



LAND AND PROPERTY RIGHTS TRIBUNAL

Date: 2023-03-08

File No.: RC2022.0120

Order No.: LPRT900992/2023

In the matter of a proceeding commenced under 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:

SW 1/4-7-46-22-W4M as described in Certificate of Title No. 092131294 (the “Land”), particularly the area granted for Alberta Energy Regulator Licence No. 0438255 (the “Site”).

Between:

Ember Resources Inc.,

Operator,

- and -

Brenda L. Mantie

Applicant.

SECTION 36(6) DIRECTION TO PAY

The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of SIX THOUSAND EIGHT HUNDRED SIXTY-FOUR and 00/100 DOLLARS (\$6,864.00) (the “Compensation”) to Brenda L. Mantie of Wetaskiwin in the Province of Alberta for compensation that became due in the years 2021 and 2022.

DECISION AND REASONS

[1] The Applicant filed an application under section 36 of the Act seeking recovery of unpaid compensation due under a Surface Lease Agreement dated October 21, 2011 for the above site (the “Right of Entry Instrument”).

ISSUES

[2] The issues before the Panel are:

- (1) Which of the parties should be named as the Operator for the purposes of section 36 of the *Act*?
- (2) Is there money past due and unpaid by the Operator to the Applicant under the Right of Entry Instrument?

- (3) If money is past due and unpaid, is there any reason why the Tribunal should direct the Minister to pay a reduced amount?
- (4) Should the Tribunal direct the Minister to pay any of the amount owed to the Applicant out of the General Revenue Fund?
- (5) Should the Tribunal suspend and terminate the Operator's rights?
- (6) Should the Tribunal order the operator to pay costs under section 39 of the Act, and if so in what amount?

DECISION

[3] The Panel decides:

- (1) For the purposes of section 36 of the Act, the Operator is Ember Resources Inc..
- (2) Compensation of \$6,864.00 is payable to the Applicant by the Operator.
- (3) There is no reason to direct the Minister to pay a reduced amount.
- (4) The Tribunal directs the Minister to pay the full amount of the Compensation payable to the Applicant.
- (5) The decision to suspend or terminate the Operator's rights is reserved.
- (6) The Operator shall pay to the Applicants costs in the sum of ONE HUNDRED THIRTY-TWO AND 25/100 DOLLARS (\$132.25)

REASONS

[4] The Operator is as defined under section 36(1) of the *Act* and a reclamation certificate has not issued so the Operator is responsible to pay compensation to the Applicant.

[5] The Panel is satisfied that the demand for payment and notice to the Operator meets the requirements of the Act pursuant to s. 36(4) and the *Interpretation of Section 36(4) Surface Rights Act Guideline*, ABSRB 2020-1.

[6] After a review of the completed Application Form, signed declaration and supporting documents, the Panel is satisfied that the Compensation is owed by the Operator to the Applicant for annual payments due under the Right of Entry Instrument. This amount is calculated as two payments of \$3,432.00 due for the years 2021 and 2022. The Applicant indicated on the application that Ember Resources Inc. paid the Applicant two partial payment of \$2,798.00 for 2021 and 2022, reducing the compensation owed from \$12,460.00 to \$6,864.00. The Tribunal has not received any other evidence of additional payment. Therefore, direction to the Minister is issued.

[7] There is no evidence to convince the Panel that payment of the full Compensation would result in overpayment to the Applicant.

[8] The Minister is directed to make full payment of the Compensation out of the General Revenue Fund.

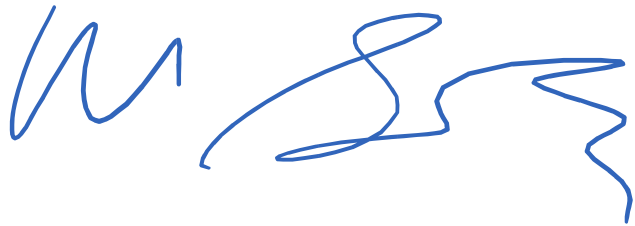
[9] The Panel is satisfied that the prerequisites to directing the Minister to pay under section 36(6) have been met.

[10] The decision to suspend or terminate the Operator's rights is reserved.

[11] The Applicant filed an invoice for costs in the total sum of \$330.75. Section 39(1) of the Act puts costs of and incidental to proceedings under the Act in the discretion of the Tribunal. Costs for section 36 proceedings are in the discretion of the Tribunal under section 39 of the Act and the factors the Tribunal may consider are in Rule 31(2) the Surface Rights Board Rules. If the Operator made the payments as required, this Application would not be necessary so the Operator should pay costs. This application was not complex and required the completion of a simple Application form. Based on a long line of Tribunal Decisions on costs for section 36 proceedings, reasonable costs for a representative are one hour at a rate of \$125.00/hour plus 5% GST. No costs are awarded for routine searches as this work is done by the Tribunal.

Dated at the City of Edmonton in the Province of Alberta this 8th day of March, 2023.

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A handwritten signature in blue ink, appearing to read 'M. Brook', is written above a horizontal line.

Mary-Kay Brook, KC, Member