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WEST COAST TRANSMISSION COMPANY LIMITED

v.

PEACE RIVER ASSESSMENT DISTRICT

Supreme Court of British Columbia (No. X794/66)

Before: MR. JUSTICE F. CRAIG MUNROE

Vancouver, September 1, 1966

J.D. Taggart, Q.C. for the Appellant
D.M. Gordon, Q.C. for the Respondent

Reasons for Judgment

Pursuant to section 51 (1) of the *Assessment Equalization Act*, the Assessment Appeal Board has stated the following case for the opinion of the Court:

"Having regard for the provisions of the *Assessment Equalization Act*, R.S.B.C. 1960, chapter 18, and especially section 37 (6) (a) thereof, and the provisions of the *Taxation Act*, R.S.B.C. 1960, chapter 376, and especially section 32, subsections (1) to (12), thereof, and the provisions of other relevant Statutes, how should the natural-gas transmission pipe-line of the appellant running from Willow Flats to Fort Nelson be classified, and should it be assessed for the taxation-year 1966 by applying a percentage utilization factor of 19.184 per cent or should it be so assessed by applying a percentage utilization factor of 68.172 per cent?"

The pipe-line in question (hereafter referred to as the "Fort Nelson line") is 220.1 miles of 30-inch pipe-line extending south from Fort Nelson to the appellant's compressor-station No. 2 at Willow Flats near Chetwynd. The gas it transports is injected directly without further processing and merged with gas collected from other fields at said compressor-station into the 30-inch pipe-line (hereafter referred to as the "main line") which extends south 646 miles from Taylor to Huntingdon. Both lines are owned by the appellant.

The Fort Nelson line has its own gathering fields with a branch line to Clarke Lake where gas wells are situate. It has its own processing plant at Fort Nelson. Unlike the main line, it has no compressor-stations. It operates on the basis of the original well-head pressure. It was constructed some years after the main line.

The percentage utilization of the main line computed for the 1966 taxation year was 68.172 per cent. The percentage utilization of the Fort Nelson line for the same year, if it is computed as a separate pipe-line, was 19.184 per cent.

Section 32 (9) of the *Taxation Act* enacts as follows:-

The percentage utilization of each gathering and transportation pipe-line, including branches, laterals or loops of each pipe-line company, shall be deemed to be the same

throughout the complete mileage of such pipe-line, notwithstanding any variation of outside diameter and throughput, and shall be calculated where the average actual daily utilized capacity of each pipe-line is at its maximum.

The appellant submits that the Fort Nelson line is, itself, a "transportation pipe-line" and not merely a branch line and should accordingly be assessed as a separate entity. The respondent, on the other hand, submits that it is a "branch" line within the meaning of section 32 (9) and should accordingly be assessed at the percentage of utilization factor applied to the main line.

The Court of Revision agreed with the submission of counsel for the respondent, expressing its decision in this way:-

As the Fort Nelson transmission line conveys the gas it transports into the main transportation line, thereby making a contribution to the whole, it must be considered a branch of the main transportation line and subject to the percentage utilization factor applied to the main transportation line. The assessment is confirmed.

"Transportation pipe-line" is defined in section 32 (1) of the *Taxation Act* as follows:-

"transportation pipe-line" means a pipe-line, other than a distribution pipe-line or gathering pipe-line, used for the transportation of natural gas, petroleum, or petroleum products.

Since counsel are agreed that the Fort Nelson line is not a distribution pipe-line or gathering pipe-line, it is, by definition, a "transportation pipe-line" since it is used for the transportation of natural gas, but is it a separate transportation pipe-line or merely a branch of the main line? If the latter, it is deemed by Statute to have the same percentage utilization as the main line, even though such is not the case. The word "branches" appearing in section 32 (9) is not defined in the Act.

The contention of the respondent would be strengthened if the section enacted that "the percentage utilization of each gathering and transportation pipe-line *system*, including branches, laterals, or loops of each pipe-line company, shall be deemed to be the same throughout the complete mileage of such pipe-line. . .," but the word "system" does not appear therein. The section clearly contemplates - by the use of the word "each" - that a single company may have more than one transportation pipe-line, each of which is to be assessed (with their branches, if any) as a separate transportation pipe-line, and each upon their own percentage utilization. The Fort Nelson line has all the characteristics of a separate transportation pipe-line. Does the fact that it joins another transportation pipe-line or that it discharges its gas into such a line change it from a separate transportation pipeline to a "branch" of the one it joins and feeds? I think not. The Fort Nelson line cannot be said to be merely a subordinate pipe-line. I hold that it is not a branch or lateral or loop of the main line. Leaving aside the well-known principles to be applied when interpreting taxation Statutes, I am of opinion that the contention of the appellant is sound; when one applies the principle that taxing Statutes are to be strictly construed against the taxing authority and ambiguities resolved in favour of the taxpayer, it is evident that the contention of the respondent cannot prevail.

In my opinion the Fort Nelson line should be classified as a transportation pipe-line, and should be assessed for the taxation-year 1966 by applying a percentage utilization factor of 19.184 per cent.