



National Energy Board

Reasons for Decision

**Novagas Clearinghouse
Pipelines Ltd.**

OH-2-96

May 1997

Facilities

National Energy Board

Reasons for Decision

In the Matter of

**Novagas Clearinghouse Pipelines
Ltd.**

Application dated 20 September 1996, as
amended, for the Taylor - Boundary Lake
Liquids Pipeline

OH-2-96

May 1997

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represented by the National Energy Board

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Abbreviations

Act	<i>National Energy Board Act</i>
AEUB	Alberta Energy and Utilities Board
AIA	Archaeological Impact Assessment
B.C.	British Columbia
CEAA	<i>Canadian Environmental Assessment Act</i>
Certificate	Certificate of Public Convenience and Necessity
Dow	Dow Chemical Canada Inc.
Express	Express Pipeline Ltd.
Federated Northern	Federated Pipe Lines (Northern) Ltd.
HRIA	Historical Resources Impact Assessment
Imperial	Imperial Oil Limited
IPL	Interprovincial Pipe Line Inc.
Kinetic	Kinetic Resources (LPG)
Morrison	Morrison Petroleums Ltd.
NCL	Novagas Clearinghouse Ltd.
NCPL	Novagas Clearinghouse Pipelines Ltd.
NGL	Natural Gas Liquid(s)
Peace	Peace Pipe Line Ltd.
Pouce Coupé	Pouce Coupé Pipe Line Ltd.
PTA	Pipeline Transportation Agreement
Solex	Solex Gas Liquids Ltd.
Sproule	Sproule Associates Limited
U.S.A.	United States of America
WEI	Westcoast Energy Inc.

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 20 September 1996, by Novagas Clearinghouse Pipelines Ltd. pursuant to Section 52 of the *Act* for facilities (referred to as the Taylor-Boundary Lake Liquids Pipeline) consisting of 58 km of 219.1 mm outside diameter pipeline and pumping and metering facilities.

IN THE MATTER OF the National Energy Board Hearing Order OH-2-96;

HEARD at Calgary, Alberta, 10, 11 and 12 February 1997 and 12 and 13 March 1997.

BEFORE:

K.W. Vollman	Presiding Member
A. Côté-Verhaaf	Member
J.A. Snider	Member

APPEARANCES:

A.S. Hollingworth D. Wood	Novagas Clearinghouse Pipelines Ltd.
A.G. Menzies	Alberta Natural Gas Company Ltd
S.H. Castonguay	Amoco Canada Resources Ltd.
S. Hutchinson	Chevron Canada Resources and Chevron Canada Limited
K.F. Miller	Dow Chemical Canada Inc.
R.M. Perrin	Federated Pipe Lines (Northern) Ltd.
D.G. Davies	Imperial Oil Limited; Kinetic Resources (LPG); Solex Gas Liquids Ltd. and Taylor Gas Liquids Limited Partnership
R.G. Panchuk K.C. Carr	Morrison Petroleums Ltd.
K.L. Meyer	Northwest Pacific Energy Marketing Inc.
L.M. Sali, Q.C.	Peace Pipe Line Ltd. and Pouce Coupé Pipe Line Ltd.
A.C. Reid	TransCanada PipeLines Limited
C.J.C. Page	Alberta Department of Energy
C. McKinnon	Board Counsel

Chapter 1

Introduction

1.1 Background

On 20 September 1996, Novagas Clearinghouse Pipelines Ltd. ("NCPL", "the Applicant" or "the Company") applied, pursuant to section 52 of the *National Energy Board Act* ("the Act"), for a Certificate of Public Convenience and Necessity ("Certificate") to construct a Natural Gas Liquids ("NGL") pipeline from Taylor, British Columbia ("B.C.") to a point of connection near Boundary Lake, Alberta with proposed facilities of Novagas Clearinghouse Ltd. ("NCL"). At Taylor, the applied-for pipeline would connect to a straddle plant proposed by NCL and at Boundary Lake, the applied-for pipeline would connect to an NGL pipeline system proposed by NCL and recently approved by the Alberta Energy and Utilities Board ("AEUB"). The applied-for pipeline is illustrated in Figure 1-1.

The applied-for facilities consist of 58 km of 219.1 mm outside diameter pipeline, pumping and metering facilities at Taylor and pig launching and receiving facilities at Taylor and Boundary Lake, respectively. The facilities are designed to transport, as a continuous stream, up to 3500 m³/day of NGL from Taylor to the proposed NCL facilities at Boundary Lake. From this point NGL will be transported on NCL's proposed pipeline system to NCL's proposed NGL fractionation facility at Redwater, Alberta.

The Board issued Hearing Order and Directions on Procedure OH-2-96 on 29 November 1996 which set NCPL's application down for an oral public hearing. The hearing was held in Calgary on February 10-12, 1997. At the conclusion of the hearing on 12 February 1997, NCPL added pumping facilities to its application.

The Board determined that there was insufficient information on the record to properly consider this addition to the application and on 14 February 1997, pursuant to its authority under subsection 21(1) of the Act, the Board decided to rehear NCPL's application. For the rehearing the Board decided to admit the entire record of the OH-2-96 proceeding and to limit matters for consideration in the rehearing to those directly related to the facilities added to NCPL's application at the close of the original hearing and to the terms and conditions of service on the pipeline in view of its operation, pursuant to section 71(1) of the Act, as a common carrier pipeline. Directions on Procedure for the oral public rehearing were issued on 28 February 1997 and the rehearing was held in Calgary on 12 and 13 March 1997.

Figure 1-1 illustrates two other proposed pipeline projects competing for supply in the Taylor area and proposing pipeline transportation to the Edmonton, Alberta area. The proposal of Federated Pipe Lines (Northern) Ltd. ("Federated Northern") would connect to facilities of Federated Pipe Lines (Western) Ltd., Morrison Petroleum Ltd. ("Morrison") and Solex Gas Liquids Ltd. ("Solex") at Taylor and would provide batch mode transportation of crude oil and NGL to Belloy, Alberta. At Belloy, the Federated Northern pipeline would connect to a pipeline proposed by Federated Pipe Lines Ltd. and recently approved by the AEUB which would provide further transportation to Judy Creek, Alberta

and onwards to Fort Saskatchewan, Alberta and Edmonton. The Board issued its Reasons for Decision, approving the Federated Northern proposal, on 10 April 1997.

