UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

ALYESKA PIPELINE SERVICE CO.

Employer

and Case 19-RC-14600

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND
ENERGY WORKERS, LOCAL 8-0369, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, an initial hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. I issued an initial Decision and Direction of Election in this matter, finding, inter alia, that the Employer was not a public utility, and directing an election in the petitioned-for unit. Shortly thereafter, the Employer filed a motion to reopen the record in order to introduce additional evidence on the Employer's alleged "public utility" status. I granted the Employer's motion to reopen the record and subsequently, there was a hearing held for the limited purpose of taking additional evidence on the alleged public utility status of the Employer. Upon the entire record,[1] I am now issuing this Supplemental Decision and Direction of Election. This Supplemental Decision and Direction of Election supersede my previously issued Decision and Direction of Election. Upon the entire record, I find the following:[2]

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[1] Briefs from both parties were timely received and duly considered after the initial hearing. Additionally, briefs from both parties were timely received and duly considered after the reopened hearing.

[2] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; the labor organization herein involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Additionally, the hearing officer deferred to me the decision regarding the admission of Employer's Exhibits 70 and 71. Those exhibits are Employer documents relating to the transfer of employees -- a relevant issue in this matter. The Petitioner's objection essentially deals with the concern

SUMMARY

The Employer, Alyeska Pipeline Service Co., operates and maintains the Trans Alaska Pipeline System ("TAPS"). TAPS transports crude oil from its point of origin on the North Slope, 800 miles south to its termination point at Valdez, Alaska. At Valdez, the Employer operates the Valdez Marine Terminal ("VMT"), where the piped crude oil is loaded onto tankers for transport. The Petitioner filed the instant petition seeking a unit of all full-time and regular part-time operations and maintenance employees (collectively referred to as "technicians") at the Employer's VMT facility.[3]

The Petitioner argues that the petitioned-for unit, as a single-facility unit, is appropriate under the Board's single-facility unit presumption. In contrast, the Employer contends that the only appropriate unit must be a system-wide unit for two reasons. First, TAPS is so functionally integrated that anything less than a system-wide unit would be inappropriate. Second, The Employer is a "public utility" under Board law, which enjoys a system-wide unit presumption.

Based on the record and applicable Board law, I find, in agreement with the Petitioner, that the petitioned-for unit, as a singe-facility unit, constitutes an appropriate unit,[4] as the evidence fails to rebut the Board's longstanding single-facility presumption. Additionally, the evidence fails to establish that TAPS is a "public utility" under existing Board law.

Below, I have set forth the evidence presented in the hearings in this matter, describing the Employer's operations generally and the community of interest factors pertinent to my analysis. Following the evidence section is my analysis of the applicable legal standards and a section setting forth the direction of election.

I. EVIDENCE

A.) The Facilities

The Employer, Alyeska Pipeline Service Co., is engaged in the operation and maintenance of TAPS. TAPS is an 800-mile pipeline that transports crude oil from the North Slope south to the VMT in Valdez, Alaska. TAPS currently transports about one

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that these exhibits were not produced for Petitioner pursuant to its subpoena served on the Employer prior to the hearing. However, the documents were introduced by the Employer, not in its case in chief but on rebuttal after Petitioner's case caused the Employer to make a closer look for transfer documents, which are not kept in a central location. Under these circumstances, I have decided to admit Employer's Exhibits 70 and 71 over Petitioner's objections.

[3] There are approximately 163 employees in the petitioned-for unit. The parties, by stipulation, clarified that the bargaining unit would include operations, maintenance and laboratory technicians.

[4] The parties stipulated that the following employees are Section 2(11) supervisors under the Act: CEO David Wight, COO David Hisey, Oil Movement Manager Mike Joyner, VP Operations and Maintenance Greg Jones, Terminal Manager Rod Hansen, BWT/Marine Operations Manager Joe Kuchin, Maintenance Manager Bill Amberg, PV/OMS Operations Manager Tom Stokes, Valdez Lab Supervisor Satch Tapangco, all VMT Operations Supervisors, all VMT Maintenance Supervisors and all VMT Operations Supervisors. Additionally, the parties stipulated that Dale Bruns, Paul Smith and Duane Edelman are currently functioning as "step-up supervisors" and as Section 2(11) supervisors and, therefore, are not eligible to vote. Based upon the parties' stipulation and the record, I find that the above individuals are supervisors within meaning of Section 2(11) of the Act and, thus, are excluded from the bargaining unit.

million barrels of oil a day, which is approximately 20% of the United States domestic crude oil production and approximately 98% of the crude oil produced in Alaska.

