



450 – 1 Street SW  
Calgary, Alberta T2P 5H1

Tel: (403) 920-2603  
Email: [bernard\\_pelletier@tcenergy.com](mailto:bernard_pelletier@tcenergy.com)

December 13, 2023

Filed Electronically

Canada Energy Regulator  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8

**Attention: Ramona Sladic, Secretary of the Commission**

Dear Ramona Sladic:

**Re: Foothills Pipe Lines Ltd. (Foothills) - Request for Approval under Subsection 21(6) of the *Northern Pipeline Act* (NPA) (Application)**

Foothills and TransCanada PipeLines Limited (TCPL) are parties to a shareholders agreement originally made August 4, 1977, and subsequently amended on seven separate occasions related to ownership of the Foothills pipeline system (Shareholders Agreement). Subsection 21(6) of the NPA and the Certificates of Public Convenience and Necessity declared under ss. 21(1) of the NPA stipulate that any change which alters, terminates or amends the Shareholders Agreement requires the approval of the Commission of the Canada Energy Regulator (Commission or CER) and of the Governor in Council (GIC).

Foothills and TCPL are seeking to reorganize their ownership interests in three Foothills pipeline system subsidiaries, as well as adding Foothills Pipe Lines Holding Company Ltd. (Foothills Holding), a new entity wholly owned by TCPL, to the ownership structure. As a result, the Shareholders Agreement will need to be amended. The proposed Amended and Restated Shareholders Agreement is provided as Appendix 1 to this Application, while an unofficial consolidation of the Shareholders Agreement in its current form reflecting all seven previously approved amendments is provided as Appendix 2. The purpose of the reorganization is to facilitate potential future minority ownership in the three Foothills subsidiaries with operating facilities, including possible participation from Indigenous groups, through the purchase of an interest in Foothills Holding.

Foothills and TCPL hereby request approval from the Commission for the proposed changes to the Shareholders Agreement. Under separate cover, we are writing to the Minister of Energy and Natural Resources of Canada, the Minister responsible for the Northern Pipeline Agency, requesting the Minister's office to initiate and obtain the necessary GIC approval, a copy of which is attached as Appendix 3 to this Application.

## **Background**

Seven previous amendments to the original Shareholders Agreement have received approval from the Commission's predecessor (the National Energy Board or NEB) and the GIC. The last approved amendment occurred in 2003 when TCPL purchased all of Westcoast Energy Inc.'s interest in Foothills along with its minority shareholder interest in Foothills Pipe Lines (North B.C.) Ltd. and Foothills Pipe Lines (Sask.) Ltd.<sup>1</sup>

As reflected in the Seventh Amending Agreement to the Shareholders Agreement, TCPL owned 51% of Foothills and 3399516 Canada Ltd., a wholly owned entity of TCPL, owned the remaining 49%. When 3399516 Canada Ltd. was dissolved in 2018, its ownership interest in Foothills rolled up to TCPL, making TCPL the 100% direct owner of Foothills.

In addition to its 100% ownership interest in Foothills, TCPL holds a 49% ownership interest in each of Foothills Pipe Lines (Alta) Ltd., Foothills Pipe Lines (South B.C.) Ltd., and Foothills Pipe Lines (Sask.) Ltd. Collectively, these three entities are referred herein as the "Foothills Subsidiaries". The Foothills Subsidiaries are identified in the NPA as the entities holding Certificates for Zones 6 through 9,<sup>2</sup> the only Foothills zones that were constructed and are currently in operation. Foothills owns the remaining 51% of the Foothills Subsidiaries.

The same ownership structure also applies to Foothills Pipe Lines (North B.C) Ltd., while Foothills holds 100% of Foothills Pipe Lines (South Yukon) Ltd. and Foothills Pipe Lines (North Yukon) Ltd. These entities are identified in the NPA as holding Certificates for zones that were not constructed and are not in operation.

## **Proposed Transaction**

Foothills Holding is a newly formed corporation incorporated under the laws of Canada and governed under the *Canada Business Corporations Act*, and is wholly owned by TCPL. With the approval of the Commission and GIC, TCPL will reorganize its direct 49% ownership interest in the three Foothills Subsidiaries into a 49% indirect ownership interest by transferring its interest to Foothills Holding (Reorganization).

There are no changes proposed to the ownership interests in Foothills Pipe Lines (North B.C) Ltd., Foothills Pipe Lines (South Yukon) Ltd., Foothills Pipe Lines (North Yukon) Ltd., or Foothills. For ease of reference, Figure 1 provides a comparison of the current and proposed ownership structure of the various Foothills entities.

---

<sup>1</sup> NEB letter decision dated June 26, 2003 (NEB File 3400-F006-44).

<sup>2</sup> See Annex II of the NPA.

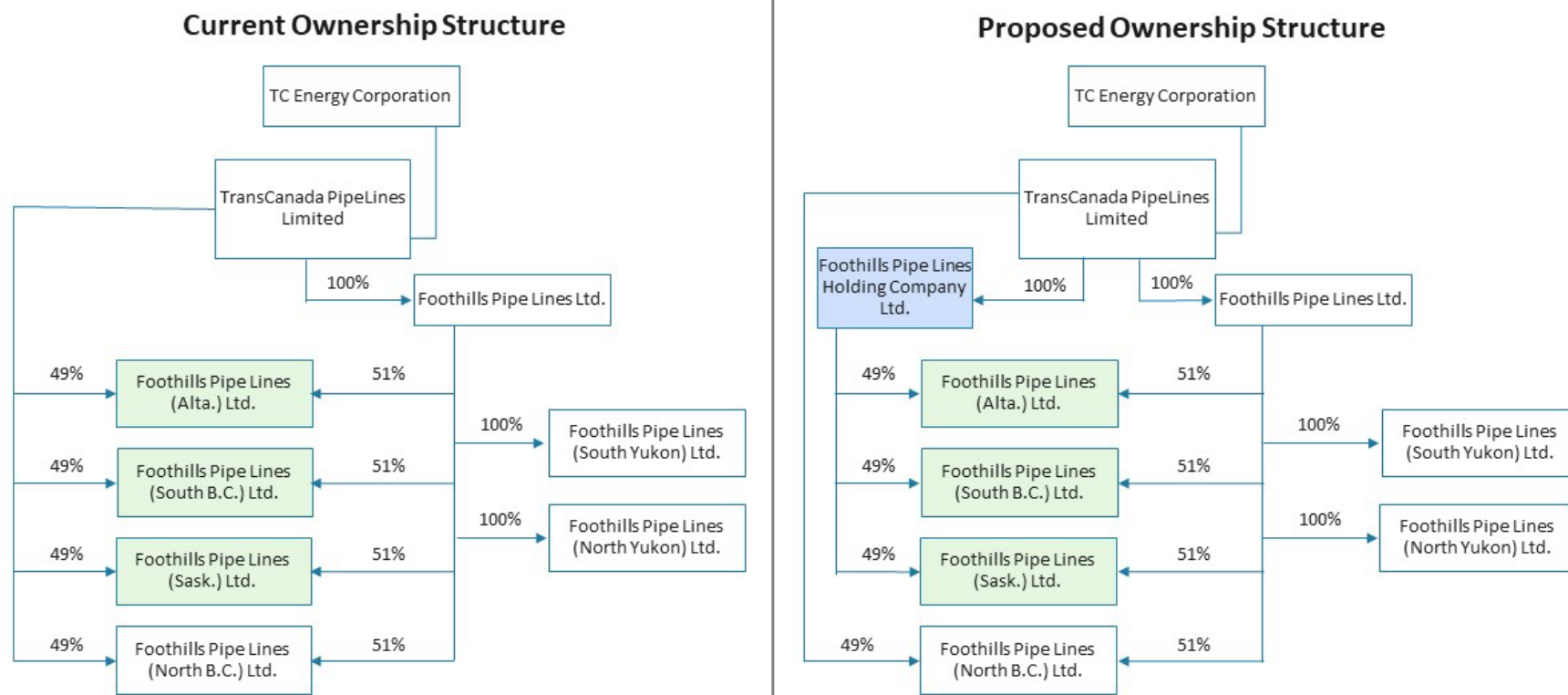


Figure 1 – Current and Proposed Ownership Structure of the Foothills Entities

## **Summary of Amendments to the Shareholders Agreement**

The primary changes to the Shareholders Agreement result from the proposed transfer of TCPL's 49% ownership of the Foothills Subsidiaries to Foothills Holding and reflect the 100% ownership of Foothills by TCPL following the dissolution of 3399516 Canada Ltd. In addition, some housekeeping updates were made to modernize the Shareholders Agreement.

