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DECISION WITH REASONS

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E.B.L.O. 226  
E.B.L.O. 226-A

IN THE MATTER OF the Ontario Energy Board Act, R.S.O. 1980, chapter 332, and in particular Sections 46 and 48 thereof;

AND IN THE MATTER OF an Application by Union Gas Limited for leave to construct a natural gas pipeline and ancillary facilities in the Townships of Moore and Sombra, both in the County of Lambton.

BEFORE

R.W. Macaulay, Q.C.  
Presiding Member

O.J. Cook  
Member

C.A. Wolf Jr.  
Member

September 1, 1988

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1. INTRODUCTION

1.1 THE APPLICATION

1.1.1

In an application dated April 21, 1988 (the Application), Union Gas Limited (Union, the Company or the Applicant) applied to the Ontario Energy Board (the OEB, or the Board) pursuant to Sections 46 and 48 of the Ontario Energy Board Act, R.S.O. 1980, chapter 332, (the Act) for an order or orders granting leave to construct a natural gas pipeline and ancillary facilities in the Township of Moore and the Township of Sombra, both in the County of Lambton.

**1.2 DESCRIPTION OF THE PROPOSED FACILITIES**

1.2.1

Union requested leave to construct the facilities shown in Appendices 4.1 and 4.1.1 which are described as follows:

- (a) 5.68 kilometres of NPS 24 (610mm) pipeline from a proposed valve in the west quarter of Lot 13, Front Concession, Moore Township (the St. Clair Valve Site), to a point of interconnection with Union's existing Sarnia Industrial Line at a proposed station to be located in the southwest corner of Lot 25, Concession I, Moore Township (the Sarnia Industrial Line Station), together with valving facilities at each location; and
- (b) 6.05 kilometres of NPS 24 pipeline from the above defined interconnection with the Sarnia Industrial Line to Union's existing Bickford Pool Compressor Station in the Township of Sombra.

1.2.2

The facilities described in (a) and (b) are together known as the St. Clair - Bickford Line and total 11.73 kilometres in length.

1.2.3

Union's proposed line from the St. Clair Valve Site to the Bickford Pool Compressor Station would connect with a 700 metre NPS 24 pipeline to be constructed by St. Clair Pipelines Limited (St. Clair Pipelines) which would extend from the St. Clair Valve Site to the international boundary between the United States of America and Canada, at the centre of the St. Clair River. At that point it would connect with an NPS 24 pipeline to be constructed by Michigan Consolidated Gas Company of Detroit, Michigan, United States of America (MichCon), which in turn would extend from the international boarder to MichCon's Belle River Mills Compressor Station (Belle River Mills) inshore from the St. Clair Riverbank in Michigan.

1.2.4

In addition to the construction of the 11.73 kilometre St. Clair - Bickford Line, the Application also contemplated the construction of the Sarnia Industrial Line Station to provide check measurement and control for volumes flowing in either direction. A sectionalizing block valve would be located at the St. Clair Valve Site some 300 metres inshore of the St. Clair River, thereby separating the river

crossing pipe from the St. Clair - Bickford Line and its interconnections with Union's existing and future distribution systems. The initial capacity of the St. Clair - Bickford Line would be 200 MMcf/d. This initial capacity was calculated utilizing MichCon's maximum compression available at Belle River Mills, which was proposed to initially be 750 psig at the international boundary, and would provide more than the design minimum inlet pressure at Union's Dawn Compressor Station (Dawn).

1.2.5

The volumes to be transported through the St. Clair - Bickford Line are capable of being delivered to the Bickford Storage Pool or directly to Dawn, through the Bickford Storage Pool Line (the Bickford Line), for further transportation or storage. It was noted in Union's evidence that the use of the Bickford Line would be restricted to varying degrees during 280 days of the year, thus limiting the flow of volumes through both the St. Clair - Bickford Line and the Bickford Line to approximately 73 percent of their annual capacity.

1.2.6

Union's Sarnia Industrial Line serves a domestic market normally in excess of 100 MMcf/d. When the Bickford Storage facilities are unable to take the volumes delivered through the St. Clair - Bickford Line to storage, or directly to Dawn, Union claimed it would be able to direct

the delivery of these volumes to the Sarnia Industrial Line.

1.2.7

Union's witnesses testified that the Company will need additional pipeline capacity from its Bickford and Terminus storage pools to Dawn when expected storage and transportation needs materialize. This additional pipeline capacity could make the total annual capacity of the St. Clair - Bickford Line available for transportation directly to Dawn and increase the deliverability and operating flexibility of the Bickford and Terminus storage pools.

1.2.8

Increases in the capacity of the St. Clair - Bickford Line could be accomplished by adding compression either in Ontario or in Michigan as deemed appropriate at the time.

1.2.9

The design specifications meet Class 2 location design criteria in what is now a Class 1 location. Union justified the use of Class 2 design criteria on the basis of future use and expansion in the Sarnia area through which the pipeline would run.

1.2.10

The total cost of construction for the St. Clair - Bickford Line and associated facilities was estimated by Union to be \$9,352,000.

1.2.11

Union stated that its construction procedures will be in accordance with the Board's "Environmental Guidelines for the Construction and Operation of Hydrocarbon Pipelines in Ontario", and will also accommodate the environmental impact mitigation measures recommended by the environmental consultants retained by Union.



**1.3 PURPOSE OF THE PROPOSED FACILITIES**

1.3.1

The St. Clair - Bickford Line would, according to Union, provide it and other Ontario local distribution companies (LDCs), with access to underground storage in Michigan. This additional gas storage in Michigan would allow Union to meet the anticipated storage requirements of the Company and its customers.

1.3.2

Union also intends to use the proposed facilities as a means by which it can access competitively priced United States gas supplies, initially through contractual arrangements with ANR Pipeline Company (ANR) in the United States.

1.3.3

Other eastern Canadian LDCs expressed an interest in contracting for transportation services on the St. Clair - Bickford Line in order to also acquire competitively priced supplies of firm and spot gas in the United States.

1.3.4

Union claimed that the proposed pipeline would enhance Ontario's security of gas supply due to increased access to Michigan storage, United States gas supplies and the array of United States transportation alternatives. Union and other Ontario LDCs would therefore be less vulnerable due to interruptions in the supplies of Alberta gas delivered to them by way of the NOVA, AN ALBERTA CORPORATION (NOVA), Great Lakes Transmission Company (Great Lakes) and Trans-Canada PipeLines Limited (TCPL) systems.

## 2. BACKGROUND

### 2.1 DESCRIPTION OF NATURAL GAS SYSTEMS

#### Introduction

##### 2.1.1

The natural gas industry consists of four major components: producers, consumers, pipeline systems and storage facilities. Canada's natural gas industry is, in many ways, unique when compared to other industries or to the natural gas industry in the United States. Issues such as Union's current application require the understanding and consideration of the natural gas pipeline systems, contractual arrangements and jurisdictions involved in the flow of gas from the wellhead in Alberta to the burner tip in Ontario.

##### 2.1.2

The majority of the natural gas consumed in Ontario is produced from reserves in Alberta. Smaller volumes of Ontario's gas supply

originate in other locations such as Saskatchewan. The descriptions of natural gas systems and arrangements that are provided herein focus on Alberta supplies as being generally representative of domestic sourced gas supplies from outside Ontario, and are not intended to imply that Alberta is Ontario's exclusive source of gas supply.

### Significance of Natural Gas to Ontario's Economy

#### 2.1.3

Natural gas is the dominant non-transportation fuel in Ontario, satisfying about 44 percent of the province's "off the road" energy needs. Nearly 60 percent of Ontario's households are currently heated with natural gas. Approximately 54 percent of the province's commercial and institutional sectors' energy demands are met by natural gas. Ontario's industries account for about 43 percent of the province's total energy consumption. Natural gas provides approximately 30 percent of Ontario's industrial fuel and energy related feedstock requirements, compared with oil and coal which provide roughly 25 percent and 21 percent, respectively.

#### 2.1.4

Healthy economic growth and employment depend on the competitiveness of the province's resource, manufacturing and high-technology industries in domestic and international

markets. Energy intensive industries, where energy costs range from 17 percent to 80 percent of the cost of manufacturing, provide 20 percent of the province's manufacturing jobs and output. When taken in total, Ontario's resource-based and manufacturing industries account for almost 40 percent of the economic output and provide three out of every ten jobs in the province. The availability and price of gas, and the health of the Ontario LDCs, is of tremendous significance to the well-being of the province.

2.1.5

The availability of gas supplies is a significant factor in determining industrial plant sites. Ontario's established natural gas distribution system and Board approved rate schedules currently allow industries to consider remote locations and thereby bolster the province's regional development aspirations.

2.1.6

Some of the province's industries, such as the fertilizer industry, are inextricably tied to natural gas as a raw material. Such "feedstock" uses account for about 8 percent of the total industrial demand for gas in Ontario. As much as 40 percent of the industrial use of gas as a fuel is in "dual-fired" facilities where users can switch between an alternate fuel and gas on short notice. To maintain its share of the Ontario industrial fuel market, natural gas

supply and pricing must remain competitive with alternative energy forms and in line with gas and fuel costs in other competing manufacturing centres, particularly in the United States.

2.1.7

In 1986 Ontario's demand for natural gas represented 33 percent of the total Canadian use and 24 percent of the combined domestic and export markets for Canada's natural gas production. Ontario's natural gas use is therefore also important to the western producing provinces.

## 2.2 THE TRANSMISSION AND DISTRIBUTION OF NATURAL GAS

### Introduction

#### 2.2.1

This Chapter provides a brief summary of the transmission and distribution of natural gas in Canada. It provides the necessary background to understand the custody, control and ownership of natural gas as it moves to and within provincial markets.

#### 2.2.2

Natural gas was first discovered in Canada near Niagara Falls, Ontario in 1794. The first natural gas well was completed in Moncton, New Brunswick, in 1859, followed by discoveries in Port Colborne, Ontario in 1866, in Kamsack, Saskatchewan in 1874 and the drilling of Ontario's first commercial well near Kingsville in 1889.

2.2.3

Alberta, although destined to add dramatically to the known store of energy in Canada, did not drill its first gas well until 1890. However, the drilling of the Leduc discovery well in 1947 touched off an intensive, widespread and long-term exploration program which has revealed very large reserves of natural gas and oil throughout western and northern Canada. These discoveries in the late 1940s and early 1950s came at about the same time as advances in the technologies of manufacturing large diameter pipe and installing it over long distances. This conjunction of circumstances made the development of projects to move gas to major population centres attractive.

Transmission

2.2.4

To address the problem of moving Alberta gas to the distant markets of eastern Canada, TCPL was incorporated in 1951 by Special Act of Parliament. In 1954, TCPL received permission to remove natural gas from Alberta. It was also granted a permit from the federal Board of Transport Commissioners to construct a pipeline from Alberta to Quebec. In June, 1956, further legislation was passed by the federal government establishing a Crown corporation to construct the northern Ontario section of the pipeline.



2.2.5

Construction of the initial pipeline system from the Alberta/Saskatchewan border to Quebec was completed in 1958, and the benefits of natural gas were made available to millions of Canadians not previously served. A petrochemical industry, which is critically dependent on natural gas as a feedstock, has developed as a result. At the same time, opportunities arose for new export revenues from the sale of natural gas to the United States of America.

2.2.6

In 1963, TCPL purchased the northern Ontario section of the pipeline from the Northern Ontario Pipe Line Crown Corporation and thus took possession of the entire gas transportation system from Alberta to Quebec.

2.2.7

Most of the natural gas used in Ontario comes from approximately 650 producers in Alberta. The gas is collected and combined from the various producing areas into transmission lines, owned principally by NOVA, for delivery to long-distance carriers.

2.2.8

Gas for Ontario and other eastern markets leaves Alberta and the NOVA system at Empress, Alberta, where it enters the pipeline facilities of TCPL at Burstall, Saskatchewan.

2.2.9

As gas flows eastward from Alberta, the gas pressure decreases due to friction with the pipe wall. In order to achieve the required flow rates, the gas must be recompressed at compressor stations located along the transmission line at intervals of 80 to 160 kilometres.

2.2.10

Between Burstall and Winnipeg there are as many as five parallel pipelines. Volumes from Alberta are supplemented in Saskatchewan by gas from Saskatchewan Power Corporation, Consolidated Natural Gas Limited and Steelman Gas Limited.

2.2.11

From Winnipeg, two parallel lines move gas into Ontario and Quebec, with portions of a third line also in service in northern Ontario. The northern line branches at North Bay. One branch, the North Bay Shortcut, runs generally east and then south through eastern Ontario, while the other runs south to Toronto. There it branches again, with two lines travelling east along the north shore of Lake Ontario to Montreal while a third skirts west of Toronto and runs south to the Niagara peninsula, connecting at the international border with pipelines serving the northeastern United States.

2.2.12

Gas also travels eastward from Winnipeg to markets in southwest Ontario and the midwestern United States through the facilities of Great Lakes, which is 50 percent owned by TCPL. The Great Lakes system runs south of Lake Superior and Lake Huron across Minnesota and northern Wisconsin, then south through the State of Michigan with links to Canadian systems at Sault Ste. Marie and Sarnia. Near Sarnia, in Dawn Township, the gas is received by Union and transmitted across southwestern Ontario on its Dawn-Trafalgar transmission pipeline to the Trafalgar Station, near Oakville, where it either rejoins the TCPL pipeline running south to Niagara and east toward Montreal, or connects with the distribution system of The Consumers' Gas Company Ltd. (Consumers').

2.2.13

Expansion of the initial pipeline system by TCPL has continued in the form of new pipelines, looplines, additional compressor stations and additional power at existing stations, all to meet the increasing demand for natural gas. The total book value of TCPL's assets is now more than \$6 billion.

2.2.14

The present TCPL system which extends along a 4,400 kilometre right-of-way, consists of 9,345 kilometres of pipeline and loopline and approximately 795,100 kilowatts of compressor power at 48 compressor stations.

2.2.15

The map in Appendix 4.2 shows the TCPL and Great Lakes systems.

Distribution

2.2.16

There are three major gas distributors in Ontario which together serve approximately 1,700,000 customers: Consumers', ICG Utilities (Ontario) Ltd (ICG) and Union. Under rights granted by the OEB, Union operates in southwestern Ontario, Consumers' in southern, central, and eastern Ontario, and ICG in northwestern, northern and eastern Ontario.

2.2.17

The three major gas distributors in Ontario, under the jurisdiction of the OEB, have different systems. The unique aspects of each distributor require different approaches to managing variations in demand, particularly during winter peaks.

Union

2.2.18

Union was incorporated in 1911, and has been involved in producing and distributing natural gas since that time. In 1942, Union became engaged in the storage of gas.

2.2.19

In 1953 Union incorporated Ontario Natural Gas Storage and Pipelines Limited as a wholly-owned

subsidiary, which in 1957 took over Union's storage and transmission facilities as well as Union's wholesale operations. The two companies and their respective operations were fully amalgamated in 1961.

2.2.20

In 1958, Union purchased the majority of the assets of Dominion Natural Gas Company Ltd., and simultaneously sold all its assets situated in Lincoln and Welland Counties to the Provincial Gas Company Ltd. At approximately the same time, Union also purchased several other small local distributors and manufacturers of gas.

2.2.21

In 1985, Union reorganized its corporate and financial structure in order to segregate its utility assets from its non-utility assets. Union Enterprises Ltd., which previously was a wholly-owned subsidiary of Union Gas, began operating as the parent company with two wholly-owned subsidiaries, Union Gas Limited (utility operations) and Union Shield Resources (which was in turn a holding company for Precambrian Shield Resources Limited and Numac Oil & Gas Ltd.).

2.2.22

Unicorp Canada Corporation was created by the amalgamation of Unicorp Financial Corporation and Sentinel Holdings Limited in late 1979. Unicorp Canada Corporation is the parent company

of Union Enterprises Ltd. and Unicorp American Corporation. Unicorp American Corporation is involved, through its subsidiaries and its investments, in the energy, real estate and financial services industries. Unicorp Canada Corporation has several holdings in Canada and in the United States as outlined in the organization chart in Appendix 4.16. The Canadian holdings are in the energy field as well as in utility operations. Unicorp Canada Corporation also holds investments in a number of unrelated industries.

2.2.23

In November of 1986, Union Enterprises Ltd.'s 67 percent interest in Precambrian Shield Resources Limited (PSR) was amalgamated with Bluesky Oil & Gas Ltd. and exchanged for a 38 percent interest in Mark Resources Inc. through a reverse takeover transaction. Mark Resources Inc. became in turn, a co-owner, with Union Enterprises Ltd., of PSR Gas Ventures Inc. which had previously been a subsidiary of Precambrian Shield Resources Limited. PSR Gas Ventures Inc. operated as a marketer of natural gas in both Canada and the United States.

2.2.24

In 1988, PSR Gas Ventures Inc. split away from Mark Resources Inc. and amalgamated with Enron Canada Ltd. to form Unigas Corporation, which is now the Canadian natural gas marketing arm of Unicorp Canada Corporation.

2.2.25

In 1987, Union Enterprises Ltd. established a natural gas marketing subsidiary in the State of Ohio called Unicorp Energy Inc., which operates exclusively in the United States.

2.2.26

An organization chart showing Unicorp Canada Corporation and its subsidiary companies is attached as Appendix 4.16.

2.2.27

Originally, Union's supply of natural gas came from Ontario sources, but as of 1947, supplementary supplies were obtained from Panhandle Eastern Pipe Line Company in the United States. Once TCPL's pipeline facilities were completed in 1958, Union entered into a long-term contract with TCPL for supplies of western Canadian natural gas. Union's distribution system expanded rapidly from then onward.

2.2.28

Union operates a fully integrated gas distribution system employing production, underground storage, transmission and distribution facilities. In its 1988 fiscal year, Union sold over 7,000  $10^6\text{m}^3$  of gas to approximately 544,000 customers. Union annually stores 2,000  $10^6\text{m}^3$  of gas for its own use and stores some 650  $10^6\text{m}^3$  of gas for other utilities. In providing storage and transportation services, Union receives gas at both TCPL's Dawn and Trafalgar delivery points.

2.2.29

Union's total assets exceeded \$1.3 billion on March 31, 1988 and its net utility plant investment was approximately \$957 million. Union's gathering, storage, transmission and distribution pipelines totalled 19,364 kilometres at March 31, 1988.

2.2.30

The storage made available by Union plays a significant role in enabling TCPL to optimize the use of its delivery system. If Union had not been able to store gas for itself and others, the TCPL delivery system would not be as efficient as it is. Union receives and stores gas in the off-peak period and is then able to use that gas to supplement deliveries from TCPL in the peak period to its customers which include other utilities such as Consumers', ICG, the City of Kingston and Gaz Metropolitan inc. (GMI). Union is the largest operator of underground storage pools in Ontario.

2.2.31

The map in Appendix 4.3 shows Union's system.

Consumers'

2.2.32

Consumers' was incorporated in 1848 by a Special Act of the Province of Canada. Consumers' was formed for the purpose of manufacturing and selling gas in the City of Toronto. Although



rates for the sale of natural gas became subject to control in Ontario, no such control applied in the case of manufactured gas.

2.2.33

In 1954, in anticipation of expanded operations and a change from a manufacturer and distributor of gas to a distributor of natural gas only, Consumers' was re-incorporated under the Corporations Act (1953). With this change, Consumers' became subject to the provisions of the Ontario Fuel Board, which then approved all rates to be charged to natural gas customers.

2.2.34

Consumers' arranged for the supply of natural gas from the United States in 1954, and also expanded its operations beyond the limits of the City of Toronto. This was accomplished through the acquisition of new franchises in municipalities not previously served, and through the acquisition of certain manufactured gas systems in other areas which were then converted to natural gas.

2.2.35

In 1958, once the TCPL system was completed, Consumers' discontinued its purchases of natural gas from the United States, and contracted with TCPL for long-term supplies from western Canada.

2.2.36

Consumers' is Canada's largest natural gas distribution utility, serving customers in

Ontario, western Quebec and northern New York State. The company currently has total assets of about \$1.9 billion and distributes gas to approximately 950,000 customers through its network of over 19,000 kilometres of mains.

2.2.37

In addition to its regulated gas distribution activities, Consumers' is engaged in:

- o the exploration for and the production of oil and gas, primarily in southwestern Ontario;
- o the operation of underground gas storage facilities in Ontario, through a subsidiary; and
- o contract well drilling for gas and oil in Ontario and the northeastern United States.

2.2.38

Underground storage located in southwestern Ontario is a key component of Consumers' integrated natural gas transmission and distribution system. Tecumseh Gas Storage Limited (Tecumseh), located in the Sarnia area, provides storage facilities for the Consumers' system. Jointly owned by Consumers' and Imperial Oil Limited, Tecumseh operates storage reservoirs with a working capacity of  $1,670 \times 10^6 \text{ m}^3$ . Additional storage capacity of up to  $365 \times 10^6 \text{ m}^3$  is secured under long-term agreements with Union. Consumers' also operates a small underground storage reservoir in the Niagara

peninsula, Crowland, which is used to meet local peak day requirements.

2.2.39

The map in Appendix 4.4 shows Consumers' system.

ICG

2.2.40

ICG began as Northern Ontario Natural Gas Company Ltd. (Northern), and Twin City Gas Company Ltd. (Twin). These were originally separate corporations, but Northern ultimately acquired over 97 percent of Twin's voting shares. Thereafter the two entities essentially operated as one.

2.2.41

Initial construction of what were to become ICG's distribution systems began in 1957, coincident with the construction of the TCPL system. Although the first gas delivery on these systems was in December of 1957, construction continued until 1959, which marked the real beginning of commercial operations of substance.

2.2.42

In 1968, the company was reorganized through the statutory amalgamation of three interrelated Ontario gas distributors: Northern, Twin and Lakeland Natural Gas Ltd. The resulting entity was renamed Northern and Central Gas Corporation Ltd. (Northern and Central). The majority of Northern and Central's business was the distribution of natural gas, but it also acted as a

holding company for a number of other corporate activities. Northern and Central's gas distribution operations were later separated from its other businesses, leaving Northern and Central as an essentially "pure" utility.

2.2.43

In October of 1984, Inter-City Gas Corporation, a holding company, and two of its subsidiaries, ICG Resources Ltd. and Vigas Propane Ltd., purchased all the common shares of Northern and Central. Northern and Central's name was officially changed to ICG Utilities (Ontario) Ltd in 1986. ICG Utilities (Canada) Ltd. currently owns 100 percent of ICG Utilities (Ontario) Ltd.

2.2.44

ICG operates a natural gas distribution system serving 120 communities by way of approximately 5,500 kilometres of pipeline originating at 84 interconnections on the TCPL transmission system. The ICG system essentially consists of a series of laterals off the TCPL pipeline as it crosses Ontario. The individual laterals are not interconnected. As noted, ICG serves customers from northwestern to eastern Ontario. ICG estimated that its net utility plant will have an average book cost of approximately \$357 million in 1988. ICG projected that in 1988 it would sell approximately 3,100  $10^6 m^3$  of gas and serve approximately 165,000 customers.

2.2.45

The storage available to ICG is very limited. It contracts with Union for approximately 99.1  $10^6\text{m}^3$  of gas storage and has its own liquid natural gas storage facility with a capacity of about 14.2  $10^6\text{m}^3$ , when converted to gas. This facility and Union's storage are used for winter peaking purposes.

2.2.46

The map in Appendix 4.5 shows ICG's system.

Systems Management

2.2.47

Consumers', ICG and Union, together with TCPL and Great Lakes, provide the complex network of pipelines and storage which serve Ontario with natural gas. In the summer, this network has excess pipeline capacity in many of its segments, and consequently there are alternative ways in which gas can be routed through the province, sometimes reversing the normal direction of flow. This flexibility permits each utility to undertake maintenance and construction projects during the off-peak period of the year while continuing to supply gas. In addition, gas injection into the underground storage pools in southwestern Ontario during the summer is facilitated by the ability to transport gas in two directions in the Union line between Dawn and Trafalgar, and in certain segments of TCPL's system.

2.2.48

Gas is injected into storage during the summer off-peak period. As winter approaches and demand increases, injection of gas into the storage pools slows and then stops. Once the demand exceeds the limits of the supply agreements between TCPL and the Ontario LDCs, gas flows into the distribution system from the underground storage pools. On peak demand days, the combined ability of TCPL and the storage pools to meet the demand approaches its limit.

2.2.49

At times of peak demand, any failure of a pipeline, compressor or valve may threaten significant portions of an LDC's customer base. This is true if the failure occurs anywhere between gas wells in Alberta and the point of use in Ontario. Serious failures to date have been rare and when they have occurred, all suppliers who had gas available cooperated to deliver it to those affected.

## 2.3 DEREGULATION

### Background

#### 2.3.1

The following chronology of the major events of deregulation is provided as background information:

#### 2.3.2

On October 31, 1985 the Governments of Canada, Alberta, British Columbia and Saskatchewan signed the Agreement on Natural Gas Markets and Prices (the Agreement). The stated intent of this Agreement was:

...to create the conditions for such a regime (a more flexible and market oriented pricing regime), including an orderly transition which is fair to consumers and producers and which will enhance the possibilities for price and other terms to be freely negotiated between buyers and sellers.

#### 2.3.3

The Agreement provided, among other things, that:

- o access to natural gas supplies would be immediately enhanced for Canadian buyers;
- o during the 12 month transition period commencing November 1, 1985, gas consumers would be able to enter into supply arrangements with producers at negotiated prices (direct sales);
- o effective November 1, 1986, the administered price of gas at the Alberta border would be removed; and
- o the parties to the agreement would foster a competitive market for natural gas in Canada.

2.3.4

The then Federal Minister of Energy, the Honourable Ms Carney, at the time of the signing of the Agreement and on many occasions since, interpreted the Agreement as permitting all buyers of gas to have access to the many sellers of gas, and that governments would not interfere with the working of a competitive market. She issued a communique relating to the Agreement, which said in part:

...by November 1, 1986 all natural gas buyers and sellers in Canada will be released from unnecessary government intervention in the marketplace.



2.3.5

Although Ontario was not a signatory to the Agreement, this Board accepted the above interpretations, and moved to accommodate the principle of a competitive market.

2.3.6

The transition period (November 1, 1985 to October 31, 1986) saw producers and brokers offering direct purchase options. Under direct purchase, customers without a gas sales contract with an LDC could negotiate directly with a broker or producer and purchase gas outside Ontario. The LDC could either transport the gas without taking title (contract carriage) or purchase the gas from the customer outside Ontario and continue to sell to the customer under Board approved rates (buy/sell).

2.3.7

The LDCs, TCPL and its system gas producers met this competition to system gas sales through two discount fund arrangements. The LDCs introduced Market Responsive Programs (MRPs) and Competitive Marketing Programs (CMPs). The customer and LDC negotiated discounts under an MRP, or the customer, LDC and TCPL jointly negotiated CMP discounts. Either program provided the discount needed to retain that customer as a purchaser of system gas.

2.3.8

The LDCs were not, however, released from any contracts for the purchase of gas; only the

pricing of supplies under contract was subject to negotiation.

2.3.9

Following a hearing early in 1986, the National Energy Board (NEB) issued Decision RH-5-85 finding that:

- (a) transportation service to direct purchasers of natural gas would reduce the operating demand volume (ODV) of the LDC and displace gas supplies previously acquired from TCPL, thus removing double demand charges;
- (b) a distinction would be made between incremental and displacement sales in defining displacement volumes for tariff purposes; and
- (c) a recommendation be made, such that non-system gas sales bear some portion of TOPGAS carrying charges.

2.3.10

The NEB RH-3-86 Decision also removed constraints on TCPL's gas marketing agent, Western Gas Marketing Limited (WGML), which had previously been prevented from making direct sales. WGML/TCPL is now, therefore, able to compete to retain system gas' market share in Ontario by using direct sales as well as by using the MRP and CMP discount arrangements with the LDCs and the end-user. In 1987 the Board ordered that

MRPs and CMPs are to be discontinued on October 31, 1988.

Traditional Sales Service - Physical Flow

2.3.11

Traditional sales service involves TCPL purchasing, transporting and supplying gas to the Ontario LDCs for their sale in Ontario. With a few exceptions this was the case until November 1, 1985. This type of service arrangement still serves most of the Ontario natural gas market.

2.3.12

An end-user or the shipper will generally have title to the gas as it moves from the wellhead through the field gathering systems. At the interconnect of the NOVA system and the field gathering systems, TCPL or its agent takes title to the gas it purchases. Custody and control of the gas transfers from the field producer to NOVA. The NOVA system is essentially an extension of the field gathering system which interconnects with the TCPL system. NOVA's rates are subject to its own Act, NOVA, AN ALBERTA CORPORATION Act, which provides for regulation (by exception) by the Alberta Public Utilities Board.

2.3.13

Gas flows through NOVA's system to the Empress station at the Alberta/Saskatchewan border, where TCPL's system interconnects with the NOVA

system. Custody and control of the gas then shift to TCPL which continues to hold title to the gas it has purchased. The gas then flows eastward through TCPL's facilities reaching Ontario either through TCPL's Northern Line or through the Great Lakes system. The TCPL system is regulated by the NEB and the portion of the Great Lakes system within the United States of America is regulated by the United States Federal Energy Regulatory Commission (FERC). The gas that flows through TCPL's Northern Line can be delivered to Ontario through a number of interconnections with the Ontario LDCs. The gas flowing through the Great Lakes system is delivered to Ontario at Dawn.

2.3.14

Custody, control and title to the gas typically shift to the LDC at the delivery point where the TCPL inter-provincial system connects with the LDC's system. The LDC may then transfer custody and control as the gas enters storage facilities such as Tecumseh or Union's storage, or the Union transmission system.

2.3.15

TCPL retains title to gas that it has contracted with Union to carry through Union's Dawn-Trafalgar transmission system for delivery to the LDC at delivery points in Ontario and Quebec. However, Union owns all of the line-pack gas in that system.

2.3.16

The LDC retains title to gas in storage but custody and control may shift to the storage company and/or transmitter. For example, under Consumers' storage contracts with Union, Consumers' takes title to the gas at Dawn and owns its gas in storage, but Union has custody and control of the gas during storage and transmission to a delivery point on Consumers' system. The OEB regulates the rates for all gas storage and transmission on the LDCs' systems within Ontario.

2.3.17

Gas sold to an LDC passes through its distribution system to the sales customers. Title, custody and control of the gas remain with the LDC until the gas is delivered to the customer's plant gate or meter. Title, custody and control then shift to the customer. The LDC's facilities and distribution rates are subject to the jurisdiction of the OEB.

