



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Huseby v Sequoia Resources Corp, 2023 ABLPRT 906769

Date: 2023-12-21

File No: RC2019.2772

Order No.: LPRT906769/2023

Municipality: Camrose 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:

SW ¼-1-47-17-W4M as described in Certificate of Title No.172 325 714 (the “Land”), particularly the area granted for Alberta Energy Regulator Licence No. 0250491 (the “Licence”), collectively (the “Site”).

Between:

Sequoia Resources Corp.,
Coastal Resources Limited,
Enercapita Energy Ltd.,
Federated Co-Operatives Limited,
C B Stateler,
Pine Cliff Energy Ltd.,
and
Richdale Resources Ltd.,

Operators,

- and -

Craig Huseby
and
Cara Huseby,

Applicants.

Before: Nolan Crouse (“the Panel”)

Appearances by written submissions:

For the Applicants: Craig Huseby and Cara Huseby

For the Operators:

Sequoia Resources Corp. Tory's LLP, Gio Bruni, for the Trustee PricewaterhouseCoopers Inc.

Pine Cliff Energy Ltd. Terry McNeill, Chief Operating Officer, for Pine Cliff Energy Ltd.

Coastal Resources Limited Made no submission but were notified of the hearing

Enercapita Energy Ltd. Made no submission but were notified of the hearing

Federated Co-Operatives Ltd. Made no submission but were notified of the hearing

C B Stateler Made no submission but were notified of the hearing

Richdale Resources Ltd. Made no submission but were 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 EIGHT THOUSAND and 00/100 DOLLARS (\$8,000.00) (the "Compensation") jointly to Craig Huseby and Cara Huseby of Bawlf in the Province of Alberta for compensation that became due in the years 2019 and 2020.

DECISION AND REASONS

[1] The Applicants filed an application dated December 18, 2019 under section 36 of the *Act* (the "Application") seeking recovery of unpaid compensation due under a surface lease agreement for the above Site (the "Right-of-Entry Instrument"). The Applicants claim \$4,000.00 under the Application for 2019.

[2] The Applicants filed an updated application dated September 20, 2020 seeking recovery of unpaid compensation due under the same the Right-of-Entry Instrument as above, claiming an additional \$4,000.00 under the updated Application. While the updated Application is ambiguous with the year claimed, it is understood that since the original Application is for 2019, this updated Application is for 2020. The amount claimed for 2019 and 2020 in total is \$8,000.00.

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 Operators to the Applicants under a Right-of-Entry Instrument?
3. Should the Tribunal direct the Minister to pay the Applicants any of the money past due under section 36(6) of the *Act*?
4. Should the Tribunal suspend and terminate the Operators' rights?

DECISION

1. For the purposes of section 36 of the *Act*, the Operators are Sequoia Resources Corp., Pine Cliff Energy Ltd., Coastal Resources Limited, Enercapita Energy Ltd., Federated Co-Operatives Limited, C B Stateler and Richdale Resources Ltd., jointly.
2. The written evidence proves compensation in the amount of \$8,000.00 is payable to the Applicants by the Operators jointly.
3. Without further notice, the Tribunal directs the Minister to pay the Applicants the Compensation in the amount of \$8,000.00 from the General Revenue Fund.
4. The decision to suspend or terminate the Operators' rights is reserved.

ANALYSIS

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

[3] The Tribunal gave notice pursuant to s. 36(4) to Sequoia Resources Corp., Pine Cliff Energy Ltd., Coastal Resources Limited, Enercapita Energy Ltd., Federated Co-Operatives Limited, C B Stateler and Richdale Resources Ltd., 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.

[4] 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

[5] 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 Sequoia Resources Corp. as of March 27, 2018, therefore, the Panel finds this party is an Operator under section 36(1)(c) for the years 2019 and 2020.

[6] The Bankruptcy and Insolvency Records search of the Government of Canada dated April 10, 2018 lists Sequoia Resources Corp. as bankrupt and the Vesting Order from the Court of Queen's (now King's) Bench of Alberta shows Sequoia Resources Corp. as insolvent as of December 13, 2019. Forden Energy Inc. is listed as the Purchaser of the assets of Sequoia Resources Corp. in the Vesting Order; however, the asset listing in the Vesting Order does not include the subject Site. This is verified both using the Sequoia Resources Corp. file number S17620 plus the land description of the Site. The Panel finds that Forden Energy Inc. is not an Operator for the Site for the years claimed.

