



Canadian Natural Resources Limited

Application for a Pipeline Licence
Wetaskiwin Field

May 27, 2008

ENERGY RESOURCES CONSERVATION BOARD

Decision 2008-042: Canadian Natural Resources Limited, Application for a Pipeline Licence,
Wetaskiwin Field

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**CANADIAN NATURAL RESOURCES LIMITED
APPLICATION FOR A PIPELINE LICENCE
WETASKIWIN FIELD**

**Decision 2008-042
Application No. 1515252**

DECISION

The Energy Resources Conservation Board has considered the findings and recommendation set out in the following examiner report, adopts the recommendation, and directs that Application No. 1515252 be denied.

Dated in Calgary, Alberta, on May 26, 2008.

ENERGY RESOURCES CONSERVATION BOARD

Dan McFadyen
Chairman

ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

EXAMINER REPORT RESPECTING CANADIAN NATURAL RESOURCES LIMITED APPLICATION FOR A PIPELINE LICENCE WETASKIWIN FIELD

**Decision 2008-042
Application No. 1515252**

1 RECOMMENDATION

Having carefully considered all of the evidence, the examiners recommend that the Energy Resources Conservation Board (ERCB/Board) hereby deny Application No. 1515252.

2 INTRODUCTION

2.1 Application

Canadian Natural Resources Limited (CNRL) applied to the ERCB, pursuant to Part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline for the purpose of transporting natural gas containing no hydrogen sulphide (H₂S) from Legal Subdivision (LSD) 13, Section 32, Township 46, Range 25, West of the 4th Meridian, to a pipeline tie-in point at LSD 16-23-46-26W4M. The proposed pipeline would be about 6.62 kilometres (km) in length, with a maximum outside diameter (OD) of 114.3 millimetres. The proposed pipeline would be located about 14.92 km west of Wetaskiwin, Alberta. On February 5, 2008, CNRL amended the application to start the pipeline at LSD 14-31-46-25W4M and change the proposed pipeline route, resulting in a pipeline length of 5.84 km.

2.2 Interventions

Objections were received from several parties who expressed concerns related to the impact of the proposed pipeline on future land development and property value, the proposed pipeline routing, CNRL's consultation, and environmental stress caused by the proposed construction. These concerns were expressed during CNRL's public consultation and notification process and through the ERCB process leading up to the hearing.

2.3 Hearing

The Board held a public hearing in Wetaskiwin, Alberta, which commenced and concluded on March 18, 2008, before Board-appointed examiners F. Rahnama, Ph.D. (Presiding Member), T. J. Pesta, P.Eng., and M. S. Craig. A site visit was conducted for the examiners by ERCB staff on the afternoon of March 17, 2008. Those who appeared at the hearing are listed in Appendix 1.

3 BACKGROUND

3.1 Appropriate Dispute Resolution

In conjunction with proceeding to establish a hearing date on this matter, the ERCB encouraged the parties to engage in appropriate dispute resolution (ADR) to continue discussing issues of interest. The parties met on November 19, 2007, but did not reach an agreement at the meeting. No other ADR meetings took place prior to the hearing.

4 ISSUES

The examiners consider the issues respecting the applications to be

- need for the pipeline,
- public consultation,
- routing of the pipeline, and
- other issues.

In reaching the determinations contained within this decision, the examiners have considered all relevant materials constituting the record of this proceeding, including the evidence and argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the examiners' reasoning relating to a particular matter and should not be taken as an indication that the examiners did not consider all relevant portions of the record with respect to that matter.

5 NEED FOR THE PIPELINE

5.1 Views of the Applicant

CNRL submitted that the pipeline was necessary to transport natural gas from three wells in the Honeysuckle/Wetaskiwin area that had been drilled and completed at surface locations in LSDs 13-32-46-25 W4M, 9-32-46-25W4M, and 14-31-46-25W4M. The natural gas received would tie into an existing 6-inch OD gathering line at 16-23-46-26W4M and subsequently flow to the existing Brightview Compression-Dehydrator Station located at LSD 1-11-46-27W4M, where it would then enter the Keyera gathering system for processing at the Rimbey Gas Plant. CNRL argued that there was no suitable existing gathering system in the area to transport the gas and as such the construction of a new pipeline was required. CNRL contended that these wells had proven resources of 24.3 million cubic metres, which could not be produced until the applied-for pipeline was constructed.

