

Rep: OEB
Doc: 1154S
Rev: 0

E.B.L.O. 208

E.B.C. 147, 148, 149, 150, 152, 153, 154, 155, 156 E.B.A. 449, 450, 451, 452

IN THE MATTER OF The Ontario Energy Board Act, R.S.O.
1980, C. 332, as amended;

AND IN THE MATTER OF an Application by Northern and
Central Gas Corporation Limited for an Order granting leave to
construct a 323.9 mm natural gas transmission line from Sault
Ste. Marie to the communities of Blind River and Elliot Lake.

AND IN THE MATTER OF the Municipal Franchises Act,
R.S.O. 1980, Chapter 309;

AND IN THE HATTER OF proposed by-laws granting Northern and Central Gas Corporation Limited
the right to construct works to supply and to supply gas to the inhabitants of the Township of
Macdonald, Meredith and Aberdeen Additional and the Towns of Blind River and Elliot Lake, and the
Village of Iron Bridge, all in the District of Algoma;

AND IN THE MATTER OF Applications by Northern and
Central Gas Corporation Limited for Certificates of Public
Convenience and Necessity to construct works and to supply gas
to the inhabitants of the Towns of Blind River and Elliot Lake
and the Townships of Macdonald, Meredith and Aberdeen
Additional, Day and Bright Additional, Thessalon, Johnson,
Plummer Additional,

Thompson, and the Village of Iron Bridge, all in the District of Algoma.

BEFORE: John C. Butler, Presiding Member

Harvey R. Chatterson, Member

Marie C. Rounding, Member

March 13, 1985

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TABLE OF CONTENTS

Page

THE APPLICATION	1
APPEARANCES	5
THE ROLE OF THE BOARD	13
THE ISSUES	19
Introduction	19
Notification to Affected Parties	19
Route Selection	24
Economic Feasibility	29
Construction Standards & Safety	38
Environmental Impact	43
Landowner Concerns	54
Easement Agreements	67
The Public Interest	68
Franchise Agreements	71
Certificates of Public Convenience	72
SUBMISSIONS REGARDING COSTS	75
BOARD FINDINGS REGARDING COSTS	81
SUMMARY OF BOARD CONCLUSIONS	93
APPENDIX A - MAPS	99
B - PARTIAL DECISION	101
C - ORDER F.B.R.O. 404	117
D - UNDERTAKINGS	121
E - GLOSSARY OF TERMS	133

Northern and Central Gas Corporation Limited ("Northern", the "Applicant", or the "Company") filed an application (the "main application") with the Ontario Energy Board (the "Board" or the "OEB") pursuant to section 46 of the Ontario Energy Board Act (the "Act") for an order granting leave to construct a 323.9 millimetre ("mm") (12 inch diameter) natural gas transmission line of approximately 170 kilometres ("km") from Sault Ste. Marie to the communities of Blind River and Elliot Lake (the "Pipeline"). This main application dated October 30, 1984 was assigned docket Board number E.B.L.O. 208.

In addition to the main application several related applications for approval of franchises and for granting certificates of public convenience and necessity were filed. The franchise applications are:

E.B.A. 449 - Township of Macdonald, Meredith and Aberdeen Additional;

Was Page 2. See Image [OEB:1154R-0:5]

E.B.A. 450 - Town of Elliot Lake; E.B.A. 451 - Town of Blind River; E.B.A. 452 - Village of Iron Bridge.

The applications for certificates of public convenience and necessity are:

E.B.C. 147 - Town of Elliot Lake; E.B.C. 148 - Township of Macdonald, Meredith and Aberdeen Additional; E.B.C. 149 - Township of Day and Bright Additional; E.B.C. 150 - Township of Thessalon; E.B.C. 152 - Town of Blind River; E.B.C. 153 - Village of Iron Bridge; E.B.C. 154 - Township of Johnson; E.B.C. 155 - Township of Plummer Additional; E.B.C. 156 - Township of Thompson, which was later withdrawn.

Appendix A contains two maps which show the affected area and:

- a) Major gas transmission lines in the Algoma, and Sudbury areas;
- b) The originally proposed route from Sault Ste. Marie to Blind River and Elliot Lake;
- c) The optional routing in the Blind River-Iron Bridge area.

Notice of the applications and of the public hearing were served on affected parties and published as directed by the Board and appropriate affidavits were filed at the hearing. The last of the applications was filed on November 16, 1984 and the hearing commenced on December 18, 1984 in Sault Ste. Marie; reconvened on January 2, 1985 in Toronto and on January 3, 4, 7, 8 and 9, 1985 in Sault Ste. Marie.

Was Page 3. See Image [OEB:1154R-0:6]

Certain rocky and swampy sections of the route have been scheduled for winter construction which Northern claim would result in savings of \$3 million to \$5 million. Northern requested, therefore, that the Board grant approval to permit construction to commence in the month of January 1985. The majority of construction is scheduled to take place during the summer of 1985 with the laterals to, and the distribution

systems in, Blind River and Elliot Lake to be completed in the fall of 1985.

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A partial Decision, (attached as Appendix B) with Reasons to follow, was issued on January 22, 1985 approving the application for leave to construct but dealing only with the essential items that would permit Northern to undertake winter construction. These Reasons for Decision pertain to that partial Decision and to the items that were specifically deferred by it.

Was Page 4. See Image [\[OEB:1154R-0:7\]](#)

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Subsequent to the hearing, the Board received an application from Northern under section 19(11)(a) of the Act for an Interim Order without a hearing to fix the upper limit of Rate 20 at \$178.00 per thousand cubic metres (10(3)m(3)) for the sale of natural gas to three customers, Rio Algom Limited, Denison Mines Limited, and Eldorado Resources Limited, located in the Elliot Lake, and Blind River areas. This application was given Board Docket No. E.B.R.O. 404 and was treated as an application separate from those included in the hearing at Sault Ste. Marie. The Board issued an Interim Order E.B.R.O. 404 on January 22, 1985 authorizing the requested higher rate ceiling for Rate 20 applicable to these three industrial customers. Order E.B.R.O. 404 is attached as Appendix C.

Was Page 5. See Image [\[OEB:1154R-0:8\]](#)

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APPEARANCES

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D. H. Rogers, Q.C. Special Counsel

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P. F. Scully for Northern
G. R. Laidlaw

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J. S. Koskie for Rio Algom Limited

35

M. Jones for Union Gas Limited

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D. Ferns for Ontario Federation
of Agriculture

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Counsel representing concerned landowners were:

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I.D. Hugill J. Purvis
M. Purvis
J. Zachary

39

C. Provenzano, Q.C. F.W. Gordon
A. Wilkins
Estate of J.W. Farmer
Ken Pierman Contracting

40

Inc.
278652 Ontario Inc.
(J. McAuley in Trust)
Robert Pinder
Anthony Provenzano
J. Wilton
G. Zeppa

L. Peterson M. David
J. Mutch
G. Denley
J. Norton

K. G. Smyth D. Witty

J.C. Walker B. Lamantea
314341 Ontario Limited

Individuals appearing on behalf of concerned landowners were:

G. Sonntag for H. Grigat

T. Buckal for S. Lypka

The following addressed the Board and were in favour of the project:

L. Cyr Blind River Town

Council

L. Martin North Shore Development

Association

L. Berling The Corporation of the
Town of Elliot Lake

J. Robbins Township of MacDonald,
Meredith and Aberdeen

Additional

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Dr. M. Foster Member of Parliament
for Algoma

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The following are concerned landowners who intervened either by mail or in person:

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Was Page 9. See Image [\[OEB:1154R-0:12\]](#)

The Board received letters of concern from the following:

L. & D. Bondar
D. Bolduc
T. Bovingdon
W. & D. Chambers
Mr. & Mrs. Claridge
H. Clostermann
R. Cohen
G. & L. Chadjideris
V. Dottor
A. & B. Elliot
C. Farmer
D. & J. Hug
A. Husch
M. Ingram
D. Johnston
G. & B. King
B. Lawrence
H. Lees
D. Lethbridge
L. & M. Lundrigan
B. & D. MacDougall
J. & J. Mattila
D. & L. Morley
M. Patterson
A. Rains
S. & N. Shelbourne
M. Shaver
A. & M. Spadoni
C. Wilmott
D. Wilton
R. Yates

Central Algoma Board of Education
North Shore Cable Services Ltd.
Town of Bruce Mines

The Municipal Corporation of the Village of Iron Bridge.

Was Page 10. See Image [\[OEB:1154R-0:13\]](#)

The Applicant called the following Company employees to testify on environmental matters:

J. Wellard Manager, Operations Engineering

R.S. Alexander Engineering Development Co-ordinator

D.J. Lathem Supervisor Construction Inspection

and on engineering matters:

R.J. Henderson Chief Engineer

J. Wellard Manager, Operations Engineering

and the following consultants to give evidence, each in his speciality:

R.W. Long Long Energy, Environmental and Engineering Consultants

G.T. Hunter President, Hunter and Associates, Environmental and Engineering Consultants

D.J. Coleman Senior Environmental Planner Ecologistics Limited

J.B. Molyneaux Easement Acquisition Agent

Was Page 11. See Image [\[OEB:1154R-0:14\]](#)

The following company employees testified on matters of general policy and economic feasibility:

R.T. Rhodes Vice-President, Gas Supply and Planning

M.B. Fraser Manager, Planning

Special Counsel subpoenaed the following to testify on matters relating to public easements:

J. Reid Director, Engineering and Construction, City of Sault Ste. Marie

J. Sniezek Deputy Planning Director, City of Sault Ste. Marie

R. Kidd Assistant General Manager City of Sault Ste. Marie Public Utilities Commission

R. Yanni Secretary Treasurer, City of Sault Ste. Marie Region Conservation Authority <next page blank>

Was Page 13. See Image [\[OEB:1154R-0:15\]](#)

THE ROLE OF THE BOARD

The leave to construct application, E.B.L.O. 208, was made by Northern under section 46 of the Ontario Energy Board Act. Section 46(1) states:

"46. (1) No person shall construct a transmission line without first obtaining from the Board an order granting leave to construct the transmission line."

Although the application was specifically made under section 46 of the Act, section 48 also applies and is as follows:

"48. (1) An applicant for an order granting leave to construct a transmission line, production line, distribution line or a station shall file with his application a map showing the general location of the proposed line or station and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed line is to pass. R.S.O. 1970, c. 312, s. 40(1).

(2) Notice of the application shall be given by the applicant in such manner as the Board directs and shall be given to the Ministry of Agriculture and Food, the Ministry of Treasury and Economics, the Ministry of Intergovernmental

Was Page 14. See Image [\[OEB:1154R-0:16\]](#)

Affairs, the Ministry of Transportation and Communications and such persons as the Board may direct. R.S.O. 1970, c. 312, s. 40(2); 1972, c. 1, ss. 1, 100(2); 1972, c. 3, s. 17(2).

(3) Where an interested person desires to make objection to the application, such objection shall be given in writing to the applicant and filed with the Board within fourteen days after the giving of notice of the application and shall set forth the grounds upon which such objection is based.

(4) A reply to an objection may be given to the objector in writing and filed with the Board within fourteen days after the giving of the objection.

(5) Where an application is opposed, it shall not be heard for at least thirty days after the day on which it

was filed with the Board.

(6) Where an application is unopposed, it shall not be heard for at least fourteen days after the day on which it was filed with the Board.

(7) Notice of the time and place fixed by the Board for the hearing shall be given in accordance with subsection (2).

(8) Where after the hearing the Board is of the opinion that the construction of the proposed line or station is in the public interest, it may make an order granting leave to construction the line or station.

(9) Leave to construct the line or station shall not be granted until the

Was Page 15. See Image [OEB:1154R-0:17]

applicant satisfies the Board that it has offered or will offer to each landowner an agreement in a form approved by the Board.

(10) Any person to whom the Board has granted leave to construct a line or station, his officers, employees and agents, may enter into or upon any land at the intended location of any part of the line or station and may make such surveys and examinations as are necessary for fixing the site of the line or station, and, failing agreement, any damages resulting therefrom shall be determined in the manner provided in section 50. R.S.O. 1970, c. 312, s. 40(3-10)."

Under these sections, an applicant seeks permission from the Board to construct a transmission line and the Board gives or withholds such permission according to whether or not the Board judges the proposed line to be in the public interest.

