THE SURFACE RIGHTS BOARD OF MANITOBA
BOARD ORDER
Under *The Surface Rights Act*, C.C.S.M. c. S235

Hearing:
(no hearing held)

Order No: 32-2014
File No. 10 -2014

Date issued: December 10, 2014

BEFORE: Clare Moster, Acting Presiding Member
Claude Tolton, Board Member
Russell Newton, Board Member

Barbara Miskimmin, Board Administrator

BETWEEN:

Landowner	**John Henry Francis Vercaigne & Margaret Ann Vercaigne**
Occupant	**Vercaigne Farms Ltd.**
	- AND-
Operator:	**Tundra Energy Marketing Ltd.** *(initially "Penn West Petroleum Ltd.")*

CONCERNING: **NW1/4 11-3-26 WPM** in the Province of Manitoba (the "Lands").

PURPOSE OF ORDER:

Termination of **Right of Entry Order No. 41-2013** (the "Order") granted to Penn West Petroleum Ltd. on September 25, 2013 and subsequently assigned to Tundra Energy Marketing Ltd. on May 1, 2014 for an oil pipeline.

TERMINATION OF RIGHT OF ENTRY ORDER FOR A PIPELINE

BACKGROUND:

Issuance of the Order to Penn West Petroleum Ltd. *(" the initial operator"*) followed a hearing (the "ROE hearing") held in Virden on June 26 and July 23, 2013. The ROE hearing pertained to right of entry applications by the initial operator regarding 37 parcels of land involving 27 separate landowners. The Order was one (1) of 30 right of entry orders issued by the Board following the ROE hearing. The Order granted right of entry subject to terms and conditions, and required the initial operator to pay interim compensation within 60 days to the Landowner in the amount of $1,000.00 for each quarter section of the Landowner's land affected by the Order. The 30 Orders issued had similar conditions, including the "interim compensation" requirement.

The Order granted the initial operator right of entry to construct and operate a crude oil pipeline to be constructed under Pipeline Construction Permit No. 2013-02A issued to the initial operator by the Minister of Innovation, Energy and Mines on March 21, 2013, under the provisions of *The Oil and Gas Act*.

In January and March 2014, four (4) of the 27 landowners affected by the 30 right of entry orders, applied to the Board to have the orders affecting their land terminated. The grounds for their applications was that the initial operator had not utilized the rights granted within the six (6) month period following issuance of the orders. At the April 15, 2014 Hearing of the four (4) applications, the initial operator stated that due to changes within the company, it had no plans to construct the pipeline. The initial operator also confirmed that it had made the $1,000.00 interim compensation payments to all landowners affected by the orders and were in the process of negotiating final compensation with those landowners. The initial operator did not oppose issuance of the requested four (4) termination orders. Four (4) termination orders were issued by the Board on May 8, 2014. The termination Orders (Nos. 02 to 05 -2014) also ordered the initial operator to take action to have caveats pertaining to the right of entry orders removed within 60 days of the issuance date of the orders and to pay costs related to the termination Hearing.

Pursuant to a "Purchase and Sale Agreement PS08115" dated April 25, 2014, an "Assignment of Surface Rights" agreement dated May 1, 2014 was executed between the initial operator and the Operator assigning all 30 right of entry orders (Nos. 13 to 42 -2013) to the Operator.

In early September 2014, landowners, whose right of entry orders had not been terminated, made application under Subsection 34(1) of *The Surface Rights Act* to terminate the remaining right of entry orders. The land company (Sun Valley Land Ltd.) representing the Operator, also inquired as to the process to terminate the remaining orders.

Following application by the Operator, the Minister of Mineral Resources, by letter dated September 18, 2014 cancelled Pipeline Construction Permit No. 2013-02A.

By letter dated October 1, 2014 the Board notified Sun Valley Land Ltd. that the Board, in accordance with Subsection 34(4) of *The Surface Rights Act,* was preparing the necessary orders to terminate the remaining 26 right of entry orders.

ISSUES:

1. **Should a termination order be made, and does the Board have authority to issue a termination order without conducting a hearing?**

2. **What, if any, terms and conditions should be in the order?**

3. **Should costs be awarded?**

DECISION:

Upon considering the situation related to the Order:

It is the Order of This Board That:

1. **Board Order No. 41-2013 is hereby terminated and the Operator is ordered to take action necessary to have any caveat filed against the Lands pertaining to the Order removed within 60 days of the issuance date of this order.**

2. **The Board makes no award for costs.**

REASONS FOR DECISION:

1. **Should a termination order be made, and does the Board have authority to issue a termination order without conducting a hearing?**

The cancellation of Pipeline Construction Permit No. 2013-02A extinguishes all rights and privileges granted by the 26 remaining right of entry orders. No objection was received from the Operator to the Board's letter dated October 1, 2014 advising that the Board was preparing termination orders to terminate the remaining 26 right of entry orders.

Section 34 of *The Surface Rights Act* states:

> ***Termination of right of entry***
>
> *34(1) Where at any time after the expiration of three months from the date of an order granting to an operator a right of entry upon land, the operator has not commenced to exercise the right granted to the operator or the operator has ceased to use the land or interest therein for the purposes granted by the order, the owner or occupant may apply to the board for the termination of the right.*
>
> ***Board to fix date of hearing***
>
> *34(2) Upon receipt of an application under subsection (1) the board shall fix a date for a hearing of the application and shall serve notice thereof on all parties concerned in such manner as the board deems proper.*
>
> ***Order terminating right of entry***
>
> *34(3) The board may, after the hearing pursuant to subsection (2), make an order terminating the right of entry on the land or any part thereof.*
>
> ***Consent of operator***
>
> *34(4) Notwithstanding subsection (2), where the operator consents to the making of an order, the board may make an order terminating the right of entry without conducting a hearing.*

Under these circumstances, where both affected parties benefit from the Board terminating the subject Order, the Board has determined it has the authority to issue a termination order in the absence of a formal application, and without conducting a hearing.

2. What, if any, terms and conditions should be in the order?

The Board, in its October 1, 2014 letter, advised the Operator that all caveats registered against various land titles affected by the remaining 26 right of entry orders must also be withdrawn by the Operator.

In the four (4) termination Orders already made by the Board, the Board ordered the initial operator to take action necessary to have any caveat filed against the title to the affected land removed within 60 days of the issuance of the Order.

The Board considers this to be a reasonable condition to be included in this Order.

3. Should costs be awarded?

Neither party has incurred expenses to have this Order issued, therefore there is no justification to award costs.

Decision delivered December 10, 2014.

H. Clare Moster,
Acting Presiding Member