

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

Date: November 21, 2000

File No. 1422

Board Order No. 326A

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 A PORTION OF THE SOUTHEAST 1/4
SECTION THIRTY-THREE, TOWNSHIP EIGHTY-FOUR, RANGE
SEVENTEEN, WEST OF THE SIXTH MERIDIAN, PEACE RIVER
DISTRICT,
(SE ¼ 33-84-17 W6M)
(THE LANDS)

BETWEEN:

ENCAL ENERGY LIMITED
10228 101 AVENUE
FORT ST. JOHN, BC
V1J 2B5
(THE APPLICANT)

AND:

EMMA SINA BERGEN
R. R. 1, SITE 15, COMPARTMENT 87
FORT ST. JOHN, BC
V1J 4M6
(THE RESPONDENT)

ARBITRATION ORDER

A Panel of the Mediation and Arbitration Board consisting of Ivor Miller, Frank Breault and Rodney Strandberg, Chair, in Fort St. John on November 21, 2000 conducted an Arbitration. In attendance on behalf of the Applicant were Kevin Aitchison and Brian Sumbot. The Respondent, Emma Bergen, and her husband, John Bergen, also attended.

HISTORY

By Application filed with this Board on August 25, 2000 the Applicant applied to have access over the Respondent's property for the purpose of building an access road to drill a well on the property adjacent to the Respondents. The application for Mediation Arbitration indicates that the purpose for the application was to access 7-33-84-17 and drill a well.

Mavis Nelson conducted Mediation hearing on September 13, 2000. The mediator granted a Right-of-Entry was issued on conditions that there be minimal use of gravel on the access road of 6-33-84-17 and that there be consultation with the land owner on the location of Burrow Pits. Concerns regarding the location of the access were reserved to the Arbitration to be scheduled in this matter.

It became clear during the Arbitration that one of the issues to be dealt with was the use by the Applicant of the Respondent's property to access the well site to construct a flow line. This was not addressed in the original application. By agreement of the parties this issue was also addressed by the Panel.

The Applicant is the owner of an existing lease site over the Respondent's property having acquired it through its purchase of a company referred to as Chesapeake, the owner of that lease. This lease consists of a road to a lease site on which a well was intended to be drilled. The drilling license for this lease on the Respondent's property has been cancelled.

For geological reasons the Applicant drilled a well on property adjacent the Respondent. The owner of this property is Gordon and Mae Steeves. In order to access that well site the Applicant had to pass over a 24 meter by 20 meter portion of the Respondent's property.

The Applicant drilled a well. Although initially contemplated being an oil well in fact, this was a sweet natural gas well.

POSITION OF THE APPLICANT

The Applicant wishes to finalize its right to pass over the Respondent's property to ensure that its operators and other persons required to attend the well site can access it as required. The amount of the Respondent's property affected is 0.12 acres.

The Applicant indicated that it had considered various other options in addition to or in substitution for passing over the Respondent's property. These included access through the adjacent property and access along the north boundary of the Respondent's property where there is an existing pipeline right-of-way in favor of Talisman Energy Ltd.

Due to economic constraints the Applicant has chosen to use the existing lease on the Respondent's property and wishes access over the Respondent's property.

The Applicant offered compensation in the sum of \$500.00 in the first year with \$200.00 annual rent payments thereafter. It was also suggested that the Applicant would install one gate at the junction of the access road and the main road, Road 249, and perhaps one gate at the driveway to the Respondent's property, which is just north of the location where the access road joins Road 249.

The Applicant estimates that the cost of constructing a road along the north boundary of the Respondent's property thence southerly along the border between the Respondent's property and the Steeves' property, where the well is located, to be between \$35,000.00 and \$40,000.00 if no frost in the ground and greater if the ground is frozen.

The Applicant indicated that because the well was natural gas, regulations restricting the number of gas wells per quarter section prohibit the Applicant from drilling any other wells on the Steeves' property.

The Applicant recognizes that if the property, which is in the Agricultural Land Reserve but is not developed, were to be cleared and utilized for either hay or cattle operations its access would interfere with these.

POSITION OF THE RESPONDENT

The Respondent was concerned that when initially approached by the Applicant, it was suggested that the existing lease and access to the adjacent property and use of the Respondent's property would be only temporary. The Respondent was also of the view that the Applicant had not clarified the need to access the well through her property to construct a flow line.

