



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Forefront Energy Services Inc v Zeal Energy Inc, 2023 ABLPRT 903166

Date: 2023-07-12

File No.: RCR2022.2825

Decision No.: LPRT903166/2023

Municipality: County of Vermilion River

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:

NE ¼ 15-50-3-W4M as described in Certificate of Title No. 152 190 647 (the “*Land*”), particularly the area granted for Alberta Energy Regulator Licence No. 0425213 and access road (the “*Site*”).

Between:

Zeal Energy Inc.

Operator,

- and -

Forefront Energy Services Inc.

Applicant.

Before: Ivan Weleschuk (the “*Panel*”).

DIRECTION TO PAY PURSUANT TO SECTION 36 OF THE ACT

The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of ONE THOUSAND SEVEN HUNDRED EIGHT_SEVEN 50/100 DOLLARS (\$1,787.50) to Forefront Energy Services Inc. of Kitscoty, in the Province of Alberta for compensation that became due in the year 2022.

DECISION AND REASONS

[1] On October 17, 2022, the Applicant filed an application under section 36 of the *Act* for compensation due under a surface lease agreement for the above Site dated October 14, 2010 (the “*Surface Lease*”). The Applicant claims a total amount of \$3,575.00 under the Application for the October 14, 2022, payment due date.

[2] Previous Tribunal Decision No. 2021/0893 and subsequent Direction to Pay Orders (LPRT 1019/2021, LPRT900788/2022) addressed the payments due for the 2019, 2020 and 2021 payment due dates.

[3] According to the Well Summary Report in evidence, the Well Licence Status changed August 6, 2013, from “issued” to “abandoned”.

ISSUES

[4] The issues before the Panel are:

- (1) Which corporations are Operator(s) for the purposes of section 36 of the *Act*?
- (2) Is there money past due that has not been paid by the Operator(s) to the Applicant under a surface lease or compensation order?
- (3) Should the Tribunal suspend and terminate the Operator(s) entry rights under section 36(5) of the *Act*?
- (4) Should the Tribunal direct the Minister to pay the Applicant any of the money past due that has not been paid by the operator(s) out of the General Revenue Fund under section 36(6) of the *Act*?

DECISION

[5] The Panel decides:

- (1) For the purposes of section 36 of the *Act*, the Operator is Zeal Energy Inc.
- (2) The Compensation is payable to the Applicant by the Operator, and the written evidence satisfactorily proves that it has not been paid.
- (3) The Tribunal has already suspended and terminated the Operators access rights, therefore there is no need to do so here.
- (4) Without further notice, the Tribunal directs the Minister to pay Compensation of \$1,787.50 out of the General Revenue Fund.

ANALYSIS

1. Who is an operator for the purpose of section 36 of the *Act*?

[6] For the purpose of recovery of compensation applications, the definition of the word *operator* is set by section 36(1) and (2) of the *Act*. Specifically, section 36(1) and (2) expands the definition of *operator* so that it has a broader meaning than in the rest of the *Act*.

[7] Tribunal Decision No. 2021/0893 found that Zeal Energy Inc. was the operator.

[8] The AER OneStop Report and AER Well Summary Report (both dated May 30, 2023) show that Zeal Energy Inc. is the Licensee and the 100% working interest participant.

[9] The Panel finds that there has been no change to the operator and that for the purpose of section 36, as of the 2022 payment due date, Zeal Energy Inc. is the Operator.

2. *Is there money past due and unpaid by the Operator(s) to the Applicant(s) under a surface lease or compensation order?*

[10] Certificate of Title No. 152 190 647 indicates that Forefront Energy Services Inc. is the owner of the Land and acquired the Land as of the June 29, 2015, Transfer Date. The Application includes a signed Declaration that the Applicant has been previously paid by the Minister under section 36, the amount due have not been received and the Surface Lease has not been suspended and remains in effect.