Sections 8 and 9 of the Municipal Franchises Act also apply and are as follows:

"8. (1) Notwithstanding any other provision in this Act or any other general or special Act, no person shall construct any works to supply or supply,

(a) natural gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas; or

Was Page 16. See Image [OEB:1154R-0:18]

(b) gas in any municipality in which such person was not on the 1st day of April, 1933, supplying gas and in which gas was then being supplied,

without the approval of the Ontario Energy Board, and such approval shall not be given unless public convenience and necessity appear to require that such approval be given.

(2) The approval of the Ontario Energy Board shall be in the form of a certificate.

(3) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and to grant or refuse to grant any certificate of public convenience and necessity, but no such certificate shall be granted or refused until after the Board has held a public hearing to deal with the matter upon application made to it therefor, and of which hearing such notice shall be given to such persons and municipalities as the Board may consider to be interested or affected and otherwise as the Board may direct. R.S.O. 1970, c.289, s.8.

9. (1) No by-law granting,

(a) the right to construct or operate works for the distribution of gas; (b) the right to supply gas to a municipal corporation or to the inhabitants of a municipality; (c) the right to extend or add to the works mentioned in clause

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(a) or the services mentioned in clause (b); or (d) a renewal of or an extension of the term of any right mentioned in clause (a) or (b),

shall be submitted to the municipal electors for their assent unless the terms and conditions upon which and the period for which such right is to be granted, renewed or extended have first been approved by the Ontario Energy Board.

(2) The Ontario Energy Board has and may exercise jurisdiction and power necessary for the purposes of this section and may give or refuse its approval.

(3) The Ontario Energy Board shall not make an order granting its approval under this section until after the Board has held a public hearing to deal with the matter upon application therefor and of which hearing such notice shall be given in such manner and to such persons and municipalities as the Board may direct.

(4) The Board, after holding a public hearing upon such notice as the Board may direct and if satisfied that the assent of the municipal electors can properly under all the circumstances be dispensed with, may in any order made under this section declare and direct that the assent of the electors is not necessary. R.S.O. 1970, c.289, s.9."

Under section 8 of the Municipal Franchises Act, an applicant seeks approval in the form of a certificate of public convenience and necessity for construction of works to supply gas in a municipality. Under section 9 the terms and conditions of the gas franchise by-law must be approved by the Board.

Was Page 18. See Image [OEB:1154R-0:20]

Was Page 19. See Image [OEB:1154R-0:21]

THE ISSUES

INTRODUCTION

Northern's evidence indicated that the installation of the North Shore Pipeline will result in significant savings to Canada through reduced oil consumption, and reduced energy costs for those who convert to gas. In addition reduced energy costs will constitute an incentive which will attract new industries to the region.

The issues raised are dealt with in the following sections.

NOTIFICATION TO AFFECTED PARTIES

On the first day of the hearing a number of landowners and legal counsel presented motions to the Board to adjourn the hearing and to reconvene at a later date in Sault Ste. Marie rather than in Toronto. The motions were supported on two grounds. First, problems associated with the notice to affected landowners, including the failure of the Applicant to attach the required map to the notice. Second, a preference to have the evidence heard in Sault Ste. Marie, since it would be more convenient for the majority of those affected.

Was Page 20. See Image [\[OEB:1154R-0:22\]](#)

The Board granted the motions and adjourned the hearing to January 3 in Sault Ste. Marie. The Board, however, denied a motion for a six-week adjournment requested on January 2 in Toronto by the Ontario Federation of Agriculture, on the ground that an adjournment would be inappropriate given the importance of the project to the communities which will be served and to the North Shore in general.

With respect to the notice given by Northern, both as to the time allowed for preparation and the information provided, most intervenors considered that the notice had been inadequate and that they should have been consulted during the route selection process. As a result, many said that they were obliged to come to the hearing to inform themselves about the proposed Pipeline route, and in some cases to determine whether they were specifically affected.

Was Page 21. See Image [\[OEB:1154R-0:23\]](#)

Mr. Rogers noted that the Ontario Energy Board Environmental Guidelines recommend that prior to the public hearing all affected landowners should be shown the pipeline route traversing their property through the use of aerial photographs. This should be done prior to the public hearing so that affected landowners can determine if they should intervene in the hearing. He submitted that a public hearing is to permit public input and it is not intended to be a public information forum, or a vehicle for pipeline routing negotiations.

Witnesses testifying on behalf of Northern referred to timing problems throughout the project. Mr. Molyneux cited the size of the project and the time constraints as reasons for his instructions to concentrate on first contacting affected landowners in the areas scheduled for winter construction. He noted that winter construction involved 25 to 30 landowners and he claimed that 90 percent had been contacted and easement agreements signed prior to the commencement of the hearing. He also noted that the proposed Pipeline affected a total of approximately 250 landowners.

Counsel for Northern submitted that the Company had met the legal requirements for the giving of notice. With respect to the adequacy of communication between Northern and the affected landowners, he noted that substantial publicity had taken place in local newspapers. However, he said that given the size of the project, and the number of people affected, personal contact with all landowners prior to the hearing was not possible. He added that public hearings enable those affected to make representations and thereby have an input into the process. He noted that such input indicates the success of the hearing process and that negotiations for easements need not necessarily be restricted in time and may take place prior to, during or after a hearing.

The Board notes that there appears to have been considerable periods of time with little or no public relations activity by the Applicant concerning this project. The Board recognizes that the Environmental Guidelines are not mandatory, but is concerned that the Applicant did not comply with the recommendations that were prepared specifically to reduce the time spent in hearings.

It is obvious that the failure of the Applicant to adequately advise the landowners of the proposed Pipeline route and the construction procedures, resulted in extending the hearing by several days. The fact that several route changes occurred may be considered a measure of the effectiveness of the public hearing process. It fact, however, the Board is required to find if the proposed transmission Pipeline is in the public interest, not to provide a forum for the route selection process.

The impact of Northern's failure to adequately inform the public and particularly the affected landowners is of considerable concern to the Board and will be considered further in the section herein dealing with costs.

ROUTE SELECTION

In order to determine the optimum route for a pipeline to the Blind River/Elliot Lake market area, Northern chose the team of Hunter and Associates and Long Energy Consultants ("Hunter and Long") to examine the area, prepare an environmental overview and give their recommendation as to the optimum route. Hunter and Long submitted reports to the Company in February and July 1984 in which they examined four alternative routes running east from the TransCanada PipeLines Limited ("TCPL") takeoff in Sault Ste. Marie to the Blind River/Elliot Lake area, and one running west from Espanola.

The July 1984 report was filed and it noted that the Espanola takeoff would be the western terminus of the gas line which originates at the TCPL takeoff in North Bay and runs westerly to serve Sudbury and Espanola. This option was estimated to cost in excess of \$4 million more than the proposed line from Sault Ste. Marie. In addition, some reinforcing of the transmission line from North Bay would be required.

The Board is of the opinion that the Espanola option was adequately investigated and rejects it as a viable option.

Messrs. Wellard, Hunter and Long gave testimony concerning economic and environmental evaluations of the four alternate routes from Sault Ste. Marie identified in the Hunter and Long report. The four routes were identified as the North, the Central, the South 1 and the South 2 Routes (see maps in Appendix A). The report indicated that the Central and South 1 routes were the most economic to construct and that environmentally the Central Route was marginally favoured because it would cause less disturbance to agricultural land than the South 1 route. The Central Route was also preferred by the Ministry of Natural Resources (MNR). Northern, therefore, proposed that the Central Route be adopted.

After the general location of the Pipeline corridor was selected, some 80 landowners were approached for consent to flag the route locations. Photomosaics were prepared and used by the land agents as a guide for title searches. The exact location of the Pipeline on the property of affected landowners was to be determined when Northern's land agents negotiated the required easements.

Was Page 26. See Image [OEB:1154R-0:28]

During the hearing Northern agreed to several re-routings of the proposed Pipeline in response to representations by affected landowners. Among these were:

- the portion adjacent to the Leigh's Bay Road area in Sault Ste. Marie will be relocated to the flood control areas of the Region Conservation Authority. - an additional portion of the Pipeline will be located in the Sault Ste. Marie Public Utilities Commission ("PUC") corridor that runs east-west across the north of the city. - In the Iron Bridge area the Pipeline will be located for the most part along property lines instead of cutting across a number of properties. This revised route lies one-quarter to one-half km to the north of the

Was Page 27. See Image [OEB:1154R-0:29]

originally proposed route between the Highway No. 17 crossing (south of Basswood Lake) and the Mississagi River crossing.

The group of landowners from the Iron Bridge area preferred that the line avoid their properties entirely by following a route north of Basswood Lake from Highway 129 to the Red Rock Hydro Dam. Northern presented evidence that this north route would affect more landowners than the recommended revised route and that it would cost approximately \$3.0 million more to construct. As a result, the landowners proposed the revised route as a less acceptable but preferable route to the Central Route. The Board agrees with Northern that a route north of Basswood Lake is not the best option and accepts the revised route.

The route selected by Northern is the Central Route as shown on the map in Appendix A. From the TCPL takeoff at Sault Ste. Marie it follows Base Line Road then northward through the Conservation Authority flood control area. It then follows the PUC corridor in an easterly direction through the

Was Page 28. See Image [OEB:1154R-0:30]

Garden River Indian Reserve, then in a southeasterly direction through the vicinity of Sylvan Valley, Rydal Bank, Bay Mills, south of Iron Bridge to a point north of Blind River, and then in a northeasterly direction to Elliot Lake. The Board is satisfied on the evidence before it that, in selecting the route, the Applicant has attempted to balance the cost of the Pipeline, land-owners' rights and environmental considerations.

Throughout the hearing the Applicant demonstrated that it was prepared to consider the concerns of landowners and, as confirmed by the re-routings referred to earlier, it was willing to make some accommodations. The Board recognizes that such accommodations will be necessary in the course of easement negotiations and it expects that the Applicant will continue to adopt this attitude.

The rerouting of the Pipeline to the Conservation Authority flood control area and PUC corridor was accepted by Northern subject to formal approval by the Authority and the PUC. Counsel for the Applicant requested, however, that in the event that formal approval was not obtained from either of these two bodies, the Board would permit the relocation of the Pipeline without a further hearing provided Northern obtains the appropriate easements from all affected landowners. The Board agrees to the Applicant's request in this regard.

Was Page 29. See Image [\[OEB:1154R-0:31\]](#)

The Board is, therefore, satisfied with the revised general Pipeline route accepted by Northern.

ECONOMIC FEASIBILITY

The projected total capital costs for the Blind River and Elliot Lake transmission line, laterals and pipeline grids are estimated by Northern to be \$ 51,664,100 by the year 1990. The projected capital costs do not include indirect overhead costs since such costs would have been incurred in any event.

Northern has been granted \$30,187,500 by the Federal Department of Energy, Mines and Resources under the Distribution System Expansion Program

Was Page 30. See Image [\[OEB:1154R-0:32\]](#)

("DSEP"). This amount will be treated as a contribution in aid of construction and the economics are therefore based only on Northern's net cost which will be \$21,476,600 by the year 1990.

Based on projected sales volumes in the regions of Blind River and Elliot Lake, Northern forecast that gas sales revenues would be \$5,111,200 for 1985, \$17,044,100 for 1986, \$17,538,100 for 1987, \$17,744,500 for 1988, \$18,556,800 for 1989 and \$18,568,200 for 1990. These revenues were estimated using Northern's rates that were based upon TCPL rates effective on August 1, 1984. However, revenues from the large industrial customers were based on a higher upper limit than that approved by the Board in E.B.R.O. 399 for the Rate 20 customer class.

The projected rate of return on rate base (Northern's net cost) for the first 5 years of service will be 6.97 percent for the year of construction, 10.74 percent for 1986, 10.24 percent for 1987, 10.26 percent for 1988, 10.57 percent for 1989 and 10.38 percent for 1990. Thus, the projected rate of return on rate base, even in the fifth year of service (10.38 percent), is less than the 13.23 percent currently approved by the Board for 1985 and lower than the 12.98 percent approved by the Board for 1984.

