



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: *Bertschy v TexCal Energy Canada Inc, 2025 ABLPRT 905271*

Date: 2025-08-15

File No: RC2024.1040

Order No: LPRT905271/2025

Municipality: Vulcan 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 18-20-19-W4M as described in Certificate of Title No. 151 056 574 (the “Land”), particularly the area granted for a well site in L.S. 10 by Alberta Energy Regulator Licence No. 0201936 (the “Licence”), collectively (the “Site”).

Between:

TexCal Energy Canada Inc.
and
Razor Energy Corp.,

Operators,

- and -

Stephen E Bertschy
and
Sandra Leanne Bertschy,

Applicants,

- and -

Grant Thornton Limited,

Receiver.

Appearances by written submissions:

For the Applicants: Stephen and Sandra Bertschy

For the Operators: TexCal Energy Canada Inc.
Geoff Thiessen, Manager, Land and Joint Venture

**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 FIVE THOUSAND EIGHT HUNDRED and 00/100 DOLLARS (\$5,800.00) jointly to Stephen E. Bertschy and Sandra Leanne Bertschy of Milo in the Province of Alberta comprised of compensation that became due in the year 2023 (the "Compensation").

[1] On August 9, 2024 the Applicants filed an application under section 36 of the *Act* seeking recovery of unpaid compensation due under a surface lease agreement dated May 13, 1997. The rate of annual compensation is \$5,800.00 and the claim is for a missed payment in 2023.

The Applicants provided a copy of the original surface lease with survey plan attached, and an EFT (Electronic Transfer of Funds) from Razor Energy Corp. (RAZOR) for seven sites including the matter that is before this Panel today. For this site, a payment of \$5,800.00 was made by the Operator.

[2] According to records provided by the Alberta Energy Regulator (AER) dated February 28, 2025, the Licensee at the time was Razor Energy Corp. (RAZOR). RAZOR was also the 100% working interest participant. Records obtained from the AER dated August 7, 2025 now name TexCal Energy Canada Inc. (TEXCAL) as the current Licensee. RAZOR remains the 100% working interest participant.

According to Corporate Registry, RAZOR and TEXCAL have amalgamated and continue under the TEXCAL name.

[3] Notices and Demands for Payment were issued to RAZOR and TEXCAL on April 3, 2025 and May 5, 2025 respectively, requiring a response within 30 days.

The notice includes this direction:

If you have acquired the site under an Approval and Vesting Order or have sold your interest, include a complete copy of the document supporting your position.

[4] On April 24, 2025 TEXCAL responded to this and several other section 36 applications. The entire text is reproduced below:

We are in receipt of your notice referenced above regarding non-payment of annual lease rentals on the Surface Lease agreements listed and the period outlined for the claims. TexCal Energy Canada Inc., as Operator, acquired all the shares of Razor Energy Corp. through the Court approved transaction effective **December 11, 2024** (per Court of King's Bench of Alberta Approval and Reverse

Vesting Order 2401-02680 filed December 6, 2024), which was after the rental period set out in your notice.

Any rental amounts for the period following the above noted effective date shall be paid as the surface lease agreement outlines.

Please refer to Clause 19, "Vesting of Property", of the attached Court of Queen's Bench of Alberta Approval and Reverse Vesting Order, Court File NO. 2401-02680 filed December 6, 2024. It provides that Texcal Energy Canada Inc. is responsible only for the Assumed Liabilities, defined therein as "all Liabilities arising from the possession, ownership or use of the Retained Assets following Closing (including for greater certainty any municipal taxes, property taxes, surface use payments, bonuses, fees, royalties, overring royalties, land use fees, license fees, easement payments and similar obligations and Liabilities that accrue on or after the Closing Date); Accordingly TexCal Energy Canada Inc. as successor in interest to Razor Energy Corp., is not responsible for surface lease rentals prior to the effective date of the acquisition and has purchased these assets free and clear from any and all charges.

If you have any questions or concerns, please feel free to contact me...

Kindly acknowledge receipt of this letter and your concurrence with the above, by signing and returning a copy of this letter to the undersigned.

[Emphasis in the original]

While the letter suggested that a copy of the Order was attached, it was not.

[6] On August 7, 2025, in connection with another file involving RAZOR, the Receiver provided the Tribunal with a copy of a Stay of Proceedings Order granted July 7, 2025 between Texcal Energy Incorporated and TEXCAL. The Receiver advised as follows:

Pursuant to sections 8 and 9 of the Receivership Order:

- a) no proceedings against or in respect of TexCal or its property (the "**Property**") shall be commenced or continued except with the written consent of the Receiver or with leave of the Court; and
- b) all rights and remedies of any Person against or in respect of TexCal or the Receiver or affecting the Property are stayed and suspended and shall not be commenced, proceeded with or continued except with leave of the Court;

(the "**Stay**").

