

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**COMSTATE RESOURCES LTD.
APPLICATION FOR SWEET
NATURAL GAS PIPELINE
PEMBINA FIELD**

**Decision 2002-020
Application No. 1091324**

DECISION

The Alberta Energy and Utilities Board has considered the findings and recommendation set out in the following examiner report, adopts the recommendation, and directs that Application No. 1091324 be approved.

DATED at Calgary, Alberta, on February 19, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

Neil McCrank
Chairman

**EXAMINER REPORT RESPECTING
COMSTATE RESOURCES LTD.
APPLICATION FOR SWEET
NATURAL GAS PIPELINE
PEMBINA FIELD**

**Decision 2002-020
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1 RECOMMENDATION

Having carefully considered all of the evidence, the examiners recommend that Application No. 1091324 for the applied-for natural gas pipeline be approved with the modified routing on the northeast quarter of Section 31, Township 47, Range 5, West of the 5th Meridian (NE 31-47-5W5M), as shown on the attached figure.

2 APPLICATION AND HEARING

2.1 Pipeline Application

On April 6, 2001, Comstate Resources Ltd. (Comstate) applied to the Alberta Energy and Utilities Board (EUB/Board), pursuant to Part 4 of the Pipeline Act, for a permit to construct and operate a pipeline in two segments from existing Comstate wells to existing Comstate infrastructure. The first segment would be from a well located in Legal Subdivision (LSD) 16-31-47-5W5M to the east end of the existing Comstate Carnwood gas gathering system in LSD 16-7-48-5W5M. The second would be from wells located in LSD 6-5-48-5W5M to a connecting point in LSD 8-6-48-5W5M. The pipeline would transport sweet natural gas produced from various sands in the Edmonton Formation to the PembAlta No. 1 gas plant located in LSD 15-25-48-7W5M. A map depicting the applied-for pipeline route and the existing pipeline system are shown on the attached figure.

The applied-for pipeline would be 114.3 millimetre (mm) outside diameter (OD) steel pipe with a total length of approximately 5.72 kilometres (km).

2.2 Intervention

The EUB received letters dated May 1 and November 9, 2001, from Regis Maltais, the owner of NE 31-47-5W5M, and his mother, Angeline Maltais, the owner of SE 6-48-5W5M. The Maltaises expressed concerns regarding the process of right-of-way acquisition, the pipeline route, the reclamation of the land, and the effects of the construction, operation, and abandonment of the pipeline on current and future land uses. In addition, both interveners wanted Comstate to accept a list of 27 conditions to any right-of-way agreement.

2.3 Hearing

A public hearing to consider the pipeline application was held on November 27, 2001, in Sunnybrook, Alberta. The examiner panel consisted of W. Remmer, P.Eng. (Chairman), T. Pesta, P.Eng., and M. Vandenbeld, C.E.T. The examiners and staff viewed the area of the applied-for pipeline route and associated well site locations on November 26, 2001.

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
Comstate Resources Ltd. (Comstate) G. Fink	G. Fink R. Jarock, P.Eng. J. Jeffcott G. Skinner
Regis Maltais K. Zajes	R. Maltais K. Zajes
Angeline Maltais* R. Maltais	R. Maltais
Alberta Energy and Utilities Board staff W. Kennedy, Board Counsel P. Derbyshire G. McClenaghan, P.Eng.	

* Not present at the hearing; represented by R. Maltais.

3 BACKGROUND

Six existing wells, including the three wells on the interveners' lands that are to be tied in by the proposed pipelines, were drilled in 1992, 1993, and 2000. Comstate was in negotiations with the Maltaises for the pipeline right-of-way since July 2000 and had signed pipeline right-of-way agreements with the seven other landowners impacted by its project.

4 ISSUES

The examiners consider the issues respecting this application to be the

- need for the pipeline,
- location of the pipeline,
- impacts: construction and reclamation, operation, and abandonment impacts of the pipeline, and
- communication and the use of the 27 conditions.

5 NEED FOR THE PIPELINES

Comstate stated that the pipelines were needed to transport the sweet gas from six wells in the area. It expected the anticipated production to total 28 thousand cubic metres per day ($10^3 \text{ m}^3/\text{d}$), with total recoverable reserves in excess of 57 million cubic metres. Comstate estimated that production from these wells would continue for longer than ten years.