Five oil companies collectively own TAPS.[5] Those five companies created the Employer, as a closely held corporation, for the exclusive purpose of operating and maintaining TAPS. The Employer has no ownership interest in the pipeline or the crude oil flowing through the pipeline. It is a service company whose sole business purpose is to maintain and operate TAPS.

The Employer divides its operations into two administrative subdivisions, one covering the pipeline and its pump stations and one covering the VMT facility. There are approximately 163 technicians working at the VMT in its various departments. The VMT's primary functions are to temporarily store the crude oil coming off the pipeline and to load the crude oil onto tankers for transport. The VMT has an extensive tank farm system that can store about 9 million barrels of oil. The VMT also has several berthing ports used to load the crude oil onto tankers. Additionally, the VMT has a biological treatment facility to treat ballast water removed from the tankers.

Beyond the VMT, the Employer also operates several pump stations along the pipeline, along which the Employer employs an additional 165 employees. Currently, there are seven staffed pump stations along the pipeline.[6] Pump Station 1, near the North Slope, is approximately 800 miles from the VMT. Pump Station 3 is approximately 696 miles from the VMT. Pump Station 4 is approximately 656 miles from the VMT. Pump Station 5 is approximately 525 miles from the VMT.[7] Pump Station 7 is approximately 386 miles from the VMT. Pump Station 9 is approximately 251 miles from the VMT. And Pump Station 12 is approximately 65 miles from the VMT.

With the exception of Pump Station 9, which is located near Delta Junction, the operational pump stations are located in remote areas. At these locations, the Employer pays to transport the employees to and from the stations, usually by aircraft. Additionally, the Employer provides "Personal Living Quarters" in which it houses and feeds the employees during their work week(s).

B.) <u>Functional Integration of the Operation of TAPS</u>

Although TAPS has individual pump stations and a separate marine terminal, it is, by its nature, a functionally integrated system designed to move crude oil from one point to another. The Employer controls the overall flow of oil from its Operational Control Center ("OCC"), which is the nerve center of TAPS. OCC controllers monitor the entire system from their office at the VMT.

The Employer maintains several system-wide programs to ensure the safe and efficient operation of TAPS. In particular, the Employer maintains system-wide

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[5] BP Pipelines (Alaska) Inc.; Exxon Mobil Pipeline Company; Philips Transportation Alaska, Inc.; Unocal Pipeline Company; and Williams Alaska Pipeline Company, L.L.C.

[6] There were 12 pump stations in the original design of the pipeline. Due to operational needs, only 11 were actually built and only 7 are in regular operation today.

[7] Pump Station 5 is currently being operated as a "relief station." Pump Station 5 has several storage tanks but does not have a mainline pump. The purpose of Pump Station 5 is to temporarily divert oil off the pipeline to relieve pressure on the pipeline.

maintenance and safety programs, which are requirements of its lease agreements with the State of Alaska and the Federal Government, to ensure the safe and environmentally clean operation of its system. Additionally, the Employer maintains a system-wide telecommunications system so that OCC controllers can be in constant contact with all facilities in the system.

C.) Managerial and Supervisory Structure

David Wight is the Employer's CEO. Reporting to Wight is COO Dan Hisey. Reporting to Hisey are Oil Movement Manager Mike Joyner and Vice President of Operations and Maintenance Greg Jones. Reporting to Joyner is Lab Services Supervisor Juliet Cruz, who oversees the Employer's three laboratories located at VMT, Pump Station 1 and at the North Pole Metering Station.[8] Valdez Lab Supervisor Satch Tapangco directly supervises the VMT laboratory and reports to Cruz, who directly supervises Pump Station 1 and the North Pole Metering laboratories. Reporting to Vice President of Operations and Maintenance Greg Jones are Pipeline Manager Jim Johnson and VMT Terminal Manager Rod Hanson. There are two more levels of management under Pipeline Manager Jim Johnson on the pipeline side of the Employer's operation. Reporting to VMT Terminal Manager Hanson are VMT Ballast Water Treatment/Marine Manager Joe Kuchin, Maintenance Manger Bill Amberg and PV/OMS Operations Manger Tom Stokes. Kuchin has three VMT Operations Supervisors reporting to him. Amberg has three VMT Maintenance Supervisors reporting to him. Stokes has four VMT Operations Supervisors reporting to him.

