

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

Date: March 9 2001

File No. 1393

Board Order No. 309A

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 NW ¼ SECTION THIRTYFOUR,
TOWNSHIP EIGHTY-THREE, RANGE NINETEEN WEST OF
THE SIXTH MERIDIAN PEACE RIVER DISTRICT, EXCEPT
PLAN 5799, PARCEL B (D12806) AND PARCEL A (35490M)
(PID # 006-998-062)
(THE LANDS)

BETWEEN:

KAISER ENERGY LTD. INC # A-32235
1000, 700 -4TH AVENUE, SW
CALGARY ALBERTA
T2P 3J4
(THE APPLICANT)

AND:

CAROL WAGNER
SS # 2, SITE 21, COMP 17
FORT ST. JOHN, BC
V1J4M7
(THE RESPONDENT)

ARBITRATION ORDER

BACKGROUND:

Kaiser Energy Ltd. (the "Applicant") to construct a flow line over the property of Carol Wagner (the "Respondent") conducted an arbitration hearing September 19, 2000 in Fort St. John concerning an application. The Panel consisted of Mavis Nelson, Frank Breault, Julie Hindbo and Rodney Strandberg. Darren Rosie appeared as land agent for the Applicant; Carol Wagner, the Respondent and owner of the surface rights, appeared in person.

NATURE OF THE APPLICATION

The Applicant filed its application to construct a flow line over land owned by the Respondent, Carol Wagner on September 10, 1999.

Initially the Applicant required 0.55 acres of the Respondent's property for the flow line. Prior to construction, to facilitate another company, the Applicant's proposal was altered, increasing the amount of land required from 0.55 to 0.57 acres.

Ivor Miller attempted mediation on October 1, 1999. The issues were not resolved. A right of entry Order, and other orders incidental thereto, was made on October 6, 1999.

At that time of mediation there was agreement on the location of the flow line. The sole issue was compensation. The application was referred to arbitration.

POSITION OF THE APPLICANT

The Applicant was of the view that it had offered \$2,000.00 compensation to the Respondent for this small parcel of property prior to the rerouting being required. This was a reasonable offer and an offer substantially above would be offered for the actual amount of property affected by the flow line. The Applicant considered that this \$2,000.00 offer had been accepted prior to the need to reroute the flow line. When the rerouting was required, the Respondent requested funds in addition to the \$2,000.00, which had been offered. The offer was withdrawn. At the Arbitration the Applicant felt \$1,000.00 was fair compensation for the property affected by the flow line.

POSITION OF THE RESPONDENT

The Respondent was of the view that she had accepted \$2,000.00 for the flow line prior to the rerouting being required. It was her view that an additional sum of money, \$1,000.00, would be required for the additional land taken as a result of the rerouting. She felt appropriate compensation was \$3000.00 for the interference with her surface rights as a result of the flow line.

There was also an issue of a potential subdivision of the Respondent's property. The parties appeared to agree that any problems could be addressed by a restrictive covenant to be prepared and registered by the Applicant to deal with the adverse impact, if any, on future subdivided lots by the presence of the flow line.

DISCUSSION

The Board listened carefully to the tape-recorded evidence heard on September 19, 2000. Based on the evidence of Mr. Rosie and the Respondent regarding negotiations for the flow line prior to rerouting being necessary, the Board finds it a fact that the Applicant offered and the Respondent accepted the sum of \$2,000.00 for the 0.55 acres of land required by the flow line as it was initially contemplated in the Application.

The Applicant and Respondent having agreed on \$ 2,000.00 for 0.55 acres to cover all heads of damage envisioned by Section 21 of the Act, the sole issue remaining to be determined by this panel is what compensation, if any, should be paid by the Applicant to the Respondent, for the 0.02 acres required by the Applicant for its flow line as it was eventually constructed.

Having considered all of the evidence and the submissions, the Board finds that the Applicant should be required to pay the Respondent compensation in addition to the \$ 2,000.00 agreed between them prior to the rerouting. The Board considers \$ 500.00 to be appropriate additional compensation.

Recognizing a partial payment of \$ 1,000.00 was ordered at the Mediation Hearing in this matter, the Board orders that the Applicant pay to the Respondent within fourteen (14) days of this Order the balance of the agreed compensation (\$ 1,000.00), and the Arbitration award of \$ 500.00 and also that the Applicant enter into an agreement with the Respondent in a form satisfactory to the Respondent or, if an agreement is not possible between the Applicant and the Respondent, in a form acceptable to the Board which provides as follows:

1. If Carol Wagner completes a sub-division of property and should the value of any of those sub-divided lots be impacted directly or indirectly in an adverse fashion by the right-of-way in favour of Kaiser Energy Ltd. either by being un-saleable or saleable only at a reduced price, then Kaiser Energy Ltd. will purchase from Carol Wagner those lots adversely affected at a price independently established by a professional real estate appraiser appraised as if there were no flow lines under those lots. This agreement will remain in full force and effect for so long as Kaiser Energy Ltd. uses the flow line or until the flow line is decommissioned and all appropriate remedial steps have been taken by Kaiser Energy Ltd. This agreement is binding upon the successors and permitted assignees of Kaiser Energy Ltd. and is expressly for the sole benefit of the landowner of Carol Wagner or its successors and permitted assignees.
2. Kaiser Energy Ltd. will, at its own expense, prepare such documents as may be required by the Land Title Office or any other Governmental or Regulatory Body to ensure that this agreement is registered on title to the Respondent's property for the protection of the Respondent.

IT IS HEREBY ORDERED THAT;

1. The Applicant pays to the Respondent within fourteen days of this Order, the sum of \$ 1,500.00. The Applicant shall provide proof of this payment to the Board Office by 4:00 p.m. Mountain Standard Time on March 23, 2001.
2. 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.
3. 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 9th day of March 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rodney Strandberg, Chair

Mavis Nelson, Member

S. Frank Breault, Member