



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Clearvalley Farms Ltd. v Ember Resources Inc., 2023 ABLPRT 900363

Date: 2023-07-31

File No.: RC2021.1397

Decision No.: LPRT2023/SR900363

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:
NW ¼ 6-34-24-W4M as described for the area (the “Site”) granted for Alberta Energy Regulator Licence No. 0411204 (the “Licence”).

Between:

Ember Resources Inc.,

Operator,

- and -

Clearvalley Farms Ltd.,

Applicant.

Before: Lana Yakimchuk, Chair and Nolan Crouse (the “Panel”)

Appearances by written submissions:

For the Applicant: Land Agent, Paul Vasseur

For the Operator: Tara Rout, Owen Law

DECISION AND REASONS

SUMMARY

[1] A thorough review of the file reveals errors in the original Application with the result that the Application is invalid and therefore dismissed.

BACKGROUND

[2] The Applicant filed an application on May 10, 2021 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”) dated August 2, 2005. The application form itself only refers to May of 2021 and no specific day is provided. The Applicant claims \$2,632.00 under the Application for 2020. The Applicant submits that \$2,568.00 has been paid toward the annual full compensation amount due of \$5,200.00, leaving \$2,632.00 unpaid.

[3] The Applicant included within its Application a copy of a letter from EMBER who provided a proposal to the Applicant to lower the rental rate from \$5,200.00 to \$2,568.00, a difference of \$2,632.00; however, the land description on the Application form and the land description on the letter from EMBER do not reference the same location.

[4] On May 10, 2021, the Applicant submitted a Costs Invoice in the amount of \$393.75 inclusive of GST for three (3) applications, including this Application. This amounts to \$131.25 per application inclusive of GST.

[5] On August 9, 2021, a Notice and Demand was sent to EMBER.

[6] On August 26, 2021 EMBER provided a submission that included a number of issues raised and are summarized as follows, in the order that they were provided by EMBER.

Request for Reconsideration

EMBER requests that this matter be reconsidered, claiming errors of jurisdiction, an error in fact and that the Demand issued was decided based on an unfair process.

Errors of Jurisdiction

EMBER submits that the Tribunal made an error by not providing notice of the Application before deciding to issue a Demand.

Unfair Process

EMBER submits that by not giving notice to EMBER of the Application, the decision to issue a Demand was based on an unfair process because EMBER did not have the opportunity to know the case against it.

Error of Fact

EMBER submits that the land description in the Demand is incorrect and therefore requests the Application be rejected.

Adverse Effect

EMBER submits that the adverse affect of the Notice on the Operator and the public is significant enough such that the Operator has a right to be heard prior to a decision being reached.

Landowner Breached the Rules

EMBER submits that there is an error in the land description causing the Application to be incomplete and inaccurate and submits the Applicant be required to bear the resultant cost incurred by EMBER to address the breach.

Further Submissions

EMBER seeks the opportunity to make further submissions regarding the exercise of the Tribunal's discretion under section 36(5) and section 36(6) of the *Act*.

Suspending Rights of Access

EMBER submits because the Tribunal's authority to suspend the Operator's rights is discretionary, this should be considered in light of the impact on the Operator and the public.

Directing the Minister to Pay

EMBER suggests that in making a decision under section 36(6), the Tribunal must "assess what proper compensation would be under the lease ..." and that the Tribunal's function under this section is "not to enforce payment". Again, EMBER suggests that there is a public interest component to the decision.

Duty to Mitigate

EMBER suggests that there is duty upon the landowner to mitigate their losses to the extent possible and are required to demonstrate same.

Relief Requested

EMBER submits that the Tribunal rescind the Demand due to errors in jurisdiction, errors in fact, and due to the unfair process. EMBER additionally asks for costs incurred by EMBER for review of this matter be borne by the Applicant.

