

## **RESOLUTION AND ORDER FOR THE MINUTES**

A RESOLUTION narrowing the issues for review by the Hearing Officer in the matter of the consolidated adjudicatory hearings granted by the Commission on July 14, 2010 relating to natural gas exploratory wells, and providing a process for notification of non-participating party and potential termination of hearings in the event that the non-participating party fails timely to enter an appearance.

*Whereas*, by letter dated May 21, 2010, the Delaware Riverkeeper Network (“DRN”) and Nockamixon Township (“Nockamixon”) requested a hearing with respect to a natural gas well proposed by Arbor Operating LLC (“Arbor”);

*Whereas*, by letter dated May 27, 2010, Damascus Citizens for Sustainability (“DCS”) requested a hearing with respect to certain natural gas exploratory wells proposed by Newfield Appalachia PA, LLC (“Newfield”);

*Whereas*, on June 14, 2010, the Executive Director issued a Supplemental Executive Director’s Determination (“SEDD”) subjecting natural gas well projects intended for exploratory purposes and targeting shale formations to the review and approval jurisdiction of the Commission pursuant to 18 C.F.R. § 401.35(b)(18);

*Whereas*, the SEDD contained a reservation authorizing certain exploratory wells to proceed without prior Commission review and approval;

*Whereas*, by letters dated June 29, 2010, Allan J. Nowicki requested a hearing with respect to the assertion of jurisdiction in the SEDD on behalf of himself and the following entities: Dyberry 33, LLC; Pennswood Oil & Gas, LLC; Pleasant Mount 10, LLC; Preston 38, LLC; and Stockport Associates;

*Whereas*, by letter dated July 1, 2010, the Starlight Forum requested a hearing with respect to the assertion of jurisdiction in the SEDD;

*Whereas*, by letter dated July 12, 2010, the Northern Wayne Property Owners Alliance, LLC (“NWPOA”) requested that the Commission reverse the SEDD without an adjudicatory hearing, or in the alternative that the Commission grant a hearing;

*Whereas*, by letters dated July 13, 2010, DCS, on behalf of itself and Friends of the Upper Delaware River, Inc. (“FUDR”), requested a hearing with respect to the reservation (or “grandparenting provision”) contained in the SEDD, and DCS supplemented its prior request for a hearing with respect to certain natural gas exploratory wells proposed by Newfield;

*Whereas*, by letter dated July 14, 2010, DRN, the Delaware Riverkeeper (“Riverkeeper”), and Nockamixon requested a hearing with respect to the reservation (or “grandparenting provision”) contained in the SEDD;

*Whereas*, on July 14, 2010, the Commission adopted a motion granting and consolidating the multiple requests for hearing and decision and referring the requests to a Hearing Officer (the "Referral Motion");

*Whereas*, the Commission's Referral Motion did not explicitly act upon NWPOA's request that the SEDD be reversed without a hearing, although the minutes reflect the General Counsel's recommendation that NWPOA's request for reversal without a hearing be denied;

*Whereas*, on July 23, 2010, the Executive Director issued an Amended Supplemental Executive Director's Determination ("Amended SEDD") authorizing two natural gas exploratory wells by Hess Corporation ("Hess") to proceed without prior Commission review and approval;

*Whereas*, by letter dated August 6, 2010, the Alternate Commissioner for Delaware's Governor Jack A. Markell, Chair of the Commission, confirmed the appointment of the Honorable Edward N. Cahn as Hearing Officer for the consolidated hearings referred to hearing by the Referral Motion;

*Whereas*, by letter dated August 10, 2010, DRN requested a hearing with respect to the Hess wells authorized by the Amended SEDD;

*Whereas*, by letter dated August 23, 2010, DCS requested a hearing with respect to the Amended SEDD;

*Whereas*, on September 2, 2010, the Hearing Officer held an initial conference among the parties to the consolidated hearing ("Exploratory Well Hearing");

*Whereas*, Starlight Forum did not enter an appearance in the Exploratory Well Hearing;

*Whereas*, on September 9, 2010, the Hearing Officer issued a Scheduling Order, which was subsequently amended by The Revised Scheduling Order dated November 2, 2010, the Interim Order dated November 17, 2010 and the orders during the November 29, 2010 telephone conference;

*Whereas*, pursuant to The Revised Scheduling Order, the Exploratory Well Hearing will be held on January 19, 2011 and continue through January 26, 2011;

*Whereas*, on September 15, 2010, the Commission adopted a motion granting the requests for hearing by DRN and DCS with respect to the Hess wells and the Amended SEDD and consolidating those requests with the previously consolidated hearing requests and referring them to the Hearing Officer as part of the Exploratory Well Hearing;

*Whereas*, on September 15, 2010, the Commission denied the requests of DRN and DCS for a supersedeas that DRN and DCS filed on September 10, 2010;

