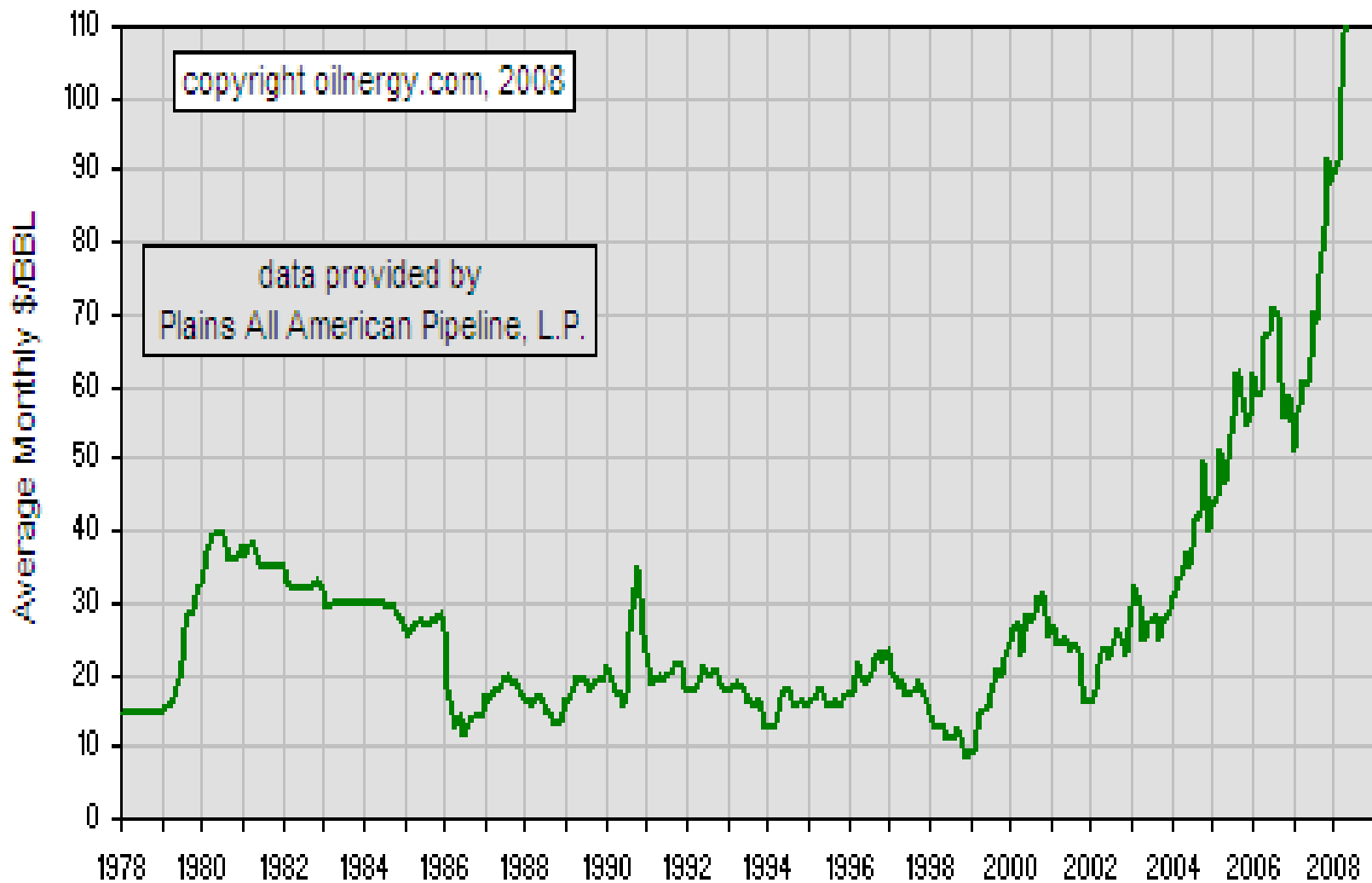


# The Point Thomson Dilemma

A problem to be solved  
or  
A war to be won

# Plains All American L.P.'s WTI Crude - Posted Price

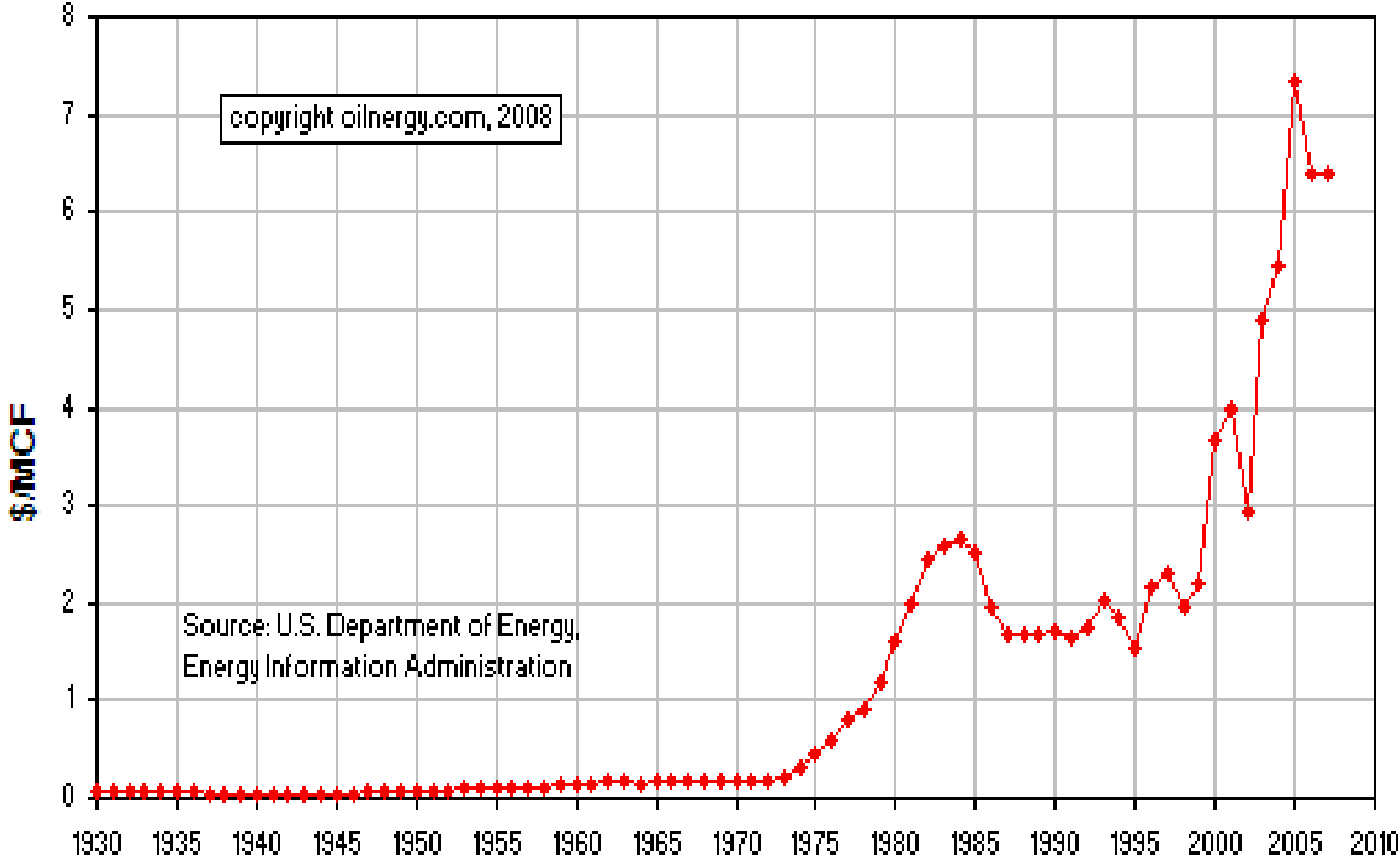


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data provided by  
Plains All American Pipeline, L.P.

