

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta**KOCH OIL CO. LTD.
APPLICATION TO CONSTRUCT AND OPERATE
A CRUDE OIL PIPELINE TERMINAL
AT HARDISTY, ALBERTA****Decision 98-17
Application No. 1020439**

1 INTRODUCTION**1.1 Application**

On 30 January 1998, Koch Oil Co. Ltd. (Koch), applied to the Alberta Energy and Utilities Board (the Board), pursuant to Part 4 of the Pipeline Act, for a permit to construct and operate a crude oil pipeline terminal (the Facilities) consisting of five storage tanks with a combined total capacity of approximately 670 000 bbl (106 000 m³) to be located at Legal Subdivision 16, Section 19, Township 42, Range 9, West of the 4th Meridian (Figure 1).

1.2 Intervention

In response to a public Notice of Hearing issued by the Board, Gibson Petroleum Company Limited (Gibson) registered an objection to Koch's application. Accordingly, the EUB directed, pursuant to Section 29 of the Energy Resources Conservation Act, that a public hearing be held to review the application.

1.3 Hearing

The application was considered at a public hearing in Calgary, Alberta on 22 and 23 June 1998 before G. J. Miller, B. T. McManus, Q.C., and A. Warren, P.Eng.

The following table lists the participants at the hearing

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives (Abbreviations Used in Report)	Witnesses
Koch Oil Co. Ltd. (Koch) K. F. Miller	D. M. Beach F. Janzen C. Bayle, P.Eng
Gibson Petroleum Company Limited (Gibson) N. M. Gretner	B. C. Stuart, P.Eng. G. A. Flaherty, P.Eng. G. K. P. Gin, P.Eng
Alberta Energy and Utilities Board staff D. Brezina P. V. Derbyshire A. Girgis, P.Eng. B. Riley E. Smith	

2 ISSUES

The Board notes that Koch filed an application pursuant to the Environmental Protection and Enhancement Act for the Facilities and obtained Approval No. 49229-00-00 on 31 March 1998. Further, the Board accepts Koch's confirmation that there are no outstanding public concerns other than those of Gibson, which are discussed later in this decision report .

The Board considers the issues respecting the application to be:

- C the need for the proposed pipeline facilities,
- C the potential for pipeline facilities proliferation, and
- C the adequacy of pre-application consultation.

3 NEED FOR THE PROPOSED PIPELINE FACILITIES

3.1 Views of Koch

Koch stated that the application was required to provide facilities necessary to terminal oil sands products and conventional crude oil, and for blending of crude oil to meet pipeline specifications and feedstock requirements of 35 000 to 40 000 barrels per day (bpd) for the Koch Refining Company, L.P. refinery at Pine Bend, Minnesota. The Facilities were designed for custom blending services, involving unconventional diluents and heavy oils. Koch argued that dedicated tankage may be required to handle its custom blended products. Need for the Facilities was based upon Koch's supply agreement with Suncor Inc. (Suncor) regarding incremental volumes of

30 000 bpd which will move via the Wild Rose Pipe Line (WRPL). Additionally, 35 000 bpd being terminalled with Gibson would be made available, and future volumes to Hardisty, amounting to approximately 20 000 bpd, would be acquired on a competitive basis.

Koch indicated that the flexibility and confidentiality afforded by operation of its own facility was of the utmost importance. In its analysis of alternatives, Koch determined that use of third party facilities, such as those of a competitor like Gibson, necessitated negotiation for any change of service dictated by market demand, and limited flexibility and speed of response for Koch. Koch also feared that such a close business relationship with a competitor could result in the disclosure of proprietary business information that they would prefer to hold confidential.

Koch also submitted that the existing Gibson facilities would not be adequate to serve its business goals and needs since the existing facilities exhibited several limitations. These limitations included: total availability of tankage; issues with the dedication of tankage; the lack of desire to provide tankage to perform these particular services; and the lack of vapour management systems. Of these limitations, the issues with dedication of tankage were noted to be of the greatest concern to Koch.

3.2 Views of Gibson

Gibson stated that it believed the Facilities were largely duplicative of the existing Hardisty infrastructure and, accordingly, Koch's application was not in harmony with economic, orderly and efficient development as outlined in the EUB Proliferation Guidelines.¹

Gibson contended that, even though Koch had secured crude oil supply from Suncor, the need for the Facilities had not been adequately demonstrated either in terms of volumes committed for the terminal through agreements with pipeline operators and producers, or by virtue of the

¹ These guidelines are currently summarized in Informational Letter 91-1 and in Volume 2 of Guide 56, the EUB's *Energy Development Application Guide and Schedules*, October 1997 Edition (G-56).

limitations of existing and proposed alternative facilities.