5.2 Views of the Interveners

The interveners did not dispute the need for a pipeline to allow CNRL to transport its natural gas to a processing facility.

5.3 Findings of the Examiners

The examiners note that the interveners did not dispute CNRL's need to access its natural gas reserves from the three existing wells and transport its produced natural gas volumes.

6 PUBLIC CONSULTATION

6.1 Views of the Applicant

CNRL submitted that it had attempted to address the concerns of all the landowners along the right-of-way of the proposed pipeline route. It stated that it had initially contacted the title holders of the affected lands and then subsequently engaged Integrity Land Inc. (Integrity Land) to carry out the consultation process and negotiation on its behalf. It pointed out that several meetings took place between Integrity Land and the landowners, the Lorentzes and the Wedmans, in order to deal with their respective concerns.

CNRL conceded that the four alternative routes (A, B, C, and D) proposed by the interveners were not fully considered, as they were deemed not to be viable. CNRL pointed out that in efforts to satisfy Mr. Wedman's concerns about the routing through his property, it resurveyed and revised the routing at Mr. Wedman's request. CNRL stated that rerouting was done to satisfy Mr. Wedman's future property development plans.

CNRL argued that the main concerns raised by the interested parties were based on compensation and that the parties were not opposed to the pipeline project.

6.2 Views of the Intervenors

The interveners stated that they were dissatisfied with the consultation efforts undertaken by CNRL. They stated that discussions between Integrity Land and the interveners had not been accurately portrayed by CNRL and that they had not been given a fair and reasonable opportunity to discuss alternative routings with CNRL. They referred to examples in CNRL's consultation approach and actions that led to an atmosphere of distrust.

The Lorentzes acknowledged that they did not have registered subdivision plans in place but stated that their future plans centred around the possibility that they would be able to subdivide their property. The Lorentzes further stated that the purpose for initially purchasing their parcel of land was based on access to the Queen Elizabeth Highway and that commercial development was very desirable in the area. The Lorentzes also disputed CNRL's claim that it had attempted to contact them more than once with regard to this project.

Mr. Wedman stated that although he had allowed CNRL to survey the proposed route, he was not approached by CNRL or Integrity Land to resurvey. Despite allowing the initial survey, Mr. Wedman stated that he did not want any development proposed by CNRL on his lands.

6.3 Findings of the Examiners

The overall intent of the public consultation requirements, as set out in *Directive 056: Energy Development Applications and Schedules*, is to ensure that an applicant discloses its project to

interested and potentially adversely affected parties. It therefore allows the parties an opportunity to understand the proposed project, identify and discuss concerns, and identify areas of difference for which they might be unable to find suitable solutions. This provides an opportunity for the applicant to build relationships with landowners and possibly accommodate their interests by agreeing to measures that may go beyond the minimum requirements of *Directive 056*. These actions may in turn build trust and constructive future relationships between an operator and landowners.

The examiners note that CNRL's efforts in dealing with the concerns of the Lorentzes and the Wedmans were deficient. The examiners note that although there are currently no approved and registered subdivision plans in place with the county of Wetaskiwin for any party along the proposed pipeline right-of-way, there was a lack of effort on behalf of CNRL to attempt to come up with alternative routes to possibly find a mutually agreeable solution with the interested parties or at the very least to exhaust all other possible options. The examiners note that the notification to the interested parties with regard to the specifics of the project was often inaccurate. In the examiners' view, this is evidence of CNRL's obvious inattention to the detail necessary to maintain credibility and to address interveners' concerns.

