

September 26, 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 ¼ SECTION 30 TOWNSHIP 78 RANGE 17 WEST
OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN A2098
AND PLAN 32070**

**THE SOUTH EAST ¼ OF SECTION 25 TOWNSHIP 78 RANGE 18
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT**

(The "Lands")

BETWEEN:

ARC Resources Ltd.

(APPLICANT)

AND:

Darcy Dwayne Hommy

(RESPONDENT)

BOARD ORDER

Heard: By written submissions and by telephone on September 17,
2014
Appearances: Rick Williams, Barrister and Solicitor for the Applicant
Darryl Carter, Q.C., Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] The Applicant, ARC Resources Ltd. (ARC), has applied to the Board for a right of entry order to Lands owned by the Respondent, Darcy Dwayne Hommy, to construct and operate a pipeline in four segments. An application for a permit to construct and operate the proposed pipeline is pending before the Oil and Gas Commission (OGC).

[2] The proposed pipeline consists of the following four segments:

- a) a 16 inch diameter segment to carry natural gas (Segment 1);
- b) a 6 inch diameter segment licensed for bi-directional service, which will carry both produced water for hydraulic fracturing operations, and natural gas (Segment 2);
- c) a 4 inch diameter segment to carry fuel gas (Segment 3); and
- d) a 4 inch diameter segment to carry produced water for disposal (Segment 4)

[3] Mr. Hommy submits the Board does not have jurisdiction to make a right of entry order with respect to Segments 2 and 4 of the proposed pipeline. He submits Segments 2 and 4 do not meet the definition of "flow line" in the *Oil and Gas Activities Act*, and that the Board, therefore, does not have jurisdiction with respect to them in accordance with section 145(2) of the *Petroleum and Natural Gas Act*.

ISSUE

[4] The issue is whether the Board has jurisdiction with respect to Segments 2 and 4 of the proposed pipeline, assuming the OGC permits the pipeline as proposed. As the Board does not have jurisdiction with respect to a pipeline that is not a "flow line", the issue is whether these two segments of the proposed pipeline meet the legislative definition of "flow line".

THE PROPOSED PROJECT

[5] I received evidence with respect to the proposed pipeline from Tejay Haugen, a Senior Production Operations Technologist employed by ARC, by way of an Affidavit sworn August 21, 2014 and by telephone on September 17, 2014, at which time Mr. Haugen was cross-examined by counsel for Mr. Hommy.

[6] The proposed pipeline will interconnect the following ARC facilities:

- a) an existing ARC well pad located at 2-25-78-18 W6M that presently consists of four natural gas wells and related facilities including an MCC Building, a generator, and a flare stack, for which ARC has received permits to construct four additional natural gas wells, and for which ARC will be applying to convert an existing vertical well into a water disposal well (the 02-25 Well Pad);
- b) a proposed ARC well pad located at 12-30-78-17 W6M, for which ARC has received a permit to construct, drill and operate one well, and for which ARC has applied to the OGC for a permit for 17 additional natural gas wells and related facilities (the 12-30 Well Pad); and
- c) the ARC Sunrise Gas Plant to be located at 13-36-78-18 W6M (the Sunrise Plant).

[7] Natural gas produced at three of the four existing wells at the 02-25 Well Pad is currently transported through an existing 12 inch diameter line to a Murphy gas plant. A fuel gas line from the Murphy plant presently serves the 02-25 Well Pad and a 6 inch diameter bi-directional water/gas line also presently connects the 02-25 Well Pad with the Murphy plant. The Murphy plant does not have the capacity to accept gas from proposed developments at the 02-25 and 12-30 Well Pads, hence ARC's proposal for the new pipeline to connect the 02-25 and 12-30 Well Pads with the Sunrise Plant.

[8] Segment 1 will carry natural gas from wellheads in the Sunrise gas field, including those located at the 02-25 Well Pad and the 12-30 Well Pad to the Sunrise Plant, where it will undergo processing to meet market quality specifications. It will then be transported through the ARC pipeline system to the TransCanada transmission and distribution line. At the 02-25 Well Pad, the 16 inch Segment 1 will connect to a pre-existing 12 inch diameter line, which in turn connects to the 3 inch diameter lines that connect to the wellheads at each of the three producing wells.

[9] Segment 2 will supply water for hydraulic fracturing operations in the Sunrise gas field, including future wells at the 02-25 Well Pad and proposed wells at the 12-30 Well Pad. Segment 2 will also carry natural gas from various wells in the Sunrise gas field to the Sunrise plant including from present and future wells at

the 02-25 Well Pad and proposed wells at the 12-30 Well Pad. ARC has applied to have Segment 2 licensed for bi-directional service.

