File No. 1589
Board Order #1589-5

December 2, 2009

MEDIATION AND ARBITRATION BOARD

IN THE MATTER OF THE PETROLEUM AND NATURAL GAS ACT, R.S.B.C. 1996, C. 361 AS AMENDED

AND IN THE MATTER OF
SE ¼ of Section 6 Township 80 Range 16, W6M, Peace River District, except Plans B6096, A938 and PGP45806; NE ¼ of Section 31 Township 79 Range 16, W6M, Peace River District, except Plans H903 and PGP38729; and NW ¼ of Section 32 Township 79 Range 16 W6M, Peace River District, except Plans H903, PGP39172 and BCP14003
(PID#014-322-455, #014-606-020 and #014-605-821)
(The "Lands")

BETWEEN:

Spectra Energy Midstream Corporation

(APPLICANT)

AND:

Kenneth James Vause and Loretta Vause

(RESPONDENTS)

AMEND ORDER

Heard by way of written submissions closing November 27, 2009.

Rick Williams and Dionysios Rossi, Barristers and Solictors, for the Applicant Kenneth Vause and Loretta Vause, on their own behalf

INTRODUCTION AND ISSUE

[1] This is an application by Spectra Energy Midstream Corporation (Spectra) to amend the style of cause in the Board's Orders to include reference to a parcel of land owned by Kenneth and Loretta Vause in the SE ¼ of Section 6, Township 80, Range 16 W6M, upon which Spectra has constructed a flow line. The application is opposed by Mr. and Mrs. Vause on the basis that the legal parcel was not contemplated as being part of the arbitrator's decision respecting compensation for Spectra's entry and occupation of their land and amending the Board's earlier order authorizing the entry and occupation of the their land. The Vauses argue that the Board does not have the jurisdiction to grant the remedy requested on the basis that it is a material change that falls outside the scope of the Board's authority to amend a final order.

[2] The issue is whether the Board has the authority to make the requested amendment, and if so, whether the amendment is appropriate.

HISTORY OF PROCEEDINGS

[3] I will set out in some detail the history of these proceedings.

[4] On May 2, 2007, the Board received an application from Spectra pursuant to section 16(1)(a) of the *Petroleum and Natural Gas Act* (*PNGA*) seeking the right to enter land owned by the Vauses. The application was received under copy of a letter dated April 4, 2007 sent by registered mail to the Vauses enclosing the application for service upon them. The application identified the Lands as: NE ¼ 31-79-16 W6M except plans H903 and BCP 14003 and NW ¼ 32-79-16 W6M except plans H903, PGP39172 and BCP14003. The application did not include a copy of the Titles. As we now know, the description on the application was correct with respect to the parcel in the NW ¼ of section 32, but not correct with respect to the parcel in the NE ¼ of section 31.

[5] By letter dated May 14, 2007 scheduling a pre-hearing telephone conference to discuss the application, the Board set out the legal description of the Lands as: NE ¼ Sec 31 TP 79 Rg 16 W6M except Plans H903 & PGP 38792, which is the correct reference for the parcel in the NE ¼ of section 31, but which leaves off

reference to the parcel in the NW ¼ of section 32. This error is perpetuated in later Board correspondence.

[6] By letter dated July 9, 2007 the Board's administrator wrote:

> Spectra Energy Midstream has requested an amendment to the application dated April 4, 2007 to include access required on NW ¼, Section 32 TP 79 Rg 16 W6M. The Board is granting this amendment for the specific reason that the Vauses have objections only to the access on Section 31 TP 79 Rg 16 W6M.

[7] The Board's record does not include a record of the application to amend or any submissions by either party and, while I question the authority of the Board's administrator to grant such an amendment, in the end, nothing ultimately turns on that decision. Given that the application originally included the NW ¼ of Section 32, Township 79, Range 16 except certain plans, an application to amend was not, at that time, necessary for that quarter section. At that time, the application should have been to amend the incorrect reference to the parcel in the NE ¼ of section 31.