Comstate indicated that the proposed pipeline system might be expanded in the future. It said that it could not comment at the time of the hearing how many additional wells might be drilled but stated that no additional wells would be drilled on the Maltais' lands and the total throughput of the proposed system could increase but was not expected to exceed $56 \cdot 10^3 \text{ m}^3/\text{d}$.

The interveners did not question the need for the pipeline. The interveners further accepted that the pipeline might be constructed if conditions were in place to address expected and potential concerns with the construction, operation, and decommissioning of the pipeline.

The examiners are satisfied that the applicant has demonstrated a need for the applied-for pipeline.

6 LOCATION OF THE PIPELINE

6.1 Views of the Applicant

Comstate stated that the closest and preferred destination would deliver the gas to Comstate's existing Carnwood gas gathering system in LSD 16-7-48-5W5M approximately 2.1 km north of Mrs. Maltais's land. The routing on the Maltais' lands was initially chosen to provide the most direct route and hence least disturbance to the land. Comstate reported that in an effort to address some of Mr. Maltais's concerns, the pipeline route through NE 31-47-5W5M was surveyed three times between March 3, 2000, and January 31, 2001. During the hearing, a further routing modification was proposed within NE 31-47-5W5M that was acceptable to Comstate. The routing modification is shown on the attached figure.

Comstate indicated that it had not proposed an alternative route on Mrs. Maltais's land in SE 6-48-5W5M. In response to the alternative routing put forth by the intervener, Comstate indicated that this new route would require a surface riser and an access road. Comstate confirmed that its application should be considered with the applied-for route on Mrs. Maltais's land in SE 6-48-5W5M. It indicated the following reasons for not supporting the alternative route:

- There would be more surface disturbance associated with the increased length of the route proposed by the intervener.
- A surface facility, consisting of a riser, would have to be constructed.
- A road would have to be built to the surface facility.
- The route would result in increased initial and annual rental payments to the landowner.

6.2 Views of the Interveners

The interveners did not suggest an alternative destination for the natural gas produced by the six wells to be tied in. Mr. Maltais agreed with the modified route proposed at the hearing for his lands in NE 31-47-5W5M.

Mr. Maltais suggested an alternative route on the land owned by Mrs. Maltais in SE 6-48-5W5M. This alternative route would have the pipeline run straight north-south and east-west, not diagonally, as shown on the attached figure. Mr. Maltais conceded that this routing would have a greater initial impact but argued it would facilitate possible future subdivision and development of the land. Mr. Maltais confirmed that there were currently no definite development plans for the land.

When asked to consider the additional impacts associated with the riser/surface facility that would be required, Mr. Maltais indicated that the additional impacts would be of concern. Subsequent to being made aware of potential impacts associated with the alternative route on SE 6-48-5W5M, Mr. Maltais did not state a preference for the alternative or the applied-for route.

6.3 Views of the Examiners

The examiners are satisfied that the applied-for connection of the wells to the existing Comstate Carnwood gas gathering system in LSD 16-7-48-5W5M is appropriate.

The examiners note that both the applicant and Mr. Maltais agree to the routing modification in NE 31-47-5W5M. If the application is approved, the examiners remind Comstate that it must revise the existing survey plan and register it accordingly.

Regarding the alternative route proposed by Mr. Maltais on Mrs. Maltais's land (SE 6-48-5W5M), the examiners are satisfied that

- the alternative route is longer and would result in more disturbances associated with the construction and reclamation process;
- an additional surface installation and associated road would have to be constructed, with additional disturbances associated with the operation of the pipeline;
- the alternative route would impact the landowner of NE 6-48-5W5M by revising the route on that property; and
- future plans for SE 6-48-5W5M are not definite and Mr. Maltais had not weighed the impacts associated with the additional surface facility versus the possible impacts to future development.

Given the above, the examiners believe that the route as applied-for by Comstate and modified in NE 31-47-5W5M is preferable. With regard to the issue of the impact of the pipeline on future

subdivision development plans, the examiners note that Section 33 of the Pipeline Act provides for the EUB to determine whether existing pipelines need to be altered or relocated when it is in the public interest to do so. The examiners are aware this provision may be initiated when actual land-use conflicts arise.

