

June 15, 2015

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 NORTH WEST ¼ OF SECTION 29 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE NORTH EAST ¼ OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")**

BETWEEN:

ENCANA CORPORATION

(Applicant)

AND:

**OLAF ANTON JORGENSEN AND
FRANCIS DIANE JORGENSEN**

(Respondents)

BOARD DECISION

Heard: By written submissions closing June 11, 2015
Appearances: Lars Olthafer and Katie Slipp, Barristers and Solicitors, For
Encana Corporation
Ellen S. Hong, Barrister and Solicitor, for Olaf Anton Jorgensen
and Francis Diane Jorgensen

INTRODUCTION

[1] Olaf Jorgensen is the owner of land legally described as the North West ¼ of Section 29 Township 79 Range 17 (NW 29-79-17), and Olaf and Diane Jorgensen are the joint owners of land legally described as the South East ¼ of Section 30 Township 79 Range 17 (SE 30-79-17), the South West ¼ of Section 30 Township 79 Range 17 (SW 30-79-17), and the North East ¼ of Section 30 Township 79 Range 17 (NE 30-79-17) all West of the 6th Meridian Peace River District (collectively the Lands). Encana has received a permit from the Oil and Gas Commission (the OGC) to construct and operate a pipeline project with multiple segments located partially within the Lands (the Permit). Encana Corporation (Encana) seeks a right of entry order from the Board granting them the right to enter and use a portion of the Lands to construct and operate the pipelines.

[2] Under the provisions of the *Petroleum and Natural Gas Act*, the Board may grant a right of entry order to privately owned land if it is satisfied that an order authorizing entry is required for an oil and gas activity. “Oil and gas activity” is a defined term that includes the construction or operation of a pipeline. However, pursuant to section 154(2) of the *Petroleum and Natural Gas Act*, the Board’s jurisdiction to grant right of entry and determine the compensation payable to a landowner as a result of an entry does not extend to a pipeline that is not a “flow line”.

[3] The term “flow line” is defined in the *Petroleum and Natural Gas Act* by reference to the *Oil and Gas Activities Act* 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.

[4] One of the pipelines authorized by the Permit is a natural gas pipeline referred to as the Sales Gas Pipeline. The Jorgensens argue the Sales Gas Pipeline is not a “flow line” within the meaning of the *Petroleum and Natural Gas Act*, and therefore not within the jurisdiction of the Board.

[5] The Sales Gas Pipeline when constructed will transport natural gas from the Saturn Compressor Station located at 9-27-79-17 W6M (the Saturn Compressor Station) to a riser site located at 8-30-79-17 W6M (the 8-30 Riser Site). Encana describes the natural gas that will be transported in the Sales Gas Pipeline as “unprocessed”. The Jorgensens submit that the natural gas is “processed” at the Saturn Compressor Station. They argue that the Saturn Compressor Station is a “scrubbing, processing, or storage facility” within the meaning of the definition of “flow line”. As the Sales Gas Pipeline connects well heads with the Saturn Compressor Station, which they say is a “scrubbing, processing or storage facility”, they submit the Sales Gas Pipeline is, therefore, not a “flow line”.

ISSUE

[6] The issue before me is whether the Sales Gas Pipeline is a “flow line”. More specifically, that issue involves determining whether what happens at the Saturn Compressor Station is “processing” and whether the Saturn Compressor Station is a “scrubbing, processing or storage facility”.

EVIDENCE AND FINDINGS OF FACT

[7] The evidence before me is an Affidavit of Nairn Bannatyne, a Senior Facilities Technologist with Encana. His responsibilities include oversight of the planning and design of the Saturn Compressor Station.

[8] The Jorgensen's submit that paragraphs 12 and 16 of Mr. Bannatyne's Affidavit be struck from the record as being based on information and belief without identifying the basis for that belief. Paragraph 12 is a statement as to what Mr. Bannatyne believes happens at another Encana Compressor Station known as the 9-15 Compressor Station. The 9-15 Compressor Station was referred to by the Board in its decision in *Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015 (*Spectra v. London*). In *Spectra v. London*, based on the evidence before it, the Board found that a pipeline known as the Bissette Pipeline transporting natural gas from the 9-15 Compressor Station to Spectra's Dawson Plant was a flow line. Paragraph 16 is a statement as to what Mr. Bannatyne believes happens downstream of the Spectra McMahon Plant. I agree that neither statement provides reliable evidence of the alleged facts and, for that reason, can be given no weight.