[8] The Board conducted a mediation on July 9, 2007. Although the Lands had been improperly described, it cannot be said that there was any confusion over the land in issue. The route proposed for the pipeline traversed two parcels of land owned by the Vauses in the NW ¼ of section 32 and the NE ¼ of section 31.

[9] During the mediation, the Vauses opposed an entry order being made on two grounds. First, they argued that the proposed pipeline was not a "flow line" and, therefore, the Board did not have jurisdiction. Second, they argued that the Board should not make an entry order in advance of the Oil and Gas Commission (OGC) issuing a permit for the pipeline's construction. The Vauses objected to the route proposed for the pipeline. They suggested there were better alternate routes that would avoid their property altogether.

[10] The mediator found the proposed pipeline was a "flow line" and that the Board had jurisdiction to issue an entry order prior to the OGC considering the application. The mediator issued an order on July 23, 2007 including an order refusing further mediation; granting Spectra the right to enter onto the lands for the purposes of an environmental assessment, an archaeological assessment and construction and operation of a pipeline as sought in the application; and ordering that the matter proceed to arbitration unless both parties reported in writing that they consented to the terms of the order within 30 days (the "Mediator's Order"). The Mediator's Order noted that the Board's correspondence had only referred to one of the quarter sections but that the application referred to both quarter sections and indicated that correspondence

and records should refer to all parcels to which the application related. The style of cause on the Mediator's Order, however, did not include the full legal description of the Lands.

[11] By letter dated August 29, 2007, counsel for the Vauses sought a ruling from the Board on costs of the mediation. By letter dated September 17, 2007, I advised that the matter of costs both with respect to the mediation and otherwise would be assigned to the arbitrator to be resolved in conjunction with the arbitration proceedings.

[12] The Board conducted pre-hearing telephone conferences on September 13 and 19, 2007 to schedule dates for the arbitration and the production of evidence. The Vauses raised the issues of costs and the effect of the Mediator's Order. As I understand it, there was no suggestion that the Mediator's Order was not enforceable due to a mis-description of the Lands, but more fundamentally, that the intent of the legislation was that a mediator's order was not enforceable. The arbitrator indicated the matter of costs had been assigned to him to address in the arbitration. In a decision rendered October 1, 2007, the arbitrator concluded that the Mediator's Order was effective and enforceable (the "Pre-Hearing Order"). The style of cause in the Pre-Hearing Order continued to reflect the incorrect legal description for the Lands. It referenced both quarter sections but used the incorrect legal description for the parcel in the NE ¼ of section 31 set out in original application.

[13] In accordance with pre-hearing directions by the arbitrator, Spectra filed a Statement of Points and Evidence Book on September 24, 2007. The Vauses filed their Points of Defence on October 10, 2007. The Points of Defence indicated that the Vauses had agreed to allow a reroute of the pipeline on their land. Spectra filed its Reply on October 19, 2007 indicating Spectra's agreement to the Vauses' proposed rerouting of the pipeline and attaching copies of the Schedule "A" Individual Ownership Plans (IOPs) showing the revised route. The IOPs show the proposed pipeline right of way on parcels within the NW ¼ of section 31 (not owned by the Vauses), the SW ¼ of section 6 (not owned by the Vauses), the SE ¼ of section 6, the NE ¼ of section 31, and the NW ¼ of section 32 (all owned by the Vauses). By letter dated October 4, 2007, included with Spectra's Reply, the Vauses indicated their agreement to a new revised route and their agreement that the only outstanding issues were costs and compensation.

[14] The arbitration proceeded on October 29 and 30, 2007. Spectra's Statement of Points and Evidence Book and Reply were marked as Exhibits 1 and 2 respectively, and the Vauses' Points of Defence was marked as Exhibit 3. The arbitrator published his decision on December 11, 2007 (the "Arbitrator's Decision"). The arbitrator described the issues before him as follows:

1. whether the proposed pipeline, which does not connect directly with the well heads, is a "flow line" and, therefore, within the jurisdiction of the MAB?
2. if question #1 is answered in the affirmative, and the right of entry order is upheld, what is the appropriate compensation for the right of entry?
3. whether the Vauses are entitled to legal costs and compensation for their time and expenses in connection with their dealings with Spectra?

