

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 14696
(CONTINUED)
ORDER NO. 16974

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
AUTHORIZING THE FLARING OF GAS FROM
THE FURHMAN #36-162-99H WELL LOCATED
IN THE NWNW OF SECTION 36, T.162N.,
R.99W., DIVIDE COUNTY, ND, AMBROSE-
BAKKEN POOL, AS AN EXCEPTION TO THE
PROVISIONS OF NDCC § 38-08-06.4 AND SUCH
OTHER RELIEF AS IS APPROPRIATE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

(1) This cause originally came on for hearing at 9:00 a.m. on the 28th day of April, 2011. At that time, counsel for Batyex Energy USA Ltd. (Batyex) requested this case be continued to the regularly scheduled hearing in June, 2011. There were no objections, the hearing officer granted the request, and this case was scheduled for hearing on June 23, 2011. At that time, counsel for Batyex requested this case be continued to the regularly scheduled hearing in July 2011. There were no objections, the hearing officer granted the request, and this case was scheduled for hearing on July 20, 2011.

(2) Pursuant to NDAC Section 43-02-03-88.1, the Director is authorized to sign, on behalf of the Commission, orders relating to, inter alia, flaring exemptions under North Dakota Century Code (NDCC) Section 38-08-06.4 and under NDAC Section 43-02-03-60.2.

(3) NDCC Section 38-08-06.4 states:

As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well. Thereafter, flaring of gas from the well must cease and the well must be capped, connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the

gas from the well. An electrical generator and its attachment units to produce electricity from gas must be considered to be personal property for all purposes. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas is economically infeasible.

(4) Baytex Energy USA LTD (Baytex) is the owner or operator of the following well in the Ambrose-Bakken Pool, Divide County, North Dakota:

<u>File #</u>	<u>Well Name & Number</u>	<u>Location</u>
18280	Furhman #36-162-99H	NW NW Section 36-T162N-R99W

(5) The Ambrose-Bakken Pool is an oil reservoir, but gas is produced in association with the oil at the wellhead as a by-product of oil production.

(6) By previous order of the Commission, said well is currently authorized to flare so that all owners of interests in the well herein described may receive the maximum benefits of the oil production in such a manner that will prevent waste and protect correlative rights.

(7) The well is not connected to a gas gathering facility and evidence presented to the Commission indicates that the well currently produces approximately 5 MCF per day of surplus gas.

(8) The well is located approximately 7.8 miles to the nearest gas gathering system.

(9) Baytex has estimated the net profit value of the project to be a loss of approximately \$150,000, therefore, there are insufficient reserves of surplus gas to recoup the costs of installing and operating a gas gathering facility.

(10) Baytex has submitted evidence that under current market conditions the surplus casinghead gas presently being produced by the well and the estimated recoverable reserves of surplus gas from the well is insufficient to recoup the costs of installing and operating a gas gathering facility.

(11) Baytex has investigated the possibility of equipping the well with an electrical generator. Commercial electric generators need a minimum gas supply of greater than 5

MCFPD, which is not available. It is therefore determined that equipping the well with an electrical generator to produce electricity from the gas is economically infeasible.

(12) If Baytex's request is not granted, taxes and royalties must be paid on flared gas which will increase operating costs, raise the economic limit and cause premature abandonment of the well; or the well must be connected to a gas pipeline or an electrical generator at an economic loss which would also cause premature abandonment, or flaring must cease and the well must be "capped," resulting in the loss of oil production and the loss of the benefits of that production by all owners of interest in the well and the State of North Dakota.

(13) Considering the amount of surplus gas being produced by the well, the amount of estimated recoverable reserves from the well, and the cost to connect the well to a gas pipeline, it is not economic at this time to connect the well to a gas gathering facility or an electrical generator.

(14) Baytex continues to evaluate the feasibility of connecting the well to a gas gathering facility.

(15) In order to prevent waste, and protect correlative rights this application should be granted.

IT IS THEREFORE ORDERED:

(1) Baytex Energy USA LTD, its assigns and successors, is hereby allowed to flare surplus casinghead gas produced with crude oil from the Ambrose-Bakken Pool through the well listed below under the exemption provided for under NDCC Section 38-08-06.4:

<u>File #</u>	<u>Well Name & Number</u>	<u>Location</u>
18280	Furhman #36-162-99H	NW NW Section 36-T162N-R99W

(2) This order shall remain in full force and effect until further order of the Commission.

Dated this 3rd day of April, 2012.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director