File No. 1747
Board Order No. 1747-2

August 27, 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
NORTH EAST ¼ OF SECTION 10 TOWNSHIP 78 RANGE 16 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Jay London and Keir London

(APPLICANTS)

AND:

Encana Corporation

(RESPONDENT)

BOARD DECISION

Heard: June 25 and 26, 2014 in Dawson Creek
Appearances: Elvin Gowman and Jay London, for the Applicants
Tom Owen and Shannon Carter, Barristers and Solicitors, for the Respondent

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INTRODUCTION

[1] Mr. and Mrs. London seek a review of the annual rent payable under a surface lease with Encana Corporation (Encana). The lease of 9.71 acres for an access road and well site was originally executed on February 19, 2007 and provides for payment of annual rent of $5,000. The Londons seek rent of $1,500/acre, or $14,565 annually. Encana submits the current rent of $5,000 is appropriate and that no increase is warranted.

[2] The effective date for this review is February 19, 2011.

ISSUE

[3] The issue is to determine the appropriate annual rent under the surface lease for the period commencing February 19, 2011.

PRELIMINARY ISSUE

[4] In their Book of Documents filed in advance of the arbitration, the Applicants included at Tabs 13 and 15, two decisions of the Board as evidence of comparable lease payments. Encana sought to have these decisions ruled inadmissible as evidence. The Book of Documents included a section entitled "Authorities" providing copies of three additional decisions of the Board. I made the following ruling respecting the inclusion of Tabs 13 and 15:

> Section 40 of the *Administrative Tribunals Act* (which applies to the Board) provides that the tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. Section 154(j) of the *Petroleum and Natural Gas Act* expressly allows the Board to consider previous orders of the Board in determining compensation. Consequently, whether the Board's decisions at Tabs 13 and 15 remain in the "Evidence" section of the Book of Documents or are moved to the "Authorities" section, and used as such, does not really make much difference. The Board's decisions may be considered; it is really just an issue of how they considered and what use is made of them

Board decisions are not evidence of the facts set out in the decision. If that is the purpose of their inclusion with the evidence, then they may not be used in that way. Board decisions may be used as authority for a particular conclusion in light of certain facts. If a subsequent case has the same facts, as proven by the evidence in that case, it is open to a party to argue that the same result should apply. If the facts of another case are different, it is open to a party to argue that the conclusion reached in another case should not apply because the cases are distinguishable on their facts

For the conclusion in another case to be persuasive, the Board needs evidence that the circumstances of the case at hand are the same or highly similar and even then a previous decision does not create a binding precedent and is not binding on another member of the Board hearing a different case.

Technically speaking, the decisions at Tabs 13 and 15 are not evidence and should probably be moved. However, I do not think the proceedings of this Board should be unduly legalistic. It is not uncommon for parties to include a combination of evidence and argument in their briefs of documents.

Whether Tabs 13 and 15 are left where they are in the Applicants' Book of Documents or moved to the section of "Authorities", I will consider them in determining compensation in this case as I am permitted to do by section 154(j) of the *Act*. I will consider them not as evidence of the facts set out, but as authority for the conclusions reached. But a conclusion as to loss sustained by one landowner, is not evidence of the loss of another and does not prove the loss of another. Each case must be determined on its own evidence.

[5] With the exception of the document at Tab 14c that I found to be inadmissible, and with the addition of the document added at 17(b), I marked the Applicants' Book of Documents in its entirety as Exhibit 1.

FACTS

[6] Mr. and Mrs. London are the owners of the North East ¼ of Section 10 Township 78 Range 78 West of the 6th Meridian Peace River District (the Lands). The Lands are located on the south side of Road #208 (the old Hart Highway), 7.2 kms west of Dawson Creek. The Londons chose these Lands because of its creeks, wildlife diversity, and grass growing ability. The Londons, and their family, live on the Lands and they use the Lands for hay and cattle, although farming and ranching are not their principle livelihood, but more of a way of life. The Londons' residence is located in the northeast quarter of the Lands.

[7] A creek traverses the Lands in a generally northeasterly direction from the western boundary just north of the well site and joins the South Dawson Creek in the northeast corner of the Lands.

