

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
114, 10142 101 Avenue
Fort St. John, BC V1J 2B3

Date: May 30, 2000

File No. 1394

Board Order No. 308A

BEFORE THE MEDIATOR:

IN THE MATTER OF THE PETROLEUM
AND NATURAL GAS ACT BEING CHAPTER 361
OF THE REVISED STATUTES OF BRITISH
COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF NE ¼ SECTION NINETEEN,
TOWNSHIP EIGHTY-FOUR, RANGE FIVETEEN WEST OF
THE SIXTH MERIDIAN PEACE RIVER DISTRICT, EXCEPT
PLAN 17817
(15-19-84-15 W6M)
(THE LANDS)

BETWEEN:

PENN WEST PETROLEUM LTD.
2300, 240 -4TH AVENUE, SW
CALGARY ALBERTA
T2P 4H4
(THE APPLICANT)

AND:

SILVER HAMMER FARMS INC. (THORHALD SKAFTE)
10206 10th STREET
DAWSON CREEK, BC
V1J 3T4
(THE RESPONDENT)

ARBITRATION ORDER

The Applicant, Penn West Petroleum Ltd. has made application to the Mediation and Arbitration Board to allow the Applicant to enter land owned by the Respondent, and to fix compensation payable as specified in the Application received by the Mediation and Arbitration Board on September 16, 1999.

BACKGROUND:

The Respondent, owns property located North East of Fort St. John, and the Applicant has applied to develop a well site described as "Penn West Flatrock 15-19-84-15." The Applicant wished to obtain access to the Respondent's property for the purpose of surveying the site, constructing a well site, drilling for natural gas and bringing a well into production if economically viable.

A Mediation Hearing was conducted by Board Member Ivor Miller on 4 October 1999. This matter did not resolve. No order was made under Section 16 of the Petroleum and Natural Gas Act.

THE HEARING

This Arbitration was heard before a panel of five members in Fort St. John on 25 April 2000. With the consent of all parties the Mediator, Ivor Miller, sat as a member of the Arbitration Panel. Representing the Mediation and Arbitration Board was Rodney Strandberg, Mavis Nelson, Frank Breault, Julie Hindbo and Ivor Miller.

Representing the Applicant, was Darren Rosie of Longstaff Land Surveying Ltd., Liz Zimmerman and Mike Williamson of Penn West Petroleum Ltd.; the Respondent was represented by J. Darryl Carter of Carter, Lock & Horrigan, and Thorhald Skafte.

After hearing the evidence and the submissions of the parties the Board Members reserved their decision to a later date. This is the decision.

Position of the Parties:

Applicant

The Applicant wishes to enter the Respondent's property to survey the proposed well site and then to develop the well site for the purpose of drilling for natural gas and, if appropriate, to construct necessary facilities for production purposes. The Applicant asks the Board to allow it to enter the Respondent's land for all purposes necessary and ancillary for the exploration, development and production of natural gas given the refusal of the Respondent to negotiate a satisfactory surface lease. The Board is asked to determine the rights of entry and the compensation due to the Respondent.

Respondent

The Respondent asks the Board to determine the rights of entry onto its land; to set an appropriate amount of compensation; including a direction that Mr. Thorhald Skafte, a principal of the Respondent, be hired to oversee all construction, drilling and bringing into production of any product; and for costs of this Arbitration on a solicitor and client basis.

The Respondent grows certified pedigree fescue on the land. In order to maintain this certification an isolation strip must be maintained around the proposed lease site which increases the amount of land disrupted by the proposed work. The crop grown is above average in value.

The Issues

The parties were able to agree on the following:

1. The lease site would extend to the road adjoining the property to encompass property between the lease site, as originally proposed, and the road. It was agreed that this area would not have been economically or easily maintained in any event;
2. The Respondent wishes that all drilling fluids be contained in mud tanks, that the drilling would be "sumpless" and that all shale piles be removed from the site;
3. The Respondent will be considered by the Applicant to carry out weed control;
4. The topsoil from the site will be stripped and separated for use in reclamation;
5. The final location of the well site might be altered based on the survey of the site and considerations of the Respondent regarding the location of the site giving consideration to the prevailing winds and the residence of Mr. Skafte.

