File No. 1598
Board Order # 1598-2

December 5, 2008

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF
NE ¼ Sec 10 & Lot 2 Sec 15 of Rge. 15 TWP 79 W6M
(The "Lands")

BETWEEN:

Arc Petroleum Inc.

(APPLICANT)

AND:

Kane Piper

(RESPONDENT)

BOARD ORDER

Heard:	October 28, 2008 at Fort St. John
Panel:	Cheryl Vickers
Appearances:	Rick Williams, Barrister and Solicitor, for the Applicant
	Darryl Carter, Barrister and Solicitor, for the Respondent

INTRODUCTION

[1] The Mediation and Arbitration Board granted the applicant, Arc Petroleum Inc (Arc), a right of entry order with respect to an 8.06 acre right of way across land owned by the respondent, Kane Piper, to construct a sour gas flowline and fuel line (the pipelines) on terms agreed to by the parties (Board Order 1598-1). Arc paid Mr. Piper $15,000 in compensation and agreed Mr. Piper would maintain the right to proceed to arbitration if he felt the compensation was inadequate. Mr. Piper felt the compensation was inadequate, and asked that the matter be arbitrated. He seeks compensation for the loss of rights taken in the amount of $2,850/acre ($22,971), annual compensation for loss of rights, and compensation for crop loss in the amount of $3,000/acre ($24,180).

ISSUE

[2] The sole issue is to determine the appropriate compensation payable to Mr. Piper under the *Petroleum and Natural Gas Act* (*PNGA*). While Arc takes the position that the $15,000 paid is more than adequate, they agree that in the event the Board determines the appropriate compensation to be less than $15,000, no amount is refundable.

FACTS

[3] The land, described as NE ¼ Sec 10 & Lot 2 Sec 15 of Range 15 TWP 79 W6M, owned by Mr. Piper, comprises 312.45 acres approximately four kilometres north of Dawson Creek in the Peace River Regional District (the Lands). The Lands are in the Agricultural Land Reserve (ALR). Mr. Piper has been farming these and other lands, collectively comprising approximately 7,500, acres for many years. On these two particular parcels, he has principally grown oats and canola and typically rotates those crops between these two parcels every year. Oats and canola are both annual crops. Mr. Piper has also planted wheat, barley and fescue but, in the last couple of years, the Lands have been used to grow oats and canola. Mr. Piper practices "zero tilling" on the lands, which he says outperforms conventional farming by approximately 30% year after year. These lands have been in zero till for over 15 years.

[4] The Right of Way in which Arc has constructed the pipelines encompasses 8.06 acres of Mr. Piper's land and runs along the property boundary and edge of the field. It is about ½ of a kilometre from Mr. Piper's residence.

[5] Construction of the pipelines on the Lands took place over 14 days during June 2008. The roads were watered to control dust, and operations were kept to daylight hours. No fence cuts were required. The land was left ready for reseeding in the spring of 2009. There is no permanent above ground disturbance along the right of way. At the request of Mr. Piper, Arc removed trees along the boundary of the right of way. Arc estimates the additional cost to them for the removal of trees at $3,000.

[6] Arc offered to pay Mr. Piper compensation of $13,299.00 based on $950/acre for the right of entry ($7,657.00) and $400/acre for crop loss, payable at 100% in the first year, 50% in the second year, and 25% in the third year ($5,642.00). Arc agreed to increase the compensation to $15,000 in consideration of Mr. Piper's agreement not to contest Arc's application to the OGC and to limit any further Board proceedings to the issue of compensation.

LAW

Principles of Compensation

[7] Pursuant to section 9(2) of the *PNGA*, a person who enters, occupies or uses land to explore for, develop or produce petroleum or natural gas is liable to pay compensation to the landowner for loss or damage caused by the entry, occupation or use. Section 21(1) of the *PNGA* lists various factors the Board may consider in determining an amount to be paid to a landowner. They are:

a) the compulsory aspect of the entry, occupation or use,
b) the value of the land and the owner's loss of a right or profit with respect to the land,
c) temporary and permanent damage from the entry, occupation or use,
d) compensation for severance,
e) compensation for nuisance and disturbance from the entry, occupation or use,
f) money previously paid to the owner for entry, occupation or use,
g) other factors the board considers applicable, and
h) other factors or criteria established by regulation.

[8] There are no factors or criteria established by regulation.