Was Page 31. See Image [\[OEB:1154R-0:33\]](#)

Mr. Rhodes indicated that from a strictly economic perspective, the North Shore Pipeline was marginally feasible because Northern will not earn its approved average rate of return even by the fifth year of operation. However, he said that in a project of this nature, consideration of the public interest should go

beyond the numerical calculation of a simple feasibility test, to include both direct and indirect benefits to the public at large. The benefits that he anticipated include:

- Local employment, - Local industrial development, - Fuel savings resulting from conversion to natural gas, 152
- National economic development through the production and sale of domestic supplies of natural gas, 153
- Tax savings resulting from a reduction in oil imports which will effect the amount of Oil Import Subsidy tax paid, and 154
- Security of supply against the possibility of a future oil shortage or embargo. 155

Approximately 95 percent of total sales volume will be made to two large industrial customers, Rio Algom Limited and Denison Mines Limited. Northern has signed contracts to serve these customers for a term of eight years. In addition, Eldorado Resources Limited has signed a letter of intent with Northern and a contract is being negotiated for relatively small volumes of gas. 156

Mr. Rogers expressed concern that the Pipeline revenues will be generated almost exclusively by sales to two customers. He questioned who would bear the risk if one or both of these companies ceased to require natural gas. He noted that Northern's existing customers will subsidize this project and said that the customers should not be exposed to this additional risk. 157

Mr. Rhodes noted that cross-subsidization between existing and new customers is a generally accepted practice and that all of Northern's industrial customers have the potential of experiencing economic difficulties and perhaps even shutdowns. Accordingly, he considered the risk is no greater for this Pipeline than for other projects Northern has undertaken. In addition, he noted that Ontario Hydro's contracts with Denison Mines and Rio Algom extend into the year 2012 and 2020 respectively. Accordingly, Mr. Rhodes concluded that although Northern's officials recognize a certain risk, they were satisfied that there is a reasonable chance that these industries will survive into the next century. 158

Mr. Rhodes did not consider that Northern's shareholders should bear any of the risk in the event that these companies cease business at any time in the next eight years. He said that although shareholders may bear the risk in any single year, it is appropriate that the entire system bear any long-term risk. 159

Mr. Rogers submitted that in the event that the contracts with Rio Algom and Denison Mines do not run their full length and Northern successfully sues on these contracts, then the proceeds received should be shared between the ratepayers and the shareholders. He argued that this would be appropriate since the ratepayers continue to pay a rate of return on the Pipeline which generally remains in the rate base. 160

In negotiating the Rio Algom and Denison Mines contracts, Northern set the contract price some 12 161

percent higher than the upper limit of the range approved by the Board in E.R.R.O. 399 for large-volume industrial customers on Rate 20 in the Northern Zone. During the hearing, counsel for Northern indicated that if it had to rely on the existing rates, then revenues would be reduced from this project in the range of \$380,000 to \$800,000 per year. Northern's witnesses indicated that with this revenue shortfall, Northern would be reluctant to proceed with the project. Mr. Scully suggested four solutions to this problem and, as noted earlier herein, Northern subsequently filed an application for approval of the higher rates on an interim basis.

Was Page 35. See Image [OEB:1154R-0:37]

162

The Board has examined the economic feasibility study filed by Northern as well as the risks that will result from the installation of the Pipeline.

163

The Board recognizes that the world price of uranium may remain at such a low level that Ontario Hydro may find it necessary to cancel or substantially reduce its contracts with Rio Algom and Denison and that such action could have an impact on the demands for gas by both companies. However, there is no evidence before the Board that either event will occur within the life of the contracts.

164

Using the evidence presented by Northern, Board staff recalculated elements of the economic feasibility study to reflect a situation where no gas is sold to the large-volume industrial customers. Without the large-volume industrial customers, the sales would be largely residential, but because there are income tax advantages, a positive rate of return on rate base is produced of 8.36 percent in 1985 falling to 4.61 percent in 1995. The above indicates that on a \$20 million rate base the burden on the balance of Northern's customers would appear to be less than \$1.5 million per year and the rate impact less than \$0.05 per cubic metre.

Was Page 36. See Image [OEB:1154R-0:38]

165

It should also be recognized that the contracts signed with both Rio Algom and Denison Mines are for eight years, whereas most other large-volume industrial customers have contracts that can be cancelled each year. The Board therefore accepts that the term of the contract and the fact that each includes Northern's standard termination clause minimizes the risk.

166

As noted in the "Application" section of these Reasons for Decision, Northern filed with the Board an application under section 19(11)(a) of the Act. An Order, E.B.R.O. 404, authorizing a higher upper limit to Rate 20, was issued on January 22, 1985. That Order impacts on the economic feasibility of the Pipeline and it is therefore reviewed hereunder.

Was Page 37. See Image [OEB:1154R-0:39]

167

The Board required Northern to advise why it was not possible to provide service to the three large industrial customers under the existing approved rate schedules and to justify the need for special rate treatment. Northern demonstrated that neither the existing 08 nor 15 Rates would generate the high level of monthly fixed charges that had been negotiated and that neither rate would accommodate the volumes contracted for.

168

Northern stated that the monthly fixed charges were necessary and confirmed that the termination clause in each contract was the standard clause that had been tested and upheld in the courts. Northern considered that it would therefore be able to collect the monthly fixed charges over the life of either contract, even if no gas were taken.

The Board is satisfied that the economic feasibility of the project is adequate, and although it will not achieve the overall rate of return on rate base that the Board has allowed Northern, the burden on the existing customers will not be unreasonable. The Board is of the opinion that the sales contracts the Applicant has negotiated with the two large customers give reasonable protection to Northern over an eight year period. Compared to the direct and indirect benefits that the availability of gas will bestow on the area and, after evaluating the risks that were cited during the hearing, the Board concludes that the application should not be denied on the basis of economic feasibility.

170

CONSTRUCTION STANDARDS AND SAFETY

171

Northern filed a table setting out the design specifications which indicate pipe size and wall thickness for each section of the Pipeline and the pressure testing that will be performed. The Applicant advised that the specifications conform with the Canadian Standards Association Gas

Pipeline Systems Code Z184-M1983 (the "Code") which has been adopted by Ontario for pipelines such as this. The intent of the Code is to establish essential requirements and minimum standards for the design, installation, and operation of gas pipeline systems. Generally, the Code specifies the precautions to be taken according to location class, including test pressures, maximum operating pressures, and spacing of shut-off valves.

173

Section 4.3.1 of the Code states that the location class of a pipeline shall be determined by the number of dwelling units per 1.6 km in an area that extends 200 metres each side of the Pipeline. Section 4.3.7 of the Code provides that when classifying locations, due consideration should be given to the possibility of future development within the area. Northern's witnesses indicated that the design and testing of the proposed Pipeline is in accordance with these requirements.

The section of the Pipeline proposed for the Sault Ste. Marie area will allow a maximum pressure of 1,000 pounds per square inch ("p.s.i.g.") in this location as a class 3 area. A class 3 location pertains to a location containing 46 or more dwelling units per 1.6 km. It is anticipated that this classification will be sufficient to meet the municipality's future development potential. Mr. Wellard noted that TCPL has estimated that Northern will be taking gas at 500 p.s.i.g. at Sault Ste. Marie, whereas the maximum allowable operating pressure, even if Sault Ste. Marie became a class 4 location, is 814 p.s.i.g., which is well above the expected operating pressure. He also indicated that Northern is required to survey the Pipeline at regular intervals in order to monitor construction of additional dwellings and, if the class location changes, the maximum operating pressure of the Pipeline will be adjusted accordingly.

175

Mr. Henderson testified that the Pipeline will be constructed in accordance with the requirements of the Code. He noted that the Pipeline will be located within an identifiable easement and markers will be installed indicating its location. This precaution should minimize the possibility of pipeline rupture caused by third-parties. He noted that the pipe will be wrapped with a polyethylene or rock jacket and will have cathodic protection against corrosion.

Mr. Henderson indicated that the Fuel Safety Branch of the Ministry of Consumer and Commercial

Relations is responsible for safety aspects of the Pipeline and that it monitors the installation of pipe when close to a high- voltage power line. He advised that induced currents will be eliminated through the use of grounding mats or by bonding to a Hydro protection system.

177

He also noted that the Pipeline's location within the PUC and the Great Lakes powerline easements will not increase the potential for corrosion of the pipeline provided the cathodic protection system is carefully maintained.

Was Page 42. See Image [\[OEB:1154R-0:44\]](#)

178

In addition to the safety aspects referred to above, Northern will take other steps to safeguard the public:

179

- the Pipeline will be monitored on a regular basis, through either walking the route or over-flying by helicopter;
- the work of other utilities in urban areas in the vicinity of the Pipeline will be monitored;
- monitoring the Pipeline operation from Northern's gas dispatch centre in North Bay will provide immediate indication of problems.

180

As an additional safety precaution Northern will pressure test with water to 1,500 p.s.i.g. prior to placing the Pipeline into service. This is a 24-hour pressure test to locate any construction faults.

181

The Board is satisfied that the planned Pipeline will conform to the design and safety requirements as set out in the Code. The Board is also satisfied that the inspection procedures currently employed and those under the jurisdiction of the Fuel Safety Branch of the Ministry of Consumer and Commercial Relations, will ensure that the Pipeline will be installed in accordance with the accepted construction standards.

Was Page 43. See Image [\[OEB:1154R-0:45\]](#)

182

ENVIRONMENTAL IMPACT

183

Ecologistics Limited under the direction of Dr. Coleman was responsible for the detailed environmental investigation and assessment of the Central Route. His report was based upon his field surveys of the Pipeline route and those of a biologist-planner and an archaeologist. Conditions along the route were assessed on the basis of field surveys, and upon information obtained from government agencies. Dr. Coleman indicated that approximately 70-80 percent of the Pipeline route was walked. On the basis of these investigations, Dr. Coleman advised that he had no major environmental objections to the Central Route. However, he recommended that his general Environmental

Was Page 44. See Image [\[OEB:1154R-0:46\]](#)

184

Protection Specifications (the "Specifications") for pipeline construction be followed.

185

Generally the Specifications establish standards for the construction of a pipeline. Under the Specifications Northern is required to follow certain procedures during and post-construction to ensure that minimum environmental damage occurs and that the land is properly restored. The conditions imposed on the contractor include:

186

- a) clean up litter left after construction, b) protect known heritage sites, c) procedures for clearing and slashing, d) procedures to strip, trench, restore and reseed the soil in agricultural areas, e)

procedures for wet and dry crossings of rivers and creeks, and f) noise control guidelines.

As part of the general requirements, Northern must provide inspection of the entire construction process to ensure compliance with the Specifications.

Special Counsel noted that Dr. Coleman, in conducting the environmental assessment of the

Was Page 45. See Image [OEB:1154R-0:47]

Central Route, did not consult with affected landowners regarding their specific concerns. He contended that the landowners represent a wealth of information on such matters as local history, Indian burial grounds, stability of river banks, nature of fish found in rivers, tile drainage improvements, and proposed subdivisions. He expressed concern that a determination of the existence of tiled drainage will not be made until just prior to construction and indicated that this process should have occurred prior to the commencement of the hearing.

Special Counsel indicated that several recommendations made in the preliminary Hunter and Long report regarding additional environmental investigation were not followed by Dr. Coleman. In this regard he noted that the recommendation for additional studies into the characteristics of silty clay loam soils and internal drainage of sandy soils were not pursued.

Was Page 46. See Image [OEB:1154R-0:48]

Special Counsel also observed that Dr. Coleman's report made no specific recommendations for particular agricultural properties. He expressed concern that soil samples would be taken only at the implementation stage prior to construction and he contended that such tests should have been performed prior to the commencement of the hearing.

The proposed Pipeline route will cross approximately 60 waterways. Dr. Coleman apparently did not take physical measurements of the soil type or slope at each proposed crossing, but relied on observations as to the general nature of the soil present and his assessment of potential erosion problem areas. Similarly, the species of fish present in particular rivers were not determined by testing; instead Dr. Coleman relied on MNR for information regarding species of fish and spawning beds within each particular stream. Dr. Coleman considered MNR to be a better source of such information than local residents.

Was Page 47. See Image [OEB:1154R-0:49]

Where MNR indicated the presence of spawning beds, Dr. Coleman recommended that the particular waterway not be crossed during the sensitive time period. In addition, almost all waterways are to be crossed in one day, thereby minimizing the disturbance to the fish. The Mississagi River crossing is an exception since it will take approximately five days to cross.

Dr. Coleman submitted tables that identified each water crossing, identified the environmental sensitivity, and recommended the method of crossing and the period when the crossing could be made. He gave assurances that MNR had been consulted as to his recommendations and was in full agreement.

Special Counsel conducted a detailed review of the environmental problems associated with the Pipeline, including each water crossing, and obtained undertakings from Northern with respect to most of his concerns. Northern summarized and confirmed these undertakings after the close of the hearing and this

summary now forms part of the record of the proceeding and is attached as Appendix D.