Please be advised that in light of the Stay, no further steps shall be taken in relation to the Demand without the consent of the Receiver or leave of the Court. In particular, as the Demand post-dates the date of the Receivership Order, any

obligation on the part of TexCal or the Receiver to make any payments under the Demand is stayed.

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 Operators are TexCal Energy Canada Inc. and Razor Energy Corp.
2. The written evidence proves compensation in the amount of \$5,800.00 is payable to the Applicants by the Operators.
3. Without further notice, the Tribunal directs the Minister to pay the Applicant Compensation in the amount of \$5,800.00 from the General Revenue Fund.
4. The Tribunal will not issue orders of termination and suspension in light of the Stay of Proceedings.

ANALYSIS

Who is an Operator for the purpose of section 36 of the Act?

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

Status of TEXCAL as an Operator

[8] Under section 36(1)(c), the holder of a licence issued by the AER and its successors are Operators. In its submissions dated April 24, 2025, TEXCAL admits that it is now the Licensee. Therefore, the Panel finds this party was an Operator under section 36(1)(c) for 2023 as a successor Licensee.

This is confirmed by the AER records dated August 7, 2025 which name TEXCAL as the current Licensee.

Status of RAZOR as an Operator

[9] As referenced above, under section 36(1)(c), the holder of a licence issued by the AER and its successors are Operators. The License for the Site was in the name of RAZOR as of October 10, 2019. Therefore, the Panel finds this party was an Operator under section 36(1)(c) for 2023.

Under s. 36(1)(d), working interest participants and their successors are Operators. The Panel finds that RAZOR was an Operator under section 36(1)(d) for 2023 because according to the AER Well Summary Report dated February 28, 2025 and confirmed again on August 7, 2025, it is the 100% working interest participant as of June 12, 2020.

Under section 36(1)(e), the holder of the surface lease or right of entry order for the Site and its successors are Operators. The Panel finds RAZOR was an Operator for the purpose of section 36(1)(e) on the due dates in 2023 because it was the Operator who made payment in 2022.

Notice

[10] The Tribunal gave notice pursuant to s. 36(4) to TEXCAL and RAZOR. The Panel is satisfied that the demand for payment and notices meet the requirements of the *Act* pursuant to s. 36(4) and the Interpretation of Section 36(4) *Surface Rights Act* Guideline, ABSRB 2020-1.

Submissions from TEXCAL

[11] TEXCAL suggests that because it acquired all the shares of Razor through the Court-approved transaction effective December 11, 2024, which was after the due date in 2024, it is not responsible for surface lease rentals prior to the effective date of the acquisition, having purchased the assets free and clear from any charges.

There are a number of fundamental flaws in the position that TEXCAL now takes:

Status as an Operator is not based on ownership of the asset

[12] The liability of TEXCAL as an Operator is based on its status as Licensee, which it has admitted. TEXCAL does not challenge its status as an Operator. Instead, TEXCAL explains: "TexCal Energy Canada Inc., as Operator, acquired all the shares of Razor Energy Corp."

Nowhere in section 36 is "Operator" defined based on who owns the asset.

TEXCAL and RAZOR are the same legal entity

[13] TEXCAL is the amalgamation successor to RAZOR. With amalgamation, the former corporations do not disappear, and no new corporation is created. (See R v. Black & Decker Manufacturing Co. [1975] 1 S.C.R. 411) Whether or not unprofitable assets are

transferred to a third corporation does not change the relationship between RAZOR and TEXCAL. They are one in law.

Under section 181 of the *Business Corporations Act*, amalgamation predecessors continue under the new name of the amalgamated corporation.

Amalgamation

181 Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation.

Perhaps the most eloquent explanation of the process of amalgamation comes from Stanward Corporation v. Denison Mines Ltd. as quoted in Black & Decker:

What we have here is an amalgamated company into which, simultaneously, two amalgamating companies have fused along with their assets and liabilities. Under this fusion, and by virtue of its statutory implementation, it may be said, broadly, that the amalgamated company acquired the assets and assumed the liabilities of the two component companies...

Returning to the view that amalgamated companies do not form a new company but continue to subsist as one, the conclusion that there is no acquisition, is, if anything, more apparent. The language of s. 96 is in my opinion unambiguous in providing that the two amalgamating companies shall continue as one company. While it may be difficult to comprehend the exact metamorphosis which takes place, it is within the Legislature's competence to provide that what were hereto two shall continue as one.

Amalgamation does not result in the "death" of the original companies.

Joint Liability

[14] The liability as between Operators is joint. Even if it were the case that TEXCAL is not responsible for RAZOR's liabilities, as the current Licensee, it is responsible to make full payment.

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.

No Evidence of the Order and Agreement for Sale

[15] If TEXCAL is relying upon an Order of the Court to prove that the assets that it acquired were “free and clear” of previous liabilities, it must prove that is the case.

