Proposal for Decision

Exhibit 2

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION

KENT HANCE, Chairman
JOHN SHARP, Commissioner
JAMES E. (JIM) NUGENT, Commissioner

CUE D. BOYKIN
Director
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Assistant Director
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1701 N. CONGRESS | CAPITOL STATION — P. O. DRAWER 12967 | AUSTIN, TEXAS 78711-2967

OIL AND GAS DOCKET NO. 6E-94,647

HEARING ON THE MOTION OF BOBBY G. REDD AND CAROLYN LINDER PURSUANT TO STATEWIDE RULE 73 TO DETERMINE IF ARCO OIL & GAS CO. HAS ABANDONED ITS CONNECTION WITH THE LENA GAINES AND E. L. WALKER LEASES IN THE EAST TEXAS FIELD, GREGG COUNTY, TEXAS

APPEARANCES:

For Complainants:	Complainants:
Maxwell S. McKaye	Bobby G. Redd Carolyn Linder
For Respondent:	**Respondent:**
Kathleen E. MacGruder Jason B. Spikes	Arco Oil & Gas Co.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE CASE HEARD:	June 22, 1990
HEARD BY:	Peggy S. Gray, Hearings Examiner George Singletary, Technical Examiner
TRANSCRIPT DATE:	July 10, 1990
PFD CIRCULATION DATE:	September 12, 1990
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

The hearing was called to determine whether Arco Oil & Gas Co. (Respondent) had abandoned its connection with the Lena Gaines (Id. No. 08516) and E. L. Walker (Id. No. 08272) Leases, East Texas Field, Gregg County, Texas, in violation of the Texas Natural Resources Code Section 111.025 and Statewide Rule 73 (16 T.A.C.

§3.68), and whether Arco Oil & Gas Co. should be granted permission to disconnect pursuant to Statewide Rule 73. The complainants in the case were Bobby G. Redd and Carolyn Linder.

SUMMARY OF THE EVIDENCE

Respondent's Evidence

Respondent introduced evidence to show that the pipeline connected to the Lena Gaines and E. L. Walker Leases was a significant safety risk; and, that replacement or repair of the pipeline was uneconomical in light of the repair cost and the low volumes of casinghead gas produced.

Mr. Spikes is Superintendent of Arco's Longview Gas Plant. The Longview Gas Plant is used to gather casinghead gas from the East Texas Field. Once gathered the gas is processed inside the plant and then sold as NGL products and the residue gas is distributed to transmission markets.

Several pipelines from Arco's Longview Gas Plant run in a southwesterly direction to the Lena Gaines and E. L. Walker Leases. Exhibit 2 is a schematic of the gas gathering system which depicts a highlighted yellow section of the pipeline which was recently severed. The Lena Gaines and E. L. Walker Leases are at the very tail-end of this pipeline. The small green blocks on this exhibit represent twelve houses which are in close proximity to the recently abandoned Arco pipeline.

The section of pipeline abandoned by Respondent was installed in the 1930's. Originally there were three pipelines running together in the area: 20", 8", and 2 1/2". In approximately 1983 the 20" pipeline was abandoned. The gas was then transported via the 8" line. The 2 1/2" line was used to return processed fuel back to the lease. The majority of the pipeline is the original 1930 pipe, except where it has been replaced due to leaks.

The pipeline has a considerable amount of internal corrosion. The corrosion has resulted from gas production on the various leases containing hydrogen sulfide, carbon dioxide, and salt water. There is not an economical way to treat the gas at the wellhead, prior to placing it in the pipeline. Due to the corrosion Respondent decided that the pipeline needed to be abandoned or replaced.

Respondent's decision to abandon was based on economic considerations, the pipeline was to a point where leaks could no longer be repaired by clamps or replacing small sections of pipe.

The only gas flowing through the pipeline was from the Lena Gaines, E. L. Walker and M. T. Cole Leases. All of these leases have declined in production. In 1989, the average daily production

from the Leana Gaines Lease was 4 Mcf and from the E. L. Walker Lease it was 5 Mcf. Based on this production history, Respondent decided that an expenditure to replace the pipeline for the volume of gas transported was not economical.

The subject leases are in a portion of the East Texas Field which has been largely depleted. Respondent conducted a flow rate test on the subject leases which measured that the two subject leases together could produce approximately 20 mcf of gas a day. The Complainant believes the subject leases may be able to produce between 40 and 50 mcf.

Respondent is concerned with safety problems due to the settling of the casinghead gas which is a very rich gas, which is heavier than air. The pipeline runs next to a blacktop road and within 100' of twelve houses. Based on safety concerns due to possible gas leaks Respondent decided the pipeline needed to be replaced or abandoned.

Respondent had a contract with the Complainants which allowed Respondent to terminate the gas purchase contract if it became uneconomical for Respondent to continue purchasing the casinghead gas. Arco notified Redd and Linder of their intention to sever the pipeline connection approximately five weeks prior to severance.

Respondent has offered to continue to take the Complainants gas if they would lay a new pipeline to the point where Respondent severed the original pipeline. The cost of replacing the present pipeline with a 3" polyethylene SDR 11 pipeline would be $25,000.00. The pipeline is approximately two miles long.

Respondent failed to meet the requirements of Rule 73 due to an unintentional oversight. When they became aware of the requirements they wrote a letter to Mr. Earley of the Kilgore District Office on March 30, 1990.

Complainant's Evidence

The Complainant offered evidence that Respondent failed to receive permission, from the Commission or written consent from the operator, prior to disconnecting the subject leases as required by Statewide Rule 73.

Mr. McKaye introduced a letter dated February 7, 1990 from the Respondent to Complainant. The letter stated that Respondent would sever the pipeline connection on March 15, 1990 due to a decline in transported gas volumes, and an increase in maintenance costs which caused the pipeline to be uneconomical.

The casinghead gas produced from the subject leases is approximately 1.2 gravity which is heavier than air. The casinghead gas settles on the ground if it is vented, flared, or

leaks from a pipeline. This will create a safety risk.

FINDINGS OF FACT

1. At least ten (10) days' notice was sent to all interested persons of this Railroad Commission hearing.
2. The subject pipeline is in close proximity to twelve houses and a blacktop road.
3. The pipeline is over fifty years old.
4. The casinghead gas is approximately 1.2 gravity which causes the gas to settle on the ground.
5. The estimated cost of replacing the pipeline is $25,000.00.
6. The Lena Gaines and E. L. Walker Leases produce approximately 9 mcf of gas per day.
7. The lease would not pay out the cost of replacement in a reasonable period of time.
8. Respondent has offered to take the Complainants gas if delivered at the point of pipeline severance.
9. The Respondent severed the pipeline connection prior to receiving Railroad Commission permission.
10. Respondent notified the Complainant of the proposed pipeline severance on February 7, 1990.
11. Respondent severed the pipeline connection on March 15, 1990.
12. Respondent requested Railroad Commission permission to sever the pipeline connection on March 30, 1990.
13. The Complainant objects to the pipeline severance.
14. The gas purchase contract gives the Respondent the right to cancel the contract when it becomes uneconomical for the Respondent to purchase gas from the Complainant.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to persons legally entitled to notice.
2. The portion of the East Texas Field where the Lena Gaines and E. L. Walker Leases are has been substantially depleted.

3. The period of time required to return the capital investment of pipeline replacement is uneconomical.

4. Continued use of the present pipeline creates a safety risk to the public.

5. The respondent unintentionally violated Statewide Rule 73 and the provisions of the Texas Natural Resources Code §111.025.

RECOMMENDATION

It is the recommendation of the Examiners that the above findings and conclusions be adopted and the attached order approved, allowing Arco Oil and Gas Co. to disconnect the Lena Gaines Lease and the E. L. Walker Lease from Arco Oil & Gas Co.'s pipeline.

Respectfully submitted,

Peggy S. Gray
Hearings Examiner

George F. Singletary, Jr., P.E.
Technical Examiner

PSG/GFS/mbs

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 6E-94,647

FINAL ORDER

The Commission finds that, after statutory notice in the above-numbered docket, heard on June 22, 1990, the presiding examiners have made and filed a report and proposal for decision containing findings of fact and conclusions of law, which was served on all parties of record; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the proposal for decision and the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Therefore, it is ORDERED by the Railroad Commission of Texas that the application and complaint of Bobby G. Redd and Carolyn Linder and the relief requested are DENIED, and the application of Arco Oil & Gas Co., to disconnect pursuant to Statewide Rule 73 for the Lena Gaines Lease and E. L. Walker Lease, in the East Texas Field, in Gregg County, Texas, be and is hereby GRANTED.

