

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF NORTH DAKOTA

CASE NO. 20442  
ORDER NO. 22748

IN THE MATTER OF A HEARING CALLED ON  
A MOTION OF THE COMMISSION TO  
CONSIDER THE APPLICATION OF HESS  
CORP. FOR AN ORDER PURSUANT TO NDAC  
43-02-03-88.1 AUTHORIZING THE FLARING OF  
GAS PRODUCED FROM THE AV-SCHWARTZ-  
163-93-0211H-1 WELL, LOT 1, SECTION 2,  
T.163N., R.93W., BURKE COUNTY, ND,  
PURSUANT TO THE PROVISIONS OF NDCC  
38-08-06.4, OR FOR SUCH OTHER RELIEF AS  
MAY BE APPROPRIATE.

ORDER OF THE COMMISSION

THE COMMISSION FINDS:

- (1) This cause came on for hearing at 9:00 a.m. on the 26th day of June, 2013.
- (2) Hess Corporation (Hess) provided exhibits and testimony in this matter by sworn affidavit.
- (3) The Commission received an application from Hess on June 24, 2013 for an order pursuant to North Dakota Administrative Code (NDAC) Section 43-02-03-88.1 authorizing the flaring of gas from the AV-Schwartz-163-93- #0211H-1 well located in Lot 1 of Section 2, Township 163 North, Range 93 West, Short Creek-Bakken Pool, Burke County, North Dakota, pursuant to the provisions of North Dakota Century Code (NDCC) Section 38-08-06.4 and such other relief as is appropriate.
- (4) 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.
- (5) 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.

(6) At the time of this application, Hess was the owner or operator of the following well in the Short Creek-Bakken Pool, Burke County, North Dakota:

<u>File #</u>	<u>Well Name &amp; Number</u>	<u>Location</u>
19347	AV-Schwartz-163-93- #0211H-1	Lot 1 Section 2-T163N-R93W

The Commission approved the transfer of the AV-Schwartz-163-93- #0211H-1 well from Hess Corporation to Hess Bakken Investments II, LLC on January 1, 2014.

(7) The AV-Schwartz-163-93- #0211H-1 well was completed in the Short Creek-Bakken Pool on or around July 18, 2012. 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.

(8) The Short Creek-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.

(9) 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.

(10) The well is not connected to a gas gathering facility and Commission records indicate that the well currently produces approximately 23 MCF per day of surplus gas.

(11) The well is located approximately 19 miles to the nearest gas gathering system.

(12) Hess 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.

(13) The record of this case was left open for Hess to address the feasibility of connecting to an electrical generator. Hess failed to submit such information, although the Commission will take administrative notice of Case Nos. 16841 and 17739.

Case No. 16841 was an application of Samson Resources Company (Samson) in which it was determined it was not economic to equip the Woodpecker #27-34-163-95H well (File No. 19432) to an electrical generator. The well has similar production to AV-Schwartz-163-93- #0211H-1 well, although produces from the Forthun-Bakken Pool.

Case No. 17739 was an application of Samson in which it was determined it was not economic to equip the Eagle #22-15-163-95H well (File No. 19367) to an electrical generator. The well has similar production to the AV-Schwartz-163-93- #0211H-1 well, although produces from the Forthun-Bakken Pool.

The Commission concludes that equipping the well with an electrical generator to produce electricity from the gas is economically infeasible.

(14) If Hess' 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.

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

**IT IS THEREFORE ORDERED:**

(1) Hess Corporation, its assigns and successors, is hereby allowed to flare surplus casinghead gas produced with crude oil from the Short Creek-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 &amp; Number</u>	<u>Location</u>
19347	AV-Schwartz-163-93- #0211H-1	Lot 1 Section 2-T163N-R93W

(2) This order is effective as of June 24, 2013 and shall remain in full force and effect until further order of the Commission.

Dated this 19th day of July, 2016.

**INDUSTRIAL COMMISSION  
STATE OF NORTH DAKOTA**

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director