

**File No. 1688**  
**Board Order 1688-2**

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**June 12, 2013**

**SURFACE RIGHTS BOARD**

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

**AND IN THE MATTER OF**

**SW ¼ of Section 29, Township 78, Range 16, W6M, Peace River District,  
Except Plans A2035 and 32053**

**(The "Lands")**

**BETWEEN:**

**SPECTRA ENERGY MIDSTREAM CORPORATION**

**(APPLICANT)**

**AND:**

**WAYNE GEORGE CLEVE AND GLORIA ANN CLEVE**

**(RESPONDENTS)**

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**BOARD ORDER**

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Heard: By written submissions, closing May 15, 2013  
Panel: Simmi K. Sandhu  
Appearances: No submissions from the Cleves  
Rick Williams, for Spectra

## **INTRODUCTION**

[1] Wayne and Gloria Ann Cleve own property near Dawson Creek, B.C., (the "Property") upon which Spectra Energy Midstream Corporation ("Spectra") has constructed and installed a pipeline. By way of application to the Board, Spectra obtained right of entry and access to the lands for the construction and operation of a flowline (Order 1688-1, dated Dec. 23, 2010). The lands accessed are 0.07 acres of a permanent right of way and 0.32 acres of temporary workspace (the "Lands"). The Lands are used for hay production and possible grazing.

[2] The entire pipeline was constructed in February and March 2011, and the Lands were cleaned up in November, 2011, with reseeded completed. Spectra plans to undertake further re-seeding of the right of way pursuant to an environmental assessment.

[3] The issue remaining to be determined is the appropriate compensation payable to the Cleves pursuant section 154(1) of the *Petroleum and Natural Gas Act*, R.S.B.C. 1996, ch. 361.

[4] The matter was set for written submissions, however, the Cleves, who had not participated in the Board's previous proceedings, did not produce any submissions. Therefore, the only evidence and submissions before the Board are Spectra's.

## **ISSUE**

[5] The issue is: what is the appropriate compensation to be paid to the Cleves by Spectra pursuant to section 154 (1) of the *Act*?

## **THE LEGISLATION**

[6] Section 154 (1) of the *Act* set out factors the Board may consider in determining an amount to be paid as compensation, including,

- (a) the compulsory aspect of the right of entry;
- (b) the value of the applicable land;
- (c) a person's loss of a right or profit with respect to the land;
- (d) temporary and permanent damage from the right of entry;

- (e) compensation for severance;
- (f) compensation for nuisance and disturbance from the right of entry;
- (g) the effect, if any, of one or more other rights of entry with respect to the land;
- (h) money previously paid for entry, occupation or use;
- (i) the terms of any surface lease or agreement submitted to the board or to which the board has access;
- (j) previous orders of the board;
- (k) other factors the board considers applicable;
- (l) other factors or criteria established by regulation.

[7] The purpose of a rental payment is to address the immediate and ongoing impact of an operator's activity on private land to the landowner and to the lands (*Dalgliesh v. Worldwide Energy Company Ltd* (1970) 75 W.W.R. 516 (Sask DC)).

[8] The factors above do not speak to speculative future loss or damage, and compensation under the *Act* is only intended to compensate for loss or damage that has occurred or is reasonably probable and foreseeable; it is inappropriate to make a speculative award (*Arc Petroleum Inc. v. Piper*, MAB Order 1598-2, *Arc Petroleum Inc. v. Miller*, SRB Order 1633).

### **EVIDENCE AND ANALYSIS**

[9] The only evidence and submissions before me are those provided by Spectra. Spectra submits that a payment of \$1,000 is reasonable although this likely exceeds the actual loss and damages suffered.

[10] For consideration of the value of the land in determining compensation (section 154(1)(b)), Spectra has provided an appraisal report effective June, 2010 that appraises the Cleves' Property. The appraiser's opinion of the market value of the fee simple in the Property is \$750/acre based on the current use of agricultural production as the highest and best use of the Property. However, Spectra says this is not an accurate reflection of the fair compensation for Spectra's use of the Lands as Spectra is not taking the fee simple interest in the land, the landowner will be able to continue to use the land after installation of the flowline and the land will be returned to the landowner. Therefore, the Board must consider the residual and reversionary value of the lands retained by the landowner, which must be deducted from the market value of the fee simple interest. Spectra submits the value of the Lands is only 25% to 50% of the market value of the fee simple value (\$750/acre) of the Lands. This conclusion is supported by the appraisal report. The value of the Lands is \$86.25 (0.32 x 25%

of \$750/acre for the temporary work space, plus  $\$0.07 \times 50\%$  of \$750/acre for the right of way).

[11] As for the compulsory aspect of the taking (section 154(1)(a)), Spectra says the actual value of the land (based on expert appraisal evidence) is sufficient to compensate the landowner for the intangible loss of rights, including the compulsory aspect and value of the land after accounting for the residual and reversionary interests (*Arc v. Miller, supra.*). Therefore, the combined amount for the loss of value and rights, and the compulsory aspect is at most \$172.50 ( $(0.07 \times \$750.00) + (0.32 \times \$750.00)$ ).

[12] Spectra submits there is no negative impact to the market value of the Property as result of the flowline, which is supported by the appraisal report, in which it was the appraiser's opinion that the proposed right of way will not cause any reduction in the market value of the remaining Property.

[13] Spectra submits that the right of entry did not result in any appreciable nuisance or severance or otherwise negatively impact the Property, particularly considering the small size of the area accessed by Spectra.

[14] As for damages and loss of profit, Spectra says the Cleves are limited to any loss of profit as a result of their inability to utilize pasture land for a period of time due to the construction of the flowline. Prior to construction, the Lands were not actively farmed nor did it appear to be used for grazing purposes. However, the appraiser, in his report, concluded a payment for loss of profit of \$34.00.

[15] In terms of money paid to others, Spectra submits that it reached agreements with other landowners along the pipeline route at \$950/acre for the land value of the permanent right of way, \$500/acre for the compulsory aspect of the taking, \$450/acre for any temporary work space, and \$1,000 signing bonus for those who came to an agreement without the need of a Board hearing. For properties with crop lands, Spectra paid landowners \$625/acre. Relying on these figures, the amount of compensation that would have been payable to the Cleves would be \$508.75, below the \$1,000 that Spectra says is reasonable.

[16] Spectra says the evidence supports a finding that the Cleves' loss and damages for the Lands are far less than the \$1,000 suggested, however, is willing to round that up to \$1,000.

[17] Given that the Board has no contrary evidence or submissions, the Board accepts Spectra's evidence on the factors set out in section 154(1) of the Act and finds that, although, the evidence suggests compensation less than that suggested by Spectra, the amount of \$1,000 is appropriate compensation. The Board is concerned that this amount may exceed the upper limit of the value of

the land, but as Spectra is prepared to pay this amount, the Board considers \$1,000 appropriate compensation in the circumstances.

**CONCLUSION**

[18] I find the appropriate compensation to be paid by Spectra to the Cleves is \$1,000. As Spectra has already paid \$300.00 partial payment pursuant to Board Order 1688-1, Spectra shall pay the balance of \$700.00 to the Cleves.

**ORDER**

[19] Spectra Energy Midstream Corporation shall forthwith pay to Wayne George Cleve and Gloria Ann Cleve the sum of \$700.00.

DATED: June 12, 2013

FOR THE BOARD

A handwritten signature in black ink, appearing to be 'Simmi K. Sandhu', written over a horizontal line.

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Simmi K. Sandhu, Vice Chair