



Oil and Gas Appeal Tribunal

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DECISION NO. 2012-OGA-002(c)

In the matter of an appeal under section 72 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36.

BETWEEN:	Willis Shore	APPELLANT
AND:	Oil and Gas Commission	RESPONDENT
AND:	Murphy Oil Company Ltd.	THIRD PARTY
BEFORE:	A Panel of the Oil and Gas Appeal Tribunal Alan Andison, Chair	
DATE:	November 27 and 28, 2012	
PLACE:	Fort St. John, BC	
APPEARING:	For the Appellant: J. Darryl Carter, Q.C., Counsel For the Respondent: Sara Gregory, Counsel For the Third Party: Rick Williams, Counsel	

APPEAL

[1] Willis Shore appeals a pipeline permit issued on July 23, 2012, by the Oil and Gas Commission (the "OGC"). The permit was issued to Murphy Oil Company Ltd. ("Murphy Oil"), and authorizes Murphy Oil to construct and operate a pipeline, subject to certain conditions, on land that is owned by Mr. Shore.

[2] The Oil and Gas Appeal Tribunal (the "Tribunal") has the authority to hear the appeals under section 72 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36 (the "OGAA"). Section 72(6) of the OGAA gives the Tribunal the power to confirm, vary or rescind the determination or review decision being appealed, or send the matter back with directions to the review official who made the decision or to the person who made the determination, as applicable.

[3] Mr. Shore submits that there are other viable routes for the pipeline. He requests that the permit be cancelled, and that there be a full and fair consideration of his concerns before any new determinations are made. Mr. Shore also asks the Tribunal to order Murphy Oil to pay Mr. Shore's costs in relation to the appeal.

BACKGROUND

[4] Mr. Shore owns, in whole or in part, three properties which are affected by the permit at issue (collectively referred to in this decision as “the Lands”):

- the North West $\frac{1}{4}$, except Parcel A, of Section 12, Township 78, Range 17, West of the 6th Meridian, Peace River District (the “North West $\frac{1}{4}$ ”);
- Block A of the South West $\frac{1}{4}$ of Section 12, Township 78, Range 18, West of the 6th Meridian, Peace River District (“Block A”); and
- the South East $\frac{1}{4}$ of Section 12, Township 78, Range 18, West of the 6th Meridian, Peace River District (the “South East $\frac{1}{4}$ ”).

[5] The Lands are within the Agricultural Land Reserve.

[6] Portions of the Lands contain sand and gravel deposits. Mr. Shore holds a permit under the *Mines Act* authorizing a 10.05 hectare sand and gravel mine on the South East $\frac{1}{4}$. That permit was issued on May 18, 2012.¹ In addition, Mr. Shore advises that he plans to subdivide a portion of the Lands, although he has not obtained any approvals to do so.

[7] Murphy Oil needs the pipeline to tie in two existing natural gas wells, located to the north of the Lands, to Murphy Oil’s Tupper West Plant, via a connection point to the south of the Lands. The wells were drilled and completed between July and October 2011. The pipeline consists of three flow lines: one three-inch produced water flow line; one eight-inch low level sour gas line; and, one three-inch fuel gas flow line.

[8] Murphy Oil first approached Mr. Shore in May 2011 about the possibility of the pipeline crossing his land. Around that time, Mr. Shore and representatives of Murphy Oil attempted to negotiate an agreement on the matter, but were unsuccessful.

[9] Murphy Oil then considered alternate pipeline routes that might avoid, or mostly avoid, Mr. Shore’s property. It proposed an alternate route (“Option E”) that involved only a small crossing of the northeast corner of Mr. Shore’s property. On August 31, 2011, Mr. Shore and Murphy Oil entered into a right-of-way agreement in relation to the portion of Option E that would cross his property. Murphy Oil then approached another land owner whose land would be crossed by Option E. However, that land owner advised that he was planning to build a home on his property near Option E. Due to the proximity to the planned home, Murphy Oil decided that Option E was not viable.

[10] In November 2011, Mr. Shore contacted Murphy Oil and advised that he had identified an acceptable route through his property. On November 29, 2011, Mr. Shore met with a representative of Murphy Oil to discuss that route (“Option E, version 2”), which involved constructing the pipeline between an existing BC Hydro power line right-of-way, and a proposed power line right-of-way, on his property.

¹ The Agricultural Land Commission must approve the gravel removal authorized by the Mines Act permit before work at the gravel pit can commence.

[11] In response, Murphy Oil contacted BC Hydro, and was advised that the pipeline could not be constructed between the power transmission lines. The pipeline would need to be moved away from the transmission lines, which would result in it encroaching onto an adjacent 10-acre property and coming within 200 metres of a home. The owner of that property objected to this proposal. Around this time, Murphy Oil investigated several other route options, but found that there were issues with each of them which made them unsuitable or limited their suitability.

[12] By a letter dated January 4, 2012, Murphy Oil provided Mr. Shore with formal notice of its intention to apply for a permit to construct and operate the pipeline on a route that would run through the Lands in a north-south direction along the easterly edge of the North West ¼ and Block A ("Option A").

[13] On January 15, 2012, Mr. Shore's application for a *Mines Act* permit for a gravel mine with respect to the South East ¼ was filed with the Ministry of Energy, Mines and Petroleum Resources.

[14] Mr. Shore made written submissions to the OGC regarding Murphy Oil's proposal on January 24 (which was revised on January 27), March 5 and March 15, 2012, pursuant to section 22(5) of the *OGAA*. In those submissions, he expressed concerns that the pipeline and associated right-of-way would prevent the development of a significant portion of the sand and gravel deposits on the Lands, and would interfere with his plans to subdivide part of the Lands. He also expressed concern about the effect of the pipeline on natural drainage and waterways. He suggested various alternate routes for the pipeline.

[15] By letters dated February 3, March 8 and March 19, 2012, Murphy Oil responded to each of Mr. Shore's written submissions.

