



National Energy
Board

Office national
de l'énergie

Reasons for Decision

Westcoast Energy Inc.

GHW-3-2000

March 2001

Purchase and Operation of Facilities

National Energy Board

Reasons for Decision

In the Matter of

Westcoast Energy Inc.

Application dated 13 September 2000 to
purchase and operate the Maxhamish Pipeline

GHW-3-2000

March 2001

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Abbreviations

the Act	<i>National Energy Board Act</i>
AEC	AEC Oil & Gas Co. Ltd.
ASTM	American Society for Testing Materials
B.C.	British Columbia
BCALC	British Columbia Assets and Land Corporation
CEAA	<i>Canadian Environmental Assessment Act</i>
CSA	Canadian Standards Association
EPN	Early Public Notification
Framework	Framework for Light-handed Regulation
Guidelines	<i>Guidelines for Filing Requirements (1995)</i>
kPa	kilopascals
MAOP	maximum allowable operating pressure
MOP	maximum operating pressure
Ministry	British Columbia Ministry of Energy and Mines
mm	millimetre
NEB or the Board	National Energy Board
NPS	nominal pipe size
OPR-99	<i>Onshore Pipeline Regulations, 1999</i>
psig	pounds per square inch gauge
Report	Environmental Screening Report
RGT	raw gas transmission
Westcoast	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 13 September 2000 by Westcoast Energy Inc., pursuant to sections 74 and 52 of the Act, to acquire and operate approximately 67.6 kilometres (42 miles) of 323.9 mm (NPS 12) outside diameter pipeline and associated facilities in the Maxhamish area of northeast British Columbia; and

IN THE MATTER OF National Energy Board Hearing Order GHW-3-2000.

EXAMINED by way of written submissions.

BEFORE:

K.W. Vollman	Chairman
J.A. Snider	Member
R.J. Harrison	Member
E. Quarshie	Member
D. Emes	Member
C. Dybwad	Member

WRITTEN APPEARANCES:

Keith S. McClelland Bob Fraser	AEC Marketing
Keith S. McClelland Bob Fraser	AEC Oil & Gas Co. Ltd.
Christopher Jones	Ministry of Energy and Mines, Province of British Columbia
John Lutes Barry J. Jardine	Westcoast Energy Inc.

Chapter 1

Introduction

1.1 Application

On 13 September 2000, Westcoast Energy Inc. (Westcoast) filed an application pursuant to sections 74 and 52 of the *National Energy Board Act* (the Act) to purchase and operate approximately 67.6 kilometres (42 miles) of 323.9 mm (NPS 12) outside diameter pipeline and associated facilities in the Maxhamish area of northeast British Columbia (the Maxhamish Pipeline). Westcoast sought leave of the National Energy Board (the Board or the NEB) to acquire the facilities from AEC Oil & Gas Co. Ltd. (AEC) and a certificate of public convenience and necessity to operate the Maxhamish Pipeline as a sour raw gas transmission pipeline. Westcoast also sought exemption from the requirements of sections 30, 31 and 47 of the Act.

On 9 November 2000, the Board decided to hold a written hearing to obtain the evidence and views of interested parties and issued Hearing Order GHW-3-2000 which established the Directions on Procedure and a Preliminary List of Issues.

On 18 January 2001, the British Columbia Ministry of Energy and Mines (the Ministry) filed a Notice of Motion seeking an order of the Board that Westcoast be required to produce the Agreement of Purchase and Sale dated 27 July 2000 between it and AEC, and any other background agreements that may exist, respecting the Maxhamish Pipeline. The Board established a written process to hear the motion. Submissions in response to the motion were received from Westcoast and AEC and the Ministry filed its reply comments.

