

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF NORTH DAKOTA

CASE NO. 19500  
ORDER NO. 21802

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 AUTHORIZING THE FLARING OF GAS FROM THE GERALYN MARIE 34-163-99H #1DQ, NWNW OF SECTION 34, T.163N., R.99W.; LARSON #3-162-99H, SESE OF SECTION 3; HAUGLAND #4-162-99H, SESE OF SECTION 4; HAUGLAND #9-162-99H, SWSW OF SECTION 4; GRUNDSTAD #5-162-99H, SESE OF SECTION 5; LARSEN #8-162-99H, NWNW OF SECTION 8; GRUNDSTAD #10-162-99H, NWNW OF SECTION 10; HANSEN #13-162-99H, SESE OF SECTION 13; SORENSON #14-162-99H, NWNW OF SECTION 14; HAUGENOE #22-162-99H, SESW OF SECTION 15; HAUGENOE #15-162-99H, NWNW OF SECTION 15; HANSEN #6-7-162-99H, NENE OF SECTION 18; HANSEN #18-19-162-99H, NENE OF SECTION 18; LYSTAD 23-162-99 #1QD, SESE OF SECTION 23; SINCLAIR #24-162-99H, NWNW OF SECTION 24, T.162N., R.99W., DIVIDE COUNTY, ND, AMBROSE-BAKKEN POOL; PURSUANT 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 came on for hearing at 9:00 a.m. on the 17th day of January, 2013.
- (2) The Commission received an application from Baytex Energy USA Ltd. (Baytex) on December 14, 2012 for an order pursuant to North Dakota Administrative Code (NDAC) Section 43-02-03-88.1 authorizing the flaring of gas from 15 wells to include: the Geralyn Marie 34-163-99H #1DQ located in the NW/4 NW/4 of Section 34, Township 163 North, Range 99 West; Larson #3-162-99H located in the SE/4 SE/4 of Section 3, Township 162 North, Range 99

West; Haugland #4-162-99H located in the SE/4 SE/4 of Section 4, Township 162 North, Range 99 West; Haugland #9-162-99H located in the SW/4 SW/4 of Section 4, Township 162 North, Range 99 West; Grundstad #5-162-99H located in the SE/4 SE/4 of Section 5, Township 162 North, Range 99 West; Larsen #8-162-99H located in the NW/4 NW/4 of Section 8, Township 162 North, Range 99 West; Grundstad #10-162-99H located in the NW/4 NW/4 of Section 10, Township 162, Range 99 West; Hansen #13-162-99H located in the SE/4 SE/4 of Section 13, Township 162 North, Range 99 West; Sorenson #14-162-99H located in the NW/4 NW/4 of Section 14, Township 162 North, Range 99 West; Haugenoe #22-162-99H located in the SE/4 SW/4 of Section 15, Township 162 North, Range 99 West; Haugenoe #15-162-99H located in the NW/4 NW/4 of Section 15, Township 162 North, Range 99 West; Hansen #6-7-162-99H located in the NE/4 NE/4 of Section 18, Township 162 North, Range 99 West; Hansen #18-19-162-99H located in the NE/4 NE/4 of Section 18, Township 162 North, Range 99 West; Lystad 23-162-99 #1QD located in the SE/4 SE/4 of Section 23, Township 162 North, Range 99 West; Sinclair #24-162-99H located in the NW/4 NW/4 of Section 24, Township 162 North, Range 99 West; Divide County, Ambrose-Bakken Pool, North Dakota, pursuant to the provisions of North Dakota Century Code (NDCC) Section 38-08-06.4 and such other relief as is appropriate.

(3) Pursuant to NDAC Section 43-02-03-88.1, the Director is authorized, on behalf of the Commission, to grant or deny applications relating to, inter alia, flaring exemptions under NDCC Section 38-08-06.4 and under NDAC Section 43-02-03-60.2.

(4) At the time of this hearing, NDCC Section 38-08-06.4 stated:

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.

