

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

CANADIAN OCCIDENTAL PETROLEUM LTD. &

MR. A. POFFENROTH

LICENCE NO. 26758, PIPELINE NO. 12

DELACOUR AREA

Decision 97-11

Applications No. 960925

1 INTRODUCTION

Canadian Occidental Petroleum Ltd. received approval from the Alberta Energy and Utilities Board (Board), formerly the Energy Resources Conservation Board, on 28 April 1994, to construct 4.2 kilometres of pipeline to transport Level 1 sour gas (1.3 per cent hydrogen sulphide (H₂S)) from Legal Subdivision 7, Section 26, Township 25, Range 28, West of the 4th Meridian to an existing facility at Lsd 7-2-26-28 W4M.

Early in 1995, Mr. Poffenroth, owner of the North-west quarter of Section 25-25-28 W4M (NW1/4 25), contacted the Board indicating concerns with the above pipeline. In subsequent letters to the Board dated 7 June 1995, 2 September 1995, and 15 September 1995, Mr. Poffenroth and his legal counsel indicated further concerns with the pipeline and requested a Board review. The Board is aware that negotiations between both parties have taken place intermittently throughout that time. On 22 November 1996, Mr. Poffenroth indicated that negotiations have proven to be unsuccessful and further requested that the Board review its decision of approving the pipeline, pursuant to Section 42 of the Energy Resources Conservation Act. Mr. Poffenroth requested an opportunity to make representation that he was not advised the pipeline through his land would be transporting sour gas and had he been aware the gas would be sour, he would have proposed alternative routings.

The locations of the existing pipeline and alternative routes presented at the hearing, are shown on the attached figure.

2 NOTICE AND HEARING

In response to Mr. Poffenroth's request, the Board agreed to review the matter in order to provide the affected parties with an opportunity to present their views and make representations.

A public hearing of the pipeline application was originally scheduled for 12 March 1997. At Mr. Poffenroth's request, the hearing was postponed. The application was eventually considered at a hearing in Calgary, Alberta, on 25 April 1997, before Board Members F. J. Mink, P.Eng., B. T. McManus, Q.C. and G. J. Miller. Those who appeared at the hearing are listed in the following table.

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives (Abbreviations Used in Report)

Witnesses

Canadian Occidental Petroleum Ltd. (CdnOxy)

W. J. Hope-Ross

A. Poffenroth

G. D. Milne

B. K. O'Ferrall

Alberta Energy and Utilities Board staff

P. R. Forbes, C.E.T.

S. L. Cowitz, C.E.T.

R. N. Tamasi, P.Eng.

D. Colborne

J. R. MacEachern

H. M. J. Hohol

M. N. Dowhaniuk

R. A. Berrien

W. J. Beamer

A. Poffenroth

3 PRELIMINARY MATTERS

At the onset of the hearing, several clarification issues were raised by both parties with respect to whether the Board was prepared to hear evidence on adequacy of notice by CdnOxy for the original pipeline project.

The Board clarified that its initial ruling, as set out in its correspondence of 15 April 1997, was to proceed to a hearing to review whether the pipeline approval should be varied, and if so, how. The Board indicated it was prepared to hear all the evidence intended to be submitted by the parties and would then determine which particular evidence and argument was relevant in making a decision.

4 ISSUES

The Board considers the issues to be:

- provision of notice, and
- impacts associated with the original and proposed routes.

5 PROVISION OF NOTICE

5.1 Views of Mr. Poffenroth

At the time of the original application, Mr. Poffenroth maintained that he entered into agreement with CdnOxy for a temporary work space agreement, an entry fee form notice, and an authorization granting easement because he believed the pipeline would transport sweet gas. Given its public support, the pipeline was approved without a hearing. Other pipeline encumbrances on his land are small sweet pipelines for individual users.

Approximately one year after the pipeline approval, Mr. Poffenroth indicated that he noticed the sour gas signs on the right of way on his property. Mr. Poffenroth indicated that during his review of the agreements, he was unaware- the pipeline contained sour gas. To his understanding, the compensation received did not include a premium for the fact that the gas was sour. Mr. Poffenroth contended that had he known the pipeline would transport sour gas, he would not have agreed to the pipeline routing through the north-west portion of his land, but would have had it go south and east of that corner. Mr. Poffenroth noted that Board staff had been unable to confirm from its records whether or not CdnOxy had provided adequate documentation to him about the nature of the project.