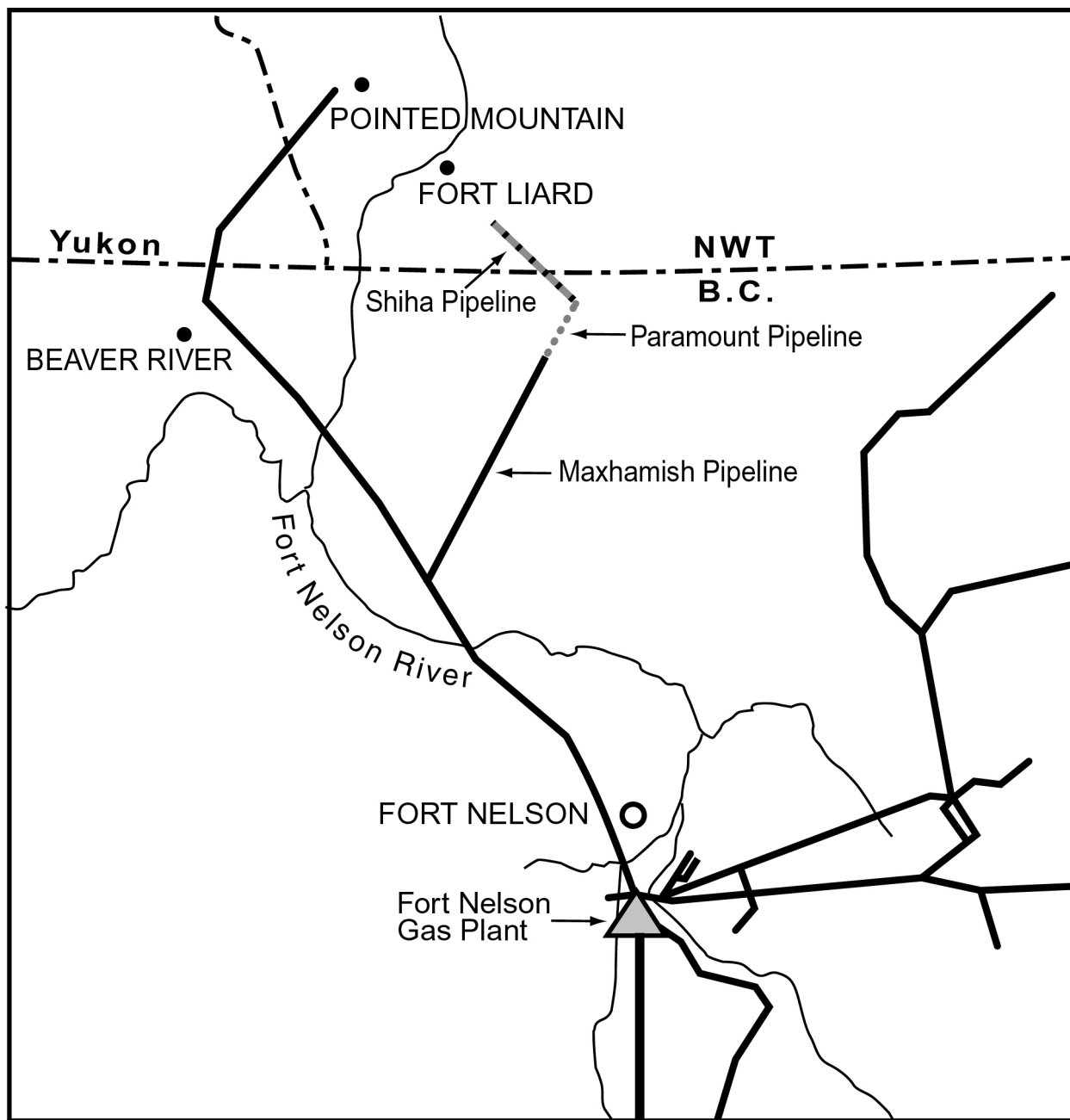
On 8 February 2001, the Board denied the Ministry's motion as it was of the view that the information sought in the motion was not relevant to the Board's decision on whether the pipeline will be used and useful and in the public convenience and necessity.

Figure 1-1 illustrates the location of the Maxhamish Pipeline.

1.2 Environmental Screening

The Board conducted an environmental screening in respect of the operation of the Maxhamish Pipeline in compliance with the *Canadian Environmental Assessment Act* (CEAA). The Board ensured that there was no duplication in requirements under the CEAA and the Board's own regulatory process.

