



National Energy Board

Reasons for Decision

**Novagas Clearinghouse
Pipelines Ltd.**

GH-1-96

January 1996

Facilities

National Energy Board

Reasons for Decision

In the Matter of

**Novagas Clearinghouse
Pipelines Ltd.**

Application dated 12 October 1995

GH-1-96

January 1996

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Abbreviations

Act	<i>National Energy Board Act</i>
Beau	Beau Canada Exploration Ltd.
Board or NEB	National Energy Board
B.C.	British Columbia
Bcf	billion cubic feet
CEAA	<i>Canadian Environmental Assessment Act</i>
cm	centimetre(s)
CNRL	Canadian Natural Resources Limited
Court	Federal Court of Appeal
Gulf	Gulf Canada Resources Limited
<i>Gulf et al</i>	Gulf, Beau and Ohio
ha	hectares
km	kilometre(s)
m	metre(s)
m ³	cubic metre(s)
m ³ /d	cubic metre(s) per day
mcf	thousand cubic feet
mm	millimetre(s)
MMcf/d	million cubic feet per day
NCL	Novagas Clearinghouse Ltd.
NCLP	Novagas Clearinghouse Limited Partnership
NCPL	Novagas Clearinghouse Pipelines Ltd.
NCPLP	Novagas Clearinghouse Pipelines Limited Partnership
NGTL	NOVA Gas Transmission Ltd.

Ohio

Ohio Resources Ltd.

Westcoast

Westcoast Energy Inc.

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* (the "Act") and the Regulations made thereunder; and

IN THE MATTER OF application dated 12 October 1995 from Novagas Clearinghouse Pipelines Ltd. pursuant to section 58 of part III of the Act, for authorization of the construction and operation of a natural gas pipeline; and

IN THE MATTER OF National Energy Board Directions on Procedure, Order GH-1-96.

EXAMINED by means of an oral hearing held 19 and 20 January 1996.

BEFORE:

K.W. Vollman	Presiding Member
R. Priddle	Member
A. Côté-Verhaaf	Member
R. Illing	Member
R.L. Andrew, Q.C.	Member

APPEARANCES:

Alberta Department of Energy
BC Gas Utility Ltd.
Beau Canada Exploration Ltd.
British Columbia Ministry of Energy Mines and Petroleum Resources
Gulf Canada Resources Limited
Novagas Clearinghouse Pipelines Ltd.
Northstar Energy Corporation
Ohio Resources Ltd.
Ranger Oil Limited
Westcoast Energy Inc.

Chapter 1

Introduction

On 12 October 1995, Novagas Clearinghouse Pipelines Ltd. ("NCPL"), filed an application for an Order pursuant to section 58 of the *National Energy Board Act* (the "Act"), exempting a proposed natural gas pipeline from the provisions of sections 30, 31 and 47 of the Act. The applied-for facilities (referred to as the Pesh Creek Pipeline) consist of 16.5 km of 273.1 mm diameter pipeline and are estimated to cost approximately \$3 million. The pipeline will transport sweet dry gas from a proposed separation, compression and metering facility in northeastern British Columbia (referred to as the Peggo Facility) to a proposed NOVA Gas Transmission Ltd. ("NGTL") metering facility in northwestern Alberta.

The upstream connecting facilities, all of which will be located in northeastern B.C., will consist of the Peggo Facility, a 65 km long gathering pipeline to the Midwinter field as well as gathering pipelines to the Peggo and Tooga fields and eventually to the Helmet field. The downstream connecting facilities include the NGTL metering facility and 86 km of NGTL pipeline to connect the metering facility to the nearest point on the existing NGTL pipeline system. The applied-for pipeline, the connecting pipelines and existing pipeline systems in the project area are illustrated in Figure 1-1.

In a letter dated 21 November 1995, Westcoast Energy Inc. ("Westcoast") argued that this application should be considered under sections 52 and 24 rather than section 58 of the Act. Westcoast argued that the Pesh Creek Pipeline is part of a larger project that includes the upstream and downstream connecting facilities. As a result of Westcoast's submission the Board invited NCPL, Westcoast and interested persons to comment on the procedural options available to the Board in this matter.