These amendments to the Shareholders Agreement do not alter the parties' obligations to seek consent of the Commission and GIC for any future amendments to the Shareholders Agreement pursuant to section 21(6) of the NPA nor do they abrogate the jurisdiction or applicability of the NPA.

The following summarizes the changes between the current Shareholders Agreement and the proposed Amended and Restated Shareholders Agreement:

- Table A in the Amended and Restated Shareholders Agreement reflects the new share structure of the Foothills Subsidiaries being 51% owned by Foothills and 49% owned by Foothills Holding; ownership in all other entities remains unchanged
- Section 2 of the Shareholders Agreement which sets out the governance structure in relation to the composition of the Board of Directors, quorum and correlating voting rights, has also been updated in the Amended and Restated Shareholders Agreement to better align to the revised ownership structure
- Section 3(a) of the Shareholders Agreement which sets out the share ownership and Board Composition of all subsidiaries is now reflected in section 4 of the Amended and Restated Shareholders Agreement
- Sections 4 and 6 of the Shareholders Agreement which set out certain voting restrictions are now reflected in section 6 of the Amended and Restated Shareholders Agreement.
- Section 5 of the Shareholders Agreement which includes content related to a right of first refusal has been removed as this right is no longer required with TCPL being the 100% owner of Foothills
- Sections 7 through 10 remain the same in both agreements, other than updating the parties and to reflect the change from the NEB to the CER
- Section 11 of the Shareholders Agreement is now split into sections 11 and 12 of the Amended and Restated Shareholders Agreement but maintains the requirement that the parties must continue to own their proportionate shares of either the Jointly Held or Solely Held Subsidiaries unless they obtain written consent of the CER

## **Engagement**

The Reorganization and resulting proposed amendments to the Shareholders Agreement will not alter the Foothills pipeline system's physical footprint nor impact its operations. There is no impact to transportation service, tolls or tariff for the Foothills pipeline system as a result of the Reorganization. Further, it will not have any impact on the interests of existing rightsholders and stakeholders. Accordingly, no engagement activities specific to the Application were considered necessary nor were any implemented.

December 13, 2023

Ramona Sladic

Page 5

### **Commercial Third Parties Notification**

On August 22, 2023, Foothills informed the Foothills Industry Committee (Committee) of the Reorganization including its rationale and resulting effect of amending the Shareholders Agreement. Foothills committed to inform Foothills' customers in the event future minority ownership through the ownership of Foothills Holding were to occur. Foothills asked Committee members to raise any concerns or ask questions outside the Committee by August 29, 2023. Foothills is not aware of any Committee member concern with either the Reorganization or its required amendments to the Shareholders Agreement.

Foothills confirms that it will notify its customers of this filing and post a copy on its website at:

<http://www.tccustomerexpress.com/934.html>.

### **Relief Sought and Timing**

Considering all of the foregoing, Foothills respectfully requests the Commission:

- approve the Amended and Restated Shareholders Agreement in accordance with s. 21(6) of the NPA; and
- grant any further or other relief as Foothills may request or the Commission may consider appropriate pursuant to section 68 of the CER Act and/or as the NPA may allow.

Upon receipt of the necessary approvals from the Commission and GIC, the parties will execute the Amended and Restated Shareholders Agreement to be effective the first day of the month at least 30 days following receipt of these approvals. With the understanding that GIC consideration is likely to follow the Commission decision, Foothills respectfully requests Commission approval by February 1, 2024 in order to support implementation of the Amended and Restated Shareholders Agreement as contemplated during the second quarter of 2024.

If the Commission has questions about the Application, please contact the undersigned or Eman Tadayoni, Senior Regulatory Project Manager by phone at (403) 920-4512 or by email at [eman\\_tadayoni@tcenergy.com](mailto:eman_tadayoni@tcenergy.com).

Yours truly,

**Foothills Pipe Lines Ltd.**

*Original signed by*

Bernard Pelletier  
Director, Regulatory Tolls and Tariffs  
Canadian Natural Gas Pipelines

Enclosure

cc: Foothills Firm Customers  
Interruptible Customers and Interested Parties

**Appendix 1**

Unexecuted Copy of the  
Amended and Restated Shareholders Agreement

**AMENDED AND RESTATED SHAREHOLDERS AGREEMENT**

DATED this \_\_\_\_ day of \_\_\_\_\_, 2024

BETWEEN:

TRANSCANADA PIPELINES LIMITED  
An amalgamated Canadian Corporation  
(hereinafter “**TCPL**”)

And

FOOTHILLS PIPE LINES LTD.  
A Canadian Corporation  
(hereinafter “**FPL**”)

And

FOOTHILLS PIPE LINES HOLDING COMPANY LTD.  
A Canadian Corporation  
(hereinafter “**FPHC**”)

WHEREAS TCPL, FPL and 3399516 Canada Ltd. (“**TC Subco**”) were parties to a Shareholders Agreement dated August 4, 1977, as amended previously by Shareholders Agreement Amendment dated August 30, 1977, by Second Amending Agreement date May 4, 1978, by Third Amendment to Shareholders Agreement dated July 16, 1981, by Joinder and Fourth Amending Agreement to Shareholders Agreement dated March 30, 1994, by Fifth Amending Agreement to Foothills Shareholders Agreement dated December 8, 1997, by Sixth Amending Agreement to Foothills Shareholders Agreement dated November 23, 1999, and by Joinder and Seventh Amending Agreement to Foothills Shareholders Agreement dated June 6<sup>th</sup>, 2003 (the “**Shareholders Agreement**”).

WHEREAS the National Energy Board, now Canada Energy Regulator (“**CER**”), delivered a decision on July 4, 1977 (“**Decision**”) to issue Certificates of Public Convenience and Necessity to FPL and its subsidiaries for the construction and operation of the pipelines described in the said Decision (the “**Pipelines**”);

WHEREAS approval of the Governor in Council for the issuance of such Certificates was required and obtained;

WHEREAS the approval of both the CER and the Governor in Council (“**GIC**”) (pursuant to section 21(6) of the *Northern Pipeline Act*) is required with respect to any amendment, termination or alteration of the Shareholders Agreement;

WHEREAS TC Subco, a wholly-owned subsidiary of TCPL, was dissolved on December 18, 2018 and its 49% Class A Common Share interest in FPL was transferred and assigned to TCPL, resulting in TCPL being the sole shareholder of FPL;

WHEREAS on July 18, 1977, FPL incorporated six subsidiary companies (the “**FPL Subsidiary Companies**”) under the Canada Business Corporations Act, as follows:

Foothills Pipe Lines (Alta.) Ltd.	Foothills Pipe Lines (North B.C.) Ltd.
Foothills Pipe Lines (Sask.) Ltd.	Foothills Pipe Lines (North Yukon) Ltd.
Foothills Pipe Lines (South B.C.) Ltd.	Foothills Pipe Lines (South Yukon) Ltd.

