



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Hallett v Ember Resources Inc., 2025 ABLPRT 900558

Date: 2025-02-03

File No: RC2023.0789

Order No: LPRT900558/2025

Municipality: County of Stettler No. 6

In the matter of a proceeding commenced under section 36 and 39 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 19-34-18-W4M, as described in Certificate of Title No 161 099 912 particularly the area granted for the Alberta Energy Regulator Licence No 0336282 (the “Licence”), collectively (the “Site”).

Between:

Ember Resources Inc.,

Operator,

- and -

William James Hallett
and

Valerie Margaret Hallett,

Applicants.

Before: Dennis Dey (“the Panel”)

Appearances by written submissions:

For the Applicants: Dean Matheson, Representative, Bridge Agri-Energy Consulting Corp.

For the Operator: Kari Swennumson, Lead, Surface Land Coordinator, Ember Resources Inc.

**ORDER DETERMINING COSTS
PURSUANT TO SECTION 39 OF THE ACT**

IT IS ORDERED that costs in the amount of FOUR HUNDRED NINETY-SIX and 56/100 DOLLARS (\$496.56) are payable by the Operator to William James Hallett and Valerie Margaret Hallett jointly.

DECISION AND REASONS

[1] The Applicants filed an application dated June 7, 2023 under section 36 of the *Act* (the Application) seeking recovery of unpaid compensation due under a surface lease agreement dated June 14, 2005, for the above Site (the “Right-of-Entry Instrument”).

[2] The Applicants claimed a total of \$6,352.00 based on receiving partial payments rather than the full compensation amounts as follows:

	2020	2021	2022	2023	Total
Compensation	\$3,935.00	\$3,935.00	\$3,935.00	\$3,935.00	\$15,740.00
Payment Amount	\$2,140.00	\$2,140.00	\$2,140.00	\$2,968.00	\$9,388.00
Unpaid Amount	\$1,795.00	\$1,795.00	\$1,795.00	\$967.00	\$6,352.00

[3] On January 30, 2024 the Operator provided to the Landowners a cheque in the amount \$6,352.00 along with a letter explaining the cheque was to cover the outstanding rental amount owed on the subject lease.

[4] On September 22, 2024 the Tribunal received an email from the Landowners’ representative confirming the Landowners receipt of the outstanding balance.

[5] The only outstanding issues are the Applicants’ costs claim and a claim for interest on each late payment.

[6] The Tribunal issued a request for submissions on costs to the Operator on December 9, 2024. No response was received.

ISSUES

1. Should the Tribunal award costs under section 39 of the *Act* and if so in what amount?
2. If costs are awarded to the Applicants who is responsible to pay them?
3. Is interest payable, and if so at what rate and to whom?

DECISION

1. The Applicants are entitled to costs in the sum of \$496.56 inclusive of GST.
2. The Operator is responsible to pay the costs awarded to the Applicants.
3. The Applicants are not entitled to an award for interest. There is no provision in section 36 of the *Act* for awarding interest.

ANALYSIS

[7] The Applicants had filed six applications for recovery of unpaid compensation from the Operator on or about June 7, 2023. The Representative tracked the shared work for all six files (Shared Time). The Applicants' cost claim is for 1/6 of the shared time plus other work specific to the subject application. The invoice for the subject application claims costs in the amount of \$510.38 (\$486.08 plus GST) which is summarized as follows:

Description	Hours	Hourly Rate	Hours Amount	Mileage (\$)	Total \$
Representative	1.83	\$130.00	\$237.90	\$11.88	\$249.78
Assistant to Representative	4.41	\$30.00	\$132.50		\$132.50
Applicants/Landowners	1.33	\$50.00	\$66.50	\$37.50	\$104.00
			Subtotal		\$486.08
			GST		\$24.30
		Total Costs Submitted for Application			\$510.38

[8] The Representative's claim for consulting time included various tasks including:

- Meetings with Landowners 0.33 hours (\$42.90)
- Review lease and examine supporting documents 0.33 hours (\$42.90)
- Develop response to Operator's position 0.50 hour (\$65.00)
- Review LPRT decisions and prepare citations. 0.50 hours (\$65.00)

[9] The Representative's Assistant's claim for time included the following tasks:

- Follow up with Landowners 0.17 hours (\$5.10)
- Create spreadsheet of details & calculations 0.50 hours (\$15.00)
- Data gathering re: response to Operator 0.50 hours (\$15.00)
- Complete recovery of compensation application forms 0.25 hours (\$7.50)
- Assemble PDF submission 1.00 hours (\$30.00)
- Submit applications 0.08 hours (\$2.40)

[10] Section 39(1) of the *Act* puts costs of and incidental to proceedings under the *Act* in the discretion of the Tribunal. Rule 31(1) and Rule 31(2) the *Surface Rights Rules* ("Rules") provides guidance as to the factors the Tribunal may consider when awarding costs.

[11] The proceeding is the Application including all necessary preliminary steps.

Is there sufficient detail in the costs claim to assess if they are of or incidental to the proceeding?

[12] The technical requirements of Rule 31(1) stipulate three requirements for the Costs claim:

(1) The Tribunal may award costs to a party if the Tribunal is of the opinion that the costs are directly and necessarily related to the proceeding and requests for costs **must** include:

- (a) reasons to support the request;
 - (b) a detailed description of the costs sought; and
 - (c) copies of any invoices or receipts for disbursements or expenses.
- (Emphasis added)

[13] Rule 31(2) outlines the factors that the Tribunal **may** consider in determining costs:

- (a) The reasons for incurring costs
- (b) The complexity of the proceeding
- (c) The contribution of the representatives and experts retained
- (d) The conduct of a party in the proceeding
- (e) Whether a party has unreasonably delayed or lengthened a proceeding
- (f) The degree of success in the outcome of a proceeding
- (g) The reasonableness of any costs incurred
- (h) Any other factor the Tribunal considers relevant.

