

**Qualico Developments West Ltd.
Reconsideration
Northeast Edmonton**

July 4, 2024

Alberta Energy Regulator

Decision 2024 ABAER 007: Qualico Developments West, Reconsideration of the
April 20, 2022, Decision

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2024 ABAER 007

Qualico Developments West Ltd Reconsideration of the April 20, 2022, Decision Northeast Edmonton

Amended Application No. 1932335

Decision

[1] For the reasons that follow and pursuant to section 42 of the *Responsible Energy Development Act (REDA)*, the Alberta Energy Regulator (AER) is varying its April 20, 2022, decision.

[2] Pursuant to section 33(1) of the *Pipeline Act*, the AER directs Pembina Pipeline Corporation (Pembina) to provide protective measures for its 20-inch (508 mm) pipeline 6926-16 (Pembina 20-inch pipeline) where the pipeline diagonally crosses the intersection of Meridian Street and 167 Avenue in Edmonton, Alberta.

[3] Pursuant to section 33(1) of the *Pipeline Act*, the AER directs Plains Midstream Canada LP (Plains) to provide protective measures for its 24-inch (610 mm) pipeline 6001-01 (Plains 24-inch pipeline) where the pipeline diagonally crosses the intersection of Meridian Street NW (Meridian Street) and 167 Avenue in Edmonton, Alberta.

[4] Pursuant to section 33(2) of the *Pipeline Act*, the AER orders Qualico Developments West Ltd. (Qualico) to pay Pembina for the cost of the protective measures where the Pembina 20-inch pipeline diagonally cross below the intersection of Meridian Street and 167 Avenue in Edmonton, Alberta.

[5] Pursuant to section 33(2) of the *Pipeline Act*, the AER orders Qualico to pay Plains for the cost of the protective measures where the Plains 24-inch pipeline diagonally cross below the intersection of Meridian Street and 167 Avenue in Edmonton, Alberta.

[6] The AER denies the application filed by Qualico to direct alterations of the Plains 24-inch pipeline where it crosses below 172 Avenue on the west side of Meridian Street in Edmonton, Alberta, (Alteration at 172 Avenue) and to order the cost of the alterations.

[7] In reaching this decision, we, the AER hearing panel presiding over this proceeding, considered all relevant materials properly before us, including each party's evidence and argument. References in this decision to specific portions of the evidence are intended to assist the reader in understanding our reasoning on a particular matter and do not mean that we did not consider all relevant portions of the evidence.

Introduction

Qualico's Amended Application

[8] Qualico filed an application under sections 33(1) and (2) of the *Pipeline Act*, section 80(1) of the *Pipeline Rules* and *Directive 077: Pipelines – Requirements and Reference Tools*. The application was registered by the AER on February 22, 2021.

[9] In April and May 2021, Pembina, Plains, Keyera, and the Canadian Energy Pipeline Association filed statements of concern about Qualico's application. Pembina and Plains stated that they would be directly and adversely affected by the AER's decision to alter the pipelines and share the alteration costs.

[10] On January 14, 2022, Qualico submitted an amended application 1932335 (the amended application) to the AER that asked the AER to direct the following:

- Two alterations where the Plains 24-inch pipeline and the Pembina 20-inch pipeline diagonally cross below the intersection of Meridian Street and 167 Avenue in Edmonton (collectively the Alterations at 167 Avenue).
- One alteration of the Plains 24-inch pipeline where it crosses below 172 Avenue on the west side of Meridian Street in Edmonton (Alteration at 172 Avenue).

[11] In addition, Qualico sought an order from the AER that the alteration costs for the Pembina 20-inch pipeline crossing be shared equally between Qualico and Pembina and the cost for the Plains 24-inch pipeline crossing be shared equally between Qualico and Plains.

Hearing

[12] On April 20, 2022, the AER denied Qualico's amended application. On November 14, 2022, the AER exercised its authority under section 42 of *REDA* to reconsider the April 20 decision. Upon review, the AER determined that a prima facie error was made in the April 20 decision and advised that it would conduct the reconsideration without a hearing.

[13] Qualico, Pembina, and Plains requested that the reconsideration be conducted with a hearing so they could test the merits of the application and the evidence of the party or parties adverse in interest. On May 30, 2023, the AER advised that, going forward, the reconsideration would be conducted with a hearing.

[14] A notice of hearing was issued on July 13, 2023, and an amended notice of hearing was issued on July 26, 2023. The amended notice provided new deadlines for confirmation of participation, filing a request to participate, and responses regarding requests to participate. The notice indicated Qualico, Pembina, and Plains as the parties to the reconsideration and who may participate in the hearing. On August 10, 2023, Qualico, Pembina, and Plains confirmed their participation in the hearing, noting they

intended to fully participate in the hearing by presenting evidence, conducting cross-examination, and providing final arguments.

[15] Brookfield Residential (Alberta) LP (Brookfield), Keyera Corp. (Keyera), Building Industry & Land Development Association Alberta (BILD), MLC Group Inc. (MLC), Avillia Developments Ltd. (Avillia), Cantiro Group LP (Cantiro), Melcor Developments Ltd. (Melcor), Urban Development Institute – Edmonton Metro (UDI-EM), and SECURE Energy Services Inc. (SECURE) applied to participate in the hearing.

[16] On September 25, 2023, we issued participation decisions, granting full participation to Qualico, Pembina, Plains, Brookfield, and Keyera. We granted limited participation to BILD, MLC, Avillia, Cantiro, Melcor, UDI-EM, and SECURE. The AER issued a notice of scheduling of hearing on February 1, 2024.

[17] During the proceedings Pembina, Plains, and SECURE made joint submissions, but only Pembina and Plains provided final arguments. Keyera made separate submissions and provided a final argument. Qualico and Brookfield each provided submissions and final arguments; BILD, MLC, Avillia, Cantiro, Melcor, and UDI-EM made joint submissions as the “Developers Group.”

[18] The AER held a public, in-person hearing for this proceeding at Govier Hall in Calgary, Alberta. The panel heard evidence on March 5 – 7 and 11, 2024, and closing arguments on March 13, 2024. Hearing participants are listed in appendix 1.

[19] On April 4, 2024, we reopened the proceeding to receive submissions from the parties on the existence of numerous historic orders issued by the AER’s predecessor under an earlier version of section 33 of the *Pipeline Act*. The existence of these orders had come to the attention of legal counsel for the panel. Given the apparent relevance of the orders to arguments made in the hearing about lack of precedent, copies of these historic orders were provided to the parties, and then all parties made submissions about those orders. On April 26, 2024, we closed the record of the proceeding.

Legal and Regulatory Framework

Responsible Energy Development Act

[20] This proceeding was a reconsideration of the AER’s April 2022 decision to deny Qualico’s amended application. We approach the reconsideration as a fresh look at the amended application.

[21] In deciding on the application before us, we must consider factors set out in our governing legislation, including the AER’s mandate. Section 2 of *REDA* states:

2(1) The mandate of the Regulator is

(a) to provide for the efficient, safe, orderly, and environmentally responsible development of energy and mineral resources in Alberta through the Regulator's regulatory activities, ...

in accordance with energy resource enactments and, pursuant to this Act and the regulations, in accordance with specified enactments.

(2) The mandate of the Regulator is to be carried out through the exercise of its powers, duties and functions under energy resource enactments and, pursuant to this Act and the regulations, under specified enactments, including, without limitation, the following powers, duties and functions:

(a) to consider and decide applications and other matters under energy resource enactments in respect of pipelines, wells, processing plants, mines and other facilities and operations for the recovery and processing of energy resources and mineral resources; ...

(f) to monitor and enforce safe and efficient practices in the exploration for and the recovery, storing, processing and transporting of energy resources and mineral resources;

[22] Section 15 of *REDA* and section 3 of the *Responsible Energy Development Act General Regulation (REDA general regulation)* require the panel to also consider

- a) the social, economic, and environmental effects of the energy resource activity,
- b) the effects of the energy resource activity on the environment, and
- c) the impacts on a landowner as a result of the use of land on which the energy resource activity is or will be located.

Pipeline Act

[23] Section 33 of the *Pipeline Act* states:

33(1) When in its opinion it would be in the public interest to do so, the Regulator may, on any terms and conditions it considers proper, direct a licensee

(a) to alter or relocate any part of the licensee's pipeline,

(b) to install additional or other equipment on the licensee's pipeline, or

(c) to erect permanent fencing on the right of way or provide any other protective measures within the controlled area that the Regulator considers necessary.

(2) Where the Regulator directs the alteration or relocation of a pipeline, the installation of additional or other equipment on a pipeline, the erection of fences or the provision of other protective measures within the controlled area, it may order by whom and to whom payment of the cost of the work and material, or either, shall be made.

(3) If a dispute arises as to the amount to be paid pursuant to an order under subsection (2), it shall be referred to the Regulator and the Regulator's decision is final.

Background

[24] The context of the amended application is that Qualico is developing land in northeast Edmonton in the Horse Hill area.

[25] The land use in the Horse Hill area was mostly agricultural when Pembina and Plains were granted pipeline licences in the late 1960s. The City of Edmonton (the city) annexed the Horse Hill area in 1982 and approved the *Horse Hill Area Structure Plan* in 2013. Qualico bought its land in the Horse Hill from Walton Development and Management Inc. (Walton) in 2018.

