

June 28, 2005

OIL AND GAS DOCKET NOS. 01-0235188, 01-0235189, & 01-0235190

APPLICATIONS OF TEJONES OPERATING CORP., TO CONSIDER EXCEPTIONS TO STATEWIDE RULE 21 TO ALLOW PRODUCTION BY SWABBING, BAILING, OR JETTING OF 23 WELLS: WELL NOS. 1, 2, 3, AND 4 ON THE B. ELLIOTT (11596) LEASE; WELL NOS. 1-14 AND 18 ON THE SAM APPLEWHITE (11714) LEASE; AND WELL NOS. 1, 2, 3, AND 4 ON THE MULLENS (11597) LEASE, SOMERSET FIELD, BEXAR COUNTY, TEXAS

APPEARANCES:
FOR APPLICANT TEJONES OPERATING CORP.:

Tom Gouger

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	May 14, 2003
NOTICE OF HEARING:	March 23, 2005
DATE CASE HEARD:	May 2, 2005
RECORD CLOSED:	June 17, 2005
HEARD BY:	Mark Helmueller, Hearings Examiner Donna Chandler, Technical Examiner
PFD CIRCULATION DATE:	June 28, 2005

STATEMENT OF THE CASE

Tejones Operating Corp. (hereinafter "Tejones") has applied for exceptions to Statewide Rule 21 to allow it to temporarily produce by regularly swabbing 23 wells in the Somerset Field in Bexar County: Well Nos. 1, 2, 3, and 4 on the B. Elliott (11596) Lease; Well Nos. 1-14 and 18 on the Sam Applewhite (11714) Lease; and, Well Nos. 1, 2, 3, and 4 on the Mullens (11597) Lease; (hereinafter "Elliott Lease," "Applewhite Lease," "Mullens Lease," and/or "subject wells"). Tejones appeared at the hearing and presented evidence in support of its applications. The record was left open until June 7, 2005 to allow Tejones to submit additional evidence on the issue of its continuing right to operate the subject wells.

The examiners recommend that the applications be denied because Tejones was unable to

establish a current good faith claim of a continuing right to operate any of the subject wells.

MATTERS OFFICIALLY NOTICED

Official Notice was taken of the following printouts of reports from the Commission's mainframe database: 1) Tejones' initial and most recent Commission Form P-5 (Organization Report) filings; 2) Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) filings for the Elliott, Applewhite, and Mullens Leases; and 3) On-Schedule Leases, Wells, Wellbores By Operator Records for Tejones as of May 30, 2005 that identify the leases and wells for which Tejones is currently recognized as the operator. Official Notice was also taken of printouts from the Commission's Production Data Query database from January 1993 through February 2005 regarding reported production and dispositions from the Elliott, Applewhite, and Mullens Leases.

SUMMARY OF EVIDENCE

Tejones first filed an Organization Report with the Commission in 1995, and filed its most recent Organization Report in December 2004. Tejones is currently listed as the operator of 99 wells with a total depth of 254,387 feet. Tejones submitted a \$50,000 letter of credit as its financial assurance at the time of its most recent Organization Report. Tejones was recognized as the operator of the 23 wells on the Elliott, Applewhite, and Mullens Leases when the Commission approved Form P-4s on April 28, 2003.

Good Faith Claim of Right to Operate

Tejones claims its right to produce the subject wells derives from assignments it obtained from the prior operator, Austin Energy Operations, Inc. ("Austin Energy"). Each assignment submitted is based on an Oil, Gas and Mineral Lease between the mineral interest owner and A&H Resources in 1986. Tejones did not provide a copy of the original lease agreements and was unable to locate a copy of its assignment for the Mullens Lease.

Tejones admits that it has not produced any of the wells since they were acquired, but asserts that assignments it obtained through quit claims remain valid because the Commission's enactment of Rule 21 prevented Tejones from producing the wells, thereby triggering "force majeure" provisions in each original lease. Tejones notes that it filed applications for swabbing authority within 30 days after it was recognized by the Commission as the operator of the leases.

