



National Energy Board

Reasons for Decision

**PanCanadian Petroleum
Limited**

MH-4-96

February 1997

Request for Service

National Energy Board

Reasons for Decision

In the Matter of

PanCanadian Petroleum Limited

Application dated 26 July 1996 for an order requiring Interprovincial Pipe Line Inc. to transport natural gas liquids for PanCanadian Petroleum Limited from Kerrobert, Saskatchewan.

MH-4-96

February 1997

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Abbreviations

AEC	Alberta Energy Company Limited
Amoco	Amoco Canada Petroleum Company Ltd. and Amoco Canada Resources Ltd.
Anderson	Anderson Exploration
ANG	Alberta Natural Gas Company Ltd.
b/d	barrels per day
BOST	breakout storage tankage
Chevron	Chevron Canada Resources
Cochin	Cochin Pipe Lines Ltd.
Director	Industry Canada, Director of Investigation and Research, Competition Bureau
FERC	(U.S.) Federal Energy Regulatory Commission
IPL	Interprovincial Pipe Line Inc.
IPL's NGL Tariff	Interprovincial Pipe Line Inc. Natural Gas Liquids Tariff NEB No. 193
Kinetic	Kinetic Resources (LPG)
Lakehead or LPL	Lakehead Pipe Line Company Limited Partnership
m ³ /d	cubic metres per day
NEB or the Board	National Energy Board
NEB Act	the <i>National Energy Board Act</i>
NGL	Natural Gas Liquids
PanCanadian or the Applicant	PanCanadian Petroleum Limited
Renaissance	Renaissance Energy Ltd.
Shell	Shell Canada Limited
RH-3-90 and GHW-5-90 Reasons for Decision	National Energy Board Reasons For Decision in the matter of an application by Interprovincial Pipe Line Inc. for certain orders respecting facilities and tolls, February 1991

Definitions

Apportionment	The monthly calculated difference between the total nominated volume and the available pipeline operating capacity, where the latter is smaller.
Barrel	1 barrel is approximately equal to 0.159 cubic metres.
Breakout Storage Tankage (BOST)	Tankage and associated facilities which are used to transfer commodities between lines in a pipeline system with varying flow rates and design parameters.
Common Carrier Pipeline	Pursuant to the NEB Act, a company operating a pipeline under the Board's jurisdiction for the transmission of oil "... shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline." (subsection 71(1) of the NEB Act).
Contract Carrier	A facility that voluntarily provides its services to others on a private contractual basis.
Crude Oil and Equivalent	A collective term used to refer to all grades of crude oil, including light and heavy conventional crude oils, synthetic crude oil, pentanes and heavier hydrocarbons and bitumen.
Fractionation	The process whereby the raw natural gas liquids product is separated into specification products in a series of columns or towers in which the product recovered at the top of each column is the most volatile component in the feed to it.
Natural Gas Liquids (NGL)	A mixture of hydrocarbons comprised of ethane, propane, butanes, pentanes plus and small quantities of non-hydrocarbons.
Open Access	Non-discriminatory access to transportation services.
Pentanes Plus	A mixture of hydrocarbons consisting mainly of pentanes and heavier hydrocarbons.
Refined Products	The products produced at a refinery from crude oil such as motor gasoline, aviation fuels, kerosine, diesel fuel, heating oil and heavy fuel oil.
Shipper	The party that contracts with a pipeline for transportation service.
Slipstreaming or Sidestreaming	In pipeline operations, the process of injecting liquid hydrocarbons into existing batches of such hydrocarbons as they flow past the injection point.

Specification Products

ethane, propane, butanes and pentanes plus

Synthetic Crude Oil

A mixture of hydrocarbons, similar to crude oil, derived by upgrading bitumen from oil sands.

Recital and Appearances

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

IN THE MATTER OF an application dated 26 July 1996 by PanCanadian Petroleum Limited for an order requiring Interprovincial Pipe Line Inc. to transport natural gas liquids for PanCanadian Petroleum Limited from Kerrobert, Saskatchewan; and

IN THE MATTER OF Hearing Order MH-4-96;

HEARD in Calgary, Alberta on 4, 5, 6, 7, 8 and 13 November 1996.

BEFORE:

R. Priddle	Presiding Member
R. Illing	Member
R.L. Andrew	Member

APPEARANCES:

D.G. Davies H.R. Huber	PanCanadian Petroleum Limited
P.H. Davies	Alberta Energy Company Limited
A.G. Menzies G. Goobie	Alberta Natural Gas Company Ltd.
D.A. Holgate L. Hunter	Amoco Canada Petroleum Company Ltd. and Amoco Canada Resources Ltd.
L. Horne	Anderson Exploration
S. Hutchison	Chevron Canada Resources
L.L. Manning	Gibson Petroleum Company Limited
P. Renton	Gulf Canada Resources Limited
W.F. Muscoby	Imperial Oil Limited
G.M. Nettleton	Interprovincial Pipe Line Inc.
D.G. Davies H.R. Huber	Kinetic Resources (LPG)
R. Nisbet	Koch Oil Co. Ltd.
W.J. McAdam	MAPCO Canada Energy Inc.

N. Jamani	NOVA Chemicals (Canada) Ltd.
K.L. Meyer	Novagas Clearinghouse Ltd.
D. Ellerton	Pacific Gas and Electric Company
S.R. Miller	Petro-Canada
R. Christensen	Renaissance Energy Ltd.
L. Auger	Shell Canada Limited
A.C. Reid	TransCanada PipeLines Limited
C.J.C. Page	Alberta Department of Energy
J.D. Sutton	Industry Canada, Director of Investigation and Research, Competition Bureau

Overview

(Note: This summary is provided for the convenience of the reader and does not constitute part of these Reasons for Decisions, to which readers are referred for details.)

