

STATE OF NEBRASKA
Department of Banking & Finance

In the Matter of)	
)	
CitiEnergy, LLC)	FINDINGS OF FACT
2309 West Cone Boulevard, Suite 200)	CONCLUSIONS OF LAW
Greensboro, North Carolina)	AND
)	CONSENT ORDER
RESPONDENT)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“Department”), by and through its Director, pursuant to its authority under the Securities Act of Nebraska, Neb. Rev. Stat. §§ 8-1101 to 8-1123 (Reissue 2012; Cum. Supp. 2016; Supp. 2017) (“Act”). Pursuant to Neb. Rev. Stat. § 8-1115 (Supp. 2017), the Department has investigated the acts of CitiEnergy, LLC, 2309 West Cone Boulevard, Suite 200, Greensboro, North Carolina (“CitiEnergy”). As a result of such investigation, and being fully advised and informed in the matter, the Director and CitiEnergy enter into the following Findings of Fact, Conclusions of Law and Consent Order (“Order”):

FINDINGS OF FACT

1. CitiEnergy is a limited liability company formed under the laws of the State of Delaware with its primary address at 2309 West Cone Boulevard, Suite 200, Greensboro, North Carolina. According to the records of the North Carolina Secretary of State, CitiEnergy was formed on November 12, 2004. At all times relevant hereto Daniel Forsberg (“Forsberg”) was President of CitiEnergy and executed all relevant documents on behalf of CitiEnergy.

2. CitiEnergy formed various general partnerships to conduct activities related to oil and natural gas exploration in Kentucky and other states. The general partnerships include, but are not

limited to, American Energy Recompletion, I G.P. (“American Energy I”); American Energy Recompletion II, G.P. (“American Energy II”); Blue Grass Shale Drilling I, G.P. (“Blue Grass”); Dark Ridge II, G.P. (“Dark Ridge II”); Dark Ridge III, G.P. (“Dark Ridge III”); Dark Ridge IV, G.P. (“Dark Ridge IV”); Xpress Pipeline, G.P. (“Xpress”); and Patriot Income Fund I, G.P. (“Patriot”) (Collectively, “Partnerships”) Each of the partnership agreements were executed by CitiEnergy, who was the only party to the partnership agreements.

3. Each partnership agreement designated CitiEnergy as the Administrator of each partnership. On the same day that each Partnership was formed, each Partnership, with the exception of Patriot, entered into a TurnKey Agreement with CitiEnergy. Through the TurnKey Agreement, the Partnerships engaged CitiEnergy as the “operator,” tasked with drilling of natural gas wells, recompleting of natural gas wells, or constructing a pipeline, depending on the business purpose of the individual Partnership. CitiEnergy executed the TurnKey Agreement as the Administrator of each Partnership, and also on behalf of itself as the operator.

4. On the same day as its formation, Patriot entered into a well purchase agreement with CitiEnergy and Forsberg for the purchase of certain natural gas wells owned by CitiEnergy and Forsberg. CitiEnergy executed the purchase agreement on behalf of Patriot, and CitiEnergy and Forsberg executed the contract as the sellers of the natural gas wells.

5. CitiEnergy sold general partnership interests in the Partnerships in order to raise the funds necessary to fulfill each Partnership’s obligations under the TurnKey Agreement. The following sales of partnership interests were made in the Partnerships:

Partnership	Investors	Amount Invested	Nebraska Investors	Amount Invested
Dark Ridge II	27	\$1,197,500	15	\$645,000
Dark Ridge III	57	\$2,775,000	29	\$1,220,000
Dark Ridge IV	29	\$1,225,500	14	\$650,000
Blue Grass	37	\$1,565,000	15	\$490,000
Xpress	63	\$2,375,000	31	\$1,595,000
American Energy I	32	\$1,395,000	13	\$445,000
American Energy II	18	\$792,500	8	\$455,000
Patriot	7	\$455,000	4	\$285,000

6. A group of finders was used to locate potential purchasers for the Partnership Interests. The finders were paid finder fees through CitiEnergy. Guy Strevey (“Strevey”), Donald Williams (“Williams”), and Dennis Applegarth (“Applegarth”), all of whom were Nebraska residents acted as finders on behalf of CitiEnergy.

