

Alberta farmers resisting power line

By Nancy Thornton
Acantha reporter

While construction of the Montana Alberta Tie Ltd. high-voltage transmission power line is continuing between Cut Bank and the Canadian border, the company is dealing with opposition to the line in Alberta.

MATL has obtained agreements with some of the Alberta landowners in the right-of-way and has paid over \$300,000 to landowners and their representatives to engage in negotiations, according to public documents on the Internet dated Aug. 27. However, other landowners were unable to settle and the company brought suit against them before the Alberta Surface Rights and Compensation Board.

Daryl Bennett, the vice president of My Landman Group Inc. in Taber, Alta., said in a recent interview that his company has been helping nearly 50 landowners channel their objections to the line, first before the Alberta Utilities Commission, where the MATL permit was upheld, and now before the Surface Rights Board.

The process for MATL to obtain a "right of entry order" has a parallel in Montana's eminent domain proceedings. In Canada, a panel, or just the Surface Rights Board chairman himself, makes a decision for the right of entry after hearing evidence from both parties. The board has received 116 applications so far, and has granted 73 rights of entry, according to a Dec. 16 article about Bennett in the Lethbridge Herald.

In the successful cases, the Surface Rights Board has ruled that MATL shall have the right of entry subject to a host of condi-

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tions.

The board has not yet determined compensation for the landowners and has deferred that until the disruption to farming is outlined and the location and type of poles is determined.

Bennett said he is not deterred by MATL's success before the Surface Rights Board, because decisions in that forum provide a way to not only obtain just compensation, but to take MATL back to the board if the company does not follow the conditions set.

MATL must pay for the proceedings before the Surface Rights Board. When asked whether the \$161 million Western Area Power Administration's federal stimulus loan to MATL is paying for the Alberta portion of the line, MATL regulatory consultant Bob Williams said, "the loan provided under the American Recovery and Reinvestment Act provides financing for the MATL project, not just the portion of the MATL project located in Montana. Legal costs are part of the cost of the MATL project, as they would be for any project like this."

According to MATL's second quarter 2010 financial information available on the Internet, MATL has paid \$3.2 million in Canada and \$2.3 million in the United States between July 1, 2008, and June 30, 2010, for matters concerning right-of-way acquisition.

"The regulatory system has failed the landowners," Bennett said of the situation. "It is captured by industry." He added that the landowners plan to appeal the Surface Rights Board's decisions before the Court of Queen's Bench within a few days.

Bennett said he believes the board has a bias in that it is making

decisions without an objection hearing, a violation of due process. The board has "ignored the principles of natural justice," he said, and plans to use case law to hear on that point.

If the landowners' appeal is successful, the court may send the matter back to the Surface Rights Board, which would cause more delays in the construction of the MATL line.

"This is not a done deal," Bennett said. "There's no way the Canadian portion will be done by March." He said the province also has certain road restrictions during the spring thaw and the irrigation companies in the right-of-way would not allow work after their ditches and pivots are running, further complicating the building schedule.

Asked for a response, Williams said, "Mr. Bennett may speculate all he wants. From our perspective, that serves no purpose. We are going to do everything we can to keep to our schedule."

Williams said that company representatives have met and continue to be open to meeting with landowners to listen to their concerns and discuss reasonable solutions.

The My Landman Group's basic position is that when MATL applied for its various permits, the landowners did not have the option to look at where the line would go during the National Energy Board proceedings, and then the Alberta Utilities Commission said it had no jurisdiction to approve where the line would go. "The landowners were deprived of a discussion of location," Bennett said.

"We are going to appeal. Either the judge rules against us or

for us to hold hearings," Bennett said. "That would introduce another year in the process."

Williams said he would not speculate on this development, other than to say that if the Surface Rights Board's decisions are appealed, the company would deal with that at that time.

Bennett said a successful appeal would be precedent setting, because in Alberta, no one has ever gotten the right to have an objection hearing for a right-of-way before. MATL is a test case, he said, adding that one argument will be that MATL is a private company building a merchant power line that is more intrusive than an oil and gas pipeline.

The landowners are also planning to ask for a delay for compensation until the line is up, so that the Surface Rights Board will arbitrate the differences that MATL and the landowners might have regarding the magnitude of the damages to farming operations.

As to why so much opposition is shown in Alberta, Bennett said the province has more people and development than where the line goes in Montana. The line would cross 95 irrigated quarter sections in Alberta and be placed only 40 yards away from some residences, he said.

Meanwhile, Bozeman attorney Hertha Lund, representing a Glacier County landowner in a MATL condemnation proceeding, won her argument in Glacier County District Court on Dec. 13 that MATL has no legislative authority to condemn land. The ramifications of this development are not fully understood.

Lund is now also representing 22 other landowners who have issues with the MATL line's loca-

tion mostly south of Conrad, according to landowner and former Teton County Commissioner Adam Dahlman, now of Great Falls.

Dahlman said he allowed MATL to survey his farm ground but wanted to change a pole location by 60 feet and MATL never got back to him.

He said the whole thing boils down to the fact that if MATL had a better attitude toward the landowners, the line would already have been built and be in operation.

He said the changes the landowners want are easy fixes to get the poles off of or moved to the edges of cropland. He said everybody is in favor of the MATL job that will be created but it is being done on the backs of the property owners who will have to farm around the poles for the next several generations.

MATL is also dealing with two back-to-back hearings before the Board of Environmental Review in Helena, one the appeal and request for a hearing by Ronald and Debbie Laubach and the second, the appeal and request for hearing by Maurer Farms Inc., Somerfeld & Sons Land & Livestock L.L.C., Larry Salois, POA; Jerry McRae; and Katrina Martin regarding the Montana Department of Environmental Quality's final decision to amend MATL's certificate of compliance, the permit to build the line.

On Dec. 3, the board assigned a Hearings Officer Catherine Orr to hear the appeals. The hearing has is set for March 10, starting at 9 a.m. at the Agency Legal Services Building, 1712 Ninth Ave., Helena, said Lisa Peterson, the DEQ public affairs coordinator.