



## LAND AND PROPERTY RIGHTS TRIBUNAL

**Citation:** Harvest Operations Corp v. Barnes, 2025 ABLPRT 406

**Date:** 2025-07-18

**File No:** BR2025.0060 (RCR2023.3029)

**Order No.:** LPRT2025/SR0406

**Municipality:** Flagstaff County

**In the matter of a proceeding commenced under** section 29 of the *Surface Rights Act*, RSA 2000, c S-24 (the “*Act*”)

**And in the matter of** land in the Province of Alberta within the:

SW 33-40-11-W4M as described in Certificate of Title No 182 024 774 + 5 (the “Land”), particularly the area granted for a well site on LS 6 by Alberta Energy Regulator Licence No. 0312503 (the “Licence”), collectively (the “Site”).

**Between:**

Harvest Operations Corp.  
and  
AlphaBow Energy Ltd.,

Operators,

- and -

Yvonne Anne Barnes,

Landowner.

**Before:** Susan McRory (“the Panel”)

Appearances by way of written submissions

For Harvest Operations Corp.: Renee Garneau

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## DECISION

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### SUMMARY

[1] This is a request for review of Order LPRT903977/2024 that was issued on August 21, 2024. The original panel was dealing with a repeat request for compensation for a missed payment in 2023 under a surface lease dated June 16, 2004.

The records for this Site provided by the Alberta Energy Regulator (AER) have consistently identified Harvest Operations Corp. (HARVEST) as a working interest participant. HARVEST had been named as an Operator in all previous Orders. HARVEST did not provide submissions in connection with these earlier applications, nor has it challenged the Orders issued in the past.

[2] On April 9, 2025, HARVEST, for the first time, provided evidence which it suggests proves that it does not hold an interest in the site.

## **BACKGROUND**

[3] A detailed chronology of events is important to understanding the decision that this Panel makes today.

### ***February 4, 2021***

The first application was filed, seeking compensation for a missed payment in 2020. The annual rate of compensation was reported to be \$3,540.00. In support, the Applicant provided a copy of the survey plan, correspondence from the agent for Husky Oil Operations Limited (HUSKY) and a record of deposit from AlphaBow Energy Ltd. (ALPHABOW) confirming that the last payment made was for 2019.

Records provided by the AER indicated that the License was issued to HUSKY on July 27, 2004, and then transferred to ALPHABOW effective December 15, 2017. ALPHABOW and HARVEST were named as working interest participants with shares of 66.67 % and 33.3333% respectively.

According to Corporate Registry, the previous corporate name for ALPHABOW was Sequoia Operating Corp.

According to Land Titles, the sole owner of the land as of 2018 was Yvonne Anne Barnes.

### ***August 5, 2022***

The Applicant filed a request to amend for a missed payment in 2021.

### ***January 11, 2023***

Notice and Demand for Payment was issued to ALPHABOW and HARVEST requiring a response within 30 days.

### ***January 13, 2023***

HARVEST contacted the Tribunal requesting a copy of the Hearing Document Package (HDP). However, HARVEST did not provide any submissions.

### ***February 22, 2023***

A panel of the Tribunal issued Order LPRT900852/2023 awarding compensation to the owner for missed payments in 2020 and 2021. Based on the AER records, ALPHABOW and HUSKY were named as Operators. A copy of that Order was provided to all parties.

### ***March 24, 2023***

The Landowner filed a request for compensation for a missed payment in 2022.

***June 28, 2023***

Relying upon the records provided by the AER, a panel of the Tribunal issued Order LPRT903684/2023 awarding compensation for 2022 and naming ALPHABOW and HARVEST as Operators. A copy of that Order was provided to all parties.

***November 3, 2023***

The Landowner filed a request for compensation for a missed payment in 2023. The records from the AER dated November 6, 2023 named ALPHABOW and HARVEST as working interest participants.

***August 21, 2024***

The original panel awarded compensation for a missed payment in 2023. A copy of Order No. LPRT903977/2024 was provided to all parties.

