



IN THE MATTER OF
the Pipeline Act, R.S.B.C. 1996, c. 364

and

An Application by Husky Oil Operations Limited
for an Order to Transport Oil on the Taylor to Kamloops Pipeline

BEFORE: P. Ostergaard, Chair)
P.G. Bradley, Commissioner)
B.L. Clemenhagen, Commissioner) September 14, 2000
K.L. Hall, Commissioner)
N.F. Nicholls, Commissioner)

O R D E R

WHEREAS:

- A. On August 30, 2000, Husky Oil Operations Limited ("Husky") applied to the Commission pursuant to Sections 73(1) and 91(1) of the Utilities Commission Act and Sections 42 and 44 of Pipeline Act for an emergency order compelling Pembina Pipeline Corporation ("Pembina") to provide service on the Taylor to Kamloops crude oil pipeline ("Taylor to Kamloops pipeline"), ("the Application"); and
- B. The Commission requested a response by Pembina to the Application by September 5, 2000, which was subsequently extended to September 6, 2000; and
- C. The Application asserts that Pembina is regulated by the Commission as a common carrier on the Taylor to Kamloops pipeline and, under Section 42 of the Pipeline Act, must receive, transport, and deliver all oil offered for transportation; and
- D. On September 6, 2000, Pembina filed a Response to the Application asserting that it is not a common carrier on the Taylor to Kamloops pipeline and that the order requested should not be granted. Pembina considers that any jurisdiction to authorize continued pipeline operations rests with the Oil and Gas Commission. Pembina stated that it is not prepared to accept shipments on the Taylor to Kamloops pipeline until it is satisfied that it is safe and in the public interest. Pembina is proceeding with a pressure test of the Taylor to Prince George segment of the pipeline; and
- E. On September 11, 2000, Husky filed a Reply to the Pembina Response; and
- F. The Commission located agreements dated January 31, 1961 and September 18, 1961 among Westcoast Transmission Company Limited, Western Pacific Products & Crude Oil Pipelines Ltd., and the Minister of Commercial Transport ("the 1961 Agreements") that allow for the construction and operation of the Taylor to Kamloops pipeline and that reference the pipeline as a common carrier; and
- G. The Commission considers that a determination on the Application is required.

NOW THEREFORE the Commission orders as follows:

1. The Commission finds that the Taylor to Kamloops pipeline is a common carrier for the purposes of Part 7 of the Pipeline Act.
2. The Commission accepts that it is a prudent action of Pembina to pressure test the pipeline following the recent rupture and because the pipeline has not been hydrostatically tested since 1961/1962. Therefore, the Application by Husky for an emergency order is denied, with Reasons to follow.
3. Pursuant to Section 43 of the Pipeline Act and in the interests of safety, Pembina is to continue with its pressure test of the Taylor to Prince George segment of the pipeline, which Pembina estimates will be completed on or about September 20, 2000. Following completion of the pressure test, Pembina is to immediately report to the Commission and the Oil and Gas Commission on its findings and the suitability of returning the Taylor to Prince George segment to service.
4. In the event that the Taylor to Prince George segment of the pipeline is returned to service, Pembina is to apply for permanent tolls in accordance with the directions contained in Order No. P-6-00.
5. In the event that the Taylor to Prince George segment of the pipeline is not returned to service immediately following the pressure test, Pembina is to provide the Commission with written confirmation from the Oil and Gas Commission that the pipeline is unsafe or unreliable to operate.
6. Pembina is to provide a copy of this Order to all customers and shippers of the Taylor to Kamloops pipeline.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of September 2000.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

IN THE MATTER OF
the Pipeline Act, R.S.B.C. 1996, c. 364

and

An Application by Husky Oil Operations Limited
for an Order to Transport Oil on the Taylor to Kamloops Pipeline

REASONS FOR DECISION
Pursuant to Commission Order No. P-7-00

On September 14, 2000, the British Columbia Utilities Commission (the “Commission”, “BCUC”) issued Order No. P-7-00 with Reasons to follow. These are the Reasons.

1.0 BACKGROUND

On July 31, 2000, Pembina Pipeline Corporation (“Pembina”) acquired 100 percent of the shares of Federated Pipe Lines (Western) Ltd. which operates a crude oil pipeline from Taylor to Prince George and on to Kamloops. The pipeline is owned by the Pembina West Limited Partnership and is operated by Plateau Pipe Line Ltd. (“Plateau”). On August 1, 2000, the pipeline ruptured near Chetwynd and spilled oil into the Pine River. Repairs to the pipeline were performed, with cleanup of the spill ongoing. On August 23, 2000, the Oil and Gas Commission (“OGC”) gave Pembina conditional approval to operate the Taylor to Kamloops pipeline (the “Western System”) at 75 percent of its certified operating pressure provided the pipeline was pressure tested within 12 months.