[9] A review of the case law illustrates that there are a number of settled principles relating to compensation for entry under the *PNGA*. The first is that a landowner's right to compensation is just that - a right to compensation for loss as a result of the entry. The landowner is entitled to the equivalent in money for the loss sustained and not for more than the loss sustained. The compensation does not represent a purchase price or a rental, it does not represent remuneration to the landowner for the development of subsurface resources under his land, and it does not compensate the landowner for the fact that a resource company has acquired the rights to subsurface resources. It simply compensates for the landowner's actual and projected probable future loss arising out of the company's entry, occupation and use of the surface (*Western Industrial Clay Products Ltd v. Mediation and Arbitration Board*, 2001 BCSC 1458.) The Board exceeds its jurisdiction if it orders an amount to be paid that exceeds the loss sustained (*Western Clay, supra*).

[10] The second principle is that a "taking" under the *PNGA* is not an expropriation, although expropriation principles may apply to determine the appropriate compensation. No land and no legal interest in the land is taken from the landowner. The landowner continues to hold the fee simple and, consequently, it is appropriate that the Board consider the landowner's residual and reversionary interest (*Dome Petroleum Ltd v. Juell* [1982] B.C.J No. 1510 (BCSC); *Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No. 1430 (BCSC)).

[11] Section 21(1) of the *PNGA* lists a number of factors that the Board may consider in determining compensation including "the value of the land". "Value of the land" means value to the owner of the land, not the value to the taker (*Dau v. Murphy Oil Company Ltd.*, [1970] S.C.R. 861; applied in BC in *Dome v. Juell, supra*; *Scurry Rainbow; supra*; *Western Clay, supra*). The Board should consider whether there are any special factors which give a greater value to this owner for this particular piece of land beyond that shown by the average value of similar land indicated by sales (*Scurry Rainbow; supra*).

[12] Evidence of what compensation is paid to other owners in the area is relevant and should be considered by the Board as an "other factor" where the evidence indicates an established pattern of compensation exists (*Scurry Rainbow, supra*). The Board may consider the various factors set out in section 21 of the *PNGA* and evaluate each, then step back and consider whether the totality gives proper compensation in any particular case (*Scurry Rainbow, supra*).

[13] These principles of compensation are the law in British Columbia and are binding on this Board in determining compensation under the *PNGA*. It is not open to this Board to change the law.

[14] It remains to apply these principles to the present case. The Board must ask what is the loss sustained by Mr. Piper as a result of Arc's right of way and what is the appropriate compensation for that loss? In determining the

appropriate compensation, the Board may consider the various factors listed in section 21 of the *PNGA*. Essentially, compensation includes compensation for loss of rights and compensation for damages and loss of profit. Damages are not an issue in this case, only the amounts payable for loss of rights and loss of profits, or crop loss.

EVIDENCE AND ANALYSIS

A. LOSS OF RIGHTS

Parties' Evidence & Submissions

[15] The evidence of both Andrea Fiedler, Surface Land Agent with Arc, and Darren Rosie, a local land agent, was that $950/acre is the amount typically paid in the area for right of way access. Ms. Fiedler has been working for Arc for three years. Her evidence was that Arc has paid $950/acre for right of way access during that time. She was aware that Arc had entered an agreement with Mr. Piper in 2003 at $950/acre. Her evidence was that she thought other landowners found the $950/acre rate to be fair.

[16] Mr. Rosie, the owner and President of Sierra Land Consulting, has been working as a local land agent for 15 years. His evidence was that when he started doing this work in 1994, the rate was $600/acre; it went up to $700, then $850 and has been $950/acre for the last several years. He indicated $950/acre for right of way access first started to be paid in 1999 or 2000 and that it has been the standard rate since 2003.

[17] Mr. Rosie testified that five landowners were affected by this flowline and that he had been retained by Arc to negotiate entry and compensation with all of them. He successfully negotiated compensation for right of entry with the other affected landowners at the $950/acre rate.

[18] Arc's brief of authorities contained Board Orders dating back to 2000 using $950/acre for pipeline rights of way.

[19] Mr. Piper characterized the $950/acre as "ridiculous" and indicated this rate has been paid for 20 years.

[20] I accept that $950/acre has been the standard rate for pipeline access in this area since 2000, and that it was the rate agreed by other landowners affected by this pipeline in 2008.

[21] Mr. Piper said land values had doubled since 2003 so if the rate was based on land values it needed to be changed. He does not think it is reasonable to compensate based on the per acre value of a whole ¼ section as, in his view, a small parcel of land equal in size to the right of way area, would be worth more per acre.