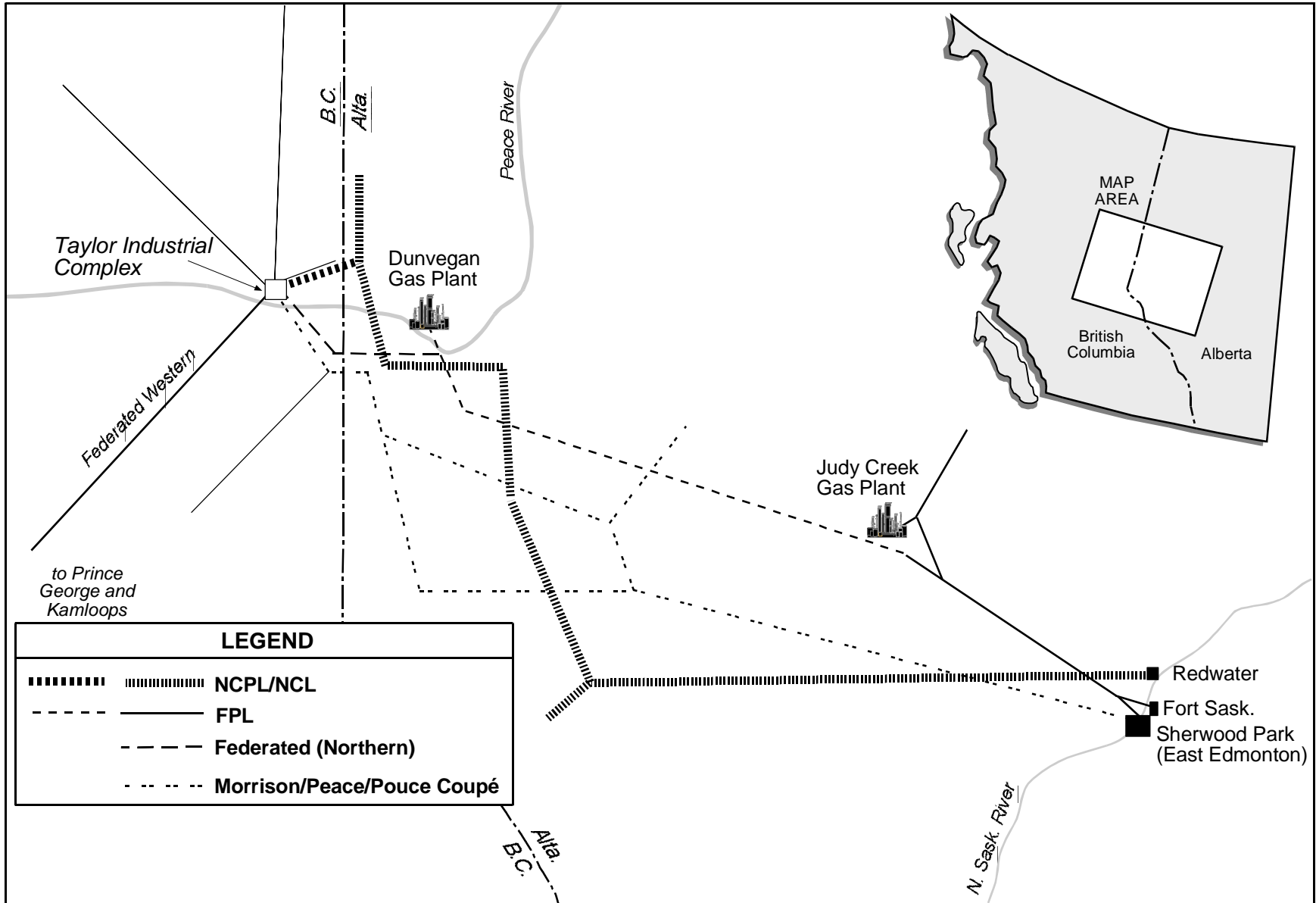
The other pipeline proposal is a joint project of Peace Pipe Line Ltd. ("Peace"), Pouce Coupé Pipe Line Ltd. ("Pouce Coupé") and Morrison. Peace operates a crude oil and NGL transmission system which provides transportation from points in northwestern Alberta to Edmonton and Fort Saskatchewan. Peace recently obtained AEUB approval to loop a portion of its system which will provide additional crude oil and NGL capacity. Pouce Coupé, a subsidiary of Peace, owns an interprovincial oil line running from Dawson Creek, B.C. to a point of connection with the Peace system near Gordondale, Alberta. Morrison proposes to build a pipeline from Taylor to connect with the Pouce Coupé pipeline at Dawson Creek.

The proponents of these other pipeline projects intervened in the OH-2-96 proceeding.

1.2 Environmental Screening

The Board conducted an environmental screening of NCPL's Taylor to Boundary Lake Liquids Pipeline project in compliance with section 18 of the *Canadian Environmental Assessment Act* ("CEAA"). The Board ensured that there was no duplication in the requirements under the CEAA and the Board's own regulatory process.

Figure 1-1
NCPL - Location Map



Chapter 2

Supply

2.1 Overall Supply

NCPL retained a petroleum consultant, Sproule Associates Limited ("Sproule"), who prepared a report entitled, "Regional Natural Gas and By-Product Supply Analysis." This report was based upon a supply region surrounding Taylor and offsetting Alberta acreage.

Natural gas supply information was provided in the Sproule Report as an indication of the volume of NGL available by extraction through deep cut natural gas processing. Such facilities produce an NGL mixture, commonly referred to as ethane plus or C2+, comprised of ethane, propane, butane and condensate. The reserve life index for natural gas was calculated to be 12.1 years based upon remaining raw gas reserves of $107.6 \times 10^9 \text{ m}^3$ (3.8 Tcf) as at December 31, 1995.