The existing Gibson facilities offered terminalling of crude oil streams, tank storage, blending of crude streams and injection of crude streams into downstream pipelines. Gibson stated that it believed its Hardisty terminal would need only the addition of one tank to rectify any perceived shortcomings of its facility, both in terms of total capacity and Koch's desire to use unconventional diluents. Gibson also stated that it had demonstrated a desire to provide tankage to perform Koch's requested services, as well as the ability to respond to customer requirements concerning flexibility and confidentiality.

3.3 Views of the Board

The Board is satisfied that Koch has demonstrated a need for the proposed facilities. In reaching its view, the Board considered:

- C the incremental volumes expected at Hardisty,
- C the new and unique blending operations and associated tankage requirements, and
- C Koch's stated business needs to construct and operate its own facilities.

The evidence presented shows that the proposed Koch facilities will have a total throughput capacity of some 85 000 bpd. Koch plans to use 35 000 bpd of this capacity to handle volumes it currently terminals with Gibson. Koch has secured an agreement with Suncor for 30 000 bpd off the WRPL, that would be incremental volumes at Hardisty. Koch plans to compete to fill its remaining capacity of up to 20 000 bpd. The Board observes that both parties are optimistic regarding the potential for future incremental volumes at Hardisty.

The Board heard no evidence that would challenge Koch's contention that some of its custom blended products may need dedicated tankage in the event of upsets. The Board also accepts Koch's assertion that it can best respond to changing blending requirements with its own facilities.

Koch, in assessing whether or not there were viable alternatives, appeared to rely heavily on its business needs in the terminalling business. While the Board accepts that competitors would realize some business advantages by building and operating their own facilities, it does not weigh this factor as heavily as the other factors in assessing the need for new facilities.

4 POTENTIAL FOR PIPELINE FACILITIES PROLIFERATION

4.1 Views of Koch

In accordance with G-56, Koch contacted all landowners and facilities operators that could be directly and adversely affected by construction of the Koch Hardisty Terminal. As there were no objections, save those of Gibson made directly to the Board, Koch concluded that there would be no negative environmental or public interest impacts regarding construction and operation of the Facilities, and no issues respecting the EUB Proliferation Guidelines.

4.2 Views of Gibson

Gibson declared itself to be not only a landowner and existing operator in the Hardisty area, but also part of the public. Gibson objected to the Koch application on the grounds that Koch did not adequately consider the capacity of the existing facilities to provide terminalling services on a competitive basis, when assessing its facilities. Therefore, Gibson stated that it believed Koch had not fulfilled the requirements of the EUB Proliferation Guidelines.

4.3 Views of the Board

After determining the need for facilities, the Board must assess whether they would result in unacceptable impacts on the environment, public health and safety, or resource conservation. While Gibson made submissions as part of the public, and a landowner in the area, the Board believes that the major impact on Gibson is likely to be monetary as a result of Koch's impact on its business. However, in the Board's view, the potential loss of revenue through increased competition does not constitute a significant public impact. In light of the possible duplication of facilities, the Board must also consider the facilities with respect to its proliferation guidelines. After careful review, the Board does not believe that approval of the Facilities would be inconsistent with these proliferation guidelines. While construction of the Koch Hardisty terminal will result in some short term duplication of facilities, that is commonly unavoidable in a competitive environment. In section 3.3, the Board noted the parties' optimism regarding the potential for future incremental volumes. The Board believes that concerns regarding facilities duplication are reduced by these potential volumes. Therefore, the Board does not consider that the Facilities represent undue proliferation providing there continues to be no public impact in terms of the environment, public health and safety, and resource conservation.

5 ADEQUACY OF PRE-APPLICATION CONSULTATION

5.1 Views of Koch

Koch stated that as early as October 1997, it had informed Gibson of its intent to construct the facilities as outlined in the application. Koch believed it had made a fair evaluation of the proposal for an alternate terminal location provided by Gibson in late January 1998, before rejecting the proposal. At the time of submitting its application to the Board, on 30 January 1998, Koch believed it had met all the consultation requirements of the EUB Proliferation Guidelines. In its view, Koch had both explored options and given proper notification to other operators in the region. Upon completing this process, Koch concluded that its own proposal best served its business goals and needs.

Koch believed that Gibson's concerns had been adequately addressed during discussions. It stated that it did not realize that Gibson felt there were outstanding concerns until it was notified that the EUB had received a letter from Gibson objecting to the application.

