

*SURFACE RIGHTS ACT*  
RSA 2000  
Chapter S-24  
(hereinafter "the Act")

Before:

SURFACE RIGHTS BOARD  
(hereinafter "the Board").

IN THE MATTER OF certain lands subject to surface leases within the South West Quarter of Section 4, Township 52, Range 25, West of the 4th Meridian, in the Province of Alberta, as described in Certificate of Title No. 962 120 129 +1 (hereinafter referred to as "the said land").  
Excepting thereout all Mines and Minerals.

B E T W E E N:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

SARASWATI PRASAD SINGH,

Lessor.

REASONS FOR DECISION

forming part of those decisions attached hereto  
and numbered 2007/0140, 2007/0141 and 2007/0142.

A hearing was held by the Board on March 12, 2007, at Edmonton, Alberta, to consider an Application for a review of compensation on the following:

- (1) a surface lease dated January 1, 1962, affecting 3.73 acres in the SW ¼-4-52-25-W4M for a well site and roadway (hereinafter referred to as "the SL 2005.0051 site");
- (2) a surface lease dated August 8, 1978, affecting 0.82 acres in the SW ¼-4-52-25-W4M for a well site extension (hereinafter referred to as "the SL 2005.0052 site"); and
- (3) a surface lease dated March 26, 1979, affecting 1.03 acres in the SW ¼ -4-52-25-W4M for a well site extension (hereinafter referred to as "the SL 2005.0053 site").

PRESIDING BOARD:

- John E. Logan, Presiding Chair
- E. Gordon Chapman
- David M. Broda

APPEARANCES:

For the Operator:

- Gary P. Richardson, Manager, Surface Land Negotiations, Penn West Energy Trust;
- Robert Wood of Burnet, Duckworth & Palmer LLP, Legal Counsel;

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- Glen Schafer, Project Manager/Landman of LandSolutions Inc., Land Agent; and

- For the Operator: (cont'd.)
- Don Hoover, AACI, P.Ag., C.M.C., of Serecon Valuation & Agricultural Consulting Inc.
- For the Lessor:
- Dr. Saraswati P. Singh, Landowner;
  - Murray L. Engelking of Campbell & Company, Legal Counsel; and
  - Rolf L. Halvorsen, AACI, P.App of Halvorsen Fedynak & Company, Inc.

EXHIBITS FOR IDENTIFICATION:

- Exhibit A: Copies of the surface leases as filed with the applications.
- Exhibit B: Applications for review.

EXHIBITS FILED:

- Exhibit 1: Written submission of Dr. Saraswati P. Singh including the Lessor's position, unexecuted offer to purchase, a written appraisal of the said land, Alberta Energy and Utilities Board (EUB) Decision No. 2005-085, EUB explanation of setbacks, copy Surface Rights Board Decision No. 99/0080, Petrofund Energy Trust Emergency Response Map, *Jorsvick v. Pennzoil Petroleums Ltd. ACQB, Kerans, J.A. 1988* and video presentation.
- Exhibit 2: Written Submission of Penn West Energy Trust.
- Exhibit 3: Penn West Petroleum Ltd.'s plan showing comparables and summary of comparables.
- Exhibit 4: Details pertaining to the Operator's comparables.
- Exhibit 5: Aerial photograph of subject area.
- Exhibit 6: Serecon Appraisal Report of Annual Rental.

Exhibit numbers 2 to 6, inclusive, were filed for the Operator. Exhibit number 1 was filed for the Lessor.

PRELIMINARY MATTER:

According to correspondence on file with the Board, there appeared to be some differences between the parties in respect of the effective dates of review. After hearing submissions on this matter the parties agreed on the effective dates of review for the surfaces leases pertaining to Board File Nos. SL 2005.0051 and SL 2005.0052. The agreed upon dates follow:

The SL 2005.0051 Site

- The original surface lease is dated **January 1, 1962**.
- The letter of Application is dated November 17, 2003.
- The effective date of review is January 1, 2002.

The SL 2005.0052 Site

- The original surface lease is dated **August 8, 1978**.
- The letter of Application is dated November 17, 2003.

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- The effective date of review is August 8, 2003.

The SL 2005.0053 Site

The parties disagreed as to the effective date of review. Therefore the following is a Preliminary Decision of the Board.

PRELIMINARY ISSUE:

What is the effective date of review as pertaining to the surface lease on Board File No. SL 2005.0053?

RELEVANT LEGISLATION:

*Surface Rights Act RSA 2000, Chapter S-24*

***Review of rate of compensation***

***27(2) For the purposes of this section,***

***(b) the term of a surface lease shall be computed from the effective date of the lease.***

***(14) The operator shall give a notice that complies with subsection (5) to the other party on or within 30 days after every 5th anniversary date after the date notice should have been given under subsection (4) for as long as the surface lease or right of entry order, as the case may be, is in effect and subsections (6) to (13) apply to that notice.***

***(15) If the operator fails to give a notice required by subsection (4) or (14), the lessor or respondent, as the case may be, may within a reasonable time after the failure, give a notice to the operator stating that the lessor or respondent wishes to have the rate of compensation reviewed or fixed and in that case ...***

LESSOR'S PRELIMINARY SUBMISSION:

The Lessor's position is that the effective date of review should be March 26, 1999. The original surface lease is dated March 26, 1979. A review of compensation is overdue and should be based on five year intervals.

OPERATOR'S PRELIMINARY SUBMISSION:

The Operator's position is that the effective date of review should be March 26, 2004, as the Lessor did not apply for a review until November 17, 2003.

FINDINGS OF FACT:

- **The original surface lease is dated March 26, 1979.**
- The Lessor's letter of Application is dated November 17, 2003.

DECISION ON PRELIMINARY MATTER:

It is the decision of the Board that the effective date of review in respect of the surface lease on Board File No. SL 2005.0053 is March 26, 2004.

REASONS FOR DECISION ON PRELIMINARY MATTER:

Together, sections 27(2)(b) and 27(5) establish compensation shall be computed in five year intervals starting from the original date upon which the lease comes into effect. The parties' submissions indicate their

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agreement on this matter and the Board concurs that this is in accordance with the *Act*.

The parties diverge in their submissions as to the effective date of review. The Lessor’s letter of Application for a review of compensation is dated November 17, 2003. This is approximately three years and eight months after the time that compensation could have been reviewed effective March 26, 1999.

Section 27(15) instructs that if an operator fails to give notice as prescribed by the *Act*, the lessor or respondent as the case may be may, within a **reasonable time** (Board’s emphasis) after the failure, give notice stating that the lessor or respondent wishes to have the rate of compensation reviewed or fixed in that case.

