

MEDIATION AND ARBITRATION BOARD

Under the Petroleum and Natural Gas Act
#114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3

Date: 22 November 2002

File No. 1483

Board Order No. 364M

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
NORTH HALF SECTION 17, TOWNSHIP 84,
RANGE 14 WEST OF THE SIXTH MERIDIAN
PEACE RIVER DISTRICT
(NORTH ½ 17 - 84 - 14 W6M)
(THE LANDS)

BETWEEN:

PETRO - CANADA
150 6TH AVENUE SW
CALGARY, ALBERTA
T2P 3E3
(THE APPLICANT)

AND:

FRANCIS ALLEN BERGE
CHRISTINA YVONNE BERGE
GENERAL DELIVERY
CLAYHURST, BC
V0C 1G0
(THE RESPONDENT)

MEDIATION ORDER

The Mediation and Arbitration Board received an Application on 17 October 2002 from Raymond Fromme, agent for Petro - Canada. The Application was for a Right-Of-Entry concerning road access to two riser sites and a bell hole. Negotiations with the Owners of the land, Mr. Francis Allen Berge and Ms. Christina Yvonne Berge had not resulted in an agreement.

Pursuant to Section 16 (2) of the Petroleum and Natural Gas Act, a copy of the Application was sent by registered mail to the Respondent on 16 October 2002.

Pursuant to Section 18 (1) of the Petroleum and Natural Gas Act, Rodney Strandberg was designated Mediator. The Mediator confirms that the Application was properly filed.

Mediation was conducted on 20 November 2002 in the residence of Francis and Christina Berge (the "Owners"). Rodney Strandberg appeared as Mediator. Kathryn Ross appeared on behalf of Petro - Canada. Wesley Berge, son of the Owners, also attended as a person whose interests might be affected by the Order sought.

BACKGROUND:

Petro - Canada has a lease with the Owners regarding the riser sites and bellhole on the property. The Owners have an executed lease with Imperial Oil for road access to an Imperial Oil lease. The parties agreed that the Imperial Oil road impacted 2.5 acres of the Owner's property. The Owners receive \$700.00 per acre as annual payments from Imperial Oil.

Petro - Canada constructed roads over the Owner's property to allow access to the riser sites and bell hole. For approximately the last 10 years Petro - Canada has used the Imperial Oil road and then Petro - Canada 's own roads to access these sites, primarily for inspection purposes, approximately 4 or 5 times per year. The parties agreed that the Petro - Canada roads impacted approximately 3 acres of the Owner's land.

Petro - Canada has never signed a lease with the Owners for the roads it constructed on the Owner's property. Petro - Canada has never paid compensation to the Owner's for the roads.

Petro - Canada wished to enter into a road use agreement with Imperial Oil to deal with maintenance of the Imperial Oil road but this cannot be done without the permission of the Owners.

As the parties were unable to agree on necessary matters to allow a lease to be executed, Petro - Canada applied to the Mediation and Arbitration Board on 17 October 2002 for a right of entry regarding the roads and to determine appropriate compensation to be paid.

POSITION OF THE PARTIES

Petro - Canada

Initially, Petro - Canada offered to increase the compensation being paid for the lease regarding the riser sites and bellhole from the current level of \$ 1,100.00 per annum to \$ 2,500.00 and to make a one time payment of \$ 6,000.00 for past compensation not paid; and \$ 1,500.00 for the time and inconvenience to the Owner's in dealing with this matter, including the Mediation.

After it was clearly understood that the Application and this Mediation could not deal with the existing executed lease for the riser site, Petro - Canada reconsidered its offer and offered to pay, in addition to the one time payment and compensation for time totaling \$ 7,500.00, the sum of \$700.00 per acre for 3.5 acres of road for a total annual payment of \$ 2,450.00.