[16] On March 31, 2012, Murphy Oil applied to the OGC for the pipeline permit based on Option A. With its application, Murphy Oil provided a consultation report to the OGC, as required under section 24 of the *OGAA*. Mr. Shore's written submissions and Murphy Oil's responses were included in the documents that were before the OGC.

[17] On July 23, 2012, the OGC issued the permit authorizing Murphy Oil to construct and operate the pipeline. The pipeline is situated in a fifteen metre wide right-of-way, which follows Option A: it crosses the Lands in a north-south direction along the easterly edge of the North West ¼ and Block A, adjacent to the permitted gravel mine. The permit includes several conditions, including the following:

3. The Permit holder must ensure that the pipe is constructed in such a manner within the pipeline right-of-way to ensure that there is at least a 3 (three) meter distance between the outside edge of the pipe and the boundary of the quarry, shown within Mines Act Permit ... as approved on May 18, 2012.

[18] Also on July 23, 2012, Donna Bozorth, an Operations Manager with the OGC (the "Operations Manager"), prepared a five page document titled "Documentation of Decision Rationale" (the "Decision Rationale") in relation to Murphy Oil's permit application. The Operations Manager was the OGC's delegated decision-maker in

determining whether to issue the permit. The Decision Rationale discusses "Items for Consideration" under the sub-headings of Gravel, Sub-division, Environmental concerns, and Options.

[19] Under the sub-heading "Gravel", the Decision Rationale concludes:

.... At this time, it is unknown whether approvals required for any such future development will be applied for and/or received. As a result, I have determined that these matters relating to future development may be addressed through the Surface Rights Board. Mr. Shore's written submission of March 5, 2012 mentions compensation for the market price of the gravel and loss of property for the sub-division.

[20] Under "Sub-division", the Decision Rationale states that Mr. Shore "currently has no plans for development of a sub-division that are the subject of any approvals or authorizations to proceed with such development." The Decision Rationale goes on to say that it is not known whether Mr. Shore would receive the necessary approvals to proceed with a sub-division, and concludes that "these matters may be addressed through the Surface Rights Board".

[21] Under "Environmental concerns", the Decision Rationale includes a finding that that the proposed pipeline will be constructed mostly in pastured areas and some areas of re-growth, and notes that Murphy Oil is required, by law, to ensure the operations do not result in excess subsidence or erosion.

[22] Under the sub-heading "Options", the Decision Rationale states, in part, as follows:

- In examining each of the alternate routes proposed by Mr. Shore, I have reviewed steps that were taken by Murphy to consider, to some degree, the possibility of relocating the pipeline route, which steps included for each route consultations, communications with land owners, assessing feasibility of tie-ins, evaluating its present and future requirements for the lines, requesting (and being denied) permission to survey private lands, and/or considering the potential that it would have to apply for additional pipelines (creating disturbance) to make up for limited capacity.
- With respect to each alternate route:
 - Option B – would result in Murphy's pipeline tying [sic] in with ARC's pipeline from their 3-13-78-18 wellsite location. I accept that this solution was not practical as ARC Resources does not have capacity to take on additional volumes of gas.
 - Option C – proposes that Murphy construct a line North from the 3-13 well through Irvine's parcel of land then parallel along ARC's existing pipeline to the 7-15 well. The proposed line does not follow existing legal or natural boundaries, and would cut through the quarter section owned by Irvine's and create a segmented parcel of land. Additionally, by tying in the 3-13-78-18 well to the 7-15 well, future capacity would be limited.
 - Option D – proposes that Murphy construct a line North from the 3-13 well through Irvine's parcel of land, then run parallel along ARC's existing pipeline; then move south west through 3 quarters of land

owned by the Wilson's, Watson's and Masse's. As with Option C, the proposed line does not follow existing legal or natural boundaries, would create segmented parcels of land, and future capacity, and would be an issue for Murphy's gas gathering system.

- Option E – version 1: proposes that Murphy construct the pipeline from the 3-13 well to the 8-7 well on the North side of Cooper Road. Murphy cannot proceed on this location as the intended route would conflict with one landowner who is building a residence in the same location.
- Option E – version 2: proposes that Murphy construct the pipeline from the 3-13 well to the 8-7 well on the South side of Cooper Road. This proposed route would be in conflict with a BC Hydro Transmission line and due to the setbacks from the two BC Hydro lines, the proposed pipeline cannot be located near the edge of the property. The pipeline would encroach on one landowner's property by approx 80 metres, segmenting a portion of one landowner's 10 acre parcel of property.
- I have concluded that the proposed pipeline route reflects developmental and operational needs in the area, discussions and consultation with multiple landowners and stakeholders in the area, and an assessment of environmental, social and economic impacts of the activity.

[23] On August 17, 2012, Mr. Shore appealed the permit to the Tribunal. The grounds for appeal in his Notice of Appeal are that the OGC "failed to consider that Mr. Shore had presented a reasonable alternative for the pipeline route" and that the OGC "failed to require Murphy to fully consider all reasonable alternatives."

[24] As the appeal was filed after the expiry of the 15-day statutory appeal period, Mr. Shore applied for an extension of time to file his appeal. After receiving submissions from all parties, the Tribunal granted the extension of time on September 17, 2012 (see *Shore v. Oil and Gas Commission*, Decision No. 2012-OGA-002(a)).

[25] While those preliminary matters were being addressed by the Tribunal, there were also applications and proceedings taking place before the BC Surface Rights Board. Those applications and proceedings culminated in the Surface Rights Board issuing a Right of Entry Order being issued to Murphy Oil on September 26, 2012. The Right of Entry Order allowed Murphy Oil to carry out an oil and gas activity on the Lands; specifically, to construct, operate and maintain the three flow lines authorized by the permit.

[26] On the same day that the Right of Entry order was issued by the Surface Rights Board (September 26th), Murphy Oil provided notice to Mr. Shore that it intended to commence construction of the pipeline on the Lands on September 28, 2012, just two days later. In a letter dated September 27, 2012, Mr. Shore asked the Tribunal to order "an immediate stay" of the permit.