Done this 22nd day of October, 1990.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

Kim Williamson
Secretary
PSG/mbs

OFFICE OF
RAILROAD COMMISSION
OF TEXAS

LENA GUERRERO, Chairman
JAMES E. (JIM) NUGENT, Commissioner
ROBERT KRUEGER, Commissioner

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1701 N. CONGRESS | LEGAL DIVISION | CAPITOL STATION — P. O. BOX 12967 | AUSTIN, TEXAS 78711-2967

OIL AND GAS DOCKET NO. 8-95,976 **DATE: July 3, 1991**

APPLICATION OF CITGO PIPELINE PURSUANT TO STATEWIDE RULE 73 TO DISCONNECT WELLS AND/OR LEASES ON THE COMANCHE GATHERING SYSTEM, PECOS AND WARD COUNTIES, TEXAS

APPEARANCES:

For Applicant:	**Applicant:**
Dean M. Hasseman, attorney James Conduff Rodney K. Wells	Citgo Pipeline
For Protestants:	**Protestants:**
Doug Dashiell, attorney	Wood, McShane and Thams
John David Patterson	GAEA Services, Inc.

PROPOSAL FOR DECISION
PROCEDURAL HISTORY

Date of Notice of Hearing:	April 2, 1991
Date Case Heard:	April 25, 1991
Heard By:	Barbara Epstein, Hearings Examiner Ramon Fernandez Jr. P.E., Technical Examiner
Transcript Date:	May 24, 1991
PFD Circulation Date:	July 3, 1991
Current Status:	Protested

STATEMENT OF THE CASE

Citgo Pipeline, hereinafter referred to as Citgo, has applied to disconnect wells and/or leases on its Comanche Gathering System, Pecos and Ward Counties, Texas, under the provisions of Railroad Commission Statewide Rule 73 for economic and environmental reasons. The application is protested by Wood, McShane and Thams and GAEA Services who assert that closure of the pipeline to producers would unnecessarily force wells in the Pecos Valley High Gravity Field to be prematurely shut in and abandoned.

BACKGROUND

Under the provisions of Statewide Rule 73, a pipeline cannot disconnect from any well or lease until it has either obtained written consent from the operator or permission from the Railroad Commission.

DISCUSSION OF THE EVIDENCE

Citgo proposes to disconnect wells on the Comanche Gathering System due to the failure of the system to be cost-effective and because major capital improvements would be necessary to continue operating the pipeline.

Wells in this area are typically connected to pipelines because many leases do not have serviceable roads to allow for trucking of oil production. The wells in the area were drilled in the 1950s. Citgo is a common carrier, and has no contracts with the producers, who pay a tariff to use its pipeline. According to Citgo, it is uneconomic to consider a tariff increase application because tariffs would not be competitive with trucking costs.

Citgo presented evidence showing that the total runthrough of oil on the Comanche Gathering System has dwindled from 853 barrels per day in 1988 to 237 as of April, 1991. (Evidence submitted after the hearing recites figures of 25 average barrels per day per lease in 1988 versus 13 average barrels per day per lease as of April 1, 1991. According to this late-filed evidence, approximately 71 leases were connected to the Comanche Gathering System in 1988; as of April 1, 1991, only 45 leases were connected to the pipeline.) Citgo argues that $500,000.00 worth of repairs are necessary because of leaks that have occurred on the pipeline over the past few years.

Citgo stated that it attempted to sell the pipeline, soliciting eight companies with facilities in the vicinity. Although two bids were returned and one offer proceeded to a drawn-up agreement, the offer was summarily withdrawn after Citgo attempted to require the purchaser to take the pipeline "as is" with liability for all past and future environmental damages.

Protestants, GAEA Services, hereinafter referred to as GAEA, and Wood, McShane and Thams, hereinafter referred to as Wood, McShane, argue that Citgo first tried to summarily disconnect the pipeline by sending out unilateral notices stating that it would disconnect. The Railroad Commission instructed Citgo that it could not disconnect unless the Commission approved such action, which resulted in the present hearing.

Protestants also contend that Citgo has let the pipeline deteriorate over the past few years with little regard to

maintenance for a long-term commitment to the area. GAEA and Wood, McShane contend that there is no need for an immediate capital outlay of $500,000.00 for repairs, suggesting that Citgo has attempted to inflate its expenses to ensure approval to disconnect the pipeline by the Commission. GAEA and Wood, McShane also suggested that Citgo neglected to solicit bids from companies such as Sun Oil Company, who currently purchases oil from producing wells using the Comanche Gathering System. Citgo also failed to look at the potential increase of operators which could use the pipeline to make it more economic to run. GAEA also disputed Citgo's figures for trucking costs, stating that it received bids of 55 and 75 cents per barrel, which are closer to the tariffs, suggesting that 68 cents is at the high end of estimated cost. If the figures for tariffs and trucking are close, a re-evaluation of an increased tariff application might be in order.

The following tables summarize Citgo's economics for its Comanche Gathering System.

Table 1 - Expense/Revenue Analysis

	Operating Expenses ($)	Overhead[2] ($)	B/D	Revenue ($)	Net Income ($)
1988	103,739	131,574	853	87,892	-147421
1989	119,690	117,802	808	94,943	-142549
1990	128,549	134,961	782	91,658	-171852
1/91 - 3/91	24,206	33,740	744	21,478	-36468
[1]4/91 - 12/91	92,851	101,221	237	20,980	-173092
1992	12,739	134,961	237	27,846	-228854

[1]Projected Expenses, Revenue and through-put based on past performance

[2]Overhead allocated based on percentage of miles. Comanche Gathering System comprises 2.8% of Citgo's entire pipeline system.

Table II - Breakeven Analysis

	Operating Expenses ($)	Overhead Expenses	Revenue Required	Through-put b/d
1991	117,057	134,961	252,018	237
1992	121,739	134,961	256,700	237

1991 Tariff = 252,018[1]-23767[2] = 228,250[3]
= $228,251 / (237 B/D x 245 days[4])
= $3.94/bbl.

(1) Total revenue required for 1991
(2) Actual revenue 1/91 - 3/91
(3) Revenue required 4/91 - 12/91
(4) Through-put 4/91 - 12/91

1992 Tariff = ($121,739 + $134,961) / (237 b/d x 365 days) = $256,700 / 86505B
= 2.97/bbl

1992 Capital Expenditures:
500,000 @ 15% Rated Return = $111,000 revenue per year

$111,000/86505 Bbl = $1.28/bbl incremental tariff

Total 1992 Tariff: $2.97
+ 1.28
$4.25/bbl

EXAMINERS' OPINION

It is the examiners' opinion that the Comanche Gathering System is not economic and that Citgo should be allowed to disconnect its system. However, the examiners do not believe that Citgo has been especially forthright about its data or its contact with the operators using this system (having attempted to notify the operators of its inteniton to unilaterally disconnect the pipeline), and therefore recommend that Citgo be required to keep the line running for an additional six months to give the operators time to make appropriate arrangements for transporting oil from leases.

Based on the testimony presented at the hearing and the file admitted into the record, the examiners make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. At least ten (10) days notice was given to all affected persons of this hearing.

2. Citgo Pipeline has applied to disconnect wells and/or leases from the Comanche Gathering System, consisting of 36 miles of pipeline in Pecos and Ward Counties due to the uneconomic costs of continuing service to operators connected to the pipeline.

3. There are presently 45 leases connected to the Comanche Gathering System.

4. The wells connected to the Comanche Gathering System were drilled in the 1950's and the oil produced from these wells has never been trucked.

5. Citgo Pipeline is a common carrier and has no contract with the producers connected to its pipeline or the gatherers purchasing the oil.

6. Citgo Pipeline testified that as of April 1, 1991, 237 barrels of oil are run through its pipeline on the Comanche Gathering system.

7. Citgo Pipeline testified that it has not applied for an increased tariff for producers connecting to the Comanche Pipeline because an increased tariff would not be competitive with trucking costs.

8. Current tariffs for producers connecting to the Comanche Pipe line are 47 cents per barrel.

9. Citgo Pipeline testified that trucking costs for producers in the Pecos Valley High Gravity Field would be 68 cents per barrel.

10. Citgo Pipeline testified that it only has one full-time gauger to check the pipeline and the pipeline is approximately 40 years old and in need of an estimated $500,000.00 of repairs.

11. Citgo Pipeline testified that it made an attempt to sell the pipeline to 8 companies with facilities in the area; two offers were received and although one offer was made, the agreement was never signed because Citgo attempted to require the purchaser to take the pipeline "as is" and be responsible for all past and potential environmental damages.

12. This application is protested by Wood, McShane and Thams, which has 22 wells connected the Comanche Gathering System and

GAEA Services, which has 84 wells connected to the system.

13. Wood, McShane and Thams and GAEA Services testified that Citgo Pipeline attempted to unilaterally sever the Comanche Gathering system by sending letters announcing the severance on January 31, 1991 and March 6, 1991, prior to filing an application for disconnection with the Railroad Commission.

14. GAEA Services testified that an equitable phase-out period is necessary because operators need time to arrange for trucking (including the possibility of building serviceable roads in some instances) and to allow additional time to secure another purchaser for the pipeline.

15. The Comanche Gathering System is not economic to continue operating, based on a review of Citgo Pipeline's operating costs.