In sum, the VMT and pipeline are separated into two administrative subdivisions of TAPS. Each side is headed by its own Manager, Terminal Manager Rod Hanson on the VMT side and Pipeline Manager Jim Johnson on the pipeline side. Technicians on the pipeline and technicians at the VMT share common supervision at the fourth level of management with Vice President of Operations and Maintenance Greg Jones.

D.) Conditions of Employment/Control of Labor Relations/ Local Autonomy

Labor relations are sometimes handled at a corporate level and sometimes at a local level. In general, the Employer's labor relations are centralized at a policy level, but are usually administered on a day-to-day basis, with some autonomy, at a local level.

The Employer's corporate headquarters are in Anchorage, Alaska, where its Human Resource Department is also located. The Employer's financial, fire/safety, regulatory compliance, training and payroll departments all operate out of its corporate headquarters in Anchorage. Employees, Employer-wide, share the same work schedules,[9] pay scales, benefits plans and share much of the same policy manuals and codes of conduct.

However, much of the day-to-day labor relations are administered locally. There are two Human Resource specialists assigned to the VMT who administer the

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[8] The North Pole Metering Station is located on the pipeline, in between Pump Stations 7 and 8.

[9] Employees at both the VMT and on the pipeline work 26 weeks per year. They either work a two-week-on, two-week-off schedule or a one-week-on, one-week-off schedule.

Employer's human resource polices at the VMT. Additionally, local supervisors, both at the VMT and on the pipeline, have independent authority to grant overtime, sick leave and vacation. With respect to discipline, local supervisors independently handle lower levels of discipline such as counselings and written warnings. A joint committee, made up of local-level and corporate-level managers, administers more formal discipline like suspensions and terminations. Hiring decisions are ultimately made at a corporate level. However, local management has significant input in the process and is involved in both interviewing and making recommendations about the candidates. Orientation and training for newly hired employees are done through a combination of centralized and local-level training programs. The corporate level training programs tend to cover those things common to all employees such as benefit plans, Employer-wide policies and Employer-wide safety and operations procedures. The final part of training and orientation is usually done at a local level by local management and covers site-specific and job-specific training.

E.) Skills and Geographic Locations of Work

The essential function of a pump station is to help move the crude oil down the pipeline. The essential functions of the VMT are to accept the oil from the pipeline and to load it onto tankers. Despite that distinction, there are some common equipment and some common skills necessary to operate both the VMT and the pump stations.

All technicians working at the VMT and on the pipeline share some common skills, training and functions. For example, the maintenance technicians at the VMT perform many of the same tasks as the maintenance technicians on the pipeline, with the exception of the occasional work on certain valves or pumps that are unique to the pump stations.

Several types of VMT technicians however have no functional equivalent on the pipeline. For example, technicians who work in the berthing area of VMT or on the Ballast Water Treatment facility at VMT have no functional equivalent on the pipeline and perform work unique to the VMT. Likewise, several pump station technicians work on jet engines that run a reaction turbine on the pump station, work which is exclusive to pump stations and which has no functional equivalent at the VMT.

With respect to promotion, all technicians, Employer-wide, are promoted via a six-step skilled progression unique to each type of technician. The skilled progression is tied to the technician's pay scale and is evaluated by his or her local supervisor. Each technician must "prove up" to next skill level in order to progress on the pay scale. The early steps of the skilled progressions tend to have skills common to most types of technicians. The higher-level skills sets, i.e., Levels 4, 5 and 6, tend to be specific to the type of technician and the location of his or her work. These skill sets are developed at a corporate level, with input from the field, and administered by local supervisors. The local supervisor is responsible for evaluating each technician working under him or her. Likewise, the local supervisor is responsible for promoting a technician through the skill levels.

