

BEFORE THE OIL & GAS COMMISSION

BIG SKY ENERGY, INC., : Appeal Nos. 853 & 854
: :
Appellant, : Review of Chief's Orders 2013-39 &
: 2013-40 (the Powelson #1 & #2 Wells)
-vs- : :
: :
DIVISION OF OIL & GAS RESOURCES : FINDINGS, CONCLUSIONS
MANAGEMENT, : & ORDER OF THE
: COMMISSION
Appellee. :

Appearances: Gino Pulito, Chris Caffarel, Counsel for Appellant Big Sky Energy, Inc.; Jennifer Cleary, Kristina Tonn, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

Date Issued: February 24, 2014

BACKGROUND

These matters come before the Oil & Gas Commission upon appeal by Big Sky Energy, Inc. ["Big Sky Energy" or "Big Sky"] from Chief's Orders 2013-39 and 2013-40 [the "orders"]. These orders were issued by the Division of Oil & Gas Resources Management [the "Division"] to Big Sky on August 14, 2013. The orders allege that Big Sky had failed to report adequate production for two wells, known as the Powelson #1 Well and the Powelson #2 Well. The orders found the Powelson Wells to be idle and non-productive, and required Big Sky to either: (1) plug and abandon the Powelson Wells, or (2) transfer these wells to a new owner.

On September 18, 2013, Big Sky appealed Chief's Orders 2013-39 and 2013-40 to the Oil & Gas Commission, and these appeals were separately docketed by the Commission. These matters came on for hearing before the Commission on January 15, 2014. At the commencement of hearing, the parties requested that the appeals of Chief's Orders 2013-39 and 2013-40 be consolidated for hearing and decision. As these two matters address common questions of law and fact, the Commission allowed the **consolidation** of appeals 853 and 854, and these appeals are the subject of the immediate decision.

ISSUE

The issue presented by these consolidated appeals is: **Whether the Chief acted lawfully and reasonably in issuing Chief's Orders 2013-39 and 2013-40, which orders require the plugging or transfer of the Powelson #1 Well and the Powelson #2 Well.**

THE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.062(A)(1) provides:

The owner of * * * an existing well * * * that has no reported production for two consecutive reporting periods as reported in accordance with section 1509.11 of the Revised Code * * * shall plug the well in accordance with section 1509.12 of the Revised Code, obtain temporary inactive well status for the well in accordance with this section, or perform another activity regarding the well that is approved by the chief of the division of oil and gas resources management.

3. O.R.C. §1509.01 defines the "owner" of an oil & gas well as:

(K) "Owner," * * * means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, * * *.

4. O.R.C. §1509.11 provides in part:

The owner of any well * * * that is producing or capable of producing oil or gas shall file with the chief of the division of oil and gas resources management, on or before the thirty-first day of March, a statement of production of oil, gas, and brine for the last preceding calendar year * * *.

5. O.R.C. §1509.062(A)(2) provides:

If a well has a reported annual production that is less than one hundred thousand cubic feet of natural gas or fifteen barrels of crude oil, or a combination thereof, the chief may require the owner of the well to submit an application for temporary inactive well status under this section for the well.

6. O.R.C. §1509.12 provides in part:

(B) When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in the order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

FINDINGS OF FACT

1. Big Sky Energy is the current registered owner of the Powelson #1 Well and the Powelson #2 Well.¹ The Powelson Wells are located in Highland Township, Muskingum County, Ohio. The Powelson Wells were drilled in the mid-1980's by a previous well owner. Until 1988, these wells were operated by Alsid Oil & Gas, and reported production of crude oil and natural gas in commercial quantities.