Traditional Sales Service - Contractual Obligations

2.3.18

Gas flows from west to east under a number of contractual arrangements. TCPL pays for the supplies of gas from its contracted producers on a net-back pricing basis. The producer's price is equal to the market price less all transportation costs etc. not borne directly by the producer, and a margin to WGML.

2.3.19

The Ontario LDCs have gas supply contracts with TCPL. The price paid by the LDCs reflects the price paid by TCPL to its producers, the cost of transportation on TCPL's system and any other charges borne by TCPL under the net-back scheme.

2.3.20

Traditional sales service end-users purchase gas from the LDC under established terms and rate schedules approved by the OEB.

2.3.21

The flow of gas is initiated by the LDC when it nominates the daily amount of gas it wishes to take under its demand contracts with TCPL. Typically a nomination stands until notice is given to change it.

Differences Between Traditional Sales Service and Direct Purchase with Contract Carriage Service

2.3.22

Since November 1, 1985, the Ontario end-user has been able to directly purchase natural gas from western producers. The resulting arrangements have changed the way in which some gas reaches Ontario end-users.

2.3.23

Under a traditional sales service arrangement, TCPL holds all regulatory approvals related to the movement of its gas in Alberta, and on its own system under the jurisdiction of the NEB.

The LDC holds all franchise and other OEB regulatory approvals required within Ontario.

2.3.24

An end-user, or its agent(s) who purchases directly, must obtain removal permits and exemption orders in Alberta. Pricing orders and a transportation order to require contract carriage on TCPL's system must be obtained from the NEB. Contract carriage arrangements with the Ontario LDC are subject to OEB approval.

2.3.25

The physical flow of gas is essentially the same for traditional sales service and contract carriage from the wellhead to the burner tip. NOVA maintains custody and control in Alberta. The important difference is in the ownership of the gas. In the case of a direct purchase, title to the gas while in the NOVA system no longer rests with TCPL, but is either with the end-user, its agent or the producer.

2.3.26

East of the NOVA/TCPL interconnect at Empress, the actual physical transportation of gas on the TCPL system, on behalf of a direct purchase customer, is notional only. In the case of direct purchase, the actual gas transported is not owned by the direct purchaser or its agent during the period of transportation in TCPL's system. TCPL owns all the line-pack gas in its system, regardless of direct purchase.

2.3.27

Even though natural gas moves at approximately 30 km/hr, which would equate to approximately 4.5 days for gas to move from Alberta to Ontario, through displacement, gas is deemed to be delivered in Ontario instantaneously with its input into the system in Alberta. That is, gas is injected into the TCPL system in Alberta and exchanged with an equal amount of gas that is withdrawn from TCPL's line-pack in Ontario.

2.3.28

The charges paid by the end-user to TCPL for transportation are in accordance with NEB approved rates, but are based on the notional transportation of the gas. As a result, the contractual relationship between TCPL and the direct purchaser does not match the physical operation of the system. The rate charged by TCPL is for transportation of the direct purchaser's gas, but physically, only TCPL's gas is transported. However, the customer pays a price to TCPL that is based on the presumption that the gas it owns has actually travelled from Alberta as opposed to having been instantaneously exchanged.

2.3.29

Under a contract carriage agreement, ownership of the gas delivered to the end-user's plant varies according to load balancing arrangements. Load balancing occurs when the LDC provides make-up supplies, or takes excess deliveries to



accommodate fluctuations in the rate at which the end-user consumes gas. If the end-user takes all the gas it has delivered to the LDC, the title to that gas will remain with the end-user while carried by the LDC. Custody will be with the LDC as it transports gas to the plant gate, at which time custody will be transferred to the end-user. Again, the transportation is notional. The LDC owns its system's line-pack, and provides instantaneous deliveries to end-users. If the end-user requires gas in excess of the amount transported for the end-user by TCPL and the LDC, then this supply will be supplemented by gas to which the LDC has title, custody and control to the end-user's plant gate.

2.3.30

If the end-user delivers more gas to the LDC than the user requires, the gas not required by the end-user may be purchased by the LDC. Title, custody and control changes and the gas is commingled as part of the LDC's integrated gas supply. Only the amount the end-user requires is in the custody of and transported by the LDC's system to the end-user's plant gate, with the end-user retaining title.

2.3.31

Unlike Union and Consumers', ICG presently does not provide load balancing for contract carriage customers. Therefore, title is not an issue. The end-user simply retains title and uses what-

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ever gas is delivered to the TCPL/LDC metering station on its behalf. The end-user's nominations at Empress must be very closely matched by its consumption.

## 2.4 HISTORY OF GAS REGULATION

### Ontario

#### 2.4.1

When Ontario's gas industry was in its infancy, all regulatory matters were under the jurisdiction of the Minister of Public Works. The Gas Inspection Act was enacted to ensure the safety of works and the integrity of franchises.

#### 2.4.2

In 1918, Ontario passed the first of a series of Natural Gas Acts. These statutes initially placed the entire natural gas industry under the jurisdiction of the Ontario Railway and Municipal Board (ORMB). The Natural Gas Advisory Board assisted the ORMB in regulatory matters.

#### 2.4.3

The 1919 Natural Gas Act superceded the 1918 Act and enshrined the government's right to supervise all drilling. However, the 1919 Act did

not provide the power to authorize rate adjustments. Therefore, another Natural Gas Act was passed in 1920 which empowered the Natural Gas Commissioner to increase rates and to limit and regulate the use of natural gas.

2.4.4

This Act was amended once more in 1921. At that time, the control and regulation of the production, transmission, distribution and sale of natural gas was placed under the jurisdiction of the Minister of Mines. Natural gas companies were removed from the jurisdiction of the ORMB. The Natural Gas Referee took over in its stead, and was empowered to fix rates. All administrative responsibilities were transferred to the Natural Gas Commissioner.

2.4.5

In 1923, the Referee was replaced by the Natural Gas Board of Reference for a short period. In 1924, the Referee took over the rate-fixing jurisdiction once more.

2.4.6

In 1954, the Ontario Fuel Board Act was passed, which placed all regulatory matters pertaining to natural gas under the jurisdiction of the Ontario Fuel Board. In 1960, the Ontario Energy Board Act was proclaimed and superseded the Ontario Fuel Board Act. All rate control powers transferred to the Ontario Energy Board.

Federal

2.4.7

The concept of a national energy board emerged from the recommendations of two Royal Commissions that reported following the Pipeline Debate of 1956. The pipeline controversy centred around the emergence of the eastern Canadian energy market and the western Canadian oil and natural gas resources. Since the western reserves were physically distant from major Canadian markets, the Province of Alberta sought markets in the United States. However, the federal government was concerned that adequate gas and oil pipeline links be established with the eastern Canadian market.

2.4.8

In 1957, the Gordon Royal Commission on Canada's economic prospects commented on the extent and importance of Canada's energy resources. The Commission recommended the development of a comprehensive energy policy and the formation of a national energy authority to advise the government on all matters connected with the long-term energy requirements in Canada.

2.4.9

The Borden Royal Commission was also appointed in 1957 to recommend the policies to best serve the national interest regarding the export of energy and energy resources. This Commission was further asked to report on the regulation

of prices or rates, the financial structure and control of pipeline companies, and all other matters concerning the efficient operation of inter-provincial and international pipelines. This last report contained extensive recommendations regarding the formation of a "national energy board". Legislation was introduced in 1959 and was enacted as the National Energy Board Act.

2.4.10

The overall purpose of the National Energy Board Act was to consolidate government actions in the energy field. The National Energy Board (NEB) was to recommend policy to the federal government, and later implement the national energy policy. The National Energy Board Act was largely based on the the legislation it replaced: the Pipe Lines Act and the Exportation of Power and Fluids and Importation of Gas Act.

2.5 INTER-PROVINCIAL AND INTERNATIONAL NATURAL GAS PIPELINE LINKS REGULATED BY THE NATIONAL ENERGY BOARD

2.5.1

Short pipeline links within the jurisdiction of the NEB, joining provincially regulated systems in adjacent provinces, and similarly between provincially regulated systems and systems in the United States, are common. The extent of this practice is illustrated in Figure 18 from the 1987 Annual Report of the NEB (Appendix 4.6).

2.5.2

Several pipeline links under NEB jurisdiction which connect Ontario with Quebec, and Ontario with the United States of America, are as follows:

Champion Pipeline Corporation Ltd. (Champion)

Noranda

2.5.3

Champion owns a 98 kilometre pipeline connecting TCPL's pipeline at Earlton, Ontario to the local

distributor, Le Gaz Provincial du Nord de Québec Ltée. (Le Gaz) in Noranda, Quebec.

Temiscaming

2.5.4

Champion owns a 1.98 km pipeline extending from the Town Border Station in Thorne, Ontario across the Ottawa River to the facilities of the local distributor, Le Gaz, in Temiscaming, Quebec. Northern and Central Gas, now known as ICG, was the local distributor in Thorne at the time of construction.

2.5.5

Both Champion and Le Gaz were wholly-owned subsidiaries of Northern and Central Gas Corporation Limited (Appendix 4.7).

Niagara Gas Transmission (Niagara)

Cornwall-Massena

2.5.6

Niagara owns and operates a 14 km transmission pipeline from the take-off point on the TCPL system near Cornwall, Ontario to the international boundary where it interconnects with the St. Lawrence Gas Company, Inc. (St. Lawrence), an LDC in northern New York State. ICG is the franchised distribution company which supplies local gas demand in Cornwall.



2.5.7

Both Niagara and St. Lawrence are wholly-owned subsidiaries of Consumers' (Appendix 4.8).

**Ottawa-Hull**

2.5.8

The short pipeline link between the high-water mark on each side of the Ottawa River is owned by Niagara and interconnects Consumers' system in Ottawa with that of Gazifère de Hull de Québec (Gazifère de Hull) in Hull.

2.5.9

Both Niagara and Gazifère de Hull are owned by Consumers'.

**Union - Panhandle Eastern Pipeline Company (Panhandle Eastern)**

2.5.10

In 1947, Union began receiving deliveries of United States sourced gas from Panhandle Eastern through two NPS 12 pipelines constructed under the Detroit River. The two pipelines of about 1 km in length from the Canada/United States border to Union's Ojibway Meter Station near Windsor are owned by Union, and were certificated by the NEB under Section 95 of the NEB Act in 1960. These lines connect the line owned by Union, extending from the Ojibway Meter Station to Union's Dawn Compressor Station in Sarnia (the Panhandle Line), and Panhandle Eastern's network in the United States. Union's Panhandle

Line is under the jurisdiction of the OEB.  
(Appendix 4.9)

NOVAcorp International Pipelines Ltd. (NOVAcorp)

2.5.11

On June 27, 1988, the NEB announced its approval of the construction of the Canadian portion of a pipeline to cross the Detroit River near Windsor. The NOVAcorp pipeline will be 0.7 km long, extending from Union's Ojibway Meter Station to the Canada/United States border. The continuing portion of this pipeline from the border into the United States will be owned by National Steel Corporation (National Steel).

2.5.12

The existing Canadian pipeline network, including the facilities of TCPL and Union, will be used to carry gas from western Canada to the proposed junction with the NOVAcorp line near Windsor for direct delivery to National Steel's plants at Ecorse and River Rouge, Michigan.

TCPL Dawn Extension

2.5.13

TCPL's Dawn Extension connects to the Great Lakes system at the Canada/United States border near the middle of the St. Clair River near Sarnia and terminates at Union's Dawn Compressor Station. This existing system consists of 0.39 km of dual NPS 24 pipe under the river and

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about 23 km of NPS 36 pipe from the river to Dawn. Pursuant to NEB Order No. XG-7-88, TCPL is now authorized to construct an additional 8.8 km of NPS 36 loop to be placed in service on this system, by November 1, 1988. (Appendix 4.10)

3. THE HEARING

3.1 THE HEARING

3.1.1

In its Notice of Hearing dated May 20, 1988, the Board appointed Thursday, June 16, 1988, as the first day of this hearing. In its Procedural Order-1 dated May 20, 1988, the Board called for all evidence, interrogatories and responses to interrogatories to be filed by June 13, 1988.

3.1.2

By Notice of Motion dated June 6, 1988, TCPL brought a motion before the Board requesting an order that Union's Application was not within the Board's jurisdiction. The Board, with the consent of all parties present, deferred hearing the motion regarding jurisdiction until the conclusion of evidence.

3.1.3

Mr. Peter Gout, an owner of storage facilities in Michigan, applied at the hearing for late intervenor status. The Board denied Mr. Gout

full intervenor status because the substance of his intervention was the private litigation between himself and Union which was already before the Courts, and which was not relevant to the matter before the Board. The Board allowed that Mr. Gout could renew his application at a later date if he could present additional evidence relevant to this proceeding pertaining to Michigan storage.

3.1.4

The hearing of evidence began on Thursday, June 16, 1988, and was completed on Monday, June 20, 1988. Oral argument from all parties, except Northridge Petroleum Inc. (Northridge), was presented on Wednesday, June 22, 1988. Northridge was permitted to file written argument by Friday, June 24, 1988. Board Staff and Union were granted the right to reply to argument by July 1, 1988, but no replies were submitted.

Appearances

3.1.5

The following parties made appearances and participated in the hearing:

Union Gas Limited	B. Kellock, Q.C.
Counsel to Board Staff	J. Campion
C-I-L Inc.	P. Jackson
The Consumers' Gas Company Ltd.	P. Atkinson

Mr. Peter Gout	J. A. Giffen, Q.C.
Northridge Petroleum Marketing Inc.	P. Budd G. Ferguson
St. Clair Pipelines Limited	S. Lederman
TransCanada PipeLines Limited	J. Murray J. Francis, Q.C. J. Schatz

Witnesses

3.1.6

The following witnesses gave testimony during the course of the hearing:

for Union - (Panel 1)	P. D. Pastirik, Manager, Financial Studies, Union
	A. F. Hassan, Manager, Gas Supply Logistics, Union
	W. J. Cooper, Senior Vice President, Marketing & Gas Supply, Union
	G. D. Black, Manager, Storage & Transportation Services, Union
	W. G. James, Manager, Facilities Planning, Union

for Union - (Panel 2)

R. Bryant,  
Manager, Pipeline  
Engineering, Gas  
Supply Engineering,  
Union

P. G. Prier,  
Project Manager,  
Ecological Services  
for Planning Ltd.

for Northridge -

D. W. Minion,  
Chairman, Northridge

G. E. Ferguson,  
Regional Manager,  
Eastern Canada,  
Northridge

for TCPL -

A. A. Douloff,  
Vice President,  
Transportation, TCPL

M. Feldman,  
Manager, Facilities  
Planning, TCPL

A. S. Cheung,  
Senior Engineer,  
Facilities Planning,  
TCPL

### 3.1.7

A verbatim transcript of the proceedings, together with a copy of all exhibits is retained in the Board files and is available to the public.

3.2 POST HEARING NOTICES AND PROCEEDINGS

TCPL's July 19, 1988, Notice of Motion

3.2.1

Subsequent to the close of the evidentiary phase of the hearing and the receipt of all arguments, TCPL submitted a Notice of Motion to the Board dated July 19, 1988, wherein it requested leave of the Board to receive additional evidence in these proceedings. TCPL specifically sought to enter Transcript excerpts dated July 8, 1988, and July 11, 1988, from another Board Hearing, under Board File No. E.B.R.L.G. 32, dealing with the security of Ontario's gas supplies. TCPL contended that these excerpts are relevant to the issue of jurisdiction raised in the E.B.L.O. 226 hearing.

3.2.2

In its Notice of Motion, TCPL advised that the cited Transcript and an Affidavit of Jill Catherine Schatz, a solicitor in the Legal Department of TCPL, sworn to on July 19, 1988, would be used at the hearing of the motion.



The Affidavit by Ms Schatz, which was withdrawn upon consent, dealt with a Transcript relating to an Application by Empire State Pipeline (Empire) to the Public Service Commission of the State of New York (NY PSC) for authorization to construct and operate a natural gas pipeline from Grand Island, New York to Syracuse, New York (the Empire Pipeline). TCPL claimed the Transcript was relevant to the E.B.L.O. 226 hearing, and was not available to TCPL prior to the close of evidence and the making of its argument on June 22, 1988.

3.2.3

By copies of its Notice of Motion, TCPL advised all intervenors in the E.B.L.O. 226 proceeding of its intentions.

The Reopened Hearing

3.2.4

The Board issued a Notice of Hearing of Motion to all active participants in the E.B.L.O. 226 proceeding on August 2, 1988, wherein Tuesday, August 16, 1988, was set as the date on which it would hear TCPL's Motion (the Reopened Hearing). The Reopened Hearing was convened under Board File No. E.B.L.O. 226-A on August 16, 1988, and lasted 1 day.

Appearances

3.2.5

The following parties made appearances and participated in the Reopened Hearing:

TransCanada PipeLines Limited                      J. Francis, Q.C.

Union Gas Limited                                      J.D. Murphy

Counsel to Board Staff                              J. Campion

3.2.6

The results of the Reopened Hearing are presented in section 3.7 of this Decision.

3.2.7

A verbatim transcript of the proceedings in the Reopened Hearing together with a copy of all exhibits is retained in the Board files and is available to the public.

TCPL's June Notice of Motion

3.2.8

After the conclusion of evidence and argument in these proceedings, TCPL submitted an undated Notice of Motion (the June Notice), seeking to have documents which were not available to TCPL prior to its making argument on June 22 and which TCPL claimed were relevant to the jurisdictional issue raised in this proceeding.

3.2.9

In its June Notice TCPL sought to have three documents, referenced in an affidavit of Jill Catherine Schatz sworn to on June 28, 1988; entered into evidence: the application by Empire to the NY PSC for authorization to construct the Empire Pipeline, the prefiled testimony of W.J. Cooper of Union in support of Empire's application, and a letter from the said W.J. Cooper to Empire dated June 14, 1988.

3.2.10

TCPL's June Notice also sought to cross examine W.J. Cooper with regard to the matters raised in the documents it proposed for filing.

3.2.11

In a letter of June 29, 1988, to the Board, Mr. G.F. Leslie, Counsel for Union, stated that Union had no objection to the filing of the three documents which were the subject of TCPL's June Notice. He further stated that the clarification TCPL sought to obtain through its cross examination of W.J. Cooper had been provided to Counsel for TCPL. In that letter Mr. Leslie went on to state that Mr. Francis had told Union that under the circumstances he did not need to pursue the June Notice and had authorized Mr. Leslie to request that the Board dispose of the matter of the June Notice on the basis of Mr. Leslie's June 29 letter.

3.2.12

On July 4, 1988 Mr. Francis wrote to the Board acknowledging Mr. Leslie's letter of June 29, 1988, and gave notice that he was discontinuing TCPL's June Notice. In his July 4 letter Mr. Francis made the "suggestion" that Mr. Leslie's June 29 letter and the three exhibits referred to in the June Notice be marked as exhibits.

3.2.13

On the basis of TCPL's discontinuing its motion, the Board withdrew the three exhibits which were the subject of the Notice, and the J.C. Schatz affidavit of June 28 from the Exhibit List.

3.2.14

Due to a clerical error, these documents had been prematurely entered as Exhibit Nos. 21.2, 21.3, 21.4 and 21.5 in this proceeding. The Board informed all parties of the withdrawal of these exhibits by letter dated August 18, 1988 which enclosed the final corrected Exhibit List.

TCPL's August 23 Notice of Motion

3.2.15

Thirty-two days after having made its argument in the main hearing, TCPL filed its fourth Notice of Motion in this proceeding dated August 23, 1988 (the August 23 Notice).

3.2.16

TCPL's August 23 Notice was to request the filing of the same three documents that were the subject of its June Notice as described above in paragraph 3.2.9.

3.2.17

In its August 23 Notice TCPL claimed that the proposed filings were relevant to the jurisdictional issue raised in this proceeding in that they were claimed to clarify the relationship between the Empire Pipeline project and the proposed St. Clair - Bickford Line. The August 23 Notice also acknowledged the Board's having previously received as exhibits the Transcript excerpts which also dealt with the Empire Pipeline's relationship to this proceeding and which were the subject of the Reopened Hearing on August 16, 1988.

3.2.18

TCPL advised that it intended to use the affidavit of Jill Catherine Schatz sworn to on June 28, 1988, and the affidavit of John Herbert Francis sworn to on August 22, 1988 (which presented a chronological account of the events, and Mr. Francis' interpretation of these events, leading to the filing of the August 23 Notice) in the hearing of this latest motion.

3.2.19

By copy of its August 23 Notice TCPL informed all active parties to the E.B.L.O. 226 proceeding of its intentions.

The ex parte Decision Survey

3.2.21

On August 26, 1988 the Board, by electronic written notice, informed all parties to the E.B.L.O. 226 proceeding that it deemed the prolonged nature of this proceeding to have created a special circumstance warranting the Board to invoke subsection 15(2) of the Act in an effort to minimize the time, expense and inconvenience to all parties when dealing with TCPL's August 23 Notice.

3.2.22

The Board asked all parties to indicate if they objected to the filing of the documents proposed by TCPL in its August 23 Notice, and if they objected to the Board deciding ex parte to grant this motion. In its communique, the Board stated that if no objections were received by the close of business on August 29, 1988, the Board would issue a decision accepting TCPL's motion.

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3.2.23

The results of this survey of the parties, and the Board's ex parte decision under Board File No. E.B.L.O. 226-A are presented in section 3.7 of this Decision.

### 3.3 NEED FOR THE PROPOSED FACILITIES

#### Access to Michigan Storage

##### 3.3.1

A prime purpose of the proposed facilities, as described by the Applicant, was to enable it to enter into arrangements with MichCon to access Michigan storage space in 1989, and meet Union's immediate storage requirements for its domestic markets that, according to the Company, cannot otherwise be accommodated by developed storage in Ontario.

##### 3.3.2

Further, Union plans to integrate Michigan and Ontario storage facilities through the proposed connection of MichCon's Belle River Mills Compressor Station to Union's Dawn Compressor Station. The proposed St. Clair-Bickford Line would, according to Union, be a key component of this integration plan. Union argued that such integrated storage capabilities would yield additional flexibility for the Company



and its transportation customers when they purchase United States gas.

### Access to Alternate Gas Supplies

#### 3.3.3

Union's witnesses identified a priority need to diversify Union's gas supply services by means of the proposed facilities which would increase access to additional storage facilities and potentially provide access to alternate supplies of competitively priced gas from the United States.

#### 3.3.4

Deregulation of the gas industry was cited by Union as having created an environment in which TCPL and others will take advantage of their increased ability to export gas into markets in the United States. Consequently, according to Union, service on the TCPL/Great Lakes and NOVA systems can be expected to be more vulnerable to disruptions as firm capacity becomes fully utilized. Interruptible service on these systems was characterized by Union as already being constrained. Union claimed it and the other Ontario LDCs could no longer afford to totally rely on the TCPL/Great Lakes and NOVA systems for essentially all their supply.

#### 3.3.5

The need for supply diversification was, therefore, seen by Union to be essential, in order

for the LDCs to fulfill their mandate to provide a reliable supply of natural gas to Ontario consumers.

Enhanced Bargaining Position

3.3.6

Union argued that, based on its experience in the United States gas supply market through its interconnection with Panhandle Eastern, the proposed facilities would increase its access to supplies of less expensive spot gas and competitively priced firm gas from the United States.

3.3.7

Despite price deregulation, Union claimed it has not been able to successfully negotiate fully market competitive gas prices under its existing CD and ACQ contracts with TCPL. Union's access to United States gas via its Panhandle Line has, however, according to the testimony of Union's witnesses, provided the leverage to negotiate discounts amounting to \$15.9 million to date under its contracts with TCPL. However, Union claimed that its United States gas purchases via the Panhandle Line are limited, as recognized by the Board in its Reasons for Decision in E.B.R.O. 412-III dated January 22, 1988.

3.3.8

Union expected that the increased ability to access and store spot and firm United States

gas, which the proposed facilities would provide, will enhance its bargaining power when negotiating the price of western Canadian supplies. Union estimated that this enhanced bargaining power would result in gas cost savings of at least \$10 million per year for its sales customers.

### Enhanced Security of Supply

#### 3.3.9

Improved security of supply was another of Union's significant objectives. Increasing capacity constraints on the NOVA, Great Lakes and TCPL delivery systems were claimed by Union to be responsible for the deliverability problems experienced in January, 1988, and TCPL's unexpected reduction in the interruptible service available to Ontario LDCs.

#### 3.3.10

Union expects that its security of supply will be improved by having increased access to the broader United States gas reserves base, and transportation alternatives. Also, the proposed pipeline interconnection with MichCon's Belle River Mills storage system was seen by Union as a way to further enhance its security of supply. Evidence was submitted by Union that it is currently negotiating a gas exchange agreement with MichCon for this purpose.

Positions of Other Parties

TCPL

3.3.11

TCPL acknowledged the value of Union's goals. However, TCPL did not agree with the means by which Union proposes to achieve these goals. TCPL's alternative to Union's proposed facilities is addressed in section 3.6 of this Decision.

Consumers'

3.3.12

Consumers' main concern was security of supply. Its position was that the existing delivery system is "too tight". It viewed the proposed facilities as a project which will enhance the deliverability of gas from a more diversified supply.

Northridge

3.3.13

Northridge supported Union's objective. Its position was that the proposed facilities, when linked through the facilities of St. Clair Pipelines to MichCon, would benefit both suppliers and purchasers of natural gas. The ability to access gas supplies and storage from an expanded number of sources would, according to Northridge, improve the climate of competition in the natural gas marketplace. Northridge argued that:

3.3.14

A substantial segment of the present Ontario gas market has not yet enjoyed the benefits of deregulation due to the lack of available supply alternatives, that is, lack of effective competition. Potential suppliers and customers have also been prevented from realizing these benefits because access to monopoly pipelines is frequently limited or restricted by government regulations.

3.3.15

Access to alternate gas supply sources through the proposed Union facilities, should provide that sort of competition in the Ontario gas market. The proposed facilities will also improve the operating flexibility of Union and other parties, such as Northridge and/or end-users, by providing alternative supply capabilities and increased access to storage. These advantages, which should be available to all purchasers or potential purchasers on a non-discriminatory basis, will enhance Ontario's security of supply and provide opportunities to minimize transportation and supply costs.

C-I-L Inc. (CIL)

3.3.16

CIL took no position on whether the proposed facilities should, or should not, be built.

Board Staff

3.3.17

Board Staff held that, subject to economic feasibility, Union has proven a need for the proposed facilities, at least in the short run.

3.3.18

On the basis of Union's evidence that it could supply its long-term storage requirements from facilities in Ontario, Board Staff concluded that a short-term need for 2 Bcf of incremental storage was not sufficient reason for the Board to grant this Application.

3.3.19

Similarly, Board Staff did not endorse Union's argument regarding enhanced security of supply since, according to Board Staff, there was no compelling evidence that the existing delivery system, including Alberta gas producers, would have any difficulty in meeting the long-term needs of Ontario gas customers.

3.3.20

However, Board Staff agreed that the proposed project would yield potential savings on Union's discretionary gas purchases and increase the Company's negotiating leverage when bargaining with TCPL and WGML.

Board Findings

3.3.21

Numerous previous public proceedings before this Board and the NEB have already established that

TCPL's existing delivery system is "tight", and that Union's storage facilities are near capacity.

3.3.22

During the recent hearing of TCPL's 1988 and 1989 Facilities Application before the National Energy Board (Order No. GH-2-87), TCPL's evidence indicated that excess capacity on its system will be greatly reduced, starting in 1988. Previous excess capacity permitted the LDCs in eastern Canada to meet their requirements, partly through discretionary purchases.

3.3.23

In this Board's Report to the Lieutenant Governor, dated May 2, 1988, under Board File No. E.B.O. 147, on the matter of an application by Tecumseh for a regulation designating the Dow Moore 3-21-XII Pool as a gas storage area, the implications of this tightened supply situation became apparent:

Correspondence between Consumers' Gas and TCPL filed in evidence indicates that there is no spare capacity available, i.e. no peaking service (PS) or temporary winter service (TWS) and only limited interruptible service (IS).

... the development of additional storage is essential for the satisfactory operation of the system, assuming that incremental firm service volumes are available. The purpose of contracting (storage capacity) with Tecumseh is to absorb the summer season surplus through injections to storage in order

to supply the winter deficiency through withdrawals from storage.

3.3.24

The above scenario was limited to the existing TCPL delivery system which is currently the only significant delivery service to eastern Canada. Hence, the emphasis is on storage. There is an obvious need for increased access to diversified supply services in order to enhance the deliverability of gas to Union, the other LDCs and their customers.

3.3.25

Reinforcement of gas supply to Union for sales within Union's franchised municipalities, including the Sarnia industrial area, and to Union's storage and transportation customers (including Consumers' and GMi, and their metropolitan service areas), requires access to alternative sources of supply.

3.3.26

Storage continues to be extremely important. Storage can provide Union with additional flexibility in its exercise of the various purchase options that can be made available by the proposed facilities and their upstream interconnections.

3.3.27

The Board finds that there is a need for the Ontario gas market to receive the benefits that can flow from the competition that enhanced gas supply alternatives will generate. The Board



finds that the proposed facilities will contribute to a more competitive and open gas supply market, wherein both Union and its storage and transportation customers will have increased bargaining power, purchasing options, flexibility and strengthened back-up supplies. This is consistent with the public interest criterion of providing reliable service to the Ontario consumer at the lowest possible cost.

3.3.28

The Board finds that Union's proposal will enhance security of supply, system reliability and system flexibility. Supply to both the Sarnia industrial area and major gas markets elsewhere in southern and eastern Ontario will be reinforced as a result of the proposed facilities and their link with Union's Dawn-Trafalgar transmission system.

3.3.29

The Board, therefore, finds that the proposed facilities will fill a need in the public interest.

**3.4 ROUTE, CONSTRUCTION, LANDOWNER AND ENVIRONMENTAL IMPACTS**

**Positions of the Parties**

**Union**

**3.4.1**

Union changed its prefiled route alignment, to locate the pipeline adjacent to the south side of the road allowance on Moore Road No. 2, from the western extremity of Lot 12, Front Concession to the eastern half of Lot 26, Concession II. The realignment is entirely within lands owned by M. Ladney and C. A. Apcynski who requested the relocation of the pipeline to the land which is zoned industrial. The previous location was not compatible with the landowners' plans for future industrial development in this area.

**3.4.2**

Union also agreed to comply with the recommendations set out in a letter from the Ministry of

Consumer and Commercial Relations, dated June 10, 1988, concerning the proximity of the proposed pipeline to two houses on Lot 27, Concession II.