7 IMPACTS

The impacts associated with the applied-for pipeline were central to the objection to this project. The views of the participants and the examiners are discussed below under the following headings: Construction and Reclamation, Operation, and Abandonment.

7.1 Views of the Applicant

Construction and Reclamation

Comstate indicated that the construction time to complete its entire project would be approximately two weeks, with three to four days' total of activity on the interveners' lands. Comstate stated that there would be additional noise and traffic associated with the construction activities at that time. However, as the interveners' residences were some distance from the project area, it believed these impacts would be minimal.

Comstate indicated that it would adopt standard industry practice regarding the cleaning of all construction equipment in response to the interveners' concerns about the spread of noxious weeds. Comstate did not provide a written description of the procedures, but verbally agreed at the hearing to wash all construction equipment in town and provide the landowner with an opportunity to inspect the equipment prior to it entering the Maltais' lands. Comstate stated that it did not believe that this condition should apply to the cars and trucks used by construction or operating staff, as they would be no different from the vehicular travel by landowners on their lands.

The applicant indicated that the construction techniques used would minimize ground disturbances and, as a result, would minimize the amount of reclamation required. Comstate stated that it would be preferable to plough in the pipeline, as that would disturb the land the least. It stated that the depth of burial would be a minimum of 1.2 metres (m) and as much as 1.5 m if this method were used. Comstate suggested that livestock safety and reclamation issues would be minimal where this construction method was used.

Comstate pointed out that if ploughing in the pipeline were not feasible due to the depth of frost, weather, or other conditions, the alternative would be to use a chain-type trenching system. If this method of installation were used, the topsoil along the narrow trench would have to be stripped and conserved. The applicant conceded that livestock safety issues might require that the right-of-way be fenced if this method were employed. It indicated that the typical pipeline burial depth would be 1.8 m if the trenching construction method were used.

Comstate stated that it would like to start construction as soon as possible and suggested that pipeline construction could likely be completed prior to the time Mr. Maltais indicated that livestock would be returned to the subject lands. If, however, livestock were present during

construction, Comstate committed to installing electric fencing to keep the livestock out of the right-of-way for areas where topsoil had been stripped or where trenching was used. Comstate was confident that arrangements could be made with the interveners to time the construction and to manage the livestock so that there would be minimal land-use conflict during construction.

With regard to the interveners' condition to install fencing to prevent construction crews from leaving the pipeline right-of-way, Comstate maintained that fencing was not necessary during construction activities.

Comstate indicated that reclamation of the pipeline right-of-way would be completed according to Alberta Environment regulations as soon as conditions permitted, but did not provide specific details in this regard. Comstate maintained that the interveners' condition to have the right-of-way fenced during the reclamation period was inappropriate, especially for sections that were ploughed in and minimally disturbed. Comstate did not comment on fencing requirements during the reclamation period for areas where conventional trenching and excavation would be required or in areas that would have to be ripped to penetrate frost during construction.

Operation

Comstate maintained that the potential for pipeline failures was remote, since the transported gas would be essentially dry and corrosion would not be an issue. It stated that corrosion test coupons would be installed to monitor internal corrosion and that the pipeline would be cathodically protected to mitigate external corrosion. Comstate indicated that pigging and chemical injection facilities would be installed, should they be needed in future to help prevent internal corrosion. It also indicated that it would ensure that an ongoing program was in place to assess the corrosive nature of the product and would take additional appropriate measures as necessary.

Comstate confirmed that all risers and surface facilities would be confined to existing surface lease sites. It stated that high-pressure shutdown controllers would be installed to prevent the applied-for pipeline and the downstream connecting pipeline from being overpressured. Comstate committed to installing an emergency shutdown (ESD) valve at the point where the proposed pipeline would tie into the existing gas gathering system. It stated that this ESD valve would be set at 690 kilopascals (kPa), while ESD valves set at 500 kPa would be installed at all the wells tied in by this pipeline application, and Comstate personnel would inspect and test all ESD valves on a monthly basis. Comstate indicated that there would be no flaring of the wells associated with either the construction or operation of the pipelines. Should a high-pressure event cause the pipeline to shut down, Comstate stated that the associated wells would be shut in and not go to flare.

