File No. 1697
Board Order # 1697-5

November 28, 2012

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 DISTICT

(The "Lands")

BETWEEN:

George Merrick and Irene Merrick

(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD ORDER

Heard:	July 9 and 10, 2012 in Fort St. John
Appearances:	Leslie J. Mackoff and Ellen S. Hong, Barristers and Solicitors, for the Applicants Thomas R. Owen and Heather Tanaka, Barristers and Solicitors, for the Respondent

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INTRODUCTION

[1] This is an application for review of rent payable under a surface lease with Encana Corporation (Encana). The Landowners, George and Irene Merrick, argue the current rent of $6,000.000 per annum for the use and occupation of 9.61 acres for a well site and access road does not adequately compensate them for their loss of income from the land or for nuisance and disturbance. They submit that Encana's activities on the Lands have frustrated their intent to operate a trail riding business. They ask that the rent be increased to $17,150 annually to compensate them for loss of income from the trail riding business and for both tangible and intangible nuisance and inconvenience from Encana's use and occupation of their Lands. Encana submits the current rent of $6,000.00 per annum adequately compensates the Merricks for their loss arising from the use of their Lands and submits no increase is warranted.

ISSUE

[2] The issue is to determine the appropriate annual rent payable by Encana for their use and occupation of the Merrick's Lands. The effective date of the rent established by this review is July 19, 2010.

FACTS AND EVIDENCE

[3] The Merricks acquired the Lands, comprising 319.03 acres, in the late 1970's. The Merricks farm the lands quite basically. Over the years, they have kept cattle and horses on the Lands. They grow and harvest oats and hay for their own animals. The Merricks adjust the size of their herds depending on market conditions. In the past few years, they have raised feeder calves, but did not purchase feeder calves this year.

[4] The Lands are mostly outside of the Agricultural Land Reserve. The Canadian Land Inventory soil capability rating for the land indicates it is suitable for production of forage crops and grazing of livestock.

[5] The Merricks enjoy trail riding and use the Lands and adjacent Crown land for this purpose. They have built trails, fences and other structures including a "saloon" with a

view to building a trail riding business. They maintain a grazing lease on adjacent Crown land and have built trails on the adjacent Crown land for riding.

[6] The Lands provide habitat for a variety of wildlife including mule deer, white tail deer, elk, bear, geese, ducks and birds.

[7] In July 1997, the Merricks entered into a surface lease with AEC Oil and Gas Co. Ltd. (AEC), the predecessor to Encana, granting access to and use of an area of the Lands for a well site and access road. Part of the area for the access road was a previously existing trail the Merricks used, and from which the Merricks built other trails for riding and snowmobiling.

[8] The original surface lease set the annual rent for AEC's use and occupation of the 9.61 acres required for the well site and access road at $4,200.00.

[9] For the first several years of the lease, there was little activity on the leased area. A well was drilled and a well head installed, but the well was not developed. There was little use of the access road by AEC or Encana, which at the time remained ungravelled. The Merricks continued to use the access road to gain access to adjacent lands, as they were permitted to do under the terms of the surface lease, including use of the access road for riding horses.

[10] The Merricks' residence is on the Lands. The well is not visible from the Merrick's residence nor is it visible from the "saloon". It is visible from various places on the Lands when out horseback riding or snowmobiling.

[11] In or around 2003, the Merricks started advertising a trail riding business. They offered trail rides and wagon rides in the spring, summer and fall, and sleigh rides in the winter. They provided rates for half day and full day trail rides and sleigh rides, and rates for two day trail rides and three day mountain adventures inclusive of meals and camping supplies. Their objective at the time was to develop the business for when they retired. They were not planning an intensive business, but planned to be able to take two to four riders out a couple of days a week from May to September or October. For a half day trail ride with lunch, they charged $100 per person. They hoped to be able to do sleigh rides during the snowy season from late October until March, perhaps a day or two a week, with more frequency during the Christmas season. They charged $50 per person with hot chocolate at the "saloon". The Merricks registered their business with the Tourist Bureau in Dawson Creek. While it is not clear from the evidence just how busy the Merricks were with their trail riding business in the early years, they did have some customers and I find they did, in fact, operate a small trail riding business. I have no evidence, however, of the income the Merricks actually received from this business.

[12] In or around 2004 and into 2005, Encana started to increase its operations on the Lands. They brought in a service rig and developed the well. A pipeline was constructed on the Lands. Encana began to use the access road more frequently, and in 2005, the access road was graveled.