Applicants' Personal Costs

[14] The personal costs claimed include 1.33 hours at \$50.00 per hour plus an amount for mileage of \$37.50. The Panel finds the Personal Costs claim meets the requirements of Rule 31(1) as details and reasons are provided to support the claim.

Representative Fees

[15] The Representative's cost claim provides details on activities and time spent. The Panel finds the Representatives cost submissions are in compliance with Rule 31(1) as they outline what services were provided, the time spent and how they relate to the proceeding.

Representative's Assistant Fees

[16] The cost claim related to the Assistant provides details on activities and time spent. The Panel finds these details are sufficient to determine the costs claim meets the requirements of Rule 31(1).

Were the costs claimed necessary for this proceeding, and are they reasonable?

[17] In addressing whether the claims for costs are reasonable, the Panel must assess whether the costs claimed are reasonable in terms of being directly and necessarily related to the proceedings before the Tribunal.

[18] In contrast to Rule 31(1) the factors under subsection (2) are permissive. While the panel must consider all the requirements under subsection (1), under subsection (2), not all factors will apply in every case. Reasonableness in the context of Rule 31(2) has three components and answers the following questions:

- Why were the costs incurred?
- Is the basis for the expenditure reasonable?
- If the reason for the expenditure is reasonable, is the quantum reasonable?

[19] The Panel finds it was reasonable for the Applicants to gain representation in order to prepare the section 36 application noting that the application sought compensation of unpaid amounts occurring over four years due to the Operator only making partial payments during that time.

[20] Rule 9 of the *Rules* establishes that a person has the right to be represented by another party before the Tribunal. Rule 31(2)(c) provides that cost awards extend to experts and representatives.

[21] When considering the reasonableness of an expenditure, the reasonableness requirement recognizes that no party is entitled to be reimbursed for costs which are excessive or unrelated to the proceedings. In this case, the Panel finds the cost claims of the Representative as well as those of the Assistant relate directly to the proceeding.

[22] In *Bear Canyon Farms Holdings Ltd. v Apex Energy (Canada) Inc.* 2018 ABSRB 64 (CanLII) ("*Bear Canyon*"), the Tribunal held at paragraphs 17 and 20:

[17] ...s.36 application costs tend to be on low side as the applications are only 2 pages, not complex and most of the info comes from applicants. The board administration performs all necessary searches and prepares the statutory declaration and [they] are decided generally without an in-person hearing...

[20] In the opinion of the panel, an experienced professional should be able to file a s.36 application within one hour or less. (Emphasis added)

[23] This Panel applies the reasoning in *Bear Canyon* to the costs claimed by the Representative. Further, the Panel finds the subject application is complex and requires more time than the one hour suggested in *Bear Canyon*. Further, the Panel finds the representative's time of 1.83 hours and the hourly rate of \$130.00 are reasonable given the circumstances of the application.

[24] As to the Representative's claim for mileage, the rate of \$0.75 per km exceeds the Alberta Government rate of \$0.55. The Panel finds to reduce the claim for milage from \$11.88 to \$8.71.

[25] The Panel is persuaded that the time for the Representative's Assistant did reduce the time required by the Representative that would be charged at a higher rate. The Panel also recognizes as per the Representative's submission, that no time was claimed for meetings between the Representative and the Assistant.

[26] The Panel finds that the various tasks in the Assistant's cost claim are specific to advancing the section 36 application and are not part of the overhead of running an office. Accordingly, the Panel finds the Assistant's claim for hours and the hourly rate to be reasonable given the circumstance of a multi year claim that required more time than the one hour referred to in *Bear Canyon*.

[27] Regarding the claim by the Applicants for personal costs the Panel finds the 1.33 hours claimed for personal time to be reasonable given the multi year claim. As for the Landowners claim for mileage costs claim for mileage, the rate of \$0.75 per km exceeds the Alberta Government rate of \$0.55. The Panel finds to reduce Landowner's claim for milage from \$37.50 to \$27.50.

CONCLUSION ON COSTS

[28] The Panel finds there is reason to reduce the Applicant's cost claim. The total award for costs payable by the Operator Ember Resources Inc. to the Applicant's will be \$496.56 calculated as follows:

Description	Hours	Hourly Rate	Hours Amount	Mileage (\$)	Total \$
Representative	1.83	\$130.00	\$237.90	\$8.71	\$246.61
Assistant to Representative	4.41	\$30.00	\$132.50		\$132.30
Landowners	1.33	\$50.00	\$66.50	\$27.50	\$94.00
				Subtotal	\$472.91
				GST	\$23.65
			Total Costs Submitted for Application		\$496.56

[29] Costs in the amount of \$496.56 are payable by the Operator to the Applicants jointly.

Interest

[30] The Applicants submit that the Operator should pay interest on all their late payments. Further, since all the outstanding balances were paid by December 2023 the Applicants are requesting that interest be paid on each late payment up to November 30, 2023.

[31] The Panel notes that the only reference to paying interest in the *Act* is Section 25(9) which states:

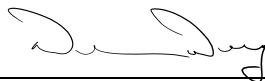
(9) The Tribunal may order the operator to pay interest on any or all the compensation payable on and from the date the right of entry order was made, at the Bank of Canada rate on the date the right of entry order was made.

[32] There is no provision in section 36 of the *Act* to provide for interest and no interest is payable in applications seeking recovery of compensation.

[33] The Panel finds no interest is awarded for the subject application.

Dated at the City of Red Deer in the Province of Alberta this 3 day of February, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL



Dennis Dey, Member