



National Energy Board

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## Reasons for Decision

**North Canadian Oils Limited**

**MH-2-88**

**May 1989**

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**Tariff and Traffic**

# **National Energy Board**

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## **Reasons for Decision**

In the Matter of

## **North Canadian Oils Limited**

Application to Orders Requiring Foothills Pipe Lines (Yukon) Ltd. to Transport Gas and Provide Facilities for the Transportation of Gas for North Canadian Oils Limited

**MH-2-88**

**May 1989**

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## Abbreviations

the Act/NEB Act	<i>National Energy Board Act</i>
Board	National Energy Board
Consolidated	Consolidated Natural Gas Limited
Foothills	Foothills Pipe Lines (Yukon) Ltd.
MMcf	million cubic feet
NCO	North Canadian Oils Limited
Northern Border	Northern Border Pipeline Company
the 1980 Agreement	Service Agreement, dated 23 April 1980 between Foothills and TCPL
TCPL	TransCanada PipeLines Limited
10 <sup>6</sup> m <sup>3</sup>	million cubic metres
WGML	Western Gas Marketing Limited
Westcoast	Westcoast Energy Inc.

## Recital and Appearances

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

AND IN THE MATTER OF Applications by North Canadian Oils Limited pursuant to subsections 71(2) and 71(3) of the Act for Orders requiring Foothills Pipe Lines (Yukon) Ltd. to receive, transport and deliver gas offered by North Canadian Oils Limited or to provide adequate and suitable facilities for such receipt, transmission and delivery;

AND IN THE MATTER OF an Application by North Canadian Oils Limited pursuant to subsection 19(2) of the Act for Interim Orders, as necessary, in respect of the foregoing.

HEARD at Calgary, Alberta on 13, 14, 15, 16 February and Ottawa, Ontario on 23 February 1989

BEFORE:

J.R. Jenkins	Presiding Member
R.B. Horner, Q.C.	Member
K.W. Vollman	Member

APPEARANCES:

A.S. Hollingworth	North Canadian Oils Limited
J. Lutes	Foothills Pipe Lines (Yukon) Ltd.
D. Sexsmith	Independent Petroleum Association of Canada
A.A. Fradsham	Alberta Natural Gas Company Ltd.
A.A. Fradsham	Alberta and Southern Gas Co. Ltd.
D. Davies	Consolidated Natural Gas Limited
L. Keough	Northern Border Pipeline Company
J. Hopwood, Q.C.	NOVA Corporation of Alberta
L. Meyer	Pan-Alberta Gas Ltd.
K. King	Poco Petroleums Ltd.
K.J. MacDonald	ProGas Limited
E.S. Decter	Shell Canada Limited
A. Wells	Suncor Inc.
N.J. Schultz	United Gas Line Company

F.G. Brener, Jr.	United Gas Pipe Line Company
M.P. Stauff	Western Gas Marketing Limited
P.A. McCunn-Miller	Alberta Petroleum Marketing Commission
D. Bursey	National Energy Board

# Chapter 1

## Application

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By an application dated 17 August 1988, North Canadian Oils Limited (NCO) requested that the National Energy Board (Board) issue an order pursuant to subsection 59(2) (now 71(2)) of the *National Energy Board Act* (Act) requiring Foothills Pipe Lines (Yukon) Ltd. (Foothills) to receive, transport and deliver gas offered by NCO for transportation through the Foothills system from either McNeil, Alberta and/or Piapot, Saskatchewan to Monchy, Saskatchewan. NCO also requested that such an order be issued on an interim basis while the Board considered its application. The request for an interim order was subsequently modified by a letter dated 26 October 1988 from NCO's counsel who asked that any interim relief granted be effective 1 May 1989. During the hearing, NCO further changed the requested commencement date of the order to 1 November 1989.

The Board issued Hearing Order MH-2-88 on 16 November 1988 which set down NCO's application for hearing to commence on 13 February 1989. In its hearing order, the Board expanded the scope of the hearing to include an examination of matters which went beyond the specific issues related to the relief requested by NCO.<sup>1</sup> More specifically, the Board decided that it would examine, *inter alia*, issues related to access criteria and queuing procedures on the Foothills system.

NCO amended its application on 16 December 1988 by applying, as an alternative to its primary subsection 71(2) application, for an order pursuant to subsection 71(3) of the Act requiring Foothills to provide adequate and suitable facilities to receive, transport and deliver NCO's gas. The Board amended the MH-2-88 hearing order on 22 December 1988 to include this alternate application in the existing proceeding.

The hearing started in Calgary on 13 February 1989 and continued for four days at which time it was adjourned until being reconvened in Ottawa on 23 February 1989 for final argument.

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<sup>1</sup>. See Appendix II for the List of Issues.



# Chapter 2

## Procedures and Requirements of a Queue for Firm Service

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### 2.1 Foothills' Queue and Criteria of Acceptance for Firm Service

#### 2.1.1 Foothills' Queuing Procedures

Since 1982, Foothills has had  $2.8 \times 10^6 \text{m}^3/\text{d}$  (100 MMcf/d) of spare firm capacity on the Zone 9 pipeline between the Alberta/Saskatchewan border near McNeil, Alberta and the Canada/United States border near Monchy, Saskatchewan.<sup>1</sup> In late 1986, Foothills began receiving requests from potential shippers for all or a portion of that available firm capacity for the export of natural gas at Monchy, Saskatchewan. During the period late 1986 to 12 January 1988, Foothills had instituted a queue for requests for firm service on the Zone 9 pipeline. The potential shippers in the queue were required to meet certain criteria of acceptance or access criteria before they could obtain access to the available firm capacity. At various times, Foothills "terminated" its queue for spare capacity so that other potential shippers would also have an opportunity to meet its criteria of acceptance. During the hearing, Foothills explained that the word "terminated" did not accurately describe the process because parties were not dropped from the queue; rather, others were permitted to join the queue. The last termination of the queue for the spare capacity occurred on 31 December 1987. As of that date, no potential shipper had fulfilled Foothills' access criteria for the available firm service capacity.

According to Foothills' description of its queuing procedure, all that was required from a potential shipper to be placed in its queue for firm service was a written request specifying the volume and the term of the proposed service. A potential shipper's position in the queue was determined by the date of the written request. Capacity was to be then allocated among potential shippers who could meet the access criteria by a specified date. The criteria were the same whether the request was for existing or expansion capacity. However, Foothills indicated that its application of the criteria would vary to reflect the practical differences between the two situations.

In allocating capacity to potential shippers in the queue, the availability of capacity was made subject to the rights of TransCanada PipeLines Limited (TCPL) to elect to nominate volumes under its 23 April 1980 service agreement with Foothills (the 1980 Agreement). Foothills stated that the 1980 Agreement overrides the company's ability to sign a service agreement with a potential shipper. Foothills also stated that it enables TCPL to move to the front of the queue unless Foothills has a signed service agreement with a potential shipper before TCPL makes an election under the 1980 Agreement. On 12 January 1988, TCPL gave written notice to Foothills that TCPL was electing under Section 1.1 (a) of the 1980 Agreement for  $2.8 \times 10^6 \text{m}^3/\text{d}$  (100 MMcf/d) of firm service on the Zone 9 pipeline commencing 1 November 1989 or such earlier date as the two parties may agree to. Foothills stated that once TCPL made its election, no firm contractable capacity was available for the period after 1 November 1989. In June and October 1988, respectively, TCPL and Foothills executed

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<sup>1</sup>. See Appendix III for a map of the Foothills pipeline system.

amendments to Appendix A of the 1980 Agreement for the commencement of service on 1 November 1988.<sup>1</sup>

The availability of capacity is also subject to the priority of existing shippers to extend their existing contracted capacity. (See Section 2.3 regarding renewal rights). While existing shippers do not have to enter the queue when they request an extension of their current capacity, they do have to meet the criteria for access. In addition, Foothills stated that it would prefer a long-term contract over a short-term contract when allocating capacity and would also prefer a potential shipper who requests a volume, distance and commencement date facilitating the optimum usage of Foothills' facilities.

Foothills has never published its queue because it believed some of the parties on the queue would have considered the information to be proprietary and, therefore, Foothills indicated that it would only disclose the queue if ordered by the Board. When the queue was discussed during the proceedings, the Board required Foothills to produce its then-current firm service queue. Foothills filed its queue list which, later in the proceedings, it revised to include further information - for instance, one shipper on the original list had not specified a volume. The revised queue list contained a total of sixteen separate requests for firm service from fourteen potential shippers.<sup>2</sup> The initial request dates ranged from 14 May 1987 to 7 February 1989. The total volume requested amounted to 52.7 x 10<sup>6</sup>m<sup>3</sup>/d (1860 MMcf/d) broken down as to start dates as follows:

Start Date	10 <sup>6</sup> m <sup>3</sup> /d	MMcf/d
On or before		
1 November 1990	16.7	590
After 1 November 1990	4.8	170
Not Specified	<u>31.2</u>	<u>1100</u>
<b>Total</b>	<b>52.7</b>	<b>1860</b>

Foothills agreed that the queue was in the nature of a "rolling queue". That is, parties are added to the queue from time to time but each party in the queue retains its position in the queue indefinitely until it chooses to be removed. Each time capacity becomes available, it is offered to each party in the queue sequentially down the list. Foothills also stated that the queue is not a commitment by those parties on the list to ship on the Foothills system. At the time of the hearing, there was only one queue for firm service. Foothills stated that the company had two queues for firm service up until TCPL made its election; one for existing capacity and one for expansion capacity. Foothills also stated that if spare capacity became available, Foothills would go back to having two queues.