Was Page 48. See Image [\[OEB:1154R-0:50\]](#)

196

A deviation was made from the proposed crossing point of the Blind River to meet the concerns of the local landowners Ms. Mutch and Mrs. David. Northern now propose a wet-crossing at a point north of the original crossing point. Northern undertook to prepare an environmental assessment of this particular construction area, but indicated that MNR has approved the new crossing location. Mr. Wellard testified that while there is more rock present at this site, the crossing itself presents less difficulty and is therefore less expensive.

197

Special Counsel expressed concern with the site plan for the Mississagi River crossing and submitted that Northern should be required to file an amended site plan for this particular crossing. He said that the site plan which Northern provided is not sufficiently detailed, given the magnitude of this type of crossing. He suggested that, in particular, additional information was required regarding construction techniques to be employed at this river crossing.

Was Page 49. See Image [\[OEB:1154R-0:51\]](#)

198

The Board agrees with Special Counsel and directs Northern to file a revised site plan with the Chairman of the Ontario Pipeline Coordination Committee ("OPCC") before May 1, 1985.

199

In regard to the issue of land restoration subsequent to construction, Northern's witnesses stated that the construction contractor is bound by Northern's contract conditions to observe the general environmental specifications outlined in Dr. Coleman's report. Considerable time was spent during the hearing discussing the restoration of agricultural lands and cleanup procedures. Issues of particular concern to landowners were tile drainage, topsoil replacement and well protection.

200

The Specifications generally provide that the location of drainage tile will be reviewed with the landowner and marked prior to construction. Tile which is damaged by trench excavation shall be removed and subsequently replaced with tile at the grade and elevation of the original tile.

Was Page 50. See Image [\[OEB:1154R-0:52\]](#)

201

Special Counsel claimed that the existence of tile drainage should have been determined by Dr. Coleman at the time he surveyed the proposed route. Special Counsel contended that consultation with affected farmers to locate tile drainage systems is a necessary first step in route selection, since such lands should be avoided where possible.

202

Topsoil on agricultural lands will be removed to a maximum depth of 0.3 metres (12 inches) and stored separately from the subsoil. Northern's witnesses indicated that the depth to which the topsoil will be stripped on any specific property will be determined with the farmer at the time of stripping.

203

Northern's procedure for cleanup on agricultural land was outlined by Mr. Alexander. After the pipe is laid in the trench, the subsoil will be backfilled and, if the farmer requests, chisel-ploughed. Next, the subsoil will be stone-picked down to fist size or smaller. Finally, the topsoil will be replaced, fertilized, chisel-ploughed at the farmer's request, and stone-picked. The contractor will return the following spring and stone-pick the topsoil once again.

The mixing of topsoil and subsoil is detrimental to agricultural land, therefore, Northern will have an environmental inspector present to protect the farmers in the event of wet weather by shutting down the work.

205

Mr. Wellard pointed out that topsoil on "abandoned fields" (not currently in agricultural production) will also be stripped and subsequently restored. He also noted that on wet soils where topsoil is not stripped, the contractor will use Terrafix 2415 Filter fabric ("Crazy Carpet") to avoid mixing the topsoil with the subsoil.

206

Where blasting occurs within 100 to 125 metres of a well used for water supply, the well shall be identified by Northern personnel and examined for quantity and quality of water prior to any blasting. Dr. Coleman particularly noted that the blasting at the northern side of Birch Lake appears to be less than 100 metres from the well supply of an existing small cottage resort. The Ministry of the Environment has specifically requested water tests in this area and Northern has undertaken to perform them.

Special Counsel considered that a single test of water quality is insufficient and he argued that several tests be performed prior to blasting to ensure that the data taken at the first test was accurate. The Board directs that Northern consult with and comply with the requirements of the Ministry of the Environment for well testing under these circumstances.

208

The environmental inspectors are responsible for implementing environmental recommendations and guidelines. During the hearing Northern emphasized the high quality of its inspection. Environmental inspectors will be used at all phases of construction but in particular, inspectors will be present at all watercrossings, at each spread where trenching and clearing activities are in progress and during all restoration activities. Dr. Coleman whose firm has been awarded the contract of environmental inspection, described the four levels of authority to which his inspectors adhere. First, an inspector may comment to the contractor directly. Second, the concern is forwarded to the contractor supervisor. If the concern is not satisfactorily addressed at that level then it is taken to Dr. Coleman, the chief environmental inspector, who will take appropriate action to correct the problem.

Special Counsel filed a list of "Proposed Conditions of Approval" during the course of the hearing and these were, for the most part, accepted by the Applicant. The Board has reviewed these conditions and with minor changes has attached them to its partial Decision. A copy of these Conditions of Approval is attached as part of Appendix B.

210

Special Counsel submitted that, because proper environmental protection is largely a matter of proper inspection, Northern should be required to submit to the Board a list of individual inspectors who will be responsible for ensuring the implementation of the standards outlined in the contract specifications, and compliance with the undertakings given by Northern throughout the hearing.

The Board is satisfied that provided Northern fulfills the undertakings it agreed to, and that it meets both the contract specifications and Dr. Coleman's Specifications, then there will be minimal environmental impact and the land will be restored to the maximum extent possible. The Board requires Northern to

comply with the above and, since proper inspection is essential, it requires Northern to submit to the Chairman of the OPCC a complete list of inspectors and the status, scope and level of authority of each.

212

LANDOWNERS CONCERNS

213

The landowners present at the hearing generally did not, in principle, oppose the construction of the Pipeline; in fact, the majority felt that natural gas will be economically beneficial to the North Shore. However, because of economic considerations or concerns with respect to safety, most wanted the Pipeline to be located anywhere other than on their property.

Was Page 55. See Image [OEB:1154R-0:57]

214

It is recognized that it would be preferable if pipelines avoided private property entirely to eliminate landowner concerns. However, this generally is impractical and almost all pipeline installations result in some inconvenience to some landowners. It would, therefore, be impossible to meet all of the concerns of all landowners, even if the Board directed Northern to change the routing or the construction methods.

215

Although the Board has approved the construction of the Pipeline in principle, the precise location of the Pipeline has not been approved. As indicated, the Board expects Northern to continue negotiations with affected landowners to accommodate their concerns wherever possible and to enter into easement agreements for the land required for the Pipeline.

216

The Board believes that in view of the number and variety of concerns, the negotiation process is the most acceptable method of proceeding and, as noted earlier herein, there was evidence that it was producing results during the course of the hearing. If, however, Northern is unable to satisfactorily resolve outstanding concerns with a landowner and is not successful in entering into an easement agreement, then Northern may make minor routing changes to avoid that property or, under section 49 of the Act, may apply to the Board for expropriation of that land. The Board is then required to hold a public hearing prior to making any determination as to whether the expropriation of the land would be in the public interest.

Was Page 56. See Image [OEB:1154R-0:58]

217

In order to ensure that landowner concerns are recognized, the following sets out a summary of those concerns, including those that were settled by negotiation and those that were apparently not settled during the hearing.

218

Mr. Lamantea, Mr. Kansikas, Mrs. Farrell, Mr. Manzo and the clients of Mr. Provenzano were concerned that routing the Pipeline through their respective properties would impede future development and requested that it be re-routed. Northern agreed to this request and, as noted earlier herein, the line has been re-routed along the Conservation Authority flood control area.

Was Page 57. See Image [OEB:1154R-0:59]

219

Some concerns about the proposed new route were expressed by Mr. King, whose property lies between the Conservation Authority flood control plain and the PUC easement. Mr. King indicated that he was involved in ongoing negotiations with the Conservation Authority with respect to the expropriation of his land. He added that the Conservation Authority easement does not appear to be adequate for the installation of a high pressure gas pipeline and that such a pipeline would impede future safe land use.

Mr. Manzo maintained that the 33 foot right-of-way has not been conveyed to the City so that the Manzo property title extends to the centre line of the road. He claimed that since Northern must, therefore, cross the Manzo property to obtain access to the Conservation Authority's flood control plain, Northern must negotiate an agreement prior to crossing onto the existing road allowance.

Was Page 58. See Image [\[OEB:1154R-0:60\]](#)

Mr. Wellard advised that the City of Sault Ste. Marie has given permission to locate the 12-inch gas line in the road right-of-way and noted that although the City claims ownership of the right-of-way, it apparently is currently negotiating with Mr. Manzo.

Landowners from Iron Bridge, including Mr. Baxter, Mr. B. Seabrook, Mr. Trivers, Mr. DeMonye, Mr. Samis, Mr. Beemer, Mr. Smith and Mr. F. Seabrook recommended that the Pipeline be routed north of Basswood Lake, and gave several variations of that route for consideration. However, if none of those variations were accepted, the landowners proposed a compromise by varying Northern's original Central Route. The compromise route was accepted by Northern. The compromise route for the most part follows lot boundaries and thereby avoids diagonal crossings of systematically tiled farms, such as that of Mr. Trivers.

Was Page 59. See Image [\[OEB:1154R-0:61\]](#)

Mr. Seabrook and Mr. Trivers succeeded through these negotiations in relocating the Pipeline away from their property. Mr. Baxter and Mr. DeMonye, however, continue to be affected.

Mr. Wellard indicated that while it is physically impossible to avoid the woodlot located upon Mr. DeMonye's property, a reduced construction right-of-way would be used to minimize damage. Regarding Mr. DeMonye's concern about the deer wintering yard located upon his property, Mr. Wellard said that this area is not scheduled for winter construction. Mr. Wellard also stated that Northern would consider erecting barriers on Mr. DeMonye's property to prevent trespassing.

Mr. Baxter expressed concerns regarding safety, land compaction, tile for drainage, replacement of fences, crop damage, disturbance to cattle, and compensation for the loss of potential for future woodlot growth.

As a result of Northern accepting the compromise route in Iron Bridge, three additional landowners become affected. Northern served them with notice during the hearing and one of the land-owners, Mr. Morrisette, filed an intervention claiming that the notice was insufficient, the Pipeline interferes with future plans to construct water lines and it reduces the value of his property.

Was Page 60. See Image [\[OEB:1154R-0:62\]](#)

Mr. Heine and Mr. Brown also supported the route north of Basswood Lake and strongly opposed using the corridor south of Basswood Lake on four grounds. First, the Pipeline would destroy woodlands and the rustic character of this major recreational region. Second, the Pipeline crosses within 100 to 200 feet of year-round residences. Third, land values in this area are higher and this would make land acquisition difficult. Fourth, natural gas would attract commercial and industrial development which should not be encouraged in the immediate vicinity of Basswood Lake.

Mrs. David and Ms. Mutch expressed a number of concerns regarding the location of the Pipeline through

their property. Ms. Mutch suggested an alternative route which would continue to affect her property but would do so at a less sensitive location and Northern agreed to follow her proposal. The settlement was filed during the hearing as exhibit number 47.

Was Page 61. See Image [OEB:1154R-0:63]
229

Mr. Denley and Mr. Norton were also concerned with the Pipeline location and Northern agreed to a new route along the rear boundary of Mr. Denley's property, thereby avoiding interference with plans for subdivision. On Mr. Norton's property, Northern agreed to relocate along the edge of the property next to the road allowance. The settlement agreements were filed as exhibits 45 and 46 respectively.

230

Mr. MacKenzie was also concerned with the proposed location of the Pipeline, indicating that if the Pipeline must cross his property, he would prefer a different location away from the residence, well and garden. It is understood that Northern has been negotiating with Mr. MacKenzie to address his concerns.

231

Mr. Sonntag, who represented Mr. H. Grigat, opposed Northern's proposed route through

Was Page 62. See Image [OEB:1154R-0:64]
232

Mr. Grigat's property on the ground that the route interferes with future plans for development by Mr. Grigat and himself. He claimed that the site is ideal for the construction of a tourist resort and emphasized the beauty of the property and its proximity to the Iron Bridge airstrip. He proposed that the line be relocated to the south boundary line, but added that if relocation was not possible then compensation should be more liberal given the value of the property to its owner.

233

Mr. Wellard indicated that Northern was negotiating with Mr. Grigat in an effort to address these concerns and undertook to advise the Board as soon as the precise Pipeline location was determined in respect of the Grigat property.

234

Mrs. Graham expressed concern that the drinking water from her well may become polluted by materials that will drain into it if the Pipeline crosses a creek that feeds the well. She also expressed concern regarding noise disturbance caused by construction. The Applicant pointed out that the original route was not located on her property and the relocated route is now two to three hundred feet further south of her property. Nevertheless, Mr. Latham indicated that Northern would investigate Mrs. Graham's concerns.

