



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Alberta Conservation Association v. Ember Resources Inc., 2024 ABLPRT 496

Date: 2024-09-30

File No: BR2024.0133 (RC2019.1531)

Order No.: LPRT2024/SR0496

Municipality: County of Stettler No. 6

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

Descriptive Plan 0221476, Block 1, Lot 1 as described in Certificate of Title No.172 265 738 (ATS Ref: NW ¼ -14-38-19-W4M) (the “Land”), particularly the area granted for Alberta Energy Regulator Licence No. 0360993 (the “Licence”), collectively (the “Site”).

Between:

Ember Resources Inc.,

Operator,

- and -

Alberta Conservation Association
and
The Alberta Fish and Game Association,

Landowners.

Before: Susan McRory (“the Panel”)

Appearances by written submissions:

For the Applicants: Patricia Walker, MY LANDMAN GROUP INC.

For the Operator: Tom Owen, OWEN LAW

PRELIMINARY DECISION AND REASONS

SUMMARY

[1] This is a request by the Applicants' representative for a Tribunal-initiated review of Decision LPRT903274/2024 issued on July 23, 2024. The original panel was dealing with applications under section 36 of the *Surface Rights Act* seeking compensation under a surface lease dated March 1, 2006.

On August 14, 2024, the representative contacted the Tribunal suggesting that the original panel had made two mistakes.

First, the representative suggested that the original panel failed to consider the requests for compensation in 2022 and 2023. The original panel had interpreted the Request to Amend for 2024 as replacing the earlier applications for 2022 and 2023 and only awarded compensation for a missed payment in 2024. However, the original panel did award costs for the applications in 2022 and 2023 notwithstanding.

Second, while the Certificate of Title names the Alberta Conservation Association (ACA) and the Alberta Fish and Game Association (AFGA) as owners with an undivided 50% interest each, the representative suggested that the original panel had failed to consider an assignment which would direct payment to the ACA alone. However, no copy of this agreement was provided, nor is there a caveat on title referencing the agreement.

[2] While an earlier application for a missed payment in 2019 was withdrawn, to understand the context for the applications in 2022, 2023 and 2024, a review of the earlier application is required.

HISTORY

Application for missed compensation in 2019.

[3] On September 11, 2019, on behalf of the ACA, the representative filed a claim for missed compensation in 2019. The reported rate of annual compensation was \$3,100.00. The agent indicated that Trident Exploration (Alberta) Corp. (TRIDENT) had made a partial payment of \$1,550.00, leaving a balance owing of \$1,550.00.

[4] On October 22, 2019, the representative filed an application seeking costs in the amount of \$333.05.

[5] Records obtained from the Alberta Energy Regulator (AER) named Ember Resources Inc. (EMBER) as the current Licensee. On that basis, on December 17, 2020 a Notice and Demand for Payment was issued to EMBER seeking payment of \$1,550.00 for 2019.

[6] On January 28, 2021, EMBER contacted the Applicants, with a copy to the Tribunal, indicating that they had made full payment in 2019, but that TRIDENT had also made a partial payment in the amount of \$1,550.00 with the result that the Applicant had been overpaid.

[7] On February 16, 2021, the representative contacted the Tribunal, with a copy to EMBER, indicating as follows:

Please be advised Ember Resources Inc. has made a payment of \$3100 to the Alberta Conservation Association (ACA) for the 2019 annual compensation owed (\$1550). We will not be withdrawing the application until costs are dealt with by Ember. The updated cost claim is:

3.5 hours consulting time at \$125/hr=\$437.50

Electronics/admin fee (5% of consulting time) = \$21.87

GST = \$22.97

Total Cost Claim = \$482.35

The ACA has yet to receive the annual compensation payment from Ember Resources Inc. for March 1, 2021 for this lease. Ember provided correspondence to the ACA earlier that it would be reducing the amount paid for this year. The ACA is not in agreement with any reduction.

It should be noted that this claim for costs does not comply with Rule 39.

[8] On February 20, 2021, the Tribunal contacted EMBER, providing a copy of the original costs claim in the amount of \$333.05 with a request that EMBER respond within 30 days.

[9] On February 22, 2021, Counsel for EMBER contacted the Tribunal regarding the Notice and Demand for Payment to indicate that EMBER had made full payment:

Ember has paid all outstanding rental amounts on these matters and considers that it has discharged its obligations in this regard.

Attached is proof of payment, and accompanying cover letters to the landowner regarding the subject leases. In each case, Ember has paid the full amount of the rental and not the outstanding balance. Ember will be treating this as an overpayment, which will be discussed and settled with the Landowner.

[10] On March 11, 2021, a new Notice and Demand for Payment was issued by the Tribunal for the “updated” costs claim in the amount of \$482.35.

Counsel for EMBER responded on March 23, 2021 indicating that it had paid \$333.05 in costs on March 18, 2021 and “considers that it had paid the claim for costs”.

Counsel also took issue with the Notice itself, suggesting that it had been issued without jurisdiction, and asked the Tribunal to re-consider its March 23, 2021 e-mail as a request for re-consideration under section 29 of the *Act*.

The Rules require that when a form is prescribed by the Tribunal, the application must include a completed form. The March 23, 2021 e-mail did not include a completed form for reconsideration.

Nonetheless, on April 9, 2021, the Tribunal issued a request for submissions to the representative indicating as follows:

Ember Resources Inc. provided a proof of payment for the initial cost claim for the amount of \$333.05 on May 18, 2021. Ember did not pay the requested cost from the updated costs...

The Tribunal requested a response on or before May 9, 2021. There was no reply from the representative.

Application for missed payment in 2022

[11] On April 11, 2022 the representative filed a claim for a missed payment in 2022 through the Tribunal’s portal. The representative reported that a partial payment of \$2,120.00 had been made, leaving a balancing owing of \$980.00.