He admitted that he agreed to $950/acre in 2006 for a right of way, but said land values had increased since then and he was "most likely not happy with the 2006 value but took it anyway".

[22] To support his view of land value, Mr. Piper provided evidence of the sale of a 4.6 acre parcel in a residential subdivision overlooking Dawson Creek for $110,000 and of a conditional sale of a 4.69 acre parcel in the same subdivision for $95,000.

[23] Rolf Halvorsen, AACI, P. App, provided an appraisal of the Lands estimating market value as of April 15, 2008 at $1,250/acre in its existing use as agricultural land. His opinion of value is based on his analysis of six sales and two listings of agricultural land ranging in size from 78.22 acres to 160 acres and in price from $1,000/acre to $1,518/acre. I find the market value of the Lands to be $1,250/acre.

[24] Mr. Piper submitted the presence of a sour gas pipeline negatively affected the value of land. Mr. Halvorsen's evidence was that he could find no evidence that the presence of a pipeline on agricultural land impacted the value of the land.

[25] Mr. Rosie characterized the impact of the right of way on Mr. Piper's lands as "minimal" in that it stayed to the ¼ section lines, involved no above ground installations, and did not interfere with harvesting and seeding. Mr. Piper agreed the route along the property boundary was preferable to cutting across the field, that there were no severance issues in harvesting the field with this right of way, and that the pipelines were buried and the right of way left for reseeding. He thinks it is likely the line will settle and Arc may have to do some more work to fix any settlement. He agreed he could always come back to the Board to seek damages or ask Arc to fix any damage, and agreed that, other than the possibility of further damage, he can keep farming the right of way area.

[26] Considering the timing and time involved in construction of the pipelines, the location of the right of way in relation to Mr. Piper's residence and his overall farm operation, that there are no above ground installations, that no lands were severed and that, but for possible future settling, the lands are ready for re-seeding and continued agricultural use, I find that, relatively speaking, the impact of this right of way on these Lands and to this owner is minimal.

Board's Decision & Analysis

[27] Mr. Piper has lost certain rights with respect to his land. These rights are intangible and not easily capable of compensation with money. In attempting to calculate value for the loss, however, the legislation provides various factors which the Board may consider. One of those factors is the compulsory aspect of the taking. Once need for surface access is established, the landowner cannot say "no" to prevent entry for the purpose of oil and gas exploration or production.

Mr. Piper has lost the right to decide for himself the use of a portion of his lands and in particular, whether or not he wants to have a sour gas pipeline under his land. To this extent, his right to quiet enjoyment of the land is lost.

[28] Loss of an intangible right, such as the loss of quiet enjoyment, is virtually incapable of valuing in terms of money. Any amount of money placed on the value of intangible rights will seem arbitrary and has been acknowledged as such by the courts. As was said by Mr. Justice Berger in *Dome v Juell, supra*, an amount for compulsory aspect of entry "is intended to be a purely arbitrary amount to compensate the farmer for the loss of his right to decide for himself whether or not he wants to see oil and gas exploration and production carried out on his land. Like other matters covered by section 21, the figure is at large, and not capable of precise calculation according to some standard or other." The best the Board can do is consider all of the relevant circumstances, including the factors listed in section 21 and other factors that may be appropriate, and decide what amount is fair and reasonable in the circumstances.

[29] Another factor to be considered is the "value of the land". Mr. Piper argued it is not reasonable to base compensation on the value of the ¼ section as a whole, but on the value of a subdivided 4 acre parcel. That view of what "value of the land" means, however, is simply not in accord with the authorities binding on this Board. The "value of the land" in section 21(1) of the *PNGA* means value to owner (*Dau v. Murphy Oil, supra*). The value to owner of this land, subject to any special value, is the ¼ section value of agricultural land in the ALR. Mr. Piper, the owner of this land, can only use the land as agricultural land, and any loss of the use of that land or rights in that land is as agricultural land. The 8.06 acres comprising the right of way in this case has no value to Mr. Piper other than as agricultural land as it cannot be used or developed by him for another purpose. The presence of the pipeline in the right of way does not restrict Mr. Piper from continuing to use the right of way area for agricultural purposes.

[30] While the presence of the pipeline in the right of way does restrict building on the surface of the right of way, there is no evidence that it was reasonably probable at the time of the taking that Mr. Piper intended to build anything on the right of way. While the presence of the pipeline may impact the future subdivision and development of the Lands, there is no evidence that subdivision and development of these Lands was imminent or probable in the reasonably foreseeable future.