CONCLUSION OF LAW

1. An application to disconnect wells in the Comanche Gathering System was properly filed with the Railroad Commission.

2. Proper notice was issued by the Railroad Commission to appropriate persons legally entitled to notice.

3. All things have been done or have occurred to give the Railroad Commission jurisdiction to decide this matter.

4. Under the provisions of Statewide Rule 73, a pipeline may not disconnect wells or leases without first obtaining permission form the Railroad Commission or without the consent of the operator.

5. Citgo Pipeline has complied with the provisions of Section 111.025 Texas Natural Resources Code.

6. The Railroad Commission is not empowered to require the continued service of an uneconomical pipeline.

RECOMMENDATION

The examiners recommend that the above findings of fact and conclusions of law be adopted and that this application pursuant to Statewide Rule 73 be GRANTED to disconnect wells from the Comanche Gathering System after a phase-out period of six (6) months so that operators in the field can make necessary arrangements for alternate trucking of production or a pipeline purchaser can be found.

Respectfully submitted,

Barbara Epstein

Barbara Epstein
Hearings Examiner

Ramon Fernandez

Ramon Fernandez, Jr., P.E.
Technical Examiner

JUN 18 1991

BE/RF/kh

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 8-95,976

FINAL ORDER

The Commission finds that after statutory notice in the above-numbered docket, the presiding examiners have made and filed a report and proposal for decision containing findings of fact and conclusions of law, which was served on all parties of record; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the proposal for decision and the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is ORDERED by the Railroad Commission of Texas that the application of Citgo Pipeline pursuant to Railroad Commission Statewide Rule 73 to disconnect wells and leases from the Comanche Gathering System in Pecos and Wards Counties, Texas, effective six (6) months from the date of this order.

Done this 5th day of August, 1991.

RAILROAD COMMISSION OF TEXAS

Lena Guerrero
CHAIRMAN

Robert Krueger
COMMISSIONER

Jim Nugent
COMMISSIONER

ATTEST:
Rim Williams
SECRETARY

Order not signed - parties settled before received.

OFFICE OF
RAILROAD COMMISSION
OF TEXAS

JAMES E. (JIM) NUGENT, Chairman
MARY SCOTT NABERS, Commissioner
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LEGAL DIVISION

1701 N. CONGRESS — CAPITOL STATION — P. O. BOX 12967 — AUSTIN, TEXAS 78711-2967

Oil and Gas Docket No. 02-0204130

COMMISSION CALLED HEARING ON THE COMPLAINT OF GO-ENERGY COMPANY AGAINST UNION CARBIDE CORPORATION AND SEADRIFT PIPELINE CORPORATION ALLEGING DISCRIMINATORY PRACTICES IN THE PURCHASE AND TRANSPORTATION OF GAS, RICHIE(4150) AND RICHIE (4400) FIELDS, GOLIAD COUNTY, TEXAS

APPEARANCES:	REPRESENTING:
COMPLAINANT	
Joe Peacock	Go-Energy Company
Elton Smith	Go-Energy Company
RESPONDENT	
Clayton Smith	Union Carbide Corporation Seadrift Pipeline Corporation
Jerry L. Lockett	Union Carbide Corporation Seadrift Pipeline Corporation
Terry Calvert	Union Carbide Corporation

PROCEDURAL HISTORY

Complaint Filed:	October 29, 1993
Notice of Hearing:	December 30, 1993
Hearing Held:	January 27, 1994
PFD Circulated	March 8, 1994
Heard by:	Larry Borella, Hearings Examiner Donna Chandler, P. E., Technical Examiner

STATEMENT OF THE CASE

This complaint hearing was called to determine whether Union Carbide Corporation and its wholly owned subsidiary, Seadrift Pipeline Corporation (herein referred to as "Union Carbide", "Seadrift", or collectively as "respondents") has, and is, discriminating against Go-Energy Company ("Go-Energy" or "complainant") in violation of the Common Purchaser Act, Tex. Nat. Res. Code § 111.081 et. seq., by failing to purchase or transport natural gas from the complaint's F. G. Gabriel Lease, Wells No. 1A and 3, in the Richie (4150) and Richie (4400) Fields respectively, and to determine whether respondents, individually or collectively, disconnected the aforementioned wells in violation of Statewide Rule 73. Respondents deny both allegations. Each party's evidence is summarized below.

COMPLAINANT'S EVIDENCE

Prior to March of 1993, Go-Energy became the operator of Wells No. 1A and 3 ("subject wells") in the Richie (4150) and Richie (4400) Fields in Goliad County. These wells have been inactive since 1987. Prior to 1987, the gas produced (approximately .3BCF cumulative production with additional recoverable reserves of 1 to 2 BCFG remaining) from these wells was purchased by Union Carbide. The gas was gathered from the wells through a one mile line (owned by the well's operator) to an 8.3 mile pipeline know as the Sarco Lateral (see Exhibit 1, attached). The sales meter was located at the gathering line-Sarco Lateral connection. The Sarco Lateral then connected to the Seadrift Burnell Line and delivered the gas to end users.

Go-Energy had, prior to acquiring the wells, entered into discussion with Union Carbide concerning the purchase of any gas to be produced from these wells. These discussions addressed the necessity of Go-Energy to cure certain title defects (i.e., areas Union Carbide thought to be defects), pipeline gas specifications, and price. The title defects were subsequently cleared. Go-Energy was under the impression that no serious obstacles to Union Carbide's purchasing the gas existed. Subsequently, Union Carbide has refused to connect to the wells and take the gas they are capable of producing.

No viable alternative exists to market Go-Energy's gas. A Delhi line exists to the north but Go-Energy is convinced that no right-of-way can be purchased to connect to it and the cost to construct the necessary 24,000 foot line would be prohibitive, even if a right-of-way could be obtained. Go-Energy intends to construct a new one mile gathering line to deliver the subject well's gas to the Sarco Lateral.

In addition to having transported and purchased gas from previous operators of the subject wells, Seadrift currently gathers, and Union Carbide purchases, gas from the Live Oak Lake (4780) Field in Goliad County. Additionally, Seadrift gathered, and Union Carbide purchased, gas from the O'Brien Ranch (4500) Field which lies immediately south of the subject wells. This O'Brien Field gas was transported through the Sarco Lateral.

RESPONDENTS' EVIDENCE

The Sarco Lateral has been inactive since 1987. During the time gas from the subject wells was transported through the Sarco Lateral it was under lease and control (except for physical maintenance) of Gabriel Prospect Pipeline, Inc. The gas purchased from the subject wells was delivered by Gabriel Prospect Pipeline to Union Carbide at the Sarco Lateral-Seadrift Burnell connection. Neither Union Carbide nor Seadrift was ever connected to the subject wells. No gas is transported through the Seadrift Burnell Line for anyone other than Union Carbide. The Sarco Lateral is currently inactive. Recommission of the Sarco Lateral would require expenditures of approximately $175,000.

Union Carbide has altered its gas purchasing procedures since gas became plentiful. Union Carbide prefers to purchase gas from marketers, rather than producers. The gas that Union Carbide currently buys from producers are obligations entered into prior to the availability of plentiful gas from marketers. No contract exists between Union Carbide and Go-Energy.

EXAMINERS' ANALYSIS

On questioning from the examiner, Go-Energy's witness stated that the wells flow at approximately 1200 psi. Union Carbide/Seadrift's witnesses stated that:

Union Carbide preferred to do business with "people our own size",

the Sarco Lateral Line is no longer under lease,

the Sarco Lateral Line has not been abandoned, is currently filled with methane at approximately 50 psi, has been maintained by cathodic protection,

no physical impediments to the line's use are known,

being required to purchase the subject well's gas would not result in Union Carbide's breaching any contract (i.e., any gas purchased from the subject wells would result in a reduction in gas bought on the spot market),

the Seadrift Burnell Pipeline is an intrastate pipeline,

no connection exists between the Sarco Lateral and the Trunk Line south of the subject wells.

the Seadrift Burnell line operates at approximately 650 psi.

Chapter 111, §§ 111.001-111.305, of the Texas Natural Resources Code govern the operations of common carriers and common purchasers in Texas. Section 111.081(a)(2) identifies, as a common purchaser:

> every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or that engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas thereof;

Union Carbide purchases and takes gas and Seadrift transports that gas. Union Carbide and Seadrift are common purchasers under this definition. Section 111.083 applies the same duty on common purchasers of gas as is applied to common purchasers of oil. One such duty found in § 111.086(a), is the duty to purchase oil (or gas) "without unjust or unreasonable discrimination between fields in this state". Sections 111.090 and 111.137 give the Commission broad authority to enforce the Common Purchaser Act, including the authority to order a common purchaser to enlarge its facilities if appropriate. (see also Railroad Commission v. Rio Grande Valley Gas Co. 405 SW2d 304 (1966)). Section 111.086(b) states: "...the question of justice or reasonableness to be determined by the Railroad Commission, taking into consideration the production and age of wells in respective fields and all other proper factors". Whether discrimination is unjust or unreasonable is a question of fact for the Commission.

