



Douglas and Dorothy Hollands

**Section 33 Application for Pipeline Removal
Leduc-Woodbend Field**

February 25, 2014

ALBERTA ENERGY REGULATOR

Decision 2014 ABAER 003: Douglas and Dorothy Hollands, Section 33 Application for Pipeline Removal, Leduc-Woodbend Field

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DECISION

[1] Having carefully considered all of the evidence, the Alberta Energy Regulator (AER) denies Application No. 1688970.

[2] In reaching its decision, the AER considered all materials constituting the record of this proceeding, including the evidence and argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to help the reader understand the AER's reasoning on a particular matter and do not mean that the AER did not consider all relevant parts of the record with respect to that matter.

INTRODUCTION

Application

[3] Douglas Hollands and Dorothy Hollands (the Hollands) applied to the Energy Resources Conservation Board (ERCB), pursuant to section 33 of the *Pipeline Act*, for an order requiring Alberta Products Pipeline Ltd. (APPL) to remove a portion of Lines 96 and 97 (Licence No. 7634) of its products pipeline. The portion of the pipelines that the Hollands are requesting be removed is in the northern half of the northwest quarter of Section 33, Township 49, Range 25, West of the 4th Meridian (N½ of NW-33-049-25W4M), adjacent to the city of Leduc, Alberta. The pipeline, which has been operating for more than forty years, transports refined product (including gasoline, diesel, and jet fuel) from Edmonton to Calgary for distribution throughout the Calgary area. APPL stated that it is the only pipeline providing this service.

Background

[4] Section 33 of the *Pipeline Act* permits the AER to alter or relocate a section of a pipeline. Section 33 states:

33(1) When in its opinion it would be in the public interest to do so, the Regulator may, on any terms and conditions it considers proper, direct a licensee

- (a) to alter or relocate any part of the licensee's pipeline,
- (b) to install additional or other equipment on the licensee's pipeline, or
- (c) to erect permanent fencing on the right of way or provide any other protective measures within the controlled area that the Regulator considers necessary.

(2) Where the Regulator directs the alteration or relocation of a pipeline, the installation of additional or other equipment on a pipeline, the erection of fences or the provision of other protective measures

within the controlled area, it may order by whom and to whom payment of the cost of the work and material, or either, shall be made.

(3) If a dispute arises as to the amount to be paid pursuant to an order under subsection (2), it shall be referred to the Regulator and the Regulator's decision is final.

[5] When the Hollands initially filed their application requesting the removal of the portion of the pipeline identified above, they did not provide any suggestions as to where it should be relocated. Later in the hearing process, the Hollands clarified that they were actually seeking to have the pipeline moved to a different location on their lands.

[6] The ERCB decided to set this matter down for a hearing, and on October 7, 2011, both parties indicated a preference for an oral hearing. Prior to the issuance of the notice of hearing, the Hollands requested an abeyance, which was granted on November 4, 2011. Three additional abeyance requests were granted between February 22, 2012, and September 17, 2012. The ERCB denied a fifth abeyance request on April 1, 2013, due to concerns over repeated delays in the process. The notice of hearing was finally issued on April 30, 2013, for an oral hearing to be held in Leduc, Alberta, starting June 11, 2013. Prior to the hearing, on June 3, 2013, the Hollands requested that the hearing be written rather than oral, and APPL agreed on June 4, 2013. On June 6, 2013, a notice of rescheduling of hearing was issued, with the ERCB cancelling the oral proceeding in favour of a written process, as requested by the parties.

[7] In parallel with their application to the ERCB to have the pipeline relocated, the Hollands also filed applications with the Surface Rights Board and the Alberta Court of Queen's Bench regarding the same pipeline and lands.

[8] On June 17, 2013, the *Responsible Energy Development Act (REDA)* came into force in Alberta. The *Energy Resources Conservation Act (ERCA)*, which established the ERCB, was repealed and the AER was created. In accordance with *REDA*, the AER assumed all of the ERCB's powers, duties, and functions under Alberta's energy resource enactments, including those under the *Pipeline Act*. Throughout the transition from the ERCB to the AER, the authority of the hearing commissioners assigned to hear this matter continued in accordance with the *Responsible Energy Development Act Transition Regulation*.

Hearing

[9] The AER held a written hearing before hearing commissioners B. T. McManus, Q.C. (presiding), R. C. McManus, M.E.Des., and T. Engen (collectively "the Panel"). Appendix 1 lists the parties in this proceeding.

[10] The hearing was declared closed by way of a letter to the parties on November 1, 2013.

ISSUE

[11] The Panel considers the primary issue respecting the application to be whether, in the Panel's opinion, it would be in the public interest to direct APPL to alter or relocate any part of its pipeline.

ANALYSIS AND FINDINGS

[12] In support of their application, the Hollands relied on the lease agreement, dated March 8, 1971, between Gulf Oil Canada Limited and Her Majesty the Queen as represented by the federal minister of transport for the land that is now owned by the Hollands (the “Lease”). Both the Hollands and APPL agreed that they are the successors of the lessor and lessee, respectively.