WHEREAS pursuant to a Purchase and Sale Agreement dated \_\_\_\_\_, 2024 and with both CER and GIC consent, TCPL sold, assigned and transferred its 49% interest in Foothills Pipe Lines (Alta.) Ltd., Foothills Pipe Lines (Sask.) Ltd. and Foothills Pipe Lines (South B.C.) Ltd. to FPHC resulting in the following ownership/voting structure of the FPL Subsidiary Companies:

**Table A  
Ownership Structure of the FPL Subsidiary Companies**

<b>Jointly Held Entities</b>		
<b>Entity</b>	<b>Shareholder Interest</b>	<b>Interest Held</b>
Foothills Pipe Lines (Alta) Ltd.	FPL (51%) FPHC (49%)	51 Class A Common Shares 49 Class A Common Shares
Foothills Pipe Lines (Sask.) Ltd.	FPL (51%) FPHC (49%)	51 Class A Common Shares 49 Class A Common Shares
Foothills Pipe Lines (South B.C) Ltd.	FPL (51%) FPHC (49%)	51 Class A Common Shares 49 Class A Common Shares
Foothills Pipe Lines (North B.C.) Ltd.	FPL (51%) TCPL (49%)	51 Class A Common Shares 49 Class A Common Shares
<b>Entities with Sole Shareholder</b>		
<b>Entity</b>	<b>Shareholder Interest</b>	<b>Interest Held</b>
Foothills Pipe Lines (South Yukon) Ltd.	FPL (100%)	51 Class A Common Shares
Foothills Pipe Lines (North Yukon) Ltd.	FPL (100%)	51 Class A Common Shares

AND WHEREAS it is proposed that the respective FPL Subsidiary Companies would construct and operate the following pipelines:

Foothills Pipe Lines (Alta.) Ltd. -	pipeline for the transmission of Alaska gas from the British Columbia – Alberta boundary near Boundary Lake to the Alberta-Saskatchewan boundary near Empress, Alberta and to the Alberta-British Columbia boundary near Coleman, Alberta.
-------------------------------------	--



Foothills Pipe Lines (Sask.) Ltd. -	the pipeline from the Alberta-Saskatchewan boundary near Empress, Alberta to the Saskatchewan-United States border near Monchy, Saskatchewan.
Foothills Pipe Lines (South B.C.) Ltd. -	the pipeline from the Alberta-British Columbia boundary near Coleman, Alberta to the British Columbia – United States border near Kingsgate, British Columbia.
Foothills Pipe Lines (North B.C.) Ltd.-	the pipeline for the transmission of Alaska gas from the Yukon Territory – British Columbia boundary to the British Columbia – Alberta boundary near Boundary Lake.
Foothills Pipe Lines (North Yukon) Ltd. -	the pipeline from the MacKenzie River Delta area approximately parallel to the Dempster Highway connecting to the main line of Foothills South Yukon near Dawson City in the Yukon Territory (the “Dempster Link”).
Foothills Pipe Lines (South Yukon) Ltd. -	the pipeline for the transmission of Alaska gas from the Alaska – Yukon Territory border to the Yukon Territory - British Columbia boundary and partially within British Columbia.

AND WHEREAS the parties have determined to amend and restate the Shareholders Agreement in the matter set forth herein.

NOW THEREFORE in consideration of the mutual covenants and promises hereinafter set forth the parties hereto covenant and agree as follows:

**Definitions**

1. Unless the context otherwise requires, the following expressions shall hereinafter have the meaning as indicated:

“Act”	means the Canada Business Corporations Act.
“affiliate”	of a party means any individual, corporation, partnership, trust or unincorporated organization, directly or indirectly controlling controlled by or under direct or indirect common control with such party.
“Agreement”	means this Amended and Restated Shareholders Agreement.
“Alaska gas”	means the gas produced in the State of Alaska.

“Jointly Held Entities” means those FPL Subsidiary Companies whose shares are held by two or more shareholders as detailed in Table A above.

“Solely Held Entities” means those FPL Subsidiary Companies whose shares are held by one shareholder as detailed in Table A above.

“Yukon” means the Yukon Territory.

2. From and after the date hereof and during the term of this Agreement, as it relates to the Jointly Held Entities, each of FPHC, TCPL and FPL, as applicable, will vote their common shares for the governance of the Jointly Held Entities, in accordance with the Bylaws of same, so that the number of directors to be elected or appointed to the Board of Directors for each of the Jointly Held Entities will be set at a minimum of 2 and a maximum of 9 with representation of director appointments from each of the shareholders of the Jointly Held Entities.
3. A quorum for the transaction of business at any meeting of shareholders for the Jointly Held Entities shall be two persons present in person, each being a representative of a shareholder entitled to vote thereat or a duly appointed proxy for an absent shareholder so entitled and representing in person or by proxy not less than 66 2/3% of the issued and outstanding shares entitled to be voted thereat.
4. TCPL, FPHC and FPL covenant and agree to act and vote and do all such things as shall be necessary to create and maintain or cause to be created and maintained the following structure in respect of each of FPL Subsidiary Companies respectively:
  - a. Foothills Pipe Lines (Alta.) Ltd. – the voting shares shall be owned 51% by FPL and 49% by FPHC;
  - b. Foothills Pipe Lines (Sask.) Ltd. - the voting shares shall be owned 51% by FPL and 49% by FPHC;
  - c. Foothills Pipe Lines (South B.C.) Ltd. - the voting shares shall be owned 51% by FPL and 49% by FPHC;
  - d. Foothills Pipe Lines (North B.C.) Ltd. - the voting shares shall be owned 51% by FPL and 49% by TCPL;
  - e. Foothills Pipe Lines (South Yukon) Ltd. – the voting shares shall be held 100% by FPL; and
  - f. Foothills Pipe Lines (North Yukon) Ltd. - the voting shares shall be held 100% by FPL.

5. Each of FPL and FPHC covenants and agrees that it will not sell, transfer or convey its legal or equitable title in or to all or part of its holding of voting shares in Foothills Pipe Lines (Alta) Ltd., Foothills Pipe Lines (Sask.) Ltd. or Foothills Pipe Lines (South B.C.) Ltd., or enter into any voting trust or other agreement whereby it divests itself of the right to control such shares and the manner in which they are voted without prior approval of the CER and, if applicable, the other shareholders of such FPL Subsidiary Company, which approval may be given with or without conditions attached.
6. Each of FPL and TCPL covenants and agrees that it will not sell, transfer or convey its legal or equitable title in or to all or part of its holding of voting shares in Foothills Pipe Lines (North B.C.) Ltd., or enter into any voting trust or other agreement whereby it divests itself of the right to control such shares and the manner in which they are voted without prior approval of the CER and, if applicable, the other shareholders of Foothills Pipe Lines (North B.C.) Ltd., which approval may be given with or without conditions attached.
7. FPL covenants and agrees that it will not sell, transfer or convey its legal or equitable title in or to all or part of its holding of voting shares in Foothills Pipe Lines (South Yukon) Ltd. or Foothills Pipe Lines (North Yukon) Ltd., or enter into any voting trust or other agreement whereby it divests itself of the right to control such shares and the manner in which they are voted without prior approval of the CER and, if applicable, the other shareholders of such FPL Subsidiary Company, which approval may be given with or without conditions attached.
8. TCPL acknowledges and agrees that it is a fundamental condition of this Agreement that TCPL shall beneficially own and continue to own throughout the term of this Agreement not less than 51% of the issued and outstanding voting shares of FPL or the FPL Subsidiary Companies and that any transfer of shares which could result in any reduction of such percentage would require the approval of the CER.
9. TCPL, FPHC and FPL covenant and agree that the records of FPL and the FPL Subsidiary Companies will be subject to audit by the CER, and hereby declare and acknowledge that the amendments to applications dated August 2, 1977 and assignments dated August 2, 1977 and filed with the NEB were approved by the NEB expressly on the condition that this Clause 9 shall apply to the records of FPL.
10. TCPL, FPHC and FPL covenant and agree each with the other that the following are the principal objectives in respect of the Canadian portion of the Alaska Highway Gas Pipeline Project as described in the said Decision:
  - a. With respect to the portion of the pipeline across Northeastern British Columbia, TCPL or FPL will design and construct such portion in accordance with a Construction Management Agreement and TCPL will operate such portion in accordance with an Operating Agreement; both agreements to be filed with and approved by the CER;

