



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Letts v Maga Energy Ltd., 2023 ABLPRT 904559

Date: 2023-07-13

File No: RCR2022.1705

Order No.: LPRT904559/2023

Municipality: Westlock County

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 ¼-27-60-27-W4M as described in Certificate of Title No. 872 061 620 (the “*Land*”), particularly the area granted for Alberta Energy Regulator Licence No. 0029170 (the “*Licence*”), collectively (the “*Site*”).

Between:

Maga Energy Ltd.
and
Sequoia Resources Corp.

Operators,

- and -

Elizabeth Letts
and
Park Letts

Applicants.

Before: Lana Yakimchuk
Samantha Georgsen
 (“the Panel”)

Appearances by written submissions:

For the Operators: Torys LLP, Gino Bruni, representing Sequoia Resources Corp.

Maga Energy Ltd., Biagio Mele, President

**DIRECTION TO PAY PURSUANT TO
SECTION 36(7) OF THE ACT**

The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of EIGHT THOUSAND 00/100 DOLLARS (\$8,000.00) (the “Compensation”) jointly to Elizabeth Letts and Park Letts of Westlock in the Province of Alberta for compensation that became due in the years 2021 and 2022.

DECISION AND REASONS

BACKGROUND

[1] The Applicants filed a Returning Recovery of Compensation application under section 36 of the *Act* seeking recovery of unpaid Compensation for the Site for the 2021 and 2022 annual Compensation years, plus \$2,500.00 for a bred heifer and \$2,000.00 for a panel fence rental. The application was signed on March 8, 2022.

[2] The current annual Compensation Rate is \$4,000.00, according to the signed application and a previous Tribunal Decision: SRB Decision No. 2021/0465 and Order No. 2140/2021. Also, a signed Compensation Review letter from previous Licensee: Husky Oil Operations Limited, confirms the annual Compensation increased from \$3,500.00 to \$4,000.00 per year, effective October 25, 2015. As well as a cheque stub to the Applicants for the 2017 annual Compensation year is in the amount of \$4,000.00.

[3] The application says the anniversary date of the surface lease is January 8, 2016, but the anniversary date is actually October 25, 1965 according to previous Tribunal Decision: SRB Decision No. 2021/0465 and Order No. 2140/2021. As well, a letter from a previous operator to the Applicants, dated January 8, 2015, also references the October 25, 1965 anniversary date.

[4] According to Certificate of Title No. 872 061 620, the Applicants have been the landowners since March 24, 1987.

[5] Alberta Energy Regulator (AER) Well Summary Report dated March 6, 2023, for License No. 0029170 indicates Sequoia Resources Corp. (“Sequoia Resources”) became the Licensee on October 17, 2017, and Maga Energy Ltd. (“Maga Energy”) became the current licensee on May 9, 2022, with 100% interest in the Site.

[6] According to the AER OneStop report for License No. 0029170, the current licence status is “suspension” for a gas site that is sour. The application indicates that the Site is fenced, contains equipment, is not still being visited by workers and the land is being used for grazing. As well, the Applicants wrote: *“the wellsite was left in disarray and cattle got in. In 2020 we lost a bred heifer valued at \$2,500.00. We then fenced it... panel rental is \$1,000.00 per year”*.

[7] On January 10, 2021 Sequoia Resources was issued a Notice and Demand for Payment from the Tribunal for the 2018, 2019 and 2020 annual Compensation years. On February 4, 2021 Maga Energy was issued a Notice and Demand for Payment from the Tribunal for the 2018, 2019 and 2020 annual Compensation years. Both of these letters from the Tribunal stipulated that *“if any future compensation becomes due for this site and is not paid, it may be considered by the Board together with this Application without further notice to you”*.

[8] A letter from Torys LLP stated: “On March 23, 2018, pursuant to the *Bankruptcy and Insolvency Act, RSC 1985, c B-3 (the “BIA”)*, Sequoia filed an assignment in bankruptcy. PricewaterhouseCoopers Inc., LIT was appointed as trustee in bankruptcy (the “Trustee”) of the estate of Sequoia. We act as legal counsel to PricewaterhouseCoopers Inc., LIT in its capacity as Trustee”.

