

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

Date: December 13, 2001

File No. 1428

Board Order No. 345 ARR

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 LESSOR OF
PARCEL A [PLAN 23914] OF THE WEST ½ OF
SECTION TWELVE, TOWNSHIP EIGHTY-FOUR,
RANGE NINETEEN, WEST OF THE SIXTH MERIDIAN,
PEACE RIVER DISTRICT, EXCEPT PLAN PGP39613
(PARCEL A WEST ½ 12-84-19 W6M)
(THE LANDS)

BETWEEN:

JOHN NURNBERGER
341 FOURNEAU WAY
PARKSVILLE, BC
V2P 2J8
(THE APPLICANT)

AND:

OREFYN ENERGY ADVISORS CORP.
C/O RANDY WOLSEY
BOX 6128
FORT ST. JOHN, BC
V1J 4H6
(THE RESPONDENT)

ARBITRATION ORDER

BACKGROUND

An Arbitration Rent Review Hearing was held on 6 March 2001 between John Nurenberger and Orefyn Energy Advisors Corp. At the conclusion of the Hearing, the parties agreed that they would attempt to resolve costs between themselves.

The Mediation and Arbitration Board received on the 12th of October 2001 a request from the Applicant's counsel for a ruling with respect to costs reserved to the Arbitration Panel, pursuant to Section 27 of the Petroleum and Natural Gas Act. Included with the submission, was a reply from Mr. John Hope, counsel for Orefyn Energy Advisors Corp.

The Mediation and Arbitration Board requested (by letter of 29 October 2001) Mr. Carter to prepare a bill of costs. A copy was sent to Mr. John Hope in addition to the Board. Submissions on entitlement to and amount of costs from both parties were also requested.

The Arbitration Panel convened via telephone conference call on 30 November 2001 to discuss the request and the submissions received.

POSITION OF THE PARTIES

Applicant

Counsel for the Applicant initially submitted a bill for the full amount of his account to his client. After the decision of Encal Energy vs. Joseph and Shirley Viens was brought to his attention, a bill of Costs in a form appropriate to the BC Supreme Court Rules on Scale 3 was prepared and provided to the Board and the Respondent. It is summarized as follows;

- Total fees claimed \$ 3,600.00, plus
- Disbursements of \$ 228.98,
- TOTAL COSTS of \$ 3,828.98.

The Mediation and Arbitration Board had previously received a letter from Mr. Carter; Q.C. dated 13 March 2001 advising that disbursements should be reduced by \$ 100.00. The disbursements claimed on the Bill of Costs were, through inadvertence, \$ 100.00 too high.

Mr. Carter also requested costs for Mr. Nurenberger as follows;

- Travel costs of \$ 380.00 plus
- Time of \$ 250.00,
- TOTAL COSTS of \$ 630.00.

The Total costs claimed by Mr. J Darryl Carter are \$ 4,458.98.

Respondent

Mr. John Hope, counsel on behalf of the Respondent, indicated that he took no issue with the amount claimed by the Applicant. However, Mr. Hope was of the view that an award of costs should be made to

the successful party. He noted that, given the position of the parties at the Arbitration, the award of this Panel was significantly closer to the amount offered by the Respondent than the amount sought by the Applicant. He expressed the concern that if parties were awarded costs by this Panel without regard to success at a hearing that it might encourage parties to take unreasonable positions knowing that their legal fees might be covered by Board order. This might reduce incentive to settle matters prior to hearing.

DISCUSSION

The *Petroleum and Natural Gas* Act requires the Mediation and Arbitration Board to compensate persons for interference with their surface rights. Unlike the *Rules of Court*, which were referred to by Mr. Justice Wilson in the *Viens* judgment, proceedings before the Mediation and Arbitration Board are not adversarial. They are administrative in nature. The *Rules of Court* attempt to reduce the number of issues between the parties and to provide incentives, in part by awards of costs, for parties to come to reasonable positions and to settle matters. The Mediation and Arbitration Board does not have these procedures. Additionally, other considerations besides the success or lack of it by a party can influence awards of costs.

Each claim for costs must be considered by the Board based on its facts. Without intending to in any way be exhaustive, factors which the Board may look at to determine the appropriateness of awarding costs to are the nature of the costs incurred, the reasons for incurring them, the contributions of counsel, or indeed, any advisor for whose assistance reimbursement of costs is sought and the need to ensure that there is fairness in the process and equality between the parties in the process of the Board.

DECISION

After having carefully considered the submissions of the parties, the Panel concludes that the amounts claimed for reimbursement of time by Mr. Nurenberger are not properly presented or supported. The amounts claimed for reimbursement of out of pocket expenses are reasonable. Mr. Nurenberger is also entitled to some contribution from the Respondent for his legal expenses.

IT IS HEREBY ORDERED THAT;

1. The Respondent will pay to the Applicant costs in the amount of \$ 800.00 on or before 12 February 2002, or within 60 days of the date of this order.
2. The Respondent will provide to the Mediation and Arbitration Board on or before 12 February 2002, proof that paragraph 1 has been complied with.
3. Nothing in this Order varies expressly or by implication any of the other terms of the existing Board Order 334 ARR dated 26 March 2001.
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 13th day of December 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Ivor Miller, Member

S. Frank Breault, Member

William Wolfe, Member