On 26 July 1996, PanCanadian Petroleum Limited ("PanCanadian") filed an application pursuant to section 59 of the *National Energy Board Act* ("NEB Act"). PanCanadian requested an order from the Board requiring Interprovincial Pipe Line Inc. ("IPL") to transport the natural gas liquids ("NGL") that PanCanadian delivers to it at Kerrobert, Saskatchewan. PanCanadian intends to tender to IPL for such transportation the NGL extracted at its new Empress, Alberta plant.

The Board issued Directions on Procedure and set down an oral public hearing to be held on 30 September 1996.

On 26 August 1996, Amoco Canada Petroleum Company Ltd. and Amoco Canada Resources Ltd. (collectively "Amoco") filed a Notice of Motion. The motion stated that the application by PanCanadian was incomplete, and that the timetable set out in the Board's Directions on Procedure was unduly compressed. By letter dated 30 August 1996, the Board denied Amoco's request for an order of the Board requiring that PanCanadian amend its application. However, the Board did postpone the commencement of the hearing until 4 November 1996 in order to allow parties additional time to prepare.

The Board conducted an oral public hearing in Calgary on 4, 5, 6, 7, 8 and 13 November 1996 to hear evidence and argument on PanCanadian's application.

The Board has granted the application by PanCanadian. However, the Board remains concerned about the broader issue of open access to IPL for all potential NGL shippers. Therefore, the Board encourages IPL and the NGL industry to cooperate in devising a long-term solution which will provide the necessary services of receipt, transportation and delivery of all NGL offered for transportation on IPL by all potential NGL shippers. The Board directs IPL to file a report with it on or before 2 September 1997 which will detail the outcome of such cooperative efforts.

If IPL and the NGL industry are unsuccessful at arriving at long-term solutions which adequately address the access issue, then we recommend that the Board consider exercising a range of options, available to it, in order to address the issue of open access for all potential NGL shippers to IPL. At that time, the Board would consider and take any measures which seem appropriate.

Chapter 1

Introduction

1.1 Summary of the Application

On 26 July 1996, PanCanadian Petroleum Limited ("PanCanadian") applied for an order pursuant to section 59 of the *National Energy Board Act* ("NEB Act") requiring Interprovincial Pipe Line Inc. ("IPL") to receive, transport and deliver for transmission by means of its pipeline, natural gas liquids ("NGL") offered to IPL by PanCanadian or its nominee at IPL's receipt point located near Kerrobert, Saskatchewan.

PanCanadian stated that it is an owner and will be the operator of a new gas processing plant which is under construction at Empress, Alberta (the "Empress Plant"). The Empress Plant was expected to be placed in service in September 1996, and will produce approximately 1 270 cubic metres (8,000 barrels) per day of NGL.

Amoco Canada Petroleum Company Ltd. and Amoco Canada Resources Ltd. (collectively "Amoco") and PanCanadian are joint owners of an NGL pipeline ("the Kerrobert Pipeline") extending from Empress, Alberta, to Kerrobert, Saskatchewan. This pipeline is regulated by the Board. Amoco and PanCanadian are also joint owners of certain NGL storage facilities located at Kerrobert, Saskatchewan. Amoco is the operator of both the Kerrobert Pipeline and the Kerrobert storage facility. PanCanadian indicated that it will transport the NGL extracted at the Empress Plant to Kerrobert, Saskatchewan, using the Kerrobert Pipeline and the Kerrobert storage facility and wishes then to transport this NGL on IPL to points in eastern Canada and the United States including Sarnia, Ontario and Marysville, Michigan.

The only facility capable of initiating batch shipments of NGL on IPL is operated by Amoco and is located near Edmonton, Alberta. Pursuant to existing contractual arrangements between Amoco and PanCanadian, Amoco currently delivers PanCanadian's NGL extracted from certain existing gas processing plants located at Empress, Alberta to IPL at Kerrobert, Saskatchewan. The NGL volumes are then injected into Amoco batches initiated at Edmonton, by slipstreaming as they pass the Kerrobert receipt point on IPL. Slipstreaming enables NGL to be injected into IPL at less than the full line rate. According to PanCanadian, its additional NGL from the new Empress Plant will be commingled in the same manner, but will not be committed under any contractual arrangements with Amoco.

PanCanadian submitted that it has discussed with IPL its desire to transport NGL in its own right as a shipper on IPL. IPL has advised PanCanadian that it is not prepared to receive PanCanadian's NGL at Kerrobert, Saskatchewan, unless the existing NGL shipper (Amoco) agrees to the commingling of PanCanadian's NGL with NGL transported by IPL for Amoco from Edmonton.

Amoco is the only shipper of record for all NGL transported on IPL, and to date Amoco has not agreed to commingling.

PanCanadian stated that Rule 4 of IPL's Natural Gas Liquids Tariff, NEB No. 193, dated

15 December 1995, ("IPL's NGL Tariff") sets out the standards as to "quality" which all NGL tendered for transportation on IPL must meet. PanCanadian indicated that the NGL produced at the Empress Plant will meet all of the specifications set out in IPL's NGL Tariff.

If PanCanadian is granted shipper status on IPL, it will require access to breakout storage facilities ("BOST") at Superior, Wisconsin. On 15 June 1995, the U.S. Federal Energy Regulatory Commission ("FERC") issued Opinion 397 which states that IPL's affiliate, Lakehead Pipe Line Company Limited Partnership ("LPL"), must arrange for the provision of BOST facilities at Superior if a shipper of NGL without access to such facilities receives transportation service on IPL.

1.2 The Interprovincial Pipe Line/Lakehead Pipe Line Transportation System

The IPL system commences at Edmonton, Alberta and extends to the international boundary near Gretna, Manitoba, and from the international boundary near Sarnia, Ontario to various locations in eastern Canada. The LPL system is the United States portion of the IPL/LPL system and stretches from the international boundary near Neche, North Dakota to the international boundary near Marysville, Michigan. The IPL/LPL system is comprised of up to four parallel pipelines, transporting over 65 segregated products, including crude oils, refined products and NGL, from 36 receipt locations to 25 delivery points.

