

## **PENSION COMMISSION OF ONTARIO**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Regulation 909*, R.R.O. 1990;

**AND IN THE MATTER OF** an application by McColl-Frontenac Petroleum Inc. for an amended consent of the Pension Commission of Ontario to payment of an amended amount of surplus from the Revised Pension Plan of Leco Inc., Registration Number 272849 (the “Plan”);

**AND IN THE MATTER OF** a Hearing held by the Pension Commission of Ontario;

**BEFORE:** C.S. (Kit) Moore, Chair;  
Don Collins, Member;  
Judith Robinson, Member;  
Joyce Stephenson, Member;  
David Wires, Member.

**HEARING DATE:** May 31, 2002

**HELD AT:** Toronto, Ontario

### **THE DECISION, BACKGROUND AND REASONS**

#### **THE DECISION**

At its meeting of May 31, 2002, the Pension Commission of Ontario (the “PCO”) considered an application by McColl-Frontenac Petroleum Inc. (the “Company”) for an amended consent pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990 c.P.8 (the “Act”) and section 8(2) of *Regulation 909*, R.R.O. 1990, as amended (the “Regulation”) to a payment of surplus to the

Company. The payment requested represents the surplus assets attributable to the Ontario portion of the Plan, based on a statement prepared by the Company's actuary.

On May 31, 2002, the PCO consented, pursuant to subsection 78(1) of the Act and subsection 8(2) of the Regulation, to a payment of surplus to the Company, in the amended amount of \$637,581.54 as at December 31, 2000 plus investment earnings thereon to the date of payment. The background and reasons for this decision are set out below.

## **BACKGROUND**

At an earlier meeting held June 26, 1997, the PCO had approved the Company's original application for payment of 100% of the Plan's surplus assets, in accordance with the procedural framework in the Ontario Act and pursuant to its powers as the "major authority" under the terms of the Memorandum of Reciprocal Agreement entered into in 1968 by the PCO, the Régie des rentes du Québec (the "Régie") and other provincial pension authorities (the "Reciprocal Agreement").

The Plan included members with employment in Ontario and Québec, but the majority of active members reported to work in Ontario. Therefore, under the terms of the Reciprocal Agreement, the Plan was registered solely with the PCO which, as the major authority under the terms of the Reciprocal Agreement, had authority to make all decisions in relation to the Plan.

The Régie brought an application in the Superior Court of Justice Divisional Court (the "Court") for judicial review of the PCO decision. In August of 2000, the Court quashed the PCO's decision insofar as it affected Québec members, remitted the matter to the PCO for reconsideration, and directed the PCO to provide written reasons for any further decision.

On or about November 26, 1997 the Régie exempted itself from the operation of the Reciprocal Agreement in relation to the Plan. As a result, the PCO no longer has authority to make decisions about the Plan's surplus relating to Québec members, as the source of that authority was the Reciprocal Agreement.

In December of 2000 the PCO directed the Company to prepare a new report and amended application to the PCO. The Company's actuary prepared and submitted an actuarial statement identifying the liabilities and surplus assets relating to the Québec members, for use in the PCO's reconsideration of this matter.

## **REASONS**

The Court's quashing of the PCO's decision of June 26, 1997, and the Court's direction to the PCO, was only insofar as the decision affected Québec Plan members. We have not revisited that decision as it related to Ontario Plan members, nor did we require further notice to be served on those members, as they had been given notice of the Company's original application for refund of surplus assets. Also, as the Régie has exempted itself from the operation of the Reciprocal Agreement with respect to the

Plan, we no longer have authority to make decisions regarding the Québec portion of the Plan. As a result, in reconsidering this matter, we directed our attention to the split of surplus assets between the Québec and Ontario portions of the Plan.

The Company's actuary provided a letter dated March 16, 2001, which included the following statement:

Proportionately 64.74% of the value of the benefit entitlements are attributable to Quebec members or beneficiaries. This letter can be used as the basis for apportioning the final Plan surplus to the Plan liabilities of Quebec members and beneficiaries. The Régie subsequently notified the Company, in a letter dated August 3, 2001, that the Régie would agree to supervise the windup process for Québec members in accordance with the contents of that letter. In a letter dated September 5, 2001 to the PCO, the Régie indicated they were satisfied with the proposed attribution, as set out in the actuary's March 16<sup>th</sup> letter. We are satisfied with this proposal for apportioning the Plan surplus, which will result in an attribution of 35.26% of Plan surplus, or \$637,581.54 as at December 31, 2000, to the Ontario portion of the Plan.

In making our decision, we noted that the interested parties or their representatives have been informed that this hearing would be held, and have been sent a copy of the PCO staff report dated April 8, 2002 prepared by Ms. Lynda Ellis. We are not aware of any objections raised to the Company's application for our amended consent.

In addition, all pension benefits for Ontario members, former members and other beneficiaries of the Plan have been paid. The application satisfies all other appropriate requirements of the Act and Regulation and the PCO's published policies in respect of such applications.

For these reasons, we give our amended consent to a payment of surplus to McColl-Frontenac Petroleum Inc., in the amended amount of \$637,581.54 as at December 31, 2000 plus investment earnings thereon to the date of payment.

Dated at Toronto this 17<sup>th</sup> day of June, 2002.

“C.S. (Kit) Moore”  
C.S. (Kit) Moore, Chair

“Judith Robinson”  
Judith Robinson, Member

“Don Collins”  
Don Collins, Member

“David Wires”  
David Wires, Member

“Joyce Stephenson”  
Joyce Stephenson, Member