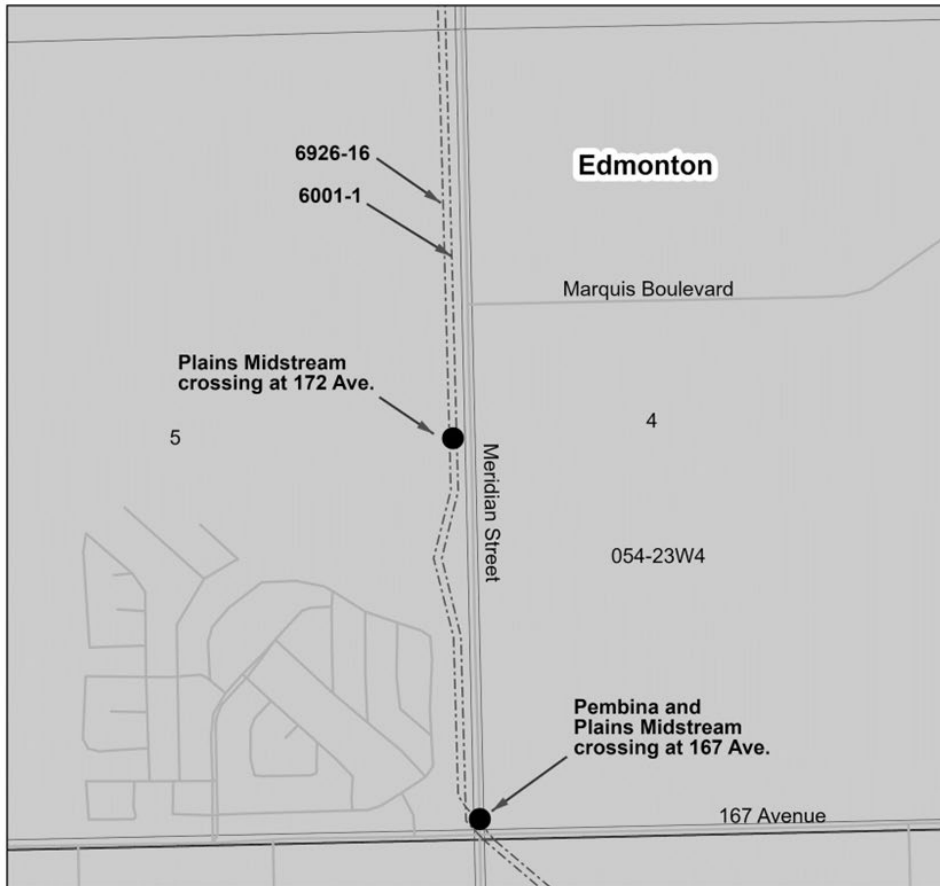
[26] Of the nearly 2800 hectares in the *Horse Hill Area Structure Plan* (area structure plan), the planning document for the development indicated that other land uses such as natural areas, railways, highway and arterial road rights-of-way, and pipeline and utility rights-of-way reduce the developable hectares by 46%. Qualico's total land in the Horse Hill area is 136 hectares or 5% of 2800 hectares.

[27] According to Qualico, the developers applying for subdivision and development approvals must upgrade and construct arterial roads at their own cost. Meridian Street is the main road connecting the Horse Hill area to Edmonton and needs upgrading from a rural road to an arterial road. An arterial road was described at the hearing as a large road which is "one step away from a highway." Meridian Street in the south will connect to Anthony Henday Drive at 153 Avenue and run north to Manning Drive after crossing the Canadian National Railway (CN) rail line.

[28] Qualico stated that it applied to the AER because the city, through the arterial road assessment steering committee (ARA steering committee), directed Qualico to seek direction from the AER through an application under section 33(1) of the *Pipeline Act*. The ARA steering committee is a cooperative decision-making group of four real estate developers and three City of Edmonton staff. The ARA steering committee approves all costs associated with arterial roads and approves road levy rates. If a road is an arterial road, the developer who builds it pays for it, and the cost is shared among the developers in the catchment through arterial road levies.

[29] Walton hired CIMA+, an engineering consultant, who, in 2015, prepared a "Concept Plan Report" for Meridian Street. CIMA+ recommended a four-lane divided arterial roadway north of 167 Avenue and a six-lane divided arterial roadway south of 167 Avenue. CIMA+ identified several existing features that must be considered for upgrading Meridian Street. Those include natural features, a creek crossing, a CN Railway crossing, utilities, a wildlife underpass, a culvert, and hydrocarbon pipeline crossings. CIMA+ provided a conceptual-level cost estimate for the upgrade of Meridian Street. When Qualico purchased the Marquis development from Walton, it assumed responsibility for the arterial road upgrade of Meridian Street.

[30] As shown in the figure below, the two crude oil pipelines in question (the Pembina 20-inch pipeline and the Plains 24-inch pipeline) pass diagonally across Meridian Street underneath the Meridian Street and 167 Avenue intersection. The Plains pipeline crosses 172 Avenue on the west side of Meridian Street. Both pipelines have been in operation for decades.



Legend

--- Existing pipeline

~ Roads

● Pipeline crossings

[31] Qualico started the development of the Marquis neighbourhood in the Horse Hill area in 2021. Meridian Street has been upgraded to arterial road status from just north of the 167 Avenue intersection to just north of Marquis Boulevard. Qualico is selling lots and has now developed about 170 lots in the Marquis neighbourhood in the Horse Hill area. The first residents have moved into their new homes.

Interpretation and Application of Section 33 of the *Pipeline Act*

AER Jurisdiction

[32] The parties had varied views on the AER's jurisdiction to decide this application.

[33] Pembina and Plains said it is not in the public interest for the AER to intervene in a private matter where there is no need for it to do so, and the AER should exercise caution in engaging in the private commercial realm. They regarded the AER's April 2022 decision, which denied the amended application, as rightly decided. They characterized the issue as a private dispute about cost sharing and the application as a cost-sharing application.

[34] Qualico said Plains' and Pembina's willingness to undertake the pipeline alterations does not mean the AER is without jurisdiction under section 33 of the *Pipeline Act*.

[35] We agree with Qualico's position. The application was filed with the AER under Section 33 of the *Pipeline Act*, an energy resource enactment, and according to the requirements for a section 33 application set out in the *Pipeline Rules*. The AER is mandated by section 2 of *REDA* to consider and decide applications made to it under the energy resource enactments, such as the *Pipeline Act*. The amended application was not returned as incomplete and is properly before the AER. We disagree with the argument that deciding the application is intervening with a private matter and, therefore, not in the public interest. This panel has the required jurisdiction and a duty to decide the application.

Interpretation of Section 33

[36] Pembina and Plains referred to the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, in support of the modern principle of statutory interpretation:

“The administrative decision-maker's task is to interpret the contested provision in a manner consistent with the text, context, and purpose, applying its particular insight into the statutory scheme at issue.”

[37] While there was no dispute about the modern principle, the parties had varied views about the purpose, application, and interpretation of section 33 of the *Pipeline Act*. There was disagreement about whether a dispute was required to trigger the use of section 33(1) and whether section 33(2) also involved public interest consideration.

[38] Qualico said that a version of section 33 has existed since 1958, but there is no discussion in Hansard about the intent and purpose of section 33 nor the change in wording in 1972. Qualico referred to Hansard discussions about similar legislation that has been applied by other regulators in situations similar to Qualico's to illustrate the purpose and application of section 33.

[39] Qualico argued that since 1958, all pipeline operators in Alberta should have been aware that the AER may issue an order to modify or relocate their pipeline and may require the operator to pay some or all of the costs of doing so. Thus, an operator's right to quiet enjoyment under its right-of-way agreements cannot shield them from the application of section 33 and the possibility that the AER may make an order under section 33, which may include cost sharing.

[40] Pembina and Plains said that the purpose of section 33 is to resolve disputes between a second-in-time party, like a developer, and a pipeline company where they cannot agree on the need for alteration or relocation work. Pembina and Plains said there is no dispute about the need or nature of the alterations and, therefore, no need for direction from the panel. Pembina and Plains also disagreed that other legislation or other regulators' decisions were relevant to the interpretation and application of section 33 and Qualico's amended application.

[41] Keyera agreed with Plains' and Pembina's views and said section 33 ensures that pipeline licensees cannot veto crossing or proximity work. If a third party seeks to cross the pipeline and the pipeline company and the third party cannot agree on what work is required to protect the pipeline, the third party can bring that dispute before the AER for adjudication. Keyera said, based on a plain reading of section 33, the AER can make orders under section 33(1) if a pipeline licensee and a third party cannot agree on the need for or the scope of the pipeline alterations or relocations. In other words, if the pipeline licensee acts unreasonably, this section provides the needed mechanism for the AER to decide what physical work is in the public interest. Unless physical work is directed by the AER under section 33(1), section 33(2) for a cost direction is never engaged.

[42] Brookfield understood the purpose of section 33 as a remedy wherein a party can seek recourse to the AER when a pipeline needs to be relocated and an agreement cannot be reached. Section 33 provides a mechanism to obtain a cost order from the AER to divide the cost of the required work.

[43] Regarding the public interest, Pembina and Plains said it is not appropriate to have regard for the public interest when considering cost-sharing orders, as requested by Qualico. They pointed to the implied exclusion rule of statutory interpretation and said consideration of public interest was deliberately excluded from the ambit of section 33(2).

[44] Pembina and Plains argued that public interest is much broader than Qualico's definition. Pembina and Plains said Qualico's definition of public interest is in service of Qualico's private earnings and interests and is narrowly defined, even if those interests are the interests of a larger group of

developers or home buyers. They submitted that the panel's public interest analysis in this proceeding should not conflate the physical alteration work on the Pembina and Plains pipelines with the cost of this work or who is responsible for the cost. They criticized Qualico for conflating whether performing the alteration work is in the public interest with whether the AER ordering cost sharing of the alteration work is in the public interest.

[45] Qualico also asked the panel to consider the impact on landowners from the existence of the pipelines as stipulated in section 15 of *REDA* and section 3 of the *REDA general regulation*. In Qualico's view the cost sharing would be in the public interest and a remedy for the impact on the landowners.

[46] In response, Pembina and Plains also asserted that Qualico is different from a typical landowner who would participate in an AER proceeding, and the impacts on the landowner, which they characterized as potential impacts on Qualico's bottom line, are not the driving consideration.

Analysis and Findings on Interpretation of Section 33

[47] The modern principle of statutory interpretation states that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

[48] In addition to the modern principle, the panel is mindful of section 10 of Alberta's *Interpretation Act*, which directs that an enactment, in this case, the *Pipeline Act*, "be construed as being remedial and shall be given the fair, large, and liberal construction and interpretation that best ensures the attainment of its objects."

[49] The panel is also mindful of the implied exclusion rule, which speaks to honouring the express intention of the legislature.

[50] With these principles in mind, we note that if the legislature had intended for the AER to only direct work under section 33(1) when there is a dispute between parties, the legislature could have expressly referenced "dispute," as it did in subsection (3). In drafting sections 33(1) and (2) of the *Pipeline Act*, the legislature did not refer to any dispute as a necessary condition for the AER to direct pipeline alterations or protective measures. Therefore, we see no reason to narrow the interpretation of section 33 in the manner suggested by Pembina, Plains, and Keyera. We find that a narrow interpretation is inconsistent with section 10 of the *Interpretation Act* and the modern principle of statutory interpretation.

[51] Sections 33(1) and (2) of the *Pipeline Act* are drafted in a specific order. We first need to examine whether directing pipeline protection or alteration is in the public interest and whether we should exercise our discretion to direct the work. If we make such a direction, only then would we examine the cost matters. In the absence of a public interest reason to direct the work, no further assessment is required.

[52] The term “public interest” is not defined in *REDA* or other energy enactments. Public interest must be interpreted within the context of section 33 of the *Pipeline Act* as a whole and the entire statutory scheme, including section 2 of *REDA*, the AER’s mandate.