Mr. Poffenroth stated that, although CdnOxy indicated that the pipeline would transport natural gas containing 3 per cent H₂S, the documentation contained no reference to sour gas. Mr. Poffenroth stated that he was unaware that H₂S meant sour and as explained to him by CdnOxy, 3 per cent was relatively small in comparison to other pipelines in the area that contained up to 35 per cent H₂S. Mr. Poffenroth believed that the H₂S was an impurity and that its relatively low level meant he was dealing with good gas. Mr. Poffenroth believed that ineffective communication occurred that deprived him of a forum and an opportunity to make the submissions on routing that he otherwise would have had on a fully-informed basis.

5.2 Views of CdnOxy

CdnOxy noted that Mr. Poffenroth had admitted that the phrase H₂S was used repeatedly during discussions with CdnOxy and that the gas was very low in H₂S content. Therefore, CdnOxy acknowledged that there may have been some question as to how explicitly Mr. Poffenroth was made aware that the line would be carrying sour gas. However, Mr. Poffenroth did sign an easement to allow construction of CdnOxy's pipeline on his property.

CdnOxy indicated that it held several open houses to present the general project overview to as much of the area population as it could. One open house, which was coordinated by PanCanadian Petroleum Limited, was held in September of 1993 at the Delacour Hall, which is near Mr. Poffenroth's home quarter. While formal records of the meeting were unable to confirm that Mr. Poffenroth received an invitation, CdnOxy committed in writing that it believed he was invited.

Finally, CdnOxy stated that while Pipeline Regulations require written notice to potentially affected parties, failure to provide written notice does not preclude the Board from granting a

permit to construct a pipeline. It was CdnOxy's opinion that this process was designed to eliminate the difficulties of proving that notice was given and that no objection was registered.

5.3 Views of the Board

The Board considers it essential that effective communication take place among industry and the public so that concerns may be raised, properly addressed, and if possible resolved. It is the Board's expectation that technical information is conveyed in a manner understandable to the public. Additionally, public consultation programs should provide all interested parties with the opportunity to obtain an adequate understanding of the proposal and its possible impacts. While the Board accepts that CdnOxy and its partners made sufficient efforts to advise affected landowners about the proposed pipeline, the Board notes that in the case of Mr. Poffenroth, a misunderstanding appears to have developed. It appears that while CdnOxy may have believed Mr. Poffenroth had an understanding of its proposal, he in fact may not have been made aware of the implication and impact of a Level 1 sour gas pipeline on his property. For that reason, the Board considers that it should allow Mr. Poffenroth to test the merits of the original application.

6 IMPACTS ASSOCIATED WITH THE ORIGINAL AND PROPOSED ROUTES

6.1 Views of Mr. Poffenroth

Mr. Poffenroth's view was that the most appropriate routing of line No. 12 should be addressed anew irrespective of the fact that line No. 12 was in the ground, so that every acre on his farm could be cultivated.

Mr. Poffenroth maintained that the land affected by the pipeline was a prime piece of property for subdivision. He indicated that the existing acreages to the north-west of his land already provided for the necessary utility services with a graded road that had a dead-end at the end of the acreages. The existing acreages, with their trees and buildings, created a good storm buffer in the direction of his land. He indicated that this particular parcel was elevated which provided for good drainage. Additionally, he indicated that his land had a good mountain view and that it was only 20 minutes from downtown and, being on the east side of the city, commuters could drive with the sun behind their backs to and from work.

Mr. Poffenroth indicated that the current routing presented a problem with estate planning because one half of the section would be given to one of Mr. Poffenroth's sons and another half to another son. He believed that this presented bias because of the potentially adverse effect of developing that acreage site. Mr. Poffenroth believed that sour gas was a very perceptual kind of thing. The use of the land that a pipeline was to cross significantly affected to the impact on the landowner and his perception of the impact. Mr. Berrien, an accredited appraiser and witness for Mr. Poffenroth, reinforced this position. He believed that people who were dealing with acreages were generally more concerned about and felt a greater impact from a sour gas line. The prospect was that it might take longer to sell. He indicated that planning submissions to the municipality for development were quicker and easier if there were no sour gas facilities located on the land. For properties with sour lines, physical impediments could exist regarding placement of the approach onto the lands as well as the requirement of contacting Alberta First

Call for any digging. Mr. Berrien stated that there were also perceptual impediments resulting from the sour gas pipeline signs, affecting people who want to stay away from such lines. However, Mr. and Mrs. Hasenbohrer, landowners to the north of the Poffenroth's land, did not object to having the line on Sections 26 and 36. Therefore, Mr. Berrien believed that CdnOxy rightfully chose to avoid the impact on the individual acreage owners along the east half of Section 35.