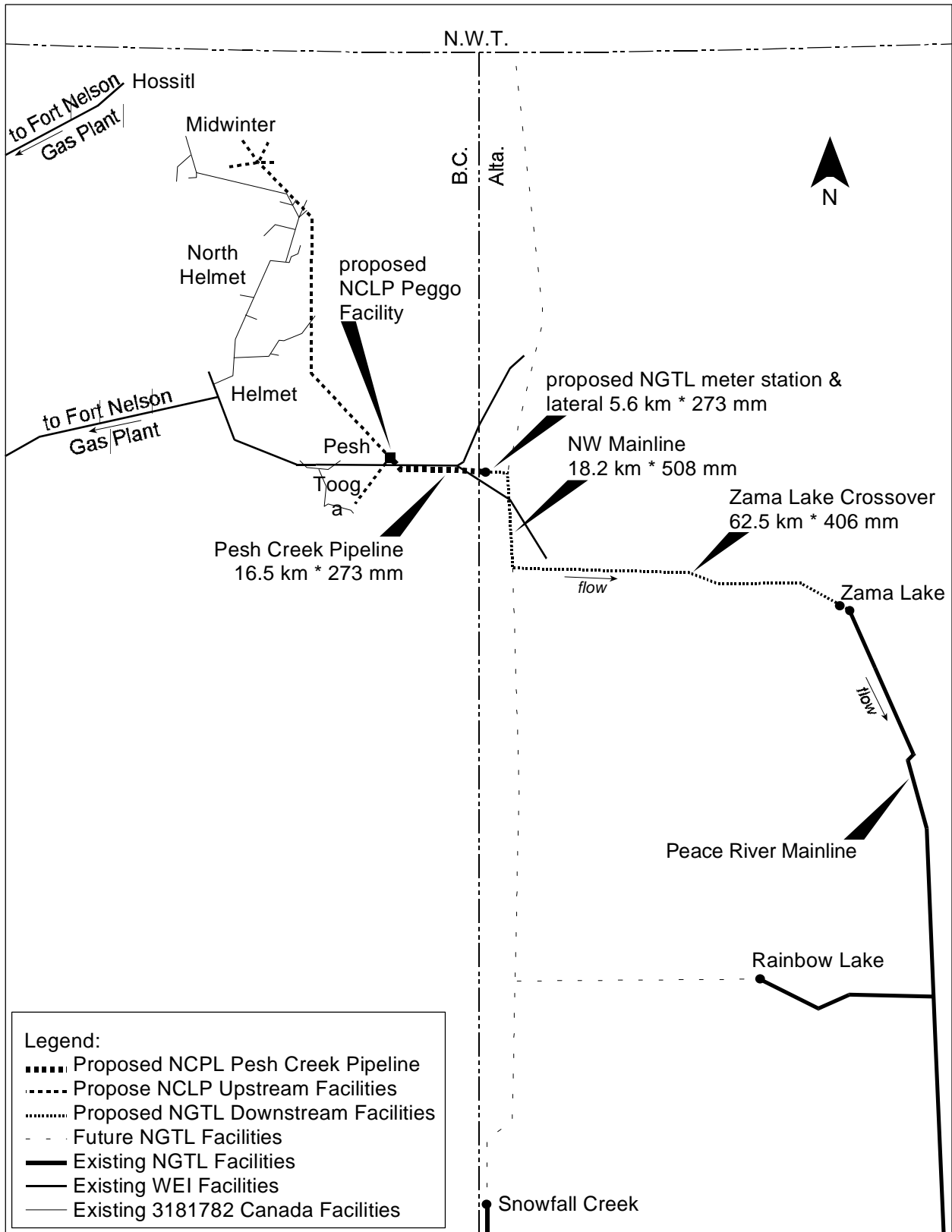
On 12 January 1996, the Board, after considering the comments that were filed in response to this request, decided to refer the question of its jurisdiction over the upstream and downstream connecting facilities to the Federal Court of Appeal ("the Court"). A written procedure was established allowing interested persons to provide comments and additional facts by 7 February 1996, and to make any reply to such submissions no later than 21 February 1996.

NCPL requested, in a letter dated 15 January 1996, that the Board review its 12 January 1996 decision, noting that such a course of action alone would prevent the construction of the proposed facilities in the current winter construction window. On 16 January 1996 the Board denied NCPL's request for a review of the Board's decision to refer the question of its jurisdiction over the upstream and downstream connecting facilities to the Court. However, the Board decided to consider the application in an oral public hearing. Hearing Order GH-1-96, issued on 16 January 1996 and amended on 17 January 1996, set out the Directions on Procedure for oral hearing of the application.

The hearing was held in Calgary on 19 and 20 January 1996 and at the conclusion of the hearing the Board reserved its decision. The Applicant requested that the Board issue its decision in a timely manner so that if the Board were to approve the project, construction could proceed during the current winter construction window. On 22 January 1996, the Board decided to issue Order XG-N62-5-96, with reasons to follow, the effect of which was to approve the Pesh Creek Pipeline.

1.1 Environmental Screening

The Board conducted an environmental screening of the applied-for facilities in compliance with the *Canadian Environmental Assessment Act* ("CEAA"). The Board ensured there was no duplication in requirements under the CEAA and the Board's own regulatory process.



Chapter 2

Jurisdiction

2.1 Objection by Westcoast Energy Inc.

Upon commencement of the hearing, Westcoast raised the question of the Board's jurisdiction as a preliminary matter. Westcoast argued that the applied-for facilities are part of a larger project which is longer than 40 kilometres, and that the Board accordingly has no jurisdiction to consider this application under section 58 of the Act. Westcoast made a motion that the Board adjourn the hearing pending determination of the jurisdictional issue that the Board intends to refer to the Court, or, alternatively, that the Board dismiss the application. The Board ruled that it would proceed with the hearing but that it would consider any further submissions that the parties might wish to make on this issue during final argument.

2.2 Views of the Parties

Westcoast argued that the applied-for facilities could not properly be considered by the Board without having regard to the proposed connecting upstream and downstream facilities. In its view, the Pesh Creek Pipeline was simply one part of a larger pipeline project that extended over 160 km from the Midwinter Field in B.C. to the Zama Lake region in Alberta. Westcoast characterized the project as being one which involved three related NOVA companies: Novagas Clearinghouse Ltd. ("NCL"), NCPL and NGTL. The overall purpose of this project, in Westcoast's view, was the interprovincial transportation of gas from the Midwinter Field to Zama Lake. Westcoast stated that the facts in this case were no different than those arising before this Board in its GHW-1-92 proceeding ("the Altamont Decision"). In that case, the Board dismissed an application under section 58 of the Act, given the true nature and purpose of the facilities applied for in relation to upstream connecting facilities. Westcoast further relied on the Supreme Court of Canada's decision in *U.T.U v. Central Western Railway*¹ for the proposition that the applied-for facilities were entirely dependent upon the connecting facilities. Westcoast submitted that the connecting facilities were therefore within the Board's jurisdiction and should be considered together with the facilities applied for in the present application. Westcoast was of the view that the Board could not properly consider the matter pursuant to section 58 of the Act, as the project exceeded 40 km in length.