3.4.3

With respect to the siting of the Sarnia Industrial Line Station, Union's witness explained that the proposed location was based on road accessibility, suitability of the terrain and landowner consent.

3.4.4

A comparison of the component costs of Union's NPS 24 Kirkwall Line (EBLO 218/219) and the proposed pipeline was made by Union's witness.

3.4.5

Union confirmed that it used Class 2 location design factors because the area is a designated industrial zone, and future development would cause the area to be reclassified from its present Class 1 location. Mr. Ladney's possible construction of a plastics plant was cited as an example of future development.

3.4.6

Union explained that the environmental assessment study filed in this hearing will be part of the construction contract, and its mitigation recommendations will therefore be imposed on the pipeline contractor.

TCPL

3.4.7

TCPL claimed that its alternative is environmentally superior to Union's proposal because it does not require a new utility corridor.

3.4.8

TCPL argued that no leave to construct order should be issued by the Board until all necessary regulatory approvals have been granted, including all necessary import and export approvals. Union countered that the amended negotiated condition described below is sufficient and that some judgments must be left to the utility's management.

Board Staff

3.4.9

Conditions of Approval (Appendix 4.11) were introduced by Board Staff during the hearing. These conditions address construction, monitoring and reporting requirements and were accepted by Union. As originally filed and agreed to by Union, these conditions called for the leave to construct to expire on December 31, 1988.

3.4.10

One further condition of approval, which was proposed by Board Staff for addition to any order or approval that the Board may decide to grant, was agreed to by Union's Counsel:

The Board's approval for the construction of the St. Clair to Bickford transmission line proposed by Union Gas Limited is contingent upon St. Clair Pipelines Limited and Michigan Consolidated Gas Company receiving all the regulatory approvals necessary to construct the pipelines from the St. Clair Valve Station to MichCon's Compressor Station at Belle River Mills, Michigan, in order to complete the connection to the storage facilities situated in the State of Michigan, one of the United States of America.

Copies of the approvals issued by FERC, or whatever approvals may be necessary in the United States, the Michigan Public Service Commission and the National Energy Board shall be filed with the Board prior to the commencement of construction of the St. Clair - Bickford transmission line.

3.4.11

Union later suggested that the first line in paragraph two should read "Copies of the approvals issued by or through FERC, the Michigan ...". This wording was proposed in order to accommodate the issuance of a Presidential permit which is required to make the international connection, and would be processed through FERC.

Board Findings

3.4.12

The Board finds that Union has been diligent in addressing landowner and environmental concerns in its final route selection, and has properly

sought to mitigate these concerns through consultation and negotiation.

3.4.13

The selection of Class 2 location pipe is found by the Board to be prudent, given the potential for industrial development along the pipeline route during the lifetime of the line.

3.4.14

The Board notes that the Applicant's environmental assessment studies for the pipeline routes were in accordance with the Board's guidelines, and were reviewed and approved by the Ontario Pipeline Coordination Committee.

3.4.15

The Board notes that the route selection was responsive to revisions initiated by concerned landowners prior to the hearing and, therefore, no landowners found it necessary to object.

3.4.16

The Board finds the revised route proposal to be appropriate. The fact that the alternative proposed by TCPL does not require a new pipeline corridor is recognized but is considered insufficient grounds for rejecting Union's proposal.

3.4.17

The Board finds that the construction costs are consistent with those of other current pipeline projects of equivalent pipe size.

3.4.18

The Board approves the form of the Agreement for Land Use filed by the Applicant.

3.4.19

The Board finds that leave to construct shall be conditional on the initial requirements proposed by Board Staff and agreed to by Union. However, given that these proceedings have now been protracted, the Board finds that it is no longer reasonable to condition its approval to the original, agreed upon, expiry date. The Board, therefore, now specifies that its leave to construct shall expire on December 31, 1989. These conditions as filed, and amended regarding the expiry date, are presented in Appendix 4.11 to this Decision.

3.4.20

The Board finds the additional condition regarding regulatory approval, agreed to by Counsels to Board Staff and for Union, and subsequently revised by Union, is appropriate and shall also be included as a condition of approval. This condition is presented in Appendix 4.12 to this Decision.

3.4.21

The Board finds that the recommendations set out in the letter from the Ministry of Consumer and Commercial Relations, dated June 10, 1988, and accepted by Union, are appropriate and

shall also be included as conditions of approval. These conditions are presented in Appendix 4.13 to this Decision.

3.4.22

The Board finds that the granting of a leave to construct order does not need to be conditioned upon the prior granting of all necessary import and export approvals, as recommended by TCPL. However, as noted earlier, the Board directs Union to file copies of all requisite regulatory approvals prior to commencing construction.

3.4.23

The Board, therefore, finds that, in complying with the conditions as defined in Appendices 4.11, 4.12 and 4.13, Union will have dealt with environmental and landowner concerns and the public interest in a responsible and acceptable manner.



**3.5 ECONOMIC FEASIBILITY**

**Positions of the Parties**

**Union**

**3.5.1**

In its economic justification for this project costing \$9,352,000, Union estimated savings of \$2.5 million in both 1988 and 1989 as a result of purchases of United States spot gas and \$750,000 in each year due to purchases of United States firm gas. Union forecast an ongoing annual \$10 million savings to be achieved as a result of increased negotiating leverage when bargaining with TCPL. The expected total savings were specified by Union to be \$13,250,000 in each of 1988 and 1989.

**3.5.2**

Union identified various costs to be deducted from these potential savings, such as the costs of transportation by St. Clair Pipelines, Ontario Hydro lease payments, municipal, capital

and current income taxes. The net cash flow, after deducting these expenses, was claimed by the Applicant to be \$7,546,600 in 1988 and \$7,700,197 in 1989.

3.5.3

The capital cash flow was projected by Union to be \$8,745,859 in 1988 and \$6,401 in 1989. Union then calculated the accumulated net present values of the net cash flow and capital streams as yielding a profitability index of .816 in 1988 and 1.559 in 1989.

TCPL

3.5.4

In its direct evidence, TCPL submitted data comparing the annual cost of transporting 200 MMcf/d of firm or interruptible gas, at different load factors, from the St. Clair River to Dawn on TCPL's Dawn Extension with the annual fixed and operating costs of the St. Clair-Bickford Line, exclusive of any transportation costs to be imposed by St. Clair Pipelines. The claimed savings in favor of the TCPL option, under various load factors and combinations of firm and interruptible service, ranged from \$941,000 to \$1,716,000 per annum. This evidence showed, according to TCPL, that it can offer the transportation service Union is seeking at a lower cost, and without duplicating facilities. The substance of TCPL's alternative proposal is dealt with in section 3.6 of this Decision.

Consumers'

3.5.5

Consumers' had no specific submissions on this topic.

Northridge

3.5.6

Northridge submitted that, with improved access to United States supplies of gas, Union and others should be in a stronger bargaining position with WGML. American gas supplies were claimed to be at least as competitive as Canadian supplies, and to be "highly available". Notwithstanding that United States producers are generally less willing than Canadian producers to contract for 10 to 20 year supplies of gas, long-term American supplies are, according to Northridge's experience, available. Both Union and Northridge gave evidence that sufficient United States spot and firm gas are available to support Union's claims of economic advantages. Northridge submitted that the Union proposal is the least expensive alternative in a generic sense and, on the evidence, the cost of the facilities appears to be recoverable within two years.

3.5.7

The Union proposal will, according to Northridge, provide significant additional firm pipeline capacity for the Ontario market at minimal cost. Therefore, Northridge submitted

that it is a relatively inexpensive proposal, which will be paid for quickly, and result in substantial gains to Ontario consumers, utilities and other market participants. In addition, because the facilities will influence a trend to more competitive gas prices for end-users and distributors in Ontario, there should be further benefits to the provincial economy.

Board Staff

3.5.8

Board Staff accepted that the existence of the United States gas alternative would result in some level of negotiated savings to the Company.

3.5.9

Board Staff did not accept the \$10 million per year savings forecast which Union claimed to be a conservative estimate. Board Staff cited Union's admission that, in order to achieve the \$10 million forecast, it would have to be prepared to acquire 52 Bcf of United States gas to displace TCPL/WGML supplies at the projected level of savings. This amount of displacement seemed particularly large to Board Staff, and not justifiable in spite of the testimony of Union's and Northridge's witnesses that such volumes would be available from the United States at competitive market prices.

3.5.10

Board Staff further questioned Union's attempt to justify its claimed \$10 million savings,

based on a comparison of its proposed negotiated savings with the savings obtained in 1987 under TCPL's "Summer Incentive CMP" discount program. Board Staff submitted that this was not a useful comparison since other utilities obtained similar discount relief from TCPL, without having access to Union's Panhandle system and American gas.

3.5.11

Board Staff concluded that, while some amount of negotiated savings will be realized, the exact amount cannot be easily determined. Board Staff estimated that, without negotiated savings, economic feasibility would be attained over six years as demonstrated in Union's response to Board Staff interrogatory No. 41, wherein it projected the savings to be obtained from United States spot and firm discretionary supplies over that period. Board Staff acknowledged that there were additional unquantifiable benefits that would result from enhanced security of supply, short-term access to storage and other long-term benefits, and that these would be additive to the savings generated by purchasing discretionary supplies from the United States.

Union's Reply

3.5.12

In addressing the credibility of its initial \$10 million negotiated savings per year forecast, Union presented a chart which, in its

submission, established that estimated savings of \$11 million in commodity and transportation demand charges payable to TCPL would be realized. Union acknowledged that TCPL demand charges are payable whether firm gas is taken from TCPL, or displaced by gas from United States sources.

Board Findings

3.5.13

The Board finds Union's conclusions regarding its estimated savings of \$10 or \$11 million due to improved negotiating leverage to be somewhat tenuous and less than fully substantiated. The leverage that access to United States supplies can provide is accepted, but it is difficult for this Board to quantify the level of savings that will result.

3.5.14

The Board notes that no evidence was presented to dispute the operating and capital costs submitted by Union.

3.5.15

In spite of the observed weaknesses in Union's estimates, the Board notes that the savings expected to result from United States spot and firm discretionary gas purchases can reasonably be expected to exceed the costs to be incurred within six years. Thus, the Board finds that

Union's proposal is economically feasible since the profitability index will likely be acceptable over six years, and will certainly meet the Board's criterion over the lifetime of the project.

3.5.16

The Board finds Union's proposed project to be in the public interest on the basis of the Company's Stage 1 analysis as prescribed by the Board. The Board concurs with Union that quantification of Stages 2 and 3 benefits is, therefore, unnecessary.

3.6 TCPL ALTERNATIVE

Description

3.6.1

TCPL described its existing Dawn Extension as extending from an interconnection with Great Lakes, at the international border near the middle of the St. Clair River near Sarnia, to an interconnection with Union's transmission line at Dawn. The existing system consists of 0.39 km of dual NPS 24 river crossing pipe, 23.34 km of NPS 36 pipe to TCPL's Dawn Sales Meter Station and 0.81 km each of NPS 36 and NPS 20 loop to Union's Dawn Compressor Station.

3.6.2

TCPL confirmed that it recently was authorized by the NEB to construct 8.8 km of NPS 36 loop which is expected to be in service by November 1, 1988. TCPL claimed that it could provide 200 MMcf/d of firm transportation service by extending this loop with an additional 5.8 km



of NPS 36 pipe, and installing additional metering facilities at Dawn, for a total capital cost of \$6.1 million. About 100 MMcf/d of interruptible capacity would then also be available on the Dawn Extension. TCPL submitted that no new easements would be required to construct this additional loop. If the entire service were to be provided on an interruptible basis, TCPL advised that no additional facilities would be required on its Dawn Extension.

### Positions of the Parties

#### TCPL

##### 3.6.3

TCPL submitted that its alternative would eliminate the need to construct Union's proposed St. Clair Valve Site, the Sarnia Industrial Line Station and the NPS 24 pipeline from the St. Clair Valve Site to the Bickford Storage Pool, as well as the need for a new utility corridor.

##### 3.6.4

In addition to matching Union's projected gas cost savings, TCPL claimed that its alternative proposal would result in transportation cost savings to Union and other Ontario LDCs ranging from \$790,000 to over \$1.7 million per year, under various assumed load factors and types of service. TCPL asserted that its alternative can provide the same benefits that Union indicated would result from its proposal.

3.6.5

During cross-examination, TCPL's witnesses acknowledged that the Dawn Extension is used to import gas flowing eastward on the Great Lakes system. Therefore, the ability to move gas westward from storage in Ontario to storage in Michigan would be achieved by displacement rather than by reverse flows. TCPL also conceded that Union would have less supply flexibility under the TCPL alternative because TCPL would not carry United States gas when this would cause WGML's gas to be displaced, since it could not do so under its current TOPGAS contractual commitments.

Union

3.6.6

Union's position was that TCPL's alternative is not a credible option. Union stated that Great Lakes has shown no interest in allowing it to move gas back and forth between Belle River Mills and Dawn. The fact that TCPL will not carry self-displacement gas, in Union's view, further renders the Great Lakes/TCPL system useless as a bargaining tool, or as a method of accessing alternative, less expensive, United States gas supplies.

3.6.7

Union stressed the importance of its ability to obtain advantageous alternative supplies of gas, even if self-displacement is involved. The TCPL alternative was not acceptable to

Union because its ability to negotiate savings is dependent upon Union having access to alternative supplies of gas, even when allowances must be made for unabsorbed demand charges.

3.6.8

Further, Union was convinced that, in the absence of enhanced supply alternatives, Union would have no leverage in current or future negotiations with TCPL, and that it would be forced to accept terms set forth by TCPL. Union was not comforted by the occasional availability of discounts under TCPL's interruptible service.

Consumers'

3.6.9

Consumers' supported Union's Application and did not address TCPL's alternative.

Northridge

3.6.10

Northridge argued that the TCPL alternative would not provide Union or others with the competitive edge that would result from Union's ability to own and control the facilities. Northridge supported Union's claim that the TCPL alternative would not be a feasible alternative because TCPL would refuse to transport any gas identified by TCPL as self-displacement gas. Northridge related that its negotiations with Great Lakes for transportation space to move Alberta gas have been lengthy

and difficult. Northridge submitted that Union's proposal would provide the best option to redress existing competitive and capacity constraints, and would yield the greatest assurance of real benefits to Ontario.

3.6.11

Northridge claimed that the facilities proposed by Union would be justified by the negotiating leverage they would provide. If a pipeline crossing the St. Clair River were not to be built by a distribution company, such as Union, then Northridge stated it is prepared to build such a pipeline itself. Northridge submitted that it had already initiated pre-application studies for a river crossing pipeline, but abandoned these when Union came forward with its proposal.

CIL

3.6.12

CIL did not address TCPL's alternative.

Board Staff

3.6.13

Board Staff's position was that the TCPL alternative will provide Union with less control, access, volume flow and ability to access storage in Michigan than will the Union proposal. Despite TCPL's intention to supply Union by means of its proposed alternative, Board Staff was concerned that TCPL's conflicting obligations to its corporate affiliate, WGML, would

cause it to deny the transmission of alternative supplies to Ontario consumers.

3.6.14

Board Staff submitted that the leverage which Union might obtain when negotiating prices with TCPL and WGML will not be available if the TCPL alternative is the only option available to Union.

#### Board Findings

3.6.15

The Board finds that the TCPL alternative would not provide the interconnection with MichCon, or facilitate the various arrangements envisaged in the Union proposal, particularly with regard to the integration of Ontario and Michigan storage, since the Dawn Extension would be restricted to only the easterly movement of gas.

3.6.16

The Board finds that extending the looping of the Dawn Extension, together with the other elements comprising the TCPL alternative, does not enhance security of supply since it is not an independent pipeline with access to diversified sources of gas supply.

3.6.17

The Board notes that TCPL's TOPGAS obligation and its resultant inability to transport self-displacement gas will not allow Union to achieve

its supply diversification objective. The Board further finds that the TCPL alternative will not provide Union the ability to access Michigan storage and consequently will deny Union the ability to take advantage of the benefits of such storage.

3.6.18

The TCPL alternative will not improve Union's negotiating leverage since it largely eliminates the alternative of competitively priced United States gas supplies. The competitive reality of delivery facilities owned and directly controlled by Union and its affiliates would also be absent under TCPL's alternative.

3.6.19

The Board finds that the TCPL alternative will place operational control in the hands of Union's sole major supplier, and that it thus lacks the flexibility and independence of control that is inherent in Union's proposal.

3.6.20

While the Board accepts that the TCPL alternative eliminates the need for a new utility corridor, the Board considers this to be only of marginal benefit.

3.6.21

The Board accepts TCPL's uncontested evidence that the total estimated capital cost of an additional loop on its Dawn Extension, plus metering facilities at Dawn, would be \$6.1

million, and be more attractive than the estimated \$9.35 million cost cited for Union's proposed facilities, all other things being equal.

3.6.22

The Board is not satisfied that the economic advantage claimed by TCPL will outweigh the opportunities that will be lost to Union and its customers by having the TCPL alternative as Union's only option. The Board, therefore, finds the TCPL alternative proposal to be deficient as a means to meet the needs which have been found as fact. The Board therefore rejects the TCPL alternative.

**3.7 RESULTS OF POST HEARING NOTICES AND PROCEEDINGS**

**The Reopened Hearing**

**3.7.1**

None of the parties to the E.B.L.O. 226 proceeding objected to TCPL's motion which was the subject of the Reopened Hearing.

**Board Findings**

**3.7.2**

The Board has reluctantly agreed to permit TCPL to file excerpts from Transcript pages 461 to 465 (inclusive), pages 586 to 590 (inclusive) and pages 607 to 611 (inclusive) obtained in another hearing before a differently constituted panel of this Board (E.B.R.L.G. 32). The evidence contained in the filed Transcript pages was available and could have been adduced when this matter first came before this Board. This evidence has been reviewed by the Board and given little weight.



3.7.3

The Board has no hesitation in observing that the Empire State project is not a certainty, and in the Board's view, its imminence or lack of imminence does not detract from the fact that the Board believes that the pipeline applied for is a wise venture for Union to undertake, even if no Empire State project is ever realized. The Board noted, during the hearing of the motion, the recent decision of the Federal Court of Appeal, (The Minister of Employment and Immigration and the A.-G. Canada v. Harvinder Singh Sethi (unreported) June 20, 1988 Ct. File No. A-493-88), in which the Court commented upon the uncertainty of legislation culminating in reality. The Board finds much truth in that decision, which is equally applicable to the uncertainty of the realization of the Empire State project. Before the Empire State Project can become a reality, approvals must be obtained from the New York State Public Service Commission, the New York State Power Authority, the (U.S.) Federal Energy Regulatory Commission, the (Canadian) National Energy Board and very likely this Board as well. None of these approvals are as yet in hand and many have yet to be applied for. The Board has, therefore, concluded that immense uncertainty surrounds the future of the Empire Pipeline project.

3.7.4

It is the Board's view that the Board's cost of hearing the TCPL motion should be paid by TCPL, after being fixed by the Board's Assessing Officer. The Board's decision is based upon the proposition that, if TCPL had been better prepared, the information could have been obtained before the conclusion of evidence and argument in the main case. In addition, the Board finds that the evidence was not of assistance to the Board in reaching its decision on the issue of jurisdiction.

The Board's ex parte Decision

3.7.5

None of the parties to the E.B.L.O. 226 proceeding objected to TCPL's August 23 Notice, or to the Board's granting TCPL's motion by an ex parte decision.

Board Findings

3.7.6

The Board notes that there were no objections to the filings proposed by TCPL. The Board further notes that the subject matter of the proposed filings bears some relationship to the matter now before this Board. However, the Board also notes that, in light of the quantity of evidence already on the record regarding the Empire Pipeline project, and the Board's

findings in the Reopened Hearing, the proposed documents do not contribute to the Board's understanding of the matter of Union's Application or the jurisdictional issues that have arisen therefrom.

3.7.7

While the Board is inclined to dismiss TCPL's motion, it will reluctantly allow the filing of the three documents proposed by TCPL if only to assure that all parties have been unencumbered in their efforts to structure a record supportive of their positions.

3.7.8

In allowing this motion the Board reiterates its position that there must be some finality to the conclusion of a proceeding. The Board is satisfied that the record with regard to Union's proposed project and the jurisdictional issues associated therewith is sufficiently complete for the purpose of this proceeding.

**3.8 JURISDICTION**

**TCPL's Motion**

**3.8.1**

Counsel for TCPL made a motion to the Board at the outset of the hearing for an Order declaring that the subject matter of Union's Application was "not within the jurisdiction of the Ontario Energy Board", but rather was "within the exclusive jurisdiction of the National Energy Board" (Appendix 4.14). The grounds for this motion were that the proposed pipeline fell within federal and not provincial jurisdiction, and that the project was a "pipeline" within the definition as set out in Section 2 of the National Energy Board Act R.S.C. N-6, as amended (the NEB Act).

**3.8.2**

The hearing of this motion was deferred until all the evidence had been heard. This was acceptable to all the parties. The jurisdictional arguments that follow concluded the hearing.

Positions of the Parties

TCPL

3.8.3

Counsel for TCPL argued that the proposed pipeline is part of a larger undertaking that goes beyond Ontario and Union's primary goals to access storage and alternate supply. In support of this argument, and its conclusion that the proposed pipeline is a work or undertaking within the jurisdiction of the NEB, he asserted that:

- (a) the Ontario gas customer will be drawn into a North American network of supply and transportation because of Union's corporate affiliation with the Empire State Project in the State of New York, and Union's contemplated use of the proposed pipeline and its interconnections in the long run to market gas in Michigan and the Northeastern United States;
- (b) Union's corporate partnership with ANR will provide access to gas from the State of Louisiana and the United States Gulf Coast Area;
- (c) although the physical work proposed by Union is within Ontario, the agreements and use of facilities outside Ontario extend the undertakings beyond Ontario;

- (d) Union wants to create a pool combining storage in Ontario and Michigan and to attract pipelines to it, thereby establishing a trading centre from which Union could offer a portfolio of storage and transportation services to United States customers;
- (e) St. Clair Pipelines was incorporated at the last minute solely for legal and jurisdictional reasons;
- (f) the entire interconnected system from Belle River Mills to the Bickford Pool will be controlled by MichCon when gas is flowing west, making it an international facility in the context of North American trading; and
- (g) it may not be in the public and national interests for the OEB to be asked to approve an interconnection between storage facilities in Ontario and Michigan.

3.8.4

Counsel for TCPL made the following citations and conclusions drawn therefrom:

3.8.5

1. Re Westspur Pipeline Co. Gathering System (1958), C.R.T.C. 158 (Bd. of Transport Commissioners).

- (a) Physical connection alone does not make the proposed pipeline a part of an inter-provincial/international system.
- (b) Ownership does not determine the character of a system. Despite the fact that St. Clair Pipelines has made application to the NEB for the river crossing, Union is still involved in an international undertaking.
- (c) Operation of the proposed pipeline will be under the control of a Michigan corporation.
- (d) The proposed pipeline cannot be limited to a local segment. It must be viewed as a part of the larger undertaking regardless of the way in which title is held.

3.8.6

- 2. Alberta Government Telephones v. C.R.T.C. et al. (1985), 15 D.L.R. (4th)515; [1985] 2 F.C. 472; 17 Admin. L.R. 149 (F.C.T.D.); (1985) 24 D.L.R. (4th) 608; [1986] 2 F.C. 179; 17 Admin. L.R. 190 (F.C.A.)

3.8.7

The fact that Union proposes to stop its legal title near the shore of the river

does not mean that its proposal is not part of an undertaking extending beyond the province. Beyond the interconnection there is no functional distinction because the continuing line becomes part of a system controlled by a utility outside Ontario.

3.8.8

3. International Brotherhood of Electrical Workers and Westcoast Transmission Company Ltd., Report of Canadian Labour Relations Board, April 1974.

3.8.9

The assumption that an operation is primarily intra-provincial is only valid if the focus is on the source and the initial delivery point of gas. However, it was clear to TCPL that the proposed pipeline is not limited to an intra-provincial operation but is central to an extended operation envisaged in a larger plan.

Union

3.8.10

Counsel for Union emphasized that the only existing legislation which has anything to do with the constitutional argument is the NEB Act which has only one provision which is of any relevance to the OEB in this case, and that is its definition of a pipeline in Section 2:



Pipeline means a line for the transmission of gas or oil connecting a province with any other or others of the provinces or extending beyond the limits of a province.

3.8.11

He observed that the language above tracks closely the language of Section 92 (10)(a) of the Constitution Act, 1867, which is an exception to provincial jurisdiction.

3.8.12

He referred to the Decision of the Federal Court of Appeal In the Matter of a reference by the National Energy Board pursuant to subsection 28(4) of the Federal Court Act, [1987] F.C.J. No. 1060, Ct. File No. A-472-87, November, 1987, (F.C.A.), (the bypass case). He claimed that in this case there is a distinction between works and undertakings, stating that works are physical things and undertakings are arrangements that make use of works. He argued that the NEB Act focuses only on works.

3.8.13

He submitted that unless the proposed pipeline, located entirely in Ontario, is a work which will connect Ontario to another province or country, it is not a pipeline within the meaning of the NEB Act and does not fall within NEB jurisdiction.

3.8.14

He emphasized that the proposed pipeline will be an integral part of Union's system which

already extends as far as the Sarnia Industrial Line, a distance of 3.1 km from the St. Clair River.

3.8.15

He explained that the proposed pipeline will be routed through industrially zoned land where Union holds franchises for gas distribution to present and future customers.

3.8.16

He submitted that this case is the reverse of the (Cyanamid) bypass case in the sense that the argument would be that the small St. Clair Pipelines interconnection is an integral part of Union's large intra-provincial system. However, because the St. Clair Pipelines link reaches the international border, he claimed it cannot for jurisdictional reasons be subject to OEB control. He stated that if the focus is on the pipeline, which is all the legislation requires, there are two separate pipelines. The point of demarcation, he submitted, is wherever Union's system stops. He contended that the most logical place for the interconnection between St. Clair Pipelines and Union is at the river bank.

3.8.17

He noted that the Ojibway crossing link between Union and Panhandle Eastern happened before there were thoughts of jurisdiction, and the NEB was created later. He argued that the NEB decided to regulate this link and issued some

~~ex post facto~~ orders, but that this does not make Union a "company" within the NEB Act since Section 25 (2) simply says that, for those pipelines that have been operating prior to a certain date, they may continue to operate providing they get a certificate. He noted that there was never any certificate from the NEB to construct that line. Nevertheless, he said, the NEB seems satisfied to exercise jurisdiction over the pipe that is in the river at Ojibway. He proposed that the same situation applies in this case.

3.8.18

He observed that the NEB, under its statute, exerts authority with respect to the import and export of gas to and from Canada, and it also has the authority, under Parts VI and VI.1 of the NEB Act, to regulate the flow of gas in and out of provinces. Union's point was that Parliamentary jurisdiction extends only to regulating the movement of gas in and out of Canada, and in and out of the provinces, not to regulating local distribution companies.

3.8.19

With respect to TCPL's preoccupation with Union's involvement in a broader sense, he responded by explaining that Unicorp is already involved in the North American energy picture through Unicorp Energy Inc. He explained that Unicorp controls, through Union Enterprises, Union which has been part of the North American

energy system for a long time. He pointed out that TCPL's gas supply arrives from the Great Lakes system at Dawn, is delivered to Oakville and back into TCPL's system by Union's Dawn-Trafalgar Transmission system. According to Union's Counsel, this has been an established fact for many years which is not going to be changed by the Application before this Board (see map in Appendix 4.2).

3.8.20

This case shows, according to Union's Counsel, that some of the Unicorp companies, for example St. Clair Pipelines, will be federally regulated, and some, such as Union Gas, will be provincially regulated. He noted that Union's intra-provincial gas distribution system is regulated by the OEB, and only so far as it engages in imports and exports, which it has been doing for a long time, is it federally regulated.

3.8.21

The point he made was that each member of the Unicorp family will have a role to play in Unicorp's grand scheme. Nevertheless, the evidence in this case, he claimed, establishes what Union's system is at present, and what it will be should the proposed pipeline be constructed.

Consumers'

3.8.22

The position of Counsel for Consumers' was that this is a relatively straightforward case of a project within the Province of Ontario in that Union has already recognized the NEB's jurisdiction over the river crossing portion which provides the international connection. He submitted that the work, i.e. the proposed pipeline, is located solely within Ontario and attracts provincial jurisdiction only.

3.8.23

He did not see any major distinction between the decision that Union is seeking from the Board and those of the Divisional Court, the Court of Appeal and the Federal Court in the bypass case. This was seen by Consumers' Counsel to be an easier case because of the nature of the pipeline proposal, and particularly because Union has recognized the jurisdiction of the NEB.

CIL

3.8.24

Counsel for CIL did not take any jurisdictional position. However, she observed that the bypass case does not resolve the issue of jurisdiction in this case. She pointed out that TCPL was not proposing to operate the Cyanamid bypass pipeline and, particularly, that the operation of the bypass pipeline was not necessary,

integral or vital to the operation of the overall, integrated, inter-provincial undertaking of TCPL.

3.8.25

She suggested that there is a stronger argument for the point of interconnection between Union and the international pipeline work to be at the Sarnia Industrial Line Station because this is the point from which gas is distributed into the Sarnia industrial area.

Board Staff

3.8.26

Counsel to Board Staff urged the Board to define the undertaking in accordance with the Application as transporting gas from a point in Ontario to another point in Ontario as an appropriate limitation, having regard to S. 92 (10) of the Constitution Act, 1867, and the ejusdem generis rule, "it is transportation we are looking at and that is all". Counsel to Board Staff's position was that the limit of the Board's jurisdiction is at the point where the wholly provincial facility connects with a facility that leads to an international or inter-provincial interconnection. In this case, he claimed, that point is at the St. Clair Valve Site.

3.8.27

He emphasized that neither the procurement of gas nor the international marketing issue raised by TCPL are relevant since these factors do not

change the nature of the undertaking, which is limited solely to transportation, and is based on the history of NEB jurisdiction upstream of interconnections with provincial undertakings that are subject to OEB jurisdiction.

3.8.28

He identified five cases in which the Courts have held that the high degree of integration between the federal and provincial undertaking was such that the local enterprise was governed by laws enacted by the Federal Parliament. In each case, Counsel to Board Staff concluded that the present Application is distinguishable from the reference decision in that the proposed pipeline will be closely integrated with the provincial system. He submitted that the proposed pipeline is not a federal undertaking but is a true local transportation work or undertaking wholly operated and built within Ontario, having regard to the ownership of the facility, the physical relationship between Union's existing system and both the proposed pipeline and St. Clair Pipelines, and the operational characteristics of the facility.

