



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Unruh v Canadian Oil & Gas International Inc, 2023 ABLPRT 904560

Date: 2023-07-13
File No. RC2018.1003
Order No. LPRT904560/2023
Municipality: Municipal District of Taber

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:

Plan 67JK; 704A as described in Certificate of Title 181 083 390 (the “*Land*”), particularly the area granted for Alberta Energy Regulator Licence No. 0030298 (the “*Site*”) (ATS Ref: Ptns of 17-11-13-W4M, NW ¼ and S ½-20-11-13-W4M.)

Between:

Canadian Oil & Gas International Inc.,

Operator,

- and -

Walter Unruh and Marilyn Unruh,

Applicants.

Before: Donald Roberts (the “*Panel*”).

Appearances by written submissions:

For the Applicants: Walter and Marilyn Unruh

For the Operator: Made no submission although notified of the hearing.

**DIRECTION TO PAY PURSUANT TO
SECTION 36(6) OF THE ACT**

The Tribunal directs the Minister to pay out of the General Revenue Fund, the sum of ONE THOUSAND NINETY-FIVE and 00/100 DOLLARS (\$1,095.00) (the “*Compensation*”) jointly to Walter Unruh of Vauxhall, in the Province of Alberta and Marilyn Unruh of Vauxhall, in the Province of Alberta for compensation that became due in the years 2018, 2019 and 2020.

DECISION AND REASONS

[1] The Applicants filed an application under section 36 of the *Act* seeking recovery of unpaid compensation due under a surface lease agreement for the above Site dated March 14, 1966 (the “Surface Lease”). On March 15, 2021, the Applicants filed an amendment to the Application to claim outstanding amounts due on the Surface Lease anniversary dates for 2019 and 2020. The Applicants claim a total amount of \$12,300.00 under the amended Application.

ISSUES

[2] The issues before the Panel are:

- (1) Which corporation is an Operator for the purposes of section 36 of the *Act*?
- (2) Is there money past due that has not been paid by the Operator to the Applicants 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

[3] The Panel decides:

- (1) For the purposes of section 36 of the *Act*, the Operator is Canadian Oil & Gas International Inc. (“COGI”).
- (2) The Compensation is payable to the Applicants by the Operator, and the written evidence satisfactorily proves that it has not been paid.
- (3) The Tribunal will not suspend and terminate the Operator’s rights to access the Site. However, the Tribunal may reconsider its decision in the future.
- (4) The Tribunal directs the Minister to pay to the Applicants, jointly, compensation in the amount of \$1,095.00 out of the General Revenue Fund for the years 2018, 2019 and 2020.

ANALYSIS

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

[4] 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*.

Section 36(1)(c) – AER Licence Holder

[5] Under section 36(1)(c) the holder of a licence issued by the Alberta Energy Regulator (AER) is an *operator*. This includes the person who held the licence on the due date and successors to the licence. AER Well Licence No. 0030298 for the Site is in the name of COGI. The Panel finds that COGI is an *operator* under section 36(1)(c) on the 2018, 2019 and 2020 due dates.

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

[6] Under s. 36(1)(d) working interest participants are *operators*. The Panel finds that COGI is an *operator* under section 36(1)(d) on the 2018, 2019 and 2020 due dates for the following reasons:

- a. AER Well Summary Report dated November 29, 2022 for AER Well Licence No. 0030298 shows COGI is a working interest participant on the Site with one hundred percent (100%) interest.

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

[7] Walter Unruh and Marilyn Unruh are the Applicants and were the owners of the subject Site on the due dates. A copy of the original lease was obtained by Tribunal Administration along with the caveat which was registered on title on June 15, 1967. The compensation requested by the Applicants is not supported by the application and supporting documentation.

[8] The Applicants advise they purchased the Site on April 26, 2018 and were not provided any particulars of the lease. The Applicants declared in writing that the Compensation has not been paid and were unsure whether the well was producing. The Applicants signed the declaration that annual payments were \$365.00; however, they also submitted in their amended application that \$365.00 is not a reasonable lease payment, as that amount was from the original lease dated March 14, 1966. The Applicants submit the amount of the lease payment should be \$4,100.00, based on lease payments ordered in previous Surface Rights Board (now LPRT) hearings *Unruh v Canadian Oil & Gas International Inc*, 2018 ABSRB 602 and *Unruh v Canadian Oil & Gas International Inc*, 2018 ABSRB 604. In those hearings the lowest lease payment ordered was \$4,100.00. These decisions are for other well licenses, not related to the subject licence and as a result, they are of no assistance to the Panel.