***April 9, 2025***

HARVEST filed a request to review Order LPRT903977/2024. The complete submissions are quoted below:

Harvest Operations Corp. is in a penalty position on the 108/06-33-040-11-W4/00, and does not have an interest. Therefore Harvest kindly requests that we be removed from the order and any future documentation in relation to this order.

Attached was a letter dated August 4, 2004 to HUSKY from Calpine Natural Gas L.P. (CALPINE):

Calpine Natural Gas L.P has elected to NOT PARTICIPATE in the proposed drilling of the above captioned wells and has signed on both ION and returns same with Husky's AFE(s). CNGTrust acknowledge that their interest will be in 300% penalty for the costs of drilling, testing and completing and 100% of the costs of operating such wells while recovery is being made.

[Emphasis in the original]

No explanation of the acronyms ION, AFE or CNGTrust were provided.

There is no reference to an attachment to the August 4, 2004 letter.

Included were Corporate Registry documents establishing that CALPINE was an amalgamation predecessor to Viking Holdings Inc. which in turn was an amalgamation predecessor to HARVEST.

The second attachment was a document from HUSKY dated December 2011 entitled "HUSKY OIL OPERATIONS LIMITED PAYOUT STATEMENT."

The third document is a Notice of Assignment dated November 8, 2017 as between HUSKY and Sequoia Operating Corp. (SEQUOIA). That document described HARVEST as a "Third Party" to the master agreement, but it is not signed by HARVEST, nor does it purport to affect HARVEST's interests.

HARVEST also provided records from Corporate Registry which identify SEQUOIA as the amalgamation predecessor to ALPHABOW.

There is a fourth document from EnerLink that seems to refer to corporations associated with CALPINE.

No explanation was provided as to how these documents should be interpreted or what these documents might prove.

No mention was made of the earlier decisions, nor was an explanation provided for why HARVEST had not provided submissions in connection with the Notice and Demand for Payment.

## ISSUES

1. Has HARVEST met the deadlines for filing an application for review under Rule 37(2)?
2. In the alternative, has HARVEST established the basic requirements for review?
3. In the alternative, is this an appropriate case for the Tribunal to exercise its discretion under Section 29?

## DECISION

1. HARVEST has not met the deadlines for filing an application for review under Rule 37(2).
2. HARVEST has not established the basic requirements for review of Order LPRT903977/2024.
3. This is not an appropriate case for the Tribunal to exercise its discretion under Section 29.

## ANALYSIS

### *Deadlines for filing applications for review*

[4] Section 29 allows the Tribunal to review, rescind, amend or replace any decision or order. Section 8(3) of the *Act* gives the Tribunal the power to establish rules governing its practices and procedures. Rule 37 of the *Surface Rights Rules* sets out the procedure for a review under section 29.

Under Rule 39, for requests submitted by the parties, reconsideration is a two-step process. An applicant must first establish the pre-requisites for reconsideration on a balance of probabilities. (Canadian Natural Resources Limited v. Main 2020 ABSRB 735). Rule 37(3) provides as follows:

The Tribunal may only decide to review a decision or order if one of the following requirements for review are met:

- (a) the decision or order shows an obvious and important error of law or jurisdiction;  
or
- (b) the decision or order shows an important error of fact, or an error of mixed fact and law, in the decision or order that affects the decision or order; or
- (c) the decision or order was based on a process that was obviously unfair or unjust;
- (d) the decision or order is inconsistent with an earlier Board decision or order, binding judicial authority, or provision of the legislation, regulation or rules; or
- (e) there was evidence at the time of the hearing that was not presented because it was

unavailable to the party asking for review, and which is likely to make a substantial difference to the outcome of the decision or order.

[5] Rule 37(2) establishes time limits for filing depending upon which requirement is being relied upon. If the allegation is a mistake of fact, the application must be made within 6 months of the date of the decision.

In a case where the applicant relies on new evidence under subsection 37(2)(e), the application must be filed within six months of the date of discovery or when the evidence became available.

