LAND AND PROPERTY RIGHTS TRIBUNAL

Citation:	*Bertschy v TexCal Energy Canada Inc, 2025 ABLPRT 482*
Date:	2025-08-14
File No:	BR2025.0129 (Ref File No. RC2024.0225)
Order No:	LPRT2025/SR0482
Municipality:	Vulcan County

In the matter of a proceeding commenced under section 29 and section 36 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:

NE 18-20-19 W4M as described in Certificate of Title No. 151 056 574 (the "Land"), particularly the area granted for a well site and access road in L.S. 9 by Alberta Energy Regulator Licence No. 0203059 (the "Licence"), collectively (the "Site").

Between:

TexCal Energy Canada Inc.
and
Razor Energy Corp.,

Operators,

- and -

Stephen E Bertschy
and
Sandra Leanne Bertschy,

Applicants,

- and -

Grant Thornton Limited,

Receiver.

SECTION 29 ORDER

Order LPRT905266/2025 is amended to delete the orders of suspension and termination.

DIRECTION TO PAY PURSUANT TO SECTION 36 OF THE ACT

The Tribunal directs the Minister to pay out of the General Revenue Fund the total sum of FOUR THOUSAND SIX HUNDRED THIRTY-TWO and 00/100 DOLLARS ($4,632.00) jointly to Stephen E Bertschy in the Province of Alberta and Sandra Leanne Bertschy in the Province of Alberta, comprised of compensation that became due in 2023.

DECISION AND REASONS

Appearances by written submissions:

For the Applicant:	Stephen and Sandra Bertschy
For the Operators:	
TexCal Energy Canada Inc.:	Geoff Thiessen, Manager, Land and Joint Venture
Receiver:	Danielle Marechal, CASSELS BROCK & BLACKWELL

[1] This is a Tribunal-initiated review of Order LPRT905266/2025 that was issued on August 7, 2025. This Panel had issued an order to this effect:

> IT IS ORDERED that if the Tribunal does not receive satisfactory evidence that the Compensation has been paid in full to the Applicant, then without further notice, TexCal Energy Canada Inc.'s right to enter the Site shall be suspended and terminated under section 36(5) of the *Act…*

TexCal Energy Canada Inc. (TEXCAL) had argued that it had acquired all the shares of Razor Energy Corp. through a reverse vesting order that was effective December 11, 2024 and that it was not responsible for debts prior to the effective date. That argument was not accepted.

[2] In connection with another file, the same day that the original order was issued, the Receiver for TEXCAL provided the Tribunal with a copy of an Order granted July 7, 2025 granting a Stay of Proceedings as between Texcal Energy Incorporated and TEXCAL. The Receiver advised as follows:

Pursuant to sections 8 and 9 of the Receivership Order:

a) no proceedings against or in respect of TexCal or its property (the "**Property**") shall be commenced or continued except with the written consent of the Receiver or with leave of the Court; and

b) all rights and remedies of any Person against or in respect of TexCal or the Receiver or affecting the Property are stayed and suspended and shall not be commenced, proceeded with or continued except with leave of the Court;

(the "**Stay**").

Please be advised that in light of the Stay, no further steps shall be taken in relation to the Demand without the consent of the Receiver or leave of the Court. In particular, as the Demand post-dates the date of the Receivership Order, any obligation on the part of TexCal or the Receiver to make any payments under the Demand is stayed.

[3] In a series of cases the Tribunal has held that while a stay of proceedings does not impact the issuance of a demand under section 36(4) or a Direction to Pay under section 36(6), it does preclude orders of suspension and termination under section 36(7) and collection activities under section 36(9).

SECTION 29 ISSUES

1. Should the Tribunal initiate a review of Order No. LPRT905266/2025?

2. Should the Tribunal seek submissions from the parties?

3. If there is to be a review, should the Tribunal confirm, amend, rescind or replace LPRT905266/2025 or order a re-hearing?

SECTION 29 DECISIONS

1. The Tribunal will initiate a review of Order No. LPRT905266/2025.

2. The Tribunal will not seek submissions from the parties.

3. The Tribunal amends Order LPRT No. LPRT905266/2025 by deleting the orders of suspension and termination.

SECTION 29 ANALYSIS

Tribunal-Initiated Reviews

[4] 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:
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> (a) the decision or order shows an obvious and important error of law or jurisdiction; or
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> (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
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> (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] For Tribunal-initiated reviews, the Tribunal is not strictly bound by Rule 39(3), but the Tribunal will consider new evidence that was not available at the time of the hearing.