Westcoast further stated that the jurisdictional question that the Board decided to refer to the Court in its decision dated 12 January 1996 would be rendered academic if the Board were to proceed and approve the applied-for facilities. In its view, because the Board would have acted in approving the applied-for facilities, and given that the facilities would likely have been constructed by the time the reference reaches the Court, it is unlikely that the reference would be heard. As a result, Westcoast submitted that the Board should either decline jurisdiction as it did in the proceedings before it in Westcoast's Fort St. John Expansion Application (GH-5-94), dismiss the proceedings as it did in the Altamont decision, or adjourn the proceedings pending the outcome of the reference, or alternatively

¹ [1990] 3 S.C.R. 1112

condition any Order so that construction of the applied-for facilities could not commence until thirty days following a determination of the question that the Board has referred to the Court.

NCPL stated that the Board possessed the necessary jurisdiction to grant an order for the applied-for facilities pursuant to section 58 of the Act. In its view, the Pesh Creek Pipeline could properly be characterized as being distinct from the connecting upstream and downstream facilities. NCPL urged that this characterization was consistent with the Board's decision in the GH-5-94 proceedings, wherein the Board decided that it did not possess jurisdiction to grant orders approving the construction and operation of gas gathering and processing facilities located in B.C. With respect to downstream facilities, NCPL argued that the Board's decision dated September 1995 involving Niagara Gas Transmission Ltd. was relevant to the facts in issue. In that case, a question of jurisdiction arose in respect of facilities required for the interprovincial movement of natural gas across a provincial boundary. NCPL noted that the Board did not, in that case, consider facilities downstream of the border crossing as being relevant to the question of jurisdiction. Accordingly, in its view, the facilities downstream of the Pesh Creek Pipeline should not be taken into consideration in this instance.

NCPL noted that the Board had decided to make a reference to the Court concerning the jurisdictional issue involving the connecting facilities. In its view the matter referred to the Court would not be rendered academic if the Board were to approve the applied-for facilities. The issue for the Court to determine was whether the connecting upstream and downstream facilities when operating together with the applied-for facilities constitute an interprovincial work or undertaking. NCPL stated that if the Board were to defer making a decision in respect of the applied-for facilities, only then would the question referred be rendered academic as the project itself would not proceed at all.

BC Gas Utility Ltd. ("BC Gas") submitted that the applied-for facilities constitute an interprovincial work falling within the definition of "pipeline" as found in section 2 of the Act. The Board, therefore, had the necessary jurisdiction to hear and determine whether such facilities should be constructed and operated. BC Gas stated that a decision respecting the applied-for facilities would not render the Board's reference dated 12 January 1996 academic provided that the facilities were constructed or that a party continued proposing their construction. BC Gas noted that broad questions concerning the scope of the Board's jurisdiction are before the Court and that it was likely that these questions will in any event be appealed to the Supreme Court of Canada. BC Gas was accordingly of the view that the Board should adopt a policy that would not stall the ongoing development of the natural gas industry in Canada.

Gulf Canada Resources Limited ("Gulf"), Beau Canada Exploration Ltd. ("Beau") and Ohio Resources Ltd. ("Ohio") concurred with the positions advanced by NCPL and BC Gas. Gulf, Beau and Ohio ("Gulf *et al*") felt that the Board should consider the question of jurisdiction by balancing the interests of all parties in this proceeding and have particular regard to the adverse consequences arising if the Board were not to hear the evidence and make a determination in respect of the applied-for facilities. Gulf *et al* submitted that the jurisdictional question raised by Westcoast was nothing more than an attempt to delay construction of the applied-for facilities in order to protect the business interests of Westcoast. In its view, the physical characteristics of the applied-for facilities, allowed the Board to hear and determine the application pursuant to section 58 of the Act. Gulf *et al* reiterated the position stated by NCPL that once the connecting facilities become operational it may be necessary for the Board to consider the overall constitutional characterization of the upstream and downstream connecting facilities. Gulf *et al* felt that issue was the subject-matter of the reference to the Court in

the Board's 12 January 1996 decision and would not be rendered academic if the Board were to proceed in granting the applied-for relief.

Views of the Board

There is no dispute among parties that the applied-for facilities cross a provincial boundary and are less than 40 kilometres in length. Based on these facts, the Board is of the view that it possesses the necessary jurisdiction to hear and consider whether an order should be granted as applied for by NCPL pursuant to subsection 58(1)(a) of the Act.

The scope of this Board's jurisdiction over connecting facilities is a matter of legal debate and uncertainty. This is the very issue which is now before the Court in two appeals of decisions of this Board as well as one reference. Moreover, in its decision dated 12 January 1996, this Board decided to refer the question concerning its jurisdiction over the connecting facilities in this case to the Court.

In light of these circumstances, it is the Board's view that the issue of whether this Board has jurisdiction over the connecting upstream and downstream facilities in this case is one which should remain separate and distinct from the issue of whether the applied-for facilities alone are properly before it. The Board recognizes that once the Court has made a determination of matters which touch upon this issue, it may be necessary for it to hear further from parties in respect of the ongoing operation of the applied-for and connecting facilities. That issue, however, can properly be deferred.

The Board does note that the connecting upstream and downstream facilities in this case have received provincial approvals for construction and operation. They have, in essence, been found to be in the public interest of the two provinces directly affected by their construction and operation. Given those provincial approvals and the uncertainty surrounding the jurisdictional questions before the Court, the Board is of the view that it would not be in the public interest to delay making a decision in respect of the applied-for facilities.

Chapter 3

Facilities

The Pesh Creek Pipeline will consist of 16.5 km of 273.1 mm outside diameter pipeline which will transport sweet dry gas from the Novagas Clearinghouse Limited Partnership ("NCLP") Peggo Facility in d-83-c/94-P-8 in northeastern B.C. to the proposed NGTL metering facility in 4-119-12 W6 in northwestern Alberta. Associated equipment for the operation of the pipeline, including separation, compression and metering facilities, main line valves and pressure relieving devices will be located on the upstream and downstream connecting facilities. Figure 3-1 illustrates the Pesh Creek Pipeline and associated equipment.