On the facts adduced, the Board is persuaded that too much time has elapsed between the time for review in 1999 and the Lessor’s application for review of compensation made in 2003. The *Act* stipulates that a party requesting a review of compensation must make said request within a reasonable time. After careful consideration of the facts, the Board finds that three years and eight months into a five year period does not constitute a reasonable time. The Lessor’s submission is therefore denied. In the alternative, the Board is persuaded as to the correctness of the Operator’s submission and therefore determines that March 26, 2004, is the effective date of review.

\* \* \* \* \*

BACKGROUND:

This matter concerns the determination of annual compensation in respect of the following surface leases:

The SL 2005.0051 Site

- for: a well site and roadway
- location: a portion of the SW ¼-4-52-25-W4M (L.S. 3)
- area: 3.73 acres (confirmed by parties during the hearing)
- current annual compensation: \$5,500.00
- effective date of review: January 1, 2002

Dunn Lease  
Note that a later 2014  
Decision states the  
area is 3.36 acres

The SL 2005.0052 Site

- for: a well site extension
- location: portion of the SW ¼-4-52-25-W4M (L.S. 3)
- area: 0.82 acres (confirmed by parties during the hearing)
- current annual compensation: \$1,000.00
- effective date of review: August 8, 2003

First Expansion  
East of Dunn Lease Site

The SL 2005.0053 Site

- for: a well site extension
- location: portion of the SW ¼-4-52-25-W4M (L.S. 3)
- area: 1.03 acres (confirmed by parties during the hearing)
- current annual compensation: \$2,300.00
- effective date of review: March 26, 2004

Second Expansion  
North of Dunn Lease Site

ISSUE:

What is the appropriate amount of compensation payable by the Operator in respect of the three surface leases as summarized above?

RELEVANT LEGISLATION:

*Surface Rights Act RSA 2000, Chapter S-24*

***Review of rate of compensation***

27(1) In this section,

- (d) “rate of compensation” means the amount of compensation payable on an annual or other periodic basis under a surface lease or compensation order in respect of the matters referred to in section 25(1)(c) and (d). ...

***Determining compensation***

**25(1)** *The Board, in determining the amount of compensation payable, may consider*

- (c) the loss of use by the owner or occupant of the area granted to the operator,*
- (d) the adverse effect of the area granted to the operator on the remaining land of the owner or occupant and the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator,*

1983 cS-27.1 s25

**SUMMARY OF THE LESSOR'S POSITION:**

**Mr. Engelking: Legal Counsel**

Mr. Engelking presented a written submission (Exhibit 1) on behalf of the Lessor. A summary of Mr. Engelking's presentation follows:

The aggregate annual rental for the three surface leases under review should be the sum of \$250,000.00. Payment should be allocated to the three leases on a pro-rata basis by reference to the proportionate share of the surface which each lease bears to the said land's total surface area.

The proper way to compensate the Lessor is through a 10% return on capital. Mr. Halvorsen's appraisal (Exhibit 1, Tab 3) indicates that the said land contains a total area of 89.72 acres, is zoned AG (Agricultural General) and has an estimated market value of ten million (\$10,000,000.00) dollars (effective January 2007).

Given that only 52 of the 89.72 acres is not restricted by the top-of-bank controls and given that the surface area utilized by the Operator is approximately 10% of the useable area, the Lessor establishes that the aggregate value of the surface area used by the Operator is \$860,000.00. The Lessor is entitled to a 10% annual return on the value of the lands under lease. Thus, annual rental for the three surface leases should be \$86,000.00.

Mr. Halvorsen's determination of Highest and Best Use follows (Exhibit 1, Tab 3, p.12):

... the Highest and Best Use of the subject property is concluded to be a holding property for future urban residential development.

The developable top-of-bank land is subject to a petroleum surface lease that includes operating pump jacks. Setbacks are required and the surface lease reduces the developable area of the land.

Mr. Engelking argued that the portion of the said land occupied by the Operator cannot be utilized for its Highest and Best Use as determined by Mr. Halvorsen. In essence, the Operator's presence prevents the Lessor from capturing the land's value until the surface leases are exhausted and the sites are reclaimed. As the said land is a capital asset of substantial value, the Lessor is entitled to a reasonable rate of return on his investment.

The subject lands held by the Operator under three surface leases (3.73 acres, 0.82 acres, and 1.03 acres) encompass a total area of 5.58 acres. Owing to the presence of a Level 1 sour gas well an additional 7.76 acres are affected by the Alberta Energy and Utilities Board's (EUB) 100 metre radius setback and the Lessor is entitled to a rate of return on this area too.

**Land Value:**

The Lessor purchased the said land in 1991 at a price of \$430,000.00. Approximately a year ago the Lessor rejected an offer to purchase in the amount of \$9,869,200.00 (Exhibit 1, Tab 1). The land touches on Anthony Hendy Drive. The development of Cameron Heights and development west of 199th Street north of 45th Avenue, has greatly increased land values in the area of the subject land. The value of the property will continue to rise. The land fronts on the North Saskatchewan River and is a prime location for development.





Adverse Effect of the Surface Facilities:

The EUB has recently granted the Operator permission to drill an additional well from a surface facility adjacent to the said land (Exhibit 1, Tab 4). This well will have a sour gas content. The Operator is planning to drill seven new wells. Some of these will be located on surface facilities on the Lessor's land. This may result in a 500 metre Emergency Protection Zone and when this happens the development potential of the said land will be greatly restricted.

Existing adverse effect includes:

- cranking noise of the well pumps
- danger of gas blowup
- danger to human health from emissions
- ugliness of well site
- adverse psychological impact on prospective buyers and commercial developers

The Lessor requested the EUB to compel the Operator to create a fund to ensure money would be available for reclamation in the event of contamination or abandonment. The Operator refused to create such a fund and the EUB declined to direct that such a fund be established.

Operators have frequently permitted contamination and abandonment. Landowners have found it difficult to force operators to clean up and compensate for damages. Operators have on occasion, become bankrupt. Therefore the land rent needs to include compensation for these risks.

The Rental:

If rental payments were to be determined directly between the landowner and the operator (as in the market place) they would be much higher and fairer to the landowner. High rent will create an incentive for the operator to extract oil and leave the land for development as soon as possible. Low rent under a regulatory regime encourages the oil company to keep the land for a longer period that would be the case in market determined payments. As the cost of holding the land is minimal, the company would keep the oil in the ground in wait of higher prices and cheaper extraction technology.

The Lessor submits that the Board should consider the actual area held by the Operator under lease and the area of the land deleteriously affected as in the case of *Rywood Resources Ltd. v. Winfield Power Company Ltd. et al. (Surface Rights Board Decision No. 99/0080)* [Exhibit 1, Tab 6].