7 ROUTING OF THE PIPELINE

7.1 Views of the Applicant

CNRL stated that it had made significant efforts to select a route for the pipeline that best accommodated the concerns and future plans of all landowners along the applied-for route and also of those along the alternative routes proposed by Mr. Wedman and Mr. Lorentz. It stressed that when the concerns of all the affected and potentially affected parties were considered, the applied-for route was the most appropriate. CNRL stated that the applied-for route not only met the need of getting the stranded gas to the Brightview facility, but was the route with the least impact.

CNRL indicated that there were no objections to the portion of the applied-for route from LSD 14-31-46-25W4M to the point where the proposed pipeline exited the southeast (SE) quarter of Section 25-46-26W4M. It stated that only the portion of the applied-for route that crossed the land owned by Mr. Wedman and Mr. Lorentz was objected to.

CNRL stated that in selecting the proposed route, including the portion objected to, it had accommodated the existing configuration of land ownership and the known plans of the various parties by selecting the route least likely to affect current operations and plans for future development. It indicated that it had attempted to run parallel to existing corridors, such as the Queen Elizabeth Highway and property lines, where possible, while minimizing the overall length of the pipeline and hence the disturbance created by the pipeline. CNRL stated that it would of course prefer that the pipeline route be as close to a straight line as possible, as such a route would involve the shortest distance and, depending on the terrain, presumably be the most cost efficient. However, it indicated that the most appropriate route when land ownership configuration and known subdivision plans were taken into consideration was not always the route having the shortest distance.

CNRL stated that in this case, having regard for the known uses of the lands, the plans of various landowners for subdivision, and the configuration of land ownership, the most appropriate route was not the shortest route or the one running entirely parallel to existing corridors. For example, CNRL mentioned that the northern portion of the proposed route, which was not objected to and to which the respective landowners had agreed, could not be entirely parallel to the Queen Elizabeth Highway because another residence was located in the SE quarter of Section 36-46-26W4M. CNRL stated that after consultation with the landowners along that portion of the route, it had selected the route through Sections 31, 30, and 25 that was the most appropriate, having regard for the concerns of the parties and existing property lines and making a trade-off between accommodating the land ownership configuration and a marginal increase in length of the pipeline.

CNRL stated that, similarly, the portion of the applied-for route that was now objected to by Mr. Wedman and Mr. Lorentz involved a marginal increase in length of the applied-for route so as to accommodate all the known and applied-for subdivisions and the land ownership configuration. It indicated that as a result, the applied-for route was slightly longer but had the least potential to interfere with plans for subdivision that were not yet known. It stated that the alternative routes proposed by the interveners were not appropriate because those routes did not consider the potential subdivision of the southwest (SW) quarter of Section 25-46-26W4M, owned by Trade Link Developments (Trade Link); each of the alternatives would pass through that parcel.

CNRL indicated that the applied-for route generally ran parallel to the dividing line between Mr. Wedman's north and south parcels of land. While it recognized that Mr. Wedman had a currently pending application to subdivide his northern parcel, it stated that the applied-for route was the most appropriate accommodation to the known and applied-for subdivision of his land. CNRL noted that Mr. Wedman requested that it try not to locate the pipeline on his "southern parcel," and therefore it moved the applied-for route north to be parallel to the south boundary of the north 80 acre parcel so as to minimize any interference with either of Mr. Wedman's parcels. Further, it noted that Trade Link intended to subdivide the SW quarter of Section 25-46-26W4M, but those plans and limits were not yet known and Trade Link objected to any pipeline that might interfere with any subdivision.

In planning and selecting the proposed route, CNRL made inquiries of various landowners in the vicinity of the shortest route or straight line from LSD 14-31-46-25W4M to the tie-in point at LSD 16-23-46-25W4M, including the vicinity of the objected-to portion of the applied-for route, and used that information to design the applied-for route. As noted above, this was done to minimize any interference with Mr. Wedman's known and applied-for plans for subdivision. As a result, the length of the applied-for route increased slightly from a straighter route in order to better accommodate the land ownership configuration and plans for subdivision.

