

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
HIGHMOUNT MIDWEST ENERGY, LLC,)
for approval to operate certain natural gas wells) Case No. U-16074
under a vacuum in Montmorency County, Michigan.)
_____)

In the matter of the application of)
BELDEN & BLAKE CORPORATION, d/b/a)
WARD LAKE ENERGY, for approval to) Case No. U-16075
operate certain natural gas wells under a vacuum)
in Montmorency County, Michigan.)
_____)

In the matter of the application of)
TERRA ENERGY COMPANY, LLC, for)
approval to operate certain natural gas wells) Case No. U-16076
under a vacuum in Oscoda County, Montmorency)
County, and Otsego County, Michigan.)
_____)

In the matter of the application of)
MUSKEGON DEVELOPMENT COMPANY)
seeking a declaratory ruling that the Commission)
will not approve any exceptions to R 460.867,)
which prohibits placing any well, pool or field) Case No. U-16190
under vacuum, or in the alternative, for approval)
to operate certain natural gas wells under a)
vacuum in Otsego, Crawford, Montmorency,)
and Oscoda Counties, Michigan.)
_____)

In the matter, on the Commission's own motion,)
to consider the appropriate regulatory response to)
proposals by various producers of natural gas from) Case No. U-16230
Antrim Shale Formation to operate their wells)
under a vacuum.)
_____)

At the April 27, 2010 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER OPENING DOCKET, STAYING PROCEEDINGS, AND CLOSING DOCKET

On August 24, 2009, HighMount Midwest Energy, LLC (HighMount), Belden & Blake Corporation d/b/a Ward Lake Energy (Belden & Blake), and Terra Energy Company LLC (Terra Energy) filed separate applications to obtain approvals pursuant to R 460.867 (Rule 17) of the Commission's Rules for the Production and Transmission of Natural Gas to produce certain natural gas wells through the use of vacuum devices.

In Case No. U-16074, HighMount is seeking approval to operate Antrim Shale Formation gas wells in three of its projects on a vacuum. In Case No. U-16075, Belden & Blake is seeking approval to operate Antrim Shale Formation gas wells in three of its projects on a vacuum. In Case No. U-16076, Terra Energy is seeking approval to operate Antrim Shale Formation gas wells in three of its projects on a vacuum. In each of the cases, the applicants maintain that the vacuum operations at any of their designated wellbores will not be located closer than 1320 feet to the boundary of a project or well unit not operated by the applicant.

The applications filed by HighMount, Belden & Blake, and Terra Energy quickly drew the interest of other producers of natural gas. Trendwell Energy Corporation (Trendwell), Muskegon Development Company (Muskegon), O. I. L. Energy Corp., Atlas Gas & Oil Company, LLC and Jordan Development Company, LLC (collectively, O.I.L. *et al*), HRF Exploration & Production LLC (HRF), and the Turtle Lake Club (TLC), all filed petitions for leave to intervene and

appeared at the October 13, 2009 prehearing conference before Administrative Law Judge Mark D. Eyster (ALJ). DCP Antrim Gas LLC and DCP Grand Lacs LLC (collectively, DCP), owners of natural gas gathering lines and carbon dioxide (CO₂) treatment facilities, also filed a petition to intervene. The Commission Staff (Staff) also participated.¹

At the prehearing conference, the ALJ granted all of the interventions² and a schedule for the remainder of the proceedings was established. Further, the ALJ recognized that the subject matter of these proceedings was both broad reaching and unusual:

The subject of this case, apparently from everything that's been represented to me is, is rather unique in that apparently the Commission has never granted such an application under Rule 17, and I'm not sure that they have actually heard an application under Rule 17 for vacuum pumping.

There are some suggestions that this case should be opened up into a broader case and to investigate, I guess, the whole concept of vacuum wells, but we are kind of limited to the application before us, so that's – that's what I am working with.

If the Commission wants to make this a broader investigation, I guess that's something they can, they can do on their own, but that's not particularly the authority that I have. But nonetheless the case seems to bring up a whole host of matters that need to be addressed in order for the Commission to thoroughly evaluate and make a decision as to this matter, and some of that has to do with safety, there's economic concerns, I'm sure that the Commission would like to address, certainly the rights of adjoining producers and property owners.