ISSUES

1. Who is an Operator for the purpose of section 36 of the *Act*?
2. Is there money past due and unpaid by the Operator to the Applicant under a Right of Entry Instrument?
3. Should the Tribunal direct the Minister to pay the Applicant any of the money past due under section 36(6) of the *Act*?
4. Should the Tribunal suspend and terminate the Operator’s rights?

DECISION

1. For the purposes of section 36 of the *Act*, the Operator is Maga Energy Ltd. and Sequoia Resources Corp.
2. The written evidence proves compensation in the amount of \$8,000.00 is payable to the Applicant by the Operator.
3. Without further notice, the Tribunal directs the Minister to pay the Applicant Compensation in the amount of \$8,000.00 from the General Revenue Fund.
4. The decision to suspend or terminate the Operator’s rights is reserved.

ANALYSIS

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

[9] The Tribunal gave notice pursuant to s. 36(4) to Sequoia Resources and Maga Energy and the Panel is satisfied that the demand for payment and notice 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.

[10] Section 36(1) and (2) expands the definition of *operator* so that it has a broader meaning than in the rest of the *Act*.

Section 36(1)(c) – Alberta Energy Regulator (“AER”) Licence Holder

[11] Under section 36(1)(c) the holder of a licence issued by the AER and its successors, is an Operator. The Licence for the Site is in the name of Maga Energy Ltd. as of May 9, 2022. According to section 36(1) therefore, the Panel finds this party is an Operator under section 36(1)(c) for t 2021, as it is a successor to the Licence and 2022 as the sole holder of the licence.

[12] Sequoia Resources was a Licence holder as of October 17, 2017 therefore, according to section 36(1) the Panel finds this party is an Operator under section 36(1)(c) for 2021.

[13] The Panel finds that Sequoia Resources is an Operator and is liable for the annual Compensation claimed although it is insolvent according to a letter from Torys LLP stating: “On March 23, 2018, pursuant to the Bankruptcy and Insolvency Act, RSC 1985, c B-3 (the “BIA”), Sequoia filed an assignment in bankruptcy. PricewaterhouseCoopers Inc., LIT was appointed as trustee in bankruptcy (the “Trustee”) of the estate of Sequoia. We act as legal counsel to PricewaterhouseCoopers Inc., LIT in its capacity as Trustee. Pursuant to section 69.3 of the BIA, any actions to enforce any debt are stayed as against Sequoia.”

Section 36(1)(d) – Working Interest Participants

[14] Under s. 36(1)(d) working interest participants and successors are Operators. The Panel finds that Maga Energy is an Operator under section 36(1)(d) for the years 2021 and 2022. The AER Well Summary Report dated March 6, 2023, for the Licence shows it was a working interest participant on the Site as of May 9, 2022, therefore it is a successor Operator.

Submissions

[15] A letter from Maga Energy, dated May 5, 2021, requests it be removed from these proceedings on the basis that there is another Operator, it is not a party to the surface lease, another entity holds the licence and it only owes its proportionate interest. Past Tribunal decisions with multiple operators have found the operators to be concurrently responsible to pay compensation. *Dobish v Terra Energy Corp*, 2019 ABRB 737 held at para 14: “[n]othing in s. 36 of the Act limits the liability of any one of the operators, including s. 36(4) and working interest participants. If the Act meant to limit the liability of a working interest participant to the percentage of its working interest, it would have explicitly said so. Rather, s. 36(4) of the Act instructs the Board to demand “full payment” from an operator if evidence satisfactorily proves non-payment.” With multiple definitions of an “operator” in the Act, along with the requirement for an approval from the regulator, there can be more than one operator concurrently responsible for the Site.

[16] Maga Energy also requests it be removed from these proceedings on the basis that the Tribunal does not have the power to search for and include additional Operators and that the Act places the evidentiary burden of proving non-payment on the Applicant. The Act contains several provisions authorizing the Tribunal to obtain documents and information from others, including public bodies such as the Registrar of Land Titles, the AER, and the Alberta Utilities Commission (sections 15 and 37). Section 24 of the Act also outlines the Tribunal’s broad authority to conduct an inspection on its own volition in particular cases. Finally, under section 6(2) of the *Land and Property Rights Tribunal Act*, SA 2020, c L-2.3, the Tribunal has all the powers of a commissioner under the *Public Inquires Act*, RSA 2000, c P-39.