NGL is transported on the system in segregated batches from Edmonton, Alberta to Superior, Wisconsin on IPL's and LPL's Line 1. Currently, certain refined products and synthetic crude oil are also transported on Line 1 as separate batches. Based on current Line 1 operations, approximately 54 percent of Line 1 capacity downstream of Kerrobert is comprised of NGL volumes. From Superior, NGL volumes are transported on LPL's Line 5 to receipt points at Rapid River, Michigan and Marysville, Michigan, and then on IPL to Sarnia, Ontario. In order to facilitate the transfer of NGL from Line 1 to Line 5 at Superior, shipper-owned NGL BOST facilities must be used. BOST enables the injection of NGL into Line 5 at full line rates.

A batch of NGL is injected at Edmonton along with buffer material immediately ahead of and behind the NGL batch using shipper-owned and operated facilities. Synthetic crude oil is used as the buffer material. The buffer becomes contaminated with NGL as the material moves down the pipeline. The contaminated portion is delivered along with the NGL batch to Amoco's fractionation facility at Sarnia, Ontario. NGL volumes are also injected into the system using shipper-owned facilities at Kerrobert, Saskatchewan and Cromer, Manitoba, by slipstreaming them into the passing NGL batches at the request of the NGL shipper who has initiated the NGL batch at Edmonton.

Historically, IPL and Lakehead have provided shippers with segregated transportation service for all commodities. However, commingled service can also be provided, either upon delivery to IPL's receipt storage tanks, during slipstream injections directly into passing batches or through planned mixing in breakout storage tanks. IPL has adopted an operational practice of requiring agreement from affected shippers before providing commingled transportation service.

The requirements which NGL must meet to be transported on IPL are found in its NGL Tariff. Because IPL operates a batched oil pipeline, NGL must be initiated as a segregated batch. IPL is

required by its tariff to endeavour to deliver substantially the same type of NGL as that received from a shipper. If NGL tendered is of a "kind" and "quality" that is not currently being transported by IPL, then IPL endeavours, at the request of the shipper of such NGL and depending upon the operating conditions of IPL's facilities, to segregate the NGL during transportation.

Again, Amoco is the only shipper of NGL on the IPL/LPL system. All of the facilities required for injection, transfer and receipt of NGL on the IPL/LPL system, including pressure storage vessels, underground storage caverns, BOST and buffer treatment facilities are owned by Amoco and associated parties, and Amoco operates all of these facilities.

Chapter 2

Submissions

2.1 PanCanadian Petroleum Limited

PanCanadian stated that IPL, by receiving for transportation on its system NGL delivered by Amoco at the Kerrobert receipt point, and by refusing to receive NGL of the same "kind" and "quality" which PanCanadian wishes to deliver at Kerrobert, is unjustly discriminating against PanCanadian in the provision of its transportation service contrary to section 67 of the NEB Act. In addition, PanCanadian claimed that IPL, by refusing to receive for transportation on its system NGL which PanCanadian wishes to deliver at Kerrobert, is failing in its duty to receive, transport and deliver all oil offered for transmission by its pipeline, which is contrary to subsection 71(1) of the NEB Act. PanCanadian submitted that if IPL continues to refuse to receive PanCanadian's NGL offered for transmission at Kerrobert, PanCanadian will be restricted in its ability to move NGL produced at the Empress Plant by pipeline to markets in eastern Canada and the United States.

PanCanadian argued that it is restricted from accessing IPL for two reasons. First, Amoco controls the only facilities at Edmonton that allow access to IPL for NGL; and second, IPL has interpreted its NGL Tariff in a manner that precludes anyone, other than Amoco, from becoming an NGL shipper on its system. This results in a major impediment to the transportation of NGL on the IPL system.

PanCanadian submitted that at Kerrobert, it meets the terms and conditions of IPL's NGL Tariff. However, IPL has an operating practice of requesting shipper consent before commingling two streams, as a surrogate for "kind" and "quality" determination. If shipper(s) consent, IPL provides commingling. However, in the case of NGL, Amoco is the only shipper and it has not given its consent. PanCanadian believes that there is an overwhelming incentive for Amoco to withhold its consent to any NGL commingling. By maintaining its status as the sole shipper, Amoco can continue to control access to IPL, thereby restricting competition in the supply of NGL components to eastern markets. In PanCanadian's view, IPL's operating practice of requiring shipper consent is inappropriate in the context of NGL transportation.

IPL also applies the operating practice of requiring shipper consent before commingling in respect of crude oil and refined products, but according to PanCanadian, these commodities are different than NGL. Crude oil can have special valuable components or contaminants which require segregation, while refined products are segregated because they have already been refined and do not require further processing. With respect to NGL, it requires further processing following transportation, and it can be readily separated into its component parts following commingling. If two streams of NGL are commingled during transportation, component balancing can ensure that each shipper receives back the same components that it delivers to IPL. PanCanadian further stated that Canadian pipelines, other than IPL, as well as NGL pipelines in the United States, commingle NGL during transportation. Moreover, they do not seek the consent of existing shippers prior to commingling.

PanCanadian indicated that it will be tendering to IPL NGL of a "kind" and "quality" that is currently being transported by IPL. PanCanadian does not know the exact component composition of Amoco's NGL batches originating in Edmonton as this is proprietary information. However, if its application is

granted, PanCanadian stipulated that the component mix to be slipstreamed by PanCanadian at Kerrobert will be identical to that slipstreamed by Amoco at Kerrobert. This reflects the fact that all Empress plant volumes are commingled prior to injection into IPL.

During the proceeding, IPL provided two alternative definitions of "kind", for Rule 6(b) of its NGL Tariff. IPL stated that any proposed definition of "kind" must take into account the ratio of NGL component proportions and the Reid vapour pressure. The need for and level of specification for these characteristics would, in IPL's view, require the assistance and input from actual and potential NGL shippers because they are the owners of the product and can best address these distinctions. PanCanadian recommended that, if the Board granted the application and allowed commingling without consent, the Board adopt the following definition of "kind" as provided by IPL:

"Kind" means, for the purposes of Rule 6, any individual component or mixture of propane, normal butane, iso-butane, and condensates, as the case may be, having an absolute vapour pressure of greater than 103 kiloPascals and less than 1,100 kiloPascals at 37.8 degrees Celsius.

