

May 31, 2019

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 SOUTH EAST $\frac{1}{4}$ OF SECTION 31 TOWNSHIP 79 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT
(The "Lands")

BETWEEN:

Encana Corporation

(APPLICANT)

AND:

Olaf Anton Jorgensen

(RESPONDENT)

BOARD ORDER

Heard by written submissions

INTRODUCTION AND ISSUE

[1] The Applicant, Encana Corporation (Encana) seeks a right of entry Order to Lands owned by the Respondent, Olaf Jorgensen, for the purpose of constructing and operating a pipeline in four segments for which the Oil and Gas Commission (OGC) has issued a permit.

[2] Segments 1 and 2 are uni-directional lines that will transport raw produced natural gas and liquids from 16-36-79-18W6M pad (the 16-36 Pad) to 05-32-79-17W6M (the 5-32 Pad).

[3] Segment 3 is a bi-directional line to transport produced water from the 5-32 Pad to the 16-36 Pad for hydraulic fracturing. It will also carry produced water from the 16-36 Pad back to the 5-32 Pad. At the 5-32 Pad the water line will connect with existing water infrastructure to flow water to and from Encana's Water Resource Hub (the Water Hub).

[4] Segment 4 is a uni-directional fuel line to move processed purchased fuel gas across the Saturn field including to the 16-36 Pad. The fuel is used to power various instruments and equipment required to operate the 16-36 well site and associated pipelines, including emergency shut down valves and control valves.

[5] The Respondent takes issue with the Board's jurisdiction with respect to Segments 3 and 4 of the proposed pipeline on the basis that they are not flow lines within the meaning of the *Petroleum and Natural Gas Act (PNGA)*. The Board's jurisdiction over pipelines is limited to those pipelines that fall within the definition of "flow line" as defined in the *PNGA* with reference to the *Oil and Gas Activities Act (OGAA)* 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.

[6] The Respondent does not dispute that Segments 1 and 2 of the proposed pipeline are flow lines within the jurisdiction of the Board.

[7] The issue is, therefore, whether Segment 3 and Segment 4 of the proposed pipeline are flow lines within the Board’s jurisdiction.

THE BOARD’S JURISPRUDENCE

[8] The Board has issued a number of decisions considering the meaning of “flow line”. It has found that pipelines that are located within the upstream or gathering part of the system, and that function as part of the gathering system are flow lines. It has found the gathering system comprises the pipelines and other infrastructure that move raw gas from the well head to processing facilities. A flow line 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. A summary of the Board’s jurisprudence on the meaning of “flow line” may be found in *Encana Corporation v. Strasky*, Order 1911/13-1, October 20, 2016 (*Strasky 1*).

[9] The Board has found that water lines similar to Segment 3 are flow lines (*Encana Corporation v. Ilnisky*, Order 1823-1, April 11, 2014 (*Ilnisky*); *Encana Corporation v. Jorgensen*, Order 1939-1, May 31, 2016 (*Jorgensen 2*); *Encana Corporation v. Strasky*, Order 1955-1, October 23, 2017 (*Strasky 2*); *Encana Corporation v. Derfler*, Order 1973-74-1, May 22, 2018 (*Derfler*)).

[10] The Board has found that fuel lines similar to Segment 4 are flow lines (*Murphy Oil Company Ltd. v. Shore*, Order 1745-1, September 13, 2012 (*Shore*); *Ilnisky*; *Jorgensen 2*).

SUBMISSIONS

[11] The Respondent submits that the Board's rationalization of what constitutes the gathering system and that flow lines are part of the gathering system does not conform with the statutory language. "Gathering system" is not a defined term in the *PNGA* or *OGAA*.

[12] The Respondent submits Segment's 3 and 4 are two entirely unconnected pipelines that are not capable of characterization as flow lines under the statute. He submits the gathering system rationale, if applied to the facts of this case, will completely displace the statutory provisions. He submits the Board's created definition of gatherings system does not appear to be tested or weighed against the language of the statute. He submits the "gathering system" language used by the Board, if applied to Segments 3 and 4, goes beyond a necessarily incidental interpretation of the legislation with reference to *ATCO Gas Pipeline Ltd. Alberta (Energy and Utilities Board)*, 2006 SCC 4 (*ATCO Gas*).

DECISION

[13] As indicated, the Board has considered the definition of "flow line" on numerous occasions. None of these decisions has been judicially reviewed. Nor has the legislature amended the definition so as to provide greater clarity or negate the Board's interpretation.