[15] The parties agreed to defer the costs issue pending a decision on the first two issues.

[16] On the first issue, the arbitrator determined that the proposed pipeline was a "flow line" within the meaning of the *Pipeline Act*, and that the Board had jurisdiction. On the second issue, the arbitrator determined the amount of compensation payable for the right of way, crop loss, re-seeding and nuisance and disturbance. He determined there was no entitlement to annual compensation. He determined the compensation payable on account of each category of loss on a per acre basis and made an order for payment calculated on the basis of 7.27 acres. He further ordered that the "mediator's order for entry, occupation and use of the Lands is confirmed, except as varied to reflect the new routing of the pipeline as agreed between the parties." The style of cause continued to reflect the incorrect legal description for the Lands as set out in the original application and did not make reference to land within the SE ¼ of section 6.

[17] In December, 2007, the Vauses asked the Board to rescind the Arbitrator's Decision under section 26(2) of the *PNGA*. I considered the Board's authority under this provision and, by letter dated December 21, 2007 declined to rescind the Arbitrator's Decision.

[18] The Vauses applied to the Board for costs. The arbitrator rendered his decision awarding costs to the Vauses on April 23, 2008 (the "Costs Decision").

[19] On June 11, 2008, the Vauses sought reconsideration of the Costs Decision and again sought reconsideration of the Arbitrator's Decision. By letter dated July 28, 2008, I declined the request for reconsideration of the Arbitrator's Decision, but agreed to reconsider the Costs Decision with respect to the application for costs in connection with the arbitration proceedings only. By decision dated October 16, 2008 (the "Costs Reconsideration Decision"), I determined that Spectra should pay the Vauses an additional amount for costs.

[20] In December, 2008, counsel for Spectra asked the Board to amend the style of cause in the Arbitrator's Decision to correct the legal description of the Lands

with respect to the NE ¼ of section 31. The Board issued an amend Order on December 22, 2008 but, while correcting the legal description for the parcel in the NE ¼ of section 31, by mistake deleted all reference to the parcel in the NW ¼ of section 32. The Board issued another amending order on January 30, 2009, following another application from counsel for Spectra to correct the style of cause. Order 1589-4amd issued January 30, 2009 amended the description of the Lands set out in the style of cause on the title page of all of the proceeding Board orders to read: NE ¼ of Section 31 Township 79 Range 16, W6M, Peace River District, except Plans H903 and PGP38729 and NW ¼ of Section 32 Township 79 Range 16 W6M, Peace River District except Plans H903, PGP39172 and BCP14003.

[21] On January 22, 2009, the Vauses filed an application for an extension of time to seek judicial review of all of the Board's decisions. By decision rendered July 6, 2009, the Court granted the extension with respect to the Costs Reconsideration Decision only, but otherwise declined leave to seek judicial review of the other Board decisions. The Vauses did not proceed with an application for judicial review of the Costs Reconsideration Decision.

[22] It was during the process to seek leave for an extension of time to file an application for judicial review that Mr. Vause brought to light that the Board's amending order "still does not have it right". His Affidavit filed in support of the application says, "The pipeline is on 3 quarters of our land. The SE ¼ Section 6 TWP 80 Range 16 W6M, which is on the revised route that Spectra built the pipeline, has never been on any Board Order or correspondence".

[23] On October 14, 2009, Spectra filed this application to further amend the style of cause to include reference to the SE ¼ of Section 6, Township 80, Range 16 W6M except Plans B6906, A938 and PGP45806. The Vauses provided their submission in opposition to the application on November 9, 2009. Spectra provided a response to the Vauses' submission on November 13, 2009. The Board received a further response from the Vauses on November, 20, 2009, from Spectra on November 25, 2009 and from the Vauses on November 27, 2009.

ANALYSIS

[24] The essence of the Vauses' submission is that the application is not a mere application to amend an accidental slip or error but seeks to amend the manifest intention of the arbitrator. They argue that it was not the arbitrator's intention to include compensation for entry to the SE ¼ of 6-80-16 and that this parcel of land was not included in the entry order or the order for compensation. They submit that amending the style of cause to include reference to this parcel would substantively change the Arbitrator's Decision, which the Board does not have

jurisdiction to do. They submit that compensation for entry to this parcel was to be the subject of separate proceedings.