Sproule's report projected a regional, long-term natural gas supply that maintained or exceeded the current Westcoast Energy Inc. ("WEI") McMahon plant raw gas inlet rate of $20.8 \times 10^6 \text{ m}^3/\text{d}$ (734 MMcf/d) through to the year 2010. With its proposed straddle plant NCL expects to process $8.1 \times 10^6 \text{ m}^3/\text{d}$ (287 MMcf/d) of the $19.8 \times 10^6 \text{ m}^3/\text{d}$ (700 MMcf/d) total residue gas exiting the McMahon plant. These gas volumes should yield $2.5 \times 10^3 \text{ m}^3/\text{d}$ (16 Mbbbl/d) of ethane plus over the long term.

Intervenors did not dispute the adequacy of overall supply of natural gas and NGL.

2.2 Project Supply

The evidence and arguments presented in these proceedings demonstrated the intense competition underway for supply in the Taylor area among NCPL and the other project proponents described previously in these Reasons for Decision. This competition focused on rights to extract ethane and other NGL from the various processed natural gas streams in the Taylor area.

In support of its application, NCPL provided evidence showing the primary source of its project supply will be NGL to be extracted from NCL's proposed deep cut straddle plant. NCPL indicated that NCL's application to construct the straddle plant was submitted to the B.C. government on 10 February 1997.

In further support of its application NCPL stated that NCL has signed supply contracts with six different shippers for periods of five years or longer. Upon the Board's request, NCPL provided the confidential pro forma contracts executed with these six shippers for the Board's consideration. The contracts were kept confidential pursuant to NCPL's application under section 16.1 of the Act. The Board reviewed this information to confirm that NCL has exclusive contractual rights to extract ethane plus.

In aggregate, contractually-committed volumes amount to approximately $6.1 \times 10^6 \text{ m}^3/\text{d}$ (216 MMcf/d), including gas volumes available for extraction from the WEI Gordondale and Boundary Lake pipelines. This gas stream will result in a committed NGL supply of $1984 \text{ m}^3/\text{d}$ (12.5 Mbbbl/d).

NCPL also estimated its highest case supply scenario. NCPL hopes to capture, in addition to the $2.5 \times 10^3 \text{ m}^3/\text{d}$ (16 Mbbl/d) of ethane plus potentially available from NCL's straddle plant, $1.1 \times 10^3 \text{ m}^3/\text{d}$ (7.0 Mbbl/d) of specification ethane and $0.55 \times 10^3 \text{ m}^3/\text{d}$ (3.5 Mbbl/d) of propane plus mix from the existing Solex straddle/fractionation plant. Thus, the total supply available to NCPL's pipeline may be as high as $4.2 \times 10^3 \text{ m}^3/\text{d}$ (26.5 Mbbl/d).

NCPL indicated they intend to proceed with pipeline construction even if the NCL plant is not constructed.

Views of the Board

The Board is satisfied that there is an adequate overall supply of natural gas and natural gas liquids to justify the applied-for facilities. The Board notes the competition for supply among NCPL and other project proponents in the Taylor area and that a significant portion of the available supply is not yet committed to any particular project.

After considering the evidence filed under section 16.1 of the NEB Act, the Board is persuaded that NCL has exclusive extraction rights, assuming certain conditions are met and subject to some minor or immaterial exceptions, for approximately $1984 \text{ m}^3/\text{d}$ (12.5 Mbbl/d) of ethane. The Board is of the view that NCPL has provided sufficient evidence of shipper support to demonstrate the need for the applied-for facilities. Lastly, the Board is confident that market forces will determine how the remaining available supply is committed for transportation from Taylor.

Chapter 3

Transportation and Markets

3.1 Natural Gas Liquids

The NGL currently produced in the Taylor area, including propane, butanes and pentanes plus are transported to market by rail car or truck. In addition, ethane is either left in the gas stream, or extracted and subsequently reinjected into the gas stream due to the lack of ethane marketing or shipping capacity out of the Taylor area.

NCPL submitted that the proposed pipeline will enable the transportation of incremental B.C. NGL production to fractionation facilities in Alberta and the subsequent delivery of specification products to consuming markets. The NCPL pipeline will connect to the recently-approved NCL pipeline system in Alberta which will deliver the NGL to the proposed NCL fractionator facility at Redwater, Alberta, or other fractionators in the Fort Saskatchewan area where fractionated products will be marketed. The Redwater facility will have connections via five different pipelines into various other NGL systems in the Fort Saskatchewan area for disposition of NGL into the Alberta market and markets outside of Alberta, including eastern Canada and the U.S.A.

NCPL argued that significant increases in demand for all liquids, except propane, are expected as shown in its adopted forecasts. The ethane demand in Alberta is of particular significance with a predicted increase of about 47 percent by the year 2000. A number of large ethane-based petrochemical projects have been proposed, among which are a new plant to be built by NOVA Chemicals and Union Carbide, an addition to the Dow Chemical Canada Inc. ("Dow") facility at Fort Saskatchewan and another new plant proposal which is currently under discussion. NCPL submitted that the U.S. market is also predicted to experience strong growth in demand for NGL and that both the Interprovincial Pipe Line ("IPL") and the Cochin pipeline can be used to transport additional NGL volumes to those markets.

None of the intervenors challenged NCPL's submissions with respect to the NGL markets.

3.2 Transportation Agreements and Committed Volumes

During the initial hearing, NCPL filed an NGL Transportation Term Sheet outlining the terms and conditions and applicable fees for transportation service on the proposed pipeline. NCPL proposed that all potential shippers seeking to obtain transportation service on its pipeline would be required to negotiate and execute a contractual commitment which contains the fee and the terms and conditions contained in the term sheet.

Prior to the rehearing, NCPL developed a Pipeline Transportation Agreement ("PTA") which all shippers on the proposed pipeline must execute. The PTA contemplates only one type of service, namely a ship-or-pay arrangement subject only to apportionment provisions. Potential shippers can sign up for a term of five years, one year, or less than one year with an applicable toll for each type of service.

NCPL filed information on the commitments from shippers in the form of an executed PTA between NCPL and NCL, which totalled 2540 cubic metres per day of ethane plus mix for a term of five years. In addition, NCPL stated that another producer is negotiating to become a shipper on the proposed pipeline.