2. Big Sky is an Ohio corporation that has operated in this state for many years. Mr. Robert Barr is the President of Big Sky, and is responsible for Big Sky's day-to-day operations. Mr. Barr and his family are affiliated with several other Ohio corporations involved in the oil & gas industry. Mr. Barr testified that Big Sky's business model is to acquire old, neglected oil & gas wells, and attempt to rehabilitate such wells and return them to production. Big Sky has successfully rehabilitated several wells in Ohio. Big Sky currently owns about 282 wells. Of these 282 wells, the Division estimates that approximately 44 wells have not reported production in the past several years.

¹ Mr. Barr testified that the Powelson Wells are actually owned by Lightning Energy. Mr. Barr is the owner of Lightning Energy. The Powelson Wells have never been officially transferred from Big Sky Energy to Lightning Energy, and these wells are listed under Big Sky Energy's bond. The forms on file with the Division show Big Sky as the owner of the Powelson Wells. The Division should be able to rely upon its official forms to determine well ownership. *See Michael L. Kiser, dba Bootstrap Oil vs. Division*, case no. 775 [November 21, 2008]. Therefore, the Division correctly directed its enforcement actions to Big Sky Energy.

3. In or around 2008, Big Sky purchased the Powelson Wells, and these wells have been registered to Big Sky since 2008.² At the time of Big Sky's purchase in 2008, the Powelson #1 Well had not reported commercial production for twenty years, and the Powelson #2 Well had not reported commercial production for seven years.

4. In 2010, the Division received a citizen complaint, identifying the Powelson Wells as unproductive and asking the Division to investigate the status of these wells. In response to this citizen complaint, on September 13, 2010, Division Inspector Miller visited the Powelson well sites. At that time, Inspector Miller noted: (1) that surface equipment was not in place to operate these wells, (2) that the wells were not actively producing oil or gas, and (3) that it appeared that the wells had not been produced for several years. At the time of this inspection, the production statements on file with the Division showed that: (1) the Powelson #1 Well had not produced any oil or gas since 1988 (*i.e.*, had not reported any production for 21 years), and (2) the Powelson #2 Well had not produced any oil or gas since 2001 (*i.e.*, had not reported any production for eight years).

5. On September 13, 2010, the Division issued Notices of Violation ["NOVs"] to Big Sky, ordering Big Sky to plug or produce the Powelson Wells within 90 days.

6. Big Sky did not plug or produce the Powelson Wells by the compliance deadline of December 14, 2010.

7. Approximately one year after the issuance of the NOVs, another citizen complaint was filed with the Division regarding the Powelson Wells. In response to this second citizen complaint, on September 9, 2011, Division Inspector Shreve inspected the Powelson well sites, and observed: (1) that Big Sky had not plugged the Powelson Wells by the NOV compliance deadline of December 14, 2010, (2) that conditions at the two well sites were not substantially different from the conditions described by Inspector Miller on September 13, 2010, (3) that essential surface equipment was either missing or not connected to the wells, and (4) that the Powelson Wells were not actively producing, and appeared to be incapable of producing, oil or gas. Division Inspector Shreve extended the December 14, 2010 compliance deadline for plugging or producing the wells until January 20, 2012.

² Mr. Barr testified that the Powelson Wells did not become "his responsibility" until very recently, asserting that the wells were recently transferred to "him" from his father's estate. However, production reports on file with the Division show Big Sky as the registered owner of these wells since 2008.

8. Big Sky did not plug the Powelson Wells by the extended compliance deadline of January 20, 2012.

9. In early 2012, Big Sky filed its 2011 annual statements of production for the Powelson Wells. Big Sky's 2011 production statements indicate that both Powelson Wells operated for 365 days during 2011. The 2011 production statements reported that, in 2011, the Powelson #1 Well produced ten barrels of crude oil and the Powelson #2 Well produced six barrel of crude oil. Mr. Robert Barr testified at hearing on behalf of Big Sky Energy, but did not testify to any production from the Powelson Wells in 2011.

10. In September 2012, Big Sky applied for temporary inactive status for both Powelson Wells. The Division denied Big Sky's applications in November 2012. Big Sky did not appeal the Chief's denials of these applications to the Oil & Gas Commission.