3.8.29

Counsel to Board Staff referred to the trilogy of the bypass cases, i.e. the Divisional Court judgments, the Federal Court of Appeal judgments and the Supreme Court of Ontario judgments, and submitted that they are directly applicable to this case.

3.8.30

He dealt with the ratio of the Divisional Court where it says:

The typical bypass facility located entirely within Ontario remains a local work under s.92 (10)(a) because:

1. It is owned, controlled and maintained by a separate entity from the interprovincial work.

3.8.31

He submitted that the proposed pipeline operates separately from the inter-provincial work in that it operates from the St. Clair Valve Site all the way to the Bickford Pool.

Further,

2. It is operated separately from the interprovincial work.

3.8.32

He submitted that while the proposed pipeline will also be operated in conjunction with the St. Clair Pipelines interconnection, both the interconnection and its operation alone do not bring the proposed pipeline into a federal sphere. Further,

3. It has no direct effect on the operating ability of the interprovincial work.

3.8.33

He admitted that this ratio creates an issue with which the Board must deal. Further,

4. Its purpose is entirely to serve an Ontario user.



3.8.34

He held that the proposed pipeline is meant to serve Ontario users alone. And lastly,

5. It is not vital, essential or integral to the interprovincial work.

3.8.35

He admitted that the proposed pipeline does not entirely meet this ratio which, by itself, does not satisfy the issue. Rather, he suggested that one must look to history.

3.8.36

In turning to the Reasons for Decisions of the Federal Court of Appeal (in the bypass case), Counsel to Board Staff observed that its ratio is not directly applicable to the facts of the present case because there is a much closer nexus between Union's proposed pipeline and the international pipeline.

3.8.37

He pointed out that the practicalities and history indicate that the intra-provincial line owned by Union is regulated by the OEB, and the change in jurisdiction is at the interconnection with the international line. He argued that Union has recognized the federal jurisdiction over the international line in that a proposed condition of approval by the OEB is that both the NEB and FERC grant their approvals.

TCPL's Reply

3.8.38

Counsel for TCPL asserted that the Dome Petroleum Case, regarding storage caverns being integral to a pipeline, is relevant to the issue of whether a pipeline which is designed, among other things, to link storage pools in Michigan with storage pools in southern Ontario, so as to create what Union's witness described as "a big pool of storage" in this area of North America, is an undertaking which extends beyond Ontario.

3.8.39

The evidence was absolutely clear, according to TCPL's Counsel, that from an operational standpoint, the subject pipelines of Union, St. Clair Pipelines and MichCon will all be controlled by MichCon when the gas is flowing west, at which time Union will not be operating the pipeline.

3.8.40

Regarding Union's position that the proposed line is not a "pipeline" under Section 2 of the NEB Act, he responded that the statute was intended to deal with pipelines which go to the border and beyond, and the fact that legal title at the border becomes that of an American corporation does not preclude the NEB from having jurisdiction over the pipeline to the border.

3.8.41

Union's assertion that the proposed pipeline travels through industrial land within Union's franchise area was considered by Counsel for TCPL to be irrelevant. He argued that the existing TCPL line from Courtright to Dawn also passes through Union's franchise area but no one would suggest that this gives the OEB jurisdiction over the line.

3.8.42

In response to Union's allegation that OEB jurisdiction ends wherever Union's system stops, Counsel for TCPL considered that the Dome Petroleum Case answers that contention, since corporate ownership is irrelevant, particularly when the corporations are related. The fact is, according to Counsel for TCPL, the pipeline from the international border to the Bickford Pool Station is an integrated line and any segregation is artificial.

3.8.43

Further, he contended that the St. Clair Valve Site is not literally at the shore and it is truly arbitrary that the division be at the valve.

3.8.44

Regarding Union's argument that Union is not a "company" within the NEB Act, he referred to overlooked Section 25(3) of the NEB Act which states:

For the purpose of this Act, ...

(c) a person, other than a company,

(i) operating a pipeline constructed before the 1st day of October, 1953 ... is deemed to be a company.

3.8.45

He concluded that, in order for Union to operate the pipeline lawfully to the international border at Detroit for connection with the Panhandle Eastern, Union must be a "company" under the NEB Act.

3.8.46

He referred to the Agreement for Firm Transportation Services between MichCon and Union (Exhibit 9.4) and pointed out that under Article 5.2, delivery, and therefore title, to the gas will pass from MichCon to Union one foot on the United States side of the interconnection between the Belle River and St. Clair Pipelines. Therefore, he contended that Union is acquiring title to the gas and taking delivery in the United States of America, for transmission through a section of the MichCon pipeline under the St. Clair River and ultimately to the Bickford Storage Pool. Union's undertaking, he submitted, must extend at least that far into the United States of America, even if Union is not the owner of all the pipe through which its gas is transmitted.

3.8.47

In response to Counsel to Board Staff, he contended that the "proposed pipeline operated in Ontario" has no special constitutional significance. However, he noted that from an operational standpoint, the pipeline from MichCon's Belle River Mills facilities to the Bickford Pool will, according to Union's witness, be operated as a single system and, when the gas is flowing west, the pipeline will be controlled by MichCon. Therefore, he contended it is wrong to base any jurisdictional argument on the assumption that Union will at all times control the operation of the proposed pipeline.

3.8.48

In response to Board Staff's position that the division of jurisdiction between the NEB and the OEB is based on history, Counsel for TCPL argued that the proposed St. Clair valve and the proposed Sarnia Industrial Line Station do not exist and therefore have no history. He argued that there is no evidence to justify the exact location of the St. Clair valve and, therefore, to base regulatory jurisdiction on the location of the valve alone appears to be arbitrary.

3.8.49

Further, Counsel for TCPL argued that the fact that a provincial regulatory body has historically exercised jurisdiction over particular undertakings does not lead to the necessary

~~inference that it is properly so regulated.~~  
Reference to the AGT case (Alberta Government  
Telephones, supra, at 92) shows that history  
does not always count. A provincial regulator  
cannot acquire jurisdiction over a federal  
undertaking through squatter's rights, according  
to Counsel for TCPL.

3.8.50

He argued against Counsel to Board Staff's  
submission that the Federal Court of Appeal  
"rejected" the Luscar Case, Luscar Collier v.  
MacDonald, [1927] 4 D.L.R. 85; [1927] A.C. 925.

3.8.51

He did not agree with Counsel to Board Staff's  
comparison of the proposed pipeline to the  
characteristics of a local work, particularly  
the statement that "it is meant to serve Ontario  
users alone." He argued that the evidence is  
that the line will be operable in either direc-  
tion in conjunction with the "large pool of  
storage", and will attract pipelines to this  
area and turn it into a trading centre. He  
further argued that while it would be primarily  
an international pipeline operating for Union's  
own purposes, it would also be available on a  
carrier basis to anyone, including non-Ontario  
distributors such as GMi and TCPL whose markets  
lie both in, and beyond, Ontario.

3.8.52

In response to arguments supporting some  
arbitrary point for limiting NEB jurisdiction,

Counsel for TCPL suggested that it is sufficient that the OEB decide the only relevant question, namely, jurisdiction over the proposed pipeline. A finding that the NEB has such jurisdiction does not, he contended, necessarily imply that it has jurisdiction over the remainder of Union's system, according to TCPL. He argued that the selection of an arbitrary point to separate jurisdictions would not be a rational solution to the jurisdictional problem.

Supplementary Evidence

3.8.53

On July 19, 1988, TCPL filed a Notice of Motion with the Board requesting that further evidence in the form of Transcript excerpts, dated July 8, 1988, and July 11, 1988, from the Board Hearing under Board File No. E.B.R.L.G. 32 be accepted as evidence in this hearing, (E.B.L.O. 226). The Board reopened these proceedings for the purpose of hearing TCPL's motion, and granted the motion as described herein under section 3.7 of this Decision.

3.8.54

On August 23, 1988, subsequent to the close of the Reopened Hearing TCPL filed a Notice of Motion that the Board accept for filing in these proceedings, three documents relating to Empire State's application before the NY PSC

for leave to construct the Empire Pipeline, including Empire States' application, the prefiled testimony of Mr. W.J. Cooper of Union, and a letter dated June 14, 1988 from Mr. Cooper to Empire State. The Board granted this motion by an ex parte decision as described in section 3.7 of this Decision.

3.8.55

TCPL claimed that all the evidence it proposed for post-hearing filing was relevant to the question of jurisdiction which was raised in these proceedings.

3.8.56

In reaching its decision on the question of jurisdiction, the Board has taken account of the Transcript and documents relative to the Empire Pipeline which were filed after the conclusion of the main hearing, and has given this evidence the weight which the Board deemed appropriate under the circumstances, as described in section 3.7.

### Board Findings

3.8.57

As stated earlier in this Decision, the issue of the OEB's jurisdiction was raised by TCPL in a specific motion to the effect that this Board did not have the jurisdiction to decide the proposal before it. The Board, with the



~~consent of all parties, reserved its decision on the matter of jurisdiction until it had heard the evidence and arguments of the parties.~~

3.8.58

The evidence and arguments having been completed, the Board now addresses the matter of its jurisdiction to decide the Application before it.

3.8.59

Historically, the collection of gas in the resource provinces, as well as the distribution and storage of gas in the user provinces, has been directly or indirectly acknowledged by every responsible board, government, parliament or legislature in Canada to fall within the jurisdiction of the provinces.

3.8.60

Union has been under the regulatory supervision of the Province of Ontario for seventy years.

3.8.61

A specific, short, international link was built to connect Union with Panhandle Eastern to access United States gas sources in the 1950s. This link came under the jurisdiction of the NEB in 1960, the link having been constructed in 1947. There has never been any suggestion that the NEB's jurisdiction over that link should extend onward into the Union distribution system.

3.8.62

There are other well known inter-provincial and international electrical power line and gas pipeline connections which are under the jurisdiction of the NEB. None have ever been used to support an argument that the jurisdiction of the NEB should extend to include all, or any part of, the distribution systems on either side of the link. Some of these are referred to in section 2.5 of this Decision.

3.8.63

The Board finds in law that it has jurisdiction over the proposed line from the west side of the St. Clair Valve Site eastward, and that the NEB has jurisdiction over the short section of the line from the international boundary eastward up to but excluding the valve site. This decision is based on the following seven reasons:

3.8.64

1. The pipeline over which the Board finds it has jurisdiction, when built, will lie entirely within the Province of Ontario and is fundamentally designed to be, and will be, an important part of the Union distribution system in Ontario. It is an intra-provincial work.

3.8.65

It is argued that the proposed St. Clair-Bickford Line will connect to an international link and, therefore, it is under the jurisdiction of the NEB. In some

cases this might be true, but in this case it is not so. Patently, Union, Consumers' and ICG are, at many points, connected to the TCPL line which is under the jurisdiction of the NEB. There is no substantial jurisdictional difference, in this Board's experience, between an international link and an inter-provincial link. No one has ever argued that, because Union, Consumers' or ICG connect to the TCPL line, and are fed by it, the jurisdiction of the NEB extends to include those three distribution systems.

3.8.66

It has also been argued that the line to be built in Ontario goes nowhere unless it connects to the international link, and therefore the jurisdiction of the NEB extends not only to the link, but to the St. Clair-Bickford Line as well. This argument is answered on three grounds:

- (a) the St. Clair-Bickford Line before this Board has a purpose beyond connecting to the international link, namely, to become part of the distribution system of Union in local areas in which Union is the franchised gas distributor.

(b) the jurisdiction of the NEB can be protected fully, as are Canadian interests, by ending the NEB's jurisdiction somewhere. If the jurisdiction does not cease as proposed by Union, it could embrace the entire Union system. Such a result could cause serious economic, political and regulatory discord in Canada.

(c) Union is already supplied by an interconnection, the Panhandle Line which, to be effective, has not required that the NEB's jurisdiction be extended downstream. As well, Union is supplied by TCPL which has not occasioned the NEB's incursion into an historical area of provincial jurisdiction.

3.8.67

2. The Board finds as a fact that the St. Clair-Bickford Line should be accepted as a component of the distribution system of Union, with or without the international link.

3.8.68

The St. Clair-Bickford Line, if built prior to meeting the capital investment criteria of this Board (see EBO 134), might cause difficulties to Union if it later attempted to have this line accepted as part of its OEB approved rate base.

3.8.69

This Board clearly would have had the jurisdiction to consider this line as part of Union's distribution system if there were no proposal to link the St. Clair-Bickford Line to a system interconnecting into the United States.

3.8.70

As part of a local distribution system, (whose many lines serve several functions simultaneously: arterial, transmission and distribution), the St. Clair-Bickford Line traverses municipal areas for which Union possesses distribution franchises. The Board finds this as a fact, of which information it is seized as the approving authority for the terms and conditions of gas franchises in Ontario.

3.8.71

In addition, the Board finds as a fact that Union has a reasonable expectation that it will, in the foreseeable future, need to extend distribution lines into the area traversed by this line. This finding is reinforced by the evidence that the said area is zoned for industrial development, as well as its proximity to other neighbouring industrially developed areas.

3.8.72

The Board finds that it is entirely reasonable for Union to expect that it will serve this area with gas. Before that expectation can be realized, and the St. Clair-Bickford Line can be included in Union's rate base, a further hearing will be required and this, in any event, is not the subject of this hearing.

3.8.73

It is, therefore, not correct to allege that the St. Clair-Bickford Line has only one use, namely to connect with the international line. As the Board has found, the primary constitutional characteristic of the proposed line is as a part of the Union distribution system, not as an "integral" part of the short international line.

3.8.74

3. This Board has the regulatory jurisdiction over the economic viability and performance of Union. No connection to Union could become more significant to its economic viability than a line connecting the Union distribution system to the storage in Michigan, which also provides access to potentially cheaper United States gas, and thereby provides enhanced security of supply and operational flexibility.

3.8.75

In the Board's view, the St. Clair-Bickford Line is integrated with Union's Ontario system, and is of no national significance or jurisdiction, but is basic to the economic fabric of Ontario and particularly southwestern Ontario, in that it provides the means by which Union can supply local industrial, residential and commercial natural gas requirements.

3.8.76

In the Board's opinion, it would be operationally impossible to share jurisdiction of this important local function with another board which has no experience in, or mandate for, regulating Ontario gas distributors.

3.8.77

Not only is there the problem of shared control, there is, as well, the major difficulty of defining where the jurisdiction of the NEB would end should jurisdiction be shared. A Court could be in constant controversy trying to arbitrate the unarbitrable. The reason regulation has been successful within Ontario is that it has been strong, focused and undivided.

3.8.78

4. Neither the international link nor the St. Clair-Bickford Line will be operated by, or form part of, the TCPL system or a truly Canadian gas transportation system.

Therefore, this Board, by taking jurisdiction of the St. Clair-Bickford Line, causes no risk to TCPL and avoids any risky sharing of jurisdiction.

3.8.79

5. The NEB will control gas exports out of Canada and gas imports into Canada, including tolls and service, totally, whether the link is 100 feet or 100 miles in length. The jurisdiction of the NEB is served and reserved by limiting its jurisdiction between two points: the international border near the centre of the St. Clair River, and the St. Clair Valve Site as proposed by Union.

3.8.80

In the Board's opinion, control of the movement of gas in and out of Canada, and between Canadian provinces, is what the Constitution sought to reserve to the federal government. History has confirmed that concept and the allocation of jurisdiction and control that flows from it.

3.8.81

6. As already discussed above in reason 1, the proposed St. Clair-Bickford Line is part of a distribution system long recognized as being within the jurisdiction of Ontario. The fact that the St. Clair-Bickford Line's financial viability



may be presently dependent on an international connection does not, in this Board's opinion, justify removing the OEB's jurisdiction over a local system, its storage, its supply and its distribution, as long as the NEB has control over the short international connecting link.

3.8.82

7. If the NEB were to have jurisdiction easterly beyond the short, river crossing link, where would its jurisdiction end, and for what reason? If not at the proposed valve site, then where? How far east into the bowels of the Union system should the NEB's jurisdiction extend? CIL, unhelpfully said it did not know. TCPL on the other hand was of the view that the NEB's jurisdiction went at least as far as the Bickford Pool, but how much farther it did not know.

3.8.83

In the Board's view, any attempt to extend the jurisdiction of the NEB east of the proposed valve site will cause serious and unnecessary economic, legal, political and jurisdictional problems. Clearly the NEB's jurisdiction must have a beginning and an ending:

- (a) The beginning must be no further west than the centre of the St. Clair River, lest it encroach on the jurisdiction of a sovereign nation.
  
- (b) The ending in the Board's opinion should be at the St. Clair Valve Site, lest it encroach on the established right of provincial jurisdiction over local distribution systems.
  
- (c) The ending could be proposed to be Hamilton or Trafalgar including Union's storage facilities. This proposition would suggest that the NEB should also have jurisdiction over NOVA in Alberta, and all distribution companies connected to the TCPL system in all the provinces. In fact, this hearing tests the very foundation of that hypothesis.

3.8.84

If the St. Clair Valve Site is not to be the end of the NEB's jurisdiction, except for arbitrariness, where would the termination be?

3.8.85

The St. Clair Valve Site is a control mechanism to separate the under-river pipeline and, as such, it can be placed almost anywhere east of the St. Clair

River bank. However, if the valve is to fulfill its intended purpose it can not be located such that the separated river crossing section also includes current or anticipated local distribution lines. The Board considers the proposed valve site location to be appropriate for the purpose to which it is intended, and that its selection was not on an arbitrary basis.

3.8.86

In reaching its decision the Board is aware of, and has reviewed, a long inventory of cases decided in Canada which deal with jurisdiction under the Constitution. These are listed in Appendix 4.15.

3.8.87

The Board does not feel that any of these cases deal specifically with the real historical and operational merits of the jurisdictional matter before it.

3.8.88

The Board finds that the St. Clair-Bickford Line, as proposed by Union, falls within the jurisdiction of the OEB, while the international link falls within the jurisdiction of the NEB.

3.8.89

The Board, therefore, dismisses TCPL's motion.

**3.9 COSTS AND COMPLETION OF THE PROCEEDINGS**

**Costs**

**3.9.1**

None of the parties appearing in these proceedings has asked for costs. It is unnecessary, therefore, for the Board to deal with any party and party costs other than the costs of the Board. Under subsection 28(4) of the Act the Board has the authority and discretion to fix its costs, "... regard being had to the time and expenses of the Board".

**3.9.2**

The Application before the Board has caused the Board to incur certain costs related to its time and expenses which would normally be borne in total by the Applicant.

**3.9.3**

As a result of TCPL's unsuccessful motion challenging the Board's jurisdiction, TCPL's filings of post-hearing evidence relative to

the Empire State application to the NY PSC, the reopening of this hearing to hear TCPL's July 19, 1988, Notice of Motion and TCPL's August 23, 1988 Notice of Motion for the further filing of post-hearing evidence, the Board has incurred additional and unusual costs.

Board Findings

3.9.4

The Board finds that the Applicant shall pay the Board's costs incurred as a result of the main portion of this hearing but excluding those costs incurred by the Board as a result of TCPL's unsuccessful motion regarding the Board's jurisdiction, TCPL's post-hearing filings of evidence relative to the Empire State Application to the NY PSC and the costs of the Reopened Hearing.

3.9.5

The Board further finds that those of its costs determined to have been incurred as a result of TCPL's unsuccessful motion on jurisdiction, TCPL's post-hearing filings of evidence relative to the Empire State Application to the NY PSC and the costs of the Reopened Hearing shall be paid by TCPL.

3.9.6

Because the jurisdictional issue impacted to some degree on all aspects of this hearing, it is impossible to make a precise division of the Board's costs as described above. As a result,

the Board has had to rely on its experience and judgement in arriving at a fair allocation. The Board finds that 50 percent of its total costs fixed in these proceedings shall be paid by Union, with the balance to be paid by TCPL.

3.9.7

The Board will, in due course, issue orders requiring the payment of its costs in keeping with the above findings.

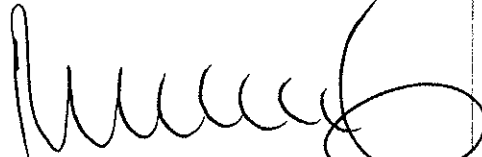
Completion of the Proceedings

3.9.8

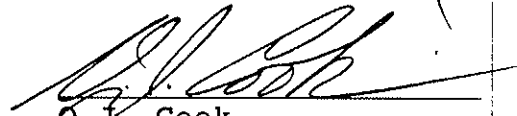
The Board grants the Applicant leave to construct the proposed facilities, conditioned as described in Appendices 4.11 as amended by the Board, 4.12 and 4.13 attached hereto, and will issue the necessary Order in due course.

Dated at Toronto this *1st* day of September, 1988.

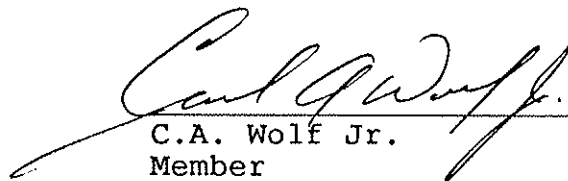
ONTARIO ENERGY BOARD



R.W. Macaulay, Q.C.  
Presiding Member



O.J. Cook  
Member



C.A. Wolf Jr.  
Member

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DECISION WITH REASONS

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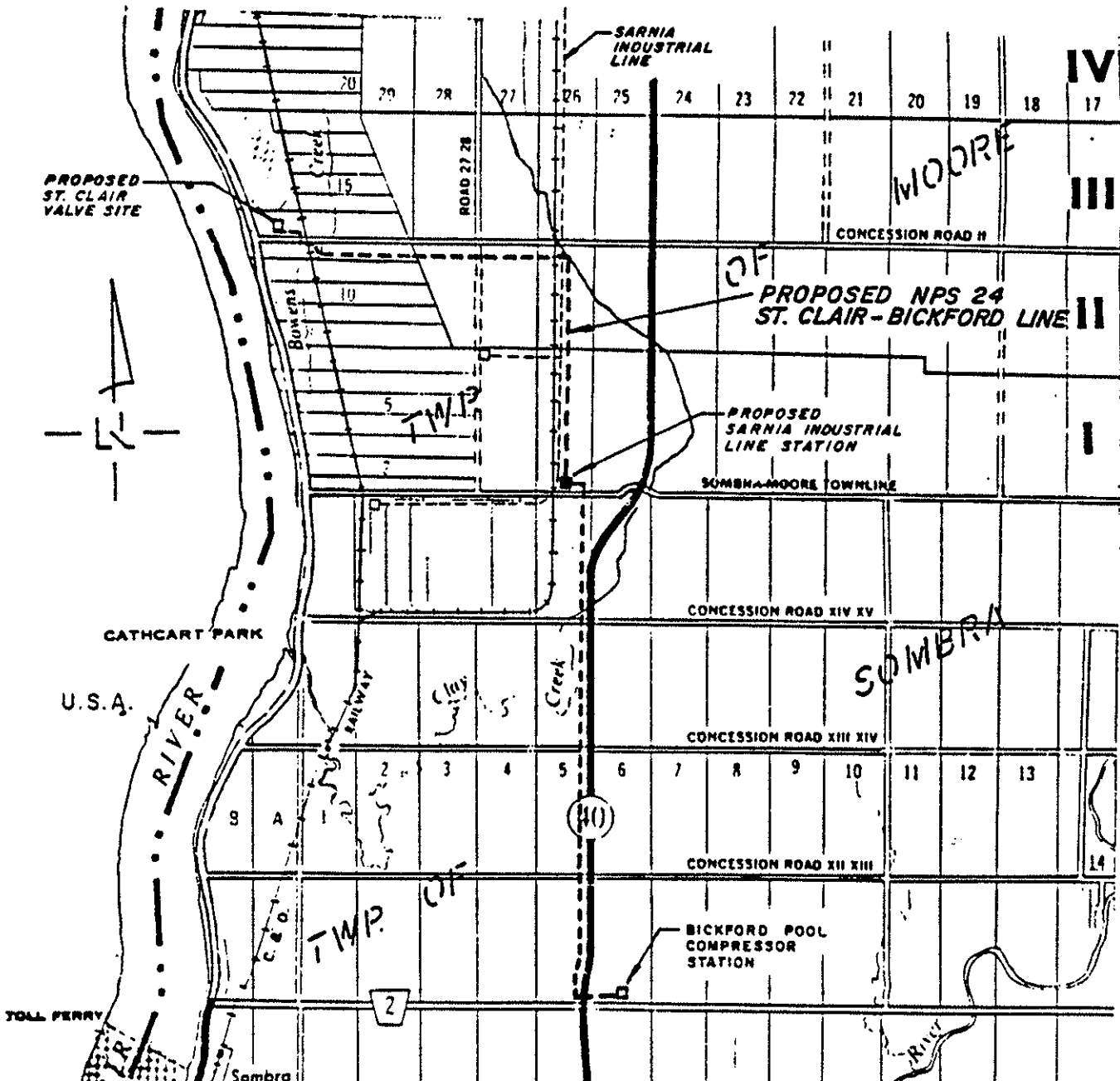
4. APPENDICES

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# UNION GAS LIMITED

## NPS 24 ST. CLAIR - BICKFORD LINE



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DECISION WITH REASONS

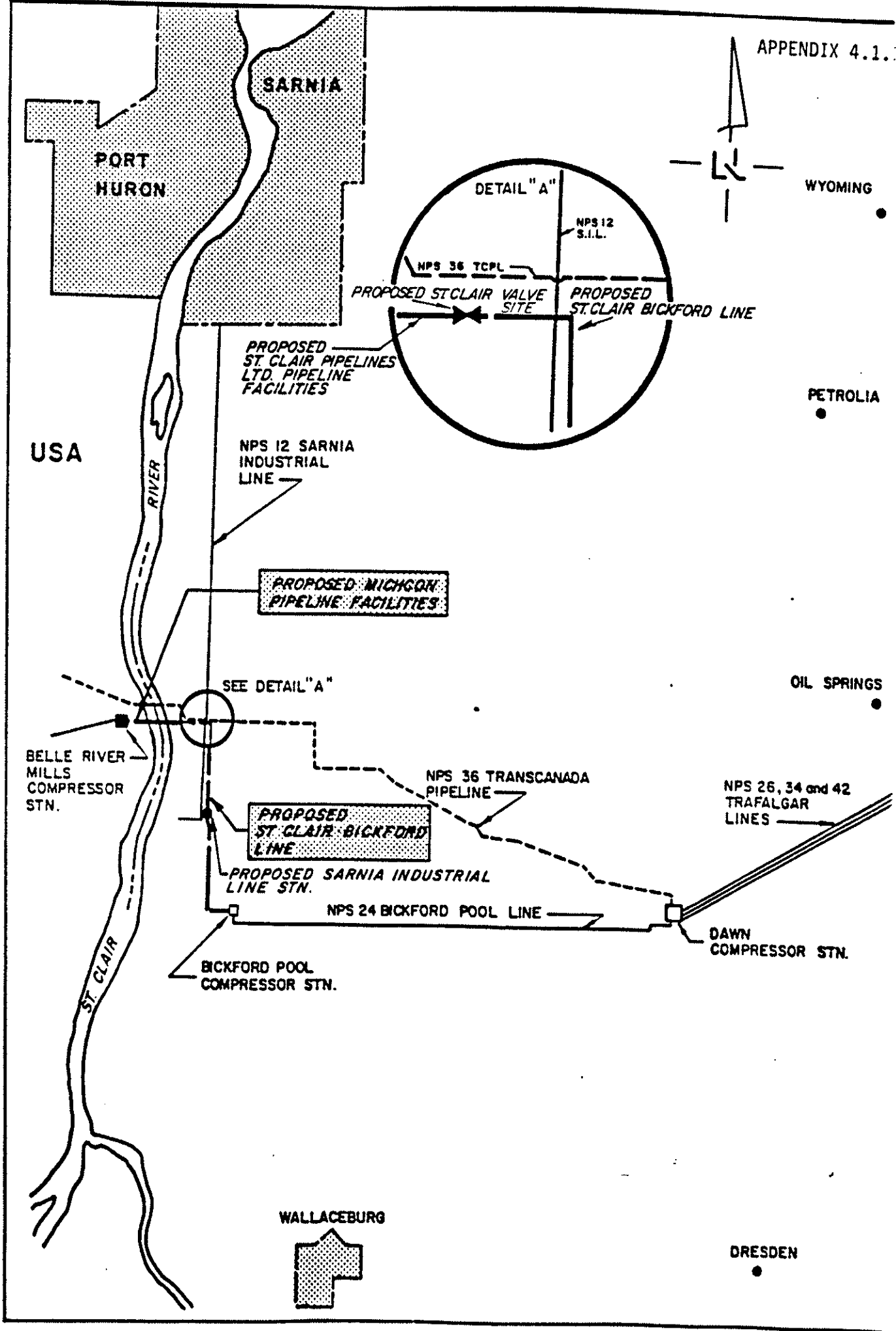
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APPENDIX 4.2