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

[7] Under s. 36(1)(d) working interest participants and successors are Operators. The Panel finds that Sequoia Resources Corp., Pine Cliff Energy Ltd., Coastal Resources Limited, Enercapita Energy Ltd., Federated Co-Operatives Limited, C B Stateler, and Richdale Resources Ltd. are Operators under section 36(1)(d) for the years 2019 and 2020 because the AER Well Summary Report dated February 22, 2023 for the Licence shows each party was a working interest participant on the Site as of April 9, 2018 with WIP interests of 93.4972%, 1.1443%, 0.0561%, 4.1323%, 0.9634%, 0.1896%, 0.0171% and 0.1896% respectively.

Section 36(1)(e) – Holder of a surface lease or right of entry order

[8] Under section 36(1)(e) the holder of the surface lease or Right-of-Entry Instrument for the Site and its successors, is an operator. The Panel finds Sequoia Resources Corp. is an Operator for the purpose of section 36(1)(e) on the due dates in 2019 and 2020 because it is the Operator named on the Assignment of the Right-of-Entry Instrument for the Site dated November 22, 2017, a copy of which is provided by the Applicants.

Section 36(1)(a) – Activities on the Specified Land by Approval or Registration Holder

[9] Pine Cliff Energy Ltd. submits that it shall not be held responsible for non-payment as they submit they had no involvement with operations and access rights. Past Tribunal decisions with multiple operators found the operators to be concurrently responsible to pay compensation. *Dobish v Terra Energy Corp*, 2019 ABSRB 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. This Panel finds that to be the case here.

[10] Pine Cliff Energy Ltd. additionally submits that they be removed from the proceedings because the Tribunal exceeded its mandate and undertook investigations beyond what is identified in the Application.

In *Canadian Natural Resources Limited v Robson*, 2022 ABLPRT 900354

Section 8(3)(b) of the *Act* gives the Tribunal powers of entry and inspection. Subsection 3(c) gives the Tribunal “the rights, powers and immunities conferred on a commissioner under the *Public Inquiries Act*. Section 4 of the *Public Inquiries Act* provides as follows:

The commissioner or commissioners have the power of summoning any persons as witnesses and of requiring them to give evidence on oath, orally or in writing, and to produce any documents, papers and things that the commissioner or commissioners consider to be required for the full investigation of the matters into which the commissioner or commissioners are appointed to inquire.”

CNRL suggests that there is no explicit authority to “search for and include additional operators to those named in the Applications.” However, the powers that are given to the Tribunal under the *Public Inquiries Act* to order the production of documents are very broad, which would include documentation from the Alberta Energy Regulator (AER) which is the agency that governs the oil and gas industry. It is the AER that decides who is a working interest participant, not the Tribunal.

The *Surface Rights Act* also gives the Tribunal specific power to obtain that evidence from any Government department without cost:

37(1) Every Registrar of Land Titles and every department of the Government shall furnish without charge to the Tribunal any certificates and certified copies of documents that the Tribunal requests in writing.

37(2) The Tribunal or a person authorized in writing by the Tribunal may search at any time in the public records of a Land Titles office without charge.

The AER is a department of the Government of Alberta.

This Panel adopts the reasoning of *Canadian Natural Resources Limited v Robson*, 2022 ABLPRT 900354 and therefore applies the same reasoning here.

[11] Pine Cliff Energy Ltd. additionally submits that it shall not be responsible for full payment and any order of payment should be commensurate with its 1.44298% working interest.

Section 36(4) of the *Act* states:

On receiving the evidence, if the Tribunal considers that it satisfactorily proves the non-payment, the Tribunal shall send a written notice to the operator demanding full payment.

There is no discretion in this regard; the demand is for full payment in this case.

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

[12] The Certificate of Title confirms the Applicants are the owners, therefore, the Panel finds the Applicants are entitled to receive the money. The Applicants provided evidence of a Right-of-Entry Instrument and the Compensation is supported by the Application and supporting documentation. The Applicants declared in writing that the Compensation has not been paid for the years claimed.

[13] 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 2019 and 2020 for a total amount owing of \$8,000.00. The Site is not reclaimed, and the Right-of-Entry Instrument remains in effect. The Panel finds that at the time the Compensation became due, the Operators are jointly 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(6) of the *Act*?

[14] *Bateman v Alberta (Surface Rights Board)*, 2023 ABKB 640 specified that under s. 36 of the *Act*, the Applicant 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 \$8,000.00, jointly, from the General Revenue Fund.

4. Should the Tribunal suspend and terminate the Operators' rights?

[15] Under section 36(5) of the *Act*, the Tribunal can suspend and terminate an operator's rights to access the Site when appropriate. This Panel reserves its decision to suspend and terminate at this time to avoid delay in payment to the Applicants, however, if any of the Operators attempt to access the Site but still does not pay the Compensation, the Tribunal may issue a suspension/termination order.

Dated at the City of St. Albert in the Province of Alberta this 21st day of December, 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Nolan Crouse, Member