

# Pipelines and Transmission Lines in Alberta

Lamont and Strathcona Counties

February 2014

Heartland Hall

# Contract ....Design and Management

Open ended Granting clause:

Conveys a specific set of rights for the right of way including future uses, access rights and considerations;

Opportunity to negotiate rights conveyed and access considerations over and above SRA;



Image Date = 13/01/2007





# Pipeline Compensation

Annual loss of use for this surface riser

Lump sum for rights taken.



Minimum 60 M Control Zone

Possible loss of use when unable to extract known and licensed gravel peat, marl, sand and clay deposits.

200 M Economic Zone limits development.

Evidence of real/actual ( not future wishing ) loss needed for damage claim.



# Pipeline Setbacks

200M Development Setback

15M Right of Way

60M Ground Disturbance Control Area

Includes excavating, digging, trenching, plowing, drilling, tunneling, augering, backfilling, blasting, stripping, topsoil, leveling, remove peat, quarrying, clearing, grading, or pounding posts.

1.20M No Machine Dig Zone

Distances not to scale  
Source: ERCB





# SRA Compensation Framework

Entry Fee = Legislated  
\$500/acre to a maximum of  
\$5000 and minimum of \$250  
per titled unit

Signing Bonus and  
“Other Considerations” may be  
outside scope of Surface Rights  
Act

Land/Market Value

(open market principle of willing  
buyer willing seller)

General Disturbance

(Initial Inconvenience= dust noise  
traffic time negotiating at initial  
construction)

Loss of Use

(Production Loss)

(Gross Loss)

Annual  
Compensation =

Adverse Effect

Tangible and Intangible  
(impacts to surrounding  
lands  
and agricultural operations)

# BUT...

Court Queen's Bench

New hearing ... new evidence led

- Confirm the SRB decision

Or

- Vary the decision and issue a cost award





# Annual Compensation

- ▶ 23 Linear affects associated with pipelines
- ▶ SRB determined 8 affects warranted annual

*“SRB would like to see a system where landowners have an option of lump sum or annual compensation award”*

- ▶ Compensation awarded by the SRB with the annual component equated to 4 to 5 times the land value of the right of way
- ▶ Objection by NCSRA but not by individual landowners



# ACQB Reaffirms

SRB Enbridge decision was unreasonable:

- SRB must look at Pattern of Dealings first
- SRB can only depart when there are most cogent reasons.

Court pointed out:

- Presumes the negotiation is balanced
- Marketplace rules



# Annual Compensation

Enbridge acknowledged resistance to annual rental payment  
Cheecham to Edmonton:

77 Agreements=\$1500 acre TWS \$950 acre

71 Agreements= \$1900 1cre TWS \$950 acre

Enbridge upped compensation to 1<sup>st</sup> 77

14 holdouts on line for annual compensation

Enbridge agreed if Legislation changes or courts award annual  
they would pay



# Annual Compensation

- ▶ Comparable POD's (pattern of dealings) should consider:
  - \* consideration to rights granted
  - \* type of land (highest and best use)
  - \* proximity (location of development)
  - \* date of agreements
  - \* size of taking (acreage)
  - \* nature of the parties (owner/occupant)
  - \* amounts paid

# Annual Compensation

- ▶ Pattern of Dealings (POD):

...such a number of deals to establish a pattern. SRB should only divert from pattern of dealings with cogent reasons.

The majority of landowners agreeing to compensation on the line established the pattern.

... less than 10% can establish a POD



# Annual Compensation

- ▶ Contract considered to be consensual unless:
  - \* Grossly unfair transaction
  - \* Victim lacked independent or unsuitable advice;
  - \* Imbalance in bargaining power (victims ignorance and/or disability);
  - \* Other party knowingly took advantage of other party;

# Annual Compensation

- ▶ Proof of imbalance required:
  - \* No contrary evidence on knowledge of landowners;
  - \* No contrary evidence that agreements weren't consensual;
  - \* No evidence to inequality of bargaining positions.



# The Court

- ▶ Landowners identified 23 alleged long term effects;
- ▶ Effects did not relate specifically (no evidence) to any of the properties of landowners to the appeal;
- No reason given by SRB for equal award of values on TWS and ROW;
- TWS continues in perpetuity until reclamation (Pennine vs Bruder) EPEA continues obligation

# SRB Decision

SRB annual based on 8 elements of perceived continuous impact:

- \* continuous adaptation of farming practices
- \* presence of pipeline ongoing nuisance
- \* caveats ongoing nuisance



Not in themselves deserving compensation

Existence of a pipeline

The Caveat

## Court confirms

Rights purchased less than fee simple

LO retain some rights to ROW

Continue to use ROW as long as you don't interfere with pipeline operation





# Unjust Enrichment

\$100 was outside the marketplace norms for other rental in the area

Value of compensation package well beyond land values.  
*(pssst...you could buy the land cheaper)*

## Court confirms

Rights purchased less than fee simple

LO retain some rights to ROW

Continue to use ROW as long as you don't interfere with pipeline operation





“Not in themselves deserving  
compensation”

Existence of a pipeline  
The Caveat



# 10 Things in favor of a ROE

Known Length

Known Terms

Revocable

1 hole, 1 Pipe

No “As Built”

Interest Awards

Pipeline ROE

Reviewable

Non-payments

Easier

Cost Awards

Contract Certainty



# Challenges ....

- Enforceability of conditions
- Open to interpretation
- Setbacks and concerns of adjacent owners who have no rights
- Future development impact:
  - = damage claims at occurrence of future event
- Potential impact to resource development (gravel)
- Policy gaps:            contracts; removal of lines
- Environmental Impacts and spills
- Rocks surfacing

# Challenges....

- Fractionalization of agricultural and urban lands;
- Permanency of Infrastructure;
- Jurisdictional transfers;
- Implications to future land values and development potential;
- Parameters of enforcement under REDA:
  - \* Only applies to agreements negotiated after Nov 30/2013;
  - \* Existing agreements not grandfathered in;
  - \* Costs of Mediation and representation in accessing system;
  - \* Agreement only enforceable based on negotiated conditions;
  - \* CAPL agreements are broad open ended;



# Considerations ...

- ▶ Knowledge
- ▶ Representation
- ▶ Accessing system (regulator/arbitrator)
- ▶ Understanding technologies
- ▶ Roles of Government/Regulator/Arbitrator
- ▶ Accessible resources
- ▶ Building on success
- ▶ Engaging in negotiation/facilitation/ mediation

# Energy Agreements

- ▶ Montana vs. Mueller
- ▶ AUC and AER grants access to land in AB not the SRB;
- ▶ If the regulator grants license and/or permit SRB has no choice but to issue the right of entry;
- ▶ SRB is ancillary and in aid of regulator;
- ▶ No statutory right of appeal on ROE; limited to judicial review;
- ▶ SRB is a compensation Board



# What's on the Radar.....

- ▶ Denial of signing bonus for contracting specific representation;
- ▶ Binding families including underage children to privacy clauses;
- ▶ Denial of signing bonus if conditions not accepted as;
- ▶ Denial of signing bonus if not signed within tight timelines;

Thankyou!