[6] HARVEST has not identified which subsection it is relying upon. HARVEST does suggest that it has no interest in the site, which might be characterized as a mistake of fact. HARVEST has provided new evidence which might fall under Rule 37(3)(e).

[7] If HARVEST is alleging that there has been a mistake of fact, the application was filed almost eight months after the original hearing.

If HARVEST wishes to request that the Tribunal consider evidence that was not presented at the time of the hearing, this “new” evidence was certainly available to the party asking for the review. Furthermore, given the date of the documents, they can hardly be described as newly discovered or newly available.

The application does not meet the requirements in the Rules as to timeliness.

***In the alternative, has HARVEST established the basic requirements for review?***

[8] HARVEST’s status as a working interest participant is based on the records provided by the AER.

[9] The Tribunal is entitled to and, indeed, has been directed by the Courts to rely upon the records provided by the AER.

The AER makes the decisions regarding the well, the licensee and the working interest participants. The AER’s directives outline the responsibilities of the licence and approval holders, including timelines, to ensure that the information the AER has on file remains accurate. The legislative intent of section 36(1) cannot be that the Tribunal is expected to duplicate the work of the Regulator when it determines whether a corporation is a licensee or a working interest participant. The Courts have made it very clear that the Tribunal’s jurisdiction is ancillary to the AER. (Windrift Ranches v. Alberta Surface Rights Board 1986 ABCA 158 (CanLII) at para 5 and Togstad v. Alberta (Surface Rights Board) 2014 ABQB 485, 2015 ABCA 192 at para 7.)

Based on the legislative scheme in Alberta that gives the AER the responsibility to issue licences, it is reasonable to rely upon the documentation provided by the Regulator in the absence of evidence to the contrary.

[10] The AER records identify HARVEST as a working interest participant. The *Act* defines “Operator” as including a working interest participant.

HARVEST has provided documents dealing with the financial arrangements between the parties but has not provided an explanation or submissions as to how these documents relate to its status as a working interest participant. The onus is upon HARVEST to connect the documents to the outcome that it seeks. It is not for the Tribunal to interpret the contractual relations between parties.

[11] HARVEST is not without a remedy. There are steps that oil companies can take to update the AER records concerning their status as a working interest participant.

Bulletin 2022-29, which was issued by the AER on September 26, 2022, outlines the process by which operators may update the records with respect to working interest participants. That process depends upon an operator noticing a discrepancy and contacting the licensee of record. The Directive states:

WIP records reflect private agreements between parties and must be managed by the licensee. We will not update records managed by active licensees.

Where the licensee is defunct, this is the direction given:

**Updating Records of Defunct Licensees**

If you notice discrepancies in the report regarding your WIP holdings in licenses held by defunct licensees, and you have not already connected with the AER regarding these holdings, contact [OrphaningInsolvency@ aer.ca](mailto:OrphaningInsolvency@ aer.ca). Supporting documentation is required before we will consider a request to alter WIP records held by a defunct licensee.

If HARVEST believes that the records maintained by the AER are incorrect, it may take that issue up with the AER, not the Tribunal.

[12] In fact, in other decisions of the Tribunal, panels have found evidence to contradict the AER records based on correspondence and updated records provided by the AER. In Crescent Point Energy Corp. v. Laughlin 2023 ABLPRT 277, the panel relied upon evidence that Crescent Point Energy Corp. had contacted the AER in an attempt to correct its misidentification as a working interest participant:

Crescent Point further submits that it contacted the AER in October 2022 with respect to the well on the Site. The AER completed a review of the well and confirmed that the well licence erroneously reflected Crescent Point as being a WIP in the Site. The AER updated the well licence on November 29, 2022 to reflect Corinthian's 100% WIP in the Site. Crescent Point also asserts that it has confirmed that the Orphan Well Association's database reflects Corinthian as the sole WIP in the Site. The Crescent Point Submissions attach an updated Well Summary Report dated December 1, 2022, and indicating that Corinthian is 100% WIP "effective 11/29/2022". They also attach copies of Crescent Point's correspondence with the AER.