CNRL stated that it had previously considered and rejected alternative routes following preliminary consultation with the affected landowners. It indicated that if the plans of those landowners for subdivision, specifically the subdivision of the SW quarter of Section 25-46-26W4M, were recognized and considered, the proposed alternative routes became inferior alternatives because they had great potential to interfere with such subdivision. It stated that since the exact plans for subdivision were not yet known, it could not realistically accommodate such plans, and accordingly its preferred route in this case addressed the known plans for subdivision.

CNRL further pointed out that proposed alternative routes B and C involved running parallel to the low-pressure gas distribution line that ran north to south through the west half of Section 25. CNRL stated that from its experience and based on information from the utility involved, such distribution lines were regularly and inexpensively moved to accommodate subdivision. Therefore, it stated that there was a significant likelihood of this low-pressure distribution line being moved to accommodate the future subdivision of the SW quarter of Section 25-46-26W4M. It indicated that the applied-for pipeline would be more difficult to move and there would be a greater potential for the pipeline to interfere with such subdivision if the applied-for line were to run parallel to this low-pressure distribution line, as proposed by the interveners. Accordingly, CNRL rejected these proposed alternatives.

CNRL stated that it also rejected proposed alternative pipeline route D because, although boring a creek for the purposes of a crossing was common practice, running a pipeline parallel to a creek, such as Bigstone Creek, was not consistent with recognized industry practice and would be an issue should the natural flow pattern of this creek ever be altered due to climatic conditions or future development. It further stated that this alternative route would again have the potential to seriously impede the subdivision of the SW quarter of Section 25-46-26W4M because the proposed alternative route passed diagonally through that land.

CNRL stated that in selecting the applied-for route, it attempted to work with and reasonably accommodate existing subdivisions and known plans and applications for subdivision in the area. It indicated that it had understood that the Wedmans did not want a pipeline on the north end of the north parcel, which is the subject of the pending application for subdivision. Therefore, it concluded that the applied-for route best accommodated all subdivision plans, including those of the Wedmans'. CNRL noted however, that the proposed alternative pipeline route A would pass through the Wedmans' land in the northwest (NW) quarter of Section 24-46-26W4M from the north, as opposed to its applied-for route, which would enter that portion of Mr. Wedman's land from the south. Prior to receiving the Wedmans' submission, CNRL believed that the Wedmans did not want the pipeline in that part of the NW quarter of Section 24-46-26W4M.

CNRL stated that while the alternatives proposed by the Lorentzes and the Wedmans avoided crossing Bigstone Creek, it viewed the two crossings required for the applied-for route as not causing any environmental impediment because

- CNRL would “dry bore” under Bigstone Creek, as it had done for other pipelines that crossed this creek with minimal additional cost and no impact;
- there were no public flow data available for Bigstone Creek—CNRL stated that the flow was intermittent and when the last pipeline crossing of this creek was conducted in 2007 by CNRL, the creek bed was dry;
- portions of Bigstone Creek in this area had already been rerouted to accommodate existing farming practices;
- all land in the area was relatively flat and farmable,
- there was no Historical Resources certificate required for this creek; and
- alternative routes would involve an additional road crossing.

CNRL prepared a comparative table showing the impacts of the applied-for route to the proposed alternative routes. It stated that this table showed that the applied-for route had two crossings of Bigstone Creek but that the alternatives proposed by Mr. Wedman and Mr. Lorentz involved an additional road crossing. Therefore it concluded that the additional surface disturbance of the marginally longer applied-for route was minimal.

7.2 Views of the Interveners

The Lorentzes questioned whether CNRL had thoroughly investigated alternative routes. They stated that a landowner to the north of their property had agreed to a caveat on his land for a portion of the pipeline with no monies in hand. They stated that this landowner had another quarter on the west side of the highway exactly in the direction of the tie-in point on CNRL's pipeline and therefore questioned why this alternative route had not been proposed by CNRL.

