

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 1891/October 7, 2014

ADMINISTRATIVE PROCEEDING

File No. 3-16000

In the Matter of

HOUSTON AMERICAN ENERGY CORP.,  
JOHN F. TERWILLIGER, JR.,  
UNDISCOVERED EQUITIES INC., and  
KEVIN T. McKNIGHT

ORDER ON SUBPOENA REQUESTS

On August 29, 2014, Respondents Houston American Energy Corp. (Houston American) and John F. Terwilliger, Jr. (Terwilliger), requested the issuance of subpoenas to Netherland, Sewell & Associates, Inc. (Netherland Sewell), SK E&P Company (SK Energy), and the Securities and Exchange Commission. On September 11, 2014, the Division of Enforcement (Division) filed an Opposition (Div. Opp.) and the Office of the General Counsel (OGC) filed a separate Opposition (OGC Opp.). On September 18, 2014, Houston American and Terwilliger filed a Reply. Undiscovered Equities Inc., and Kevin T. McKnight did not submit a filing relating to this request.

A party may request the issuance of subpoenas requiring the production of evidence that is not “unreasonable, oppressive, excessive in scope, or unduly burdensome.” 17 C.F.R. § 201.232. For the reasons set forth in the discussion below, I grant in part and deny in part the request of Houston American and Terwilliger.

**Discussion**

**Subpoenas to Netherland, Sewell & Associates, Inc., and SK E&P Company**

The Respondents’ request (Motion) and attendant subpoenas seek documents relating to “the reasonableness of Houston American’s estimate concerning the CPO-4 field in the Llanos Basin in Columbia . . .” which the Division disputes. Motion at 1; *see id.* at 2.

The requests to Netherland Sewell appear relevant because: (i) they directly implicate matters alleged to the detriment of Houston American and Terwilliger (OIP ¶ 78); (ii) they pertain to subjects of allegedly false statements by Houston American and Terwilliger (Reply at 4, Ex. C); (iii) the Division questioned eight witnesses about Netherland Sewell and issues implicated by the requests (*Id.* at 3-4, Ex. A); (iv) the Division sought documents from

Netherland Sewell on subjects somewhat similar to those requested by Respondents (*Id.* at 4, Ex. B); and (v) the recovery rates elsewhere in the Llanos basin may be relevant to estimating the recovery rate on an exploratory concession like CPO-4 (*Id.* at 5-6, Ex. E). According to Respondents, because the Division challenged their use of the word “reserves” in a 2009 presentation, “[t]he subpoena to Netherland Sewell also seeks documents related to the use of the word ‘reserves’ in a pre-drill context” which may also be relevant. Motion at 3.

For similar reasons, the subpoena request to SK Energy also appears relevant. *See* Reply Ex. C; Motion Ex. 2 at Exs. B & C. To the extent that Houston American and Terwilliger’s request to SK Energy overlaps with one of the Division’s prior subpoena requests, then SK Energy may note that in order to streamline its response. Div. Opp. at 12-13. However, Houston American and Terwilliger note that SK Energy may not have produced any internal communications about “recovery rates on CPO-4 or anywhere else in the Llanos basin.” Reply at 10 (formatting altered); *see id.* Ex. F (only two of just 174 email messages produced by the Division from its subpoena to SK Energy are internal communications).

Although the Division contends that the documents sought from Netherland Sewell and SK Energy will ultimately only undermine Houston American and Terwilliger’s contentions, this does not establish that the requests are irrelevant. Div. Opp. at 4-6, 12. Indeed, it instead highlights that they are within the scope of this proceeding. Reviewing any such relevant documents appears to be a reasonable approach for Houston American and Terwilliger, in the event that they may reach a different interpretation than the Division.