- b. With respect to the portion of the pipeline in Alberta, TCPL or FPL will design and construct such portion in accordance with a Construction Management Agreement and TCPL will operate such portion in accordance with an Operating Agreement, both agreements to be filed with and approved by the CER;
- c. With respect to the portion of the pipeline across Southeastern British Columbia, TCPL or FPL will design and construct such portion in accordance with a Construction Management Agreement and TCPL will operate such portion in accordance with an Operating Agreement; both agreements to be filed with and approved by the CER;
- d. With respect to the portion of pipeline in Saskatchewan, TCPL or FPL will design and construct such portion in accordance with a Construction Management Agreement and TCPL or such other company as may be approved by the CER will operate such portion in accordance with an Operating Agreement, both agreements to be filed with and approved by the CER;
- e. With respect to the portion of pipeline in the Yukon, Foothills Pipe Lines (South Yukon) Ltd. or FPL will design and construct such portion in accordance with a Construction Management Agreement and Foothills Pipe Lines (South Yukon) Ltd. will operate such portion; both agreements to be filed with and approved by the CER;
- f. With respect to the portion of the pipeline from the Mackenzie River Delta area to the main line of Foothills Pipe Lines (South Yukon) Ltd., Foothills Pipe Lines (North Yukon), TCPL or FPL will design and construct such portion in accordance with a Construction Management Agreement and Foothills Pipe Lines (North Yukon) or such other company as may be approved by the CER, will (in accordance with an Operating Agreement in the case of such other company) operate such portion; both agreements to be filed with and approved by the CER;
- g. The use of the Alaska Highway Gas Pipeline Project as a main line to transport initially Alaska gas to points on the 49<sup>th</sup> parallel and subsequently to transport gas from sources in the Western Canadian Arctic to points of receipt or delivery on any of the pipeline systems existing at the time that delivery of such gas is made;
- h. All commitments and undertakings heretofore given in writing or orally by FPL, FPHC or TCPL or their respective predecessors in interest, to any duly constituted tribunals or inquires shall be maintained and complied with by FPL, FPHC, TCPL with and to the extent they are applicable unless FPL, FPHC and TCPL mutually agree to a change and such changes are approved by the CER;
- i. All commitments and undertakings heretofore given by FPL to any duly constituted tribunals or inquiries in respect of Indigenous participation are to be maintained unless FPL, FPHC and TCPL mutually agree to a change and such changes are approved by the CER;

- j. There is to be maximum use of Canadian-owned and Canadian-located firms in respect of engineering, construction, provision of materials, supplies and services in connection with the design, construction, maintenance and operation of the Pipelines; and
  - k. Each of TCPL, FPL and FPHC (in each case, both for itself and the FPL Subsidiary Companies) hereby declares and acknowledges that each portion of the pipeline, as set out in sub-clauses (a), (b), (c) and (d) of this Clause 10, and as such portion may exist from time to time by reason of the addition thereto of facilities including looping, and/or compression, although within the provincial boundaries of British Columbia, Alberta and Saskatchewan respectively and to be constructed and operated as therein set out, is nevertheless part of an international and/or interprovincial pipeline and that each such portion is and will be at all times subject to the jurisdiction of the Parliament of Canada and, in particular, subject to the provisions of *the Canadian Energy Regulator Act* and to the regulation and control of the CER, or any successor to that body.
11. Nothing in this Agreement derogates from the obligations and responsibilities placed upon each of the FPL Subsidiary Companies pursuant to the *Northern Pipeline Act*, including the ultimate responsibility for the design, construction and operation of their respective portions of the pipeline (as such term is defined in the *Northern Pipeline Act*).
12. The parties hereto shall from time to time hereafter do such things and execute and deliver such instruments in writing as shall be necessary or desirable in order to comply with the provisions of, and attain the objectives set forth in Clauses 9 and 10 hereof, and to fully perform and carry out the terms of this Agreement and, without limited the generality of the foregoing, the parties hereto shall at all times exercise their respect voting and other rights and shall cause their nominee directors to vote and act in connection with FPL and the FPL Subsidiary Companies to give effect to the provisions of this Agreement and to ensure that the person from time to time designated as directors of FPL and the FPL Subsidiary Companies pursuant to this Agreement are elected directors of FPL or such FPL Subsidiary Companies as the case may be and that such directors shall at all times vote and act in conformity with this Agreement and shall not vote or act contrary to the provisions in this Agreement. The parties hereto covenant and agree to vote in favour of any transfer of shares when such transfer is made in accordance with the provisions of this Agreement.
13. The Board of Directors of the Jointly Held Entities shall not, without the written consent of the CER and the Jointly Held Entities' respective shareholders, approve the issuance of, or cause the Jointly Held Entities to issue voting shares, or any securities convertible into or exchangeable or exercisable for voting shares, or any securities with, under the terms thereof, initially or upon the happening of any event or contingency would give the holders thereof voting rights, if such issuance would or could result in:
- a. with respect to Foothills Pipe Lines (Alta) Ltd., Foothills Pipe Lines (Sask.) Ltd., and Foothills Pipe Lines (South B.C) Ltd., FPHC and FPL holding less than 49% and 51%, respectively of the issued and outstanding voting shares; and

- b. with respect to Foothills Pipe Lines (North B.C.) Ltd., TCPL and FPL holding less than 49% and 51%, respectively of the issued and outstanding voting shares.
14. The Board of Directors of the Solely Held Entities shall not, without the written consent of the CER and their respective shareholders, approve the issuance of, or cause Solely Held Entities to issue voting shares, or any securities convertible into or exchangeable or exercisable for voting shares, or any securities with, under the terms thereof, initially or upon the happening of any event or contingency would give the holders thereof voting rights, if such issuance would or could result in FPL holding less than 100% of such Solely Held Entity's voting shares.
  15. Time shall be of the essence of this Agreement.
  16. This Agreement shall not be assignable except with the consent of the CER and parties hereto but shall enure to the benefit of and be binding upon the heirs, successors, administrators, executors and permitted assigns of the parties hereto respectively.
  17. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matter.
  18. This Agreement shall terminate upon the mutual agreement of the parties.

Executed at Calgary, Alberta this \_\_\_\_\_ day of \_\_\_\_\_, 2024

**FOOTHILLS PIPE LINES LTD.**

**FOOTHILLS PIPE LINES HOLDING COMPANY LTD.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**TRANSCANADA PIPELINES LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Appendix 2**

Unofficial Consolidation of the Shareholder Agreement in its Current Form  
Reflecting All Seven Previously Approved Amendments



UNOFFICIAL CONSOLIDATION

SHAREHOLDERS AGREEMENT

(THIS UNOFFICIAL CONSOLIDATION HAS BEEN  
PREPARED FOR REFERENCE AND CONVENIENCE ONLY)

MEMORANDUM OF AGREEMENT made as of the 4<sup>th</sup> day of August, 1977, as amended the 30<sup>th</sup> day of August, 1977, the 4<sup>th</sup> day of May 1978, the 16<sup>th</sup> day of July, 1981 the 3<sup>rd</sup> day of March 1994, the 8<sup>th</sup> day of December, ~~1997 and 1997,~~ the 23<sup>rd</sup> day of November, ~~1999, 1999~~ and the 6<sup>th</sup> day of June, 2003.