PanCanadian argued that granting of its application would allow purchasers in Sarnia and Marysville a greater choice, which would lead to increased competition in the market. PanCanadian added that granting of its application would not fully resolve the access problem for potential NGL shippers in western Canada to IPL, as Amoco would continue to control all the injection facilities, thereby enabling Amoco to maintain its dominant position in the NGL market.

Amoco identified various alternatives to IPL for shipping NGL to eastern markets, including entering into contractual arrangements with Amoco, building new batch initiation facilities, and shipping on the Cochin pipeline, or by rail or by truck. PanCanadian submitted that those alternatives are all inferior compared to shipping on IPL. PanCanadian currently has contractual arrangements with Amoco whereby it pays Amoco to transport NGL on IPL on its behalf. These arrangements have restrictions with respect to volumes which can be shipped and destinations for those volumes. Building new batch initiation facilities along with associated downstream facilities would cost in the range of \$100 million, and parties other than Amoco do not have a secure supply of NGL required to make building of such facilities economic. With respect to the Cochin pipeline, it is not a viable alternative to IPL as the costs of transporting NGL on Cochin to Sarnia are more than double the cost of transportation on IPL. Similarly, rail and trucking costs are generally prohibitively expensive when compared to the cost of moving NGL by pipeline, and more specifically on IPL.

PanCanadian argued that there is no evidence on the record that slipstreaming of PanCanadian's NGL at Kerrobert will increase Amoco's costs at Edmonton, or that Amoco's downstream facilities will be negatively impacted. PanCanadian submitted that granting of its application need not impact Amoco's ability to satisfy its market requirements as the eastern market is for specification products, not for NGL mix, and component balancing can ensure that Amoco receives back the same components that it delivers to IPL.

2.2 Interprovincial Pipe Line Inc.

IPL argued that PanCanadian's application is a request to gain access to its system by having IPL provide a new type of transportation service, namely common stream service. IPL disagreed with

PanCanadian's assertion that it has acted in an unjustly discriminatory manner. In contrast, IPL believes that the application is about the competing interests and contrasting needs of two parties wishing to ship NGL on its system. For this reason, IPL submitted that it is neutral with respect to the requested change in transportation service offered on its system. However, IPL stated that its position of neutrality is not intended to downplay the important public interest and public policy issues involved with the requested change in service.

IPL submitted that the service provided by a pipeline is dependent upon its operating conditions, as well as the needs of its shippers. IPL stated that it is not advocating a change to the type of transportation service currently offered to all shippers and potential shippers of NGL. However, if ordered to provide common stream service, IPL can accommodate such a change, although some revisions would be required to its NGL Tariff.

IPL took exception to the serious allegation of unjust discrimination with respect to IPL's alleged refusal to provide service to PanCanadian. IPL maintained that it has not refused to provide transportation service to PanCanadian. It has simply required the consent of the affected shipper before providing the requested commingled service. IPL submitted that the requirement of shipper consent is completely consistent with the batch segregated service currently being provided on its system and the manner in which that service is offered. IPL stated that obtaining consent from affected shippers prior to providing commingled service allows IPL to deliver the same type of NGL that shippers have agreed to by their consent. If consent was not obtained, IPL would put itself at risk of not being able to deliver substantially the same type of NGL, which is a requirement under its current NGL Tariff. In addition, IPL indicated that in this case, the practice of requiring consent is reasonable due to the fact that PanCanadian does not possess the necessary facilities required to provide full-stream NGL injection. Without those facilities, no volumes could be accepted at Kerrobert, and the requirement of consent ensures that the potential shipper has obtained access to, and the use of, such necessary batch initiation facilities.

IPL argued that, as a common carrier, it has an obligation to provide service. This obligation, however, is dependent upon the carrier first establishing the type of service required. The obligation is not one that requires the carrier to provide all types of services to every possible shipper.

Due to the historic needs of its NGL shipper, IPL currently provides segregated batch transportation service for NGL. IPL submitted that segregated batch service provides certain control features which that shipper can use to customize its batches in order to satisfy downstream market requirements. In contrast to the evidence presented on the U.S. NGL pipelines, which are smaller diameter NGL-dedicated systems and which offer common stream service, IPL is a large diameter pipeline carrying multiple types of hydrocarbon commodities. In addition, IPL's NGL Tariff does not contain provisions similar to the tariffs of the U.S. pipelines, which reference: the NGL transported as being a fungible common stream; the carrier's ability to commingle at its own discretion; and the carrier's exemption from or obligations to provide component balancing. Therefore, IPL does not consider it possible to provide common stream service under its current NGL Tariff.

IPL submitted that if the Board grants PanCanadian's application and orders IPL to only provide common stream service, the NGL Tariff must be changed to mirror the provisions contained in other common carriers' tariffs which offer such service. In addition, issues surrounding component balancing would have to be addressed. While IPL remains open to the use of an Industry Task Force

to resolve such issues, based on the evidence in this proceeding it believes that component balancing must remain a shipper responsibility and not one undertaken by the carrier. If common stream service is contemplated, IPL stated that it will require changes to its batch scheduling program. IPL also added that a decision to require a common stream service for NGL must be clearly stated as being specific for NGL and not in any way intended to apply to other commodity types transported on its pipeline.

IPL stated that, if it is ordered to provide common stream service, potential changes in costs associated with providing this service (i.e. facilities modifications, component balancing) would be applied-for as a non-routine adjustment item. IPL tolling matters are currently governed by NEB Order TO-1-95 and the approved Incentive Tolling Agreement. Under subsection 7.1(d) of this Agreement, changes in costs resulting from orders that cause IPL's practices or procedures to be altered are considered to be a non-routine adjustment to the negotiated revenue requirement.

