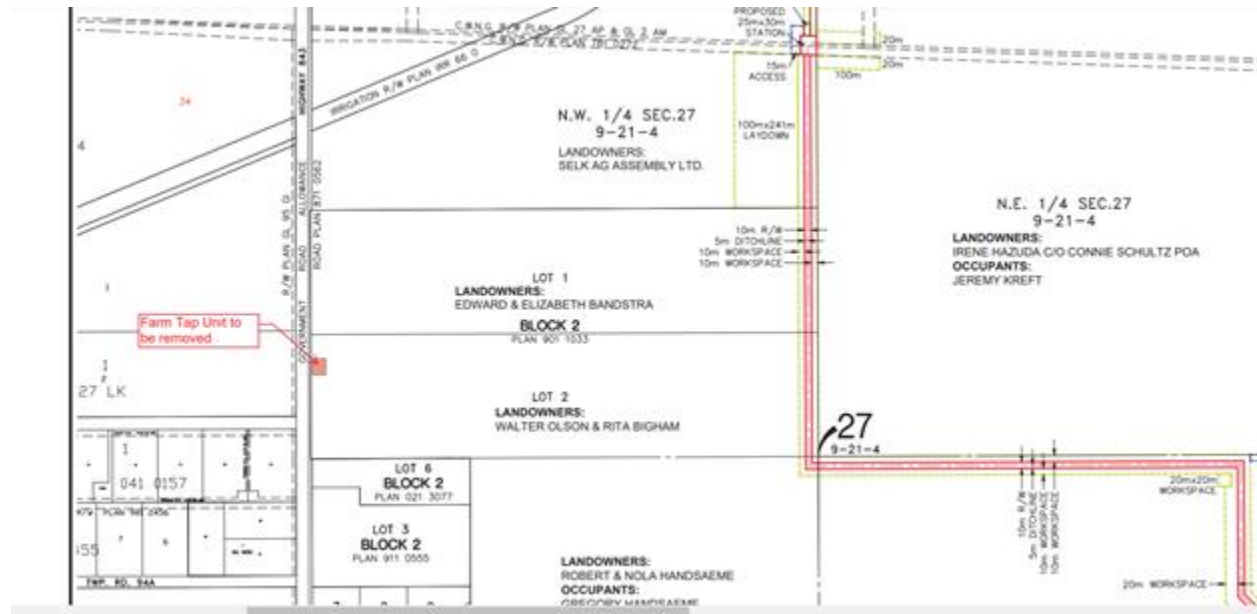
2.3 Interveners

16. The Commission issued a notice of application on February 2, 2022 and received statements of intent to participate (SIP) from Michael Vucurevich and from Rita Bigham. In addition, the Commission received three returns from the mailed-out notices, and subsequently requested updated addresses from ATCO. ATCO provided updated addresses and the notice was reissued with a new submission deadline of March 18, 2022 for SIPs. There were no new submissions received in response to the second notice.

17. M. Vucurevich initially expressed concern with the proposed location of the pipeline right-of-way. He indicated that the right-of-way should be as close to the property line as possible in order to minimize the adverse effects that the pipeline would have on future land development projects. On March 3, 2022, M. Vucurevich confirmed in an email, filed by ATCO, that the concerns identified in his SIP had been addressed by ATCO. Subsequently, he withdrew his objection to the project.

18. R. Bigham is a registered co-owner of Plan 9011033, Block 2, Lot 2. She requested that the project, as applied for, not be approved because the proposed pipeline would negatively impact property value and limit potential future development of the land. R. Bigham expressed that the negative impact would remain until such time that the pipeline is removed and the land restored to its original state. R. Bigham also expressed concern about ATCO's delay in the removal of an abandoned Farm Tap Unit on her land. The following figure,⁵ excerpted from ATCO's application material, shows R. Bigham's land, the location of the proposed pipeline outlined in red on her land, and the location of the Farm Tap Unit she identified.

⁵ Portion of Exhibit 27102-X0022, 219mm Lethbridge East - Route with Landowner Names.