Mr. Poffenroth proposed alternative locations for the pipeline which would place the line off of his property by rerouting it at a diagonal under the road and entirely on the SW1/4 36. Mr. Poffenroth claimed that Mr. and Mrs. Hasenbohrer had no objection to his alternative proposal and the new routing going through their property.

When comparing the current routing (Alternative 1) and the proposed routing (Option 1 or 2 of Alternative 2), Mr. Poffenroth et al, cited the following:

- Alternative 2 was shorter and should therefore cost less.
- Alternative 2 involved two quarter sections instead of the three as in Alternative 1 and therefore, should be cheaper in regard to entry fees, landman costs, negotiations, etc.
- Alternative 2 avoided Mr. Poffenroth's land without impacting anyone else.
- The Municipal District of Rocky View (MD) had no objection to the alternative options.
- Alternative 2 constituted the best right of way plan.
- CdnOxy concurred that Alternative 2 was feasible with proper permit and right of way acquisitions.

In conclusion, Mr. Poffenroth submitted that the two routings should be compared on an equal footing, regardless of the fact that the line was currently in the ground.

6.2 Views of CdnOxy

CdnOxy contended that Mr. Poffenroth had no firm development plans. He had not subdivided the land, nor had he filed a plan of subdivision with the MD. Additionally, CdnOxy indicated that the current alignment was not an impediment for development given that there were no setback requirements for a Level 1 pipeline other than the right of way. Furthermore, there were no surface installations on Mr. Poffenroth's land. Therefore, the affected area could be used for a park area, a yard for residents, or for grazing.

CdnOxy indicated that Mr. Berrien had suggested to CdnOxy in previous business dealings that a Level 1 pipeline would not affect subdivision planning for an area. CdnOxy acknowledged that any pipeline was an impediment to a development. However, sour gas created only a percentage more impediment and there were all kinds of subdivisions with sour gas in them. CdnOxy stated that it had considered various routing alternatives in an attempt to minimize impacts to acreage owners in Section 35 as well as on Mr. Poffenroth's land. CdnOxy submitted that it caused less

disruption during construction to locate a line on vacant unsubdivided land than to run it across subdivided and developed parcels.

In its original proposal for the pipeline, CdnOxy considered running the line east of the 7-26 well into Section 25, then north. After discussion with Mr. Poffenroth, and being apprised of his potential plans for future subdivision of the NW1/4 25, CdnOxy changed the route so that instead of half a mile of right of way along the west half of Section 25, only the north-west corner of Section 25 would be impacted. CdnOxy suggested that if Mr. Poffenroth's corner was subdivided in the future and it was necessary to cross the right of way with a power line or roadway, CdnOxy would work towards mitigation of the power line and roadway with the pipeline. Additionally, in its final routing proposal, CdnOxy opted to maintain the standard crossing of roadways that most municipalities preferred, that being between 70 and 90 degrees to the roadway. CanOxy concluded that non-standard approaches to road crossings created greater stress to the pipe caused by the longer crossing. It would still require notification to the landowners in all of the areas within 500 metres of the line.

CdnOxy accepted that Mr. Poffenroth's concern was for future subdivision. However, it believed that it was unlikely that Mr. Poffenroth's subdivision would occur before the end of life of the 7-26 well and associated gas plant. CdnOxy believed, from its dialogue with Mr. Hasenbohrer, that he was not in favour of the alternate routing proposed by Mr. Poffenroth.

6.3 Views of the Board

The Board believes that the various concerns raised regarding Mr. Poffenroth's subdivision would apply to either sweet or sour lines. Mr. Poffenroth agreed to a line on his property. While the sour line may raise a perceptual problem, in the Board's view the fact that this line is slightly sour does not materially increase the impediments or setbacks over the right of way requirements for a sweet line.

The Board believes that the current route of the pipeline has no substantial impact on the health and safety of Mr. Poffenroth. The proposed alternate route would move the pipeline closer to existing residences, the net effect of which would be the transfer of impact from one party to another. Additionally, relocation of the pipeline would not eliminate the use of sour gas signage in proximity to the north-west quarter of Mr. Poffenroth's land, and therefore, the Board believes that the perception of impact from H₂S would still exist. The Board sees no compelling public interest that would justify moving the line from its existing location.

While Level 1 sour lines do not require any additional setback requirements or create any additional impediments compared to sweet gas pipelines, the Board tends to believe that sour lines may impact marketability due to the perception of such facilities by some members of the public. The Board accepts that Mr. Poffenroth should receive fair compensation for facilities on his property; however, it takes no position on the fairness of the originally negotiated settlement between the parties. A review of such matters would need to be referred to some forum other than the Board.