Was Page 63. See Image [OEB:1154R-0:65]
235

Mr. Sharpe and Mr. Hurley opposed the proposed location of the Pipeline in the Echo Bay area. Mr. Sharpe considered the easement compensation offered by Northern as unrealistically low because it will be only 250 feet from the family residence; will destroy a hardwood bush which is the only source of heat for the family residence; and cause the value of the property to decline.

236

Mr. Hurley was concerned that the proposed Pipeline route will cross an existing gravel pit located on his property. He introduced into evidence a resolution passed by the Municipality of MacDonald, Meredith and Aberdeen Additional recommending that the Pipeline route avoid all gravel reserves.

237

Mr. Wellard indicated that Northern was negotiating alternate routes with other landowners, but noted that there have been surveying difficulties in this area and that the region is being resurveyed. He stated that Northern would be in a better position to address these concerns when the land surveyors complete

the resurveying but, in any event, Northern would try to avoid the gravel pit.

Was Page 64. See Image [\[OEB:1154R-0:66\]](#)
238

Mr. Witty expressed concern that a possible infringement of privacy may result from the location of the Pipeline on his property. His concern arose from Northern's proposal to use the PUC easement crossing his property. There are two waterways on this property, a ravine and a small gully with steep slopes, which provide natural barriers to snowmobiles. Mr. Witty does not have a problem with trespassers at the present time, but he is concerned that reducing the slope of the ravine banks from about 50 degrees down to approximately 25 degrees will create an access for snowmobiles.

Was Page 65. See Image [\[OEB:1154R-0:67\]](#)
239

Northern agreed to construct fences or barriers to Mr. Witty's satisfaction to minimize access and trespassing.

240

Mr. Smyth who represented Mr Witty, submitted that because Dr. Coleman's report failed to indicate both the ravine and the gully, Northern should be required to present to Mr. Witty a detailed plan of how Northern proposes to cross the gully and ravine prior to his signing an easement.

241

The Board directs Northern to provide Mr. Witty and the OPCC with a detailed plan of the Pipeline crossing of the gully and ravine on his property prior to his entering into an easement agreement with Northern.

242

In addition to the intervenors who appeared at the hearing themselves or were represented by counsel, the Board received a number of written interventions and letters of concern, which expressed the specific concerns of individual landowners.

Was Page 66. See Image [\[OEB:1154R-0:68\]](#)
243

Although they are too numerous to review in these Reasons for Decision, the Board has carefully considered all the letters of concern as well as the written and verbal interventions.

244

The Board has noted that Northern dealt with a number of the landowner concerns during the course of the hearing and, in addition, gave a number of undertakings that should alleviate the concerns of other intervenors.

245

Northern also made an attempt to accommodate the concerns of the Iron Bridge agricultural landowners. Although the revised route is not entirely satisfactory to this group of landowners, the Board has accepted the compromise route since the route proposed north of Basswood Lake was more costly and would affect a significant number of landowners who had not been served with notice of this proceeding as they were not previously affected. The Board expects Northern to address the outstanding concerns of these agricultural landowners, including those now affected as a result of the compromise route, relating to such matters as soil compaction, fencing, disturbance to cattle, tile and crop damage.

Was Page 67. See Image [\[OEB:1154R-0:69\]](#)
246

The Board also directs Northern to address the concerns of those newly affected landowners whose property abuts the Conservation Authority flood plain and PUC corridor where working rights easements will need to be obtained.

EASEMENT AGREEMENTS

The Board has examined the form of easement to be used by Northern and approves the form and its policies for compensation.

The procedure whereby landowners are to be compensated was outlined by Mr. Molyneaux. Compensation will be paid for the actual easement, for the working easement and for damages. Compensation in the amount of 50 percent of market value of the land will be paid to acquire a 50-foot (15 metres) easement in perpetuity. A higher percentage will be paid where a crossing is "irregular" such as in the case where the Pipeline will run diagonally across the property. This easement grants to Northern the right to enter the property and lay pipe. Once the easement is granted the landowner is restricted from building over the pipeline and can only build up to the easement boundaries.

Was Page 68. See Image [OEB:1154R-0:70]

In addition to the easement in perpetuity, a 25-foot temporary working easement will be reacquired for construction purposes. This temporary space could be used by Northern throughout the entire project, or for a period of one year. Working area will be compensated on the basis of 20 percent of market value of the property. Compensation will also be paid for damage, including fences, crop loss, and loss of trees.

Special Counsel noted that Northern's compensation policies, restoration techniques and compensation for crop damage are generally in line with other Ontario utilities.

THE PUBLIC INTEREST

In deciding this leave to construct application, the Board is required by Section 46(8) of the Act to decide whether or not the construction of the proposed Pipeline is in the public interest.

Was Page 69. See Image [OEB:1154R-0:71]

Broadly defined, the public interest will be satisfied by an undertaking or action that will result over time in an enhancement of the economic and/or general welfare of the public without imposing an undue burden on any individual, group or class. The public interest criterion can be met and satisfied without improving the economic and/or general welfare of every member of society. In the public utility context, the Board assumes that the general welfare will be enhanced if service is provided to consumers at an economic cost which is competitive with alternatives. Under certain circumstances the public interest criterion can be satisfied even if a project will not be commercially viable for several years.

Public interest may also be interpreted as an accommodation of conflicting specific and individual interests. All of these interests may not be represented at a hearing, nevertheless, the Board must attempt to identify and have regard for them. In assessing whether a specific proposal would be in the public interest, the Board must also consider whether a disservice to the public would result if the proposal were not approved.

Was Page 70. See Image [OEB:1154R-0:72]

Clearly there are no firm criteria for determining the public interest which are valid in every situation. The

criteria of public interest for any particular set of circumstances are understood rather than defined and a precise definition to cover all situations would be impossible. The public interest is, therefore, dynamic and the criteria by which it is assessed must also change according to the circumstances.

257

The Board has no evidence that any party or interest group is opposed to the principle of this application. The Board can therefore assume that all concerned parties are at least in favour of the general principle of the Pipeline and its attendant benefits.

258

The Board has noted the risks that the industrial load may be curtailed and that unwanted development could occur in some areas.

Was Page 71. See Image [\[OEB:1154R-0:73\]](#)
259

The circumstances prevailing, however, with respect to the economic benefits that can accrue to the industrial concerns and the public in Blind River and Elliot Lake and the potential benefits to the North Shore communities as a whole are such that the Board concludes that the Pipeline satisfies the public interest criterion and it will make an Order granting leave to construct.

260

FRANCHISE AGREEMENTS

261

Northern submitted copies of franchise agreements which it has with the Township of Macdonald, Meredith and Aberdeen Additional; the Village of Iron Bridge; and the Towns of Elliot Lake and Blind River. An application for franchise approval was filed for each of these. The franchise agreements are Northern's standard franchise form except for two small modifications to the Blind River agreement. In that agreement "municipal parks" has been added into the definition of "public property". A change of wording was also made to the indemnification clause. These changes were considered by Northern and by Special Counsel to contain no change in meaning. As there is no change in the contractual obligations, the Board accepts the franchise agreements as filed.

Was Page 72. See Image [\[OEB:1154R-0:74\]](#)
262

The Board, therefore, approves each of the applications under the following docket numbers: E.B.A. 449 for the Township of Macdonald, Meredith and Aberdeen Additional and E.B.A. 452 for the Village of Iron Bridge. The Board previously approved the applications under E.B.A. 450 for the Town of Elliot Lake and E.B.A. 451 for the Town of Blind River in its partial Decision.

263

The Board also declares that the assent of the electors of each of the municipalities to the terms and conditions of the franchise agreements is not necessary. The Board also directs that the Applicant file with the Board a copy of all the signed franchises and a copy of the bylaws authorizing the franchise agreement.

264

CERTIFICATES OF PUBLIC CONVENIENCE

265

Northern has submitted applications seeking the granting of certificates of public convenience and necessity for a number of communities. These, with Board docket numbers are: Township of Macdonald, Meredith and Aberdeen Additional - E.B.C. 148; Township of Day and Bright Additional - E.B.C. 149; Township of Thessalon - F.B.C. 150; Village of Iron Bridge - E.B.C. 153; Township of Johnson - E.B.C.

154; and the Township of Plummer Additional - E.B.C. 155. An application for the Township of Thompson was withdrawn. The Board previously approved the applications under the Town of Elliot Lake - E.B.C. 147 and the Town of Blind River - E.B.C. 152 in its partial Decision. Of these, only the communities in E.B.C. 147, 148, 152, and 153 have signed franchise agreements. The Company advised that it has no immediate plan for serving the communities for which it has not obtained franchises.

Was Page 73. See Image [OEB:1154R-0:75]
266

The Board finds itself in a position of being asked to grant certificates before being informed of plans or costs. Special Counsel expressed his concerns as to the consequences of granting certificates of public convenience and necessity without supporting information as to the economics associated with serving the area.

Was Page 74. See Image [OEB:1154R-0:76]
267

Mr. Rhodes advised that the applications had been made at this time in order to simplify future development. He confirmed that leave to construct applications would not be necessary for each of the communities, but noted that Northern would prepare an economic analysis for each, similar to that filed in this proceeding. Mr. Rhodes gave an undertaking that copies of each analysis prepared would be filed with the Board before going ahead with the project.

Given the undertakings of the Applicant, the Board is satisfied that all certificates of public convenience and necessity applied for can be granted at this time, and an appropriate Order including those previously approved will be issued in due course.

Was Page 75. See Image [OEB:1154R-0:77]
269

SUBMISSIONS REGARDING COSTS

Special Counsel submitted that costs should be awarded to the intervenors for the following reasons:

- The landowners were not adequately informed about the implications of the Pipeline crossing their property. - The involvement in the hearing of the landowners, whose views he maintained were useful to the Board, was necessitated by virtue of the inadequacy and lateness, of contact by Northern prior to the hearing.

Special Counsel submitted that the Board is given jurisdiction to award discretionary costs under section 28 of the Act and suggested that the following factors should be taken into account in awarding costs:

The intervenors should not be awarded costs on an hourly basis but perhaps should receive some reasonable sum for time spent on the hearing on an arbitrary per diem basis.

Was Page 76. See Image [OEB:1154R-0:78]
274

- The Board should award costs without taxation. - The Board should establish an amount compensating the intervenors for disbursements, travelling expenses, and meal expenses while attending the hearing. - There cannot be total compensation as there is necessarily some cost in attending a hearing to make one's views known.

Counsel representing intervenors who appeared and those who appeared on their own behalf and commented on costs, all supported the awarding of costs and many specifically adopted the reasons given by Special Counsel for the award of costs. Counsel who supported the award of costs and asked for them on a solicitor-and-his-own-client basis were Mr. Provenzano, Mr. Peterson, and Mr. Smyth. Mr. Hugill did not enter an appearance on the record at the hearing but submitted a statement of costs.

Intervenors who requested costs were Messrs. B. Seabrook, Trivers, Beemer, Samis, Smith,

Was Page 77. See Image [\[OEB:1154R-0:79\]](#)

DeMoyne, F. Seabrook, Hurley, Baxter, and Sonntag, also Mrs. David and Mr. Mutch.

Counsel for Northern submitted that:

- "to the extent that the Board perceives that either through our notice provisions or our negotiating techniques we have.. made necessary the participation of people in these proceedings, we have some sympathy to the awarding of costs to those individuals or their solicitors."

- The easiest method to award costs would be for actual out-of-pocket expenses. If the Board chooses to award a per them or hourly rate for time spent by individuals, then the Board should determine that rate. Travelling costs might be reimbursed but not costs for travelling time.

- If the Board chooses to award costs it should do so without recourse to a taxing authority.

- The criteria upon which costs should be awarded is that the participation should be seen to have been necessary.

Was Page 78. See Image [\[OEB:1154R-0:80\]](#)

- With the exception of two clients the remainder of Mr. Provenzano's clients as of January 3, no longer had an interest. Mr. Provenzano's attendance, and cross-examination therefore, was unnecessary. The same comment applies to other lawyers whose clients' interests were no longer affected after a certain point or to whom negotiation was available.

- There was duplication of effort in the Iron Bridge group and one person could adequately have represented the group. Their attendance beyond January 3 was unnecessary because a relocation of the Pipeline had been set in negotiations at a private meeting before the hearing reconvened on January 3.

- An award of costs under these circumstances would set a precedent in leave to construct hearings.

- Costs awarded on a solicitor-and-his-own-client basis is an award on a punitive scale,

Was Page 79. See Image [\[OEB:1154R-0:81\]](#)

seldom awarded by the courts, and inappropriate for the following reasons:

288
a) Northern did not abuse the process; if there were any shortfalls in Northern's notice to affected landowners, it does not fall into that category.