The unresolved issues are as follows;

1. Should this Board, in the course of considering appropriate compensation pursuant to Section 2 of the Petroleum and Natural Gas Act, direct that the Applicant make use of the services of Mr. Skafte;
2. What, notwithstanding the decision on the first issue, is the appropriate amount of compensation due to the Respondent?;
3. What are the appropriate terms of any entry, use or occupation Order which may be pronounced?; and
4. Should the Board award the Respondent costs under Section 27 of the Petroleum and Natural Gas Act and, if so, how should these be determined?

Issue 1, Should the Board direct that the Applicant use the services of Mr. Skafte?

There was agreement between the parties that Mr. Skafte has the training, skills and experience to oversee the construction of the well site, any drilling operations on the well site and the bringing into production of any product discovered on the site.

The Respondent urges the Board to direct the Applicant to hire Mr. Skafte, presumably under either Section 21 (1) (g) or Section 9 of the Petroleum and Natural Gas Act. The Respondent suggests, and the Applicant does not seriously dispute, that because this development will take place on Mr. Skafte's property above average care and skill will be brought to bear on this development to the benefit of all concerned.

The Applicant says that notwithstanding the qualifications of Mr. Skafte that it has contractual arrangements and relationships with other equally qualified persons to whom it feels a duty is owed to offer this opportunity, in preference to Mr. Skafte.

DECISION:

Section 9 of the Petroleum and Natural Gas Act provides that the Board may specify the terms of entry, occupation or use of land after a hearing under Section 20 and, further, order a person to pay compensation for the purposes enumerated under Section 9 (2) of the Petroleum and Natural Gas Act.

Section 20 (3) of the Petroleum and Natural Gas Act provides that if the Mediator has not made an order under Section 18 (4) of the Petroleum and Natural Gas Act, that the Board must determine the amount of money to be paid to a person as rent for occupation, or use or for damage caused for the entry, occupation of use of the land. Section 21 of the Petroleum and Natural Gas Act direct the Board to consider a number of factors in determining the appropriate amount of compensation to be paid.

The Board has concluded that the issue of compensation is limited to the payment of money only. Although the Board recognizes that in freely negotiated contracts between landowners and companies there are often arrangements for compensation beyond money, it is beyond the scope of the statute for the Board to direct any Applicant to make use of the services of any specified individual.

If the Board is incorrect in its interpretation of the statute and it has the authority under Section 9 (1) (c) of the Petroleum and Natural Gas Act to direct the Applicant to employ Mr. Skafte, then the Board, after reviewing all of the evidence and submissions, has determined that this is not an appropriate case for such a direction to be made. Although the Board strongly recommends to the Applicant that serious consideration be given to engaging the services of Mr. Skafte in this matter, the Board does not feel that the evidence is sufficiently persuasive to justify intervening in the established contractual arrangements which the Applicant has with other persons who may provided to the Applicant services similar to those offered by Mr. Skafte.

Issue 2, The appropriate amount of compensation to be paid by the Applicant .

The Respondent is engaged in the agricultural activity of growing pedigreed fescue on the property, a portion of which is sought by the Applicant . Both parties presented evidence and made submissions on the appropriate amount of compensation which should be payable in both the initial year and in subsequent years, should a producing well be discovered on the well site. Both parties made extensive reference to the factors enumerated in Section 21 (1) of the Petroleum and Natural Gas Act, each stressing different of the factors to be considered by the Board.

The Board is cognizant of the need to deal with each case in accordance with the facts of the case; bearing in mind that the Board is attempting to determine the appropriate compensation due to the landowner for the landowner's rights of ownership which are often being influenced against the landowner's wishes.

After reviewing carefully all of the evidence and the submissions, including compensation which has either been negotiated or ordered by the Board in other circumstances, the Board has determined that the following is the appropriate amount of compensation in this case;

1. For the first year, which includes the annual payment for the first year; \$ 10,000.00 and
2. In the second and subsequent years of occupation and use, until otherwise negotiated, ordered, the well site reclaimed and a certificate of restoration issued; \$ 4,500.00

The anniversary date for the payment of annual rent shall be the date of this order.