7 DECISION

Having carefully considered all of the evidence, the Board denies Mr. Poffenroth's request for relocation of the pipeline and confirms that Licence No. 26758 remains in good standing.

DATED at Calgary, Alberta, on 12 September 1997.

ALBERTA ENERGY AND UTILITIES BOARD

<signed by>

F. J. Mink, P.Eng.
Board Member

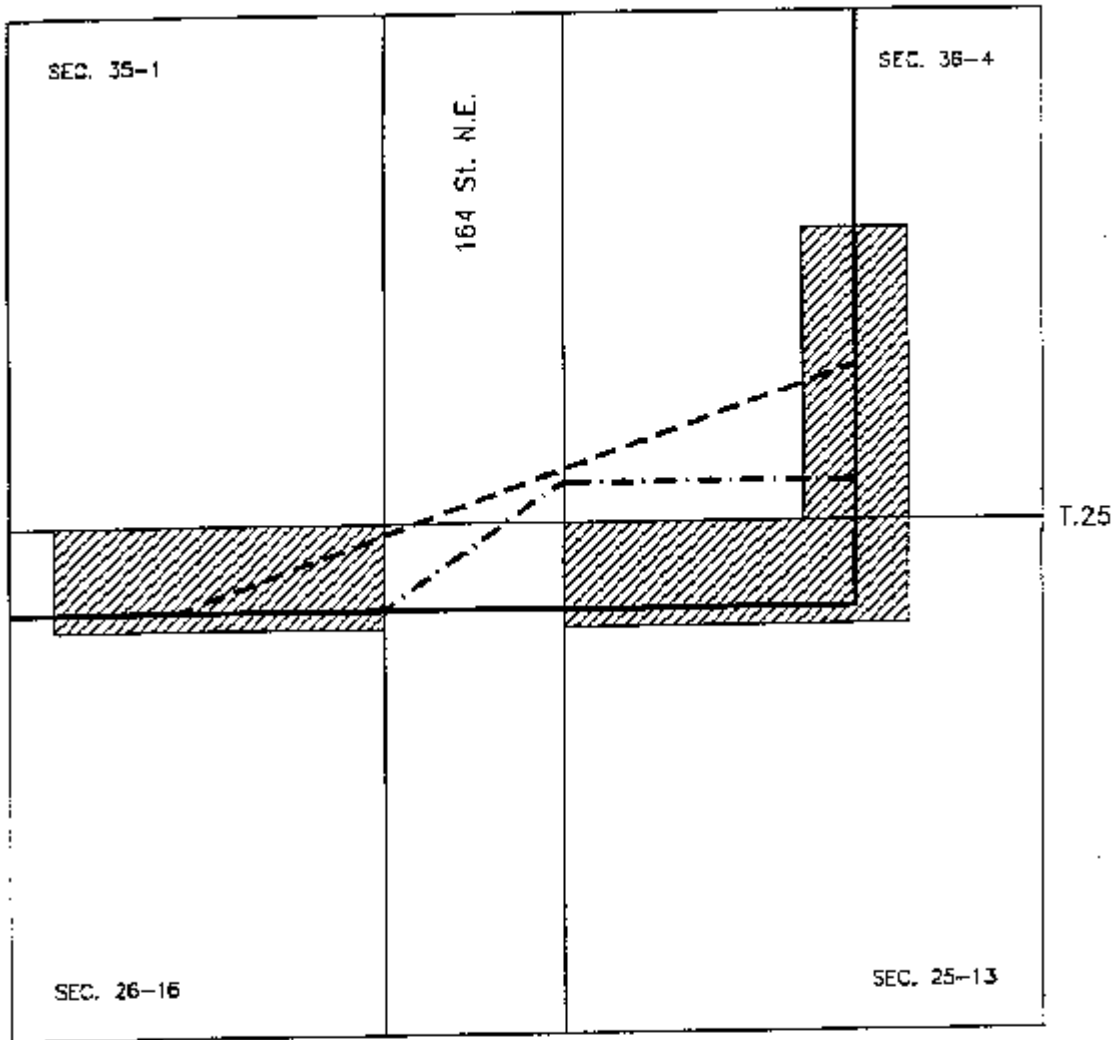
<signed by>

B. T. McManus, Q.C.
Board Member

<signed by>

G. J. Miller
Board Member

R.28 W.4M.



LEGEND

- Existing Line No. 12 (Alternative 1)
 - - - Proposed Line No. 12 - Option 1
 - · - Proposed Line No. 12 - Option 2
 - ▨ Existing 15 m Right-of-Way
- } (Alternative 2)

PROPOSED PIPELINE

Application No. 960925

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