IPL indicated that pursuant to subsection 71(3) of the NEB Act, the Board clearly has the discretion to order IPL to provide adequate and suitable facilities for the receipt, transport and delivery of NGL, if it finds that it is in the public interest to do so and that no undue burden would be placed upon the company. IPL stated that the evidence in this proceeding is that new injection facilities at Kerrobert are not acceptable to either PanCanadian or IPL. IPL further stated that Edmonton would be a better location for such facilities which could potentially access more NGL supplies, and if owned and operated by IPL, they could be open-access common carrier facilities subject to NEB regulation. These facilities could allow for the injection of a common stream batch, in turn allowing PanCanadian's NGL volumes to be slipstreamed at Kerrobert, while Amoco's needs for segregated batch service could also be accommodated. With respect to tolling issues, IPL submitted that, if tolled on a rolled-in basis, new facilities would have minimal impact on tolls. Alternatively, if the facilities were tolled on a stand-alone basis, IPL stated that a minimum volume commitment necessary to ensure that IPL would not suffer undue burden is 3 200 cubic metres (20,000 barrels) per day.

2.3 Amoco Canada Petroleum Company Ltd. and Amoco Canada Resources Ltd.

Amoco argued that the proper interpretation of IPL's NGL Tariff and its operating practices is that there can be no commingling of NGL batches without shipper consent. Amoco submitted that the Board should not change IPL's NGL Tariff. In Amoco's view, PanCanadian is seeking benefits from commingling on terms not available to any other product or shipper. Amoco further argued that, if the PanCanadian concept of "kind" and "quality" were applied to NGL, it would be equally applicable to crude oil and refined products since the language used in the tariffs for all three commodities is virtually identical and has been consistently interpreted in the same manner.

Amoco stated that the NGL currently slipstreamed from the Kerrobert storage is not of the same "kind" or "quality" as the NGL in Amoco's Edmonton batch, and noted that the "quality" of its stream delivered by IPL should be maintained through segregated service. Amoco submitted that it adjusts its Edmonton batch in anticipation of downstream facility requirements and downstream markets, and that the component mix is usually the result of specific tailoring. It contended that small variations in the composition of the inlet mix can have significant impacts on downstream fractionation facilities and thus Amoco's ability to meet market requirements. Amoco added that the impacts it would incur as a

result of the granting of the PanCanadian application would exceed the potential benefit to PanCanadian.

Amoco indicated that PanCanadian is asking the Board to ignore the subsidy which would be conferred on PanCanadian's NGL volume by virtue of Amoco's extensive investment in upstream facilities. Amoco maintained that compulsory commingling would cause Amoco's costs to increase at Edmonton and Fort Saskatchewan, and would cause PanCanadian's costs to decrease. Amoco argued that the granting of the application would provide PanCanadian with an economic "free ride".

Amoco agreed that component balancing of NGL is possible by agreement, as currently is the case. However, Amoco asserted that component balancing is presently performed in the context of an overall agreement which may have been acceptable to two parties, but which may not be acceptable to a different set of parties. Amoco claimed that PanCanadian has failed to address the issue of component balancing, especially the overriding concerns that arise with the suggestion of compulsory component balancing.

Amoco argued that there is nothing preventing PanCanadian itself from building any facilities to access IPL, and that the cost of batch initiation facilities at Kerrobert is not uneconomic. In Amoco's view, PanCanadian's evidence demonstrates that it has sufficient volume of NGL in western Canada to justify an economic decision to duplicate the entire NGL infrastructure. Amoco noted that PanCanadian itself indicated that if existing facilities were at capacity, new facilities would have to be built. Although the capital cost of building new facilities is not insignificant, Amoco argued that such cost is not a barrier to entry for this industry. Amoco claimed that, in addition to IPL, there are other alternatives available to move NGL or specification products east, such as the Cochin pipeline and rail.

On the issue of competition, Amoco submitted that the record did not support any conclusion that the market for NGL specification products in Canada is anything less than fully competitive or that the order which PanCanadian seeks would in any way enhance competition. Furthermore, Amoco argued that there is no compelling evidence that the current arrangements have restricted the volume of NGL shipped from western Canada.

2.4 Other Parties

Alberta Energy Company Limited ("AEC") was fully supportive of the PanCanadian application. In its view, the IPL system must be allowed to operate as a common carrier for all shippers and all commodities, whenever the terms and conditions of the relevant tariff are met. It argued that the evidence showed that PanCanadian has met all of the terms and conditions of IPL's NGL Tariff. It stated that Amoco's refusal to consent to commingling was based upon Amoco's desire to maintain exclusive control over NGL shipments on IPL.

Alberta Natural Gas Company Ltd. ("ANG") submitted that it was concerned about the impacts of forced commingling on the ability of shippers to manage their commercial interests on what is supposed to be a segregated batch system. ANG was particularly concerned about the potential for changes to the "kind" and "quality" of NGL batches injected into IPL at Edmonton. ANG argued that the granting of the PanCanadian application would amount to an unwarranted expropriation of privately-owned, non-jurisdictional facilities for the benefit of, but not at the expense of, others.

Anderson Exploration ("Anderson") supported PanCanadian's application. In its view, because certain facilities were built by private parties, a portion of IPL is controlled by the owners of these facilities. In Anderson's view, this represents a barrier to entry in the downstream marketplace. Anderson claimed that granting of the application would increase competition and benefit the Canadian consumer, while increased access would benefit the western Canadian producer.

Chevron Canada Resources ("Chevron") stated that the issue in this case is one of access to a common carrier pipeline on a fair and non-discriminatory basis for all shippers. In its view, the Board should clearly define "kind", and should incorporate this definition into IPL's NGL Tariff, so that IPL can clearly enforce it. Chevron argued that the requirement for consent by a current NGL shipper is an unsatisfactory solution and could encourage a non-competitive environment.