[53] The *Pipeline Act* as a whole and section 2 of *REDA* tell us that providing for the safe, orderly, efficient, and environmentally responsible operation of pipelines is a primary function and, by extension, a duty of the AER. As public interest underpins the legislation governing a regulator, such as the AER, and legislation of general application, such as the *Pipeline Act*, these functions and duties are rooted in the public interest. Any event that introduces new challenges to a pipeline’s ability to safely transport hydrocarbons must be anticipated and addressed in accordance with the applicable standards, including the requirements set out in *CSA Z662, Oil and Gas Pipeline Systems*. When overseeing the safe, orderly, efficient, and environmentally responsible operation of pipelines and transportation of energy resources, the threshold for directing such work is not high. Thus, when directions are necessary to ensure ongoing public safety and environmental protection, it is in the public interest for the AER to make such directions. This is foundational to the statutory framework governing energy legislation in Alberta.

[54] While section 33(1) expressly requires that direction to alter a pipeline or provide protective measures be in the public interest, section 33(2) of the *Pipeline Act* does not. There are no restrictions or conditions regarding when to exercise the authority to order costs other than a direction under section 33(1) must have been made. There is no additional requirement that it must be in the public interest to order costs.

[55] Additionally, as articulated in section 15 of *REDA*, our governing enactment, for any application, regulatory appeal, or reconsideration, we must consider the factors outlined in section 15 of *REDA* and section 3 of the *REDA general regulation*. These sections require us to assess the impact on landowners due to land use by energy resource activities. The impacts on landowners that Qualico characterized were mainly financial. Therefore, when assessing matters related to cost sharing, we will also examine any potential impacts on landowners related to these pipeline crossings and if cost sharing is an appropriate mitigation of the impacts.

[56] With this interpretation in mind, we will first examine if we should exercise our discretion and direct the requested pipeline alterations and protection and then assess the matters related to the cost order.

Is Directing the Work in the Public Interest?

[57] Qualico requested three pipeline alterations in its amended application. Two alterations are at the intersection of Meridian Street and 167 Avenue, where Meridian Street crosses the Pembina 20-inch pipeline and the Plains 24-inch pipeline. The third alteration is at the intersection of Meridian Street and 172 Avenue, where the access road to 172 Avenue from Meridian Street crosses the Plains 24-inch pipeline.

[58] We will first assess the nature and the need for the three alterations. We will then assess each intersection of Meridian Street separately as to whether we should exercise our discretion and direct these alterations.

What is the Nature of the Work at 167 Avenue?

[59] The parties agreed that the alterations at the Meridian Street and 167 Avenue intersection are needed to protect the pipelines.

[60] Qualico said there is no agreement between it and Pembina and Plains concerning the crossings other than a shared understanding of the need to do something to protect the pipelines. However, there has been no agreement on what that work is, which methodology to use, or how extensive it is. Qualico indicated that it is unsure whether all the required work is attributable to upgrading the road or is in part related to pipeline maintenance and integrity.

[61] Pembina and Plains have provided brief scopes of work and cost estimates to Qualico in the form of a cost recovery agreement or a backstopping agreement requiring Qualico to pay up front the estimated cost. On November 14, 2022, the AER asked the parties to address the nature of the pipeline alterations in their written submissions. In their written material, Pembina and Plains only said the work was needed to protect the pipelines, according to *CSA Z662*. However, it was not until the hearing that Pembina and Plains provided details about the work.

[62] At the hearing, in answer to a question from the panel's counsel, witnesses for Pembina and Plains provided a more detailed overview of the work required to protect their respective pipelines at the Meridian Street and 167 Avenue intersection.

[63] For the Pembina 20-inch pipeline, the work required includes excavation, backfilling with Fillcrete (a flowable concrete that distributes the load over the pipeline), backfill with soil, and cleanup. Pembina stated it has no pipeline integrity concerns for this location.

[64] Plains characterized the work required as civil engineering work, including excavation, removal of [pipeline] casing, pipeline inspection, construction of concrete slabs, and backfilling with crushed gravel to 300 millimetres above the concrete slabs. Although there are other alternatives, Plains stated that this would be the least invasive and the lowest-cost option. According to Plains, installing concrete slabs

will allow the building of the road over the pipeline. Plains stated it has no other pipeline integrity concerns for this location.

[65] However, according to Pembina and Plains, the actual work required cannot be known for certain until the pipelines are exposed.

Analysis and Findings on the Nature of the Work at 167 Avenue

[66] Section 18(1) of the *Pipeline Rules* requires all aspects of the pipeline life cycle to comply with *CSA Z662*. *CSA Z662* contains design requirements for pipelines crossing under roadways. The *CSA Z662* requirements are intended to ensure that the pipeline design and operation are safe. The requirements consider the load on the pipeline and the density of the population near the pipeline. Section 28(2) of the *Pipeline Rules* requires that the licensee apply the *CSA Z662* design requirements applicable to the pipeline crossing (i.e., the full width of the road's right-of-way when widening a roadway over an existing pipeline).

[67] Qualico is to upgrade Meridian Street from a two-lane roadway to a four-lane arterial road, one step away from a highway. This upgrade will result in increased loading on the pipelines. The Pembina and Plains pipelines are relatively large in diameter (20 and 24 inches, respectively) and carry large volumes of liquid hydrocarbons. Therefore, a pipeline failure at this location could result in a large volume spill, and as urban density increases, the consequence of a pipeline failure becomes more significant.

[68] Based on the descriptions of the work by Pembina and Plains, it appears that the needed work is to distribute increased loading from the upgraded road and traffic volumes to protect the pipelines. Plains will use concrete slabs to protect the pipeline, and Pembina will use Fillcrete over and around the pipeline. These protective measures are normal industry practice. Qualico used the term “alterations” of the pipelines in its application, as did the parties at various times during the proceeding. However, the nature of the work as described by Pembina and Plains is to provide protective measures for their respective pipelines at the crossings.

[69] The safety of people and conservation of the environment must be protected during the continued operation of these two pipelines. The parties agreed that the pipelines must be appropriately protected to match the changing conditions (i.e., increased load on the pipelines and an increase in the local population). Therefore, we find the protective measures are in the public interest.

Is Directing the Pipeline Protections at 167 Avenue in the Public Interest?

[70] Although all parties agreed the protection of pipelines is necessary, the work is not yet complete. The record of the proceeding demonstrated that negotiations and discussions about the pipelines' protections have been ongoing for over five years without a resolution. In the meantime, the Horse Hill development and construction of sections of Meridian Street are progressing.

[71] Pembina and Plains exchanged various cost recovery or backstop agreements in 2019 with Qualico. Qualico stated it had negotiated with Pembina and Plains on terms and conditions, including the cost of the alterations. However, the parties could not agree on cost sharing; thus, through the ARA steering committee, the city instructed Qualico to seek direction from the AER through an application under section 33(1) of the *Pipeline Act*. Qualico applied to the AER in November 2020.

[72] In May 2021, the AER directed Qualico, Plains, and Pembina to attend a preliminary alternative dispute resolution (ADR) session. The session took place in June 2021. The parties concluded that mediation was unlikely to be productive. Nevertheless, in July 2021, the AER contacted the parties and advised of the appointment of a hearing commissioner to conduct "alternative dispute resolution by hearing commissioner." The ADR by hearing commissioner was held in October 2021 and did not lead to a resolution.

[73] In 2022, the AER made its decision on the amended application, and this hearing was conducted to reconsider that decision. The parties requested the hearing and fully and willingly participated in it, where they continued advancing their respective positions.

[74] At the hearing, Pembina and Plains argued there is absolutely no need for the AER to direct Pembina or Plains to perform work they are willing to undertake voluntarily.

Analysis and Findings on the Public Interest Regarding the Work at 167 Avenue

[75] The prolonged process over the past five years (including private negotiations, application process, ADR, reconsideration, and a hearing) indicates to us that the parties are at an impasse. Although Pembina and Plains characterized this matter as a disagreement about the cost and a private commercial matter between private parties, a private resolution does not appear likely to us. The impasse about cost sharing has stalled the completion of the necessary protection of the pipelines and the completion of the road. The work required to protect the pipelines, public safety, and the environment are not being completed.

[76] The population of the Horse Hill area is projected to increase from 3000 in 2020 to between 65 000 and 70 000 by 2044, as indicated in Qualico's evidence. Considering the increasing population in the area and the resulting increase in traffic, it is not in the public interest to delay the alterations, hoping that a private resolution will occur and initiate the work.

[77] Although Pembina and Plains characterize this as a private commercial matter and the AER should not intervene, they also said that the City of Edmonton and the ARA steering committee are driving this application to achieve broader policy and political objectives. Qualico also stated that it was directed by the City of Edmonton, through the ARA steering committee, to make the amended application. The development industry representatives participated in the hearing and indicated the issue of pipeline crossings as one of their top ten advocacy priorities. They stated that they are pursuing legislative change concerning the issues raised in Qualico's application.

[78] Therefore, this matter is not strictly a private commercial negotiation between independent private entities (Qualico, Pembina, and Plains). Other influential stakeholders, the ARA steering committee, on behalf of the city, expect the cost of the crossing to be shared between developers and pipeline licensees to keep the costs and subsequent levies lower. However, neither the city nor the ARA steering committee has interacted with Pembina and Plains directly. Qualico has been acting on their behalf. This situation seems to have affected Qualico's ability to independently negotiate a private resolution on its behalf. The success of most commercial negotiations depends on all parties to the negotiations being autonomous decision makers. Qualico does not appear to be an autonomous decision maker in these negotiations.

[79] Qualico appears to be in a difficult position in these negotiations. It needs to build and pay for the Meridian Street upgrade within the timeframe set by the city and try to share the cost with the pipeline licensees to keep the overall levies down, as directed by the ARA. Furthermore, the pipeline licensees seem inflexible in their negotiations about the crossings, which Qualico characterized as "take it or leave it."

[80] All of these things have hindered the negotiations between Qualico, Pembina, and Plains; consequently, the protection work is not happening. Demonstrated by the unsuccessful attempts at mediation, these negotiations do not seem to have a chance of success.

[81] MLC provided an example of a situation where a major collector road crossing a pipeline had not been completed. The road is in Edmonton's Desrochers development and has been completed except for where it crosses over a pipeline. This road provides access to a high school and kindergarten to grade 9 school. The land developer and Pembina have not reached a crossing agreement. Consequently, the road remains uncompleted, leaving an impassable 20-metre gap for vehicles and unsafe passage for pedestrians, MLC stated.

