

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:            Mark Sievers, Chairman  
   Thomas E. Wright  
   Shari Feist Albrecht

In the matter of the application of Primal Energy O&G, LLC, for a location exception for the Skiles #28-1 well in Section 28, Township 18 South, Range 9 West in Rice County, Kansas. ) Docket No. 13-CONS-402-CWLE  
)  
) CONSERVATION DIVISION  
) License No.: 34763

**ORDER GRANTING APPLICATION**

This matter comes before the State Corporation Commission of the State of Kansas ("Commission") on the application of Primal Energy O&G, LLC ("Primal Energy"). Giving due consideration to the record herein, Kansas Statutes and its regulations the Commission finds and concludes as follows:

1. Primal Energy filed an application for a well location exception for its Skiles #28-1 well in Rice County, Kansas on May 20, 2013 and filed an amended application on June 21, 2013.
2. Protests to the application were filed by Trans-Western Petroleum, Inc. ("Trans-Western") on May 30, 2013 and by Rama Operating Co. ("Rama") and American Warrior, Inc. ("American Warrior") on June 4, 2013.
3. The docket was originally scheduled for hearing on August 15, 2013 but was continued to September 20, 2013 by Commission order dated August 1, 2013.
4. At the hearing W. Rick Griffin appeared on behalf of Primal Energy, Diana Edmiston appeared on behalf of Rama and Trans-Western and Lane Palmateer, Litigation

Counsel, appeared on behalf of Commission Staff and the public generally. American Warrior failed to appear.

5. Primal Energy's application seeks a well location exception under K.A.R. 82-3-108(c) so that it can drill the Skiles #28-1 well 150 feet from both the South and East boundaries of its lease in Section 28, Township 18 South, Range 9 West, Rice County. Rama operates the offset lease to the East in Section 27 and Trans-Western operates the offset lease to the South in Section 33.

#### **SUMMARY OF TESTIMONY**

6. Eduardo Gonzales, a geologist, testified on behalf of Primal Energy. He testified that Primal Energy completed a fully integrated analysis for its proposed location. That analysis showed an Arbuckle formation domed structure or trap that Primal Energy believes holds oil reserves. (Gonzales Prefiled p. 4 l. 3-9 and Gonzales Exhibit 2) This structure trap is relatively small, thus the need for a well location exception. (Gonzales Prefiled Exhibit 2) Waste will occur if this prospect is not developed. (Gonzales Prefiled p. 5 l. 17-22 and p. 6 l. 1-4)

7. Frank S. Mize, a geologist, testified for Protestants. He testified that he did not believe the proposed target was worth developing. In his opinion the time maps, which were part of Primal Energy's analysis, did not support the existence of an Arbuckle structure trap. (Mize Prefiled p. 4 l. 14-22 and p. 5 l. 1-10) If Primal Energy was allowed to drill at the proposed location it would end up producing from other formations which are present under Protestants' acreage and could drain oil or gas reserves from the Protestants. (Mize Prefiled p. 5 l. 22-23 and p. 6 l. 1-16)

## FINDINGS AND CONCLUSIONS

8. It is well settled law in Kansas that the Commission's primary duty is to prevent waste. Mobil Exploration & Producing U.S. Inc. v. State Corp. Comm'n of State of Kan., 258 Kan. 796, 806, 908 P.2d 1276, 1286 (1995).

9. K.A.R. 82-3-108(c) allows the Commission to grant a well location exception, if the exception is necessary to either prevent waste or to protect correlative rights.

10. The Protestants believe that the proposed location is not a viable prospect, therefore it is very unlikely they will drill a well on their acreage to either prove or disprove the existence of the Arbuckle structure trap and oil reserves. (Transcript p. 51 l. 2-4, p. 66 l. 10-13 and p. 6 l. 1-7) If the Commission does not allow Primal Energy to drill its well we will never know if oil is present. If oil is present, waste will have occurred by leaving it in the ground. Primal Energy is taking all the risk. If Primal Energy drills a dry hole, the Protestants are out nothing. If Primal Energy is successful the Commission would entertain an application from Protestants to drill an offset well.