Proposed Operations and Other Requirements

Tejones advises that the wells were swabbed by the prior operator, Austin Energy. None of the wells are currently equipped to produce by pumping. The wells were drilled in the 1980's and range in depth from 1400-1500 feet. The wells are cemented from the total depth to the surface. Correspondence from the Texas Commission on Environmental Quality notes that fresh water in the area is required to be protected to a depth of 600 feet below the surface. Testimony and Commission inspections show that each well is equipped with a cap with a 1" valve. The inspections also indicate that a tank battery is present on each lease.

Tejones has swabbed wells to initiate production, but has not used swabbing as a production method. It proposes the following step-by-step process to swab the subject wells. Upon arriving at each well, the swabber will first remove the cap on the wellhead. A boom on the swabbing unit will be lowered over the well and then hooked up to the wellbore. Swabbing cups will be lowered by a retractable cable until they reach the top of the fluid level in the well. The swabber will then lower the cups to the uppermost perforations in the wellbore. The cable will then be retracted. As the cable is retracted, the swabbing cups will form a seal against the casing, thereby forcing any fluid to the surface. Any fluid raised by this process will be carried into a tank on the back of the swabbing truck by a tank hose. When swabbing is completed, the unit will be disconnected and the cap reinstalled. After all the wells on a lease are swabbed, the swabber will proceed to the tank battery to pump the fluids into a storage tank and record the increased fluid level.

The most recent production information for the subject wells is found in Commission reports filed by Austin Energy from January 2001 through April 2003. During that time period, Commission records indicate that the total reported production from swabbing the wells was 364 barrels, an average of 0.57 barrels of oil per well per month.

Tejones has limited its request to swab the wells to only the next twelve months. Tejones acquired the wells to determine whether some of them could be restored to pumping production. The equipment necessary to conduct swabbing operations was included in its purchase of these properties. It intends to swab the wells to make enough production so that it will not realize a loss when it plugs any well that is not a candidate for pumping production.

Tejones advises that it has no internal account set up to cover plugging costs for the subject wells, but contends that such an account is not necessary as its principals are affiliated with Pegasus Cementers, Inc., ("Pegasus"), a Commission approved plugger that has plugged wells under Commission awarded contracts. Commission records show that Pegasus has been awarded contracts to plug 131 wells in District 1 in an amount totaling \$184,712.00.

EXAMINERS' OPINION

Statewide Rule 21(k)(1)(B)(vi) requires an operator seeking to produce a well by swabbing, bailing or jetting to present evidence establishing that it possesses a continuing good faith claim to the right to operate the well. Because Tejones is unable to show that it has a legal right to operate the wells, the examiners recommend that the applications be denied.

Tejones admits that it has not produced any of the wells on the Elliott, Applewhite, and Mullens Leases. It claims its right to produce the wells derives from assignments it obtained from Austin Energy. Each assignment is based on an Oil, Gas and Mineral Lease signed in 1986. Because the leases were not provided by Tejones, Tejones' claim that it retains a continuing right to operate these wells cannot be evaluated. However, under typical lease provisions, the leases would have lapsed due to the lack of production for more than 2 years. Additionally, while Tejones claims that force majeure provisions in the leases are applicable, once again this contention cannot be evaluated without reviewing the applicable lease agreements.

The examiners note that it is likely that the primary term of each lease has expired and that the failure to produce the wells since April 2003 would have terminated the leases from lack of production. It is also likely that any force majeure clause would not operate to continue the lease as Tejones ability to comply with the Commission's regulatory requirements would have been within its reasonable control as Commission rules did not prohibit Tejones from producing the subject wells by conventional means¹.

CONCLUSION

In sum, Tejones failed to establish a good faith claim of a continuing right to operate the 23 wells on the Elliott, Applewhite, and Mullens Leases. Accordingly, its applications should be denied.

