

COUNSELLING CASE STUDY

PIPE DOWN AND PAY UP

The Myers' Challenge

Mr. and Mrs. Myers owned land in North Riverside, Guysborough County, Nova Scotia. Their property lay across the path of two pipelines, both subsequently to be laid in the same easement through their land. Sable Offshore Energy's natural gas liquids line, which fell under Provincial jurisdiction, was laid in the same trench as the Maritimes and Northeast Pipeline's natural gas line, which fell under Federal jurisdiction. In addition to their sub-surface pipeline, Sable Offshore Energy Inc. required an above ground valve installation site. The Myers were approached by a Mr. Kevin MacDonald, a former forestry technician hired by Sable Offshore to negotiate pipeline easements for them. According to the Myers, Mr. MacDonald assured them that the fenced valve site would only be 8ft. square and was going to be located close to the river. In reality the site proved to be 60ft. x 100 ft. and was located instead at the entrance to their property. In order to compute compensation for their pipeline easement Sable Offshore commissioned a "baseline appraisal" from Mr. Vernon Murray, a self employed appraiser in Antigonish. The purpose of this "baseline appraisal" was to establish the "average" land value along the pipeline route: it ignored "injurious affection", usually the most substantive part of any claim. Only property owners who objected to the baseline figure received individual attention: Sable Offshore would then commission Mr. Murray to undertake a site specific appraisal which considered all heads of claim, including injurious affection. This was done for the Myers' property and Sable Offshore's Mr. MacDonald based his offer on it. The Myers disputed the offer; the matter was set down for adjudication by the Provincial Utility and Review Board: the Myers turned to Turner Drake for advice.

Turner Drake's Approach

The Myers had agreed to Sable Offshore Energy's offer of compensation for the pipeline easement; the only point of issue appeared to be the value of the surface area of the valve site and its deleterious effect (injurious affection) on the remainder of their property. Sable Offshore Energy attempted to confine its case to the single issue of injurious affection but instead of calling their first appraiser Mr. Murray, retained instead local appraiser Mr. Peter Constable from New Glasgow to address the issue. Turner Drake rejected this piecemeal approach adopting instead a "Before and After" methodology to calculate the total loss suffered by the property as a result of Sable Offshore's easement and valve site. During the case Sable Offshore advanced the argument that since their line was in the same easement as the Maritimes Northeast Pipeline's gas line, the compensation paid by the latter should be deducted from the Myers' claim against Sable ... something akin to the proposition that you should fly free if there are other passengers on the plane. The sheer logic of the argument was not readily apparent to the Board and they rejected it. They declined as well, to place any evidentiary weight on the monetary settlements Sable had agreed with other property owners, in part because Sable's Mr. MacDonald had omitted to advise owners of their rights under the Expropriation Act.

Winning Results

The Nova Scotia Utility and Review Board agreed with Turner Drake's valuation approach, awarded the Myers their court costs and compensation 1,530% higher than the figure originally advanced by Sable Offshore at the hearing.



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