

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

Date: July 11, 2001

File No. 1460

Board Order No. 340ARR

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 $\frac{1}{4}$ OF SECTION EIGHTEEN,
TOWNSHIP EIGHTY-FIVE, RANGE SEVENTEEN,
WEST OF THE SIXTH MERIDIAN, PEACE RIVER
DISTRICT (NORTHEAST $\frac{1}{4}$ 18-85-17 W6M) **(THE
LANDS)**

BETWEEN:

FRANK SCHLICHTING
P.O. BOX 199
CECIL LAKE, BC
V0C 1G0
(THE APPLICANT)

AND:

TALISMAN ENERGY INC.
SUITE 3400, 888 3rd Street SW
CALGARY, AB
T2P 5C5
(THE RESPONDENT)

RENT REVIEW ARBITRATION ORDER

BACKGROUND

The surface rights owner, Frank Schlichting, applied to the Mediation and Arbitration Board on the 22nd of May 2001 for Arbitration to settle compensation pursuant to Section 12 of the Petroleum and Natural Gas Act.

The Applicant had sent the 60 day notice pursuant to Section 11 of the Petroleum and Natural Gas Act, requesting renegotiation of the rental conditions on 20 September 2000.

As the two parties were unable to reach a mutually satisfactory annual payment, an Arbitration Hearing was scheduled for 31 May 2001.

Members of the Arbitration Panel, Frank Breault, Julie Hindbo and William Wolfe inspected the site on 30 May 2001. They observed that the well site is a shut in well with no connecting flow lines and is surrounded by immature second growth bush.

An Arbitration Hearing was held on 31 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 William Wolfe, Frank Breault and Julie Hindbo. The Applicant, Mr. Frank Schlichting represented himself. Doug Doray of Roy Northern Land Service Ltd. represented the Respondent.

POSITION OF THE PARTIES

Applicant

The Applicant presented comparables for leases on four other properties, two owned by himself and two by others in the district. Annual rentals on these leases ranged from \$725 per acre to \$873 per acre and included Mediation and Arbitration Board Order No. 337ARR, which awarded annual rental payments of \$836 per acre.

The Applicant noted that land immediately surrounding the wellsite and access road has been previously logged, is now covered by immature second growth poplar, pine and spruce and is considered to be under tree farm cultivation. The Applicant acknowledged that the tree farm value of the disturbed land would be similar to its value under hay crop production.

The Applicant noted that the wellsite and access road lies at the end of a main access road and is frequented by third parties who cause nuisance and disturbance, as well as potential forest fire hazard.

The Applicant indicated the negotiations and appearance before the Mediation and Arbitration Board resulted in lost wages.

Respondent

On behalf of Talisman Energy Inc., Roy Northern Land Service Ltd. presented comparable lease rentals for eight other well sites within a 3 km radius of the subject wellsite. These comparable

sites are all located on land currently covered by bush or in two cases, under hay production. Annual rentals on these eight leases ranged from \$591 per acre to \$700 per acre. The Respondent's last offer for annual rental was \$3,150.00 (\$635 per acre) retroactive to April 26, 1999, based on a per acre rate comparable with other similar leases in the area. The well is shut in and Talisman has no immediate plans for production. The Respondent obtained ownership of this lease since the last rental renegotiation in 1994 and following terms of the April 26, 1994 agreement, has continued to make annual rental payments of \$2,500.00 at the 2000 and 2001 anniversary dates.

DECISION

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

1. Exhibit B-4 presented by the Applicant was a Rent Review Arbitration Order, which varied the rental provisions of a surface lease by awarding an annual rental payment of \$ 5,582 on a 6.67 acre lease (\$836 per acre). This amount included an additional two acre strip alienated by the lease location. Considering both the lease area and the additional area, the per acre value for this comparable would be approximately \$643 per acre.
2. The Respondent's figures were based on a per acre value of comparable leases without reference to headings under the Petroleum and Natural Gas Act Section 21 (1) compensation guidelines. The low end of the range of annual rentals (\$591 per acre) presented for comparison by the Respondent represents a rental negotiated in 1994. This figure was discarded as unreflective of 1999 values even though it does represent a wellsite in close proximity to the subject site. The average of the seven remaining comparables presented by the Respondent is \$641 per acre.
3. In determining the amount to be paid for annual lease rentals, the Arbitration Panel is governed by Section 21 (1) of the Petroleum and Natural Gas Act which lists eight categories the Panel may consider in arriving at compensation due to the surface owner. Of these eight categories Section 21 (1) (a) to (h), only one category 21 (1) (b) is clearly related in a direct way to the acreage of the lease. Without any evidentiary information submitted as to how the other seven categories contributed to the final dollar per acre figure, it is difficult to make fair assumptions based on the comparables presented. In the absence of evidence to support the headings under Section 21 (1) of the Petroleum and Natural Gas Act, the Board, has considered the per acre comparables submitted by the parties as evidence.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 12 (2) of the Petroleum and Natural Gas Act, the surface lease rental provisions effective April 26, 1994, paid by the Respondent to the Applicant are varied from \$ 2,500.00 per annum to \$ 3,185.00 per annum. The varied rental provisions are

effective from April 26, 2000 and shall be due and payable on the 26th April of each year until agreement of the parties or further order of this Board.

2. The payment of the retroactive increase of \$ 6,370.00 is due and payable as of the date of this order, less any annual payments the Respondent has made to the Applicant pursuant to the existing lease agreement.
3. The Respondent shall within 60 days of this order, provide the Applicant with a single one time payment of \$500.00 representing reimbursement for the Applicant's costs connected with negotiation and attendance at the arbitration hearing.
4. The Respondent shall within 60 days of this order, provide an accounting to the Board of the payments actually made to the Applicant for the payments due on April 26, 2000 and 2001 indicating the amount due and owing to the Applicant.
5. The Respondent will provide to the Applicant and the Mediation and Arbitration Board a copy of all assignments of ownership of the surface lease agreement from the original lessor to the current corporate holder of the surface lease agreement, to clarify the current ownership of this wellsite.
6. Nothing in this Order varies expressly or by implication any of the other terms of the existing lease between Frank Schlichting and Talisman Energy Inc.
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 31st day of July 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

William Wolfe, Member

Frank Breault, Member

Julie Hindbo, Member