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

FINDINGS OF FACT

¹The recognized purpose of a force majeure provision is to excuse non-performance of lease obligations only when caused by circumstances beyond the reasonable control of the lessee. See *Hydrocarbon Management, Inc. v. Tracker Exploration, Inc.*, 861 S.W.2d 427, 435-36 (Tex.App.-- Amarillo 1993, no writ). The parties to an oil and gas lease are presumed to have contracted with knowledge of the law and regulations of the Texas Railroad Commission concerning the production of oil and gas. *Id.* at 436; *Hughes v. Cantwell*, 540 S.W.2d 742, 745 (Tex.Civ.App.-- El Paso 1976, writ ref'd n.r.e.). Thus, the force majeure provision of an oil and gas lease is not triggered when the Commission orders a well shut-in due to the lessee's failure to comply with its regulations, at least when compliance with the regulation is within the reasonable control of the lessee. See also *Atkinson Gas Co. v. Albrecht*, 878 S.W.2d 236, 241 (Tex.App.-- Corpus Christi 1994, writ denied).

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1. Tejones Operating Corp. (hereinafter “Tejones”) has applied for exceptions to Statewide Rule 21 to allow it to temporarily produce by regularly swabbing 23 wells in the Somerset Field in Bexar County: Well Nos. 1, 2, 3, and 4 on the B. Elliott (11596) Lease; Well Nos. 1-14 and 18 on the Sam Applewhite (11714) Lease; and, Well Nos. 1, 2, 3, and 4 on the Mullens (11597) Lease (hereinafter “Elliott Lease,” “Applewhite Lease,” “Mullens Lease,” and/or “subject wells”).
 2. Applicant and all other affected parties identified by the applicant, were given at least 10 days notice of this proceeding at the addresses provided by applicant.
 3. Tejones appeared at the hearing and presented evidence in support of the applications.
 4. Tejones first filed an Organization Report with the Commission in 1995, and filed its most recent Organization Report in December 2004. Tejones is currently listed as the operator of 99 wells with a total depth of 254,387 feet. Tejones submitted a \$50,000 letter of credit as its financial assurance at the time of its most recent Organization Report.
 5. Tejones was recognized as the operator of the 23 wells on the Elliott, Applewhite, and Mullens Leases when the Commission approved Form P-4s (Producer’s Transportation Authority and Certificate of Compliance) on April 28, 2003.
 6. Tejones obtained assignments in which the prior operator, Austin Energy Operations, Inc. (“Austin Energy”) quit claimed to Tejones any right it possessed to operate the Elliott, Applewhite, and Mullens Leases under the original oil, gas and mineral leases entered into between the mineral interest owners and the original lessees in 1986.
 7. Tejones failed to submit copies of the original leases upon which its assignments were based to support its claim of a continuing right to operate the Elliott, Applewhite, and Mullens Leases.
 8. Records from the Commission’s Production Data Query database from January 1993 through February 2005 regarding reported production and dispositions from the Elliott, Applewhite, and Mullens Leases show that the last reported production was in April 2003.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred to give the Commission jurisdiction to decide this matter.
3. Tejones did not provide evidence that it possesses a good faith claim of the right to operate: Well Nos. 1, 2, 3, and 4 on the B. Elliott (11596) Lease; Well Nos. 1-14 and 18 on the Sam

Applewhite (11714) Lease; and Well Nos. 1, 2, 3, and 4 on the Mullens (11597) Lease; Somerset Field, Bexar County, Texas.

- a. Tejones' claim of a right to operate each of the wells and leases is based on an assignment by quit claim from Austin Energy of its rights under oil, gas and mineral leases entered into in 1986.
 - b. Tejones failed to provide copies of the original lease agreements.
 - c. The wells have not been produced since April 2003.
4. Tejones' applications do not meet the all of the mandatory requirements under Statewide Rule 21(k) because Tejones was unable to establish a good faith claim of a continuing right to operate.

RECOMMENDATION

The examiners recommend that Tejones' applications be denied, in accordance with the attached final order.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Donna Chandler
Technical Examiner