In Comstate's opinion, there would be no impacts to the landowners associated with the operation of its pipeline. All impacts, including increased traffic and well site visits, would be confined to existing surface leases. Comstate did not comment on potential impacts associated with unusual operating conditions, such as pipeline breaks.

Abandonment

With respect to the interveners' condition that the pipeline be removed upon abandonment, Comstate stated that it would comply with EUB regulations in effect at that time. The applicant commented that there was currently no requirement to remove abandoned pipelines and that it believed removal of pipelines often did more damage to the land than their installation. Comstate indicated that it could not envision a scenario where it would consider voluntarily removing the pipeline; however, it indicated that should a valid reason to remove the pipeline be presented in the future, it would try to accommodate such a need at that time.

With regard to the interveners' condition that a full environmental assessment of the property, including sampling of soil and water, be completed upon pipeline abandonment, Comstate reiterated that it was not necessary but said it would comply with regulations in effect at the time.

7.2 Views of the Interveners

Construction and Reclamation

Mr. Maltais did not indicate that he had concerns about the noise and traffic associated with the construction activities.

Mr. Maltais indicated that prior to the hearing, he had no specific details on the measures Comstate proposed to use to control the spread of noxious weeds. He agreed that it would be satisfactory to him if the construction equipment involved in the earthmoving were washed to his satisfaction prior to entering his or his mother's land. He conceded that the risk of nonconstruction vehicles transporting noxious weeds was very low.

Mr. Maltais conceded that he was not familiar with the mentioned ploughing or trenching methods of pipeline installation. However, based on his farming experience, he was very sceptical about ploughing during the winter. Mr. Maltais indicated that he believed ploughing, if done in the right season, would result in the least impacts to the land.

The interveners were satisfied with a burial depth of 1.8 m, as discussed during the initial negotiations with Comstate. Mr. Maltais indicated that the first time he was made aware that the burial depth might be as shallow as 1.2 m was at the hearing. He indicated that this might pose a safety risk if equipment got stuck over the pipeline, since the equipment might sink to 1.2 m as he attempted to get it out. Additionally, Mr. Maltais indicated that drainage ditches might be installed on both his and his mother's lands in the future and the deeper the pipeline was buried, the less likely it was to be in the way. Mr. Maltais said that he had no specific plans or time lines yet for the construction of the drainage ditches.

Mr. Maltais stated that the interveners wanted fencing installed prior to construction activity both for the safety of livestock and to prevent construction equipment from leaving the right-of-way and damaging adjacent land. He indicated that at one time he was prepared to accept electrical fencing during construction but he expressed concern that it might be inadequate for horses; as well, moose, deer, and elk could damage the fence, allowing the livestock to escape. Mr. Maltais suggested that it might be possible to make special arrangements for his horses during the construction of the pipeline so that they would not be in the area.

The interveners were adamant that during a two- to three-year pipeline right-of-way reclamation period, a fence would be required to keep livestock off the area being revegetated. The interveners were concerned that the vegetation would not re-establish itself if it were eaten to the ground and trampled on.

Operation

The interveners did not express any concerns with the technical design of the pipeline or Comstate's proposed operational and maintenance plans.

The interveners did not identify any adverse impacts associated with regular pipeline operations. The interveners commented that unusual operating conditions, such as pipeline ruptures, would have adverse impacts and create uncertainty. The interveners' representative expressed a concern that a pipeline break would also necessitate repair equipment on the property, interrupting the quiet enjoyment of the land and creating the risk that any liquids released, such as salt water and corrosion inhibitors, could be ingested by livestock should it be on the surface or reach a nearby dugout.

Abandonment

The interveners were adamant that the pipeline must be removed at the landowner's request at the time of abandonment and were not convinced that the removal would result in significant impacts. The reasons given by the interveners were that the pipeline would rust and act as a conduit, it could interfere with future development plans, and its presence would negatively affect the property value.

Further, the interveners were concerned about potential contamination associated with leaks over the operational life of the pipeline and wanted a full environmental assessment, including soil and water analysis, to be a condition upon pipeline abandonment.

