

MEDIATION AND ARBITRATION BOARD  
Under the Petroleum and Natural Gas Act  
#114, 10142 - 101 Avenue  
Fort St. John, BC V1J 2B3

Date: May 11, 2001

File No. 1442

Board Order No. 338M

**BEFORE THE MEDIATOR:**

IN THE MATTER OF THE PETROLEUM AND  
NATURAL GAS ACT BEING CHAPTER 361 OF  
THE REVISED STATUTES OF BRITISH  
COLUMBIA AND AMENDMENTS THERETO:  
**(THE ACT)**

AND IN THE MATTER OF A PORTION OF THE  
SOUTH EAST QUARTER OF SECTION 6,  
TOWNSHIP 80, RANGE 13 WEST OF THE  
SIXTH MERIDIAN PEACE RIVER DISTRICT  
**(THE LANDS)**

**BETWEEN:**

AEC OIL & GAS CO. LTD.  
3700, 707-8<sup>TH</sup> AVENUE  
CALGARY, ALBERTA  
T2P 1H5  
**(THE APPLICANT)**

**AND:**

FREDERICK SAMUEL NOBBS  
BOX 156  
BONANZA, ALBERTA  
T0H 0K0  
**(THE RESPONDENT)**

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**RIGHT OF ENTRY ORDER**

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**BACKGROUND:**

The Mediation and Arbitration Board received an application for Mediation and Arbitration and Permission to enter on 28 November 2000 from Raymond Fromme, agent for AEC Oil & Gas Co. Ltd. The purpose of the application is for Mediation and Arbitration for signing Right-of-Way documents for registration purposes.

A Mediation Hearing was held on 8 March 2001. In attendance representing the Applicant were Raymond Fromme, Land Agent of Pioneer Land Services Ltd., Fort St. John office, and Les Dellow of Mitchell, Schuller & Dellow, legal counsel for the Applicant. In attendance representing the Respondent were Mr. Fred Nobbs.

Pursuant to Section 16 (2) of the *Petroleum and Natural Gas* Act, a copy of the application was sent by registered mail to the Respondent on 20 December 2000.

Pursuant to Section 18 (1) of the *Petroleum and Natural Gas* Act, Julie Hindbo was designated Mediator. The Mediator confirms that the application was properly filed. The Mediator did not view the site prior to the Mediation Hearing.

The Mediation Hearing was conducted in the Mediation and Arbitration Board (Board) office located at 10142 101<sup>st</sup> Avenue, Fort St. John, on 8 March 2001 at 9:00 a.m. Mountain Standard Time.

#### **POSITION OF THE PARTIES:**

##### **A APPLICANT**

The Applicant asked for assistance from Pioneer Land Services Ltd., in July 1999 to register a pipeline right-of-way agreement for 3.07 acres of land on the south east ¼ of section 6 township 80 range 13 west of the 6<sup>th</sup> meridian Peace River District (hereinafter referred to as the said lands).at the appropriate BC Land Title Office. The agreement was acquired 8 October 1991 between Conwest Exploration Company Limited (now AEC Oil & Gas Co. Ltd.) as Grantee and Victor Nobbs and Olive Oriole Nobbs as Grantor (parents of Respondent, Mr. Fed Nobbs).

There was some confusion on behalf of the Applicant with respect to Daryl Carter acting as legal counsel for the Respondent. The Applicant was of the opinion the Respondent had solicited Mr. Carter to act on his behalf, but this turned out to be a miscommunication problem. Nevertheless, some correspondence was handled via Mr. Carter, causing some initial communication problems and costs that the Applicant is prepared to take responsibility for.

The Applicant is of the view that the right-of-way was properly acquired with documentation typical at the time of the taking. This documentation referred to the taking as an 'Easement'. For reasons unknown to the Applicant, the proper Land Title registration did not follow this acquisition. A title search of the said lands dated 7 March 2001 indicates the present owner of the said lands is Frederick Samuel Nobbs. Because the landowner has changed since the original right-of-way was required, the Applicant is unable to properly register the document.

In order to achieve proper title registration to secure this land interest, the Applicant asked the Respondent to execute a new pipeline right-of-way agreement with documentation typical at the present time, but with the Respondent noted as Grantor. The Applicant indicated registration problems are common in BC and it is not uncommon to resign documents for this purpose. The Applicant offered the amount of two hundred and fifty dollars (\$250.00) for the Respondents time and assistance in correcting this administrative problem and indicated this is in keeping with accepted general rates in the area for resigning of documents. The Applicant confirmed the initial consideration for the right-of-way, at the accepted area rate at the time of the taking, was paid to Victor and Olive Nobbs prior to commencing construction on the pipeline project. In addition, the Applicant agreed to cover all legal costs erroneously incurred from Mr. Carter, subject to review and agreement of costs, and to compensate the Respondent for time and inconvenience of attending the Mediation Hearing.

