

October 20, 2016

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 1/4 OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF
THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH 1/2 OF SECTION 4 TOWNSHIP 80 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT**

**THE SOUTH WEST 1/4 OF SECTION 3 TOWNSHIP 80 RANGE 17 WEST OF
THE 6TH MERIDIAN PEACE RIVER DISTRICT (the "Lands", file 1911)**

AND

**THE NORTH WEST ¼ OF SECTION 34, TOWNSHIP 79, RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT (the "Lands", file 1913)**

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

**Rodney Allen Strasky and
Kim Lori Strasky**

(RESPONDENTS, file 1911)

AND:

Tailwind Properties Ltd.

(RESPONDENT, file 1913)

BOARD ORDER

Heard: by written submissions closing October 14, 2016
Appearances: Darrin K. Naffin, Barrister and Solicitor, for the Applicant
Darryl Carter, Q.C., for the Respondents

INTRODUCTION

[1] Encana Corporation (Encana) has applied to the Board for mediation and arbitration services respecting right of entry to construct a pipeline right-of-way from 14-27-79-W6M to riser site 4-19-80-W6M (the Pipeline Segment) and with respect to unsettled compensation to the owners of the affected lands. Rodney and Kim Strasky are the Respondents to application 1911 and the owners of the Lands described as: NW ¼ 4-80-17 W6M, S ½ 4-80-17 W6M and SW ¼ 3-80-17 W6M (Board's file 1911). Tailwind Properties Ltd. (Tailwind) is the Respondent to application 1913 and owner of the Lands described as: NW ¼ 34-79-17 (Board's file 1913). Mr. and Mrs. Strasky are also the occupiers of Tailwind's Lands.

[2] The Respondents take issue with the Board's jurisdiction to grant the right of entry orders, submitting that the Pipeline Segment is not a "flow line". The term "flow line" is defined by the *Petroleum and Natural Gas Act* and *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.

[3] The Board's jurisdiction to grant right of entry and determine the compensation payable as a result of an entry does not extend to a pipeline that is not a "flow line".

ISSUE

[4] The issue is whether the Pipeline Segment is a “flow line” and thus a pipeline over which the Board has jurisdiction.

EVIDENCE AND FINDINGS OF FACT

[5] The evidence before me is an Affidavit of Jason Tauber, a Senior Development Engineer in the Infrastructure and Planning department, Northern Operations of Encana. From Mr. Tauber’s Affidavit I find as follows.

[6] The Pipeline Segment is one segment of the Encana C3+ pipeline project from 1-27-78-17 W6M to 3-7-81-17 W6M (collectively, the C3+ Pipeline) for the conveyance of unprocessed natural gas liquids (NGLs) to storage at the Tower Centralized Liquids Hub (Tower CLH). The NGLs are comprised primarily of a mix of propane, butane and other heavier hydrocarbon components.

[7] The C3+ Pipeline is a component of a system for the conveyance of NGLs from the Sunrise Gas Plant and the Saturn Phase 2 Sweet Gas Plant (collectively, the Gas Plants) to the Tower CHL. The Gas Plants are raw natural gas processing facilities. The Pipeline Segment, as a component of the C3+ Pipeline, will convey NGLs from the Gas Plants to an above ground riser site at 4-19-80-17, upstream of the Tower CLH.

[8] The Gas Plants will receive raw natural gas from well head production in the Dawson North development area in northeast British Columbia. At the inlet to each of the Gas Plants, raw natural gas will be separated from free liquids such as produced water and condensate. The raw natural gas is then compressed and refrigerated to segregate NGLs.

[9] The NGL's will undergo treatment as necessary to meet network requirements of the C3+ Pipeline and Pembina Pipeline Corporation and related entities' Peace pipeline (the Pembina Mainline). The NGLs may be temporarily stored in pressurized storage tanks associated with each of the Gas Plants before being received on the C3+ Pipeline and conveyed to the Tower CLH.

[10] The principle function of the Tower CLH is to accumulate and store NGLs delivered from the Gas Plants via the C3+ Pipeline. The NGLs will be conveyed from a custody transfer unit adjacent to the Tower CLH to the Pembina Redwater Fractionation and Storage Facility (the RFS Facility) via the Pembina Mainline.

[11] As NGLs are a mixture of different hydrocarbon liquids such as propane and butane among others, fractionation is required to make the liquid hydrocarbons consumable for domestic and industrial purposes. Fractionation refers to distillation of natural gas liquids into pure components, primarily through the addition of heat. Following fractionation, end uses of the pure components include home heating, crop drying, motor fuel, petro-chemical and industrial uses. The pure products recovered from fractionation at the RFS Facility will be transported for immediate sale to end users or for further distribution.

SUBMISSIONS

[12] Encana submits the Pipeline Segment is part of the "gathering system for unprocessed NGLs". It submits the C3+ Pipeline connects well head production of NGLs to a "storage" facility at the Tower CLH and a "processing" facility at the RFS Facility within the meaning of the definition of "flow line" and that both the Tower CLH and the RFS Facility precede the transmission of the pure natural gas liquids to market.