The Wedmans stated that their NW quarter of Section 24-46-26 (NW 24) was presently split into two parcels, the north parcel being 78.58 acres and the south parcel being 61.28 acres. The Wedmans further stated that they had applied to the County of Wetaskiwin in April 2007 to have 23.5 acres of the 78.58 acre parcel zoned as "severed agricultural," because of the presence of Bigstone Creek as a natural boundary. The approval of the application would result in the 78.58 acre parcel being split into a 23.5 acre parcel and a 52.15 acre parcel. At the hearing, the Wedmans acknowledged that the county application had been rejected based on current land-use policy. However, they advised that the county was considering rezoning this area in the near future.

In their submission, the Wedmans indicated that the pipelines as proposed by CNRL would pass through three parcels of their land. They indicated that these parcels contained 23 acres, 52 acres, and 61 acres. They stated that because the parcels bordered Queen Elizabeth Highway and/or Bigstone Creek and were in close proximity to Highway 13, these parcels had an excellent potential for future commercial or residential acreage development.

The Wedmans stated that CNRL's proposed pipeline would

- severely hinder or limit future development of these lands;
- devalue these lands because of building and development restrictions; and
- raise potential questions by potential purchasers of lands about any encumbrances, such as wells, power lines, or pipelines.

The Wedmans questioned whether

- any earlier potential and more desirable routes has been explored;
- a route west, then south, and then east along existing pipelines to the north of Bigstone creek had been explored; and
- a route north to Harvey Burghardt's lands had been explored, as it was their understanding that Mr. Bughardt had already signed to allow the pipeline on his land on the east side of Queen Elizabeth Highway; they therefore they questioned whether the route could cross the highway from his west quarter.

The Lorentzes and the Wedmans together proposed four alternative routes. The principles employed by the interveners, consistent with industry best practice, were as follows:

- The pipeline should run parallel to existing pipeline rights-of-way where possible.
- The pipeline should be as short as possible, to minimize surface disturbance and environmental impacts.
- The pipeline should be routed in a manner that avoided multiple crossings of Bigstone Creek.

In their submission, the interveners proposed four alternative pipeline routes A, B, C, and D, as illustrated in the attached map and described below.

Alternative Pipeline Route A

Alternative Route A would cross Queen Elizabeth Highway from the northeast (NE) quarter of Section 25-46-26W4M into Mr. Burghardt's land at the NW quarter of Section 25-46-26W4M and run to the west boundary of the NW quarter of Section 25-46-26W4M. From there it would run south through the SW quarter of Section 25-46-26W4M and the NW quarter of Section 24 (parallel to Range Road 261) and then turn west to the pipeline tie-in point at LSD 16-23-46-26W4M. The interveners noted that Mr. Burghardt had agreed to allow the proposed CNRL pipeline on his land on the east side of the Queen Elizabeth Highway (the SE quarter of Section 25-46-26W4M), and therefore it would seem reasonable to assume that he would also agree to have the CNRL pipeline route traverse the south boundary of his land at the NW quarter of Section 25-46-26W4M.

Alternative Pipeline Route B

Alternative route B would cross Queen Elizabeth Highway from the NE quarter of Section 25-46-26W4M into Mr. Burghardt's land at the NW quarter of Section 25-46-26W4M and from there go west until it reached an existing natural gas distribution right-of-way. It then would turn south, following the existing natural gas distribution right-of-way through the SW quarter of Section 25-46-26W4M and NW 24 to the pipeline tie-in point at LSD 16-23-46-26W4M. The interveners again noted that Mr. Burghardt had agreed to allow the proposed CNRL pipeline on his land on the east side of the Queen Elizabeth Highway (the SE quarter of Section 25-46-26W4M), and therefore it would seem reasonable to assume that he would also agree to have the CNRL pipeline route traverse the south boundary of his land at the NW quarter of Section 25-46-26W4M.

The interveners stated that the north half of the SW quarter of Section 25-46-26W4M was owned by Daniel Liddle and Harriet Liddle and the south half of the SW quarter of Section 25-46-26W4M was owned by Trade Link. They indicated that caveats had been filed by Plains Western Gas & Electric Co. Ltd. (now known as AltaGas Utilities) protecting the existing natural gas distribution easements through the SW quarter of Section 25-46-26W4M. Further, the Wedmans stated that they owned the SW quarter of Section 25-46-26W4M and were familiar with the surface of the land in that area and the existence of the Plains Western Gas & Electric Co. Ltd. easement.