[31] The market value of the Lands is $1,250/acre. As $1,250/acre reflects the use of the land as agricultural land, it represents the value to owner, subject to evidence of any special value arising in the circumstances. There is no evidence that the particular 8.06 acres comprising the right of way across the Lands has any special value beyond that indicated by the market value for similar agricultural land other than as may be reflected in increased crop yields as a result of the practice of zero tilling.

There is no evidence before me, however, that lands that are zero tilled sell for more than lands that have been conventionally farmed. To the extent the zero till practice on these lands increases the yield, that factor can be taken into consideration in considering any loss of profits. I find the "value of the land" within the meaning of section 21(1) of the *PNGA* is $1,250/acre.

[32] This finding is not, in itself, determinative of the compensation payable in this case. The compensation is not a purchase price – no land is being purchased. It is simply a finding that in considering the "value of the land" in determining an amount of compensation, that value is $1,250/acre representing the value of this land in agricultural use.

[33] While Mr. Piper's land is now encumbered with a right of way, he maintains residual value in the unencumbered land and a reversionary interest to regain the unencumbered title. Residual value is the value remaining in the hands of the landowner because of his ability to make economic use of the right of way area during the life of the right of way, in this case, by being able to continue farming the right of way area over top of the buried pipelines. I was not referred to any BC authority to assist in determining the residual value to the owner in a pipeline right of way. The Alberta Court of Queen's Bench has found the reversionary/residual interest in a pipeline easement to be 75% of the land value (*Dome Petroleum Limited v. Grekul, et al* [1983] A.J. No. 994). If Mr. Piper's residual/reversionary interest in the lands is represented by 75% of the value of the lands, then $312.50/acre represents the value of his lost interest.

[34] Considering the compulsory aspect of the entry, the value of the land at $1,250/acre and Mr. Piper's residual value in the land, the relatively minimal impact of this right of way to Mr. Piper's use and enjoyment of the Lands, the standard use of $950/acre in Board orders and agreements between landowners and resource companies for pipeline access over the last several years and continuing into 2008, I am not satisfied that Mr. Piper is entitled to compensation beyond that rate for his loss of rights. I find $950/acre ($7,657) adequately compensates Mr. Piper for his loss of rights in this case.

B. CROP LOSS

Parties' Evidence & Submissions

[35] Mr. Rosie testified that he will usually wait until the pipeline is in the ground, then follow up with landowners to determine compensation for damages and crop loss. His evidence was it is standard practice to pay three years damages at 100% for the first year and 50% for the second year. If construction and reclamation has been done properly, the landowner should get a good crop and, by the third year, there is less of a risk that the landowner will not get a good crop. His general practice with landowners is to find out what they are growing and, after the fact, find out yield and price actually obtained.

He says he often uses $400/acre which he says provides a good average for most crops and assumes a good crop.

[36] Mr. Rosie said last year was one of the driest years on record in the Dawson Creek area and that yields were down about 1/3 of normal. According to Statistics Canada, the average 2008 yields in British Columbia for oats and canola were 2.7 bushels/acre and 20 bushels/acre, respectively.

[37] Mr. Piper's evidence was that it takes 10 years of zero till practice to bring the soil to a healthy organic state. He estimated his total crop loss for a seven year period at $3,000/acre, based on $725/acre (100%) in the first year decreasing over 7 years to $125.00/acre (17%) in year seven. He calculated the acre rate on the basis of a 50 bushel yield of canola at $14.31/bushel and a 200 bushel yield of oats at $3.75/bushel. He provided copies of 2008 purchase and sale agreements between himself and Louis Dreyfus Canada Inc and Agro Source Ltd for canola and seed grade oats to support the commodity prices used in his estimate. He indicated 200 bushels of oats was his best crop received in the season before last season and in 2005, and that an average crop was 170 bushels. He said 50 bushels of canola was his best crop and 40 bushels an average crop. His yield for canola in 2008 was about 15 bushels/acre and for oats was about 45 bushels/acre.

[38] As of October 23, 2008 the average closing canola price ranged from $8.80 to $9.70 a bushel and the average closing oat price was $1.90/bushel according to the Alberta Ministry of Agriculture and Rural Development.

