

December 1, 2008

OIL AND GAS DOCKET NO. 04-0256345

ENFORCEMENT ACTION AGAINST VTEX ENERGY, INC. (OPERATOR NO. 887727), FOR VIOLATIONS OF STATEWIDE RULES 3 AND 14(B)(2) ON THE STATE TRACT 818L LEASE, WELL NO. F1 (RRC NO. 085548), STATE TRACT 818L LEASE, WELL NO. F2 (RRC NO. 092493), AND STATE TRACT 818L LEASE, WELL NO. F3 (RRC NO. 092494) SAMEDAN (FRIO) FIELD, OFFSHORE KLEBERG COUNTY, TEXAS.

APPEARANCES:

For the Railroad Commission of Texas:

Elaine Moore, Staff Attorney

NO APPEARANCE FOR RESPONDENT VTEX Energy, Inc

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	May 7, 2008
NOTICE OF HEARING:	September 3, 2008
DATE CASE HEARD:	October 9, 2008
PFD PREPARED BY:	Mark Helmueller Hearings Examiner
PFD CIRCULATION DATE:	December 1, 2008
CURRENT STATUS:	Default

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the respondent VTEX Energy, Inc, ("VTEX") should be required to plug Well No. F1 (RRC No. 085548), Well No. F2 (RRC No. 092493), and, Well No. F3 (RRC No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas, for violations of Statewide Rule 14(b)(2);

2. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rules 3 and 14(b)(2);
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said leases and wells;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. § 81.0534.

Elaine Moore, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. No appearance was made by Respondent. The Enforcement Section's hearing files were admitted into evidence.

Enforcement recommends respondent be assessed an administrative penalty of \$150,750.00 for 3 violations of Statewide Rule 14(b)(2) related to offshore wells and 3 violations of Statewide Rule 3. The examiner agrees with the recommended administrative penalty. Additionally, the examiner recommends the Final Order contain a "plug only" requirement.

MATTERS OFFICIALLY NOTICED

Official notice was taken of the Final Order entered on October 30, 2006 in *Oil & Gas Docket No. 04-0247650: Application of VTEX Energy, Inc., Regarding Revocations of Plugging Extensions for Various Leases, Samedan (Frio) Field, Kleberg County, Texas*. The Final Order revoked the plugging extension for Well No. F2 (RRC No. 092493), based on VTEX's admission that its lease with the General Land Office had terminated.

Official notice was also taken of Commission records related to Orphan Wells in the Mustang Island LB area. These records show that all of the wells identified in this docket are currently included on the Orphan Well list.

PROCEDURAL SUMMARY

On May 7, 2008, Enforcement filed the Complaint in this action and sent the Complaint and Notice of Opportunity for Hearing by certified mail to VTEX's last reported organization address. The Complaint and Notice of Opportunity for Hearing was also sent by certified mail to VTEX's President, Stephen Francis Noser, and Chief Executive Officer, Samuel Mark Skipper, as identified on its last Organization Report.

VTEX responded on June 3, 2008 to the Notice of Opportunity for Hearing through its President Mr. Noser, by requesting a hearing. On July 23, 2008, Enforcement mailed a Notice of Hearing, scheduling the hearing in this docket for September 4, 2008 to Mr. Noser. On July 31, 2008, Mr. Noser filed a Notice of Intent to Appear in response to the Notice of Hearing.

On September 3, 2008, Enforcement filed a First Amended Notice of Hearing rescheduling the hearing for October 9, 2008. On September 10, 2008, Mr. Noser filed a Notice of Intent to Appear in response to the First Amended Notice of Hearing.

The hearing was convened on October 9, 2008 at the Commission's offices in Austin, Texas. No appearance was made by Mr. Noser, or any other representative of VTEX at the hearing. The docket was presented as a default proceeding by the Enforcement Staff Attorney.

DISCUSSION OF THE EVIDENCE

VTEX's most recent approved Commission Form P-5 (Organization Report) was filed on September 4, 2003. Stephen Francis Noser is identified as VTEX's President. Samuel Mark Skipper is identified as VTEX's Chief Executive Officer. VTEX's Organization Report is currently delinquent.

VTEX was recognized as the operator of the State Tract 818L Well No. F1 (RRC No. 085548), Well No. F2 (RRC No. 092493), and Well No. F3 (RRC No. 092494), Samedan (Frio) Field, Offshore Kleberg County, Texas ("subject lease" and/or "subject wells"), upon approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on September 11, 2003. All of the wells are offshore and are currently included on the Commission's Orphan Well list.