*Whereas*, Mr. Nowicki is being represented by NWPOA in the proceedings and neither Mr. Nowicki nor the entities on whose behalf he submitted requests for hearing are represented or participating independently in the Exploratory Well Hearing;

*Whereas*, Arbor has withdrawn its participation in the Exploratory Well Hearing and cancelled the well drilling permit for the well that was the subject of the request for hearing by DRN and Nockamixon;

*Whereas*, Commission staff identified a total of fifteen wells potentially covered by the reservation in the SEDD or the Amended SEDD;

*Whereas*, two of the fifteen wells potentially covered were drilled prior to the date of the SEDD;

*Whereas*, of the thirteen wells that were not drilled prior to the date of the SEDD, Newfield has finished drilling three and Hess has finished drilling one and is in the process of drilling a second;

*Whereas*, Hess expects to be finished drilling the second of its wells by December 28, 2010;

*Whereas*, the five wells drilled or being drilled by Newfield and Hess are no longer susceptible to preconstruction review by the Commission;

*Whereas*, Newfield and Hess have offered to submit these five wells to post-construction, prospective review by the Commission;

*Whereas*, of the remaining eight wells that have not been drilled and are not in the process of being drilled, one – a Newfield well – is designed as a horizontal production well and, therefore, is not covered by the reservation contained in the SEDD and Newfield has submitted an application for Commission approval of this well;

*Whereas*, Newfield has agreed that two other wells will not be drilled as grandfathered wells pursuant to the SEDD;

*Whereas*, as previously noted, Arbor has cancelled its well that was potentially covered by the reservation contained in the SEDD;

*Whereas*, another operator, Stone Energy Corp., has allowed its well permit to expire for its well that was potentially covered by the reservation contained in the SEDD;

*Whereas*, Mr. Nowicki and the entities on whose behalf he submitted requests for hearing are not defending the status of the two wells for which they have state-issued permits and that are potentially covered by the reservation contained in the SEDD;

*Whereas*, Mr. Nowicki has confirmed that neither he nor the entities on whose behalf he submitted requests for hearing intend to rely on the reservation contained in the SEDD to authorize the two wells;

*Whereas*, Kevin E. Schrader, a person not participating in the Exploratory Well Hearing, is the operator of one well potentially covered by the reservation contained in the SEDD;

*Whereas*, no sponsor has proposed, and the Commission has not otherwise been made aware, of any exploratory natural gas well other than those identified above, that is covered by the reservation contained in the SEDD;

*Whereas*, on May 5, 2010, the Commission directed staff to draft regulations on well pads in the shales for notice and comment rulemaking;

*Whereas*, in recognition of the Commission's direction to staff of May 5, 2010, the Commission will make its final decision as to whether natural gas exploratory well pad projects in shale formations will be subject to Commission review and approval through rulemaking following notice and an opportunity to comment, and any decision made by another process would necessarily be preliminary only;

*Whereas*, NWPOA has agreed to withdraw its request for a hearing on whether the Executive Director acted properly under 18 C.F.R. § 401.35(b)(18) to subject exploratory natural gas projects to the Commission's review and approval jurisdiction provided that (a) that withdrawal has the effect of narrowing the issues to be addressed by the consolidated hearing to those presented by the Executive Director's determinations to "grandparent" certain wells and (b) that withdrawal does not preclude any party who has to date raised issues in a timely manner from asserting any such issue in any subsequent proceeding;

*Whereas*, Hess and Newfield support NWPOA's request;

*Whereas*, Hess and Newfield separately have requested that the Commission withdraw the hearing referral and terminate the Exploratory Well Hearing with respect to any and all Hess and Newfield wells;

*Whereas*, by letter dated December 6, 2010, the Hearing Officer recommended to the Commission that it withdraw the reference to the Hearing Officer of the requests for a hearing challenging the assertion of Commission jurisdiction in the SEDD upon a request by NWPOA's counsel for withdrawal of the jurisdictional challenge without prejudice;

*Whereas*, in his December 6, 2010 letter, the Hearing Officer further recommended that if the drilling companies voluntarily opt to submit their exploratory wells for the Commission's review, the requests of DCS regarding the Newfield exploratory wells and the requests of DCS and DRN for a hearing challenging the Hess wells that the Amended SEDD allowed to proceed would no longer be before the Hearing Officer;

*Whereas*, the Commission accepts these recommendations of the Hearing Officer and desires to take appropriate action based on these recommendations, the requests of Hess, Newfield and NWPOA and developments occurring after the Commission adopted the Referral Motion; now therefore,

BE IT RESOLVED that the Commission orders as follows:

1. NWPOA's request for a hearing on whether the Executive Director acted properly under 18 C.F.R. § 401.35(b)(18) to subject exploratory natural gas projects to the Commission's review and approval jurisdiction is deemed withdrawn without prejudice.