[82] MLC's Desrocher example confirms the panel's belief that the alterations may not happen in time and before the increase in the local population. Meridian Street is a large road designed for high-traffic volumes and is the main connection between the Horse Hill area and the rest of Edmonton. If a situation similar to the Desrocher example occurs at the intersection of Meridian Street and 167 Avenue, and traffic volumes increase before the protective measures to the pipelines are in place, the integrity of two large

pipelines carrying large volumes of petroleum products would be at risk. That, in turn, would be a risk to the environment and public safety. Therefore, we find that directing the work is needed to prevent such a situation.

[83] It is clear to us that the parties are at an impasse after a prolonged process. Private negotiations are not likely to bring about a resolution, and there remains a risk to public safety and the environment. Further prolonging this impasse by not directing the work is not in the public interest.

[84] Therefore, we find that directing the protective measures is in the public interest, and we exercise our discretion to direct the protective measures.

[85] Because we are directing work under section 33(1), section 33(2) is engaged, and in the following sections, we will examine by whom and to whom payment of the cost of the work and material, or either, shall be made.

Is Directing the Alterations at 172 Avenue in the Public Interest?

[86] The third alteration requested by Qualico in its amended application is at the intersection of Meridian Street and 172 Avenue, where access to 172 Avenue from Meridian Street crosses the Plains 24-inch pipeline.

[87] MLC said that Marquis JV Ltd. (a joint venture in which MLC was a party) entered into an agreement with Plains, who completed the alterations required to protect its 24-inch pipeline at the Meridian Street and 172 Avenue intersection. MLC submitted that Marquis JV paid for the alterations out of necessity because the crossing is across the entrance to their newly developed neighbourhood. Marquis JV paid for the crossing, understanding it would be encompassed by Qualico's application.

[88] Qualico said Marquis JV Ltd. could not wait any longer to proceed with its development because of changing market and business conditions. That meant Marquis JV and not Qualico had to do the crossing work. Qualico and MLC agreed that the Plains pipeline crossing at Meridian Street and 172 Avenue remains part of the amended application.

[89] Pembina and Plains said that Qualico's amended application for the 172 Avenue crossing is moot because the work is done. They also said it is not appropriate for Qualico to attempt to seek relief on behalf of another party. They said that section 33(2) of the *Pipeline Act* is only engaged after the AER has made a positive public interest determination regarding the alteration work.

Analysis and Findings on the Public Interest of the Alterations at 172 Avenue

[90] The work for protecting the Plains 24-inch pipeline below 172 Avenue on the west side of Meridian Street was necessary because of the road upgrade and the increased traffic volume. Protecting people and the environment must be maintained during the continued operation of the pipeline. Therefore, the pipeline alterations are in the public interest; however, they are complete.

[91] Following the same logic and analysis we applied to the work at 167 Avenue, we do not find a need for the AER to direct any alterations of the Plains 24-inch pipeline below 172 Avenue on the west side of Meridian Street. The need for directing the work at the 167 Avenue intersection arose from the need to protect pipeline integrity, public safety, and the environment. We are directing the pipeline protection at the 167 Avenue intersection because we do not know when the work will happen, nor are we convinced that a resolution by the parties is soon likely. None of those concerns applies to the alterations at 172 Avenue and Marquis Boulevard because the alterations and protections are in place and complete. Therefore, no public interest basis remains for us to direct the alterations.

[92] Section 33(2) states, “Where the Regulator directs the alteration or relocation of a pipeline, ..., it may order by whom and to whom payment of the cost of the work and material, or either, shall be made.” Since we have not directed the alterations, we need not consider costs for alterations at 172 Avenue and Marquis Boulevard, as no order can be made.

By Whom and to Whom Payment of the Cost of the Work and Material Should be Paid?

[93] Qualico’s application sought an order from the AER that the costs of alteration be shared equally between Qualico (50%) and Pembina (50%) for Pembina’s pipeline crossing and Qualico and Plains (50% each) for Plains’ pipeline crossing. Qualico characterized a 50/50 cost sharing for pipeline crossings as a public interest consideration. Qualico reasoned cost sharing would create equity between Qualico, Pembina, and Plains. Cost sharing would help mitigate what Qualico considered as negative effects from the existence of pipelines on landowners and the cost of pipeline crossings on homebuyers. Qualico relied on section 15 of *REDA* and section 3 of the *REDA general regulation* for us to consider the interest of landowners as part of our assessment. As presented by Qualico, those impacts were primarily financial and economic and related to the cost-sharing relief Qualico requested.

[94] While deciding who pays whom for the cost of the work, we need to consider our governing legislation. Section 15 of *REDA* and section 3 of the *REDA general regulation* require us to consider the effects of the energy resource activity on the environment and the impacts on a landowner because of the use of land on which the energy resource activity is or will be located.

Would Cost Sharing Mitigate the Impacts on Landowners?

[95] Qualico's submissions on potential impacts on landowners focused on four main issues:

- Home affordability may be affected by the costs of the pipeline crossings.
- The presence of pipelines negatively affects land value and land use.
- Carrying the cost of the crossings by developers is a disadvantage to them.
- Cost sharing would signal better land use by using pipeline corridors.

[96] We will examine each of these issues separately in the following sections. In the following analysis, we note that as the applicant, Qualico must persuade us that the points it raised are impacts that would justify exercising our discretion to order cost sharing.

Affordability for Homebuyers

[97] A key argument of Qualico was that it is in the public interest that the cost of the crossings be shared with Pembina and Plains to help with housing affordability. Otherwise, homebuyers will bear the full cost of the crossings, hindering home affordability in these new neighbourhoods. Qualico and members of the Developers Group said that all costs of development, including road building, are passed on to the homebuyer if the market allows it. If Qualico's costs increase, the cost of homes in the Horse Hill area will increase. Qualico stated that the average household income in the region is about \$105 000, which can be sufficient to qualify for a mortgage of at least about \$400 000.

[98] Qualico and the ARA representative provided an overview of how homeowners in the area pay their proportionate share of the cost of arterial roads. The mechanism of passing down the cost of arterial roads to the homebuyer is through arterial road levies. Since arterial roads benefit the whole catchment area, all developers share road costs through the levy system. The ARA steering committee, on behalf of the city, administers the arterial levy bylaws and funds. The levy system is designed so that every developer pays a proportionate share of the arterial road costs for a development catchment, such as Horse Hill. Qualico's land in Horse Hill is 5% of the total land; hence, its share of the levy will be about 5%. The ARA steering committee will reimburse Qualico over the life of the Horse Hill development as other developers initiate neighbourhoods.

[99] Qualico, Brookfield, and the Developers Group stated that levies are a significant development cost, and the ARA steering committee and developers have an interest in reducing the costs of the arterial road levy to benefit the residents of the Horse Hill neighbourhood.

[100] The ARA steering committee determines the levy based on previous arterial road building costs. In 2019, Qualico received a cost estimate of \$34 million to construct Meridian Street. Based on the estimates provided in the evidence, the Plains crossing would cost \$858 000 and the Pembina crossing

would cost \$559 000. The combined cost for the two crossings at 167 Avenue are estimated to cost about \$1.4 million, or about 5% of the cost of the Meridian Street upgrades.

[101] Qualico and the Developers Group members said that based on their experience, the cost of crossings ranged from \$0 to \$300 000.

[102] On the other hand, Pembina provided evidence that they receive 3500 crossing requests annually, and only 30 to 40 of them are complex crossings similar to the ones that are the subject of this hearing. The remaining crossing requests required little to no work. Plains' experience was similar to Pembina's in this regard.

[103] Pembina, Plains, and SECURE disagreed that crossing costs are a significant cost to purchasers. Using available information on crossing costs and the number of dwellings contemplated in the area structure plan, a witness for Pembina and Plains calculated the effect of the estimated cost of the crossings of Meridian Street at 167 Avenue and 172 Avenue Pembina and Plains to be \$35 per residential dwelling.

[104] Qualico said that \$35 per dwelling did not capture the whole impact of arterial road pipeline crossings on home affordability in the Horse Hill development. The ARA steering committee representative said if the outcome of this proceeding were that Qualico pays all of the crossing costs, it would have a greater impact on the levy than just the cost of the two crossings. This is because the ARA steering committee would multiply the 45 crossings in the Horse Hill area by an average of \$800 000, adding about \$35 million or 10% to the levy so incoming developers are not undercharged. The 10% increase to the levy will equate to \$1000/home, according to the ARA steering committee representative.

[105] In the hearing, the expert witness for Pembina, Plains, and SECURE said the two pipeline crossings that are the subject of the hearing would add \$35/home, and the 45 crossings will add about \$670 or \$700/home. He based his calculation on the 2020 area structure plan, which anticipates 29 000 residential units in the Horse Hill area.

[106] Another line of argument and evidence that Qualico advanced was that they build homes in new neighbourhoods to provide affordable homes. Qualico said new neighbourhoods face high sensitivity to the price of housing. Developers are forced to offer properties at a substantial discount compared with established neighbourhoods to be competitive. Adding costs in price-sensitive areas affects affordability and dampens the market.

[107] In response, the appraisal expert for Pembina, Plains, and SECURE said different neighbourhoods have different price points. Most of the time, new homes are worth more than homes in existing neighbourhoods, he said. Typically, developers set an initial price for the lot that reflects the economic return they want to achieve, but the purchaser determines if they will pay the asking price. If lots do not sell at that initial price, they may be discounted. Conversely, if demand is strong, the price will increase to reflect the demand, as has been happening in the Horse Hill area over the past eight to ten

months. Furthermore, when development costs increase, developers may increase the density of homes in the area and build more homes.

[108] The economics witness for Pembina, Plains, and SECURE stated that Qualico and other developers have insufficient market powers to pass through such costs easily into the competitive markets. If the costs and prices are too high for the market and the development becomes uneconomical, the developer will go elsewhere, and someone else will take their place. The market sets the price. He asserted that rather than a public interest matter, it is about Qualico's earnings or business interests. He, therefore, characterized the request for cost sharing as taking money from the pockets of one corporation, a pipeline company, and putting it into the pocket of another corporation, Qualico.

Analysis and Findings Concerning Affordability for Homebuyers

[109] We agree that the affordability of homes in Alberta is a consideration when assessing the impacts of energy resource activities on landowners, in this case, homebuyers. Affordability of homes, in addition to the cost of home construction, also depends on many factors including interest rates, inflation rate, potential homebuyers' income, housing supply and demand, and government policies. Housing affordability assessment is a complex economic assessment. Such an assessment was not presented by Qualico and other developers. Qualico only provided an average household income and an estimate of the mortgage such household can borrow. Beyond that, Qualico did not provide any assessment of the affordability of homes in Alberta.