11. The Division inspected the Powelson well sites on September 10, 2012 and June 14, 2013. During these inspections, Inspector Shreve reported that conditions at these well sites had not significantly changed since the issuance of the NOV's in September 2010.

12. On August 14, 2013, the Division Chief issued Chief's Order 2013-39 to Big Sky Energy, finding that: (1) the Powelson #1 Well had only reported production of ten barrels of crude oil in 2011, and had not reported any production in 2008, 2009 and 2012³, (2) the Powelson #1 Well was idle and not in production, (3) Big Sky was not in the process of rehabilitating the Powelson #1 Well, and (4) Big Sky had not been granted temporary inactive status for the Powelson #1 Well.

13. Chief's Order 2013-39 required Big Sky to either: (1) plug and abandon the Powelson #1 Well, or (2) transfer this well to a properly bonded and insured owner. Big Sky was ordered to take one of these actions within thirty days of Big Sky's receipt of Chief's Order 2013-39. Big Sky did not meet this compliance deadline. Big Sky appealed Chief's Order 2013-39 to the Commission, and Chief's Order 2013-39 is the subject of appeal number 853 and this decision.

³ There is no record of the filing of production reports for the Powelson #1 Well or the Powelson #2 Well in 2010.

14. On August 14, 2013, the Division Chief issued Chief's Order 2013-40 to Big Sky Energy, finding that: (1) the Powelson #2 Well had only reported production of six barrels of crude oil in 2011, and had not reported any production in 2008, 2009 and 2012³, (2) the Powelson #2 Well was idle and not in production, (3) Big Sky was not in the process of rehabilitating the Powelson #2 Well, and (4) Big Sky had not been granted temporary inactive status for the Powelson #2 Well.

15. Chief's Order 2013-40 required Big Sky to either: (1) plug and abandon the Powelson #2 Well, or (2) transfer this well to a properly bonded and insured owner. Big Sky was ordered to take one of these actions within thirty days of Big Sky's receipt of Chief's Order 2013-40. Big Sky did not meet this compliance deadline. Big Sky appealed Chief's Order 2013-40 to the Commission, and Chief's Order 2013-40 is the subject of appeal number 854 and this decision.

16. Division Inspector Shreve returned to the Powelson well sites on October 10, 2013. At that time, Inspector Shreve observed no change in the condition of either well. Photographs of the Powelson well sites taken in October 2013 establish that the soil, vegetation and foliage surrounding the wells had not been disturbed when compared with photographs of these well sites taken in September 2011, September 2012 and June 2013.

17. Big Sky's 2011 annual production statements filed with the Division reported production of small amounts of crude oil from the Powelson Wells in 2011. These 2011 production statements are: (1) inconsistent with the field conditions observed and reported by Division inspectors in 2010, 2011, 2012 and 2013, (2) inconsistent with the direct testimony of Division Inspector Shreve that the Powelson Wells were not actively producing or in a productive condition during Inspector Shreve's September 9, 2011 inspection (despite the production statements' claim that the Powelson Wells were in production for 365 days during 2011), (3) inconsistent with field conditions reflected in photographs taken in 2011, 2012 and 2013, showing that essential production equipment was either missing, or disconnected, from the Powelson Wells during Division inspections, (4) inconsistent with Inspector Shreve's observations, testimony and photographs establishing that there had been no disruption to the surface soils, vegetation and foliage surrounding the Powelson Wells between Division inspections conducted in 2011, 2012 and 2013, and (5) inconsistent with the observable condition of the on-site surface equipment that showed no signs of use between Division inspections conducted over a three-year period.

18. Mr. Robert Barr testified that there is a hole in the casing of the Powelson #1 Well, and that Big Sky intends to plug the Powelson #1 Well.