7.3 Views of the Examiners

Construction and Reclamation

The examiners are satisfied that off-site noise and traffic impacts associated with construction activities would be minimal and were not an issue at this hearing.

Comstate and the interveners appeared to agree at the hearing on the issue of washing vehicles prior to entering the interveners' lands to control the spread of noxious weeds. The examiners believe that much of the difficulty in reaching an agreement on the control of noxious weeds was due to a lack of details on the procedures to be followed by Comstate. The examiners believe that Comstate should provide specific written procedures to Mr. Maltais prior to the construction equipment entering his or his mother's lands to ensure no misunderstanding on the procedures to be employed.

The examiners are satisfied that there appears to be no unusual terrain, surface structure, or agricultural factors that would necessitate deep burial of the pipelines through the interveners' lands. The examiners agree that depths for ploughing (1.2 m to 1.5 m) or trenching (1.8 m) are satisfactory and that the depth will be greater than the minimum 0.8 m specified by the Pipeline

Regulation. The examiners believe that the soil conditions and the depth of frost may influence the selection of the construction method and that the burial depth would be determined by the construction method selected.

The examiners do not recommend that Comstate use a particular construction method; however, they believe that it is important to select the optimum pipeline installation methods and procedures to minimize surface impact and reduce the necessary effort for reclamation wherever possible. The examiners are satisfied that in this case the preferred installation method, given the small pipeline diameter and level terrain, is ploughing or, if necessary, a chain-type trenching system. The examiners believe that if the pipeline were ploughed in during favourable soil conditions, the disturbance to the land would be minimal and this would effectively deal with the interveners' concerns about long-term reclamation and livestock safety immediately after construction.

Notwithstanding Comstate's desire to start construction as soon as possible after the approvals are issued, the examiners believe that should approval be granted, Comstate should seriously consider, as a gesture of good will, a delay in the installation to facilitate ploughing the pipeline under favourable soil conditions.

The examiners do not believe it is necessary to routinely fence the disturbed areas for reclamation purposes. The examiners believe that it is important for Comstate and Mr. Maltais to work cooperatively to reach a mutually satisfactory approach to ensure the most likely success for construction and reclamation. The examiners encourage Comstate to develop a specific plan to address the issues of reclamation when there is the possibility of cattle in the area and how the impacts can be mitigated. Should agreement not be possible, the examiners expect Comstate, as a minimum, to comply with expectations established in consultation with the local Alberta Environment reclamation inspector.

Operation

The examiners are satisfied that the pipeline would transport sweet, dry gas and therefore the internal corrosion rate would not be of concern in this instance. The examiners believe that the potential for a pipeline leak is very low and, even so, the impacts of a leak would likely be minimal. The examiners also expect Comstate to follow through on its plan to ensure appropriate assessment of the corrosive nature of the product being transported and to take additional measures as necessary. Comstate is reminded that in the event of a leak it must notify the EUB, pursuant to Section 35(1) of the Pipeline Act, and affected parties.

Abandonment

The examiners note that the costs and benefits of removing a pipeline at the time of abandonment has been a matter of debate among government, industry, and landowner groups for some time and the current standards do not require removal of the pipeline. Mr. Maltais was not able to provide any substantive information as to why the pipeline should be removed in the future. The examiners agree that it is premature to give one party the right to determine if the pipeline should be removed at the time of establishing the right-of-way agreement. The examiners agree that a discussion on options about what to do when the pipeline is no longer

required should be considered by the owner of the pipeline in consultation with the landowner when overall need, cost-benefit, and impacts can be established with more certainty.

The examiners believe that it is also premature to consider requiring a full environmental assessment of the pipeline on the Maltais' lands, since there must be a demonstrated need at the time of abandonment recognizing such factors as operational history and the type of pipeline.

