

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

Case No. S-12-0104

Order No. S-12-0104-12-OR02

ARKANSAS SECURITIES DEPT.

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IN THE MATTER OF  
DUNWELL CORPORATION, and  
PRESTON ENERGY, INC.

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CEASE AND DESIST ORDER

On December 13, 2012, the staff of the Arkansas Securities Department (Staff) filed its Request for a Cease and Desist Order (Request) stating that it has information and certain evidence that indicates Dunwell Corporation (Dunwell) and Preston Energy, Inc. (Preston) (collectively, Respondents) have violated provisions of the Arkansas Securities Act (Act) codified at Ark. Code Ann. §§ 23-42-101 – 509. The Arkansas Securities Commissioner (Commissioner) has reviewed the Request, and based upon representations made therein, finds that:

FINDINGS OF FACT

1. The Request asserts the following representations of fact:
  - a. Dunwell is a Texas corporation formed on April 7, 1977. Its primary office is located at 8144 Walnut Hill Lane, Suite 285, Dallas, Texas 75231.
  - b. Preston is a Texas corporation formed on July 31, 2012. Its primary office is located at 8144 Walnut Hill Lane, Suite 285, Dallas, Texas 75231.
  - c. AR1, an Arkansas resident, received an unsolicited email dated May 16, 2012, from Dunwell. The email contained an advertisement soliciting investments in two projects

under a heading stating that Dunwell “proudly announces our new ‘Energy Investment Opportunities.’” The investment opportunities were described as follows (boldface and italics in original):

**The Oil Drilling Venture**, Hull Sterling No. 1 Well, is located in Liberty County, TX. This is an infield development project. The total depth for this well is 6,500 feet. This is a **fully tax deductible investment**.

**The Gas Pipeline Opportunity**, Hull Gas Gathering System, involves a gas pipeline which currently spans 4.5 miles. The pipeline will be expanded an additional 3.0 miles to accommodate additional gas tie-ins for additional revenue. Transportation and Delivery contracts are already established. This equity investment is **80% tax deductible**.

*Let 30 years of experience help you generate a lucrative revenue stream!*

- d. Immediately below this advertisement was a link: “For more information, [CLICK HERE](#).” When AR1 clicked, he was taken to a web page a prospective investor would use to obtain more information about the investment. There were spaces for the investor to fill in a name, email address, telephone number and time of day to call, along with a box for comments. There was a “submit” button for sending the information on to Dunwell. The page was topped with what appeared to be Dunwell’s corporate logo and a large heading that read: “INVEST IN A SAFE, PROVEN STRATEGY THAT WORKS.” Below that heading were several significant statements, including:
- i. “We have helped hundreds of clients generate thousands of dollars by investing in oil and natural gas.”
  - ii. “Don’t let this opportunity pass you by, let your money work harder for you in this low cost investment today.”
  - iii. “Potential returns up to 125% in the first year.”

- iv. "Low to moderate risk."
- e. Attached hereto as Exhibit A is a copy of the email to AR1 dated May 16, 2012, and the web page that appeared when AR1 clicked "For more information, CLICK HERE." AR1 did not fill out the information boxes on the web page and obtain more information about these investment opportunities from Dunwell.
- f. On August 13, 2012, AR1 received an unsolicited email from Preston. This email was an advertisement soliciting unspecified energy investments headed by Preston's corporate logo. Across the top, just under photographs of what appears to be oil and gas field equipment, was a large heading stating, "It's time for you to consider new investment opportunities. Add energy to your portfolio - A great hedge against inflation." Just below this heading were several bulleted claims, including "Rate of return as high as 130% per year" and "Low to moderate risk investment opportunities currently available." Immediately below these claims was "to learn more, CLICK HERE." When this link was clicked, AR1 was taken to a web page much like the one described in ¶ 1.d, a web page a prospective investor would use to obtain more information about the investment. There were spaces for the investor to fill in a name, email address, telephone number and time of day to call, along with a box for comments. There was a "submit" button for sending the information on to Preston. On this page two "current projects" were briefly described, the Hull Gas Gathering System (HGGS) and the Hull Sterling No. 1 Well (HS Well), both described in the May 16, 2012, email sent to AR1 by Dunwell and described above in ¶¶ 1.c and 1.d.
- g. Attached hereto as Exhibit B is a copy of the email to AR1 dated August 13, 2012, and

the web page that appeared when AR1 clicked “to learn more, CLICK HERE.” AR1 did not fill out the information boxes on the web page and obtain more information about these investment opportunities from Preston.