[27] Following a teleconference with all parties on September 28, 2012, the Tribunal issued an interim stay of certain activities under the permit, to allow time for the Tribunal to receive full submissions on the stay application.

[28] On October 9, 2012, after receiving submissions from all parties, the Tribunal denied the stay application and rescinded the interim stay (see *Shore v. Oil and Gas Commission*, Decision No. 2012-OGA-002(b)).

[29] On November 27 and 28, 2012, the Tribunal conducted an oral hearing on the merits of the appeal. After the hearing concluded, Mr. Shore's lawyer sent a letter and billing statement to the Tribunal's office requesting that the Tribunal order Murphy Oil to pay Mr. Shore's costs associated with the appeal.

The Parties' Positions

[30] Mr. Shore submits that the OGC made errors of law and facts in determining the pipeline's location. He submits that Murphy Oil's application does not fulfill legislative or regulatory requirements, that the OGC's determination does not reflect Murphy Oil's needs, and that the OGC did not properly assess the impacts of Murphy Oil's proposed activity. Mr. Shore also submits that the OGC was biased against him. Specifically, the OGC applied a different standard to Mr. Shore than it did to other landowners. Mr. Shore argues that Murphy Oil should pursue the other routes that are available to it, using the remedies that are available to it, as necessary. Finally, Mr. Shore submits that the OGC is generally biased against all land owners, and approves all applications for oil and gas activities regardless of objections from land owners.

[31] The OGC submits that the determination to issue the permit was made after careful consideration of Mr. Shore's concerns about the proposed permit and his plans for the Lands. It submits that the determination involved the consideration of many different interests, as well as the impact on, and views expressed by, multiple land owners and stakeholders. In addition, the OGC submits that there is no evidence that it was biased or exercised its authority in bad faith.

[32] Murphy Oil submits that the OGC had due regard for Mr. Shore's submissions prior to issuing the permit. It submits that there is no basis for Mr. Shore's claims that the OGC was biased against him or that the OGC acted in bad faith.

[33] In addition, Murphy Oil submits that the determination to issue the permit is wholly consistent with the OGC's mandate under sections 4(a) and (b) of the *OGAA*. Murphy Oil submits that alternate routes for the pipeline were considered, but those routes were not selected because they had greater environmental, economic and social impacts. It submits that the appeal should be dismissed.

ISSUES

[34] As set out in section 72(2) of the *OGAA*, the main issue to be decided in this appeal is as follows:

1. Whether the OGC's determination to issue the permit was made without due regard to a submission that was previously made by Mr. Shore or the consultation report that Murphy Oil submitted to the OGC.

[35] Under this issue, the Panel has addressed a number of sub-issues that were raised in the parties' submissions. Those sub-issues are:

- a) Whether the OGC failed to have due regard for Mr. Shore's submissions regarding the pipeline's impacts on gravel resources on the Lands, sub-division plans for the Lands, and waterways on the Lands, or the viability of alternate pipeline routes;
- b) Whether the OGC failed to have due regard for Mr. Shore's submissions because the OGC was biased or acting in bad faith;
- c) Whether the OGC failed to have due regard for Mr. Shore's submissions because the OGC failed to meet the requirements of sections 4(a) and (b) of the *OGAA*.

[36] If the Panel finds that the OGC did not have due regard to Mr. Shore's submissions, or did not have due regard to the consultation report submitted by Murphy Oil, then the next issue to be decide is:

- 2. What is the appropriate remedy in the circumstances?

[37] The final issue to be decided is:

- 3. Whether the Tribunal should order Murphy Oil to pay Mr. Shore's costs associated with the appeal.

RELEVANT LEGISLATION

[38] The following sections of the *OGAA* are relevant to this appeal:

4 The purposes of the commission include the following:

- (a) to regulate oil and gas activities in British Columbia in a manner that
 - (i) provides for the sound development of the oil and gas sector, by fostering a healthy environment, a sound economy and social well-being,
 - (ii) conserves petroleum and natural gas resources,
 - (iii) ensures safe and efficient practices, and
 - (iv) assists owners of petroleum and natural gas resources to participate equitably in the production of shared pools of petroleum and natural gas;
- (b) to provide for effective and efficient processes for the review of applications for permits and to ensure that applications that are approved are in the public interest having regard to environmental, economic and social effects;

...

22(5) A person, other than the applicant, may make a written submission to the commission with respect to an application or a proposed application under section 24.

24(1) Subject to subsection (4), a person may apply to the commission for a permit by submitting, in the form and manner the commission requires,

...

(c) a written report, satisfactory to the commission, regarding the results of the consultations carried out or notification provided under section 22, if any, ...

72(2) A land owner of land on which an oil and gas activity is permitted to be carried out under this Act may appeal a determination under this section only on the basis that the determination was made without due regard to

(a) a submission previously made by the land owner under section 22 (5) or 31 (2) of this Act, or

(b) a written report submitted under section 24 (1) (c) or 31 (6).

DISCUSSION AND ANALYSIS

1. Whether the OGC's determination to issue the permit was made without due regard to a submission that was previously made by Mr. Shore or the consultation report that Murphy Oil submitted to the OGC.

Mr. Shore's Submissions

[39] Mr. Shore submits that there are commercially valuable gravel deposits within the pipeline right-of-way, which will not be available for extraction if the permit is upheld. He argues that the OGC erred in deciding that matters related to future development of those deposits rests with the Surface Rights Board. In particular, he submits that the OGC has a duty to ensure that gravel resources remain available to users in the Peace River area, including the oil and gas industry, given the "known" scarcity of gravel resources in the area. He also submits that the OGC requires a 10-metre distance from quarries, and that section 11 of the *Oil and Gas Activities Act General Regulation* requires a 40-metre control zone related to pipeline right-of-ways. In support of those submissions, Mr. Shore provided a letter dated August 21, 2012, from Tryon Land Surveying Ltd., stating that there is an estimated 144,869 cubic yards of gravel underlying the pipeline right-of-way.