The salient facts concerning the reasonableness, or unreasonableness, of Union Carbide's decision not to take the gas are: Union Carbide and Seadrift are common purchasers; Union Carbide purchased, and Seadrift transported, gas from these wells in the past; no physical or legal impediment exist to the future purchase of additional gas from these wells; the volume of gas offered is substantial; Union Carbide has a need for the gas offered; the Sarco Lateral and Seadrift Burnell lines are capable of transporting the gas; Union Carbide will not be unreasonably prejudiced by taking the gas; no less onerous alternative to marketing the subject well's gas exists; Union Carbide prefers to deal with large entities. In view of the foregoing, Union Carbide's and Seadrift's refusal to purchase and transport gas from the subject wells is unjust and unreasonable and is a violation of the Common Purchaser Act.

The evidence indicates that neither Union Carbide nor Seadrift were, at any time, connected directly to the subject wells. It is unclear how the gathering line from the wells became disconnected from the Sarco Lateral, but the disconnection apparently occurred while the Sarco Lateral was under the control of Seadrift's lessee, Gabriel Prospect Pipeline, Inc. No violation of SWR 73 has been proven.

EXAMINERS' RECOMMENDATION

The examiners recommend that the Commission enter the attached order requiring Union Carbide Corporation to purchase the gas from Go-Energy Company's F. G. Gabriel Lease, Wells No. 1A and 3 in the Richie (4150) and Richie (4400) Fields and dismissing the complaint alleging a violation of SWR 73.

FINDINGS OF FACT

1. Union Carbide Corporation ("Union Carbide") and Seadrift Pipeline Corporation ("Seadrift") were given at least 10 days notice of this hearing.

2. Go-Energy Company ("Go Energy") is the operator of the F. G. Gabriel Lease, Wells No. 1A and 3 (subject wells) in the Richie (4150) and Richie (4400) Fields, Goliad County Texas.

3. The subject wells, individually or collectively, are capable of producing substantial quantities of gas. The most recent G-1 for the Gabriel 1A well indicated an absolute open flow of 8,200 mcf/d.

4. Go-Energy has offered to sell gas from the subject wells to Union Carbide.

5. Go-Energy Company's only reasonable market outlet for gas produced from the subject wells is through the Sarco Lateral pipeline owned by Seadrift Pipeline Corporation (Seadrift).

6. Seadrift's Sarco Lateral line connects to its Burnell Line which supplies gas to Union Carbide's Seadrift plant.

7. Seadrift is a wholly owned subsidiary of Union Carbide.

8. Union Carbide has refused to purchase the gas from the subject wells.

9. Seadrift transports natural gas by pipeline within the limits of this state and Union Carbide purchases and takes natural gas from this area of the state.

10. No physical or legal impediment exists to prevent Union Carbide from purchasing and Seadrift from transporting gas from the subject wells.

11. Union Carbide refuses to purchase the gas because it prefers to do business large entities.

12. Union Carbide has a need for the gas offered by Go-Energy.

13. The Sarco Lateral and Seadrift Burnell lines are capable of transporting the gas.

14. Purchasing Go-Energy's gas will not cause Union Carbide or Seadrift to breach any existing contract.

15. Neither Seadrift nor Union Carbide disconnected from the subject wells.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.

2. All things have occurred and have been done to give the Commission jurisdiction to decide this matter.

3. Union Carbide and Seadrift are common purchasers under the Common Purchaser Act, Tex. Nat. Res. Code § 111.081 et. seq. and are required to comply with the duties specified in the Act.

4. Union Carbide's and Seadrift's refusal to purchase and transport gas from the subject wells is unjust and unreasonable and constitutes discrimination against Go-Energy in violation of the Common Purchaser Act.

5. Go-Energy failed to meet its burden of proof that Seadrift violated Statewide Rule 73.

Respectfully submitted,

Larry Borella
Hearings Examiner

Donna Chandler, P.E.
Technical Examiner

LGB

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET
NO. 02-0204130

COMMISSION CALLED HEARING ON THE COMPLAINT OF GO-ENERGY COMPANY AGAINST UNION CARBIDE CORPORATION AND SEADRIFT PIPELINE CORPORATION ALLEGING DISCRIMINATORY PRACTICES IN THE PURCHASE AND TRANSPORTATION OF GAS, RICHIE(4150) AND RICHIE (4400) FIELDS, GOLIAD COUNTY, TEXAS

FINAL ORDER

The Commission finds that, after statutory notice in the above-numbered docket, heard on January 27, 1994, the presiding examiners have made and filed a report and proposal for decision containing findings of fact and conclusions of law, which was served on all parties of record, and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the proposal for decision and the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is ORDERED by the Railroad Commission of Texas that:

Seadrift Pipeline Corporation connect to, and Union Carbide Corporation purchase from, the Go-Energy Company's F. G. Gabriel Lease, Wells No. 1A and 3, in the Richie (4150) and Richie (4400) Fields and to henceforth transport and purchase gas from these wells without unjust or unreasonable discrimination between fields.

It is further ORDERED that Go-Energy Company's complaint of a violation of Statewide Rule 73 is hereby DISMISSED.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Done this _____ day of _____, 19_____.

RAILROAD COMMISSION OF TEXAS

_____
CHAIRMAN

_____
COMMISSIONER

_____
COMMISSIONER

ATTEST:

_____
Secretary

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 08-0208730

FINAL ORDER APPROVING AMERICAN PETROFINA PIPE LINE COMPANY'S AND HIGHLANDS NGL PIPELINE COMPANY'S JOINT APPLICATION FOR PERMISSION TO DISCONTINUE SERVICE PURSUANT TO STATEWIDE RULE 73 VARIOUS COUNTIES, TEXAS

The Railroad Commission of Texas has received, docketed and heard this joint application of American Petrofina Pipe Line Company and Highlands NGL Pipeline Company for permission to discontinue the service of transporting crude oil pursuant to Statewide Rule 73 for a portion of the Fin-Tex Pipeline running from Crane to Refugio through Crane, Upton, Reagan, Crockett, Schleicher, Sutton, Edwards, Real, Kerr, Bandera, Medina, Bexar, Atascosa, Karnes, Bee, and Refugio Counties, Texas and accordingly makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. A hearing in this docket was convened on June 21, 1995. At least ten (10) days notice was given by United States Mail to applicants American Petrofina Pipe Line Company (hereinafter "Fina") and Highlands NGL Pipeline Company ("Highlands NGL") and to all operators served by a portion of Fina's Fin-Tex Pipeline System, consisting of 384 miles of pipe extending from Refugio, Texas northwest to Crane, Texas and including the Big Lake Gathering System ("Fin-Tex System").

2. Fina published notice of this proceeding in the May 29, 1995 issue of the Oil & Gas Journal.

3. Fina and Highlands NGL have requested the Commission's permission to discontinue gathering and transportation service of crude oil for hire from a portion of the Fin-Tex System.

4. The Big Lake Gathering System has been inactive since the fall of 1992. No wells are currently connected to the system. Fina Oil and Chemical Company ("FOCC"), an affiliate of Fina, was and is the first purchaser of crude oil from the wells formerly associated with this system. FOCC began trucking the crude oil to an injection point on the main line at Big Lake, Texas. FOCC will continue to truck the oil to a pipeline connection for transport to market.

5. Since the fall of 1992 to the present, Fina has operated that portion of the Fin-Tex System (approximately 61 miles) from Big Lake to Crane, Texas, injecting into a single terminal the crude oil trucked by FOCC for operators previously connected to the Big Lake Gathering System. Those seven operators served by FOCC were given notice of this proceeding.

6. In October 1993, the main line (excepting the 61 mile portion from Big Lake to Crane, Texas) running from Refugio to Big Lake, Texas was taken out of active service and nitrified ("moth-balled"). Until 1993 this portion of the main line remained filled with crude oil to maintain the line's ability to deliver crude from and to the Gulf Coast and Midland markets on a spot basis; no wells were connected to this portion of the system. The only three shippers on a spot basis in the past five years were Parker & Parsley, Marathon Petroleum Company, and EOTT, each of which was given notice of this proceeding.

7. No operator or shipper has registered any objection or protest in regard to this application.

8. All operators previously served by the Fin-Tex System have been provided a market for their crude oil. No operator will be denied or forced from the crude oil market if this application is approved.

9. The Fin-Tex System at issue herein is comprised of 384 miles of bi-directional 10" pipeline between Crane and Refugio, Texas, with an estimated capacity of 22,000 barrels of oil per day.

10. Fina and Highlands NGL have negotiated a transaction whereby Highlands NGL will purchase the Fin-Tex System to transport natural gas and/or natural gas liquids.