Figure 2: Route with landowner names

19. The Commission granted standing to R. Bigham based on the fact that she owned or occupied land on which the proposed pipeline and associated right-of-way would be located. As required by Section 9 of the *Alberta Utilities Commission Act*, the Commission held a hearing, in written form, to consider the application and R. Bigham's concerns with the project.

3 Written evidence and argument

20. The issues in this proceeding generally arise in two categories. First, ATCO must demonstrate that its proposed pipeline project meets the need for the gas utility pipeline development that was approved in Decision 25663-D01-2021. Second, the Commission must decide whether approval of the project is in the public interest, having regard to the social and economic effects of the proposed pipeline and related facilities and their effects on the environment. The effect of the project on R. Bigham and her interests are relevant to this part of the Commission's assessment of the application.

3.1 The need for the project

21. ATCO stated that the project is part of the LUPU program, the business case for which was recently presented to the Commission in ATCO's 2021-2023 General Rate Application. ATCO also stated that the Commission had previously addressed the need for the LUPU program in the context of ATCO's 2019-2020 General Rate Application (Decision 23793-D01-2019), and that the Commission has approved the construction and operation of other gas utility pipelines associated with the LUPU program.

22. R. Bigham did not specifically address whether the project met the need for gas utility pipeline development that was identified in Decision 25663-D01-2021 or otherwise address the gas utility pipeline needs in the Lethbridge area, except to submit that approval of the pipeline would enable the city of Lethbridge's continued reliance on fossil fuels. Her written evidence

was generally focused on the need to reduce the global reliance on, transportation of and trade in fossil fuels. She said that these concerns were in addition to her concerns about her land being directly and negatively impacted.

23. R. Bigham stated that ATCO's motives are profit-driven, and indicated that ATCO sells and supplies natural gas without consideration being given to the environmental impacts that pipeline projects, such as this one, have on the environment. R. Bigham stated that ATCO and others whose profits are tied to the production, transportation and delivery of natural gas are exacerbating global warming and other devastating climate disasters. R. Bigham submitted that the construction of the proposed pipeline would deliver more natural gas to the city of Lethbridge and thereby enable ongoing and increased reliance on fossil fuel consumption. She also stated that the extent to which leaks occur from fossil fuel infrastructure and equipment, as well as emissions from deliberate flaring and venting operations, will result in a profoundly negative impact on all living beings and on the local climate. R. Bigham further stated that the consumption of fossil fuels will result in extreme climate disasters and increased health-care costs, and will drive millions of people into poverty.

24. ATCO stated that R. Bigham's concerns about climate change and greenhouse gas emissions are the primary focus of her evidence and that this proceeding is not the appropriate forum for her to raise such concerns. ATCO also stated that these concerns are general in nature and largely relate to public policy, and they are not relevant to the project.

3.2 Impacts from the project

25. ATCO stated that it has provided a significant amount of detailed evidence and information that address environmental concerns. This includes the environmental protection plan (EPP),⁶ environmental evaluation (EE),⁷ noise impact assessment, participant involvement summary and other information regarding the project as requested by the Commission. ATCO stated that it retained Jacobs as a third-party environmental consultant to prepare the EPP and EE for this project, and that these documents were designed to identify and effectively manage the risk of adverse environmental effects associated with the project.

26. ATCO submitted that the application is consistent with the economic, orderly and efficient development in the public interest of pipeline facilities in Alberta.

27. R. Bigham's written evidence reiterated her concerns about the project directly and negatively impacting her property. These concerns include diminished property value and the loss of productive agricultural land. R. Bigham stated that if this project proceeds, ATCO will appropriate more of her land through a permanent right-of-way registered against the land title. She also indicated that an AUC approval would signal that the needs of the city of Lethbridge supersede those of her and her family.

28. R. Bigham also stated that ATCO issued a veiled threat should she and her co-owner not agree to sign off on ATCO's terms without any objections to its pipeline construction. In response to an information request from the Commission requesting her to elaborate, she

⁶ Exhibit 27102-X0011, Lethbridge_UPU_PCSA-EPP_1Dec21.

