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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JAN 16 2007

COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY nr

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In the matter of:  
  
Mid America Energy, Inc.,  
a Nevada Corporation  
321 Victor Reiter Parkway  
Portland, TN 37148  
  
Mid America Oil & Gas, LLC  
a Kentucky Limited Liability Company,  
493 Pleasant Run Church  
Campbellsville, KY  
  
Gary M. Milby a/k/a  
Gary Moss Milby a/k/a  
Gary M. Milley  
and Wanda Milby,  
husband and wife  
321 Victor Reiter Parkway  
Portland, TN 37148  
  
Jim and Rita Whatcott,  
husband and wife  
222 Basin Creek Road  
Durango, CO 81303-3647  
  
John and Lucille Blitz,  
husband and wife  
225 Marneh Avenue  
Santa Cruz, CA 95062  
  
Clinton Goff a/k/a Clint Goff,  
an un-married man  
321 Victor Reiter Parkway  
Portland, TN 37148

) Docket No. S-20442A-06-0110

) DECISION NO. 69233

) **ORDER TO CEASE AND DESIST, ORDER  
OF RESTITUTION AND ORDER FOR  
ADMINISTRATIVE PENALTIES  
AGAINST:**

) **MID AMERICA ENERGY, INC., A  
NEVADA CORPORATION**

) **MID-AMERICA OIL & GAS, LLC, A  
KENTUCKY LIMITED LIABILITY  
COMPANY**

) **GARY M. MILBY a/k/a  
GARY MOSS MILBY a/k/a  
GARY M. MILLEY**

) **ENERGY MARKETING, INC., A NEVADA  
CORPORATION**

1 Warren Exploration, LLC )  
 2 A Nevada Limited Liability Company )  
 3 321 Victor-Reiter Parkway )  
 4 Portland, TN 37148 )  
 5 Energy Marketing, Inc., )  
 6 a Nevada Corporation )  
 7 129 Haven Street, Unit A )  
 Hendersonville, TN 37075 )  
 Respondents. )

8 On September 8, 2006, the Securities Division (the "Division") of the Arizona Corporation  
 9 Commission (the "Commission") filed a First Amended Temporary Order to Cease and Desist and  
 10 Notice of Opportunity for Hearing ("First Amended TC&D") with respect to several  
 11 Respondents,<sup>1</sup> among them are the following four: Mid America Energy, Inc., Mid America Oil and  
 12 Gas, LLC, Gary M. Milby, and Energy Marketing, Inc. The Division served the First Amended  
 13 TC&D on the foregoing four Respondents as follows: Gary M. Milby, Mid America Energy, Inc.,  
 14 Mid America Oil and Gas, LLC by mail to their attorney of record, Paul Stoller, Esq., on September  
 15 8, 2006; and Energy Marketing, Inc., by certified mail upon its statutory agent, the return card  
 16 indicating delivery and receipt on September 13, 2006.

17 The First Amended TC&D specified that Respondents would be afforded an opportunity for  
 18 an administrative hearing regarding the matter upon filing a written request with Docket Control of  
 19 the Commission within ten days of receipt of notice. Mr. Stoller who had appeared on behalf of  
 20 Gary M. Milby, Mid America Energy, Inc., and Mid America Oil and Gas, LLC was granted  
 21 permission to withdraw on September 28, 2006, by procedural order. Respondents Gary M. Milby,  
 22 Mid America Energy, Inc., Mid America Oil and Gas, LLC, and Energy Marketing, Inc. failed to  
 23 respond to the First Amended TC&D and failed to request a hearing within the required time.

24 ...

25 \_\_\_\_\_  
 26 <sup>1</sup> A temporary order to cease and desist was entered by the Division on February 28, 2006 (Original TC&D) and served upon Gary M. Milby, Mid America Energy, Inc., and Mid America Oil and Gas, LLC on March 6, 2006. Energy Marketing, Inc. was not specifically named in the Original TC&D.

## I.

## FINDINGS OF FACT

1  
2  
3 1. MID AMERICA ENERGY, INC. ("MAE") is a Nevada corporation, who was  
4 known to be doing business at 129 Haven Street, Unit A, Hendersonville, TN 37075 and whose  
5 Tennessee address according to the Tennessee Secretary of State's Website is 321 Victor Reiter  
6 Parkway, Portland, TN 37148.