A Commission inspection on October 11, 2007 of the subject wells found that the signs posted at all three wells were illegible. An affidavit prepared by Engineering Specialist Mark England notes that in the event of a pollution or safety violation or other emergency, the lack of legible signs and identification displaying correct information may cause confusion which would cause delays in containing and remediating the violation or emergency, and may threaten public safety.

The Commission inspection on October 11, 2007 also found that the wells were not producing, but due to safety issues and unfavorable sea conditions, the inspector was not able to access any of the platforms. Commission records report no production from Well No. F1 (RRC No. 085548) since at least January 1993. Commission records report no production from Well No. F2 (RRC No. 092493) since at least January 1993. Commission records report no production from Well No. F3 (RRC No. 092494) since June 1995.

The plugging extension for Well No. F2 (RRC No. 092493) was revoked by Commission Final Order entered on October 30, 2006 in Oil & Gas Docket No. 04-0247650. The plugging extensions for Well No. F1 (RRC No. 085548) and Well No. F3 (RRC No. 092494) were cancelled effective November 15, 2007.

An affidavit prepared by Engineering Specialist Mark England notes that any wellbore is a potential conduit for flow from oil or saltwater zones to zones of usable quality water and the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface.

Enforcement contends that the subject wells are inactive and in violation of Statewide Rule 14(b)(2). The estimated cost to plug all three wells is \$750,000.00. Because the wells are located offshore, the recommended administrative penalty for each of the violations of Statewide Rule 14(b)(2) is \$50,000.00, which is consistent with the Commission's recommended penalty guidelines for violations related to abandoned offshore wells.

APPLICABLE AUTHORITY

In determining the amount of an administrative penalty under Texas Natural Resources Code §81.0531, the Commission must consider the respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent.

Statewide Rule 3(a) requires the posting of signs at the principal entrance of the property, the tank battery and at each well site which show: the number of acres in the property, the name of the property; the name of the operator; the well number; and the commission lease number.

Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted. For wells transferred on or after September 1, 1997, the operator of a well for purposes of plugging liability is the person who assumed responsibility for the physical operation and control of a well as shown by an approved Form P-4 designating that person as operator.

EXAMINER'S OPINION

It is uncontested that the subject wells are currently in violation of Rules 3 and 14. This proposal for decision addresses the following issues: 1) the amount of the administrative penalty; and, 2) whether the Commission should limit compliance in its Final Order to the plugging of the subject wells.

Amount of Administrative Penalty

In determining the amount of an administrative penalty under Texas Natural Resources Code §81.0531, the Commission must consider the respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. In this instance, VTEX has abandoned offshore wells in the Gulf of Mexico. Commission administrative penalty guidelines recognize the seriousness and threat posed by abandoned offshore wells and provide for enhanced administrative penalties in such instances. The enhanced penalties are consistent with the provisions of Texas Natural Resources Code §81.0531. Based on these considerations, the examiner agrees with Enforcement's recommended administrative penalty of \$150,750.00.

Propriety of Plug Only Compliance Requirements

Final Orders in Commission Enforcement Proceedings which result from the operator's failure to appear at the hearing typically require an operator to plug a well for a violation of Statewide Rule 14(b)(2) if there is no reported production from the well (or injection for injection and disposal wells) in the past 48 months. In protested cases, a "plug only" recommendation is based on findings of fact and conclusions of law that the operator no longer possesses a right to operate the well. These "plug only" orders reflect a policy adopted to avoid multiple Enforcement actions for wells which have not reported any production or injection activity for a lengthy period of time. The "plug only" requirement also prevents the perpetual deferment of plugging obligations for wells which have reached the end of their useful lives.

In this case, the subject wells have not reported any production for at least 13 ½ years and the wells are currently included on the Commission's Orphan Well list. The platforms where the wells are located are in disrepair and unsafe to access without calm sea conditions. Additionally, VTEX admitted its lease has terminated and the plugging extension was cancelled for Well No. F2 (RRC No. 092493). Under these circumstances, the adoption of a "plug only" compliance requirement in the Final Order is consistent with the Commission's proactive practice of addressing wells which pose actual or potentially chronic compliance issues. It will also ensure any new operator seeking to take over the wells possesses a recognized legal claim of a right to operate the wells, and that the wells will be restored to a beneficial use.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent, VTEX Energy, Inc. ("VTEX") and the officers listed on the most recent Form P-5 (Organization Report) were given at least 10 days notice of this proceeding by certified mail.