Alternative Pipeline Route C

Alternative route C would cross Queen Elizabeth Highway from the SE quarter of Section 25-46-26W4M into the SW quarter of Section 25-46-26W4M and from there go west along the

boundary of the north half and south half of the SW quarter of Section 25-46-26W4M until it reached an existing low-pressure natural gas distribution right-of-way. The alternative route would then run parallel to the existing low-pressure natural gas distribution right-of-way through the south half of the SW quarter of Section 25-46-26W4M and through NW 24 to the pipeline tie-in point at LSD 16-23-46-26W4M.

The Wedmans suggested that CNRL's initial plan was to route its pipeline diagonally across the south half of the SW quarter of Section 25-46-26W4M and then to run it parallel to the existing natural gas distribution easement through NW 24 to the pipeline tie-in at LSD 16-23-46-26W4M. However, they suggested that CNRL abandoned this option for its preferred route after Trade Link, the owner of the south half of the SW quarter of Section 25-46-26W4M refused permission to survey. They stressed that the landowner's refusal to allow a survey was not sufficient reason for CNRL to abandon its preferred pipeline route.

Alternative Pipeline Route D

Alternative route D would cross Queen Elizabeth Highway from the SE quarter of Section 25-46-26W4M into the south half of the SW quarter of Section 25-46-26W4M and from there go diagonally along the north boundary of Bigstone Creek in the south half of the SW quarter of Section 25-46-26W4M until it reached the south boundary of south half of the SW quarter of Section 25-46-26W4M. From there it would run along the south boundary of the south half of the SW quarter of Section 25-46-26W4M (parallel to Township Road 464), then turn south along a portion of the west boundary of NW 24 (parallel to Range Road 261), and then turn west to the pipeline tie-in point at LSD 16-23-46-26W4M.

In summary, the interveners preferred the alternative pipeline routes A, B, C, or D for the following reasons:

- The Lorentzes did not want the proposed CNRL pipeline on NE 24 and the Wedmans did not want it on NW 24.
- The proposed CNRL pipeline on NE 24 would not run parallel to any existing pipeline easements.
- Although the proposed CNRL pipeline on NW 24 would not run parallel to an existing pipeline easement, the Wedmans were prepared, if necessary, to have the CNRL pipeline run parallel to the existing natural gas distribution easement in the northwest corner of NW 24.
- All four alternative pipeline routes would be more direct, shorter by about a quarter of a mile, have less impact on the environment (involving less surface disturbance), and not involve crossing Bigstone Creek at the SE quarter of Section 25 or at NW 24 or any of Township 46-26W4M.
- All four alternative routes would have shorter boring distances under the Queen Elizabeth Highway, be less expensive, minimize the length of pipeline running parallel with the Queen Elizabeth Highway, avoid crossing NE 24, thereby reducing chances of introducing soil-borne diseases on this quarter section, and avoid traversing two of the three parcels of land in NW 24.

7.3 Findings of the Examiners

The examiners stress that in selecting a pipeline route, an applicant must take into consideration all aspects of the route selection, including impacts on the number of potentially affected landowners, land use, the environment, pipeline costs, and length of the route selected. The examiners note that CNRL used these criteria in its proposed route selection. They also note that all alternative routes for the proposed pipeline were researched and submitted by the interveners, not the applicant. The examiners further note that the interveners took into consideration the same criteria to propose alternative routes, which they suggested were better suited to mitigate land-use impacts. In looking at the applied-for route proposed by CNRL, the examiners note advantages and disadvantages as cited by CNRL. In addition, the examiners have considered the routes proposed by the interveners, which also have potential advantages and disadvantages.