NCO held the view that a queue for a firm service should have a set of defined access criteria which provides a clear understanding to the parties affected. In the case where existing capacity is available, NCO stated that a potential shipper who first approaches Foothills with a "ripe" project and meets the criteria should be given priority. In the case where capacity may become available or when expansion

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<sup>1.</sup> See Appendix IV for a summary of the Service Agreements for firm service on the Foothills and Northern Border Pipeline Company pipeline systems at the time of this hearing.

<sup>2.</sup> A copy of the Foothills Firm Service Queue list as filed at this hearing may be found in Appendix V.

is required, potential shippers should be required to complete a form with relevant information containing volumes, receipt and delivery points, upstream and downstream transporters, term (commencement and expiry) and regulatory requirements. The potential shippers should also provide expected dates for fulfilling each of the requirements and be prepared to enter a conditional firm service agreement with Foothills.

At the hearing, NCO also filed a copy of Foothills' letter of 20 January 1989 which contained Foothills' Service Request Form. Foothills confirmed that the letter and form had been sent to all potential shippers requesting service and that all parties were required to complete and return the forms to Foothills by 28 February 1989 to retain their position in the queue. To obtain service commencing 1 November 1990, after a proposed expansion in Zone 9 of  $7.8 \times 10^6 \text{m}^3/\text{d}$  (275 MMcf/d), a potential shipper would be required to meet Foothills' firm service access criteria by 1 May 1989.

### ***Views of the Board***

The revised firm service queue list which Foothills filed in the hearing was nothing more than a list of potential shippers expressing an interest in obtaining firm service. In the absence of any demonstrated willingness of potential shippers to commit to firm service on the Foothills system, conditional or otherwise, the list cannot be said to constitute a viable queue for firm service. This is particularly true if expansion capacity is required.

The establishment of a position in the queue for each potential shipper based on the date of its initial request for firm service is generally consistent with the first-come, first-served principle of open-access transportation. However, some potential shippers in Foothills' queue had not even provided the most basic information necessary to determine the nature of their request for firm service, such as the commencement date or volume. It was also not clear whether all of them had provided an indication of the term of transportation service. Permitting a potential shipper to hold a position in the queue without that shipper providing such basic information is not appropriate. Giving such potential shippers a position in the queue also appears contrary to Foothills' own direct evidence, wherein Foothills stated that it required a written request specifying the volume and term of the proposed service in order for a potential shipper to be placed in Foothills' queue.

The "rolling queue" aspect of Foothills' queue is also inappropriate. It permits a potential shipper to retain its position in the queue indefinitely without having to make any commitments. Under such circumstances, a potential shipper has no incentive to work towards finalizing arrangements to meet the criteria of acceptance.

Only one queue for firm service is needed on Foothills' system. A request by a potential shipper for firm service is a request for access to transportation on a pipeline whether it is to be accommodated by existing or expansion capacity. A potential shipper's position in the queue determines its priority in obtaining transportation service subject to meeting the criteria of acceptance. However, the criteria of acceptance may differ depending on whether existing capacity is or will become available or whether expansion of the pipeline capacity is required.

The queue list for firm service should be available upon request by any potential shipper. Such a list provides information on the demand for firm service on the pipeline system as well as providing an indication to a potential shipper of its relative position and, thereby, an indication of when it might expect to obtain service.

### **2.1.2 Foothills' Criteria of Acceptance**

In its direct evidence, Foothills stated that it requires a potential shipper to meet three criteria of acceptance or access by a specified date before Foothills would enter into a firm service agreement with such a shipper. The three access criteria are:

- the acquisition of all regulatory approvals;
- upstream and downstream transportation arrangements satisfactory to Foothills; and
- financial assurances satisfactory to Foothills.

In addition, the availability of capacity is subject to the rights of TCPL to elect to nominate volumes under the 1980 Agreement and to the priority of existing shippers for their current capacity and extension thereof. (See Section 3.2 for a discussion of the 1980 Agreement.)

It was evident during these proceedings that Foothills' application of its access criteria had been evolving. In 1987, Foothills' criteria required regulatory authorizations for the full term of the firm service requested. As Foothills' criteria developed, the application of the criteria became more flexible. In May 1988, the application of the full term criterion was formally removed. In its 26 May 1988 letter to NCO, the regulatory authorization criterion required that a potential shipper demonstrate that mature gas sales contracts be filed in applications with the appropriate regulatory authorities in Canada and the United States.

For the upstream and downstream transportation criterion, Foothills also applied in 1987 a full term requirement and a firm-for-firm transportation requirement - i.e. to obtain firm service on Foothills' system, firm transportation on upstream and downstream pipelines was expected. Foothills' access criteria now requires that transportation arrangements be in progress in a manner satisfactory to the company. Although it prefers firm-for-firm transportation arrangements, Foothills is prepared to be flexible.

On the question of financial assurances, Foothills indicated a preference for the assignment of the proceeds of gas sales contracts to be exercised in the event a shipper fails to pay its share of Foothills' cost of service. Foothills also stated that it was prepared to be flexible if the circumstances so warranted, and that, instead of the assignment of proceeds, it would accept a one-year letter of credit or some other alternative. However, Foothills did not consider this to be an "either/or" choice on the part of the shipper but rather that Foothills and the potential shipper would have to discuss what the shipper could provide and what Foothills could accept while continuing to meet its obligation to its lenders.

With respect to the letter of credit alternative, Foothills stated that it required a letter of credit equal to one year's cost of service and that this requirement should apply in the cases of both spare and expansion capacity. Foothills also argued that a new shipper should provide a level of financial

assurance reasonable not only for Foothills' interests but also for the interest of its existing shippers and lenders.

Foothills held the view that a short-term letter of credit similar to that approved for TCPL and Westcoast Energy Inc. (Westcoast) would not be adequate security for Foothills' firm service. It was Foothills' position that the situation on the Foothills system is different because of its smaller size and the relative importance of one shipper to the financial well-being of the Foothills system versus the impact of one shipper on the TCPL system. Foothills also emphasized that it deals primarily with the export market while both TCPL and Westcoast have large, relatively secure domestic markets.

With respect to the question of determining the creditworthiness of a potential shipper, it was Foothills' view that this should be left to the discretion of the pipeline company.

In its evidence, NCO suggested that the regulatory approvals should not necessarily be required to have the same term as the proposed service because a circular problem could develop if Foothills took that position while, at the same time, prospective purchasers were unwilling to contract for the long term until pipeline capacity and approvals for the long term have been obtained. It was also NCO's view that transportation arrangements, particularly the downstream arrangements, should be complementary to avoid the inefficient use of pipeline capacity and the creation of administrative problems associated with nominations for firm and interruptible service on the Foothills and Northern Border Pipeline Company (Northern Border) systems.

On the matter of the assignment of gas sales proceeds, NCO argued that sufficient other remedies exist under Section 5 of Foothills' tariff such that a requirement for the assignment of the proceeds of gas sales contracts is unnecessary.

NCO stated that Foothills' requirement of an irrevocable letter of credit covering one year's cost of service is totally unacceptable, given the Board's application of less onerous financial criteria on the TCPL and Westcoast pipelines. NCO noted that the Board had approved the use of a 70-day letter of credit in the case of interruptible service on Foothills' Zone 9 and submitted that nothing more should be required of firm shippers.

With respect to the determination of creditworthiness, NCO was of the view that the onus would be on Foothills to set down criteria to ensure that a shipper can meet its obligations. NCO also indicated that the shipper, if rejected by Foothills because of this financial review, would also have the right to put its case before the Board. The Board could then review Foothills' financial assurances criteria and determine whether they are appropriate.

It was also NCO's view that the criteria for acceptance by Foothills falls under the Board's jurisdiction and should be explicitly regulated. NCO argued that "the criteria, implicitly or otherwise, are an extension of the General Terms and Conditions of Foothills".

### *Views of the Board*

In providing firm transportation service on a pipeline, the same basic access criteria for potential shippers should apply to both existing capacity and expansion capacity. However, it may be necessary to apply additional requirements in the case of expansion capacity because the pipeline company would have additional costs, risks

and financing requirements. Furthermore, the access criteria applicable for existing capacity does not need to be as stringent because when existing capacity is available, any new potential shipper coming on the system would reduce the existing shippers' allocated costs.