Referring to the Rywood decision noted above, the Lessor submits that a rate of 10% is fair compensation for return on his investment. Applying this approach the annual rental should be 5.21 acres x \$165,000.00 per acre for a total of \$86,000.00 (rounded).

EUB rules require a setback of 100 metres between a Level 1 sour gas facility (Exhibit 1, Tab 7) and any residential development. As a result, another 7.76 acres is adversely affected by the presence of the Operator's facilities. Annual rent for this area should be as follows:

$$\$165,000.00 \text{ per acre} \times 7.76 \text{ acres} \times 10\% = \$128,000.00 \text{ (rounded)}$$

The above rates are based on the land's present value. In view of the virtual certainty that the land will rise in value in the near future and having regard for the risk of abandonment and contamination issues, the annual rental should be fixed at \$250,000.00. The Board must assess the present rental on a looking forward basis (see Exhibit 1, Tab 8 *Jorsvick v. Pennzoil Petroleum Ltd. ACQB, Kerans, J.A. 1988*).

**Mr. Halvorsen: Valuation Analysis**

Mr. Halvorsen summarized his valuation analysis (Exhibit 1, Tab 3). He was asked by the Lessor to provide a current estimate of the said land's market value along with an estimate of reasonable annual compensation for lands occupied by the Operator under three surface leases.

The subject land is annexed into the City of Edmonton. The property contains a total land area of 89.72 acres. Approximately 52 acres is situated above the top-of bank. This portion of the land is presently zoned AG (Agricultural General) and contains the three surface lease areas under review.

The balance of the property comprises river valley land that is zoned A - Metropolitan Recreation. Mr. Halvorsen emphasized that there is a limited amount of remaining river frontage land within the City of Edmonton and accordingly, the Lessor's land is very desirable for future residential development.

Mr. Halvorsen estimates that municipal utility services are to be extended across the river near the subject property in approximately 2010/2011.

Land Value:

Mr. Halvorsen's estimate of land value derived from an analysis of comparable sales (see Exhibit 1, Tab 3, pp.13-16). His conclusion yielded a unit price per acre of \$165,000.00 for the 52 acre top-of-bank land and a unit price of \$40,000.00 per acre for the 37.72 acres of river valley land. Combining the per unit prices, Mr. Halvorsen estimated that the market value of the 89.72 acres is ten million (\$10,000,000.00) dollars as at January 2, 2007.

Surface Lease Rental:

Mr. Halvorsen was requested to provide calculations of the annual rental for the subject leases that occupy 5.21 acres within the top-of-bank portion of the said land. In Exhibit 1, Tab 3, p.16, Mr. Halvorsen states:

... We were informed that the annual rental amount is to be based on 10% of the land value. Therefore, the annual rental amount is calculated as follows:

Annual Rent = Surface Lease Acres x Unit Price Per Acre x 10%  
Annual Rent = 5.21 acres x \$165,000.00 per acre x 10%  
Annual Rent = \$85,965.00

(The Board notes that the parties agreed that the three subject leases occupy a total area of 5.58 acres.)

In his testimony, Mr. Halvorsen asserted that land rents range from 9% to 12% of market value. Ten percent is therefore a reasonable return. Mr. Halvorsen stated that he did not look at other surface lease rents in the neighbourhood because the subject land is valuable and the Lessor had an offer to purchase (Exhibit 1, Tab 1) that supported Mr. Halvorsen's estimate of the said land's market value. Therefore, annual compensation should be calculated as a return on investment.

**The Lessor: Dr. Singh**

Dr. Singh purchased the said land in 1991. The purchase price was \$430,000.00. The land was initially sown to crop. This kept the land weed free and in conformance with City Bylaws. Later, Dr. Singh used the land for raising goats. He noted that production costs incurred in his goat operation were virtually nil. The goats thrived on the available forage.

Dr. Singh purchased the land with the intention of developing it at some point in the future. He met with Mr. Tim Fuhr who is a City planner, on several occasions. Based on these and other conversations Dr. Singh feels that services will be available by 2010 or perhaps earlier due to burgeoning pressure for more housing.

Dr. Singh estimated that as many as 80 river and ravine lots are feasible for development. New river lots sell for \$1,000,000.00 and ravine lots sell for \$500,000.00. An additional 35 lots could be developed on non-river/ravine lands. In the result, Dr. Singh views Mr. Halvorsen's estimate of annual rental as "very conservative".

Dr. Singh expressed his concern over the EUB's setback requirements and how this could sterilize or undermine the potential to develop the portion of his land so affected. He also expressed concern over reclamation. His request to the Operator and the EUB to establish a reclamation fund was rejected. This situation is "very unfair" insofar as he is "not allowed" to reap the benefits of his investment.

Dr. Singh noted that the Operator had offered to increase the aggregate annual rental from \$8,800.00 to \$10,000.00.

SUMMARY OF THE OPERATOR’S POSITION:

Mr. Wood, Mr. Richardson, Mr. Schafer and Mr. Hoover appeared for the Operator.

**Mr. Wood: Legal Counsel**

Mr. Wood outlined the Operator’s written submission (Exhibit 2) as follows:

This case involves an application by the Landowner for review of annual compensation payable under three surface leases on the SW ¼-4-52-25-W4M.

Details of the three surface leases are as follows:

- |    |                   |  |  |
|----|-------------------|--|--|
| 1. | Original Location | Acquired:<br>Review Date:<br>Acreage:<br>Current Rental:<br>Surface Equipment: | January 1, 1962<br>January 1, 2002<br>3.73 acres<br>\$5,500.00/year<br>15-33 well, 4-4 well, 3-4 well, 02/3-4 wellhead and riser |
| 2. | Second Expansion  | Acquired:<br>Review Date:<br>Acreage:<br>Current Rental:<br>Surface Equipment: | August 8, 1978<br>August 8, 2003<br>0.82 acres<br>\$1,000.00/year<br>14-33 wellhead and cattle guard                             |
| 3. | Third Expansion   | Acquired:<br>Review Date:<br>Acreage:<br>Current Rental:<br>Surface Equipment: | March 26, 1979<br>March 26, 2004<br>1.03 acres<br>\$2,300.00/year<br>2-4 well and header building                                |

Total rental for the three leases: \$8,800.00 per year

The land is located within the southwesterly limits of the City of Edmonton. While there is subdivision development to the west of the leases, the subject land and leased acreage is currently zoned agricultural and is used for agricultural purposes.

In consideration of the factors set out in Sections 27 and 25(c) and (d) of the *Surface Rights Act* and in consideration of surface rentals and/or compensation orders in respect of comparable properties in the immediate area, a modest increase in annual rent from its current level to \$9,350.00 is warranted on the following basis:

Land Value Not Determinative:

The Board must be guided by the statutory criteria set out in s.27 and s.25 ( c ) and ( d) of the *Surface Rights Act* regarding ongoing loss of use and adverse effect.