CONCLUSIONS OF LAW

1. Notice of application and hearing was timely given to all affected persons.

2. The Commission has jurisdiction over the subject matter of this proceeding.

3. American Petrofina Pipe Line Company is a common carrier.

4. Disconnection of the Fin-Tex System from Refugio to Crane, Texas is in the public interest.

Jurisdiction of this docket having been established, and based on the findings of fact and conclusions of law, it is therefore ORDERED by the Railroad Commission of Texas, that the joint application of American Petrofina Pipe Line Company and Highlands NGL Pipeline Company for permission to discontinue the service of transporting crude oil from a portion of the Fin-Tex System is APPROVED.

Done this 18th day of July, 1995, in Austin, Texas.

RAILROAD COMMISSION OF TEXAS

Barry Williamson
CHAIRMAN

COMMISSIONER

Carole Keeton Rylander
COMMISSIONER

ATTEST:
Kim Williamson
SECRETARY

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 08-0208730

SETTLEMENT AGREEMENT CONCERNING AMERICAN PETROFINA PIPE LINE COMPANY'S AND HIGHLANDS NGL PIPELINE COMPANY'S JOINT APPLICATION FOR PERMISSION TO DISCONTINUE SERVICE PURSUANT TO STATEWIDE RULE 73 VARIOUS COUNTIES, TEXAS

The Railroad Commission of Texas has received, docketed and heard this joint application of American Petrofina Pipe Line Company and Highlands NGL Pipeline Company for permission to discontinue the service of transporting crude oil pursuant to Statewide Rule 73 for a portion of the Fin-Tex Pipeline running from Crane to Refugio through Crane, Upton, Reagan, Crockett, Schleicher, Sutton, Edwards, Real, Kerr, Bandera, Medina, Bexar, Atascosa, Karnes, Bee, and Refugio Counties, Texas and accordingly makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. A hearing in this docket was convened on June 21, 1995. At least ten (10) days notice was given to the applicants and all other affected persons.

2. American Petrofina Corporation ("Fina") and Highlands NGL Pipeline Company have requested the Commission's permission to discontinue gathering and transportation service of crude oil for hire from a portion of the Fin-Tex Pipeline System.

3. Fina disconnected service from the Big Lake Gathering System and 321 miles of the main pipeline running from Refugio, Texas to Big Lake, Texas (all a part of that portion of the Fin-Tex Pipeline System for which permission to disconnect is sought) without first obtaining the permission of the Commission or the written consent of operators connected to the system.

CONCLUSIONS OF LAW

1. Notice of application and hearing was timely given to all appropriate persons.

2. The Commission has jurisdiction over the subject matter of this proceeding.

3. American Petrofina Pipe Line Company violated Statewide Rule 73 and Section 111.025 of the Texas Natural Resources Code by disconnecting wells on a portion of the Fin-Tex System without first obtaining the Commission's permission or the written consent of all operators connected to that portion of the system.

4. A person who violates Section 111.025 of the Texas Natural Resources Code, and a rule promulgated thereunder, is subject to a penalty of not less than $100 nor more than $1,000 for each offense recoverable in the name of the State in a district court in Travis County. Each day a violation continues constitutes a separate offense.

In settlement of this matter, the Railroad Commission of Texas and American Petrofina Pipe Line Company have agreed and stipulated as follows:

That American Petrofina Pipe Line Company has placed in the possession of the Railroad Commission of Texas a private contribution in the amount of FIVE THOUSAND DOLLARS ($5,000.00) for deposit in the Railroad Commission of Texas Oil Field Cleanup Fund, in lieu of the Railroad Commission referring this matter to the Attorney General for a penalty action.

Done this 18th day of July, 1995, in Austin, Texas.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY

APPROVED AS TO FORM AND SUBSTANCE:

AMERICAN PETROFINA PIPE LINE COMPANY

BARRY WILLIAMSON, *CHAIRMAN*
CAROLE KEETON RYLANDER, *COMMISSIONER*
CHARLES R. MATTHEWS, *COMMISSIONER*

CAROLE VOGEL, *DIRECTOR*
LARRY BORELLA, ASST. *DIRECTOR*
OIL & GAS SECTION

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION

OIL AND GAS DOCKET NO. 04-0207250

COMMISSION-CALLED HEARING TO SHOW CAUSE WHY VALERO TRANSMISSION, L.P., SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AND THE COMMON PURCHASER ACT REGARDING ITS 20" PIPELINE BETWEEN KELSEY AND FALFURRIAS, BROOKS COUNTY, TEXAS

APPEARANCES:

FOR RESPONDENT:	**RESPONDENT:**
Andy Taylor (Attorney) Charles H. Neutzler (Account Exec.)	Valero Transmission, L.P.

REVISED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	December 8, 1994
DATE CASE HEARD:	January 26, 1995
HEARD BY:	Jeffrey T. Pender, Hearings Examiner Margaret Allen, Technical Examiner
PFD CIRCULATION DATE:	April 28, 1995
EXCEPTIONS FILED	May 15, 1995
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing to determine the following:

1. Whether Valero Transmission, L.P., ("Valero"), has violated provisions of Title 3, Oil and Gas, Subtitle D, Texas Natural Resources Code and Commission Statewide Rule 73, pertaining to pipeline connections, by disconnecting wells without first obtaining permission from the Commission, or without the written consent of the operators as to its 20" pipeline between Kelsey and Falfurrias, Brooks County, Texas ("the subject pipeline").

2. Whether any violations of Statewide Rule 73 and the Texas Natural Resources Code, Title 3, Chapter 111, Subchapter D by Valero should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 111.263(a) (Vernon 1994); and

3. Whether other orders should be entered as permitted by law.

APPEARANCES AND LEGAL ENFORCEMENT RECOMMENDATION

Mr. Andy Taylor, Attorney and Mr. Charles H. Neutzler, Account Executive, appeared on behalf of Valero. No other parties or interested persons appeared. The examiners recommend that Valero be found in violation of Statewide Rule 73(a) and referred to the Office of the Attorney General for the pursuit of an appropriate penalty.

BACKGROUND

The following provisions of the Texas Natural Resources Code and Statewide Rule 73 are germane to the issues in this matter:

1. Tex. Nat. Res. Code §111.081(a)(2). "common purchaser" means every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or that engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas.

2. Tex. Nat. Res. Code §111.083. A common purchaser as defined in §111.081(a)(2) shall purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed by the commission in the manner, under the inhibitions against discriminations, and subject to the provisions applicable under this chapter to common purchasers of oil.

3. Tex. Nat. Res. Code §111.086. A common purchaser shall purchase oil offered to it for purchase without discrimination in favor of one producer or person against another producer or person in the same field and without unjust or unreasonable discrimination between fields in this state.

4. Tex. Nat. Res. Code §111.263(a) Any person who violates a provision of Subchapter D of this Chapter, a rule promulgated under these subchapters or sections, or an order passed by the commission under these subchapters or sections or one of these rules, on violation, is subject to a penalty of not less than $100 nor more than $1,000 for each offense recoverable in the name of the state in a district court in Travis County. Each day a violation continues constitutes a separate offense.

5. Tex. Nat. Res. Code §85.046(a)(9) defines "waste" as the escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas.

6. Statewide Rule 73(a) (16 T.A.C. §3.68(a)) requires that no pipeline shall disconnect from any well or lease without first obtaining permission from the Commission, or without the written consent of the operator.

DISCUSSION OF THE EVIDENCE

Prior to June 1, 1994, Mestena, Inc. ("Mestena"), Coastal Gas Marketing Company ("Coastal"), Royal Production Company, Inc., ("Royal"), Collier & Ely, Inc. ("C&E"), and Lomak Petroleum, Inc., ("Lomak") (hereinafter referred to collectively as "complainants") were producing gas from various Alta Mesa fields (hereinafter "Alta Mesa Field") into Valero's 20-inch pipeline running between Kelsey and Falfurrias in Brooks County, Texas. Valero claims that the complainants are the only producers in the Alta Mesa Field and there are no other fields served by the subject pipeline downstream of the Alta Mesa Field tie-in.

On May 29, 1994, Valero told the complainants that it needed to shut down the subject pipeline for 45 to 60 days for maintenance work. On June 1, 1994, Valero shut down the line without permission from the Railroad Commission or written waivers from the complainants. By late July, Valero became aware that completion of the project would require an expensive remedial upgrade that would have more than doubled the cost of the project. At that point, Valero decided to abandon its plan to resume taking the complainant's gas. On August 29, 1994, one month after the alleged work was to have been completed, Mestena requested permission from the Commission to flare 1.05 MMCF per month through December 1, 1994 because Valero had not resumed service. The flare permits were granted. By letter dated September 1, 1994, the Commission directed Valero to show that it had not violated Rule 73(a). Valero requested and received additional time, until September 26, 1994, to demonstrate compliance.

In its September 26th response, Mr. David Kaufman, attorney for Valero, claimed that it never intended the suspension of service to be permanent. The producers using the subject pipeline were notified that it would take 45 to 60 days to convert the subject pipeline to lean-residue service so that it could take the low volume, low pressure gas tendered by the complainants along with higher volumes of high pressure gas it was planning to transport for producers other than the complainants. Mr. Kaufman stated in his September 26 response letter:

> "Valero concluded that conversion of the 20-inch pipeline to residue service would not be economically feasible and cancelled the project. There currently is no economically viable alternative use for the pipeline, which has remained out of service."