Views of the Board

The Board is of the view that the assessment provided by NCPL of the overall markets for NGL accessible through the proposed pipeline is sufficient for the purpose of assessing the need for this pipeline. The Board is satisfied that sufficient overall market demand will exist in the market regions accessible through the proposed pipeline, and that pipeline take-away capacity does or will exist to service the market regions accessible through this pipeline.

The Board notes the PTA executed by NCL and NCPL and is of the view that the existence of this signed long-term PTA is evidence of the need for the proposed pipeline.

Chapter 4

Traffic, Tolls and Tariff

4.1 Financial Matters

NCPL intends to finance the \$8,000,000 cost of the project through internal sources of funds, credit facilities arranged with financial institutions or a combination of these two methods. A contractual arrangement with NCL would serve to support in part NCPL's investment in this project. NCPL has stated that it will assume all the financial risks of the proposed facilities including all risks associated with unsubscribed and under-subscribed capacity for the life of the applied-for facilities.

Views of the Board

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

4.2 Form of Regulation and Toll Methodology

Pursuant to the Board's Memorandum of Guidance on the Regulation of Group 2 Companies, issued on 6 December 1995, the financial regulation of Group 2 companies is carried out on a complaint basis. NCPL proposed to be designated as a Group 2 pipeline and to have its traffic, tolls and tariffs regulated on a complaint basis. NCPL was of the opinion that, as a Group 2 company, its tolls would be considered to be just and reasonable unless a complaint is made.

NCPL's initial proposal was to charge a toll of \$1.58 /m³ for the transportation of all NGL from Taylor to the point of connection with NCL's proposed pipeline system near Boundary Lake. The toll of \$1.58 /m³ was arrived at through negotiations with NCL rather than by utilizing the traditional cost-of-service approach. NCPL stated that it had selected the negotiated fee tolling methodology because it is market responsive, it shares the risk between the facility owner and the shippers, and it provides NCPL with the required security to finance the project.

Prior to the end of the original hearing, NCPL revised its proposal by offering three different levels of tolls depending on the term of service. NCPL stated that, because it is an at-risk pipeline, it would like to attract as many long-term shippers as it can. Therefore, NCPL proposed to offer a lower toll for shippers willing to commit to longer terms. The proposed initial tolls were as follows:

Table 4-1: Proposed Initial Tolls (\$ per m³)

<u>Term of Service</u>	<u>Applicable Toll</u>
Less than 1 year	2.03
1 year	1.91
5 years	1.58

It was proposed that these tolls would remain in effect through 31 March 2003. The tolls in effect from 1 April 2003 to 31 March 2008, and in respect of each successive five-year period, would be subject to an adjustment by NCPL that would be based on market conditions.

A topic discussed during the hearing was the so-called "all-in toll". Dow described the all-in toll as the price that NCL and NCPL would negotiate with any party for transportation services from Taylor to Redwater or from Taylor to Fort Saskatchewan. The toll could also include processing and truck terminal fees and fractionation costs.

Dow argued that the toll of \$1.58 on the NCPL pipeline is effectively meaningless because, at the end of the day, any shipper wishing to have its volumes transported from Taylor to Redwater or Fort Saskatchewan will end up paying the negotiated all-in toll. On this matter, NCPL stated that the toll from Taylor to Fort Saskatchewan will be a series of tolls and rejected the idea that the tolls on the NCL system and the tolls on the NCPL system were put together by some sort of revenue requirement process.

Views of the Board

The Board views NCPL as a Group 2 pipeline company and, therefore, its traffic, tolls and tariff will be regulated on a complaint-basis. As it is the Board's normal practice to deal with the tolls and tariffs of Group 2 companies under paragraph 60(1)(a) of the Act, the Board does not consider it necessary to approve NCPL's proposed tolls and tariff. NCPL will be required to file annual audited financial statements in accordance with paragraph 5(2)(b) of the *Oil Pipeline Uniform Accounting Regulations*.

Concerning the all-in toll, the Board notes that its jurisdiction extends only to the tolls on the NCPL pipeline. The Board is confident that regulatory agencies responsible for upstream or downstream connecting facilities are fully capable of regulating matters arising within their jurisdictions. Furthermore, the Board does not view the NCL/NCPL situation as unusual as systems transporting energy are often regulated by multiple jurisdictions between the points of production and consumption.

4.3 Contract Serving as a Tariff

Prior to the commencement of the rehearing, NCPL filed a copy of the pro forma contract that it will enter into with shippers. NCPL proposed that the pro forma contract, together with copies of all executed agreements with shippers, would constitute the tariff for its transmission system.

NCPL explained that, apart from the shipper's name, address, volume, term and signature, the agreements that will be entered into by NCPL with other shippers will be identical to the pro forma contract. NCPL also explained that it would file copies of all executed agreements with the Board and would make them public.

Concerning the question of whether a contract could serve as a tariff, NCPL submitted that the contract which it has advanced as the PTA constitutes a tariff which meets the requirements of section 58.5 of the Act. In this respect, NCPL stated that the PTA provides the tolls and terms that will be applicable, and it provides conditions, practices and rules and regulations applicable to the provision of service by NCPL, including rules respecting the calculation of tolls. NCPL acknowledged that its

proposed tariff is in a different form than traditional tariffs but, in NCPL's opinion, it accomplishes the same goal.

Federated Northern was of the view that a contractual structure, such as that proposed by NCPL, can constitute a tariff as defined in section 58.5 of the Act. Similarly, Federated Northern stated that a series of contracts may be viewed, in the aggregate, as the tariff for the pipeline if all contracts for similar service specify substantially similar terms of service; otherwise discrimination would occur. However, as more fully described in section 4.5 of these Reasons for Decision, Federated Northern was concerned that the practice of employing contracts exclusively to define transportation rights could be problematic in terms of access to the pipeline. For this reason, Federated Northern submitted that all pipeline companies should be required to prepare and file a general tariff when third-party service is contemplated.

Views of the Board

The term "tariff" is defined in the Act in section 58.5 as follows:

In this Part, "tariff" means a schedule of tolls, terms and conditions, classifications, practices or rules and regulations applicable to the provision of a service by a company and includes rules respecting the calculation of tolls.