The Board should presume that land value of the leased acreage was properly considered in the initial fixing of compensation.

The Operator does not dispute that the land value has increased. However, this factor ought not to affect the Board’s determination of compensation for the following reasons:

- (i) **Zoning of Land Has Not Changed:** The leased acreage and the Landowner’s holdings continue to be zoned Agricultural. While the use of the lands for residential development may ultimately be possible, it is not now. It would be inappropriate to base the compensation rate on a use not permitted by current zoning.
- (ii) **No Change to Use of Property:** The Landowner’s holding surrounding the leases continue to be used for agricultural purposes. As above, the rate of compensation should be based on the land’s actual use and not its theoretical future use.



- (iii) **Rent From Leases Should Approximate Earnings From the Balance of the Land:** The remainder of the Landowner’s property earns income at an agricultural rental rate. It is illogical for the Landowner to expect to earn rent from the acreage that is disproportionately different from the value he received from the balance of his land [see *Fairborne Energy Ltd. v. Larry Bruce Seutter et al.* (Decision Nos. 2006/0129 and 2006/0130) and *Libra Holdings Ltd. v. Westhill Resources Ltd.*, 1978 Carswell Alberta 161].

Appropriate Compensation for Loss of Use and Adverse Effect:

The Operator has assessed loss of use and adverse effect to the leased acreages by referring to comparable properties affected by recent surface leases or compensation orders as summarized on the chart and map (Exhibit 3).

**Loss of Use**

The Operator proposes a rate of \$300.00 per acre. This is reasonable compensation for cultivated agricultural land. This rate is supported by the comparables submitted as Exhibits 3 and 4 and includes the Operator’s own site to the immediate north which is leased to and farmed by the same tenant farmer who rents the Landowner’s property.

**Adverse Effect**

The Landowner does not reside on or near the leased acreages and the subject land is otherwise vacant. The Operator believes that compensation paid by it on comparable lands immediately north of the Landowner’s property is reasonable. Like the subject lands, this land is unoccupied and is located within the City limits. Compensation for adverse effect on the property to the north is \$2,450.00 for each individual site, \$800.00 per additional well bore, \$3,500.00 for the facility and \$500.00 for the access road.

Application:

Applying the above analysis to the subject leases yields the following results:

|                |  |                             |
|----------------|--|-----------------------------|
| 1. Loss of Use | \$300.00/acre x 3.73 acres: .....          | \$1,120.00 (rounded)        |
| Adverse Effect | 1st well: .....                            | \$2,480.00                  |
|                | 3 additional wells at \$800.00/well: ..... | <u>\$2,400.00</u>           |
|                | <b>Total for Site 1: .....</b>             | <b>\$6,000.00</b>           |
| 2. Loss of Use | \$300.00/acre x 0.82 acres: .....          | \$ 250.00 (rounded)         |
| Adverse Effect | \$800.00 for an additional well: .....     | <u>\$ 800.00</u>            |
|                | <b>Total for Site 2: .....</b>             | <b>\$1,050.00</b>           |
| 3. Loss of Use | \$300.00/acre x 1.03 acres: .....          | \$ 310.00                   |
| Adverse Effect | \$800.00 for an additional well: .....     | <u>\$ 800.00</u>            |
|                | <b>Total for Site 3: .....</b>             | <b>\$1,150.00 (rounded)</b> |

Current compensation for Site 3 is \$2,300.00 per year.

The Operator is prepared to voluntarily increase compensation above the rate described above to reflect the current rental of \$2,300.00 per year on Site 3.

**Total All Sites: ..... \$9,350.00**

Conclusion:

The Operator submits that an increase in annual compensation to \$9,350.00 per year is reasonable and appropriate in the circumstances.

**Mr. Schafer: Comparables**

**Mr. Schafer presented 25 (labeled A through Y) comparable leases.** Exhibit 3 summarizes the comparables and is accompanied by a detailed map showing the location of the comparables relative to the subject sites. Exhibit 4 provides supporting documentation for the comparables in the form of Surface Rights

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Board decisions, orders, and surface acquisition reports.

Mr. Schafer stated that the comparables provide solid evidence that the Operator’s offer of compensation is fair and consistent with compensation paid in the immediate area. In his opinion, the most cogent comparables are located directly to the north (Exhibit 3, examples lettered E, W and X) and directly to the south (Exhibit 3, example V) of the subject leases.

To facilitate a clear view of the subject and adjacent leases, Mr. Schafer submitted a large scale aerial photograph (Exhibit 5) showing facilities within Section 4, the South Half of Section 9, Township 52, Range 25, West of the 4th Meridian and the North Half of Section 33, Township 51, Range 25, West of the 4th Meridian.

Mr. Schafer’s comments regarding the nearby comparables follow:

- **Comparable V:**  
Location: NW 33-51-25-W4M, Operator: Penn West  
Area: 2.6 acres, Compensation: \$5,800.00/year, Effective: 2004  
This comparable lies directly south of the subject. It contains four above ground wells, one riser and well casing system. Compensation was fixed by the Board (see Exhibit4).
- **Comparable W:** Lieber Lease as Amended  
Location: S2 4-52-25-W4M, Operator: Penn West  
**Area: 7.88 acres,** Compensation: \$12,000.00/year. Reviewed in 2005  
This lease contains two separate well sites and a fairly major facility including tanks, buildings, heavy traffic and a second access road. The Operator agreed to the current compensation under duress. **This lease is located almost immediately north of the subject leases.**
- **Comparable X:** Armstrong Lease (Crown)  
Location: S2 4-52-25 W4M, Operator: Penn West  
**Area: 4.7 acres,** Compensation: \$2,500.00/year  
This comparable encompasses **two distinct sites and contains a district facility** and an access road.
- **Comparable E:**  
Location: 9-52-25-W4M, Operator: Canetic Trust  
Area: 2.743 acres, Compensation: \$1,235.00/year for an access road.

Thirteen of the remaining comparables are located within or near the City limits several miles to the north and west of the subject leases (letters O,S,Q,U,T,N, R, P, D, L, I, M and K). Another four comparables are located just west of the Enoch reserve (letters J,F,H and G). Two comparables are located on the south east corner of the City limits (letters A and B). One comparable is located near Devon (letter C).

**Mr. Hoover: Appraisal of Annual Rental**

Mr. Hoover outlined his report submitted as Exhibit 6.

Mr. Hoover approached his appraisal of annual rental in accordance with s.27 and s25(1)(c) and(d) of the *Surface Rights Act*. The appraisal is effective as of January 1, 2002.

