

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

Date: August 9, 2000

File No. 1392

Board Order No. 310A

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 SW ¼ AND THE SE ¼ SECTION
THIRTYFOUR, TOWNSHIP EIGHTY-THREE, RANGE
NINETEEN, WEST OF THE SIXTH MERIDIAN PEACE RIVER
DISTRICT, EXCEPT PLAN 26616
(PID # 011-727-578 AND PID # 014-587-017)
(THE LANDS)

BETWEEN:

KAISER ENERGY LTD. INC # A-39235
1000, 700 -4TH AVENUE, SW
CALGARY ALBERTA
T2P 3J4
(THE APPLICANT)

AND:

PEACE COMMUNICATIONS CABLE LAYING LTD.
(INC # 85891)
SS # 2, SITE 7, COMP 14
FORT ST. JOHN, BC
V1J 4M7
(THE RESPONDENT)

ARBITRATION ORDER

An Arbitration was heard before the panel consisting of Mavis Nelson, S. Frank Breault, Julie Hindbo, William Wolfe, and Rodney Strandberg on 20 June 2000 regarding an Application by Kaiser Energy Ltd. to settle compensation concerning a flow line right-of-way across land owned by the Respondent, Peace Communications Cable Laying Ltd.

Present at the hearing representing the Applicant was Brian Palmer. Cliff Forester represented the Respondent

The Application in this matter was served 9 September 1999. A Mediation was heard before Ivor Miller, Mediator 8 October 1999 and this did not resolve. Accordingly, the Arbitration was brought pursuant to section 17 of the Petroleum and Natural Gas Act.

BACKGROUND

Peace Communications Cable Laying Ltd. owns property immediately southwest of the city of Fort St. John in an area known as Grandhaven. The land, with an exception of a strip of land approximately 200 feet deep along an arterial road, is in the Agricultural Land Reserve. A flow line was constructed in January 2000 for the purpose of transporting sour natural gas. This flow line affected five (5) property owners in the immediate area. Three (3) of the owners settled compensation directly with the Applicant; the respondent and one (1) other land owner have yet to resolve this issue.

POSITION OF THE PARTIES

A APPLICANT

The Applicant says that the market rate for a flow line right-of-way is \$ 950.00 per acre. The Applicant says it is prepared to compensate the respondent for 100% of his crop loss for the first two years and 50% of his crop loss in the third year. There is also some temporary work space utilized for the purpose of construction of the flow line. Total area affected by the flow line is 2.531 hectares or 3.79 acres.

The flow line will cross land in the Agricultural Land Reserve which has the potential to be moved from the Agricultural Land Reserve and sub-divided. The Applicant is prepared to enter into an arrangement whereby any lots whose value is diminished or any lots from a future sub-division which are un-saleable as a result of the flow line will be purchased by the Applicant at a fair market value of those lots. The Applicant says this is sufficient protection for the Respondent to ensure that the flow line has no future effect on a potential sub-division.

B RESPONDENT

The Respondent is concerned about the impact of the flow line on future sub-divisions of its property and the fact that a flow line may curtail use of some or all of those lots. Additional, the Respondent wishes to receive the same compensation as he received in 1998 from Berkley Petroleum Corporation for a flow line which crossed his property. Berkley Petroleum Corporation paid the respondent \$ 950.00 per acre and

crop loss and also agreed to perform additional work on the respondent's property to a value of \$ 4,000.00 when a flow line was constructed under the Respondents' property.

Both the Applicant and the Respondent had agreed on compensation, except for the amount of \$4,000.000 sought by the respondent. This appears to be the sole issue between the parties.

DECISION:

Having considered the evidence from the Applicant and the Respondent it is the view of the Arbitration panel that the \$ 4,000.00 which is sought by the Respondent was paid by Berkley Petroleum Corporation not by way of compensation for interference with surface rights; but may have been. The Arbitration panel finds that this payment is unrelated to any of the factors to be considered by the Board in fixing compensation and declines to make a similar award in favor of the Respondent in this proceeding.

The Arbitration panel awards the Respondent for the interference of his surface rights to date for the construction of the flow line, the use of land temporarily as work space in the construction of the flow line, crop loss and other damages associated with the interference with the Respondents' right of use of the surface of the land to the date of the Arbitration in the sum of \$ 4,223.00.

Recognizing that there was a partial payment ordered at the Mediation in this matter, the Board orders that the Applicant pay to the Respondent within fourteen (14) days of this Order the balance of the award of \$ 4,223.00 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 Peace Communications Cable Laying Ltd. 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 Peace Communications Cable Laying Ltd. 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 land owner of Peace Communications Cable Laying Ltd. 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 pay to the Respondent within fourteen days of this Order the balance of the award of \$ 4,223.00.
2. The Applicant enter into an agreement with the Respondent in a form satisfactory to the Respondent as set out in this decision.
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 August 2000.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Rodney Strandberg, Chair

Mavis Nelson, Member

Frank Breault, Member

William Wolfe, Member

Julie Hindbo