Board's Decision & Analysis

[39] I accept Mr. Piper's evidence that his zero tilled land out performs conventional farm land and that, as a result of the installation of the pipelines, the benefits of zero tilling will be lost on the right of way area for a period of time. His evidence was that it takes 10 years to develop the full potential of zero tilling. Under cross-examination, he acknowledged 10 years was a "best guess" based on his past experience but did not agree that 5 years would be sufficient time to fully receive the benefit of zero tilling. Arc has not provided any evidence to the contrary with respect to the benefits of zero tilling or the amount of time that it takes for zero tilled land to reach its potential. Mr. Piper's estimate of crop loss is based on seven years, which I find is reasonable on the evidence before me. While Arc's offer estimating crop loss over a three year period may be appropriate and sufficient in most cases, it does not adequately consider that the crop loss in this case will extend beyond three years because of the zero till nature of this farm.

[40] Mr. Piper's calculation over seven years, however, is based on his best crop ever, not his actual 2008 crop or his average crop. When determining crop loss for 2008, the actual loss can be determined based on actual yield and contract price now that those factors are known.

When estimating crop loss for future years, a reasonably probable crop loss would be based on average yield. As one cannot know or predict commodity prices, and in the absence of evidence of average crop prices in average yield years, I will estimate future crop loss based on the prices obtained in 2008.

[41] On the evidence before me, Mr. Piper's actual crop loss for 2008 as a result of the right of way was $865.00 for canola (calculated as: 4.03 acres x 15 bu/acre x $14.31/bu = $865.03) and $680.00 for oats (calculated as: 4.03 acres x 45 bu/acre x $3.75/bu = $680.06) for a total of $1,545.

[42] His crop loss based on 100% of average yields and 2008 prices would be $2,307 for canola (calculated as: 4.03 acres x 40 bu/acre x $14.31/bu = $2,306.77) and $2,569 for oats (calculated as: 4.03 acres x 170 bu/acre x $3.75/bu = $2,569.12) for a total of $4,876.

[43] Applying the percentages applied by Mr. Piper to estimate loss in 2009 to 2014 (in the absence of any other evidence with which to calculate the loss while the land regains the benefit of zero till) results in crop loss as follows:

2009	$4,876 x 86%	$4,193
2010	$4,876 x 72%	$3,511
2011	$4,876 x 58%	$2,828
2012	$4,876 x 45%	$2,194
2013	$4,876 x 31%	$1,512
2014	$4,876 x 17%	$ 829
	Total 2009-2014	$15,067

[44] I find Mr. Piper is entitled to be compensated for crop loss in the amount of $16,612 ($1,545 + $15,067).

C. GLOBAL LUMP SUM

[45] I have found compensation for loss of rights is $7,657 and for loss of profits is $16,612. These amounts add up to $24,269. Stepping back and considering the totality of the award, I am satisfied that rounding this figure to $24,300 provides fair and reasonable compensation in the circumstances of this case.

D. ANNUAL PAYMENTS

[46] Mr. Piper seeks an annual payment for the pipeline right of way on his Lands, but provided no submissions as to the appropriate amount of an annual payment.

[47] Counsel, on Mr. Piper's behalf, argued that as a right of entry order takes away landowner's rights for an indefinite period of time, the only fair way of compensating the landowner is by an award of periodic payments. In that way, compensation is related to the time that the landowner's rights are affected. He argues that no reasonable landowner would willingly give up his or her rights to allow someone else to occupy his or her property to operate a sour gas pipeline for an indefinite period of time without requiring fair compensation over the length of time that the pipeline will be operated. He submits landowners should not be expected to accept less when their rights are forcibly taken away under the *PNGA*. I was not provided any evidence of what a "reasonable landowner" would consider "fair compensation" for the loss of annual rights in the event the landowner was able to negotiate their loss – likely because no such evidence exists given the loss of these rights is not negotiable.

[48] Counsel argued use of the right of way area for anything other than growing hay or crops is precluded and that land outside the right of way area is also affected by setback regulations, especially so in the case of a sour gas pipeline. He submitted future owners or a potential buyer will be wary and the risk of a pipeline leak or explosion, no matter how slight, is an adverse effect that cannot be ignored. However, there is no evidence that the value or marketability of the Lands will be diminished as a result the presence of a sour gas pipeline under the Lands. There is no evidence of lost opportunity with respect to the Lands, or that the presence of the pipelines will interfere with contemplated future use of the Lands.