[8] The well site comprises 6.10 acres and is located in the southwest quarter of the Lands. The well site area is rectangular with the west boundary along the west property line of the Lands. The access road of 3.61 acres extends from the north boundary along the west side of the Lands, not quite along the actual boundary of the Lands, slivering off a severed area of .59 acres between the property line and the access road, north of the creek, meeting up with the property line just south of the creek. The severed area is treed. The access road is gated at the entrance to the old Hart Highway and at the entrance to the well site, and the access road is fenced on both sides with gates at two locations along it. The well site is mostly surrounded by a berm.

[9] The well has never produced and is shut in. Encana has no plans to bring the well into production and no plans to add additional wells to the site or to develop the well as a water well. Encana personnel visit the well site four times a year, three times for weed control and once for surface casing testing. In accessing the site for weed control, personnel use a pick up truck, an ATV, a tractor and a mower. In accessing the site for casing testing, personnel use a pick up truck. Annually, Encana personnel spend eight to ten hours in total at the site.

[10] Although Mr. London has had as many as 300 to 400 head of cattle at one time, currently he has 25 cow/calf pairs. In 2011 and 2012, there were no cattle on the Lands. In October of 2013, Mr. London brought 25 head of cattle onto the Lands. Those cattle calved in the spring of 2014. Mr. London plans to purchase another 25 head in the next couple of months, and hopes to build up his herd again over time. Mr. London hayed in 2011 and 2012, stockpiling the bales for forage.

[11] Mr. London practices what he calls "mob grazing" or intensive management grazing, which involves allowing the cattle to run around, eat and trample a 10 acre area, then moving them into another 10 acre area. There are eight 10 acre areas that the cattle rotate through on the Lands including the hay field itself. Mr. London wants the cattle to eat 1/3 of the grass and tromp 2/3 of it into the ground. This practice allows for the accumulation of dry matter on the ground, which lengthens the growing season and allows for the tromping of seeds into the earth, assisting with the rejuvenation of the land.

[12] Mr. London's haying operation involves cutting, baling and taking the bales off. He does not seed or spray.

[13] A couple or so years ago (possibly 2011, but Mr. London was not sure of the exact year), the well site flooded beyond the top of the wellhead. Without consultation with Mr. London or prior contact, Encana personnel broke the berm on the north side of the well site allowing the accumulated water and debris to flood into Mr. London's pasture.

Mr. London did not make a claim for damages. He put out hay bales to stem the water and did not claim compensation from Encana for his time, the lost hay or use of the tractor. The berm has remained open ever since. In a rainy year, water runs from the well site area onto the pasture, and eventually into the creek. Mr. London puts out hay bales to stem the water.

[14] In June 2012, the parties met to discuss various issues raised by Mr. London and agreed to various actions and compensation amounts as a result. In July 2014, Encana paid the Londons $15,000.00 for the installation and maintenance of trees to provide a visual buffer between the residence and the well site, $12,900.00 for the installation and reclamation of the livestock watering system and $2,924.00 for the pipe needed for this system, $5,000.00 for time spent dealing with various concerns, and $4,000.00 for time spent and materials used to deal with off-lease weed issues. Encana agreed to provide an additional $1,400.00 annually in each of 2012, 2013, 2014 and 2015 to assist with managing off-lease weeds. Encana replaced a gate along the east side of the access road, installed a culvert on the road leading to the barn and replaced another culvert near 208 Road, and graveled some access into the field. Encana replaced some fencing along the west side of the borrow pit.

EVIDENCE AND ANALYSIS

Principles of Compensation

[15] Section 154 of the *Petroleum and Natural Gas Act* sets out the factors the Board may consider in determining compensation or annual rent. They include:

(a) the compulsory aspect of the right of entry;
(b) the value of the applicable land;
(c) a person's loss of a 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 one or more 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.

[16] Additionally, in determining annual rent on a rent review, the Board must consider any change in the value of money and of land since the date the surface lease was originally or last granted.

[17] Following consideration of the various factors set out in the legislation, 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)).

[18] 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 is to compensate for actual or reasonably probable loss or damage caused by an operator's continuing 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).