⁷ Exhibit 27102-X0012, ATCOLethbridge_EE_12172021_Final.

explained that in an email (which she attached), ATCO stated if we do not capitulate to their proposed terms, they will take action to appropriate a greater portion of our private land.⁸

29. ATCO addressed this matter in its reply evidence. ATCO also provided a copy of the email that was sent from its land representative to R. Bigham on December 13, 2021. ATCO stated that the purpose of the email was to explain “the differences between negotiated agreements and right-of-entry orders,” to provide “an updated offer which reflected an increase in compensation for landowners in the area,” and to outline the next steps in the AUC’s application process for the project as well as other potential steps that may be required for ATCO to secure land access rights and complete installation of the pipeline.

30. ATCO’s reply evidence also responded to R. Bigham’s concerns regarding permanent property damage along the pipeline route and ATCO’s environmental mitigation measures. ATCO indicated that a detailed EPP was prepared by a qualified third-party environmental consultant, and it contained mitigative measures that would adhere to provincial environmental regulations, practices and procedures. ATCO has indicated that it is committed to the EPP which was designed to prevent or minimize any land-related impacts during construction of the pipeline.

31. Specifically in response to R. Bigham’s concerns regarding flaring operations associated with the project, ATCO stated that the two required flaring operations would be one-time events, with each one lasting up to two hours. ATCO indicated that these are necessary operations and they would not present any risk to people or the environment in proximity of the project.

32. ATCO also stated that it had made efforts to resolve R. Bigham’s concerns regarding the unused Farm Tap Unit and that it had previously indicated to her that it could not be removed from her property at that time. ATCO stated it had done the following:

- a. Communicated with R. Bigham on a regular basis via telephone, text message, and email on matters relating to the application, compensation, and AUC processes.
- b. Prepared and sent numerous emails to R. Bigham regarding ATCO’s efforts to remove the Farm Tap Unit and related compensation for land access.
- c. Provided R. Bigham with two detailed letters describing ATCO’s anticipated process and timelines associated with the removal of the Farm Tap Unit.
- d. Attempted to schedule meetings with R. Bigham to further discuss and address concerns in relation to ATCO’s plans to remove the Farm Tap Unit.

4 Commission findings

33. The Commission has reviewed the application and has determined that the information requirements specified in Rule 007 have been met. Additionally, the Commission finds that ATCO’s participant involvement program satisfied the requirements of Rule 007.

⁸ Exhibit 27102-X0042, Response to AUC Information Request to Rita Bigham.

34. In accordance with Section 17 of the *Alberta Utilities Commission Act*, in addition to any other matters it may or must consider, the Commission must decide if approval of the project is in the public interest having regard to its social and economic effects and effects on the environment. The Commission considers that the public interest will be largely met if an application complies with existing regulatory standards, and the project's public benefits outweigh its negative impacts, including those experienced by more discrete members of the public.

35. The Commission has considered the evidence and arguments of the parties with respect to the project, including the questions raised regarding environmental impact and greenhouse gas emissions.

36. The project is part of ATCO's LUPU program and the need was approved as part of the Commission's approval of ATCO's 2021-2023 General Rate Application in Decision 25663-D01-2021. R. Bigham did not state or suggest in her evidence or argument that the project did not meet the need identified in the LUPU program. The Commission finds that this project meets the previously established need by replacing a section of the existing Lethbridge East Lateral Pipeline. It is intended to accommodate the current and future demand for gas supply, while also ensuring the long-term reliability of the natural gas delivery system in the Lethbridge region.

37. The Commission finds that the environmental information required for the project has been sufficiently addressed in the EPP and EE and the preconstruction site assessment, and that the assessments and recommendations contained in those documents are reasonably protective of the environment. The Commission accepts ATCO's commitment to adhere to the EPP to mitigate the risk of environmental impacts associated with this project. The Commission also finds that ATCO's proposed flaring operation associated with the project is in compliance with Rule 007.