[49] Counsel referred to two recent decisions of the Alberta Surface Rights Board awarding annual compensation for a pipe line right of way: *Penn West Petroleum Ltd v. North East Muni-Corr Ltd*, Decision No. 2008/0187 and *Enbridge Pipelines (Athabasca) Inc. v. Karpetz, et al*, Decision Nos. 2008/0362 *et al*. I was advised that the *Penn West* decision had been appealed and that the *Enbridge* decision would likely be appealed. Counsel submitted this Board was on the right track in its 1977 decision in *Houston Oils v. Berry*, Order 91A, which ordered an annual payment, albeit it minimal, for a pipeline right of entry.

[50] The Board's 1977 decision in *Houston Oils* is, to my knowledge, the only time this Board has awarded an annual payment for a pipeline entry. At $10 a year, the annual award can only be considered nominal. I was referred to two more recent decisions (*Talisman Energy v. Beresheim*, Order 336A, May 11, 2001 and *Spectra Energy Midstream Corporation v. Vause*, Order 420A, December 11, 2007) both declining to make an award of annual compensation for a pipeline entry.

[51] The decisions of the Alberta Surface Rights Board are not binding on this Board. In considering them, this Board must be cognizant of the differences in the relevant legislation. Without going so far as to say than an award of annual compensation in a pipeline case will never be appropriate, it is evident that the legislative criteria in BC and Alberta setting out the factors to be considered in

determining compensation are different and permit themselves more easily of an award for speculative future loss in Alberta than they do in BC. Counsel for Arc pointed to the provision of section 25(1) of the Alberta *Surface Rights Act* (*SRA*) allowing for the consideration of adverse effect, nuisance, inconvenience, noise and damage that "might be caused by or arise from" the entry. In contrast, section 9(2) of the *PNGA* establishes liability to pay compensation "for loss or damage *caused* by the entry" as opposed to that "*might be caused or arise from*" the entry (emphasis added) and section 21(1) of the *PNGA*, unlike section 25(1) of the *SRA*, does not encourage consideration of speculative future loss. I can only conclude that compensation under the *PNGA* is intended to compensate for loss or damage that has occurred or is reasonably probable and foreseeable. An award for annual compensation would necessarily have to be based on evidence of probable and reasonably foreseeable ongoing and recurring loss or damage that can be reasonably quantified. In the event there is future damage to the land or suffering to the landowner as a result of the entry that has not already been compensated for, it is open to the landowner to apply to the Board for compensation under section 16(2)(b) of the *PNGA*. Interestingly, a similar provision does not exist in the *SRA*, perhaps pointing to the purpose for making a speculative award in Alberta. The BC legislation, however, makes it neither necessary nor appropriate to make a speculative award.

[52] Another difference between the legislated factors for consideration in Alberta and BC is the presence in section 21 of the *PNGA* of consideration for the "compulsory aspect of the entry, occupation or use". There is an ongoing loss of intangible rights with respect to the land. The loss of quiet enjoyment and the loss of the right to determine the use of the land continue over the life of the pipeline. To the extent there is ongoing loss of rights, however, I find that this ongoing loss is recognized in the lump sum payment for loss of rights. In considering the compulsory aspect of the entry, consideration is given to the fact that the landowner has involuntarily lost certain rights to his lands and that those rights are lost over the life of the entry. The loss is compensated in a lump sum payment that is acknowledged as arbitrary and quite incapable of precise valuation. Although it is an ongoing loss, an annual payment would be no less arbitrary or incapable of calculation. In making an award for annual payment in *Houston Oils, supra*, the Board recognized the ongoing nature of the loss by contemplating "the reality that the owners' options as farmers are limited by the existence of the [pipe]line", but the nominal award made speaks both to its arbitrariness and incalculable nature. Indeed, I was provided no submissions to assist with quantifying an annual payment for this loss. In the absence of clear legislative direction with respect to the valuation of ongoing intangible rights, there seems little point to adding another arbitrary amount, particularly of a nominal nature, in an annual payment. I am satisfied that consideration of the compulsory aspect of the entry, occupation and use is intended to acknowledge the ongoing loss of intangible rights with a lump sum, and that the lump sum awarded in this case is sufficient compensation for this loss.

CONCLUSION

[53] I conclude Mr. Piper is entitled to lump sum compensation for the right of entry in the amount of $24,300. As he has already been paid $15,000, he is entitled to receive the balance of $9,300. I conclude an annual award is not appropriate in the circumstances of this case.

ORDER

[54] The Board orders Arc Petroleum Inc to pay Kane Piper $9,300, being the balance of compensation owed for loss caused by the entry.

Dated: December 5, 2008

FOR THE BOARD

Cheryl Vickers
Panel Chair