Typically, a tariff filed with the Board will set out the rules for access to the pipeline and the tolls to be charged for shipping on the pipeline. The tariff should be public in order to let anyone who wants to ship on the pipeline know how to gain access. The Board is satisfied that the NCPL pro forma PTA meets these basic requirements and that it therefore is a proper tariff. The pro forma agreement is open and transparent and clearly sets out the terms and conditions for access to the pipeline and the tolls to be charged to shippers. Everyone who ships on the pipeline will be required to sign a contract that is the same as the pro forma PTA and therefore the same terms and conditions will apply to all shippers. NCPL provided assurances during the hearing that all agreements it signs will be the same as the pro forma agreement, with the necessary additions of the name of the shipper, term commitments and volumes.

Finally, the Board considers that the tariff consists of the pro forma transportation agreement and that the signed contracts would not form part of the tariff. Signed agreements would therefore not have to be filed with the Board but should be available for the purposes of audit.

4.4 Other Tariff Issues

Imperial, Kinetic and Solex argued that the Board should not approve NCPL's proposed PTA as the tariff for the pipeline because, in their view, some of the terms and conditions contained in the PTA are not just and reasonable, and none of the terms and conditions were subject to negotiation, or even to discussion with shippers.

Imperial, Kinetic and Solex raised particular concern with two clauses. The first one was clause 3(b) which contemplates that the daily contract quantities of all shippers may exceed the capacity of the transmission system. In their opinion, that situation should never occur because a pipeline should not be permitted to over-contract its capacity, and hence collect tolls on volumes it does not ship and, in

fact, cannot ship. Also in clause 3(b), Imperial, Kinetic and Solex found NCPL's proposed apportionment procedure to be unreasonable because an existing shipper, that had agreed to pay demand charges for capacity for a specified term, could be subject to apportionment during the term of its contract if capacity constraints are caused by the request for service of a future shipper.

On this matter, NCPL provided assurances that it was not its intention to reap rewards for over-contracting and charging for more capacity than is available. Specifically, NCPL stated that, in the event that NCPL obtains contracts for more than its physical capacity at any given time, it will consider itself in apportionment and not charge for any more than its physical capacity.

Clause 6(c) also caused problems for Imperial, Kinetic and Solex. That clause specifies that volumes in excess of a shipper's daily contract quantity will be shipped at the applicable contract rate. Therefore, Imperial, Kinetic and Solex argued that, in the situation where three different shippers, each with a different contract term and applicable toll, ship an additional thousand cubic metres above their daily contract quantity, each shipper would be paying a different toll for the same service.

Other concerns were raised with the PTA, particularly technical matters, such as the product specifications, measurement, metering and sampling. Imperial, Kinetic and Solex submitted that amendments and refinements to those areas of the PTA are also required.

Views of the Board

The Board notes the assurances given by NCPL that it will not benefit financially through the over-collection of demand charges, in the event that it over-contracts its capacity. While the Board believes that such a situation would be unusual, it is satisfied that, given NCPL's assurances, NCPL would treat all shippers in a fair and reasonable manner in an apportionment situation.

With respect to clause 6(c) of the PTA, the Board is of the view that the potential for unjust discrimination does exist. In the Board's view, shippers who contract for service for longer terms, and receive the benefit of lower tolls, are only entitled to receive that benefit for their contract volumes. The benefit should not be extended to volumes in excess of the contracted volumes; otherwise shippers with different contract terms and applicable tolls would be paying different tolls for traffic of the same description. This would be in violation of section 62 of the Act.

Therefore, pursuant to section 65 of the Act, the Board disallows clause 6(c) and directs NCPL, within 30 days of the release of this decision, to file a revised tariff in the same form as the revised pro forma PTA with the appropriate changes to clause 6(c) to specify that NCPL would only charge the applicable toll for contract terms of less than one year to any shipper that receives service in excess of its daily contract quantity.

With respect to other concerns raised by parties, the Board notes that a tariff is not a static document and that changes occur from time to time in response to the needs of pipeline companies and shippers and to changes in the market place. The Board is of the view that the concerns raised by parties with respect to NCPL's tariff, including technical matters, can be resolved through negotiation between NCPL and shippers

with consequent necessary changes to the pro forma PTA. In the event NCPL and shippers cannot resolve all matters, a complaint mechanism exists through which the Board could examine specific concerns.

4.5 Common Carrier Obligations

Subsection 71(1) of the Act states that, "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." Further, section 67 of the Act states that, "A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality."

Subsection 71(1) generally reflects the common law interpretation of common carrier obligations in respect of oil pipelines. An oil pipeline must receive and transmit all oil offered for transmission by means of its pipeline, if the Board finds that no undue burden will be placed on the company by requiring the company to do so. Taken together, subsections 71(1) and section 67 require an oil pipeline to offer service under the same terms and conditions to any party wishing to ship oil on its pipeline.

In its decision in MH-4-96, the Board outlined the common carrier obligations of an oil pipeline. That proceeding involved an application for an order requiring IPL to transport natural gas liquids for PanCanadian Petroleum Limited. The Board stated:

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 only by 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.

NCPL submitted that it will give all parties wishing to ship NGL, at any time, on NCPL's pipeline the right to do so. The Company argued that this process is completely non-discriminatory and reflects open access, and that it conforms with the statement regarding the definition of common carrier contained in the Board's Information Bulletin No. 10. NCPL stated repeatedly that it will contract with anyone coming forward with products meeting the specifications set out in the PTA, as long as the potential shipper is willing to meet the terms and conditions of the PTA. NCPL argued that any suggestion that it might refuse to sign a contract is pure conjecture. In addition, in the unlikely event that an apportionment situation arises, all shippers will be apportioned on a pro rata basis.

NCPL stated that there is always a contractual relationship set up between the carrier and the shipper when the shipper's goods are transported by the carrier. Typically, oil pipelines regulated by the Board file a posted tariff outlining terms and conditions of service, and a further document, such as a nomination or even a PTA, is required in order to get oil into the pipeline. NCPL argued that by requiring execution of a PTA, it merely proposes to achieve this result using one document instead of several and, at the same time, address a problem of shippers overnominating for capacity, a problem

which continues to plague IPL. The Company further argued that there is nothing offensive to subsection 71(1) of the Act about entering into a contract.