As described above, six of the seven pump stations along the pipeline are located in remote areas.[10] As such, the Employer transports the employees in and out of the pump station areas and houses and feeds the employees working at these six pump stations during their work week(s) at the pump stations' Personal Living Quarters. However, the VMT has no Personal Living Quarters. All employees at the VMT get to and from work on their own and are not provided housing or meals during their work week(s).

F.) Interchange of Employees

There is little evidence to suggest that employees regularly transfer between VMT and the pipeline. In the past five years, an estimated three to five employees have transferred between the VMT and pump stations on the pipeline out of a group of over 320 employees. When employees do transfer, they retain their pay and skill level but they must, over a 1 to 2 year period, essentially prove that they are qualified to perform at that level in the position at the location into which they transferred. Regardless, there is no evidence to suggest that transfers are frequent or regular.

Most VMT technicians have little or no contact with technicians working on the pipeline during their day-to-day work routine. Each technician group, either at the VMT or at a pump station, generally has its own tools, technicians and supervisors. The day-to-day work of a particular technician is usually confined to his or her particular work location and his or her particular area of expertise. There are instances of contact between VMT and pipeline technicians. However, evidence of these contacts is usually brief and confined to special projects like updating procedural manuals or line-wide equipment upgrades and maintenance. In short, most VMT technicians do not come in contact with pipeline technicians on a day-to-day basis.

G.) Bargaining History

The record reveals no evidence of bargaining history with this Employer and any union.

H.) Public Regulation of TAPS and the Employer

TAPS, as a common carrier of crude oil, is subject to regulatory oversight by both the State of Alaska's Regulatory Commission of Alaska ("RCA") and the Federal Government's Federal Energy Regulatory Commission ("FERC"). The five owners of TAPS each have Certificates of Public Necessity and Convenience issued by the RCA. These Certificates allow the five owners of TAPS to build and operate the sole common carrier pipeline from Alaska's North Slope to Valdez, which travels a patchwork of state and federal lands. The Employer, Alyeska, does not have a Certificate of Public Necessity and Convenience, but rather operates the pipeline under the five owners' Certificates.

By state and federal law, the owners of TAPS, as well as Alyeska, cannot own the crude oil flowing through pipeline. Rather, the oil is owned by the entities that

[10] The exception to this is Pump Station 9, which is located near Delta Junction, Alaska. Most employees who work at Pump Station 9 live in Delta Junction. Unlike the other pump stations, employees who live in Delta Junction and work at Pump Station 9 are not transported to work by the Employer or provided living quarters during their work week(s).

purchased the oil from the North Slope supplier, usually individual shipping companies. The pipeline is open to anyone holding title to the oil.

Any entity wishing to move crude oil through the pipeline pays a tariff to the five owners of the TAPS.[11] The tariff rates are approved by the RCA and FERC. The vast majority of tariffs collected go to the operating costs of the Employer.

I.) End Users of TAPS

TAPS moves approximately 935,000 barrels of crude oil a day through its system. There are several end users of this oil, but none of these users, at least directly, are retail consumers. The primary recipients of TAPS's oil are tankers in the Valdez port who pick up the oil and ship the crude oil to refineries at various west coast ports.[12] Some of these tanker ships and refineries have corporate ownership affiliations with the five owners of TAPS; many do not.

Additionally, approximately 150,000 barrels a day are diverted from TAPS to supply three nearby refineries. These refineries have no affiliation with TAPS or Alyeska. Two of the refineries are located near the midpoint of the pipeline near North Pole, Alaska. The other refinery is located near Valdez, Alaska. These refineries produce different types of oil products for various commercial, residential and governmental applications in the area.[13]

J.) National Security Interest in TAPS

The government considers TAPS to be a possible terrorist threat. As such, several state and federal agencies monitor TAPS for suspicious activity and coordinate their efforts to protect the pipeline. To effectuate this, Alyeska's security chief is in frequent contact with such agencies as the FBI and Homeland Security.

II. ANALYSIS:

The Union seeks to represent technicians at the Employer's VMT location. The Employer contends that the single facility VMT is inappropriate and the smallest appropriate unit would be a system-wide unit. The Employer's position is based on its assertion that TAPS is a public utility and, thus, falls under the Board's presumption of system-wide units for public utilities.

