

May 31, 2017

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 EAST $\frac{1}{4}$ OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH WEST $\frac{1}{4}$ OF SECTION 30 TOWNSHIP 79 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT
THE SOUTH EAST $\frac{1}{4}$ 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 way of written submissions
Appearances: Lars Olthafer, Barrister & Solicitor, for the Applicant
J. Darryl Carter, Q.C., for the Respondents

INTRODUCTION AND ISSUE

[1] The applicant, Encana Corporation (“Encana”) seeks a right of entry order over Lands owned by the Respondents, Olaf Anton Jorgensen and Frances Diane Jorgensen, to construct and operate a pipeline in four segments (the “Pipeline”). The Pipeline has been permitted by the Oil and Gas Commission. The Respondents question the Board’s jurisdiction to issue the requested right of entry order on the basis that the Pipeline, and in particular segments 3 and 4 of the Pipeline, is not a “flow line” within the meaning of the *Oil and Gas Activities Act* and the *Petroleum and Natural Gas Act*.

[2] As the Board’s jurisdiction with respect to pipelines is limited to those pipelines that are “flow lines” as defined in the legislation, the issue is whether the Pipeline or any of its segments is a “flow line”.

[3] The *Oil and Gas Activities Act* provides the following 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.

BACKGROUND

[4] The application is for a right of entry order for right of way, workspaces, and sump required for the construction or operation of a portion of the Pipeline located between two well sites operated by Encana on two parcels of the Lands owned by the Jorgensens (the “NE 30 Well Site” and the “SE 30 Well Site”, collectively the “Well Sites”). Following receipt of the parties’ submissions on the issue of whether the

Pipeline is a “flow line”, I asked the parties to address the Board’s jurisdiction to issue a right of entry order with respect to the sump. This decision does not deal with that issue.

[5] The Pipeline includes four segments. Segment 1 is a 12” uni-directional pipeline that carries raw, produced natural gas and liquids from the NE 30 Well Site to a compressor station (the “15-27 Compressor”) via the NW 30 Well Site. After undergoing separation, compression and dehydration at the 15-27 Compressor, gas is transferred to the Enbridge Spectra Dawson Processing Plant for processing (the “Dawson Plant”).

[6] Segment 2 is a 6” uni-directional pipeline that carries produced water from Encana’s Water Resource Hub (the “Water Hub”) to the NE 30 Well Site for hydraulic fracturing via the SW 30 Well Site.

[7] Segment 3 is a 4” bi-directional pipeline that carries produced water from the Water Hub to the NE 30 Well Site for hydraulic fracturing via the NW 30 Well Site. It also conveys produced water from the NE 30 Well Site, after fracturing operations, to the Water Hub via the NW 30 Well Site.

[8] Segment 4 is a 4” uni-directional pipeline that carries sweet fuel gas to the NE 30 Well Site via the SW 30 Well Site. The fuel gas is used to power emergency shut down valves and control valves at the NE 30 Well Site, as well as to power a supervisory control and data acquisition system (SCADA) system, a remote transmitting unit, various instruments, and pieces of equipment, such as pumps, required for operations at the NE 30 Well Site.

ANALYSIS

[9] The Board has considered the definition of “flow line” in a number of cases to determine the extent of its jurisdiction over pipelines and pipeline components. Those cases and the various findings of the Board respecting the term “flow line” are

summarized in *Encana Corporation v. Strasky*, Order 1911/1913-1 and I will not repeat that summary here. Essentially, the Board has found that pipelines that function as part of the gathering system for the production of natural gas are “flow lines”. They need not connect directly to a well head, but may connect well heads indirectly with scrubbing, processing or storage facilities as long as they are part of the gathering system for the production of natural gas. The Board has found that scrubbing, processing or storage facilities demarcate the extent of the Board’s jurisdiction over pipelines.

[10] Flow lines are a subset of pipelines. “Pipeline” is defined in the *Oil and Gas Activities Act* as follows:

"pipeline" means... piping through which any of the following is conveyed:

- (a) petroleum or natural gas;
- (b) water produced in relation to the production of petroleum or 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, or
- (h) anything else that is prescribed;

[11] A “flow line” must 1) connect a well head with a facility, and it must 2) precede the transfer of the conveyed substance to or from a transmission, distribution or transportation line.

