

Before:

Metis Settlements Appeal Tribunal
Land Access Panel

Between:

Lorraine Anderson, Appellant

-and-

Peavine Metis Settlement, Respondent
Arrow Energy Ltd., Respondent

Concerning:

Interests in NW-25-78-15-5

Hearing Date:

December 9, 2008

Decision Date:

February 12, 2009

D e c i s i o n

Land Access Panel Members

Allan Lamouche, Chair
Thelma Chalifoux, Panel Member
Violet Haggerty, Panel Member

Parties present at the hearing

Lorraine Anderson, Appellant
Raymond Carifelle, Chairman, Peavine Metis Settlement
Glenna Cunningham, Council Member, Peavine Metis Settlement
Henry Carifelle, Council Member, Peavine Metis Settlement
Layne Gauchier, Council Member, Peavine Metis Settlement
Dennis Cunningham, Council Member, Peavine Metis Settlement
Violet Noskey, Administrator, Peavine Metis Settlement
Carmen McDermott, Land & Membership Assistant, Peavine Metis Settlement
Claude Cunningham, Land & Membership Coordinator, Peavine Metis Settlement
Sandford Gauchier, Arrow Energy Ltd.
Lisa Chartrand, Registrar, Metis Settlements Land Registry

MSAT staff present at hearing

Karen Mustus, Oil & Gas Officer
Michael Gubbels, Acting Dispute Resolution Officer

Place and date of the hearing

High Prairie, Alberta
December 9, 2008

Issue: (what the appellant wants)

1. *Occupancy and compensation*: The Appellant, Lorraine Anderson, wants the Tribunal to direct that she be paid the compensation that was paid to the Peavine Metis Settlement for pipeline activity in 2002 on the NW-25-78-15-5 (the land).

1. Occupancy and Compensation

1.1 Applicable legislation – jurisdiction and decision-making criteria

This appeal turns on the question of whether the Appellant was an “occupant” of the land when the pipeline activity occurred in 2002.

The Land Access Panel has assumed jurisdiction over this matter under section 119(b) of the *Metis Settlements Act* (the Act) [R.S.A. 2004]. It reads:

- 119 The Land Access Panel may, without a hearing, amend a compensation order or right of entry order, regardless of who made it, with respect to a person named in it
- (a) ...
 - (b) when the Panel is satisfied that there has been a change of occupant and compensation should properly be paid to a new occupant.

As set out above, it is for the Land Access Panel to determine whether there has been a change of occupant, and whether compensation should properly be paid to that occupant.

1.2 Evidence before the Panel

The Appellant said she has held an interest in the land since 1990. She said she filled out all documents required to obtain Provisional Metis Title (PMT) on the land. She added that she met with Peavine Council a few times and was told that she would be compensated.

The Appellant said that she did not have a place to live on the Peavine Settlement during the time her PMT was in place. She also stated that she has been living off and on at her brother’s place in Peavine on weekends and further stated that she lives with her brother now.

As set out in her application, she was approved for Leave of Absence once in May 1994 to May 1995. She made subsequent applications in 2000 and 2001, but both were tabled by Council.

The Respondent, Peavine Metis Settlement Council and staff, gave a range of responses. Some Council members confirmed that Council promised to pay the Appellant the compensation in December 2006 or January 2007, but that the resolution went missing. Others suggested that the Appellant should only be paid if the land was hers when the pipeline went through. It was also stated that if no improvements were made in the first five year term of a PMT, the interests were generally not renewed.

There was consensus, though, that Peavine's record keeping was poor. Often decisions would be made, but not recorded or followed-up on. Or, memorandums of interest for land would be executed in Peavine, but not forwarded to the Metis Settlements Land Registry for recording or registration. Many of these documents then went missing.

The Respondent, Arrow Energy, (which purchased Tirmoil Energy Ltd. assets in 2006) stated that they did their due diligence and at the time the pipeline went through in 2002, it appeared to them that the land belonged to Peavine Metis Settlement. Accordingly, they paid the compensation to Peavine Metis Settlement. To the extent that there is a dispute about compensation, Arrow Energy said that it is for the Appellant and Peavine Metis Settlement to work out.

Materials from the Hearing Package were also referred to during the hearing, and the Hearing Package is considered as part of the evidence before the Panel.