BETWEEN:

~~WESTCOAST ENERGY INC. (formerly Westcoast Transmission Company Limited)~~ TRANSCANADA PIPELINES LIMITED, a company incorporated under the laws of Canada, (~~“Westcoast Alberta~~ (“TCPL”))

OF THE FIRST PART

AND:

~~TRANSCANADA PIPELINES LIMITED~~ 3399516 ALBERTA LTD., a company incorporated under the laws of Alberta (~~“TCPL Canada~~ (“TC Subco”))

OF THE SECOND PART

AND:

~~NOVA CORPORATION OF ALBERTA (formerly NOVA, AN ALBERTA CORPORATION and before that The Alberta Gas Trunk Line Company Limited), a company incorporated under the laws of Alberta (“NOVA”)~~

OF THE ~~THIRD~~ PART

AND:

FOOTHILLS PIPE LINES LTD. (formerly Foothills Pipe Lines (Yukon) Ltd.), a company incorporated under the laws of Canada ("Foothills")

OF THE ~~FOURTH~~THIRD PART

WHEREAS the National Energy Board in its written Decision delivered on the 4<sup>th</sup> day of July, 1977 has stated that, subject to the conditions therein contained, it is prepared to issue Certificates of Public Convenience and Necessity to Foothills and its subsidiaries for the construction and operation of the pipelines described in the said Decision;

WHEREAS approval of the Governor in Council for the issuance of such Certificates is required, pursuant to Section 44 of the National Energy Board Act;

WHEREAS Foothills is a company continued under the Canada Business Corporations Act and all of the issued and outstanding voting shares in the capital of Foothills are owned as follows:

TCPL	5051	voting shares
<del>Westcoast</del> <u>TC Subco</u>	5049	voting shares;

WHEREAS Foothills has caused to be incorporated under the Canada Business Corporations Act the following six subsidiary companies:

1. Foothills Pipe Lines (Alta.) Ltd.  
(hereinafter referred to as  
"Foothills Alta.")

2. Foothills Pipe Lines (North Yukon)  
Ltd. (hereinafter referred to as  
"Foothills North Yukon")
  
3. Foothills Pipe Lines (South Yukon)  
Ltd. (hereinafter referred to as  
"Foothills South Yukon")
  
4. Foothills Pipe Lines (North B.C.)  
Ltd. (hereinafter referred to as  
"Foothills North B.C.")
  
5. Foothills Pipe Lines (South B.C.)  
Ltd. (hereinafter referred to as  
"Foothills South B.C.")
  
6. Foothills Pipe Lines (Sask.)  
Ltd. (hereinafter referred to as  
"Foothills Sask.")

(the said six subsidiary companies being hereinafter referred to as the "Subsidiary companies");

AND WHEREAS it is proposed that the respective Subsidiary companies would construct and operate the following pipelines:

Foothills South Yukon - the pipeline for the transmission of Alaska gas from the Alaska-Yukon Territory border to the Yukon Territory-British Columbia boundary and partially within British Columbia

Foothills North B.C. - the pipeline for the transmission of Alaska gas from the Yukon Territory-British Columbia boundary to the British Columbia-Alberta boundary near Boundary Lake

Foothills Alta. - the pipeline for the transmission of Alaska gas from the British Columbia-Alberta boundary near Boundary Lake to the Alberta-Saskatchewan boundary near Empress, Alberta and to the Alberta-British Columbia boundary near Coleman, Alberta

Foothills Sask. - the pipeline from the Alberta-Saskatchewan boundary near Empress, Alberta to the Saskatchewan-United States border near Monchy, Saskatchewan

Foothills South B.C. - the pipeline from the Alberta-British Columbia boundary near Coleman, Alberta to the British Columbia-United States border near Kingsgate, British Columbia

Foothills North Yukon - the pipeline from the Mackenzie River Delta area approximately parallel to the Dempster Highway connecting to the main line of Foothills South Yukon near Dawson City in the Yukon Territory (the "Dempster Link")

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and promises hereinafter set forth the parties hereto covenant and agree each with the other as follows:

1. Unless the context otherwise requires, the following expressions shall hereinafter have the meaning as indicated:

"Act" means the Canada Business Corporations Act

“affiliate” of a party means any individual, corporation, partnership, trust or unincorporated organization, directly or indirectly controlling, controlled by or under direct or indirect common control with such party;

“Alaska gas” means the gas produced in the State of Alaska

“control” means the power, directly or indirectly, to direct or cause the direction of the management and policies whether through the ownership of voting securities, by contract or otherwise

“NEB” means the National Energy Board

“Yukon” means the Yukon Territory

2. (a) From and after the date hereof and during the term of this agreement, TCPL and ~~Westcoast~~TC Subco shall each vote their common shares in the capital stock ~~in~~of Foothills so that the Board of Directors of Foothills shall in due course consist of ~~127~~ directors including (initially and from time to time by way of replacement or succession) the following:

~~four~~(i) 4 officers or directors of TCPL, including the ~~President and Chief Executive Officer and the~~ an Executive Vice President of TCPL; and

~~four~~(ii) 3 officers or directors of ~~Westcoast, including the President and Chief Executive Officer and the~~ Executive Vice President of ~~Westcoast;~~TC Subco.

~~four other Canadian citizens.~~

It is anticipated that the Board of Directors of Foothills may be increased to allow for the addition of not more than two United States citizens.

- (b) The quorum of the Board of Directors of Foothills shall be four directors; Provided That such quorum shall include one director nominated by TCPL (who shall also be an officer of TCPL) and one director nominated by ~~Westcoast~~TC Subco (who shall also be an officer of ~~Westcoast~~TC Subco); Provided Further That if a quorum is not attained at a meeting of directors because of the absence of one director nominated by TCPL and/or one director nominated by ~~Westcoast~~TC Subco, the meeting shall be adjourned to a date 7 days later at the same time and place and notice of the adjourned meeting shall be given forthwith to all directors, setting out the reason for adjournment and at the adjourned meeting, provided a quorum of any four directors is present, the foregoing provision that the quorum shall include one director nominated by TCPL and one director nominated by ~~Westcoast~~TC Subco, shall not apply to such adjourned meeting.
- (c) Each such nominee for a directorship referred to in sub-clause (a) above, ~~subject to the proviso in the said sub-clause (a) as to the addition of not more than two United States citizens as directors of Foothills,~~ shall be a Canadian citizen resident in Canada, Provided That if at any time and from time to time any such nominee elected to the Board of Directors of Foothills ceases to be a Canadian citizen or resigns from the Board of Directors or ceases to be a director for any other reason, such nominee shall be replaced as a director with a nominee (designated by the party or parties who nominated such replaced nominee) complying with the foregoing qualifications and TCPL and ~~Westcoast~~TC Subco shall so act and vote so that such replacement nominee is elected or appointed to the Board of Directors of Foothills.
3. (a) TCPL and ~~Westcoast~~TC Subco covenant and agree to act and vote and cause Foothills to act and vote and do all such things, and Foothills covenants and

agrees to act and vote and do all such things, as shall be necessary to create and maintain or cause to be created and maintained the following structure in respect of each of the Subsidiary Companies respectively:

- (i) Foothills Alta. – the voting shares shall be owned 51% by Foothills and 49% by TCPL; the directors of Foothills Alta. shall be ~~seven~~3 who shall be nominated (initially and from time to time by way of replacement or succession) as follows:

4~~2~~ by Foothills

3~~1~~ by TCPL .

