



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Southoff v Cleo Energy Corp, 2025 ABLPRT 904407

Date: 2025-07-21

File No: RC2024.1369

Order No: LPRT904407/2025

Municipality: Municipal District of Provost No. 52

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:

SE 22-40-8-W4M as described in Certificate of Title No. 232 146 252 (the “Land”), particularly the areas granted for an access road and padsite for the 10/02-22-040-08W4M/0, 12/02-22-040-08W4M/0, 11/02-22-040-08W4M/0, 06/02-22-040-08W4/0, 11/01-22-040-08W4M/0, and 12/01-22-040-08W4M/0 wells, Alberta Energy Regulator Licence Nos. 0169800, 0169785, 0169801, 0155981, 0169798, and 0169799 (the “Licences”), collectively (the “Sites”).

Between:

Cleo Energy Corp.,

Operator,

- and -

Troy William Southoff,

Applicant,

- and –

Obsidian Energy Ltd.,

Other Party.

Before: Tamara M. Bews (“the Panel”)

Appearances by written submissions:

For the Applicant: Troy Southoff

For the Operator:

Cleo Energy Corp. None

For the Other Party:

Obsidian Energy Ltd. Brandie Simpson, Surface Land Analyst

DIRECTION TO PAY PURSUANT TO SECTION 36 OF THE ACT

The Tribunal directs the Minister to pay out of the General Revenue Fund the total sum of SIX THOUSAND EIGHT HUNDRED SEVENTY-TWO and 00/100 DOLLARS (\$6,872.00) to Troy William Southoff in the Province of comprised of compensation that became due in the year: 2024 (the “Compensation”).

DECISION AND REASONS

[1] On August 15, 2024, the Applicant applied under section 36 of the *Act* to recover unpaid compensation due under a surface lease dated April 13, 1992 for the Sites. The Applicant claims \$6,872.00 annually, for a total amount of \$6,872.00 for the year: 2024.

[2] During routine searches of publicly available records maintained by the Alberta Energy Regulator (AER), Alberta Corporate Registry, and Alberta Land Titles, the Tribunal found more than one party that might be an “operator” of the Sites under section 36.

[3] By letters dated February 4, 2025, the Tribunal issued a Notice and Demand for Payment to Cleo Energy Corp. (Cleo) and Obsidian Energy Ltd. (Obsidian). The LPRT received responses from Obsidian. No response was received from Cleo.

FACTS

[4] Based on the searches conducted by the Tribunal administration, the Panel finds the following facts and relies on them for this decision. The AER has licensed five well sites located on the Land. Cleo holds five AER Licences (referred to in this decision as “Site 0155981”, “Site 0169785”, “Site 0169798”, “Site 0169800”, and “Site 0169801”). Obsidian holds one AER Licence (referred to in this decision as “Site 0169799”). Information for the Sites is summarized in the table below.

Table 1: AER Well Sites on the Land

	Site 0169785	Site 0169798	Site 0169799	Site 0155981	Site 0169800	Site 0169801
Licence No.	0169785	0169798	0169799	0155981	0169800	0169801
Licence Issue Date	August 23, 1994	August 23, 1994	August 23, 1994	January 26, 1993	August 23, 1994	August 23, 1994

Current Licence Holder	Cleo	Cleo	Obsidian	Cleo	Cleo	Cleo
Current Working Interest Participants	Cleo (100%)	Cleo (100%)	Cleo (100%)	Cleo (100%)	Cleo (100%)	Cleo (100%)
Well Identifier	12/02-22-040-08W4M/0	11/01-22-040-08W4M/0	12/01-22-040-08W4M/0	06/02-22-040-08W4/0	10/02-22-040-08W4M/0	11/02-22-040-08W4M/0
Well Name	CLEO ENERGY PROVOST 2-22-40-8	CLEO ENERGY PROVOST 1-22-40-	PENN WEST PROVOST 1-22-40-8	CLEO ENERGY PROVOST 2-22-40-8	CLEO ENERGY PROVOST 2-22-40-8	CLEO ENERGY PROVOST 2-22-40-8
Current Licence Status (Date)	Crude Oil - Abandoned (December 1, 2020)	Crude Oil - Abandoned (March 25, 2021)	Rec Exempt (December 28, 2010)	Crude Oil - Abandoned (March 25, 2021)	Crude Oil - Abandoned (December 1, 2020)	Suspended – Crude Oil (April 25, 2007)

[5] The Applicant did not provide a copy of the April 13, 1992 surface lease for the Sites. The Applicant provided a document entitled “Page 4 2020-03-08” which included a table containing the following references for the Sites.