[13] The well is classified as a sweet gas well but does have sour gas content of up to 400 parts per million. It has always been a poor producer, and is presently suspended although the evidence is not clear as to when it became suspended. The Emergency Planning Zone for this well is 11 metres. Encana personnel visit the well site to do a visual inspection about five times per month, accessing the well site in a pick up truck and spending approximately 10-15 minutes on site.

[14] There is a blue light installed on one of Encana's structures located on the well site that is intended to flash when there is a problem. The Merricks have observed the flashing blue light on three occasions. They reported the flashing light to the Hythe Gas Plant or the Oil and Gas Commission and were advised "everything was ok". There have been no incidents at this well site requiring evacuation.

[15] In 2006, Mr. Merrick underwent back surgery to alleviate a deteriorating condition from an old injury. He initially recovered from this surgery before his condition deteriorated again requiring further surgery in 2008. At present, Mr. Merrick is able to ride a horse. He is not comfortable sitting in a car for extended periods and does not snowmobile.

[16] In 2006, the Merricks and Encana signed a rent renewal agreement increasing the annual rent for Encana's use and occupation of the Lands to $6,000.00 retroactive to 2003. At the time the rent was renegotiated, the Merricks were operating their trail riding business.

[17] In 2008, some Encana installations in the area surrounding the Lands were targeted by one or more persons placing bombs at the sites. These incidents, which were widely reported in the media, resulted in a high level of police activity in the area and a high level of anxiety amongst persons living in the area, including the Merricks.

[18] Encana graveled the access road again in 2010. The gravel used on the access road contains large stones that do not provide a suitable surface on which to ride horses. Mrs. Merrick blames the gravelling of the road on the loss of the trail riding business. Mrs. Merrick's evidence was that shoeing the horses for the gravel road would have to be done about every six weeks and is expensive. But, in her view, shoeing the horses would not solve the problem as she says the gravel road takes away from the experience. She says clients want to ride on a trail that is more rustic.

[19] The Merricks have had issues with weed control both on and off the lease area since the well was developed. Detrimental weeds on the property include stinkweed and foxtail. In the past, the Merricks have spent time spraying weeds resulting in a compensation claim for time and expenses incurred by them for weed control. Mrs. Merrick has been highly critical of Encana's efforts at weed control and their response to her concerns about weeds on the Lands. In 2010, Encana hired Jennifer Critcher, a Vegetation Advisor, who has been working closely with the Merricks in an effort to deal with the weeds. Mrs. Merrick was not satisfied with Encana's weed control efforts in

2011, but agreed things were going better in 2012. Encana has not received any complaints from Mrs. Merrick with respect to weed control in 2012.

[20] Encana developed a Vegetation Management Document and Pest Management document in 2011. Jennifer Critcher's evidence was that she treats this site as a high priority site, and while she expressed confidence that weeds were now being effectively managed, agreed that previously Encana did not have a proper weed management program in place and she was not confident that in the past the work was being done properly. I find that prior to 2011, while providing some compensation to the Merricks to compensate them for their own expenses related to weed control, Encana was not meeting their responsibility under the surface lease for weed control of the leased area.

[21] Encana plows the access road in the winter, frequently leaving drifts across the trails that lead off the access road restricting access to other parts of the Lands and making it difficult to open or close gates. The plowing occasionally damages fences and gates. The drifts left by the snowplow make it difficult to access fields to feed the animals and make it difficult to access trails with the snowmobile. The Merricks have spent time and effort digging access where required. Mr. Blazevic's evidence, on behalf of Encana, was that Encana had not received any complaints from the Merricks with respect to plowing or any requests for crossings. He indicated Encana would make crossings if requested. I find that Encana's plowing of the access road has typically been done without regard to the effect of the plowing on the Merricks and their use of the Lands. I also find, however, that the Merricks have not consistently brought their concerns about plowing to Encana's attention.

[22] Encana has posted signs on the Lands advising Encana personnel the "Gates are to be left as found". I accept Mrs. Merrick's evidence that often Encana personnel or their contractors do not leave gates as found, often leaving them open if found closed, or closing them if found open. The Merricks find it inconvenient to have gates locked, but also have concerns about security and the number of people who are able to access the Lands via the access road.

[23] Occasionally, trespassers access the Lands via the access road with dirt bikes or quads.

[24] Encana provided compensation to the Merricks in 2002 for erosion damage attributed to Encana's activities. Encana has not received any claims for erosion damage or requests to fix erosion issues in recent years.