Mr. Hoover confirmed that the portion of the said land located above top-of-bank and containing the leased areas under review is zoned AG – Agricultural General. On the basis of his analysis Mr. Hoover found the Highest and Best Use of this land as follows:

Agricultural, annual crop production; holding property for future urban development

Annual Compensation Components:

**The Loss of Use by the Owner** (Exhibit 6, pp. 17 and 18)

Section 25(1)(c) (rounded): ..... \$625.00 per year



Mr. Hoover assumed that the property will continue to be used for crop production for the next five year period, or would undergo a review if there was a land use change that occurred prior to that time period.

The entire well site is on cultivated land seeded to an alfalfa, Timothy, orchard grass hay mix. It was seeded down two years ago. To estimate the loss of use (profit and fixed costs), Mr. Hoover determined the annual and variable expenses. He used yields, costs and returns obtained from the current tenant (Mr. Haarsma) to determine a gross margin (gross revenue minus variable expenses).

Based on Mr. Hoover’s analysis, the average gross margin for the subject is \$112.50 per acre. The loss of use totals \$621.68 (rounded to \$625.00). This assumes the entire leased area is taken out of production.

**The Adverse Effect of the Area Granted on the Remaining Land** (Exhibit 6, pp. 19 to 21)

Section 25(1)(d)  
Tangible Effects: ..... \$670.00 per year

Additional time is spent farming around the well site and access road due to extra turns etc. As well, increased costs and reduced revenues from the extra turns, double and triple applications of seed, fertilizer and chemicals are also estimated.

A detailed account of Field Equipment Tracking – Obstruction Mapping data is set out at page 20 of Mr. Hoover’s report. It shows the total tangible adverse effect for all production and financial impacts, inclusive of weed control costs, totals \$670.00 per year.

Intangible Effects: ..... \$3,000.00 per year

In addition, there are minimal non-quantifiable factors such as nuisance and noise which are subjective and difficult to measure. Nuisance is defined as “a person, thing or circumstance causing inconvenience or annoyance”, or in law “an unlawful interference with the use and enjoyment of land”.

The nuisance and noise factors have been quantified by the Surface Rights Board. Past compensation determinations have varied from \$1,500.00 per site for agricultural properties away from urban centres, to \$6,000.00 per site for intensive urban development property. This is based on the Highest and Best Use of the property being held until urban development occurs. We have assumed the property will not be developed prior to the next annual rental period.

**The total Adverse Effect is estimated at \$3,670.11 per year, rounded to \$3,670.00 peryear.**

Mr. Hoover’s total estimate of Annual Compensation is \$4,295.00

In conversations with officials from the City of Edmonton’s department of planning and development Mr. Hoover found that servicing is a central issue affecting the subject property’s development timelines. Sanitary sewer services are expected to be extended from Windermere (across the river) by 2011 of 2010. The next step is to develop an Area Structure Plan.

Owing to the lack of services and an Area Structure Plan Mr. Hoover’s view is that residential or residential/commercial use of the subject property is not plausible within the effective periods of rental reviews.

Mr. Hoover disagrees with the approach taken by the Lessor in seeking a 10% rate of return on the value of the lands taken under lease. He stated that this may be feasible if the subject land was zoned and/or being used for commercial or residential purposes. But it is not. Rather, the Owner of the subject property is free to participate in the market by renting out the land for whatever he can garner.

In the final result, Mr. Hoover asserted that he was compelled to conduct his research and analysis of compensation on an agricultural basis because this is what the land is zoned for and rented for. He reiterated his opinion that basing annual rental on 10% of the land’s market value is inappropriate under the present factual circumstances.

In closing, Mr. Hoover opined that at some time in the future when the land is truly ready to be or is developed, then compensation for loss of use and adverse effect will be commensurately greater.

FINDINGS OF FACT:

- The portion of the said land located above top-of-bank is zoned AG (Agricultural General).
- The said land is currently used for agricultural production.
- The said land is within the City of Edmonton's statutory boundary.
- The said land is not serviced.
- The said land is not included in an Area Structure Plan.
- Services necessary for developing the said land will not become available until approximately 2010/2011.
- The Lessor has not applied or otherwise initiated steps necessary for subdivision approval and/or development of the said land.
- The surface lease pertaining to Board File No. SL 2005.0051 is dated January 1, 1962 and the effective date of review is January 1, 2002.
- The surface lease pertaining to Board File No. SL 2005.0052 is dated August 8, 1978 and the effective date of review is August 8, 2003.
- The surface lease pertaining to Board File No. SL 2005.0053 is dated March 26, 1979 and the effective date of review is March 26, 2004.
- The subject surface leases were in existence when the Lessor purchased the said land.
- The Lessor had full knowledge of the subject surface leases and associated operations when he purchased the land.
- The Lessor receives income from the surface rentals (\$8,800.00 per year).

DECISION:

It is the decision of the Board to increase the total annual compensation payable for the three subject leases from \$8,800.00 per year to \$13,424.00 per year.

REASONS FOR DECISION:

The issue facing the Board is that of determining fair and reasonable annual compensation payable by the Operator for its use of 5.58 acres of land held under three surface leases.

The parties advance two distinct methods to establish the annual rental. The Lessor asserts that annual compensation should be calculated on the basis of a 10% return on the market value of the leased lands and an additional 7.76 acres of land affected by EUB setback requirements. On the other hand, the Operator maintains that the Board should rely on comparable rents paid for leases in similar locations and circumstances.

The Lessor argues that the land occupied by the Operator cannot be utilized for its Highest and Best Use until the surface leases have expired and the sites are reclaimed. The Lessor further argues that the land is a capital asset with substantial value and therefore he is entitled to a reasonable rate of return on his investment.

In considering the Lessor's approach the Board notes that his appraiser (Mr. Halvorsen) states the following:

... We were informed that the annual rental amount is to be based on 10% of the land value. ... (Exhibit 1, Tab 3, p.16)

In his testimony, Mr. Halvorsen said that he did not look at other surface lease rents in the area because the subject land is valuable and annual compensation should be calculated as a return on investment.

Mr. Engelking (Lessor's legal counsel) refers to *Rywood v. Winfield Power (supra)* as an authoritative case for the Board to rely upon in adopting a "return on market value" approach to fixing compensation.

After careful consideration of *Rywood v. Winfield Power (supra)*, the Board finds that this case is readily distinguishable from the present case. The reasons for this finding follow:

### **Zoning**

In the Rywood case the well site occupied a portion of a 66.22 acre parcel located generally north of 114th Avenue and west of 170th Street in the City of Edmonton. The majority of this land was classified as Medium Industrial District. The remaining land included the area lease for the well site 3.78 acres and a 6.62 acre site. Both of these locations were zoned DC5 (Direct Control District). In addition, subdivision approval had been granted by the City for the most southerly 11.7 acres on September 17, 1998.