[40] Mr. Shore further submits that the OGC erred by assuming that the absence of formal subdivision plans for the Lands reflects an inability to subdivide the Lands. He submits that the OGC is required to look at the highest and best use of the Lands, and its subdivision potential. He further submits that the OGC failed to consider that the area with subdivision potential is only marginal agricultural land, with a Canada Land Inventory rating of five to seven over much of the area.

[41] In addition, Mr. Shore submits that the OGC erred in assuming that the Lands will continue to be used as "pastured areas and some re-growth". He submits that the present land use should not be a criterion in deciding where to locate the pipeline.

[42] Regarding alternate routes, Mr. Shore submits that Murphy Oil did not carry out consultations with all of the relevant land owners regarding the feasibility of alternate routes, and the OGC did not evaluate Mr. Shore's proposals in good faith or with due diligence.

[43] Specifically, regarding Option B, Mr. Shore submits that the OGC provided no evidence with respect to the inability of ARC Resources to take on additional gas volumes.

[44] Regarding Option C, Mr. Shore submits that there is no requirement that the OGC only approve pipeline routes that follow existing legal or natural boundaries, and that the OGC has segmented parcels of land in the past. He also argues that there is no evidence that Murphy Oil's future plans might be compromised by tying in one well to another well.

[45] Regarding Option D, Mr. Shore submits that he advised the OGC that, provided that the right-of-way follows "proper" boundaries, neither Mr. Irvine nor Mr. Wilson would object to the pipeline. He also submits that the Watsons and Masses have no objection to routing the pipeline at any location on their property. He further submits that this option would not compromise future capacity because it feeds into the same lines as Option A.

[46] Regarding Option E, version 1, Mr. Shore submits that the line could be located on the southern boundary of the properties along Cooper Road without major impacts on those properties. Also, this option is consistent with the right-of-way that Murphy previously acquired from Mr. Shore.

[47] Regarding Option E, version 2, Mr. Shore submits that neither the OGC nor Murphy Oil properly investigated the circumstances with BC Hydro. He argues that, had they properly investigated, they would have discovered the following:

- The existing power line is located within the road right-of-way.
- The existing power line may be removed in the near future.
- The presence of the existing power line does not prohibit the location of the pipeline on the northerly boundary of the Lands paralleling Cooper Road. This location would not be in conflict with the Dawson Creek or Chetwynd area transmission line
- The right-of-way for the Dawson Creek or Chetwynd area line can be located adjacent to the pipeline as long as the closest insulator is at least nine metres from the pipeline.
- The combined right-of-way will encroach no more than 48 metres into the land owner's 10 acre parcel, contrary to the 80 metres of encroachment that has been stated by the OGC.

[48] Finally, the Panel notes that Mr. Shore gave evidence at the hearing in a forthright, honest and sincere manner. In that regard, he stated under cross-examination that this appeal would not have been necessary and he would have accepted Option A across his property if Murphy Oil had been prepared to compensate him for the loss of gravel and the value of the lost subdivision, and had paid \$42,000 per half-mile for the pipeline to cross his land. However, Murphy Oil did not agree to Mr. Shore's request for compensation.

The OGC's Submissions

[49] The OGC submits that it gave due regard to Mr. Shore's concerns, and it gave full and fair consideration to the submissions that Mr. Shore provided during

the consultation process. The OGC submits that it also considered Murphy Oil's written report, the submissions made by other parties during the consultation process, and other information, including:

- o a report prepared by an OGC Landowner Liaison,
- o a Schedule A Soil assessment,
- o information from the Inspector of Mines regarding Mr. Shore's permit under the *Mines Act*, and
- o information from BC Hydro.

[50] The OGC provided the Panel with a copy of the documents that it considered before issuing the permit.

[51] The OGC also referred to the Decision Rationale prepared by the Operations Manager. The OGC submits that the Decision Rationale sets out the Operations Manager's review and consideration of the information in determining whether to issue the permit.

[52] The OGC submits that the determination to issue the permit was made after carefully assessing Mr. Shore's concerns, and the information provided by other land owners and stakeholders. It submits that there is no evidence that the OGC was biased or exercised its authority in bad faith.

[53] In addition, Roger St. Jean, the Deputy Commissioner for the OGC, conducted a review of the permit after it was issued in response to concerns raised by Mr. Shore. The Deputy Commissioner confirmed the determination.

Murphy Oil's Submissions

[54] Murphy Oil submits that it is clear from the Decision Rationale that the OGC had due regard for Mr. Shore's submissions. In addition, Murphy Oil submits that there is no basis for Mr. Shore's claims that the OGC acted out of bias or bad faith, or that the determination to issue the permit was inconsistent with the OGC's legislated mandate under sections 4(a) and (b) of the *OGAA*.

[55] Further, Murphy Oil submits that it considered several alternate pipeline routes in response to Mr. Shore's concerns, including the alternatives that he proposed. However, the alternates had greater environmental, social and economic impacts than Option A.

[56] Murphy Oil argues that, although Option A may not be the most ideal for either Mr. Shore or Murphy Oil, it is the most logical route when the environmental, social and economic impacts of the options are considered. It also submits that any negative impacts on Mr. Shore in terms of gravel development or subdivision plans will be addressed by the Surface Rights Board, which has the jurisdiction to determine compensation.

[57] With regard to the sand and gravel deposits on the Lands specifically, Murphy Oil submits that there is no "40 metre control zone," as section 11 of the *Oil and Gas Activities General Regulation* was repealed in June 2012. Murphy Oil submits that section 2(3) of the *Pipeline Crossing Regulation* only requires a 10-metre setback from a pipeline when carrying out a ground activity. Additionally, Murphy

Oil submits that Mr. Shore's mine permit requires a seven metre leave strip from the western edge of the South East ¼, in which no excavation can occur, and the pipeline permit requires at least a three metre distance between the outside edge of the pipe and the boundary of the mine, resulting in a 10-metre minimum distance between the flow pipes and the approved sand and gravel mine. Murphy Oil submits, therefore, that the pipeline will not impede the mine development.

