

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 11461
ORDER NO. 13583

IN THE MATTER OF A HEARING CALLED ON
A MOTION OF THE COMMISSION TO
CONSIDER THE APPLICATION OF BAYTEX
ENERGY USA LTD. FOR AN ORDER
PURSUANT TO NDAC § 43-02-03-88.1 POOLING
ALL INTERESTS IN A SPACING UNIT FOR THE
FUHRMAN #36-162-99H, SECTION 36, T.162N.,
R.99W, AMBROSE-BAKKEN POOL, DIVIDE
COUNTY, ND; AUTHORIZING THE
RECOVERY FROM EACH
NONPARTICIPATING OWNER A RISK
PENALTY AS PROVIDED BY NDCC § 38-08-08
AND SUCH OTHER RELIEF AS IS
APPROPRIATE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 27th day of August, 2009.
- (2) Pursuant to North Dakota Administrative Code Section 43-02-03-88.1, the Director is authorized to sign, on behalf of the Commission, orders relating to, inter alia, pooling under North Dakota Century Code (NDCC) Section 38-08-08.
- (3) The applicant is the owner of an interest in an oil and gas leasehold estate in a spacing unit for the Ambrose-Bakken Pool described as all of Section 36, Township 162 North, Range 99 West, Divide County, North Dakota.
- (4) Said spacing unit is created in accordance with an order of the Commission and there are separately owned tracts and/or separately owned interests in the spacing unit, and some of the owners thereof have not voluntarily pooled their interests for the development and operation of said spacing unit.
- (5) The Commission makes no findings with regard to the specific acreage or percentage attributed to separately owned tracts or interests.

(6) NDCC Section 38-08-08 requires the Commission to enter a pooling order upon application when two or more separately owned tracts are embraced within a spacing unit, or there are separately owned interests in all or a part of a spacing unit, in the absence of voluntary pooling. The section further provides that working interest owners in the spacing unit shall pay their share of the reasonable actual cost of drilling and operating the well plus a reasonable charge for supervision. In addition to such costs and charges, nonparticipating lessees may be required to pay a risk penalty of 200 percent and unleased mineral interest owners may be required to pay a risk penalty of 50 percent of their share of the reasonable actual cost of drilling and completing the well.

(7) Applicant requests an order of the Commission pooling all interests in the spacing unit, and allowing the recovery of a risk penalty from nonparticipating owners.

(8) There were no objections to this application.

(9) This application should be granted in order to prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED:

(1) All oil and gas interests in a spacing unit for the Ambrose-Bakken Pool described as all of Section 36, Township 162 North, Range 99 West, Divide County, North Dakota, are hereby pooled for the development and operation of the spacing unit.

(2) This pooling shall not determine or establish the specific acreage to be attributed to separately owned tracts, or specific interests attributed to separately owned interests.

(3) The operator of the well for said spacing unit shall conduct operations in a manner so as to protect correlative rights of all interested parties.

(4) All owners of interests shall recover or receive, without unnecessary expense, their just and equitable share of production from said spacing unit in the proportion as their interests may appear in the spacing unit.

(5) The working interest owners shall reimburse the operator for their proportionate share of the reasonable actual cost of drilling and operating said well, plus a reasonable charge for supervision.

(6) In the event of any dispute as to such costs the Commission shall determine the proper cost.

(7) If a lessee owning an interest in the spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating lessee's share of the drilling and operation of a well may recover from the nonparticipating lessee a risk penalty for the risk involved in drilling the well. The risk penalty is 200 percent of the nonparticipating lessee's share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by NDCC Section 38-08-10, exclusive of any royalty or overriding royalty.

(8) If an unleased mineral interest owner in the spacing unit refuses a good-faith attempt to execute a lease and elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating mineral interest owner's share of the drilling and operation of a well may recover from the nonparticipating mineral interest owner a risk penalty for the risk involved in drilling the well. The risk penalty is 50 percent of the nonparticipating mineral interest owner's share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by NDCC Section 38-08-10, exclusive of any royalty.

(9) In the event the size of the spacing unit pooled herein is modified by the Commission, this order shall terminate as of the date of such order.

(10) This order shall be effective from the date of first operations, and shall remain in full force and effect until further order of the Commission.

Dated this 23rd day of September, 2009.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director