The full term requirement for both the regulatory authorizations and the upstream and downstream transportation arrangements may be desirable in some circumstances such as when expansion capacity is required to accommodate the firm service requests. In any event, such evidence may be required by the pipeline company for filing a complete application with the Board for additional facilities. When existing capacity is available or will become available through a reduction in service to an existing shipper, such a stringent full term requirement is not necessary. In these cases, it should be sufficient for Foothills to only require a shipper to provide evidence that it has the necessary removal permit upon the commencement of the firm service and, thereafter, only as necessary to satisfy Foothills that the gas delivered is being removed under a valid removal permit.

Although having firm-for-firm upstream and downstream capacity may be desirable, it does not provide any assurance that all of the capacity under contract will be fully utilized. Therefore, Foothills should exercise reasonable discretion in applying this criterion to potential shippers.

Financial assurances in the form of an irrevocable letter of credit from a shipper provides a means for the pipeline company to obtain payment for transportation service it has already rendered to that shipper. Therefore, the level of financial assurance required would depend on the ability of the pipeline company to suspend service to the shipper who fails to pay the full amount of its monthly cost of service. Section 5.52 of Foothills' General Terms and Conditions, among other remedies, allows the company to suspend service to the defaulting shipper if that shipper fails to pay the full amount within 10 days after the date payment is due. Accordingly, an irrevocable letter of credit, or such other sufficient financial guarantee, which covers the shipper's full contract quantity for a period of 70 days would be appropriate. However, where new facilities are required to be built, additional financial assurances satisfactory to Foothills may be required.

The requirement for these financial assurances depends on Foothills' assessment of the creditworthiness of each potential shipper to honour its contractual commitments. The amount of financial information Foothills may require to assess each potential shipper's creditworthiness will obviously vary depending on such things as the size of the company, years in business, bond ratings, gas supply security, etc. Given the uniqueness of each situation, it is not practical to codify all the information Foothills may require. A check of a potential shipper's creditworthiness is a business decision which should be left to Foothills to apply with reasonable discretion as the circumstances warrant.

Foothills does not appear to have applied any consistent time frames for requiring potential shippers in its queue to meet its access criteria. Some of the potential

shippers have been in the queue for nearly two years and have retained their position in the queue without having to make any commitments. Under such circumstances, there are no means of determining the seriousness of the potential shipper to commit to firm service. The use of criteria of acceptance for allocating capacity is only meaningful when the potential shippers are given a specific time frame in which to satisfy them.

The access criteria discussed in the previous paragraphs should apply equally to all potential shippers and to existing shippers for increases in their contract volumes or extensions of their existing level of firm service. However, for the purposes of queuing, the application of the criteria to an existing shipper who requests such an extension would be subject to any applicable renewal rights that shipper may have. Renewal rights are discussed further in Section 2.3.

Article 2.1 of the TCPL/Foothills 1980 Agreement stipulates that the service agreement is subject to the provisions of Foothills applicable Rate Schedules and its General Terms and Conditions, as do other Foothills firm service agreements. Once the access criteria are incorporated into Foothills' tariff, a request by TCPL to increase or extend its existing level of service will be subject to those criteria. Tariff provisions approved by this Board cannot be superseded by contract.

## **2.2 Principles of a Queue and Criteria of Acceptance for Firm Shippers**

Foothills has not included its queuing procedures and criteria of acceptance for firm shippers in its tariff. It was the company's view that these were policy matters. In argument, Foothills stated that it was not possible to incorporate a detailed set of regulations into an access policy.

### ***Views of the Board***

Queuing procedures and criteria of acceptance are matters affecting the priority and conditions of access to transportation services. They are, therefore, tariff and traffic matters which fall within the Board's jurisdiction under Part IV of the Act.

In the move towards a more flexible and market-oriented environment since the Agreement on Natural Gas Markets and Prices was signed in October 1985, the Board has endeavoured to encourage pipeline companies to adopt more open-access procedures to facilitate the efficient operation of the natural gas market in the evolving market environment. To this end, it is essential that all terms and conditions of access to transportation services of a pipeline company be included in the tariff so that existing and potential shippers know their rights and obligations in advance of contract negotiations with the pipeline company. At the same time, the inclusion of approved conditions of access in the tariff will ensure that there are no undue service restrictions to access markets the company's pipeline system serves.

The MH-2-88 proceedings provided a forum for all interested parties to present their views on the procedures and requirements for determining the queue and the criteria of acceptance for firm service. Although the access issue in the hearing order dealt primarily with requests for firm service by potential shippers, such requests relate to a

pipeline system which is in operation and is providing service to existing shippers on it. By necessary implication, the principles and rules applicable to the provision of service to potential shippers could have an effect on the rights and obligations of existing shippers.

During the proceeding, only Foothills, NCO, and Western Gas Marketing Limited (WGML), as agent for TCPL, presented witnesses to address the access questions contained in the Board's list of issues. For the most part, their evidence focussed primarily on the specific application of NCO, pursuant to subsection 71(2) of the Act, to obtain access on Foothills' Zone 9 pipeline. Nevertheless, considerable evidence was adduced at the hearing to enable the Board to determine guiding principles for instituting detailed queuing procedures and access criteria on Foothills' Zone 9 pipeline. Based on this evidence and the Board's views as expressed in Section 2.1, the Board has determined that the following principles are appropriate for inclusion in the queuing procedures and the access criteria.

- (a) A potential shipper requesting firm service, an existing shipper requesting to increase its level of firm service and an existing shipper who does not have renewal rights (for convenience, all of these shippers are hereinafter referred to as a "prospective shipper") shall make its request in writing to the pipeline company stating:
  - (i) the name and address of the prospective shipper;
  - (ii) the maximum daily quantity of gas to be transported;
  - (iii) the term of the firm service, including the commencement and termination dates; and
  - (iv) the receipt and delivery points.
- (b) Prospective shippers will be entered into the queue in the order of the date and time that a written request for firm service containing all of the information set out in paragraph (a) is received by the pipeline company. The pipeline company shall forthwith notify the prospective shipper in writing of its acceptance into the queue.
- (c) Where the pipeline company determines that an expansion of its pipeline system is required, in the absence of existing pipeline capacity being or becoming available, the pipeline company shall notify the prospective shipper in writing within a specified number of days<sup>1</sup> of the receipt of the request for service and provide the prospective shipper with a Project Status Summary as contained in Exhibit No. B-11. The prospective shipper shall complete the Project Status Summary and submit it to the pipeline company within a

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<sup>1</sup>. Foothills is to recommend the number of days it believes is appropriate when it files the documents with the Board in accordance with the decisions in Section 2.4 of these Reasons for Decision.



specified number of days<sup>1</sup> which apply in such cases in order to retain its position in the queue. Prospective shippers who submit a completed summary form after the specified return date shall enter the queue on the date and time of receipt by the pipeline company of the fully completed form.

- (d) Subject to the procedure set out in paragraph (e), a prospective shipper's position in the queue shall not be affected by the volume, date of commencement, term of service or distance requested.
- (e) Where the pipeline company determines that an expansion of its pipeline system is required to accommodate requests for firm service from prospective shippers, the pipeline company may establish a minimum term of service<sup>2</sup> as may be necessary to ensure financing for the expansion and for protecting the financial integrity of the pipeline system. Under these circumstances, the pipeline company shall, in the procedures identified in paragraph (c), advise the prospective shippers who do not meet the minimum term of service for expansion capacity. Each prospective shipper shall advise the pipeline company within the time frame identified in paragraph (c) that it is prepared to commit to firm service for the minimum term or a longer term in order to retain its position in the queue. Each prospective shipper who decides that it is not prepared to commit to a longer term of service shall notify the pipeline company. In such a case, the prospective shipper shall fall to the bottom of the queue according to the date and time of receipt of such notice by the pipeline company.
- (f) The pipeline company shall make available to any party, upon request, a copy of the firm service queue which shall contain the following details of each request for firm service:
  - the name of the prospective shipper;
  - the position in the queue of each prospective shipper;
  - the receipt date by Foothills;
  - the maximum daily volume; and
  - the term of service (commencement and termination dates).

The access criteria for prospective shippers in the queue for firm service shall include the following:

- (a) Where the requested capacity is available or will become available, the potential shipper must:

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<sup>1.</sup> Foothills is to recommend the number of days it believes is appropriate when it files the documents with the Board in accordance with the decisions in Section 2.4 of these Reasons for Decision.

<sup>2.</sup> Foothills is to recommend the minimum term of service it believes is appropriate when it files the documents with the Board in accordance with decisions in Section 2.4 of these Reasons for Decision.