[25] Rule 17(3) of the Board's Rules provides:

> 17(3) The Board may amend a final decision to correct
> a) a clerical or typographical error;
> b) an accidental or inadvertent error, omission or other similar mistake; or
> c) an arithmetic error.

[26] The Vauses are correct in their submission that, neither this Rule, nor the common law, would permit an amendment to a Board decision that manifestly changes the intent of the decision. The legislative authority for the Board to amend a decision is found in section 26(2) of the *PNGA*.

[27] Section 26(2) of the *PNGA* also gives the Board a discretionary reconsideration or review power that permits a broader power to actually reconsider and potentially change a decision. The Board has interpreted this section to permit such a reconsideration in limited circumstances including where there is a change in circumstances since making the original order, new evidence not available at the time of the original order, a clear error of law, or an issue relating to fairness and the principles of natural justice. I find this application does not engage the Board's reconsideration powers, but may be dealt with within the scope of the Board's powers to amend its decisions as authorized by section 26(2) described and circumscribed in the Rules.

[28] The issue is whether the requested amendment does manifestly change the arbitrator's intention, as submitted by the Vauses, or whether it falls within the scope of Rule 17(3). A closer look at the Arbitrator's Decision is required. Reproduced below are all of the references within the Arbitrator's Decision that include any description or reference to the pipeline route, the land affected by the pipeline, or land with respect to which compensation for entry was in issue.

[29] At page 2, in the Introduction, the arbitrator writes:

> For the purpose of the pipeline, Spectra requires a 15 meter right of way across the land of 17 landowners, including Mr. and Mrs. Vause, the owners of the Lands. All landowners, except the Vauses, entered into right of entry agreements with Spectra. Spectra initially intended to cross the Alaska Highway on the Lands, cutting southeast through the Vauses' field, rather than following an unconstructed road allowance at the edge of the Lands. The Vauses objected to the proposed routing.
>
> ...

> Before the scheduled hearing dates, October 29 and 30, 2007 in Fort St. John, British Columbia, the parties reached an agreement on a different routing of the pipeline.

[30] In the Facts and Evidence section of the decision, under the heading "The Project", at page 4, the arbitrator writes:

> Except with respect to the variation of the routing of the pipeline over the Vauses' property as agreed between the parties, I understand that the Oil and Gas Commission ("OGC") has approved the pipeline. An application to the OGC is pending for the variation.

[31] At the same page and onto the next page, under the heading "The Pipeline and the Vauses' Lands", the arbitrator writes:

> One of the issues between Spectra and the Vauses was the routing of the pipeline. The Vauses objected to the pipeline taking a jog down through their field as opposed to following the edge of the property. Spectra viewed the original proposal as the most appropriate routing. The original proposal for crossing the Lands was determined, among other factors, by regulation. BC highways regulations mandate that a "flow line" must cross a highway at a 90 degree angle, and sour gas regulations require a 100 meter setback from residential buildings.
>
> In late September there were direct contacts between Mr. and Mrs. Vause and Spectra. As a result of these contacts, Spectra agreed to revise the routing of the pipeline along the lines proposed by the Vauses.
>
> Under the revised proposal, the pipeline will follow the property line approximately 200 meters to the north, cross the Alaska Highway, and then generally follow the Highway southeast for about 500 meters, meeting up with the unconstructed road allowance. The routing is approximately 240 m longer and follows the edge of the Vauses' property. It involves a landowner to the north whose property was not originally affected by the pipeline. It will cost Spectra $65,000 - $70,000 more, including compensation to the other landowner.

[32] At page 5, under the heading "Compensation", the arbitrator writes:

> The 15 meter right of way will take up 7.27 acres which has been used for growing fescue, of which 1.03 acres is temporary workspace.
>
> ...

> Spectra proposed to pay the $950/acre for the entire 7.27 acres, including the temporary workspace.

