

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 20938
(CONTINUED)
ORDER NO. 24076

IN THE MATTER OF A HEARING CALLED ON
A MOTION OF THE COMMISSION TO
CONSIDER THE APPLICATION OF POWERS
ENERGY CORP. AND/OR INTERVENTION
ENERGY, LLC FOR AN ORDER PROHIBITING
MUREX PETROLEUM CORP. FROM IMPOSING
A RISK PENALTY AGAINST POWERS AND/OR
INTERVENTION AS PROVIDED BY NDCC § 38-
08-08 AND NDAC § 43-02-03-16.2 FOR THE
RISK OF DRILLING THE LORI ANN #4-9H
WELL, LOCATED IN SECTIONS 4 AND 9,
T.161N., R.101W., WRITING ROCK-BAKKEN
POOL, DIVIDE COUNTY, ND, 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 26th day of September, 2013. At that time, counsel for Powers Energy Corporation (Powers) and/or Intervention Energy, LLC (Intervention) requested this case be continued to the regularly scheduled hearing in October, 2013. There were no objections, the hearing officer granted the request, and this case was scheduled for hearing on October 24, 2013. At that time, counsel for Powers and/or Intervention requested this case be continued to the regularly scheduled hearing in December, 2013. There were no objections, the hearing officer granted the request, and this case was scheduled for hearing on December 19, 2013.

(2) Commission Order No. 23244, signed January 27, 2014, continued the decision in this matter for an additional thirty days.

(3) North Dakota Century Code (NDCC) § 38-08-08 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.

(4) Powers and Intervention filed an application for an order prohibiting Murex Petroleum Corporation (Murex) from imposing a risk penalty against Powers and/or Intervention as provided by NDCC § 38-08-08 and North Dakota Administrative Code (NDAC) § 43-02-03-16.2 for the risk of drilling the Lori Ann #4-9H well (File No. 24485), drilled within a spacing unit described as all of Sections 4 and 9, Township 161 North, Range 101 West, Writing Rock-Bakken Pool, Divide County, North Dakota (Sections 4 and 9), and such other relief as is appropriate.

(5) Powers is the owner of a mineral interest in the spacing unit for the Writing Rock-Bakken Pool described as Sections 4 and 9.

(6) The Commission makes no findings with regard to the specific acreage or percentage attributed to separately owned tracts or interests.

(7) Pursuant to NDAC § 43-02-03-16.3, Murex sent an invitation to participate in the drilling and completion of the Lori Ann #4-9H well. Powers received the invitation from Murex on December 13, 2011. Evidence in the record indicates the invitation to participate was complete and properly served on Powers. Powers admits that Murex's lease offer was a good-faith offer, although Powers subsequently leased its mineral interests in Sections 4 and 9 to Intervention on May 31, 2013 for better terms.

(8) Pursuant to NDAC § 43-02-03-16.3, Powers had 30 days from the date of receiving the invitation to elect to participate in the Lori Ann #4-9H well. Powers responded to Murex's invitation indicating Powers wanted to further negotiate terms of the lease Murex offered. Powers introduced email correspondence indicating Powers's request for Murex to offer more favorable lease terms. Powers claims Murex failed to respond to Powers's request within the 30-day deadline in which Powers had to respond to the invitation, although Murex introduced email correspondence indicating otherwise. The Commission notes that pursuant to NDAC § 43-02-03-16.3, an election to participate must be in writing and must be received by the owner giving the invitation within thirty days of the participating party's receipt of the invitation.

(9) Powers effectively elected not to participate in the risk and cost of drilling the Lori Ann #4-9H well when Powers did not accept the lease offered by Murex and did not elect to participate in Murex's invitation within the 30-day deadline. The Commission concludes Murex complied with NDAC § 43-02-03-16.3 and the risk penalty may be imposed against Powers's mineral interest.

IT IS THEREFORE ORDERED:

(1) A risk penalty may be imposed on the Powers Energy Corporation mineral interest for the drilling and completion of the Lori Ann #4-9H well (File No. 24485), on a spacing unit described as all of Sections 4 and 9, Township 161 North, Range 101 West, Writing Rock-Bakken Pool, Divide County, North Dakota, pursuant to NDCC § 38-08-08 and NDAC § 43-02-03-16.3.

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

(3) 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 29th day of January, 2014.

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA

/s/ Jack Dalrymple, Governor

/s/ Wayne Stenehjem, Attorney General

/s/ Doug Goehring, Agriculture Commissioner