- (i) demonstrate that it has upstream and downstream transportation arrangements;
  - (ii) provide sufficient financial information to the pipeline company to determine its creditworthiness;
  - (iii) provide, at the pipeline company's option, an irrevocable letter of credit for 70 days of the full contract quantity or such other sufficient financial guarantee that provides a similar level of security; and
  - (iv) execute, within 60 days of notification of acceptance into the queue, a binding agreement with the pipeline company for the provision of the transportation service requested, subject to the fulfillment of conditions precedent as agreed to between the prospective shipper and the pipeline company (a "precedent agreement").
- (b) Where new facilities are required, the pipeline company may require additional information and documentation from a prospective shipper to support a facilities application, including.
- (i) evidence that the intended market is secure and long term;
  - (ii) evidence that the prospective shipper has a secure and long-term source of supply;
  - (iii) evidence that the prospective shipper will obtain all associated regulatory approvals in a timely manner; and
  - (iv) other financial assurances satisfactory to the pipeline company.
- (c) Prospective shippers in the queue have certain rights and obligations including:
- (i) When capacity is available or becomes available, the pipeline company shall offer it sequentially to prospective shippers in the queue until the capacity is fully committed;
  - (ii) When new facilities are required, prospective shippers who have met the criteria have a right to expect the pipeline company to proceed in a timely manner to apply for and to construct such facilities after their approval, providing that such facilities will not impose any undue economic hardship on the pipeline company;
  - (iii) If a prospective shipper in the queue waives the offer of capacity, it shall be removed from the queue, except if acceptance of the offer would result in an earlier start date, or the capacity or term of service offered is less than that specified in the precedent agreement;
  - (iv) Prospective shippers who do not execute a binding agreement within 60 days shall be removed from the queue;
  - (v) Prospective shippers who cannot meet the criteria within the time limits specified in the precedent agreement shall have a right to drop to the last position in the

queue or move to the last position of the queue for a subsequent service commencement date;

- (vi) Positions in the queue are not assignable to any other party; and
- (vii) The pipeline company may require, by inclusion of a provision in its tariff, a prospective shipper to provide evidence that it has a valid removal permit for the gas before service commences and, from time to time, that it has a valid removal permit.

## **2.3 Renewal Rights**

During the course of the hearing, the matter of the renewal rights of the existing firm shippers on Foothills' Zone 9 arose. Foothills stated that it offers existing shippers renewal rights.

During cross-examination, it was noted that Article 3.1 of the service agreement between Foothills and Consolidated Natural Gas Limited (Consolidated) provided for the continuation of the agreement as may be agreed to between the two parties, prior to that agreement's original expiration in October 1987. A subsequent amendment to Article 3.1 extended the term of the agreement to October 1989 but did not provide for the continuation or renewal of the agreement beyond that date. Foothills agreed that no provisions in the agreement provided for its renewal. However, Foothills stated that it gives renewal rights to its existing firm shippers for extensions and that the renewal of the Consolidated agreement was provided for in a letter.

### ***Views of the Board***

No substantive evidence was adduced on the matter of renewal rights in this proceeding as renewal rights, *per se*, were not at issue. Therefore, the Board does not propose to decide at this time on what those rights should be. However, renewal rights do affect the access of potential shippers in the queue to existing pipeline capacity as well as the continued access of existing shippers to such capacity. Unless renewal rights are clearly specified in a document which is available to both existing and potential shippers, it is difficult to determine whether existing capacity will become available or whether, and how much, new capacity will be required to meet the requests for firm service of potential shippers in the queue. Moreover, it is important that the rights and obligations of renewal be set out in a tariff document which applies equally to all service agreements, so that all shippers and potential shippers will know what will occur on the expiration date of a service agreement.

It is therefore appropriate that provisions for renewal rights be clearly specified in Foothills' tariff.

## **2.4 Decision**

In consideration of the foregoing, Foothills is directed to:

- Develop for inclusion in its tariff, the procedures and requirements of its queue for firm service which reflect the principles and details contained in these Reasons for Decision;

- Amend Section 1, Availability, of its Rate Schedule T-1 Firm Service to incorporate the access criteria for acceptance of shippers in a manner consistent with these Reasons for Decision, including financial assurances by reference to the amended Section 5.8 of its General Terms and Conditions as set out below;
- Amend Section 5.8 of its General Terms and Conditions to include a provision whereby Foothills may require, prior to the commencement of service and at any time during the term of service, any shipper under its rate schedules to provide an irrevocable letter of credit acceptable to Foothills from a financial institution or such other sufficient financial guarantees which will cover the shipper's full contract quantity for a period of 70 days; and
- Develop, for inclusion in its Rate Schedule T-1 Firm Service, provisions for renewal rights, including the consideration of the initial term required to obtain such rights and the period of notice required of a shipper in exercising such rights.

Foothills shall file the above documents with the Board, interested parties to the proceedings under Order MH-2-88, and all existing firm and interruptible shippers on its system by 31 August 1989 for further consideration by the Board. The Board expects that Foothills will consult with existing shippers who have firm and interruptible transportation service on its system and with potential shippers who have requested firm service, prior to filing the documents with the Board.

# Chapter 3

## North Canadian Oils Limited's Subsection 71(2) and 71(3) Applications

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NCO's application pursuant to subsection 71(2) of the Act was based on two principal arguments. First, that in providing service to TCPL and denying it to NCO, Foothills discriminated unjustly against NCO. Second, the capability presently exists for Foothills to contract for greater volumes of gas and further capacity will be added with the addition of Station 393. In either case, NCO claimed to be entitled to the capacity it requested as it was the only one that could meet the access criteria for that capacity.

The subsection 71(3) application was an alternative form of relief requested from the Board by NCO in the event that the subsection 71(2) order was not granted.

### 3.1 Background

The evidence indicates the following events occurred:

- In its letter of 12 January 1988, TCPL notified Foothills of its election for the available capacity of  $2.8 \times 10^6 \text{m}^3/\text{d}$  (100 MMcf/d) commencing 1 November 1989 or such earlier date as may be agreed to between the two parties;
- On 29 April 1988, NCO requested service of two years and thirteen years, commencing 1 November 1988 for the initial two-year period. By letter dated 9 May 1988, Foothills advised NCO that TCPL had exercised its contractual rights under the 1980 Agreement to the remaining spare capacity commencing 1 November 1989 and that discussions were underway toward the provision of earlier service pursuant to the terms of the 1980 Agreement,
- On 17 May 1988, NCO reconfirmed its request for service for a two-year and thirteen-year period and moved up the initial commencement to 1 July 1988;
- In its letter of 26 May 1988, Foothills stated that TCPL had been informed that it would be expected to meet the same criteria as any other prospective shipper in order to exercise its option earlier than 1 November 1989 and that, if TCPL were unable to meet the criteria by 1 July 1988, Foothills would offer the spare capacity of  $2.8 \times 10^6 \text{m}^3/\text{d}$  (100 MMcf/d), available until November 1989, to other interested parties; and
- During cross-examination, Foothills stated that TCPL did not request service for 1 November 1988 until a meeting with its agent WGML on 17 March 1988. Foothills also stated that no formal written request was made until 15 June 1988 for the 1 November 1988 start date when TCPL executed the amendment to Appendix A of the 1980 Agreement. Foothills did not execute the amendment until October 1988.

## 3.2 Unjust Discrimination

NCO argued that Foothills discriminated in the provision of service by its treatment of TCPL's request to increase its capacity under its service agreement from 0 to  $2.8 \times 10^6 \text{m}^3/\text{d}$  (100 MMcf/d). In particular, NCO complained that the criteria for access which were applied to other potential shippers and NCO were not applied to TCPL. NCO further argued that such discrimination was unjust and contrary to section 67 of the NEB Act, but more importantly, section 68 of the NEB Act places the onus on Foothills to prove that such discrimination is not unjust. According to NCO, Foothills failed to discharge that onus.

The 1980 Agreement between Foothills and TCPL was discussed extensively during the debate on this issue at the hearing. Foothills and WGML maintained that the 1980 Agreement gave TCPL, special rights and, therefore, any special treatment given to TCPL in accordance with those rights was not unjust. These companies held the view that TCPL's special rights were in consideration for the risks TCPL undertook for the financial backstopping of the prebuild facilities.

NCO's view was that the rights of TCPL under the 1980 Agreement were, as a result of the operation of Article 2.1 of that agreement, subject to the provisions of Foothills' applicable rate schedules and the General Terms and Conditions in Foothills' tariff. NCO believed that the access criteria that Foothills was applying to other requests for capacity should have been equally applicable to TCPL's request as those criteria were, implicitly or otherwise, necessarily an extension of Foothills' General Terms and Conditions. Once the criteria were adopted, NCO argued that they should have applied to all existing shippers as well as to potential shippers.

As an example of the different treatment given to TCPL, NCO pointed to the fact that, while Foothills testified that the criteria would apply to existing shippers who wished to increase their capacity, TCPL was exempted from the application of the criteria when it elected to increase its existing capacity from 0 to  $2.8 \times 10^6 \text{m}^3/\text{d}$  (100 MMcf/d). NCO considered TCPL's election to increase its capacity as being no different from a request by an existing shipper to increase its capacity.

The evidence at the hearing showed that Foothills treated TCPL's request as two separate requests:

- an election to commence service on 1 November 1989; and
- a request to commence one year earlier on 1 November 1988.