A.) The Board's Unit Presumption Standards

With respect to most industries, save the public utility industry, it is well established that a single-facility unit is presumptively appropriate. Therefore, unless it has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity, the single facility unit is

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[11] The Employer has no involvement in the collection of these tariffs or setting the tariff rates.

[12] The refineries are primarily located in three areas, the Puget Sound (Washington), San Francisco and Los Angeles, California. Approximately 830,000 barrels a day are shipped out of Valdez.

[13] The two refineries near North Pole, Alaska produce three types of oil products: jet fuel, which is sold to the nearby military bases; home heating oil, which is sold to a delivery company, who in turn sells to residential and small commercial customers in the area; and diesel, which is sold to a large mining operation in the area and is also sold to electric company who uses the diesel as a fuel source in one of its power generation plants. The refinery near Valdez primarily produces jet fuel for commercial customers in Anchorage, Alaska.

an appropriate unit. *See J & L Plate*, 310 NLRB 429 (1993); *Dixie Belle Mills, Inc.,* 138 NLRB 629, 631 (1962). To determine whether the presumption has been rebutted, the Board looks at such factors as control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical location; and bargaining history, if any. *Esco Corp*., 298 NLRB 837, 839 (1990), *R&D Trucking*, 327 NLRB 531 (1999).

In contrast, the Board has long held that a system-wide unit is the optimum bargaining unit in the public utility industry due to the essential service rendered to the public by this industry and the integrated and interdependent nature of their operations. *See Colorado Interstate Gas Co.,* 202 NLRB 847 (1973); *Deposit Telephone Co*., 328 NLRB 1029 (1999); *Montana-Dakota Utilities Co*., 115 NLRB 1396 (1956). The Board's rationale for a system-wide presumption for public utilities is largely a matter of public policy; namely that the public has an "immediate and direct interest in the uninterrupted maintenance of the essential services that the public utility industry alone can adequately provide." *Baltimore Gas & Elec.,* 206 NLRB 199, 201 (1973). This is, ultimately, a balancing test between employees' Section 7 rights and the public's interest in uninterrupted utility service that only a single entity provides. Generally, the Board is reluctant to limit employee's Section 7 rights unless the countervailing public interest is substantial. The Board's public utility presumption is not absolute; rather the Board has found less than system-wide units appropriate in certain circumstances. *See PECO Energy Co.*, 322 NLRB 1074 (1997) (establishing a three-part test for rebutting the system-wide public utility presumption).

The Board most recently dealt with the public utility presumption in *Verizon Wireless*, 341 NLRB No. 63 (2004). In *Verizon*, the employer provided, among other things, wireless telephone service. The petitioner sought to represent the retail sales clerks at the Employer's Bakersfield, California retail stores. The employer argued that wireless telephone service is a public utility and therefore the Board should apply its public utility presumption of a system-wide unit. The Board declined to rule on the broader issue of whether wireless telephone service is a public utility. Instead, the Board refused to extend the presumption to a group of retail employees who were far removed from the operation of the employer's wireless network.

While the Board has applied the public utility presumption to a handful of industries such as electrical, water and the natural gas industry, it has never clearly defined "public utility."[14] However, the Board has never extended the public utility presumption to a crude oil pipeline. Essentially, the Employer is arguing that I should

[14] Black's Law Dictionary (6th Ed. 1990) defines "public utility" as "a privately owned and operated business whose service are so essential to the general public as to justify the grant of special franchises for the use of public property or of the right of eminent domain, in consideration of which the owners must serve all persons who apply, without discrimination. It is always a virtual monopoly." Additionally, the Internal Revenue Code, 26 U.S.C. § 247(b)(1) defines a "public utility" as "a corporation engaged in the furnishing of telephone services or in the sale of electrical energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission."

break new legal precedent and extend the public utility presumption to a service company that maintains and operates a common carrier crude oil pipeline.

B.) <u>Single-Facility Unit Appropriate</u>

Applying the Board's single-facility presumption and general community of interest standards, I find the VMT technicians to be an appropriate unit for purposes of collective bargaining. Although a pipeline-wide unit would arguably be *an* appropriate unit, it would not be the *only* appropriate unit. *See Triangle Bldg. Products, Corp.*, 338 NLRB No. 29, slip opinion at 13 (2002) ("It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit.").