11. Protestants allege that if the Arbuckle formation is not productive in Primal Energy's well that it will produce the well from other formations. This will allow drainage from Protestants acreage and adversely affect their correlative rights. (Mize Prefiled p. 3 l. 15-20 and p. 6 l. 1-16) The Commission disagrees. The record shows that there are no producing wells on Protestants' acreage within 1200 feet of Primal Energy's proposed location and these producing wells are separated from Primal Energy's proposed location by dry holes. (Gonzales Prefiled p. 2 l. 21-23, p. 3 l. 1-5, p. 3 l. 17-22, p. 4 l. 1-2 and Gonzales Exhibits 1 and 2) This fact leads the Commission to believe that any drainage from Protestants' acreage will be minimal and does not outweigh the risk of leaving producible oil in the ground.

12. The Protestants suggested that the proper way to develop this prospect is to form a unit containing acreage from both Primal Energy and the Protestants. The Commission agrees that forming a unit would be the ideal way to develop this prospect. Unfortunately, Primal Energy and the Protestants could not agree on a unit, and because of the acreage positions of the parties, none are in a position to use K.S.A. 55-1301 et. seq to form a unit.

13. Based on the above the Commission finds that waste will occur if the application is not granted. There is only minimal risk of drainage from the Protestants' acreage if the proposed well produces from formations other than the Arbuckle structural trap Primal Energy believes exists. The risk to Protestants' correlative rights is far outweighed by the waste that could occur if applicant is correct about the existence of the Arbuckle structural trap and is not allowed to drill the well.

14. The Commission finds the application should be granted and a full allowable assigned to the well.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED:**

A. The application of Primal Energy O&G, LLC, for a well location exception for its proposed Skiles #28-1 well is hereby granted. A full allowable will be assigned to the well.

B. Any party affected by this Order may file with the Commission a petition for reconsideration pursuant to K.S.A. 77-529(a). Such petition shall be filed within fifteen (15) days after service of this Order and must state the specific grounds upon which relief is requested. This petition for reconsideration shall be filed with the Executive Director of the Conservation Division, Finney State Office Building, 130 S. Market, Room 2078, Wichita, Kansas 67202-3802.

C. The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further Order or Orders as from time-to-time it may deem proper.

**BY THE COMMISSION IT IS SO ORDERED.**  
Sievers, Chmn.; Wright, Com.; Albrecht, Com.

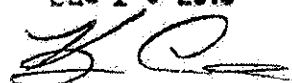
Date: DEC 10 2013

  
\_\_\_\_\_  
Kim Christiansen  
Executive Director

Date Mailed: 10-11-2013

JM

I CERTIFY THE ORIGINAL  
COPY IS ON FILE WITH  
The State Corporation Commission

DEC 10 2013  


**CERTIFICATE OF SERVICE**

I hereby certify that on 12-11-2013, I caused a true and correct copy of the foregoing "Order" to be served by placing the same in the United States mail, postage prepaid, to the following parties:

Paul Funkhouser  
Primal Energy O&G, LLC  
21021 Springbrook Plaza Dr, Ste 160  
Spring, Texas 77379

And by hand delivery:

Steve Bond, Production Supervisor  
Jim Hemmen, Production


W. Rick Griffin  
Martin, Pringle, Oliver, Wallace, & Bauer, L.L.P.  
100 North Broadway, Suite 500  
Wichita, Kansas 67202  
*Attorneys for Primal Energy O&G, LLC*

Douglas J. Isern  
Trans-Western Operating Company  
PO Box 276  
Golden, Colorado 80402-0276

Aaron Zeller  
American Warrior, Inc.  
3118 Cummings Rd  
PO Box 399  
Garden City, Kansas 67846

Robin L. Austin  
Rama Operating Co., Inc.  
101 S Main St  
Stafford, Kansas 67578-1429

Diana Edmiston  
Glaves, Irby, and Rhoads  
1050 Market Centre  
155 North Market  
Wichita, Kansas 67202-1829  
*Attorneys for American Warrior, Inc. and  
Rama Operating Co., Inc*

  
John McCannon  
Litigation Counsel  
Kansas Corporation Commission