

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Integration of
Interests Pursuant to Environmental
Conservation Law ("ECL") § 23-0901(3)
within an Individual Spacing Unit Known
as,

**ORDER OF
DISPOSITION**

DEC Order No.
DMN 09-45

FRED ANDREWS 1-A.

Appearances of Counsel:

- Alison H. Crocker, Deputy Commissioner and General Counsel (Michael S. Caruso of counsel), for staff of the Department of Environmental Conservation
- Nixon Peabody LLP (Ruth E. Leistensnider of counsel), for well operator Fortuna Energy Inc.
- Lipman & Biltekoff, LLP (Michael P. Joy of counsel), for Austin Exploration, LLC, Cook Investments, and Epsilon Energy USA, Inc.
- Hinman, Howard & Kattell, LLP (Robert H. Wedlake of counsel), for Northeast Energy Development, LLC, and Buck Mountain Associates, Inc.

**ORDER OF DISPOSITION OF THE
CHIEF ADMINISTRATIVE LAW JUDGE**

Proceedings

Staff of the Department of Environmental Conservation ("Department") issued a well permit to drill the Fred Andrews 1-A natural gas well on April 29, 2005. The well is located in the Town of Big Flats, Chemung County. The well's target natural gas bearing formation is the Trenton/Black River ("TBR"). The well operator is Fortuna Energy Inc.

A spacing and compulsory integration order addressing TBR mineral interests was issued by the Department on September 8, 2006. That order was vacated by interim decision of the Commissioner dated January 7, 2009, and the matter was remanded to the presiding Chief Administrative Law Judge ("ALJ") for proceedings under Environmental Conservation Law ("ECL") article 23, as amended in 2005.

A superseding spacing order for the unit was issued on May 1, 2009. Because one or more owners in the Fred Andrews 1-A unit had not entered into a voluntary agreement with the well operator Fortuna Energy Inc., the Fred Andrews 1-A unit was not one-hundred percent controlled. Accordingly, a compulsory integration hearing was required to receive the elections of the uncontrolled owners in the unit (see ECL 23-0901[3][b]).

The compulsory integration hearing was duly noticed and convened on July 1, 2009, the undersigned Chief ALJ presiding. At the hearing, Austin Exploration, LLC, Cook Investments, Epsilon Energy USA, Inc., Buck Mountain Associates Inc., and Northeast Energy Development LLC filed timely elections to participate in the Fred Andrews 1-A well as integrated participating owners ("IPOs") (see ECL 23-0901[3][a][2]).

The IPOs raised objections to the draft integration order (see Draft Integration Order No. DMN 09-45, Exh DMN 1), which I determined to be substantive and significant. Accordingly, I referred the matter to the Department's Office of Hearings and Mediation Services ("OHMS") for adjudicatory proceedings under part 624 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") (see ECL 23-0901[3][d]).

After referral, but prior to the commencement of proceedings under part 624, Fortuna, Department staff and the objecting IPOs executed a stipulation effective September 30, 2009, stating that all objections raised by the parties have been resolved and that no issues remain for adjudication. Accordingly, the stipulation requests that the matter be remanded to Department staff for issuance of a final order of integration as set forth in the stipulation. Fortuna filed the stipulation with the ALJ on November 12, 2009.

Order of Disposition

Consistent with Organization and Delegation Memorandum

94-13 (Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings), the parties to this proceeding have resolved all issues by stipulation and submitted a signed statement to that effect with the assigned ALJ (see 6 NYCRR 624.13[d]). Accordingly, the matter is hereby remanded to Department staff for issuance of a final order of integration consistent with the stipulation. The hearing record in this matter is hereby closed.

/s/

James T. McClymonds
Chief Administrative Law Judge

Signed: November 13, 2009
Albany, New York

Attachments

TO: Attached Service List