There's discussion about setbacks, I've heard, you know, some arguments regarding the fractured nature of the structure and whether or not those setbacks are sufficient. It appears this is going to be a question of first impression for the Commissioners, and as an Administrative Law Judge on matters of that type, I always prefer to kind of err on the side of including additional information that I

¹A seemingly related matter, filed by O.I.L. that was docketed as Case No. U-16079, was later withdrawn. See, the November 12, 2009 order in Case No. U-16079.

²Some of the intervenors were recognized as having qualified for intervention as of right under the "Two-Prong Test" from *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150; 90 S Ct 827; 250 LEd 184 (1970). The remaining intervenors were granted permissive intervention.

might not find useful, rather than limiting information they receive, possibly to the detriment of the State of Michigan and the parties involved.

1 Tr 56-57.

On January 13, 2010, Muskegon filed its own application in Case No. U-16190 stating two counts and requesting certain relief. In Count I of its application, Muskegon seeks a declaratory ruling pursuant to R 460.17701(1) establishing that the Commission will not approve any exceptions to Rule 17, which prohibits placing any gas well, pool, or field under vacuum with respect to the entire Antrim Shale Formation. In the alternative, Muskegon requests in Count II of its application that the Commission grant Muskegon approval to operate all of its natural gas wells under a vacuum, including 33 projects located in the counties of Otsego, Crawford, Oscoda, and Montmorency.

Discussion

R 460.867 (Rule 17) provides:

No gas well, pool or field shall be placed under vacuum by the use of compressors, pumps or other devices except with the approval of the commission. If and when the placing of a vacuum in any well, pool or field is planned, application for approval shall be made to the commission, and the adjoining lease owners and operators of a pool or field who may be affected shall be given notice. The commission may call a hearing on the subject, or may take such action as it deems advisable.

As recognized by the ALJ, the three cases filed by HighMount, Belden & Blake, and Terra Energy and Muskegon's request for a declaratory ruling involve issues of first impression that are likely to establish important and potentially controlling precedent for many producers of natural gas from Antrim Shale Formation gas wells. Affected persons may encompass any operator and lease holder with interests in the Antrim Shale Formation. Issues of the protection of correlative rights, the safety of the general public, and the prevention of economic waste all must be addressed.

Therefore, the Commission finds that, rather than engaging in a piecemeal, case-by-case adjudication process with respect to the entire Antrim Shale Formation on the issue of whether the Commission will approve any exceptions to Rule 17, the Commission should take action at this time to broaden the proceedings as suggested by the ALJ.

Toward that end, the Commission directs the ALJ to temporarily stay further proceedings in Case Nos. U-16074, U-16075, and U-16076. A new docket, Case No. U-16230, has been opened to consider the Commission's appropriate regulatory response to proposals by all interested persons regarding the issue of whether the Commission should permit gas wells to be operated under vacuum from the Antrim Shale Formation.

The ALJ assigned to preside over Case Nos. U-16074, U-16075, and U-16076 shall preside over Case No. U-16230. All current applicants and intervenors to Case Nos. U-16074, U-16075, U-16076, and U-16190 shall be considered parties to Case No. U-16230. Given these actions, the Commission finds that further proceedings in Case No. U-16190 are unnecessary and that Case No. U-16190 should be dismissed.

The Commission directs the Executive Secretary to arrange to publish a notice in the Michigan Oil & Gas News regarding Case No. U-16230 indicating that a prehearing conference in Case No. U-16230 has been scheduled for 9:00 a.m. on June 15, 2010. The notice shall invite all interested persons to participate in the proceedings, either intervening as a party under R 460.17201 (Rule 201) of the Commission's Rules of Practice and Procedure or through the submission of a statement under Rule 207 of those rules. The Executive Secretary is also directed to work with the Gas Operations Section of the Commission's Operations & Wholesale Markets Division to send individual notices to all known producers having wells in the Antrim Shale Formation of the proceeding to be conducted in Case No. U-16230.

Persons seeking to intervene as a party shall submit a petition for leave to intervene in Case No. U-16230 by June 4, 2010. All documents filed in this case by a party or a person seeking to intervene as a party shall be submitted electronically through the Commission's E-Dockets Website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 241-6180 or by e-mail at mpscedockets@michigan.gov. Documents may also be submitted as an attachment to an email, in Word or PDF format, to mpscfilecases@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at 517-241-6180 or by e-mail at: mpscfilecases@michigan.gov.