[13] The Hollands submitted that the pipeline must be removed from the N½ of NW-33-049-25-W4M given the expiry of the lease on July 1, 2010, and the terms contained within. The Hollands contended that APPL’s continued failure to remove the pipeline despite having been requested by the Hollands to do so on several occasions was a breach of the Lease. In contrast, APPL maintained that the Hollands had misinterpreted the Lease. APPL believed that only the minister of transport under certain events of nonpayment or other defaults had the power to require the pipeline be removed. APPL submitted that at no point did the Hollands assume the powers of the minister of transport.

[14] The Panel notes that the question as to the proper interpretation of the Lease is currently the subject of a Court of Queen’s Bench action filed by the Hollands. Given the nature of the dispute, the Panel is of the opinion that the court is the proper forum for interpreting the Lease and finds that it would be inappropriate for the Panel to comment on how the Lease should be interpreted. Given that the Panel lacks the authority to order specific performance of the Lease, the Panel concludes that the Lease cannot form the basis of its public interest consideration.

[15] In determining whether approving the application to direct APPL to relocate a portion of its pipeline would be in the public interest, the Panel considered the factors set out in section 3 of the *Responsible Energy Development Act General Regulation*, which states:

- 3 For the purposes of section 15 of the Act, where the Regulator is to consider an application or to conduct a regulatory appeal, reconsideration or inquiry in respect of an energy resource activity under an energy resource enactment, the Regulator shall consider
 - (a) the social and economic effects of the energy resource activity,
 - (b) the effects of the energy resource activity on the environment, and
 - (c) the impacts on a landowner as a result of the use of the land on which the energy resource activity is or will be located.

Social Effects

[16] The Hollands noted that Leduc is growing and maintained that their lands could be used for development to support such growth. In support of this, they indicated that the City of Leduc had advised them of its intention to annex their lands. Additionally, an appraisal report, dated May, 2, 2012, concluded that their lands were highly desirable for residential growth, and a residential property development company had recently purchased the parcel immediately east of the Hollands’ lands. It is the Hollands’ position that the current location of the pipeline and the lands sterilized by it hampers the ability of the City of Leduc to implement its development plan to its full potential.

[17] While APPL agreed with the Hollands that their lands, or a portion of their lands, will eventually be developed, APPL felt that this would not occur for a considerable period of time.

APPL also disagreed with the Hollands that their lands are highly desirable for residential growth. APPL highlighted that the Hollands' lands are along what has been identified as a major roadway in the City of Leduc/Leduc County Intermunicipal Development Plan 2010–2044. The lands are also located a substantial distance from existing roads and sewer and water services, which makes it more costly for land developers since they bear the costs for extending the amenities to their developments.

[18] The Panel notes that the City of Leduc was not a party to this proceeding and is still in the process of finalizing its development plan. Accordingly, it is unclear what effect, if any, the pipeline in its current location would have on the plan.

Economic Effects

[19] When assessing the potential economic effects of removing the pipeline, the benefits must be weighed against the costs. Moreover, both the cost to remove the pipeline and the cost to relocate the pipeline need to be considered.

[20] As stated above, it is the Hollands' position that the pipeline in its current location is sterilizing a portion of their lands and impeding future development. They maintained that this is negatively affecting their property value.

[21] APPL, in contrast, submitted that the current location of the pipeline may actually be a benefit to the Hollands. APPL noted that the Hollands will have to dedicate up to 10 per cent of their lands to the City of Leduc as environmental reserve. APPL suggested that the current location of the pipeline presents an opportunity for the Hollands to request municipal reserve credit in the vicinity of the pipeline as the City of Leduc has indicated that it may want to use the pipeline right-of-way for a regional pathway.

[22] In terms of costs associated with relocating the pipeline, the Hollands submitted that the costs would be offset by savings associated with pipeline maintenance. In response, APPL stated that there was no evidence to support this assertion and advised that no pipeline integrity work is currently scheduled for the portion of the pipeline on the Hollands' lands and no further maintenance work has been identified. APPL also noted that the pipeline is the only one transporting refined product from Edmonton to Calgary for distribution throughout the Calgary area. Consequently, relocating the pipeline would require shutting down the pipeline for about one week, which could potentially affect both shippers and customers.

[23] Given the lack of certainty surrounding the development plans for the Hollands' lands and the lack of specifics as to the location where the Hollands are seeking to have the pipeline relocated, it is not surprising that the proposed costs and benefits of relocating the pipeline are speculative. The Panel notes that the costs estimated by the two parties for relocating the pipeline differed significantly, with each party providing little reasoning as to how they derived their estimates and no evidence to support their numbers. The Hollands estimated the total cost for removing the old pipe and installing the new pipe at \$295 000, and APPL estimated the cost to be \$6.2 million. The Panel also notes that the potential benefit of relocating the pipeline is uncertain at this time given that the Hollands have no firm development plans and there is conflicting evidence as to whether the current location of the pipeline would be financially detrimental to the Hollands.