289
b) Northern's participation, attitude, and openness to all attendees of the hearing should show that such a scale would not suit the circumstances.

290
- Mr. Smyth, who participated rather lengthily, Mr. Peterson, and Mr. Provenzano chose to litigate rather than negotiate on behalf of their clients and they should not be compensated for the full time of their attendance. <next page blank>

Was Page 81. See Image [OEB:1154R-0:82]

291 BOARD FINDINGS REGARDING COSTS

292
The Board has received applications for costs from eleven landowner intervenors and four lawyers for landowner intervenors. Special Counsel supported the awarding of costs to intervenors in this case and Northern indicated it had sympathy to the awarding of costs to the extent that its notice or negotiations had necessitated participation in the hearing.

293
Although he did not make reference to cost award criteria established by the Board in previous hearings, Mr. Scully suggested that the criterion for eligibility should be that "the participation should be seen to have been necessary".

294
The Board has considered all the submissions regarding cost awards in this hearing and also the criteria established in the Northern and Central Gas Decision in E.B.R.O. 314-II (November, 1977) where the Board stated:

Was Page 82. See Image [OEB:1154R-0:83]

295
"Cost will be awarded to all of the respondents in this proceeding who;

296
a) seek them;

297
b) have a substantial interest in the outcome of the proceeding; C) have participated in a responsible way; and d) have contributed to a better understanding of the issues by the Board."

298
The Board has treated Mr. Scully's suggested criterion as implicit in criterion (d) above.

299
The Board has concluded that the landowners were not adequately informed of the implications of the Pipeline crossing their properties. The Board accepts Northern's claim that it satisfied the legal requirements with regard to notice, but believes that if Northern had contacted and consulted with landowners earlier in the process many of the landowner concerns might have been satisfied, thus avoiding the need to appear at the hearing.

300
For purposes of this proceeding, the Board will adopt the criteria from E.B.R.O. 314-II and has concluded

that each of the intervenors requesting costs satisfies the first three criteria, and that each, with the exception of Mr. Hugill, satisfies the fourth criteria. The Board will, therefore, award costs to intervenors based on the extent to which they have contributed to a better understanding of the issues.

Was Page 83. See Image [OEB:1154R-0:84]
301

A number of the intervenors and one solicitor, although present in the hearing room at times, did not make any representations on the record. This raises the question as to what extent these intervenors have contributed to a better understanding of the issues by the Board.

From the statements of costs, it would appear that the Iron Bridge group spent a considerable amount of time prior to the hearing in meetings among themselves and with Northern. These meetings led to the various suggested routes in the Basswood Lake and Iron Bridge areas, including the compromise route which was finally accepted by Northern. Undoubtedly these negotiations led to a reduction in the time required at the hearing in reviewing this issue and also narrowed and clarified the issue for the Board. However, as Special

Was Page 84. See Image [OEB:1154R-0:85]
303

Counsel has noted, there is necessarily some cost in preparing to attend a hearing to make one's views known. The Board will not, therefore, award full costs for meetings and negotiations outside of the hearing.

Since the meetings were recorded on an hourly basis, the Board will award ten dollars an hour (the equivalent of \$80.00/day) for one half the time claimed by the landowners outside of the hearing.

The Board is satisfied that the presentations by the landowners have contributed to a better understanding by the Board of the landowner concerns relating to routing, restoration and other environmental concerns. The Board accepts that the Iron Bridge group attempted to avoid repetition by having Mr. Seabrook and Mr. Baxter speak primarily on their behalf. The Board accepts the necessity of this group's continued intervention in the hearing because there was uncertainty as to which route Northern would recommend and which the Board would accept.

Was Page 85. See Image [OEB:1154R-0:86]
306

The Board will, therefore, award \$80.00 a day for each day a landowner has claimed for attendance at the hearing. With regard to travelling mileage, the government rate for Northern Ontario is 25.5 per kilometre and the Board will allow mileage at this rate. Other miscellaneous costs such as meals, postage, telephone charges, and hall rental will be allowed.

Mr. Baxter has claimed for both time spent at the hearing and for loss of wages. The Board, to be consistent with other intervenors and avoid a double benefit, will accept only his claim for time spent. Mr. Hurley requested costs for meals for five days at \$35.00 a day, which may be considered excessive in comparison to the claims of others. Mr. Hurley did not, however, claim for his time as other landowners did and, therefore, he will be allowed the requested rate for meals.

Ms. Mutch requested kennel fees of \$100.00, which could be considered to be beyond the normal range of allowable expenses. However, Mrs. David and Ms. Mutch also did not ask for costs for time spent and, therefore, the Board will in this case allow the requested \$100.00 for kennel fees. The Board, however,

will not allow Ms. Mutch and Mrs. David the requested fee for the consultant services of David Mutch in soil analysis, forest evaluation, proposed pipeline study, alternative route selection and survey. No evidence was filed by David Mutch, he was not called to give evidence, and there is no indication that the route change was influenced in any way by the work he performed.

Was Page 86. See Image [\[OEB:1154R-0:87\]](#)

309

The Board received statements of costs from four lawyers who acted for landowners. Mr. Hugill represented three landowners who were no longer affected after the relocation of the Pipeline in the City of Sault Ste. Marie. Mr. Hugill did not register his appearance on the record at the hearing but apparently did prepare for the hearing in anticipation of his clients' interests being affected. Although Mr. Hugill's preparation may have been helpful to his clients, it did not contribute to a better understanding of the issues by the Board. The Board, therefore, will not allow Mr. Hugill's costs or disbursements.

Was Page 87. See Image [\[OEB:1154R-0:88\]](#)

310

Mr. Provenzano appeared on behalf of nine clients in the City of Sault Ste. Marie. A number of Mr. Provenzano's clients were no longer affected after the relocation of the Pipeline in the Conservation Authority flood plain. Mr. Provenzano has therefore requested costs for these four clients only up until January 3 when the relocation was confirmed in the hearing. The Board accepts Mr. Provenzano's appearance at the hearing on behalf of these clients until the route was confirmed as necessary and finds his statement of costs for these clients as reasonable. The Board will, therefore, allow these four accounts in full.

311

Of the remaining five clients, three are affected only to the extent that their properties are adjacent to the PUC corridor and Northern may require working rights easements. Nevertheless, these landowners will be in close proximity to the Pipeline and, therefore, the Board accepts as necessary Mr. Provenzano's examination of safety issues and the change in classification of the Pipeline. Mr. Provenzano was of assistance to the Board in exploring certain landowner and environmental concerns, and construction and safety issues and did make a contribution to a better understanding of these issues by the Board. The Board will, therefore, allow Mr. Provenzano three-quarters of his fee and his full disbursements for the remaining five clients.

Was Page 88. See Image [\[OEB:1154R-0:89\]](#)

312

Mr. Peterson stated that he appeared on behalf of Mr. and Mrs. Norton and Mr. and Mrs. Denley. Mr. Peterson's appearances at the hearing were limited to brief representations on behalf of his clients, filing of undertakings of Northern, and finally filing of Minutes of Settlement relating to Mr. and Mrs. Norton, Mr. and Mrs. Denley and Ms. Mutch and Mrs. David. Mr. Peterson did not cross-examine or present evidence because he was able to negotiate a settlement for his clients.

Was Page 89. See Image [\[OEB:1154R-0:90\]](#)

313

Mr. Peterson's statement of costs also includes reference to clients Mr. Beemer, Mr. Wilmott, Mr. Ian and Carl MacKenzie, representatives from Viking Rubber Boats Ltd., and representatives from the Ontario Farmer's Association. Other than Mr. Beemer, who intervened and requested costs on his own behalf, the Board has no record of an intervention or letter of concern for these additional clients; nor did Mr. Peterson indicate during the hearing that he appeared on their behalf.

314

The Board appreciates Mr. Peterson's efforts in negotiating with Northern outside of the hearing, thereby avoiding lengthy consideration of the issues in the hearing. The Board also agrees with Mr. Peterson that if this process of consulting and negotiating had commenced earlier, it might not have been necessary for

Mr. Peterson to appear at all. The Board accepts the appearances made by Mr. Peterson at the hearing as necessary. The Board notes, however, that in the end Mr. Peterson only represented three clients, one of whom,

Was Page 90. See Image [\[OEB:1154R-0:91\]](#)
315

Ms. Mutch, appeared and made a contribution on her own behalf and that of her sister and requested costs for herself and her sister. Mr. Peterson, therefore, represented Ms. Mutch and Mrs. David only with regard to the Minutes of Settlement.

316

The Board will, therefore, allow Mr. Peterson one half of his fee and his full disbursements.

317

Mr. Smyth appeared on behalf of Mr. Witty whose property is crossed by the PUC corridor where the Pipeline will be located. Because of the relocation of the Pipeline in that area, Mr. Witty was unsure as to what extent his property would be affected. Once the location was confirmed, Mr. Witty had one specific concern relating to prevention of access to snowmobiles.

318

The Board accepts Mr. Smyth's preparation time for the hearing of 10.25 hours as reasonable as it was reflected in his cross-examination and argument. The Board agrees that Mr. Smyth did contribute to a better understanding of the issues relating to environmental and landowner concerns and the Board accepts his original attendance as necessary to protect his client's interests. The Board does have some concern, however, that Mr. Smyth's attendance throughout five days of the hearing might not have been necessary once the location of the Pipeline was established, given that his client had one specific concern and was not involved in the broader issues of the hearing. The Board will, therefore, allow Mr. Smyth his fee for three days attendance at the hearing and his full disbursements.

Was Page 91. See Image [\[OEB:1154R-0:92\]](#)
319

The Board will, therefore, by Order require Northern to pay the following costs to these intervenors:

320

Was Page 92. See Image [\[OEB:1154R-0:93\]](#)
321

and to these solicitors on behalf of their intervenor clients:

322

Was Page 93. See Image [\[OEB:1154R-0:94\]](#)
323

SUMMARY OF BOARD CONCLUSIONS

324

1. The Board found that the failure to advise and consult with landowners contributed to the necessity for many of the landowners to appear at the hearing and it expressed concern that Northern had not complied with the Environmental Guidelines produced by the OPCC.

325

2. The Board concluded that the economic benefits of the Pipeline to potential gas consumers, and to the North Shore as a whole, offset the risks associated with the large-volume industrial load.

3. The Board is satisfied that the design of the Pipeline is in accordance with the Code and that the safeguards imposed by the Fuel Safety Branch of the Ministry of Consumer and Commercial Relations, will ensure the installation meets construction standards.

326

4. The Board also concluded that the route selection was satisfactory. However, if the

327

Was Page 94. See Image [\[OEB:1154R-0:95\]](#)
328

PUC or the Region Conservation Authority do not permit the installation of the Pipeline on their properties or easements, Northern may re-route the Pipeline without a further hearing provided that easements are obtained from all the landowners affected by the new route.

5. The Board is also satisfied that provided Northern fulfills the undertakings it agreed to, and that it meets both the contract specifications and Dr. Coleman's Specifications, then there will be minimal environmental impact and the land will be restored to the maximum extent possible. The Board requires Northern to comply with the above and to submit a list of the inspectors to the chairman of the OPCC.

329

6. For all of these reasons the Board found that the application for Leave to Construct E.B.L.O. 208 is in the public interest. An Order will be issued granting leave to construct but requiring that Northern comply

330

Was Page 95. See Image [\[OEB:1154R-0:96\]](#)
331

with the undertakings set out in Appendix D as well as with the conditions that form part of Appendix B.

7. The Board directs Northern to review its well testing procedures with the Ministry of the Environment and, if necessary, change them to comply with the Ministry requirements.

332

8. The Board directs Northern to continue with its attempts to satisfy the landowners concerns with respect to routing, construction methods and restoration procedures.

333

9. The Board approved all franchise applications and grants all certificates of public convenience and necessity that had been deferred to these Reasons for Decision. Orders will be issued covering these applications and those approved in the partial Decision dated January 22, 1985.

334

10. The Board directs Northern to file with the OPCC chairman before May 1, 1985 a revised site plan for the Mississagi River crossing.

335

Was Page 96. See Image [\[OEB:1154R-0:97\]](#)
336

11. Northern is directed to provide Mr. Witty and the chairman of the OPCC with detailed plans of the gully and ravine crossings on Mr. Witty's property prior to entering into an easement agreement.

12. The Board expects Northern to address outstanding concerns of agricultural landowners, such as soil compaction, fencing, tile and crop damage and disturbance to cattle.