7 2. MID AMERICA OIL & GAS, LLC ("MAOG") is a Kentucky Limited Liability  
8 Company, whose last known principal office address as provided by the Kentucky Secretary of  
9 State's website is: 2023 Earl Pearce Cir, Mount Juliet TN 37122-1328. Upon information and  
10 belief, this entity's last known business address is 493 Pleasant Run Church, Campbellsville, KY.

11 3. Both MAE and MAOG had a website at [www.mid-americaoilandgas.com](http://www.mid-americaoilandgas.com) ("MAOG  
12 Website").

13 4. MAE identified itself on the MAOG Website as a company engaged in developmental  
14 drilling in several locations in Kentucky and via the Website introduced investors to a number of  
15 investment opportunities. When a page from the website was printed the header read "Mid-  
16 America Oil & Gas, LLC- Invest in Oil and Natural Gas Production."

17 5. MAE's then set up a website located at <http://mid-americaenergy.com> ("MAE  
18 Website"). The MAE website represented that the company's corporate headquarters are located  
19 in Portland, TN and specifically provided the following address: 321 Victor Reiter Parkway,  
20 Portland, TN 37148. Upon information and belief, the website was no longer online in  
21 December of 2006.

22 6. GARY M. MILBY A/K/A GARY MOSS MILBY AND GARY M. MILLEY  
23 ("MILBY") is an individual with multiple business addresses as follows: 129 Haven Street, Unit  
24 A, Hendersonville, TN 37075; 2343 Alexandria Drive, Suite 140, Lexington, KY 40504; 321  
25 Victor Reiter Parkway, Portland, TN 37148.

26 7. MILBY is the President of MAE and the president and owner of MAOG.

1           8. Energy Marketing Inc., ("EMI") is a Nevada corporation which on Nevada's  
2 Corporations' Website has listed the following address: P.O. Box 2259, Minden, NV 89423-2259.  
3 Upon information and belief, EMI also received mail at 129 Haven Street Unit A, Hendersonville,  
4 TN 37075 and at 321 Victor-Reiter Parkway, Portland, TN 37148.

5           9. An order dated May 5, 2006, was entered by the Department of Corporations of the State  
6 of California against MILBY, MAE, and MAOG. In that order MILBY, MAE, and MAOG  
7 consented to the order without admitting or denying any of the findings contained in the order and  
8 agreed not to make any statements that were inconsistent with the order. The order stated that EMI  
9 is also a fictitious business name filed with the County Clerk's office in Sumner County Tennessee  
10 on April 7, 2006. Its principal place of business is also at 321 Victor Reiter Parkway, #199,  
11 Portland, TN 37148.

12           10. MAE, MAOG, MILBY, and EMI may be collectively referred to as  
13 "RESPONDENTS."

14           11. From at least November 23, 2005, RESPONDENTS have been and are directly or  
15 indirectly offering securities in the form of investment contracts in oil and gas opportunities.

16           12. MILBY, MAOG and MAE solicited Arizona investors through newspaper ads. One  
17 advertisement ran at least eight times, beginning 11/23/05 to 1/03/06 in the Arizona Republic  
18 Newspaper or online version, and stated: "Investment Opportunity For a one time \$37,000  
19 investment you can receive a \$1200-\$4800 monthly return for up to 30 years. Call 970-946-8893  
20 for information."

21           13. Upon dialing the published number, a potential Arizona investor was introduced to an  
22 investment known as Fort Knox #15. The program was explained to be an oil program for the  
23 drilling and completion of three oil wells in Adair County, Kentucky. The potential investor was  
24 referred to the MAOG Website and arrangements were made to mail him a brochure and other  
25 materials concerning FORT KNOX #15. The materials were received by the Division.

1           14. Representations were made by the salesman who explained that they "could guarantee  
2 everyone gets a good return" because each investor in FORT KNOX #15 has an interest in all  
3 three wells that will be drilled. The salesman also said that a \$37,000 investment provides the  
4 investor with a 2% net revenue interest in the three oil wells.

5           15. The salesman informed the potential Arizona investor that they were seeing a return  
6 of \$3,000.00 to \$6,000.00 a month on a single investment. The salesman represented that the  
7 investor would receive a return on his investment within 60-90 days of sending in his money and  
8 agreement.

9           16. The salesman explained that the investment is in developmental drilling, which he  
10 explained is done on "*proven reserves*." He further explained that the wells are drilled next to  
11 existing, producing wells. The salesman said they already have 90 wells up and running and that  
12 they intended to sell about 200 on this particular lease.