Koch submitted that Gibson's intervention was simply an effort to curb competition in the region and an attempt to protect its market share. Koch submitted that this was demonstrated by the fact that Gibson was the only terminal operator or landowner in the region that intervened in the proceedings.

5.2 Views of Gibson

In its evidence, Gibson stated that Koch had not complied with the letter and spirit of the proliferation guidelines in that, prior to submitting its application, it did not meaningfully investigate viable alternatives to the application, regardless of ownership or interest. It had not evaluated the feasibility of upgrading an existing facility and forging commercial partnerships with existing operators.

Gibson stated that its alternate proposal of late January 1998 was not intended to imply that it had no objection to Koch's proposed facilities, but rather it was meant as an option for Koch to evaluate as a viable alternative. Gibson further stated that for Koch to fulfill the recommended notification requirements, it should have approached other industry proponents, including Gibson, to discuss a proposal based on need rather than with a completed project proposal.

In Gibson's view, Koch's sole intention was to construct its pipeline terminal regardless of Gibson's ability to fully accommodate its service requirements. Gibson denied Koch's assertion that it was seeking regulatory protection from competition with Koch. In Gibson's analysis, its sole intervener status was evidence that producers and shippers were mindful of Koch's powerful position as a large purchaser and refiner.

Gibson submitted that the Board should adjourn the hearing to allow the parties time to conduct further negotiations.

5.3 Views of the Board

The Board heard considerable argument respecting the interpretation of the Board's proliferation guidelines and previous Board decisions that dealt with the issue, particularly with respect to the consultation requirements of the proliferation guidelines. In this case, the Board believes that the consultation process broke down and resulted in a hearing because of the differing interpretations by Koch and Gibson, that were based on differing business interests.

Gibson argued that it did not understand Koch's needs in sufficient detail to offer a satisfactory proposal for the use of its facilities by Koch. The Board has some difficulty accepting this position given the evidence presented in Koch's diary of contacts and the associated documentation. Gibson is an existing, and long-term operator at Hardisty that currently handles some Koch volumes, and actively competes with several other operators to fill its facilities. The Board believes that Gibson was aware of Koch's plans and business objectives and recognized the potential for competition and revenue impacts early on in the consultation process. Gibson appears to have become frustrated with Koch's unwillingness to consider options using its

facilities, which might become idle, and then looked to the Board's proliferation guidelines and hearing process for a remedy. Gibson's main argument appeared to be that the Koch proposal is largely duplicative of its facilities and services and, being a new facility, its construction would be less economic, orderly, and efficient than modifying existing Gibson facilities.

The operators of existing facilities need to understand that in the absence of significant public impacts, they will be potentially facing competition. The Board suggests that this real possibility should be factored into their negotiations and proposals for service. Further, it should be understood that some duplication of facilities is unavoidable in a competitive environment and may be tolerated by the Board, when there are no significant negative public impacts that are clear and substantiated.

The evidence offered by Koch demonstrated that it had ruled out the use of existing (Gibson and other) facilities, prior to its initial contact with Gibson in October 1997, largely because of its business needs and goals. The Board notes that this decision on the part of Koch preceded the completion of its public consultation process, which later documented that there were no significant public concerns. In terms of process, it appears to the Board that Koch was premature in ruling out any possible use of existing facilities, and that this affected the tone of its discussions with Gibson. Further, Koch's request for a 30-year proposal from Gibson, followed a few days later by a withdrawal of the request, suggests a lack of clarity in these negotiations.

The Board expects that new proponents will seriously entertain the possibility of using existing facilities. By this, the Board means asking for and considering complete proposals from existing facility operators that can reasonably be expected to provide the services intended. While this would not necessarily commit a proponent to the use of existing facilities, in the Board's view, this process provides for a more thorough review of alternatives and is particularly prudent where all potential public concerns have not been ruled out.

From the evidence heard, the Board concludes that both Koch and Gibson were partly responsible for the breakdown in the consultation process. There was discussion at the hearing about good faith negotiations between new and incumbent competitors. The Board appreciates the difficulty in mandating this. Nevertheless, it does encourage new and incumbent operators to negotiate in good faith because failure to do so may result in hearings that are costly for all parties involved.

6 DECISION

From the evidence of both Koch and Gibson, the Board is not convinced that further negotiations, as suggested by Gibson, would yield a viable alternative acceptable to both parties and therefore rejects the request to adjourn the hearing.

