

M A N I T O B A) **Order No. 68/04**
)
THE PUBLIC UTILITIES BOARD ACT)
)
IN THE MATTER OF THE GAS PIPE LINE ACT)
)
AND IN THE MATTER OF) **April 30, 2004**
THE PUBLIC UTILITIES BOARD ACT)

BEFORE: Graham F.J. Lane, B.A., C.A., Chairman
M. Girouard, C.G.A., Member
Mario J. Santos, B.A., LL.B., Member

AN ORDER IN RESPECT OF TRANSCANADA CALIBRATIONS LTD.

1.0 Background

In accordance with information provided to The Public Utilities Board (“Board”), the Board is of the understanding that:

- (i) TransCanada Calibrations Ltd. (“TCC”) is an Alberta corporation owned 80% by TransCanada Pipelines Services Ltd. (“TCSL”). TCSL is a wholly owned subsidiary of TransCanada Pipelines Limited (“TCPL”). The remaining 20% of TCC is owned by a third party joint venture partner: Instromet Investments, N.V.
- (ii) TCC operates facilities located within the decommissioned “A” Plant Building situated on TCPL’s Compressor Station #41 property, located in Ile des Chenes, Manitoba.
- (iii) The TCC facilities provide calibration services for the calibration of large natural gas meters by rerouting natural gas from the TCPL pipe line system, through TCC’s natural gas pipe line and facilities, before returning all but trace amounts of the natural gas to the TCPL system.
- (iv) TCC has entered into two agreements in 1999 with TCPL, in order to construct and operate its facilities in Ile de Chenes, Manitoba:
 - (a) a Lease Agreement; and
 - (b) a Gas Stream Use Agreement

In this Order, the Board has considered whether TCC operates a “gas pipe line” pursuant to *The Gas Pipe Line Act* (“Act”), such that the Board has jurisdiction over safety aspects of TCC’s facilities in Ile de Chenes, Manitoba.

2.0 Legislation

The provisions of the Act considered by the Board include:

Definitions

1 In this Act,
“board” means The Public Utilities Board;

“gas pipe line” means a pipe line for the transportation, transmission or conduct of gas and includes

(a) real property and personal property required for such purposes,

(b) any system, works, plant, pipe line or equipment for the transmission, delivery or furnishing of gas directly or indirectly, to the public, and

(c) a gas transmission line,
but does not include a flow line or pipeline as those terms are defined in *The Oil and Gas Act*;

“gas transmission line” means a gas pipe line that is used and operated for the transportation, transmission, or conduct of gas to a distribution system and that has been so designated by the board under section 13;

Application of Act

2 This Act applies only to gas pipe lines situated wholly within the province.

Authority for construction or operation of gas pipe lines

3(1) Notwithstanding any provision of any other Act, but subject as herein provided, no person shall construct or operate a gas pipe line in the province unless authorized so to do by an order of the board; but this subsection does not apply to the operation of a gas pipe line constructed or under construction on April 23, 1956.

Application of P.U. Board Act

5 Except as otherwise specifically provided herein, *The Public Utilities Board Act* applies to the construction and operation of a gas pipe line.

Plans, etc., for construction

6 Before authorizing the construction of a gas pipe line, the board may require the applicant for the authority to file complete plans and specifications of the proposed gas pipe line; and it shall require the applicant to file the certificate of a duly qualified engineer that, in his opinion, the plans and specifications are in accordance with the standards required by the regulations and that the construction of the proposed gas pipe line will not endanger the public safety.

Certificate as to construction

7 Before authorizing the operation of a gas pipe line, the board may require the production of a certificate signed by a duly qualified engineer certifying that, in his opinion, the gas pipe line has been constructed in accordance with the standards required by the regulations and any plans and specifications filed under section 6; and that it is tight and safe for use.

Inquiry respecting applications

8 For the purpose of determining whether the construction or operation of a gas pipe line should be authorized, or for the purpose of examining into the operation of any gas pipe line, the board may appoint or direct any duly qualified person to make an inquiry and report upon any application or upon the operation of any gas pipe line, and may also direct by whom, and in what proportion, the costs and expenses incurred in making the inquiry and report shall be paid, and may fix the amount of the costs and expenses.

Liability insurance

11 Every owner shall be insured, by an insurance company licensed to do business in the provide, against liability that it may incur to others by reason of negligence on its part, or on the part of its servants or agents, in the construction or operation of a gas pipe line or for any other reason; and the insurance shall be to such an amount as is approved by the board.

Designation of gas transmission lines

13 The board may, by order, designate any gas pipe line or proposed or planned gas pipe line, or any part thereof, as a gas transmission line; and thereafter neither Part I (other than sections 6, 7, 8, 10 and 11), nor *The Municipal Act* nor *The Public Utilities Board Act* applies to the construction of the gas transmission line; but sections 6, 7, 8, 10, and 11 apply thereto.

Manner of construction

33(1) Notwithstanding any provision of any other Act, every person authorized to construct or operate a gas pipe line shall locate, construct, maintain, and operate it so as not to endanger the public health or safety; and the construction thereof shall be in accordance with such standards and specifications as may from time to time be required by the board or prescribed in the regulations.