[9] In any event, although both parties referred in their arguments to the 9-15 Compressor Station, and in particular tried to compare the activities at the 9-15 Compressor Station to the activities at the Saturn Compressor Station, this case will turn on the evidence before me of what happens at the Saturn Compressor Station. Mr. Bannatyne's belief as to what occurs at the 9-15 Compressor Station is not relevant, particularly where that belief includes information that was not relied on by the Board in coming to its decision in *Spectra v. London*.

[10] From Mr. Bannatyne's Affidavit I find as follows.

[11] Raw natural gas and produced liquids, principally water and condensates, enter the Saturn Compressor Station from well pads that are tied into the Saturn Gathering Pipeline System. At the Saturn Compressor Station, the raw natural gas and produced liquids undergo primary treatment comprised of inlet separation, compression, and dehydration.

[12] Inlet separation is a necessary component of field compression and is required to separate liquids (water and condensate emulsion) from the natural gas prior to compression and further transport of that gas through the Sales Gas Pipeline and the South Peace Pipeline. The liquids are relatively incompressible and are, therefore, not physically compatible with compression. Once the natural gas is separated from the liquids, it is subject to compression and dehydration.

[13] The separated liquids are directed to a flash tank which operates at lower pressure. Most of the remaining natural gas entrained in the produced liquids comes out of solution in the flash tank, is captured by a vapour recovery unit and is directed back to the compressors. From the flash tank, the liquids are directed to the desand unit which removes approximately 99% of sand particles 25 microns and greater from the liquids.

[14] The separated sand is directed to a sand slurry tank and the clean desanded liquids are directed through the produced liquid (emulsion) tanks which feed the emulsion delivery pumps that pump the liquids to the Water Resource Hub located at 16-36-78-17 W6M. The principal function of these tanks is to ensure there is adequate liquid volume and pressure (head) to support the operation of the emulsion delivery pumps and, in the event that Encana's ability to pump the liquids to the Water Resource Hub is interrupted, to serve as temporary holding tanks until pumping can be resumed. While referred to as the "Liquid Storage (Emulsion) tanks", the separate liquids typically flow continuously through the tanks except in the case of pumping service interruptions. The produced liquids delivered to the Water Resource Hub are treated, recycled and

blended for, among other things, delivery to well sites for hydraulic fracturing stimulation operations.

[15] Following inlet separation and vapour recovery, the separated raw natural gas is compressed to South Peace Pipeline pressure specifications to which the Sales Gas Pipeline connects.

[16] Following compression, the raw natural gas enters dehydration to remove residual water vapour in order to meet South Peace Pipeline water dew point specifications. As part of dehydration, the natural gas stream is percolated through the glycol tower. The residual water is captured by the glycol, which is then directed through a reboiler so that the entrained water is vapourized and released, and the glycol can be recirculated through the glycol tower.

[17] None of the inlet separation, compression or dehydration functions of the Saturn Compressor Station alters the composition of the raw natural gas, which may contain up to 9 ppm Hydrogen Sulphide (H₂S), received from the wells and which is delivered to the Spectra McMahan Plant by the Sales Gas Pipeline and the South Peace Pipeline. The raw natural gas that leaves the Saturn Compressor Station is first metered at the Spectra McMahan Sales Meter located within the Saturn Compressor Station and then conveyed through the Sales Gas Pipeline to the 8-30 Riser Site. From the 8-30 Riser Site, the gas is further conveyed through the South Peace Pipeline to the Spectra McMahan Plant for processing before being transported to market.

[18] The Sales Gas Pipeline does not transport natural gas to market for sale.

[19] The following processes are undertaken at the Spectra McMahan Plant:

- the raw natural gas stream is sent through the inlet separators to remove any remaining free liquids;

- the raw natural gas is treated through an amine system and impurities, such as carbon dioxide and hydrogen sulfide are removed;
- hydrogen sulfide is sent to the sulphur plant for treating;
- the gas stream then goes through a lean oil absorption process to remove heavier hydrocarbons;
- heavy hydrocarbons removed during the lean oil absorption process are condensed into liquid form;
- hydrocarbon liquids recovered at various points throughout the process are sent for further processing where they are stabilized and fractionalized to meet certain specifications; and
- the processed gas is dehydrated and sent to the sales outlet.

