

**Mediation and Arbitration Board (the Board)
114, 10142 - 101 Avenue
Fort St. John, BC V1J 2B3**

Date: July 23, 2007

**FILE No. 1589
Board Order No. 422M**

BEFORE THE MEDIATOR:

**IN THE MATTER OF THE PETROLEUM
AND NATURAL GAS ACT, R.S.B.C. 1996,
c. 361
(THE ACT)**

**NE ¼ of Section 31 Township 79 Range 16,
W6M, Peace River District, except Plans
H903 and PGP38729
(THE LANDS)**

BETWEEN:

**SPECTRA ENERGY MIDSTREAM
CORPORATION
(APPLICANT)**

AND:

**KENNETH JAMES VAUSE &
LORETTA VAUSE
(RESPONDENTS)**

MEDIATION ORDER

Applicant: Spectra Energy Midstream Corporation
Respondents: Kenneth James Vause and Loretta Vause
Counsel for the Respondents: Darryl Carter Q.C.
Site Visit: July 8, 2007
Mediation Meeting: July 9, 2007 at the Board offices at Fort St. John, B.C.
Decision: July 23, 2007
Mediator: Darrel Woods

Board Order

Background

Under 16(1)(a) of the Act the Applicant is seeking an order to enter the lands for the purpose of environmental assessment, archaeological assessment and construction and operation of a pipeline.

A pre-hearing conference was held on June 20, 2007 by telephone conference. Board Order 420 PHC resulted from a submission made by Darryl Carter at the pre-hearing conference. A survey of the lands has taken place.

Site Visit

A site visit took place the evening of July 8, 2007. Those who attended were the same as those who attended the mediation except that Shirley Olsen, Board administrator, attended the site visit but not the mediation and Darryl Carter and Cameron Matte did not attend the site visit.

The Mediation

Those attending the mediation hearing on July 9, 2007 were:

Darrel Woods	Board Mediator
Kenneth James Vause and Loretta Vause	Respondents
Darryl Carter Q.C.	Counsel for the Respondents
Jim Eros	Spectra, Manager, Lands Midstream,
Cameron Matte	Spectra, Commercial Manager
Jim Eros	Spectra, Senior Project Manager
Brian Dunn, Kelsey McLeod and Sacha Plotnikow	Roy Northern Land Service Ltd.

The mediator gave a general introduction to the mediation process.

Darryl Carter has raised two preliminary issues, initially at the pre-hearing conference. He was asked to provide written submissions which he did by email to the Board office

dated June 22, 2007. Spectra responded by fax letter to the Board office dated July 5, 2007. The issues are related to some degree.

The first issue is whether the Board should proceed with mediation, and possibly make an order for entry, before the Oil and Gas Commission (the OGC) has considered the application. The second issue is whether the subject application relates to a flow line or a pipeline. Darryl Carter submits that the Board cannot properly consider the question of whether it is dealing with a flow line or a pipeline [a pipeline that is not a flow line] until the OGC has approved an application. In his submission he states that the reason for this is that the Board cannot consider the issue until it knows "...what sort of line if any, has been approved by the OGC."

Flow line or Pipeline

A flow line is defined in section 1 of the *Pipeline Act* as follows:

" 'flow line' means a pipeline serving to interconnect wellheads with separators, treaters, dehydrators, field storage tanks or field storage batteries;..."

Section 16(4) of the *Pipeline Act* reads as follows:

Part 3 of the Petroleum and Natural Gas Act, in so far as it is not inconsistent with this Act applies to flow lines and necessary works and undertakings connected with them.

It is Part 3 of the Petroleum and Natural Gas Act which provides for the process of the Board.

There was considerable discussion as to whether the application in this matter relates to a flow line or not. In their written submission Spectra stated that:

"Our proposed operation is clearly a flow line pursuant to the definition presented in the Pipeline Act, since it is a pipeline interconnecting wellheads with a dehydrator, separators and an amine treatment system. This line is being constructed to move raw gas from the field to a treatment plant which includes these facilities."

Spectra demonstrated on a series of plans why they conclude that the proposed line met this criteria. Although Darryl Carter questioned Spectra closely, in my opinion he did not demonstrate that there was any real question as to the characterization of the proposal as a flow line. Accordingly I find that for purposes of this application that the proposal relates to a flow line.

Board Mediation prior to OGC consideration

In his written submission Darryl Carter stated he was relying on Order No. 331M and Order No. 367M with the attached submission "*Reasons why the Mediator should not proceed at this time*". Darryl Carter was counsel for the Respondent at the hearing which resulted in Order No. 367M.