Penalty for contravention of Act or regulations

37 Every person who

(a) contravenes, directly or indirectly, any provision of this Act or of the regulations; or

(b) either alone or in conjunction with others, causes any person to contravene, directly or indirectly, any provision of this Act or of the regulations; or

(c) instructs, orders, or directs, any person to contravene, directly or indirectly, any provision of this Act or of the regulations;

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding \$1,000. and, in the case of a continuing offence, to a fine not exceeding \$1,000. for each day during which the offence continues.

Obstructing the minister an offence

38 Every person who obstructs, hinders, or interferes with the minister, or any person authorized by him, or with the board or any person authorized by it, in the exercise of any of the powers conferred by this Act is guilty of an offence and is liable, on summary conviction, to a fine of not more than \$500.

3.0 Board Comments and Findings

The Board has considered the words, the objects and the purposes of the Act, and finds that TCC's facilities include a gas pipe line as defined in the Act. TCC's gas pipe line is wholly

situated within the Province of Manitoba and is used for the transportation, transmission or conduct of gas.

The Board is aware that TCC resists acceding to the Board's jurisdiction. TCC takes the position that "(S)ince the TCC gas pipe line is used strictly to convey gas for a specific, non-public purpose, wholly situate within lands owned by TransCanada Pipelines Limited and leased to TCC, ...that the pipeline should not fall within the purview of the PUB."

The Board does not accept TCC's position. The Board does not interpret the legislation, defining a gas pipe line, to include a requirement that TCC transport, transmit or conduct gas to public consumers where the gas will be substantially consumed.

The Board is aware that TCC reroutes natural gas from TCPL's pipe lines, through TCC's pipe line, to be used as a testing medium for meters. After TCC utilizes the natural gas to test/calibrate meters, substantially all of the natural gas is returned to TCPL's pipe lines and transported to consumers.

The rerouting of natural gas from TCPL's system through TCC's pipe line and facilities, and then back to TCPL's system also involves an indirect method of transmission, delivery or furnishing of gas to the public, and again is consistent with the definition of a gas pipe line under the Act.

As TCC is aware, public safety is the dominant concern of the Board in exercising its jurisdiction under the Act. Public safety is a predominant theme throughout the Act, including the sections set out above.

TCC has acknowledged that under the Act, the Board's major concern is with the safe operation of gas pipe line systems. To provide the Board with comfort regarding public safety as it relates to TCC's gas pipe line and facilities, TCC has advised the Board that to construct its gas pipe line and facilities within the TCPL station yard, TCC was required to comply with all of TCPL's construction and operation requirements, which in turn are consistent with the National Energy Board's ("NEB") requirements. Additionally, TCC hired a Manitoba based engineering company

to audit and provide a letter to the Board on TCC's compliance with the Canadian Standards Association Z662 Oil and Gas Pipeline Code System Standard.

TCC has also proposed to voluntarily comply with all reasonable requests from the Board, for documentary evidence in an effort to demonstrate that TCC's gas pipe line and facilities have been constructed, and are being operated and maintained, in a manner that satisfies the Board that public safety is being maintained.

TCC has indicated a willingness to allow the Board to conduct an inspection, but only with an advance copy of the Board's audit plan at least one week prior to the inspection, on a without prejudice basis to its position on the Board's jurisdiction.

The Board does not find TCC's offers sufficient to enable the Board to fully carry out its safety inspection responsibilities pursuant to the legislation. The Board considers TCC's prerequisites to inspection to defeat the purpose of the safety audit.

What is missing from TCC's voluntary offer of cooperation is the Board's ability to conduct unannounced safety audits of the physical plant and operating and maintenance documentation kept by TCC. Such safety audits are generally conducted on behalf of the Board at least once every 12 months.

Pursuant to the Board's jurisdiction as provided by the Act, the Board will arrange for its engineering safety consultants to conduct a safety and operating and maintenance audit on or before June 1, 2004, of TCC's gas pipe line and facilities located at Ile de Chenes, Manitoba.

The safety audit is to be conducted in accordance with the Schedule attached to this Order. The resulting report will be shared by the Board, with TCC.

With respect to the making of this Order the Board has incurred legal and engineering costs in the amount of \$20,042.28 and in this Order will be seeking recovery of these costs pursuant to Section 8 of The Gas Pipe Line Act.

Matters of public safety are of utmost importance to the Board and the Board wishes to remind TransCanada Calibrations Ltd. that Section 37 and 38 of The Gas Pipe Line Act dealing with penalties for contravention of The Gas Pipe Line Act may have some application in this instance and may be pursued.

4.0 IT IS THEREFORE ORDERED THAT:

1. TransCanada Calibrations Ltd.'s facilities at Ile de Chenes, Manitoba includes a gas pipe line for the transportation, transmission or conduct of gas and is subject to the jurisdiction of The Public Utilities Board, pursuant to *The Gas Pipe Line Act*.
2. TransCanada Calibrations Ltd. submit its gas pipe line and facilities to a safety and operation and maintenance audit, to be conducted by The Public Utilities Board's engineering safety consultants on or before June 1, 2004, in accordance with the audit plan attached as Schedule 1 to this Order.
3. TransCanada Calibrations Ltd. remit a cheque payable to the Minister of Finance in the amount of \$20,042.28 covering costs incurred by The Public Utilities Board related to this matter.

THE PUBLIC UTILITIES BOARD

"GRAHAM F.J. LANE, B.A., C.A."

Chairman

"G. O. BARRON"

Secretary

Certified a true copy of Order No. 68/04 issued
by The Public Utilities Board

Secretary