[13] The Respondents submit that “processing” of the raw natural gas to segregate the NGL’s will have occurred at the Gas Plants and that a pipeline downstream of this “processing” cannot meet the definition of “flow line”.

[14] In response, Encana submits it is the unprocessed NGLs that are the “conveyed substance” within the meaning of the definition of “flow line” not the raw natural gas, that “processing” within the meaning of the definition of “flow line” requires making a marketable product, and that “processing” of the NGLs occurs downstream of the C3+ Pipeline.

ANALYSIS

[15] For convenience, I repeat the statutory definition of “flow line”:

“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.

[16] As noted by the Board in *Encana Corporation v. Jorgensen*, Order 1852/1853-1, June 15, 2015, the term “flow line” is only used in the *Petroleum and Natural Gas Act* and in the *Oil and Gas Activities Act* in dealing with entry to private land. The sole purpose of the definition of “flow line” is to define the Board’s jurisdiction by differentiating between those pipelines over which the Surface Rights Board has jurisdiction to grant right of entry and determine compensation payable for entry, and those pipelines for which a permit holder may expropriate land necessary for the construction and operation of a pipeline. The Board has applied the industry specific understanding of words in the definition of “flow line” in order to give effect to what it has found to be the legislative intent, to provide certainty as to which pipelines the Board has jurisdiction over and which it does not, and to ensure that words are interpreted consistently throughout the legislation that provides the comprehensive scheme for the regulation of the oil and gas industry in British Columbia (*Encana v. Jorgensen*).

[17] The Board has considered the definition of “flow line” in several cases all involving pipeline components required for the production of natural gas. 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 Oil Company Ltd. v. Shore*, Order 1745-1, September 13, 2012);
- 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 Corporation v. Ilnisky*, Order 1823-1, April 11, 2014);
- 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 Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014);
- 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 Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015);
- j) a line connecting a compressor station where raw natural gas is not processed into marketable gas to a gas plant where raw natural gas is processed into marketable gas (*Encana Corporation v. Jorgensen*).

[18] 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 and that the legislative intent of the definition of “flow line” is to give the Board jurisdiction over those pipelines that form part of the gathering system and function as part of the gathering system.

[19] In *ARC v. Hommy*, the Board found that a segment of 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.

[20] The Board has found that a “processing facility” within the meaning of the definition of “flow line” is the facility that processes raw natural gas into marketable gas (*Encana v. Jorgensen*). It has found the term “scrubbing” facility is synonymous with “processing facility” and that to be a “storage facility” within the meaning of the definition of “flow line”, storage needs to be a major function of the facility, not a temporary or periodic occurrence (*Encana v. Jorgensen*).

[21] Further, in *Encana v. Jorgensen*, the Board found that the words “scrubbing, processing or storage facility” in the definition of “flow line” “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 principle purpose of the facility.” By characterizing the C3+ Pipeline as “part of the gathering system for unprocessed NGL’s”, and on the basis that the NGL’s are not processed into a marketable product until they get to the RFS Facility, Encana submits the definition of “flow line”, and therefore the Board’s jurisdiction, extends to those pipelines carrying unmarketable product, namely unprocessed NGL’s, downstream of the Gas Plants which process raw natural gas into marketable gas. The question is: Can the definition of “flow line” bear that interpretation when read in the context of the legislative scheme as a whole and the intention of the legislature?

[22] As the Board has said before, there are two parts to the definition of “flow line”. 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 (*Spectra v. London; Encana v. Jorgensen*). The Board

has found that a “flow line” need not connect directly to a well head, but may indirectly connect well heads to scrubbing, processing or storage facilities, as long as “it is part of the gathering system for the production of natural gas” (*Spectra v. London; Encana v. Jorgensen*). As the Board said in *Spectra v. London*, a “‘flow line’ is but one part of the upstream gathering system that moves gas from wellheads to processing facilities, prior to the transmission of the processed gas to market.”

[23] Characterizing the C3+ pipeline as “part of the gathering system for unprocessed NGL’s”, Encana submits the C3+ Pipeline connects well head production of NGL’s with the Tower CLH which is a “storage facility” and the RFS Facility which is a “processing facility” and therefore meets the first part of the definition of “flow line”. However, this characterization of the “gathering system” does not conform to the industry definition of the term.

[24] The Oil and Gas Commission (OGC) defines “Gathering system” as “The pipelines and other infrastructure moving raw gas from the well head to processing and transmission facilities” (Oil and Gas Glossary and Definitions, Version 1.0: July 2016). This is the same definition that has informed the Board’s understanding of the “gathering system”. See for example *Murphy v. Shore* where the Board has described the gathering system as comprising “the pipelines and other infrastructure that move raw gas from the well head to processing facilities”.