TRANSCANADA PIPELINES AND CONNECTING SYSTEMS MAP

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DECISION WITH REASONS

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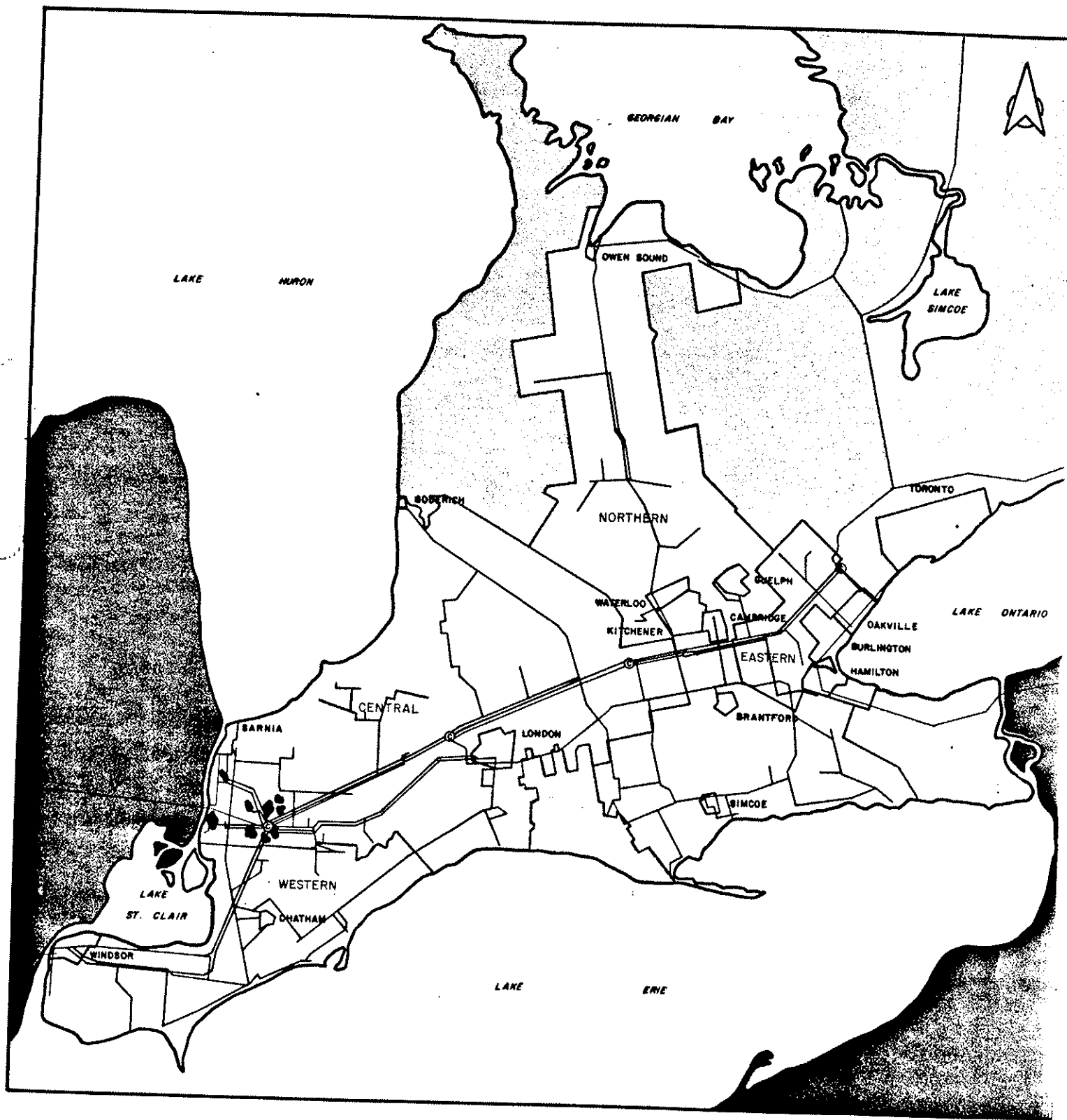
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**APPENDIX 4.3**

**UNION GAS PIPELINE SYSTEMS MAP**

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# UNION GAS LIMITED PIPELINE SYSTEMS MAP



## LEGEND

ACTIVE STORAGE POOLS



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DECISION WITH REASONS

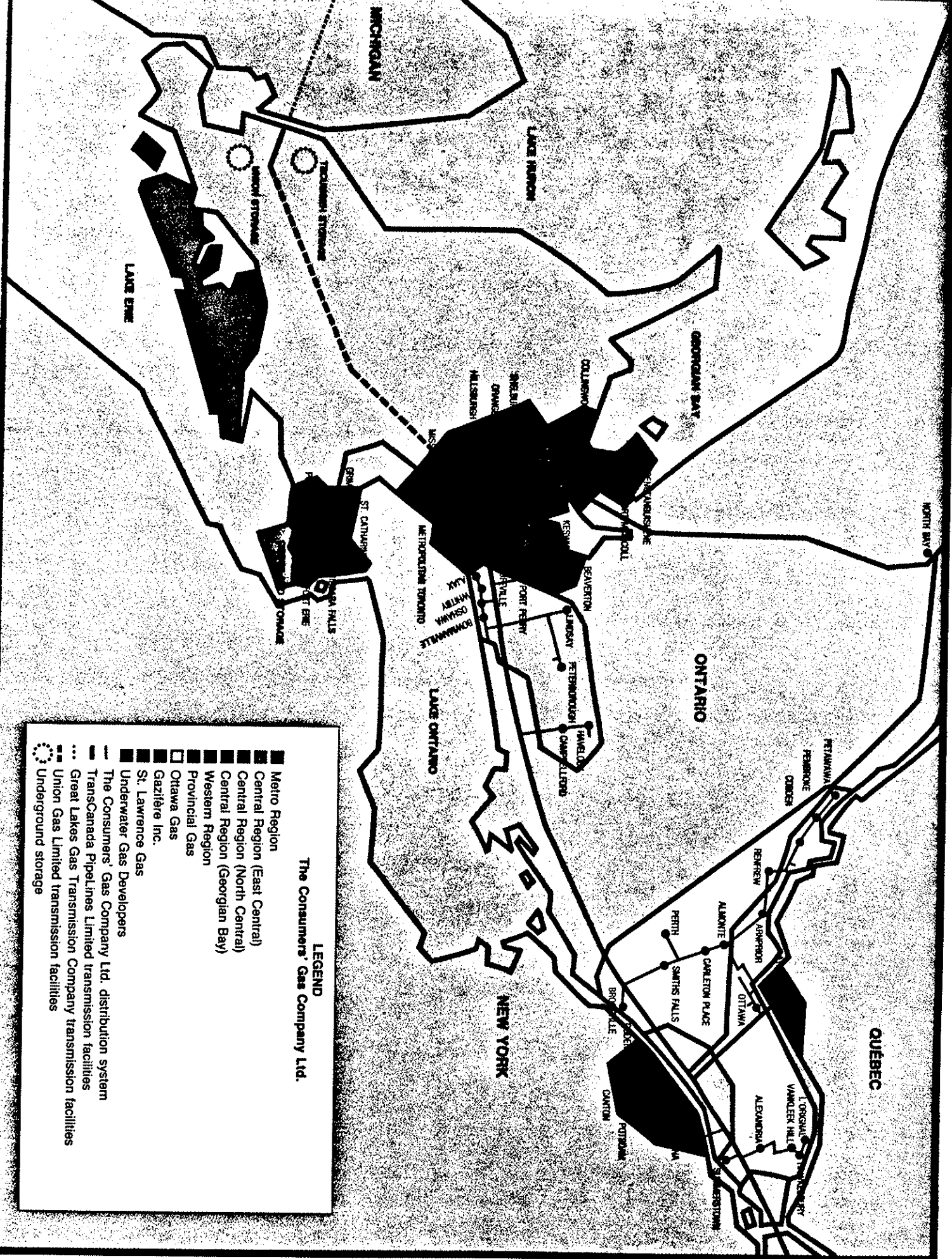
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**APPENDIX 4.4**

**CONSUMERS' GAS SYSTEM MAP**

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**LEGEND**  
**The Consumers' Gas Company Ltd.**

- Metro Region
- Central Region (East Central)
- Central Region (North Central)
- Central Region (Georgian Bay)
- Western Region
- Provincial Gas
- Ottawa Gas
- Gazifère Inc.
- St. Lawrence Gas
- Underwater Gas Developers
- The Consumers' Gas Company Ltd. distribution system
- - - TransCanada Pipelines Limited transmission facilities
- ... Great Lakes Gas Transmission Company transmission facilities
- x-x- Union Gas Limited transmission facilities
- Underground storage



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DECISION WITH REASONS

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**APPENDIX 4.5**

**ICG UTILITIES (ONTARIO) DISTRIBUTION NETWORK MAP**

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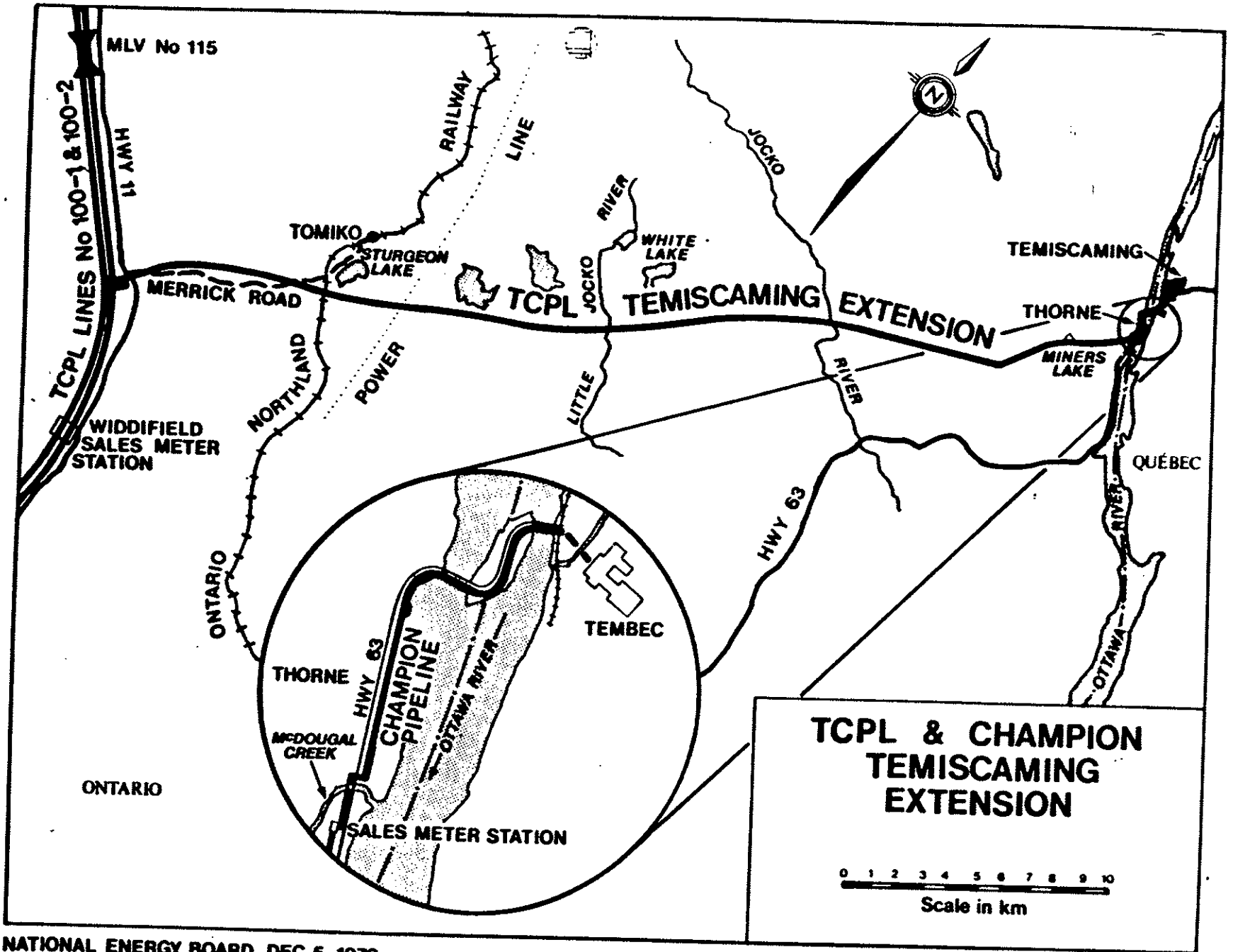
Figure 18

# Gas Pipeline Companies Regulated by the National Energy Board



1. Alberta Natural Gas Company Ltd.
2. Amoco Canada Petroleum Company Ltd. (abandoned)
3. Canadian Montana Pipe Line Company
4. Champion Pipe Line Corporation Limited
5. Consolidated Pipe Lines Company
6. Dome Petroleum Limited
7. Foothills Pipe Lines (Yukon) Ltd.
8. ICG Transmission Holdings Ltd.
9. Many Islands Pipe Lines (Canada) Limited
10. Mid-Continent Pipelines Limited
11. Minell Pipeline Ltd.
12. Murphy Oil Company Limited
13. Niagara Gas Transmission Limited
14. Peace River Transmission Company Limited
15. Saskatchewan Power Corporation
16. TransCanada PipeLines Limited
17. Trans Québec & Maritimes Pipeline Inc.
18. Union Gas Limited
19. Westcoast Transmission Company Limited
20. Canadian Hunter Exploration Ltd.
21. A.P.R. Pipeline Company Limited
22. Shell Canada Products Limited
23. Consumers' Gas (Canada) Limited
24. Foothills Dempster Lateral (Corridor)

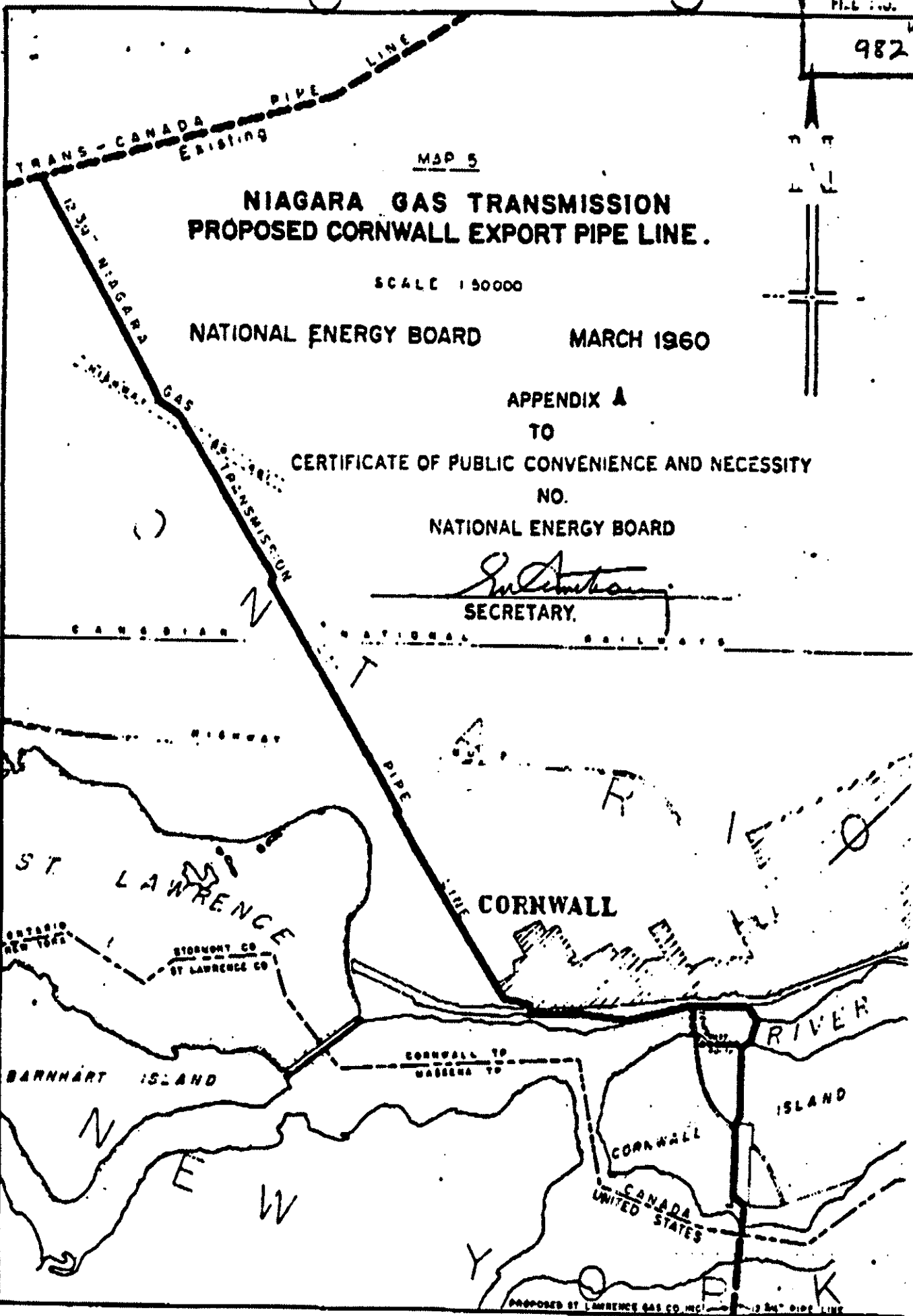
(From NEB Annual Report 1987)



NATIONAL ENERGY BOARD, DEC. 5, 1979

DWG. No. 1132-M

FILE NO.  
982



**NIAGARA GAS TRANSMISSION  
PROPOSED CORNWALL EXPORT PIPE LINE.**

MSP 5

SCALE 1:50000

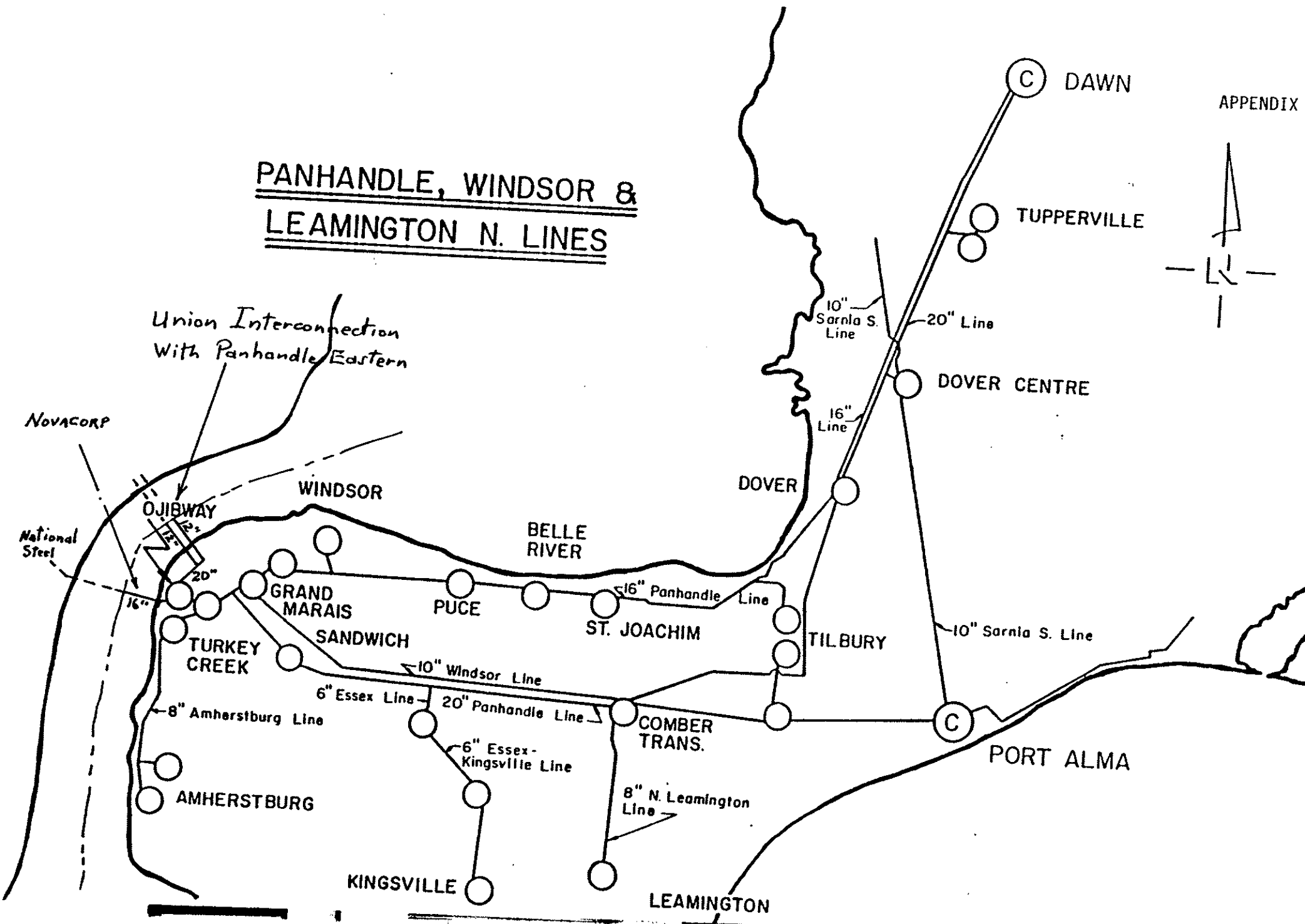
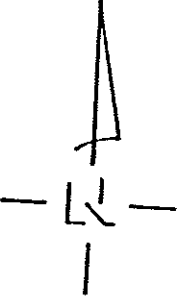
NATIONAL ENERGY BOARD

MARCH 1960

APPENDIX A  
TO  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
NO.  
NATIONAL ENERGY BOARD

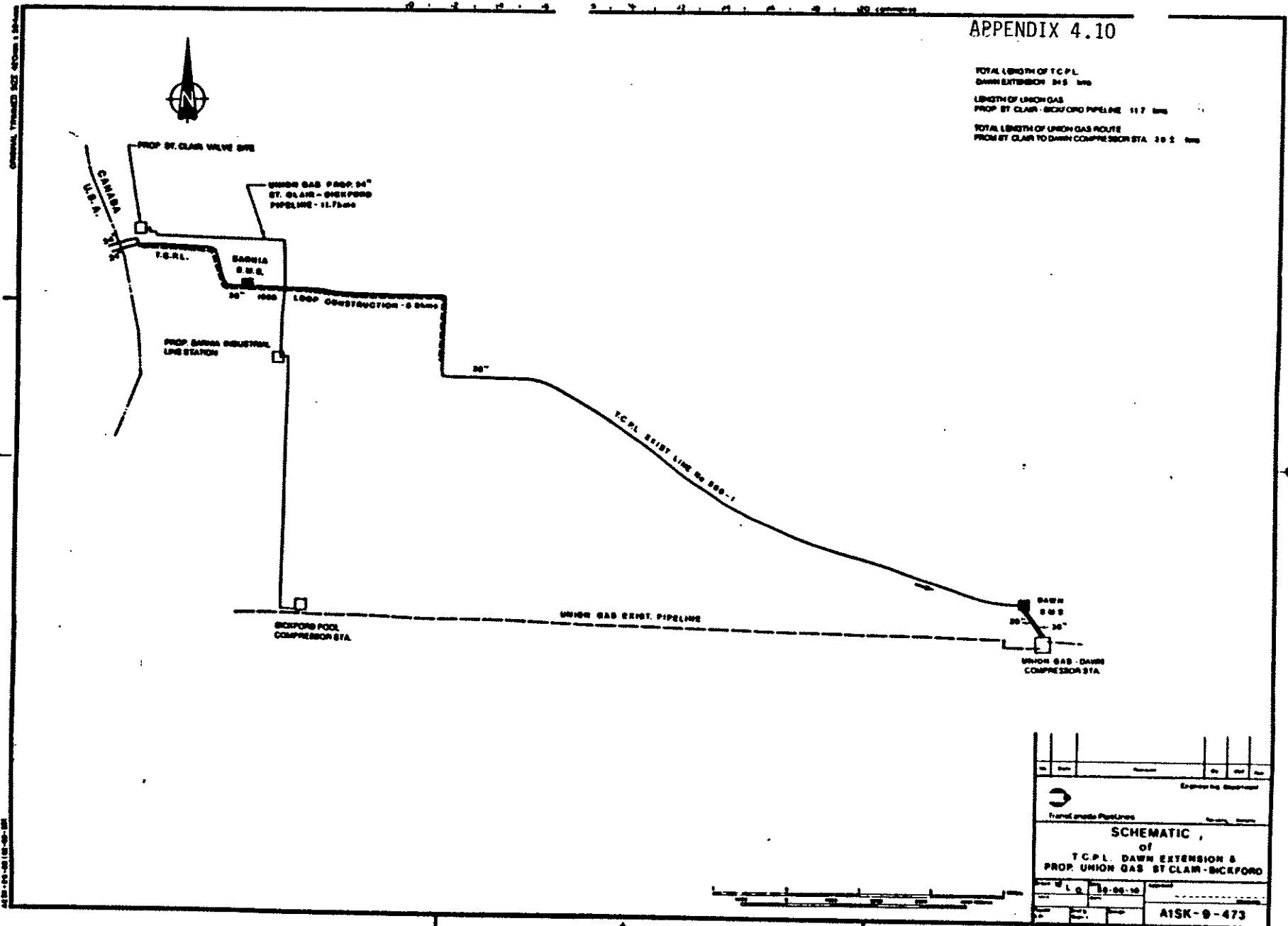
*[Signature]*  
SECRETARY.


# PANHANDLE, WINDSOR & LEAMINGTON N. LINES

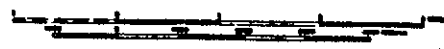


# APPENDIX 4.10

TOTAL LENGTH OF T.C.P.L.  
DAWN EXTENSION 34.5 MILES  
LENGTH OF UNION GAS  
PROP BY CLAIR - BICKFORD PIPELINE 117 MILES  
TOTAL LENGTH OF UNION GAS ROUTE  
FROM ST. CLAIR TO DAWN COMPRESSOR STA. 20.2 MILES



NO.	DATE	REVISION	BY	APP.	FOR
 TRANSMISSION PIPELINES					
<b>SCHEMATIC</b> of <b>T.C.P.L. DAWN EXTENSION &amp;          PROP. UNION GAS ST. CLAIR - BICKFORD</b>					
DATE OF L.G.		30-06-10			
<b>AISK-9-473</b>					



ORIGINAL DRAWING SIZE 400mm x 300mm

AISK-9-473 (01-09-10)

Appendix 4.11

ST. CLAIR-BICKFORD LINE

Conditions of Approval E.B.L.O. 226

(Exhibit 10.2 except for amended Condition 1)

- a) Subject to Condition (b), Union shall comply with all undertakings made by its counsel and witnesses, and shall construct the pipeline and restore the land according to the evidence of its witnesses at the hearing.
  
- b) Union shall advise the Board's designated representative of any proposed change in construction or restoration procedures and, except in an emergency, Union shall not make any such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board or its designated representative shall be informed forthwith after the fact.



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DECISION WITH REASONS

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- c) Union shall furnish the Board's designated representative with every reasonable facility for ascertaining whether the work has been and is being performed according to the Board's Order.
  - d) Union shall give the Board and the Chairman of the OPCC 10 days written notice of the commencement of construction of the pipeline.
  - e) Union shall designate one of its employees as project engineer who will be responsible for the fulfillment of conditions and undertakings on the construction site. Union shall provide the name of the project engineer to the Board. Union shall prepare a list of the undertakings given by its witnesses during the hearing and will provide it to the Board for verification and to the project engineer for compliance during construction.
  - f) Union shall file with the Board Secretary notice of the date on which the installed pipeline is tested within one month after the test date.
  - g) Both during and after the construction, Union shall monitor the effects upon the land and the environment, and shall file ten copies of both an interim and a final monitoring report in writing with the Board.
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DECISION WITH REASONS

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The interim monitoring report shall be filed within three months of the in-service date and the final monitoring report within 15 months of the in-service date.

- h) The interim report shall describe the implementation of Conditions (a) and (b), if any, and shall include a description of the effects noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the construction upon the land and the environment. This report shall describe any outstanding concerns of landowners.
  
  - i) The final monitoring report shall describe the condition of the rehabilitated right-of-way and actions taken subsequent to the interim report. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Further, the final report shall include a breakdown of external costs incurred to date for the authorized project with items of cost associated with particular environmental measures delineated and identified as pre-construction related, construction related and restoration related. Any deficiency in compliance with undertakings shall be explained.
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DECISION WITH REASONS

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- j) Union shall file "as-built" drawings of the pipeline; such drawings shall indicate any changes in route alignment.
  
  - k) Within 12 months of the in-service date, Union shall file with the Board a written Post Construction Financial Report. The Report shall indicate the actual capital costs of the project and shall explain all significant variances from the estimates adduced in the hearing.
  
  - l) The Leave to Construct granted herein terminates December 31, 1989.
-

Appendix 4.12

Additional Condition of Approval

The Board's approval for the construction of the St. Clair to Bickford transmission line proposed by Union Gas Limited is contingent upon St. Clair Pipelines Limited and Michigan Consolidated Gas Company receiving all the regulatory approvals necessary to construct the pipelines from the St. Clair Valve Station to MichCon's Compressor Station at Belle River Mills, Michigan, in order to complete the connection to the storage facilities situated in the State of Michigan, one of the United States of America.

Copies of the approvals issued by or through FERC, the Michigan Public Service Commission and the National Energy Board shall be filed with the Board prior to the commencement of construction of the St. Clair - Bickford transmission line.

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Ontario

Ministry of  
Consumer and  
Commercial  
Relations

Ministère de la  
Consommation  
et du  
Commerce

Technical Division  
Standards des normes  
Division techniques  
Fuels Safety Branch

P. 2/ 3  
DEPT. (TX): 0004  
Shipp Centre - West Tower  
4th Floor  
Toronto, Ont. M8X 2X4

(416) 234-6022

June 10, 1988  
File: # 5170  
# 9011

APPENDIX 4.13

Mr. Neil McKay  
Chairman  
Ontario Pipeline Coordination Committee  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
26th Floor  
Toronto, Ontario  
M4P 1E4

Dear Mr. McKay:

RE: Revised Route - NPS 24 St. Clair Line

This is in response to Union Gas letter of June 7, 1988 and further to our letter of February 26, 1988 regarding the proposed St. Clair Line.

The location of the pipeline adjacent to the Moore Road N.2 in a 18m. easement appears adequate after considering other alternatives, although two houses will be close to the pipeline easement.

Because of this, the following recommendation should be taken into account:

- a) The pipeline shall be located in the northerly portion of the easement so that the distance of the closest house to the pipeline is 18m. as a minimum as shown on Union's drawing No. 15524.
- b) Require Union Gas to have a written acknowledge from the house occupants that they have no objection to the construction of the pipeline in their front yard as per drawing No. 15524.
- c) Require Union Gas to implement special mitigatory measures in order to minimize disruption during construction, ensure safe access to and out of the houses, prevent the possibility of children falling into the trench and restoring the right of way and working space to its original conditions.

Mr. Neil McKay  
June 10, 1988  
Page 2.

Should you have any questions, please call us at your  
convenience.

Yours truly,



*H* H.K. Taylor, P. Eng.  
Chief Engineer

cc: R. Chan, Union Gas

E.B.L.O. 226

ONTARIO ENERGY BOARD

Application by Union Gas Limited for  
Leave to Construct a Natural Gas  
Pipeline and Ancillary Facilities in  
The Townships of Moore and Sombra,  
Both in The County of Lambton.

NOTICE OF MOTION

TAKE NOTICE THAT the Intervenor TransCanada  
PipeLines Limited will make a motion to the Ontario  
Energy Board at the commencement of Hearing of the within  
Application, on Thursday, 16 June 1988, or so soon after  
that time as the motion can be heard.