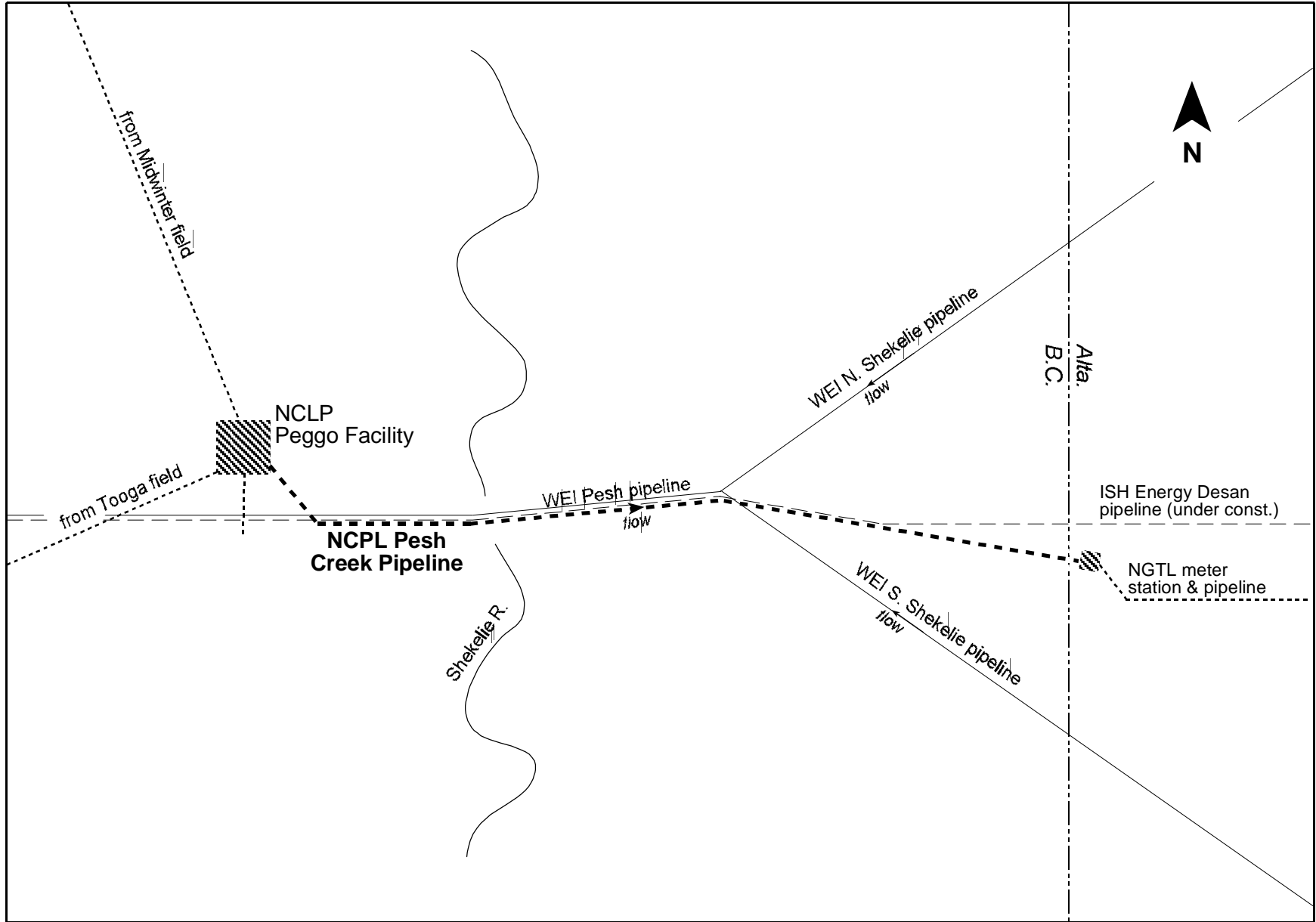
NCPL stated that the applied-for facilities will be designed, constructed and tested in accordance with the Canadian Standards Association standard, CAN/CSA Z662, Oil and Gas Pipeline Systems, the requirements of the Act and other appropriate governing codes.

Initially, the pipeline will transport from the Peggo Facility approximately $566 \text{ } 10^3 \text{ m}^3/\text{d}$ (20 MMcf/d) of gas, gathered from the Midwinter field. In addition, up to $142 \text{ } 10^3 \text{ m}^3/\text{d}$ (5 MMcf/d) will be gathered from each of the Peggo and Tooga fields and ultimately gas could be gathered from the Helmet field. The pipeline has a design transportation capacity of up to $1\ 700 \text{ } 10^3 \text{ m}^3/\text{d}$ (60 MMcf/d). It is not designed to transport sour gas.

NCPL indicated that producers other than those supporting this application may be interested in transportation capacity on the Pesh Creek Pipeline. Considering the general level of exploration and development activity in the project area it would appear that other producers are likely to come forward and, therefore, designing the pipeline with spare capacity is prudent.

Views of the Board

The Board is of the view that the applied-for facilities have been designed and will be constructed, tested and operated in accordance with the requirements of the Act and the *Onshore Pipeline Regulations*. The Board is also of the view that the pipeline is appropriately sized.



Chapter 4

Gas Supply

NCL submitted that gas supply for the project would initially be sourced from Gulf and Ohio's Midwinter field wells completed in the Jean Marie formation. Supporting documentation was provided for six existing wells, and estimates were provided for the ten additional wells to be drilled during the current winter drilling season. Detailed well data from two of the six wells (d-79-B/94-P-15 and d-84-C/94-P-15) was provided to the Board.

