

File Nos. 1714 and 1812
Board Order No. 1714/1812-1

March 12, 2014

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

THE FRACTIONAL SOUTH EAST $\frac{1}{4}$ OF SECTION 2 TOWNSHIP 78 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(the Lands)

BETWEEN:

Murphy Oil Company Ltd.

(APPLICANT)

AND:

Marilyn Gross

(RESPONDENT)

BOARD ORDER

[1] This is an application by the landowner, Marilyn Gross, for advance costs to assist with the retainer of expert witnesses and counsel to participate in an arbitration hearing.

[2] The arbitration, scheduled for March 26 and 27, 2014 is to determine the compensation payable by Murphy Oil Company Ltd (Murphy Oil) to Marilyn Gross for its use and occupation of the lands to drill and operate two additional wells on an existing lease, and to review and determine the rent payable under the lease. In June 2013, following unsuccessful mediation, the Board refused further mediation and referred the disputes to arbitration. By Order dated September 3, 2013, the Board scheduled the arbitration for March 26 and 27, 2014 and set dates for the production of expert reports and documentary evidence to be relied on at the arbitration. The Board ordered Murphy Oil to produce its documents and reports by March 5, 2014, the landowner to produce her documents and reports by March 12, 2014, and Murphy Oil to produce any documents in response by March 19, 2014.

[3] On February 19, 2014, Murphy Oil sought to adjourn the arbitration and use the scheduled dates to continue mediation. The landowner did not consent. On February 25, 2014, Murphy sought to adjourn the arbitration to a date in April. The landowner's counsel opposed the request for adjournment on the grounds that the hearing date had been scheduled for a long time and his client would not next be available until August. The Board denied the adjournment.

[4] On March 3, 2014, six months after the Board's Order scheduling the arbitration, and less than 10 days before the date established for the production of the Appellant's evidence, Ms. Ellen Gross, on behalf of the landowner, made this application for advance costs. She submits she will require an appraisal and several assessments done by experts in the field of land value, damage, and loss on investment, and estimates her costs as follows:

Lawyer for the 2 day hearing	\$10,000 (Approx 25 hours)
Lawyer travel to/from Dawson each day	\$ 560 (1040 kms @ .54)
Appraisal	\$2500 - \$5000

[5] Ellen Gross submits the landowner is a pensioner with a limited income and that she is finding it difficult to come up with the funds to cover the anticipated costs. Murphy Oil opposes the application.

[6] Section 169 of the *Petroleum and Natural Gas Act* gives the Board the discretion to order an operator to pay to a landowner as advance costs all or part of the amount the Board anticipates will ultimately be awarded to the landowner for their costs. The purpose of the advance costs provision is to ensure the effective participation of landholders and the provisions are intended to be used by the Board for that purpose (*CNRL v. Kerr*, Order 1715-2, and *Encana Corporation v. 507788 British Columbia Ltd., et al*, Order 1734/35-3).

[7] In *CNRL v. Kerr*, the Board identified several factors that it found relevant to exercising its discretion to make an award of advance costs. These factors included: the compulsory aspect of the application, the personal and financial circumstances of the landholder, the fact that the landholder sought to advance novel arguments the Board had not previously had the opportunity to consider and the apparent need for expert evidence to support his case, the fact that the landowner had not received any amount on account of his costs of the Board's mediation process, and that there was no suggestion an award of advance costs would pose an unfair burden on the operator.

[8] Some of these factors exist in this case. The claim for compensation arises in a right of entry context. I am told the landowner's financial circumstances are modest and that she will incur financial difficulty in advancing her case. However, while the applications may require expert evidence, they do not raise novel issues, and the landowner has received an amount for costs of the mediation process. The factor that significantly weighs against the landowner in this case, however, is that an award of advance costs, at this time, would be highly prejudicial to the operator.

[9] This application comes far too late in the process. If an award of advance costs is necessary to ensure a landowner's effective participation in the process, that application must be made early on. The landowner could have and should have made this application early on when the arbitration was scheduled and the dates for the production of expert evidence set.

[10] If the landowner had not retained experts as of March 3, when the application was made, an award of advance costs would not assist with the preparation of expert evidence to be filed by March 12, 2014. In order to enable sufficient time for the expert opinions to be prepared, the arbitration would have to be adjourned. The landowner opposed Murphy's recent request for an adjournment indicating she wished to proceed. In the circumstances, requiring Murphy Oil to provide advance costs to assist with the preparation of expert evidence, necessitating adjournment, would be highly prejudicial.

[11] If experts have been retained such that the landowner can file expert evidence by March 12, then the advance costs were not required to ensure her participation. The Board can consider whether the landowner should recover all or part of her costs once a decision on the arbitration has been issued.

[12] The application for advance costs is dismissed.

DATED: March 12, 2014

FOR THE BOARD



Cheryl Vickers
Chair