The decision of Justice Jones in Canadian Natural Resources Limited v. Trident Exploration (Alberta) Corp et al. v Westdrum Energy Ltd., Docket 2301 08556, on January 11, 2024 represents a fundamental shift in the law. Prior to Justice Jones’s decision, Operators who had purchased interests under the terms of a Vesting Order had argued that they acquired those interests “free and clear” of pre-existing debts, quoting a particular clause in the Order. However, Justice Jones was clear: a proper interpretation of the Vesting Order requires an examination of the Sales Agreement:

All parties before me further agree that a consideration of the provisions of the [Purchase and Sales Agreement], in conjunction with those of the [Approval and Vesting Order], was necessary to the determination of Westdrum’s liability, if any, for surface lease payment as successor to or assignee of Trident and as a party to the PSA. They also agree that the standard of review in respect of LPRT’s decision is reasonableness. (Para 2)

On January 11, 2024, the formal Order was issued:

The Application is granted, and the Decision is remitted to the Tribunal for reconsideration, taking into account the AVO and the PSA (as those terms are defined in the Endorsement.)

[16] As a result of Justice Jones’s direction, the Notice and Demand for payment includes this requirement:

If you have acquired the site under an Approval and Vesting Order or have sold your interest, include a complete copy of the document supporting your position.

The submissions of April 24, 2025 did not include the required documents. Rule 7 of the *Surface Rights Rules* deals with non-compliance with a direction of the Tribunal.

[17] Without evidence, there is no foundation for the position that TEXCAL is promoting.

Conclusion

[18] There is nothing before this Panel that would challenge TEXCAL’s status as an Operator under section 36.

Is there money past due and unpaid by the Operators to the Applicant under a Right of Entry Instrument?

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

The Panel finds that there is a Right of Entry instrument and a default in payment, therefore, failing full payment, the Tribunal may direct the Minister to pay to the Applicants the Compensation of \$5,800.00 due for the year 2023.

Should the Tribunal direct the Minister to pay the Applicant any of the money past due under section 36 of the Act?

[20] In Bateman v Alberta (Surface Rights Board), 2023 ABKB 640, Justice Carruthers specified that under s. 36 of the *Act*, the Applicant need only prove there is a Right of Entry Instrument and a default on the payment. Absent extraordinary circumstances, the Tribunal should direct the Minister to pay the full amount owing.

In this case, the status of the License is “Suspended”, and the well is therefore capable of being pressed into service. Even on a pre-Bateman analysis, full payment is justified. Therefore, failing full payment, the Tribunal may direct the Minister to pay to the Applicant the Compensation of \$5,800.00 from the General Revenue Fund.

Should the Tribunal suspend and terminate the Operator’s rights?

[21] The Tribunal can suspend and terminate an Operator’s rights to access the Site when appropriate. This is a suspended well, and the current Licensee TEXCAL is an active company. Operators should not be allowed to profit without making payment to the surface owner.

However, Counsel for the Receiver for TEXCAL has advised the Tribunal that there is a stay of proceedings in place concerning TEXCAL as of June 30, 2025. While that correspondence was not directed to this particular file it is information that the Tribunal now has before it.

The relevance of a stay of proceedings has been considered in a number of earlier decisions of the Tribunal. The stay of proceedings does not preclude the issuance of a demand under section 36(3) or a direction to pay under section 36(6). However, it does preclude enforcement activity, which would include orders of suspension and termination and the ability of the Minister to proceed under section 36(9). (See Ember Resources Inc. v. Miller 2021 ABLPRT which dealt with a stay under the *Bankruptcy Act* and Flach v. Long Run Exploration Ltd. 2025 ABLPRT 136 which dealt with a stay under the *Companies’ Creditors Arrangement Act*.)

As this Panel concluded in Zargon Oil & Gas Ltd. v. Brewin, 2023 ABLPRT 2 (CanLII), the whole point of section 36 is to pay the landowner when the operator fails to do so.

(Devon Canada Corp. v. Surface Rights Board, 2003 ABQB 7 (CanLII), Provident Energy Ltd. v. Alberta (Surface Rights Board), 2004 ABQB 650.)

The reason for failure to pay is irrelevant. An operator may fail to pay because it cannot, or it may refuse to pay. Where an operator is insolvent, the Receiver may choose to ignore the demand, but that does not affect the ability of the Tribunal to make that demand.

An application under section 36 is not a lawsuit and it does not change the underlying contractual obligations between the parties. If the statutory pre-requisites are met, then payment to the Landowner is made through General Revenue.

Interpreting the provisions in section 36 in any other way would undermine the legislative intent behind section 36 that was deliberately structured to ensure that landowners are paid when operators fail to do so.

However, in light of the stay of proceedings, no orders of suspension or termination will be issued.

Dated at the City of Edmonton in the Province of Alberta this 15th day of August, 2025.

LAND AND PROPERTY RIGHTS TRIBUNAL

Susan McRory, Chair