The examiners note that the evidence suggests that a northern option through the SW quarter of Section 25-26W4M was not surveyed because of CNRL's concern about unknown subdivision potential. However, CNRL's statements suggest that it was not surveyed because the landowners with potential development to the north refused to allow CNRL to survey those lands. The examiners note that the landowners along the routes to the south allowed CNRL to survey, which provided further information about potential development in that area. The examiners believe that evidence of further consultation with the landowners to the north would have been beneficial in helping the examiners understand the needs of all of the potentially affected landowners and to identify why the northern route options were not pursued.

The examiners recognize the advantage of pipeline routes using existing corridors with other pipelines. They accept CNRL's argument that utility distribution lines are easier to move than the lines proposed by CNRL in case subdivision is necessary; yet without more detailed surveying and/or consultation by CNRL with other landowners proposing to subdivide their land, it is difficult for the examiners to accept that these routes should simply be dismissed on the basis of unknown information. The examiners believe that had similar consultation efforts been conducted with landowners to the north, those landowners may have participated at the hearing, allowing the examiners to hear evidence and consider all of the issues and options regarding all potential routes.

After reviewing the evidence, the examiners conclude that there is insufficient information to determine whether CNRL's proposed route would be appropriate. Having insufficient information or participation and input from other landowners whose lands may be impacted by potentially viable options, the examiners are not prepared to recommend approval of CNRL's applied-for routing.

8 OTHER ISSUES

8.1 Views of the Applicant

In general, CNRL indicated that did not have a policy or specific guideline in place for preventing the spread of soil-borne diseases, such as Clubroot. CNRL noted that its planned prevention efforts were a reflection of the nature of the area that it would be working in,

including higher levels of precaution in areas with known infestations. CNRL determined that there had been no reported instances of Clubroot within the proposed project area.

To mitigate the potential for the spread of Clubroot associated with the construction of the proposed pipeline portion on the Lorentz property, CNRL stated that it would ensure that earth-engaging equipment was properly cleaned before entering the land. In addition, to avoid contamination from another field, CNRL would initiate construction of the proposed pipeline on the Lorentzes' property and then proceed north. CNRL argued that with no known Clubroot in the area, the proposed cleaning of equipment and construction sequencing would adequately and reasonably protect the Lorentzes' land from Clubroot. CNRL submitted that the risk to the Lorentzes' land as a result of the proposed pipeline construction activity would be no greater than the risk to other lands in the area.

CNRL stated that it was evaluating its broader lease construction, pipeline construction, and reclamation planning to address the issue of Clubroot for all of its projects. CNRL further noted that this spring it would be meeting with reclamation consultants to discuss current knowledge of Clubroot and measures to prevent the spread of the soil-borne disease.

8.2 Views of the Interveners

The Lorentzes identified that their major concern was the potential for the introduction of soil-borne diseases, such as Clubroot, to their property as a result of earth-moving equipment contaminated by foreign earth. According to Mr. Lorentz, canola production on the Lorentz farm had been the commodity with the highest sales, exceeding cattle, wheat, and barley. The introduction of Clubroot could stop canola production for up to seven years, resulting in an uncompensated loss of revenue for the Lorentzes.

The Lorentzes pointed out that they had farmed their five adjoining quarter sections of land for the past eight to ten years. With the exception of their equipment and a custom contract sprayer, their land had not been exposed to any other equipment or traffic. The Lorentzes stated that they took precautions when moving their farming equipment from field to field, including removing all dirt and debris from the equipment and leaving it on the field where it originated. The Lorentzes acknowledged the potential for the contract sprayer to introduce soil-borne diseases and indicated that they might have to purchase their own sprayer or take additional steps to prevent Clubroot when the sprayer arrived from a different field. The Lorentzes stated that this issue would be addressed with their contractor during the spring season.

The Lorentzes argued that they conducted their due diligence to prevent Clubroot and felt that the proposed pipeline construction would include the use of various earth-engaging equipment, creating an increased potential for soils containing diseases to be transported to their property. The Lorentzes felt that there would be feasible alternative routes for the proposed pipeline that would bypass their farm.