[25] Both parties provided me with evidence of other leases. The Merricks leases involve various operators and range in time from 2001 to 2011 and in per acre rate from approximately $899/acre to $1,550/acre, with an average rate of approximately $1,040/acre. None are in the same township as the Lands and no evidence was provided as to the relative comparability of any of the other leased lands to the Lands in terms of soil capability, actual use, level of the operator's activity, or impact on the landowner. The leases provided by Encana, some of which are Encana leases and some of which are not, range in time from 2008 to 2012 and in per acre rate from

approximately $450/acre to $977/acre, with an average rate of approximately $697/acre. With one exception, they are all in Township 77, as are the Lands. Some evidence is provided as to land use and the number of wells at each location, with the majority of lease sites having more than one well flowing.

Opinion Evidence

[26] The Board heard evidence from Todd Dalke and Rob Telford, both appraisers accredited by the Appraisal Institute of Canada. Neither provided an appraisal of the Lands. Both provided an opinion of the compensation payable as annual rent to the Merricks arising from Encana's use and occupation of the Lands. I permitted both witnesses to provide these opinions and marked their reports as exhibits. In reviewing the evidence of both witnesses, however, I have significant reservations both with respect to the qualifications of the witnesses to provide the opinions expressed and with respect to the appropriateness of the Board accepting opinion evidence of this nature at all.

[27] Mr. Telford is a qualified real estate appraiser. He is also a Professional Landman and licensed land agent in the Province of Alberta. His resumé lists various other professional qualifications, not all of which are relevant to the opinions expressed. The report is laid out like an appraisal report as required by the Canadian Uniform Standards for Professional Appraisal Practice (CUSPAP) adopted by the Appraisal Institute of Canada. The report is not an appraisal, however, and does not provide an opinion of the value of property, which is the type of opinion that qualified appraisers may provide and for which CUSPAP is intended to govern. It is an opinion of the compensation payable, not an opinion appraisers *per se* are qualified to give.

[28] As a Professional Landman, Mr. Telford has experience with the negotiation of surface leases in British Columbia, Alberta and other places, as well as experience with rent reviews. He may be qualified to provide an opinion as to what he thinks the appropriate rent payable under a surface lease may be as a result of this experience. However, an opinion of this nature is an opinion on the very issue that the Board must determine and encroaches on the very analysis required of the Board. While the supporting evidence in the report may be relevant and of some assistance to the Board, the opinion of appropriate compensation itself is superfluous.

[29] Mr. Dalke is also a qualified appraiser. He, likewise, prepared a report in the style of an appraisal report and purporting to address the CUSPAP requirements. His report does provide an opinion of value for the Lands although that is not the express purpose of the report, nor does it conform in that regard to the CUSPAP requirements. His opinion of compensation is expressed as a percentage of what he determines to be the value of the Lands. Mr. Dalke's qualifications to provide an opinion on compensation arise from having "looked at annual rents since 1997" and having "reviewed approximately 2,000 annual rent reviews". From this "review", he determined a pattern that compensation tended to be approximately 80% of land value. While Mr. Dalke may very well be able to express this observation from his review of 2,000 surface leases, I have reservations that he is properly qualified as an expert in compensation payable for

surface access. But in any event, as with Mr. Telford's opinion, Mr. Dalke's opinion as to the appropriate level of compensation payable as annual rent under this surface lease is the very matter on which the Board must make a determination, and is superfluous.

[30] As to the substantive content of each report, Mr. Telford takes the traditional approach of estimating crop loss to compensate for loss of income, although the leased area was not used for crops. Mr. Dalke takes a novel approach of equating compensation for loss to a percentage of the value of the land. Neither report considers the actual impact of Encana's use and occupation of the Lands to the Lands or to the Merricks, and neither report takes account of the Merricks' actual use of the Lands or purports to quantify their actual loss. I give no weight to the opinions of either Mr. Telford or Mr. Dalke and find the supporting evidence contained in each report of little assistance in estimating the Merricks' actual continued loss arising from Encana's use of the Lands.