[19] The onus is on the applicants in a rent review application, in this case the Londons, to establish their ongoing prospective losses and to establish that any increase in the annual rent is warranted (*Progress Energy Canada Ltd. v. Salustro*, 2014 BCSC 960).

[20] I now turn to a consideration of the various factors set out in section 154 of the *Petroleum and Natural Gas Act* relevant to this application

Compulsory Aspect of the Entry

[21] The evidence is that compensation for the compulsory aspect of the entry was included in the initial payment to the Londons for this lease. Nevertheless, I accept that continuing use and occupation of private land for an oil and gas activity remains compulsory until terminated in accordance with legislative provisions. Where a right of entry has been exercised, a landowner does not have the power to terminate that relationship or to oppose the assignment of a right of entry to another operator. I accept that renewed rent may reflect this ongoing compulsory relationship.

Value of the Land

[22] I have no evidence of the value of the Lands as of the rent renegotiation date. In any event, the evidence is that compensation for the value of the Land was included in the initial payment to the Londons for this lease. On a rent review, the Board is required to consider any change to the value of the land.

[23] Mr. Hoover suggests an increase of 20% in the value of land in the area from 2007 to 2011 based on the average selling price in 2006/2007 and the average price in 2010/2011 and statistics from Farm Credit Canada. All this evidence suggests is that

on average the market value of land in the area increased 20% between 2007 and 2011. It says nothing about the value of these Lands or the change in the value of these Lands, either up or down, over time or as a result of the lease.

[24] The Londons' Book of Documents includes a sales chart of vacant land sales with BC Assessment data. The sales chart includes three sales at approximately $1,500/acre in 2008 and four sales in 2012 with prices ranging from approximately $1,400/acre to $2,700/acre. No witness spoke to this information and there is no explanation or analysis of it. Consequently, these documents have no evidentiary value and I give them no weight. The Book of Documents also includes a chart of improved sales also without explanation or analysis. I do not see the relevance of this information and likewise give it no weight.

Loss of Right or Profit

[25] The presence of the lease means the landowner no longer has the right to use the leased area for his own purposes, and loses any income or potential income from use of the leased area.

[26] Mr. London's evidence is that the presence of the lease "screws up" his grazing as it removes 9.7 acres from the grazing rotation. Mr. London's evidence is that 9.7 acres would produce enough feed to support 22 or 23 head of cattle. On the basis of an average weight of 550 pounds market weight per calf at $2.30/pound, he estimates his potential loss of income from cattle as a result of the presence of the lease at $27,830 annually (22 calves x 550 pounds x $2.30 = $27,830).

[27] The Londons did not have cattle on the Lands as of the relevant date for renegotiation of this lease. Further, their decision to limit their herd to 25 head expanding to 50 head next year is not related to the presence of the lease. Mr. London's evidence is he has grass for many more animals than he actually has on the Lands. He feels reasonably confident that, assuming absence of drought that would compromise the grass, he could put out 100 head. While the lease area may be capable of supporting 22 or 23 head of cattle, as the Londons did not have cattle in February 2011, and as their present cattle operation has not been limited as a result of the presence of the lease, loss of income from cattle is not a reasonably foreseeable loss for this rent review period.

[28] Don Hoover, AACI, estimates probable loss of income from the lease area based on its hay growing capability. His evidence is that average actual yields in the area are 1.5 to 2.0 tons per acre. He assumes above average production of 2.5 tons per acre and applies an expected price of $60/ton to estimate gross revenue from hay production at $1,500 rounded (9.7 x 2.5 x $60 = $1,455). After factoring in expenses, he estimates the average margin at $94.25/year, rounded to $100 or $971 total.

[29] Mr. London's evidence is that he did not have any income from the Lands in 2011, 2012 or 2013. He did not have cattle on the Lands until the fall of 2013 and did not sell the hay harvested from the Lands. Although with the benefit of hindsight, it is evident that the Londons did not actually incur loss of income from the Lands as a result of the presence of the lease, as of the relevant renegotiation date it would not have been unreasonable to anticipate probable crop loss attributable to being unable to hay the leased area. Mr. Hoover's evidence provides the only evidence before me to estimate loss of haying income from the lease area.