(5) At the time of this application, Baytex was the owner or operator of the following wells in the Ambrose-Bakken Pool, Divide County, North Dakota:

<u>File #</u>	<u>Well Name &amp; Number</u>	<u>Location</u>	<u>Completion Date</u>
20569	Geralyn Marie 34-163-99 #1DQ H	NWNW Section 34-T163N-R99W	7/12/2011
18982	Larson #3-162-99H	SESE Section 3-162N-R99W	11/10/2010
19266	Haugland #4-162-99H	SESE Section 4-162N-99W	12/6/2010
19489	Haugland #9-162-99H	SWSW Section 4-162N-99W	12/7/2010
19162	Grundstad #5-162-99H	SESE Section 5-162N-99W	10/22/2010
19653	Larsen #8-162-99H	NWNW Section 8-162N-99W	4/27/2011
19754	Grundstad #10-162-99H	NWNW Section 10-162-99W	5/18/2011
18728	Hansen #13-162-99H	SESE Section 13-162-99W	6/23/2010
18854	Sorenson #14-162-99H	NWNW Section 14-162N-99W	9/22/2010
20285	Haugenoe #22-162-99H	SESW Section 15-162N-99W	4/28/2011
18978	Haugenoe #15-162-99H	NWNW Section 15-162N-99W	11/9/2010
19633	Hansen #6-7-162-99H	NENE Section 18-162N-99W	1/22/2011
19461	Hansen #18-19-162-99H	NENE Section 18-162N-99W	1/22/2011
20474	Lystad #23-162-99 1QD	SESE Section 23-162N-99W	8/20/2011
18900	Sinclair #24-162-99H	NWNW Section 24-162-99W	9/2/2011

The Commission approved the transfer of the above wells from Baytex to SM Energy Company on November 21, 2014.

(6) The wells in paragraph (5) above were completed in the Ambrose-Bakken Pool. Pursuant to NDCC Section 38-08-06.4, 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.

(7) 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.

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

(9) At the time of the application gas pipeline infrastructure did not exist in and around the Ambrose Field, although Baytex anticipated these wells could be connected to a gas gathering facility in the future.

The Commission notes that the following wells were connected to a gas gathering system in the month listed below:

<u>Well Name &amp; Number</u>	<u>Connected to a gas gathering system</u>
Hansen #18-19-162-99H	September 2013
Haugland #4-162-99H	July 2013
Haugland #9-162-99H	July 2013
Grundstad #5-162-99H	July 2013
Larsen #8-162-99H	July 2013
Sorenson #14-162-99H	October 2013
Haugenoe #22-162-99H	October 2013
Hansen #6-7-162-99H	October 2013

<u>Well Name &amp; Number</u>	<u>Connected to a gas gathering system</u>
Lystad 23-162-99 #1QD	October 2013
Larson #3-162-99H	January 2014
Geralyn Marie 34-163-99H #1DQ	July 2014

(10) Baytex submitted evidence that, at the time of their application, there was no market for the surplus casinghead gas being produced by the wells.

(11) Baytex has investigated the possibility of equipping the wells with an electrical generator and determined that it is not economic to purchase, install, connect and operate an electric generator fueled by produced casinghead gas. The Commission concludes that equipping the wells 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 wells; or the wells 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 wells 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 wells and the State of North Dakota.

(13) 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 wells listed below under the exemption provided for under NDCC Section 38-08-06.4:

<u>File #</u>	<u>Well Name &amp; Number</u>	<u>Location</u>
20569	Geralyn Marie #34-163-99H #1DQ	NWNW Section 34-T163N-R99W
18982	Larson #3-162-99H	SESE Section 3-162N-R99W
19266	Haugland #4-162-99H	SESE Section 4-162N-99W
19489	Haugland #9-162-99H	SWSW Section 4-162N-99W
19162	Grundstad #5-162-99H	SESE Section 5-162N-99W
19653	Larsen #8-162-99H	NWNW Section 8-162N-99W
19754	Grundstad #10-162-99H	NWNW Section 10-162-99W
18728	Hansen #13-162-99H	SESE Section 13-162-99W
18854	Sorenson #14-162-99H	NWNW Section 14-162N-99W
20285	Haugenoe #22-162-99H	SESW Section 15-162N-99W
18978	Haugenoe #15-162-99H	NWNW Section 15-162N-99W
19633	Hansen #6-7-162-99H	NENE Section 18-162N-99W
19461	Hansen #18-19-162-99H	NENE Section 18-162N-99W
20474	Lystad 23-162-99 #1QD	SESE Section 23-162N-99W
18900	Sinclair 24-162-99H	NWNW Section 24-162-99W

(2) This order is effective as of December 14, 2012 and shall remain in full force and effect until further order of the Commission.

Dated this 18th day of July, 2016.

INDUSTRIAL COMMISSION  
STATE OF NORTH DAKOTA

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director