[11] The Panel is satisfied that Compensation is owed by the Operator to the Applicant for annual payment due under the Surface Lease for the 2022 payment due date. This amount is calculated as one payment of \$3,575.00 due on the payment due date. The Site has not been reclaimed, and the Surface Lease or Right of Entry Order remains in effect.

3. *Should the Tribunal suspend and terminate the Operator's entry rights under section 36(5) of the Act?*

[12] Tribunal Decision 2021/0893 suspended and terminated the entry rights of the Operator. Furthermore, the well bore was abandoned and is no longer capable of production. There is no reason to suspend or terminate the Operator's entry rights.

4. *Should the Tribunal direct the Minister to pay the Applicant any of the money past due that has not been paid by the operator(s) out of the General Revenue Fund under section 36(6) of the Act?*

[13] In the Condition of Leased Area portion of the Application, the Applicant indicate that the Site is not fenced, there is no equipment on the Site but that the Site is still being visited by workers (including for reclamation work). The Applicant also included the following comment:

"The site was reclaimed but not seeded until 2021. A reclamation certificate has not yet been issued."

[14] The Panel notes that the Orphan Well Association (OWA) has abandoned the well and in the process of reclaiming the Site, though a Reclamation Certificate was not in evidence.

[15] In *Devon Canada Corporation v Alberta (Surface Rights Board)*, 2003 ABQB 7, 337 AR 135 ("*Devon*"), the Court of Queen's Bench considered the Tribunal's responsibility when considering an order under s. 36(5) and (6) and held at paragraph 29:

... the function of sections 36(5) and 36(6) appears to me to provide the surface owner with some assurance that if they cooperate with providing the oil industry access to their lands, they need not fear the operator will not pay them.

The sections provide a pragmatic solution whereby the surface owner need only prove the existence of a lease and that rent has not been paid. Upon proof of such, in most cases, the province would then pay the rent and the operator would then face the province, seeking reimbursement from the operator.

... if the ... owner's claim is unjustified, is patently absurd, or provides an unjust enrichment, the Board should be able to use its discretion under s. 36(6) to refuse to direct that Alberta taxpayers pay the rental arrears.

[16] According to *Devon*, the Panel's decision to direct the Minister to pay out of the General Revenue Fund is discretionary. This was confirmed by the Alberta Court of Queen's Bench in *Provident Energy Ltd v Alberta (Surface Rights Board)*, 2004 ABQB 650.

[17] In a recent decision, *Praskach Farms v Lexin Resources Ltd.*, 2020 ABSRB 85 (“*Praskach*”), the Tribunal concisely summarizes the scope of authority under section 36 of the *Act*, the factors to consider direct the Minister to pay either the full amount of Compensation owing or a reduced amount if payment if the full amount is unjustified. The Tribunal held (at paragraphs 10):

[10] There are two factors particularly important for considering annual compensation and whether directing the Minister to pay the full amount owing is unjustified. ... this is not a review of compensation under section 27, however, the loss of use and adverse effect are components of fair compensation which the Board can consider when determining if directing the Minister to pay the full amount owing is justified.

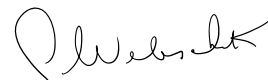
and this Panel adopts and applies the reasoning from *Praskach*.

[18] The Panel finds that directing the Minister to pay the full amount to the Applicant would be unjustified. As of the October 14, 2022, payment due date, the adverse effects are reduced, primarily because the Applicant no longer has to incur the costs of farming around the Site. The Applicant provided no evidence as to the crop growth or productivity. With the Site in a state of being monitored by OWA staff, activity on the Site is also reduced as of the 2022 payment due date. The Panel finds that directing the Minister to pay half the annual payment reasonably compensates the Applicant for losses associated with the Site in 2022. The compensation is calculated as one payment of \$1,787.50 for the 2022 payment due date.

[19] The Tribunal directs the Minister to pay a total of \$1,787.50 to the Applicant out of the General Revenue Fund under [section 36\(6\)](#) for the 2022 payment due date.

Dated at the City of Calgary in the Province of Alberta this 12th day of July 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Ivan Weleschuk, Member