During the hearing, Gulf testified that six of the ten proposed locations have been drilled and the wells are in various stages of evaluation. Gulf provided the Board with additional information concerning two of the wells indicating productive capacity rates greater than initially estimated. In addition, Gulf's evidence of four wells (two vertical and two horizontal) drilled by another operator demonstrated an increase in producing rates from horizontal versus vertical wells could be expected. This evidence indicates approximately a three fold increase in productive capacity for the horizontal wells.

A concern was raised by Gulf and Ohio regarding drainage of their reserves by other wells in the same field which are being produced through Westcoast's Fort Nelson gathering and processing system. Evidence consisted of observations of downhole pressure declines in Gulf and Ohio's wells which offset the producing wells.

NCPL submitted an independent reserves study conducted in 1995 by AMH Group Ltd. to support its estimates of remaining established (proven plus 50 percent probable) marketable gas reserves in the area of $9\,473\,10^6\text{m}^3$ (336 Bcf), from the Jean Marie, Slave Point and Keg River formations, of which $7\,307\,10^6\text{m}^3$ (259 Bcf) are in the Jean Marie formation. This study includes the Helmet, Helmet North, Midwinter, Peggo and Pesh Fields. The AMH study indicated the remaining undiscovered marketable potential for the study area could be as high as $16\,324\,10^6\text{m}^3$ (579 Bcf) depending on the level of risk applied to the undiscovered potential.

NCPL also provided an estimate of productive capacity of the remaining established marketable reserves from the five fields and from undiscovered potential to demonstrate that the Pesh Creek Pipeline could be kept full through the year 2005.

Beau filed a letter with the Board commenting on the reserves potential in the South Peggo area, referred to as the Tooga area, stating its belief that the Jean Marie potential in the Tooga area is in excess of $2\,830\,10^6\text{m}^3$ (100 Bcf). However, no evidence was filed with the Board to substantiate these numbers.

Westcoast took the position that there was insufficient gas supply to warrant this project. Westcoast's estimate of reserves from the Helmet, Helmet North, Midwinter, Peggo and Pesh fields was $5\,417\,10^6\text{m}^3$ (191 Bcf). Within these fields Westcoast estimates that the Jean Marie formation contains $4\,406\,10^6\text{m}^3$ (156 Bcf) and that only $1\,586\,10^6\text{m}^3$ (56 Bcf) from the Jean Marie is not already committed to Westcoast. Lastly, Westcoast's estimate for the area indicates that $11\,331\,10^6\text{m}^3$ (400 Bcf) of undiscovered gas potential over a 10-year period will be found.

Westcoast's productive capacity estimates were presented for the Helmet North and Midwinter fields, and for the fields currently supplying the Fort Nelson Plant, which includes the Helmet North and Midwinter fields. These productive capacity estimates were submitted to demonstrate to the Board how important the Midwinter field is in keeping the Fort Nelson Plant running at the highest possible level. Westcoast's productive capacity estimates for fields supplying gas for the Fort Nelson Plant includes significant volumes from the Northwest Territories, Alberta (Shekilie area) and future reserves additions including potential future sour gas production in the Fort Nelson area from the Slave Point and Keg River horizons. Westcoast stated that even taking these volumes into account, the Fort Nelson Plant would be running at between 78 and 88 percent utilization.

The project proponents argued that it made no sense to contaminate sweet gas by commingling it with sour gas and then requiring the entire gas stream to be processed, resulting in unnecessary processing charges, through the Fort Nelson Plant.

During the hearing, Westcoast questioned the witnesses from Gulf and Ohio concerning supply. Westcoast's contention was that the supply evidence submitted by the Applicant was insufficient for the Board to make a decision on the adequacy of supply.

Westcoast questioned the Gulf and the Ohio panel's reserves and deliverability estimates for the ten wells scheduled to be drilled during the 1995/96 winter season. Westcoast felt that the reserves assigned to these wells were too high and submitted evidence to demonstrate that the average reserves for horizontal wells drilled to date in the Midwinter area were approximately $83 \times 10^6 \text{ m}^3$ (2.9 Bcf). Westcoast testified that the variability of reserves estimates for these wells ranges from $15 \times 10^6 \text{ m}^3$ (0.5 Bcf) to $265 \times 10^6 \text{ m}^3$ (9.4 Bcf).

Views of the Board

The Board, in arriving at its reserves evaluation for the area, made use of publicly available data and reports, as well as more up-to-date information filed during the hearing, and compared its analysis with the Applicant's and Intervenor's'. The Board is satisfied that the Applicant's estimate of remaining established reserves and undiscovered potential is adequate to support the proposed facilities.

The Board concurs that the Applicant's deliverability estimates are reasonable in the light of the evidence submitted with respect to the use of horizontal well technology.

The Board has examined evidence regarding drainage and concurs with Gulf and Ohio that drainage of their reserves is occurring.

Chapter 5

Transportation and Market Arrangements

In support of the Pesh Creek Pipeline Project, Novagas Clearinghouse Pipelines Limited Partnership ("NCPLP") executed a "Gas Transmission Agreement, Term Sheet" with four shippers for firm and interruptible service. The agreements for firm service are with Gulf, Ohio, and Beau. The agreement for interruptible service is with Canada Natural Resources Limited ("CNRL"). The agreements provide for the transportation of the shippers' residue gas from the NCLP Peggo Facility in B.C. through the applied-for pipeline to the proposed connecting facilities of NGTL in Alberta.

The agreements for firm service provide for the delivery of $567 \times 10^3 \text{ m}^3/\text{d}$ (20 MMcf/d) for Gulf and Ohio and $142 \times 10^3 \text{ m}^3/\text{d}$ (5 MMcf/d) for Beau over a minimum five-year period, commencing 30 April 1996. Beau has the option to increase the contract volume to $283 \times 10^3 \text{ m}^3/\text{d}$ (10 MMcf/d). The agreement with CNRL, which provides for the delivery of up to $142 \times 10^3 \text{ m}^3/\text{d}$ (5 MMcf/d) of interruptible service commencing 30 April 1996, allows CNRL to convert to firm service. Upon receipt of appropriate notice from the shipper, NCPLP will extend the term of the firm agreements by two years.