NCPL submitted that it is entering into an agreement with NCL whereby users wishing to ship on the proposed pipeline will be guaranteed access to the NCL truck terminal. As a result, potential shippers will have to deal only with NCPL for access to the truck terminal. In addition, the Company argued that it would be counterproductive for NCPL and NCL to act in a way to restrict access to the NCL straddle plant or the NCPL pipeline.

Dow argued that it has serious concerns that reasonable access for all potential shippers would not be available on the proposed NCPL pipeline. Dow based this concern on the corporate relationship of NCPL to NCL and NOVA Chemicals, the transportation arrangements proposed for the NCPL and NCL pipeline systems, and the fact that NCL is acting as the facilitator to acquire ethane supply from the Taylor area for NOVA Chemicals. Both NCPL and NCL are owned 51 percent by NOVA Gas International and 49 percent by NGC Canada Inc. NOVA Gas International is a wholly-owned subsidiary of NOVA Corporation. NOVA Chemicals is also a wholly-owned subsidiary of NOVA Corporation.

Federated Northern argued that the Board should be vigilant in ensuring that pipeline operators, such as NCL and NCPL, do not use their control over transportation facilities to gain market advantage in the purchase of products, in this case NGL. In reply to the argument, NCPL submitted that the concerns expressed by the above parties were based on pure conjecture and speculation and there was no evidence to support these claims.

Federated Northern submitted that any failure or delay in providing service would constitute a breach of NCPL's common carrier obligations under section 71 of the Act. Federated Northern argued that the pipeline operator has no discretion to accept or reject the products if they comply with the terms and conditions of the posted tariff. It further argued that if NCPL chose to employ a solely contractual structure to document its tariff, it would always be in a position to refuse transportation service simply by not executing the PTA.

Views of the Board

As articulated in the MH-4-96 decision, the Board is mindful of the need to ensure that there is open public access to oil pipelines under its jurisdiction. Open public access is something which the Board must be assured of in granting authority to construct and operate any oil pipeline.

The Board has considered NCPL's pro forma PTA and arrangements for access and is satisfied that NCPL has met the common carrier obligations set out in subsection 71(1) of the Act for the proposed pipeline. The Board notes that NCPL confirmed that it will accept any volumes delivered to the proposed pipeline under the terms and conditions of the PTA. The Board is satisfied that the assurances provided by NCPL and the arrangements it has made with other parties will allow any shipper wishing to ship volumes on the pipeline, full and open access to the pipeline.

The Board further finds that the requirement for all shippers to execute a PTA containing the same terms and conditions as the pro forma PTA in order to access the

proposed pipeline, does not constitute unjust discrimination under section 67 of the Act. At the same time, the Board notes that its statutory powers cannot be constrained by contracts and it retains its jurisdiction to protect the public interest in future proceedings.

Chapter 5

Facilities

5.1 Facilities Description

The proposed pipeline consists of approximately 58 km (35 miles) of 219.1 mm outside diameter pipeline originating at Taylor and terminating at an approved but unbuilt NCL metering facility near Boundary Lake. NGL received from the proposed NCL straddle plant at Taylor would be transported to an interconnection with NCL's Alberta pipeline system and eventually delivered to fractionation facilities at Fort Saskatchewan and Redwater. The pipeline would also receive NGL from a proposed NCL truck terminal situated within the straddle plant site. Figure 5-1 illustrates the layout of the proposed pipeline and associated facilities.

5.2 Pipeline

The 219.1 mm outside diameter pipeline between Taylor and Boundary Lake has an initial design capacity of 4100 m³/d at a maximum operating pressure of 9930 kPa. The Beaton River crossing would have check valve and block valve sites located such that the river crossing segment could be isolated. NCPL proposes to directional drill the Beaton River crossing. A pig-sending trap would be installed at the Taylor Pump Station and a pig receiving trap would be installed at the point of connection to the proposed NCL pipeline system near Boundary Lake.

5.3 Pump Station

The mainline pumping facility would be located at the origin of the pipeline, in Taylor, and would contain two 500 kW pumps each capable of moving 100 percent of throughput. The pumping units would consist of electrically driven variable speed motors powering centrifugal pumps. Supervisory control and data acquisition and radio communication would link the pump station, metering station and all remotely operated block valves to the NCL Operations Centre in Redwater. NCPL stated that it would enter into an operating agreement with NCL whereby NCL would provide the services that NCPL requires to operate the pipeline.