13           17. RESPONDENTS' brochure references MAOG, MAE and MILBY, and it was received  
14 by at least one potential Arizona investor from the Division. The brochure contains a guarantee  
15 on the oil wells that promises that if any of the three wells comes up dry a new one will be drilled  
16 at company expense.

17           18. Under the alleged "Private Placement Memorandum" for FORT KNOX #15 ("PPM"),  
18 received by the Division, the plan is to raise \$925,000 from the sale of 25 units at \$37,000 each.  
19 The money is to be raised from a group of investors who pool their money to obtain the required  
20 amount. According to the PPM, in the aggregate the 25 units will have a total of 50% net  
21 revenue interest and a 61.5385% working interest in the three new wells.

22           19. Again according to the PPM, once funded by MAE, FORT KNOX #15 is to drill,  
23 complete, and operate up to three wells. Distributions are to be made to the partners from the  
24 revenues of the wells minus expenses and reserves.

25           20. Terms of the FORT KNOX #15 investment are also set forth in RESPONDENTS'  
26 brochure which identifies both MAOG and MAE in the materials.

1           21. Prospective investors are encouraged “to visit the field operations” by MILBY in the  
2 FORT KNOX #15 brochure; however, it is clear from the PPM that investors must rely upon  
3 management who has the sole discretion over everything including the drill sites and whether to  
4 substitute them. In fact, RESPONDENTS acknowledge in the PPM that, “[t]he Managing  
5 Partner will have exclusive and complete discretion in and responsibility for the management of  
6 the Partnership affairs, including certain decisions with respect to the drilling, completion,  
7 development and operation of the properties in which the Partnership invest. The Managing  
8 Partner will exercise complete control over all of the Partnership’s activities. Accordingly, the  
9 investors must rely entirely upon the Managing Partner and its management and personnel in the  
10 conduct of the Partnership’s business.” (Italics added). There is no avenue for investors to  
11 participate in the management of the venture.

12           22. The PPM identifies MAE as its Managing Partner and Program Manager. The written  
13 materials also identify MILBY as the Managing Partner for FORT KNOX.

14           23. RESPONDENTS also directly solicited Arizona investors in gas and oil investments  
15 through the use of the MAOG Website which was known to be online on January 30, 2006.

16           24. For example, RESPONDENTS’ MAOG website stated, “*We are currently drilling in*  
17 *several locations in Kentucky, all of which are located in highly productive oil fields. For*  
18 *clarification on the two most common types of drilling, exploratory drilling involves drilling on a*  
19 *site with the hopes of finding oil, whereas, developmental drilling involves drilling in a field*  
20 *where there is known to be oil. We are not engaging in exploratory drilling, **these wells will***  
21 *yield oil and natural gas! Our wells are surrounded by oil fields that have been pumping oil for*  
22 *over 50 years, and we have no reason to think ours will not do the same.” (Italics and bold*  
23 *added).*

24           25. The top of the MAOG Website stated: “Request a free brochure and Prospectus.... E-  
25 mail us your name and full mailing address and we’ll send you our full color brochure and  
26 prospectus.”

1           26. Under the "current opportunities" button on the MAOG Website a number of oil  
2 drilling programs were listed. The current offers listed were: Big Creek Oil #1, LLP; Black Gold  
3 Oil #1, LLP; Black Gold Oil #2, LLP; Black Gold Oil #3, LLP; Black Gold Oil #4, LLP; Black  
4 Gold Oil #5, LLP, Black Gold Oil #6, LLP. The MAOG Website permitted visitors to view  
5 details on all the programs and identified whether an offering was available for any particular  
6 program. On January 4, 2006 the MAOG Website indicated that the current opportunities are  
7 closed out with only the Black Oil #6, LLP available.

8           27. MILBY's "Expanded Professional History," provided to at least one prospective  
9 Arizona investor in January of 2006, represents that MILBY is the President/Owner of Mid-  
10 America Oil & Gas, LLC, and that such entity is a registered Operator with the Railroad  
11 Commission of Texas in good standing with all regulating bodies in the state. MILBY further  
12 claims that this company has drilled and or participated in the drilling of 100+ sites and "is  
13 currently experiencing significant growth with current oil prices exceeding \$55 per barrel."  
14 Notwithstanding MILBY's assertions, MID AMERICA OIL & GAS, LLC is inactive with the  
15 Railroad Commission of Texas and has been inactive since August 31, 2005.