[9] The Applicants also submit that they “were approved” for a payment of \$365.00 per annum by the Surface Rights Board; however, the only documentation that suggest that, is the declaration form and a schedule originally sent to the Operator and its insolvency trustee.

[10] The Applicants also submitted correspondence from DEL Canada Ltd. GP (“DEL”) that the last payment DEL was aware of was for \$1,700.00 paid to Richard and Josephine Church in March 2016.

[11] The Board finds that the obligation to support the requested payments due is an obligation of the Applicants. In this case, the Applicants submit the lowest lease amount ordered by the Surface Rights Board on other well license decisions between the Applicant’s and COGI is \$4,100.00. While that may be true, the Panel requires supporting documentation as to what the correct lease payment is, and not to adopt the lowest payment amount from other decision. The Applicant’s did not provide any information as to the correlation between the subject Site and those in the Surface Rights Board decisions.

[12] Regarding correspondence from DEL Canada Ltd. GP, the Panel notes the correct land description, the correct lease size (2.20 acres); however, the correspondence does not provide information as to the

owners who were identified as Richard and Josephine Church. The correspondence also fails to identify the relationship between DEL and the Site.

[13] The Panel is satisfied that Compensation is owed by the Operator to the Applicants for annual payments due under the Surface Lease; however, the Panel is unable to support the requested \$4,100.00 per annum. The only support for a payment is for a total of \$1,095.00. This amount is calculated as three (3) payments of \$365.00 due on date for the years 2018, 2019 and 2020 and is based on the original lease agreement. 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?*

[14] Under section 36(5) of the *Act*, the Tribunal can suspend and terminate an Operator's rights to access the Site when appropriate. There is no reason to delay this application by doing so here because COGI is under insolvency proceedings and the OneStop report dated December 1, 2020 notes the well is suspended. The Panel decides that the Tribunal will not suspend and terminate the Operator's rights to access the Site. However, if any Operator in the future attempts to access the Site but still has not paid the compensation, the Tribunal may reconsider its decision and issue an Order.

4. *Should the Tribunal direct the Minister to pay the Applicants 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?*

[15] The Applicants checked "yes" to whether any of the following are true: (1) the site is fenced; (2) there is equipment or structures on the site, such as a wellhead; (3) the site is still being visited by the workers (including for reclamation work). On March 25, 2021 the Applicants also submitted the following:

Losses - wellhead, road, dyke, gravel, weeds

- numerous contractors to pig, service downhole, and do reclamation 50 to 100 people in the last four years!

Work I have Done: Levelled road and dyke a bit to control weeds and farm a bit closer. Sprayed. Took care of fencing. Delt (sic) with trespassers. Worked with all contractors to pig, clean up lease, test, service well with service rig, show contractors well, provide history (as former operator) and keep an open line to reclamation.

Note: Summit wants to pig injection line from well to battery. There has been a large oil leak from this pipeline at the riser in battery. I've seen it but Orphan Well does nothing. This is ongoing. Met contractor Sunday again and made him aware of leak. They want to do work again. They aren't aware of service work done??? I gave him info. Frustrating.

[16] It is not clear that the comments all apply to the subject Site.

[17] In Devon Canada Corporation v Alberta (Surface Rights Board), 2003 ABQB 7, 337 AR 135 the Court of King'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.

[18] 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.

[19] In Praskach Farms Ltd v Lexin Resources Ltd, 2020 ABSRB 85 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 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.

This Panel adopts and applies the reasoning from Praskach.

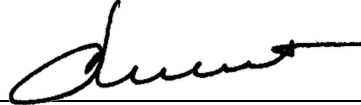
[20] There is no evidence to convince the Panel that payment of the full Compensation would result in overpayment to the Applicants, especially considering the low amount of the lease payment.

[21] The Tribunal directs the Minister to pay to the Applicants, jointly, a total amount of \$1,095.00 calculated as \$365.00 for each of the years 2018, 2019 and 2020.

[22] Should the Applicant's provide further information as to the relationship between DEL and their interest in the subject Site, and to confirm the Compensation should be greater than that awarded, the Applicant's can request a rehearing pursuant to s. 29 of the *Act*.

Dated at the Chestermere in the Province of Alberta this 13th day of July, 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Donald Roberts, Member