- (ii) Foothills North Yukon – the voting shares shall be owned at least 51% by Foothills and other Canadian Participants may own 49% or such lesser amount as may be determined by Foothills, TCPL and ~~Westcoast~~TC Subco; the directors of Foothills North Yukon shall be not less than seven nor more than eleven and shall be selected in such a manner as to provide that a majority of the board shall be directors nominated by Foothills and that the remaining directors shall provide appropriate representation for other participants including permanent residents, native or others, of the Yukon.”
- (iii) Foothills South Yukon – the voting shares shall be initially owned 100% by Foothills but in the event other persons or corporations participate in ownership, the percentage owned by Foothills shall never be less than 51%, the directors of Foothills South Yukon shall be eleven to be selected in such manner as to provide representation from permanent residents, native or others of the Yukon.
- (iv) Foothills North B.C. – the voting shares shall be owned 51% by Foothills and 49% by ~~Westcoast~~TCPL; the directors of Foothills North B.C. shall be

~~seven~~3 which shall be nominated (initially and from time to time by way of replacement or succession) as follows:

4 by Foothills

~~3~~1 by ~~Westcoast~~TCPL

- (v) Foothills South B.C. – the voting shares shall be owned 51% by Foothills and 49% by TCPL; the directors of Foothills South B.C. shall be ~~seven~~3 which shall be nominated (initially and from time to time by way of replacement or succession) as follows:

4 by Foothills

~~3~~1 by TCPL

- (vi) Foothills Sask. – the voting shares shall be owned at least 51% by Foothills and ~~other Canadian Participants may own 49% or such lesser amount as may be determined by Foothills,~~49% by TCPL and Westcoast; the directors of Foothills Sask. shall be ~~seven and shall be selected in such a manner as to provide that a majority of the board shall be directors nominated by Foothills and that the remaining directors shall provide appropriate representation for other participants,~~3 which shall be nominated (initially and from time to time by way of replacement or succession) as follows:

2 by Foothills

1 by TCPL

4. Each of ~~Westcoast~~TC Subco and TCPL covenant and agree each with the other that neither will sell, transfer or convey its legal or equitable title in or to all or part of its holdings of voting shares in Foothills to the other or to any third party nor enter into any voting trust or other arrangement whereby it divests itself of the right to control such



shares and the manner in which they are voted without the prior approval of the NEB which approval may be given with or without conditions attached.

5. Subject to the provisions of Clause 4, each of ~~Westcoast~~TC Subco and TCPL further covenant and agree, each with the other, that neither shall reduce its holdings of voting shares in Foothills to that number of voting shares in Foothills which would result in such party holding less than 33-1/3% of the issued and outstanding voting shares of Foothills without the prior written consent of the other and if either such party seeks to directly or indirectly sell, transfer or otherwise dispose of voting shares so that such party would hold less than 33-1/3% then the following procedures shall apply:

- (a) The shareholder party (the "Selling Party") desiring to sell or otherwise dispose of voting shares which if such shares were sold or otherwise disposed of would result in the Selling Party owning less than 33-1/3% of the issued and outstanding voting shares of Foothills, shall first offer such shares ("subject shares") to the other shareholder party (the "Offeree Party") by notice in writing (the "Offering Notice") specifying the number of shares proposed to be sold or disposed of, the consideration proposed to be paid, the terms of the proposed sale or other disposition and, if known, the proposed purchaser, whereupon the Offeree Party may, at its option exercised by an acceptance in writing delivered to the Selling Party within fifteen (15) days after receipt of the said Offering Notice, purchase either (i) all of the subject shares at the price and on the terms contained in the Offering Notice, or (ii) that number of the subject shares which would result in ~~Westcoast~~TC Subco and TCPL continuing to collectively own at least 51% of the outstanding voting shares at the pro rata offering price for such number of shares. If the consideration proposed to be paid is other than cash, the Selling Party shall set out in its Offering Notice the bona fide cash equivalent of such consideration and such cash equivalent shall be the offering price. If the Offeree Party fails to accept either (i) or (ii) above or accepts (ii) above within the said period of fifteen (15) days then the Selling party may sell or dispose of

- (A) all the subject shares if the Offeree Party did not exercise either (i) or (ii) above, or
- (B) the remainder of the subject shares if the Offeree Party exercised (ii) above

to any third party within thirty (30) days of the expiry of the said fifteen (15) day period at a price not less than the price specified in the said Offering Notice and upon terms no more favourable than those specified in the said Offering Notice, and subject further to the condition that such third party shall enter into an agreement with all the then holders of voting shares of Foothills in form and substance satisfactory to such holders, to the same effect as this Agreement with such changes as may be necessary to provide for the additional shareholder or shareholders resulting from such sale or disposal.

- (b) If the Selling Party fails to sell or dispose of the subject shares offered by the said Offering Notice within the said thirty (30) day period as referred to above, such right to sell or dispose of such shares shall expire and the Selling Party may not then sell or dispose of any voting shares unless and until it has again complied in full with the provisions of this Clause 5, and so on from time to time.
- (c) The foregoing provisions of this Clause 5 shall not apply to the sale or other disposition of voting shares to an affiliate of such shareholder party provided that upon such sale or other disposition such affiliate shall enter into an agreement with the parties hereto in form and substance satisfactory to the parties hereto, providing that such affiliate shall be bound by, and become party to, the provisions hereof and with the same force and effect as though an original signatory thereto and for the purposes of this Clause 5 such affiliate and the party from which such affiliate acquired such shares shall be deemed to be one party and shall be bound by the conditions of Clause 4.

6. ~~Westcoast~~TC Subco and TCPL acknowledge and agree that it is a fundamental condition of this Agreement that TCPL and ~~Westcoast~~TC Subco collectively shall beneficially own

and continue to own throughout the term of this Agreement not less than 51% of the issued and outstanding voting shares of Foothills and that any transfer of shares which could result in any reduction of such percentage would require the consent of TCPL and ~~Westcoast~~TC Subco and the approval of the NEB.

7. ~~Westcoast~~TC Subco and TCPL and Foothills covenant and agree that the records of Foothills will be subject to audit by the NEB, and hereby declare and acknowledge that the amendments to applications dated August 2, 1977 and the assignments dated August 2, 1977 and filed with the NEB were approved by the NEB expressly on the condition that this Clause 7 shall apply to the records of Foothills.
  
8. ~~Westcoast, TC Subco and~~ TCPL and NOVA covenant and agree each with the other that the following are the principal objectives in respect of the Canadian portion of the Alaska Highway Gas Pipeline Project as described in the said Decision:
  - (a) With respect to the portion of the pipeline across Northeastern British Columbia, ~~Westcoast~~TCPL or Foothills will design and construct such portion in accordance with a Construction Management Agreement and ~~Westcoast~~TCPL will operate such portion in accordance with an Operating Agreement; both agreements to be filed with and approved by the NEB.
  
  - (b) With respect to the portion of the pipeline in Alberta, ~~NOVA~~TCPL or Foothills will design and construct such portion in accordance with a Construction Management Agreement and ~~NOVA~~TCPL will operate such portion in accordance with an Operating Agreement; both agreements to be filed with and approved by the NEB.
  
  - (c) With respect to the portion of the pipeline across Southeastern British Columbia, TCPL or Foothills will design and construct such portion in accordance with a Construction Management Agreement and TCPL will operate such portion in

accordance with an Operating Agreement; both agreements to be filed with and approved by the NEB

- (d) With respect to the portion of the pipeline in Saskatchewan, NOVATCPL or Foothills will design and construct such portion in accordance with a Construction Management Agreement and NOVATCPL or such other company as may be approved by the NEB will operate such portion in accordance with an Operating Agreement; both agreements to be filed with and approved by the NEB.
- (e) With respect to the portion of the pipeline in the Yukon, Foothills South Yukon or Foothills will design and construct such portion in accordance with a Construction Management Agreement and Foothills (South Yukon) will operate such portion; both agreements to be filed with and approved by the NEB.
- (f) With respect to the portion of the pipeline from the Mackenzie River Delta area to the main line of Foothills South Yukon, Foothills North Yukon or Foothills will design and construct such portion in accordance with a Construction Management Agreement and Foothills North Yukon, or such other company as may be approved by the NEB, will (in accordance with an Operating Agreement in the case of such other company) operate such portion; both agreements to be filed with and approved by the NEB.
- (g) The use of the Alaska Highway Gas Pipeline Project as a main line to transport initially Alaska gas to points on the 49<sup>th</sup> parallel and subsequently to transport gas from sources in the Western Canadian Arctic to points of receipt or delivery on the Westcoast and NOVA or TCPL systems, Provided That gas gathering within British Columbia shall continue to be the responsibility of Westcoast and gas gathering in Alberta shall continue to be the responsibility of NOVA; any of the pipeline systems existing at the time that delivery of such gas is made. ;

- (h) All commitments and undertakings heretofore given in writing or orally by Foothills, TCPL, NOVA Corporation or Westcoast Energy Inc., or their respective predecessors in interest, to any duly constituted tribunals or inquiries shall be maintained and complied with by Foothills with and to the extent they are applicable unless Foothills, ~~Westcoast~~TCPL and ~~NOVA~~TC Subco mutually agree to a change and such changes are approved by the NEB;
- (i) All commitments and undertakings heretofore given by Foothills to any duly constituted tribunals or inquiries in respect of Indian participation are to be maintained unless Foothills, ~~Westcoast~~TC Subco and TCPL mutually agree to a change and such changes are approved by the NEB; and
- (j) There is to be maximum use of Canadian-owned and Canadian-located firms in respect of engineering, construction, provision of materials, supplies and services.