2. VTEX's most recent approved Commission Form P-5 (Organization Report) was filed on September 4, 2003. Stephen Francis Noser is identified as VTEX's President. Samuel Mark Skipper is identified as VTEX's Chief Executive Officer. VTEX's Organization Report is currently delinquent.
3. VTEX was recognized as the operator of the State Tract 818L Well No. F1 (RRC No. 085548), Well No. F2 (RRC No. 092493), and, Well No. F3 (RRC No. 092494), Samedan (Frio) Field, Offshore Kleberg County, Texas ("subject lease" and/or "subject wells"), upon approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on September 11, 2003. All of the wells are offshore and are currently included on the Commission's Orphan Well list.
4. A Commission inspection on October 11, 2007 of the subject wells found that the signs posted at all three wells were illegible.
5. In the event of a pollution or safety violation or other emergency, the lack of legible signs and identification displaying correct information may cause confusion which would cause delays in containing and remediating the violation or emergency, and may threaten public safety.
6. The subject wells are currently inactive and have been inactive for more than 12 months.
 - A. The Commission inspection on October 11, 2007 found that the wells were not producing, but due to safety issues and unfavorable sea conditions, the inspector was not able to access any of the platforms.
 - B. Commission records report no production from Well No. F1 (RRC No. 085548) since at least January 1993.
 - C. Commission records report no production from Well No. F2 (RRC No. 092493) since at least January 1993.
 - D. Commission records report no production from Well No. F3 (RRC No. 092494) since June 1995.
 - E. The plugging extension for Well No. F2 (RRC No. 092493) was revoked by Commission Final Order entered on October 30, 2006 in Oil & Gas Docket No. 04-0247650.
 - F. The plugging extensions for Well No. F1 (RRC No. 085548) and Well No. F3 (RRC No. 092494) were cancelled effective November 15, 2007.

7. Any unplugged wellbore is a potential conduit for flow from oil or saltwater zones to zones of usable quality water and the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface.
8. VTEX has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance after being notified of the violations by the district office.
9. The estimated cost to plug the subject wells is \$750,000.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. VTEX is the operator of Well No. F1 (RRC Gas Id. No. 085548), Well No. F2 (RRC Gas Id. No. 092493), and, Well No. F3 (RRC Gas Id. No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. VTEX has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to Well No. F1 (RRC Gas Id. No. 085548), Well No. F2 (RRC Gas Id. No. 092493), and, Well No. F3 (RRC Gas Id. No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas.
5. Well No. F1 (RRC Gas Id. No. 085548), Well No. F2 (RRC Gas Id. No. 092493), and, Well No. F3 (RRC Gas Id. No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas are not in compliance with Rule 3.
6. Well No. F1 (RRC Gas Id. No. 085548), Well No. F2 (RRC Gas Id. No. 092493), and, Well No. F3 (RRC Gas Id. No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas have been out of compliance with Rule 3 from October 2007 to the present.
7. Well No. F1 (RRC Gas Id. No. 085548), Well No. F2 (RRC Gas Id. No. 092493), and, Well No. F3 (RRC Gas Id. No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas are not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
8. Well No. F1 (RRC Gas Id. No. 085548), Well No. F2 (RRC Gas Id. No. 092493), and, Well No. F3 (RRC Gas Id. No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas have been out of compliance with Rule 14 from November 15, 2007 to the present.

9. Stephen Francis Noser and Samuel Mark Skipper were officers in positions of ownership or control of VTEX, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
10. The violations of Commission rules committed by VTEX are related to safety and the control of pollution.
11. As officers in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, both Stephen Francis Noser and Samuel Mark Skipper and any other organization in which they may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.
12. The documented violations committed by VTEX are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring VTEX Energy, Inc.:

- 1) to plug Well No. F1 (RRC No. 085548), Well No. F2 (RRC No. 092493), and, Well No. F3 (RRC No. 092494), State Tract 818L Lease, Samedan (Frio) Field, Offshore Kleberg County, Texas; and
- 2) to pay an administrative penalty of \$150,750.00.

Respectfully submitted,

Mark Helmueller
Hearings Examiner