Average monthly data from January 1978 through May 2008

# U. S. Wellhead Natural Gas Price



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Source: U.S. Department of Energy,  
Energy Information Administration

# Point Thomson Unit Status prior to Director's Decision

- 21 Plans of Development
- State's continuing desire to move to production
- Point Thomson owners unwillingness to move to production

# Director's Decision

- 22<sup>nd</sup> POD disapproved because it does not provide for the reasonable delineation and timely development of the unit.
- Failure to submit an acceptable POD is grounds for termination of the Unit
- Individual leases with certified wells must commence production by October 1, 2009

# Commissioner's Decision

- Rejects Plan of Development because it does not commit to put the unit into production
- Terminates the Point Thomson Unit
- Revokes the certifications of the PTU wells.

# May 1 Decision

- Will allow the process to move forward
- “the undisputed fact remains that the Department certified these wells pursuant to 11 AAC 83.361, and that as a result of these certifications, the wells “will be considered capable of producing hydrocarbons in paying quantities” for purposes of 11 AAC 83.374”
- DNR failed to follow its own statutes and regulations when it decertified the wells

# Dec 26 Court Decision

- Plan of Development
  - DNR has broad authority to accept or reject POD
- Unit Termination
  - DNR has the authority to terminate the Unit but not without a hearing to determine the appropriate remedy for rejection of the POD
- Consider appropriate remedy for rejection of POD
  - Termination of unit is only one possible remedy
    - “consider the import of Section 21 of the PTUA, as amended in 1985, in determining the appropriate remedy.”
- Certified wells
  - See our May 1 comments

# Point Thomson Unit Agreement

- Section 21
  - See handout Section 21 detail
    - “and shall not be exercised in a manner that would (i) require any increase in the rate of prospecting, development, or production in excess of that required under good faith and diligent oil and gas engineering and production practices; . . . or (iii) prevent this agreement from serving its purpose of adequately protecting all parties in interest hereunder, subject to the applicable conservation laws and regulations.”

# 23<sup>rd</sup> POD

- Phased development proposal
  - Met or exceeded DNR prior request and positions to the court.
  - Did not propose penalties as an alternative to compliance with obligation

# Commissioner's Decision on Remand

- Rejected Point Thomson 23<sup>rd</sup> POD
  - Proposal was either unpersuasive or incredible
  - “credibility is most persuasively established by actions, not words.”
  - “promise to commit gas from this unit to the first open season of a gas pipeline is of no value.”
  - Most importantly, the public's interest would not be protected if I approve the 23<sup>rd</sup> POD because I do not believe, based on this record, that the Appellants will perform as promised this time.”
- Terminated the Unit

# Probable Outcome

- Unit termination and certified wells
  - State Success on both points (low probability)
    - Timing of new development – 10 year delay
  - State partial success (equally as probable as next possible outcome)
    - Timing of new development – 10 year delay
      - Point Thomson retains leases with certified wells.
  - Court overturn of state decision (equally as probable as previous outcome)
    - Point Thomson proceeds ahead on schedule
      - Gas condensate and oil production
      - Earlier participation in gas pipeline (gain of 10 years)

# State's Obligation under Contract

- Principles of Prevention in Contract Law
  - Actions of one party prevents another party from complying with contractual obligations
    - Cannot benefit from own wrongful acts
  - Failure to act prevents another party from complying with the contract
    - act in “good faith” and cooperation toward other contracting party
    - Cannot benefit from the omission to act

# State's Obligation under Point Thomson Contract

- Good faith participation to resolve the problem
- Contractual Relationship when you don't trust the other party
  - Make the damage provision match the potential breach
- Point Thomson obligation
  - Propose alternative that would meet the state's concerns
  - Comply with the intent of 11 AAC 83.343(b)

# DNR's responsibility under regs.

- 11 AAC 83.343(b) The commissioner will approve the unit plan of development if it complies with the provisions of 11 AAC 83.303. If the proposed unit plan of development is disapproved, the commissioner will, in his discretion, propose modifications which, if accepted by the unit operator, would qualify the plan for approval.