8 COMMUNICATION AND THE USE OF THE 27 CONDITIONS

8.1 Views of the Applicant

Comstate stated that contract landmen or third-party consultants conducted the majority of its right-of-way negotiations with landowners. It added that negotiations conducted in this manner were usually successful but senior company personnel were prepared to become involved if problems occurred or issues arose. It pointed out that its landman had reached an agreement with the seven other landowners for this pipeline and that he had initially reported that negotiations conducted with Mr. Maltais in the summer of 2000 were progressing well. Comstate stated that when Mr. Maltais contacted it with his concerns, it immediately agreed to meet with him. Comstate indicated it was trying to be flexible and hoped to reach an agreement. It cited the numerous surveys Comstate conducted to address Mr. Maltais's concerns about the routing of the pipeline on his lands. Comstate stated that when the negotiations broke down early in 2001, it attended a facilitation meeting with EUB field staff and Mr. Maltais and then requested a public hearing of its proposal when the facilitation was not successful and Mr. Maltais did not respond to its offer to engage in appropriate dispute resolution (ADR). It also stated that Mr. Maltais did not respond to its calls for continued dialogue before the hearing was held.

Comstate indicated that the negotiations centred on the 27 conditions developed by Mr. Zajes, a surface rights consultant retained by Mr. Maltais. Comstate stated that it was not initially aware of the 27 conditions or wording changes Mr. Maltais agreed to with its contract landman. Comstate indicated it had worked through the 27 conditions with Mr. Maltais and Mr. Zajes but they all acknowledged that the conditions could not be agreed upon.

Comstate indicated that the majority of the conditions were satisfactory; however, it had some difficulty with several conditions, including fencing the pipeline right-of-way, performing a full environmental assessment, and removing the pipeline when abandoned. Comstate questioned the need for these conditions and stated that it would meet all regulatory requirements and follow standard industry practice. Although it made reference to industry practices, it did not provide specific details in this regard at the hearing. Comstate reflected that it had attempted to be a good neighbour, had remained flexible and open to new pipeline routes, and was willing to pursue the ADR process again, if the interveners agreed.

8.2 Views of the Interveners

Mr. Maltais submitted that he was not familiar or comfortable with the process of negotiating with oil and gas companies for pipeline rights-of-way. He stated that he had difficulty understanding the right-of-way agreements he was being asked to sign and therefore he contacted Mr. Zajes to assist him with the negotiations with Comstate. Mr. Maltais said he was

thankful for the help he received from Mr. Zajes to understand the issues. Mr. Zajes pointed out that he was representing Regis Maltais, and not Angeline Maltais, and that his role was to act as an adviser and advocate for landowners.

Mr. Maltais indicated that communications were difficult with Comstate, as they were high pressure, and he was not able to get the information he needed. He also commented on the time lines involved and indicated that months would often go by between dealings with the landman or Comstate. He believed that the initial negotiations had been proceeding well with Mr. Zajes's assistance and that he had thought he was close to an agreement on the 27 conditions in July 2000, because Comstate's landman had agreed, in principle, to a revised version of the 27 conditions. Mr. Maltais stated that the subsequent unilateral withdrawal of the agreement by Comstate was very damaging to the trust necessary to negotiate in good faith, as well as confusing, because they did not know if they were dealing with someone with authority to make such agreements. Mr. Maltais confirmed that ADR was discussed at the field facilitation meeting and he was willing to participate. However, he maintained that Comstate never followed up on this.

Mr. Zajes stated that he had developed his standard form of 27 conditions to assist landowners to ensure that their rights were protected and that certain key elements, often avoided by industry, were addressed. He indicated that landowners had used his form in the past and that he often negotiated or mediated discussions between landowners and companies using the form.

Mr. Zajes and Mr. Maltais maintained that since it was Comstate that wanted to install the pipeline, the effort necessary to reach an agreement must fall to the applicant. Based on his dealings with Comstate to this point, Mr. Maltais stated that he would prefer not to deal further with it, and hence he reverted back to his original position asking for a hearing to demand the unmodified 27 conditions.

8.3 Views of the Examiners

The examiners believe that a number of factors led to a breakdown of negotiations and communications between Mr. Maltais and Comstate, including the level of authority given to the landman, prompt and sufficient information, and the apparent inflexibility of all parties regarding certain sections of the 27 conditions.

The examiners recognize and appreciate the attempts that both Comstate and Mr. Maltais initially made to resolve their dispute. Initially, both parties tried to reach an agreement. It is the belief of the examiners that the failure to reach a complete agreement was related to how both parties dealt with the 27 conditions.

