



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Parker v Ember Resources Inc., 2024 ABLPRT 905642

Date: 2024-10-24

File No: RCR2024.1715

Order No.: LPRT905642/2024

Municipality: Kneehill 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 1/4-2-31-24-W4M as described in Certificate of Title No. 981 034 597 (the “*Land*”), particularly the area granted for Alberta Energy Regulator Licence No. 0330187 (the “*Licence*”), collectively (the “*Site*”).

Between:

Ember Resources Inc.,

Operator,

- and -

Douglas A Parker
and
Elma Gayle Parker,

Applicants.

Before: Amit Chowdhury (“the Panel”)

Appearances by written submissions:

For the Applicants: Paul Vasseur

For the Operators:

Ember Resources Inc.: No written submission

**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 EIGHT THOUSAND THREE HUNDRED NINETY and 00/100 DOLLARS (\$8,390.00) (the “Compensation”), jointly, to the Applicants, Douglas A Parker and Elma Gayle Parker of Three Hills in the Province of Alberta for compensation that became due in the years 2023 and 2024.

DECISION AND REASONS

[1] This is a repeat application under s. 36(7) of the *Act*. The Minister previously paid the Applicants money that was due and unpaid by the Operators for this Site for the years 2020, 2021 and 2022. The Applicants seek recovery of unpaid compensation due under a Right-of-Entry Instrument in the amount of \$4,195.00 annually, for a total amount of \$10,475.00 under the Application for partial payment of 2020, 2021, and 2022 and full payment of 2023 and 2024. The Panel finds that the Tribunal directed the Minister on May 31, 2023, to pay the remaining compensation for the years 2020, 2021 and 2022. Therefore, the panel will only consider the application for compensation that became due in the years 2023 and 2024.

ISSUES

1. Is Ember Resources Inc. the Operator for the years that money is past due?
2. Is there money past due and unpaid by the Operator to the Applicants?
3. Should the Tribunal direct the Minister to pay the Applicants any of the money past due under section 36 of the *Act*?
4. Should the Tribunal award costs under section 39 of the *Act*?

DECISION

1. The Operator is Ember Resources Inc.
2. The written evidence proves compensation in the amount of \$8,390.00 is payable to the Applicants by the Operator.
3. Without further notice, the Tribunal directs the Minister to pay the Applicants Compensation in the amount of \$8,390.00 from the General Revenue Fund.
4. Costs in the amount of \$210.00 are payable by the Operator to the Applicants.

ANALYSIS

1. Is Ember Resources Inc. an Operator for the years that money is past due?

[2] The Tribunal previously determined the identity of the Operator, Ember Resources Inc., the validity of the Right of Entry Instrument, the rate of annual compensation, and the Applicants’ entitlement to the money. The Panel is satisfied by the evidence before it that these facts remain the same. The Panel finds that the Operator is Ember Resources Inc.

2. Is there money past due and unpaid by the Operator to the Applicants?

[3] This is a repeat s. 36 application. The Minister previously paid the Applicants for money due and not paid by the Operator. The Panel is satisfied that compensation is owed to the Applicants as two (2) payments of \$4,195.00 due for the years 2023 and 2024. 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, the Operator is liable for the Compensation due to the Applicants.

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

[4] *Bateman v Alberta (Surface Rights Board)*, 2023 ABKB 640 specified that under s. 36 of the *Act*, the Applicants need only prove there is a Right of Entry Instrument and there is default on the payment, therefore, the Panel directs the Minister to pay the full amount owing. The Panel determined there is a right of entry instrument and money is owing, accordingly the Minister is directed to pay the Applicants \$8,390.00 from the General Revenue Fund.

4. Should the Tribunal award costs under section 39 of the *Act*?

[5] The Applicant filed an invoice for costs in the sum of \$402.15. In the invoice, the Applicants' agent billed three hours with the hourly rate of \$125.00 per hour and \$8.00 for disbursement.

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

[7] In *Bear Canyon Farms Holdings Ltd v Apex Energy (Canada) Inc.*, 2018 ABSRB 64, ("*Bear Canyon*") the Tribunal held:

[17] A factor weighing towards a lower costs award is the low complexity of the proceedings. Board administration provides a reasonably short application form (2 pages) for section 36 applications and drafts the required statutory declaration for applicants. The vast majority of the information requested on the form, such as Applicant's name, land description, rate of annual compensation, and year(s) claimed for unpaid compensation are generally within the knowledge of applicants. The proceedings are entirely by writing and are usually unopposed by the Operator. In the majority of these kinds of straightforward section 36 applications, applicants are able to file all paperwork by themselves and do so correctly.

[18] Board administration performs all necessary searches, including searches for the responsible operator and its insolvency status; Board administration prepares a statutory declaration which the Applicant is requested to swear before commissioner of oaths; and the Board convenes a Panel to make a determination, generally without an in-person hearing."...

[20] ...in the opinion of the [p]anel, an experienced professional should usually be able to file a section 36 application within one hour or less.

[8] This Panel applies the reasoning in *Bear Canyon* and awards costs for two hours of professional assistance at a rate of \$100.00 per hour plus five percent GST \$10.00, for a total cost award of \$210.00. Given the low complexity of the proceeding, the Panel uses its discretion to reduce the hourly rate from \$125.00 per hour to \$100.00 per hour and reduces the time from three hours to two hours. The Panel shall

not grant \$8.00 costs in mileage as no receipt was provided.

[9] Costs in the amount of \$210.00 are payable by the Operator to the Applicants.

COSTS ORDER

[10] IT IS ORDERED that costs of TWO HUNDRED TEN and 00/100 DOLLARS (\$210.00) are payable by the Operator to the Applicants.

Dated at the City of Calgary in the Province of Alberta this 24 day of October, 2024.

LAND AND PROPERTY RIGHTS TRIBUNAL

 Digitally signed by
Chowdhury, Amit
Date: 2024.10.24
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Amit Chowdhury, Member