In the present case the said land is zoned AG – Agricultural General and is currently used for agricultural purposes.

### **Servicing**

In the Rywood case the land was clearly ready for further subdivision and servicing was well underway.

According to testimony given by the Lessor, Mr. Halvorsen, and Mr. Hoover the said land will have access to core municipal services in approximately 2010/2011.

### **Imminence of Development**

In the Rywood case, the Board determined that subdivision of the land was "imminent". On the basis of this determination the Board decided to employ the "annual return on investment approach" in fixing annual compensation.

In the present case, the Board has no evidence before it to show that the said land's development is imminent. Rather, evidence supplied by both parties indicates that the time for development is well into the future. The parties agree that essential services will not be available until 2010, or 2011.

At page 10 of his report (Exhibit 1, Tab 3) Mr. Halvorsen writes:

... Future residential development of the land will be subject to future area and neighbourhood planning and re-zoning.

The Board is mindful of its discretion to look ahead into the review period and consider future changes in land use. In this instance the passage of time has provided the Board with a degree of certainty as to what has and will happen in the review period. The effective period of review for the original (first) lease (3.73 acres) begins January 1, 2002 and ends December 31, 2006. The review period for the second lease (0.82) acres begins August 8, 2003 and ends August 7, 2008. The third lease (1.03 acres) review begins as of March 26, 2004 and ends March 25, 2009.

After careful consideration of the facts, the Board determines that development of the said land as of the effective dates is simply not imminent.

As set out above, the Board determines that the Rywood case is clearly distinguishable from the present case. In Rywood, the land was zoned for development and parts of the land were already subdivided and/or had been given subdivision approval. In the present case, the said land is zoned for agriculture and is rented out by the Lessor for agricultural use. If the Lessor is demanding a higher income from his investment, he is free to participate in the marketplace and garner a greater income from the land. Although the Board recognizes that the use of the land will likely change in the future, the Board finds no evidence to show that development is in any way imminent as of the effective dates of review. In light of the facts and circumstances, the Board will not adopt the "return on investment" approach as advanced by the Lessor in this matter.

### **Pre-Knowledge of Surface Lease**

In the Rywood case, when the current owner purchased the land there was no notification of the presence of a well site on the newly issued title. It follows that the landowner was unaware of any possible implications and restraints posed by the well site.

In the current case, the Lessor testified that he was fully aware of the Operator's surface operations prior to purchasing the said land. The Board finds that as a matter of due diligence, the Lessor and/or his legal advisors were likely to have considered any possible advantages and disadvantages posed by the subject site in making a decision to purchase the land.

Having rejected the Lessor's approach, the Board relies on the decision of Moore, J. in *Edward Muntean and Bradley David Muntean v. GNE Resources Ltd.* [1993] 7 W.W.R. 341, ABQB, for determining an acceptable method of calculating fair annual compensation.

In his summary and decision Justice Moore states:

... Income stream method of calculating rent only appropriate where no comparable leases existing in same urban area ...

He further states that:

Appropriate annual compensation must be determined in relation to what other tenants pay to lease similar lands in similar situations. ...

... Although no two leases are truly comparable, an element of common sense must be applied. ...

### **EUB Setback:**

The Alberta Energy and Utilities Board requires any residential development to be set back 100 metres from a Level 1 sour gas facility. Because of this, the Lessor is seeking compensation for an additional 7.76 acres contained within the setback area.

As previously determined by the Board, residential or residential/commercial development on the said land is far from imminent. Development cannot occur until the pre-requisite planning, zoning and servicing is in place. No evidence was submitted by the Lessor that would indicate that these processes are even underway. The Lessor purchased the said land with full knowledge of the pre-existing surface leases. The Board can only surmise that consideration for these leases was part of the initial negotiations for purchase and the Lessor was aware of the possible benefits, drawbacks and implications arising from the presence of the lease sites.

In light of the said land's current zoning, agricultural use and because the land is not yet ripe for development, the Board denies this aspect of the Lessor's request for annual compensation.

### **Comparables:**

The Operator submits 33 comparable examples on 25 sites lettered A through to Y (Exhibit 3). The map accompanying Exhibit 3 shows the comparables' locations (Y is on the list of comparables, but is not marked on the map). Seventeen of these are located some distance to the north and west of the subject in or near the City limits. One comparable is located near Devon and two others are located at the south east corner of the City. Four examples (letters E, V, W and X) are located within a very close distance to the subject and are visible in the large scale aerial photograph (Exhibit 5).

Compensation ranges from a low of \$1,235.00 per year to a high of \$12,000.00 per year. Average compensation is \$3,223.93. The most frequently occurring compensation amounts lie within a range from \$2,000.00 to \$3,000.00 per year.

The Board finds the comparables located a considerable distance from the said land to be of limited use. The Board prefers to more closely examine comparables E, V, W and X as they are located in close proximity to the subject leases. Although no evidence was brought before the Board regarding the zoning status of these comparables, the aerial photograph indicates they are situated on lands used for agricultural purposes. A brief analysis follows:

- Comparable E  
Location: 9-52-25-W4M  
Operator: Canetic Trust  
Area: 2.743 acres  
Compensation: \$1,235.00 per year for an access road.
- Comparable V  
Location: NW 33-51-25-W4M  
Operator: Penn West  
Area: 2.63 acres  
Compensation: \$5,840.00 per year

Comparable V is located directly south of the subject. It contains four above ground wells, one riser and well casing system.

The Board notes that comparable V pertains to Board File No. ER 912. The Board issued Right of Entry Order No. E442/77, on May 2, 1977. Compensation Order No. E693/78 was issued on July 20, 1978, and the Board determined annual compensation in the amount of \$2,920.00. In 1987 the operator (at that time Amoco) and the landowner agreed to increase the rental to \$5,840.00 effective May 2, 1987. The Operator gives the effective date as 2004.

- Comparable W  
Location: S2 4-52-25 W4M  
Operator: Penn West  
Area: 7.88 acres  
Compensation: \$12,000.00 per year  
This lease contains two separate well sites and a fairly major facility including tanks, buildings, heavy traffic and a second access road. This lease is located almost immediately north of the subject leases. During the hearing, the Operator stated that it agreed to this amount of compensation under duress. However, no evidence was presented to substantiate this claim.  
  
In its summary of comparables (Exhibit 3) the Operator states that compensation for this site was last reviewed in 2005. However, the Amendment to Surface Lease included as part of Exhibit 4 shows that compensation was last amended in 2003.  
  