SE¼-22-40-4W4M (LSD 2)	13-Apr-92	Padsite and Access Road	6/02-22-40-8W4M/00 10/02-22-040-8W4M/00 12/02-22-040-8W4M/00 11/02-22-040-8W4M/00 11/01-22-040-8W4M/00 12/01-22-040-8W4M/00	LOU = \$1752.00 (4.38 ac) Adverse = \$2500.00 Additional wells (x4) \$500 = \$2000.00 Total = \$6872.00	13-Apr-17	2017, 2018, 2019 Reduction	Original Surface Lease dated 13-April-1992 Amended Surface Lease dated 22-August-1994
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(Collectively, the March 8, 2020 Application Supporting Document).

[6] The current certificate of title confirms that the Land is subject to three caveats regarding a surface lease under 20 acres which were registered on April 24, 1992 by Cabre Exploration Ltd. (registration nos. 922108518, 922108519, and 922108521). These caveats state that Cabre Exploration Ltd. claimed an estate or interest in the land described as the E 22-40-8-W4M by virtue of an Alberta Surface Lease dated April 13, 1992 for a wellsite and access road for the Cabre et al Provost 1A-22BQ-40-8 well, 1B-22BQ-40-8 well, 2A-22BQ-40-8 well, containing 3.56 acres, more or less, between Edward Ronald Southoff,

Evelyn Marjorie Southoff, and Ronald Chester Southoff, as Lessor, and Cabre Exploration Ltd. (the April 13, 1992 Surface Lease Caveats).

[7] Also, the current certificate of title confirms that Cleo now holds the April 13, 1992 Surface Lease Caveats, pursuant to transfer of caveats.

[8] Certificate of Title No. 232 146 252 shows that the Applicant has owned the Land since May 9, 2023.

ISSUES

1. Is there sufficient evidence of the surface lease for the Sites?
2. Who is an Operator for the purpose of section 36 of the *Act*?
3. Is there money past due and unpaid by the Operator to the Applicant under the Surface Lease?
4. Should the Tribunal direct the Minister to pay the Applicant any of the money past due under section 36 of the *Act*?
5. Should the Tribunal suspend and terminate the Operator's rights?

DECISION

1. The Applicant has provided sufficient evidence to support his application that there is a surface lease for the Sites. The Panel finds that the Sites are subject to the April 13, 1992 Surface Lease, with an annual compensation rate of \$6,872.00.
2. For the purposes of section 36 of the *Act*, the Operator is Cleo Energy Corp.
3. The written evidence proves compensation in the amount of \$6,872.00 is payable to the Applicant by the Operator.
4. Without further notice, the Tribunal directs the Minister to pay the Applicant Compensation in the amount of \$6,872.00 from the General Revenue Fund.
5. The decision to suspend or terminate the Operator's rights is reserved.

ANALYSIS

1. Is there sufficient evidence of the surface lease for the Sites?

[9] In his application, the Applicant suggests that the original agreement for the Land is the April 13, 1992 Surface Lease. As noted above, the Applicant did not provide a copy of the April 13, 1992 Surface Lease.

[10] In *Cardinal Petroleum Company v Hutterian Brethren Church of Hillridge*, 2011 CanLII 95496 (ABSRB), the Tribunal found, in the absence of a copy of a surface lease, the Tribunal could rely on other evidence to conclude a surface lease was entered into between the parties. This decision was considered and followed in *Canadian Natural Resources Limited v Brezinski*, 2021 ABSRB 233 (CanLII) and

Richardson v Tudor Corporation Ltd et al, 2021 ABSRB 1190. The Panel relies on and applies the reasoning from these decisions.

[11] Here, the Panel finds that the March 8, 2020 Application Supporting Document (which shows the April 13, 1992 Surface Lease pertains to the Sites and that the Sites' total annual compensation rate was reduced to \$6,872.00 on April 13, 2017), the April 13, 1992 Surface Lease Caveats, the August 15, 2024 written declaration of the Applicant (who states, among other things, that the agreement is for a roadway and well pad for the Sites and the total annual compensation rate is \$6,872.00), and the AER Searches for the Licences provide evidence of a surface lease.

[12] Therefore, the Panel concludes that the Sites are subject to the April 13, 1992 Surface Lease, with an annual compensation rate of \$6,872.00.

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

[13] Section 36(1) of the *Act* defines "operator" as including any person who at the time of non-payment under a surface lease, right of entry order or compensation order:

- (a) was an approval or registration holder who carried on an activity on or in respect of specified land pursuant to an approval or registration,
- (b) carried on an activity on or in respect of specified land other than pursuant to an approval or registration,
- (c) was the holder of a licence, approval or permit issued by the Alberta Energy Regulator...
- (d) was a working interest participant in a well or other energy development on, in or under the specified land ...
- (e) was the holder of a surface lease or right of entry order...

and includes a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in clause (a), (b), (c), (d) or (e) who was so liable and any person acting as principal or agent of any person referred to in or after clauses (a) to (e).