SUBMISSIONS

[20] The parties disagree that the inlet separation, de-sanding, compression, and dehydration that occurs at the Saturn Compressor Station is “processing” as that word is used in the definition of “flow line”. Relying on the ordinary meaning of the word “processing” as well as various judicial authorities considering that word in other legislative contexts, the Jorgensens submit these activities amount to “processing” of the natural gas. Encana argues that as the composition of the gas is not altered, “processing” does not occur and the Saturn Compressor Station is not a “scrubbing, processing or storage facility”.

[21] Encana submits “processing” of natural gas has an industry specific meaning that does not include the activities at the Saturn Compressor Station. Encana submits the Sales Gas Line is part of the gathering system that transports raw unprocessed natural gas to the Spectra McMahon Plant for “processing”, as that term is understood in the natural gas industry, prior to its transmission to market.

[22] While not disputing that the natural gas is processed at the Spectra McMahon Plant, the Jorgensens argue that it is also processed at the Saturn Compressor Station. As the Sales Gas Line transports natural gas from the Saturn Compressor Station to the 8-30 Riser Site and on to the South Peace Pipeline and the Spectra McMahon Plant, they argue it is not part of the upstream gathering system but part of the downstream system for the transmission, distribution or transportation of natural gas to market.

ANALYSIS

Previous Board Decisions

[23] The Board has considered the definition of “flow line” in several cases. The Board has found that pipelines that are located within the upstream or gathering part of the system, and that function as part of the gathering system are flow lines (*Encana Corporation v. Ilnisky*, Order 1823-1, April 11, 2014 (*Encana v. Ilnisky*); *ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014 (*ARC v. Hommy*)). The gathering system comprises the pipelines and other infrastructure that move raw gas from the well head to processing facilities (*Murphy Oil Company Ltd. v. Shore*, Order 1745-1, September 13, 2012 (*Murphy v. Shore*)).

[24] A pipeline need not connect directly to a well head to be a flow line as long as it is part of the gathering system for the production of natural gas (*Spectra v. London*). A “flow line” must: 1) connect a well head to a “scrubbing, processing or storage facility” and 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line. The Board has found the following types of pipelines to be flow lines:

- a) a segment of pipeline transporting natural gas from a well head
(*Murphy v. Shore*;

- b) a segment to transport produced water separated from the natural gas at a well site (*Murphy v. Shore*);
- c) a fuel line transporting fuel gas from a facility to a well head (*Murphy v. Shore*);
- d) a line to transport produced gas from a well site (*Encana v. Ilnisky*);
- e) a hydraulic fracturing water supply line (*Encana v. Ilnisky*);
- f) a hydraulic fracturing water return line (*Encana v. Ilnisky*);
- g) a 16 inch line to transport produced gas from a well site (*ARC v. Hommy*);
- h) a hydraulic fracturing water supply line also licensed for bi-directional use to carry natural gas from a well site (*ARC v. Hommy*);
- i) a line connecting a well head to a scrubbing, processing or storage facility that is not owned by the same entity that operates the well head or the facility (*Spectra v. London*).

[25] In all of these cases, the Board found the pipelines in issue to be part of the gathering system for the production of natural gas.

[26] In *ARC v. Hommy*, the Board found that a segment of a pipeline that transported water as post-production waste from a processing and storage facility to a vertical well for injection and disposal was not a flow line because, although it was located on the gathering side of the system, it did not function as part of the gathering system.

[27] The Board has found that the legislature intended to give the Board jurisdiction over those pipelines that form part of the gathering system and function as part of the gathering system. The gathering system starts at the well heads and ends at “scrubbing, processing or storage facilities” that precede the transfer of the conveyed substance to transmission, distribution or transportation lines. This case asks whether the Saturn Compressor Station is a “scrubbing,

processing or storage facility” that marks the end of the gathering system, such that the Sales Gas Pipeline is not a “flow line”.

Approach to Statutory Interpretation

[28] The modern approach to statutory interpretation set out by the Supreme Court of Canada, and applied by the Board, requires that the words of an enactment must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act, and the intention of Parliament.