In a letter to the Commission dated September 30, 1994, Mr. Kaufman acknowledged receipt of another complaint, this time from C&E Operating, Inc., and reasserted the same defense made in its letter of September 26, 1994:

> "Valero subsequently decided not to proceed with the project and the pipeline has remained out of service."

Mr. Kaufman made no indications that Valero ever intended to resume servicing the complainants and requested permission from the Commission to disconnect.

On October 18, 1994, The Commission notified Valero that its application to disconnect pursuant to Statewide Rule 73 would be heard on December 13, 1994. Meanwhile, Border Resources/Lomak Production had filed a complaint with the Commission concerning the disconnection. Valero's response was again, that they had decided to not proceed with the project and the pipeline would remain out of service.

In October, according to Mr. Neutzler's testimony, Valero started looking for alternatives to abandoning the project. In late November, 1994, Valero notified the Commission of its decision to hook up a small compressor to the subject pipeline and resume taking the complainants' gas by early 1995.

On December 1, 1994, two weeks before the hearing, Valero withdrew its application to disconnect claiming that because they intended to resume taking the complainants' gas in the near future, the application was unnecessary. The Commission re-noticed the hearing as a show-cause and set the date for January 26, 1995.

On December 13, 1994, Valero again requested a postponement which was denied. On December 14, 1994, Mestena filed its Notice of Intent to Appear in the show-cause hearing.

Valero resumed taking some of the complainants' gas on January 12, 1995. By January 25th, the day before the hearing, all complainants had settled with Valero and had withdrawn their complaints.

At the hearing, Valero's position was that it was not a "common purchaser" subject to the Common Purchaser's Act (as codified in Tex. Nat. Res. Code Chapter 111), that it did not "disconnect" the complainants and that, because it received written consent from the complainants before the hearing, the complaint should be dismissed. In its Exceptions to the Examiners' Proposal for Decision, Valero complained that the examiner's proposed definition of "disconnect" was over broad and that if the Commission wanted to define "disconnect" it should be done in a rulemaking. The examiners disagree that a rulemaking is necessary but have otherwise revised their recommendation.

EXAMINER'S OPINION

The examiners believe that Valero has violated Statewide Rule 73(a) and should be referred to the Office of the Attorney General for an appropriate civil penalty.

IS VALERO IS A COMMON PURCHASER?

A "common purchaser" is a person that claims or exercises the right to carry or transport natural gas by pipeline for hire, compensation, or otherwise within the limits of this state. Tex. Nat. Res. Code §111.082. A common purchaser is required to take natural gas under rules prescribed by the Commission including Rule 73(a) which addresses the conditions and procedures that apply to common purchasers of gas when taking gas or disconnecting from a producer.

Valero did transport gas produced by the complainants, by pipeline for hire, before June 1, 1994 and after January 12, 1995. Accordingly, Valero is a common purchaser.

DID VALERO "DISCRIMINATE" AS DEFINED IN THE COMMON PURCHASER'S ACT?

A common purchaser pipeline "discriminates" when it does not take ratably from each producer in a field that offers its production to the pipeline. Tex. Nat. Res. Code §111.086. However, if a pipeline ceases its discriminatory behavior before the Commission acts on the complaint, the action must be dismissed. R. L. Foree v. Crown Central Petroleum Corporation, 431 S.W.2d 312 (Tex. 1968). Dismissal is required because none of the statutory tools given to the Commission for combating discrimination (ie: ordering the reasonable extension of lines, reconnection or ratable takes) are appropriate where discrimination has ceased. Moreover, the Commission has no statutory authority to assess penalties for past discrimination.

On June 1, 1994, Valero suspended receipt of the complainants' gas through the subject pipeline. On January 12, 1995, fourteen days before the hearing, Valero resumed taking all of the gas offered by the complainants. Therefore, the issue of discrimination is moot.

Though the Commission has no authority to continue to pursue an action against Valero for discrimination under Chapter 111 of the Texas Natural Resources Code, there is an issue of whether Valero violated Commission Statewide Rule 73(a).

WAS VALERO REQUIRED BY RULE 73(A) TO OBTAIN CONSENT FROM THE COMPLAINANTS OR PERMISSION FROM THE COMMISSION PRIOR TO DISCONNECTING THEM FROM THE PIPELINE?

The third sentence in Rule 73(a) requires that:

> "No pipeline shall disconnect from any well or lease without first obtaining permission from the Commission, or without the written consent of the operator."

Valero does not contest that if Commission permission is the chosen route to disconnection, Rule 73(a) requires that it must be obtained before disconnection. Valero believes, however, that Rule 73(a) permits a pipeline to obtain consent from the operator to disconnect either before or after the disconnection occurs.

The rule is rearranged below to clearly illustrate Valero's perspective:

"No pipeline shall disconnect from any well or lease

> without first obtaining permission from the Commission, or without the consent of the operator."

(emphasis added)

Note that there are two independent and separate clauses stating options for accomplishing a legal disconnection. The first option requires Commission permission and the second, consent of the operators. Valero argues that only the option involving Commission permission uses the qualifying term, "first," implying by omission that prior consent of the operator is not necessary.

However, if we treat the rule as containing two independent and separate clauses as Valero believes, and we leave out the words that pertain to the "Commission permission" clause, the rule then reads:

> "No pipeline shall disconnect from any well or lease ... without the consent of the operator."

From this perspective, consent is required to be at least contemporaneous with disconnection because a disconnection without consent is clearly prohibited.

The existence of at least two reasonable interpretations means that Rule 73(a) is ambiguous. Where the language of a statute is ambiguous, construction is necessary. Koy v. Sneider, 218 S.W. 479 (Tex. 1920). Administrative rules are ordinarily construed like statutes. Lewis v. Jacksonville Building and Loan Association, 540 S.W.2d 307 (Tex. 1976). If the language of a rule or statute is susceptible to two constructions, one of which will carry out and the other defeat the object of the rule, it should receive the construction which supports the intended purpose. Citizens Bank of Bryan v. First State Bank, Hearne, 580 S.W.2d 344 (Tex. 1979). Knowing the purpose behind Rule 73(a) is therefore the key to determining the proper construction.

Because Rule 73(a) was "grandfathered" into the Texas Administrative Code, a written justification of the rule is not available. However, its intent may be gleaned by examining the sole source of the Commission's authority to regulate, gas pipelines - Chapter 111 of the Texas Natural Resources Code. Gas pipelines are prohibited from discriminating as defined in later sections of the Chapter, and the Commission is charged with detecting, correcting and preventing discrimination by gas pipelines. Tex. Nat. Res. Code §§ 111.083 and 111.091. Therefore, at least one purpose of Rule 73(a) is the prevention of discrimination.

Discrimination occurs when a pipeline does not take ratably from all producers within a field that offer their production. The gas under the tracts of those producers disconnected from a pipeline may be drained by those producers who can move their gas to market via the pipeline. The prevention of discrimination amounts to a protection of correlative rights.

Incidental to its authority under Chapter 111, the Commission may also, under authority granted in Chapter 85, order any person, including a gas pipeline, to refrain from committing waste by entering an appropriate order or seeking an injunction through the Office of the Attorney General. Tex. Nat. Res. Code §§ 85.049 and 85.351. Waste prevention is another goal of Rule 73(a).

Having identified the purposes for Rule 73(a), the issue now becomes whether Valero's interpretation of Rule 73(a), allowing consent after disconnection, would carry out or defeat the rule's intended purposes of preventing discrimination and waste.

Permitting a pipeline to disconnect without the prior consent of the affected producers greatly increases the probability that undue discrimination or waste will occur. Most wells, but not all, can be economically brought back on-line and not suffer significant drainage across lease lines during the time periods normally associated with temporary interruptions of service. However, if the suspension of service is of longer duration, unless the disconnected producers have access to alternative transportation for their production,

the risks of losing a well or suffering significant off-lease drainage greatly increase.

In most cases, a showing by the pipeline that the disconnection will not result in undue discrimination or waste, will support the granting of the pipeline's request to disconnect. Economics is a valid basis for granting a disconnect because under the Common Purchaser's Act, the Commission may order only "..reasonable extensions of lines, **reasonable connections** and ratable takes to prevent discrimination." Tex. Nat. Res. Code §111.091 (emphasis added). Therefore, the Commission may order a pipeline to maintain only **reasonable connections**. To require a pipeline to maintain a connection when the pipeline can not do so at a profit and the disconnection would not be unduly discriminatory or wasteful, would not be reasonable and exceed the Commission's authority under the Act.