Temporary and Permanent Damage

[30] Breaching the berm around the lease caused the pasture to be flooded and continues to allow run-off into the pasture. It is not clear from the evidence, however, whether this run-off is causing or has caused permanent damage to the Lands or what the ongoing effect of the run-off is to the Lands or to the Londons. There is no calculation of the time spent by Mr. London or other members of his family to deal with the run-off or any calculation of actual loss attributed to the run-off as a result of a reduced hay crop or otherwise.

[31] The Londons argued that Encana is a company that follows the practice that "it is easier to seek forgiveness than permission" and that it has shown little respect for the landowners and their quiet enjoyment of the Lands. They point to the breach of the berm as the most egregious example of Encana's attitude. I agree that breaching the berm and allowing a significant amount of water and debris to flood into the pasture without consultation with the landowner is egregious. If this activity has caused damage or continues to cause damage to the Lands, Encana should rectify the situation going forward and compensate the landowners for past loss and damage. The Londons did not seek damages when the breach event occurred and have not provided evidence in this rent review to assist with quantifying the effect of any continuing damage going forward. Annual rent is intended to compensate for reasonably foreseeable prospective losses, not past losses. When damage to land occurs as a result of a right of entry, if the damage is not rectified or loss is incurred, it can and should be the subject of a separate application to the Board.

[32] Mr. London's evidence is there has also been damage to the Lands as a result of the culvert in the access road washing out or plugging up. He does not provide evidence of his actual loss in terms of time spent or expenses incurred, or of how this problem otherwise contributes to loss on a regular basis. Ms. Berscht and Ms. Wannamaker deny that the road washes out regularly. Their evidence is that the culvert froze this year causing an ice jam so the water could not flow through it.

[33] The letter of June 2012 summarizing the parties' meeting and agreements with respect to various issues raised by Mr. London does not say anything about the culvert under the access road. If the culvert washes out regularly, I would expect that issue to have been raised by Mr. London along with all of the other issues. The letter sets out

the parties' agreement to a trial solution to deal with erosion. It is not clear whether this agreement relates to erosion related to the culvert over-flowing or from another cause. In any event, I do not have evidence with which to quantify any ongoing loss attributable to the culvert washing out. If damage occurs, it can be the subject of a separate application.

[34] The Londons argue the letter of June 2012 is evidence of Encana's "seek forgiveness rather than permission attitude". Encana argues it is evidence that when issues are brought to its attention, it is willing to deal with them. There is likely a bit of truth in both of these positions. The Londons are in the best position to identify problems as and when they arise. Those problems should be brought to Encana's attention when they occur, and if not rectified, claims for damages must be supported with evidence and not vague complaints. Encana has either rectified or provided compensation for several issues, although not always to the satisfaction of the Londons. Encana can likely improve its communications with the Londons, be more pro-active in ensuring issues do not arise, and be more responsive when issues do arise.

[35] On the whole, while I am satisfied there likely is some ongoing damage to the Lands as a result of the breached berm, the evidence does not assist with quantification of that damage.

Severance

[36] Mr. Hoover does not add any additional loss for the severed area as it is treed with no revenue potential. His evidence is that if the fence and access road were not there, the severed area would not contribute to hay production. If the fence and access road were not there, however, the trees could either be cleared for the purpose of haying or pasture, or the trees could be left as shelter for cattle and be easily accessed by cattle. Either way, although small, the area is effectively unavailable to the landowner. I am satisfied that the annual rent should reflect an amount for the small severed area.

Nuisance and Disturbance

[37] Anticipated time spent by a landowner dealing with the lease, farming around the lease, dealing with weeds off lease, bringing damage or other issues of concern to the company's attention, and following up with concerns is compensable as tangible nuisance and disturbance.

[38] The parties have already agreed to compensation for 2012, 2013, 2014 and 2015 for off lease weed control. There is no need, therefore, to include compensation for the nuisance and disturbance associated with off-lease weed control in this rent review.