~~Westcoast~~, TCPL, NOVA/TC Subco and Foothills (both for itself and the Subsidiary Companies) hereby declare and acknowledge that each portion of the pipeline, as set out in sub-clauses (a), (b), (c) and (d) of this Clause 8, and as such portion may exist from time to time by reason of the addition thereto of facilities including looping and/or compression, although within the provincial boundaries of British Columbia, Alberta and Saskatchewan respectively and to be constructed and operated as therein set out, is nevertheless part of an international and/or interprovincial pipeline and that each such portion is and will be at all times subject to the jurisdiction of the Parliament of Canada and, in particular, subject to the provisions of the National Energy Board Act and to the regulation and control of the NEB, or any Successor to that body.

9. Nothing in the Agreement ~~or this Third Amending Agreement~~, as amended from time to time, derogates from the obligations and responsibilities placed upon each of the Subsidiary Companies pursuant to the Northern Pipeline Act, including the ultimate responsibility for the design, construction and operation of their respective portions of the pipeline (as such term is defined in the Northern Pipeline Act).

10. The parties hereto shall from time to time hereafter do such things and execute and deliver such instruments in writing as shall be necessary or desirable in order to comply with the provisions of, and attain the objectives set forth in Clauses 7 and 8 hereof, and to fully perform and carry out the terms of this Agreement and, without limiting the generality of the foregoing, the parties hereto shall at all times exercise their respective voting and other rights and shall cause their nominee directors to vote and act in connection with Foothills and the Subsidiary Companies to give effect to the provisions of this Agreement and to ensure that the persons from time to time designated as directors of Foothills and the Subsidiary Companies pursuant to this Agreement are elected as directors of Foothills or such Subsidiary Companies as the case may be and that such directors shall at all times vote and act in conformity with this Agreement and shall not vote or act contrary to the provisions in this Agreement. The parties hereto covenant and agree to vote in favour of any transfer of shares when such transfer is made in accordance with the provisions of this Agreement.
  
11. The Board of Directors of Foothills shall not, without the written consent of ~~Westcoast~~TC Subco, TCPL and the NEB, approve the issuance of, or cause Foothills to issue any voting shares, or any securities convertible into or exchangeable for voting shares, or any securities which, under the terms thereof, initially or upon the happening of any event or contingency would give the holders thereof voting rights, if such issuance would or could result in ~~Westcoast~~TC Subco and TCPL collectively owning beneficially less than 51% of the issued and outstanding voting shares of Foothills.
  
12. Time shall be of the essence of this Agreement.
  
13. This Agreement shall not be assignable except with the consent of ~~Westcoast, NOVA Gas Services, NOVA~~TCPL, TC Subco and the NEB but shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and permitted assigns of the parties hereto respectively.

14. This Agreement shall terminate upon the mutual agreement of the Parties.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, all as of the day and year first above written.

WESTCOAST ENERGY INC.

NOVA CORPORATION OF ALBERTA  
3399516 CANADA LTD.

TRANSCANADA PIPELINES LIMITED

FOOTHILLS PIPE LINES LTD.

**Appendix 3**

Letter to the Minister of Energy and Natural Resources  
for Governor in Council Approval of the  
Amended and Restated Shareholders Agreement



December 13, 2023

Via Courier

Hon. Jonathan Wilkinson, P.C., M.P.  
Minister of Energy and Natural Resources  
580 Booth Street  
Ottawa, Ontario  
K1A 0E4

Dear Minister:

**Re: Foothills Pipe Lines Ltd. (Foothills) - Request for Approval under Subsection 21(6) of the *Northern Pipeline Act* (NPA) (Application)**

We write to you in your capacity as Minister responsible for the Northern Pipeline Agency seeking approval to amend the shareholders agreement originally entered into by Foothills Pipe Lines (Yukon) Ltd. and other companies described in the NPA,<sup>1</sup> originally made August 4, 1977, and subsequently amended on seven separate occasions related to ownership of the Foothills pipeline system (Shareholders Agreement). Foothills and TransCanada PipeLines Limited (TCPL) are parties to the Shareholders Agreement. Subsection 21(6) of the NPA and the Certificates of Public Convenience and Necessity declared under ss. 21(1) of the NPA stipulate that any change which alters, terminates or amends the Shareholders Agreement requires the approval of the Governor in Council (GIC) and the Commission of the Canada Energy Regulator (Commission or CER).

Foothills and TCPL are seeking to reorganize their ownership interests in three Foothills pipeline system subsidiaries, as well as adding Foothills Pipe Lines Holding Company Ltd. (Foothills Holding), a new entity wholly owned by TCPL, to the ownership structure. As a result, the Shareholders Agreement will need to be amended. The proposed Amended and Restated Shareholders Agreement is provided as Appendix 1 to this Application, while an unofficial consolidation of the Shareholders Agreement in its current form reflecting all seven previously approved amendments is provided as Appendix 2. The purpose of the reorganization is to facilitate potential future minority ownership in the three Foothills subsidiaries with operating facilities, including possible participation from Indigenous groups, through the purchase of an interest in Foothills Holding.

Foothills and TCPL hereby request your approval of the proposed changes to the Shareholders Agreement. Under separate cover, we are filing a request for approval with the Commission, a copy of which is attached as Appendix 3 to this Application.

---

<sup>1</sup> The original companies subject to the Shareholders Agreement under subsection 21(6) were Westcoast Transmission Company Limited and Alberta Gas Trunk Line Company Limited.

## **Background**

Seven previous amendments to the original Shareholders Agreement have received approval from the GIC and the Commission's predecessor (the National Energy Board or NEB). The last approved amendment occurred in 2003 when TCPL purchased all of Westcoast Energy Inc.'s interest in Foothills along with its minority shareholder interest in Foothills Pipe Lines (North B.C.) Ltd. and Foothills Pipe Lines (Sask.) Ltd.<sup>2</sup>

As reflected in the Seventh Amending Agreement to the Shareholders Agreement, TCPL owned 51% of Foothills and 3399516 Canada Ltd., a wholly owned entity of TCPL, owned the remaining 49%. When 3399516 Canada Ltd. was dissolved in 2018, its ownership interest in Foothills rolled up to TCPL, making TCPL the 100% direct owner of Foothills.

In addition to its 100% ownership interest in Foothills, TCPL holds a 49% ownership interest in each of Foothills Pipe Lines (Alta) Ltd., Foothills Pipe Lines (South B.C.) Ltd., and Foothills Pipe Lines (Sask.) Ltd. Collectively, these three entities are referred herein as the "Foothills Subsidiaries". The Foothills Subsidiaries are identified in the NPA as the entities holding Certificates for Zones 6 through 9,<sup>3</sup> the only Foothills zones that were constructed and are currently in operation. Foothills owns the remaining 51% of the Foothills Subsidiaries.

The same ownership structure also applies to Foothills Pipe Lines (North B.C) Ltd., while Foothills holds 100% of Foothills Pipe Lines (South Yukon) Ltd. and Foothills Pipe Lines (North Yukon) Ltd. These entities are identified in the NPA as holding Certificates for various zones that were not constructed and are not in operation.