7. The investors invested in the partnerships under the belief that the partnerships would be profitable, and that the investors would receive a return on their investment.

8. CitiEnergy, the administrator of the Partnerships, handled all matters on behalf of the Partnerships. In addition to signing the documents identified in Findings of Fact #3 and #4 above, CitiEnergy admitted new partners into the Partnerships, calculated partner distributions, and mailed checks and tax forms to the partners. No partner meetings were held, nor were any partnership votes called regarding these matters.

9. The investors in the Partnership were generally inexperienced in the oil and gas exploration business. The investors’ expectations of profits were predicated on the entrepreneurial and managerial skills of the partnership administrator, CitiEnergy. CitiEnergy’s efforts were significant, and were essential to the success of the partnerships. Whether gas was recovered from the wells depended entirely upon CitiEnergy’s ability to select the appropriate location for the wells and properly drill the wells. The investors were not in a position to oversee drilling operations, ensure that permits were in place, hire the drillers, or pay the bills.

10. At all times relevant to this Order, the partnership interests were not registered for sale as securities in Nebraska under the Act. Respondents have not filed any claim of exemption for the partnership interests with the Department.

11. At all times relevant to this order, CitiEnergy was not registered as a broker-dealer under the Act.

12. On November 2, 2017, the Department issued its Findings of Fact, Conclusions of Law and Order to Show Cause (“Show Cause Order”) ordering CitiEnergy, Forsberg, Strevey, Williams, and Applegarth to appear before the Department and show cause why they should not be permanently barred from conducting securities business in Nebraska under the Act, and/or why a fine, not to exceed \$25,000.00 per violation, and/or the costs of the investigation incurred by the Department, including a reasonable amount for the time incurred by the Department staff, should not be imposed upon them. A hearing on the Show Cause Order is currently scheduled to commence on April 30, 2018.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-1101(15) (Supp. 2017) defines the term “Security” to include an investment contract.

2. In determining whether an instrument is an investment contract, Nebraska follows the test first established in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946). *See, e.g., State v. Jones*, 235 Neb. 1, 4-5, 453 N.W.2d 447, 451 (1990). The elements of an investment contract are (1) an investment (2) in a common enterprise (3) with a reasonable expectation of profits (4) to be derived from the entrepreneurial or managerial efforts of others. *Id.*

3. As set forth in Finding of Fact No. 5 above, the Partnerships received investments of money from general partners.

4. As set forth in Finding of Fact No. 5 above, each general partnership had many individual general partners who pooled their funds to finance the partnerships. Thus, the general partnerships represented a common enterprise.

5. As set forth in Finding of Fact No. 7 above, investors who purchased the partnership interests expected to receive a profit for their investment.

6. In analyzing whether a general partnership meets the fourth prong of *Howey*, courts have looked at whether (1) an agreement among the parties leaves so little power in the hands of the partner or venturer that the arrangement in fact distributes power as would a limited partnership, or (2) the partner or venturer is so inexperienced and unknowledgeable in business affairs that he or she is incapable of intelligently exercising his partnership or venture powers, or (3) the partner or venturer is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he or she cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers. *See, e.g., Williamson v. Tucker, 645 F.2d 404 (5th Cir. 1981); Casali v. Schultz, 732 S.W. 836 (Ark. 1987); Consolidated Management Group, LLC v. Department of Corporations, 75 Cal. Rptr. 3d 795 (Ct. App. 2008).*

7. The facts recited in Findings of Fact No. 8 and No. 9 above establish that the partners were inexperienced and unknowledgeable in the business of oil and gas exploration and were dependent upon the unique entrepreneurial and managerial ability of CitiEnergy.

8. The partnership interests constitute securities, as defined by Neb. Rev. Stat. § 8-1101(15) (Supp. 2017), and are required to be registered or exempt from registration under Neb. Rev. Stat. § 8-1104 (Cum. Supp. 2016).