[33] At page 7, under the same heading, the arbitrator writes:

> The Vauses' position is that 4 quarters of land is affected and that Spectra, therefore, should pay $50,000 on account of nuisance or loss of value, based on $12,500 per quarter of land.

[34] In the Analysis and Decision section of the decision, under the heading "Jurisdiction and Statutory Interpretation", at page 9, the arbitrator writes:

> I uphold the mediator's order for right of entry, with the necessary changes to reflect the changed routing of the "flow line" as set out in the maps attached as Appendix "A".

[35] The published version of the Board's decision appearing on its website does not include an Appendix "A".

[36] In the same section of the decision, under the heading "Compensation", at page 12, the arbitrator writes:

> The Vauses seek $50,000 for loss of land value based on the value of the four quarters of land they say are affected by the right of entry order ($12,500 per quarter). I reject that claim. My review of the maps and plans indicates that the new pipeline route only crosses two quarters. In any event, whether the route crosses two or four quarters, there was no real evidence of the market value of the property affected or of any impact on market value.

[37] At page 13, the arbitrator makes an Order for compensation "calculated on the basis of 7.27 acres" and confirms the Mediator's Order for entry occupation and use of the Lands "except as varied to reflect the new routing of the pipeline as agreed between the parties."

[38] As indicated earlier, the style of cause on the first page of the Arbitrator's Decision referenced the NE ¼ of section 31 and the NW ¼ of section 32, providing an incorrect description of the parcel in the NE ¼ of section 31, and did not reference the SE ¼ of section 6.

[39] The Vauses refer to the arbitrator's reference at page 12 to "two quarters", (quoted above in paragraph [36]) to argue that the arbitrator did not turn his mind to the SE ¼ of section 6 and that the object of his deliberation was only two quarters of land. A review of all of the arbitrator's references to the land, however, and reading the decision as a whole makes it clear that the object of

the arbitrator's deliberation was the revised route as agreed between the parties encompassing 7.27 acres. The evidence before the arbitrator (Exhibit 2) included the IOPs for the revised route including an IOP for the SE ¼ of section 6. The evidence referred to an increase in the amount of land being taken, with the revised route taking 7.27 acres, as compared to the original route, where only 6.92 acres would have been taken. The arbitrator's award is calculated on the basis of 7.27 acres being the total taking inclusive of temporary work space in the revised route. The description of the route change at pages 4-5 of the decision (quoted above at paragraph [31]), when read in conjunction with the IOPs at Exhibit 2, clearly describes the portion of the route crossing the SE ¼ of section 6.

[40] The arbitrator's indication that the route "crosses two quarters" is not inconsistent with the IOPs for the revised route. Although the route affects three quarters, it can only be said to "cross" two quarters being the SE ¼ of section 6 and the NW ¼ of section 32. The revised route takes a very small corner of the NE ¼ of section 31 comprising .06 of an acre and .1 of an acre for temporary workspace.

[41] The Vauses' contention that it was their understanding that compensation for the SE ¼ of section 6 would be addressed separately is simply not credible. As can be seen from the decision, the Vauses argued that the taking affected four quarters of land, not just two. For them to suggest now that they thought the proceedings only related to two quarters of their land is not believable. Mr. Vause's Affidavit in support of the application for an extension of time to seek judicial review indicating the Board "still does not have it right" and identifying the SE ¼ of section 6 as being on "the revised route that Spectra built the pipeline" is inconsistent with their current suggestion that they thought the SE ¼ of section 6 would be the subject of separate proceedings. The statement is more consistent with an understanding that the SE ¼ of section 6 was part of the revised route described by the arbitrator and included in the arbitration and suggests that amending the description of the Lands to include reference to the SE ¼ of section 6 would "make it right". Further, the Arbitrator's Decision does not reflect that the arbitrator was only dealing with the compensation payable for a portion of the revised route. It is clear from his decision that the issue before him was to determine compensation for the whole of the revised route and that he did determine compensation for the whole of the revised route.