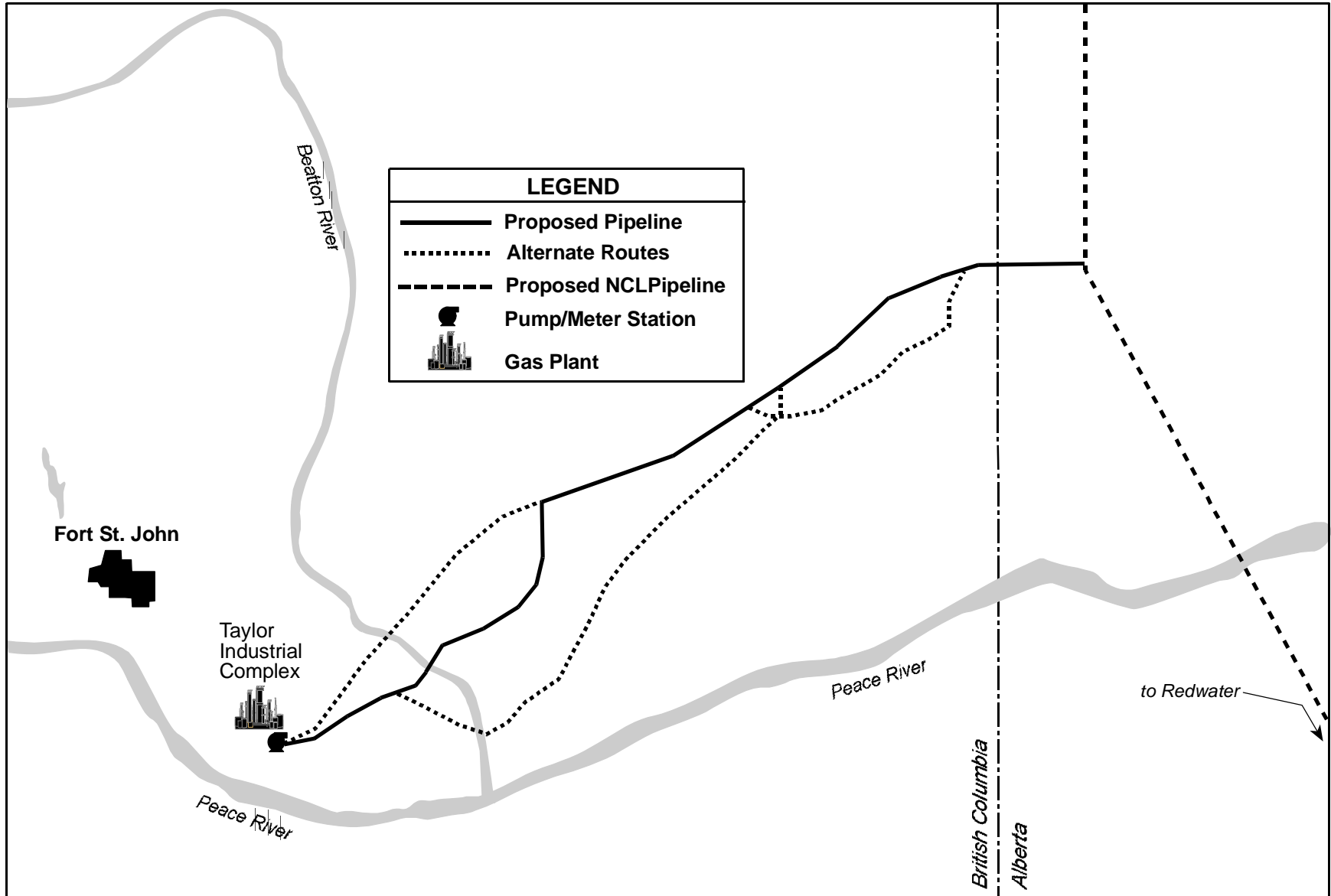
The pump station would be located within 200 metres of the nearest residence in Taylor. NCPL made a commitment to conduct a baseline noise level survey prior to commencement of any construction activities on the pump site and a noise level survey within six months after start-up at the pump station. The surveys would provide noise level readings along the fence line of the pump station, and the boundary of the property at the nearest residence to the pump station.

Views of the Board

The Board is satisfied that the pipeline, pump station and associated facilities are appropriate for the purposes of the proposed service. The Board is satisfied that the design of the applied-for facilities meets regulatory requirements and that construction will be adequately monitored to ensure that all standards and design requirements are met.

The Board is of the view that NCPL has made appropriate arrangements for the operation of the applied-for facilities. The Board notes that NCPL agreed to file a copy of the operating agreement between NCPL and NCL once the agreement is finalized and executed.

Figure 5-1
NCPL - Proposed Facilities and Alternative Routes



Chapter 6

Public Consultation, Environment, Socio-Economics, Land and Right-of-Way

6.1 Public Consultation, Environmental and Socio-Economic Matters

The Board completed an Environmental Screening Report pursuant to the CEAA and the Board's own regulatory process. The Board circulated the Environmental Screening Report to the Applicant, those federal agencies which provided specialist advice, and parties to OH-2-96 that requested a copy.

The Board has considered the Environmental Screening Report and comments received on the report in accordance with OH-2-96 and is of the view that, taking into account the implementation of the proposed mitigative measures and those set out in the attached conditions, NCPL's Taylor to Boundary Lake Liquids Pipeline project is not likely to cause significant adverse environmental effects.

The comments received and the Board's views form Appendices I and II, respectively, of the Environmental Screening Report, copies of which are available upon request from the Board's Regulatory Support Office.

6.2 Land and Right-of-Way Matters

6.2.1 Routing

6.2.1.1 Route Selection

The primary control points for the pipeline route are NCPL's pumping and metering facilities to be located at Taylor, British Columbia, and the Alberta tie-in to the proposed NCL pipeline system in SE 14-85-13 W6M. The applied-for pumping and metering facilities, as set out in the 20 September 1997 application would have been located at the Solex Straddle Plant at Taylor. The proposed location of NCPL's pumping and metering facilities was revised to the site of the proposed NCL straddle plant on 23 December 1996.

NCPL stated that the route selection criteria incorporated input from various stakeholders, including landholders, public, special interest and regulatory groups, as well as economic, technical, and environmental considerations. NCPL noted that three main alternative routes were studied during the route selection process and these were developed based on potential crossings of the Beaton River valley. NCPL further noted that alternative routes along the northeastern portion of the project were developed to address potential landowner issues. The alternative routes considered and the preferred route are illustrated in Figure 5-1.

6.2.1.2 Preferred Route

NCPL noted that the proposed pipeline route, commencing at the proposed NCPL pumping and metering facilities at Taylor, would traverse privately owned land and Crown land for the entire route. The route typically passes through flat agricultural land with approximately 8 km encountering muskeg

terrain at the east end. NCPL stated that the route takes advantage of a superior crossing of the Beaton River valley and maximizes the use of the existing pipeline corridor while minimizing overall length. NCPL noted that the proposed route of 57.3 km parallels existing linear disturbances for approximately 67% of its length.

Views of the Board

The Board is satisfied with the process for route selection undertaken by NCPL. The Board finds the general route proposed to be acceptable.

6.2.2 Land Requirements

NCPL stated that it would seek a 15 m wide permanent right-of-way along the pipeline route. With respect to temporary workspace, NCPL noted that it would require 5 m along the entire pipeline right-of-way. Additional temporary workspace would be required at foreign crossings, water crossings, and pipeline bends. NCPL stated that it had notified landowners to obtain their consent for approval of the pipeline route and that no objection had been noted. NCPL further stated that it would serve notice on owners of lands, pursuant to section 87 of the Act, upon receipt of Board approval of the route. NCPL also undertook, prior to acquiring lands required for the right-of-way, to advise all affected occupants and landowners of the requirements of section 112 of the Act.