## **Proposed Transaction**

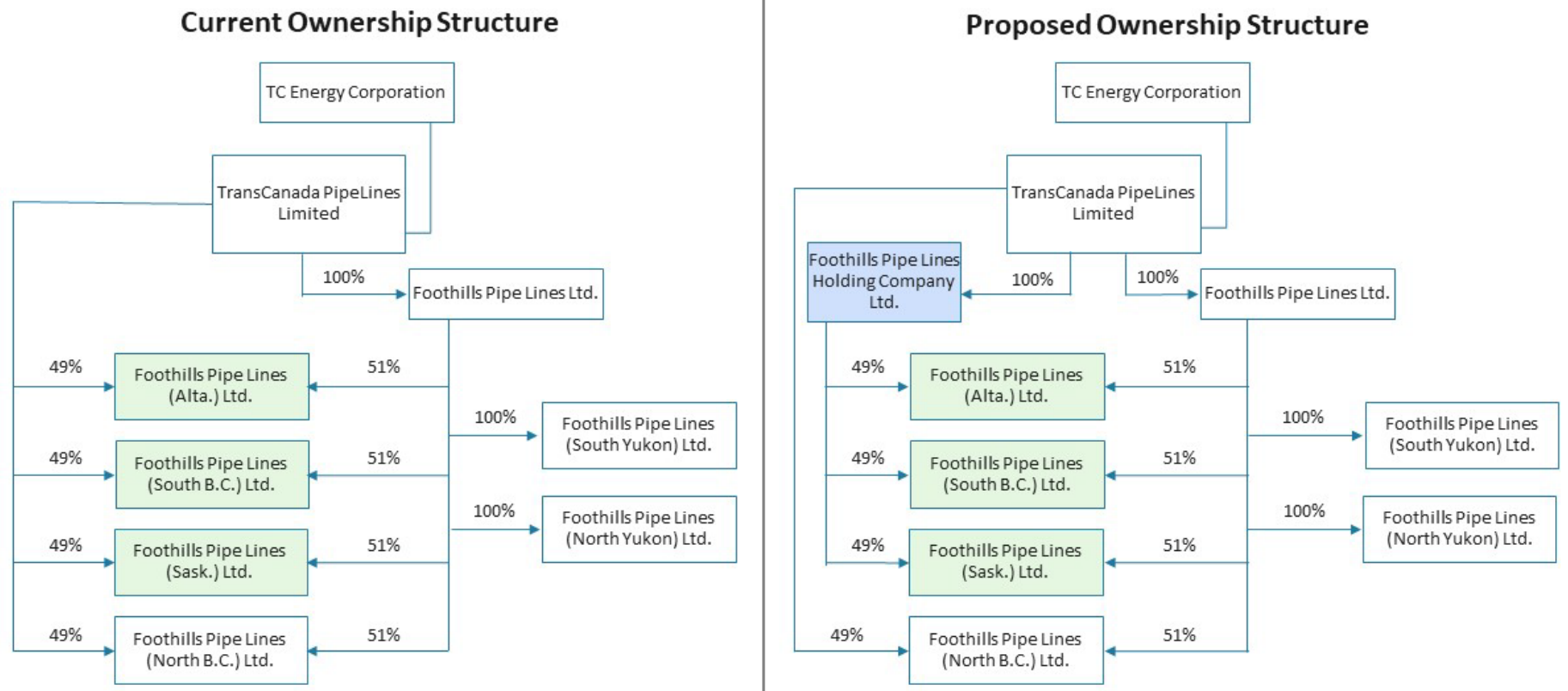
Foothills Holding is a newly formed corporation incorporated under the laws of Canada and governed under the *Canada Business Corporations Act*, and is wholly owned by TCPL. With the approval of the GIC and the Commission, TCPL will reorganize its direct 49% ownership interest in the three Foothills Subsidiaries into a 49% indirect ownership interest by transferring its interest to Foothills Holding (Reorganization).

There are no changes proposed to the ownership interests in Foothills Pipe Lines (North B.C) Ltd., Foothills Pipe Lines (South Yukon) Ltd., Foothills Pipe Lines (North Yukon) Ltd., or Foothills. For ease of reference, Figure 1 provides a comparison of the current and proposed ownership structure of the various Foothills entities.

---

<sup>2</sup> Order in Council P.C. 2003-1210, dated August 13, 2003.

<sup>3</sup> See Annex II of the NPA.



**Figure 1 – Current and Proposed Ownership Structure of the Foothills Entities**

## **Summary of Amendments to the Shareholders Agreement**

The primary changes to the Shareholders Agreement result from the proposed transfer of TCPL's 49% ownership of the Foothills Subsidiaries to Foothills Holding and reflect the 100% ownership of Foothills by TCPL following the dissolution of 3399516 Canada Ltd. In addition, some housekeeping updates were made to modernize the Shareholders Agreement.

These amendments to the Shareholders Agreement do not alter the parties' obligations to seek consent of the GIC and the Commission for any future amendments to the Shareholders Agreement pursuant to section 21(6) of the NPA nor do they abrogate the jurisdiction or applicability of the NPA.

The following summarizes the changes between the current Shareholders Agreement and the proposed Amended and Restated Shareholders Agreement:

- Table A in the Amended and Restated Shareholders Agreement reflects the new share structure of the Foothills Subsidiaries being 51% owned by Foothills and 49% owned by Foothills Holding; ownership in all other entities remains unchanged
- Section 2 of the Shareholders Agreement which sets out the governance structure in relation to the composition of the Board of Directors, quorum and correlating voting rights, has also been updated in the Amended and Restated Shareholders Agreement to better align to the revised ownership structure
- Section 3(a) of the Shareholders Agreement which sets out the share ownership and Board Composition of all subsidiaries is now reflected in section 4 of the Amended and Restated Shareholders Agreement
- Sections 4 and 6 of the Shareholders Agreement which set out certain voting restrictions are now reflected in section 6 of the Amended and Restated Shareholders Agreement
- Section 5 of the Shareholders Agreement which includes content related to a right of first refusal has been removed as this right is no longer required with TCPL being the 100% owner of Foothills
- Sections 7 through 10 remain the same in both agreements, other than updating the parties and to reflect the change from the NEB to the CER
- Section 11 of the Shareholders Agreement is now split into sections 11 and 12 of the Amended and Restated Shareholders Agreement, but maintains the requirement that the parties must continue to own their proportionate shares of either the Jointly Held or Solely Held Subsidiaries unless they obtain written consent of the CER

## **Engagement**

The Reorganization and resulting proposed amendments to the Shareholders Agreement will not alter the Foothills pipeline system's physical footprint nor impact its operations. There is no impact to transportation service, tolls or tariff for the Foothills pipeline system as a result of the Reorganization. Further, it will not have any impact on the interests of existing rightsholders and stakeholders. Accordingly, no engagement activities specific to the Application were considered necessary nor were any implemented.

## **Closing**

Upon receipt of the necessary approvals from the GIC and the Commission, the parties will execute the Amended and Restated Shareholders Agreement to be effective the first day of the month at least 30 days following receipt of these approvals. With the understanding that GIC consideration is likely to follow the Commission decision, Foothills requested Commission approval by February 1, 2024 in order to support implementation of the Amended and Restated Shareholders Agreement as contemplated during the second quarter of 2024.

Should you or your office have any questions about the Application, please contact:

Bernard Pelletier  
Director, Regulatory Tolls and Tariffs  
Canadian Natural Gas Pipelines  
Phone: (403) 920-2603  
Email: [bernard\\_pelletier@tcenergy.com](mailto:bernard_pelletier@tcenergy.com)

We appreciate your consideration of all of the foregoing and respectfully request approval of the Amended and Restated Shareholders Agreement in accordance with ss. 21(6) of the NPA to reflect the Reorganization as described and illustrated in Appendix 1.

Yours truly,  
**Foothills Pipe Lines Ltd.**

### ***Original signed by***

Greg Grant  
President, Canadian Natural Gas Pipelines

Enclosure