In contrast to the preceding subpoena requests, a handful of Houston American and Terwilliger’s requests are quite broad, including Request No. 3 to Netherland Sewell for “[a]ll documents concerning [Houston American] or John Terwilliger” (Motion Ex. 1 at 6), Request No. 5 to Netherland Sewell for “[a]ll communications with the SEC regarding [Houston American] [and] John Terwilliger” (Motion Ex. 1 at 7), and Request No. 8 to SK Energy is for “[a]ny communications with the SEC regarding [Houston American] or John Terwilliger” (Motion Ex. 2 at 7). All of these requests are denied. However, to the extent that a document, or communication with the SEC, relates to Houston American and Terwilliger and to one of the other requests, each requestee should produce it in response to the relevant request(s) for which the subpoena has issued.

Finally, Houston American and Terwilliger have agreed with the Division that the requestees should not have to produce any documents discussing the Capella field (unless the same document also discusses the Llanos basin). *Compare* Div. Opp. at 3-4, *with* Reply at 5 n.2. The subpoena is ordered modified to remove any reference to the Capella field.

## **Subpoena to the Securities and Exchange Commission**

### **Request Nos. 1-3**

The subpoena seeks documents relating to the Commission’s awareness that “oil and gas companies commonly use ‘reserves’ in the same manner as Houston American . . .” Motion at 3. “The subpoena seeks the press releases and web sites disclosure language that the SEC reviewed

before issuing” a November 14, 2000, release that stated it has ““seen in press releases and web sites disclosure language by oil and gas companies which would not be allowed in a document filed with the SEC.”” Motion at 3 & n. 1, Ex. 3 at Ex. A. The subpoena also seeks “documents related to the SEC’s decision to recommend . . . cautionary language” that was used in Houston American’s presentation. Motion at 3.

The Division’s interpretation of what the term “reserves” means is not dispositive, but does highlight a disagreement between the parties that additional documents may help to address. Div. Opp. at 13-17; *see* Reply Ex. G.

For Requests No. 1 & 2, OGC notes that documents relevant to these requests may no longer exist, because they were created fourteen years ago and were not required to be retained, and that “[m]ost staff members who participated in the drafting of the November 2000 Guidance have since left the Commission.” *See* OGC Opp. at 3. With those caveats, it would be reasonable for the remaining staff members who participated in the drafting of that guidance to search for responsive documents. OGC also contends that any documents that remain will “likely fall under the protection of the deliberative-process privilege,” but that assertion will have to await the search. OGC Opp. at 4. Any non-privileged documents should then be produced, and, given the contention that there may be relatively few documents, preparing a privilege log for the documents that cannot be disclosed should not be onerous.

For Request No. 3, OGC contends it would take six hours to search for Division of Corporation Finance comment letters relating to the cautionary language and that the “tenuous relevance” would not justify the time. OGC Opp. at 4. However, because the term is of express relevance to the OIP and contested by the parties, the request is sufficiently relevant to be granted, nor is it unduly burdensome.

#### **Request Nos. 4-5**

The subpoena also “seeks documents related to the SEC’s decision to bring this action administratively.” Motion at 4. Houston American and Terwilliger assert that these requests are “relevant and reasonable in scope” in relation to their “constitutional claims” that the Commission’s decision to initiate the proceeding administratively violates Respondents’ federal constitutional rights to a jury trial, due process, and equal protection. *Id.* at 3-4.

The Division contends, “[t]hese types of generic attacks on the administrative process are both legally deficient and not justiciable in the administrative forum.” Div. Opp. at 18 (citing *Harding Advisory LLC*, Securities Act Release No. 9651, 2014 SEC LEXIS 938, at \*34-35 (Mar. 14, 2014); *David F. Bandimere*, Initial Decision Release No. 507, 2013 SEC LEXIS, at \*217-18 (Oct. 8, 2013)). The documents sought are outside the scope of this proceeding. *See id.*; *see also* 17 C.F.R. § 201.232. Furthermore, they call for material that would overwhelmingly, if not exclusively, be protected by governmental privileges. It would be both an unproductive exercise, and an unreasonable, undue burden for the SEC to identify and produce a privilege log of such documents that are not even within this proceeding’s scope. These requests are therefore denied.

**Order**

It is ORDERED that Houston American's and Terwilliger's Request for the Issuance of Subpoenas is GRANTED IN PART AND DENIED IN PART, as set forth above.

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Jason S. Patil  
Administrative Law Judge