[29] According to *Sullivan on the Construction of Statutes*, 5th ed (Markam: LexisNexis 2008), words in a statute are presumed to have their ordinary meaning unless this assumption becomes untenable (page 24). Sullivan sets out the following propositions for applying the ordinary meaning of words to statutory interpretation:

1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must consider the purpose and scheme of the legislation; they must consider the entire context.
3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.

[30] An exception to applying the ordinary meaning of words, or one of the reasons for not applying the ordinary meaning, is where a particular word has a technical meaning that is generally understood within a particular trade or industry, and the statute is written for that trade or industry (*Sullivan*, page 51-52). The parties disagree on whether the ordinary or technical meaning of the word “processing” should be used in interpreting the phrase “scrubbing, processing or storage facility”.

Ordinary or Technical Meaning

[31] The Jorgensens provide definitions from the *Canadian Oxford Dictionary* for the noun form of “process” as: “a course of action or proceeding, esp. a series of stages in manufacture or some other operation”; and for the verb form as: put (a raw material, a food, etc.) through an industrial or manufacturing process in order to change or preserve it etc.”. The *Dictionary of Canadian Law* defines the term “processing” as: “1. ‘[T]he treatment must make the goods more marketable and ... there must be some change in the nature or appearance of the goods.’ *Tenneco Canada Inc. v. R* (1987), [1988] 2 F.C. 3 at 9, [1987 2 C.T.C 231, 87 D.T.C. 5434, 15 F.T.R 314, Dubé J. 2. Includes changing the nature, form size, shape, quality or condition of a natural product by mechanical, chemical or any or any other means.”

[32] Judicial interpretation of the word “processing” found in other statutes, in particular taxation statutes, has generally adopted an ordinary meaning of the word as, most recently, in *Repsol Canada Ltd. v. R*. 2015 TCC 21 which said:

1. The term “processing” should be given broad interpretation;
2. There must be some change to the goods; and
3. The change must render the goods more marketable.

[33] The Jorgensens submit that the ordinary meaning of the word “processing” should be used to interpret the phrase “scrubbing, processing or storage facility” and that applying the ordinary meaning of the word and judicial interpretation of that word makes what happens at the Saturn Compressor Station “processing”.

[34] Encana submits that the legislation is technical in nature and that the technical meaning of words as they are understood in the industry should be used. Encana says “processing” of natural gas as that term is understood in the industry means removing the constituent parts of the gas such as the H₂S and other deleterious substances and the by-products such as pentane, butane,

propane and ethane in order to render the gas marketable. Encana provides a definition from *The Manual of Oil and Gas Terms*, 13th ed, that defines “processing plant” as “a plant to remove liquefiable hydrocarbons from wet gas or casing head gas.” Encana submits this definition confirms that processing involves the alteration of gas by removing liquefiable hydrocarbons (i.e. propane, butane, ethane, etc.); that is, separating the gas into its constituent parts. The definition of “raw gas” in the same *Manual* as “casing-head gas after it has passed through a separator for the purpose of removing oil and condensate and prior to its passage through a gas processing facility for the extraction of various liquefiable hydrocarbons”, supports the previous definition of “processing plant”.

[35] Encana refers to the following definitions from various Regulations:

Drilling and Production Regulation, BC Reg 282/2010 (OGAA):

“gas processing plant” means a facility for the extraction from natural gas of hydrogen sulphide, carbon dioxide, helium, ethane, natural gas liquids or other substances, but does not include a facility that

- a) has a processing capacity less than 150 000 m³/day, and
- b) uses a non-regenerative system for the removal of hydrogen sulphide or carbon dioxide.

Oil and Gas Waste Regulation, BC Reg 254/2005 (*Environmental Management Act*):

“processing plant” means a facility that extracts hydrogen sulphide, carbon dioxide, helium, ethane or natural gas liquids from natural gas.

Petroleum and Natural Gas Royalty and Freehold Production Tax Regulation, BC Reg 495/92 (PNGA):

“natural gas processing plant” means a plant for the extraction from natural gas of marketable gas and natural gas by-products.

[36] The terms “marketable gas” and “natural gas by-products” are not defined in the Regulations under the *Petroleum and Natural Gas Act* but are defined in the *Oil and Gas Activities Act General Regulation*, BC Reg 274/2010 as follows:

“marketable gas” means natural gas that is available for sale for direct consumption as a domestic, commercial or industrial fuel, or as an industrial raw material, or is delivered to a storage facility, whether it occurs naturally or results from the processing of natural gas.