[42] The IOPs at Exhibit 2 set out the area included in the permanent right of way and for temporary workspace on each parcel. The combined total of areas on each of the three parcels owned by the Vauses is 7.27 acres inclusive of 1.03 acres of temporary workspace. This is the area upon which the arbitrator based his award.

[43] The Vauses argue that the arbitrator may have calculated the 7.27 acres with reference to a sketch of a proposed route and an IOP for the NW ¼ of section 32 found at Tabs 2 and 8 of Exhibit 1, being Spectra's Statement of Points and Evidence book filed on September 24, 2007. The IOP at Tab 8 clearly shows a proposed taking on the NW ¼ of section 32 of 3.19 acres. Tab 2 contains a photocopy of a survey plan showing a proposed pipeline across several quarter sections including the NE ¼ of section 31 upon which has been sketched by hand another route further to the south. The Vauses submit that the sketched portion of the route comprises 4.08 acres, although this is not evident from the face of the document, which added to the 3.19 acres indicated on the IOP for the NW ¼ of section 32, makes the total proposed taking equal 7.27 acres. They suggest this is how the arbitrator arrived at 7.27 acres.

[44] I reject this suggestion for a number of reasons. Tab 8 of Exhibit 1 also includes an IOP for the NE ¼ of section 31 showing Spectra's initial proposed taking on that quarter to be 3.71 acres. It is clear from Exhibit 1 and the Arbitrator's Decision that the original proposal encompassed 6.92 acres, comprised of 3.71 acres on the NE ¼ of section 31 and 3.19 acres on the SW ¼ of section 32. The Vauses filed their Points of Defence on October 10, 2007 (Exhibit 3) indicating that they had agreed to a revised route although the specifics of the route are not set out. Spectra filed its Reply (Exhibit 2) on October 19, 2007 indicating that Spectra had agreed to a revised route proposed by the Vauses and attaching the IOPs for the revised route. These are the IOPs described earlier involving three quarters of the Vauses' land and two quarters of land owned by other persons. The IOPs show the proposed taking on the Vauses' land to comprise 7.27 acres inclusive of 1.03 acres of temporary workspace. Exhibit 2 references the change in the original proposal from 6.92 acres to 7.27 acres in the revised proposal. There was no evidence before the arbitrator that the sketch at Tab 2 of Exhibit 1 had been agreed by the parties and comprised the "revised route". There is no calculation as to how much of the sketched area comprised temporary workspace to equate with the 1.03 acres referred to by the arbitrator. The only evidence before the arbitrator of an agreed revised route is that found in Exhibit 2. The arbitrator's reference, therefore, to the "revised route", and the calculation of 7.27 acres inclusive of 1.03 acres of temporary workspace can only relate to the route shown in Exhibit 2 and not another route. That route clearly includes the SE ¼ of section 6 and there can be no doubt that was the route that was the subject of the arbitration for compensation.

[45] Further, if the Vauses did not agree to the route at Exhibit 2 described as the revised route, there is nothing on the face of the record to show that they voiced any objection to the evidence depicting the revised route or to Spectra's characterization of the route as having been proposed by them and agreed to by Spectra. The Vauses were represented by counsel at the arbitration and it is not

conceivable that such an objection would not have been made by counsel if it was warranted.

[46] Even if the Vauses are correct as to how the arbitrator calculated the 7.27 acres, which I do not accept as being plausible on the face of the record, they would not now be entitled to any additional compensation. Even if the arbitrator thought he was compensating for 7.27 acres comprised only of land in the NE ¼ of section 31 and the NW ¼ of section 32 and not including any land in the SE ¼ of section 6, again which I do not accept on the face of the record, he awarded compensation for 7.27 acres, and 7.27 acres is what has been taken in the construction of this pipeline.

[47] The pipeline has long since been constructed on the revised route including the land in the SE ¼ of section 6. The Vauses did not object to Spectra's entry onto that parcel on the grounds that it was not included in the entry order. If they thought compensation for the entry on the SE ¼ of section 6 had not been included in the Arbitrator's Decision, they could have made an application to the Board for damages arising from the entry onto that quarter, which they have not done.