[110] Although Qualico made an argument that the cost of the crossings applied through the levy would be adverse to home buyers, it did not provide any analysis to support this claim. To assert that the cost is "significant" is not sufficient. Significant relative to what or on what scale? Qualico did not provide an assessment demonstrating whether \$1000/home would make homes unaffordable. We accept that any cost increase is an increase. However, it is unclear how substantial the resulting impact from a \$1000/home increase would be relative to the total cost of the home and its market price. Qualico did not provide evidence on how the reduction in the cost of road construction would reduce the price they charge for homes. When many other external factors may also have an impact on the affordability of homes—for example, income level, borrowing power, interest rates, the cost of material and labour, and supply and demand—lowering one element of the cost may not necessarily make homes more affordable. Qualico's evidence did not demonstrate how any of the variables that affect the cost of an average home in Horse Hill, including the road levy, influence home affordability. They did not present any average or range for the total cost or price of homes in the Horse Hill area or Marquis neighbourhoods. Consequently, we have no means of assessing the cost of the crossings on home affordability.

[111] We will now examine the calculation for the \$1000/home increase in the levy. The only calculation presented was a hypothetical calculation assuming that all of the 45 crossings in the Horse Hill area would cost \$800 000 on average, resulting in a \$35 million increase in total to the levy or \$1000/home increase. No other evidence or data were presented about the other 45 crossings—not the size of the arterial roads, their use, nor relative traffic volumes compared with Meridian Street. Based on the evidence, Meridian Street appears to be large arterial road connecting all of Horse Hill area to Edmonton. No evidence was presented to demonstrate if all the other road crossings have a similar design or significant traffic volume as Meridian Street.

[112] On the other hand, Pembina and Plains indicated that only a small fraction of the crossings each company handles are complex and similar to the crossings at Meridian Street and 167 Avenue. Most crossings require little or no work, they said. This statement aligns with the evidence from Qualico and other developers evidence that the historical cost of crossings ranged from \$0 to \$300 000. An example of a higher-cost estimate was \$974 000 for the 24-inch pipeline at 172 Avenue and Meridian Street. However, the actual invoice amount was \$482 000. Based on this evidence, it appears to us that not all crossings in the Horse Hill area will be complex and as costly as the two crossings at 167 Avenue.

[113] The cost of crossings depends on many factors, including soil conditions, pipeline diameter, road design, road weight, traffic weight, and traffic volume. When Qualico presented its calculation for \$1000/home, assuming that all 45 crossings would cost \$800 000 on average, it did not explain why. It did not provide any input assumptions (road dimensions, traffic information or road use information) for arriving at a uniform cost for the 45 crossings. The only basis for Qualico's claim was that because crossing upgrade costs have been increasing to values similar to the crossings at Meridian Street and 167 Avenue, then the average costs for all future crossings in Horse Hill will be \$800 000.

[114] Without knowing the specifics of these 45 crossings, it is reasonable to assume that not all the roads in Horse Hill have the same function and design parameters as the Meridian Street crossings. It is reasonable to infer that not all the crossings are over large-diameter pipelines, and not all roads are main connector roads with heavy traffic volumes. Some crossings may be adequate the way they currently are. Therefore, the panel questions why Qualico would assume that the upgrade costs for all 45 crossings in the Horse Hill area would be the same as those that are the subject of this hearing.

[115] The historical range for crossing costs would likely continue to apply, with some crossings having a lower cost or none. Based on the evidence, assuming that each of the 45 crossings in Horse Hill will cost \$800 000 appears to be a high-cost scenario rather than an average-cost scenario. Therefore, the cost increase could be less than \$1000/home.

[116] Qualico’s witnesses had differing views from the witnesses of Pembina, Plains, and SECURE about whether new neighbourhoods provide affordable homes. Witnesses did not substantiate their views with any analysis. They did not provide comparative data demonstrating how home prices in new neighbourhoods, such as Marquis and Horse Hill, compare with homes in older established neighbourhoods.

[117] Based on the above, the link between home affordability and a 50/50 cost sharing between Qualico and Pembina and Plains for the costs for Meridian Street and 167 Avenue crossings was not established by the evidence.

Impact on Land Value and Use

[118] Qualico indicated that cost sharing of the crossings compensates for the negative impact on land value from the presence of pipelines. Qualico asserted that the cost of crossings is only a fraction of the total negative effect of the existence of the pipelines on land value. For example, the presence of pipeline rights-of-way reduces the developability of the land and, therefore, the overall value of the land.

[119] Qualico’s expert stated that the presence of the pipelines negatively affects the land value and that negative effect increased over time as the highest and best use of the land changed from agricultural to urban development. In Qualico’s expert’s opinion, while adequate compensation for the pipeline right-of-way was given to the original owner when the right-of-way was registered, the subsequent landowners bore a loss of value because of the restrictions created by the pipeline right-of-way. Meanwhile, pipeline companies did not pay any further compensation, the witness said.

[120] Qualico’s evidence showed that today, land values in the Horse Hill area range from \$250 000 to \$325 000/acre, depending on how close the land is to municipal services. The land taken in the late 1960s for the Plains 24-inch pipeline right-of-way was about \$600 to \$1000 per acre. Nonetheless, in Qualico’s opinion, the current land value would have been higher if the land restrictions caused by the presence of the pipelines did not exist, and because without the pipelines, municipal development planning would have been more efficient.

[121] At the hearing, Qualico stated that pipelines with diagonal routing across land can cause inefficiency in planning as some parcels of land are small or triangle-shaped, adding costs to developers. Qualico did not provide a quantitative assessment to demonstrate land values with and without pipeline rights-of-way.

[122] Qualico also said Pembina and Plains had benefited from using the land at the original compensation rate, while some current development costs are related to their pipelines. Therefore, according to Qualico, the crossing costs should be shared by the different users of the land, including Pembina and Plains. In Qualico’s opinion, developers and subsequent purchasers of land and homes would “incur an excessive and inequitable financial burden if they were required to bear the entire cost of

pipeline crossings.” Therefore, the equity between the parties provided by 50/50 cost sharing would inherently be in the public interest.

[123] Pembina, Plains, and SECURE said they do not receive a benefit from crossing work, whereas the developer does. Thus, cost sharing is not equitable. Their view was that developers, during their due diligence period, review a wide range of factors to determine if the project can meet their business objectives before purchasing land. Known development restrictions may cause a loss of land value, but any loss in land value is accounted for in the price paid. They also stated that a pipeline company could not know the future land use and developer plans. But the developers, through their due diligence phase, would or should know that pipelines existed in the land they are buying. The expert witnesses for Pembina, Plains, and SECURE included an appraiser, an urban planner, and economists.

[124] The witnesses for Pembina, Plains, and SECURE rejected Qualico’s claim that pipeline rights-of-way always erode the value of the land being developed. They said the right-of-way can be incorporated into neighbourhoods as green space, bike lanes, or pedways and that they do not necessarily reduce land values and development efficiency. Rights-of-way may require more planning to be accommodated in the design and even be beneficial for the development. They also said there was no indication in the area structure plan that pipelines caused a loss of density of housing per hectare in Horse Hill or an increase in roads required to service lots.

[125] Pembina and Plains witnesses referred to the principles of first-in-time, first-in-right and cost causation to characterize why any second-in-time user should expect to bear 100% of the costs of a crossing they request. They said since Qualico is the party causing the upgrade of Meridian Street, Qualico must pay the upgrade cost. The witnesses relied on their experience to assert cost causation is a long-standing industry practice in Alberta regarding pipeline crossings.

[126] According to Qualico, for land in the urban periphery of Edmonton, the loss of value from restrictions due to the existence of pipelines warranted a change to the cost causation principle. Moreover, Qualico argued it did not cause the need for the crossing upgrades but rather urban growth and the pressure to develop affordable housing in the City of Edmonton is the cause.

Analysis and Findings Concerning Land Value and Use

[127] Successive buyers, including Qualico, have been willing to pay the price of the Horse Hill area and Marquis neighbourhood land, which has substantially increased over the 50 years since the pipeline rights-of-way were registered.

[128] As an experienced developer, before purchasing the lands in the Horse Hill area in 2018, Qualico must have known that the pipelines existed and would likely need crossing work. This fact is evident as Qualico’s evidence shows CIMA+ conducted a study in 2015 for the previous owner of Qualico’s land, Walton. CIMA+ prepared an arterial road concept plan for Meridian Street, which included a preliminary

cost estimate. The concept plan identified restrictions to land use planning, such as the railway line, pipelines, utility lines, and natural areas. The CIMA+ concept plan highlighted pipeline restrictions and stated that the estimated cost for installation of pipeline protection slabs on Pembina's 20-inch pipeline as \$1 135 200. The 2015 concept plan identified the need for pipeline crossings at 167 Avenue, and the concept plan was available to Qualico during its due diligence studies.

[129] When it purchased the land in 2018, Qualico agreed with the price requested by the vendor for the land despite the identified restrictions and the cost estimate for at least one of the pipeline crossings. Moreover, if we accept that the pipeline restrictions reduced the land value, we can conclude that Qualico would have benefited from a lower price and a cost advantage at the time of purchase. Therefore, in our view, a 50/50 cost sharing is not necessary to compensate for any inefficiency in urban development or any added cost of planning.

[130] Moreover, Qualico did not demonstrate how the pipelines negatively affected land value. It is a speculative assertion to say the land value could have been even higher today if the pipelines did not exist. Qualico did not substantiate this assertion by demonstrating what the land value could have been without the pipelines. For example, it did not present prices for similar parcels of land being sold at a higher value solely because there were no pipelines on those parcels. In other words, Qualico did not make a like-to-like comparison. Qualico did not present a quantitative comparison of today's land value with the hypothetical case where pipelines do not exist. It did not substantiate its assertion with any price or cost data, allowing the panel to understand the alleged negative impact on the land value because of the existence of the pipelines.

[131] To conclude that crossing costs must be shared to compensate for a hypothetical erosion in land value caused by the existence of pipelines is an improper application of section 33(2) of the *Pipeline Act*. Section 33(2) is to be used to order the cost arising from actual pipeline alterations or protections at hand and not to compensate for a hypothetical and vague decrease in land value.

Carrying Costs of Road Construction

[132] Another issue raised by Qualico was the impact on Qualico from carrying the upfront cost of road construction, including crossing costs. Qualico stated that as the "front-end developer" (the first developer), it has to carry the construction costs for Meridian Street and hope that other developers coming into the area will contribute their portion of the road cost. Qualico characterized carrying the road construction costs as "over expenditure" that it must finance. Qualico said these costs are beyond its proportionate share.