The examiners appreciate how promptly Comstate senior staff responded when they became aware of Mr. Maltais's concerns. However, this was after lengthy negotiations and after Comstate had overruled some of the previous agreements negotiated by the landman. The examiners recognize Comstate's need to use consultants and that this practice is successful in most instances. However, the examiners have significant concern with Comstate's practice to delegate matters to third-party consultants without establishing firm guidelines about when to involve company staff and without clearly setting out the degree of authority that can be exercised by the consultants. In this instance, the good-faith negotiations that occurred between Mr. Maltais and the contract landman on behalf of Comstate were followed by a deteriorating of

trust between the two parties. The examiners are concerned that this became a lost opportunity and appears to have resulted in lowered trust between the parties when it became clear that the individual at the table for Comstate did not have the authority to respond adequately to this level of negotiations. The examiners expect Comstate to do better in its consultation work in the future.

Regarding the issue of prompt and sufficient information, the examiners believe that the responsibility is shared by all parties. The examiners believe that should either party have concerns regarding long delays, the onus was on them to contact the other party regarding the lack of information or a response. The examiners hope that in the future, commitments and expectations will be established and agreed to before the end of any meeting between Comstate and Mr. Maltais. The examiners are not aware of any contacts by Mr. Maltais to other resources available to him, such as EUB field staff or the Farmer's Advocate, to help him understand the requirements or provide assistance. Such contact might have helped in the resolution of the issues prior to the establishment of polarized positions. Several sections in EUB *Guide 56: Energy Development Application Guide* outline the need for the applicant to consult and disclose information to potentially and directly affected parties and to enter into meaningful consultations in an attempt to resolve concerns. It was noted throughout the hearing that Comstate responded to various concerns that the interveners had by committing to carry out the work according to standard industry practices or consistent with the applicable legislation without defining or explaining what those standard industry practices or what the applicable legislation was or specifying the specific procedures it intended to use. The intent of the requirements of *Guide 56* are to have these procedures fully explained to individuals who are not familiar with these operations. Similarly, the examiners believe there could have been more information provided by the surface rights consultant on certain of his 27 conditions. For example, during the hearing the parties appeared to achieve a common understanding on the condition dealing with noxious weeds and the washing of equipment, yet this information appeared new to the parties at the hearing. The examiners believe this instance, in particular, demonstrates the need for parties in negotiations to seek to understand the needs and information requirements of the other party and enter into a meaningful dialogue in order for them to reach resolution.

Regarding the 27 conditions developed by Mr. Zajes, the examiners appreciate Mr. Zajes's commitment to assist landowners. However, the examiners have some difficulty when he indicates he is willing to mediate between landowners and companies but at the same time is apparently unwilling to consider the need for flexibility regarding certain conditions and that they might need to be adapted given the type and potential impacts of a specific project. As indicated previously, the examiners do not believe that certain conditions are appropriate and believe that many are already covered by regulations of various government agencies. The examiners will not be recommending that any of the conditions be linked to the EUB approval. However, the examiners hope that the parties will continue a constructive dialogue.

The examiners believe that negotiations between landowners and companies should start with a recognition that both parties have rights and that they should attempt to work toward resolutions to the greatest possible extent. The examiners note that with the assistance of his surface rights consultant, Mr. Maltais may have been made aware of his rights as a landowner, but not necessarily of how they relate to the rights of the oil and gas company.

It appeared to the examiners that Mr. Zajes was using the hearing as an opportunity to promote the use of his 27 conditions over the specific needs and interests of the landowner. The examiners believe this significantly limited his effectiveness in representing the unique circumstances and particular needs of his client. This approach and the evidence submitted was not particularly helpful, and in this regard, the examiners recommend that the Board closely examine any cost claim Mr. Zajes may submit as part of intervener funding.

The examiners believe that through the exchange of dialogue and information during the hearing process, both parties may have achieved additional understanding and may agree on the need to continue dialogue to complete negotiations in the several areas identified in this report. The examiners look to Comstate to initiate communications with Mr. Maltais and encourage both parties to work together to mutual benefit.