Figure 1-1
Maxhamish Pipeline



Chapter 2

Facilities and Environmental Matters

2.1 Facilities Description

The 323.9 mm (NPS 12) outside diameter Maxhamish Pipeline is approximately 67.6 km in length and connects with Westcoast's 610 mm (NPS 24) outside diameter Beaver River Pipeline. The pipeline is located approximately 77 km northwest of Fort Nelson, British Columbia (B.C.) and is located entirely within the province of B.C. It is operating and currently connects 44 producing wells to the Westcoast system.

The Maxhamish Pipeline was built by AEC during the winter of 1998/1999 after it received approval on 29 September 1998 from the Ministry. Leave to Open was granted by the B.C. Oil and Gas Commission on 4 March 1999. The pipeline was designed, constructed and tested in accordance with the Canadian Standards Association CAN/CSA-Z662-M96 standard, as well as other appropriate governing legislation and codes. The pipeline was designed to handle sour raw gas production.

While the Maxhamish Pipeline was designed and constructed with a Maximum Operating Pressure (MOP) of 9 760 kPa (1415 psig), Westcoast submitted that its Maximum Allowable Operating Pressure (MAOP) has been set to 9 303 kPa (1350 psig), in order to match the MOP of the Beaver River Pipeline. The MAOP of 9 303 kPa (1350 psig) was imposed on the pipeline as a result of the lack of pressure control devices at the junction of the Maxhamish and Beaver River pipelines. Westcoast indicated that every receipt point on the Maxhamish Pipeline will be controlled by two pressure control devices.

The pipe used on the project conforms to CSA-Z245.1 and ASTM specifications. In order to provide positive control of fracture length during operation and pressure testing, all line pipe is Category II with minimum absorbed energy values per CSA-Z245.1.

The entire pipeline is located within a Class 1 location. There are two block valve assemblies along the line which serve various operational requirements, as well as launching and receiving facilities for regular pigging operations and in-line inspection programs. There are no compression facilities on the pipeline.

Westcoast indicated that the pipeline has been protected against external corrosion by an extruded polyethylene corrosion coating (YJ1), supported by cathodic protection. The pipeline is also internally protected using a corrosion inhibitor system.

Westcoast submitted that the Maxhamish Pipeline will be operated in accordance with the Board's *Onshore Pipeline Regulation 1999* (OPR-99).

Views of the Board

The Board is satisfied that the Maxhamish Pipeline was designed, constructed and tested in accordance with the appropriate standards and regulations to meet the requirements for sour gas service. The Board is of the view that the facilities will be operated in accordance with the requirements of the Act and OPR-99.

2.2 Environmental Matters

The Board conducted an environmental screening of the Maxhamish Pipeline in compliance with the CEAA and has completed an Environmental Screening Report (the Report) pursuant to CEAA and the Board's own regulatory process. In addition to environmental matters, the Report also addresses matters pertaining to public consultation.

Views of the Board

The Board has considered the Report and is of the view that, taking into account the implementation of Westcoast's proposed mitigative measures and those set out in the attached conditions (see Appendix II), the operation of the Maxhamish Pipeline is not likely to cause significant adverse environmental effects. This represents a decision pursuant to paragraph 20(1)(a) of the CEAA.

2.3 Socio-Economic, Public Consultation and Land Matters

Westcoast stated that the Maxhamish Pipeline is located entirely on unsurveyed provincial crown lands within the province of British Columbia. The right-of-way is approximately 67.6 kilometres in length and of variable width. The land rights for the pipeline are currently held by AEC under a statutory right-of-way granted by the British Columbia Assets and Land Corporation (BCALC). Westcoast stated that, when all required approvals for the purchase of the Maxhamish Pipeline are in place, it will apply to the BCALC for transfer of the statutory right-of-way from AEC to Westcoast.

In response to information requests from the Board, Westcoast stated that it had not conducted an Early Public Notification (EPN) program for the purchase of the Maxhamish Pipeline. It believed that Part II of the Board's *Guidelines for Filing Requirements (1995)* (the Guidelines) require an EPN program in the context of a section 52 application to construct pipeline facilities. Since the application for the purchase of the Maxhamish Pipeline is made under subsection 74(1) of the Act and includes a section 52 application for a certificate to operate the pipeline, Westcoast requested exemption from the requirements of Part II of the Guidelines. It stated that the purchase of the pipeline would not result in any potentially-adverse environmental or socio-economic effects as it is an existing in-service pipeline.

