



## LAND AND PROPERTY RIGHTS TRIBUNAL

**Citation:** Postill v Ember Resources Inc., 2025 ABLPRT 900210

**Date:** 2025-02-12

**File No:** RC2023.1230

**Order No.:** LPRT900210/2025

**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 11-33-22-W4M as described in Certificate of Title No. 231 074 982 +2 (the “Land”), particularly the area granted for Alberta Energy Regulator Licence No. 0458209 (the “Site”).

**Between:**

Ember Resources Inc.,

Operator,

- and -

William Robert Postill,  
and  
Sara Catherine Postill,

Applicants.

**Before:** Miles Weatherall (“the Panel”)

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### SECTION 36(6) DIRECTION TO PAY

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The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of FIVE THOUSAND SIX HUNDRED SEVENTEEN and 25/100 DOLLARS (\$5,617.25) (the “Compensation”) jointly to William Robert Postill and Sara Catherine Postill in the Province of Alberta and for compensation that became due in the years 2019 and 2023 and costs awarded in this order.

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**SUSPENSION ORDER  
PURSUANT TO SECTION 36(5)(a) OF THE ACT**

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IT IS ORDERED that the Operator's right to enter the Site is suspended immediately under section 36(5)(a) of the *Act*. This does not affect any of the Operator's obligations, nor any other person's rights against the Operator. The Right-of-Entry Instrument remains in place for purposes of shutting-in, suspension, abandonment, and reclamation.

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**COSTS ORDER  
PURSUANT TO SECTION 39 OF THE ACT**

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IT IS ORDERED that costs in the amount of ONE HUNDRED THIRTY ONE and 25/100 DOLLARS (\$131.25) are payable by the Operator to the Applicants.

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**DECISION AND REASONS**

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[1] The Applicants filed an application under section 36 of the Act seeking recovery of unpaid compensation due under a Surface Lease Agreement dated July 17, 2013 for the above site (the "Right of Entry Instrument").

**ISSUES**

1. Which of the parties should be named as the Operator for the purposes of section 36 of the Act?
2. Is there money past due and unpaid by the Operator to the Applicants under the Right of Entry Instrument?
3. Should the Tribunal direct the Minister to pay any of the amount owed to the Applicants out of the General Revenue Fund?
4. Should the Tribunal suspend and terminate the Operator's rights?

**DECISION**

1. For the purposes of section 36 of the Act, the Operator is Ember Resources Inc..
2. Compensation of \$5,617.25 is payable to the Applicants by the Operator.
3. The Tribunal directs the Minister to pay the full amount of the Compensation payable to the Applicants.
4. The Operator's right to enter the site is suspended **immediately**. If the Operator

continues to not pay compensation the Tribunal may decide to issue a termination order.

## ANALYSIS

[2] The Operator is as defined under section 36(1) of the *Act* and a reclamation certificate has not issued so the Operator is responsible to pay compensation to the Applicants.

[3] The Panel is satisfied that the demand for payment and notice to the Operator 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] After a review of the completed Application Form, signed declaration and supporting documents, the Panel is satisfied that the Compensation is owed by the Operator to the Applicants for annual payment(s) due under the Right of Entry Instrument. This amount is calculated as one payment of \$4,155.00 plus a partial payment of \$1331.00 due for the years 2019 and 2023 respectively.

[5] *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 \$5,617.25 from the General Revenue Fund.

[6] The Panel finds that the Operator did not comply with the notice under 36(4) therefore the Panel suspends the Operator's right to enter the site **immediately**. The Panel decides not to terminate at this time to avoid delay in payment to the Applicants.

[7] The Applicants filed an invoice for costs in the total sum of \$131.25. Section 39(1) of the *Act* puts costs of and incidental to proceedings under the *Act* in the discretion of the Tribunal. Based on a numerous of Tribunal decisions on costs for section 36 proceedings, this Application was not a complex matter and reasonable costs for a representative are one hour at a rate of \$125/hour plus 5% GST. The Direction to Pay for costs will issue immediately.

Dated at the City of Medicine Hat in the Province of Alberta this 12th day of February, 2025.

**LAND AND PROPERTY RIGHTS TRIBUNAL**



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Miles Weatherall, Member