Husky Oil Operations Limited (“Husky”) operates an oil refinery at Prince George and receives oil supplies from the Taylor to Prince George segment of the pipeline. Husky requested that Pembina resume delivery of crude oil to the Prince George refinery but Husky and Pembina were unable to reach an agreement on providing service to Husky.

On August 30, 2000, an Application was filed with the Commission by Husky for an emergency order, without a hearing, compelling Federated Pipe Lines (Western) Ltd. and Pembina to provide service on the Taylor to Prince George pipeline.

The Application asserted that the pipeline rupture was repaired, was successfully pressure tested at, and near, the point of rupture and, despite the OGC's conditional approval to operate the Taylor to Kamloops pipeline, Pembina refused to put the pipeline back into service at this time. The Application contended that Pembina is regulated by the Commission as a common carrier under Section 42 of the Pipeline Act. The Commission, in letters dated August 31 and September 1, 2000, requested a response from Pembina by September 6, 2000.

In letters dated August 30 and 31, 2000, Pembina informed the Commission and Husky that Plateau had commenced a pressure test of the Taylor to Prince George segment of the pipeline.

In a letter dated September 6, 2000, Husky stated that commencement of the hydrotest in advance of the Commission's ruling on the Husky Application, changed the factual context of the Application. Husky requested that the Commission proceed with its consideration of the Husky Application, but defer a decision until the hydrotest was completed to the satisfaction of the OGC.

On September 6, 2000, Pembina responded that it did not consider itself to be a common carrier, particularly in regards to the Taylor to Kamloops pipeline, and that the emergency order sought should not be granted. Pembina stated that it did not intend to accept shipments on the Taylor to Kamloops pipeline until it is satisfied that it is safe and prudent to do so.

In the September 11, 2000 Husky Reply to the September 6, 2000 Pembina Response, Husky repeated its request for an immediate order compelling Pembina to resume service.

The Commission informed Pembina and Husky, by letter dated August 17, 2000, that the Commission was not aware of the pipeline having been declared a common carrier by the OGC, or its predecessors. Recently, the Commission discovered Certificate No. 65 dated January 31, 1961, issued by the Minister of Commercial Transport to Westcoast Transmission Company Limited ("Westcoast Transmission"), for approval of a Westcoast Transmission application to construct a crude oil pipeline from Taylor to Kamloops. Certificate No. 65 contained a condition that Westcoast Transmission enter into, execute and fulfill an agreement with Her Majesty the Queen in the right of the Province of British Columbia, as represented by the Minister of Commercial Transport, respecting the construction, use and operation of the pipeline and the transmission of oil to, through, and from the pipeline. Westcoast Transmission and the Minister of Commercial Transport entered into an agreement dated January 31, 1961, regarding the construction and operation of the Taylor to Kamloops pipeline which required

Westcoast Transmission to incorporate a corporation in the Province of British Columbia and meet the requirements of the corporation as a common carrier. An agreement dated September 18, 1961, among Westcoast Transmission, Western Pacific Products & Crude Oil Pipelines Ltd. (“Western Pacific Products”), and the Minister of Commercial Transport, acknowledged the requirements of Western Pacific Products as a common carrier and by executing this agreement, Western Pacific Products was deemed to have accepted the January 31, 1961 agreement. A subsequent agreement, dated November 1, 1966, established revised tolls, terms and conditions, amending the 1961 agreements “to the extent that is necessary to give force and effect to this agreement”. Copies of Certificate No. 65 and the January 31, 1961 and September 18, 1961 agreements and the November 1, 1966 agreement, are attached to these Reasons for Decision.

2.0 ISSUES

2.1 Common Carrier Status

The August 30, 2000 Application by Husky stated that Pembina is regulated by the Commission as a common carrier under Part 7 of the Pipeline Act. Part 7, Section 42 of the Pipeline Act states that:

“Subject to exceptions or conditions the British Columbia Utilities Commission approves, a common carrier must, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transportation by means of its company pipeline.”

Husky argued that Section 42 of the Pipeline Act makes it clear that if a common carrier desires not to provide service without delay, it must apply to the BCUC for permission to do so. As at the date of Application no such application had been made and no order excepting Pembina from its common carrier duties had been issued.

