

STATE OF ALASKA
ALASKA OIL AND GAS CONSERVATION COMMISSION
333 West Seventh Avenue
Anchorage, Alaska 99501

Re: Petition for a Hearing on a) Other Order 191
Complaint of Waste.) Docket Number: OTH-19-002
AS 31.05.060(a)) January 20, 2022

On March 1, 2019, the Alaska Oil and Gas Conservation Commission (AOGCC) received a “petition for a hearing on a complaint of waste,” dated February 28, 2019, from Hollis S. French (French). French alleged “waste occurred from an 8” line carrying fuel gas to Platform A in Cook Inlet, which is operated by Hilcorp.” According to French, “the line leaked gas to the atmosphere for approximately three months in the winter and spring of 2017, at a rate of approximately 300,000 scf per day.” French requested a hearing to be allowed to urge AOGCC to take action upon his complaint.

AOGCC investigated the leak at the time it occurred and determined the leaking gas had been purchased by Hilcorp Alaska, LLC (Hilcorp) from a third-party provider. At the time of AOGCC’s investigation, French was an AOGCC commissioner. The AOGCC does not have authority under the Alaska Oil and Gas Conservation Act (the Act) to make a determination related to post-production use of commercially sold gas. In Other Order 150, AOGCC denied the request for a hearing.

French appealed. On September 3, 2021, the Alaska Supreme Court reversed the superior court’s affirmance of Other Order 150, noting that AOGCC’s factual statements regarding its investigation and waste determination were unsupported by evidence in the administrative record and, in turn, the findings in Other Order 150 were not supported by substantial evidence that AOGCC had investigated the leak and concluded it was not waste. The court remanded the matter to AOGCC for further proceedings consistent with its opinion.

On December 15, 2021, AOGCC held a hearing on the petition. At the hearing, French asked the AOGCC to expand its jurisdiction to declare the pipeline leak waste. He also proposed that the AOGCC could selectively enforce leaks of commercially sold gas by exercising “prosecutorial discretion.”

At the hearing, James Regg testified as to the investigation undertaken by AOGCC at the time of the 2017 leak. Since March of 2003, Regg, a Senior Petroleum Engineer, has been AOGCC’s inspection program supervisor. Regg’s duties include technical assessment project management, development of regulations, and inspections and regulatory enforcements for both onshore and offshore oil and gas operations.

Regg testified that in the course of its investigation into the leak, AOGCC reviewed its field files, its inspection files, and the Cook Inlet oil and gas pipeline infrastructure. AOGCC reviewed the custody transfer points for produced natural gas in the onshore and offshore Cook Inlet region, comparing the information from produced natural gas flow schematics with AOGCC records to confirm the custody transfer measurement points. AOGCC gathered information regarding the source of the gas leaking from the pipeline going out to Platform A, including volumes of natural gas produced, sold, purchased and used in the operation of Platform A. AOGCC also reviewed information obtained from the Alaska Department of Environmental Conservation, the Federal Pipeline and Hazardous Materials Safety Administration, and Hilcorp.

Based upon its investigation, AOGCC determined that Platform A required the purchase of third-party natural gas to operate the platform. AOGCC further determined that the gas flowing out to Platform A had been purchased from the East Cook Inlet Gas Gathering System, a third-party common carrier pipeline operated by Harvest Pipeline on the Kenai Peninsula that transports natural gas produced by several operating companies, and that the gas had passed through a custody transfer meter prior to entering the common carrier line.

Oil and gas conservation law, which developed in response to the rush to find oil, was aimed at practices by drillers that resulted in loss of recoverable hydrocarbons when wells were drilled inefficiently, gas was flared, and well spacing and production was done in a manner that dissipated reservoir pressure thereby reducing ultimate recovery from a reservoir. These kinds of practices were defined as waste.

The primary purpose behind the prohibition against “waste” is to maximize ultimate resource recovery. By law, all gas must pass through a custody transfer meter prior to being severed from the property where it is produced. The custody transfer meter – where volumes of oil and gas are measured, royalties and taxes determined, and ownership of the oil or gas is transferred – is the point at which AOGCC has always deemed oil and gas resources to have been recovered. It is at this point that gas or oil can no longer be the basis for a waste determination under the Act.

Nothing in the AOGCC’s enabling act or its legislative history suggests that the Alaska Legislature intended to expand the AOGCC’s authority to regulate wasteful uses of oil or gas after it has been produced and purchased. In addition, the AOGCC is not aware of, and French has cited no instance of, any conservation agency in the United States that has exercised its authority to make a waste determination as to gas or oil which has been produced and become private property.

The AOGCC understands the concern over the loss of gas because of the pipeline leak. However, the AOGCC is not empowered to expand the definition of waste just because the event was compelling or garnered national attention. The AOGCC, like any administrative agency, can only act within the scope of its statutory authority. To expand its authority, as suggested by French, would mean that the AOGCC would be extending its authority over cases like the Exxon Valdez tanker spill, a rupture in an Enstar Natural Gas Company’s gas line that serves its residential or business customers, and even private consumers who are wasteful with the oil or gas they purchase. The Legislature did not include that authority in the Act.

That the gas being transported in the line in question was commercially purchased gas – gas that had previously been metered at the custody transfer meter, severed from the property, subject to royalty payments, and sold to Hilcorp – is undisputed. Therefore, the gas which escaped during the Hilcorp leak cannot be the basis for a waste determination by the AOGCC.

French’s petition is denied.

Done at Anchorage, Alaska and Dated January 20, 2022.

Jeremy M. Price
Chair, Commissioner

Daniel T. Seamount, Jr.
Commissioner

Jessie L. Chmielowski
Commissioner



RECONSIDERATION AND APPEAL NOTICE

As provided in AS 31.05.080(a), within **20** days after written notice of the entry of this order or decision, or such further time as the AOGCC grants for good cause shown, a person affected by it may file with the AOGCC an application for reconsideration of the matter determined by it. If the notice was mailed, then the period of time shall be **23** days. An application for reconsideration must set out the respect in which the order or decision is believed to be erroneous.

The AOGCC shall grant or refuse the application for reconsideration in whole or in part within 10 days after it is filed. Failure to act on it within 10 days is a denial of reconsideration. If the AOGCC denies reconsideration, upon denial, this order or decision and the denial of reconsideration are **FINAL** and may be appealed to superior court. The appeal **MUST** be filed within **33** days after the date on which the AOGCC mails, **OR 30** days if the AOGCC otherwise distributes, the order or decision denying reconsideration, **UNLESS** the denial is by inaction, in which case the appeal **MUST** be filed within **40** days after the date on which the application for reconsideration was filed.

If the AOGCC grants an application for reconsideration, this order or decision does not become final. Rather, the order or decision on reconsideration will be the **FINAL** order or decision of the AOGCC, and it may be appealed to superior court. That appeal **MUST** be filed within **33** days after the date on which the AOGCC mails, **OR 30** days if the AOGCC otherwise distributes, the order or decision on reconsideration.

In computing a period of time above, the date of the event or default after which the designated period begins to run is not included in the period; the last day of the period is included, unless it falls on a weekend or state holiday, in which event the period runs until 5:00 p.m. on the next day that does not fall on a weekend or state holiday.