

File No. 1697
Board Order # 1697-3

June 21, 2011

SURFACE RIGHTS BOARD

**IN THE MATTER OF THE PETROLEUM AND NATURAL GAS
ACT, R.S.B.C., C. 361 AS AMENDED**

AND IN THE MATTER OF

**PARCEL A (P2913) OF SECTION 1 TOWNSHIP 77 RANGE 15
WEST OF THE 6TH MERIDIEN PEACE RIVER DISTRICT**

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

(APPLICANTS)

AND:

EnCana Corporation

(RESPONDENT)

BOARD ORDER

[1] On January 20, 2011, the Board issued Order 1697-1, finding the "Board has jurisdiction to provide mediation and arbitration services in the dispute over renegotiation of the rental provisions in the lease between the Merricks and EnCana".

[2] On February 1, 2011, EnCana asked the Board to reconsider its order pursuant to Rule 17 of the Board's Rules (See Appendix 1). On February 17, 2011, EnCana produced argument supporting its application. The Merricks responded on April 11, 2011.

[3] On May 9, 2011, the parties produced a joint submission. They agree that the result of the Board's Order 1697-1 is correct, but argue the reasons are not. They ask that the Board reconsider the reasons to produce certainty and clarity.

[4] In decision 1697-1 the Board found the effective date of the most recent amendment to the rental agreement is July 19, 2003 based on an agreement between the parties. The parties submit this is incorrect and s.165 determines the effective date. Section 165(7) of the *Petroleum and Natural Gas Act* (Appendix 2) dictates that the effective date of a new rental provision is the anniversary date of the lease that precedes the request for renegotiation, and not any agreement between the parties. Therefore, a party to a surface lease may request a rental review four years after the effective date of each renegotiated rental rate.

[5] In this case, the parties submit that the effective date of the new rate was July 19, 2003 and the Merricks became entitled to request a renegotiation on July 19, 2007. They sent a notice to EnCana on October 19, 2010, and following s.165 any newly ordered or negotiated rental provisions will be retroactive to and effective from the anniversary date of the lease preceding that date, being July 19, 2010.

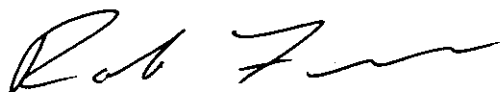
[6] I agree and reconsider the reasons for the Board Order, but confirm the Board's decision that it has jurisdiction in this application for mediation and arbitration. I accept the joint submission that s.165 dictates the effective date regardless of any agreement for retroactive payments made under the amending order. The Merricks requested a renegotiation in March of 2004 and July 19, 2003 was the anniversary date of the lease preceding the request, and therefore the effective date of the renegotiated rent. Although not settled until September 2006, the effective date was July 19, 2003 and, consistent with s.165, the Merricks became entitled to request another renegotiation four years later on July 19, 2007. The Merricks requested renegotiation on October 19, 2010.

[7] The Board has jurisdiction over this dispute and any newly ordered or negotiated rental provision is retroactive to July 19, 2010, which is the

anniversary date of the lease preceding the date of the Merricks' notice to renegotiate.

DATED: June 21, 2011

FOR THE BOARD

A handwritten signature in black ink, appearing to read "Rob Fraser". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Rob Fraser
Vice Chair

Appendix 1

Rule 17 of the Board's Rules of Practice and Procedure:

17. (1) The Board may reconsider an order of the Board and may vary or rescind the order under section 155(1) of the Act if the Board is satisfied that any of the following circumstances exist:
- (a) there has been a change in circumstance since the making of the Board's order;
 - (b) evidence has become available that did not exist or could not have been discovered through the exercise of reasonable diligence at the time of the making of the Board's order;
 - (c) the Board made a jurisdictional error including a breach of the duty of procedural fairness, or a patently unreasonable error of fact, law or exercise of discretion in respect of matters within the Board's jurisdiction.
- (2) An application for reconsideration must be in writing and a copy of the application must be delivered to each other party.
- (3) An application for reconsideration must state the grounds for reconsideration and must include as appropriate, a statement of the change of circumstance since the making of the board order, a summary of any new evidence relied on in support of the reconsideration, and the details of any alleged jurisdictional error.
- (4) The Board may determine the procedures to be followed on a case by case basis in order to determine whether to conduct a reconsideration and how a reconsideration will be conducted.
- (5) A party may only apply once for reconsideration of a Board order because of an alleged jurisdictional error.

Appendix 2

Sections 165 and 166, *Petroleum and Natural Gas Act*:

Negotiation of amendment to surface lease or order

165 (1) This section and section 166 apply despite

- (a) the terms of a surface lease or order containing rental provisions made at any time before or after the coming into force of this section, or
- (b) anything done under the surface lease or order before or after that time.

(2) Subject to subsection (3),

- (a) a right holder who holds a right of entry under a surface lease or order of the board, or
- (b) the landowner whose land is subject to the right of entry

may serve notice on the other party, in the form and manner established by the rules of the board, requiring a negotiation of an amendment to the rental provisions in the surface lease or order.

(3) A notice under subsection (2) may not be served before the 4th anniversary of the later of the following:

- (a) the effective date of the surface lease or order to which the notice relates;
- (b) the effective date of the most recent amendment to the rental provisions in the surface lease or order agreed to by the parties or ordered by the board, if any.

Parties do not agree to amendment of surface lease or order

166 (1) If persons giving and receiving a notice under section 165 (2) do not agree to an amendment of the rental provisions in the surface lease or order to which the notice relates within 60 days after receipt of the notice, either party may apply to the board to resolve the disagreement.