

Fortuna Leases

Some Landowners able to Renegotiate or End Leases

by Sue Smith-Heavenrich

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Just one month ago, the Office of the Attorney General (OAG) announced that some landowners leased with Fortuna Energy would be able to renegotiate their terms or get out of their lease altogether. In the agreement between Fortuna and the OAG, the gas drilling company promised to stop using misleading tactics to unilaterally extend leases on properties, allowing some 300 landowners out of the improperly extended leases. Fortuna will also pay \$192,500 to the state to help settle the matter.

“Drilling companies will not be permitted to use misleading letters and dubious legal claims to bully landowners,” Attorney General Andrew Cuomo told the press. “Many of these companies use their size and extensive resources to manipulate individual property owners who often cannot afford to hire a private attorney,” he added, noting that this type of land-grabbing practice must stop.

Beginning in April 2009, Fortuna sent letters to hundreds of landowners whose natural gas leases with the company were about to expire. These letters falsely stated that Fortuna had the right to extend these leases without the permission of the landowners.

Specifically, Fortuna falsely claimed that the leases contained a provision that allowed the company to put the lease on hold until they could obtain the required horizontal drilling permits from the New York State Department of Environmental Conservation (DEC). According to the OAG, most landowners’ leases contained no such provisions.

In addition, Fortuna offered landowners 30 days to extend their leases for an additional three years, with an increase in the royalty. Landowners choosing to not extend their leases would be sent a “Notice of Force Majeure”, and Fortuna would file the notices with county clerks as well. That would prevent landowners from freely negotiating drilling rights with other companies. [*see BVW Force Majeure article archived at www.tiogagaslease.org*]

Nick Schoonover, chairman of Tioga County Landowner Group, said that about 166 landowners in the group had leases with primary terms expiring in 2009. He feels that the use of force majeure to extend leases amounts to nothing less than corporate bullying.

Schoonover encouraged landowners who received letters from Fortuna and Chesapeake – the two companies sending letters to landowners in this region – to contact the OAG. Schoonover himself wrote three letters to Cuomo’s office complaining about unfair and misleading leasing practices, and he feels that third letter helped tip the scale. Since August he has spent many hours collecting information from landowners and working with the OAG on this issue.

“What was crucial,” Schoonover emphasizes, “was getting landowners to send letters – and copies of their leases – to the OAG as well.” Some of the leases, the old Central Appalachian leases for example, had blanks where the extension of lease would have been penned in. In 2008 Chesapeake, who had purchased the leases, sent a letter to these landowners explaining that Chesapeake would not extend the lease beyond the primary

term. One year later, in July 2009, they decided to extend the leases, giving some people 1-year extensions and others 10-year extensions. These extensions paid the same as the original leases, Schoonover said – about \$3 to \$5 per acre.

Schoonover praised the Office of the Attorney General for their involvement in the issue. “They were very cooperative and I believe we worked well together on this issue,” he said. Schoonover also welcomes Fortuna’s agreements to remove any liens they placed on land, and offer landowners an opportunity to cancel lease extensions.

Fortuna President Jim O’Driscoll told the press that Fortuna has always tried to act fairly and honestly, giving leaseholders “a choice to continue with their existing lease, or extend their lease under terms that provided them extended benefits with Fortuna.” After noting that this particular issue affected 312 landowners, only two percent of all of Fortuna’s leases in the state, O’Driscoll said that Fortuna cooperated fully with the OAG and he believes the outcome has helped clarify a “confusing area” of NY law.

But Fortuna isn’t the only player in this game, and at this point Schoonover hasn’t seen any similar cooperation from Chesapeake. In fact, this fall Chesapeake began sending out checks to landowners to “continue and extend for another year” their leases. Even if the landowners don’t cash the checks, Schoonover believes Chesapeake will insist that the lease is extended.

The pressure is still on for gaining leases, too. With the expectation that DEC will be giving permits for Marcellus wells early this spring, landmen are once again going door to door and offering deals for new leases. And some landowners have reported that they are using the same old pressure tactics.

Whether it’s a high-pressure sales pitch from a landman or a threatening letter from the company lawyers, Schoonover feels the deceptive practices have to stop. “The Tioga County Landowner Group is looking forward to a partnership with the gas industry that is fair and equitable,” he said. In addition, Schoonover says he will continue to work with the OAG to further protect landowner interests in Tioga County and across the state.