Views of the Board

The Board notes that the statutory right-of-way for the Maxhamish Pipeline is currently held by AEC and that the purchase of the pipeline would not require the acquisition of any additional lands for the continued operation of the pipeline. The Board also notes Westcoast's plans to apply to BCALC to transfer the statutory right-of-way from AEC to

Westcoast. The Board finds that Westcoast has appropriately addressed the lands and right-of-way matters for the purchase of the Maxhamish Pipeline.

The Board accepts that the purchase of the Maxhamish Pipeline would not result in any potentially-adverse environmental or socio-economic effects as it is an existing in-service pipeline. The Board determined that exemption from the requirements of Part II of the Guidelines to conduct an EPN program is appropriate in this case.

Chapter 3

Supply, Transportation and Markets

3.1 Supply

The Maxhamish Pipeline facility is currently providing service for gas pools located in the Chinkeh and Mattson formations in the Maxhamish Field. As of 31 March 2000, Westcoast estimates that there were remaining recoverable proven raw gas reserves of $8\,874\,10^6\text{m}^3$ (314 Bcf) in the producing pools. In addition, the Maxhamish area contains recoverable proven raw gas reserves estimated at $1\,241\,10^6\text{m}^3$ (44 Bcf) that are still unconnected. Westcoast has included the unconnected Celibeta Lake area that has recoverable proven raw gas reserves estimated at $70\,10^6\text{m}^3$ (2.5 Bcf) and $2\,072\,10^6\text{m}^3$ (73 Bcf) of probable raw gas reserves as part of its supply basin.

Undiscovered recoverable raw gas potential is in an area east of the Liard River, west of 122° longitude and south of 61° latitude and was estimated by Westcoast to be $20\,580\,10^6\text{m}^3$ (726 Bcf). This gas potential is expected to be found in Cretaceous sands as well as Mattson, Jean Marie and Nahanni carbonates.

The Westcoast deliverability forecast indicates that a daily raw gas volume total of $2\,123\,10^3\text{m}^3/\text{d}$ (75 MMcf/d) is expected to be maintained until 2008. Gas volumes from undiscovered gas potential will be needed by 2003 to maintain the daily deliverability total.

In its application, Westcoast noted that the purchase of the Maxhamish Pipeline would permit it to extend its gathering facilities into the Maxhamish supply basin within northeastern B.C. and Alberta. Westcoast stated that this potential new source of supply would help increase the utilization of its gathering and processing facilities in the Fort Nelson resource area. When questioned on what was the "potential new source of supply" referred to in its application, Westcoast responded that this new source of supply was gas from the Fort Liard area.

Views of the Board

The Board accepts Westcoast's estimate of gas supply as reasonable and is satisfied that the facilities will continue to be utilized. The 15-year deliverability forecast by Westcoast also appears to be reasonable to the Board.

The Board has taken notice of the fact that gas from the Fort Liard area is currently flowing through the pipeline owned and operated by Shiha Energy Transmission Ltd., another pipeline owned and operated by Paramount Resources Ltd. and finally through the Maxhamish Pipeline to Westcoast's Fort Nelson gathering system. The supply from the Fort Liard area that was referred to by Westcoast is therefore already flowing on the Maxhamish Pipeline.

3.2 Transportation and Markets

Under Westcoast's Framework for Light-handed Regulation (the Framework), Westcoast and AEC negotiated an overall package which included the purchase of the Maxhamish Pipeline facilities and tolls for gathering services in the Fort Nelson area. Westcoast also indicated that it has negotiated gathering and processing contracts with all third-party shippers on the Maxhamish Pipeline.

The Maxhamish Pipeline raw gas is delivered to Westcoast's Beaver River Pipeline and then transported to the Fort Nelson Gas Plant for processing. After processing, the gas is available for transmission to Canadian domestic markets and to the United States export market.

Views of the Board

The Board is satisfied that there is sufficient market demand for the gas to ensure that the Maxhamish Pipeline will continue to be used and useful for a reasonable period of time. The Board also notes that, under the Framework, Westcoast assumes responsibility for utilization of the facilities and for any associated costs for stranded assets.