Foothills stated that it did not apply the access criteria to the 1 November 1989 request because TCPL had a contractual right to elect for spare capacity on 18-months' notice. On the other hand, Foothills treated the request by TCPL to commence service on 1 November 1988 as a request for new service for one year because abridging the 18-month notice period required Foothills' agreement. Accordingly, Foothills decided to apply the same access criteria as it did for requests by other potential firm shippers.

Foothills' 26 May 1988 letter to NCO explained that TCPL had until 1 July 1988 to meet the criteria, failing which, the space would be offered to others. One of those criteria, as discussed previously in these Reasons, required that downstream arrangements be in place. TCPL did not have firm downstream arrangements on the Northern Border pipeline. According to Foothills, there were no other shippers requesting that same capacity for that time period, therefore, TCPL's interruptible

downstream arrangements were accepted as fulfilling that criterion. In view of such acceptance, Foothills agreed in October 1988 to the contract amendment which gave effect to the 1 November 1988 commencement date.

By not applying the access criteria to TCPL's election for service beginning 1 November 1989 and by applying more flexible criteria to TCPL's request to commence service on 1 November 1988, NCO maintained that Foothills gave TCPL preferential treatment. According to NCO, such treatment was not given to other potential shippers nor did Foothills communicate to potential shippers that a similarly flexible application of the criteria for access would be considered.

NCO maintained that it had met the criteria and is therefore entitled to the capacity ahead of any other potential shipper. It was also entitled to priority over TCPL by virtue of NCO being able to meet the criteria before TCPL.

Foothills countered that TCPL's rights arose by virtue of the 1980 Agreement and Foothills was obligated to accept TCPL's election on 12 January 1988. Foothills claimed to have a legal opinion which supported this view of the 1980 Agreement. That opinion was not filed. Instead, Foothills argued that the 1980 Agreement speaks for itself. In particular, Foothills maintained that the second paragraph of Article 1.1(a) of the 1980 Agreement provided TCPL with the right to elect any spare capacity on the system upon giving 18-months' notice. This election had priority over any request for spare capacity by other potential shippers or by existing shippers. WGML was in agreement with this view.

Foothills and WGML argued that the access criteria which were applied by Foothills to requests for capacity were not part of Foothills' tariff or General Terms and Conditions. Therefore, Article 2.1 of the 1980 Agreement did not apply to those criteria. Foothills further argued that the 1980 Agreement "... is an enforceable obligation on Foothills unfettered by any direct or indirect order of the Board."

Foothills also took the position that access policy is not a tariff matter within the meaning of section 60 of the Act. The better view, according to Foothills, is that access policy may be regulated under the Board's general powers under section 59. It was Foothills' view, that if an access policy is approved by the Board, those criteria would then be used in deciding whether a subsection 71(2) order should be issued.

In argument, Foothills stated that, as a result of the evidence presented during the proceedings, it was able to decide that NCO did not meet Foothills' criteria. In evidence during the proceedings, Foothills stated that it had not assessed whether NCO met the criteria. Foothills argued that, in any event, if the Board were to find that TCPL was not entitled to the capacity, then such capacity must be made available to other potential shippers in Foothills' queue. Foothills did not believe NCO was entitled to priority simply because it had filed a subsection 71(2) application. Foothills' queue list, as filed in the proceedings, showed NCO in the eighth position.

WGML's position was that there was no unjust discrimination because, at the time of NCO's request, there was no capacity available. The capacity which had been available was acquired by TCPL several months earlier as a result of TCPL's election. Conversely, at the time of TCPL's election, there was available capacity but no other requests.

## *Views of the Board*

### **Providing Service Starting 1 November 1989**

For the provision of service commencing 1 November 1989, Foothills accepted TCPL's election under its 1980 Agreement without requiring TCPL to meet any access criteria. Whether or not this was unjust depends on several matters, including whether:

- i) the 1980 Agreement gave TCPL the right, upon 18-months' notice, to elect for the spare capacity that existed at the time of the election;
- ii) that right had priority over any other requests for some or all of the same capacity;
- iii) that right was subject to TCPL satisfying the access criteria applicable to other requests for capacity, whether or not the criteria were formally incorporated into Foothills' tariff or General Terms and Conditions; and
- iv) the election was in elect before NCO made its request to Foothills for service.

The Board finds it unnecessary to determine the answer to these questions in view of its decision, as discussed in Section 3.3, that there will be sufficient capacity to accommodate both TCPL's and NCO's volumes. However, the Board has decided that such rights to capacity should not be provided to any shipper on Foothills' system. By its decision in Section 2.4, the Board has decided that Foothills should develop its criteria for access and include them in its tariff. Furthermore, no shipper may be exempt by contract from the application of those criteria. Therefore, any rights which TCPL may have pursuant to the 1980 Agreement will be subject to those tariff provisions.

### **Providing Service Starting 1 November 1988**

All parties agreed that the contract did not give TCPL priority to capacity for the twelve-month period commencing 1 November 1988. Foothills decided that TCPL's request to commence service on 1 November 1988 should be treated as any other request for capacity because that start date was short of the 18-month notice period required by the 1980 Agreement to make an election. However, the evidence shows that, even after that decision was made, TCPL was given different treatment. Having shown that Foothills discriminated in the provision of service to TCPL, the burden then shifts, pursuant to section 68 of the Act, from NCO to Foothills to prove that such discrimination was not unjust.

At the time Foothills terminated its firm service queue on 31 December 1987, the criteria were applied more stringently than was the case when TCPL's request for service at an earlier commencement date was considered. The evidence shows that this willingness to be flexible was a change which Foothills instituted in early 1988 and was not generally communicated to potential shippers other than TCPL. The Board does not think it was reasonable, as was suggested by Foothills, that Foothills



expect prospective shippers to continually communicate with the company for the purpose of determining any changes in its application of its previously distributed access criteria.

Foothills provided no reasonable explanation of why other prospective shippers were not offered the space that was available up to 1 November 1989 until TCPL had attempted to meet the access criteria by 1 July 1988. At the hearing, Foothills argued that no other shipper, including NCO, asked for capacity for that duration. It was not reasonable for Foothills to have expected NCO to ask for capacity for the period up to 1 November 1989 when Foothills' letter of 26 May 1988 clearly indicated that the capacity would only be available to others if TCPL were unable to meet the firm service criteria by 1 July 1988. During cross-examination, NCO stated that if the space had been offered to it, NCO would have taken it.

Although Foothills states that the queue was cleared on 31 December 1987, the queue list filed at the hearing shows that Foothills carried the requests from 1987 and 1988 forward for inclusion in the most up-to-date queue. Furthermore, Foothills testified that prospective shippers maintain their position in the queue indefinitely. Therefore, the Board does not accept WGML's view that there were no other requests for spare capacity at the time TCPL advised Foothills of its election for service commencing 1 November 1989. Moreover, the Board notes that the last paragraph of Foothills' 26 May 1988 letter to NCO states: "As to your request for service starting July 1, 1988 to November 1, 1989 we would apply the above criteria to offering such service and should inform you that other parties have also indicated an interest in becoming firm shippers." Therefore, the Board is not convinced that there were no other parties interested in the capacity for the period up to 1 November 1989.

The Board finds that in relation to the capacity available for the period up to 1 November 1989, TCPL's request for service was treated differently than previous requests from potential shippers and than the request from NCO. However, it is unnecessary for the Board to decide on whether Foothills has proven that the different treatment of requests for firm service with respect to this period was not unjust discrimination in view of the fact that NCO is requesting that Foothills provide service starting 1 November 1989. For the period 1 November 1989 and beyond, the Board has decided, for the reasons set out in Section 3.3, that there will be sufficient capacity to accommodate NCO's volumes.

Finally, the Board is not persuaded by Foothills' argument that, if a company other than TCPL is entitled to capacity, the capacity should be given to a company in the queue other than NCO. The Board must rely on the evidence presented at the hearing. Foothills' queue list provides evidence that Foothills received requests for service but it does not assist the Board in establishing priorities. Although the Board clearly set out in its list of issues for this hearing that it intended to examine who should be given priority, no party other than NCO and TCPL, through its agent WGML, provided evidence or asserted a claim to the capacity in question. TCPL is already on the system. NCO is the only other party that put forward evidence at the hearing on its ability to meet the access criteria and on its claim to priority.

### 3.3 Foothills' Capability to Transport NCO's Volumes

During the proceedings, there was considerable evidence presented regarding the capacity of Foothills' Zone 9 pipeline and whether the existing system could accommodate the NCO volumes. The evidence focussed on: system capability with and without Compressor Station 393; Foothills' security philosophy; the criteria for determining contractable capacity; seasonal design criteria; and existing tariff and contractual provisions of Foothills and Northern Border.