Landowners

It was the view of the Owners that they should receive \$ 700.00 per acre per year for the total area impacted by the roads used by Petro - Canada, 5.5 acres, for a total annual payment of \$ 3,750.00. The Owners were prepared to accept the one-time payments totaling \$ 7,500.00 offered by Petro - Canada.

The Owners were also concerned with providing consent to Petro - Canada to enter into road use agreements with Imperial Oil, as the Owners were uncertain how this might impact their rights as the owners of the surface.

DISCUSSION

The major issue between the parties was the appropriate compensation to be paid for the use by Petro - Canada of the road that was the subject matter of the lease between the Owners and Imperial Oil.

It was the view of the Mediator that although the Owners were entitled to be compensated for the use by Petro - Canada of the Imperial Oil road, it could not be said that this use had the same impact as the use of roads constructed by Petro - Canada. The lease payments from Imperial Oil were designed, in whole or in part, to compensate the Owners for the disruption to their rights as a result of the construction and maintenance of the road and the use made of the road by Imperial Oil. The Owners are to be compensated for any incremental impact on their rights by the use made of this pre-existing road by Petro - Canada.

After discussion, it was agreed by the parties that for two acres of the Imperial Road, being the difference between the 5.5-acre total length of the road required by Petro - Canada and the 3.5 acres to be compensated at \$ 700.00 per acre, the sum of \$ 350.00 per acre for a total of \$ 700.00 per year would be appropriate compensation. It was further agreed that if Imperial Oil should terminate its lease of the road then the appropriate compensation would increase to \$ 700.00 per acre per year for a total of \$ 1,400.00.

After discussion, the Owners also agreed to execute consent to allow Imperial Oil and Petro - Canada to enter into a road use agreement over the shared portion of the road upon receipt of the money ordered to be paid pursuant to this order.

All issues between the parties are resolved at mediation. Accordingly, the Order of the Mediation and Arbitration Board is:

IT IS HEREBY ORDERED THAT;

1. Pursuant to section 19 (1) of the Petroleum and Natural Gas Act, following payment of the amount ordered, and for so long as the annual payments are made as ordered, the Applicant, Petro - Canada is entitled to enter upon the land of the Owners for the purpose of using and maintaining the existing roads constructed on the land of the Owners for the purpose of accessing and inspecting the pipeline now existing on the land.
2. The Applicant shall forthwith and in any event within two weeks of the date of this order (6 December 2002) pay to the Respondent the agreed upon sum of \$ 7,500.00 representing the one time payment of past compensation and compensation for the Owner's time, and will provide proof of payment of this amount to the Owners to the Mediation and Arbitration Board within the same time period. This payment is deemed to be the payment required pursuant to Section 19 (2) (b) of the Petroleum and Natural Gas Act.
3. The Applicant shall pay annual rent in the sum of \$ 3,150.00, payable 22 November 2002 and payable on the 22nd day of November of each year thereafter until further order of the Board or agreement between the parties.
4. The Owners shall, immediately upon receipt of the sum of \$ 10,650.00 representing the one time payments agreed to and the first year annual compensation execute a consent to allow Petro - Canada to enter into a road-use agreement with Imperial Oil.
5. Immediately upon the execution of the road use agreement, Petro - Canada will forward a copy of it to the Owners and to the Mediation and Arbitration Board.
6. Pursuant to Section 19 (2) (c) of the Petroleum and Natural Gas Act the Applicant shall forthwith and in any event within two weeks of the date of this order (6 December 2002) deliver a certified true copy of this order to the Owners of the land.
7. Pursuant to Section 19 (2) (a) of the Petroleum and Natural Gas Act the Applicant is required to deposit security with the Board consisting of a consent to the cancellation of this Board Order which will be held by the Board and released to the Owners upon the Owners providing

proof in a form satisfactory to the Board that the Applicant has failed to comply with a term of this Order. A copy of this consent is attached to this Order and incorporated by reference.

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

Dated at the City of Fort St. John, British Columbia, this **22nd day of November 2002**.

**MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT**

Rodney J. Strandberg, Chair