- h. On November 30, 2012, AR1 received another unsolicited email from Preston soliciting investment in the HGGs. It also had a button to click for more information, this one entitled “CLICK HERE to receive more detailed information.” When this was clicked, AR1 was taken to a web page much like the one described in ¶¶ 1.d and 1.f, a web page a prospective investor would use to obtain more information about the investment. There were spaces for the investor to fill in a name, email address, telephone number, state or province, a time of day to call and a box for a message. Under these boxes was a “submit” button for sending the information on to Preston.
- i. Attached hereto as Exhibit C is a copy of the email to AR1 dated November 30, 2012, and the web page that appeared when AR1 clicked “CLICK HERE to receive more detailed information.” AR1 filled out the boxes to obtain more information that appeared on the web page and clicked on the submit button. In response, AR1 received an email dated December 4, 2012, from someone who identified herself as Brandi Steitle of Preston. In the email she identified Preston’s “two current projects as follows:

**Oil Well**

98%-100% deductible first year  
15% monthly income tax free  
Potential annual return in excess of 100%  
Min. Investment-\$24,750 D&T  
Moderate Risk

**Gas Gathering System**

80% deductible in first year  
income is paid quarterly and expected to grow  
Potential annual return in excess of 40%+  
Min. Investment  
Low Risk

- j. “In order to review actual projects,” the email stated, “direct personal contact is required.”

A telephone conversation was then arranged. Someone identifying herself as Steitle called AR1 on December 5, 2012, and talked about both projects. She told AR1 that the rate of return was so good because Preston did not use brokers or brokerage firms, which would usually take most of the profits in any investment offering. Although she told AR1 that she could only send him a prospectus on one of these offerings, she emailed him a copy of an offering document for each project entitled "Confidential Informational Memorandum" (CIM) later that day. Each CIM contained information about the investment and subscription documents that could be used for investing.

*HULL GAS GATHERING SYSTEM*

- k. The CIM for the HGGS reveals that HGGS is a joint venture formed under Texas law on October 11, 2011. Its managing venturer is Associated Gas Gathering LLC, (AGG) a Texas limited liability company organized on June 22, 2011, whose address is the same as the address for Dunwell and Preston. The joint venture agreement (JVA) is attached to the CIM as Exhibit A. According to the JVA, the "Principal Business" of HGGS is "to acquire gas gathering pipelines and equipment necessary to transport, compress and dehydrate gas for delivery to DCP Midstream," as described more fully in the CIM. The CIM describes the anticipated business of HGGS in further detail as follows:

[AGG] owns certain natural gas pipelines in Liberty County, Texas. [AGG] is contributing 100% of its ownership in the pipelines, permit to operate the pipelines, a negotiated Facilities Agreement and Gas Purchase Contract with DCP Midstream and Centana Intrastate Pipeline to the Joint Venture at a stipulated value of \$900,000 in the . . . Joint Venture.

- l. According to the CIM, money would be made by creating "an open source gas gathering and transmission system to transport, compress and dehydrate natural gas for delivery to DCP's Centana Intrastate Pipeline" for an initial fee of \$ .75 per thousand cubic feet of

gas delivered.

- m. As represented in the CIM, AGG had completed regulatory requirements and obtained a permit from the Texas Railroad Commission to operate the pipelines in question and to enter into agreements with DCP to purchase natural gas.
- n. According to the JVA and the CIM, AGG would contribute the pipelines and agreements it owned set out in ¶ 1.k and thereby own 60% of HGGs. As stated in the CIM, “[AGG] is offering the balance in Forty (40) Units of participation in [HGGs], representing the remaining 40% of Joint Venture interest for a total of \$600,000.” Each unit was offered for \$15,000 and represented a 1% interest in HGGs.
- o. As managing venturer of HGGs, the JVA vested AGG with complete control of the day-to-day operations of HGGs and permitted it to make all decisions for HGGs, albeit “in a prudent and businesslike manner, and in accordance with good practices in the industry.” According to the JVA, the managing venturer can be removed by a vote of the owners of 60% of the joint venture. However, the investors other than AGG (known as venturers) could own a maximum of only 40% of HGGs and, therefore, could not remove AGG as the managing venturer. Investors other than AGG were dependent on the managerial efforts of AGG in order to realize any return on their investment.

*HULL STERLING No. 1 WELL*

- p. The CIM for the HS Well reveals that the HS Well is a joint venture formed under Texas law. Its address is the same as the address for Dunwell, Preston and AGG. The joint venture agreement (JVA) was dated August 1, 2012, and attached to the CIM as Exhibit A. According to the JVA, the “Principal Business” of the HS Well is “to acquire a percentage of the Working Interest in the ‘Prospect Well’ more fully described in the

[CIM] . . . and to enter into a turnkey drilling and completion contract with Preston Energy to drill, test and complete, if warranted the Prospect Well and to distribute the producing property interest to the Venturers or plug and abandon” the “Prospect Well.” The CIM identifies the “Prospect Well” as the Sterling Well No. 1, located in the Hull Oilfield in Liberty County, Texas. The JVA named Preston as the managing venturer and the drilling contractor.

q. According to the CIM,

Preston “has the right to acquire 100% of the Working Interest to a drill site location [for the HS Well] on Leases in the Hull Oilfield. [Preston] will transfer 75% working interest in the drill site location to the Venture and is offering to Participants Fifteen Units representing 99% of the Joint Venture Interest under the terms described in this [CIM]

r. The CIM and the JVA provided that each unit was comprised of approximately 5.00% working interest, 3.75% net revenue interest and 6.6% of the joint venture, HS Well. A total of fifteen units were offered, Preston taking one unit for itself. Each unit sold for \$49,500 initial contribution/drilling cost and \$33,000 completion cost, for a total of \$82,500 per unit.