“natural gas by-products” means natural gas liquids, sulphur and substances other than marketable natural gas that are recovered from raw natural gas by processing or normal 2-phase field separation.

[37] Encana argues that these definitions support the conclusion that “processing” requires that the composition of the natural gas be altered such that it is broken down into its constituent components or otherwise made ready for market. Encana submits that the *Petroleum and Natural Gas Act* and the *Oil and Gas Activities Act* are specialized statutes that are intended for a technical audience, and for that reason, the presumption in favour of using the ordinary meaning of words is rebutted.

[38] I am satisfied that if the ordinary meaning of the word “processing” as set out in the various cases that have considered that word is used, then what occurs at the Saturn Compressor Station is “processing”. The product that enters the Saturn Compressor Station is changed in that liquid is removed, it is desanded, it is compressed and it is dehydrated. The product that emerges from the Saturn Compressor Station into the Sales Gas Pipeline is not the same as the product that entered the Saturn Compressor Station. The processes, in the ordinary sense, that are applied to the raw natural gas at the Saturn Compressor Station, while not making the gas marketable directly to consumers, make the gas “more marketable” than it was before the processes were carried out.

[39] I am also satisfied that “processing” of natural gas has a specific meaning in the industry that involves altering the gas by removal of the constituent

components to make the gas marketable. This definition is evident in the industry material provided to me as well as the various definitions for “natural gas processing plant”, “gas processing plant”, and “processing plant” found in various regulations under the *Oil and Gas Activities Act*, the *Petroleum and Natural Gas Act* and the *Environmental Management Act*. I am satisfied that the processes, in the ordinary sense, that are applied to the raw natural gas at the Saturn Compressor Station does not process the natural gas as that term is understood in the industry as there is no change to the constituent components of the natural gas itself.

[40] The question is, which meaning of the word “processing” did the legislature intend to apply in the phrase “scrubbing, processing or storage facility” in the definition of “flow line”?

[41] In *Murphy v. Shore*, with reference to the Debates of the Legislative Assembly, the Board found that the legislature’s intent in defining two classes of pipelines, one over which the Board has jurisdiction and one over which it does not, was to give the Board jurisdiction over those pipelines that comprise the gathering system. In that decision, the Board found that pipelines that carry produced gas and produced water separated at the well site are flow lines. The Board applied an industry understanding of the term “gathering system”, in finding that it could not have been the legislature’s intent that separation of raw natural gas and water at the well head would be considered “processing” for the purpose of the definition of “flow line” otherwise, the legislative intent that “flow lines” include those pipelines comprising the gathering system would be frustrated.

[42] Without the benefit of the thorough submissions in this case with respect to the meaning of the word “processing”, the Board’s decision in *Murphy v. Shore* necessarily applies the meaning of “processing” as it is understood in the industry. The fact that “processing” in the ordinary sense occurred at the well

site, did not turn the equipment that performs that function into a “processing facility” within the meaning of the definition of “flow line”. To interpret the well site separation of raw natural gas and water as “processing” would not give effect to the intent that flow lines are the pipelines that comprise the gathering system.

[43] In *Murphy v. Shore*, the Board also gave effect to the industry understanding of “transmission, distribution and transportation lines” as the downstream pipelines that convey product from a processing facility to market for sale or further transport.

[44] The *Oil and Gas Activities Act* establishes the Oil and Gas Commission and provides the regulatory framework for the development of the oil and gas industry in the province. It provides that a person may not carry out an “oil and gas activity” without a permit and in compliance with the Act and its regulations. The *Petroleum and Natural Gas Act* provides the regulatory framework for exploration and drilling for oil and natural gas, and in Part 17, establishes the Surface Rights Board and the legislative scheme for gaining access to private land and the dispute resolution mechanism to determine compensation for access to private land. Together, the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* provide a comprehensive scheme for the regulation of the oil and gas industry in British Columbia. Much of the language used in both Acts is technical in nature and has specific meaning within the oil and gas industry. The principal audience for the legislation is the oil and gas industry. It makes sense, therefore, that words in the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* be interpreted in accordance with the industry’s understanding of those words.