The Foothills Zone 9 facilities consist of 258.97 kilometres of 1 067-millimetre O.D. pipeline and 3 compressor stations. (See map in Appendix III). The stated capability of the system is  $30.45 \times 10^6 \text{m}^3/\text{d}$  (1075 MMcf/d). In August 1988, during a shutdown for scheduled maintenance and inspection, Foothills discovered a cracked seal in the compressor unit at Station 392. Foothills stated that had it not been detected, a major failure of the unit would have occurred. Foothills also stated that industry experience with a major failure of this particular type of unit resulted in the unit being down for six months while waiting for repairs. As a result of protracted maintenance and inspection at Station 392, Foothills curtailed its firm shippers' nominations for 25 days. In October 1988, Foothills applied for approval to construct Station 393 near Val Marie, Saskatchewan as a security unit for the Zone 9 facilities during scheduled or unscheduled shutdowns of any of the three existing stations. On 9 February 1989, Foothills received approval from the Northern Pipeline Agency for an amendment to their system design manual which made provision for Station 393. Further authorization to construct was not required because the station was part of the original certificate.

Station 393 was originally intended to be in service in November 1989 for the 1989/90 heating season. Foothills has stated that the addition of the station provides no possibility of increasing the declared firm contractual capacity of Zone 9 above the current  $30.45 \times 10^6 \text{m}^3/\text{d}$  (1075 MMcf/d), after giving due consideration for unit outages. However, Foothills indicated that the station will result in a higher annual deliverability because of increased reliability and accordingly, greater opportunity for interruptible deliveries. Table 4-1 summarizes the Zone 9 capacities under various scenarios for the Foothills/Northern Border integrated system. The results are based on an analysis of flow diagrams provided by Foothills. The flow diagrams considered compressor station temperature limitations, compressor wheel curve limitations and their related impacts on throughputs as discussed during the hearing. The results show that the Zone 9 capacities are higher in the winter period than in the summer period and that, with the addition of Station 393, the capacities are even higher.

The original design of the Foothills system was based on a system-wide security philosophy. Under this security philosophy, a spare compressor at Jenner, Alberta, together with a by-pass of the stripping plants at Empress, Alberta, were used as back-up for an outage at any of the three compressors in Zone 9. Foothills has recently changed to a zonal security philosophy (i.e., individual zone-by-zone security) because of its concerns regarding the reliability of Station 392. In constructing Station 393 as a back-up unit for Station 392, the unit also acts as the zonal security unit for Zone 9.

At the hearing, the concerns regarding Station 392 focussed on the reliability of this industrial turbine and those of the aero-derivative turbines in Zone 9, including the Station 393 addition. Foothills' witnesses indicated that the aero-derivative units are very reliable and that they do not expect to have major problems with them. If there is a major failure, such as a problem with the gas generator, Foothills could replace it within one or two days. On the other hand, a failure of the industrial turbine unit at Station 392 would have major consequences. Based upon experience in the industry, a major

failure of the unit could take up to six months to correct. As a result of the detection of the defect at Station 392, Foothills plans to implement a more rigorous annual inspection and maintenance of the unit. Although Station 391 becomes the most critical unit as a result of the switch to the zonal security philosophy, an outage at Station 392 is more critical if the outage is prolonged.

**Table 4-1**  
**Seasonal Capacities of Foothills' Zone 9 Stations With and**  
**Without Station 393 During Station Outages**  
**10<sup>6</sup>m<sup>3</sup>/d (MMcf/d)**

<b>Zone 9 capacity * - without station 393</b>					<b>Zone 9 capacity * - with station 393</b>				
<b>Station outage</b>	<b>July</b>		<b>January</b>		<b>Station outage</b>	<b>July</b>		<b>January</b>	
NONE	29.40	(1038)	33.12	(1169)	NONE	31.09	(1098)	33.15	(1170)
391	19.74	(697)	22.99	(812)	391	26.82	(947)	30.33	(1071)
392	21.16	(747)	26.11	(921)	392	29.39	(1038)	33.11	(1169)
394	22.81	(805)	28.41	(1003)	393	29.40	(1038)	33.15	(1169)
					394	27.51	(971)	30.51	(1077)

\* Foothills' capacity calculations are based on an integrated Foothills/Northern Border system

In relation to its zonal security philosophy, Foothills stated that the contractual capacity must not exceed the capacity of the system with all units operating. In particular, it should not exceed the capacity of the Foothills/Northern Border integrated system with all units operating. Generally, a flow loss caused by a unit outage in Zone 9 should not exceed ten percent of the contractable capacity. Foothills indicated that Northern Border used the same ten percent philosophy in its design.

However, Foothills has relaxed the ten percent criterion to twelve percent in the case of a Station 391 outage. In its evidence, Foothills stated that the criteria for determining contractable capacity is not intended to be absolutely or rigidly adhered to at all times, as some judgment is always necessary. Having relaxed its criteria, it is Foothills' judgment that any departure from the criteria would become too large if a contractable capacity greater than 30.45 x 10<sup>6</sup>m<sup>3</sup>/d (1075 MMcf/d) were declared.

In addition, it was noted that the ten-percent factor is related to provisions in Foothills' tariff which provide for a billing abatement or refund of a portion of the demand charges if Foothills is unable to

move more than ninety percent of a shipper's monthly nominations. If Foothills is unable to receive all of a shipper's nominations and such a deficiency is less than ten percent, the shipper is allowed to make up the receipt deficiencies in a later period. Foothills stated that, when Station 392 was out of service in August 1988, Foothills was within the ten percent parameter and the shippers were entitled to make up the receipt deficiencies.

NCO filed a study prepared on its behalf by Can-Eng Projects Inc. The study contained additional flow studies of Foothills' Zone 9 pipeline capacity using July, November and January ambient conditions. It was used by NCO to explore the validity of Foothills' data as well as to cross-examine of Foothills' interpretation of its pipeline capability data.

Although Foothills' design criteria is based on July ambient condition, NCO believed that Foothills' contractable capacity would be higher if it used January rather than July ambient conditions for its criteria. Both NCO and Foothills identified pipeline companies which use January or winter criteria and others which use July or summer criteria. Foothills argued that contracting on a January criteria would restrict Foothills' ability to meet its contractual firm requirements every month of the year except January and would affect the rights of existing shippers.

NCO noted that its contract with Northern Border provides for the shipment of 100 percent flows in the winter, 95 percent in the shoulder months and 90 percent in the summer. Therefore, NCO questioned the necessity of designing the Foothills' system to carry the full contract volumes all year round. In response, Foothills noted that the Northern Border tariff only provides for the lower quantities during planned maintenance and scheduled shutdowns. The remainder of the time, Northern Border is obliged to carry up to the contractual limits. Foothills therefore argued that it must still be capable of carrying the full contract volumes throughout the year.

NCO also questioned Foothills' witnesses regarding its ability to carry more gas through Zone 9 by relying on higher compression in Zone 6, if Foothills retained its system-wide security philosophy. Foothills argued that it could not carry more gas because, before Alberta gas can exit the province, the gas is required to go through stripping plants and must be decompressed in order to enter the plants.

In argument, NCO stated that it believed sufficient capacity currently exists to move its gas on the Foothills system and that the addition of Station 393 will add further capacity. NCO also indicated that any access order could be timed to the date of the commissioning of Station 393.

### ***Views of the Board***

The Board is not convinced by Foothills' evidence that it would not be able to transport the NCO volumes. Taking into consideration the existing firm and interruptible contracts and the nomination procedures on Foothills and Northern Border, there is no reason to believe that Foothills could not carry NCO's volumes at the present time. The Board also notes that during cross-examination Foothills indicated that during the past year it could have accommodated the NCO volumes.

In addition, the Board notes that when Foothills agreed to provide firm service to TCPL from 1 November 1988 to 1 November 1989, that decision was made with the knowledge that Station 393 would not be in service during that time period. The results of Table 4-1 show that, when Station 393 is added, the capacity and reliability

will be increased by an amount which is greater than the volume which NCO wishes to ship. If Foothills is prepared to contract for the capacity with TCPL during that period when the capacity is lower, then the question which arises is why Foothills believes it cannot contract for additional volumes when Station 393 comes on stream and when the system capacity will be higher. Under these circumstances, the Board has not been persuaded by Foothills that there is no capacity available to accommodate the NCO volumes.

The Board also recognizes that, during the summer months, the ambient conditions result in lower pipeline capacities during that period. However, the Board also notes that shippers normally tend to have lower throughputs during these months as well. The experience on the Foothills system tends to support that general conclusion. Although it has been noted that the throughputs in July over the last two years have been at high load factors, the evidence tends to indicate that this is likely due to the increased sales by the firm shippers, in particular by Pan-Alberta Gas Ltd. under its settlement with United Gas Pipeline Company which expires at the end of June 1989, and as a result of increased interruptible sales in the export market.

During cross-examination, Foothills indicated that it expected the high level of sales to continue. However, the witness also admitted that Foothills does not prepare detailed analyses and forecasts of anticipated throughputs on its system. In view of this, the Board cannot rely on Foothills' expectation that the high level of volumes during July will continue in the manner of the past two years.