Persons seeking to participate via Rule 207 may appear at the June 15, 2010 prehearing conference or may file a statement of their positions with the Commission. Any person may submit written or electronic comments regarding the subject matter of Case No. U-16230. The comments must be filed no later than 5:00 p.m. on June 30, 2010. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to mpscedockets@michigan.gov. All comments should reference Case No. U-16230. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure.

Following the June 15, 2010 prehearing conference, the ALJ shall be free to determine the remainder of the schedule for this proceeding. However, because the Commission believes it needs to have a better basis for understanding the issues, the ALJ's initial focus shall be on the gathering of background information. Toward that end, a liberal use of the MPSC's right to officially recognize "general, technical or scientific facts within the agency's specialized knowledge" pursuant to

MCL 24.277 is encouraged. After developing a record on the history of Antrim Shale Formation production, the ALJ shall launch into developing a record that addresses the proposals put forth by the producers regarding whether the Commission should allow the production of gas from Antrim Shale Formation natural gas wells through the use of vacuum devices and the effect that allowing or rejecting such operations might have on the Commission's obligation to protect correlative rights, to safeguard the general public, and to prevent economic waste.

To avoid harm to the parties who have already invested resources in the prosecution of Case Nos. U-16074, U-16075, U-16076, and U-16190, the ALJ shall permit all of the work done in those cases to be incorporated into the docket in Case No. U-16230.

During the pendency of Case No. U-16230, the Commission directs that the unauthorized operation of an Antrim Shale Formation gas well, pool, or field under a vacuum will not be permitted.

Further, the Commission directs that the burden of going forward and the risk of non-persuasion should be with those seeking to have the Commission authorize the production of gas from Antrim Shale Formation under vacuum.

Finally, the Commission invites the parties and the ALJ to evaluate whether the Commission should carry out the recommendations to be made in the Proposal for Decision through this single contested case proceeding, serial contested case proceedings, or a rulemaking proceeding.

THEREFORE, IT IS ORDERED that:

A. The proceedings in Case Nos. U-16074, U-16075, and U-16076 are stayed until further order of the Commission, and Case No. U-16190 is closed.

B. A new docket, Case No. U-16230, is opened for a contested case proceeding on the subject of operating a gas well, pool or field under a vacuum in the Antrim Shale Formation.

C. To avoid harm to the parties who have already invested resources in the prosecution of Case Nos. U-16074, U-16075, U-16076, and U-16190, the ALJ shall permit all of the work done in those cases to be incorporated into the docket in Case No. U-16230.

D. The operation of a gas well, pool or field under a vacuum is prohibited until further order of the Commission.

E. Petitions for leave to intervene in Case No. U-16230 shall be filed by June 4, 2010.

F. A pre-hearing conference is scheduled for 9:00 a.m. on June 15, 2010.

G. The Commission's Executive Secretary Office shall publish a notice in the Michigan Oil & Gas News and shall provide notice to known operators of gas wells in the Antrim Shale Formation by electronic mail, if available. Known providers without e-mail addresses shall be notified by ordinary mail.

H. Any interested person may submit written comments until 5 p.m. on June 30, 2010, as provided in the order.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of April 27, 2010.

Mary Jo Kunkle, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-16074

County of Ingham)

Mignon Middlebrook being duly sworn, deposes and says that on April 27, 2010 A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Mignon Middlebrook

Subscribed and sworn to before me
This 27th day of April 2010

Gloria Pearl Jones
Notary Public, Ingham County, MI
My Commission Expires June 5, 2016

Service List – Case No. U-16074

James A. Christopherson
Dingeman Dancer & Christopherson PLC
100 N. Park Street
Traverse City MI 49684

Mark D. Eyster
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
Lansing MI 48911

HighMount Midwest Energy LLC
226 East 16th Street
Traverse City MI 48684

Dennis J. Levasseur
Bodman LLP
1901 Saint Antoine Street
6th Floor Ford Field
Detroit MI 48826

Gregory M. Luyt
Bowerman Bowden Ford Clulo & Luyt PC
620 Woodmere Avenue, Suite A
Traverse City MI 49686

James A. O'Toole
Biber O'Toole Fowler & Clarkson PLLC
2701 Troy Center Drive, Suite 400
Troy MI 48084

Jack D Sage
Varnum, Riddering, Schmidt & Howlett LLP
Bridgewater Place
P.O. Box 352
Grand Rapids MI 49501-0352

Spencer A. Sattler
Michigan Dept. of Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing MI 48911

Bret A. Totoraitis
Michigan Dept. of Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing MI 48911