Chapter 4

Concerns of the Ministry

The Ministry stated that it had three principal concerns with respect to Westcoast's application. Each of these concerns is discussed below.

4.1 Jurisdiction

The Ministry submitted in its final argument that it was concerned that, through a simple change in ownership, a provincially approved and regulated pipeline will fall under federal regulation. Westcoast did not address the jurisdictional issue in its final argument but responded to the Ministry's submissions in Reply. No other intervenor made submissions on this point.

The Ministry submitted that the mere change in ownership of the Maxhamish Pipeline does not alter the fact that the pipeline remains fundamentally a local undertaking that should be provincially regulated. The purpose and function of the pipeline are different from Westcoast's larger pipeline facilities, whose purpose and function are the inter-provincial and international transportation of gas. The pipeline that is the subject of this application is not of an interprovincial connecting nature. The Ministry stated that there is little evidence on the record to show that the pipeline will be functionally integrated into Westcoast's system. The purpose and function of the pipeline are different from Westcoast's interprovincial system and its purchase by Westcoast would not cause it to lose its distinct and local character. In support of its position, the Ministry relied on the dissenting opinion of Madam Justice McLachlin (as she then was) in *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322 (hereinafter *Westcoast Energy*).

Westcoast argued in reply that the Ministry's submission on jurisdiction was patently wrong on both the facts and the law. Westcoast quoted extensively from the majority opinion of the Supreme Court in the *Westcoast Energy* decision, noting that the Supreme Court affirmed that there is exclusive federal jurisdiction over the entire Westcoast system, including not only existing facilities but proposed expansion facilities. Westcoast submitted that once the Board approved the purchase and operation of the applied-for pipeline it would be fully integrated into Westcoast's operations and subject to common control, direction and management with the rest of the Westcoast system. The ownership history of the facilities purchased by Westcoast is constitutionally irrelevant. What is important is how Westcoast actually operates its business, not how certain facilities used to be owned and operated by others. Finally, Westcoast noted that certain of its federally-regulated facilities moved into provincial jurisdiction when Westcoast sold them to another company.

Views of the Board

The decision of the Supreme Court of Canada in *Westcoast Energy* makes it clear that the Westcoast system falls under federal jurisdiction. This includes the gathering and processing facilities operated by Westcoast, as well as the mainline. The Supreme Court held that the primary factor to consider is whether the various operations are functionally

integrated and subject to common management, control and direction. The Court determined that Westcoast's gathering pipelines, processing plants and mainline transmission pipeline met this test and that therefore the Westcoast system constitutes a single federal undertaking.

The evidence before the Board is that the Maxhamish Pipeline will be functionally integrated into the Westcoast system and will be subject to common management, operation and control with the rest of the system. The Board is not persuaded by the Ministry's argument that the pipeline would remain fundamentally provincial in character if it is purchased by Westcoast. It is clear from the decision of the Supreme Court of Canada in *Westcoast Energy* that portions of the Westcoast system that are functionally integrated and subject to common management, control and direction cannot be hived off and placed under provincial jurisdiction. The submission of the Ministry relied solely on the dissenting opinion in *Westcoast Energy* and did not address the fact that the majority clearly ruled that the entire Westcoast system falls under federal jurisdiction. There is nothing about the Maxhamish Pipeline that would suggest that it is an exception to the principles set out in *Westcoast Energy*.

The Board is therefore of the view that the Maxhamish Pipeline would fall under federal jurisdiction should it become part of the Westcoast system, as contemplated by this application.

4.2 Concentration of Ownership

The Ministry expressed concern about the concentration of ownership of natural gas processing and gathering facilities in Northeast B.C. as it may allow Westcoast to exercise market power. The Ministry stated that, due to their size and ability to negotiate with Westcoast, larger producers may not be affected by this concentration of ownership. However, the Ministry's concern was that smaller producers may not be in the same position to negotiate as effectively with Westcoast and may therefore be unable to obtain terms which are as advantageous as those obtained by larger producers.