For these reasons, the Board has concluded that NCO's requested volumes could be accommodated on the Foothills Zone 9 pipeline with minimal risk or difficulty after the installation of Station 393. The Board also recognizes that, should the installation of Station 393 be delayed beyond the planned November 1989 in-service date, the delay would occur during the winter season when the pipeline capacity is somewhat higher than it would be during July.

In the event that a constraint occurs such that Foothills is unable to carry all the firm nominations, the applicable terms and conditions in the Foothills tariff shall apply equally to all firm shippers.

### **3.4 Term of the Subsection 71(2) Order**

NCO requested an order commencing 1 November 1989 and continuing for a period of two years, followed by another period of thirteen years; or, alternatively, for a period of only two years initially. During that initial two-year period NCO would:

- i) obtain the necessary regulatory approvals; and
- ii) enter into the requisite gas sales contracts to demonstrate long-term markets.

Once these conditions are satisfied, NCO suggested that the Board could issue a further order for the balance of the fifteen years.

NCO's contract on the Northern Border pipeline is for 15 years which commenced in November 1988. NCO suggested that any mismatch of terms between the order and its Northern Border contract could be remedied by extending the Northern Border contract.

### *Views of the Board*

The Board would much prefer to have continuing access to transportation on the Foothills system accomplished by means of a service agreement rather than by an order.

The Board set out in Chapter 2 what it believes are the appropriate criteria to be applied to requests for existing capacity. It is those criteria that are applicable to NCO's request for capacity. Given this, the Board is confident that Foothills and NCO will be able to enter into a long-term service agreement in the near future. This would subsequently render the subsection 71(2) order unnecessary. Therefore, the Board believes that an initial subsection 71(2) order with a two-year term is sufficient to accomplish this purpose. If, within the term of this order, NCO and Foothills execute a service agreement, either party may apply to have the order rescinded. If a service agreement is not executed, NCO may apply before the expiry of the order to have the term extended.

## **3.5 Decision**

NCO has met the access criteria which the Board has found reasonable for requests for existing capacity and the Board is satisfied that sufficient capacity will exist with the installation of Station 393 to accommodate the requested volumes.

Consequently, on 10 April 1989, the Board decided to issue Order No. TG-3-89, requiring Foothills to receive, transport and deliver up to  $1.4 \times 10^6 \text{m}^3/\text{d}$  (50 MMcf/d) of gas on behalf of NCO for a period of two years commencing 1 November 1989. In view of the Board's decision on the subsection 71(2) application, the Board also decided that an order pursuant to subsection 71(3) was not necessary.

The Board decided to issue its decisions in advance of these Reasons for Decision because the timing of the Board's decisions on the NCO applications could have affected the ability of NCO to respond to Foothills' requirements for expansion capacity and could have affected the potential shippers which may or may not be included in Foothills' expansion plans. A copy of the Board's letter of 10 April 1989 to the solicitors for NCO and a copy of Order No. TG-3-89 with the terms and conditions are contained in Appendix I of these Reasons for Decision.

# Chapter 4

## Disposition

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The foregoing chapters, together with Order No. TG-3-89, constitute our Reasons for Decision and Decision on this Matter.

J.R. Jenkins  
Presiding Member

R.B. Horner, Q.C.  
Member

K.W. Vollman  
Member

# Appendix I

## Board Letter of 10 April 1989 and Board Order TG-3-89

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File No.: 1540-N21

10 April 1989

**VIA TELECOPIER**

Mr. Alan S. Hollingworth  
Code Hunter  
Barristers and Solicitors  
Suite 1900  
736 - 6th Avenue S.W.  
Calgary, Alberta  
T2P 3W1

Dear Mr. Hollingworth:

Re: North Canadian Oils Limited Applications pursuant to Subsections 71(2) and 71(3) of the  
*National Energy Board Act*. MH-2-88

At the proceedings held pursuant to Hearing Order MH-2-88, North Canadian Oils Limited (NCO) filed a letter dated 20 January 1989 (Exhibit No. B-11) from Foothills Pipe Lines (Yukon) Ltd. (Foothills). In that letter Foothills advised NCO that it would be required to meet Foothills' criteria of acceptance by 1 May 1989 if it wished to be considered in Foothills' pipeline expansion proposal for service commencing 1 November 1990. During the hearing, Foothills also indicated that similar letters were sent to all potential shippers in Foothills' firm service queue. In view of this, the timing of a decision on NCO's applications could affect the ability of NCO to respond to Foothills' requirements and affect the potential shippers which may or may not be included in Foothills' expansion plans. To remove this uncertainty, the Board considers it to be in the public interest to have its decision on the NCO applications made public as soon as possible.

Having given careful consideration to the evidence and the arguments at the Hearing, the Board has decided to issue an Order directing Foothills to receive, transport and deliver gas on behalf of NCO, as more particularly set out in the attached Order No. TG-3-89. The term of the Order is for a period of two years. The Board is confident that NCO and Foothills will be able to enter into a long-term service agreement. If the two companies enter into such an agreement either party may have the Order rescinded. If a service agreement for a longer term is not executed, NCO may apply to have the term extended before the expiry of the Order. The Board's reasons for decision on this matter and on the queuing procedures and access criteria will follow as soon as possible.



Yours truly,

Louise Meagher,  
Secretary

Attach.

c. c.: - Mr. Michael D. Callahan  
North Canadian Oils Limited  
- Mr. H.N.E. Hobbs  
Foothills Pipe Lines (Yukon) Ltd.  
- Other Parties of Record to MH-2-88

**Order no. TG-3-89**

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

IN THE MATTER OF an application by North Canadian Oils Limited ("NCO") for orders pursuant to subsections 19(2) and 71(2) of the Act directing Foothills Pipe Lines (Yukon) Ltd. ("Foothills") to transport natural gas; and

IN THE MATTER OF an application by NCO for an order pursuant to subsection 71(3) requiring Foothills to provide adequate and suitable facilities for the transport of natural gas, filed with the Board under File No. 1540-N21.

BEFORE the Board on 10 April 1989.

WHEREAS by an application dated 17 August 1988, as amended, NCO applied, pursuant to subsections 19(2) and 71(2) of the Act, for interim and final orders requiring Foothills to receive, transport and deliver natural gas offered by NCO for transmission on its pipeline from McNeil, Alberta and Piapot, Saskatchewan to Monchy, Saskatchewan, as more particularly set out in the application;

AND WHEREAS by an application dated 16 December 1988, NCO applied, pursuant to subsection 71(3) of the Act, for an order requiring Foothills to provide adequate and suitable facilities for the receiving, transmission and delivery of gas, provided that such order be granted only in the event that the application for an order pursuant to subsection 71(2) of the Act was denied;

AND WHEREAS a public hearing has been held pursuant to Hearing Order MH-2-88, at which NCO and other interested parties were heard;

AND WHEREAS the Board has found that it would be in the public interest to grant an order pursuant to subsection 71(2) of the Act;

AND WHEREAS the Board having made such a determination, and having further decided that an order pursuant to subsection 71(3) was not necessary;

IT IS ORDERED THAT pursuant to subsection 71 (2) of the Act:

1. Foothills shall in accordance with the terms and conditions of Foothills' Rate Schedule T-1 Firm Service, receive, transport and deliver gas offered by NCO for transmission from McNeil, Alberta and Piapot, Saskatchewan to Monchy, Saskatchewan, up to a Maximum Daily Receipt Quantity of  $1\,416.4 \times 10^3 \text{m}^3/\text{d}$ , adjusted as required to provide for Lost and Otherwise Unaccounted for Gas, plus Company Use Gas, and plus or minus Line Pack Changes;
2. The term of this Order shall be for the period commencing on 1 November 1989, and ending on 31 October 1991;

3. Pursuant to this Order, NCO shall have all the rights and obligations which apply to a firm shipper under Foothills' Rate Schedule T-1 Firm Service as if a firm service agreement was in effect between NCO and Foothills and a reference to a service agreement in Foothills' tariff shall be deemed to include a reference to this Order;
4. The tolls applicable for the services rendered to NCO by Foothills pursuant to Paragraph 1 of this Order shall be in accordance with Foothills' Rate Schedule T-1 Firm Service;
5. Foothills shall not be obligated to render to NCO any of the services described in Paragraph 1 of this Order until NCO provides Foothills' with an irrevocable letter of credit from a financial institution or such other sufficient guarantees which will cover NCO's full contract quantity for a period of 70 days; and
6. This Order will terminate if NCO has not commenced deliveries pursuant to this Order within 60 days of the commencement date of 1 November 1989.