The Panel has carefully reviewed Crescent Point's submissions and supporting evidence and is satisfied that Crescent Point was not an Operator of the Site for the purposes of section 36 of the *Act* on the 2018 to 2020 due dates. Although the updated Well Summary Report indicates that Corinthian's 100% WIP became effective only on November 29, 2022, the Panel is satisfied on the evidence before it that this date reflects the date on which the Well Summary Report was updated, and that Crescent Point ceased being a WIP in the Site effective January 1, 2016.

[13] In Hutterian Brethren Church of Spring Ridge v. Questfire Energy Corp. 2023 ABLPRT 396, the panel found that there was evidence to contradict the AER records in the form of a signed and sealed Assignment Agreement.

[14] However, in Erion v. Canadian Coyote Energy Ltd. 2022 ABLPRT 905216, the panel did not find that there was evidence to displace the AER records:

Although Gear and Harvest both contest WIP status, they have provided no evidence in support

of their position. Gear's argument is that as it has never held an interest in the well, it does "not have supporting documents and/or agreements that could be provided that would demonstrate that Gear Energy has no interest." While this may be the situation Gear currently faces, there is nothing prohibiting Gear from taking steps with the AER to challenge the records and, ultimately if its efforts verify the records are incorrect, obtain documentary evidence which would support its position. Crescent Point, for example, contacted the AER to request a review of the well records, and then provided the panel with copies of its correspondence with the AER.

Clearly, it is Gear's responsibility to work with the AER if it does not believe that the AER is providing accurate records regarding Gear's interest in the well on the Site.

[15] It is always a question of the evidence that is presented. The evidence in this particular case does not meet the test.

***Is this an appropriate case for the Tribunal to exercise its discretion under section 29?***

[16] The word "may" in section 29 signals that this is a discretionary remedy, not a right to appeal. The Court of King's Bench is the appropriate forum for an appeal or judicial review.

As the author of the definitive text *Administrative Law in Canada 5<sup>th</sup> Edition* suggests:

A party has no right, and a tribunal is not obliged to re-hear a matter. A tribunal has discretion. (Page 138)

The author has canvassed situations in which the power to re-hear has been exercised:

- where the parties misapprehended the purpose of the hearing or the issues,
- to cure prejudice caused by procedural deficiencies,
- where a court decision changed the interpretation of a statutory provision,
- in cases of fraud or bias. (Pages 136-137)

The author also lists factors that might justify a refusal to re-hear a matter:

- that a considerable period of time has lapsed,
- that the request is a tactic to delay implementation of the order,
- that the request has the effect of extending a limitation period,
- where a party has acted to its prejudice on the strength of a previous decision.  
(Page 138)

[17] HARVEST has had three opportunities in which to respond.

The first was the Notice and Demand for Payment that was issued on January 11, 2023. That demand provided *inter alia*:

You are receiving this demand because you have been identified as a Licensee or a Working

Interest Participant as per the Alberta Energy Regulator Well Summary Report and are therefore an operator under section 36(1) of the *Act*...

The Tribunal has prepared a Hearing Document Package for this application. **You can obtain a copy of the Hearing Document Package (HDP) through the Surface Rights E-File Portal or by contacting Tribunal Administration.**

[Emphasis in the original]

HARVEST did obtain a copy of the HDP but made no further submissions.

The second opportunity was after the decision of February 22, 2023 was issued.

The third opportunity was after the decision of June 28, 2023 was issued.

[18] On April 9, 2025, over two years after the deadline for submissions in the Notice and Demand, HARVEST suggests that it does not have an interest in the site. Rather than providing submissions, HARVEST has provided documents that it asks the Tribunal to interpret.

In these circumstances, it would not be an appropriate exercise of discretion to consider a review under section 29. To quote from Ms. Blake, a considerable amount of time has lapsed, and the parties have relied upon the previous decisions.

Dated at the City of Edmonton, in the Province of Alberta this 18<sup>th</sup> day of July 2025.

**LAND AND PROPERTY RIGHTS TRIBUNAL**



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Susan McRory, Chair