

File No. 2124
Board Order No. 2124-1

June 26, 2020

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

PART E ½ of NE ¼ SECTION 31 TOWNSHIP 77 RANGE 15 WEST OF THE 6th
MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN BCP 30132
(The "Lands")

BETWEEN:

DOLF CLARENCE OBERG

(APPLICANT)

AND:

NORTHRIVER MIDSTREAM PARTNERS

(RESPONDENT)

BOARD ORDER

Heard by written submissions closing June 5, 2020

INTRODUCTION AND ISSUE

[1] The Applicant, Dolf Oberg, is the owner of land legally described as Part E ½ of Northeast ¼ of Section 31 Township 77 Range 15 West of the 6th Meridian Peace River District, Except Plan BCP 30132 (the Lands). He applies to the Board under section 163(1)(b) of the *Petroleum and Natural Gas Act (PNGA)* alleging that the Respondent, NorthRiver Midstream Partners. (NorthRiver) has caused damage to the Lands in the exercise of its right of entry for the purpose of operating a pipeline on the Southeast ¼ of Section 31 (SE 31) and the Southwest ¼ of Section 32 (SW 32). NorthRiver disputes that the Board has jurisdiction to entertain the application on the grounds that the Lands are not “immediately adjacent” to the land that is subject to NorthRiver’s right of entry within the meaning of section 163(1)(b) of the *PNGA*.

[2] The Board sought submissions on the question of jurisdiction raised by NorthRiver as well as to whether the pipeline in issue is a “flow line” within the meaning of the *PNGA* and, therefore, within the Board’s jurisdiction. The parties advise that the pipeline in question is known as the Bissette Pipeline. Neither party disputes that it is a “flow line”. Indeed, the Board has previously determined the Bissette Pipeline to be a “flow line” within its jurisdiction (*Spectra Energy Midstream Corporation v. London*, Order 1694-3, February 24, 2015). The only issue, therefore, is whether the Board has jurisdiction to deal with Mr. Oberg’s application under section 163(1)(b) of the *PNGA*.

[3] Section 163(1)(b) of the *PNGA* provides:

163(1) A person may apply to the board for mediation and arbitration if the person
(a)...

(b) is the owner or occupant of land immediately adjacent to land that is subject to a right of entry, and the exercise of the right of entry causes damage to the adjacent land or causes loss to the owner or occupant.

[4] A map, provided by NorthRiver printed from ParcelMap BC, depicting the Lands, surrounding land, and NorthRiver's right of way for the Bissette Pipeline is attached as Schedule "A".

SUBMISSIONS

[5] The interpretive issue is whether the Lands are "immediately adjacent" to land containing the right of way for the Bissette Pipeline. With reference to dictionary definitions of the words "immediately" and "adjacent" NorthRiver submits that the phrase "immediately adjacent" requires that the land subject to the right of entry must be contiguous to or bordering the land of the owner or occupant claiming damage from the right of entry. Using the plain and ordinary meanings of the words "immediately" and "adjacent" and with regard to the map at Schedule A, NorthRiver submits that north of the legal boundary of the Crown land parcel on which the NorthRiver's pipeline right of way is situated are three separate parcels of private land, none of which are owned by Mr. Oberg, and that consequently, the Lands are not "immediately adjacent" to the land subject to the right of entry alleged to be the cause of the damage.

[6] Mr. Oberg, again with reference to Schedule "A", submits that:

- NorthRiver's right of way for the Bissette Pipeline lies on two Crown land parcels to the south of the quarter section on which the Lands are located (SE 31 and SW 32);
- SW 32 is where the alleged damage to the Lands originated from;
- immediately to the north of SW 32 is a third parcel of Crown Land, the northwest $\frac{1}{4}$ of Section 32; and
- these three parcels of Crown land (SE 31, SW 32 and NW 32) are uninterrupted by any privately owned properties and would be considered one continuous property.

[7] Mr. Oberg submits that because the Crown land NW 32 borders the eastern boundary of the Lands, the Lands are “immediately adjacent” to the land that is subject to NorthRiver’s right of way.

[8] Mr. Oberg further argues that a statutory right of way running from the point of intersection of the two parcels NorthRiver has access to (SE 31 and SW 32) through the Lands and through all of the privately owned properties to the south of the Lands for the purpose of protecting and maintaining drainage means that the Lands are “immediately adjacent” to the land on which the Bissette Pipeline is located. Mr. Oberg says you can walk along the statutory right of way from his Lands to the Crown land upon which the Bissette Pipeline is located making the Lands “immediately adjacent” to the land subject to the right of entry. Referring to the dictionary definitions supplied by NorthRiver he submits the Lands are in direct connection with the Crown land upon which the Bissette Pipeline is built.

[9] In response, NorthRiver submits that the statutory right of way is a natural drainage course registered under BB261173 and concerns the Lands and the privately owned parcels to the south but does not include the road (at the southeast corner of the most southerly parcel lying south of the Lands and just to the north of the Crown land with the Bissette Pipeline) and does not include the Crown parcels on which the Bissette Pipeline is located. The statutory right of way is BCP 30132 which is excepted from Mr. Oberg’s title. NorthRiver further submits each of the three Crown quarter sections are legally identified as separate parcels and should not be considered one continuous or uninterrupted property.

ANALYSIS

[10] In interpreting the language of the *PNGA* the Board must apply the modern approach to statutory interpretation namely that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the

scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27).