I recognize that there are facts that militate for a system-wide unit. TAPS, at an operational level, is a functionally integrated system designed to move crude oil from one area to another. It has several system-wide programs to facilitate that purpose such as system-wide maintenance, safety and communications systems. There is some evidence of limited employee interchange between the VMT and the pipeline as well as minimal work-related contact between the two groups. Additionally, all employees share the same work schedules, rates of pay, benefits, and many of the same procedural manuals.

Despite these commonalities, the record as a whole supports a conclusion that the VMT technicians enjoy a community of interest separate and distinct from the technicians on the pipeline. The Employer separates the two groups of technicians into two distinct administrative subdivisions of its operations, the VMT and the Pipeline. These two administrative subdivisions have their own respective manager, with two more levels of supervision below each of them. Additionally, local supervisors maintain significant local autonomy with respect to such things as directing the day-to-day work of technicians; promoting technicians to the next pay level; granting overtime, time off for vacation and sick leave; and issuing lower level discipline.

Further, the essential function of the pipeline pump stations, where pipeline technicians work, is markedly different than the essential functions of the VMT, where VMT technicians work. The essential function of a pipeline pump station is to force the crude oil down the pipeline, whereas the essential functions of the VMT are to store the crude oil coming off the pipeline and to load the oil onto tanker ships. As such, the VMT has several facilities that pipeline pump stations do not, such as extensive tank farms, biological water treatment facilities and berthing ports.

Additionally, most pipeline technicians perform their work under very different conditions than VMT technicians. While VMT technicians go home at the end of each shift and are not paid for travel time, most pipeline technicians remain at the remote pump stations for the duration of their work week(s). Additionally, most pipeline technicians are provided transportation to and from their remote work locations and are also provided housing and meals during their work week(s), all at Employer expense.

With respect to the factor of employee interchange, the record revealed minimal interchange and relatively few transfers over the years. Regarding the factor of geographical location, the pump stations are relatively distance from the VMT as those distances range from 60 to 800 miles. As for the factor of bargaining history, the lack

thereof fails to support the Employer's efforts to rebut the single-facility presumption. Indeed, no other labor organization seeks to represent a unit similar to and/or different from that sought by Petitioner.

In sum, I find that the Employer has failed to rebut the single-facility unit presumption. Indeed, the existence of significant local autonomy; distinctive functions and working conditions; minimal employee interchange; significant distances between the VMT and the pump stations, and an absence of bargaining history in a larger unit, support finding that VMT technicians share a distinct community of interest separate from the pipeline technicians such that the VMT employees constitute a separate and appropriate unit for purposes of collective bargaining. See *Standard Oil Co*., 230 NLRB 967 (1977) and 241 NLRB 1248 (1979); *BP Alaska, Inc*., 230 NLRB 986 (1977); supplemented in 234 NLRB 125 (1978); enfd. *Sohio Petroleum Co. a Div. Of Sohio Natural Resources Co. v. NLRB*, 625 F. 2d 223 (9th Cir. 1980).

C.) <u>Public Utility Presumption Not Applicable</u>

The Employer argues that the Board's single-facility presumption is inappropriate here. Instead, the Employer argues that TAPS is a "public utility" and therefore should be analyzed under the Board's public utility presumption of a system-wide unit. Although I recognize the Board's system-wide presumption for public utilities, I find its analysis inapposite to this case.

The Employer failed to cite and I am not aware of any case in which the Board has recognized a crude oil company or a crude oil pipeline as a "public utility."[15] The Employer is asking me to extend the public utility presumption beyond the current state of Board law to a common carrier crude oil pipeline.

Although the Board has never clearly defined what constitutes a "public utility," the Board, in its public policy analysis of the presumption, instructs that public utilities provide an "essential service that the public utility industry alone can adequately provide." *Baltimore Gas & Elec.,* 206 NLRB at 201. They are, by definition, a monopoly.