Comparable X  
Location: S2 4-52-25 W4M  
Operator: Penn West  
Area: 4.7 acres  
Compensation: \$2,500.00 per year  
This comparable encompasses two distinct sites and contains a district facility and an access road. Compensation was negotiated between the Operator and Alberta Infrastructure in May of 1990.

Lieber Lease as Amended  
Note the reference to the "Amendment Agreements"

Armstrong Lease (Crown Land)  
Access Road and North Portion of Battery

Comparable E is of limited use as it pertains to an access road only and there is no indication as to when compensation was last reviewed.

Comparable X contains site facilities that may exert a similar amount of nuisance and adverse effect as the subject leases. However, the low compensation on this lease may be attributable to the Government of Alberta's common practice of charging lower rates of annual rentals to operators on Crown or government land throughout Alberta. This practice is similar to providing Crown grazing leases at low rates in order to stimulate economic activity which benefits the Province overall.

The Board prefers to rely on comparable V and comparable W. Further analysis follows:

Comparable V (Board File No. ER 912)

This site occupies an area of 2.63 acres and contains among other things four wells. The Board issued Right of Entry Order No. E442/77 on May 2, 1977. Compensation Order No. E693/78 was issued on July 20, 1978, and fixed annual compensation in the amount of \$2,920.00. In 1987, the operator and the landowner agreed to compensation in the amount of \$5,840.00 (effective May 2, 1987).

This is a meaningful comparable. It is located very close to the subject sites, on similar land showing a similar use. However, compensation for this comparable was last set in 1987. This is not acceptably contemporaneous with the subject leases' effective dates of review which are respectively, January 1, 2002, August 8, 2003, and March 26, 2004. Comparable V is somewhat outdated and compensation may not be up-to-date.

**Amendment Agreement with Dale and Coleen Braun and Daneve Lucas was signed on December 17, 2003 (other owners signed on later dates)**

**Comparable W**

This site is somewhat larger than the subject sites and the on-site facilities may generate a similar level of activity. The Operator's Exhibit 2, represents that compensation was last reviewed in 2005. However, the amended surface lease forming part of the Operator's Exhibit 4 shows that compensation was actually amended on December 17, 2003, with annual compensation in the amount of \$12,000.00.

The Operator declared that the \$12,000.00 annual compensation on comparable W was signed under duress. However, no evidence was brought before the Board to substantiate this assertion.

LOSS OF USE:

The Board considered the Operator's submission on this matter as set out in Exhibit 6 wherein loss of use is estimated to be \$112.50 per acre. In addition, the Operator submits that its offer of \$300.00 per acre is based on a review of its own comparables and this amount is reasonable for cultivated lands. The disparity between these two figures detracts from the credibility of the former. The Board is not persuaded that the Operator's empirical calculation of loss of use (Exhibit 6) was submitted for any purpose other than to bolster its assertion that \$300.00 per acre is reasonable.

Only three of the 33 comparables entered in evidence by the Operator provide a breakdown between loss of use and adverse effect [a portion of Exhibit 4 [Decisions Nos. 2006/0129 (A), 2006/0130 (B) and 2004/0035 (C)]: A @ \$400.00 per acre; B @ \$400.00 per acre; and C @ \$250.00 per acre]. The Operator's summary of comparables shows no break down.

The \$400.00 award on Decision Nos. 2006/0129 and 2006/0130 for loss of use, stems from the increased value of the hay crop because of it being processed into plastic wrapped high moisture bales. The third Board decision (Decision No. 2004/0035) awarded loss of use in the amount of \$250.00 per acre.

Having considered the comparables, the Board fixes compensation for loss of use in the amount of \$300.00 per acre.

ADVERSE EFFECT:

For reasons previously given, the Board is not persuaded by the "income approach" taken by the Lessor in his request for annual compensation. The Operator's presentation was fraught with confusion. Most of the Operator's comparables were located too far away and in contextual settings that bore no similarity to the subject lease sites.

As previously stated, the Board is persuaded that comparables V and W are the most cogent available indicators of fair compensation in respect of the subject leases. **As no breakdown is provided the Board will adopt the assumption that compensation for loss of use could be \$300.00 per acre. Building on this, compensation for adverse effect in respect of V and W is as follows:**

- Comparable V: 2.63 acres with four wells and riser, reviewed in 1987  
 Total annual compensation: .....\$ 5,840.00  
 2.63 acres @ \$300.00 per acre Loss of Use: .....\$ 790.00 (rounded)  
 Estimated Adverse Effect: \$ 5,050.00
- **Comparable W: 7.88 acres**, reviewed in 2003  
 Total annual compensation: .....\$ 12,000.00  
**7.88 acres** @ \$300.00 per acre Loss of Use: .....\$ 2,364.00  
 Estimated Adverse Effect: \$ 9,636.00

**Comparable W is the Lieber Lease as Amended (by Amendment Agreements).  
 Note the acreage stated is 7.88 acres.**

Comparable V was last reviewed in 1987. It is similar to the first of the three subject leases (the SL 2005.0051 site) insofar as it contains four wells. The SL 2005.0051 site is however much larger with an area of 3.73 acres. It involves lands similar to the subject sites and is located in close proximity.

The Operator stated in the hearing that Comparable W was reviewed in 2005 (Exhibit 3). However, the amended surface lease (Exhibit 4) shows this lease was reviewed on December 17, 2003. The site is located in close proximity to the subject sites on similar lands with similar uses.

In fixing compensation **the Board regards V and W as the best available evidence**. The Board accepts the Lessor's evidence regarding nuisance and inconvenience. Dr. Singh is worried about how the appearance, potential danger and activity arising from the Operator's operations may impact his plans for development and influence buyer perceptions. Although the Board determines that as of the effective date, development is not imminent, the said land's location and characteristics underscore the probability that the lands will be developed in the future. It is this disturbance to Dr. Singh in terms of the nuisance and inconvenience that he must bear in adjusting his plans for the land that attracts an award of suitable compensation under the heading of adverse effect.

The **three subject leases contain a total of six wells, a riser, a header building** and other minor installations. In Exhibit 2, the Operator offers compensation for adverse effect on the first of four wells located on the SL 2005.0051 site in the amount of \$2,480.00. For the five other wells (three on the first site and one well on each remaining site), the Operator offers \$800.00 for each additional well.

The Board will award \$2,500.00 for the first well for adverse effect.

Under circumstance deemed appropriate, the Board has fixed adverse for additional wells on a single lease at 50% of the first well. In the present case, the Board finds that this approach is appropriate. Compensation must be fixed having regard for the fact that the said land is unique. It is surrounded by intense urban development and occupies a prime riverfront location.

In Exhibit 2, the Operator offers \$800.00 for the single wells located on the two remaining leases. As these are separate and distinct leases the Board considers each well to be the first (and only) well on these sites.