Renaissance Energy Ltd. ("Renaissance") supported the PanCanadian application, as well as actions by the Board to provide open access to IPL for all potential NGL shippers. Renaissance argued that PanCanadian has met the terms of IPL's NGL Tariff, and that IPL should therefore be obliged to provide the requested service.

Shell Canada Limited ("Shell") urged the Board to deny PanCanadian's application. Shell argued that if this application is granted, it and other parties who took the risk and invested in the Edmonton batch initiation facilities would be the parties suffering unjust discrimination in the services provided by IPL. Shell stated that if it and other parties had not made the capital investment in the Edmonton facilities, PanCanadian's shipments could not be made. In addition, if PanCanadian's application is granted, PanCanadian would not experience any cost for the use of these facilities. Further, in Shell's view, there is ample evidence on the record of economic alternatives to IPL which are available to PanCanadian or any other party wishing to ship NGL to the Sarnia market.

Industry Canada, Director of Investigation and Research, Competition Bureau ("Director") stated that providing open access to common carrier pipelines is in the public interest, and in this case, both western producers and eastern consumers could benefit from open access. The Director submitted that the ability of Amoco to exercise market power was based on its control of non-regulated facilities and, as a result, Amoco presently controls the access for NGL to IPL. The Director noted that NGL producers do not have economic alternatives to IPL for accessing the Sarnia market. As well, there are no close substitute supply sources available to purchasers in the Sarnia market. The Director supported the view expressed by both Amoco and PanCanadian that there are significant economies of scale from sunk capital investments. The Director stated that, as a result, the incentive for construction of a new facility to move small volumes is borderline because the margin is probably insufficient to justify the risk.

In the Director's view, an order to commingle would have competitive benefits by reducing the extent of Amoco's control over access to IPL, and thereby reducing or eliminating its market power. The Director argued that the increase in NGL exports from Alberta, which commingling and open access allows, would provide competitive benefits in the Alberta and Sarnia markets.

Chapter 3

Views of the Board

3.1 Common Carrier Obligation

The issues in this proceeding involve the NEB's responsibilities pursuant to Part IV of the NEB Act. Specifically, PanCanadian has framed its application in the form of a request for an order requiring IPL to receive, transport and deliver natural gas liquids offered by PanCanadian to IPL.

Of particular significance in this context is the obligation of IPL to "receive, transport and deliver according to its powers". Section 71 of the NEB Act stipulates:

- 71.(1) Subject to such exemptions, conditions or regulations as the Board may prescribe, a company operating a pipeline for the transmission of oil shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.
- (2) The Board may, by order, on such terms and conditions as it may specify in the order, require the following companies to receive, transport and deliver, according to their powers, a commodity offered for transmission by means of a pipeline:
 - (a) a company operating a pipeline for the transmission of gas;
and
 - (b) a company that has been issued a certificate under section 52 authorizing the transmission of a commodity other than oil.
- (3) The Board may, if it considers it necessary or desirable to do so in the public interest, require a company operating a pipeline for the transmission of hydrocarbons, or for the transmission of any other commodity authorized by a certificate under section 52, to provide adequate and suitable facilities for
 - (a) the receiving, transmission and delivering of the hydrocarbons or other commodity offered for transmission by means of its pipeline,
 - (b) the storage of the hydrocarbons or other commodity, and
 - (c) the junction of its pipeline with other facilities for the transmission of the hydrocarbons or other commodity,

if the Board finds that no undue burden will be placed on the company by requiring the company to do so.

Furthermore, it should be noted that the Board has a broad generic power under section 59 of the NEB Act to "make orders with respect to all matters relating to traffic...".

Regulatory statutes such as the NEB Act must be applied along with the common law where there is no apparent conflict between the statute and the common law. It is clear from the common law that a common carrier may be created by the actions of the undertaking itself, in holding out to the public through public tariffs, or otherwise, that it will carry all traffic of a particular description offered to it for transportation. In this particular case, there was no evidence of any denial by IPL that it is a common carrier in respect of NGL shipped on its pipeline. Nor did any other party suggest that IPL was not a common carrier of NGL.

Some NGL components, such as pentanes plus, are an oil within the meaning of section 2 of the NEB Act. Other NGL components carried by IPL meet the statutory definition of gas prescribed by section 2 of the NEB Act. However, the NGL shipped on IPL is a mixture of hydrocarbons which invariably includes some pentanes plus. Hence, NGL does not fall strictly within the meaning of gas, as gas is defined in section 2 of the NEB Act, and therefore can be encompassed by the definition of oil. This interpretative approach also accords with the treatment of NGL from an energy industry perspective. From an operational perspective, NGL is much more analogous to an oil than a gas because it is in a liquid form and for this reason it is ordinarily shipped through oil pipelines rather than through gas pipelines. It is clear therefore, that the Board has full jurisdiction to resolve the dispute between IPL and the Applicant over the transmission of NGL through IPL's oil pipeline.

Nevertheless, the Board remains cognizant of the fact that statutory service obligations which are imposed by law on regulated undertakings are relative, rather than absolute, obligations. Thus, tribunals and courts have consistently ruled that the obligations of a statutory carrier in respect of both service and facilities are tempered by a test of reasonableness. An example of this adjudicative approach is found in the judgment of the Supreme Court of Canada in *Patchett & Sons Ltd. v Pacific Great Eastern Railway Co.* (1959), 78 C.R.T.C. 282 (S.C.C.), where the obligation of a railway company to afford reasonable facilities as part of its common carrier obligations was described in these terms:

"Individuals have placed their capital at the risk of the operations; they cannot be compelled to bankrupt themselves by doing more than what they have embraced within their public profession, reasonable service. Saving any express or special statutory obligation, that characteristic extends to the carrier's entire activity. Under that scope of duty a carrier subject to the Act is placed."

The importance of the approach articulated in the case law is that compliance with the common carrier provisions is determined by a test of reasonableness, which is a relative concept. Section 71 of the NEB Act is consistent with this common law approach because it permits the Board to tailor the statutory obligations of both oil and gas pipelines to fit any unique circumstances which may exist. Thus, the Board can increase or decrease the statutory common carrier obligations of an oil, gas or commodity pipeline in respect of their carriage of oil, gas or another commodity.