As its authority for this presumption, the Employer cites several Board cases finding a system-wide unit to be appropriate in the public utility industry. *See New England Telephone and Telegraph Co.*, 280 NLRB 162 (1986) (telephone service);

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[15] *See, e.g., Standard Oil Co*., 230 NLRB 967 (1977) and 241 NLRB 1248 (1979). There, Petitioner sought a unit of truck drivers. The Employer argued that the smallest appropriate unit was a division-wide unit. The Board found the petitioned-for unit appropriate, analyzing the facts under the general community of interest factors, with no mention of a public utility presumption for this Employer who is clearly engaged in the business of transporting crude oil. Further, see *BP Alaska, Inc*., 230 NLRB 986 (1977); decision supplemented by 234 NLRB 125 (1978); related, *Sohio Petroleum Co. a Div. Of Sohio Natural Resources Co (formerly BP Alaska, Inc.)*, 239 NLRB 281 (1978); enfd. *Sohio Petroleum Co. a Div. Of Sohio Natural Resources Co. v. NLRB*, 625 F. 2d 223 (9th Cir. 1980), in which the Board overturned the Regional Director's Decision finding only a system-wide unit appropriate, instead finding the lesser included unit of the employees working in the Employer's power generation department to be an appropriate unit. Interestingly, the Board found the power-generating department to be a "de facto public utility" unlike the rest of the Employer's drilling and oil production operations. In light of the foregoing, the Board does not appear to find that an oil company's operations fall within the public utility industry.

Tennessee Gas Pipeline, 254 NLRB 1031 (1981) (natural gas service); *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973) (natural gas and electric services).[16] While I recognize the Board's public utility presumption as set forth in these cases, Board law appears to confine this presumption to traditional public utilities such as electricity, natural gas service, telephone service and cable television service. More specifically, the Board appears to confine the presumption to those employers that are the only providers of their essential service to the public.

I do not find the traditional public utility presumption applies to a crude oil pipeline where the users and direct benefactors of the pipeline are commercial entities and not the general public in any direct manner. In cases where the Board has extended the presumption, those employers exclusively provided a vital or essential service directly to the public. Here, however, TAPS only moves crude oil from one place to another for the benefit of a few commercial customers. Moreover, the Employer in this case is not the owner of the pipeline, but rather the service company charged with operating and maintaining TAPS. Unlike the cases in which the Board applied the presumption, TAPS's product is a least three steps removed from the general public.[17] At best, TAPS has an indirect, aggregate effect on the public's consumption of oil as a fuel source. TAPS only transports about 20% of the Nation's domestic oil and presumably far less than 20% of the nation's overall oil consumption.

In its brief, the Employer essentially proffered four arguments as to why I should extend the public utility presumption to this Employer and to this industry.

First, the Employer argues that TAPS is regulated as a public utility by the State of Alaska's RCA. The RCA issued Certificates of Public Convenience and Necessity (to the five companies that formed the Employer to operate TAPS), wherein TAPS is referenced to as a "utility service." As such, the Employer argues that TAPS should also be considered a "public utility" under Board law. I find this argument unpersuasive. While public regulation is surely an element of being a "public utility," it is not dispositive of the issue. There are several industries that are regulated by the RCA,[18] but have not been recognized as public utilities under Board law, such as the long distance telephone service,[19] Internet service providers[20] and cellular telephone service.[21]

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[16] In its brief, the Employer cited *The Texas Pipeline Company*, 129 NLRB 705 (1960) as support for its position in this matter. However, that case involved an unfair labor practice proceeding arising in part from a related representation proceeding in *The Texas Pipeline Company*, 125 NLRB 837 (1959). In the representation proceeding, the Union sought a bargaining unit broader than that thought appropriate by the Employer. Ultimately, the Board directed an election in a unit that was broader than that sought by the Employer but smaller than that sought by Petitioner. Regardless, in either case, the Board did not address the Employer's status as a public utility.

[17] The majority of the crude oil coming off the pipeline at the VMT is loaded onto a tanker (transaction #1). It is then shipped to a refinery (transaction #2). After the crude oil is refined at the refinery, it is shipped to a retail outlet like a gas station (transaction #3), where it is finally sold to the general public (transaction #4).

[18] I am taking judicial notice of the existence of the Regulatory Commission of Alaska, the various industries and businesses that it regulates and the Certificates of Public Convenience and Necessity it issues. A variety of information about the RCA, including lists of the businesses it regulates, can be found on the Internet at http://www.state.ak.us/rca/cpcn.html.