[24] In light of the above, the Panel finds that the economic effects of relocating the pipeline are unclear.

Environmental Effects

[25] The Hollands submitted that integrity digs conducted on APPL's pipeline in 2010 revealed that it would be beneficial for the entire pipeline to be replaced.

[26] APPL asserted that the integrity digs had not indicated that it would be beneficial for the entire pipeline to be replaced. APPL maintained that it did not intend to replace the section of pipe on the Hollands' lands. APPL further stated that removing and relocating the pipeline would cause environmental effects.

[27] The Hollands argued that conducting repair work on the pipeline requires disturbing the land and that the environmental effects of relocating the pipeline would not be significantly greater. The Hollands also asserted that the current state of the pipeline is a threat to the environment as it is near to Whitemud Creek. This proximity, the Hollands argued, exposes Whitemud Creek to the risk of contamination, which could affect residents along the creek and potentially the North Saskatchewan River.

[28] The Panel finds that insufficient information has been provided to support the Hollands' assertion that the pipeline's location near Whitemud Creek poses a risk. The Panel also notes that relocating the pipeline would not only result in further ground disturbance, but would also require a longer length of pipe.

Landowner Impacts

[29] The Panel considered both the potential impacts on the Hollands and on the neighbouring landowners in assessing the Hollands' application.

[30] The Hollands submitted that relocating the pipeline would positively affect them, and given that the proposed relocation would be within their lands, it would not affect other landowners. APPL disagreed and indicated that depending on where the pipeline was relocated, the neighbouring landowners could be affected. To support this assertion, APPL noted that in the Hollands' drawing of the proposed relocation of the APPL pipeline, the northern reconnection point of the pipeline is not on the Hollands' lands.

[31] The Panel notes that the information provided by the parties as to the potential impacts on other landowners is speculative given the lack of clarity surrounding the proposed relocation. As the exact route for the proposed relocation and the associated reconnection points are unclear, the Panel is unable to ascertain what impacts, if any, relocation would have on other landowners.

Need to Relocate the Pipeline

[32] The Hollands contended that the pipeline needs to be relocated not only because the lease has expired, but also because it has sterilized 20 acres of land on the east side of their property. The Hollands submitted that this impedes development of the area, which is needed for industrial and urban growth.

[33] The Hollands indicated that they had participated with the City of Leduc in the area structural plan (ASP) process for their four quarter sections that the City of Leduc is annexing from Leduc County. The Hollands stated that they expect that the ASP, once finalized, will specify what can be developed on the four quarter sections and where all facilities will be located. Until the ASP is finalized and development occurs as a result of either a joint venture or by a development company, they intend to farm the land. The Hollands conceded that they do not currently have any approvals or approved development plans for their lands.

[34] APPL contended that the Hollands had failed to provide specific evidence regarding how the 20 acres would be sterilized and how the new location proposed for the pipeline would be less intrusive. APPL also submitted that residential development can occur right up to the pipeline setback and that not all development is prohibited within municipal setbacks. APPL also noted that there is currently development surrounding portions of its pipeline in the Nisku and Millwoods areas.

[35] The Panel finds that, despite the numerous opportunities to clarify the application, insufficient evidence has been provided to support the Hollands' position that the pipeline needs to be relocated. The panel notes that the Hollands have no clear development plans for their lands and that the ASP has not yet been approved. In the absence of any clear plans, the Panel is unable to determine whether the pipeline is incompatible with area development. The Panel believes that to relocate the pipeline at this time would be premature and could result in further relocations being required once the ASP is finalized.

[36] For the above reasons, the Panel finds that there is too much uncertainty to support a finding that the application to remove or relocate the portion of the APPL pipeline in the N½ of NW-33-049-25W4M is in the public interest. To require APPL to relocate the pipeline when there is currently no apparent need would result in regulatory uncertainty and unnecessary costs and could have potential environmental risks.

CONCLUSION

[37] Based on the evidence submitted in this proceeding, the Panel finds that it is not in the public interest to remove or relocate the pipeline at this time. Accordingly, the Panel denies the application. This decision in no way prejudices the Hollands' ability to submit a new application for relocating the pipeline once their plans become certain.

Dated in Calgary, Alberta, on February 25, 2014.

ALEBRTA ENERGY REGULATOR

<original signed by>

B. T. McManus, Q.C.
Presiding Hearing Commissioner

<original signed by>

R. C. McManus, M.E.Des.
Hearing Commissioner

<original signed by>

T. Engen
Hearing Commissioner

APPENDIX 1 PARTIES

Principals and Representatives (Abbreviations used in report)

D. and D. Hollands (the Hollands)

K. Buss
D. Bishop

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D. Watt

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