#### *REGISTRATION RECORDS*

- s. A search of the records of the Arkansas Securities Department shows no registration or exemption from registration under state or federal law of any security issued by HGGs.
- t. A search of the records of the Arkansas Securities Department shows no registration or exemption under state or federal law from registration of any security issued by HS Well.

#### *CONCLUSIONS OF LAW*

2. The investments offered to AR1 in HGGs by Dunwell and Preston are investment contracts, a type of security pursuant to Ark. Code Ann. § 23-42-102(15)(A)(xi). The units offered in

HGGS were part of an investment scheme that left the investors other than the managing venturer wholly without control and totally dependent on the managerial efforts of the managing venturer to realize a return on their investments.

3. The investments offered to AR1 in HS Well by Dunwell and Preston are securities pursuant to Ark. Code Ann. § 23-42-102(15)(A)(xvi) as a certificate of interest or participation in an oil or gas lease or in payments out of production under such a lease. Holders of such interests are entitled to payments out of production of oil or gas on land covered by such leases. Units in this joint venture were comprised of working interests and corresponding net revenue interests in an oil and gas well drilling project in particular oil and gas leases in the Hull Oilfield in Liberty County, Texas.
4. The facts set out above in ¶¶ 1.a, 1.c - 1.e and 1.k - 1.t show that Dunwell offered these unregistered securities to AR1 in violation of Ark. Code Ann. § 23-42-501 by soliciting an offer to buy these securities in its unsolicited email to AR1 dated May 16, 2012.
5. The facts set out above in ¶¶ 1.b, and 1.f - 1.t show that Preston offered these unregistered securities to AR1 in violation of Ark. Code Ann. § 23-42-501 by soliciting an offer to buy these securities in its unsolicited emails to AR1 dated August 13, 2012, and November 30, 2012. Preston further offered these securities by the activities of the individual who identified herself as Brandi Steitle in her email to AR1 dated December 4, 2012, in her telephone call to AR1 on December 5, 2012, and in her subsequent email to AR1 on December 5, 2012, to which was attached offering documents for both securities.
6. The seriousness of the violations described above should not be taken lightly, as violations of Ark. Code Ann. § 23-42-501 can lead to severe personal financial loss.
7. Whenever upon sufficient grounds or evidence satisfactory to the Commissioner it appears to

the Commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of the Act or any rule or order issued pursuant to the Act, the Commissioner may summarily order the person to cease and desist from the act or practice. Ark. Code Ann. § 23-42-209. The respondents have engaged in conduct that violates the Act. Based upon the seriousness of the violations, the opportunity for future violations, the degree of harm that could be caused to investors resulting from the violations, and the remedial function to be served by the Cease and Desist Order, this Cease and Desist Order is in the public interest and appropriate.

8. The Commissioner is empowered by Ark. Code Ann. § 23-42-205(a) to make any public or private investigations within or outside of Arkansas which he deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or order issued or promulgated under the Act or to aid in the enforcement of the Act. Based on the representations made by the Staff in its pleadings, it is appropriate that the Staff continue its investigation into Dunwell and Preston to determine if other violations of the Act and Rules of the Arkansas Securities Commissioner (Rules) have occurred.

### ORDER

IT IS THEREFORE ORDERED that Dunwell Corporation and Preston Energy, Inc., CEASE AND DESIST from any further actions in Arkansas in connection with offering and selling securities until such time as any securities offered or sold are properly registered, shown to be exempt from registration pursuant to the Act or are shown to be covered securities under federal law.

The Staff of the Arkansas Securities Department shall continue its investigation into Dunwell Corporation and Preston Energy, Inc., to determine what, if any, other violations of the Act or

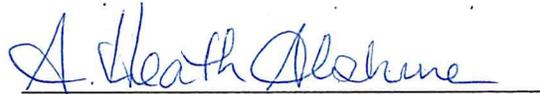
Rules have occurred. This investigation should include the total amount and type of securities offered and sold by or through the agency of any of the Respondents or any associated or affiliated entities or persons as yet unknown, the methods used and representations made in connection with the offer and sale of securities and the disposition of any funds invested.

A hearing on this Order shall be held if requested by any Respondent in writing within thirty days of the date of the entry of this Order, or if otherwise ordered by the Commissioner. Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner  
201 East Markham, Suite 300  
Little Rock, Arkansas 72201

If no hearing is requested and none is ordered by the Commissioner, this Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. §23-42-209(a)(2)(B).

IT IS SO ORDERED.



A. Heath Abshure  
Arkansas Securities Commissioner

December 13, 2012  
Date