In its response dated September 6, 2000, Pembina took the position that it is not a common carrier with respect to the operation of the line from Taylor to Kamloops and that, even if Pembina were a common carrier, the order sought should not be granted. Lastly, Pembina believed that any jurisdiction over operations of the Western System rests with the OGC. Pembina was not aware of any documentation declaring the facilities to be a common carrier. In addition, Pembina asserted that the common carrier provisions apply only to parties holding themselves out as willing to do business in a particular area of endeavor. Pembina argued that it is not possible to read the Oil and Gas Commission Act (the “OGC Act”) or the Pipeline Act as providing the OGC with the power to compel operation of the Western System. There is no wording similar to Section 41 of the Utilities Commission Act compelling Pembina to seek approval prior to the cessation of operations, unless it were to seek to abandon the line altogether.

Pembina takes the position that it is not a public utility within the meaning of the Utilities Commission Act.

The Husky Reply dated September 11, 2000, repeated the assertion that Pembina is a common carrier under Part 7 of the Pipeline Act and that if this were not the case, Pembina and its predecessor companies would not have sought approval of tolls and Tariffs pursuant to Part 7. Husky submits that whether or not Pembina has been declared a common carrier by the OGC is irrelevant. It submits that the provisions of Section 19 of the OGC Act are meant to declare persons, such as oil and gas producers who do not generally hold themselves out as willing to transport products for others, to be common carriers.

Husky argued that Pembina cannot withdraw service unilaterally because Section 42 of the Pipeline Act compels a common carrier to provide service unless authorized to do otherwise by the BCUC.

During the course of its investigations the BCUC has become aware of Certificate No. 65, dated January 31, 1961, which was not apparently known to Husky or Pembina during their arguments.

Based on all the information, the Commission has concluded that Pembina is a common carrier pursuant to the Pipeline Act. The Commission agrees with Husky that Pembina has held itself out to be a common carrier through submissions under Part 7 of the Pipeline Act. For example, BCUC Order No. P-3-00, dated March 28, 2000, establishes the tolls for the two segments of the pipeline and extends the incentive tolling methodology approved by the BCUC in 1995. The functions that Pembina performs are consistent with those of common carriers. Finally, the original approvals and agreements support the conclusion that the Taylor to Kamloops pipeline is a common carrier.

If Pembina were found not to be a common carrier, the Commission is of the view that it may fall under the definition of "public utility" pursuant to the Utilities Commission Act.

2.2 Pressure Testing the Pipeline

The Husky Application identifies several reasons why it believes that Pembina should be required to restart pipeline deliveries immediately. Husky relies strongly on a letter from the OGC, dated August 23, 2000, which authorizes Pembina to operate the Taylor to Kamloops pipeline under several conditions including reduced operating pressure pending completion of a leak and strength test. The suspension of service to the Husky refinery would cause significant financial harm to Husky (in the order of \$80,000 per day). Husky concluded that it would be more appropriate to schedule the hydrotest for a time when the refinery had adequate inventory or would be on a planned plant turnaround.

Pembina responded that it had commenced hydrostatic testing of the section of the pipeline between Taylor and Prince George. As part of the process, crude oil was being delivered to the Husky refinery. Pembina identified that it had significant concerns as to the integrity of the pipeline and that it was not accepting shipments, other than that required to fill the pipeline behind the water being used for the hydrostatic tests. The Affidavit of Mr. Webb, on behalf of Pembina, outlines the major consequences of the recent pipeline rupture, the independent engineering report on the cause of the pipe rupture, and the fact that the pipeline has not been hydrostatically tested since 1961/62 when it was placed in service. Based on these results Pembina argued that a prudent operator would conduct a hydrostatic test on the line prior to the resumption of service.

The Commission concludes that the recent rupture of the pipeline and the evidence that the pipeline has not been pressure tested for nearly 40 years is sufficient cause for the pipeline operator to delay restarting the pipeline until a successful hydrotest is completed. The Commission accepts these circumstances as a valid “exception” under Section 42 of the Pipeline Act. However, the Commission also agrees with Husky that future hydrotests, planned in the normal course of operations, should be timed to consider the needs of the shippers and customers.

2.3 Duty to Reopen the Pipeline

At the time of considering this Application, the Commission was informed that two of the three sections of pipeline to be pressure tested were completed. The pressure test of the third section would be completed in a few days. Husky has received sufficient crude oil to operate at reduced levels for approximately 15 days.