NATIONAL ENERGY BOARD

Louise Meagher  
Secretary

## Appendix II

### MH-2-88, List of Issues<sup>1</sup>

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The Board intends to examine but does not limit itself to the following issues:

1. Whether the existing criteria for acceptance of new firm shippers on the Foothills pipeline system are appropriate.
2. Whether North Canadian Oils has met the criteria for access to firm capacity on Foothills zone 9.
3. The rights of TransCanada PipeLines Limited (TransCanada) to contract for space on Foothills zone 9 in relation to the rights of new firm shippers; including any rights which arise from TransCanada's service agreement with Foothills dated 23 April 1980.
4. Whether North Canadian Oils, TransCanada or other potential shippers should be given priority access to the capacity that was available on Foothills zone 9 at the time of North Canadian Oils' request for firm service.
5. What procedures apply for new firm shippers to be recognized by Foothills as being in a queue for available firm capacity and how should that queue operate.
6. Whether it is in the public interest to require Foothills to provide adequate and suitable facilities for the receiving, transmission and delivering of gas offered by North Canadian Oils for transmission on Foothills zone 9.

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<sup>1</sup>. Appendix III, as amended, to Order No. A-1-MH-2-88

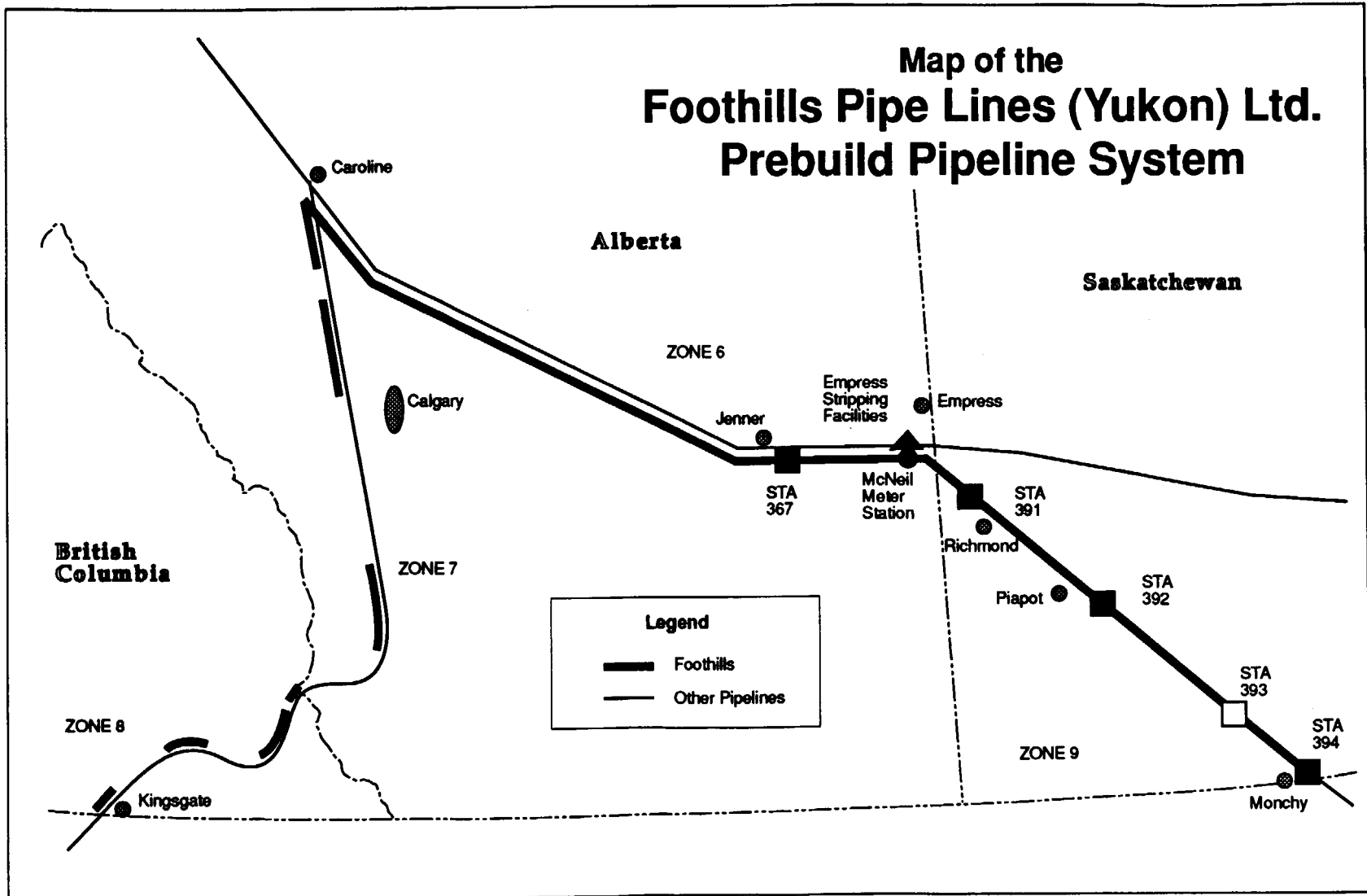
# **Appendix III**

## **Map of the Foothills Pipe Lines (Yukon) Ltd. Prebuild Pipeline System**

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**Figure a3-1**  
**Map of the**  
**Foothills Pipe Lines (Yukon) Ltd.**  
**Prebuild Pipeline System**

# Map of the Foothills Pipe Lines (Yukon) Ltd. Prebuild Pipeline System



# Appendix IV

## Summary of Service Agreements for Firm Service

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### Summary of Service Agreements For Firm Transportation:

#### On Foothills' Zone 9 Pipeline for delivery at Monchy, Saskatchewan (November 1988)

Shipper	Maximum Daily Receipt Quantities			
	10 <sup>6</sup> m <sup>3</sup> /d <sup>1</sup>		MMcf/d <sup>1,2</sup>	
Consolidated Natural Gas Limited	2.86	(2.83)	101	(100)
Pan-Alberta Gas Ltd.	22.90	(22.66)	808	(800)
ProGas Limited	2.15	(2.12)	76	(75)
TransCanada PipeLines Limited	<u>2.86</u>	<u>(2.83)</u>	<u>101</u>	<u>(100)</u>
Total	30.77	(30.44)	1086	(1075)

#### On Northern Border for receipt at Monchy, Saskatchewan (November 1988)

Shipper	Maximum Daily Receipt Quantity	
	10 <sup>6</sup> m <sup>3</sup> /d <sup>2</sup>	Mmcf/d
Panhandle Eastern Pipe Line Company	4.25	150
Natural Gas Pipeline Company of America	2.12	75
Northern Natural Gas Company	8.50	300
North Canadian Oils Limited	1.42	50
Suncor Inc.	1.42	50
United Gas Pipe Line Company	<u>12.75</u>	<u>450</u>
Total <sup>3</sup>	30.46	1075

<sup>1.</sup> The figures reflect the receipt contract quantities at the Alberta/Saskatchewan border while the figures in brackets reflect the delivered quantities at Monchy, Saskatchewan after adjustments for fuel, line losses and line pack changes and heat control.

<sup>2.</sup> Conversion factor: 1 m<sup>3</sup> (@ 101.325 kPa and 15°C) equals 35.301 Mcf (@ 14.73 psia and 60°F).

<sup>3.</sup> Northern Border receives synthetic gas from a coal gasification plant near Hebron, Dakota of 3.90 x 10<sup>6</sup>m<sup>3</sup>/d (137.5 MMcf/d) for a total capacity at that point of 34.36 X 10<sup>6</sup>m<sup>3</sup>/d (1 212.5 MMcf/d).

## Appendix V

# Foothills Pipe Lines (Yukon) Ltd. Firm Service Queue

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### Foothills Pipe Lines (Yukon) Ltd.<sup>1</sup> Firm Service Queue<sup>2</sup> (As of 1989-02-16)

Applicant	Date of Initial Request	Volume (MMCFD)	Commencement Date
1. POCO Petroleum Ltd.	May 14, 1987	100	As soon as possible
2. Shell Canada Limited	July 29, 1987	30	November 1, 1990
3. Vector Energy Inc.	October 21, 1987	200	January 1, 1988 or as soon as possible
4. Western Gas Marketing Limited	November 9, 1987	200	Not specified
5. Canadian Hunter Exploration Ltd.	November 19, 1987	100	Not specified
6. Pan-Alberta Gas Ltd.	November 24, 1987	300	Not specified
7. Northwest Pacific Energy Marketing Inc.	February 1, 1988	150	Not specified
8. North Canadian Oils Limited	April 29, 1988	50	November 1, 1989
9. POCO Petroleum Ltd.	May 6, 1988	100	1991
10. Enron Gas Marketing	May 9, 1988	200	50 - Nov.1, 1990 150 - Not Specified
11. Suncor Inc. Resources Group	May 27, 1988	100	50 - As soon as possible 50 - Not specified
12. Chieftain Development Co. Ltd.	May 31, 1988	50	Late 1990

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<sup>1</sup> (Exhibit C-13 Revised)

<sup>2</sup> Each applicant has obtained his place in the queue in accordance with the date of his initial request for firm service.



13.	Amoco Canada Petroleum Company Limited	October 11, 1988	150	Not specified
14.	HiPro Energy & Development Corp.	November 15, 1988	30	September 1, 1989
15.	Mobil Oil Canada	January 20, 1989	30	November 1, 1990
16.	Shell Canada Limited	February 7, 1989	70	November 1, 1991