[45] The Jorgensens point out that the term “flow line” is only used in the *Petroleum and Natural Gas Act* in the context of defining the Board’s jurisdiction to grant right of entry to private land and determine compensation for entry. The term “flow line” is defined in the *Oil and Gas Activities Act* and that definition is

incorporated by reference in to the *Petroleum and Natural Gas Act*. The term “flow line” is used in both pieces of legislation dealing with entry to private land. The *Petroleum and Natural Gas Act* provides that the Board may grant a right of entry order for an oil and gas activity, including for the construction and operation of a pipeline as long as the pipeline is a flow line. Section 34 of the *Oil and Gas Activities Act* allows that a permit holder who has failed to obtain an entry agreement with a landowner authorizing the permit holder to enter, occupy and use land for the purposes of constructing and operating a pipeline that is not a flow line, may expropriate as much of the land as is necessary for constructing and operating the pipeline. The sole purpose for the definition of “flow line”, therefore, is to differentiate between those pipelines over which the Surface Rights Board has jurisdiction to grant a right of entry and determine the compensation payable for entry, and those pipelines for which a permit holder may expropriate the land necessary for the construction and operation of the pipeline. Arguably, as the word “flow line” is not used in any context relating to the regulation of the industry, there is no reason to apply industry specific meanings to the words in the definition. However, interpretation of the word “flow line” must make sense in the context of the entire legislative scheme, and words should be interpreted consistently throughout the legislation.

[46] Unless industry specific meanings are applied to the definition of flow line, the legislative intent that the Board have jurisdiction over the gathering system cannot be given effect and there would be confusion and uncertainty about which pipelines the Board has jurisdiction over and which it does not. If the ordinary meaning of the word “processing” is used in the definition of flow line, then whether a pipeline connecting a well head to a downstream processing plant is a “flow line” would differ depending on when initial separation of the raw natural gas and water occurred and depending on the location of other intermediate processes, in the ordinary sense, as raw natural gas is conveyed to a plant for processing into marketable gas. As pointed out by Encana, there are numerous upstream operations that are applied to raw natural gas including well site test

separation or the injection of corrosion inhibitor or methanol into a raw natural gas stream. Applying the ordinary meaning of “processing” would mean some pipelines typically considered as part of the gathering system would not be “flow lines” while other pipelines typically considered part of the gathering system would be “flow lines”. As many pipeline projects consist of more than one pipeline, the likelihood that duplicitous processes would be necessary to gain entry to the land would increase. In the absence of agreement with landowners, there would be a patchwork of entry by Board Order and entry by expropriation throughout the gathering system creating inconsistency, uncertainty and confusion. Applying the generally understood meaning within the industry of “processing facility” as the facility that processes the raw natural gas into marketable gas, provides certainty to both landowners and permit holders and treats all of the pipelines comprising the gathering system consistently.

[47] If the legislature intended that any change to the natural gas that made it “more marketable” was “processing”, then arguably every upstream operation from the moment the gas leaves the well would be processing. There would not be any “flow lines” or any reason for the definition of “flow line”, and the Board would have no jurisdiction to grant right of entry beyond a well site. As articulated in *Murphy v. Shore*, if the legislative intent was to confine the Board’s authority to authorizing entry to land required only for oil and gas activities associated with a well site, there would be no purpose to giving the Board jurisdiction to authorize entry for an “oil and gas activity” including “the construction or operation of a pipeline”, but then limit that jurisdiction to a particular type of pipeline. There would have been no need to distinguish between flow lines and pipelines, or provide a definition of “flow line” at all. The Board could simply have been given jurisdiction with respect to activities required for the construction and operation of a well site.

[48] As well, as articulated in *Murphy v. Shore*, there would have been no need to provide an expansive definition of “surface lease” to include right of way

agreement, as use and occupation of land for portions of pipeline within the boundaries of a well site would be covered by the surface lease for the well site. And, as annual rent is payable to a landowner for continued use and occupation of a well site area, there would have been no need in section 143(3) of the *Petroleum and Natural Gas Act* to expressly limit a right holder's obligation to pay annual rent for a right of way for a flow line. The definition of "pipeline" itself expressly excludes "well head" requiring that the use of land for all of the equipment associated with a well head be covered by a surface lease or board order, rather than a right of way agreement, and liable to payment of annual rent. Reading the legislation as a whole, a "flow line" must be intended to extend beyond a well site area, and the Board must be intended to have jurisdiction for pipelines beyond those actually located at the well site. That intent can only be realized if the industry specific meanings are applied to the words within the definition.