2. Is there money past due and unpaid by the Operator to the Applicant under a Right-of-Entry Instrument?

[17] The Certificate of Title No. 872 061 620 confirms the Applicants are the owners, therefore, the Panel finds the Applicants are entitled to receive the money. The compensation is supported by the Application and supporting documentation (i.e.: Tribunal Decision: SRB Decision No. 2021/0465 and Order No. 2140/2021. Also, a signed Compensation Review letter from previous Licensee to the Applicants: Husky Oil Operations Limited, confirms the annual Compensation increased from \$3,500.00 to \$4,000.00 per year, effective October 25, 2015. As well as a cheque stub to the Applicants for the 2017 annual Compensation year is in the amount of \$4,000.00. The Applicants declared in writing that the Compensation has not been paid for the years claimed.

[18] The Panel is satisfied that compensation is owed to the Applicants for annual payment due under the Right-of-Entry Instrument. This amount is calculated as two payments of \$4,000.00 due for 2021 and 2022 for a total amount owing of \$8,000.00. The Site has not been reclaimed, and the Right-of-Entry Instrument remains in effect. The Panel finds that at the time the Compensation became due, Sequoia

Energy and Maga Energy are liable for the Compensation due to the Applicant. Sequoia is liable for the 2021 payment and Maga Energy, as successor and current licensee, is liable for the 2021 and 2022 payments.

3. Should the Tribunal direct the Minister to pay the Applicant any of the money past due from the General Revenue Fund under section 36(6) of the *Act*?

[19] The Applicant described the condition of the land as: “*the wellsite was left in disarray and cattle got in. In 2020 we lost a bred heifer valued at \$2,500.00. We then fenced it... panel rental is \$1,000.00 per year*”. The application indicates that the Site is fenced, contains equipment, is not still being visited by workers and the land is being used for grazing.

[20] In *Devon Canada Corporation v Alberta (Surface Rights Board)*, 2003 ABQB 7, 337 AR 135 (“*Devon*”), the Court considered the Tribunal’s responsibility when considering an order under s. 36(5) and (6) and held at paragraph 29 that the function of s. 36(5) and 36(6) appears to provide the surface owner with assurance that they need not fear the operator will not pay them. Further:

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.

[21] According to *Devon*, the Panel's decision to direct the Minister to pay from the General Revenue Fund is discretionary. The Panel adopts the reasoning in *Praskach Farms Ltd. v Lexin Resources Ltd.*, 2020 ABSRB 85 where the Tribunal concisely summarized the scope of authority under section 36 of the *Act*, the factors to consider when directing 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 paragraph 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.

[22] The Panel finds that the payment of the full amount owing would not result in overpayment to the Applicant because the Site is not reclaimed with effects to the Landowners still occurring. The Minister is directed to pay a total of \$8,000.00 to the Applicants from the General Revenue Fund under section 36(6) of the *Act*.

[23] The application under consideration of the Panel today is regarding s.36 of the *Act*, which deals with unpaid annual compensation under a surface lease. Section 36 is in relation to annual rental payments to the Landowner from an Operator. Any damages incurred by the Landowner must be filed through a s.30 application to the Tribunal, therefore the requested compensation for damages to the bred heifer (\$2,500.00) and fence/panel rental (\$2,000.00) were determined by the Panel to not be properly claimed under a section 36 application and are therefore not part of this decision.

4. Should the Tribunal suspend and terminate the Operator's rights?

[24] The Tribunal can suspend and terminate an operator's rights to access the Site when appropriate. The Panel reserves its decision to suspend and terminate at this time, however, if the Operator attempts to access the Site but still does not pay compensation, the Tribunal may issue a suspension/termination order.

Dated at the Village of Cremona in the Province of Alberta this 13th of July 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Lana Yakimchuk, Member