In the event that Mr. Nobbs is not willing to sign the new documentation, but is willing to agree to a Board Order by consent of the parties, the Applicant submitted wording proposed for such a Board Order. Following discussion, the Applicant suggested revisions to the proposed Board Order by the addition of reference to Prince George Plan (PGP) # 37278 in paragraph 2 and rewording of paragraph 6 to provide better clarification. Legal survey plan PGP37278, contains the portion of pipeline right-of-way on the said lands as described in the 'Easement' document acquired 8 October 1991 with the Respondent's parents as Grantor. A Title Search dated 8 March 2001 identifies "Miscellaneous Notes" in connection with the said lands where PGP37278 is clearly listed.

The Applicant's considers this matter a common BC registration problem, simply requiring some tidying up of paper work so the Grantee's interest can be properly secured through title registration.

## **B RESPONDENT**

The Respondent confirmed he was aware of the pipeline at the time of the land transfer from his parents. In fact, the Respondent was contracted to assist with clean up of the right-of-way area following construction. In addition, the Respondent confirmed PGP37278 appeared to be an accurate plan representing the location of the right-of-way at issue.

The Respondent initially requested a sum of two thousand five hundred dollars (\$2,500.00) for resigning the documents. The Respondent indicated this figure was based on the assumption that he should allow room to bargain with the Applicant. As an alternative, the Respondent requested the current acceptable area rate for pipeline right-of-way acquisition in BC, nine hundred fifty dollars (\$950.00) per acre. He pointed out some of the negative effects caused by pipeline rights-of-way such as land use and equipment operation restrictions as justification for the compensation requested.

As a final submission for compensation, the Respondent requested two thousand eight hundred dollars (\$2,800.00) to cover inconvenience and costs for the right-of-way and attendance at hearings, and an additional payment to Mr. Carter for costs associated with this application, in full.

## **DECISION**

Following discussion in regard to differences between BC and Alberta registration procedures and compensation rates, the parties appeared willing to consider options. The Mediator suggested the parties continue in good faith negotiations to determine whether either a signed current Statutory Right of Way in a form that could be registered with mutually agreed costs OR a Board Order by Consent with mutually agreed conditions and costs would be acceptable alternatives to resolve the issues at hand. Failing agreement to either of these alternatives on or before 1 May 2001, the Mediator shall prepare a Right of Entry Order and initiate steps for an Arbitration Hearing. Notwithstanding this Order, the parties may continue to negotiate and consider options up to the time of an Arbitration Hearing and subsequent binding Decision.

The Mediator is of the view the Applicant has acted in good faith, for both the initial acquisition and subsequent attempts to complete registration, and has done all that can be reasonably expected within the Statutory framework to rectify the registration problems for the right-of-way at issue on the said lands. Furthermore, it is necessary for the proper maintenance and safety of the pipeline right-of-way at issue that the Applicant has legal access to the said lands.

### **IT IS HEREBY ORDERED THAT:**

1. Pursuant to Section 19 (1) of the *Petroleum and Natural Gas Act*, and subject to compliance with this Order as to payment of monies to the Respondent, and the deposit with the Board the security ordered, the Applicant has the right to enter the Respondent's land for the following purposes:
  - (a) to conduct all necessary work as may reasonably be necessary for the maintenance of the right-of-way area and the pipeline itself for the purpose of oil and gas production;
  - (b) to conduct all necessary soil sampling, cultural or heritage surveying or any other surveys, or assessments as may be required by any level of government or administrative agency;
2. Pursuant to Section 19 (2) (a) of the *Petroleum and Natural Gas Act*, the Applicant will deposit with the Board security in the sum of two hundred fifty dollars (\$ 250.00) by cheque payable to the Ministry of Finance and Corporate Relations, Province of British Columbia on or before 31 May 2001.
3. Pursuant to Section 19 (2) (b) of the *Petroleum and Natural Gas Act*, the Applicant will pay to the Respondent, the sum of two hundred fifty dollars (\$ 250.00) which will be deposited into the Respondent's bank account if known, or failing that delivered in person to the Respondent, proof of this payment being provided to the Board office in a timely manner upon receipt of this Order.

4. Pursuant to Section 19 (2) ( c) of the *Petroleum and Natural Gas* Act, the Applicant will serve a copy of this Order to the Respondent and provide proof of service to the Board office in a timely manner upon receipt of this Order.
5. Pursuant to Section 18 (2) further Mediation Hearings are refused. Unless otherwise agreed to by the parties, compensation for any additional costs or damages will be determined at an Arbitration Hearing to be set at a date determined by the Board in consultation with the parties.
6. Nothing in this order is or operates as consent, permit, or authorization that by enactment a person is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this **11 day of May 2001**.

MEDIATION AND ARBITRATION BOARD  
UNDER THE  
PETROLEUM AND NATURAL GAS ACT

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Julie Hindbo, Mediator