Is the Pipeline a flow line?

[12] Segment 1 of the Pipeline clearly functions as part of the gathering system that conveys raw natural gas to processing facilities. It connects a well head with a processing facility via the NW 30 Well Site and the 15-27 Compressor and precedes the transfer of the natural gas to a transmission, distribution or transportation line. The Board has previously found pipelines similar to Segment 1 to be flow lines (*Murphy Oil Company Limited v. Shore*, Order 1745-1 and *Encana Corporation v. Ilnisky*, Order 1823-1) and I am not persuaded that the Board's reasoning in those cases should not apply to Segment 1 in this case.

[13] Segment 2 carries produced water from the Water Hub to the NE 30 Well Site for hydraulic fracturing. It may be described as a hydraulic fracturing water supply line. The Board found a similar pipeline segment to be a "flow line" in *Encana v. Ilnisky*.

[14] Segment 3 carries produced water from the Water Hub to the NE 30 Well Site for hydraulic fracturing and from the NE 30 Well Site back to the Water Hub. It may be described both as a hydraulic fracturing water supply line and a hydraulic fracturing water return line. The Board found a hydraulic fracturing water return line to be a "flow line" in *Encana v. Ilnisky*.

[15] Segment 4 is a fuel line. It carries fuel for the purpose of powering emergency shut down valves and control valves at the NE 30 Well Site as well as other equipment required for the operation of the NE 30 Well Site. The Board found fuel line segments to be flow lines in both *Murphy Oil v. Shore* and *Encana v. Ilnisky*.

[16] As to Segments 3 and 4, the Respondents submit there is no evidence these pipelines will either connect a well head with a scrubbing, processing or storage facility, or that they will precede the transfer of the conveyed substance (produced water as to Segment 3, and fuel as to Segment 4) to or from a transmission, distribution or transportation line. The Board dealt with a similar argument in *Encana v. Ilnisky* and said:

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 the flow line precedes the transfer of the conveyed substance to or from such a line. (Emphasis in original)

[17] As discussed in *Encana v. Ilnisky*, the substance conveyed in the hydraulic fracturing water supply and water return lines, namely produced water, “is not a product that is further distributed through a transmission, distribution or transportation line”. The location of the segments in issue in *Encana v. Ilnisky*, as with the location of Segments 2 and 3 of the Pipeline in issue here, precedes the transfer of the natural gas conveyed in Segment 1 to a transmission, distribution or transportation line. They are both part of the gathering system for the conveyance of natural gas from a well head to a processing facility.

[18] In *Murphy Oil v. Shore*, the Board found that a fuel line used to power equipment at a well site including emergency shut down valves and control valves is “included in the definition of pipeline as ‘installations and facilities associated with the piping’ and is part of the system of vessels, piping, valves, tanks and other equipment that is used to gather, process, measure, store, or dispose of natural gas or water”. The Board found that to exclude a fuel line segment from the definition of “flow line” would “lead to absurd and harsh consequences that cannot have been intended”.

[19] The OGC Permit in this case authorizes the construction and operation of a pipeline in four segments as specifically detailed. As the Board said in *Encana v. Ilnisky*:

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.

[20] The same may be said for each of the four pipeline segments in this case. They will function collectively for the production of natural gas as part of the gathering system. Collectively, they connect a well head, the NE 30 Well Site, with a processing facility, namely the Dawson Plant, and precede the transfer of the produced natural gas to transmission, distribution or transportation lines. I am not persuaded that the Board's previous analysis respecting similar pipeline segments should not apply to these segments and find that Segments 1, 2, 3 and 4 of the Pipeline are a "flow line".

CONCLUSION

[21] The Pipeline is a "flow line". The Board has jurisdiction to make a right of entry order for the purpose of constructing and operating the Pipeline as permitted by the OGC and to determine the compensation payable to the Jorgensens for the right of entry. The application will be referred back to the mediator.

DATED: May 31, 2017

FOR THE BOARD



Cheryl Vickers, Chair