[39] Mr. London's evidence is that unauthorized people use the access road for camping and hunting and that he is constantly having to kick people off. His evidence is that another oil and gas company also used the road without his permission. Around

the time of the bombing scare a few years ago, on two or three occasions, he found someone sleeping in in an unmarked truck on the access road beside the gate. It took some time and effort on his part to get hold of anyone at Encana to confirm that it was an Encana security person and not someone else. He expresses concern about unauthorized people gaining access to his property and says "my enjoyment and my whole life is topsy turvy watching that road". He says he found Encana people at 6:30 in the morning walking around looking at things. Encana now provides 48 hours notice if they are coming to the site so that Mr. London does not have to waste his own time trying to figure out what is going on.

[40] Mr. London expresses a lot of frustration in his dealings with Encana, accusing them of being poor communicators, failing to take initiative to ensure there are no problems, and being unresponsive to complaints. He says that since the meeting in 2012, it has been better, although sometimes Encana is still unresponsive to complaints. He has not documented his time spent dealing with Encana and does not provide an estimate of his time spent dealing with Encana. While I accept that Mr. London incurs loss in the form of his time dealing with Encana, his evidence does not assist with quantifying this loss.

[41] Mr. Hoover uses an obstruction mapper program that he has developed to estimate loss attributable to farming around the lease area. The program calculates missed areas and overlaps resulting from farming around the lease area and calculates the associated loss. As Mr. Hoover was not able to talk to Mr. London about his actual use of the Lands, he assumes the Lands are used for growing hay and assumes a hay crop will be harvested every year. He makes assumptions about the number of operations used to hay the Lands and assumptions about the size of the equipment used. Using this program, Mr. Hoover estimates increased farming costs of $116.08 annually as a result of farming around the lease area. Some of Mr. Hoover's assumptions turned out to be incorrect. I accept the Londons likely incur loss farming around the leased area. The evidence dos not enable a precise calculation of that loss.

[42] Mr. Hoover estimates that Mr. London will spend an additional seven hours a year for surveillance, dealing with Encana, administrative time and negotiation. At $35.00/hour, he estimates this loss at $245.00/year.

[43] I accept that the annual rent should include an amount to reflect the likely additional time the Londons will be required to spend dealing with Encana and working around the lease area. The parties agreed in 2012 to $5,000 to compensate Mr. London for his time spent during the first five-year period of the lease. In the absence of any actual records to substantiate Mr. London's time spent dealing with Encana, I find $1,000 per year is the best estimate of probable loss for time spent dealing with this lease.

[44] As for intangible nuisance and disturbance, Encana only accesses this site four times a year spending up to 10 hours a year on site. There is little disturbance,

therefore, in the way of noise or dust. While there was some flaring initially causing nuisance and disturbance, there is no ongoing nuisance and disturbance from flaring as the well has been capped. Mr. London has already been compensated an amount to plant trees as a visual buffer. I am not satisfied that that the evidence supports that the annual rent should include a significant amount for intangible nuisance and disturbance.

Money Previously Paid

[45] The parties have agreed to compensation for various losses extending into the time for this rent review including an annual payment of $1,400 in each of 2012, 2013, 2014 and 2015 to help manage weeds off lease. Encana has also already compensated Mr. London for time spent up to the summer of 2012.

Other Surface Leases

[46] Both parties provide evidence of other surface leases. The Londons provide seven rental agreements within a 120 km radius of the Lands involving a variety of different operators. Encana provides 20 leases within a 10 km radius of the Lands, including both Encana leases and leases with some other operators. Ms. Bersht's evidence is these leases include all leases within a 10 km radius for which a copy of the lease could be obtained. Both parties provide information as to the date of the lease or renegotiation, the number of acres involved, the status of the well and the parent parcel land use.

[47] The Londons compare the rents on a per acre basis calculated by dividing the total annual rent by the number of acres covered by the lease. Encana submits that comparing leases in this way is not appropriate. For its own leases, Encana provides a breakdown of the global rent showing amounts paid for nuisance and disturbance, severance and crop loss. Ms. Bersht's evidence is that the payment for crop loss is typically calculated on a per acre basis but compensation for other losses is never calculated that way.