[58] In regard to the right-of-way itself, Murphy Oil submits that Mr. Shore has provided no evidence to substantiate his claims that commercial aggregate is contained throughout the South West ¼ (and not just in Block A), or that there is a scarcity of gravel in the Peace River area. Murphy Oil further submits that, even if there are commercial quantities of gravel underlying the right-of-way and that the pipeline will unreasonably interfere with the development of that resource, which Murphy Oil denies, it is a matter of compensation to be addressed by the Surface Rights Board. In that regard, Murphy Oil submits that the matter of Murphy Oil's compensation to Mr. Shore is already before the Surface Rights Board, and will be determined through arbitration if it is not resolved through mediation. It notes that similar issues were considered by the Tribunal in *Loiselle Investments Ltd. v. Oil and Gas Commission*, Decision No. 2011-OGA-009(b), issued January 13, 2012 [*Loiselle*], where the Tribunal held at paragraph 83:

..., to the extent that the pipeline may affect the Appellant's subdivision plans or the Appellant's intended use of water reservoirs, the road allowance, or the proposed rock quarry, the Tribunal finds that those matters can be addressed through the Surface Rights Board compensation process.

[59] Regarding Mr. Shore's subdivision plans, Murphy Oil submits that the proposal is wholly speculative, as Mr. Shore has provided no evidence of any applications, approvals or authorizations to proceed with a subdivision. Moreover, Murphy Oil argues that the OGC did not assume that the Lands could not be subdivided; rather, the OGC noted that none of the necessary approvals or authorizations had been sought. In any case, Murphy Oil submits that even if the Lands could be subdivided, the Tribunals' previous decision in *Loiselle* dealt with that type of issue.

[60] With regard to the land use where the pipeline will be constructed, Murphy Oil submits that the OGC correctly considered the existing land use, given that there are no approvals or authorizations for other land uses. Murphy Oil reiterates its submission that, even if the pipeline results in any harm to Mr. Shore, it is a matter of compensation to be addressed either through an agreement, or by the Surface Rights Board.

Tribunal's findings

1(a) Whether the OGC failed to have due regard for Mr. Shore's submissions regarding the pipeline's impacts on gravel resources on the Lands, sub-division plans for the Lands, and waterways on the Lands, or the viability of alternate pipeline routes?

[61] The Tribunal has reviewed all of the submissions and evidence, including Mr. Shore's written submissions to the OGC, Murphy Oil's responses to those submissions, the other documents that the OGC considered before making the determination, and the Decision Rationale dated July 23, 2012. The Decision Rationale sets out a summary of Mr. Shore's comments regarding gravel resources, sub-division, environmental concerns, and potential alternate routes. The Decision Rationale then sets out a 2½-page discussion of those matters. The Tribunal has considered each of the specific concerns raised in Mr. Shore's submissions to the OGC, as follows.

Gravel resources

[62] Regarding the gravel resources that are the subject of Mr. Shore's permit under the *Mines Act*, the Decision Rationale states, in part:

...

- Mr. Shore has received approval from MEMPR [the Ministry of Energy, Mines and Petroleum Resources] for a 10.05ha quarry in the SE ¼ Section of 12-78-18.
- The proposed pipeline runs adjacent to the quarry along the most easterly edge of Block A To ensure safety, there must be a 10m distance between the pipeline and the excavation of the quarry. The quarry was approved with a leave strip of 7m around the boundary of the quarry. MEMPR has confirmed that no excavation can occur within the leave strip. As a result, I have determined that it is necessary to add a condition to any permit approving Murphy's proposed pipeline to require the pipeline be constructed, within the right-of-way, in a manner that ensures that there is at least 3m distance between the outside edge of the pipe and the boundary of the quarry. As a result, a safe distance may be maintained and the pipeline will not conflict with any activity on area of the quarry approved by MEMPR.

[63] The Tribunal finds that the OGC gave due regard to the gravel resources that are the subject of Mr. Shore's *Mines Act* permit. This is evident from the portions of the Decision Rationale set out above, which discusses safe setbacks between the pipeline and the gravel mine, and the fact that the OGC added a condition to the permit requiring a three-metre setback. That condition, together with the seven-metre setback required under the *Mines Act* permit, ensures a minimum 10-metre setback between the pipeline and the gravel mine. The Tribunal notes that a 10-metre setback is consistent with section 2(3) of the *Pipeline Crossing Regulation*, which requires a minimum 10-metre setback between a pipeline and the site of a "ground activity", which is defined in section 1 of that regulation as including a mining activity under the *Mines Act*. The Tribunal finds that the OGC took steps to ensure a safe setback distance between the gravel mine and the pipeline, while also ensuring that the pipeline would not intrude on, or inhibit, the gravel mine operations.

[64] The OGC also considered the fact that no approvals had been sought, or issued, to develop any gravel resources on the Lands, beyond those that are the subject of the *Mines Act* permit. The Decision Rationale states, in part, as follows:

- o Future development of Mr. Shore's property for gravel extraction, within Block A ... or otherwise, will be a matter that will require further approvals and authorizations from authorities. The information about gravel testing provided by Mr. Shore does not clearly indicate the location or nature of any proposed future development. At this time, it is unknown whether approvals required for any such development will be applied for and/or received. As a result, I have determined that these matters relating to future development may be addressed through the Surface Rights Board. Mr. Shore's written submission of March 5, 2012 mentions compensation for the market price of the gravel and loss of property for the sub-division.

[65] When this appeal was heard, there was no evidence that Mr. Shore had sought or obtained a *Mines Act* permit, or other authorization, to develop any gravel resources anywhere else on the Lands beyond the area subject to the existing *Mines Act* permit. The Tribunal finds that there is insufficient evidence to determine whether any other gravel resources would receive the necessary approvals to proceed with their development if the pipeline were located elsewhere. In fact, the evidence before the Tribunal is that, if Mr. Shore applies to develop additional gravel resources, his application may be subject to an environmental assessment. It is, therefore, completely speculative as to whether the gravel resources would be, or could be, developed in the future. Finally, any further development for mining purposes would also require the approval of the Agricultural Land Commission, which may or may not grant approval.