[49] I find that as the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Acts* are written for the purpose of providing a comprehensive scheme for the regulation of the oil and gas industry in the province, that interpretation of the legislation should be done with the technical or industry specific words in mind. I agree with Encana's submission that the legislature must not have intended that the phrase "scrubbing, processing or storage facility" include any facility in which scrubbing, processing in the ordinary sense, or storage takes place. I find that those words are intended to demarcate the extent of the Board's jurisdiction over pipelines at those scrubbing facilities, processing facilities, or storage facilities, where scrubbing, processing in the industry sense as the processing of raw natural gas into marketable gas, or storage is the principal purpose of the facility.

[50] In the context of this case, the evidence is that the Saturn Compressor Station does not process the raw natural gas into marketable gas. The principal function and purpose of a compressor station is to boost natural gas pressure to move it through pipelines or other facilities. As indicated by information provided

by the Jorgensens about compressor stations, over distance friction and geographic elevation differences slow the gas and reduce the pressure. To ensure gas continues to flow optimally, it must be compressed and pushed through the pipeline. Compressor stations are placed along a pipeline to give the gas a “boost”. The evidence is that inlet separation is necessary for compression. The raw natural gas is not compressible unless liquids are removed. None of the inlet separation, compression or dehydration functions of the Saturn Compressor Station alters the composition of the raw natural gas by removing its constituent elements. None of the functions of the Saturn Compressor Station turn the raw natural gas into marketable gas.

[51] The evidence is that the McMahan Plant processes natural gas, as that term is understood in the industry, by removing its constituent parts including the H₂S and heavy hydrocarbons. The McMahan Plant processes change the raw natural gas into marketable gas.

[52] The parties also provided submissions with respect to “scrubbing” and “storage”. I find the Saturn Compressor Station is not a “storage facility”. While temporary storage of emulsion may occur periodically during pumping interruptions, storage is not a major function of this facility, and it cannot be considered a “storage facility”.

[53] “Scrubbing” is an industry specific term that refers to the removal of liquids from raw natural gas and to the extraction of deleterious substances such as H₂S from raw natural gas. “Scrubbing” is part of, and somewhat synonymous with, “processing” as that term is understood in the industry. The Alberta *Gas Utilities Act*, RSA 2000, c G-5, defines a “scrubbing plant” as “any plant for the purifying, scrubbing or otherwise treating, of gas for the extraction or removal from it of hydrogen sulphide or any other deleterious substance”. Notably, whereas the word “processing” is used in the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act* and their various regulations, other than in the definition of

“flow line”, the word “scrubbing” does not occur elsewhere in either the *Oil and Gas Activities Act* or the *Petroleum and Natural Gas Act*. The fact that the word “scrubbing” is not used, supports the understanding that “scrubbing” is intended to be synonymous with “processing”. A “scrubbing facility” performs many of the same functions as a “processing facility”, as the term “processing” is understood in the industry. I find the Saturn Compressor Station is not a “scrubbing facility” for the same reasons it is not a “processing facility”.

CONCLUSION

[54] I find that in the context of the entire legislative scheme the legislative intent must have been that the words in the term “flow line” be interpreted in accordance with the generally understood meanings of those words in the industry. The presumption that the ordinary meanings of words apply is rebutted in the context of the legislative scheme and to give effect to the legislative intent. In particular, I find it was not the legislature’s intent to apply the ordinary meaning of the word “processing” or the meaning of that word as it has been judicially interpreted in the context of other legislative schemes to the definition of “flow line”. I conclude that the Saturn Compressor Station is not a “processing facility” within the meaning of the definition of “flow line” and that the Sales Gas Pipeline is a “flow line”.

[55] The Sales Gas Pipeline functions to connect well heads in the Saturn Gathering Pipeline System with a scrubbing or processing facility, namely the McMahon Plant, where raw natural gas is processed into marketable gas. The Sales Gas Pipeline is, therefore, a flow line, and the Board has jurisdiction.

ORDER

[56] The Board has jurisdiction to deal with Encana's application for right of entry with respect to the Sales Gas Pipeline and to determine the compensation payable to the Jorgensens. The application is referred back to the mediator.

DATED: June 15, 2015

FOR THE BOARD



Cheryl Vickers, Chair