337

13. Northern is directed to address the concerns of landowners affected by route changes including those on or adjacent to the PUC and Conservation Authority land. 338
14. The Board approves the form of easement used by Northern and also its compensation policies. 339
15. The Board declares that the assent of the electors is not necessary, and directs Northern to file a copy of all signed franchise agreements together with a copy of the related by-laws. 340
16. The Board has decided that costs are to be awarded to certain of the intervenors who requested them and has prescribed the amounts to be paid by Northern. 341

Was Page 97. See Image [OEB:1154R-0:98]

COSTS OF THE BOARD 342

The Board will make an Order charging its costs of the hearing to Northern. 343

DATED at Toronto on this 13th day of March, 1985.
ONTARIO ENERGY BOARD 344

<signed>
John C. Butler
Presiding Member
<signed>
Harvey R. Chatterson
Member
<signed>
Marie C. Rounding
Member

Was Page 99. See Image [OEB:1154R-0:99]

North Shore Pipeline Alternate Routes 345

Was Page 100. See Image [OEB:1154R-0:100]

Proposed Pipeline - Sault Ste. Marie to Elliot Lake 346

Was Page 101. See Image [OEB:1154R-0:101]

APPENDIX B 347

E.B.L.O. 208 348

E.B.C. 147, 148, 149, 150
152, 153, 154, 155
156

E.B.A. 449, 450, 451, 452

IN THE MATTER OF The Ontario Energy Board Act, R.S.O.
1980, C. 332, as amended;

AND IN THE MATTER OF an Application by Northern and
Central Gas Corporation Limited for an Order granting leave to
construct a 323.9 mm natural gas transmission line from Sault
Ste. Marie to the communities of Blind River and Elliot Lake.

AND IN THE MATTER OF the Municipal Franchises Act,
R.S.O. 1980, Chapter 309;

AND IN THE MATTER OF proposed bylaws granting Northern
and Central Gas Corporation Limited the right to construct
works to supply and to supply gas to the inhabitants of the
Township of Macdonald, Meredith and Aberdeen Additional and
the Towns of Blind River and Elliot Lake, and the Village of
Iron Bridge, all in the District of Algoma;

AND IN THE MATTER OF Applications by Northern and
Central Gas Corporation Limited for Certificates of Public
Convenience and Necessity to construct works and to supply gas
to the inhabitants of the Towns of Blind River and Elliot Lake
and the Townships of Macdonald, Meredith and Aberdeen
Additional, Day and

Was Page 102. See Image [\[OEB:1154R-0:102\]](#)

Bright Additional, Thessalon, Johnson, Plummer Additional, Thompson, and the Village of Iron Bridge,
all in the District of Algoma.

BEFORE:

John C. Butler, Presiding Member
Harvey R. Chatterson, Member
Marie C. Rounding, Member

January 9, 1985

Was Page 103. See Image [\[OEB:1154R-0:103\]](#)

DECISION

(with Reasons to Follow)

358

The Board has taken evidence and has heard argument on a leave to construct and other related applications by Northern and Central Gas Corporation Limited ("Northern" or the "Applicant") for authority to build a natural gas transmission line of approximately 170 kilometres (km) from Sault Ste. Marie to the communities of Blind River and Elliot Lake. The related applications were for franchise approvals and certificates of public convenience and necessity, with the last application being received by the Board Secretary on November 16, 1984.

359

Board docket number for the leave to construct application is E.B.L.O. 208, and the franchise applications are:

360

E.B.A. 449 - Township of Macdonald, Meredith and Aberdeen Additional; E.B.A. 450 - Town of Elliot Lake; E.B.A. 451 - Town of Blind River; E.B.A. 452 - Village of Iron Bridge.

Was Page 104. See Image [\[OEB:1154R-0:104\]](#)

361

The applications for certificates of public convenience and necessity are:

362

E.B.C. 147 - Town of Elliot Lake; E.B.C. 148 - Township of Macdonald, Meredith and Aberdeen Additional; E.B.C. 149 - Township of Day and Bright Additional; E.B.C. 150 - Township of Thessalon; E.B.C. 152 - Town of Blind River; E.B.C. 153 - Village of Iron Bridge; E.B.C. 154 - Township of Johnson; E.B.C. 155 - Township of Plummer Additional; E.B.C. 156 - Township of Thompson was withdrawn.

363

The hearing took place on December 18, 1984 in Sault Ste. Marie; on January 2, 1985, in Toronto and on January 3, 4, 7, 8 and 9, 1985 in Sault Ste. Marie. The hearing was conducted almost entirely in Sault Ste. Marie to accommodate extensive participation by concerned landowners.

364

Since the capital cost of the pipeline has been based on part of it being constructed during the 1984/85 winter, Northern requested that the Board render a decision by January 11, 1985. This date, or 4 or 5 days thereafter, was said to be the latest that would provide the necessary time for the contractor to complete the winter construction. Northern submitted that delayed construction could increase the cost by \$2.0 million to possibly \$5.0 million.

Was Page 105. See Image [\[OEB:1154R-0:105\]](#)

365

In view of the claimed urgency the Board concluded that it should issue this partial Decision, dealing only with the approvals required by Northern to enable it to undertake winter construction and complete the pipeline to Blind River and Elliot Lake. The Reasons for Decision, to be issued in due course, will include the reasons for this partial Decision together with reasons and decisions on other landowner concerns, costs, and the balance of the applications for franchise approval and certificates of public convenience and necessity.

Was Page 106. See Image [\[OEB:1154R-0:106\]](#)

366

BOARD FINDINGS

367

The Board finds that:

- a) the construction of the proposed pipeline is in the public interest and grants Northern leave to construct the proposed pipeline subject to Northern complying with all the undertakings made by its counsel and witnesses as recorded in the transcript and with the list of other Conditions of Approval that were filed by Special Counsel during his argument and which are attached to this Decision as Appendix I; 368
- b) Northern's proposal that the following sections 1, 2 and 3 of the pipeline, and possibly section 4, be constructed during the 1984/85 winter is acceptable: 369
- 1) chainages 16+000 to 35+000 through the Rankin Location and Garden River Indian Reserves (19 km); 370
- 2) chainages 129+000 to 163+700 through primarily Crown and institutional land (34.7 km); 371
- Was Page 107. See Image [\[OEB:1154R-0:107\]](#) 372
- 3) the four inch lateral from Eldorado Nuclear to the Blind River District Regulating Station, (4 km) and ; 373
- 4) chainages 110+600 to 129+000 ending at the Blind River Town Border Station (18.4 km). 374
- c) Northern shall address the landowner concerns in the fourth section under paragraph (b), including those concerns of Mr. Herbert Grigat, as represented by Mr. Gregor Sonntag, Mr. Gerald Archibald, and Mr. Robert "Hartley" Beemer. Northern shall attempt to locate the pipeline such that interference with the future use of the land or land development plans of the affected landowners is minimized. The Chairman of the Ontario Pipeline Coordination Committee shall be advised of the outcome of these negotiations. 375
- d) the easement forms proposed by Northern are acceptable to the Board and satisfy the requirements of section 48(9) of the Ontario Energy Board Act. 376
- Was Page 108. See Image [\[OEB:1154R-0:108\]](#) 377
- e) the applications for certificates of public convenience and necessity to construct works and supply gas to the inhabitants of the Towns of Blind River and Elliot Lake are hereby granted; 378
- f) the terms and conditions upon which, and the period for which the Applicant is to be granted the right to construct and operate works to supply and to supply gas to the inhabitants of the Towns of Blind River and Elliot Lake pursuant to the provisions of resolutions, draft by laws and franchise agreements of the Towns are hereby approved; 379
- g) pursuant to section 9(4) of the Municipal Franchises Act, the assent of the electors of the Towns of Blind River and Elliot Lake to the terms and conditions of the said franchise agreements is not necessary;

- h) the approval is conditional upon the Applicant taking appropriate steps to obtain approval of rates negotiated with major

Was Page 109. See Image [\[OEB:1154R-0:109\]](#)
380

industrial customers in Blind River and Elliot Lake that fall outside the ranges currently approved by the Board.

Orders and certificates of public convenience and necessity will be issued subsequent to the issuance of the Reasons for Decision and will incorporate the above conditions and any further conditions that may be imposed on the sections of the pipeline to be constructed during the summer of 1985.

Signed this 22nd day of January 1985.

<signed>
J. C. Butler
Presiding Member

<signed>
H. R Chatterson
Member

<signed>
M. C. Rounding
Member

Was Page 110. See Image [\[OEB:1154R-0:110\]](#)
386

APPENDIX I

CONDITIONS OF APPROVAL

- a) Subject to Condition (b), Northern 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 this hearing.
- b) Northern shall advise the Board or its designated representative of any proposed change in construction or restoration procedures and, except in an emergency, Northern shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board or its representative shall be informed forthwith after the fact.
- c) Northern shall furnish the Board's designated representative with every reasonable facility for ascertaining whether the work has been

Was Page 111. See Image [\[OEB:1154R-0:111\]](#)
391

and is being performed according to the Board's Order.

d) Northern shall file with the Board Secretary the date on which the installed pipeline is tested within one month of this test date.

392

e) Both during and after the construction, Northern shall monitor the effects upon the land and the environment, and shall file both an interim and a final monitoring report in writing with the Board and the Chairman of the Ontario Pipeline Coordination Committee ("OPCC"). The interim report shall be filed within one month of the in-service date and the final report prior to December 1, 1986.

393

f) The interim report shall describe the implementation of Conditions (a) and (b), 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

394

Was Page 112. See Image [\[OEB:1154R-0:112\]](#)

report shall describe any outstanding concerns of landowners.

395

g) The final 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 delineated and explained.

396

h) Northern shall commence and complete the construction and restoration of the crossings of the following creeks and rivers during the time period and by the method indicated on the table below. The time and method for

397

Was Page 113. See Image [\[OEB:1154R-0:113\]](#)

crossing these watercourses shall not be changed without prior approval of the Ministry of Natural Resources and the Ontario Energy Board. In addition, Northern shall complete the restoration of all streambanks within 7 days of pipe installation at the crossing.

398

399

Was Page 114. See Image [\[OEB:1154R-0:114\]](#)

i) Northern shall give the Board and the Chairman of the OPCC 10 days written notice of the commencement of construction of the Pipeline. Northern shall give the Ministry of Natural Resources, the Ministry of the Environment, the Board and the Chairman of the OPCC 7 days notice prior to the commencement of construction of the crossing of rivers and creeks referred to in the table in (h) and confirmation of the schedule 24 hours in advance. The commencement time shall not be changed without notice to the Chairman of the OPCC.

400

k) Northern shall not do any blasting in that portion of the pipeline between Hwy. 129 and the Mississagi River during the period December 15 to April 30 in order to minimize impacts on the

401

Iron Bridge deer wintering yard.

- l) Northern shall provide "as-constructed" drawings of the Pipeline which will also indicate the number and size of tile runs cut on each

Was Page 115. See Image [\[OEB:1154R-0:115\]](#)

property and the method to be used for repair.

- m) Within a reasonable time after all necessary information becomes available, Northern shall file with the Board a written Post Construction Financial Report. The Report shall indicate the actual capital costs of the project in the same format as Table II of Exhibit 7 and shall explain all significant variances from the estimates adduced in the hearing.

- n) Northern will offer to each landowner involved an agreement for land use in a form approved by the Board.

- o) The Leave to Construct granted herein terminates December 31, 1985, unless the Pipeline is substantially completed and available for service by that date. <next page blank>

Was Page 117. See Image [\[OEB:1154R-0:116\]](#)

APPENDIX C

E.B.R.O. 404

IN THE MATTER OF the Ontario Energy Board Act, R.S.O.
1980, Chapter 332, as amended;

AND IN THE MATTER OF a request by Northern and Central
Gas Corporation Limited or a Rate Order under Section 19(1) of
the Act and in accordance with the provisions of Section
19(11)(a) of the Act.

BEFORE: John C. Butler, Presiding Member

Harvey R. Chatterson, Member

Marie C. Rounding, Member

January 22, 1985

ORDER

WHEREAS Northern and Central Gas Corporation Limited ("Northern") has requested the Ontario Energy Board (the "Board") by application dated January 14, 1985, for an Interim Order fixing the upper limit of Rate 20 at \$178.00 per thousand cubic meters (10(3)m(3)) for the sale of natural gas to three customers, Rio Algom Limited, Denison Mines Limited, and Eldorado Resources Limited, located in the Elliot Lake and Blind River areas.