19. Mr. Robert Barr testified that, in December 2013, Big Sky made certain improvements to the Powelson #2 Well, and that the well should now be capable of commercial production. Mr. Barr testified that Big Sky Energy intends to transfer the Powelson #2 Well to LJB Marketing. LJB Marketing is an Ohio corporation, which was incorporated by Mr. Robert Barr. The Barr family is affiliated with LJB Marketing, and Mr. Barr testified that he would likely be the person responsible for the day-to-day operation of the Powelson #2 Well, if the Division were to approve a transfer of this well to LJB Marketing. An application to transfer the Powelson #2 Well had not been filed with the Division at the time of hearing.

DISCUSSION

The Division is the permitting and regulatory authority for all oil & gas operations in Ohio. Division inspectors are charged with inspecting oil & gas well sites to determine whether oil & gas operations are being conducted in accordance with Revised Code Chapter 1509 and the rules promulgated thereunder. In this case, the Division's initial inspection of the Powelson well sites in September 2010 resulted from a citizen complaint. A second citizen complaint was lodged in September 2011.

Ohio oil & gas law requires the owner of an oil & gas well to file a statement of production with the Division on an annual basis. *See O.R.C. §1509.11.* Pursuant to O.R.C. §1509.062(A)(1), if an existing well has not reported production for two consecutive reporting periods, the Chief may order that well to be plugged or placed into temporary inactive status. Both of the Powelson Wells reported no production for at least two consecutive years, those years being 2008 and 2009. (*See Division Exhibits 1 & 2.*)

Production statements filed with the Division for 2011 claim that the Powelson #1 Well produced ten barrels of crude oil in 2011 and that the Powelson #2 Well produced six barrels of crude oil in 2011. At hearing, Mr. Robert Barr did not testify to production from the Powelson Wells in 2011. In fact, Mr. Barr's testimony contradicted the 2011 production statement for the Powelson #1 Well, as Mr. Barr testified that the Powelson #1 well is incapable of production because of a hole in the well's casing. Mr. Barr's testimony at hearing also contradicted the 2011 production statement for the Powelson #2 Well, as Mr. Barr testified that the Powelson #2 Well was not capable of production until certain repairs were made in December 2013.

The Commission received evidence at hearing as to the field condition of the Powelson Wells over the period of time between September 2010 and October 2013. The testimony of Division Inspector Shreve, and photographs entered into evidence, establish that neither Powelson Well was in a productive condition from September 2011 until at least October 2013. Division inspection reports generated in September 2010 further establish that the Powelson Wells were not in a productive condition in September 2010. The Division's September 2010 inspection reports specifically state that, in September 2010, it appeared that the Powelson Wells had not been operated "for several years."

Generally, wells that are found to be "incapable of producing oil or gas in commercial quantities" qualify for plugging. (*See Michael L. Kiser, dba Bootstrap Oil vs. Division, supra; Chieftain Energy Corporation vs. Division, case nos. 734, 735 & 741 [February 6, 2006]; Alsid Oil & Gas vs. Division, case no. 650 [January 11, 1999]*). The plugging of non-productive wells is intended to protect the environment, other oil & gas producing strata, and public health and safety.

Production summaries entered into evidence revealed that the Powelson Wells were commercially productive in the mid-1980's. These production summaries also establish that the Powelson Wells have not produced in commercial quantities since 1988.⁴

⁴ "Commercial production" is not specifically defined in statute. However, O.R.C. §1509.062(A)(2) provides:

If a well has a reported annual production that is less than one hundred thousand cubic feet of natural gas or fifteen barrels of crude oil, or a combination thereof, the chief may require the owner of the well to submit an application for temporary inactive well status under this section for the well.

The Commission has viewed these minimum amounts – 100,000 mcf of gas or 15 barrels of crude oil – as the threshold for "commercial production." (*See Meridian Energy Company, et al. vs. Division, case no. 832 [November 3, 2011]*). Applying the standards of O.R.C. §1509.062(A)(2) to the facts of these cases, it appears that the Powelson #1 Well has not been commercially productive for approximately 26 years and the Powelson #2 Well has not been commercially productive for 13 years.

