

File No. 1823
Board Order No. 1823-1

April 11, 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 SOUTH WEST $\frac{1}{4}$ OF SECTION 9 TOWNSHIP 79 RANGE 17 WEST OF
THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")**

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

**Wesley Boris Ilnisky and
Laurene Mabelle Ilnisky**

(RESPONDENTS)

BOARD DECISION

Heard by written submissions closing March 17, 2013
Lars H. Olthafer, Barrister and Solicitor for Encana Corporation
Wesley and Laurene Ilnisky on their own behalf

INTRODUCTION AND ISSUE

[1] Wesley and Laurene Ilnisky own the Lands described as the South West $\frac{1}{4}$ of Section 9 Township 79 Range 17 West of the 6th Meridian, Peace River District (the Lands). The Oil and Gas Commission (OGC) granted a Pipeline Permit to Encana Corporation (Encana) for the construction, installation and operation of a pipeline, in four segments, across the Lands (the Pipeline). As Encana and the Ilniskys have not been able to agree to the terms of Encana's entry to the Lands or the compensation payable to the Ilniskys arising from Encana's entry to and use of the Lands, Encana applied to the Board for a right of entry order and for mediation and arbitration services to assist in determining the compensation payable.

[2] The Ilniskys dispute the Board's jurisdiction to grant the requested right of entry order on the grounds that the Pipeline, or at least three segments of it, is not a "flow line" within the meaning of the *Petroleum and Natural Gas Act* and the *Oil and Gas Activities Act*.

[3] The issue for this decision is whether the Board has jurisdiction to grant the right of entry order and provide mediation and arbitration services to settle or determine the compensation payable to the Ilniskys for the entry. As the Board only has jurisdiction with respect to pipelines that are "flow lines", the issue is whether the Pipeline is a "flow line".

FACTS

[4] The Pipeline Permit authorizes the construction and operation of a pipeline in four segments for the purpose of conveying petroleum, natural gas or water as follows:

Segment 001 From DLS: 11-08-79-17 To DLS: 12-10-79-17
Segment 002 From DLS: 12-10-79-17 To DLS: 11-08-79-17
Segment 003 From DLS: 11-08-79-17 To DLS: 12-10-79-17
Segment 004 From DLS: 12-10-79-17 To DLS: 11-08-79-17

[5] Segment 001 will transport produced natural gas and Segment 002 will transport fuel gas. Segments 003 and 004 will transfer produced water. Segment 003 is more specifically described as a hydraulic fracturing water supply pipeline and Segment 004 is more specifically described as a hydraulic

fracturing water return pipeline. I will refer to all four segments, collectively, as the Pipeline, and to Segments 003 and 004 collectively as the "Water Pipelines".

[6] The Water Pipelines are required infrastructure for a produced water recycling scheme in the area northwest of Dawson Creek. The purpose of the Water Pipelines is to transport produced water between Encana's Water Resources Hub (the Water Hub) to be located at 16-36-078-17 W6M and storage tanks to be located at well sites in the Farmington area for use in hydraulic fracturing stimulation operations. The Water Pipelines will transport produced water from three sources, described below, namely: Cadotte Produced Water, Montney Produced Water, and Frac Water Flowback.

[7] Cadotte Produced Water is water produced from a vertical well located at 14-35-078-17 W6M and three horizontal wells located at A13-33-078-17 W6M, 9-34-078-17 W6M, and A9-34-078-17 W6M for use in hydraulic fracturing operations. Upon completion of the Water Hub, Cadotte Produced Water will be transmitted by pipeline to the Water Hub, where it will be filtered, injected with a scale inhibitor chemical and stored.

[8] Montney Produced Water is water that has been separated from the production of gas, water and condensate at gas wells. The liquid components of this production are transported by pipeline from compressor stations located at 09-27-079-17 W6M and 01-34-078-17 W6M to the Water Hub for further treatment, including removal and recovery of condensate and dissolved natural gas to create the separated water, or Montney Produced Water.

[9] Cadotte Produced Water will be blended with Montney Produced Water and Frac Water Flowback. A hydraulic fracturing water supply pipeline, of which Segment 003 is a part, will transport some of these combined volumes to well sites for hydraulic fracture stimulation operations. The produced water blend delivered from the Water Hub (Frac Water) will be temporarily stored in tanks at a given well site until required for hydraulic fracturing stimulation operations. The well site storage tanks will be connected to the well head by hydraulic fracturing equipment, and the Frac Water will be used in the hydraulic fracturing stimulation operations of the targeted natural gas reservoir.