The Lorentzes expressed a lack of confidence in CNRL's equipment-washing procedures. They indicated that in the fall CNRL carried out a project to the west of Mr. Wedman's property, where CNRL washed its machinery on the county road or in the adjacent field. Mr. Lorentz argued that industry standards dictated that a company should wash its equipment into a

containment tray and that the dirt or debris should be removed or burned, not be washed onto the road or field.

Mr. Lorentz stated that should CNRL clean its equipment to his specifications, his concerns would be alleviated. However, he expressed concern about potential problems associated with effectively washing all of the cracks and crevices of the equipment, including the extensive time required to properly clean equipment. Further, Mr. Lorentz was not certain if the use of hot water and soap would remove the cause of Clubroot.

The Lorentzes argued that there had been cases of Clubroot found in Wetaskiwin County, specifically within an estimated 6 to 8 km radius of their property. The Lorentzes noted that soil testing for Clubroot was being conducted by Wetaskiwin County. However, the county did not have the resources to test every field and would be concentrating its testing on susceptible fields. The Lorentzes stated that they had asked Wetaskiwin County to test their property. The Lorentzes acknowledged that they did have the option of sending in a soil sample for testing and would not have to wait for the county to test their property. However, they stressed the fact that they continuously farmed the same property, using rotating crops, and therefore felt that the risk of Clubroot was low.

Mr. Wedman also expressed concern regarding Clubroot and noted that one portion of his land was currently rented to someone for canola crops. He indicated that he had not yet spoken to his renter regarding specific precautions for this property. Mr. Wedman assumed that CNRL would take the same precautions on his property as it proposed for the Lorentz property.

8.3 Findings of the Examiners

When considering any application for oil and gas facilities proposed on privately held lands, the Board must balance the rights of the surface holder with the rights of the mineral holder and account for the public interest associated with economic development of Alberta's energy resources. The Board expects the applicant to consider all available options in establishing that the location proposed is the most appropriate, having regard for the social, economic, and environmental circumstances. If a surface holder has legitimate concerns regarding potential impacts of the proposed development, the Board expects that the applicant will take reasonable steps to mitigate impacts.

With respect to Clubroot, the examiners note that in April 2007 it was declared a pest under Alberta's *Agricultural Pests Act*. The Minister of Alberta Agriculture and Rural Development is responsible for the act, while municipalities are responsible for enforcing it. A landowner and/or occupant is responsible for taking reasonable measures to prevent the establishment of any pest on the land. The examiners are of the view that prevention/mitigation is a shared responsibility between the landowners and CNRL or any other occupant of the land. The examiners acknowledge the efforts of the Lorentzes in attempting to prevent the establishment of the soil-borne disease on their property.

Specific to CNRL's proposed development, the examiners note CNRL's commitment to ensure that earth-engaging equipment is properly cleaned before entering the Lorentz property and would expect CNRL to take the same precautions on the Wedman property. The examiners also understand that in order to help alleviate the Lorentzes' concerns, CNRL would initiate

construction of the proposed pipeline on the Lorentz property and proceed north with pipeline construction from there. The examiners note that it would be prudent for CNRL and the Lorentzes and Wedmans to maintain communication with agricultural field men and local municipalities regarding the issue of Clubroot in the area to allow each to take appropriate precautions and mitigation measures when assessing these properties through the entire life of a proposed pipeline.

The examiners accept that if these measures are successfully implemented, the risks associated with the establishment of Clubroot as a result of CNRL's proposed activity could be effectively mitigated.

9 CONCLUSION

Having carefully considered all of the evidence, the examiners hereby recommend that Application No. 1515252 be denied.

Dated in Calgary, Alberta, on May 13, 2008.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

F. Rahnama, Ph.D.
Presiding Member

<original signed by>

T. J. Pesta, P.Eng.
Examiner

<original signed by>

M. S. Craig
Examiner

APPENDIX 1 HEARING PARTICIPANTS

Principals and Representatives
(Abbreviations used in report)**Witnesses**

Canadian Natural Resources Limited (CNRL)

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