16           28. MILBY filed for Chapter 7 bankruptcy on November 5, 2003 and was discharged  
17 from the same on March 17, 2004. MILBY did not disclose this information to at least one  
18 potential Arizona investor in January of 2006.

19           29. Another ad was published in the Arizona Republic on Sunday February 5, 2006. This  
20 ad stated, "Make up to \$4800/mo on a \$49K oil investment. 615-537-0261."

21           30. A call to the published number by at least one potential Arizona investor resulted in a  
22 return phone call from "John" who represented himself as a representative of Mid America  
23 Energy ("MAE") located in Hendersonville, Tennessee. On February 22, 2006, "John"  
24 represented that MAE was operated by GARY MILBY and offered a 2% net revenue interest in  
25 three oil wells for \$49,000 in an area called the "Knox Formation." "John" represented that  
26

1 payments to investors would begin one year after the investment was made and continue for  
2 approximately twenty plus years.

3 31. On January 22, 2006, "John" also represented that the opportunity with MAE is a  
4 private placement "registered with the SEC."

5 32. On or about February 27, 2006, a "Private Placement Memorandum" for a program  
6 known as EAGLE OIL #6 was received by at least one potential Arizona investor from MAE.  
7 The materials also identify MILBY as President of MAE and as the Managing Partner for the  
8 EAGLE OIL #6 program. A review of the materials reveals that except for the offering price,  
9 and amount of money sought to be raised, the EAGLE OIL #6 LLP "Private Placement  
10 Memorandum" and Eagle Oil brochure is almost identical to the PPM and brochure referenced  
11 above in connection with FORT KNOX #15 LLP.

12 33. The documents received by at least one potential Arizona investor on February 27,  
13 2006 also contained a cover letter. The cover letter sets forth highlights of the oil drilling  
14 investment including the following representations: "*3 Guaranteed Producing Oil Wells,*"  
15 "*[m]onthly income checks for as much as \$3,600 + per unit,*" and "*Monthly checks lasting for as*  
16 *long as 30--50 years.*" (Italics added).

17 34. No Respondents were registered pursuant to Article 9 of the Securities Act to sell  
18 securities, nor exempt therefrom.

19 35. On or prior to December 6, 2005, the Pennsylvania Securities Commission issued a  
20 Summary Order to Cease and Desist against MAE, MILBY, and Tom McKenna. Said order was  
21 entered to halt the offer and sale of unregistered securities, namely units representing a working  
22 interest in an operation to drill and operate oil wells in Kentucky – Black Gold Oil #4, LLP. The  
23 summary order was not disclosed to at least two potential Arizona investors.

24 36. At least since January of 2006, Respondents also offered unregistered securities to  
25 Arizona residents through advertisements that were broadcast on XM Satellite Radio ("XM")  
26 under the name of EMI.



1           37. XM radio is a company which delivers its signal by satellite nationally. XM radio's  
2 programming reaches Arizona residents who are subscribers via the internet and XM receivers.  
3 Arizona residents who are not subscribers also can receive a free trial subscription to XM via the  
4 internet.

5           38. From at least January 18, 2006 to July 2, 2006, over 3800 ads aired on XM promoting  
6 EMI for the purpose of offering securities in MAE and MAOG.

7           39. The XM ads promote investments in oil wells in a "proven lease that's been  
8 producing oil for over 40 years."

9           40. Similar to the newspaper ads placed by MAOG and MAE described above, the XM  
10 ads tout that investments of \$24,000 to \$49,000 can provide up to \$4,800 in monthly income.

11           41. The XM ads that ran under the name of EMI are public offers of the same  
12 unregistered securities described supra for MAE, MAOG, and MILBY.

13           42. On February February 28, 2006 the Division entered a Temporary Cease and Desist  
14 and Notice of Opportunity for Hearing ("TC&D"). At least 830 ads ran offering securities before  
15 the entry of the TC&D.

16           43. On August 4, 2006, the Division applied to Superior Court of Maricopa County to  
17 hold the Respondents in contempt of the February 28, 2006, TC&D.

18           44. On September 8, 2006, the Division filed a First Amended Temporary Order to Cease  
19 and Desist and Notice of Opportunity for Hearing.

20           45. On September 29, 2006, Judge Colin Campbell of the Superior Court of Maricopa  
21 County, entered an order against MAOG, MAE, MILBY, and EMI. In that order the court found  
22 that these Respondents had violated the TC&D entered on February 28, 2006. The court also  
23 found the Respondents in contempt and ordered them to pay \$1,000,000.00.