ANALYSIS

[31] Section 154(1) of the *Petroleum and Natural Gas Act* (*PNGA*) lists the various factors the Board may consider in determining an amount to be paid periodically or otherwise. The enumerated items include:

(a) the compulsory aspect of the entry;
(b) the value of the applicable land;
(c) a person's loss of right or profit with respect to the land;
(d) temporary and permanent damage from the right of entry;
(e) compensation for severance;
(f) compensation for nuisance and disturbance from the right of entry;
(g) the effect, if any of other rights of entry with respect to the land;
(h) money previously paid for entry, occupation or use;
(i) the terms of any surface lease or agreement submitted to the Board or to which the Board has access;
(j) previous orders of the Board;
(k) other factors the Board considers applicable;
(l) other factors or criteria established by regulation.

[32] Not all of the above factors will be relevant in every case or in the determination of annual compensation as opposed to initial compensation for an entry. There are no factors or criteria established by regulation.

[33] Section 154(2) of the *PNGA* further provides that in determining an amount to be paid on a rent review application, the Board must consider any change in the value of money and of land since the date the surface lease was originally granted or last renewed.

[34] The purpose of a rental payment is to address the immediate and ongoing impact of an operator's activity on private land to the landowner and to the lands (*Dalgliesh v.*

Worldwide Energy Company Ltd (1970) 75 W.W.R. 516 (Sask DC)). The rental payment must be based on actual or reasonably probable loss or damage caused by the operator's entry on and use of the lands. In an application for rent review, any revised rent is payable for the period following the effective date, not for past losses. In determining a revised annual rent with reference to actual loss and on consideration of the relevant factors, an analysis of probable future use of the land and probable future losses must be undertaken (*Canadian Natural Resources Ltd. v. Bennett, et al*, 2008 ABQB 19).

[35] Following consideration of the various factors, the Board must step back and consider whether the award in its totality gives proper compensation, as there may be cases where the sum of the parts exceeds, or where the sum of the parts falls short of proper compensation (*Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No. 1430 (BCSC)).

[36] The Merricks' claim for revised annual rent is based principally on consideration of loss of profit and compensation for tangible and intangible losses associated with nuisance and disturbance. These are the two factors most relevant to a determination of immediate and ongoing loss in this case, and the two factors addressed by the bulk of the evidence before me.

Loss of profit

[37] The Merricks claim that Encana's use and occupation of the Lands has caused them to have to discontinue the trail riding business, resulting in loss of income. On the basis of Mrs. Merrick's evidence of intent to operate the trail riding business a couple of days a week for a season of 16-20 weeks, counsel estimated gross income of $12,000 - $25,600 annually for a 16-week season. He estimated expenses of $12,000 based on $500 for advertising, $3,000 for liability insurance, $6,000 for shoeing of horses, $1,500 for lunches, and $1,000 for administration and overhead, resulting in an estimated net income of $13,600. He further suggested discounting this figure by 25% to account for bad weather, thus arguing $10,200 was a reasonable claim for loss of income.

[38] Encana argues that the loss of the trail riding business is not attributable to Encana's use and occupation of the Lands, but to Mr. Merrick's back problems. In any event, Encana argues there is no evidence that the Merricks actually made any profit from the trail riding business, and no evidence upon which to estimate probable loss of income.

[39] I accept Mrs. Merrick's evidence that she and Mr. Merrick intended to operate a trail riding business into their retirement. I accept that they invested considerable effort into building the trails on their property for the purpose of a trail riding business. I further accept that they did, in fact, operate a modest trail riding business commencing in or around 2003 until at least sometime in 2006, and that at the time of the last rent renewal in 2006 they were operating a modest trail riding business. I accept Mrs. Merrick's evidence that gravelling of the access road impacted the trail riding business in that it not only required shoeing of the horses, but it also affected the experience of

the trail ride making riding less pleasant than on an ungravelled trail. I find that Encana's activities, in particular the gravelling of the road, contributed to the decline of the trail riding business. While I accept it is likely that Mr. Merrick's back surgery in 2006 and again in 2008 also affected at least his ability to participate in a trail riding business, I do not accept Mr. Merrick's condition was the sole contributing factor to the business' decline. I accept Mrs. Merrick's uncontroverted evidence that Mr. Merrick is now capable of trail riding. I also accept her evidence that the large gravel used on the access road makes the road unsuitable for riding horses, and will make it difficult, if not impossible, to rebuild a trail riding business in the future.

[40] While I have found that Encana's use and occupation of the Lands contributed to and continues to contribute to the Merricks' inability to operate a trail riding business on the Lands, and that there should therefore be some compensation for that loss, I have little in the way of evidence with which to estimate actual or probable future loss of profit. While I have evidence of what the Merricks charged for trail rides and of what other businesses currently charge, I have no evidence of the actual income earned by the Merricks' trail riding business. Nor do I have any evidence to support counsel's estimates of likely expenses and estimated net income.