a. By "without prejudice" the Commission intends that NWPOA or any other party to the currently scheduled consolidated hearing who has to date raised the issues in a timely manner may assert the same issues of whether exploratory natural gas development projects are properly subject to the Commission's review and approval jurisdiction should a sponsor apply to the Commission for approval to develop an exploratory natural gas well subject to the SEDD but not excluded from Commission review under the SEDD's "grandparenting" provision, and should the Commission either deny that approval or refuse to consider the application because of the Commission's direction to staff of May 5, 2010, as that direction may be amended. At that time, unless the SEDD has been superseded or replaced by regulations promulgated by the Commission, the issues of the propriety of the SEDD may be re-raised in a hearing by NWPOA or any other party to the consolidated hearing who has to date raised the issues in a timely manner.

b. NWPOA shall have the aforementioned rights notwithstanding the fact that it did not seek judicial review of the Commission's July 14, 2010 action adopting the Referral Motion, which Referral Motion did not explicitly act upon NWPOA's request that the SEDD be reversed without a hearing although the Commission's meeting minutes reflect the General Counsel's recommendation that NWPOA's request for reversal without a hearing be denied.

c. In addition, NWPOA and, subject to any timeliness objections, any other party to the consolidated hearing, could re-raise the issues in connection with adoption by the Commission of regulations or a new Executive Director's Determination that superseded the SEDD and Amended SEDD.

2. The request is denied as moot, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to the May 21, 2010 request by DRN and Nockamixon regarding the Arbor well.

3. The request is deemed withdrawn, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to the July 1, 2010 request by Starlight Forum regarding the assertion of jurisdiction in the SEDD;

4. The requests are deemed withdrawn, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to the June 29, 2010 requests by Allan J. Nowicki, as

presented on his behalf and behalf of Dyberry 33, LLC, Pennswood Oil & Gas, LLC, Pleasant Mount 10, LLC, Preston 38, LLC, and Stockport Associates.

5. Newfield and Hess shall file applications with the Commission for approval of the five natural gas wells spudded to date. Such applications shall be filed on the earlier of thirty (30) days following the Commission's adoption of natural gas regulations or as directed by the Executive Director or Commission. Nothing in this Resolution shall limit the authority of the Executive Director or Commission to take appropriate action to address past or future actions, if any, that may pose a risk to water resources of the Basin whether through any approvals issued in response to the applications or otherwise.
6. By consent of Newfield, the grandfathering provision of the SEDD is vacated as to any Newfield well other than the three Newfield wells spudded to date (VE Crum 1 1 OG Well, Woodland Mgmt. Partners 1 1 OG Well, DL Teeple 1 1 OG Well).
7. The requests are dismissed as moot and/or futile, the hearing referral is withdrawn and the Exploratory Well Hearing is terminated with respect to (i) the May 21, 2010 request by DRN and Nockamixon, (ii) the May 27, 2010 request by DCS, (iii) the July 13, 2010 request by DCS and FUDR, (iv) the July 14, 2010 request by DRN, the Riverkeeper and Nockamixon, (v) the August 10, 2010 request by DRN, and (vi) the August 23, 2010 request by DCS, except to the extent those requests relate to Schrader exploratory well (B & E Wells 1 OG Well) as provided in paragraph 10 below, and except with respect to allocation of hearing costs as provided in paragraph 11 below.
8. Commission staff shall provide notice of the Exploratory Well Hearing to Mr. Schrader, by certified mail, affording him the opportunity to enter an appearance in the Exploratory Well Hearing within ten (10) days of receipt of such notice by submitting a written notice of appearance to the Hearing Officer.
9. If Mr. Schrader does not enter an appearance in the Exploratory Well Hearing in the manner and time prescribed above, the grandparenting provision of the SEDD shall be deemed vacated as to the Schrader well, the hearing referral shall be withdrawn and the Exploratory Well Hearing shall be terminated, except with respect to allocation of hearing costs, as provided below.
10. To the extent it proceeds, the Exploratory Well Hearing shall be limited to a hearing regarding (i) the July 13, 2010 request by DCS and FUDR, (ii) the July 14, 2010 request by DRN, the Riverkeeper and Nockamixon, and (iii) the August 23, 2010 request by DCS, but only to the extent those requests relate to the Schrader well.
11. With respect to allocation of the costs of the Exploratory Well Hearing, the Commission requests that the Hearing Officer make a recommendation for allocation of costs among the present and, if appropriate, former parties to the proceeding. The Commission desires the Hearing Officer to consider in the first instance an argument now raised by certain parties that costs incurred after today in connection with the Exploratory Well Hearing shall be separately

allocated to DRN, Nockamixon, DCS, FUDR, the Riverkeeper, and Mr. Schrader, if he enters an appearance.

12. The referral to the Hearing Officer is modified accordingly.

BY THE COMMISSION

ADOPTED: December 8, 2010