Application for missed payments in 2022 and 2023

[12] On February 5, 2024 the representative filed what she described as a “corrected resubmission” on behalf of the ACA and the AFGA:

The original application was submitted to recover \$1,550.00 representing the balance in arrears and owing to the landowners for the March 1, 2019 compensation. The arrears amount for 2019 was paid by Ember Resources Inc. and Patricia Walker from My Landman Group Inc. advised the LPRT of the same. In the interim, the Operator Ember Resources Inc. only paid a portion of the annual compensation owing to the landowners for March 1, 2022 and March 1, 2023.

On that basis, the claim was for a shortfall of \$980.00 for 2022 and \$980.00 for 2023.

The representative also indicated that under the terms of a “Management Agreement for Scheerschmidt” between the ACA and the AFGA, payment was to be made to the ACA. While the representative suggested that a copy of the agreement was attached to the application, it was not. The Tribunal has not been able to find any connection to a party by the name of Scheerschmidt. The application was only signed by the officer for the ACA.

Note: There were two applications filed, one dated February 1, 2024 which was signed by the officer for the ACA, and a second dated February 5, 2024 which was signed by an officer for the AFGA.

Application for missed payments in 2022, 2023 and 2024

[13] On March 13, 2024, the representative filed first year applications that duplicated the claims for \$980.00 in 2022 and \$980.00 in 2023, as well as additional for claim for 2024. With respect to the claim for 2024, based on the annual rate of \$3,100.00, the representative indicated that a partial payment of \$2,732.00 had been made by EMBER, leaving a balance of \$368.00. In total the claim for all three years amounted to \$2,318.00.

The applications were in the names of the ACA, the AFGA and James Arthur Scheerschmidt. Again, there was no information to link Mr. Scheerschmidt to the site.

Included was a further claim for costs in the amount of \$622.91 in connection with the claim for 2022 and 2023. This claim concerned activities in March to May of 2022 and from November 15, 2023 to February 15, 2024, which would not include the claim for the March 13, 2024 applications.

Original Order LPRT903274/2024 awarding payment for 2024 alone

[14] On July 27, 2024, the original panel issued Order LPRT903274/2024.

With respect to the claim for annual compensation, the original panel interpreted the March 12, 2024 application as amending the applications for 2022 and 2023:

The Applicants subsequently filed three application for missing partial payments for the 2022, 2023 and 2024. An amended application was filed on March 12, 2024 showing that the only outstanding amount owed by the operator was \$368.00 in relation to the 2024 lease payment.

In the result, the original panel awarded \$368.00 for missed compensation in 2024, divided between the two owners.

With respect to the claim for costs, based on the invoice which was described as “Revised Feb. 15, 2024”, the original panel went on to award costs in connection with what was described as “the three applications submitted” plus an additional .5 hour for filing the Request to Amend. However, the invoice of February 15, 2024 did not include a claim for the March 13, 2024 application. Based on the anniversary date of March 1st, no application could be filed until March 2, 2024. In effect, the original panel awarded compensation for 2024 alone but awarded costs in connection with applications that she considered were not before her, as well as additional costs for 2024 for which no invoice had been provided. The total cost award was \$551.25.

PRELIMINARY ISSUES

1. Should the Tribunal initiate a review of Order LPRT903274/2024?
2. Should the Tribunal seek submissions from the parties?

PRELIMINARY DECISION

1. The Tribunal will initiate a review of Order LPRT903274/2024.
2. The Tribunal will seek submissions from the parties.

ANALYSIS ON PRELIMINARY ISSUES

Tribunal-Initiated Reviews

[15] Rule 37(1) provides as follows:

The Tribunal may review a decision or order on its own initiative, and, if it does so, will determine a procedure for review, including an opportunity for the parties to make submissions.

For reviews initiated by the Tribunal there is no requirement to establish the basic requirements for review. However, a mistake of fact can be a consideration in the Tribunal initiating its own review.

[16] There is no doubt that full payment has been made for 2019. While there would seem to have been an overpayment in 2019, there are no applications before the Tribunal for 2020 or 2021.

The original panel only awarded compensation for 2024. The representative suggests that there is an error in the original decision in that the panel did not consider the requests for 2022 and 2023. The original panel did misconstrue the March 12, 2024 Request to Amend as suggesting payment had been made for 2022 and 2023. This alone would justify a review.

The original panel was also in error in calculating the claim for costs. First, the panel did not take into consideration that the representative had already been paid costs directly by the operator in connection with a claim for missed compensation in 2019. This is not a “new” claim for costs. The representative had already compiled the information required for the initial claim and was paid for that work by the Operator. Second, the original panel awarded costs for applications which, based on her analysis, had been withdrawn. Third, the original panel awarded costs for a claim for 2024 when no invoice had been submitted for 2024.

For these reasons, this Panel will initiate its own review.

Submissions

[17] While this Panel has determined that there will be a review, there are a number of options under Rule 37(5): the Tribunal may confirm, amend, rescind or replace the original decision or may order a rehearing.

This is an active site; EMBER is an active corporation. EMBER has already paid costs in connection with an application that was subsequently abandoned. EMBER should be given an opportunity to provide submissions as to the Panel's options in conducting a review which would include the matter of costs.

As well, while the representative suggests that there is an assignment directing all compensation to the AGA, no copy has been provided to the Tribunal. The representative should be given an opportunity to provide that document.

All parties will have until October 30, 2024 to provide submissions with rebuttal, if required, on or before November 15, 2024.

Dated at the City of Edmonton in the Province of Alberta this 30th day of September, 2024.

LAND AND PROPERTY RIGHTS TRIBUNAL



Susan McRory, Chair.