The Board's policy with respect to the obligations of oil pipeline carriers was articulated in the case of a 1984 complaint by Gulf Canada against Trans Mountain Pipeline (RH-4-84 Reasons for Decision dated December 1984), where the Board said that the carrier was "... under a *prima facie* duty to ship

all oil tendered to it, including petroleum product, unless it can convince the Board that for some reason, such as a safety or capacity related one, it cannot."

In addition to its obligation to receive, transport and deliver according to its powers, IPL is also obligated to avoid practices which are unjustly discriminatory. Section 67 of the NEB Act provides that:

67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

However, not all discrimination is prohibited by that section. Rather, it is only unjust discrimination that is caught by section 67. Since the NEB Act does not define "unjust" discrimination, or provide considerations to assist the Board in determining what constitutes unjust discrimination, this is a matter for the considered judgment of the Board. Finally, section 63 of the NEB Act stipulates that any determination of unjust discrimination by the Board is a question of fact, rather than of law.

3.2 The Application

PanCanadian's application is for a Board order requiring IPL to receive, transport and deliver for transmission by means of its pipeline, NGL offered to IPL by PanCanadian or its nominee at IPL's Kerrobert receipt point. During the proceeding, several alternatives, said to be available to the Applicant, were put forth for consideration. Those alternatives included use of the Cochin pipeline, building new facilities and entering into contractual arrangements with Amoco. The Board is of the opinion that the record clearly indicates that these alternatives are not viable. The Board recognizes that Amoco's NGL operations may be impacted by slipstreaming of PanCanadian's NGL into IPL. However, IPL is a common carrier and currently it does not, in the Board's view, properly provide public access for NGL to be transported on its pipeline. The Board believes that it is necessary, as a first step, to grant the PanCanadian application to enable it to obtain access to IPL.

As an oil pipeline, IPL is subject to a statutory obligation to "receive, transport and deliver all oil offered for transmission" on its pipeline. This statutory obligation, which is in the nature of a common carrier obligation, is limited by only two factors. Firstly, the company is only obligated to act "according to its powers" which means the powers devolved upon the company by statute law and by its corporate constitution. Secondly, the obligations of an oil pipeline are limited, for practical purposes, by its published tariffs. However, since the obligations of an oil pipeline company to receive, transport and deliver oil are statutory obligations, no provision in the company's tariffs may detract from those obligations which are imposed by the NEB Act.

The evidence in this case illustrated that IPL's NGL Tariff provisions did not preclude the commingling of NGL on IPL. Nevertheless, by means of an "operating practice", purportedly established by IPL pursuant to its general powers under section 73 of the NEB Act, the consent of an existing shipper of record to commingling was made mandatory, as a surrogate for the determination by IPL of similar "kind" and "quality" in respect of NGL sought to be commingled with existing NGL on IPL. As the evidence showed, the sole NGL shipper of record declined to grant its consent to commingling of new NGL shipments with its existing shipments.

Although the Board finds that IPL did not intentionally seek to exclude PanCanadian, or any other potential shipper of NGL, from obtaining access to its pipeline in order to ship NGL to eastern Canada and the United States, the Board considers that the operating practice adopted by IPL has had a major and adverse impact on the rights of the public to obtain open access to the IPL system. In the result, the application of the operating practice and the tariff conditions has led to a detrimental differentiation between PanCanadian and Amoco in terms of access for NGL to IPL's pipeline at Kerrobert. In the view of the Board, this difference in treatment cannot be justified under section 67 of the NEB Act, and consequently the obligations of IPL to receive, transport and deliver NGL have not been satisfied.

In the result, both the private interest of PanCanadian as a shipper seeking the right to ship NGL on IPL as a shipper of record, together with the broader public interest in ensuring open public access to IPL requires the Board to issue orders to ensure that IPL will receive, transport and deliver, according to its powers, NGL offered for transmission by PanCanadian. To this end, the Board has also noted IPL's evidence concerning the need for revisions to some of the current provisions contained in IPL's NGL Tariff. Accordingly, the Board has decided, pursuant to sections 19(1) and 65 of the NEB Act to disallow by Order MO-2-97, (see Appendix I) IPL's NGL Tariff ninety days from the date of publication of that order, and to require the substitution of a new tariff which conforms with the principles articulated therein. In addition, the Board prescribes a definition of "kind", to be incorporated by IPL into the revised tariff as follows:

"Kind" means, for the purposes of Rule 6, any individual component or mixture of propane, normal butane, iso-butane and condensates, as the case may be, having an absolute vapour pressure of greater than 103 kiloPascals and less than 1,100 kilopascals at 37.8 degrees Celsius.

Having decided that IPL must provide for two streams of NGL with different ownership to be transported on its pipeline on a commingled basis, the Board must consider the question of component balancing. The Board is of the view that it is in the public interest for IPL to provide component balancing services and that the provision of such services would not constitute an undue burden on the company. The Board wishes to note however, that it is not opposed to an NGL shipper performing component balancing and related functions, if a satisfactory agreement, to be filed with the Board, can be negotiated between IPL and its NGL shippers.

3.3 Access to the Interprovincial Pipe Line Transportation System

There remains a broad regulatory issue, namely the continued lack of further public access for NGL to the IPL system, which is of importance to the Board and to the Canadian NGL industry: to the Board as a matter of principle; and to the industry because the movement of NGL by IPL's pipeline is clearly the most cost-effective means of transportation between western and eastern Canada and to certain export markets. Yet a series of commercial and regulatory decisions over many years has led to the development of physical and regulatory impediments to access for NGL to that lowest cost system.