[10] While much of the Frac Water will remain in the natural gas reservoir, some will return to the surface along with other produced fluids during the well cleanup and production testing operations (the Frac Water Flowback). The Frac Water Flowback will again be temporarily stored in tanks at the well site, and then will be pumped from the well site storage tanks back to the Water Hub through a hydraulic fracturing water return pipeline, of which Segment 004 is a part. At the Water Hub, the Frac Water Flowback will be treated, recycled and blended with the Cadotte Produced Water and the Montney Produced Water for ultimate delivery to well sites for hydraulic fracture stimulation operations.

LEGISLATION

[11] The *Oil and Gas Activities Act* provides the following definitions:

“flow line” means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line

“pipeline” means, ...piping through which any of the following is conveyed:

- a) petroleum and natural gas;
- b) water produced in relation to the production of petroleum and natural gas or conveyed to or from a facility for disposal into a pool or storage reservoir;
- c) solids;
- d) substances prescribed under section 133(2)(v) of the *Petroleum and Natural Gas Act*,
- e) other prescribed substances,
and includes installations and facilities associated with the piping, but does not include
- f) piping used to transmit natural gas at less than 700 kPa to consumers by a gas utility as defined in the *Gas Utility Act*,
- g) a well head
- h) anything else that is prescribed

“facility” means a system of vessels, piping, valves, tanks and other equipment that is used to gather, process, measure, store or dispose of petroleum, natural gas, water or a substance referred to in paragraph (d) or (e) of the definition of “pipeline”

[12] These definitions must be interpreted harmoniously with the scheme and objects of the legislation and the intention of the legislature in accordance with the modern rule of statutory interpretation.

ANALYSIS

[13] The Iliskys argue that water lines are clearly defined as pipelines. They argue that the legislature purposefully distinguishes flow lines from pipelines such as water lines. I agree that the legislature has created two classes of pipelines – one class over which the Board has jurisdiction and one class over which the Board does not. The distinction between a pipeline and a flow line, however, is not based on what is conveyed within the pipeline as suggested by the Iliskys, because a “flow line” is a subset of pipeline, or a type of pipeline. To be a “flow line” the disputed installation must first be a “pipeline”. As a pipeline may convey water produced in relation to the production of natural gas, a “flow

line” may also convey water produced in relation to the production of natural gas. It is not the fact that a pipeline conveys water produced in relation to the production of natural gas that distinguishes it from a flow line.

[14] If a pipeline conveys a substance not identified in subsections (a) to (e) of the definition of pipeline, for example fresh water drawn from a lake or stream, the pipeline would not be a “pipeline” within the meaning of the *Petroleum and Natural Gas Act* or the *Oil and Gas Activities Act*, and could not, therefore be a “flow line” within the meaning of either of those Acts. But if it conveys a substance set out in subsections (a) to (e) of the definition of pipeline, and is not otherwise excluded by subsections (f) to (h) of the definition, it is a pipeline and could also be a “flow line”.

[15] To be a “flow line”, the pipeline or its respective segments must be a pipeline “that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line”. It must 1) connect a well head to a facility, and it must 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

[16] Dealing first with the second requirement of the definition, the Iliskys submit that the definition contemplates the transfer of the conveyed substance to or from a transmission, distribution or transportation line. They argue that the Water Pipelines have no such purpose and, therefore, cannot be flow lines. Encana argues that the definition does not require the transference of a conveyed substance to or from a transmission, distribution or transportation line, but that the use of the word “precede” refers to the oil and gas sector (i.e. upstream versus midstream/downstream) in which each pipeline is situated. With reference to the Board’s decision in *Murphy Oil Company Ltd. v. Shore*, Order 1745-1, and the former Minister’s explanations during the legislative debates on these provisions, Encana submits the legislative intent is to give the Board jurisdiction over pipelines and infrastructure comprising the upstream or gathering system, but not over pipelines comprising the downstream distribution, transmission or transportation system. That is the interpretation adopted by the Board in *Murphy Oil* upon an analysis of the legislative scheme and with reference to the legislative debates. The Iliskys’ arguments in this case do not convince me otherwise. The definition of “flow line” does not contemplate that the flow line operates to transfer a conveyed substance to a transmission, distribution or transportation line. It contemplates only that that the flow line precedes the transfer of the conveyed substance to or from such a line.