38. The Commission finds that R. Bigham's concerns about the impact of fossil fuel use on the environment are general in nature and that she did not establish how they are directly relevant to the project. Her concerns regarding climate change and greenhouse gas emissions were largely associated with government policies and global social behaviour rather than any impact the proposed pipeline might have on the environment. Although she did refer to the loss of use of agricultural land as a direct environmental impact, she did not identify any particular agricultural land: whether her own land or another owner's land. The Commission notes that ATCO proposed a 10-metre right-of-way and combined 20 metre temporary workspace along the east boundary of R. Bigham's property. R. Bigham did not provide any information about how that portion of her property is currently being used or is planned to be used in the future, or whether her land is being or will be put to agricultural uses. The Commission is therefore unable to conclude that there will be any loss of agricultural land on R. Bigham's property if the project is approved.

39. The Commission notes that R. Bigham's concern regarding diminished property value was not supported by expert opinion evidence that is specific to her property. The Commission has consistently stated that property valuation is a complex and technical matter that is

influenced by a wide variety of contextual and circumstantial factors.⁹ In accordance with the Commission's well-established practice, it cannot make a finding on property value impacts without expert evidence that is specific to the particular property. No such information was provided in this proceeding. Accordingly, the Commission cannot make any finding on property value impacts attributable to the project.

40. The Commission notes that the Farm Tap Unit that R. Bigham wanted ATCO to remove was scheduled to be removed by ATCO between June 20, 2022 and June 30, 2022. The Commission assumes that has occurred and that no further consideration of the matter is needed.

41. The Commission has considered the evidence about the communication sent to R. Bigham by ATCO on December 13, 2021, which she perceived to be a veiled threat of more severe consequences if she did not agree to ATCO's proposal for the project. ATCO described the communication as a factual account of the AUC's process and the potential steps and outcome that would likely arise if a right-of-way agreement could not be concluded, and ATCO had to resort to applying for a right-of-entry order.

42. The Commission has reviewed ATCO's email message to R. Bigham and finds that the intent of the message was to convey the information that ATCO stated it was attempting to share with R. Bigham. The main point of the email appears to be that a Land and Property Rights Tribunal order would likely grant ATCO a 30-metre right-of-way instead of the 10 metre right-of-way and 20 metre temporary workspace that ATCO was attempting to negotiate. Viewed in that light, the Commission considers that ATCO's characterization of the email is accurate, and that sharing this information with R. Bigham was intended to better inform her decision-making.

43. However, acknowledging that the Commission has no insight into the relationship between the parties at that point of the negotiations (in particular, whether it was infused with emotion or conflict), the Commission can fully appreciate that R. Bigham may reasonably have perceived the purpose of the email to be that of conveying a threat of less favourable consequences for R. Bigham if she did not accept ATCO's proposal.

44. The Commission is unable to conclude that ATCO's email message was intended to intimidate or threaten R. Bigham, however, it clearly and regrettably was perceived that way by her. Ultimately, the Commission cannot find misconduct by ATCO in relation to the email message. What emerges from this situation is a reminder for parties that they need to be clear and forthright in their negotiations and communications so that unfortunate misunderstandings like this are avoided.

45. Based on all the foregoing, including the commitment made by ATCO to adhere to the EPP in order to manage the risk of adverse environmental effects associated with the project, the Commission considers approval of the project to be in the public interest in accordance with Section 17 of the *Alberta Utilities Commission Act*.

⁹ Decision 2011-436: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Heartland Transmission Project, November 1, 2011, PDF page 24, paragraph 87.

5 Decision

46. Pursuant to Section 11 of the *Pipeline Act* and Section 4.1 of the *Gas Utilities Act*, the Commission approves the installation of approximately 9.4 kilometres of new 219.1-millimetre natural gas pipeline, and the associated research control and gate station. The Commission grants ATCO Gas and Pipelines Ltd. the licence as set out in Appendix 1 – Gas Utility Pipeline Licence 2027 (Appendix 1 will be distributed separately).

Dated on August 5, 2022.

Alberta Utilities Commission

(original signed by)

Vera Slawinski
Commission Member

Appendix A – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
ATCO Gas and Pipelines Ltd. Dalton Schwab
Rita Bigham Michael Vucurevich

Alberta Utilities Commission
Commission panel Vera Slawinski, Commission Member
Commission staff Gary Perkins (Commission counsel) Neil Behal Hussain Shamji

Appendix B – Written hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative
ATCO Gas and Pipelines Ltd. Dalton Schwab
Rita Bigham