The proposed site to be leased for the NCPL pumping and metering facilities is on property to be acquired by NCL for construction of its straddle plant. NCPL stated that this site is the former location of the Petro-Canada Inc. refinery tank farm. To comply with the land acquisition requirements of the Act, NCPL stated that it would serve notice pursuant to section 87 of the Act on NCL prior to requesting a lease agreement.

Views of the Board

The Board finds that NCPL's proposed land requirements for the project are reasonable and justified. The Board notes that, though NCPL has not identified the specific land requirements for its pumping and metering facilities, the land to be leased would form part of the proposed site for NCL's straddle plant as identified during the OH-2-96 proceeding. The Board also notes that no intervenor objected to the proposed route or to the requirements for new lands.

Chapter 7

Disposition

The foregoing chapters constitute our Reasons for Decision and Decision in respect of the application considered by the Board in the OH-2-96 proceeding. The Board is satisfied from the evidence that the applied-for 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 applied-for facilities are satisfactory to ensure their safe and environmentally sound construction and operation. The Board will recommend to the Governor in Council that a Certificate be issued, subject to the conditions set out in Appendix I of these Reasons for Decision.

K.W. Vollman
Presiding Member

A. Côté-Verhaaf
Member

J.A. Snider
Member

Appendix I

Proposed Certificate Conditions

General

1. Unless the Board otherwise directs, NCPL shall cause the approved facilities to be designed, manufactured, located, constructed and installed in accordance with those specifications, drawings and other information or data set forth in its application, or as otherwise adduced in evidence before the Board.
2. Unless the Board otherwise directs, NCPL shall implement or cause to be implemented all of the policies, practices, recommendations and procedures for the protection of the environment included in or referred to in its application or as otherwise adduced in evidence through the application process.
3. Unless the Board otherwise directs, NCPL shall submit for Board approval, prior to undertaking the Wildlife Survey and the Rare Vascular Plant and Plant Community Survey, the methodologies to be used for these surveys.
4. Unless the Board otherwise directs, NCPL shall directionally drill the Beatton River crossing.
5. Unless the Board otherwise directs prior to 31 December 1998, this certificate shall expire on 31 December 1998 unless the construction and installation with respect to the applied-for facilities has commenced by that date.

Pre-Construction

6. Unless the Board otherwise directs, NCPL shall submit at least 15 days prior to construction the Wildlife Survey, the Rare Vascular Plant and Plant Community Survey, and the Weed Survey.
7. Unless the Board otherwise directs, NCPL shall file with the Board, at least 15 days prior to the commencement of construction of each water crossing, the results of any further consultation with the Department of Fisheries and Oceans and the Canadian Coast Guard.
8. Unless the Board otherwise directs, NCPL shall, at least 15 days prior to the commencement of construction of the approved facilities, file with the Board, for approval, its construction safety manual.
9. Unless the Board otherwise directs, NCPL shall, at least ten days prior to the commencement of construction of the approved facilities, file with the Board a detailed construction schedule or schedules identifying major construction activities and shall notify the Board of any modifications to the schedule or schedules as they occur.
10. Unless the Board otherwise directs, NCPL shall, prior to the commencement of construction:

- (a) file a copy of the Heritage Resources Impact Assessment ("HRIA")/Archaeological Impact Assessment ("AIA") with the Board and the Archaeological Branch of the British Columbia Ministry of Small Business, Tourism and Culture.
 - (b) advise the Board as to whether the HRIA/AIA is acceptable to the Archaeological Branch of the British Columbia Ministry of Small Business, Tourism and Culture and provide any further mitigation required by the Archaeological Branch; and
 - (c) confirm that NCPL will comply with the mitigative measures and recommendations set out in the assessment referred to in (a) and any further mitigation identified in response to (b).
11. Unless the Board otherwise directs, NCPL shall file with the Board, prior to the commencement of clearing operations along the pipeline right-of-way, a copy of any permits or licenses required from the British Columbia Ministry of Forests and Alberta Environmental Protection for project, in addition to any comments or concerns raised with respect to the proposed clearing procedure.

During Construction

- 12. Unless the Board otherwise directs, NCPL shall, 15 days prior to the commencement of the hydrostatic test program, file with the Board copies of permits for the withdrawal and discharge of the hydrostatic test water.
- 13. Unless the Board otherwise directs, NCPL shall, at least 15 days prior to the commencement of any pressure test using air as the test medium, file with the Board, for approval, its air testing procedure.
- 14. Unless the Board otherwise directs, NCPL shall, at least 15 days prior to placing the approved facilities into service, file with the Board, for approval, its emergency response plan.
- 15. Unless the Board otherwise directs, NCPL shall, at least 15 days prior to placing the approved facilities into service, file with the Board its operation and maintenance manuals, in accordance with section 48 of the *Onshore Pipeline Regulations*.
- 16. Unless the Board otherwise directs, NCPL shall, at least 15 days prior to placing the approved facilities into service, file with the Board the information pertaining to the identification of emergency situations involving the pipeline and the safety procedures to be followed in the case of an emergency, in accordance with section 50 of the *Onshore Pipeline Regulations*.

Post-Construction

- 17. Unless the Board otherwise directs, NCPL shall file with the Board, a post-construction environmental report within six months of the date that each approved facility is placed in service. The post-construction environmental report shall set out the environmental issues that have arisen up to the date on which the report is filed and shall:
 - (a) provide a description of all minor amendments to practices, procedures and recommendations which have been implemented during the construction process;

- (b) indicate the issues resolved and those unresolved; and
 - (c) describe the measures NCPL proposes to take in respect of the unresolved issues.
- 18. Unless the Board otherwise directs, NCPL shall file with the Board, on or before the 31 December that follows each of the first two complete growing seasons following the filing of the post-construction environmental report referred to in Condition 17:
 - (a) a list of the environmental issues indicated as unresolved in the report and any that have arisen since the report was filed; and
 - (b) a description of the measures NCPL proposes to take in respect of any unresolved environmental issues.