[6] After the original order was issued, the Tribunal received information that there was a stay of proceedings, which would not impact the award of compensation under section 36(6) but precludes the Tribunal from pursuing enforcement activities. These activities include the orders of suspension and termination. Those orders are now inconsistent with binding authority from the Court. This justifies a review initiated by the Tribunal itself.

Submissions

[7] Rule 37(5) provides as follows:

> The Tribunal shall not grant a request for review without providing all of the parties an opportunity to make submissions and may consider the application by written submissions or by some other method. (Rule 37(5))

The Rules also allow the Tribunal to “waive or vary a requirement of these rules at its discretion.” (Rule 6(3).

In this case, none of the parties are in a position to challenge the Order of the Court. In any event, the orders of suspension and termination have not taken effect. The rights of the Operators have not yet been impacted by the original decision as no direction to pay has been issued.

In the circumstances, it would serve no purpose to ask for further submissions.

Options

[8] Prior to amendments to the legislation in 2020, the Tribunal had no option but to issue orders of suspension and termination prior to issuance of a direction to pay. In the result, thousands of section 36 applications were delayed for years until insolvency proceedings were concluded.

With amendments to the *Act* the Tribunal now has discretion whether or not to issue orders of suspension and termination. In this case, the well is suspended and the current Licensee TEXCAL is an active company. Operators should not be allowed to profit without making payment to the surface owner. It was on that basis that this Panel elected to issue orders of suspension and termination. Section 36(5) requires that Operators be given notice of the intention of the Tribunal to terminate access rights so that a further 30-day period is required. No direction to pay can be issued until that period of time has passed.

[9] However, on August 7, 2025 Counsel for the Receiver for TEXCAL advised the Tribunal that there is a stay of proceedings in place concerning TEXCAL as of June 30, 2025. While that correspondence was not directed to this particular file, it is information that the Tribunal now has before it.

[10] The relevance of a stay of proceedings has been considered in a number of earlier decisions of the Tribunal. The stay of proceedings does not preclude the issuance of a demand under section 36(3) or a direction to pay under section 36(6). However, it does preclude enforcement activity, which would include orders of suspension and termination and the ability of the Minister to proceed under section 36(9). (See Ember Resources Inc. v. Miller 2021 ABLPRT which dealt with a stay under the *Bankruptcy and Insolvency Act* and Flach v. Long Run Exploration Ltd. 2025 ABLPRT 136 which dealt with a stay under the *Companies' Creditors Arrangement Act.*)

As this Panel concluded in Zargon Oil & Gas Ltd. v. Brewin, 2023 ABLPRT 2 (CanLII), the whole point of section 36 is to pay the landowner when the Operator fails to do so. (Devon Canada Corp. v. Surface Rights Board, 2003 ABQB 7 (CanLII), Provident Energy Ltd. v. Alberta (Surface Rights Board), 2004 ABQB 650.)

The reason for a failure to pay is irrelevant. An Operator may fail to pay because it cannot, or it may refuse to pay. Where an Operator is insolvent, the Receiver may choose to ignore the demand, but that does not affect the ability of the Tribunal to make that demand.

An application under section 36 is not a lawsuit and it does not change the underlying contractual obligations between the parties. If the statutory pre-requisites are met, then payment to the Landowner is made through General Revenue.

Any other interpretation of the provisions in section 36 would undermine the legislative intent behind section 36, which was deliberately structured to ensure that landowners are paid when Operators fail to do so.

However, in light of the stay of proceedings, no orders of suspension or termination will be issued.

[11] Accordingly, this Panel will amend the Original order to delete those orders.

[12] With the orders of suspension and termination being rescinded and the notice period no longer required, this Panel can now consider whether to issue an Order directing the Minister to Pay.

SECTION 36 ISSUE

Should the Tribunal direct the Minister to pay the Applicant any of the money past due under section 36(6) of the *Act*?

SECTION 36 DECISION

Without further notice, the Tribunal directs the Minister to pay the Applicant Compensation in the amount of $4,632.00 from the General Revenue Fund.

SECTION 36 ANALYSIS

[13] This Panel has already determined that for the purposes of section 36 of the *Act*, the Operators are TexCal Energy Canada Inc. and Razor Energy Corp., that the written evidence proves compensation in the amount of $4,632.00 is payable to the Applicants by the Operators and that the Minister should be directed to pay the full amount owing.

Accordingly, without further notice, the Tribunal directs the Minister to pay the Applicant Compensation in the amount of $4,632.00 from the General Revenue Fund.

Dated at the City of Edmonton in the Province of Alberta this 14th day of August, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

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Susan McRory, Chair