[10] The produced water carried in Segment 2 will be a byproduct of the natural gas produced at wellheads in the Sunrise gas field, including those located at the 02-25 and 12-30 Well Pads. At the Sunrise Plant, this produced water will be processed through an inlet separator and put in on-site storage facilities. Segment 2 will transport the produced water from the storage facility at the Sunrise Plant to various wellheads in the Sunrise gas field for hydraulic fracturing. Segment 2 may transport natural gas and will be used for pressure management once hydraulic fracturing operations, which generally take one to two months, are complete.

[11] Segment 3 will carry fuel gas originating from the Sunrise Plant to wellheads in the Sunrise gas field, including those at the 02-25 and 12-30 Well Pads. The fuel gas is used to operate these wells and specific wellhead and pipeline components such as the line heaters, the emergency shut down valves, the control valves, and the well alarm system.

[12] Segment 4 will carry produced water from the storage facilities at the Sunrise Plant to an existing vertical well at the 02-25 Well Pad, for injection and disposal. It will connect to a 2 inch diameter line that connects to the wellhead.

[13] ARC proposes to construct all four segments in the same trench, at the same time, in the same 20 metre right of way. If it is unable to construct Segments 2 and 4 at this time, its options will be to use semi-trailer trucks to transport the produced water from the Sunrise Plant to well heads for hydraulic fracturing and to the disposal well at the 02-25 Well Pad for disposal, or to construct the segments at a later date.

POSTIONS OF THE PARTIES

[14] Mr. Hommy agrees Segments 1 and 3 are "flow lines" but submits Segments 2 and 4 are not. He argues that the definition of "flow line" contemplates that a flow line takes product to a processing or storage facility, not that it transports product back from a processing or storage facility to a wellhead. He argues the primary purpose of Segment 3 is for hydraulic fracturing, although later on it may be used as a flow line to transport natural gas from the wellheads to the plant. With respect to Segment 4, he argues it is carrying post process facility product as it is transporting processed water from a storage facility for disposal. He argues a "flow line" must be intended solely for the purpose of connecting a well head with a scrubbing, processing or storage facility preceding

the transfer of the conveyed substance to or from a transmission, distribution or transportation line, and that these lines are not intended solely for that purpose.

[15] ARC argues the proposed pipelines connect storage facilities with wellheads and that there is nothing in the definition of “flow line” that speaks to the direction of travel of the conveyed substance. ARC submits Segments 2 and 4 are part of the gathering system and in accordance with previous Board decisions finding that the definition of “flow line” captures the pipelines forming the upstream gathering system, these pipelines are “flow lines”.

ANALYSIS

[16] The Board may authorize right of entry to private land if it is satisfied entry is required for an “oil and gas activity” (*Petroleum and Natural Gas Act*, section 159(1)). An “oil and gas activity” includes the construction or operation of a pipeline (*Oil and Gas Activities Act*, section 1). The Board’s jurisdiction to authorize right of entry or provide mediation and arbitration services respecting compensation does not apply to the entry, occupation or use of land relating to a pipeline other than a “flow line” (*Petroleum and Natural Gas Act*, section 145(2)).

[17] For pipelines that are not “flow lines”, right of entry may be acquired either by agreement with the landowner or by the process for expropriation set out in section 34 of the *Oil and Gas Activities Act*.

[18] Section 1 of the *Oil and Gas Activities Act* defines “flow line” as follows:

“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.

[19] As the Board said in *Encana Corporation v. Ilnisky*, Order 1823-1, to be a “flow line” the pipeline or its respective segments must connect a wellhead to a facility, and must precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line. The evidence establishes that Segment 2 connects various wellheads with a processing and storage facility, namely the Sunrise Plant. The evidence establishes that Segment 4 connects a specific wellhead at the 02-25 Well Pad to the Sunrise Plant. But does either segment precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line?

[20] In *Encana v. Ilnisky*, *supra*, the Board found that the use of the word “precede” in the definition refers to the location of the pipeline in the oil and gas

system, specifically those pipelines located in the “upstream” or gathering part of the system. The Board said:

The definition of “flow line” carves out a subset of pipeline depending on the location of the pipeline....The upstream or gathering part of the system connects the wellheads 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.