THE MOTION IS FOR the following relief:

- (a) an Order declaring that the subject matter of  
the within Application by Union Gas Limited is  
not within the jurisdiction of the Ontario  
Energy Board;
- (b) an Order that the subject matter of the within  
Application by Union Gas Limited is within the  
exclusive jurisdiction of the National Energy

Board pursuant to the National Energy Board Act, R.S.C. N-6, as amended:

- (c) alternatively, pursuant to the Ontario Energy Board's draft Rules of Practice and Procedure, Rule 13(b), that the Board state a case to the Divisional Court respecting the jurisdiction of the Board and, further, that the Board order that the hearing of the within Application be stayed pending the decision of the Divisional Court on this issue.

THE GROUNDS FOR THE MOTION ARE:

- (a) that the proposed pipeline falls within Federal and not Provincial jurisdiction;
- (b) that the proposed pipeline is a "pipeline" within the definition set out in Section 2 of the National Energy Board Act R.S.C. N-6, as amended.



DATED at Toronto this            day of June, 1988.

TRANSCANADA PIPELINES LIMITED

per:   
Jill C. Schatz  
Solicitor

TO: Ontario Energy Board  
2300 Yonge Street  
26th Floor  
Toronto, Ontario  
M4P 1E4

AND TO:

Blake, Cassels & Graydon  
P.O. Box 25  
Commerce Court West  
Toronto, Ontario  
Attention: Burton H. Kellock, Q.C.

Solicitors for Union Gas Limited

AND TO:

All Intervenors

E.B.L.O. 226

ONTARIO ENERGY BOARD

Application by Union Gas Limited for  
Leave to Construct a Natural Gas  
Pipeline and Ancillary Facilities in  
The Townships of Moore and Sombra,  
Both in The County of Lambton.

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NOTICE OF MOTION

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TransCanada PipeLines Limited  
P.O. Box 54  
Commerce Court West  
Toronto, Ontario  
M5L 1C2

Appendix 4.15

LIST OF CASE CITATIONS

Capital Cities Communications Inc. et al. v. Canadian Radio-Television Commission et al. (1977), 81 D.L.R. (3d) 609; [1978] 2 S.C.R. 141.

Re Ontario Energy Board and Consumers' Gas Co. et al. (1987), 59 O.R. (2d) 766 (Div. Ct.).

Re Public Service Board et al, Dionne et al and A.G. of Canada et al. (1977), 83 D.L.R. (3d) 178 (S.C.C.).

Luscar Collier v. MacDonald, [1927] 4 D.L.R. 85; [1927] A.C. 925.

Alberta Government Telephones v. C.R.T.C. et al; (1985), 15 D.L.R. (4th) 515 [1985]; 2 F.C. 472 17 Admin. L.R. 149; (F.C.T.D.); (1985) 24 D.L.R. (4th) 608; [1986] 2 F.C. 179; 17 Admin. L.R. 190 (F.C.A.)

Re Westspur Pipeline Co. Gathering System (1958), C.R.T.C. 158 (Bd. of Transport Commissioners)

In the Matter of a reference by the National Energy Board pursuant to subsection 28(4) of the Federal Court Act, [1987] F.C.J. NO. 1060, Ct. File No. A-472-87, November, 1987 (F.C.A.).

Reference re: Lesiglative Authority in Relation to Bypass Pipelines, [1988] O.J. NO. 176, February, 1988 (C.A.).

Dome Petroleum v. National Energy Board (1987), 73 N.R. 137 (FCA)

Northern Telecom and Canadian Union of Communication Works v. Communication Workers of Canada and A.G. Canada, [1983] 1 S.C.R. 733

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DECISION WITH REASONS

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City of Montreal v. Montreal Street Railway, [1912] A.C. 333.

Re: Regulation and Control of Radio Communication in Canada, [1932] A.C. 305.

Canadian Pacific Railway v. A.G. B.C., [1950] A.C. 122.

Re Inter-provincial Paving Co (1962), C.C.H. Lab. Law Cases, 1188 (Ontario Labour Relations Board)

Canadian National Railway v. Nor-Min Supplies Ltd., [1977] 1 S.C.R. 322.

B.C. Electric Railway v. Canadian National Railway, [1932] S.C.R. 161.

Re: Industrial Relations and Disputes Investigation Act (The Stevedoring Reference), [1955] S.C.R. 529.

In the matter of a Public Hearing Into Certain Facilities Owned or Leased and Operated by Dome Petroleum Ltd., National Energy Board, January 1986.

R. v. Board of Transport Commissioners, (Go Train Case), [1968] S.C.R. 118.

Re Henuset Ltd. et al. (1981), 1 D.L.R. (3d) 639

Flamborough v N.E.B. et al. (1984) 55 N.R. 95 (F.C.A.)

A.G. B.C. v. A.G. Canada, [1937] A.C. 377

Re Validity of S.5 of Dairy Industry Act, Canadian Federation of Agriculture v. A.G. Quebec et al (Margarine Reference), [1951] A.C. 179.

International Brotherhood of Electrical Workers and Westcoast Transmission Company Ltd., Report of Canadian Labour Relations Board, April, 1974.

Attorney-General Ontario v. Winner et al., [1954] 4 D.L.R. 657

Re: Carleton Regional Transit Comm. (1983), 44 O.R. (2d) 560

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DECISION WITH REASONS

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Re: Tank Truck Transport, [1960] O.R. 497

R. v. Cooksville Magistrate's Court, ex parte Liquid Cargo Lines [1965] 1 O.R. 84

R. v. Man. Lab. Bd. ex parte Invictus (1968), 65 D.L.R. (2d) 517

Re: A.-G. Que. and Baillargeon (1978), 97 D.L.R. (3d) 447

Re: Colonial Coach Lines, [1967] 2 O.R. 25

Re: Windsor Airline Limousine Service, (1980) 30 O.R. (2d) 732

Campbell-Bennett v. Comstock Midwestern, [1954] S.C.R. 207

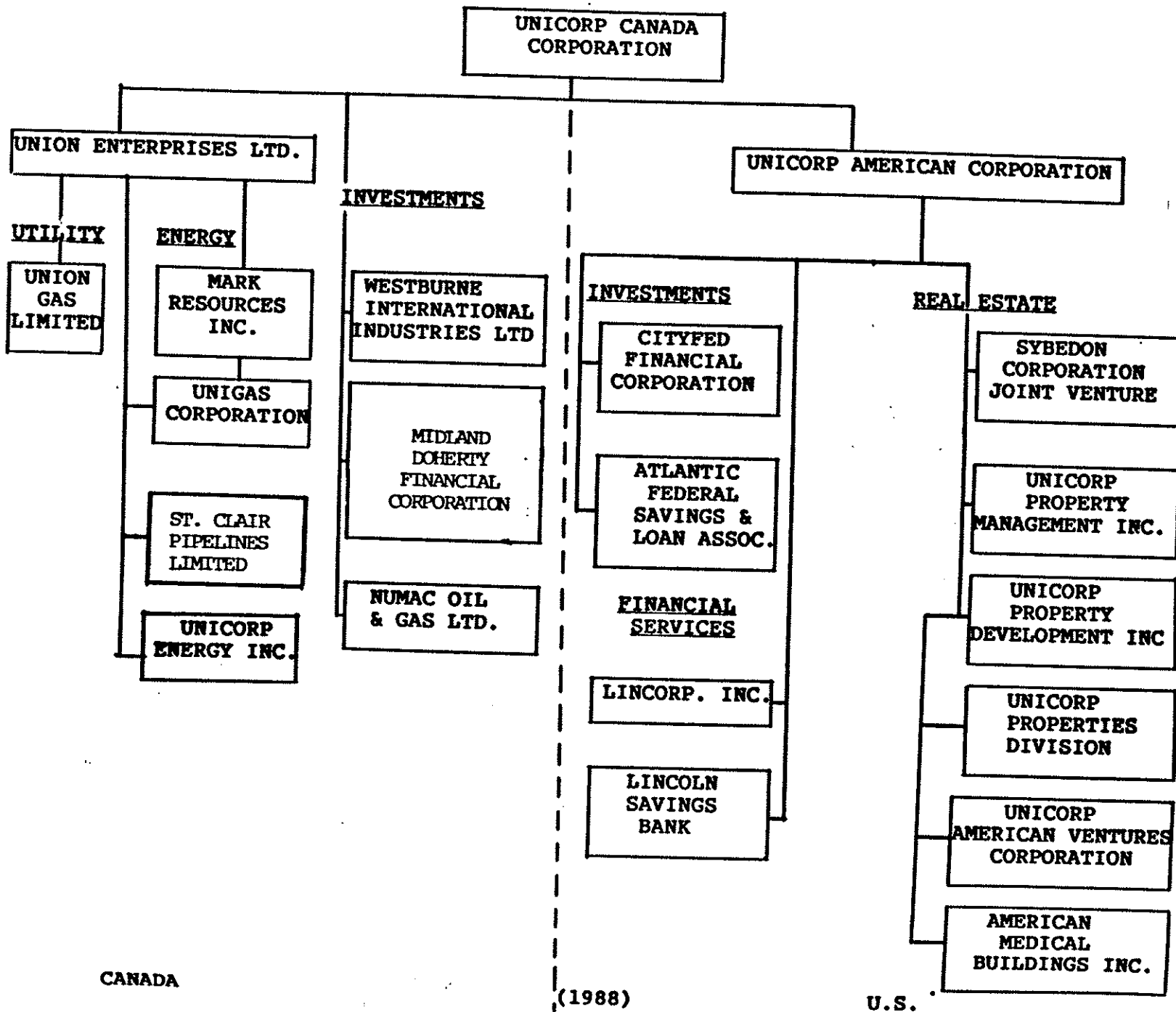
Sask. Power Corp. v. TransCanada PipeLines, [1979] 1 S.C.R. 297.

Kootenay & Elk R. Co. et al v. CPR Co. et al (1972), 28 D.L.R. (3d) 385 (1974) S.C.R. 955

The Minister of Employment and Immigration and the A.-G. Canada v. Harvinder Singh Sethi (Unreported) June 20, 1988, Ct. File No. A-493-88 (F.C.A.)

Central Western Ry. Corp. v. United Transportation Union et al. (1988), 84 N.R. 321 (F.C.A.)

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5. GLOSSARY OF TERMS

ANNUAL  
CONTRACT  
QUANTITY  
(ACQ) GAS

An annual quantity of gas sold by TCPL under a contract to a customer under a delivery schedule largely at the discretion of TCPL. Forty percent is deliverable in the winter period and sixty percent in the summer. The charge for such is on a volumetric basis with a provision for a supplemental charge for volumes offered and not taken.

ANNUAL LOAD  
FACTOR

A mathematical indicator of the way in which a customer consumes gas over the year. It can be calculated in more than one way. A common approach is to express the average daily volume of gas consumed by a customer over the year as a percentage of the customer's peak day consumption.

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DECISION WITH REASONS

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**Bcf** An abbreviation for a billion cubic feet of gas which is equivalent to  $28.328 \times 10^6 \text{ m}^3$ .

**BUY-SELL** In this arrangement, the end-user purchases its own supply of gas and arranges for transportation, generally to the distributor's receipt point. The distributor purchases the gas and commingles it with the balance of its supplies, and then sells to the end-user as a sales customer under the appropriate rate schedule.

**BYPASS** Bypass involves the total avoidance of the LDC's system for the transportation of gas.

**CLASS LOCATION** A classification of a geographic area according to its approximate current and future population density and other characteristics considered when prescribing the design and methods of pressure testing for pipelines to be located in the area.

**CLASS 1 & 2 LOCATION** A Class 2 location has higher population density than a Class 1 location. Therefore a pipeline designed originally for Class 1 location would be subject to a reduction in pipeline operating



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DECISION WITH REASONS

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pressure, and hence lower throughput, in the event that the area was later reclassified as Class 2. The original pipe would have to be replaced with heavier pipe to maintain the same maximum operating pressure.

**COMPETITIVE  
MARKETING  
PROGRAM  
(CMP)**

A mechanism by which "system producers" (i.e. those who sell gas to TCPL) provide specific discounts to individual end-users of gas. The distributor sells to the end-user under the approved sales rate schedule; the distributor advises TCPL of volumes sold each month. TCPL rebates to the distributor the agreed upon discount for the preceding month's volumes and the distributor flows the rebate through to the end-user.

**CONTRACT  
CARRIAGE**

A transportation service provided under contract for the transport of gas not owned by the transporter.

**CONTRACT  
DEMAND GAS  
(CD GAS)**

Gas which the utility or a customer has the contractual right to demand on a daily basis from the supplier of the gas. For the transportation of the gas the customer must pay a fixed monthly demand charge regardless of volumes

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DECISION WITH REASONS

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actually taken. A commodity charge related to the volume taken is also paid.

**DEMAND CHARGE**

A monthly charge which covers the fixed costs of a pipeline. The demand charge is based on the daily contracted or operating demand volumes and is payable regardless of volumes taken.

**DESIGN MINIMUM  
INLET PRESSURE**

The minimum acceptable delivery pressure at the downstream end of a pipeline.

**DIRECT  
PURCHASE**

Natural gas supply purchase arrangements transacted directly between producers, brokers, or agents and end-users at negotiated prices.

**DIRECT SALES**

Natural gas sales by producers or agents, (as opposed to sales by an LDC), directly to end-users.

**DISCRETIONARY  
PURCHASE**

The gas utility volumes purchased over and above those under contract with TCPL and which are usually associated with the availability of excess capacity in the TCPL system.

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DECISION WITH REASONS

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**DISPLACEMENT  
VOLUME**

According to the TCPL definition approved by the NEB, (which is currently under review), the volume of gas contracted under a direct purchase, firm transportation contract with TCPL is considered a displacement volume if, assuming the absence of such direct purchase, the LDC could supply the account on a firm contract basis without itself contracting for additional firm volumes to accommodate that demand.

**DOUBLE  
DEMAND CHARGE**

A double demand charge occurs when a direct purchase sale displaces a distributor's sale, and the space reserved by that distributor on the TCPL system is paid for twice: first by the utility and second, by the direct purchaser.

**FEEDSTOCK**

Natural gas used as a raw material for its chemical components and not as a source of energy.

**FIELD GATHERING  
SYSTEMS**

Systems of pipelines that convey gas from gas wellhead assemblies to treatment plants, transmission lines, distribution lines or service lines.

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DECISION WITH REASONS

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<b>FIRM SERVICE</b>	A relatively higher priced service for a continuous supply of gas without curtailment, except under extraordinary circumstances.
<b>HYDROCARBON</b>	Any compound of hydrogen and carbon. Fuel oil and natural gas are referred to as hydrocarbon fuels.
<b>INTERRUPTIBLE CUSTOMERS</b>	Customers whose gas service is subject to curtailment at the discretion of the utility. The duration of continuous and cumulative interruptions as well as required notice periods are usually specified in the service contract.
<b>INTERRUPTIBLE SERVICE (IS)</b>	Transportation service or sales service provided on a best-efforts basis depending upon the availability of spare capacity on a pipeline. The shipper or buyer must pay a commodity charge related to the volume taken.
<b>LINE-PACK GAS</b>	The inventory of gas in the pipeline system to which gas is continually being added at the upstream end and withdrawn at the downstream end.
<b>LOAD-BALANCING</b>	The efforts of a utility or of a direct purchaser to meet its gas requirements in the most economic manner. It

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DECISION WITH REASONS

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involves balancing the gas supply to meet demand by using storage and other measures.

**LOAD FACTOR**

A mathematical indicator of the way in which a gas utility system, or end use customer draws on its supply of gas over a period of time. The annual load factor can be expressed as the average daily volume of gas demanded over the year expressed as a percentage of the peak day demand.

**LOOP**

Additional pipeline which is located parallel to an existing pipeline over the latter's entire length, or any part of it, and is added to increase the capacity of the transmission system.

**MANUFACTURED  
GAS**

A combustible gas artificially produced from coal, coke, or oil, or by reforming liquefied petroleum gases.

**MARKET  
RESPONSIVE  
PROGRAM (MRP)**

This program permits a local distribution company to offer customers discounts from the price normally paid under the sales tariff. The funds for these discounts are provided by system gas producers through Western Gas Marketing Limited. MRPs are similar to CMPs in that they assist system gas to compete with direct purchase supply.

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DECISION WITH REASONS

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**MAXIMUM  
COMPRESSION  
AVAILABLE**

The maximum compression currently available at the upstream end of a pipeline which limits the transportation capability of the pipeline to a level below the pipeline's potential capability.

**METHANE**

Methane, a colourless hydrocarbon gas, is the chief component of natural gas. Its chemical formula is CH<sub>4</sub>.

**NPS**

NPS means nominal pipe size and is used in conjunction with a non-dimensional number to designate the nominal size of valves, fittings and flanges. More specifically the following nominal pipe sizes appear in this document:

	<u>Outside Diameter in Millimetres</u>	<u>Equivalent Imperial Size in Inches</u>
NPS 12	323.9	12
NPS 20	508	20
NPS 24	610	24
NPS 36	914	36

**OFF-PEAK  
PERIOD**

A period during which the amount of gas required by a customer or local distribution company is less than its maximum requirement.

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DECISION WITH REASONS

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ONTARIO PIPELINE COORDINATION COMMITTEE (OPCC)	An interministerial committee, chaired by a member of the OEB staff and including designates from those ministries of the Ontario Government which collectively have a responsibility to ensure that pipeline construction and operation have minimum undesirable impacts on the environment. The environment, perceived in a broad sense, covers agriculture, parklands, forests, wildlife, water resources, social and cultural resources, public safety and landowner rights.
OPERATING DEMAND VOLUMES	Volumes specified in the distributor's CD contracts with TCPL, less the volumes deemed to have been displaced by direct sales, as determined under the NEB's rules.
PEAK DAY	A peak period of 24 hours duration.
PEAK DEMAND	The maximum amount of gas required over a given, usually short, period of time.
PEAK PERIOD	A period, usually of short duration, during which the maximum amount of gas is required by a customer or local distribution company.

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DECISION WITH REASONS

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**PEAKING SERVICE (PS)**      A discretionary purchase for the delivery of gas during the winter season. The service is not subject to interruption and includes a take-or-pay provision.

**PROFITABILITY INDEX**      A measure of whether there is a net cost to a utility's customers as a result of undertaking a proposed project. A profitability index of 1.0 would mean that the net present value of the cash inflows is equal to the net present value of the cash outflows over the period selected for the analysis, based on the utility's incremental cost of capital.

**"PURE" UTILITY**      A local distribution company which is not engaged in any other unrelated business activities.

**RATE BASE**      The amount the utility has invested in assets such as pipes, meters, compressors and regulator stations, etc., minus accumulated depreciation, plus an allowance for working capital and other amounts that may be allowed by the Board.



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DECISION WITH REASONS

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<b>RAW NATURAL GAS</b>	A naturally occurring unprocessed mixture of hydrocarbon and non-hydrocarbon gases of low molecular weight.
<b>REMOVAL PERMITS</b>	A permit granted by the Alberta Energy Resources Conservation Board that authorizes the export of gas from the Province of Alberta.
<b>ROAD ALLOWANCE</b>	A right-of-way reserved for a highway which includes the travelled portions of the highway and its perimeter.
<b>SECTIONALIZING BLOCK VALVE</b>	A valve used to interrupt the flow of gas and isolate a section or sections of a pipeline for maintenance, repair, safety or other purposes.
<b>SELF- DISPLACEMENT</b>	The purchase of gas by an LDC from sources other than TCPL to displace gas it would otherwise obtain from TCPL.
<b>SPOT GAS</b>	Gas available in the market place through short-term, fixed price contracts generally lasting less than twelve months.

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DECISION WITH REASONS

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**STAGE 1**                      The Board requires each gas utility to use a three-stage process to evaluate the economic feasibility of system expansion. Stage 1 is a profitability test based on a discounted cash-flow (DCF) analysis.

**STAGE 2**                      Stage 2 is designed to quantify other public interest factors not considered in a Stage 1 analysis of the costs and benefits when testing the economic feasibility of a utility system expansion project.

**STAGE 3**                      Stage 3 takes into account all other relevant public interest factors that cannot be readily quantified in a cost/benefit analysis when testing the economic feasibility of a utility system expansion project.

**SUMMER  
INCENTIVE CMP**                A price discount feature of the Competitive Marketing Program to encourage individual end-users to purchase system gas during the summer season when both producers and TCPL have excess capacity.

**SYSTEM GAS**                      Gas supplied under contract to TCPL by gas producers.

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DECISION WITH REASONS

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**SYSTEM PRODUCERS** Gas producers that have contracts to supply TCPL with gas.

**TCPL DEMAND CHARGE** A component of TCPL's CD rate designed to recover all or most of the fixed costs of transmission. Demand charges are payable by the shipper whether or not gas is taken.

**TEMPORARY WINTER SERVICE (TWS)** A discretionary purchase for the delivery of gas during the winter season. The service is subject to limited interruption and includes a take-or-pay provision.

**TOPGAS & TOPGAS II** Two banking consortiums formed in 1982 and 1983 respectively which have made an aggregate of approximately \$2.65 billion of take-or-pay payments to Alberta gas producers for gas contracted for but not taken by TCPL. These payments were made on a project financing basis and are referred to as the TOPGAS and TOPGAS II loans.

**UNBUNDLED RATE** A rate for an individual, separate service offered by a distributor as opposed to a rate which combines the costs of a variety of -component services.

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DECISION WITH REASONS

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**UNABSORBED  
DEMAND  
CHARGE**

Charges which occur when a distributor purchases its gas or receives its gas at less than the forecasted load factor used in setting rates.

**WINTER  
PEAKING**

The higher gas requirement of a customer or local distribution company in response to higher demand in the winter season.

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DECISION WITH REASONS

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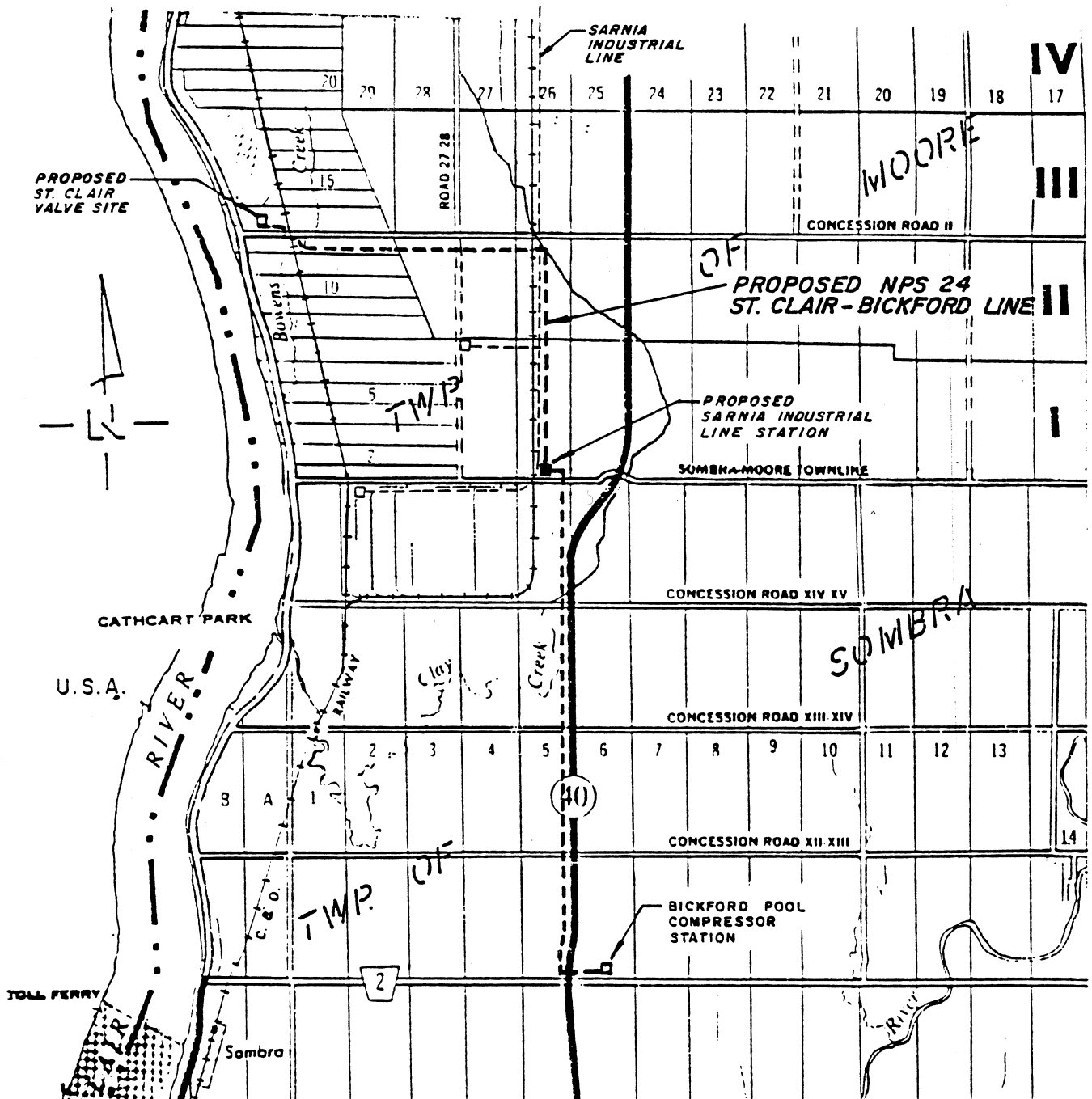
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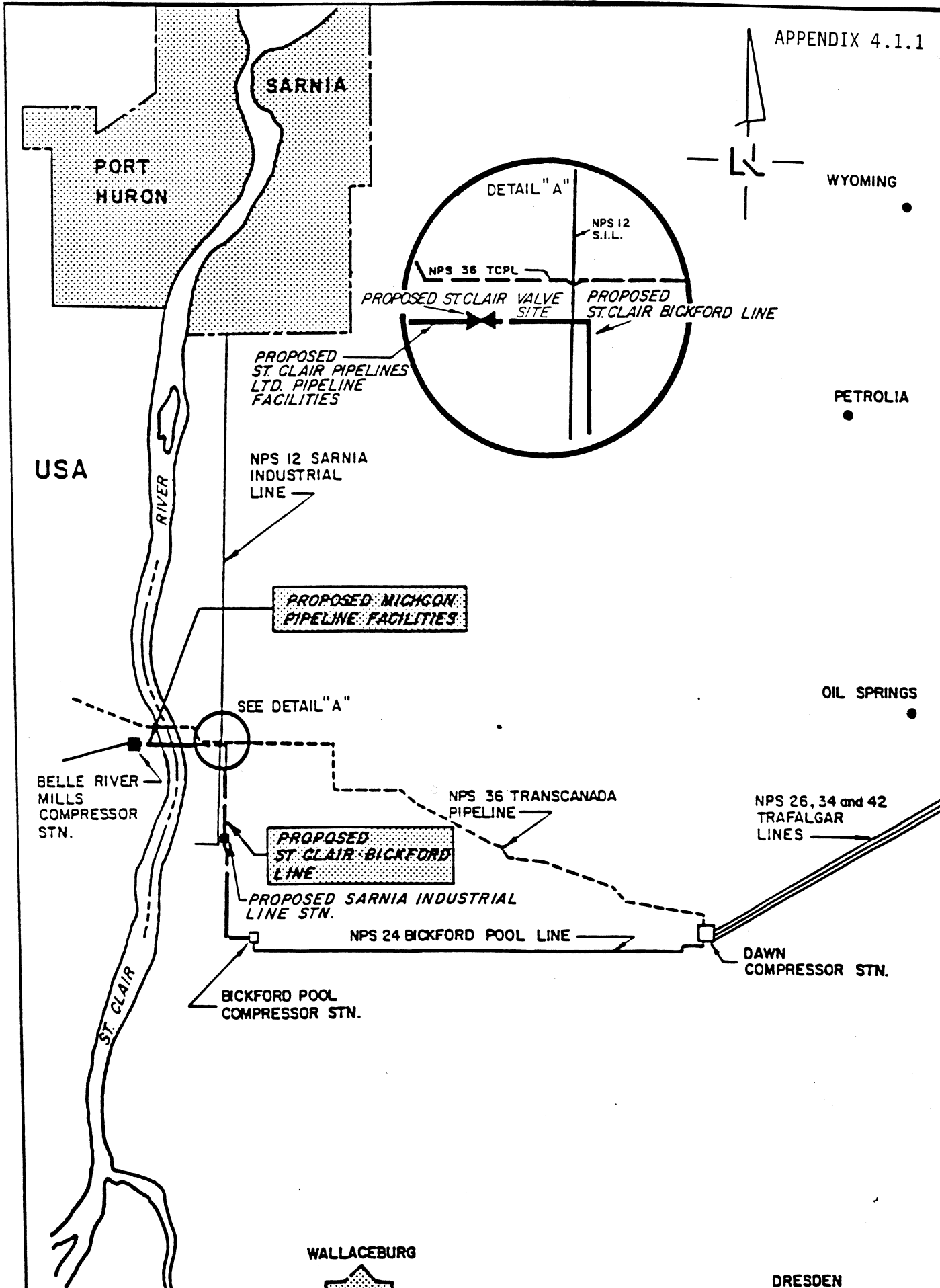
**4. APPENDICES**