In summary, the agreements provide for the delivery of $708 \times 10^3 \text{ m}^3/\text{d}$ (25 MMcf/d) to $850 \times 10^3 \text{ m}^3/\text{d}$ (30 MMcf/d) of firm service and $142 \times 10^3 \text{ m}^3/\text{d}$ (5 MMcf/d) of interruptible service.

In addition to these agreements, NCPL is actively negotiating with other producers in the Tooga, Peggo and Helmet areas with the aim of concluding similar transportation service arrangements to deliver sales gas into Alberta. NCPL acknowledged that it was assuming a degree of risk associated with the fact that the pipeline will be undersubscribed for an initial period.

The agreements are conditional upon the shipper and NCLP executing a "Gas Gathering and Processing Agreement, Term Sheet" relating to capacity on the proposed upstream gathering and processing facilities. In that regard, on 29 December 1995, the B.C. Ministry of Municipal Affairs issued the necessary approvals for the construction of the upstream gathering and processing facilities. Similarly, on 22 January 1996, the Alberta Energy and Utilities Board issued the necessary approvals for the construction and operation of the downstream NGTL facilities.

NCL has executed a 15-year Service Agreement, "Schedule of Service, Rate Schedule FS", with NGTL for downstream pipeline capacity which NCL will assign to each of the aforementioned shippers to meet their respective requirements. The NGTL Service Agreement provides for the delivery of $902 \times 10^3 \text{ m}^3/\text{d}$ (32 MMcf/d) commencing 1 April 1996, increasing to $1\,355 \times 10^3 \text{ m}^3/\text{d}$ (48 MMcf/d), commencing 1 April 1997.

The shippers indicated that the gas to be transported through the subject facilities will be incorporated into their respective corporate gas supply pools to serve existing long and short-term domestic and export markets.

Views of the Board

The Board is satisfied that the executed agreements for firm and interruptible service and the commitments to upstream and downstream transportation, demonstrate that the applied-for facilities are required. Furthermore, the Board is satisfied that market arrangements are or will be in place to ensure that these facilities will be utilized at a reasonable level over their economic life.

Chapter 6

Public Consultation, Right-of-Way, Environmental and Socio-Economic Matters

The Board has completed an Environmental Screening Report pursuant to the CEAA and the Board's own regulatory process. In addition to matters pertaining directly to the environment, the Report addresses matters pertaining to public consultation, the right-of-way and socio-economics.

The Board has considered the Environmental Screening Report and is of the view that, taking into account the implementation of the proposed mitigative measures, and those set out in the attached conditions, the NCPL project is not likely to cause significant adverse environmental effects. This represents a decision pursuant to paragraph 20(1)(a) of the CEAA.

Copies of the Board's Environmental Screening Report are available upon request from the Board's Regulatory Support Office.

Chapter 7

Financial Matters, Toll Methodology and Tariffs

7.1 Financial Matters

NCPL intends to finance the \$2,957,000 cost of the project through internal sources of funds, credit facilities arranged with financial institutions or a combination of these two methods. Contractual arrangements with Gulf and Ohio as well as with Beau and CNRL would serve to support in part NCPL's investment in this project. Under the terms of these agreements, NCPL is prepared to demonstrate its creditworthiness by undertaking the construction of the transmission facilities. NCPL is assuming a degree of risk associated with the throughput in the initial period of operation of these facilities.

Views of the Board

The Board has no concerns about NCPL's ability to finance the proposed pipeline.

7.2 Toll Methodology and Tariff Matters

NCPL filed copies of the Gas Transmission Agreement, Term Sheets representing the contractual arrangement between it and Gulf and Ohio for firm service as well between it and CNRL for interruptible service. A contract with Beau was agreed to but not filed. However, Beau stated that the terms are the same as those found in the Gulf and Ohio agreement. In each contractual arrangement, the stated fee in 1996 is \$0.12/mcf based on the recovery of estimated annual operating costs of \$400,000 and a portion of return on capital. This unit cost will be indexed and adjusted annually to the Canadian Consumer Price Index.

The agreements provide for rate adjustments with increased use of the facilities and for shippers to contract in excess of their current commitments where opportunities exist. The agreements also contemplate that the contracting parties enter into formal gas transmission agreements.

Views of the Board

The Board finds the toll methodology to be acceptable. The Board notes that all parties agreed to the terms of their respective agreements, that the transportation fee for the committed quantity covers the pipeline's operating costs and contributes to return on capital for the project and that other shippers are not precluded from shipping gas on the proposed pipeline.

Decision

NCPL is required to file the above-noted formal agreements once they are executed, as well as any new agreements, reflecting changes from the agreements already filed. Alternatively, NCPL may choose to file a general tariff outlining its terms and conditions pursuant to subsection 60(1)(a) of the Act. Also, NCPL

is required to file annual audited financial statements in accordance with Paragraph 5(2) of the *Gas Pipeline Uniform Accounting Regulations*.

Chapter 8

Project Feasibility

The Board examines the feasibility of facilities by assessing the likelihood that those facilities will be used at a reasonable level over their economic life and by determining whether the costs associated with their construction and operation will be recovered. In doing so, the Board has regard to all considerations that appear to be relevant.

NCPL noted that the proposed facilities are required to enable Gulf, Ohio, Beau and CNRL to deliver their northeast B.C.-sourced sweet gas, as part of their respective corporate gas supply pools, to existing markets in and to the east of Alberta. To that effect, each shipper has entered into a firm or interruptible service agreement with NCPL for a minimum five-year term. Under those agreements, each shipper commits to a minimum annual payment provision and to the payment of a transportation fee of \$0.12/mcf. This enables NCPL to recover its \$400,000 annual operating costs and allows for a contribution to its return on capital. The transportation fee is indexed to the Canadian Consumer Price Index. In addition, transportation arrangements with NGTL ensure the availability of downstream pipeline capacity for a fifteen-year period.