24           46. Upon information and belief, Arizona residents invested at least \$200,000.00 in MAE  
25 and MAOG. Arizona investors have not been returned their investments. Instead, investors have  
26 received statements reflecting that had a negative balance on their account.

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**II.**

**CONCLUSIONS OF LAW**

1. The commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21) and 44-1801(26).

3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondents violated § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. Respondents violated A.R.S. § 44-1991 by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

6. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondents' conduct is grounds for an order of restitution pursuant to § 44-2032.

8. Respondents' conduct is grounds for administrative penalties under § 44-2036.

**III.**

**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. §44-2032, that the Respondents, their agents, servants, employees, successors, assigns, and those persons in active concert or participation with them,

1 permanently cease and desist from violating the Securities Act. Respondents shall not sell any  
2 securities in or from Arizona without being registered in Arizona as dealers or salesmen, or exempt  
3 from such registration. Respondents shall not sell securities in or from Arizona unless the securities  
4 are registered or exempt from registration.

5 IT IS FURTHER ORDERED that pursuant to §44-2032, that Respondents shall, jointly and  
6 severally, pay restitution to investors, shown on the records of the Commission, in the amount of  
7 TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00), plus interest at the rate  
8 of 10% per annum from the date of this Order until paid in full. Payment shall be made by check  
9 or money order payable to the "State of Arizona" and will be placed in an interest-bearing account  
10 maintained and controlled by the Commission. The Commission shall disburse the funds on a pro  
11 rata basis to investors shown on the records of the Commission. Any restitution funds that the  
12 Commission cannot disburse because an investor refuses to accept such payment shall be  
13 disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission.  
14 Any funds that the Commission determines it is unable to, or cannot feasibly, disburse shall be  
15 transferred to the general fund of the State of Arizona.

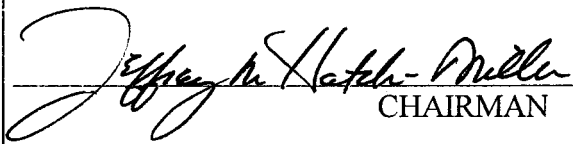

16 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 that Respondents shall jointly  
17 and severally pay an administrative penalty in the amount of ONE HUNDRED THOUSAND  
18 DOLLARS AND 00/100 (\$100,000.00). Payment shall be made in full on the date of this Order to  
19 the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum  
20 from the date of this Order until paid in full. The payment obligations for these administrative  
21 penalties shall be subordinate to any restitution obligations ordered herein and shall become  
22 immediately due and payable only after restitution payments have been paid in full or upon  
23 Respondents' default with respect of Respondents' restitution obligations.

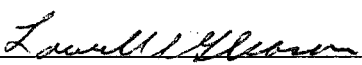

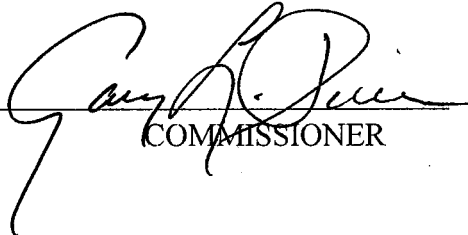
24 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of  
25 default. If any Respondent does not comply with this Order, any outstanding balance may be  
26 deemed in default and shall be immediately due and payable without notice or demand.

1 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the  
2 Commission may bring further legal proceedings against that Respondent, including application to  
3 the superior court for an order of contempt, to include attorneys fees and costs related to collection.

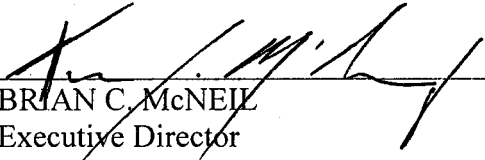
4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6    
7 CHAIRMAN COMMISSIONER

8  
9     
10 COMMISSIONER COMMISSIONER COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
13 Executive Director of the Arizona Corporation  
14 Commission, have hereunto set my hand and caused the  
15 official seal of the Commission to be affixed at the  
16 Capitol, in the City of Phoenix, this 16<sup>th</sup> day of  
January, 2007.

17   
18 BRIAN C. McNEIL  
19 Executive Director

20 \_\_\_\_\_  
21 DISSENT

22 \_\_\_\_\_  
23 DISSENT

24 This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator,  
25 voice phone number 602-542-3931, E-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov)

26 (soe)