[19] The RCA regulates businesses providing long distance telephone service in Alaska, including Bell South Long Distance, Inc. and Sprint Communications, Inc. Long distance telephone service is a highly

Second, the Employer also argues that because TAPS is a functionally integrated and interdependent operation, it must therefore be considered a public utility. Again, I find this argument unconvincing. Simply because an employer's operation is integrated and interdependent, does not make it a public utility. If this were the case, every functionally integrated operation would be a public utility under Board law. That clearly is not the state of Board law. In any event, here, the Employer failed to produce sufficient to rebut the single-facility presumption. As described earlier, the employees at the VMT constitute an appropriate unit for purposes of collective bargaining despite the fact that TAPS itself is a functionally integrated pipeline.

Third, the Employer argues that TAPS provides an "essential service" to both the United States and the State of Alaska. Specifically, the Employer notes that TAPS moves about 20% of the domestic crude oil production, 56% of the West Coast's production, 98% of the crude oil produced in Alaska and is the only means of moving North Slope crude oil to market. Additionally, the Employer notes that the TAPS also supplies crude oil directly to three of Alaska's four in-state refineries, which in turn produce refined oil that ultimately either ends up in the production of power and heat for eventual use by residents of Alaska or as jet fuel sold to the U.S. military. In sum, the Employer argues that large areas of Alaska, as well as the United States as a whole, have an immediate and direct interest in the uninterrupted supply of North Slope oil that only TAPS supplies. Even accepting these assertions however, does not negate the fact that TAPS itself is only a common carrier pipeline, moving crude oil from one point to another. It does not own the oil; it does not sell the oil; it does not refine the oil; and it does provide a single drop of North Slope crude oil directly to the public. In fact, the crude oil moving through TAPS is at least three steps removed from the public. TAPS's continued operation, at best, only has an indirect, aggregate impact on the general public. Moreover, as the Employer's cited statistics illustrate, North Slope oil is not the sole source of crude oil, for the United States, the West Coast or even all of Alaska's crude refineries.

Finally, the Employer argues that TAPS should be treated as a public utility because the public's interest in TAPS is so significant that it should outweigh the Section 7 rights of its employees. As mentioned above and as admitted by the Employer, the Board has never extended the public utility presumption to a crude oil pipeline company. Thus, any balancing here should continue to favor the statutorily mandated Section 7 rights of employees to freely organize under existing Board law.

In sum, I am declining to extend the public utility presumption to a crude oil pipeline for the reasons stated above and particularly because the Board has never extended the presumption to such an industry.[22]

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competitive industry and not indicative of a traditional public utility, where a single entity exclusively provides its essential service to the public.

[20] For example, see DSLnet Communications, LLC.

[21] For example, see Pacific Telecom Cellular of Alaska and Bristol Bay Cellular Partnership. Like long distance telephone service, the cellular telephone industry is highly competitive and not indicative of a traditional public utility industry.

[22] My decision that the VMT technicians constitute an appropriate unit is based upon a rejection of the argument that TAPS is a public utility under Board law. There is sufficient evidence to support a

III. CONCLUSION

Based on the foregoing and the record evidence, I find that the following employees of Alyeska Pipeline Service Co. constitute a unit appropriate (hereinafter "Unit") for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time operations, maintenance and laboratory technicians working at the Employer's Valdez Marine Terminal in Valdez, Alaska; excluding all office clerical employees, guards and supervisors as defined by the Act.
>
> There are approximately 163 employees in the Unit.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Paper, Allied-Industrial, Chemical and Energy Workers, Local 8-0369.

A.) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v.*

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conclusion that the VMT technicians constitute an appropriate unit under the Board's single-facility presumption. However, if TAPS were a public utility under Board law, I would conclude differently; namely that a system-wide unit of technicians would be the only appropriate unit under the Board's system-wide unit presumption for public utilities. While there are limited exceptions to the system-wide presumption, the facts here would not be sufficiently compelling to overcome the Board's strong presumption for a system-wide unit if TAPS were a public utility.

Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director of Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174, on or before February 16, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Because the list will be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B.) <u>Notice Posting Obligations</u>

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C.) <u>Right To Request Review</u>

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 23, 2005**.

DATED at Seattle, Washington, this 9th day of February 2005.

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174