[17] The definition of “flow line” carves out a subset of pipeline depending on the location of the pipeline. The former Minister equated “flow lines” with the gathering or upstream part of the oil and gas system. The language of the definition is reasonably capable of that interpretation. The upstream or gathering part of the system connects the well heads with scrubbing, processing or storage facilities, but does not include the transmission, distribution, or transportation of

substances beyond those facilities. The gathering system “precedes” or is located “upstream” or in advance of the transfer of substances to or from transmission, distribution, transportation lines “downstream” of, or beyond, those facilities.

[18] Segment 001 is piping through which natural gas is conveyed. It is, therefore, a pipeline in accordance with subsection (a) of the definition. It connects a well head to a processing facility and precedes the transfer of the natural gas to a transmission, distribution or transportation line. The Ilniskys do not dispute that this segment is a flow line. I find Segment 001 is clearly a “flow line”.

[19] Segments 003 and 004 are piping through which water produced in relation to the production of natural gas is conveyed. They are, therefore, pipelines in accordance with subsection (b) of the definition. They connect a well head, with the Water Hub. The evidence discloses that at the Water Hub the produced water from three sources is blended and treated, and redistributed through pipelines for use in the production of natural gas. The Water Hub is a facility used to gather and process water and is, therefore, a “facility” within the meaning of the legislation. Segments 003 and 004 are, therefore, pipelines that connect a well head with a processing facility, and meet the first part of the definition of “flow line”.

[20] As to the second part of the definition of flow line, the substance that is conveyed within these segments (produced water) is not a product that is further distributed through a transmission, distribution or transportation line. The location of the segments, however, precedes the transfer of the natural gas conveyed in Segment 001 to a transmission, distribution or transportation line. They are part of the gathering system for the conveyance of natural gas from a well head to a processing facility. The intent of the legislation is to give the Board jurisdiction over pipelines that comprise the gathering system, but not pipelines that comprise the transmission, distribution or transportation system downstream of a processing facility.

[21] Segment 002 carries fuel gas. The Ilniskys’ objection initially related only to the Water Pipelines and neither party has provided evidence respecting the purpose of this segment. The Board has previously found a fuel gas line associated with other pipeline segments connected to a well head conveying produced gas and produced water to fall within the definition of “pipeline” as “installations and facilities associated with the piping” (*Murphy Oil, supra*). The evidence in the *Murphy Oil* case was that the fuel line was required to power various instruments and pieces of equipment required to operate the well. In the Board’s experience, this is the purpose of a fuel line permitted as a pipeline segment. As I have no evidence to conclude that the fuel line in this case is for a different purpose, it also falls within the definition of “pipeline” in accordance with the Board’s earlier decision.

[22] The Ilniskys argue that Encana incorrectly characterizes the works as “Pipeline segments”. They submit they are four distinct pipelines in the same right of way each serving a distinct and separate purpose, one quite apart from the other. They argue it is illogical to think of them as segments as they comprise four distinct linear works.

[23] The characterization of the works as a pipeline in four segments comes from the Permit the OGC granted. The Permit authorizes the construction and operation of a pipeline in four segments for the conveyance of petroleum, natural gas, or water. The definition of “pipeline” does not refer to “a pipe” but speaks of “piping through which any of” various substances “is conveyed”. While each segment comprises a distinct pipe, the four segments function together to produce and transport natural gas as part of the gathering system. Neither line has an independent function. Each functions in conjunction with the others as part of the gathering system for the production of natural gas. Collectively, they are piping through which petroleum, natural gas and produced water are conveyed, and are collectively a pipeline within a single right of way forming part of the natural gas gathering system.

[24] I find each segment of this Pipeline connects a well head with processing facilities. In the case of the disputed Water Pipelines they carry produced water and connect well heads with produced water processing and storage facilities. They are located upstream of the transfer of the produced water to or from those facilities. The produced water is not transferred to a transmission, distribution, or transportation line, but is recirculated in the upstream portion of the oil and gas system as part of the gathering system for the production of natural gas. The Water Pipelines precede the transfer of the natural gas, to transmission, distribution or transportation pipelines and are part of the gathering system.

CONCLUSION

[25] I conclude the Pipeline permitted by the OGC and each of its segments is a “flow line”. The Board, therefore, has jurisdiction to provide mediation and arbitration services with respect to Encana’s application.

DATED: April 11, 2014

FOR THE BOARD



Cheryl Vickers, Chair