

BEFORE THE INDUSTRIAL COMMISSION
OF THE STATE OF NORTH DAKOTA

CASE NO. 19501
ORDER NO. 21803

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 COLBY 23-14-160-99H #1PB, SWSE
SECTION 23, T.160N., R.99W., DIVIDE
COUNTY, ND, BURG-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 the Colby 23-14-160-99H #1PB well located in the SW/4 SE/4 of Section 23, Township 160 North, Range 99 West, Burg-Bakken Pool, Divide 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.
- (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 well in the Burg-Bakken Pool, Divide County, North Dakota:

<u>File #</u>	<u>Well Name & Number</u>	<u>Location</u>
20587	Colby 23-14-160-99H #1PB	SWSE Section 23-T160N-R99W

The Commission approved the transfer of the Colby 23-14-160-99H #1PB well from Baytex to SM Energy Company on November 21, 2014.

(6) The Colby 23-14-160-99H #1PB well was completed in the Burg-Bakken Pool on or around August 6, 2011. 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 Burg-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 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.

(9) At the time of the application gas pipeline infrastructure did not exist in and around the Burg Field, although Baytex anticipated the well could be connected to a gas gathering facility in the future. The Commission notes the well was connected to a gas gathering system in June 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 well.

(11) Baytex has investigated the possibility of equipping the well with an electrical generator and determined it is not economic to purchase, install, connect and operate an electric generator fueled by produced casinghead gas. The Commission concludes 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) 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 Burg-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>
20587	Colby 23-14-160-99H #1PB	SWSE Section 23-T160N-R99W

(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