[133] According to the ARA representative, over time and through ARA steering committee levies, all developers in the Horse Hill catchment will share the cost of the Meridian Street upgrades. Each developer's share would be proportionate to the size of their land in the catchment. Based on the size of

Qualico's land in the Horse Hill area, Qualico's share of the arterial road cost after reimbursements through the levy for Meridian Street would be about 5% of Meridian Street, Qualico said at the hearing.

[134] WSP Global Inc., an engineering contractor, produced a cost estimate in 2019. The estimated cost to develop Meridian Street from 153 Avenue to the CN rail line was \$34 million. Of the \$34 million cost, other infrastructure costs for culvert replacement and bridge construction at Horsehills Creek totalled almost \$6 million or 24% of the arterial road upgrades. The estimated cost to relocate overhead power lines was \$350 000. Based on the estimates provided in the evidence, the Plains crossing would cost \$858 000 and the Pembina crossing \$559 000. In other words, the estimated cost of the two crossings at 167 Avenue is \$1.4 million or about 5% of the cost of Meridian Street upgrades.

[135] Qualico argued that sharing the crossing costs would not impair the profitability of Pembina or Plains. They pointed to Pembina and Plains' 2023 earnings and argued there is little to no actual financial impact on these companies should the AER grant the order requested by Qualico. No evidence was provided about Qualico's earnings to demonstrate the impact of carrying the crossing cost on Qualico.

[136] Pembina and Plains, supported by SECURE and Keyera, stated that they would be negatively affected by a direction to share costs 50/50 for the 167 Avenue crossings because they would bear all of their share of the costs without any benefit to their business; however, Qualico would be able to reduce its costs and receive the benefit to its business. The costs Pembina and Plains would incur from 50/50 cost sharing may not be recoverable from their customers. They said they and their customers should not have to pay for upgrades they did not cause. Their economics expert witness stated cost sharing creates uncertainty in an otherwise successful and vibrant oil and gas businesses. He stated that the financial industry is deeply involved in raising capital for the North American oil and gas industry, which, in turn, depends on stable contractual relations.

[137] Qualico and members of the Developers Group said that they have paid for crossings in the past but that the cost recovery, or backstopping agreements, provided by Pembina and Plains are a relatively new part of negotiations in the Edmonton region. These agreements set out a scope of work and cost estimate that developers are required to agree to and pay for up front. Qualico said this is unfair because the amount of money demanded as an upfront payment is much higher than they previously experienced and higher than the final invoice (about double the actual costs based on the examples given), adding to their cost of capital. If possible, they will pass on their cost of capital to home buyers, potentially affecting affordability.

[138] Pembina and Plains said they initiated upfront payment through backstopping or cost recovery agreements as a business practice. To minimize the risk and the burden on Plains, Plains requests upfront payment through the cost recovery agreement. It is a recent business practice primarily because of Plains' experience with Marquis JV and the 172 Avenue crossing, where Marquis JV refused to reimburse Plains when they were invoiced. Pembina stated that the amount in a backstopping agreement is only an

estimate. Pembina will invoice the developer for the actual cost incurred after the work is done. In Pembina and Plains' experience, the amounts previously invoiced under such agreements have been less than the authorized amount.

Analysis and Findings Concerning Carrying Costs of Road Construction

[139] All of the capital needs for development, including road building, are part of the development business. It is not exceptional or extraordinary to invest capital up front and get returns later. This fact is evident by the upfront land cost years before development or home building. The model established by the city and ARA steering committee is that the first developer, Qualico, will carry the costs of the arterial road construction until sometime in the future when new developers take up land in the Horse Hill area, and reimbursement occurs through the levy fund. However, as a sophisticated developer, Qualico understood it would carry the costs of the arterial road when it received its development permit. It took the risk of purchasing the land even though its due diligence would have indicated potential costs from pipelines, utilities, and natural areas. These costs were not a surprise to Qualico as it had access to the CIMA+ studies from 2015 prepared for Walton. The record of the proceeding shows that before Qualico purchased the land, CIMA+ identified both pipeline crossings and the cost of crossing Pembina's 20-inch pipeline at \$1 135 200. Therefore, the costs and risks of managing these restrictions to development appear to have been known to Qualico as part of the cost of developing the land.

[140] Although Qualico asserted that the crossing costs have a negative or dampening effect, Qualico did not present any economic assessment to demonstrate how the cost of crossings at Meridian Street and 167 Avenue or the 5% cost from the total cost of the road is affecting the economics of making its investments. The crossings do not appear to be an extraordinary or excessive cost component of upgrading Meridian Street, which has other major infrastructure upgrades with more significant costs.

[141] Developers are for-profit companies. Although these pipeline crossings have a cost, developing the Horse Hill area must have benefits for Qualico and other developers in the area. Qualico would profit from building the road as it will facilitate the sale of its land for homes and new businesses in the Horse Hill area. Qualico will be reimbursed through the ARA levies, albeit over time, and its share of the crossing costs will be less than \$1.4 million. The nature of most capital projects is to invest upfront capital and receive returns over time.

[142] Conversely, Pembina and Plains do not seem able to gain any apparent financial benefit from this cost sharing requested by Qualico. It will be just a cost to them and not an investment with returns. They will need to recover it somehow, possibly by passing it down to their customers if their customer agreements allow it. All the corporations that appeared at the hearing are for-profit corporations, both developers and pipeline companies alike. It is in the interest of for-profit corporations to keep operating costs as low as possible.

[143] Reducing the crossing costs by half would benefit the developers, through reducing upfront costs. On the other hand, Pembina and Plains would need to absorb 50% of the crossing costs, which they would not need to pay if there was no need to upgrade the road.

[144] Qualico argued that Pembina and Plains have high enough earnings not to notice the crossing costs. At the same time, there was no evidence on the record of how the crossing costs would affect Qualico's annual income. Therefore, in the absence of Qualico's annual earnings and the ratio of the cost of crossings to those earnings, Pembina and Plain's annual earnings have little use in our analysis because there is no like-to-like comparison.

[145] Similar to the road that Qualico is building for public use, pipelines, power lines, and other infrastructure that Qualico characterized as restrictions provide a service to the public. Pipelines ship products and power lines distribute electricity. Land developers and pipeline companies alike provide services and enjoy their profits. The parties provided no evidence or argument that one's profits or type of service is superior to the other.

[146] For these reasons, we do not agree that section 33(2) of the *Pipeline Act* should be used to mitigate the impact on Qualico for carrying the costs of the pipeline protections at 167 Avenue and Meridian Street.

Land Use and Pipeline Corridors

[147] Another argument Qualico advanced, supported by its expert witness, was pipelines should be placed in pipeline corridors to increase land use efficiency and avoid land use conflicts. In Qualico's expert's view, not putting pipelines in pipeline corridors had negatively affected land use and land value. Even 50 years ago, the pipeline licensees should have known the future use of the land would eventually change, he stated. Therefore, 50/50 cost sharing for crossings would send a price signal that would encourage pipeline licensees to use pipeline corridors in the future, reducing the impact on future land use, which would be in the public interest.

[148] In response, the witnesses for Pembina, Plains, and SECURE noted no corridors existed in the subject area when the Pembina and Plains pipelines were planned and constructed. In agricultural areas, corridors can be used where a natural feature intersects the paths of multiple operators, they said. However, corridors may not always be optimal as operators usually have different origins and destinations, and corridors would lead to increased land impact.

[149] The economics witnesses for Plains, Pembina, and SECURE stated that the concept of "infrastructure corridors" remains a useful area of scholarly study for prospective pipelines in Alberta. However, that bears no practical application in this case and to the Pembina and Plains pipelines at issue.

Analysis and Findings Concerning Land Use and Pipeline Corridors

[150] We agree that for the orderly development of oil and gas infrastructure, any AER licensee must complete studies and choose the most efficient land use. Using corridors is one method to consider when planning pipeline infrastructure routings, but it is not the only one. Other methods that have merits and benefits must also be considered. For example, following the existing road's right-of-way is a well-established method for optimizing land use. The maps presented in Qualico's evidence indicate this method was applied here, and some sections of Pembina and Plains pipelines run parallel and adjacent to Meridian Street and follow the existing road's right-of-way. Moreover, the maps in the application show that the two pipelines in question share a common corridor through this development, as they have directly adjacent rights-of-way.

[151] Nonetheless, to suggest that the pipeline companies must have known the future land use 50 years in advance with a high enough certainty to plan their routing suitable for future urban development is an unrealistic expectation. Furthermore, Qualico's argument that cost sharing for two crossings today for pipelines built 50 years ago would send a strong signal to influence the broad use of pipeline corridors appears highly speculative. We find it hard to imagine how the cost sharing of the crossings at Meridian Street and 167 Avenue can be realistically linked to the broad use of pipeline corridors in the future.

Should the Costs of Crossings at Meridian Street and 167 Avenue be Shared 50/50?

[152] We will now address the protection work required at the two Meridian Street and 167 Avenue crossings and who should pay whom for those crossings. We will assess the following issues raised by the parties specific to these crossings:

- engineering and cost uncertainty
- routine maintenance and pipeline repairs
- the work required and its cost

Engineering and Cost Uncertainty

[153] Qualico, supported by the developers participating in the hearing, expressed dissatisfaction with the recent cost increases in pipeline crossings and the uncertainty of the cost estimates. Qualico was also dissatisfied that it has to pay for engineering studies to determine the work required but do not routinely receive the results of those studies. Qualico felt this lack of information makes it unclear whether the proposed alterations or protection methods were appropriate or necessary.

[154] Qualico said that the work scope and cost estimates in the cost recovery or backstopping agreements are too general for it to evaluate whether all the work is needed and whether the cost is reasonable. As a developer of roads and other infrastructure, it is used to more detailed scopes of work than those received from Pembina and Plains and is left questioning the cost of the work. Therefore,

Qualico felt it was paying for work it does not understand, which may include maintenance work piggybacked on the protection work.

[155] Pembina and Plains characterized the crossings at the Meridian Street and 167 Avenue intersection as complex. They said that a complex crossing requires an iterative process to arrive at scopes of work and cost estimates, which needs coordination and cooperation between a pipeline company and the party looking to cross the pipeline. They explained that the accuracy of the cost estimate depends on the information the developers provide them about the crossing. They stated that when approached for a crossing request for these complex crossings, they create a class 5 cost estimate, which typically includes a 20% contingency and has an accuracy range of minus 20% to plus 30%. This may lead to cost estimates in the cost recovery or backstopping agreements being different than the eventual cost of the crossing.