The Board is mindful of the enterprise which has been demonstrated and investments made by Amoco to secure access for NGL under its control to the IPL system. The Board recognizes that the measures it has decided upon in response to PanCanadian's application and the further necessary steps to provide public access to IPL for NGL may affect the value of certain of those investments. However,

in this instance, the provision of open public access to oil pipelines under the Board's jurisdiction is a consideration of overriding importance. In this connection, the Board is concerned that IPL may not be adequately fulfilling, in the area of NGL, its primary function which is, in the broadest sense, to provide a continuous line of open access transportation between western and eastern Canada and between Canada and the United States. This is a function and an obligation that permeates the grant of authority to construct and operate a pipeline pursuant to the NEB Act.

While the Board's decision in this case is intended to alleviate the immediate obstacles faced by PanCanadian, which seeks to become a new shipper of record of NGL, the Board considers that, over time, others may wish to obtain the same, or similar, rights in order to compete effectively in the NGL market. In this connection, the Board has a responsibility to ensure that conditions of access to oil or other pipelines facilitate the operation of broad market forces here as in other parts of the hydrocarbon sector of the economy and that the most efficient and effective energy transportation services are available to all potential shippers of NGL.

In exercising this responsibility, the Board's inclination is to look first to the pipeline and the energy industry to create market-responsive solutions. In this particular instance, the Board has made known its concerns about the lack of open access services in respect of the transportation by IPL of NGL. It believes that the facts disclosed in this proceeding call for a broader solution to the impediments faced by those who wish to ship NGL, as shippers of record, than is achieved by the granting of PanCanadian's application. The Board therefore encourages IPL and the NGL industry to cooperate in devising a long term solution which will provide the necessary services of receipt, transportation and delivery on an economic basis of all NGL offered for transportation by all potential NGL shippers on IPL.

In this connection, the Board directs IPL to file with it a report on or before 2 September 1997 which will detail the process, content and outcome of its discussions with the NGL industry in respect to the access issue. We recommend that the Board should then assess the extent to which appropriate commercial solutions have been devised to accommodate increasing commercial interest in respect of the shipment of NGL on IPL. If the Board finds that the commercial solutions address the access issue, it may endorse and take steps to facilitate those solutions. If the Board finds that the solutions devised fall short of its requirements, then we recommend that it should look to the regulatory tools with which it has been equipped by Parliament to effect an appropriate solution.

Section 12 and subsection 15(3), together with the provisions of Part IV of the NEB Act, in our view confer ample powers on the Board to encompass, within an inquiry, an investigation of the underlying sources of the lack of open access for NGL on IPL and to fashion an appropriate remedy. Such matters as the provision of new facilities, by acquisition or construction, or the subsumption of existing facilities into federal jurisdiction, as well as related tolling issues, are possible subject matters for a future regulatory proceeding. The Board may also wish to consider any other action which at that time may seem appropriate by the Board to ensure open access for NGL to IPL.

Chapter 4

Disposition

The foregoing together with Order MO-2-97, constitutes our Decision and Reasons for Decision on this matter.

R. Priddle
Presiding Member

R. Illing
Member

R.L. Andrew
Member

Calgary, Alberta
February 1997

Appendix I

Order MO-2-97

IN THE MATTER OF Sections 12, 59, 65, 67, 71 and all other relevant sections of the *National Energy Board Act* ("NEB Act"); and

IN THE MATTER OF an application by PanCanadian Petroleum Limited ("PanCanadian") dated 26 July 1996, for an order requiring Interprovincial Pipe Line Inc. ("IPL") to receive, transport and deliver for transmission by means of its pipeline, natural gas liquids ("NGL") offered to IPL by PanCanadian or its nominee at IPL's receipt point located near Kerrobert, Saskatchewan.

BEFORE THE BOARD on 15 January, 1997.

WHEREAS, PanCanadian filed an application dated 26 July 1996, for an order requiring IPL to receive, transport and deliver NGL offered for transmission by PanCanadian at Kerrobert, Saskatchewan;

AND WHEREAS, the Board has examined the application at an oral hearing held in Calgary, Alberta;

AND WHEREAS, the Board has determined that IPL is required to receive, transport and deliver NGL offered for transmission at Kerrobert, Saskatchewan;

AND WHEREAS, the Board has determined that it would be in the public interest for IPL to provide adequate and suitable facilities for component balancing of NGL;

AND WHEREAS the Board has determined that no undue burden would be placed upon IPL by requiring IPL to provide adequate and suitable facilities for component balancing;

AND WHEREAS IPL filed NGL Tariff, NEB No. 197, dated 15 December 1996, in replacement of NGL Tariff, NEB No. 193, dated 15 December 1995;

IT IS ORDERED THAT:

1. IPL shall receive, transport and deliver NGL offered for transmission by PanCanadian or its nominee at IPL's receipt point located near Kerrobert, Saskatchewan.
2. IPL's NGL Tariff, NEB No. 197, dated 15 December, 1996 is hereby disallowed as of the close of business on the ninetieth (90th) day after the publication of this Order, and IPL is directed to file a tariff, to take effect on the expiration of the former tariff, which will permit the receipt, transport and delivery of NGL offered by PanCanadian or its nominee at IPL's receipt point located near Kerrobert, Saskatchewan.
3. The Board prescribes the following definition of "kind" to be included within Rule 6 of IPL's NGL Tariff:

"Kind" means, for the purposes of Rule 6, any individual component or mixture of propane, normal butane, iso-butane, and condensates, as the case may be, having an absolute vapour pressure of greater than 103 kiloPascals and less than 1,100 kiloPascals at 37.8 degrees Celsius.

4. IPL shall provide, or arrange for any consenting shipper(s) to provide, adequate and suitable facilities for component balancing of all NGL offered for transmission on IPL's pipeline.
5. IPL is prohibited from applying an operating practice which requires shipper consent to the commingling of NGL where the NGL to be commingled are of the same "kind", as "kind" is defined by IPL's NGL Tariff, amended herein.
6. IPL shall do all other things necessary to accommodate the receipt, transport and delivery of NGL offered for transmission by means of its pipeline.

NATIONAL ENERGY BOARD

M. L. Mantha
A/Secretary