[41] I have no records of income and expenses for income tax purposes, nor any records for the purpose of charging and remitting goods and services tax or harmonized sales tax. It is possible the income was so modest that it fell below taxable income thresholds or thresholds for charging goods and services tax, and records were not kept for that reason. It is also possible that, if records were kept, they have been lost or destroyed given the passage of time. While I accept the Merricks likely received some modest income from their trail riding business, I have insufficient evidence before me to determine how much income was earned or with which to estimate probable future loss of income.

[42] While in principle, I accept that loss of profit is not limited to an estimate of crop loss, but may include a claim for other business loss attributable to a right of entry, where a claim for specific business losses are made, it is incumbent upon a landowner not only to substantiate that the loss is attributable to the right of entry, but to substantiate the income or profit earned. In the absence of evidence upon which to calculate actual loss of profit or estimate probable future loss of profit, any estimate is simply speculative.

[43] In the absence of evidence of actual loss of profit, the Board will often estimate loss on the basis of potential agricultural production loss. The evidence is that the soil capability of the Lands is for the raising of forage crops or grazing of livestock. Mr. Telford provides evidence that rental rates for pasture in the vicinity range from $15.00 to $35.00 acre. His evidence is that if used for growing hay, the yield would range from 1.5 to 2.0 tonnes per acre with a range of $65.00 to $90.00 per tonne. Two tonnes per acre at $90.00/tonne would produce a gross yield of $180.00 per acre.

[44] The only other evidence of loss of profit before me is the Merricks' acceptance of $250 per acre for this factor for the 2006 rent renewal. At the time, the Merricks were

operating the trail riding business. I find this is the best evidence of the Merricks' actual loss of profit as of 2006. Assuming, but for Encana's use and occupation of the Lands, that the Merricks could expect a similar level of profit in 2010, and adjusting for inflation from 2006 to 2010 by 6.02% based on the Bank of Canada Inflation Calculator provided in the Merricks' document brief, I estimate loss of profit at approximately $265/acre, say $2,550 for 9.61 acres.

Nuisance and Disturbance

[45] The Board can consider whether compensation for both tangible and intangible nuisance and disturbance is appropriate. Nuisance and disturbance is "tangible" if it lends itself readily to some sort of objective quantification, such as for the time incurred by the landowner attributable to the right of entry. Such time might include extra time required to work a field because of an installation, time incurred by the landowner in communicating issues to the operator such as complaints about weeds, damage or noise, or time spent in negotiating periodic rent reviews. Nuisance and disturbance is "intangible" if its effect on the landowner is not readily capable of objective quantification, such as additional stress caused by the right of entry, or the effect of noise, traffic or dust. The tangible and intangible components of nuisance and disturbance may be difficult to separate. As was said in *CNRL v. Bennett, supra*, in its discussion of compensation for adverse effect in the Alberta context,

> "while there may be tangible and intangible components to adverse effect, they cannot be completely divorced from one another. For example while there is a quantifiable equipment cost to working over a piece of land two or more times, simultaneously, there is added stress on the operator to ensure that he or she does not hit any of the structures on the well site. Simultaneous with the extra caution being taken with each extra pass, there is extra time being expended."

[46] The Merricks claim $3,950 for tangible nuisance and disturbance. This claim is based on Mrs. Merrick's estimate that they have spent: approximately 30 hours at $50/hour per season on weed control including checking, phoning Encana, burning, and spraying; approximately 25 hours at $50/hour per season monitoring the coming and going of people on their Lands; and approximately 12 hours for man and machine time at $100/hour in the winter to create access for livestock because of Encana's plowing of the access road ((30 x $50) + (25 x $50) + (12 x $100) = $3,950).

[47] The Merricks claim $3,000 for intangible nuisance and disturbance based on the decision of the Alberta Surface Rights Board in *Progress Energy Ltd. v. Wilkins*, Decision 2010/0410 determining $3,000 to be an appropriate rate of compensation for adverse effect, noise, nuisance and inconvenience in circumstances counsel argued were at least as serious. In that case, the panel determined an amount approximately 20% above comparable leases paying the highest amounts for adverse effect was appropriate because of the amount of activity associated with the well site, its proximity to the landowner's residence, the increased amount of traffic associated with the active nature of the operations, and the significant noise from a gas powered pump jack.