[48] The Vauses must have understood the arbitrator's order varying the mediator's right of entry order "to reflect the new routing of the pipeline as agreed between the parties" included the right to enter the parcel in the SE ¼ of section 6. Further, they must have understood that the 7.27 acres compensated for by the arbitrator was the 7.27 acres comprising the revised route before the arbitrator in Exhibit 2 and including the SE ¼ of section 6.

[49] I find it is very clear from the Arbitrator's Decision that the arbitrator turned his mind to the SE ¼ of section 6. I find that both the right of entry order and the award for compensation were in respect of the whole of the revised route for the pipeline as agreed between the parties including the takings in the SE ¼ of section 6, the NE ¼ of section 31 and the NW ¼ of section 32. I find that the amendment now requested by Spectra does not materially change the Arbitrator's Decision. It simply amends the style of cause to correctly reflect the description of the Lands in evidence before the arbitrator over which the right of way was required and contemplated by him in rendering his decision confirming the right of entry and awarding compensation for the entry. The amendment falls within the scope of Rule 17(3) as an accidental or inadvertent omission. On a review of the whole of the Arbitrator's Decision, there can be no question that it was the arbitrator's manifest intent that the Lands over which the right of entry was authorized, and for which compensation for entry was awarded, included three parcels of land owned by the Vauses properly described as follows:

> SE ¼ of Section 6 Township 80 Range 16, W6M, Peace River District, except Plans B6096, A938 and PGP45806, NE ¼ of Section 31 Township

79 Range 16, W6M, Peace River District, except Plans H903 and PGP38729, and NW ¼ of Section 32 Township 79 Range 16 W6M, Peace River District except Plans H903, PGP39172 and BCP14003

[50] While Spectra should have thought to amend their application to include the additional quarter, and the Board should have taken more care in setting out the description of the Lands, it is not conceivable that the Vauses did not understand that the arbitration was in respect of compensation for the whole of the revised route inclusive of the land in the SE ¼ of section 6. It was clearly the intent of the arbitration and all parties' understanding of the arbitration that, subject to the issue of the Board's jurisdiction, if it was determined the Board had jurisdiction, the arbitrator was to determine compensation for the whole of the revised route. It was clearly the arbitrator's intent to determine compensation for the whole of the revised route including the portions of the route on the SE ¼ of section 6, the NE ¼ of section 31 and the NW ¼ of section 32.

[51] Although the Board made administrative errors in the description of the Lands, I do not accept that at any time there was any confusion by the parties and in particular by Mr. and Mrs. Vause, about which Lands were in issue. Nor do I accept that the administrative errors by the Board contributed to any substantive error, or that without the errors, the result of the arbitration would have been different.

CONCLUSION

[52] I conclude that the Board has the jurisdiction to amend its decision as requested and that the requested amendment is appropriate to correct an accidental or inadvertent omission. I conclude that the requested amendment does not change the manifest intent of the arbitrator.

ORDER

[53] Pursuant to section 26(2) of the *Petroleum and Natural Gas Act* and Rule 17(3) of the Board's Rules, the Board rescinds Orders 1589-4 and 1589-4amd dated December 22, 2008 and January 30, 2009, respectively, and replaces them as follows:

The Board amends the title page of Order 422M dated July 23, 2007, Order 422PA dated October 1, 2007, Order 420A dated December 11, 2007, Order 1589-2 dated April 23, 2008, Order 1589-3 dated October 16, 2008, in each case to delete the legal description set out and to replace the legal description in each Order with the following: SE ¼ of Section 6 Township 80 Range 16, W6M, Peace River District,

except Plans B6096, A938 and PGP45806; NE ¼ of Section 31 Township 79 Range 16, W6M, Peace River District, except Plans H903 and PGP38729; and NW ¼ of Section 32 Township 79 Range 16 W6M, Peace River District, except Plans H903, PGP39172 and BCP14003 (PID#014-322-455, #014-606-020 and #014-605-821)

[54] The Board will provide the parties with certified copies of each of the Orders referenced above as amended in accordance with this Order.

Dated December 2, 2009

FOR THE BOARD

Cheryl Vickers, Chair