

May 22, 2018

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 $\frac{1}{4}$ OF SECTION 28 TOWNSHIP 79 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN PGP42560;
THE SOUTH EAST $\frac{1}{4}$ OF SECTION 33 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT;
THE NORTH EAST $\frac{1}{4}$ OF SECTION 29 TOWNSHIP 79 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Brian Ernest Derfler and
Lila Evangeline Derfler

(RESPONDENTS)

BOARD ORDER

Heard: By way of written submissions
Appearances: Lars H. Olthafer, Barrister and Solicitor, for the Applicant
Patrice Brideau, Barrister and Solicitor, for the Respondents

Introduction and Issue

[1] The Applicant, Encana Corporation (“Encana”), seeks right of entry to the Lands owned by the Respondents, Brian Ernest Derfler and Lila Evangeline Derfler, for the purpose of constructing and operating a proposed pipeline in three segments. Segments 1 and 2 are proposed to be uni-directional pipelines to move raw natural gas and liquids from well sites to a liquids hub. Segment 3 is a proposed bi-directional pipeline to move produced water from a Water Resource Hub (the “Water Hub”) to various well sites for hydraulic fracturing activities and then return produced water from the well sites back to the Water Hub. The Derflers contests the Board’s jurisdiction over Segment 3 (the “Water Line”) submitting this segment is not a “pipeline” and, consequently, not a “flow line” within the meaning of the *Petroleum and Natural Gas Act* and the *Oil and Gas Activities Act*.

[2] As the Board does not have jurisdiction over a pipeline that is not a “flow line” within the meaning of the legislation, the issue is whether the Board has jurisdiction over the Water Line.

The Water Line

[3] The Water Line will carry water for hydraulic fracturing operations from three sources: 1) water produced from wells in the water leg of the Sunrise field Cadotte “A” reservoir (“Cadotte produced water”); 2) water separated from wells producing gas, water and condensate in the Montney area (“Montney produced water”); and 3) hydraulic fracturing water flowback. Water is proposed to be transported from the

Water Hub to well sites for on-site storage until it is used in hydraulic fracturing operations. Once hydraulic fracturing operations are concluded, the gas, water and condensate recovered will be separated on site and liquid phases stored in tanks. The recovered water will be transported via the Water Line back to the Water Hub. At the Water Hub, the hydraulic fracturing flowback water will be treated, recycled and blended with Cadotte produced water and Montney produced water to be used again in hydraulic fracturing operations.

The Respondents' submission

[4] The Derflers submit the Water Line does not qualify as a “pipeline” within the meaning of the *Oil and Gas Activities Act* as it will not convey “produced water” or any other substances listed in (a) to (e) of the definition of “pipeline” in that Act, and consequently cannot be a “flow line” as defined. They submit the Water Line will not be conveying produced water but will be conveying produced water blended with either or both of non-produced water and chemicals for hydraulic fracturing. They submit what will be conveyed is not one of the substances listed in the definition of “pipeline”. The submission that what will be conveyed in the Water Line is not one of the substances listed in the definition of “pipeline” is not a submission previously considered by the Board.

Analysis – Is the Water Line a “flow line”?

[5] A “flow line”, as defined, must also be a “pipeline” as defined. The term “pipeline” is defined in the *Oil and Gas Activities Act*, the relevant portions of which define a “pipeline” as “piping through which any of the following is conveyed:

- a) ...;
- 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) ...;
- d) ...;

e) other prescribed substances.”

[6] The *Oil and Gas Activities General Regulation*, B.C. Reg. 274/2010 (the “Regulation”), prescribes various substances for the purpose of the definition of “pipeline” including at section 3(1)(a) “water or steam used for geothermal activities or oil and gas activities”. The definition of “oil and gas activity” in the *Oil and Gas Activities Act* includes “the production, gathering, processing, storage or disposal of petroleum, natural gas, or both”.

[7] I find the Water Line is a “pipeline” as it falls within either or both of subsections b) and e) of the definition.

[8] The water to be conveyed in the Water Line is “water produced in relation to the production of petroleum and natural gas”. It includes Cadotte produced water, Montney produced water, and hydraulic fracturing water flowback, all of which have been produced in relation to the production of petroleum and natural gas.

[9] While there is no legislative definition of “produced water”, the on-line Glossary published by the Oil and Gas Commission provides a definition of “produced water” as follows:

Water flowing or is [*sic*] extracted to the surface from a natural gas or oil well, including water injected into the formation, and including any chemicals added during the production/treatment process. This includes flow-back fluids from well completion and stimulation operations. This also includes any fresh water not used for domestic purposes.

[10] The industry understanding of the term “produced water” and the phrase “water produced in relation to the production of petroleum and natural gas”, therefore, includes the water to be conveyed in the Water Line.

[11] Even if all or some of the water in the Water Line is not “water produced in relation to the production of petroleum and natural gas”, it is “water...used...for oil and gas activities” as prescribed by the Regulation. Hydraulic fracturing operations are completed for the production of natural gas in certain formations and the water used for hydraulic fracturing and recovered as flowback is water used for oil and gas activities. The Water Line, therefore, also falls with subsection e) of the definition of “pipeline”.

[12] The term “flow line” is defined in 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.

[13] 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”.

[14] The proposed Water Line will perform the same functions as water lines found by the Board to be flow lines within its jurisdiction in *Encana Corporation v. Ilnisky*, Board Order 1823-1, *Encana Corporation v. Jorgensen*, Board Order 1939-1, and *Encana Corporation v. Strasky*, Board Order 1955-1. In those cases the Board found pipelines used to carry water from the Water Hub to well sites for hydraulic fracturing and from well sites to the Water Hub including produced water and hydraulic fracturing flowback to be flow lines within the meaning of the legislation and within the jurisdiction of the Board. The Board found those similar pipeline segments function collectively with the other pipeline segments to produce and transport natural gas as part of the gathering system. Having considered the Respondents’ submission respecting whether the

proposed Water Line is a “pipeline” and having found that it is, I see no reason in this case to depart from the analysis in the previous decisions finding similar pipeline segments to be “flow lines”.

[15] I am satisfied that the proposed pipeline inclusive of Segment 3 is a “flow line” over which the Board has jurisdiction.

Conclusion

[16] The Board has jurisdiction over Encana’s application for a right of entry order with respect to the proposed pipeline project.

DATED: May 22, 2018

FOR THE BOARD

A handwritten signature in black ink, appearing to read 'Cheryl Vickers', written over a horizontal line.

Cheryl Vickers, Chair