[48] I accept that, up until 2012, the Merricks have spent considerable amounts of their own time with weed control. I further accept Ms. Critcher's evidence that Encana now treats this site as a high priority, and supported by the evidence that there were no complaints from the Merricks in 2012 that, going forward, it is probable that the Merricks will not have to spend as much time as in the past dealing with weeds. On the basis that 30 hours per season was required for 2010 and 2011, and estimating that only 5 hours per season will be required for the following two years, I find compensation based on an average of 10 hours per season for the four years commencing in 2010 is appropriate.

[49] I accept Mrs. Merrick's evidence that she and Mr. Merrick spend considerable time worrying about who is coming and going on their property, and checking whether persons gaining access to the Lands via the access road are Encana personnel or trespassers. I accept that trespassers occasionally gain access to the Lands via the access road causing stress and inconvenience to the Merricks. I further accept that Encana has not lived up to its agreement to "leave gates as found" also causing additional stress and inconvenience to the Merricks. It is probable that the Merricks will continue to experience nuisance and disturbance of this nature going forward. I find Mrs. Merrick's estimate that approximately 25 hours a season is consumed in checking whether persons using the access road are trespassers is appropriate for estimating the Merricks' time in dealing with tangible nuisance and disturbance associated with the surface lease issues (other than weeds or snowplowing), including time spent monitoring for trespassers.

[50] I accept that in plowing the access road in the winter, Encana has not been attentive to the Merricks' need to use the road to gain access to other parts of the Lands, in particular to attend to their animals. The surface lease provides that the Merricks may use the access road to gain access to adjacent lands, but in maintaining the road, Encana has not given due regard to the impact of that maintenance on the Merricks' use of the road. I accept that the Merricks have incurred time and expense in having to ensure their continued ability to use the road to access adjacent lands, and time and expense in occasionally repairing damage to gates or fences caused by the plowing of the road, and will likely have to continue to expend time and energy dealing with issues caused by the plowing of the road. I find compensation for nuisance and disturbance based on Mrs. Merrick's evidence estimating 12 hours per season of man and machine time is appropriate.

[51] The calculations above suggest $2,950 as an appropriate amount for tangible nuisance and disturbance. To this amount, I accept that an additional amount should be added for intangible nuisance and disturbance arising from Encana's use and occupation of the Lands, including recognition of stress and anxiety, disturbance from traffic, and the general loss of the Merricks' ability to simply use and enjoy the Lands as they would like to. Compensation for these factors is incapable of calculation, but is an exercise of judgment and discretion in the particular circumstances of a case. In the circumstances of this case, I find compensation for nuisance and disturbance should include $2,000 in recognition of intangible factors.

Stepping back to determine Global Sum

[52] My analysis of the compensation factors relevant to this case results in the following "sum of parts":

Factor	**Annual amount**
Loss of profit	$2,550.00
Nuisance and disturbance (tangible)	$2,950.00
Nuisance and disturbance (intangible)	$2,000.00
Sum of parts	**$7,500.00**

[53] An award of $7,500.00 equates to approximately $780/acre. This amount is considerably below the average in the leases provided by the Merricks, but well within the range of the leases provided by Encana. While other leases are a factor the Board may consider under section 154 of the *PNGA*, on the whole, I find consideration of other leases generally unhelpful to an analysis of loss in a particular case. First, other leases generally say nothing about the actual loss experienced in the case in issue, and it is the actual loss experienced for which compensation is payable. Second, in the absence of evidence with which to compare the circumstances involved in the other agreements to the circumstances in issue, and without any understanding of the particular losses compensated for in any particular case, the other leases do little to assist with determining appropriate compensation in the case in issue. At best, an array of leases without sufficient detail to enable a comparative analysis can only provide a check as to whether a determination of appropriate compensation in the case in issue falls within or outside of the compensation range agreed to in other cases.

[54] On the evidence before me, I am satisfied that $7,500.00 is an appropriate annual rent to compensate the Merrick's for their losses arising from Encana's use and occupation of the Lands for the current rent review period.

ORDER

[55] The Surface Rights Board orders that the annual rent payable by Encana Corporation to George and Irene Merrick for Encana's use and occupation of a portion of the Lands for a well site and access road be amended to $7,500.00 effective July 19, 2010. Encana Corporation shall forthwith pay to George and Irene Merrick any difference in annual rent paid since July 19, 2010 and the revised annual rent effective July 19, 2010.

DATED: November 28, 2012

FOR THE BOARD

Cheryl Vickers, Chair