The Respondent purchased the property in April 2000. The Respondent has lived across from the affected land since 1992 and was aware that the property's previous owner negotiated a lease on the property in 1993. When the land was purchased, the previous owner, Mr. Clark, retained the rental payment for the lease for a period of ten (10) years. The Respondent will not receive those rental payments until 2003.

The Respondent objected to having permanent access over her property for the following reasons:

1. If the property were cleared, the existing road would cut off 35 acres from the rest of the quarter increasing costs of clearing and utilizing the land;
2. The existing road and lease were not surveyed in straight lines causing further inconvenience in using the land;
3. The existing road and traffic will present a risk to livestock;
4. The existing road and traffic would create a dust problem for the Respondent;

5. On at least two (2) occasions a truck and tractor unit missed the signs to the access road stopping abruptly in front of the Respondent's driveway where children were waiting for the school bus causing a safety concern; and
6. The Respondent was concerned that the Applicant might change the use of the road and use it more frequently than currently indicated without further compensation to her.

The Respondent's wishes were as follows:

1. That the Applicant access the well site through the property of Mr. Gordon Steeves;
2. In the alternative, that the Applicant build a road along the north side of the Respondent's property to the boundary between the Respondent's property and Mr. Steeves property thence southerly to the well site; or
3. In the further alternative, and the least desirable outcome, that the existing road remain as it was with compensation being paid in the sum of \$5,500.00 in the first year, consisting of a \$2,000.00 prepayment ordered by the Mediator and the additional sum of \$3,500.00 as rental in the first year and the sum of \$3,500.00 each year thereafter for so long as the road was used until the site and the road were properly reclaimed.

DECISION

This Panel is of the view that it has no jurisdiction to order the Applicant to access the well site over the property of the adjacent land owner who is not a party to this Arbitration.

After carefully considering all of the evidence presented to it and the submissions of the parties this Panel has decided that the best balance of the interests of the owner of the surface rights and the sub-surface rights is to require the Applicant to construct an access road along the north boundary of the Respondent's property to the boundary between the Respondent's property and Mr. Steeves property thence southerly to the well site.

This Panel is aware that this road would have to be approved by the Land Reserve Commission before it could be constructed. Recognizing that this process, together with road construction, will take time the decision is as follows:

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 20 (3) (a) of the *Petroleum and Natural Gas Act*, this Panel varies the Order of the Mediator to provide that the Right-of-Entry ordered in Board Order 326M dated September 13, 2000 expire on the 1st day of December 2001 unless otherwise varied or altered by Order of this Board;
2. The Applicant may make use of the existing road until December 1, 2001 with minimal use of gravel and consultation with the land owner on the location of the Burrow Pits;
3. The Applicant will construct a gate at the entrance to the access road and, if requested by the Respondent, a gate at the driveway of the Respondent's property and Road 249;
4. For so long as the Applicant is required to pay the annual rental payments on the existing lease, whether to Mr. Clark or the Respondent, the Applicant will not be required to pay compensation to the Respondent for either the part of the Respondent's land currently used by it or any part of the land used in constructing the access road along the north boundary of the Respondent's land and to the well site;
5. Once the existing lease and access road is reclaimed and the appropriate approval is obtained by all relevant bodies then the Applicant will begin to pay to the Respondent compensation for the newly constructed road. The Board reserves to itself the right to determine compensation for this new road if the parties are unable to agree on that compensation;
6. The Applicant will pay, within thirty (30) days of this order, the further sum of \$500.00 to the Respondent representing all compensation payable for the use by the Applicant of the Respondent's property until December 1, 2001 and the Applicant will provide proof to this Board of payment of that amount;
7. The Applicant will also pay to the Respondent as costs for the time spent in dealing with this matter, preparing and attending at the Arbitration the sum of four hundred eighty dollars (\$480.00) within thirty (30) days of this order and will provide proof to the Board of payment of these amounts.
8. If the sums ordered to be paid by this order are not paid within the time limits specified the Right-of-Entry granted by the Mediator in Board Order 326M will terminate.
9. 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".
10. 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 21st day of November 2000.

MEDIATION AND ARBITRATION BOARD
UNDER THE PETROLEUM AND NATURAL GAS ACT

Rodney Strandberg, Chair

Ivor Miller, Member

S. Frank Breault, Member