As agreed between the parties, with the exception of necessary surveying work on the property, no further development will occur until the initial year's consideration has been paid to the Respondent.

Issue 3, The terms of entry, use and occupation

The Respondent submitted that as the parties had been unable to freely and voluntarily arrive at any agreements that the Board should specify for the parties these terms and, in effect, write a lease and impose it on both parties.

Pursuant to Section 9 (1) (c) of the Petroleum and Natural Gas Act, the Board specifies the following terms which shall govern the relationship between the Applicant and the Respondent:

1. USUAL TERMS;
2. All drilling fluids used by the Applicant will be contained in mud tanks;
3. There will be no sump;
4. All shale piles will be removed from the site;
5. With the exception of surveying the site, no work will be performed by the Applicant until the first year's compensation cheque is paid by the Applicant .

Issue 4, Costs

The Respondent submitted that the Board should exercise its jurisdiction under Section 27 of the Petroleum and Natural Gas Act, and award the Respondent its legal fees on a solicitor and client basis. The Applicant made no submissions on this point.

Having considered this matter, the Board finds that solicitor and client costs are not appropriate in this matter.

In the exercise of its discretion, the Board awards the Respondent Party and Party Costs at Scale 3 of Appendix B to the Supreme Court Rules. Having consideration to this matter, the Board awards the Respondents its costs, either to be agreed upon or assessed in the appropriate fashion, for Tariff items 1, 24 and 25 of the Tariff and disbursements at the appropriate allowed rates such disbursements not to include any disbursements relating to the fact that counsel for the Respondent does not ordinarily reside in the Peace River area of British Columbia.

This decision is, of course, subject to any other relevant legislation or regulations of the Province of British Columbia and does not vary, alter or supersede such legislation or regulations.

IT IS HEREBY ORDERED THAT:

1. The Board hereby orders the Applicant Penn West Petroleum Ltd. to pay to the Respondent, Silver Hammer Farms Inc. the amount of \$ 10,000.00 for first year compensation, which includes the annual payment for the first year; which must be paid prior to the Applicant entering onto the land to construct the well site and access road. The Applicant or it's agent may enter for the purposes of surveying the well site and access road prior to the Respondent receiving the first year compensation.
2. The Board hereby orders the Applicant to pay to the Respondent the amount of \$ 4,500.00 for annual compensation. The annual payment will be due and payable before or on the anniversary of this Order 30 May, until such time as this order may be canceled or amended pursuant to Section 26 (2) of the Petroleum and Natural Gas Act, or until such time an agreement is re-negotiated pursuant to Section 11 (2) of the Petroleum and Natural Gas Act, or until a date stated in the restoration certificate pursuant to Section 20 (3) of the Petroleum and Natural Gas Act. The next annual payment (of \$ 4,500.00) shall be due on 30 May 2001.
3. Upon payment of the sum awarded in part 1 of this Order, the Applicant shall be entitled to all the rights of an operator, to enter, occupy or use of land granted under the provisions of the Petroleum and Natural Gas Act and Amendments thereto, upon the lands referred to in the survey plan.
4. The usual terms referred to on page 5 of this order are the terms of the Surface Lease "endorsed by the Surface Lease Committee", bearing C.A.P.L 1997 logo; and shall be in effect for the life of this Order, or until such time as the terms are re-negotiated and amended.

5. The Board hereby orders that all drilling fluids used by the Applicant will be contained in mud tanks; that there will be no sump; and that all shale piles will be removed from the site when drilling of the well has been completed.
6. This order is subject to the completion of the referral process, conducted by the Oil and Gas Commission and the issuance of the "Permission to construct Letter."
7. Nothing in this order is or operates as consent permit or authorization that by enactment a person is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 30th day of May 2000.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rodney Strandberg, Chair

Mavis Nelson, Member

Ivor Miller, Member

Frank Breault, Member

Julie Hindbo, Member