[48] Ms. Berscht's and Ms. Wannamaker's evidence is that leases are initially negotiated on an assumption that the well will be producing, with all the attendant traffic, and that a landowner will be losing income from the leased area. It is apparent from Encana's comparable leases in the area, that Encana typically compensates loss of profit at $250/acre/year. In one circumstance, apparently involving cultivated land with soil that is more productive, they paid $400/acre/year. In other leases, however, where the parent parcel is identified as "cultivated", the payment for loss of profit is still $250/acre/year.

[49] Without evidence of the circumstances involved in any particular surface lease, it is virtually impossible to apply a rent negotiated in one case to the circumstances of another case. Other leases are rarely helpful unless they clearly support a pattern of dealings in an area, or unless the evidence discloses that the circumstances are the

same or highly similar. When the amounts paid for different losses are not broken down, and where reasons for particular payments are not apparent, it is very difficult to compare lease payments. Further, if the various payments comprising annual rents are not determined on a per acre basis, the total rent cannot be compared on that basis.

[50] The Londons argued a lease at 5-1-78-16, common to both parties' Books of Documents, should be given most weight. The evidence is however that this lease is on better land (Class 2 compared to Class 3), the land is cultivated with canola and wheat as opposed to hay or used for pasture, and the rent incudes higher payments for nuisance and disturbance and severance than paid under other leases because of the particular circumstances of that lease. In comparison, the Londons' lease creates a very small severed area and little in the way of intangible nuisance and disturbance. The evidence in this case does not demonstrate ongoing nuisance and disturbance compensable at the level paid for this other lease.

[51] The leases do not establish a pattern of dealings other than to suggest the "going rate" for loss of profit typically agreed to in Encana leases is $250/acre/year. This amount exceeds Mr. Hoover's estimated loss of profit and exceeds Mr. London's actual loss of profit since 2011. I am nevertheless satisfied that the annual rent in this case should reflect crop loss at $250/acre as this is the "going rate" and Mr. London's actual loss of income does not exceed this rate.

Change in the Value of Money

[52] Mr. Hoover's evidence is that from February 2007 to February 2011, the Consumer Price Index (CPI) for British Columbia increased by 11.28% according to Statistics Canada. This conclusion does not seem to equate with the chart provided in his report showing the CPI in February 2007 at 109 and the CPI in February 2011 at just over 115, which would indicate an increase of less than 6%.

Global Payment

[53] The above analysis suggests that the global rent payable under this lease should reflect a payment of $250/acre for loss of income including the severed area because it is a "going rate" despite that the Londons did not experience loss of income as a result of the lease. It should also reflect a payment of $1,000.00 annually to account for the Londons' probable time spent dealing with Encana during the rent period. This loss equates to $2,575.00 ((9.71+.59) x $250 + $1,000 = $2,575). Generally speaking, I accept that $2,575 is likely low in that it does not account for probable damage to the land, which I accept is occurring but for which I have insufficient evidence to quantify loss. Nor does it account for ongoing intangible loss such as the continuing compulsory aspect of the taking or intangible nuisance and disturbance, which is not substantial in this case. With respect to the first year of this rent review, however, Mr. London's time has already been compensated.

[54] The onus is on the Londons to establish their ongoing prospective losses as of February 19, 2011 and to establish that an increase to the current rent is warranted to compensate for ongoing prospective losses. The Londons have not provided evidence to support their claim for over $14,000 annual rent. The evidence simply does not establish a reasonable probability of ongoing gloss at that level as of February 2011. The evidence does not establish prospective loss as high as $5,000 as of February 2011, and shows that actual loss has, in fact, been less than that.

[55] The evidence does not support increasing the rent above the current rent of $5,000. The current rent more than sufficiently compensates the Londons for their actual tangible loss and provides additional compensation for intangible losses, likely incurred but not quantified.

[56] I find that annual rent of $5,000 continues to be appropriate as of the rent review period commencing February 19, 2011.

ORDER

[57] Encana Corporation shall continue to pay annual rent of $5,000 to the Londons for the rent period commencing February 19, 2011.

DATED: August 27, 2014

FOR THE BOARD

Cheryl Vickers, Chair