The evidence at hearing further established that the Powelson Wells were not equipped for production during six Division inspections, conducted over a three-year period. For example, Division Inspector Shreve testified that in 2011 (the year in which Big Sky's production statements indicate that the wells were operated for 365 days) the Powelson #1 Well lacked a pump jack and the Powelson #2 Well had no power supply to its pumping unit.

Based upon evidence presented as to the lack of reported commercial production from the Powelson Wells, as well as evidence regarding the field conditions at the Powelson well sites, it was not unreasonable or unlawful for the Division Chief to order the plugging or transfer of the Powelson Wells.

The Commission is aware that Big Sky, Energy is in the business of acquiring neglected wells, and attempting to rehabilitate these wells. Certainly, the operator must be afforded some time to evaluate purchased wells in order to determine if the wells should be plugged or rehabilitated. However, in these cases, Big Sky has had five years to evaluate the Powelson Wells and develop plans for these wells. This is certainly adequate time. Moreover, Big Sky was aware of the Division's concerns with regard to these wells as early as September of 2010. Indeed, Big Sky has been under an order to plug or produce the Powelson Wells since September 2010. Big Sky failed to comply with the Division's enforcement orders for three full years. The Chief's issuance of orders requiring the plugging or transfer of the Powelson Wells in August of 2013 was not unreasonable or unlawful.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is both lawful and reasonable.

2. Big Sky Energy, Inc. is the registered owner of the Powelson #1 Well and the Powelson #2 Well. *O.R.C. §1509.01(K)*.

3. The evidence presented at hearing established that, at the time of the Chief's issuance Chief's Orders 2013-39 and 2013-40, the Powelson #1 Well and the Powelson #2 Well were idle, were not producing oil or gas in commercial quantities, and were incapable of producing oil or gas. *State of Ohio v. Baldwin Producing Corporation, no. 76AP-892 (Court of Appeals, Franklin County [March 10, 1997])*.

4. The evidence presented at hearing established that, at the time of the Chief's issuance Chief's Orders 2013-39 and 2013-40, the Powelson #1 Well and the Powelson #2 Well had not been plugged or produced as required by the Division through enforcement orders, had not been transferred to another owner, and had not been approved for placement in temporary inactive status. *O.R.C. §1509.04; O.R.C. §1509.062(A)*.

5. The Chief may require the plugging of an oil & gas well, where the Chief determines that an oil & gas well is idle or incapable of producing oil & gas in commercial quantities. *O.R.C. §1509.12(B); Chieftain Energy Corp. vs. Division, supra*.

6. Based upon the evidence presented at hearing, it was neither unlawful nor unreasonable for the Chief to issue Chief's Order 2013-39 or Chief's Order 2013-40.

7. Appellant Big Sky Energy, Inc. did not present sufficient evidence to refute the Division's findings that the Powelson #1 Well and the Powelson #2 Well were idle and not producing in August 2013, and that these wells should be plugged and abandoned or transferred to a properly bonded and insured owner.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2013-39 and Chief's Order 2013-40.

Date Issued: 2/24/2014


ROBERT S. FROST, Chairman


BRANDON DAVIS, Vice Chairman


JEFFREY J. DANIELS, Secretary

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

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	:	Review of Chief's Orders 2013-39 &
-vs-	:	2013-40 (the Powelson #1 & #2 Wells)
	:	
DIVISION OF OIL & GAS RESOURCES	:	
MANAGEMENT,	:	<u>INDEX OF EVIDENCE</u>
	:	<u>PRESENTED AT HEARING</u>
	:	
Appellee.	:	

Before: Robert S. Frost

In Attendance: Jeffrey J. Daniels, J. Brandon Davis

Appearances: Gino Pulito, Chris Caffarel, Counsel for Appellant Big Sky Energy, Inc.; Jennifer Cleary, Kristina Tonn, Assistant Attorneys General, Counsel for Appellee Division of Oil & Gas Resources Management.