DETERMINATION OF COMPENSATION:

Having carefully considered the evidence, testimony and circumstances the Board fixes compensation as follows:

The SL 2005.0051 Site (four wells and riser)

|  |                    |
|--|--------------------|
| Loss of Use: \$300.00 per acre x <b>3.73 acres</b> ..... | \$ 1,119.00        |
| Adverse Effect: 1st well.....                            | \$ 2,500.00        |
| 3 additional wells @ \$1,250.00 per well .....           | \$ 3,750.00        |
| <b>Total Annual Compensation: .....</b>                  | <b>\$ 7,369.00</b> |

The SL 2005.0052 Site (one well)

|  |                    |
|--|--------------------|
| Loss of Use: \$300.00 per acre x <b>0.82 acres</b> ..... | \$ 246.00          |
| Adverse Effect: .....                                    | \$ 2,500.00        |
| <b>Total Annual Compensation: .....</b>                  | <b>\$ 2,746.00</b> |

The SL 2005.0053 Site (one well and header building)

|  |                    |
|--|--------------------|
| Loss of Use: \$300.00 per acre x <b>1.03 acres</b> .....         | \$ 309.00          |
| Adverse Effect (\$2,500.00 + \$500.00 for header building):..... | \$ 3,000.00        |
| <b>Total Annual Compensation: .....</b>                          | <b>\$ 3,309.00</b> |

**TOTAL AGGREGATE COMPENSATION.....\$ 13,424.00**

INTEREST:

Under Section 27(15)(c), the Board may make an order regarding the payment of interest that it considers appropriate. The Board considers the Bank of Canada rate on the due date of the rental payment to be appropriate interest on the balance of annual compensation due. The Board awards interest as follows:

| <u>File No.</u> | <u>Effective Date</u> | <u>Bank Rate</u> |
|-----------------|-----------------------|------------------|
| SL 2005.0051    | January 1, 2002       | 2.50%            |
|                 | January 1, 2003       | 3.00%            |
|                 | January 1, 2004       | 3.00%            |
|                 | January 1, 2005       | 2.75%            |
|                 | January 1, 2006       | 3.50%            |
|                 | January 1, 2007       | 4.50%            |
| SL 2005.0052    | August 8, 2003        | 3.25%            |
|                 | August 8, 2004        | 2.25%            |
|                 | August 8, 2005        | 2.75%            |
|                 | August 8, 2006        | 4.50%            |
|                 | August 8, 2007        | 4.75%            |
| SL 2005.0053    | March 26, 2004        | 2.50%            |
|                 | March 26, 2005        | 2.75%            |
|                 | March 26, 2006        | 4.00%            |
|                 | March 26, 2007        | 4.50%            |

COSTS:

In considering costs, the fundamental principle is that a party entitled to an award of costs is entitled to be reimbursed for any reasonable costs reasonably incurred in and incidental to the proceedings before the Board, and necessary to the determination of fair compensation payable for that which gave rise to the proceedings.

The Lessor has claimed the following costs:

|  |                   |
|--|-------------------|
| 1. Appraisal: account dated January 22, 2007 ..... | \$3,148.20        |
| 2. Legal: account dated March 8, 2007 .....        | \$2,988.03        |
| 3. Legal: account dated March 12, 2007 .....       | <u>\$2,058.26</u> |
| Total .....  | \$8,194.49        |

Appraisal Costs:

The Operator maintains that the appraisal was irrelevant to the matter before the Board. Land value is not a factor to be considered in fixing annual compensation. The Operator also notes that the appraisal report was expressly prepared for two distinct purposes: the hearing and for mortgage financing purposes. Accordingly, the Operator submits that only a portion, if any, of the costs of the appraisal report should be awarded by the Board.

The Landowner has a right to seek effective representation at a hearing before the Board. Matters related to surface rights compensation are complex and may involve numerous factors. While the “return on investment” approach did not succeed for the reasons given in this decision, it may have succeeded under different circumstances. Accordingly the Board will award the full cost of the appraisal.

The Operator contends that legal costs are excessive due to an inappropriate focus on the value of the land rather than on comparable leases or loss of use and adverse effect. In addition, the Operator notes that a portion of legal costs pertained to advice and legal services to the Landowner related to proceedings before the Alberta Energy and Utilities Board (EUB). Such advice is not properly the subject of a Surface Rights Board Hearing. The Operator submits that the March 8, 2007, account should be reduced by one-third.



File Nos. SL 2005.0051, SL 2005.0052 and SL 2005.0053

25.....

The Board agrees with the Operator's submission regarding legal costs related to EUB matters. The March 8, 2007, account will be reduced by one-third (\$996.01).

After careful consideration of the submissions and facts, the Board fixes costs in the amount of \$7,198.48 including GST. Costs will be applied to File No. SL 2005.0051.

ORDERS:

Orders will issue determining and varying the rate of compensation payable by the Operator as set out in the attached decisions.

*SURFACE RIGHTS ACT*  
RSA 2000  
Chapter S-24  
(hereinafter "the Act")

Before:

SURFACE RIGHTS BOARD  
(hereinafter "the Board").

IN THE MATTER OF section 27 of the Act; and

IN THE MATTER OF certain lands subject to a surface lease in the South West Quarter of Section 4, Township 52, Range 25, West of the 4th Meridian, in the Province of Alberta.  
Excepting thereout all Mines and Minerals.

B E T W E E N:

PENN WEST PETROLEUM LTD.,

Operator,

- and -

SARASWATI PRASAD SINGH,

Lessor.

DECISION

On the relevant evidence heard, and on the findings of fact and for the reasons set out in the Reasons for Decision to which this is attached hereto and forming part hereof, the Board determines that the rate of compensation payable by the Operator in respect of the Surface Lease shall be varied from \$5,500.00 annually to \$7,369.00 annually, effective on and after January 1, 2002, and payable on that date in each year thereafter unless and until varied by a further review.

Interest calculated at the following rates:

- (a) 2.50% per annum on \$1,869.00 from January 1, 2002, until paid in full;
- (b) 3.00% per annum on \$1,869.00 from January 1, 2003, until paid in full;
- (c) 3.00% per annum on \$1,869.00 from January 1, 2004, until paid in full;
- (d) 2.75% per annum on \$1,869.00 from January 1, 2005, until paid in full;
- (e) 3.50% per annum on \$1,869.00 from January 1, 2006, until paid in full; and
- (f) 4.50% per annum on \$1,869.00 from January 1, 2007, until paid in full

shall be paid by the Operator.

The costs of these proceedings are fixed in the sum of \$7,198.48 payable by the Operator to the Lessor.

Dated at the City of Edmonton in the Province of Alberta this 19th day of October, 2007.

SURFACE RIGHTS BOARD

MEMBER