Because allowing disconnections without prior consent would significantly increase the probability of undue discrimination and waste and would effectively preclude the Commission from performing its duties under Chapter 111, Valero's interpretation of Rule 73(a) can not be followed. The public policy of preventing discriminatory and wasteful practices would simply not be advanced under Valero's interpretation. Only by requiring a pipeline to demonstrate that its proposed disconnection is reasonable and not discriminatory, prior to the disconnect, can the Commission effectively carry out its duty under Chapter 111. Requiring prior consent of the producers places no undue burden on pipelines. The Commission should not concern itself with bona fide, routine and temporary suspensions of service. Only when a pipeline's decision to suspend service threatens discrimination or waste, should the Commission participate in the decision.

DID VALERO "DISCONNECT" THE COMPLAINANTS?

Statewide Rule 73(a) requires that:

> "No pipeline shall **disconnect** from any well or lease without first obtaining permission from the Commission, or without the written consent of the operator."

(bold emphasis added)

In Valero's Exceptions to the Examiner's Proposal For Decision, it argues that the term, "disconnect" as defined by the examiners is over broad and that if the Commission wishes to adopt the examiners' interpretation, it should by done in a formal rulemaking. The examiners originally proposed that the term, "disconnect" should apply to any refusal to take gas, regardless of its necessity or impact on correlative rights. The examiners agree with Valero that, as proposed, that definition would unduly restrict legitimate pipeline operations. Accordingly, the examiners have revised their interpretation of the scope of activities that would constitute a "disconnect" and believe that Valero's due process concerns are satisfied. The examiners believe that, as proposed below, the definition of "disconnect" may be adopted by the Commission by final order in this case and that there are no due process concerns warranting a rulemaking.

Generally, where an agency possesses both rulemaking and adjudicatory powers, it is free, in its informed discretion, to announce a new definition in an ad hoc adjudicatory hearing rather than in a formal rulemaking. Madden v. Texas Bd. of Chiropractic Examiners, 663 S.W.2d 622 (Tex. App.-Austin 1983, writ refd. n.r.e.). Preceding on a case by case basis is acceptable in the context of a new rule or a newly competitive market place, Southwestern Bell Tel. Co. v. Public Utility Comm.of Texas, 745 S.W.2d 918 (Tex. App.-Austin 1988, writ denied), and may be preferable to a formal rulemaking proceeding where the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Id at 926 n.2.

Though Rule 73(a) has existed in its present form for decades, there have been very few complaints filed under the rule. Only three cases since 1991, addressing Rule 73(a), could be found in the Commission's Final Order Index and none of them directly addressed the issues presented in this case. Whether a pipeline has "disconnected" a producer is a fact-intensive determination. To insure that the effectiveness of the rule is preserved, the Commission should not, at this point, attempt to adopt a hard and fast definition. The issues presented in this case are of first impression and wholly the result of changing market forces brought about by recent deregulation. Because the Commission does not have a significant body of experience pertaining to Rule 73(a) issues it should proceed to define the regulatory contours of Rule 73(a) on a case by case basis.

Valero argues that Rule 73(a) does not apply to it because it did not "disconnect" the complainants; it merely suspended service by closing the valve between its pipeline and the complainants' wells. It argues that "disconnect" has a plain meaning which is "to physically sever the connection of or between...." (Valero cites Webster's Ninth New Collegiate Dictionary, 1989) and that "disconnect" must be given its plain meaning.

The ordinary and plain meaning of a word is to be given effect, if reasonable and possible unless the intent of the rule requires that the meaning be restricted or enlarged to give effect to that intent. Matter of Estate of Furr, 553 S.W.2d 676 (Tex.App.-Amarillo 1977, ref. n.r.e.) (quoting from the Texas Supreme Court opinion in Huntsville Indep. School Dist. v. McAdams, 221 S.W.2d 546 (1949)).

To determine the proper scope and meaning of the term "disconnect" it is useful to examine the scope of what constitutes the more commonly understood concept of an "interruption" of service. Gas purchase/transportation contracts generally address the issue of interruption of service by either providing for it in limited situations or by prohibiting it. Interruptions allow a pipeline to conduct necessary operations such as pigging, cleaning and maintenance, compressor repairs and safety inspections. They are temporary in nature, limited to the time reasonably necessary to conduct the operation requiring the interruption and are followed by a prompt reinstatement of service. Temporary interruptions of service simply do not create a great concern for undue discrimination or waste. The potential for a temporary imbalance in correlative rights created by a temporary interruption is usually outweighed by the benefits derived from the work performed during the interruption.

However, this is not to say that all interruptions for "traditional" purposes are per se, nondiscriminatory and not subject to Commission review. In situations where the proposed time interval for interruption of service is or becomes unreasonably long and the risk of undue discrimination or waste is high, Commission jurisdiction arises and a pipeline should seek permission or consent before suspending or continuing a existing suspension of service.

The term "disconnect" must necessarily refer to actions that evoke Commission jurisdiction and justify the Commission's review. Valero claims that "disconnect" refers only to situations where there is an actual physical severance between a producer and a pipeline. This interpretation, on its face, does not evoke Commission jurisdiction, ignores the purpose of Rule 73(a) and the very nature of discrimination and waste. Discrimination and waste can occur long before a pipeline actually "physically severs" its facility from a producer. Moreover, there are situations where physical severance of the line is definitely necessary but not likely to result in undue discrimination or waste; for example, where a pipeline is shut down to replace a section of pipe accidently damaged by excavation activities.

Distinguishing between an interruption of service and a "disconnect," as the term is used in Rule 73(a), necessarily involves a balancing test except in the case where the pipeline, by its words or actions, indicates that the suspension will be permanent. The Commission has no interest in regulating the necessary, every day operations of a pipeline, regardless of whether "physical severance" of facilities is involved. However, when a suspension of service creates an undue risk of discrimination or waste, the Commission is empowered to act and should act.

Therefore, a "disconnect" should refer to those suspensions of service where the pipeline expressly or impliedly indicates that the suspension is permanent or, in the absence of an indication, when the risk of discrimination or waste outweighs the benefits of suspending service. Using this approach, the Commission will avoid interfering with the legitimate operations of a pipeline yet preserve its ability to prevent undue discrimination and waste. Determining whether a "disconnect" has occurred is a fact-intensive inquiry which should be made on a case by case basis. The Commission should consider at least the following:

1. Any contractually permissible reasons for interruption of service or other evidence of written consent by the producers;
2. Risk to public health and safety in maintaining the connection;
3. Reasonableness of the period of time required to do the maintenance or other operations proposed or conducted during the suspension of service;
4. The good faith and diligence of the pipeline in conducting the work during the suspension of service;
5. The availability of alternate transportation;
6. The necessity for flaring gas and the amount;

7. The risk of permanently losing a well whose production is shut-in because of the suspension of service and the amount of potentially lost production;
8. The potential for off-lease drainage by competing wells;
9. Whether there will be any unjust discrimination between fields as a result of the suspension of service.

Valero claims that the suspension of service on June 1, 1994 was meant to be temporary and last only until the end of July, 1994. By the end of July, however, Valero had expressly abandoned its plans to resume service to the complainants as indicated in Mr. Kaufman's September 26th letter to Mr. Triana. At that point, Valero should have sought permission from the Commission to disconnect. Instead, Valero waited until late September, when the disconnected producers started complaining to the Commission, before requesting permission to disconnect and then failed to prosecute that request. The examiners believe that Valero "disconnected" the complainants in late July, 1994, when it permanently abandoned its plans to reinstate service to the complainants.

FINDINGS OF FACT

1. Notice of hearing in Docket No. 04-0207250 was given to Valero Transmission L.P. ("Valero") and to all affected producers on December 8, 1994 by first class mail. Valero attended the hearing represented by Andy Taylor, Attorney and Charles Neutzler, Account Executive.

2. Valero operates a 20-inch pipeline running between Kelsey and Falfurrias in Brooks County, Texas ("subject pipeline").

3. Prior to June 1, 1994, Mestena, Inc. ("Mestena"), Coastal Gas Marketing Company ("Coastal"), Royal Production Company, Inc., ("Royal"), Collier & Ely, Inc. ("C&E"), and Lomak Petroleum, Inc., ("Lomak") (hereinafter referred to collectively as "complainants") were producing gas into the subject pipeline.

4. On June 1, 1994, Valero suspended service to the complainants' on the subject pipeline and refused to take the complainants' gas production from the Alta Mesa Field. Valero did not get prior permission from the Railroad Commission or the written consent of the complainants. Valero told the complainants that the suspension of service would last 45 to 60 days for the purpose of converting the line to lean residue service.

5. In late July, 1994, Valero abandoned its plan to resume taking the complainant's gas because the project involving the subject pipeline was too costly. Valero did not, at that time, seek permission from the Commission to disconnect its service to the complainants.

6. On August 29, 1994, Mestena requested permission to flare/vent 1.05 MMCF of casinghead gas per month, in the Alta Mesa Field, because of the disconnection by Valero. Prior to the disconnection, the casinghead gas had been taken by Valero into the subject pipeline. The Commission granted Mestena permission to flare/vent until December 1, 1994.