5

# Union Gas LIMITED

## NPS 24 ST. CLAIR - BICKFORD LINE





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DECISION WITH REASONS

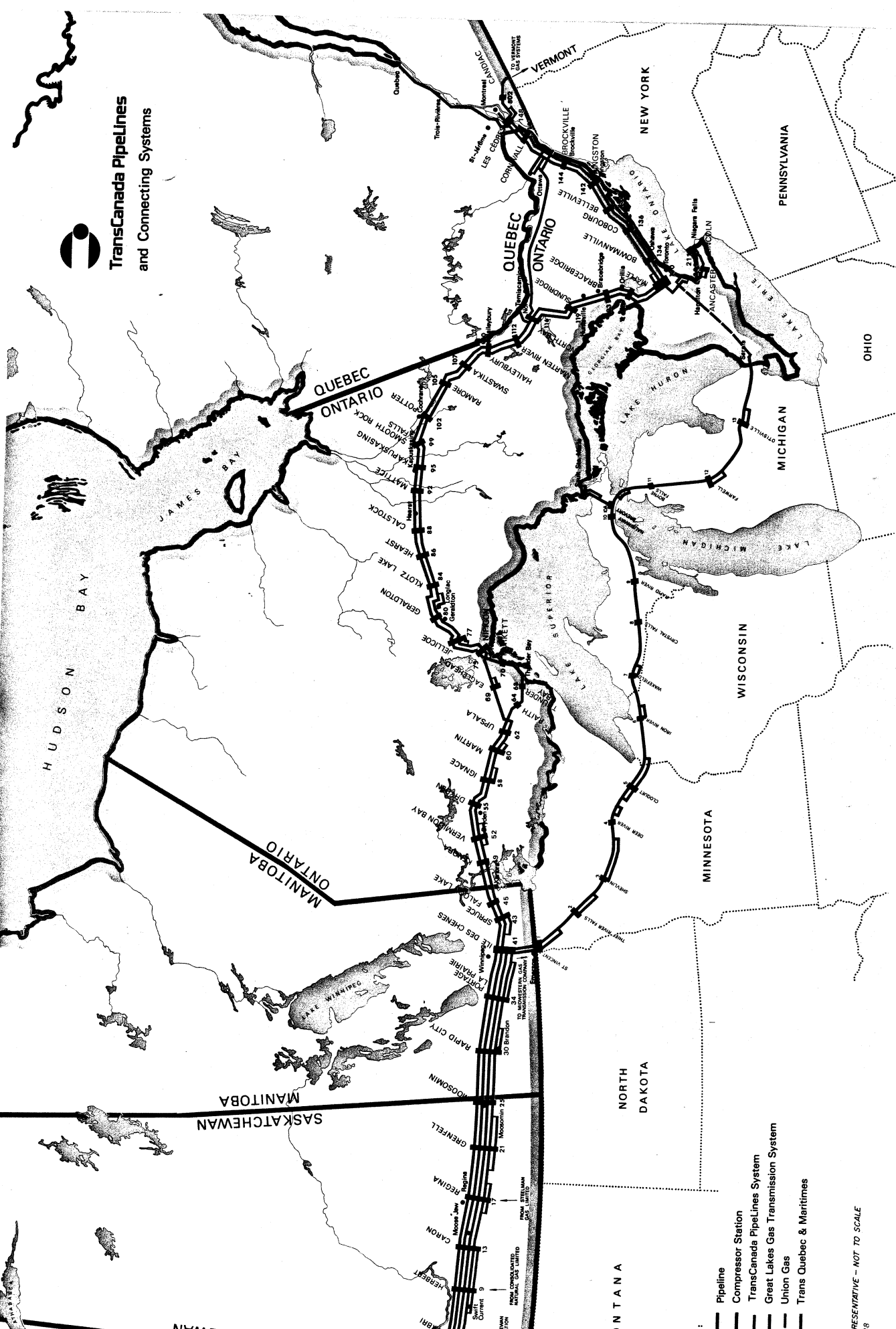
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APPENDIX 4.2

TRANSCANADA PIPELINES AND CONNECTING SYSTEMS MAP

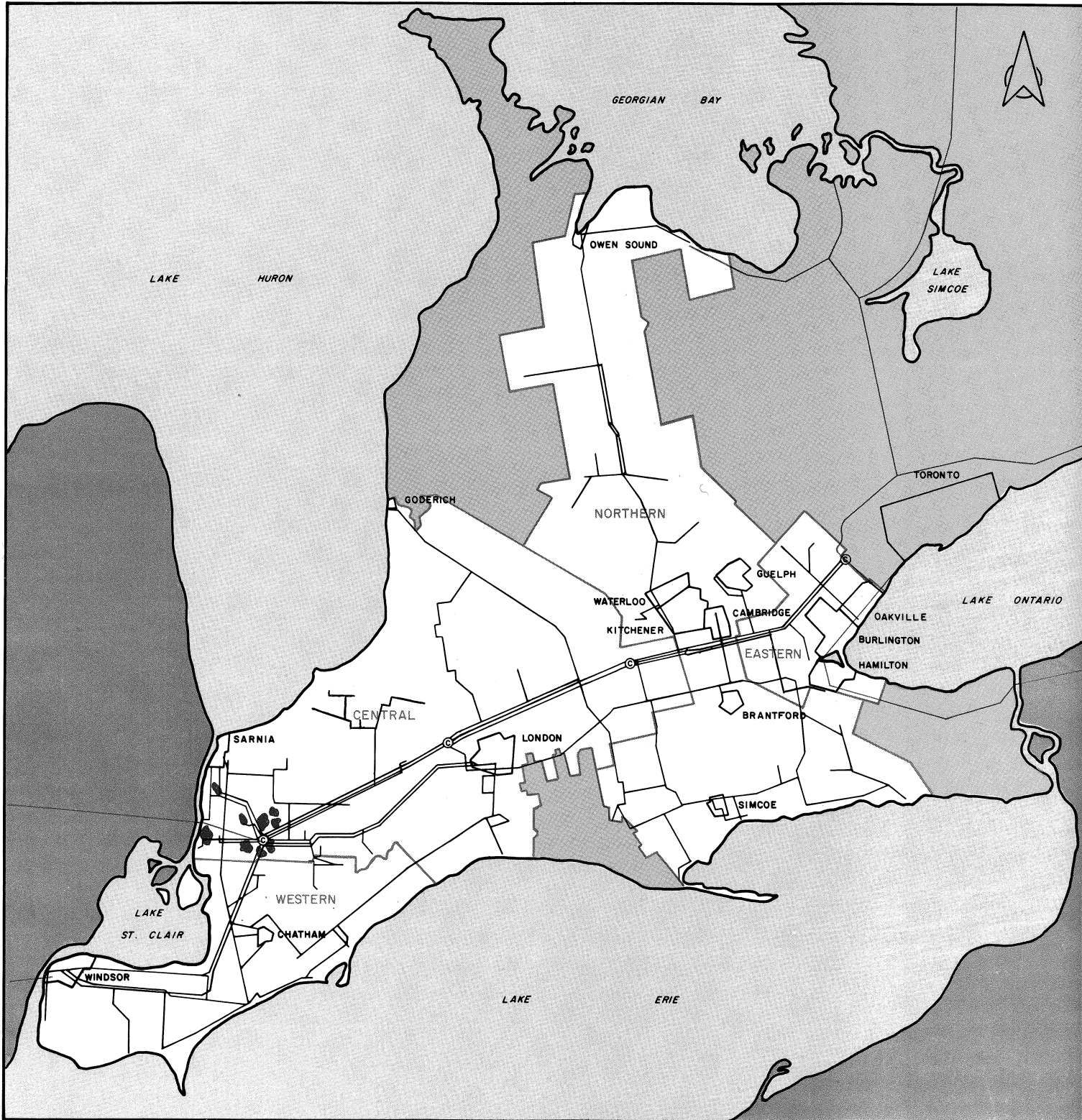




**TransCanada Pipelines  
and Connecting Systems**

- Legend:**
- Pipeline
  - Compressor Station
  - TransCanada PipeLines System
  - Great Lakes Gas Transmission System
  - Union Gas
  - Trans Quebec & Maritimes

# UNION GAS LIMITED PIPELINE SYSTEMS MAP



## LEGEND

ACTIVE STORAGE POOLS 

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DECISION WITH REASONS

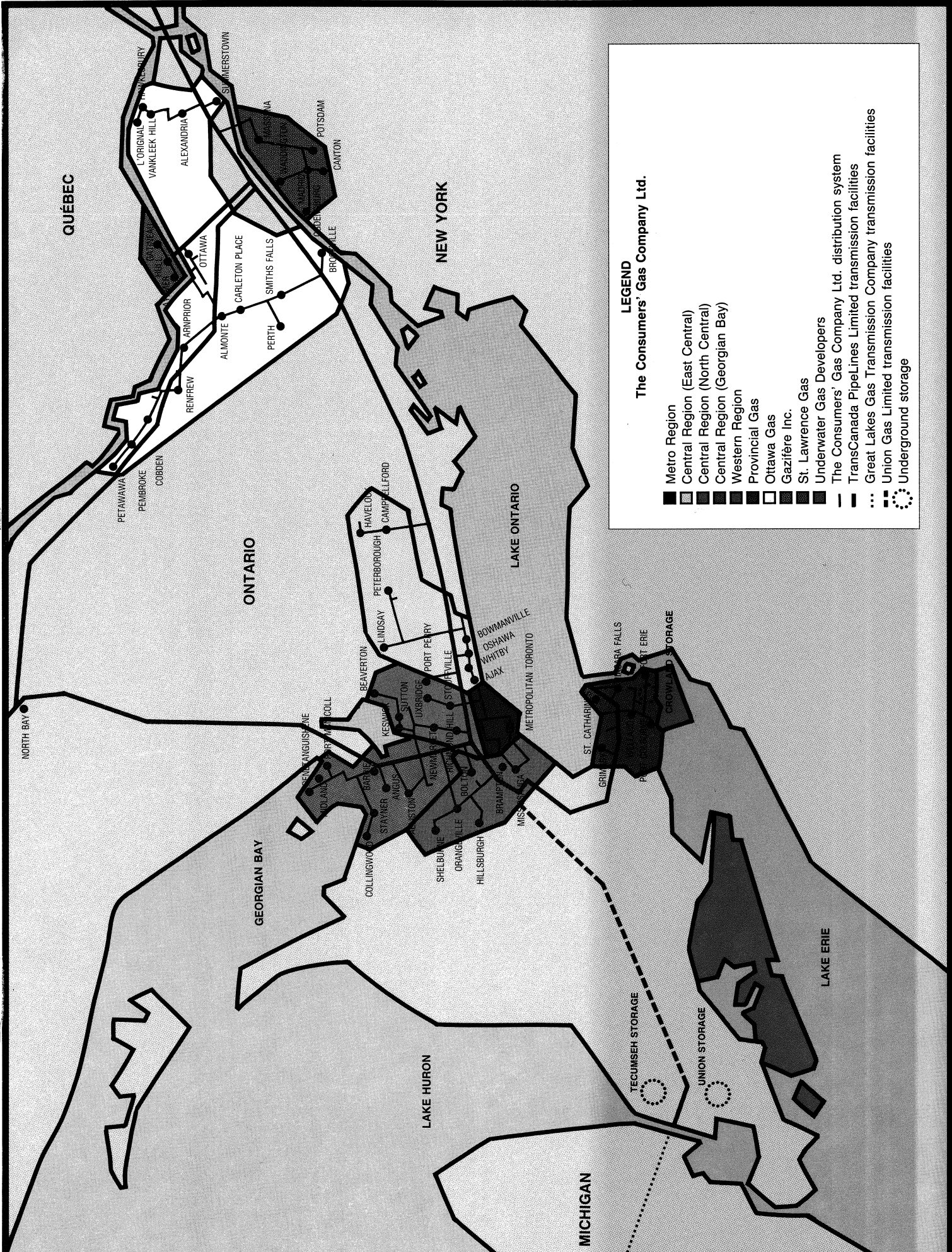
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**APPENDIX 4.4**

**CONSUMERS' GAS SYSTEM MAP**

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**LEGEND**  
**The Consumers' Gas Company Ltd.**

- Metro Region
- Central Region (East Central)
- Central Region (North Central)
- Central Region (Georgian Bay)
- Western Region
- Provincial Gas
- Ottawa Gas
- Gazifère Inc.
- St. Lawrence Gas
- Underwater Gas Developers
- The Consumers' Gas Company Ltd. distribution system
- - - TransCanada Pipelines Limited transmission facilities
- ⋯ Great Lakes Gas Transmission Company transmission facilities
- ⋯ Union Gas Limited transmission facilities
- Tecumseh Storage
- Union Storage
- Crowland Storage

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DECISION WITH REASONS

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**APPENDIX 4.5**

**ICG UTILITIES (ONTARIO) DISTRIBUTION NETWORK MAP**

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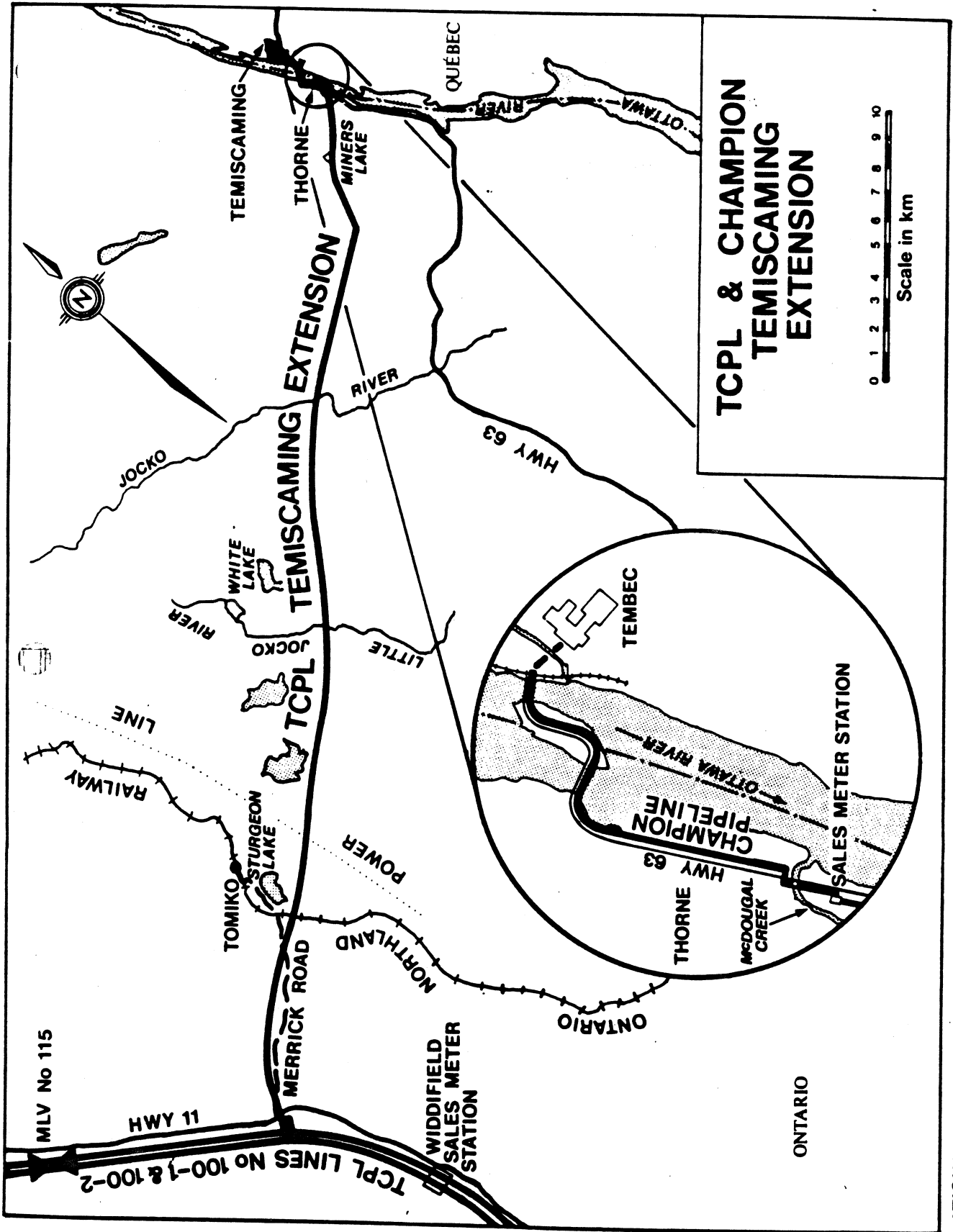
Figure 18

## Gas Pipeline Companies Regulated by the National Energy Board



1. Alberta Natural Gas Company Ltd.
2. Amoco Canada Petroleum Company Ltd. (abandoned)
3. Canadian Montana Pipe Line Company
4. Champion Pipe Line Corporation Limited
5. Consolidated Pipe Lines Company
6. Dome Petroleum Limited
7. Foothills Pipe Lines (Yukon) Ltd.
8. ICG Transmission Holdings Ltd.
9. Many Islands Pipe Lines (Canada) Limited
10. Mid-Continent Pipelines Limited
11. Minell Pipeline Ltd.
12. Murphy Oil Company Limited
13. Niagara Gas Transmission Limited
14. Peace River Transmission Company Limited
15. Saskatchewan Power Corporation
16. TransCanada PipeLines Limited
17. Trans Québec & Maritimes Pipeline Inc.
18. Union Gas Limited
19. Westcoast Transmission Company Limited
20. Canadian Hunter Exploration Ltd.
21. A.P.R. Pipeline Company Limited
22. Shell Canada Products Limited
23. Consumers' Gas (Canada) Limited
24. Foothills Dempster Lateral (Corridor)

(From NEB Annual Report 1987)



**TCPL & CHAMPION  
TEMISCAMING  
EXTENSION**





06/30/88

14:46

495 5802

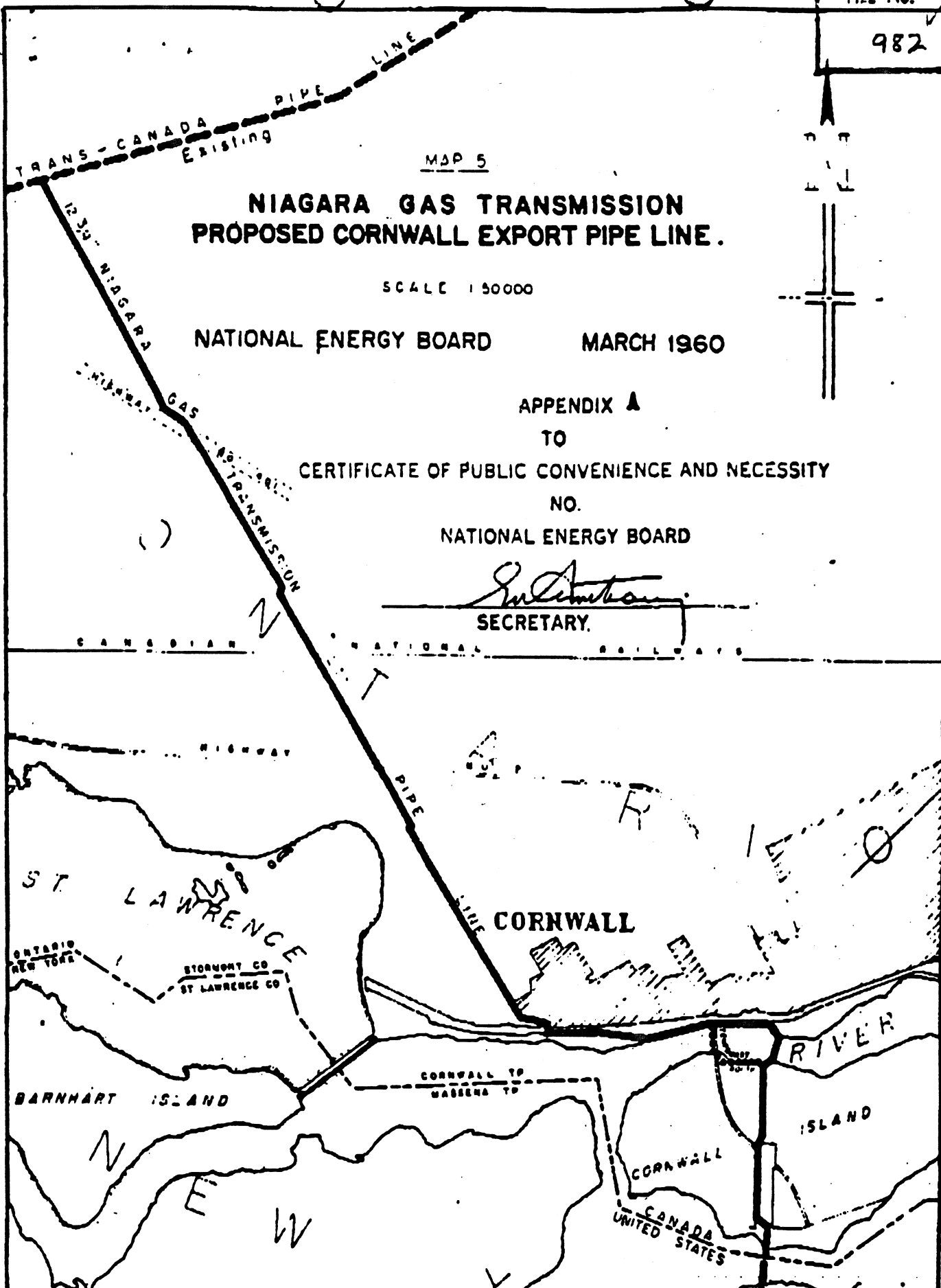
GAS SUPPLY

AIRD & BERLIS

005

FILE NO.

982



MSP 5

# NIAGARA GAS TRANSMISSION PROPOSED CORNWALL EXPORT PIPE LINE.

SCALE 1:50000

NATIONAL ENERGY BOARD

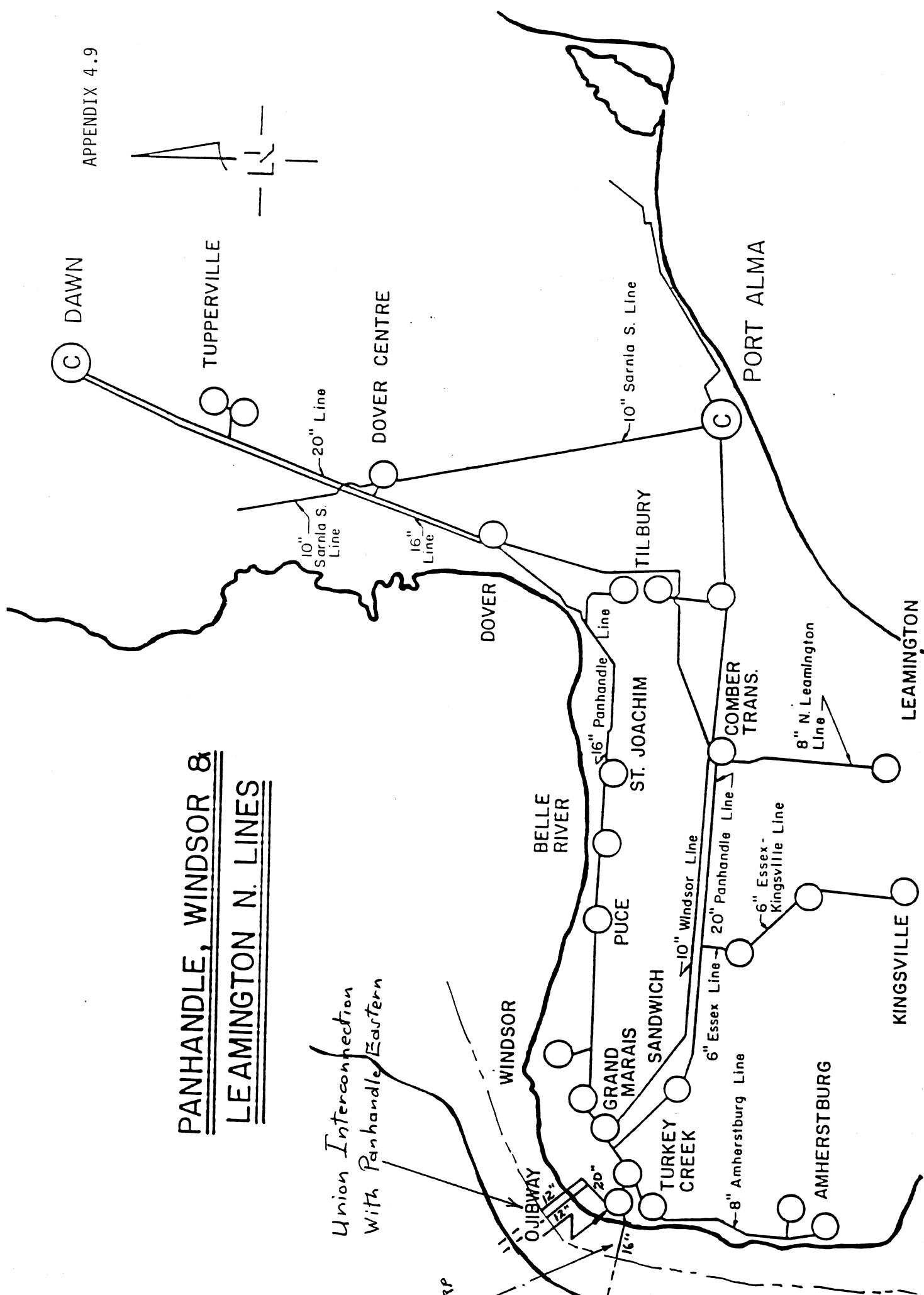
MARCH 1960

APPENDIX A  
TO  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
NO.

NATIONAL ENERGY BOARD

*[Signature]*  
SECRETARY.

# PANHANDLE, WINDSOR & LEAMINGTON N. LINES



Union Interconnection  
With Panhandle Eastern

WINDSOR

BELLE RIVER

PUCE

GRAND MARAIS

SANDWICH

TURKEY CREEK

AMHERSTBURG

KINGSVILLE

ST. JOACHIM

COMBER TRANS.

LEAMINGTON

DOVER

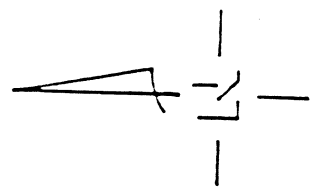
TILBURY

DOVER CENTRE

TUPPERVILLE

DAWN

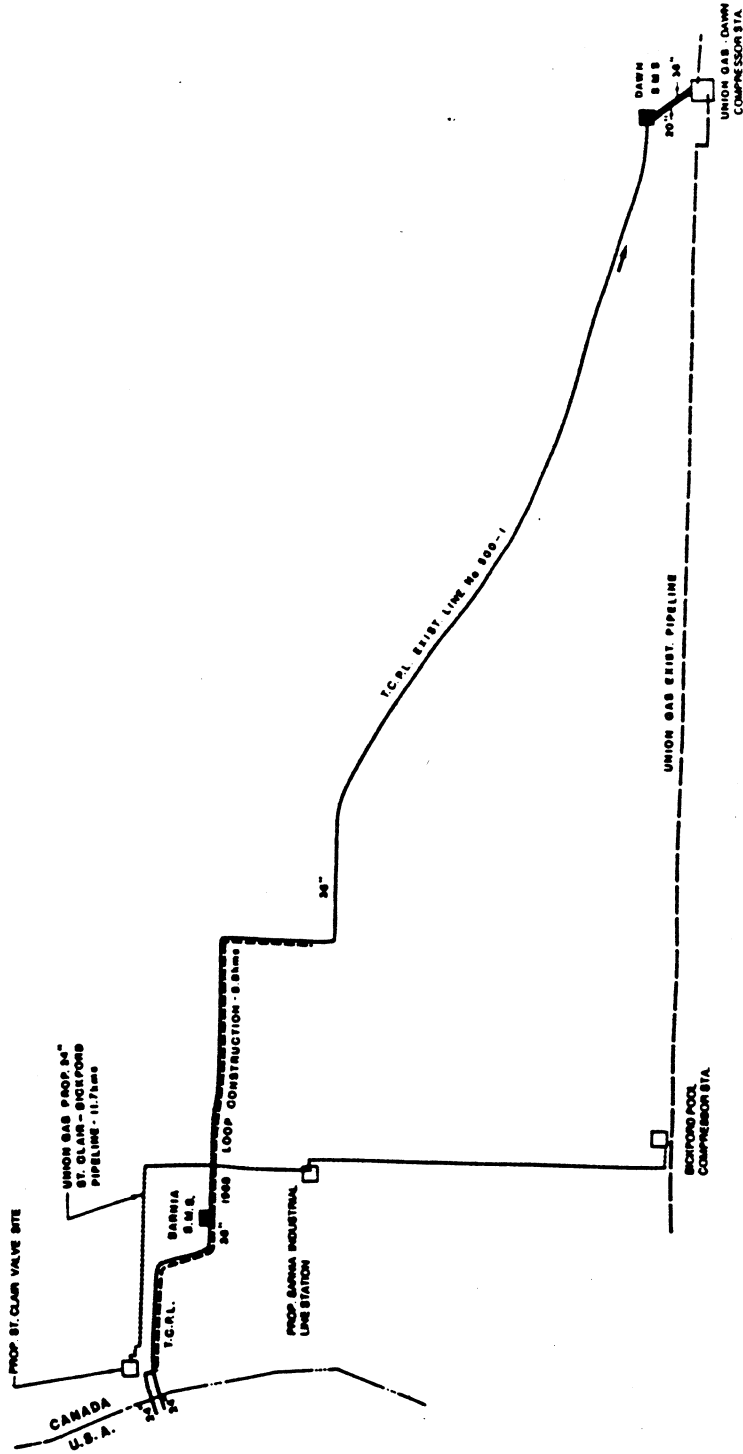
PORT ALMA



# APPENDIX 4.10

TOTAL LENGTH OF T.C.P.L.  
 DAWN EXTENSION - 24.7 kms  
 LENGTH OF UNION GAS  
 PROP. BY CLAIR - BICKFORD PIPELINE - 11.7 kms  
 TOTAL LENGTH OF UNION GAS ROUTE  
 FROM ST. CLAIR TO DAWN COMPRESSOR STA. - 36.4 kms

0 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200



		Engineering Department	
<b>SCHEMATIC</b>			
OF <b>T.C.P.L. DAWN EXTENSION &amp;          PROP. UNION GAS BY CLAIR - BICKFORD</b>			
Date: 19-08-10	Drawn:	Checked:	Project:
Project No:			<b>AIK-9-473</b>



Appendix 4.11

ST. CLAIR-BICKFORD LINE

Conditions of Approval E.B.L.O. 226

(Exhibit 10.2 except for amended Condition 1)

- a) Subject to Condition (b), Union shall comply with all undertakings made by its counsel and witnesses, and shall construct the pipeline and restore the land according to the evidence of its witnesses at the hearing.
  
  - b) Union shall advise the Board's designated representative of any proposed change in construction or restoration procedures and, except in an emergency, Union shall not make any such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board or its designated representative shall be informed forthwith after the fact.
-

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DECISION WITH REASONS

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- c) Union shall furnish the Board's designated representative with every reasonable facility for ascertaining whether the work has been and is being performed according to the Board's Order.
  - d) Union shall give the Board and the Chairman of the OPCC 10 days written notice of the commencement of construction of the pipeline.
  - e) Union shall designate one of its employees as project engineer who will be responsible for the fulfillment of conditions and undertakings on the construction site. Union shall provide the name of the project engineer to the Board. Union shall prepare a list of the undertakings given by its witnesses during the hearing and will provide it to the Board for verification and to the project engineer for compliance during construction.
  - f) Union shall file with the Board Secretary notice of the date on which the installed pipeline is tested within one month after the test date.
  - g) Both during and after the construction, Union shall monitor the effects upon the land and the environment, and shall file ten copies of both an interim and a final monitoring report in writing with the Board.
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DECISION WITH REASONS

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The interim monitoring report shall be filed within three months of the in-service date and the final monitoring report within 15 months of the in-service date.

