



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Alberta Conservation Association v Ember Resources Inc, 2023 ABLPRT 904183

Date: 2023-06-28

File No.: RC2021.1076

Order No.: LPRT904183/2023

Municipality: County of Stettler No. 6

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:

NW ¼ -14-38-19-W4M as described in Certificate of Title No. 172 265 738 (the “*Land*”), particularly the area granted for a wellsite and access road, Alberta Energy Regulator Licence No. 0178597 (the “*Site*”).

Between:

Ember Resources Inc.

Operator,

- and -

Alberta Conservation Association
and
The Alberta Fish and Game Association,

Applicants.

Before: Barbara A. Samuels and Lana Yakimchuk (the “*Panel*”).

ORDER PURSUANT TO SECTION 39 OF THE ACT

IT IS ORDERED that costs in the amount of TWO HUNDRED AND EIGHTY-EIGHT and 75/100 DOLLARS (\$288.75) are payable by the Ember Resources Inc. to the Applicants, Alberta Conservation Association and The Alberta Fish and Game Association.

DECISION AND REASONS

BACKGROUND

[1] The only matter before this Panel today is the claim for costs by the Applicants following Decision LPRT2022/SR1040 under section 36 of the Surface Rights Act.

[2] The Applicants filed a post-decision submission advising the Tribunal that payment was received from Ember Resources Inc. (“Ember”) for annual compensation owing under the Surface Lease on the anniversary dates for 2020, 2021, 2022.

[3] On August 4, 2022, the Applicant’s representative advised the Tribunal that the Application would not be withdrawn until costs have been dealt with. Also, a detailed description of the costs and reasons to support the request was submitted.

[4] A request for submission was sent to Ember on October 24, 2022, with notice that a written response must be filed by November 23, 2022, however no submission was made.

REASONS

[5] The Applicants filed an invoice for costs in the sum of \$595.35. As in all matters, there must be an evidentiary basis for any decision. There must be reasons provided and there must be detailed descriptions of the costs being requested, reasons and reasonableness, for the costs claimed.

[6] Rule 31 of the *Surface Rights Rules* provides guidance as to the factors the Tribunal may consider when awarding costs.

[7] In this case, the Panel is satisfied that the invoices do provide sufficient detail both in description and reasons and fulfill those requirements. However, the Panel did consider the reasonableness of the submitted number of hours and the consulting rate/hour.

[8] In *Bear Canyon Farms Holdings Ltd. v Apex Energy (Canada) Inc.* 2018 ABSRB 64 (CanLII) (“*Bear Canyon*”) speaks to the factor of reasonableness of costs.

[9] In *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)

[10] The Panel finds that a reasonable cost/hour for services such as these are between \$100.00-\$125.00/hr. The Panel will not consider disbursements.

DECISION

[11] The Panel applies the reasoning in *Bear Canyon* to the costs claimed by the Applicants. The Panel finds the multi-year applications and amendments were not complex and the Applicants' representative is "an experienced professional" and "should be able to file a s. 36 application within one hour or less." The Panel therefore awards costs for 2 hours of professional assistance at a rate of \$125/hour plus landowner time and fees of ½ hour, plus 5% GST, for a total of **\$288.75**.

Activity	Rate	Cost
Consulting time	2 hours @ \$125.00 /hr	\$250.00
Landowner time	½ hour @ \$50.00/hour	\$25.00
GST	@5%	\$13.75
		Total awarded \$288.75

ORDERS

[12] Costs in the amount of \$288.75 are payable by the Operator, Ember, to the Applicants. The Order for costs is included at the start of this decision.

Dated at the City of Calgary in the Province of Alberta this 28th day of June 2023

LAND AND PROPERTY RIGHTS TRIBUNAL**Barbara Samuels**

Digitally signed by Barbara
Samuels
Date: 2023.06.28 16:58:30 -06'00'

Barbara A. Samuels, Member