[21] *Encana v. Inisky* dealt with two pipeline segments transporting produced water. One of the segments was a hydraulic fracturing water supply pipeline and the other was a hydraulic fracturing water return pipeline. These water pipelines were part of the infrastructure for a produced water recycling scheme that transported water between a water storage hub and processing facility and wellheads. The water hub collected produced water from three sources, including frac water flowback, blended and treated the water, then conveyed the produced water from the water hub to well sites for use in hydraulic fracturing operations via the hydraulic fracturing water supply pipeline. The hydraulic fracturing water return pipeline transported the water produced during well testing and cleanup operations following hydraulic fracturing, the frac water flowback, to the water hub to be blended with other produced water and recycled for use in hydraulic fracturing operations. The Board found that both of these pipeline segments were part of the gathering system for the conveyance of natural gas from a wellhead to a processing facility.

[22] The Board found the water pipelines connected wellheads with a processing facility. As to the second part of the definition of “flow line”, the Board said:

...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 wellhead 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.

[23] The same logic applies to Segment 2 in this case. It is a hydraulic fracturing water supply pipeline. It connects wellheads with a facility, namely the Sunrise

Plant, and precedes the transfer of the natural gas conveyed in Segment 1 of this project to transmission, distribution or transportation lines downstream of the Sunrise Plant. The hydraulic fracturing water supply line is used for the production of natural gas and is part of the gathering system.

[24] As for Segment 4, it also connects a wellhead to a storage facility at the Sunrise Plant. It is also located within the gathering system in that is located on the upstream side of the plant for the processing of natural gas prior to its transfer to a distribution system. The evidence does not support, however, that it is part of the gathering system in that is not used for the production of natural gas or for the conveyance of natural gas to a processing facility prior to the transfer of the processed natural gas for further transmission and distribution. It is used for the disposal of waste water that has been separated from the natural gas in processing. This water is not re-used, as in *Ilinsky*, for hydraulic fracturing operations, but is disposed of as post-production waste. The pipeline disposing of the waste water plays no direct role in the production of natural gas or its conveyance to a facility for processing to market specifications.

[25] ARC refers to the Board's decision in *Murphy Oil v. Shore, supra*, where the Board noted that requiring separate and duplicative processes for obtaining surface rights in respect of pipelines within the same right of way would be an "absurd result that cannot have been the legislature's intent." The Board further noted, citing *Ontario v. Canadian Pacific Ltd.* [1975] 2 SCR 1031, that "[i]nterpretations that lead to absurd consequences should be rejected".

[26] However, as discussed, the Board has found that the legislature's intent was to give the Board jurisdiction over pipelines that comprise the gathering system. The definition of "flow line" captures those pipelines that are part of the gathering system. It is possible that the intent of the definition of "flow line" is to capture all of the lines located on the upstream side of the system whether actually used for gathering or not. That interpretation would avoid duplicative process. But it might also have been the legislative intent that "flow lines" only include actual gathering lines, or pipelines actually used for the gathering of natural gas prior to processing of the gas to market specifications and further transmission and distribution of the processed gas. The legislative scheme of the *Petroleum and Natural Gas Act* and the *Oil and Gas Activities Act* clearly contemplates two kinds of pipelines and two separate processes for a pipeline permit holder to gain entry to private land in the absence of an agreement with a landowner.

[27] If a pipeline connects to a well head and is used for the production of natural gas or the conveyance of natural gas to a processing facility, it is part of the gathering system and is a "flow line". A line carrying natural gas from a wellhead to a processing facility is clearly part of the gathering system. A fuel line is

necessary to the operation of wellheads and integral to the production of natural gas and the gathering system. A hydraulic fracturing water supply line is used for the production of natural gas and part of the gathering system. A pipeline carrying produced water from a wellhead in conjunction with the production of natural gas or flow back from hydraulic fracturing operations is used for the production of natural gas and part of the gathering system. The water disposal line is not used for the production or conveyance of natural gas to a processing facility and does not function as part of the gathering system. It is used to dispose of waste water after the gathering and processing of natural gas has occurred.

[28] Just because a pipeline is proposed to be constructed within a common right of way with other flow lines does not necessarily make it a flow line. Placing the water disposal pipeline within the same trench as other pipelines actually used for the gathering of natural gas may be convenient and efficient, but it does not turn the pipeline into a gathering line or make it part of the gathering system. The legislation contemplates an alternate process to obtain entry for pipelines that are not part of the gathering system.

CONCLUSION

[29] Segments 1, 2 and 3 of the proposed pipeline meet the definition of "flow line". Segment 4 is not a gathering line in that it is not used for the production of natural gas or conveyance of natural gas to a facility for processing and, therefore, does not meet the definition of "flow line". Assuming the OGC permits the pipeline in four segments as proposed, the Board will have jurisdiction to grant a right of entry order and provide mediation and arbitration services with respect to Segments 1, 2 and 3, but will not have jurisdiction with respect to Segment 4.

DATED: September 26, 2014

FOR THE BOARD



Cheryl Vickers, Chair