ISSUES

1. Is the Application, as submitted, complete?
2. If the Application is incomplete, should the Tribunal consider it?
3. Should the Tribunal award costs to EMBER for Relief, and/or shall the Tribunal review the Costs invoice by the Applicant?

DECISIONS

1. The Panel finds the Application is not complete as submitted and therefore invalid.
2. The Application is dismissed, and the Applicant is invited to file another application containing sufficient information to allow the Tribunal to make a decision.
3. The Panel decides it shall not award costs to EMBER for relief. Additionally, the Panel decides it shall not award costs to the Applicant for filing.

ANALYSIS ON THE PRELIMINARY MATTERS

1. Is the Application, as submitted, complete?

[7] In deciding whether the Application is complete, the Panel considered the legislative scheme governing section 36 applications, the *Surface Rights Board Rules* (Rules") interpreting the requirements for a complete application under section 36 of the *Act*.

Surface Rights Board Rules Section 16 states the following:

(2) Although a Board Administrator will review applications, it is always the applicant's responsibility to ensure that their application is complete, accurate and in compliance with the requirements of the Board and the statutory requirements.

There are a number of discrepancies within the information provided with respect to the Site:

- a. The Application form defines the land description as 14-6-34-24.
- b. The Application includes an EMBER proof of payment record of deposit dated August 6, 2020 which defines the land description as 14-6-34-23, which is not the subject of the Application form.
- c. The Application includes an EMBER letter dated May 25, 2020 offering a reduced rental rate and defines the land description as 14-6-34-23, which is not the subject of the Application form.
- d. The Application includes an Esri Geographic which defines the land description as 14-34-23, which is not the subject of the Application form.
- e. EMBER submits that EMBER does not have a lease at the location defined in the Application with the current landowner. The Panel finds on the Well Summary report dated January 11, 2023 by the AER that the Wellsite No. 0411204 has the land description as 14-6-34-24, which is consistent with the Application. The Panel finds that the Current Licensee as EMBER. EMBER submits "EMBER does not have a lease with these landowners on this location". The Applicant claims otherwise.
- f. The Application for Costs submitted by the agent of the Applicant indicates the land description as 14-6-34-24, which is consistent with the Application form; however, much of the accompanying information provided is not consistent with this land description.

This Panel finds the Application is incomplete due to the discrepancies.

2. If the Application is incomplete, should the Tribunal consider it?

[8] The Tribunal considered sections 5 and 6 of the Land and Property Rights Tribunal Act, SA 2021, Chapter L-2 and the Public Inquiries Act, RSA 2000, Chapter P-39 and Section 6 of the Land and Property Rights Tribunal Act which confers the authority to make rules regarding its practice and procedure.

[9] Tribunal finds that they are the foundation for its authority to adopt the Rules which impose upon the applicants some obligation to provide the information requested by the Tribunal necessary to exercise its discretion under section 36 of the Act. Accordingly, the Surface Rights Board Rules Section 15 and 16 provides the following:

Surface Rights Board Rules Section 15 states:

(4) A party who disagrees with a notice from a Board Administrator may ask the Board to review the application, in which case the Board may:

(b) dismiss the application;

Surface Rights Board Rules Section 16 states:

(3) Ultimately, it will be up to the Board panel hearing the application to decide whether or not the application is valid.

This Panel finds that due to the discrepancies in the land description in the Application, that the Application is incomplete and therefore not valid. The Application is dismissed and will not be considered.

As this Panel has determined that the Application is incomplete, it need not consider any of the arguments in the submissions provided by EMBER. However this Panel would note that a request for reconsideration requires that an application under section 29 using the prescribed form must be filed and that for any claim of costs, an applicant must comply with Rule 31.

3. Should the Panel review the Costs invoice by the Applicant?

[10] As the Application is incomplete, this Panel will not consider the request for costs by Mr. Vasseur.

Dated at the City of St. Albert in the Province of Alberta on this 31st day of July 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Nolan Crouse, Member