[66] In addition, no evidence was provided to establish that gravel resources are scarce in the Peace River area, or that any limitations on the future development of Mr. Shore's gravel resources would have a significant impact on gravel supplies in the area.

[67] The Tribunal finds that it was appropriate for the OGC to consider the present land use on those portions of the Lands that are the subject of the *Mines Act* permit, to add an additional condition, and to leave the matter of compensation for any impact to be addressed by the Surface Rights Board. The Tribunal notes that the matter of Murphy Oil's compensation to Mr. Shore was before the Surface Rights Board when this appeal was heard.

[68] In conclusion, the Tribunal finds that the OGC had due regard for Mr. Shore's submissions on the impact of the pipeline on the gravel resources found on the Lands.

Sub-division plans

[69] Mr. Shore submits that the OGC erred by assuming that the absence of formal subdivision plans for the Lands reflects an inability to subdivide the Lands. However, the Tribunal has reviewed the evidence, including the Decision Rationale, and finds that there is no evidence that the OGC made such an assumption. With regard to subdivision, the Decision Rationale states as follows:

Mr. Shore currently has no plans for development of a sub-division that are the subject of any approvals or authorizations to proceed with such development. As a result, it is unknown whether Mr. Shore would receive necessary approvals to proceed with his stated future development plans to

subdivide the property. As a result, I have determined that these matters relating to future development may be addressed through the Surface Rights Board. As indicated above, Mr. Shore's written submission of March 5, 2012 mentions compensation for the market price of the gravel and loss of property for the sub-division.

[70] The Decision Rationale does not indicate that the OGC proceeded based on an assumption that Mr. Shore was unable to subdivide the Lands. Rather, it indicates that the OGC recognized that no approvals or authorizations were in place to proceed with a subdivision, and it concluded that any impact that the pipeline may have on Mr. Shore's subdivision plans, is a matter of compensation to be addressed by the Surface Rights Board.

[71] The Tribunal notes that, when this appeal was heard, there were still no approved plans or other authorizations in relation to subdividing the Lands. The Tribunal also notes that a subdivision development on the Lands would require approval to remove the subject land from the Agricultural Land Reserve. The Tribunal finds that it is uncertain whether the approvals required for a subdivision development would be obtained. Even if the subject land has limited agricultural value and is best suited to residential use, as Mr. Shore asserts, the Tribunal finds that, without more information, Mr. Shore's subdivision plans are speculative at this time.

[72] The Tribunal also notes that the application for Mr. Shore's *Mines Act* permit states that "The area is not residential and there are no residential services that can be impacted by the proposed quarry." A subdivision development on the Lands would be a change in the circumstances on which the *Mines Act* permit was issued. It is unclear to the Tribunal whether a subdivision might impact the operation of the gravel mine or, conversely, whether the development of the gravel mine, and use of a road on the Lands to access the gravel mine, might impact any plans to subdivide the Lands.

[73] For all of these reasons, the Tribunal finds that it was appropriate for the OGC to consider the existing land use of those portions of the Lands that Mr. Shore might seek to subdivide in the future, and to leave the matter of compensation for any impact that the pipeline may have on the Lands' subdivision potential to the Surface Rights Board. The Tribunal has already noted that the matter of compensation was before the Surface Rights Board when this appeal was heard.

Environmental concerns regarding natural drainage

[74] In Mr. Shore's submissions to the OGC, he raised concerns about the pipeline's potential effects on natural drainage, streams and erosion on the Lands. In addition, Murphy Oil's consultation report notes Mr. Shore's concern that existing drainage could cause water to cross over the pipeline to reach the creek. In that report, Murphy Oil responds that it will do "what is required of them to control erosion as per the regulations, and once on site, construction crews would be able to better assess the physical attributes of the area to determine what they would need to do to prevent/avoid any damage or erosion."

[75] The Tribunal notes that the Schedule A Site Assessment Report, that was submitted to the OGC with Murphy Oil's permit application, states that the erosive

potential for the proposed pipeline is “moderate as the soils are of high clay content, and the topsoil is of high silt content and exhibits weak or poorly defined structures.” The Schedule A Site Assessment Report recommends that Murphy Oil take several steps to reduce the risk of erosion and sediment loss, including the replacement of soil and replanting of vegetation in the areas that are disturbed when the pipeline is constructed.

[76] The Decision Rationale discusses the environmental issues that were raised, as follows:

- The Schedule A assessment is used to assess disturbance within agricultural lands to ensure adherence to the Schedule B for reclamation within two years. The report indicates that the proposed pipeline is located on gently sloping topography of 2-5%. The potential for erosion is moderate and standard recommendations have been provided to Murphy.
- Evidence of past erosion could not be fully evaluated at the time of site inspection due to ground cover; however, there was no evidence of slope movement or slumping in the proposed right-of-way.
- I have reviewed the information provided by Murphy and Mr. Shore, maps provided by Mr. Shore, GIS databases, google earth maps and the Schedule A report. I have concluded that while there is some evidence of past erosion, particularly to the west of the proposed pipeline right of way, the risk of future erosion occurring from the proposed project is minimal and is adequately addressed by regulatory requirements.
- The proposed pipeline crosses one non-classified drainage. There is no evidence to indicate that this crossing cannot be completed safely and in a manner that prevents any materials from being deposited into the stream.
- The pipeline will be constructed mostly in pastured areas and some areas of regrowth.
- Murphy is required by law to ensure the operations do not result in excess subsidence or erosion.
- There is not sufficient evidence to indicate that the proposed project will in any way interfere with the natural flow or drainage of any existing water body. I find that the concerns raised by Mr. Shore have been adequately addressed by Murphy in its project proposal and are fully addressed by existing regulatory requirements.

