

**THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
BINGHAMTON REGIONAL OFFICE**

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***In the Matter of***

***FORTUNA ENERGY INC.***

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**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO EXECUTIVE LAW  
SECTION 63(15)**

**WHEREAS**, pursuant to the provisions of Executive Law Section 63(12), Eliot Spitzer, Attorney General of the State of New York, caused an inquiry to be made into oil and natural gas exploration, production, extraction, sale, and associated accounting practices engaged in by Fortuna Energy Inc. (hereinafter "Fortuna") and based upon that inquiry, makes the following findings:

1. Fortuna is a business corporation incorporated in the State of Delaware and licensed to do business in the State of New York with an office and principal place of business located at 203 Colonial Drive, Suite 101, Horseheads, New York, 14845.
2. Fortuna is in the business of natural gas exploration and extraction from lands throughout the State of New York.
3. As part of its business, Fortuna's employees and third-party landmen companies have contacted landowners in the State of New York for the purpose of negotiating and acquiring oil and natural gas leases (the "Leases") to extract natural gas from the subsurface of landowners' real property.
4. The Leases may also grant Fortuna ancillary rights necessary to explore, drill for, and extract natural gas from the leased properties, such as the right to install gathering pipelines, the right to conduct seismic surveys, and the right to construct access roads on landowners' property.

5. Fortuna has also acquired interest in lands throughout New York State, including Leases, from other companies engaged in oil and natural gas exploration and development.

6. Fortuna sells the natural gas it produces from its wells in the open market. In some instances, Fortuna has relied on natural gas marketers to arrange and schedule its sales to third parties.

7. Some sales are made pursuant to contracts between Fortuna and a buyer or between a marketer, such as Mid American Natural Resources, ("Mid American"), on behalf of Fortuna, and a buyer. Other sales are made on the "spot market" where the sales price is usually tied to a transparent industry-wide index, *e.g.*, the New York Mercantile Exchange, or reference price, *e.g.*, the "Henry Hub price."

8. Fortuna sells its natural gas from each wellhead at various delivery points. Buyers include local distribution companies and natural gas transmission companies such as Columbia Gas Transmission Corporation, National Fuel Gas Supply Corporation, and Dominion Transmission, Inc.

9. During the course of this inquiry it was discovered that between June 2003 and July 2004, Mid American billed approximately \$400,000 in marketing fees to Fortuna and those fees were deducted from the amount of gross revenues before Fortuna distributed royalties to its lessors.

10. Fortuna voluntarily reimbursed the Mid American fees plus interest via a payment of additional royalties in the amount of \$51,596.87.

11. Fortuna has cooperated with the Office of the Attorney General's inquiry and

with its requests for remedial action.

**IT NOW APPEARS** that Fortuna is willing to enter into this Assurance of Discontinuance (the "Assurance") without any admission that it has violated any law, or breached any Lease or contract and the Attorney General is willing to accept this Assurance in lieu of commencing a statutory proceeding.

**IT IS HEREBY AGREED** that Fortuna shall pay to the State of New York at the time of the execution of this Assurance, the sum of \$100,000 for costs incurred by the Office of the Attorney General in the course of its inquiry. This payment will be made to the State of New York and delivered to the Attorney General by Eliot Spitzer in care of Roberto Barbosa, Esq., Assistant Attorney General, 44 Hawley Street, 17th Floor, Binghamton, New York 13901. Said payment is not to be construed as an admission of liability on the part of Fortuna, its directors, officers and/or employers.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that this Assurance concludes this inquiry and precludes any other action the Office of the Attorney General could commence as it relates to Fortuna and any of its officer, directors, and employees arising out of matters inquired herein up to the date of this Assurance.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that this Assurance is final and binding on the Office of the Attorney General and Fortuna, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that Fortuna is willing to enter into this Assurance by its duly authorized officer for settlement purposes only.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that the Office of the Attorney General agrees not to institute judicial or administrative actions or proceedings against Fortuna regarding any alleged breach of common law, General Business Law, Executive Law, or any other local regulation arising out of matters inquired herein, preceding the date on which this Assurance is signed on behalf of the Attorney General.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that this Assurance is entered into solely for the purpose of resolving this inquiry and is not intended to be used for any other purpose.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that this Assurance shall be governed by, construed, and enforced in accordance with the laws of the State of New York.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that this Assurance sets forth the entire agreement of the parties and may be modified only by the subsequent execution of a written agreement by the parties.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that acceptance of this Assurance by the Attorney General shall not be deemed or construed as approval of the Attorney General in any of the activities of Fortuna and Fortuna shall not make any representations to the contrary.

**IT IS HEREBY FURTHER UNDERSTOOD AND AGREED** that nothing

contained herein shall be construed to deprive any person, corporation, association or other entity of any private right under the law.

**WHEREFORE**, the following signatures were are affixed hereto this \_\_\_\_ day of \_\_\_\_\_, 2006.

Dated: Horseheads, New York  
\_\_\_\_, 2006

FORTUNA ENERGY INC.

By: \_\_\_\_\_

Dated: Horseheads, New York  
\_\_\_\_, 2006

By: \_\_\_\_\_

Dated: Binghamton, New York  
\_\_\_\_, 2006

ELIOT SPITZER  
Attorney General of the  
State of New York  
Attorney for State of New York  
44 Hawley Street, 17th Fl.  
Binghamton, New York 13901  
Tel. (607) 721-8771

By: \_\_\_\_\_

ROBERTO BARBOSA  
Assistant Attorney General

**CORPORATE ACKNOWLEDGMENT**

STATE OF NEW YORK )  
:ss

COUNTY OF \_\_\_\_\_ )

, being duly sworn, deposes and says:

I am the \_\_\_\_\_ of FORTUNA ENERGY INC., and the respondent described in and which executed the foregoing Assurance of Discontinuance. I have executed the aforesaid instrument with the consent and authority of FORTUNA ENERGY INC. and those responsible for the acts of said entity and duly acknowledged same.

\_\_\_\_\_  
\_\_\_\_\_

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Notary Public

**CORPORATE ACKNOWLEDGMENT**

STATE OF NEW YORK )  
:ss  
COUNTY OF \_\_\_\_\_ )

, being duly sworn, deposes and says:

I am the \_\_\_\_\_ of FORTUNA ENERGY INC., and the respondent described in and which executed the foregoing Assurance of Discontinuance. I have executed the aforesaid instrument with the consent and authority of FORTUNA ENERGY INC. and those responsible for the acts of said entity and duly acknowledged same.

\_\_\_\_\_

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Notary Public