WITNESS INDEX

Appellant's Witnesses:

Robert Barr, Sr. Direct Examination; Cross Examination

Appellee's Witnesses:

Stephen Riley Direct Examination; Cross Examination
Patrick Shreve Direct Examination; Cross Examination

EXHIBIT INDEX

Appellee Division's Exhibits:

Appellee's Exhibit 1	Production Report; Big Sky Energy, Inc., Powelson #1 Well; Years 1984 – 2012 (1 page)
Appellee's Exhibit 2	Production Report; Big Sky Energy, Inc., Powelson #2 Well; Years 1985 – 2012 (1 page)
Appellee's Exhibit 3	Notice of Violation No. 1185903439, Powelson #1 Well; issued September 14, 2010 (1 page)
Appellee's Exhibit 4	Notice of Violation No. 1758445852, Powelson #2 Well; issued September 14, 2010 (1 page)
Appellee's Exhibit 5	Complaint Status Report; citizen complaint from Chuck Shipley; complaint date September 13, 2011, updated through September 10, 2012 (1 page)
Appellee's Exhibit 6	Compliance Notice No. 1369763191, Powelson #1 Well; inspection date September 9, 2011 (1 page)
Appellee's Exhibit 7	Eight Photographs, Powelson #1 Well; taken September 9, 2011 (4 pages)
Appellee's Exhibit 8	Compliance Notice No. 250332760, Powelson #2 Well; inspection date September 9, 2011 (1 page)
Appellee's Exhibit 9	Three Photographs, Powelson #2 Well; taken September 9, 2011 (2 pages)
Appellee's Exhibit 10	Compliance Notice No. 1954663730, Powelson #1 Well; inspection date January 20, 2012 (1 page)
Appellee's Exhibit 11	Compliance Notice No. 1327319445, Powelson #2 Well; inspection date January 20, 2012 (1 page)
Appellee's Exhibit 12	Compliance Notice No. 1843938833, Powelson #1 Well; inspection date February 28, 2012 (1 page)

Appellee's Exhibit 13	Compliance Notice No. 267938050, Powelson #2 Well; inspection date February 28, 2012 (1 page)
Appellee's Exhibit 14	Compliance Notice No. 1637695959, Powelson #1 Well; inspection date September 10, 2012 (1 page)
Appellee's Exhibit 15	Two Photographs, Powelson #1 Well; taken September 10, 2012 (1 page)
Appellee's Exhibit 16	Compliance Notice No. 192168758, Powelson #2 Well; inspection date September 10, 2012 (1 page)
Appellee's Exhibit 17	Five Photographs, Powelson #2 Well; taken September 10, 2012 (3 pages)
Appellee's Exhibit 18	Facility Report, Powelson #1 Well; inspection date June 14, 2013 (1 page)
Appellee's Exhibit 19	Fifteen Photographs, Powelson #1 Well; taken June 14, 2013 (8 pages)
Appellee's Exhibit 20	Facility Report, Powelson #2 Well; inspection date June 14, 2013 (1 page)
Appellee's Exhibit 21	Nine Photographs, Powelson #2 Well; taken June 14, 2013 (5 pages)
Appellee's Exhibit 22	Chief's Order 2013-39; issued August 14, 2013 (3 pages)
Appellee's Exhibit 23	Chief's Order 2013-40; issued August 14, 2013 (3 pages)
Appellee's Exhibit 24	Facility Report, Powelson #1 Well; inspection date October 10, 2013 (1 page)
Appellee's Exhibit 25	Eleven Photographs, Powelson #1 Well; taken October 10, 2013 (6 pages)
Appellee's Exhibit 26	Facility Report, Powelson #2 Well; inspection date October 10, 2013 (1 page)
Appellee's Exhibit 27	Eight Photographs, Powelson #2 Well; taken October 10, 2013 (4 pages)