[156] Pembina and Plains said that the scope of pipeline alteration work and compliance with applicable regulations, codes, and technical standards, more broadly, are not items that pipeline licensees like Pembina and Plains negotiate or seek landowner input on. Those obligations rest with the pipeline licensee, who ultimately bears responsibility for ensuring regulatory compliance and the continued safe operation of its pipeline.

[157] The pipeline companies also said every crossing is unique, and two pipelines close to one another may require different protective measures, especially when those pipelines are operated by different companies.

[158] Keyera's evidence was helpful and listed a range of mitigation measures for protecting pipelines at crossings, which included

- no work required to carry the traffic load;
- concrete blocks or slabs to distribute the load;
- lowering the pipeline to increase the depth of cover;
- changing the wall thickness of the pipeline; and
- moving the pipeline.

[159] Keyera said a mitigation measure is generally selected based on the specific circumstances of the crossing and related engineering assessment. There was one instance where Keyera shared a stress test report with Brookfield, but Keyera said it was not their normal practice to share engineering studies. The circumstances that led to providing the report were unknown to Keyera's witness.

Analysis and Findings Concerning Engineering and Cost Uncertainty

[160] Section 18 of the *Pipeline Rules* states that the licensee must comply with *CSA Z662*. Section 28(2) of *Pipeline Rules* states:

“prior to the initiation of any construction related to the building, improving or widening of a road or highway over an existing pipeline, or extending a road or highway right-of-way over an existing pipeline, the pipeline at such locations must either be upgraded or otherwise meet the requirements of *CSA Z662* respecting crossings of existing pipelines.”

[161] *CSA Z662* allows licensees to determine through engineering what the best actions would be. The *CSA* standard is partly prescriptive (i.e., minimum wall thicknesses under the roadway) and partly goal based (i.e., where the minimum specified in *CSA Z662* would not be adequate, the company must calculate applied stresses and design according to the actual situation). Such assessments require complex, thorough, and possibly iterative engineering calculations.

[162] Pembina and Plains described the work at the 167 Avenue intersection as primarily civil engineering and directed at establishing sufficient pipeline protection and adequate load distribution structures. This type of work is site specific and depends on site variables, including the soil condition, external load on the pipeline, road design, and other local factors.

[163] Pembina and Plains must conduct appropriate engineering before the work starts in the field to ensure the protection of the pipelines is suitable for the specifics of these pipeline crossings. We agree with Pembina and Plains that as the licensees and operators of the pipelines, they have the responsibility of defining the scope of the pipeline protections and compliance with the applicable regulations, codes, and technical standards. Those obligations rest with the pipeline licensee, who bears responsibility for ensuring regulatory compliance and the continued safe operation of their pipelines. Qualico had a desire for engineering studies to be shared with it. Pembina and Plains disagreed. We believe it is up to the parties to determine when and how they may find it necessary to share the engineering assessments.

[164] An engineering assessment is required to produce a cost estimate for complex crossings similar to those at Meridian Street and 167 Avenue. In addition to the necessary pipeline specifications and operating conditions, road design parameters at the pipeline crossing are needed for the engineering assessment of a pipeline crossing. The road design parameters include the road weight, traffic weight, road width, soil condition, and other parameters. In the early stages of subdivision development, such details may not be available, and the scope of work may only exist in generalities. Only after the exact location and design scope are defined can the pipeline licensee initiate its engineering design, which may also require on-site geotechnical assessment. Only when the pipeline licensee receives detailed and specific design parameters for the crossing, it can provide a detailed and accurate cost estimate. It is reasonable to expect this work will take some time.

[165] Lastly, a cost estimate is an estimate and a forecast, and a class 5 estimate is a rough estimate and not detailed and accurate. The more complex a project, the more uncertainty in the estimate. The process of cost estimate preparation is iterative. Only when the project is complete can the actual scope and final cost be known with certainty. Therefore, full certainty about the cost of a complex crossing cannot be known when a developer approaches a pipeline company.

Routine Maintenance and Pipeline Repair Costs

[166] As a reason for cost sharing, Qualico and other developers alleged there is no transparency in the proposed scope of work and cost estimate, and there is potential for adding opportunistic maintenance costs to the crossing costs. Qualico implied that because of the age of the Pembina and Plains pipelines (about 50 years old), they may require other upgrades or repairs included in the scope of the crossing upgrades. They argued there is no transparency on what drives the work and consequently its cost because engineering studies are not shared with them. The ARA steering committee representative indicated a desire to see a cost breakdown from the pipeline licensees that would highlight any required maintenance because of the pipe's age.

[167] Pembina and Plains disagreed and said they carry out routine integrity testing programs using in-line inspection tools, and they have no concern over the integrity of each of their pipelines at 167 Avenue. Responding to Qualico's questions on whether an older pipeline would require more protection, Plains said that determining the upgrade or protection needed is case specific and depends on a combination of factors, such as the roadbed material, the increase in traffic volume, the product carried in the pipeline, and depth of cover, but not on the pipeline itself.

[168] Pembina and Plains distinguished between opportunistic maintenance (maintenance work made possible because the crossing is happening) and repair work caused by the crossing upgrade. Plains stated it would pay for any maintenance required due to day-to-day operations that would exist without the crossing. However, it would expect the developer to pay for maintenance work that arose because the pipeline would be inaccessible once the road upgrade occurred.

[169] Pembina said it would, for efficiency, cover the cost of the maintenance and integrity work. However, Pembina expected Qualico to pay for pipeline protection and the roadbed upgrade because this was caused by upgrading the road to arterial roadway standards.

Analysis and Findings Concerning Routine Maintenance and Pipeline Repair Costs

[170] At the hearing, both Pembina and Plains stated that there were no integrity concerns related to the pipelines at this road crossing, and they routinely perform in-line inspections. They stated that they maintain the pipelines in accordance with their regular integrity management programs. No evidence was presented indicating that Pembina and Plains were not in compliance with the terms of their pipeline licences for the two pipelines in question. Therefore, it is reasonable to expect that the existing pipelines

are operated in accordance with applicable standards and regulations since the pipeline licensees, under their licence obligations, must remain compliant with the governing standards and regulations.

The Work and Its Cost

[171] The witnesses for Pembina and Plains provided an overview of the work required for pipeline protection at the Meridian Street and 167 Avenue intersection.

[172] For Pembina's 20-inch pipeline, described work was entirely related to the protection of the pipeline by distributing the road and traffic loading so that it does not damage the pipeline. That work included excavation, backfilling with Fillcrete, backfill with soil, and cleanup.

[173] Similarly, for the Plains 24-inch pipeline, the work required would distribute the road and traffic loading to protect the pipeline from external stress. Plains said it will install concrete slabs over the pipeline. It appears that the Plains pipeline is within a casing, and Plains would remove the casing to inspect the pipeline.

[174] Concerning how protection and alteration costs should be divided, the chair of Qualico's panel stated that the development industry would be responsible for engineering and road surface upgrades required to protect the pipelines. Pembina and Plains should pay the upgrade costs and for replacements to the existing pipelines, including compliance with CSA requirements. Moreover, any additional work related to requirements that the pipeline companies might have that goes beyond the standards is the responsibility of Pembina and Plains, Qualico asserted.

[175] The representative from the ARA steering committee, however, characterized the responsibility of the development industry somewhat differently. He said anything to do with the road structure to dissipate the loads transferred down to the pipeline, including concrete slabs or a thicker road structure, would be the development industry's cost as they build roads. However, the pipeline company should pay for work associated with repairing, replacing, or bringing the pipeline to the current standards.

[176] Pembina and Plains stated that any alteration work caused by the crossing to the pipeline itself should be the responsibility of the party requesting the alterations or upgrades. If, for example, pipelines need lowering or wall thickness changed, this work, they asserted, is the responsibility of the second-in-time party to pay. The party requesting the work pays for the work, which is a standard approach within the industry.

[177] Pembina and Plains also said they try to ensure their costs are not needlessly high. They only recover their costs and do not collect any profit when completing the crossing work for the parties requesting the crossings. In the future, Pembina explained, it may need to cross infrastructure belonging to the party that had crossed its pipeline, and Pembina would not want to be overcharged either. This approach creates "good natural tension" in the industry, Pembina said.

Analysis and Findings Concerning the Work and Its Cost

[178] In our assessment, the work described by the pipeline companies to protect their pipelines at the Meridian Street and 167 Avenue intersection is directly linked to the Meridian Street road upgrade. The use of concrete slabs and Fillcrete is to protect the pipelines from increased loading due to traffic and changes in road design. There is no indication of any additional work to address pipeline integrity problems.

[179] Based on the evidence, if circumstances had not changed, the two pipelines would not need these additional protections at this time. For 50 years, the pipelines have operated at this current crossing with the current road. However, because circumstances have changed, upgrades to the road are now required. The requirements for protecting the two pipelines traversing rural lands differ from those needed in an urban setting. If there were no changes in the roadway, the road use, the road design, or the land use, there would be no need for additional pipeline protection. The change in land use and road design demand appropriate measures to provide adequate safety in the face of increasing traffic loads and population density. The change of circumstances demands increased protection of the pipelines. If there had been no change of circumstances, these costs would not have occurred.

[180] Qualico is the developer upgrading Meridian Street. The cost of the pipeline crossings is no different from that of the creek crossing, railway crossing, culvert, bridge, or other features Qualico must include in the Meridian Street construction and pay for. Pipeline crossings and their costs are also part of the cost of the entire road. The protection of the pipelines is needed for the road upgrade, as a creek crossing is needed. The developers building the road are responsible for all costs associated with the road upgrade for Meridian Street. We regard the pipeline protection cost as part of the road upgrade cost to be paid for by the developer. We note that this approach for the crossing at the Meridian Street and 167 Avenue intersection aligns with the suggestion of the ARA steering committee representative, as the cost is strictly related to dissipating the loading from the road and traffic.

[181] In our view, and as stated before, any cost of the work to protect the pipelines linked to the road upgrade would be the responsibility of Qualico. However, should the pipeline licensees conduct an inspection and discover maintenance and integrity issues that need addressing, or they wish to conduct proactive work to ensure the future longevity of the pipelines, the licensees are solely responsible for paying those costs. Similarly, the licensees would be responsible for the cost of any opportune maintenance conducted while the pipelines are exposed.

Other Matters

Historical Orders

[182] Qualico and the Developers Group were seeking to obtain predictability about crossing costs in light of the many crossings needed because of urban growth in the Edmonton region and the different existing pipeline infrastructures. Qualico referred to two previous decisions of the Energy Resource Conservation Board (ERCB; the predecessor to the AER), *ERCB Decision 80-10, Application by the Town of Sundre for Relocation of a Pipeline* and *ERCB Decision D 85-2 Municipal District of Foothills No. 31 Pursuant to Section 34 of the Pipeline Act, August 21, 1980*, as examples where the ERCB considered cost sharing.