Dated at Calgary, Alberta, on February 12, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

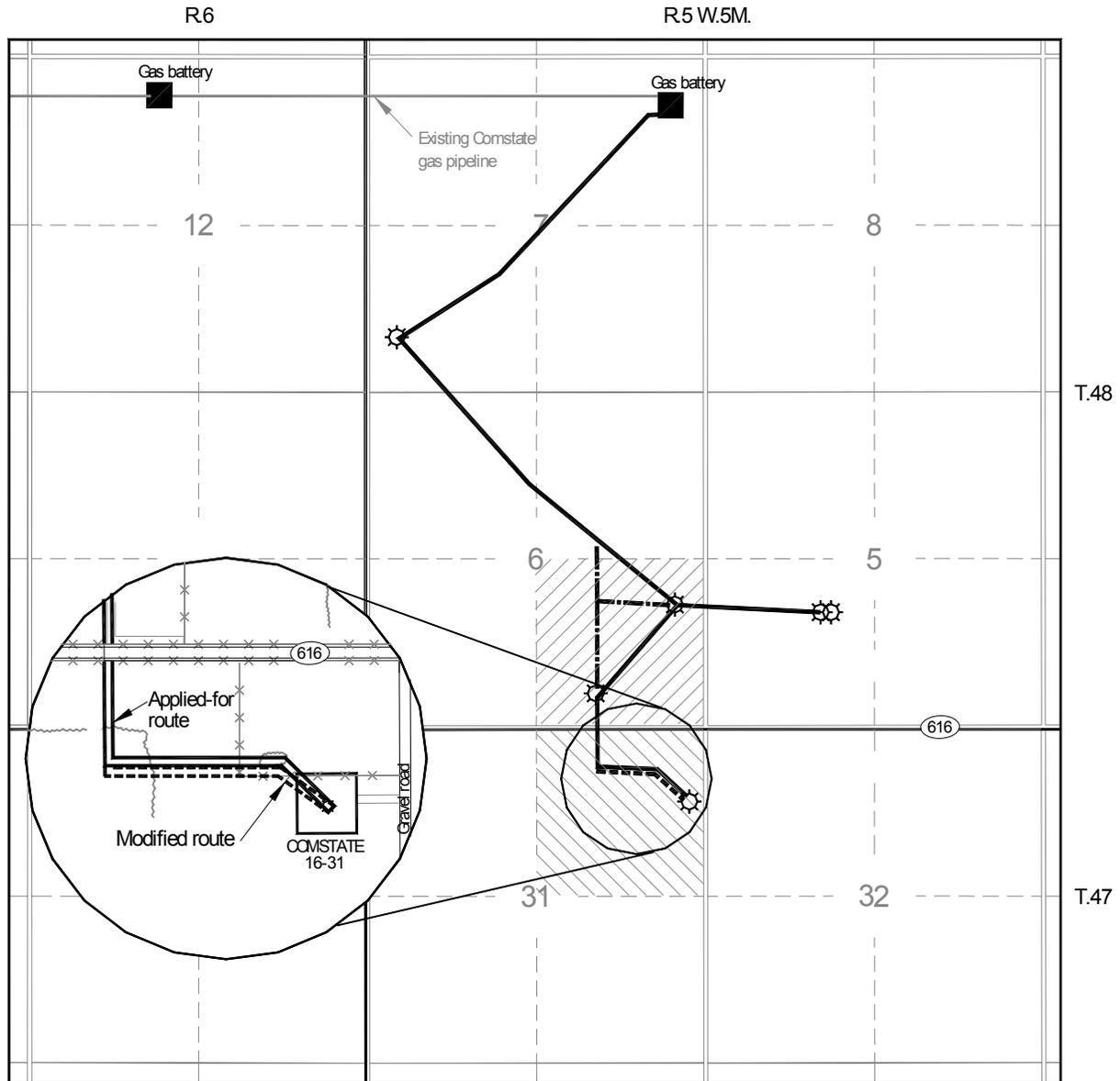
W. Remmer, P.Eng.

(Original signed by)

T. Pesta, P.Eng.

(Original signed by)

M. Vandenbeld, C.E.T.



- Legend**
- Applied-for route
 - - - Modified route
 - · - Alternative proposed routing
 - ▨ Regis Maltais's land
 - ▩ Angeline Maltais's land
 - ⊙ Existing gas wells

Pembina Field
 Application No. 1091324
 Comstate Resources Ltd.

Decision Report 2002-020

