

BEFORE THE INDUSTRIAL COMMISSION  
OF THE STATE OF NORTH DAKOTA

CASE NO. 28234  
ORDER NO. 30687

IN THE MATTER OF A HEARING CALLED ON  
A MOTION OF THE COMMISSION TO  
CONSIDER THE APPLICATION OF  
WINDRIDGE OPERATING LLC FOR AN  
ORDER PURSUANT TO NDAC § 43-02-03-88.1  
AUTHORIZING THE FLARING OF GAS FROM  
THE KESTREL STATE 36-25 1H WELL (FILE  
NO. 34171) LOCATED IN LOT 2 OF SECTION 1,  
TOWNSHIP 163 NORTH, RANGE 93 WEST,  
BURKE COUNTY, ND, SHORT CREEK-  
MADISON 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 16th day of January, 2020.
- (2) Windridge Operating, LLC (Windridge) provided exhibits and testimony in this matter by sworn affidavits.
- (3) The record in this case was left open to receive additional information from Windridge. The Commission received supplemental information on September 23, 2020 and the record was closed.
- (4) The Commission received an application from Windridge on December 16, 2019 for an order pursuant to North Dakota Administrative Code (NDAC) Section 43-02-03-88.1 authorizing the flaring of gas from the Kestrel State 36-25 1H well (File No. 34171) located in Lot 2 of Section 1, Township 163 North, Range 93 West, Burke County, North Dakota, Short Creek-Madison Pool, pursuant to the provisions of North Dakota Century Code (NDCC) Section 38 08-06.4 and such other relief as is appropriate.
- (5) 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.

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

**FLARING OF GAS RESTRICTED - IMPOSITION OF TAX -  
PAYMENT OF ROYALTIES - INDUSTRIAL COMMISSION AUTHORITY.**

1. 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.
2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be:
  - a. Capped;
  - b. Connected to a gas gathering line;
  - c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;
  - d. Equipped with a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons; or
  - e. Equipped with other value-added processes as approved by the industrial commission which reduce the volume or intensity of the flare by more than sixty percent.
3. An electrical generator and its attachment units to produce electricity from gas and a collection system described in subdivision d of subsection 2 must be considered to be personal property for all purposes.
4. 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.
5. 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.
6. A producer may obtain an exemption from this section from the industrial commission upon application that shows to the satisfaction of the industrial commission 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 or employing a collection system described in subdivision d of subsection 2 is economically infeasible.

(7) Windridge is the owner or operator of the following well in the Short Creek-Madison Pool, Burke County, North Dakota:

<u>File #</u>	<u>Well Name &amp; Number</u>	<u>Location</u>
34171	Kestrel State 36-25 1H	Lot 2 Section 1-T163N-R93W

(8) The Kestrel State 36-25 1H well was completed in the Short Creek-Madison Pool on or around May 22, 2018.

(9) The Short Creek-Madison Pool is an oil reservoir, but gas is produced in association with the oil at the wellhead as a by-product of oil production.

(10) 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.

(11) The well was connected to a gas gathering facility in December 2018 and is still connected to a gas gathering line today, although no gas sales have occurred since May 2019. Evidence presented to the Commission indicates that the well currently produces approximately 146 MCF per day, which is flared. Windridge indicated the well is connected to the Lignite Gas Processing Plant, operated by Steel Reef Infrastructure Corp. (Steel Reef), but due to capacity restraints, they have been unable to enter the line or sell any gas. Windridge is presently negotiating to contract with Steel Reef for firm or interruptible deliveries and awaits a written proposal to allow deliveries to continue.

(12) The applicant 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 an alternate gas gathering facility.

(13) Windridge has provided documentation that it is economically infeasible to equip the well with a collection system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption.

(14) If applicant's request is not granted and it is deemed taxes and royalties must be paid on flared gas, it 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 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. The Commission notes the flaring of said gas from the Kestrel State 36-25 1H well while connected to a gas gathering line is not in violation of NDCC Section 38-08-06.4.

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

IT IS THEREFORE ORDERED:

(1) Windridge Operating, LLC, its assigns and successors, is hereby allowed to flare surplus casinghead gas produced with crude oil from the Short Creek-Madison 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>
34171	Kestrel State 36-25 1H	Lot 2 Section 1-T163N-R93W

(2) This order is effective as of May 22, 2019 and shall remain in full force and effect through September 30, 2022.

Dated this 30th day of September, 2020.

INDUSTRIAL COMMISSION  
STATE OF NORTH DAKOTA

By the Director, on behalf of the Commission

/s/ Lynn D. Helms, Director