Was Page 118. See Image [\[OEB:1154R-0:117\]](#)

AND WHEREAS Northern has noted that gas has not previously been supplied in these areas and has requested that the Interim Order be made pursuant to subsection (11)(a) of section 19 of the Ontario Energy Board Act (the "Act") fixing the initial rates for these customers for a period of not more than one year or until the final disposition of Northern's next rates application;

AND WHEREAS Northern has satisfied the Board that these customers should not be served under any of the rate schedules currently approved by the Board and that special rates are necessary;

AND WHEREAS on the basis of the contracts with two of these customers and other information provided by Northern, the Board is satisfied that the increase in the upper limit of Rate 20, as requested for these three customers, is just and reasonable in the circumstances;

IT IS ORDERED THAT;

1. Pursuant to subsection (11)(a) of section 19 of the Ontario Energy Board Act the upper limit of Rate 20 be increased to \$178.00 per 10(3)m(3) for gas service to the Rio Algom Limited, Denison Mines Limited and Eldorado Resources Limited facilities located in the Elliot Lake and Blind River areas;

Was Page 119. See Image [\[OEB:1154R-0:118\]](#)

2. AND IT IS FURTHER ORDERED THAT this Order shall be effective for a period of not more than one year from the date hereof or until a final disposition of the application;

3. AND IT IS FURTHER ORDERED THAT the costs of this Order be fixed at \$300.00 payable forthwith by Northern.

ISSUED at Toronto this 22nd day of January, 1985.

ONTARIO ENERGY BOARD

<signed>
S.A.C. Thomas
Board Secretary

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APPENDIX D

UNDERTAKINGS OF NORTHERN AND CENTRAL GAS ONTARIO ENERGY BOARD HEARING E.B.L.O. 208 NORTH SHORE PROJECT

1. There were no undertakings in Volume I or Volume II of the transcript. 429
2. Volume III 430
- a) Page 212-213 - undertaking by J. Wellard to file an Environmental Study in respect of the changes in the route onto PUC lands from the route originally filed prior to the start of construction. b) Page 236-237 - undertaking by B. Molyneaux on behalf of Northern to compensate a landowner for continuing damage in subsequent years which is caused by the pipeline construction. c) Page 239-240 - undertaking by B. Molyneaux on behalf of Northern to include in the Easement Agreement or 431

Was Page 122. See Image [\[OEB:1154R-0:120\]](#)
432

Agreement to Grant the specific concerns and protections for the landowner which are agreed upon. d) Page 242 - undertaking by B. Molyneaux to advise the Board of Union Gas' practices with respect to compensation for working rights. e) Page 247 - undertaking by B. Molyneaux on behalf of Northern to repair farm land damaged by construction and to compensate farmer for damage caused until repaired. f) Page 254 - undertaking by B. Molyneaux to advise the Board if Union Gas does not have a policy of paying 100 percent of fee value for working rights. g) Page 258 - undertaking by B. Molyneaux on behalf of Northern to comply fully with promises made in the Landowner's Manual. h) Page 260 - undertaking by J. Wellard to revise contract specifications to 433

Was Page 123. See Image [\[OEB:1154R-0:121\]](#)
434

reflect procedures set out in Landowner's Manual. i) Page 261 - undertaking by B. Molyneaux on behalf of Northern to give a copy of Landowner's Manual to every landowner directly affected by the Pipeline. j) Page 263 - undertaking by B. Molyneaux on behalf of Northern to file landowners pre-construction report listing specific concerns of individual landowners. k) Page 263 - undertaking by B. Molyneaux on behalf of Northern to supply preconstruction report instructions to inspectors and to Board. 435

3. Volume IV a) Page 369 - undertaking by D. Alexander to file with the Board prior to construction a report concerning any well locations and results of tests which are undertaken. 436

Was Page 124. See Image [\[OEB:1154R-0:122\]](#)
437

- b) Page 386 undertaking by P. Scully that Northern will not arbitrarily withhold its consent to the easement transferee constructing new drains, repairing existing drains, surfacing or repairing his lands, roads, driveways, pathways or walkways. 438
- c) Page 541 - undertaking by J. Wellard that when work is being done in the 19.2 km designated as noise sensitive, the Company will comply with the Ministry of Environment Noise Guidelines restricting the work that can be done at times other than from Monday to Friday between 7:00 439

a.m. and 8:00 p.m.

4. Volume V a) Page 554 - undertaking by D. Alexander to file an Environmental Study concerning the Conservation Authority portion of the route prior to construction.

438

Was Page 125. See Image [\[OEB:1154R-0:123\]](#)

439

- b) Page 625 - undertaking by J. Wellard to file with the Board prior to construction, a summary or list of all changes, all deviations from the location of the Pipeline shown in the Environmental Report and further that Dr. Coleman will mark on the deviation exactly what the deviation would be from the original study from the standpoint of environmental specifications. c) Page 636 - undertaking by D. Alexander to do all the river crossings in the way that was specified in Dr. Coleman's Environmental Protection Report. d) Page 639 - undertaking by J. Wellard to file with the Board additional profiles of river crossings that are to be filed with the Navigable Waters Branch of the Federal Government. e) Page 656 - undertaking by J. Wellard to complete restoration of steam crossings within seven (7) days, barring unforeseen

Was Page 126. See Image [\[OEB:1154R-0:124\]](#)

440

and extreme weather conditions (not permanent restoration). f) Page 682 - undertaking by J. Wellard to offer affected landowners a choice of stripping topsoil in the width that they request. g) Page 690 - undertaking by Dr. Coleman on behalf of Northern to affect repairs of all fences to the standard of existing fence at least, if the owner so requests. h) Page 692-693 - undertaking by Dr. Coleman on behalf of Northern to comply with the Model Municipal Noise Control By-law in respect to construction close to occupied buildings along the road through Sylvan Valley. i) Page 708 - undertaking by D. Alexander that once a tile drain had been cut through, it will be marked and kept

Was Page 127. See Image [\[OEB:1154R-0:125\]](#)

441

marked until it is repaired and inspected by the foreman and approved by him. j) Page 711 - undertaking by D. Alexander and J. Wellard to afford an affected landowner the opportunity to inspect and approve a cut in drainage tile before it is covered up again. k) Page 729 - undertaking by J. Wellard to ensure that trench will be fenced if there are livestock on the property, if there is a problem with livestock wandering into the trench.

5. Volume VI a) Page 747 - undertaking by J. Wellard to do several tests of water quantity and quality of wells in the vicinity of blasting prior to blasting. b) Page 752 - undertaking by J. Wellard to advise the Board a week in advance or within a reasonable period of pre-job environmental meetings with contractors

442

Was Page 128. See Image [\[OEB:1154R-0:126\]](#)

443

and inspectors held to review environmental concerns. c) Page 754 - undertaking by J. Wellard to file with the Board prior to construction, a schedule of river crossings once that schedule has been finally determined. d) Page 756 - undertaking by J. Wellard with respect to Mr. DeMonye's property to reduce construction right-of-way in the area of his trees. e) Page 795-796 - undertaking by Northern to file with the Board permit drawings for crossings of streams. These are drawings showing profiles of the stream and the crossing locations and indicating where the pipe will be in the stream. f) Page 804 - undertaking by J. Wellard to provide a new site plan satisfactory to Board staff in respect of the crossing of the Mississagi River.

Was Page 129. See Image [\[OEB:1154R-0:127\]](#)

444

- g) Page 816-817 - undertaking by J. Wellard to advise the Board immediately upon determining the precise Pipeline location in respect to the Grigat property. h) Page 843 - undertaking by J. Wellard to file profile drawings in permit application for river crossing in respect of the Dorothy Inlet. i) Page 845 - undertaking by D. Alexander to remove corduroy roads constructed for access during construction when construction is completed if requested by the landowner. j) Page 856 - undertaking by J. Wellard to advise the Board of the timing of meetings that are proposed to be held with Lake Matinenda and Rydal Bank residents. k) Page 866 - undertaking by J. Wellard to file with the Board a copy of MTC approval in respect of Pipeline location within Highway 108 right-of-way.

Was Page 130. See Image [\[OEB:1154R-0:128\]](#)

445

- l) Page 887 - undertaking by D. Alexander to request from affected landowners whether there is tile drainage on their lands. m) Page 995-996 - undertaking by J. Wellard to file an updated construction schedule.

446

6. Volume VII a) Page 1084 - undertaking by R.T. Rhodes to file a leave to construct application in respect of any proposed service to Thessalon. b) Page 1087 - undertaking by R.T. Rhodes that prior to any service in those communities along the route other than Blind River or Elliot Lake, the Company will file feasibility studies for the community as per that in Exhibit 7. c) Page 1166 - undertaking by P. Scully that the release filed as Exhibit 19 does not release Northern from any

Was Page 131. See Image [\[OEB:1154R-0:129\]](#)

447

damage which may be caused in the future by its acts of negligence or misconduct. <next page blank>

Was Page 133. See Image [\[OEB:1154R-0:130\]](#)

448

APPENDIX E

449

GLOSSARY OF TERMS

450

CATHODIC PROTECTION

451

A method of preventing or controlling the decomposition or corrosion of the pipe wall by stray electrical currents.

452

CONCRETE-COATED PIPE

453

Pipe that is coated with concrete to add weight to ensure negative buoyancy. Concrete coating also provides protection from abrasion.

454

CONTRIBUTIONS IN AID OF CONSTRUCTION

455

Capital contributions made by customers where connecting the customer to the system would otherwise be uneconomic.

DRY CROSSING

456

A method of installing a pipeline across a watercourse whereby the water flow is carried across the proposed pipeline location by a flume (culvert) and trenching is done under the flume in the "dry" (streambed).

457

Was Page 134. See Image [\[OEB:1154R-0:131\]](#)

458

GEOTECHNICAL INVESTIGATION

Any method used to determine subsurface soil conditions. Boring a hole and examining the resulting cores is the most common method used.

459

GROUNDING MATS

460

Pipelines paralleling alternating current electrical transmission lines are subject to induced potentials. When such pipelines are under construction, contact with the pipeline can be dangerous because of induced alternating current potentials. A thick grounding mat on which the worker stands will provide protection from potential shock.

461

IRREGULAR CROSSING

462

A pipeline crossing of a feature such as a river or road at an angle other than 90°. A regular crossing would be a pipeline crossing at 90°.

463

MATRIX APPROACH

464

A method of ranking alternative routes using the cumulative ranking of each route in terms of its impact on a particular factor. Factors such as number of water crossings, total length, and amount of bedrock may be used in the matrix.

465

Was Page 135. See Image [\[OEB:1154R-0:132\]](#)

466

NEGATIVE BUOYANCY

The condition where the pipeline and its coating having a weight greater than the volume of material (water or mud) that the pipeline displaces so that the pipe will not float.

467

PHOTOMOSAIC

468

A sequential group of airphotos, of the route of the pipeline, that have been cut out and assembled into a mosaic.

469

470

RATE BASE

The funds which the utility has invested in assets such as pipes, meters, compressor and regulatory stations plus an allowance for working capital and other amounts that may be allowed by the Board.

RATE OF RETURN ON COMMON EQUITY

The return which the Board allows the utility's common shareholders to earn, expressed as a percentage of the common equity or shareholdings in the company.

Was Page 136. See Image [\[OEB:1154R-0:133\]](#)

RATE OF RETURN ON RATE BASE

The amount which the Board allows a utility to earn net of all taxes and other expenses, expressed as a percentage of rate base.

RESTORATION TECHNIQUES

Construction procedures and techniques used to restore the land after the pipeline is installed, which would include; grading, subsoiling, chisel ploughing, revegetation, and soil erosion control techniques.

ROCK JACKET PIPE

Pipe that is coated with an asphalt-based aggregate mixture that allows installation in a rock trench and backfilling<backfilling> with rock thereby eliminating the need for padding of the trench and/or pipe with sand. It may also be used to provide negative buoyancy.

TERRAIN CLASSIFICATION

A classification of land according to its inherent value for a particular purpose such as agriculture, forestry, recreation. The Canadian Land Inventory classification system has 7 classes; Class 1 being the best land for a particular purpose and Class 7 being unsuitable for that purpose.

Was Page 137. See Image [\[OEB:1154R-0:134\]](#)

TILE DRAINAGE

A method of removing excess water from the soil by the use of strategically placed, subsurface drains.

WET CROSSING

A method of installing a pipeline across a watercourse by trenching, installing the pipe and backfilling

while the watercourse continues to flow.