1.3 Findings of Fact

- The Metis Settlements Land Registry (MSLR) Land Search Report for the NW-25-78-15-5 which was contained in the Hearing Package—contains the following:
 - Peavine / Metis Title / 159 acres / surveyed
 - Lorraine Anderson / allocation / recorded / November 1, 1991;
 - Tirmoil Energy Ltd. / pipeline right of way plan / filed / December 16, 2002;
 - Arrow Energy Ltd. / mineral projects interest/pipeline / registered / March 26, 2002;
 - Lorraine Anderson / PMT interest / registered / January 14, 2008.
- The Appellant applied to convert her allocation interest in the land to a PMT interest on April 13, 1995.
- Peavine Council approved her PMT interest on November 21, 1995. This PMT interest was not recorded or registered at the Metis Settlements Land Registry.
- The Appellant did not live on the Settlement for most of the period between 1995 and 2001 and did not make any improvements to the land.
- There is no documentary evidence to show that the Appellant applied to renew or convert her PMT in 2000, or 2001.
- Peavine Metis Settlement and Tirmoil Energy Ltd. entered into a Mineral Land Use Agreement and a Right of Way Agreement for a pipeline on March 7, 2002.
- On June 10, 2002, a Notice of Available Land was posted for the land. The Appellant applied for the land. No decisions were made concerning the posting and the Appellant did not appeal this “non-decision” at the time.
- Construction of the pipeline started in December 2002.

- The Appellant filed a request with Council to post the land. Council approved her request to post the land at a September 6, 2005 meeting. The Appellant applied for the land on September 22, 2005.
- The Appellant wrote to Peavine Council on December 5, 2005, stating that she owned the land in 1990 and that when the Settlement took the land back, she was not properly compensated, or compensated for the oil activity, and that she should be. She wrote another letter to Peavine Council on September 10, 2007 asking for compensation for the pipeline project on the land.
- Arrow Energy Ltd. purchased the assets of Tirmoil Energy Ltd. in November 2006.
- A Memorandum of Provisional Metis Title for the land was signed by the Appellant on November 26, 2007. The Request to register the interest was signed by the Appellant on January 14, 2008. Notice of Registration was sent to the Appellant by the Metis Settlements Land Registry on January 24, 2008. (As set out in the Metis Settlements Land Registry Land Search Report the PMT interest is effective January 14, 2008 and set to expire on September 2, 2012.
- The Appellant filed an appeal with the Tribunal on August 18, 2008.

1.4 Analysis / Reasons

To get compensation for oil and gas activity on Settlement lands, one must be an “occupant.” This requirement is set out in section 119 of the Act. Applied to the case at hand, it is for the Appellant to show she was an “occupant” of the land when the pipeline activity occurred in 2002.

Section 111(h) the Act sets out the definition of occupant. It reads:

111(h) “occupant” means

- i. a Settlement Council,
- ii. the person in **actual possession** of a parcel of patented land, and
- iii. a person having a right or interest in patented land that is **registered** in the Metis Settlements Land Registry.

Was the Appellant in “actual possession” of the land in 2002? The evidence indicates that she was not. She was not living on the land, or otherwise working the land in 2002.

Did the Appellant have a right or interest that was “registered” in the Registry in 2002? Again, the evidence indicates that she did not have a registered interest. Though the land search report shows an allocation interest was recorded in 1991, these interests were a carry-over from the *Metis Betterment Act* and were supposed to be converted by June 30, 1995 to other registerable

interests, such as Metis Title, PMT, allotment and road title as established by General Council Policy.

Apart from these rather technical applications of the Act, this Panel simply cannot say the Appellant is an occupant when her own conduct shows she was not. Namely, she applied for the land along with everyone else when it was posted in 2002. If she had a continuing interest in the land at the time, we believe it is reasonable to expect that the Appellant would have told the Settlement Council that it was wrong to post the land, which she did not do.

Finally, though some members of the Settlement Council indicated that they promised to pay the compensation to the Appellant, it is not for this Panel to compel payment where neither the Act nor General Council Policy provides a legal basis for that payment.

Decision

The Appellant's request for compensation relating to pipeline activity in 2002 on the NW-25-78-15-5 is denied.

Dated in the City of Edmonton in the Province of Alberta on the 12th day of February 2009.



Alian Lamouche, Panel Chair