[14] I do not accept the Respondent's submission that the Board's definition of gathering system was not tested or weighed against the language of the statute or against a comprehensive analysis of the legislative scheme and legislative intent. In interpreting the definition of "flow line", the Board has applied the modern rule of statutory interpretation to interpret the words of the definition in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the legislation and the intention of the legislature. It has engaged in an

analysis of the legislative scheme established by the *PNGA* and *OGAA* and an analysis of legislative intent. It has considered other statutory definitions within the *PNGA* and *OGAA*. It has considered interpretive aids including excerpts from legislative debates and the Glossary published by the OGC. It has considered legislative history. It has considered the OGC's treatment of pipeline segments as a single pipeline project for permitting purposes. These analyses and considerations are set out in *Shore* and *Ilinsky*, and have been adopted and applied in subsequent decisions of the Board.

[15] I accept that it is difficult to apply the statutory language of the definition of "flow line" to either of Segment 3 or Segment 4 if the words of the definition and each of those segments is considered in isolation. I disagree, however, that when the words are considered in the context of the whole of the legislative scheme, that the Board's rationale for including pipelines that function as part of the gathering system for the production of natural gas is untenable or goes beyond what can be considered necessarily incidental.

[16] As was said in *ATCO Gas*, at para. 49:

The provisions at issue are found in statutes which are themselves components of a larger statutory scheme which cannot be ignored:

As the product of a rational and logical legislature, the statute is considered to form a system. Every component contributes to the meaning as a whole, and the whole gives meaning to its parts: "each legal provision should be considered in relation to other provisions, as parts of a whole"

(P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 308)

As in any statutory interpretation exercise, when determining the powers of an administrative body, courts need to examine the context of the legislative scheme. The ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme (*Bell ExpressVu*, at para. 27; see also *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10 (in Appendix)). "[S]tatutory

interpretation is the art of finding the legislative spirit embodied in enactments”: *Bristol-Myers Squibb Co.*, at para. 102.

[17] Having considered the words of the definition and the statutory scheme as a whole, and with the assistance of interpretive aids, the Board concluded that pipelines that are located within the upstream or gathering part of the system, and that function as part of the gathering system are flow lines (*Ilinsky, ARC Resources Ltd. v. Hommy*, Order 1837-1, September 26, 2014). It has found the gathering system comprises the pipelines and other infrastructure that move raw gas from the well head to processing facilities (*Shore*). The analysis leading to those conclusions may be found in the decisions cited. I will apply the Board’s analysis and findings to the pipeline segments in issue.

[18] The purpose of the proposed pipeline, comprised of four segments, is to gather natural gas. Segments 1 and 2 do that specifically. Segment 3 is used for hydraulic fracturing for the purpose of gathering natural gas. Segment 4 powers the facilities required for the gathering of natural gas, including those necessary for safety of the well site and pipeline. Together, the segments are permitted as a single pipeline project and collectively function to gather natural gas and connect well heads with processing facilities. Segments 3 and 4 are not, as submitted by the Respondent entirely unconnected pipelines; they are part of a single pipeline project for the purpose of gathering natural gas.

[19] For all of the reasons expressed in *Shore* and *Ilinsky*, I am satisfied that the legislative intent was to give the Board jurisdiction over pipelines and pipeline segments of the nature in issue here and that the definition of “flow line” captures the proposed pipeline inclusive of Segments 3 and 4. To interpret the definition of flow line otherwise, so as to give the Board jurisdiction over only two of four pipeline segments collectively functioning as part of the gathering system and connecting well heads with processing facilities, would result in an absurdity. As said in *ATCO Gas* at para 51: “...the powers conferred by an enabling statute are construed to

include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature.”

[20] I am satisfied that including segments 3 and 4 in the definition of “flow line” is not an interpretation falling outside of the doctrine of jurisdiction by necessary implication. The analysis of the legislative scheme and intent articulated in the Board’s earlier jurisprudence supports that conclusion.

[21] I am satisfied the Board has jurisdiction over the proposed pipeline inclusive of Segments 3 and 4.

ORDER

[22] The Board has jurisdiction to issue the requested right of entry order. The application is referred back to the mediator to consider whether the right of entry order should be made.

DATED: May 31, 2019

FOR THE BOARD



Cheryl Vickers, Chair