

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

Date: July 17, 2001

File No. 1457

Board Order No. 339ARR

BEFORE THE ARBITRATOR:

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
NORTHEAST ¼ OF SECTION THIRTY-FIVE, TOWNSHIP
EIGHTY-FOUR, RANGE SEVENTEEN, WEST OF THE
SIXTH MERIDIAN, PEACE RIVER DISTRICT,
(NORTHEAST ¼ 35-84-17 W6M)
(THE LANDS)

BETWEEN:

WADE ROY NICHOLSON AND
HEATHER PATRICIA CLAIRE NICHOLSON
BOX 88
CECIL LAKE, BC
V0C 1G0
(THE APPLICANT)

AND:

CALPINE CANADA RESOURCES LTD.
10228 101 AVENUE
FORT ST. JOHN, B.C.
V1J 2B5
(THE RESPONDENT)

Certified a true
copy this 15th day

of July 20 01

The original being in
the custody of the
Mediation and Arbitration
Board under the
"Petroleum and Natural Gas
Act, 1996"

RENT REVIEW ARBITRATION ORDER


Gayle Colwell
Board Administrator

BACKGROUND

The surface rights owners, Wade Nicholson and Heather Nicholson, applied to the Mediation and Arbitration Board on 26 April 2001 for Arbitration to settle compensation pursuant to Section 12 of the Petroleum and Natural Gas Act.

As the two parties were unable to reach a satisfactory annual payment, an Arbitration Hearing was scheduled for May 18, 2001.

The members of the Arbitration Panel, Mavis Nelson, Frank Breault and Ivor Miller inspected the site prior to the arbitration. They observed the well site is a shut in gas well. The access road also provides access to an oil lease on the west side of the well site in review.

An Arbitration Hearing was held on 18 May 2001 in the Boardroom of Execuplace Business Centre located at 10142 101st Avenue, Fort St. John BC. Present for the Mediation and Arbitration Board were Ivor Miller, Frank Breault and Mavis Nelson. The Applicants, Wade Nicholson and Heather Nicholson represented themselves. Kevin Aitchison of Calpine Canada Resources Ltd. represented the Respondent.

POSITION OF THE PARTIES

Applicant

The Applicants presented their evidence in the form of Exhibit 1 divided into parts A, B, and C.

Part A consisted of the farms B.C. Crop Insurance averages to established production records for this operation and a listing of what they believe to be factors contributing to nuisance and disturbance in the farming around the lease as well as the inconvenience of the lease in the field south of their home. According to their calculations, by using the Section 21 of the Act, the annual rental should be \$ 5,994.71.

Part B compared annual rental payments of leases of a similar size and within a reasonable distance from this lease, one of which is the adjacent oil lease. The average annual rental of these comparable leases is \$4,080.74.

Part C reflected the rate of inflation over the past 5 years and established a current rental amount at \$3,700.00.

The Applicants requested the amount of \$ 4,300.00 which is less than the average of the total dollar values in Parts A, B and C.

Respondent

The Respondent presented his evidence in Exhibit 2 showing the access road and well site in a map form with recent pictures showing the current annual rental payable at \$ 3,400.00. The evidence included comparisons of previous Board Orders to show the heads of compensation to be used to determine compensation. Crop

loss was established by a May 16, 2001 daily price obtained from a local buyer. Severance was noted as 0.03 acres. Nuisance and disturbance was compared to previous Board Order awards over the past few years and offered at \$ 250.00 per acre. Other factors were represented by the amount of \$ 300.00 per year. Comparable leases in the close proximity of this lease were detailed in Exhibit 3. The Respondents offer as per Section 21 of the Act totaled \$, 2,557.56, which is less than currently being paid. The Respondent acknowledged that offers higher than the current amount had been made but the Applicant decided to take the matter before the Board.

DECISION

The Arbitration Panel, having heard all the evidence presented at the hearing, and the arguments made in support makes the observations;

1. The Applicants use of Crop Insurance records of the actual production of the land is more indicative of the annual crop loss than a daily pricing from a buyer, and the Board accepts the amount of \$1,430.00 annually.
2. The Board considered Page 15 of the Respondents evidence package. The Board determined severance was created by the intrusion of the road and the well site, thereby limiting the Applicants farming practices. The Board awards \$ 1,020.00 annually as per the Applicant's exhibit A3.
3. The Board concurs with the Respondents value of \$ 250.00 per acre for nuisance and disturbance for a total of \$ 1,350.00 annually.
4. The Board recognizes that the road provides access to another lease as well as a meter site and the increased use reflects in increased value in the amount of \$ 500.00 annually.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 12 (2) of the *Petroleum and Natural Gas Act*, the rental provisions of the surface lease signed October 7, 1980, paid by the Respondent to the Applicant are varied from \$ 3,400.00 per annum to \$ 4,300.00 per annum. The increased rental provisions are effective from October 7, 2000 and is due and payable each year until agreement of the parties or further order of this Board.
2. The Respondent shall within 60 days of this order, provide an accounting to the Board of the payment of the retroactive increase less any annual payments made pursuant to the existing lease agreement for the rental payment due on October 7, 2000. The balance due and owing to the Applicant shall be paid within that time period.
3. Nothing in this Order varies expressly or by implication any of the other terms of the existing lease between Wade Nicholson and Heather Nicholson and Calpine Canada Resources Ltd.

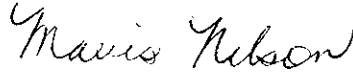
4. Nothing in this order is or operates as consent, permit or authorization that by enactment a person is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 17th day of July 2001.

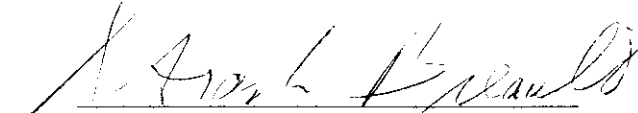
MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT



Ivor Miller, Member



Mavis Nelson, Member



Frank Breault, Member