The Ministry stated that the concentration of ownership of gathering and processing facilities necessitates an effective mechanism to ensure that the Province's natural gas resources are being exploited in an economically efficient manner. While this mechanism has traditionally been economic regulation by the NEB, the Ministry noted that, since 1996, the Framework has increasingly taken the place of such regulation. In the Ministry's view, the Framework does not effectively control the ability of Westcoast to exert market power, particularly over small shippers, and may therefore be an inadequate tool to ensure an economically efficient exploitation of the natural gas resource.

Westcoast submitted that its purchase of the Maxhamish Pipeline from AEC will not have a negative impact on the efficient exploitation of natural gas resources. Westcoast noted that AEC is an oil and gas exploration and production company, and is not a competitor of Westcoast in providing gathering and processing services in Northeast B.C. Further, Westcoast stated that the Maxhamish Pipeline does not compete with Westcoast in the provision of gathering and processing services in Northeast B.C. In fact, the Maxhamish Pipeline is, in effect, an extension of Westcoast's existing Fort Nelson raw gas transmission (RGT) system. Accordingly, Westcoast argued that there is no basis for the argument that this purchase by Westcoast increases concentration and reduces competition for providing such services.

Westcoast also noted that its tolls for gathering and processing services remain subject to economic regulation by the NEB under Part IV of the Act and the Framework does not in any way fetter the Board's jurisdiction to regulate Westcoast's tolls. Further, the Framework contains provisions and mechanisms specifically designed to protect the rights of smaller shippers, all of which remain in effect and available to any shipper.

Views of the Board

The Board views the Maxhamish Pipeline as an extension of Westcoast's Fort Nelson RGT system, bringing raw gas to the Fort Nelson Plant for processing. The Board does not believe that the Maxhamish Pipeline is in competition with Westcoast's existing RGT facilities in the provision of gathering and processing services in Northeast B.C. In the Board's opinion, Westcoast's purchase of this pipeline will not reduce competition in the provision of such services.

With respect to the Ministry's concerns with the Framework and its impact on smaller shippers, the Board notes its comments from its decision approving the Framework.

"The Board notes the broad support for the Framework. The open workshop and the comment procedure following the workshop have given all interested parties an opportunity to obtain further details with respect to the terms of the Framework and to provide comments.

Given the many innovative provisions in the Framework, it is not possible at this time to anticipate the nature and extent of issues that may arise in respect of the implementation of the Framework. To this end, the Board notes that the proposed complaints procedure will allow recourse to the Board to achieve resolution of all issues as and when they may arise.

In continuing to fulfill its mandate in respect of the regulation of Westcoast's tolls and tariffs, and to enable the Board to respond to related issues as they may arise, the Board intends to monitor developments in the implementation of the Framework."

Should the Ministry or any other party believe that the Framework no longer adequately serves the needs of shippers, an application for review or amendment could be brought to the Board.

4.3 Benefits from Operation of the Pipeline

The Ministry also submitted that Westcoast has made an application for a Certificate of Public Convenience and Necessity without having demonstrated any benefit arising from its operation of the Maxhamish Pipeline. In the Ministry's view, Westcoast must show more than that it has the expertise and creditworthiness to operate the pipeline. It must show that Westcoast's operation of the pipeline is needed and desirable in the public interest. The Ministry submitted that all of the benefits provided by the existence of the pipeline, including the potential to open a new source of supply, would be present irrespective of who operates it.

Westcoast stated that it is in the business of providing transportation services to third parties whereas AEC is not. Westcoast stated that, through its ownership and operation of the pipeline, it will be able to provide gathering and processing services to third parties with gas supply in the area. In the future, Westcoast will be able to expand and extend the pipeline to connect additional sources of gas supply and to provide service to other area producers.

Views of the Board

Section 52 of the Act requires the Board, before issuing a certificate, to satisfy itself that the pipeline is and will be required by the present and future public convenience and necessity. In considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant and may have regard to certain specific considerations that are listed in the section. In this case, as Westcoast is applying for a certificate to operate an existing pipeline, the Board's overriding responsibility is to satisfy itself that the pipeline will be used and useful for a reasonable period of time. In the Board's view, the issue of benefits raised by the Ministry is not relevant to this consideration in this case.