- h) The interim report shall describe the implementation of Conditions (a) and (b), if any, and shall include a description of the effects noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the construction upon the land and the environment. This report shall describe any outstanding concerns of landowners.
  
  - i) The final monitoring report shall describe the condition of the rehabilitated right-of-way and actions taken subsequent to the interim report. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Further, the final report shall include a breakdown of external costs incurred to date for the authorized project with items of cost associated with particular environmental measures delineated and identified as pre-construction related, construction related and restoration related. Any deficiency in compliance with undertakings shall be explained.
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DECISION WITH REASONS

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- j) Union shall file "as-built" drawings of the pipeline; such drawings shall indicate any changes in route alignment.
  
  - k) Within 12 months of the in-service date, Union shall file with the Board a written Post Construction Financial Report. The Report shall indicate the actual capital costs of the project and shall explain all significant variances from the estimates adduced in the hearing.
  
  - l) The Leave to Construct granted herein terminates December 31, 1989.
-

Appendix 4.12

Additional Condition of Approval

The Board's approval for the construction of the St. Clair to Bickford transmission line proposed by Union Gas Limited is contingent upon St. Clair Pipelines Limited and Michigan Consolidated Gas Company receiving all the regulatory approvals necessary to construct the pipelines from the St. Clair Valve Station to MichCon's Compressor Station at Belle River Mills, Michigan, in order to complete the connection to the storage facilities situated in the State of Michigan, one of the United States of America.

Copies of the approvals issued by or through FERC, the Michigan Public Service Commission and the National Energy Board shall be filed with the Board prior to the commencement of construction of the St. Clair - Bickford transmission line.

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Ontario

Ministry of  
Consumer and  
Commercial  
Relations

Ministère de la  
Consommation  
et du  
Commerce

Technical Division  
Standards des normes  
Division techniques  
Fuels Safety Branch

P. 2/ 3  
DEPT. (TX) : 0004  
3300 Sheppard Avenue West  
Shipp Centre - West Tower  
4th Floor  
Toronto, Ont. M8X 2X4

(416) 234-6022

APPENDIX 4.13

June 10, 1988  
File: # 5170  
# 9011

Mr. Neil McKay  
Chairman  
Ontario Pipeline Coordination Committee  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
26th Floor  
Toronto, Ontario  
M4P 1E4

Dear Mr. McKay:

RE: Revised Route - NPS 24 St. Clair Line

This is in response to Union Gas letter of June 7, 1988 and further to our letter of February 26, 1988 regarding the proposed St. Clair Line.

The location of the pipeline adjacent to the Moore Road N.2 in a 18m. easement appears adequate after considering other alternatives, although two houses will be close to the pipeline easement.

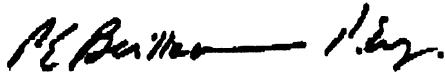
Because of this, the following recommendation should be taken into account:

- a) The pipeline shall be located in the northerly portion of the easement so that the distance of the closest house to the pipeline is 18m. as a minimum as shown on Union's drawing No. 15524.
- b) Require Union Gas to have a written acknowledge from the house occupants that they have no objection to the construction of the pipeline in their front yard as per drawing No. 15524.
- c) Require Union Gas to implement special mitigatory measures in order to minimize disruption during construction, ensure safe access to and out of the houses, prevent the possibility of children falling into the trench and restoring the right of way and working space to its original conditions.

Mr. Neil McKay  
June 10, 1988  
Page 2.

Should you have any questions, please call us at your convenience.

Yours truly,



*EV* E.K. Taylor, P. Eng.  
Chief Engineer

cc: R. Chan, Union Gas

E.B.L.O. 226

ONTARIO ENERGY BOARD

Application by Union Gas Limited for  
Leave to Construct a Natural Gas  
Pipeline and Ancillary Facilities in  
The Townships of Moore and Sombra,  
Both in The County of Lambton.

NOTICE OF MOTION

TAKE NOTICE THAT the Intervenor TransCanada  
PipeLines Limited will make a motion to the Ontario  
Energy Board at the commencement of Hearing of the within  
Application, on Thursday, 16 June 1988, or so soon after  
that time as the motion can be heard.

THE MOTION IS FOR the following relief:

- (a) an Order declaring that the subject matter of  
the within Application by Union Gas Limited is  
not within the jurisdiction of the Ontario  
Energy Board;
- (b) an Order that the subject matter of the within  
Application by Union Gas Limited is within the  
exclusive jurisdiction of the National Energy

Board pursuant to the National Energy Board Act, R.S.C. N-6, as amended:

- (c) alternatively, pursuant to the Ontario Energy Board's draft Rules of Practice and Procedure, Rule 13(b), that the Board state a case to the Divisional Court respecting the jurisdiction of the Board and, further, that the Board order that the hearing of the within Application be stayed pending the decision of the Divisional Court on this issue.

THE GROUNDS FOR THE MOTION ARE:

- (a) that the proposed pipeline falls within Federal and not Provincial jurisdiction;
- (b) that the proposed pipeline is a "pipeline" within the definition set out in Section 2 of the National Energy Board Act R.S.C. N-6, as amended.

DATED at Toronto this            day of June, 1988.

TRANSCANADA PIPELINES LIMITED

per:   
Jill C. Schatz  
Solicitor

TO: Ontario Energy Board  
2300 Yonge Street  
26th Floor  
Toronto, Ontario  
M4P 1E4

AND TO:

Blake, Cassels & Graydon  
P.O. Box 25  
Commerce Court West  
Toronto, Ontario  
Attention: Burton H. Kellock, Q.C.

Solicitors for Union Gas Limited

AND TO:

All Intervenors

E.B.L.O. 226

ONTARIO ENERGY BOARD

Application by Union Gas Limited for  
Leave to Construct a Natural Gas  
Pipeline and Ancillary Facilities in  
The Townships of Moore and Sombra,  
Both in The County of Lambton.

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NOTICE OF MOTION

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TransCanada PipeLines Limited  
P.O. Box 54  
Commerce Court West  
Toronto, Ontario  
M5L 1C2

Appendix 4.15

LIST OF CASE CITATIONS

Capital Cities Communications Inc. et al. v. Canadian Radio-Television Commission et al. (1977), 81 D.L.R. (3d) 609; [1978] 2 S.C.R. 141.

Re Ontario Energy Board and Consumers' Gas Co. et al. (1987), 59 O.R. (2d) 766 (Div. Ct.).

Re Public Service Board et al, Dionne et al and A.G. of Canada et al. (1977), 83 D.L.R. (3d) 178 (S.C.C.).

Luscar Collier v. MacDonald, [1927] 4 D.L.R. 85; [1927] A.C. 925.

Alberta Government Telephones v. C.R.T.C. et al; (1985), 15 D.L.R. (4th) 515 [1985]; 2 F.C. 472 17 Admin. L.R. 149; (F.C.T.D.); (1985) 24 D.L.R. (4th) 608; [1986] 2 F.C. 179; 17 Admin. L.R. 190 (F.C.A.)

Re Westspur Pipeline Co. Gathering System (1958), C.R.T.C. 158 (Bd. of Transport Commissioners)

In the Matter of a reference by the National Energy Board pursuant to subsection 28(4) of the Federal Court Act, [1987] F.C.J. NO. 1060, Ct. File No. A-472-87, November, 1987 (F.C.A.).

Reference re: Lesiglative Authority in Relation to Bypass Pipelines, [1988] O.J. NO. 176, February, 1988 (C.A.).

Dome Petroleum v. National Energy Board (1987), 73 N.R. 137 (FCA)

Northern Telecom and Canadian Union of Communication Works v. Communication Workers of Canada and A.G. Canada, [1983] 1 S.C.R. 733

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DECISION WITH REASONS

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City of Montreal v. Montreal Street Railway, [1912] A.C. 333.

Re: Regulation and Control of Radio Communication in Canada, [1932] A.C. 305.

Canadian Pacific Railway v. A.G. B.C., [1950] A.C. 122.

Re Inter-provincial Paving Co (1962), C.C.H. Lab. Law Cases, 1188 (Ontario Labour Relations Board)

Canadian National Railway v. Nor-Min Supplies Ltd., [1977] 1 S.C.R. 322.

B.C. Electric Railway v. Canadian National Railway, [1932] S.C.R. 161.

Re: Industrial Relations and Disputes Investigation Act (The Stevedoring Reference), [1955] S.C.R. 529.

In the matter of a Public Hearing Into Certain Facilities Owned or Leased and Operated by Dome Petroleum Ltd., National Energy Board, January 1986.

R. v. Board of Transport Commissioners, (Go Train Case), [1968] S.C.R. 118.

Re Henuset Ltd. et al. (1981), 1 D.L.R. (3d) 639

Flamborough v N.E.B. et al. (1984) 55 N.R. 95 (F.C.A.)

A.G. B.C. v. A.G. Canada, [1937] A.C. 377

Re Validity of S.5 of Dairy Industry Act, Canadian Federation of Agriculture v. A.G. Quebec et al (Margarine Reference), [1951] A.C. 179.

International Brotherhood of Electrical Workers and Westcoast Transmission Company Ltd., Report of Canadian Labour Relations Board, April, 1974.

Attorney-General Ontario v. Winner et al., [1954] 4 D.L.R. 657

Re: Carleton Regional Transit Comm. (1983), 44 O.R. (2d) 560

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DECISION WITH REASONS

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Re: Tank Truck Transport, [1960] O.R. 497

R. v. Cooksville Magistrate's Court, ex parte Liquid Cargo Lines [1965] 1 O.R. 84

R. v. Man. Lab. Bd. ex parte Invictus (1968), 65 D.L.R. (2d) 517

Re: A.-G. Que. and Baillargeon (1978), 97 D.L.R. (3d) 447

Re: Colonial Coach Lines, [1967] 2 O.R. 25

Re: Windsor Airline Limousine Service, (1980) 30 O.R. (2d) 732

Campbell-Bennett v. Comstock Midwestern, [1954] S.C.R. 207

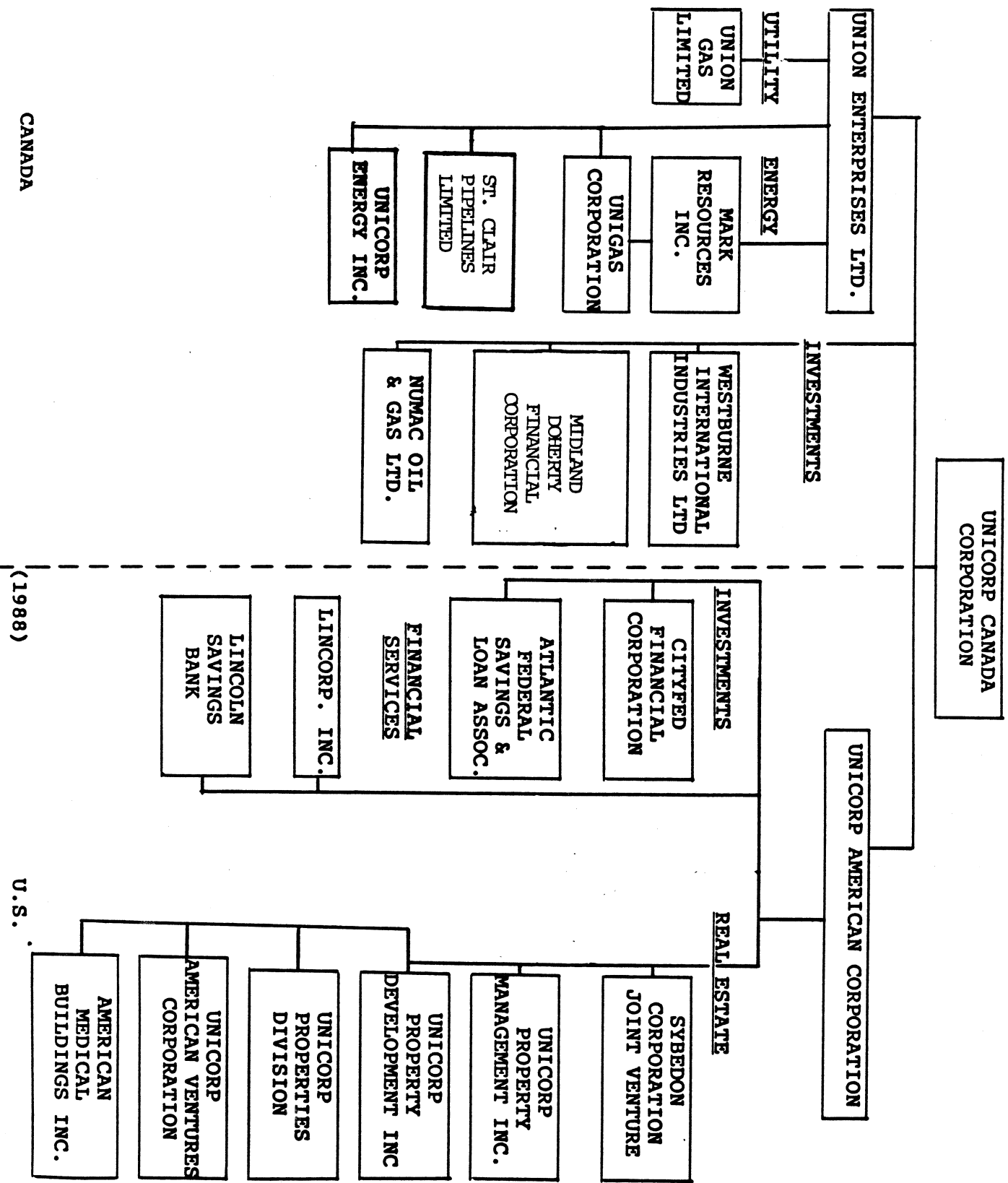
Sask. Power Corp. v. TransCanada PipeLines, [1979] 1 S.C.R. 297.

Kootenay & Elk R. Co. et al v. CPR Co. et al (1972), 28 D.L.R. (3d) 385 (1974) S.C.R. 955

The Minister of Employment and Immigration and the A.-G. Canada v. Harvinder Singh Sethi (Unreported) June 20, 1988, Ct. File No. A-493-88 (F.C.A.)

Central Western Ry. Corp. v. United Transportation Union et al. (1988), 84 N.R. 321 (F.C.A.)

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CANADA

(1988)

U.S.

5. GLOSSARY OF TERMS

ANNUAL  
CONTRACT  
QUANTITY  
(ACQ) GAS

An annual quantity of gas sold by TCPL under a contract to a customer under a delivery schedule largely at the discretion of TCPL. Forty percent is deliverable in the winter period and sixty percent in the summer. The charge for such is on a volumetric basis with a provision for a supplemental charge for volumes offered and not taken.

ANNUAL LOAD  
FACTOR

A mathematical indicator of the way in which a customer consumes gas over the year. It can be calculated in more than one way. A common approach is to express the average daily volume of gas consumed by a customer over the year as a percentage of the customer's peak day consumption.

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DECISION WITH REASONS

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**Bcf** An abbreviation for a billion cubic feet of gas which is equivalent to 28.328  $10^6 m^3$ .

**BUY-SELL** In this arrangement, the end-user purchases its own supply of gas and arranges for transportation, generally to the distributor's receipt point. The distributor purchases the gas and commingles it with the balance of its supplies, and then sells to the end-user as a sales customer under the appropriate rate schedule.

**BYPASS** Bypass involves the total avoidance of the LDC's system for the transportation of gas.

**CLASS LOCATION** A classification of a geographic area according to its approximate current and future population density and other characteristics considered when prescribing the design and methods of pressure testing for pipelines to be located in the area.

**CLASS 1 & 2 LOCATION** A Class 2 location has higher population density than a Class 1 location. Therefore a pipeline designed originally for Class 1 location would be subject to a reduction in pipeline operating

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DECISION WITH REASONS

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pressure, and hence lower throughput, in the event that the area was later reclassified as Class 2. The original pipe would have to be replaced with heavier pipe to maintain the same maximum operating pressure.

**COMPETITIVE  
MARKETING  
PROGRAM  
(CMP)**

A mechanism by which "system producers" (i.e. those who sell gas to TCPL) provide specific discounts to individual end-users of gas. The distributor sells to the end-user under the approved sales rate schedule; the distributor advises TCPL of volumes sold each month. TCPL rebates to the distributor the agreed upon discount for the preceding month's volumes and the distributor flows the rebate through to the end-user.

**CONTRACT  
CARRIAGE**

A transportation service provided under contract for the transport of gas not owned by the transporter.

**CONTRACT  
DEMAND GAS  
(CD GAS)**

Gas which the utility or a customer has the contractual right to demand on a daily basis from the supplier of the gas. For the transportation of the gas the customer must pay a fixed monthly demand charge regardless of volumes

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DECISION WITH REASONS

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actually taken. A commodity charge related to the volume taken is also paid.

<b>DEMAND CHARGE</b>	A monthly charge which covers the fixed costs of a pipeline. The demand charge is based on the daily contracted or operating demand volumes and is payable regardless of volumes taken.
<b>DESIGN MINIMUM INLET PRESSURE</b>	The minimum acceptable delivery pressure at the downstream end of a pipeline.
<b>DIRECT PURCHASE</b>	Natural gas supply purchase arrangements transacted directly between producers, brokers, or agents and end-users at negotiated prices.
<b>DIRECT SALES</b>	Natural gas sales by producers or agents, (as opposed to sales by an LDC), directly to end-users.
<b>DISCRETIONARY PURCHASE</b>	The gas utility volumes purchased over and above those under contract with TCPL and which are usually associated with the availability of excess capacity in the TCPL system.

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DECISION WITH REASONS

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**DISPLACEMENT  
VOLUME**

According to the TCPL definition approved by the NEB, (which is currently under review), the volume of gas contracted under a direct purchase, firm transportation contract with TCPL is considered a displacement volume if, assuming the absence of such direct purchase, the LDC could supply the account on a firm contract basis without itself contracting for additional firm volumes to accommodate that demand.

**DOUBLE  
DEMAND CHARGE**

A double demand charge occurs when a direct purchase sale displaces a distributor's sale, and the space reserved by that distributor on the TCPL system is paid for twice: first by the utility and second, by the direct purchaser.

**FEEDSTOCK**

Natural gas used as a raw material for its chemical components and not as a source of energy.

**FIELD GATHERING  
SYSTEMS**

Systems of pipelines that convey gas from gas wellhead assemblies to treatment plants, transmission lines, distribution lines or service lines.

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DECISION WITH REASONS

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<b>FIRM SERVICE</b>	A relatively higher priced service for a continuous supply of gas without curtailment, except under extraordinary circumstances.
<b>HYDROCARBON</b>	Any compound of hydrogen and carbon. Fuel oil and natural gas are referred to as hydrocarbon fuels.
<b>INTERRUPTIBLE CUSTOMERS</b>	Customers whose gas service is subject to curtailment at the discretion of the utility. The duration of continuous and cumulative interruptions as well as required notice periods are usually specified in the service contract.
<b>INTERRUPTIBLE SERVICE (IS)</b>	Transportation service or sales service provided on a best-efforts basis depending upon the availability of spare capacity on a pipeline. The shipper or buyer must pay a commodity charge related to the volume taken.
<b>LINE-PACK GAS</b>	The inventory of gas in the pipeline system to which gas is continually being added at the upstream end and withdrawn at the downstream end.
<b>LOAD-BALANCING</b>	The efforts of a utility or of a direct purchaser to meet its gas requirements in the most economic manner. It



involves balancing the gas supply to meet demand by using storage and other measures.

**LOAD FACTOR**

A mathematical indicator of the way in which a gas utility system, or end use customer draws on its supply of gas over a period of time. The annual load factor can be expressed as the average daily volume of gas demanded over the year expressed as a percentage of the peak day demand.

**LOOP**

Additional pipeline which is located parallel to an existing pipeline over the latter's entire length, or any part of it, and is added to increase the capacity of the transmission system.

**MANUFACTURED  
GAS**

A combustible gas artificially produced from coal, coke, or oil, or by reforming liquefied petroleum gases.

**MARKET  
RESPONSIVE  
PROGRAM (MRP)**

This program permits a local distribution company to offer customers discounts from the price normally paid under the sales tariff. The funds for these discounts are provided by system gas producers through Western Gas Marketing Limited. MRPs are similar to CMPs in that they assist system gas to compete with direct purchase supply.

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DECISION WITH REASONS

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**MAXIMUM  
COMPRESSION  
AVAILABLE**

The maximum compression currently available at the upstream end of a pipeline which limits the transportation capability of the pipeline to a level below the pipeline's potential capability.

**METHANE**

Methane, a colourless hydrocarbon gas, is the chief component of natural gas. Its chemical formula is CH<sub>4</sub>.

**NPS**

NPS means nominal pipe size and is used in conjunction with a non-dimensional number to designate the nominal size of valves, fittings and flanges. More specifically the following nominal pipe sizes appear in this document:

	<u>Outside Diameter in Millimetres</u>	<u>Equivalent Imperial Size in Inches</u>
NPS 12	323.9	12
NPS 20	508	20
NPS 24	610	24
NPS 36	914	36

**OFF-PEAK  
PERIOD**

A period during which the amount of gas required by a customer or local distribution company is less than its maximum requirement.

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DECISION WITH REASONS

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<b>ONTARIO PIPELINE COORDINATION COMMITTEE (OPCC)</b>	An interministerial committee, chaired by a member of the OEB staff and including designates from those ministries of the Ontario Government which collectively have a responsibility to ensure that pipeline construction and operation have minimum undesirable impacts on the environment. The environment, perceived in a broad sense, covers agriculture, parklands, forests, wildlife, water resources, social and cultural resources, public safety and landowner rights.
<b>OPERATING DEMAND VOLUMES</b>	Volumes specified in the distributor's CD contracts with TCPL, less the volumes deemed to have been displaced by direct sales, as determined under the NEB's rules.
<b>PEAK DAY</b>	A peak period of 24 hours duration.
<b>PEAK DEMAND</b>	The maximum amount of gas required over a given, usually short, period of time.
<b>PEAK PERIOD</b>	A period, usually of short duration, during which the maximum amount of gas is required by a customer or local distribution company.

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DECISION WITH REASONS

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<b>PEAKING SERVICE (PS)</b>	A discretionary purchase for the delivery of gas during the winter season. The service is not subject to interruption and includes a take-or-pay provision.
<b>PROFITABILITY INDEX</b>	A measure of whether there is a net cost to a utility's customers as a result of undertaking a proposed project. A profitability index of 1.0 would mean that the net present value of the cash inflows is equal to the net present value of the cash outflows over the period selected for the analysis, based on the utility's incremental cost of capital.
<b>"PURE" UTILITY</b>	A local distribution company which is not engaged in any other unrelated business activities.
<b>RATE BASE</b>	The amount the utility has invested in assets such as pipes, meters, compressors and regulator stations, etc., minus accumulated depreciation, plus an allowance for working capital and other amounts that may be allowed by the Board.

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DECISION WITH REASONS

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<b>RAW NATURAL GAS</b>	A naturally occurring unprocessed mixture of hydrocarbon and non-hydrocarbon gases of low molecular weight.
<b>REMOVAL PERMITS</b>	A permit granted by the Alberta Energy Resources Conservation Board that authorizes the export of gas from the Province of Alberta.
<b>ROAD ALLOWANCE</b>	A right-of-way reserved for a highway which includes the travelled portions of the highway and its perimeter.
<b>SECTIONALIZING BLOCK VALVE</b>	A valve used to interrupt the flow of gas and isolate a section or sections of a pipeline for maintenance, repair, safety or other purposes.
<b>SELF- DISPLACEMENT</b>	The purchase of gas by an LDC from sources other than TCPL to displace gas it would otherwise obtain from TCPL.
<b>SPOT GAS</b>	Gas available in the market place through short-term, fixed price contracts generally lasting less than twelve months.

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DECISION WITH REASONS

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**STAGE 1**                    The Board requires each gas utility to use a three-stage process to evaluate the economic feasibility of system expansion. Stage 1 is a profitability test based on a discounted cash-flow (DCF) analysis.

**STAGE 2**                    Stage 2 is designed to quantify other public interest factors not considered in a Stage 1 analysis of the costs and benefits when testing the economic feasibility of a utility system expansion project.

**STAGE 3**                    Stage 3 takes into account all other relevant public interest factors that cannot be readily quantified in a cost/benefit analysis when testing the economic feasibility of a utility system expansion project.

**SUMMER  
INCENTIVE CMP**            A price discount feature of the Competitive Marketing Program to encourage individual end-users to purchase system gas during the summer season when both producers and TCPL have excess capacity.

**SYSTEM GAS**                Gas supplied under contract to TCPL by gas producers.

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DECISION WITH REASONS

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<b>SYSTEM PRODUCERS</b>	Gas producers that have contracts to supply TCPL with gas.
<b>TCPL DEMAND CHARGE</b>	A component of TCPL's CD rate designed to recover all or most of the fixed costs of transmission. Demand charges are payable by the shipper whether or not gas is taken.
<b>TEMPORARY WINTER SERVICE (TWS)</b>	A discretionary purchase for the delivery of gas during the winter season. The service is subject to limited interruption and includes a take-or-pay provision.
<b>TOPGAS &amp; TOPGAS II</b>	Two banking consortiums formed in 1982 and 1983 respectively which have made an aggregate of approximately \$2.65 billion of take-or-pay payments to Alberta gas producers for gas contracted for but not taken by TCPL. These payments were made on a project financing basis and are referred to as the TOPGAS and TOPGAS II loans.
<b>UNBUNDLED RATE</b>	A rate for an individual, separate service offered by a distributor as opposed to a rate which combines the costs of a variety of component services.

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DECISION WITH REASONS

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**UNABSORBED  
DEMAND  
CHARGE**

Charges which occur when a distributor purchases its gas or receives its gas at less than the forecasted load factor used in setting rates.

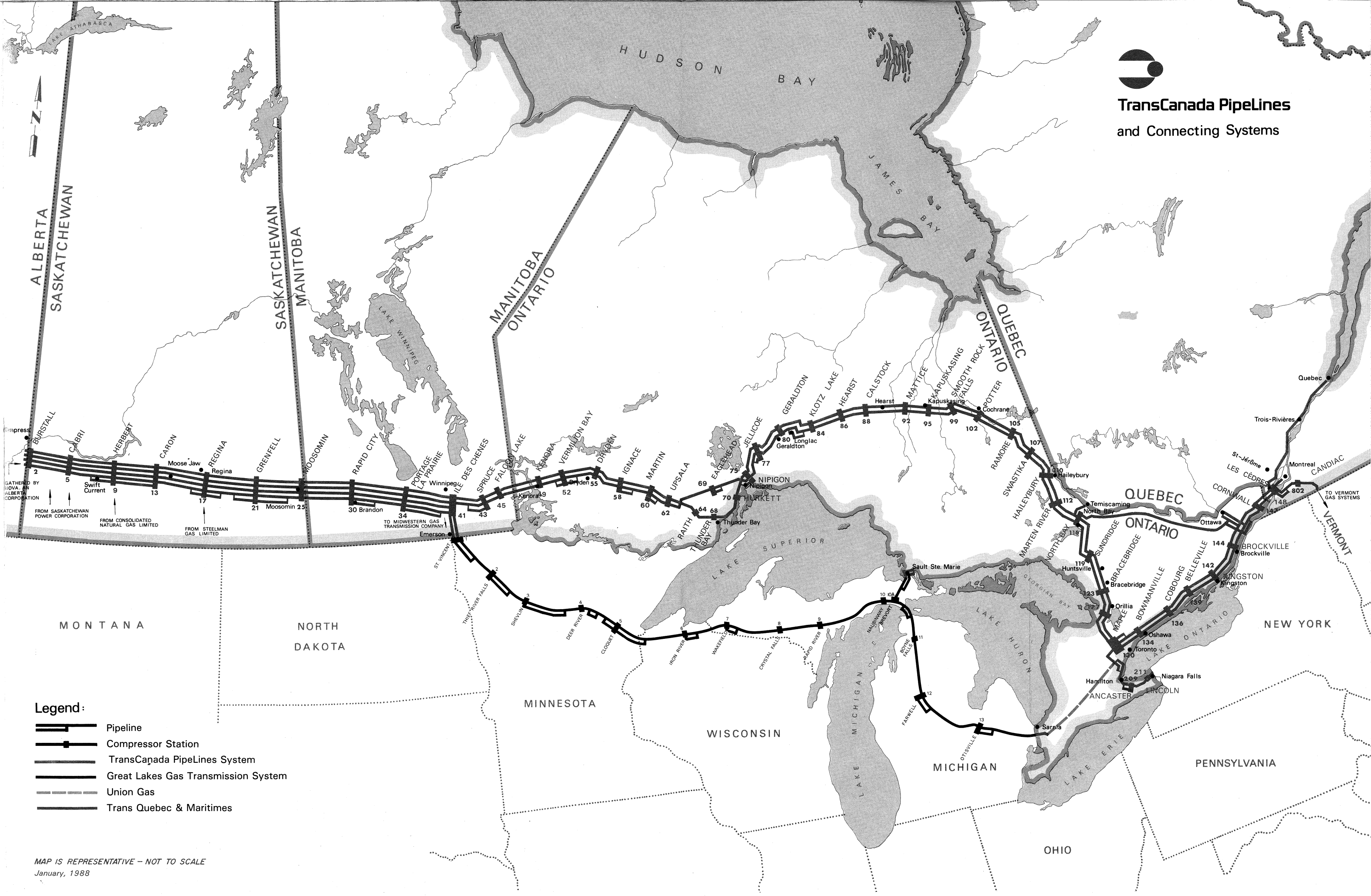
**WINTER  
PEAKING**

The higher gas requirement of a customer or local distribution company in response to higher demand in the winter season.





**TransCanada Pipelines  
and Connecting Systems**



ALBERTA  
SASKATCHEWAN

SASKATCHEWAN  
MANITOBA

MANITOBA  
ONTARIO

ONTARIO  
QUEBEC

MONTANA

NORTH  
DAKOTA

MINNESOTA

WISCONSIN

MICHIGAN

NEW YORK

PENNSYLVANIA

OHIO

- Legend:**
- Pipeline
  - Compressor Station
  - TransCanada PipeLines System
  - Great Lakes Gas Transmission System
  - Union Gas
  - Trans Quebec & Maritimes

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January, 1988