Pembina has stated that it is not willing to recommence operations until it is satisfied that it is safe and in the public interest to do so. Pembina further argues that the legislation granting the OGC powers to regulate pipelines is permissive with respect to the company's decision whether to engage in operations or not. While an application must be brought before a pipeline can be opened, Pembina argues that there is no power granted to the OGC or, for that matter, the BCUC, to order a company in the position of Pembina to carry out pipeline operations. Pembina acknowledges that if it were prepared to carry on business, a common carrier must provide service in a non-discriminatory fashion. However, in this instance Pembina feels it is not discriminating because it is not prepared to provide service to any shipper until it is satisfied it is appropriate to do so.

The Husky Reply argued that Section 42 of the Pipeline Act compels a common carrier to provide service unless authorized to do otherwise by the BCUC. Husky further takes issue with the Pembina submission that it can cease operation of the pipeline without approval of any regulator “unless and until a decision to abandon is made”. Husky submits that the factors relevant to deciding whether a pipeline company should be allowed to

abandon the operation of a pipeline were the considerations used to certificate the pipeline in the first place. Among the factors set out in Subsection 11(4) of the Pipeline Act are:

- “(e) any public interest the Commission (OGC) believes may be affected by the granting or refusal of the application;
- (f) the needs and general good of the residents of British Columbia as a whole.”

Husky stated that:

“If Pembina desires to cease or otherwise abandon operations of the Pipeline, it must submit an appropriate application to the OGC, pursuant to s. 9 of the *Pipeline Act*, and pending disposition of such an application, request dispensation from the BCUC of its common carrier duties, pursuant to s. 42.”

It is clear under Section 9 of the Pipeline Act that a common carrier cannot abandon its operations without leave of the OGC. However, in this case, Pembina has not indicated that it is abandoning its operations. Rather, it is temporarily suspending its operations, to allow it time to undertake their assessment of the pipeline. **The Commission concludes that it has the jurisdiction under Section 42 of the Pipeline Act to determine whether the suspension of pipeline service is in the public interest. In this instance, the Commission has agreed with Pembina that hydrotesting of the pipeline between Taylor and Prince George is a prudent exception under Section 42 of the Pipeline Act prior to recommencing operations. Once a successful test is completed the Commission expects normal service to resume unless there are safety or other operational impediments which the OGC identifies.**

The Commission is also in receipt of a September 6, 2000 letter from Canadian Natural Resources requesting a firm schedule be established for the resumption of service on the entire pipeline from Taylor to Kamloops. Recognizing the impact on customer tolls, the Commission expects that Pembina will reopen service on the entire pipeline as soon as it is considered safe to do so. A successful hydrotest of the pipeline between Taylor and Prince George may be adequate information for Pembina to reopen the pipeline from Prince George to Kamloops at 75 percent of the certified operating pressure until a pressure test of that section of pipeline can be scheduled to meet the convenience of shippers and the pipeline operator.

2.4 Tolling Issues

The Husky Application stated that Pembina had offered to reopen the pipeline prior to hydrotesting if Husky would pay more for the service than the approved toll, and/or make other commercial concessions that would have the effect of assuming certain of Pembina’s environmental and abandonment liabilities in respect of the

pipeline. Husky argued that Section 44 of the Pipeline Act prohibits Pembina from charging additional charges beyond that approved toll. Section 44 states that: “a common carrier must not charge a toll unless it is specified in a Tariff that has been filed with the British Columbia Utilities Commission and is in effect.”

On August 31, 2000, Plateau applied to the Commission as the operator of the Pembina pipeline to have the tolls made interim. The Commission responded with Order No. P-6-00 making the current tolls for deliveries from Taylor to Prince George and from Taylor to Kamloops interim, effective September 7, 2000. These interim tolls are the only authorized tolls that may be charged until a new application for tolls has been filed and approved by the Commission. The Commission established a timetable for the pipeline operator to reach agreement with customers and shippers on the establishment of permanent tolls. If no agreement is reached by October 31, 2000, the pipeline operator is to apply to the BCUC detailing its proposed tolls along with details of its costs, including proposed amortization of prudently incurred costs resulting from the line break and leak and strength testing. The Commission considers that all matters related to appropriate tolls to recover costs related to the line rupture and the pressure testing of the pipeline will be resolved through the process initiated by Order No. P-6-00.

Commission Determinations

These Reasons for Decision amplify the determinations and instructions contained in Order No. P-7-00 dated September 14, 2000.

Dated at the City of Vancouver, in the Province of British Columbia, this 21st day of September 2000.

Original signed by
 Peter Ostergaard
 Chair

Original signed by
 Paul G. Bradley
 Commissioner

Original signed by

Barbara L. Clemenhagen
Commissioner

Original signed by
Kenneth L. Hall, P. Eng.
Commissioner

Original signed by
Nadine F. Nicholls
Commissioner

Attachment