Chapter 5

Disposition

The foregoing constitutes our Reasons for Decision in respect of the application heard by the Board in the GHW-3-2000 proceeding.

The Board approves Westcoast's application to purchase the Maxhamish Pipeline and has issued Order MO-4-2001, as shown in Appendix III.

The Board is satisfied from the evidence that the Maxhamish Pipeline is and will be required by the present and future public convenience and necessity. Therefore, subject to the approval of the Governor in Council, a certificate of public convenience and necessity will be issued pursuant to Part III of the Act.

Westcoast applied for exemption from the requirements of sections 30, 31 and 47 of the Act. Under section 58 of the Act, the Board only has authority to exempt pipelines less than 40 kilometres in length from these provisions; the Maxhamish Pipeline exceeds 40 kilometres. However, the Board is of the view that section 47 and the portions of sections 30 to 33 which pertain to new construction are not applicable in this case since Westcoast is only seeking a certificate to operate a pipeline as opposed to a certificate of construction and operation. Westcoast does not need to apply for a leave to open since the pipeline is already in operation. Provisions relating to plans, profiles and books of reference are similarly not applicable in this case because Westcoast is only applying for a certificate to operate an existing pipeline. The applied-for exemption is therefore not required.

K.W. Vollman
Chairman

J.A. Snider
Member

R.J. Harrison
Member

E. Quarshie
Member

D. Emes
Member

C. Dybwad
Member

Calgary, Alberta
March 2001

Appendix I

List of Issues

1. The safety of the operation of the applied-for facilities.
2. The potential environmental and socio-economic effects of the operation of the applied-for facilities.
3. The financial viability of the applied-for facilities.
4. The economic feasibility of the applied-for facilities.
5. The appropriate terms and conditions to be included in any approval which may be granted.

Appendix II

Certificate Conditions

1. Unless the Board otherwise directs, Westcoast 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 before the Board during the GHW-3-2000 proceeding.
2. Unless the Board otherwise directs, Westcoast shall, at least 15 days prior to the commencement of any work within any watercourse where Department of Fisheries and Oceans-Canadian Coast Guard has required authorization pursuant to the *Navigable Waters Protection Act*, provide confirmation that those authorizations have been obtained and a description of any conditions to the authorizations.
3. Unless the Board otherwise directs, Westcoast shall, when the Maxhamish Pipeline is integrated into Westcoast's Emergency Response Plan (ERP), conduct a study to determine the effect of a combustible rupture of the pipeline on the environment, health and safety and to file that study with the Board. Based on the results of the study, Westcoast shall advise the Board of any changes the Company has made to the ERP.
4. Unless the Board otherwise directs, Westcoast shall, when the Maxhamish Pipeline commences to flow sour gas, file with the Board a study of:
 - (i) the dispersion characteristics of flaring residual wastes, including pigging wastes, and the effect of the flaring operations on the environment, health and safety;
 - (ii) the effects of a combustible rupture of the pipeline on the environment, health and safety; and
 - (iii) Westcoast shall include any mitigative measures the Company proposes to minimize the impacts resulting from the studies referred to in items (i) and (ii).

Appendix III

Order MO-4-2001

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

IN THE MATTER OF an application pursuant to section 74 of the Act by Westcoast Energy Inc. (Westcoast), filed with the National Energy Board (the Board) under File 3200-W005-10.

BEFORE the Board on 19 March 2001

WHEREAS the Board has received an application from Westcoast dated 13 September 2000 pursuant to section 74 of the Act for approval to purchase from AEC Oil & Gas Co. Ltd. (AEC) approximately 67.6 kilometres (42 miles) of 323.9 mm (NPS 12) outside diameter pipeline and associated facilities in the Maxhamish area of northeast British Columbia (the Maxhamish Pipeline);

AND WHEREAS the Board has examined the application pursuant to Hearing Order GHW-3-2000 and considers it to be in the public interest to grant the relief requested;

IT IS ORDERED THAT, pursuant to section 74 of the Act, Westcoast is granted leave to purchase the Maxhamish Pipeline from AEC.

NATIONAL ENERGY BOARD

Michel L. Mantha
Secretary