[14] The Panel will now consider the evidence that shows which persons held the AER licences, approvals, or permits; were a working interest participant of the wells on the Sites; or were the holder of the surface lease, and their successors/assignees at the time of non-payment.

Obsidian

[15] In responses to the Tribunal's Notice and Demand for Payment, Obsidian submitted that Obsidian no longer has an interest in the Sites, effective June 2, 2016, following the sale of the Sites by Obsidian's predecessor, Penn West Petroleum Ltd., to Cleo; and that Cleo is the owner of the Sites.

[16] Obsidian acknowledged that Site 0169799 remains in Obsidian's name due to it having a "Rec Exempt" status. Obsidian submitted that the AER did not allow for the transfer of this well type in 2016 and as such, Penn West Petroleum Ltd. entered into a Non-Transferable Asset Trust and Indemnity Agreement dated July 28, 2016 confirming this well was included in the sale to Cleo.

[17] In support, Obsidian included the following documents:

- a. A partial copy of an Agreement of Purchase and Sale dated June 2, 2016, between Penn West Petroleum Ltd. and Penn West Petroleum (the Vendor), and Cleo (the Purchaser), which shows that the Vendor sold their entire interest in the wells associated with the Sites to the Purchaser.
- b. An executed copy of a Non-Transferable Asset Trust and Indemnity Agreement dated July 28, 2016 between Cleo (Beneficiary) and Penn West Petroleum Ltd. (Trustee), which shows Site 0169799 (a surface reclaimed exempt well) was included in the above referenced sale to Cleo. In this agreement, the parties acknowledged and agreed that Site 0169799 (as a reclamation-exempt well) could not be transferred, and that the Beneficiary shall be liable and indemnify the Trustee "... from all actions and demands, ... arising as a direct result of the Trustee holding ..." Site 0169799.

[18] After carefully reviewing Obsidian's submissions and the supporting documents provided, the Panel is satisfied that Obsidian provided sufficient evidence to rebut the evidence shown in the AER's records concerning Site 0169799, and that Site 0169799 was sold to Cleo in 2016.

[19] Therefore, the Panel finds that Obsidian is not an operator under section 36(1)(c) of the *Act*. Accordingly, Obsidian should be removed as a party from the section 36 proceeding, and the application is dismissed as against them.

Cleo

[20] As noted above, the Tribunal did not receive any submission from Cleo.

[21] In the absence of any evidence to the contrary, the Panel finds that the Tribunal is entitled to rely on the records of the AER that makes the decision regarding the well, the licensee, and the working interest participants, and whose directives outline the responsibilities of the licence holder to ensure that the information that the AER has on file remains accurate; see *Canstone Energy Ltd v Anderson*, 2021 ABLPRT 737 (CanLII), at paragraph 45.

[22] Therefore, the Panel finds that Cleo is the operator of the Sites under section 36(1) (c) and (d) of the *Act* (see Facts section above).

[23] In summary, the Panel finds that the Operator is Cleo for the Sites.

3. Is there money past due and unpaid by the Operator to the Applicant under the April 13, 1992 Surface Lease?

[24] As noted above, the current certificate of title confirms that the Applicant has owned the Land since May 9, 2023. Therefore, the Panel finds that the Applicant is entitled to receive the money.

[25] In support of his application, the Applicant provided a copy of March 8, 2020 Application Supporting Document. This document supports the annual compensation rate of \$6,872.00 claimed for the Sites. Also, the Applicant declared in writing that the Compensation has not been paid for the year claimed.

[26] Given that AER records show that Site 0155981, Site 0169785, Site 0169798, Site 0169800, and Site 0169801 are not reclaimed, the Panel finds that the April 13, 1992 Surface Lease remains in effect.

[27] The Panel is satisfied that compensation is owed to the Applicant for annual payment due under the April 13, 1992 Surface Lease. This amount is calculated as one payment of \$6,872.00 for a total amount of owing of \$6,872.00. The Panel finds that at the time the Compensation became due, the Operator is liable for the Compensation due to the Applicant.

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

[28] *Bateman v Alberta (Surface Rights Board)*, 2023 ABKB 640 specified that under section 36 of the *Act*, the Applicant need only prove there is a surface lease and there is a default on the payment. Therefore, the Panel directs the Minister to pay the full amount owing.

[29] Here, the Panel determined there is a surface lease and money is owed. Accordingly, the Minister is directed to pay the Applicant \$6,872.00. from the General Revenue Fund.

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

[30] 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 to avoid delay in payment to the Applicant. However, if the Operator attempts to access the Sites but does not pay compensation, the Tribunal may issue a suspension/termination order.

Dated at the City of Calgary in the Province of Alberta this 21st day of July, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

Tamara M. Bews, Member