9. The facts recited in Findings of Fact No. 5 through No. 10 above, constitute the sale of unregistered securities.

10. The facts recited in Findings of Fact No. 5 through No. 11 above, constitute the sale of securities by CitiEnergy when not it was registered as a broker-dealer.

11. Neb. Rev. Stat. § 8-1108.01(4) (Supp. 2017) provides that the Director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to the costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the Act or any rule, regulation, or order issued under the Act.

12 Under the Act's statutory framework, the Director has legal and equitable authority to fashion significant protective remedies.

13. It is in the best interest of CitiEnergy, and it is in the public's best interest, for CitiEnergy and the Director to mutually resolve the issues included herein.

STIPULATIONS

In connection with this Consent Order, CitiEnergy and the Director stipulate to the following:

1. The Department has jurisdiction as to all matters herein.

2. This Consent Order shall resolve all matters between the Department and CitiEnergy in connection with the Findings of Fact listed above. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the Department.

CitiEnergy further represents as follows:

1. CitiEnergy is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.

2. CitiEnergy is acting free from any duress or coercion of any kind or nature.

3. CitiEnergy neither admits nor denies the Findings of Facts and Conclusions of Law contained in this Order, and consents to entry of this Order by the Department as settlement of the issues contained in this Order.

CONSENT ORDER

IT IS THEREFORE ORDERED as follows:

1. CitiEnergy shall pay a fine of Forty Thousand Dollars (\$40,000.00).
2. CitiEnergy shall pay the investigation costs of the Department in the amount of Ten Thousand Dollars (\$10,000.00).

3. The total amount of the fines and investigation costs, Fifty Thousand Dollars (\$50,000.00), shall be paid as follows:

- a. The sum of Ten Thousand Dollars (\$10,000.00) shall be paid to the Department no later than ten days after the effective date of this Consent Order.
- b. The remaining balance of Forty Thousand Dollars (\$40,000.00) shall be payable to the Department as follows:

<u>Payment Due Date</u>	<u>Amount</u>
September 30, 2018	\$5,000.00
December 31, 2018	\$5,000.00
March 31, 2019	\$5,000.00
June 30, 2019	\$5,000.00
September 30, 2019	\$5,000.00
December 31, 2019	\$5,000.00
March 31, 2020	\$5,000.00
June 30, 2020	\$5,000.00

- c. Payments shall be received by the Department on or before the due date listed above and shall be payable in one check or money order for the entire amount of the installment due. Partial payments of any installment will not be accepted.

d. Late payments will not be accepted without the prior approval of the Department. Any unapproved late payment will result in the total remaining balance of the fine and costs to become immediately due. Any check that is dishonored by the financial institution it is drawn upon shall be deemed a late payment.

e. CitiEnergy may pay in full the fines and costs at any time prior to June 30, 2020.

4. CitiEnergy shall not sell any partnership interests to Nebraska residents unless and until such partnership interests have been registered with the Department, or it has filed a notice claiming an appropriate, applicable exemption with the Department.

5. In the event CitiEnergy fails to comply with any of the provisions of this Consent Order, the Department may commence such action regarding CitiEnergy as it deems necessary and appropriate in the public interest.

6. The Department shall issue a separate Order vacating the Findings of Fact, Conclusions of Law, and Consent Order no later than five business days after receipt of the payment required by paragraph 3.a. above.

7. This Consent Order is not intended to subject CitiEnergy to disqualification under federal securities laws, rules or regulations thereunder, or the rules and regulations of any self-regulatory agency, nor the laws, rules or regulations of the various states and U.S. Territories, including without limitation, any disqualification from relying upon the registration exemption or the safe harbor provisions.

8. The effective date of this Consent Order shall be the date of the Director's signature.

DATED this 19 day of April, 2018

CitiEnergy, LLC

Daniel R. Forsberg, Managing Member

Daniel Forsberg, President
2309 West Cone Boulevard, Suite 200
Greensboro, North Carolina 27408
(336) 379-0800

DATED this 23 day of April, 2018.

STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE



By: *Mark Quandahl*

Mark Quandahl, Director

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