Westcoast submitted that NCPL had not demonstrated the economic feasibility of the Pesh Creek Project and argued that the feasibility could not be assessed without taking into consideration the connecting upstream gathering and processing and downstream transmission facilities. Westcoast submitted that its evidence demonstrated that the incremental costs of the entire project are very high, making the Pesh Creek Pipeline uneconomic.

BC Gas argued that the proponents of the Pesh Creek Pipeline project have entered into private contractual arrangements and have thereby assumed all of the associated risks. BC Gas submitted that the application should be approved and not rejected on economic grounds.

Producers supporting the application indicated that their assessment of Westcoast's tolls and estimated in-service date to move their sweet gas through the Westcoast sour gas system in a commingled form, were unacceptable and would render the development of their sweet gas reserves uneconomic. Gulf, Ohio and Beau argued that it makes little sense to force them to abandon their gas reserve development and to suffer the economic penalty associated with drainage so that Westcoast could preserve the large sweet gas reserves in northeast B.C. to move through its sour gas system. They further argued that the facilities are supported by underlying commercial arrangements through which all of the risks are assumed by the contracting parties.

Gulf and Beau indicated that over the past two years they have made substantial investments to establish gas reserves and recent investments to provide deliverability capacity for purposes of the Pesh Creek Pipeline. Both producers added that those efforts are continuing in 1996 and that the applied-for facilities are critical to allowing them to market their gas and to start generating a return on their significant upstream investments.

Views of the Board

The Board is satisfied that the proposed facilities are required to enable the shippers to develop and market their sweet gas reserves in northeast B.C.

The Board is also satisfied that the contractual arrangements underpinning the applied-for facilities clearly demonstrate that the parties have found the economics of the Pesh Creek Pipeline Project attractive enough to proceed. Those arrangements similarly demonstrate their willingness to assume all risks, including the risk associated with any underutilized facilities. In these circumstances, the Board finds the project to be economically feasible.

Chapter 9

Other Considerations

Through submitted evidence and argument, Westcoast contended that approval of projects such as the Pesh Creek Pipeline, which allow for the diversion of gas eastward from B.C. into Alberta, have significant implications for Westcoast, its shippers, and the Board's current regulatory construct which has been in place and underpinned Westcoast's investment decisions for many years. Westcoast has concluded that the traditional form of regulation over Westcoast and the current conditions of service are increasingly inappropriate in the new market-based business environment.

It was argued further by Westcoast that the question regarding the Board's jurisdiction over Westcoast's gathering and processing facilities, as set out in the GH-5-94 decision, has had a profound impact on Westcoast's ability to respond to its customers' needs and in particular, on its ability to make timely and competitive tariff, tolling and facility proposals with respect to its northeast B.C. gathering and processing facilities.

In pointing out that a significant portion of the service contracts underpinning its facilities are for a one-year term; renewable upon six-months notice, Westcoast contended that its existing tariff structure significantly increases its exposure to by-pass projects such as the Pesh Creek Pipeline. Westcoast elaborated, indicating that such short-term arrangements permit a shipper to easily abandon the Westcoast system in favour of the by-pass alternative, thus increasing Westcoast's and its remaining shippers' exposure to underutilized or stranded investment and escalating service costs.

Westcoast submitted that its current depreciation rates for gathering and processing facilities are based on a reserve life index and have not been reviewed by the Board since 1992. Under that methodology, Westcoast's depreciation expense is calculated by dividing the depreciable plant for each rate section by the reserve life index for that section. Westcoast explained that its depreciation expense could be negatively affected as B.C. gas supply is diverted eastward onto the NGTL system, reducing reserve life indices and resulting in possible serious toll and cost implications for Westcoast and its shippers.

Lastly, Westcoast raised the concern that the Board's flow-through tax methodology has the potential for intergenerational inequity. Westcoast explained that the existing short-term service arrangements, in combination with the existence of by-pass facilities such as the Pesh Creek Pipeline, will encourage shippers to leave its system at the time when those future taxes become payable.

Westcoast acknowledged however, that while it believes the Board should take the aforementioned policy issues into consideration when deciding on the merits of the application, these issues focus on the bigger picture and have broad implications for Westcoast and the rest of the gas industry. Westcoast testified that these issues will be aggressively dealt with in 1996 in cooperation with all affected parties, with the aim of bringing new proposals forward for Board consideration and approval.

NCPL noted that Westcoast has had opportunity to raise some of the aforementioned issues with the Board notwithstanding the current jurisdictional uncertainty. NCPL noted also that Westcoast was the only party to oppose the application, arguing that Westcoast's motive has been to slow down or stop

consideration of NCPL's facilities application and to thereby, force the NCPL shippers no alternative but to process and ship their sweet gas, in a commingled form, through the Westcoast gathering and processing facilities.

Gulf, Ohio and Beau noted that Westcoast has acknowledged that the present regulatory regime and toll and tariff structure doesn't allow it to compete. They argued that Westcoast should not be looking to the Board to solve its business problems, instead Westcoast should be formulating its own business plans and proposals with respect to sweet gas service to allow it to compete with sweet gas projects such as the Pesh Creek Pipeline.

Views of the Board

The Board acknowledges the policy issues raised by Westcoast but believes these to have far reaching implications and thus to be beyond the scope of this proceeding. The Board encourages Westcoast to address these issues in the coming year in cooperation with other parties and with the aim of bringing tolls and tariff proposals forward for consideration and approval.

Chapter 10

Disposition

The foregoing, together with the Board's letter dated 22 January 1996 to NCPL and Order XG-N62-5-96 constitutes the Board's Reasons for Decision in respect to the application considered by the Board in the GH-1-96 proceeding.