[183] Pembina and Plains argued if we order cost sharing, it would set a new precedent. In their arguments, they were unequivocal and said, “Never before has the AER or any of its predecessors made the type of order that you are now being asked to make.”

[184] After the close of the hearing, while looking for a template form of order, counsel for the panel came across over one hundred orders issued by the ERCB (AER’s predecessor) under what is now section 33 of the *Pipeline Act*. Many of the historic orders required the pipeline licensee to pay 100% of the cost, many others required the applicant to pay 100%, and some orders required a 50/50 split in cost. The fact that such orders (and so many of them) existed directly contradicted the submissions made by the pipeline companies, particularly ordering cost splitting or payment by the pipeline licensee. The pipeline companies had argued that it would set a precedent for the AER to do such a thing.

[185] The fact that the AER’s predecessor had issued many such orders in the past was relevant. The parties were notified of counsel’s discovery of these historic orders, provided copies of the orders and provided an opportunity to make further submissions. The parties made submissions regarding the historic orders.

[186] The existence and substance of these orders did not factor into our decision and reasoning other than as evidence that such orders had been made previously. No single approach to costs has been followed. Therefore, the panel does not agree that any one decision respecting a specific situation sets a precedent for future applications filed under section 33 of the *Pipeline Act*.

Emergent Issue of Crossings in Edmonton

[187] Representatives from the development industry, including UDI-EM and BILD Alberta attended the hearing. These representatives indicated the issue of pipeline crossings is one of their top ten advocacy priorities. They said that they are actively trying to pursue legislative change concerning the issues raised in Qualico's application. The representatives of the ARA steering committee, UDI-EM, and BILD Alberta stated that before further advocacy work with the government, they are attending this

public hearing to get guidance from the AER on if and how applications under Section 33 of the *Pipeline Act* can resolve the situation.

[188] In our view, the powers of the regulator contemplated in section 33 of the *Pipeline Act* are not the proper tool for resolving the broad emergent public policy issues related to new municipal developments. Section 33 of the *Pipeline Act* can apply to specific facts related to a specific pipeline, and through analysis of the facts at hand, an order may or may not be issued. Section 33 is not the correct tool to be applied broadly to assist or resolve matters as expansive as land use conflict in the Edmonton region. Indeed, and as stated by the development industry representatives, pursuing other collaborative approaches is more appropriate for resolving this emergent issue in Edmonton.

Conclusion

[189] Pembina and Plains shall provide the protective measures for their respective pipelines, where the Pembina 20-inch pipeline 6926-16 and Plains 24-inch pipeline 6001-01 diagonally cross below the intersection of Meridian Street and 167 Avenue, subject to the terms and conditions provided in the orders attached to this decision (see appendix).

[190] Qualico shall pay for the engineering and construction of those protective measures.

[191] We deny the application filed by Qualico to direct alterations of Plains 24-inch pipeline where it crosses below 172 Avenue on the west side of Meridian Street, as those alterations are in place and complete.

[192] Pembina and Plains shall pay for any proactive maintenance as may be found necessary for their respective pipelines.

Dated in Calgary, Alberta, on July 4, 2024.

Alberta Energy Regulator

Parand Meysami, M.Sc., LL.B., P.Eng.
Presiding Hearing Commissioner

Elizabeth McNaughtan, MBA, P.Ag.
Hearing Commissioner

Harold Robinson, LL.B.
Hearing Commissioner

Appendix 1 Hearing Participants

Principals and Representatives (Abbreviations used in report)

Witnesses

Qualico Developments West Ltd.
G. Fitch, Legal Counsel

B. Armstrong
G. Dal Bello
S. Gerein
J. Fjeldheim
I. Morrison

Developers Group
E. Appelt, Legal Counsel

C. Nicholas
K. Rowe
M. Davis
J. Marchese
S. Fash
K. Anderson

Brookfield Residential Alberta LP
E. Dixon, Legal Counsel
M. Cherkawsky, Legal Counsel

P. Tsoukalas
R. Westren

Pembina Pipeline Corporation
Plains Midstream Canada ULC
SECURE Energy Services Inc.
T. Myers, Legal Counsel
D. Naffin, Legal Counsel
T. Machell, Legal Counsel

G. Filipchuck
A. Torr
N. Trim
J. Sprott
I. Balfour
J. Makhholm
L. Olive
B. Romanesky
R. Telford

Keyera Corp.
S. Duncanson, Legal Counsel
J. Baker, Legal Counsel

J. Beztilny

Alberta Energy Regulator staff
D. Brezina, AER Counsel
A. Huxley, AER Counsel

E. Arruda
D. Grzyb
F. Hamdan
A. Honarvar
A. Lung
D. Parsons
A. Stanislavski
M. Rahimabadi
T. Wheaton

Appendix 2 Pembina Order

Made at Calgary, in the
Province of Alberta, on

ALBERTA ENERGY REGULATOR

Under section 33 of the *Pipeline Act*

Pembina Pipeline Corporation (Pembina)

Qualico Developments West Ltd. (Qualico)

WHEREAS Pembina is the licensee of pipelines in Alberta, which licences were granted by the Alberta Energy Regulator (AER) under the *Pipeline Act*.

WHEREAS Qualico is developing land in northeast Edmonton in the Horse Hill area and must upgrade and construct an arterial road as part of its development, which road will cross Pembina's pipeline 6926-16.

WHEREAS Qualico applied to the AER under section 33 of the *Pipeline Act* for the AER to direct Pembina to alter its pipeline 6926-16 where the pipeline diagonally crosses the intersection of Meridian Street and 167 Avenue in Edmonton Alberta (amended application 1932335).

WHEREAS Qualico also requested an order that the cost of alteration work be shared 50/50 between Pembina and Qualico.

WHEREAS a hearing of the matter was held in March 2024, and Decision 2024 ABAER 007 was issued, setting out the decision of the AER on amended application 1932335 and reasons for decision.

Therefore, under section 33 of the *Pipeline Act*, the AER directs and orders as follows:

1. Pembina must provide protective measures for its 20-inch (508 mm) pipeline 6926-16 (Pembina 20" pipeline) where the pipeline diagonally crosses the intersection of Meridian Street and 167 Avenue in Edmonton Alberta.
2. Qualico must pay Pembina for the cost of the protective measures necessary to safely distribute additional loads from the proposed arterial roadway and its anticipated traffic where the Pembina 20" pipeline diagonally crosses below the intersection of Meridian Street and 167 Avenue in Edmonton, Alberta. In particular, Qualico shall pay for the engineering and construction of those protective measures.
3. Pembina must pay for any proactive maintenance it finds necessary for its pipeline at this location.
4. Work must be completed in accordance with the requirements of *CSA Z662, Oil and Gas Pipeline Systems*, the *Pipeline Act* and the *Pipeline Rules*.

5. Pembina and Qualico must make all reasonable efforts to complete the directed works as a priority and before the end of 2024.
6. If completion by end of 2024 will not be possible, Pembina and Qualico must submit a request for extension by October 30, 2024, jointly explaining the reason for delay and including a proposed completion date of no later than October 15 of 2025. This request must be made to the AER pipeline operations group at Pipelineoperations@aer.ca and is subject to approval.
7. If requiring up-front payment, the pipeline licensee shall provide a clear breakdown of each portion of the estimated costs of the proposed works, identifying each type of activity (distinguishing between protective and maintenance activities), to both Qualico and the AER (at pipelineoperations@aer.ca).
8. In carrying out the requirements of this Order, Pembina shall obtain and comply with all required federal and provincial permits and governing legislation and provide to the AER all authorizations obtained upon request.

Alberta Energy Regulator

DRAFT

Appendix 3 Plains Order

Made at Calgary, in the
Province of Alberta, on

ALBERTA ENERGY REGULATOR

Under section 33 of the *Pipeline Act*

Plains Midstream Canada LP (Plains)

Qualico Developments West Ltd. (Qualico)

WHEREAS Plains is the licensee of pipelines in Alberta, which licences were granted by the Alberta Energy Regulator (AER) under the *Pipeline Act*.

WHEREAS Qualico is developing land in northeast Edmonton in the Horse Hill area and must upgrade and construct an arterial road as part of its development, which road will cross Plains' pipeline 6001-01.

WHEREAS Qualico applied to the AER under section 33 of the *Pipeline Act* for the AER to direct Plains to alter its pipeline 6001-01 where the pipeline diagonally crosses the intersection of Meridian Street and 167 Avenue in Edmonton Alberta (amended application 1932335).

WHEREAS Qualico also requested an order that the cost of alteration work be shared 50/50 between Plains and Qualico.

WHEREAS a hearing of the matter was held in March 2024, and Decision 2024 ABAER 007 was issued, setting out the decision of the AER on amended application 1932335 and reasons for decision.

Therefore, under section 33 of the *Pipeline Act*, the AER directs and orders as follows:

1. Plains must provide protective measures for its 24"-inch (610 mm) pipeline 6001-01(Plains 24" pipeline) where the pipeline diagonally crosses the intersection of Meridian Street and 167 Avenue in Edmonton Alberta.
2. Qualico must pay Pembina for the cost of the protective measures necessary to safely distribute additional loads from the proposed arterial roadway and its anticipated traffic where the Plains 24" pipeline diagonally crosses below the intersection of Meridian Street and 167 Avenue in Edmonton, Alberta. In particular, Qualico shall pay for the engineering and construction of those protective measures.
3. Plains must pay for any proactive maintenance it finds necessary for its pipeline at this location.
4. Work must be completed in accordance with the requirements of *CSA Z662, Oil and Gas Pipeline Systems*, the *Pipeline Act* and the *Pipeline Rules*.
5. Plains and Qualico must make all reasonable efforts to complete the directed works as a priority and before the end of 2024.

6. If completion by end of 2024 will not be possible, Plains and Qualico must submit a request for extension by October 30, 2024, jointly explaining the reason for delay and including a proposed completion date of no later than October 15 of 2025. This request must be made to the AER pipeline operations group at pipelineoperations@aer.ca and is subject to approval.
7. If requiring up-front payment, the pipeline licensee shall provide a clear breakdown of each portion of the estimated costs of the proposed works, identifying each type of activity (distinguishing between protective and maintenance activities), to both Qualico and the AER (at pipelineoperations@aer.ca).
8. In carrying out the requirements of this Order, Plains shall obtain and comply with all required federal and provincial permits and governing legislation and provide to the AER all authorizations obtained upon request.

Alberta Energy Regulator

DRAFT