[77] The Tribunal finds that the OGC gave due regard to the information provided by Mr. Shore and the Schedule A Site Assessment, as well as information from several other sources, regarding the presence of streams, evidence of past erosion, and the risk of erosion in the pipeline right-of-way, in assessing the potential environmental effects of the pipeline. Based on that information, the OGC properly concluded that the proposed pipeline would not interfere with streams or adversely affect natural drainage, and there was minimal risk of future erosion occurring from the pipeline based on Murphy Oil's plans, and the applicable regulatory requirements.

[78] The OGC did not specify which regulatory requirements apply, but the Tribunal notes that section 17 of the *Environmental Protection and Management Regulation* is relevant. It states as follows:

17 A person carrying out an oil and gas activity that disturbs the surface of an operating area must

(a) not cause the soil of the area to become unstable, and

(b) minimize any alteration to the natural surface drainage patterns on the area.

[79] The definition of “operating area” in that regulation includes a pipeline corridor.

[80] A person who contravenes section 17 of the *Environmental Protection and Management Regulation* is, under section 3 of the *Administrative Penalties Regulation*, liable for an administrative penalty not exceeding \$500,000.

[81] Section 35(3) of the *OGAA* is also relevant. It states:

35 (3) A pipeline permit holder, as soon as reasonably possible after constructing a pipeline, must restore, in accordance with the regulations, if any, the land and surface disturbed by the construction.

[82] Under section 2(2) of the *Administrative Penalties Regulation*, a person who contravenes section 35(3) of the *OGAA* is liable for an administrative penalty not exceeding \$250,000.

[83] The Tribunal finds that these regulatory requirements, and the associated penalties, are sufficient to ensure that Murphy Oil will take adequate steps to prevent erosion from occurring as a result of pipeline construction.

Alternate Pipeline Route Options

[84] The Tribunal finds that the Decision Rationale and other consultation documents confirm that the OGC carefully considered Mr. Shore’s objection to Option A, and Murphy Oil’s rationale for choosing Option A over the other options. Specifically, the OGC reviewed Mr. Shore’s submissions to the OGC and Murphy Oil, Murphy Oil’s responses to Mr. Shore’s submissions, and the correspondence received from other land owners who would be affected by the various options. A Landowner Liaison with the OGC also sent a list of specific questions about each of the alternate routes to Murphy Oil, which Murphy Oil responded to. Based on those documents, the Operations Manager concluded that Murphy Oil considered the options proposed by Mr. Shore, consulted with affected property owners about the different options, and contacted BC Hydro regarding situating the pipeline adjacent to the power line right-of-ways.

[85] The Tribunal finds that the consultation documents also confirm that Murphy Oil considered routes that either avoided the Lands, or only crossed the northeast corner (which Mr. Shore had previously agreed to). These documents confirm that Option A was chosen after weighing many factors, including consultation, maps, field visits, surveys, and an assessment of the social, economic and environmental risks associated with the different route options. The Tribunal has addressed Mr. Shore’s submissions on each route option, below.

- *Option B*

[86] Mr. Shore argues that the OGC has provided no evidence to support its conclusion, in the Decision Rationale, that ARC Resources does not have the capacity to take on additional volumes of gas.

[87] The Tribunal heard evidence from Edward Johnston, General Manager of Lands and Legal Issues for Murphy Oil. Mr. Johnston gave unchallenged evidence that Murphy Oil's engineering department rejected Option B, as the ARC Resources line has a capacity of 20 million cubic feet per day. ARC Resources was already using 16 million cubic feet per day of that capacity, and the new flow line would require another seven million cubic feet per day. Accordingly, there was a lack of capacity in the ARC Resources line to take on the additional volume of gas.

[88] The Tribunal accepts the OGC's conclusion that Option B was unsuitable under the circumstances.

- *Option C*

[89] The Tribunal notes that a Landowner Liaison with the OGC made further inquiries with Murphy Oil about Options C and D, in response to Mr. Shore's concerns. This supports the conclusion that the OGC considered whether Murphy Oil had fully explored those options.

[90] In addition, Mr. Johnston gave unchallenged evidence that Murphy Oil's engineering department rejected Option C because Mr. Irvine did not want his property to be segmented, because the Options C and D routes involved crossing water courses, and because Options C and D were longer than Option A.

[91] It is possible that Mr. Shore may be correct that the OGC is not required to approve only pipeline routes that follow existing legal or natural boundaries, and that the OGC has segmented parcels of land in the past. However, the Tribunal finds that following existing property and/or natural boundaries helps to minimize the inconvenience and disruption that land owners may experience when their property is traversed or segmented by a pipeline right-of-way. Following natural boundaries may also help to reduce the amount of environmental disturbance caused by pipeline construction. As such, the Tribunal finds that it is appropriate and relevant to consider pipeline route options that follow existing legal or natural boundaries.

[92] The Tribunal also finds that Option C is longer than Option A, and crosses four separately owned parcels; therefore, it would be more costly to construct and would disturb a larger area than Option A, resulting in greater potential social and environmental effects. The Tribunal accepts the OGC's conclusion that Option C was unsuitable under the circumstances.

- *Option D*

[93] Mr. Shore advised the OGC that neither Mr. Irvine nor Mr. Wilson object to the pipeline on their land provided that the right-of-way follows "proper" boundaries. He also submits that the Watsons and Masses have no objection to routing the pipeline at any location on their property.

[94] However, as noted above regarding Option C, the Tribunal finds that a Landowner Liaison with the OGC made further inquiries with Murphy Oil about Options C and D, in response to Mr. Shore's concerns.

[95] Also, similar to Option C, the Tribunal finds that Option D does not follow existing legal or natural boundaries, and would create segmented parcels of land. For the reasons provided above regarding Option C, the Tribunal finds that it is appropriate and relevant to consider pipeline route options that follow existing legal or natural boundaries. The Tribunal also finds that Option D is longer than Option A, and crosses four separately owned parcels, and therefore, would be more costly to construct and would disturb a larger area, resulting in greater potential social and environmental effects. Accordingly, the Tribunal accepts that the OGC gave due consideration to this option, and concluded that it was unsuitable.