The Board is satisfied from the evidence that the proposed facilities are and will be required by the present and future public convenience and necessity. The Board is also of the view that the design and location of the facilities are satisfactory to ensure the safe and environmentally sound construction and operation of these facilities.

K.W. Vollman
Presiding Member

R. Priddle
Member

A. Côté-Verhaaf
Member

R. Illing
Member

R.L. Andrew, Q.C.
Member

Calgary, Alberta
January 1996

Appendix I

The Board's Letter to NCPL Dated 22 January 1996

File No. 3400-N062-1
22 January 1996

BY FACSIMILE

Mr. Don J. Klisowsky
Manager, Project Development
Novagas Clearinghouse Pipelines Ltd.
Suite 800, 707 - 8th Avenue S.W.
Calgary, Alberta
T2P 3V3

Facsimile No. 781-3188

Dear Mr. Klisowsky:

**Re: Novagas Clearinghouse Pipelines Ltd. ("NCPL") - Section 58 Application
Dated 12 October 1995 - Pesh Creek Pipeline**

The Board has examined NCPL's application and the evidence and arguments presented by NCPL and intervenors in the GH-1-96 proceeding. The Board has decided to issue Order XG-N62-5-96, the effect of which is to allow NCPL to proceed with the construction of the Pesh Creek Pipeline subject to fulfilment of the applicable conditions in Order XG-N62-5-96. The Order is attached. Reasons for the Board's decision will follow.

The Board notes that NCPL will pressure test the applied-for pipeline using air as the pressure test medium. The Board is of the view that close examination of pneumatic test results is necessary to verify the adequacy of the pressure test and, therefore, requires the opportunity to examine NCPL's pneumatic test results before the Pesh Creek Pipeline is put into service. Accordingly, prior to commissioning and operating the Pesh Creek Pipeline leave to open must be obtained from the Board.

The accounting treatment of the cost of the project should conform with the *Gas Pipeline Uniform Accounting Regulations*. In addition, the cost of the project, including any overruns, may be subject to examination pursuant to the Board's responsibilities under Part IV of the Act.

This Order does not affect the Board's decision dated 12 January 1996 to refer a question of jurisdiction to the Federal Court of Appeal relating to facilities connecting with the Pesh Creek Pipeline. The Board reminds parties that comments on the proposed question or facts contained in NCPL's application together with any additional facts that may be relevant to the question to be referred to the Court are due by 7 February 1996 at 4:00 p.m. (MT).

Attach.

c.c.: Intervenors in the GH-1-96 Proceeding

Appendix II

Order XG-N62-5-96

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the regulations made thereunder; and

IN THE MATTER OF an application, pursuant to section 58 of the Act filed with the Board by Novagas Clearinghouse Pipelines Ltd. ("NCPL"); under File No. 3400-N062-1.

BEFORE the Board on 22 January 1996.

WHEREAS the Board has received an application filed by NCPL dated 12 October 1995, respecting the construction and operation of a pipeline to be located in northeastern British Columbia and northwestern Alberta;

AND WHEREAS pursuant to the *Canadian Environmental Assessment Act* ("CEAA"), the Board has considered the information submitted by NCPL and has performed an environmental screening of the proposal;

AND WHEREAS the Board has determined, pursuant to paragraph 20(1)(a) of the CEAA, that taking into account the implementation of NCPL's proposed mitigative measures the proposal is not likely to cause significant adverse environmental effects;

AND WHEREAS, the Applicant estimates that the cost of the project will be approximately \$3 000 000;

AND WHEREAS, the Board has examined the application and the evidence and arguments presented by NCPL and Intervenors in the GH-1-96 Proceeding and has found it to be in the public interest to grant certain relief requested in the application;

IT IS ORDERED, pursuant to section 58 of the Act, that the project consisting of the construction of a 16.5 km long, 273.1 mm outside diameter, natural gas pipeline from a point in d-83-c/94-P-8 in the Province of British Columbia to a point in 4-119-12 W6M in the Province of Alberta, as more particularly described in the application, is exempt from the requirements of sections 30(1)(a), 30(2) and 31 of the Act subject to the following conditions:

Unless the Board otherwise directs:

1. This Order shall expire on 31 December 1997 unless the construction of the project has commenced by that date.

2. NCPL shall implement or cause to implement all of the policies, practices, recommendations and procedures for the protection of the environment included in or referred to in its application, and its undertakings made to other regulatory agencies, with the exception of minor adjustments or changes to these practices, procedures and recommendations which may be required as a result of site conditions at the time of construction. These minor amendments to practices, procedures and recommendations will be reviewed by NCPL's on-site Environmental Inspector and, providing the same standard of environmental protection is achieved, may be implemented without prior Board approval. Federal, provincial and/or the local authorities shall be consulted, where appropriate.

At least ten days prior to the commencement of construction

3. NCPL shall, prior to the commencement of construction of the proposed Pesh Creek Pipeline, file with the Board a detailed construction schedule or schedules identifying major construction activities and shall notify the Board of all modifications to the schedule or schedules as they occur.
4. NCPL shall, prior to the commencement of any directional drill or horizontal bore construction activities, file with the Board, for approval, a detailed plan addressing the methods to be employed.
5. NCPL shall submit to the Board, prior to the commencement of construction, a copy of the company's spill response plan which shall include, but not be limited to, information on individuals responsible for spill control and clean-up, materials/equipment available on-site and off-site (with time of response) for spill control and clean-up and general procedures to be employed for spill containment, clean-up and disposal.

At least ten days prior to the pipeline being operated

6. NCPL shall, prior to the commencement of the operation of the pipeline, file with the Board, for approval, an Environmental Response Plan, as per section 6.2, Appendix 1 of the Application.