[11] The *PNGA*, generally speaking, establishes the Board to provide mediation and arbitration services to resolve disputes between landowners and persons requiring entry to private land for an oil and gas activity. Specifically, it empowers the Board to grant rights of entry to persons requiring entry to private land for an oil and gas activity (section 159) and to determine the amount of rent or compensation payable to a landowner (section 162). Division 6 of the *PNGA*, in which section 163 is found, empowers the Board to make orders to resolve certain types of disputes relating to rights of entry. Section 163 is headed “Application relating to loss or damage caused by right of entry”. Subsection 163(1) sets out who may make such applications to the Board and subsection 163(2) gives the Board the power to order a right holder to pay compensation for damage or loss as a result of the exercise of the right of entry.

[12] Section 163 takes what would otherwise be a claim in negligence or nuisance between two private parties out of the courts and gives the Board the authority to resolve the claim. That authority, however, is expressly limited by the words of the legislation itself. The Board cannot assume jurisdiction to resolve claims for damage and loss arising from the alleged nuisance or negligence of right holders in the exercise of a right of entry unless the words of the legislation can reasonably be interpreted to provide that authority. Section 163 is set out in full below:

Application relating to loss or damage caused by right of entry

163 (1) A person may apply to the board for mediation and arbitration if the person

- (a) is a landowner or occupant of land that is subject to a right of entry, and the exercise of the right of entry causes damage to the land or other land of the owner or occupant or causes loss to the owner or occupant, or
- (b) is the owner or occupant of land immediately adjacent to land that is subject to a right of entry, and the exercise of the right of

entry causes damage to the adjacent land or causes loss to the owner or occupant.

(2) On application under subsection (1), the board may order the right holder to pay compensation to the landowner or owner or occupant for damage to the land of the landowner, owner or occupant or loss to the landowner, owner or occupant as a result of the exercise of the right of entry, including, without limitation, compensation relating to negotiation with the right holder before the application was made to the board.

(3) The board may order that interest is payable on an amount payable under subsection (2).

[13] Subsection 163(1)(a) gives a landowner or occupant of land that is subject to a right of entry who alleges the exercise of the right of entry has caused either damage to the land or loss to the owner or occupant to apply to the board for mediation and arbitration services to resolve their claim. Subsection 163(1)(b), in issue in these proceedings, allows “the owner or occupier of land immediately adjacent to land that is subject to a right of entry” to apply to the board for mediation and arbitration services if that person alleges the exercise of the right of entry has caused damage to the adjacent land or loss to them.

[14] Mr. Oberg alleges that the exercise of NorthRiver’s right of entry has caused damage to the Lands owned by him or loss to him. Whether he can advance that claim to the Board, depends on whether Mr. Oberg is the owner of land “immediately adjacent” to the land that is subject to the right of entry that is alleged to have caused the damage or loss.

[15] The Oxford English Dictionary defines “adjacent” as: lying near, contiguous to. It defines “contiguous” as touching, adjoining, next in order. While the word “adjacent” on its own does not necessarily require touching, as in the term “lying near” the modifier “immediately”, defined by the Oxford English Dictionary as “directly” makes that requirement clear such that the terms “contiguous” or “adjoining”, are the intended meaning of the word “adjacent”. I find that the words “immediately adjacent” require

that the land alleged to be damaged by a right of entry and the land on which the right of entry alleged to cause the damage are located must be contiguous, abutting, or adjoining, or perhaps more colloquially, right next door and not separated by any other parcels.

[16] It is clear from Schedule "A" that the Lands are not right next door to SW 32 which is the land containing the right of way alleged to be the source of damage to the Lands. The fact that SW 32 is next door to NW 32, NW 32 is next door to the Lands, and SW 32 and NW 32 have common ownership in that they are both Crown land, does not make SW 32 "immediately adjacent" to the Lands. SW 32 and NW 32 are separate legal parcels. Their common ownership does not turn them into a single continuous parcel.

[17] I do not accept Mr. Oberg's argument that the statutory right of way for drainage running through the Lands and adjacent parcels to the south makes the Lands "immediately adjacent" to SW 32. The statutory right of way may connect the Lands to SW 32, or at least to the road allowance at the SE corner of the most southerly parcel south of the lands but the word "connected" does not have the same meaning as the words "immediately adjacent". Parcels that are "immediately adjacent" are "connected" but parcels that are "connected" may not be "immediately adjacent". While the Lands are connected to each of the four parcels lying to the south by the statutory right of way, they are only "immediately adjacent" to the legal parcels with a common boundary, namely Lots 3, 4 and 5 depicted at .Schedule "A"

[18] I find that Mr. Oberg is not "the owner or occupant of land immediately adjacent to land that is subject to a right of entry" alleged to cause damage to the adjacent lands or loss to the owner or occupant within the meaning of section 163(1)(b) of the *PNGA*. The Board, therefore, does not have jurisdiction to deal with Mr. Oberg's claim.

[19] This finding that the Board does not have jurisdiction to provide mediation and arbitration services with respect to this claim is not a judgement on the merits of Mr. Oberg's claim in either nuisance or negligence. It is only to say that any such claim cannot be advanced before this Board, but must be advanced in a court of competent jurisdiction.

CONCLUSION

[20] The Board does not have jurisdiction to deal with this application and will close its file.

DATED: June 26, 2020

FOR THE BOARD



Cheryl Vickers, Chair

ParcelMap BC Print Report



April 8, 2020

WARNING: MAP IS NOT PRINTED TO SCALE

- - - Interest Parcels
- Parcel Boundaries
- · · Ownership
- + TANTALIS - Surveyed Wellsites
- World Imagery
- Low Resolution 15m Imagery
- High Resolution 80cm Imagery
- High Resolution 30cm Imagery
- Citations

Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Cadastral data from ParcelMap BC
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