- *Option E, version 1*

[96] Mr. Shore argues that the pipeline could be located on the southern boundary of the properties along Cooper Road without major impacts on those properties. Also, this option is consistent with the right-of-way that Murphy previously acquired from Mr. Shore. The Tribunal finds that, while this option may be consistent with the right-of-way that Murphy Oil acquired over a portion of the Lands, it is not viable because one landowner is building a residence on or in close proximity to where the right-of-way would be located. Also, Option E is longer than Option A, and crosses five separately owned parcels; therefore, it would be more costly to construct and would disturb a larger area, resulting in greater potential social and environmental effects.

[97] The Tribunal is satisfied that the OGC properly considered this route to be unsuitable in the circumstances.

- *Option E, version 2*

[98] Mr. Shore argues that neither the OGC nor Murphy Oil properly investigated the circumstances of BC Hydro's presence. However, the Tribunal finds that the document evidence shows that a Landowner Liaison with the OGC made inquiries with BC Hydro staff, who referred the matter to BC Hydro's engineering contractor, SNC-Lavalin. On April 10, 2012, the engineer from SNC-Lavalin responded via email to the questions from the OGC's Landowner Liaison, and explained the safety and operational considerations when locating a pipeline adjacent to an electrical transmission line. That email states that, as a general guideline, "any pipeline of length 700m or more, that is 50 – 75 m laterally from a transmission line, *and parallel to it*, must be studied for induction/conduction [italics in original]."

[99] The Tribunal finds that, due to the necessary safe setbacks from the BC Hydro transmission lines, Option E, version 2, would encroach on one landowner's property by at least 50 metres, segmenting a 10-acre parcel of property.

[100] Furthermore, the Tribunal finds that Option E, version 2, is longer than Option A, and crosses five separately owned parcels, and therefore, would be more costly to construct and would disturb a larger area, resulting in greater potential social and environmental effects.

[101] In summary, for the reasons provided above, the Tribunal is satisfied that the OGC gave due regard to each of the specific concerns Mr. Shore raised in his submissions.

1(b) Whether the OGC failed to have due regard for Mr. Shore's submissions because the OGC was biased or acting in bad faith?

[102] The Tribunal finds that Mr. Shore has provided no evidence that the OGC was biased or acted in bad faith in making its determination or considering his submissions. In particular, there is no evidence that the Operations Manager, the OGC's delegated decision-maker, failed to consider Mr. Shore's submissions with an open mind. Rather, the documentary evidence shows that OGC staff took Mr. Shore's submissions seriously, and made their own further inquiries with Murphy Oil based on the issues he had raised. There is no indication in the evidence that Mr. Shore's concerns were given any less weight than those of any other land owner or Murphy Oil. Indeed, the evidence shows that careful consideration was given to Mr. Shore's concerns and to the alternate routes that he proposed.

[103] Further, the Tribunal received no evidence to support Mr. Shore's assertion that the OGC is generally biased in favour of applicants for permits for oil and gas activities, or that proponents are always favoured over land owners. Without compelling evidence to support such an assertion, the Tribunal is not prepared to make such a finding.

1(c) Whether the OGC failed to have due regard for Mr. Shore's submissions because the OGC failed to meet the requirements of sections 4(a) and (b) of the OGAA

[104] The Tribunal finds that there is no evidence that the OGC failed to consider the social, economic, or environmental impacts of the pipeline within the context of sections 4(a) or (b) of the OGAA. The Decision Rationale discusses and evaluates each of the proposed route options based on the relevant social, economic and environmental considerations.

Tribunal's Conclusion on Issue 1

[105] In conclusion, the Tribunal finds that the OGC's determination to issue the permit was made with due regard to Mr. Shore's submissions. The OGC fully and fairly considered Mr. Shore's objections to routing the pipeline on the Lands, and his suggestions for alternate routes. There is no evidence of bias or bad faith by the OGC. The OGC considered Mr. Shore's submissions and the various route options in the context of Murphy Oil's operational needs, comments from other land owners and stakeholders, and the potential social, economic and environmental impacts of the route options. The OGC made its determination based on all of those considerations, and there is no evidence before the Tribunal that would warrant cancelling the permit and/or ordering the OGC to reconsider the matter.

[106] Finally, the Tribunal finds that the outstanding issues regarding this appeal are primarily related to compensation. Mr. Shore clearly stated this to be the case while giving his evidence before the Tribunal. Under the circumstances, the proper

forum for matters of compensation is the Surface Rights Board, and not this Tribunal.

2. What is the appropriate remedy in the circumstances?

[107] In light of the findings above, the Tribunal need not consider Issue 2, the appropriate remedy.

3. Whether the Tribunal should order Murphy Oil to pay Mr. Shore's costs associated with the appeal.

[108] As noted above, after the appeal hearing concluded, Mr. Shore's lawyer sent a letter and billing statement to the Tribunal's office requesting that the Tribunal order Murphy Oil to pay Mr. Shore's costs associated with the appeal.

[109] The Tribunal has reviewed the legislation that gives it the authority to award costs, the Tribunal's Rule respecting costs, and the Tribunal's decision in *Marilyn Gross v. Oil and Gas Commission (Murphy Oil Company Ltd., Third Party)*, Decision Nos. 2011-OGA-006(c) and 2011-OGA-007(c), issued December 24, 2012 [*Gross*]. The Tribunal adopts its reasoning in *Gross*, and concludes that an award of costs is not justified in this case, given that the Appellant has been unsuccessful in the appeal, and that there are no special circumstances that would otherwise warrant an award of costs. Under these circumstances, it is unnecessary to take further submissions on this application. The application for costs is denied.

DECISION

[110] In making this decision, the Tribunal has considered all of the relevant documents and evidence, whether or not specifically reiterated herein.

[111] For the reasons provided above, the appeal is denied. The application for costs is also denied.

"Alan Andison"

Alan Andison, Chair
Oil and Gas Appeal Tribunal

May 22, 2013