In Order No. 331M the application was “...*for access and to construct, drill and operate a well site*”. Following two mediation sessions the outstanding issue for the Respondent (landowner) was “...*one of locational and operational concerns in regard to impacts on his organic bison operation.*” The mediator stated that “*These are matters that must be addressed by the Land Reserve Commission and the Oil and Gas Commission of British Columbia.*”

The mediator concluded that upon approval of these bodies, and failing agreement by the parties, that she would be willing to hold a “...*final Mediation Hearing to discuss the terms and conditions for a Right-of-Entry Order which will be promptly approved...*”

In Order No. 367M the application was also for “...*access and to construct, drill and operate well sites ...*”. This application concerned coal bed methane. The mediator stated that this was the first time that the Board had considered coal bed methane. The position of the Respondent (landowner) was “...*that the operational issues, particularly the disposal of produced water [was] too great an unknown; and that the operational and location issues associated with the three wells should be known prior to a Right-of-Entry being being issued.*”

The Applicant’s position, in part, was that “...*obtaining a Right-of-Entry would in no way prejudice the Respondent during the OGC well authorization review and approval process.*”

The mediator agreed “...*with Mr. Carter that with respect to **these** Coal Bed Methane Applications, the Well authorizations should issue first.*” The mediator concluded that once the well authorization was obtained from the OGC, and if an agreement had not been signed either party could re-convene the mediation to discuss the terms and condition of a Right-of-Entry Order.

Despite the reference to *the particular* coal bed methane applications in Order 367M, it appears to be accepted by the mediators who made both orders that the OGC would be prepared to consider the circumstances and provide authorizations without a prior Board order for entry. However, I note that in paragraph 8 of Darryl Carter’s submissions for Order 367M that he states that the OGC “...*has decided a company must apply to the Mediation and Arbitration Board first.*” This suggests to me that this was the accepted policy of the OGC at the time.

There was no evidence at the present mediation to explain this apparent discrepancy between the policy and the confidence on the part of the mediators in the above cases that the OGC would deal with issues arising out of an application in the absence of a right to entry.

For purposes of this mediation I am treating the degree to which the OGC will consider the details of an application in the absence of an agreement between the parties or a Board order for entry as being an uncertainty.

Order for Entry

The question remains as to whether the Board has the statutory authority to consider and issue an order for entry prior to the OGC considering an application. In my opinion the answer to this is yes. This is consistent with the process set out in Part 3 of the Act. I refer to Board Orders 402 MA and 403A as to the Board process and matters the Board may consider with respect to an application.

An application is part of a process to enable an applicant to seek access to exploit its undersurface rights.

Should there be an order for entry with respect to this particular application? The Applicant explained why it felt that the southern routing which would require entry on the Respondents' land was most appropriate. The Respondents asked about alternatives and these were discussed.

Although the Respondents raised at least one specific objection to the proposed routing on their property, they believe that there are better alternative routes such that their property would be avoided altogether. Darryl Carter stated that the Respondents did not want to discuss the issues that would arise if there were to be a pipeline on their property, including routing options within their property as their position is that there are better alternative routes. As a result there was no opportunity to consider what might be appropriate terms of entry, if any, or why an order for entry should not be made within the parameters of this application.

Description of lands to which application relates

Darryl Carter raised the issue that correspondence from the Board referred to the NE 1/4 parcel of land but not the NW 1/4 parcel. Spectra stated that they understood that there was no specific objection to the NW1/4. The Respondents did not acknowledge this was the case. I also referred to only one parcel on the facing page of my Order 420PHC. I did this as a form of abbreviation. The application itself refers to both 1/4 sections. I agree with Darryl Carter that it would be best for correspondence and records to refer to all parcels to which the application relates. I am not aware of any prejudice to the Respondents in this instance.

Security

At the conclusion of the mediation hearing both the Respondents and the Applicants indicated that they were not concerned as to the issue of security.

Costs

Darryl Carter stated that he wanted to seek an order for costs. Both parties agreed that this issue would be adjourned. An application for costs may be brought under Rule 25 of the Rules.

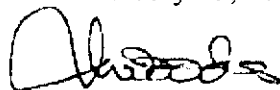
Decision:

The Mediation and Arbitration Board makes the following Order:

1. Under section 18(2)(c) of the *Petroleum and Natural Gas Act*, further mediation is refused.
2. Under section 19(1) of the *Petroleum and Natural Gas Act*, the Applicant is granted the right to enter onto the lands for the purposes of an environmental assessment, an archaeological assessment and construction and operation of a pipeline as sought in the application.
3. Under section 19 (2)(a) of the *Petroleum and Natural Gas Act*, the Applicant must deposit with the Board or the Government of British Columbia, security in the amount of \$0.00 for the purpose of ensuring the Respondents will be paid any amount ordered subsequently to be paid to them.
4. Under section 19 (2)(b) of the *Petroleum and Natural Gas Act*, the Applicant must pay to the Respondents, as partial payment of the amount subsequently ordered by this Board to be paid to the Respondents, the amount of \$0.00.
5. Pursuant to Section 19(2)(c) of the *Petroleum and Natural Gas Act*, the Applicant must serve a copy of this order on the Respondents prior to entry onto the land.
6. The Applicant shall provide the Respondents with reasonable notice before entering onto the lands.
7. Under section 20 of the *Petroleum and Natural Gas Act*, this matter shall proceed to arbitration unless both parties report in writing that they consent to the terms of this order within 30 days of the date of this order.

MEDIATION AND ARBITRATION BOARD
UNDER THE PETROLEUM AND NATURAL GAS ACT

DATED: July 23, 2007



Darrel Woods, Board Member