Given that no significant public concerns were in evidence at the hearing, and recognizing the current and future need for additional facilities to handle the terminalling of oil sands products,

the Board is prepared to approve Application No. 1020439 and will issue the required approval forthwith.

Dated at Calgary, Alberta, on 23 September 1998.

ALBERTA ENERGY AND UTILITIES BOARD

<Original signed by>

G. J. Miller
Presiding Member

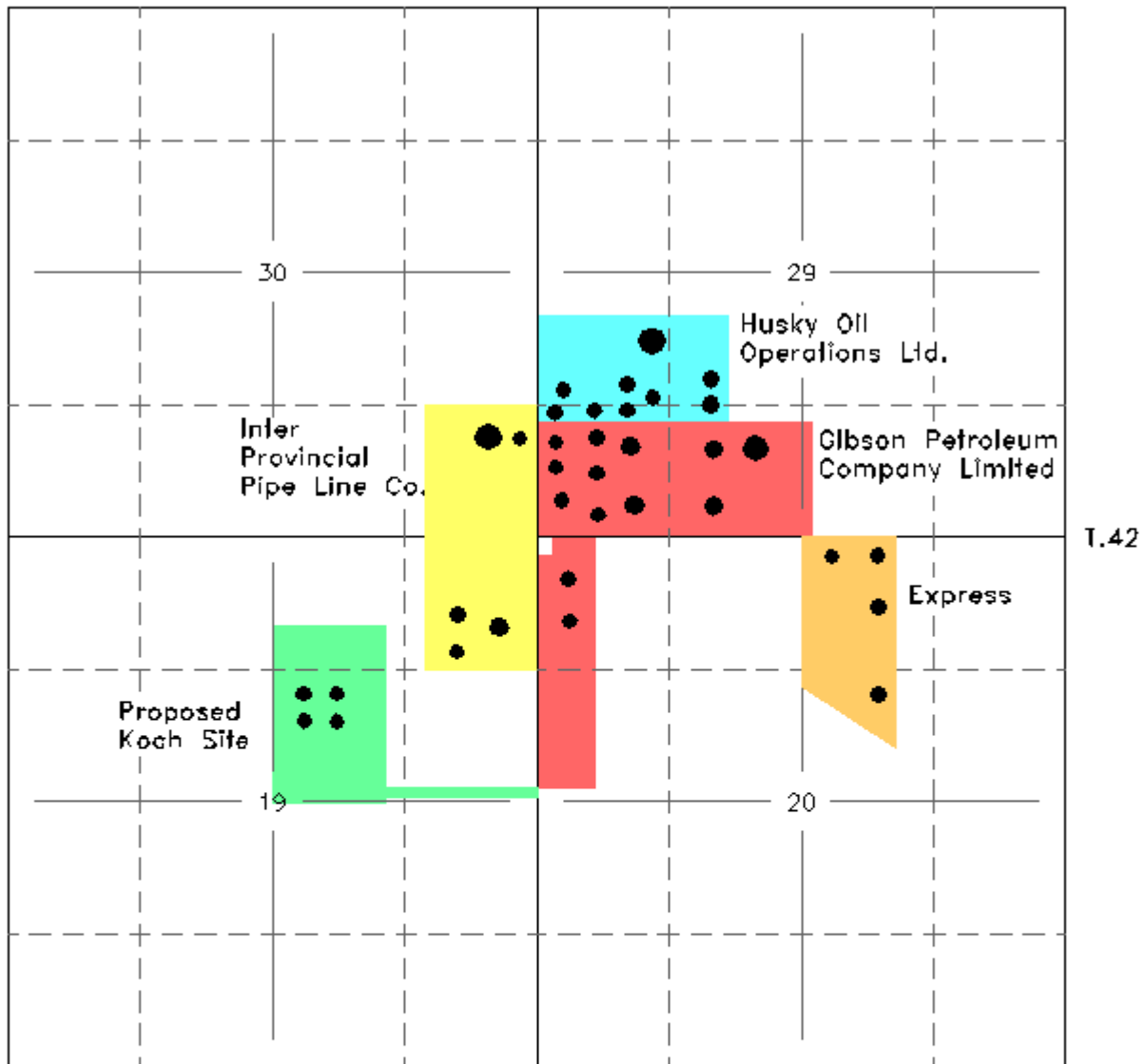
<Original signed by>

B. T. McManus, Q.C.
Member

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A. Warren, P.Eng.
Member

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Legend

- Storage Tanks

HARDISTY TERMINAL AREA

Application No. 1020439

Koch Oil Co. Ltd.

Decision 98-17