[25] While a “flow line” need not connect directly to a well head, it will be part of the upstream system that conveys substances from well heads to processing facilities. The OGC’s definition of “Gathering System schematic (Gathering Block Diagram)” is also instructive as follows: “A diagram indicating the flow path of oil and/or gas (including liquids) in pipelines between wells (well site facilities) and central facilities they are physically linked to (connected by pipelines).” (Emphasis added). The gathering system is the system of pipelines that serves to convey product from well heads to processing facilities. That product may include liquids, but to be considered a “flow line” the liquids

must be transported in a pipeline that serves to connect well heads, and be produced at well site facilities. The evidence in this case is that the unprocessed NGL's are recovered from the natural gas at the Gas Plants. I find it is stretching the definition of "flow line" to say that the C3+ Pipeline connects well heads to scrubbing, processing or storage facilities.

[26] Encana submits the unprocessed NGLs are the "conveyed substance", within the meaning of the definition, and the Pipeline Segment "precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line" and therefore meets the second part of the definition. As the Board found in *Encana v. Jorgensen* that "processing" meant processing into a marketable product, and as the NGLs are not marketable, Encana submits the C3+ Pipeline is part of the "gathering system" for NGLs and characterizes the Gas Plants as "Gathering Plants".

[27] What the Board found in *Encana v Jorgensen* was that a "processing facility" within the meaning of the definition of "flow line" was a facility that processed raw natural gas into a marketable product. A "flow line" connects well heads where raw natural gas (and other substances) is produced to scrubbing or processing facilities where the natural gas is processed into a marketable product or to storage facilities that are primarily for storing the conveyed substance prior to its transfer to a transmission, distribution or transportation line.

[28] I agree that NGL's are the "conveyed substance" in the C3+ Pipeline. However, they are not a "conveyed substance" until they are recovered from the raw natural gas stream at the Gas Plants. The evidence is that the NGL's in the C3+ Pipeline are recovered from the raw natural gas at the Gas Plants, not at the well heads. I agree with the Respondent's submission that whether or not the NGL's are themselves then further processed into a marketable product is irrelevant. Processing of the natural gas, as the industry understands it, will have already occurred. A pipeline downstream of this processing does not meet the definition of "flow line".

[29] I do not think it was the legislature's intent to stretch the "gathering system" over which the Board has jurisdiction beyond scrubbing or processing facilities that process raw natural gas into marketable product. A "flow line" is intended to convey raw natural gas (or presumably raw petroleum) from well heads to scrubbing, processing or storage facilities that precede its transfer to market. It may also convey produced water separated from the natural gas at well head facilities as it did in *Murphy v. Shore*, and potentially other liquids also separated from the natural gas at well heads. In all of those situations the "flow line" connects well heads with processing facilities and is functioning as part of the gathering system for natural gas.

[30] In *ARC v. Hommy* the Board found a pipeline segment carrying water from a gas plant for disposal was not a flowline as it was carrying post production waste and no longer functioning as part of the gathering system for natural gas. Similarly, in this case the C3+ Pipeline is carrying post-production by-product from the processing of raw natural gas for further processing. It is no longer part of the gathering system for natural gas.

[31] That NGL's are a byproduct of natural gas is evident from other definitions within the comprehensive legislative scheme for the regulation of the oil and gas industry.

[32] Natural Gas Liquids are defined in the *Drilling and Production Regulation* under the *Oil and Gas Activities Act* as follows:

"natural gas liquids" means ethane, propane, butanes, or pentanes or any other condensates, or any combination of them recovered from natural gas.

[33] The same Regulation provides the following definition of "natural gas by-products":

"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

[34] The *Petroleum and Natural Gas Act* provides as definition of "plant liquids":

“plant liquids” means hydrocarbon liquids recovered from natural gas other than by normal 2 phase separation.

[35] NGLs are hydrocarbon liquids recovered from natural gas also known as “natural gas byproducts” or “plant liquids”. While it is true that the NGL's are part of the raw natural gas stream produced at wells, they are not, in the circumstances of this case, the conveyed substance in a pipeline that connects well heads to scrubbing, processing or storage facilities as they do not exist as a singular conveyable product until they have been recovered from the natural gas at the processing facility that processes the natural gas. The C3+ Pipeline conveys these natural gas byproducts to a storage facility and then to a facility where they, in turn, are processed into marketable products. It does not connect well heads to scrubbing, processing or storage facilities, but connects processing facilities, namely the Gas Plants, to a facility for storage and then for further processing.

[36] The Board found in *Encana v. Jorgensen* that the words “scrubbing, processing or storage facility” in the definition of “flow line” “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 principle purpose of the facility”. I do not think it was the legislature's intent to extend the Board's jurisdiction over pipelines beyond those pipelines that convey substance from well heads to processing facilities or storage facilities. It did not intend the Board to have jurisdiction over pipelines beyond those facilities that carry post production waste or post production by-product recovered from the natural gas processing plant. Beyond those facilities the pipeline no longer connects well heads to scrubbing, processing or storage facilities and is no longer part of upstream gathering system for natural gas. It is part of the downstream post processing system for the conveyance of waste substances, byproduct and marketable product.

[37] I find the Pipeline Segment is not a “flow line” and the Board does not have jurisdiction.

ORDER

[38] The Board does not have jurisdiction. The applications are dismissed.

DATED: October 20, 2016



Cheryl Vickers, Chair