7. In September, 1994, in response to the Commission's request to show why it had not violated Rule 73, Valero requested permission to disconnect the complainants.

8. On December 1, 1994, Valero withdrew its application to disconnect the Complainants.

9. By January 25, 1994, the day before the hearing, all complainants had settled with Valero and had withdrawn their complaints.

10. Valero resumed taking the complainants' gas into the subject pipeline on January 12, 1995.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.

2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.

3. In late July, 1994, Valero "disconnected" the complainants, as the term, "disconnect" is used in Statewide Rule 73(a), because it abandoned its plans to resume taking the complainants' gas.

4. Valero violated Statewide Rule 73(a) in late July, 1994 because it did not obtain the consent of the complainants prior to or contemporaneous with the disconnect, nor did Valero obtain prior permission from the Commission.

5. The issue of whether Valero committed discrimination in violation of the Common Purchaser's Act is moot.

RECOMMENDATION

The examiner's recommend that the above findings and conclusions be adopted and that Valero be referred to the Attorney General's Office for further action.

Respectfully submitted,

Jeffrey T. Pender
Hearings Examiner

Margaret Allen
Technical Examiner

JTP/bjw

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 04-0207250

FINAL ORDER AND SETTLEMENT AGREEMENT CONCERNING THE SHOW CAUSE HEARING OF VALERO TRANSMISSION, L.P. REGARDING ITS 20" PIPELINE BETWEEN KELSEY & FALFURRIAS, BROOKS COUNTY, TEXAS

FINAL ORDER

The Railroad Commission of Texas finds that after statutory notice the captioned proceeding was heard by the examiners who have made and circulated a Proposal for decision containing Findings of Fact and Conclusions of Law which were amended by the examiners in response to exceptions filed. Such proceeding was duly submitted to the Railroad Commission of Texas at Conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the Revised Proposal for Decision, the Findings of Fact and Conclusions of Law contained therein, and any exceptions and replies thereto, makes the following Findings of Fact and conclusions of Law.

FINDINGS OF FACT

1. Notice of hearing in Docket No. 04-0207250 was given to Valero Transmission L.P. ("Valero") and to all affected producers on December 8, 1994 by first class mail. Valero attended the hearing represented by Andy Taylor, Attorney and Charles Neutzler, Account Executive.

2. Valero operates a 20-inch pipeline running between Kelsey and Falfurrias in Brooks County, Texas ("subject pipeline").

3. Prior to June 1, 1994, Mestena, Inc. ("Mestena"), Coastal Gas Marketing Company ("Coastal"), Royal Production Company, Inc., ("Royal"), Collier & Ely, Inc. ("C&E"), and Lomak Petroleum, Inc., ("Lomak") (hereinafter referred to collectively as "producers") were producing gas into the subject pipeline.

4. On June 1, 1994, with prior notice, Valero suspended service to the producers on the subject pipeline and refused to take the complainants' gas production from the Alta Mesa Field. Valero did not get prior permission from the Railroad Commission or the prior written consent of the producers. Valero told the producers that the suspension of service would last 45 to 60 days for the purpose of converting the line to lean residue service.

5. In late July, 1994, Valero abandoned its original plan to resume taking the producers' gas because the project involving the subject pipeline was too costly. Valero did not, at that time, seek permission from the Commission to disconnect its service to the complainants.

6. On August 29, 1994, Mestena requested permission to flare/vent 1.05 MMCF of casinghead gas per month, in the Alta Mesa Field, because of the disconnection by Valero. Prior to the disconnection, the casinghead gas had been taken by Valero into the subject pipeline. The Commission granted Mestena permission to flare/vent until December 1, 1994.

7. In September, 1994, in response to the Commission's request to show why it had not violated Rule 73, Valero requested permission to disconnect the producers.

8. On December 1, 1994, Valero withdrew its application to disconnect the producers.

9. By January 25, 1994, the day before the hearing, all producers had settled with Valero and had withdrawn their complaints. Most of the producers had recommended dismissal of this docket.

10. Valero resumed taking the producers' gas into the subject pipeline on January 12, 1995.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.

2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.

3. Valero violated Statewide Rule 73(a) from late July, 1994 through January 12, 1995.

4. The issue of whether Valero committed discrimination in violation of the Common Purchaser's Act is moot.

SETTLEMENT AGREEMENT

In light of Valero's belief that it did not violate Rule 73(a) and in settlement of this matter, the Railroad Commission of Texas and Valero Transmission, L.P., have agreed and stipulated as follows:

That Valero Transmission, L.P. shall remit to the Railroad Commission of Texas, a private contribution in the amount of FIVE THOUSAND DOLLARS ($5,000.00), as authorized by §§89.084(a) and 91.111(c)(3) of the Texas Natural Resources Code, for deposit in the Oil-field Cleanup Fund in lieu of the Railroad Commission referring this matter to the Attorney General for a penalty action.

Done this 28th day of August, 1995, in Austin, Texas.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY

VALERO TRANSMISSION, L.P., AGREES AND STIPULATES ONLY TO THE TERMS OF THE SETTLEMENT AGREEMENT:

Attorney for Valero Transmission, L.P.

VALERO TRANSMISSION, L.P.

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION

BARRY WILLIAMSON, *CHAIRMAN*
CAROLE KEETON RYLANDER, *COMMISSIONER*
CHARLES R. MATTHEWS, *COMMISSIONER*

CAROLE VOGEL, *DIRECTOR*
LARRY BORELLA, ASST. *DIRECTOR*
OIL & GAS SECTION

OIL AND GAS DOCKET NO. 10-0207681

COMMISSION-CALLED PROCEEDING TO GIVE D-S PIPE LINE CORPORATION AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AS TO ITS TEXAS PLAINS PANHANDLE GATHERING SYSTEM, CARSON, GRAY, HUTCHINSON, AND WHEELER COUNTIES, TEXAS

APPEARANCES:

FOR RESPONDENT:	**RESPONDENT:**
John W. Camp W. E. (Champ) Turner Preston Boyd Bill Thompson Martin Moises	D-S Pipe Line Corporation

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE CASE HEARD:	March 29, 1995
HEARD BY:	Meredith Kawaguchi, Hearings Examiner Doug Johnson, Technical Examiner
PFD CIRCULATION DATE:	May 30, 1995
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

The Commission called this hearing to give D-S Pipe Line Corporation ("respondent" or "D-S Pipe Line") an opportunity to show cause why it should not be found in violation of Statewide Rule 73, which provides that "no pipeline shall disconnect from any well or lease without first obtaining permission from the Commission, or without the written consent of the operator." D-S Pipe Line was a common carrier oil pipeline connected to wells located on approximately 380 leases producing from the Panhandle Field. In September 1994 D-S Pipe Line ceased pipeline operations and proceeded to disconnect its facilities which had been connected to these oil wells. Although D-S Pipe Line ceased transporting oil, no operators have filed an objection with the Commission or objected to representatives of the respondent.

D-S Pipe Line appeared through its representatives, offering testimony and evidence discussed herein that pipeline operations had to be terminated for environmental and economic reasons. Such cessation of operations was done without depriving producers of a market for their production.

On September 27, 1994, D-S Pipe Line informed the Commission by letter that "effective immediately, D-S Pipe Line Corporation will cease operating the Panhandle gathering pipeline and seek consent from all operators to disconnect all 368 leases currently connected to such Panhandle gathering pipeline."

D-S Pipe Line did indeed disconnect all wells on its Texas Plains Panhandle Gathering System in September 1994. The issues in this proceeding are whether D-S Pipe Line violated Statewide Rule 73 and whether the Commission should assess a penalty for violations if they occurred.

Statewide Rule 73(a) states: "No pipeline shall disconnect from any well or lease without first obtaining permission from the Commission, or without the written consent of the operator." This provision mirrors Section 111.025 of the Texas Natural Resources Code (TNRC). Section 111.263 of the TNRC allows the state to recover a penalty of not less than $100 nor more than $1,000 for each violation of Section 11.025, or a rule promulgated by the Commission under that section. Each day a violation continues constitutes a separate offense. TNRC, §111.263(a).

DISCUSSION AND OPINION

D-S Pipe Line does not question that it violated Rule 73 but argues that the violations were technical only, because D-S informed the Commission that it was ceasing operations and no producer has objected to termination of service.

Although no producer objected to the disconnection, D-S Pipe Line did not present at hearing a written consent to the disconnection by any operator. Therefore, D-S Pipe Line must obtain the permission of the Commission to do what the company has done already. The system in question was disconnected in September, purged in December, and is presently empty.

D-S Pipe Line's evidence at hearing demonstrated that the system, 312 miles of pipe covering four counties, has been riddled with leaks. The system has averaged 118 leaks per year for the last eight years. Humble Oil built the system in the 1920s. D-S Pipe Line and Scurlock Permian acquired it in 1976. The system gathered crude oil from approximately 380 leases and 99 producers and delivered the oil to D-S Pipe Line's refinery on the northern end of the system.

Because there are two major waterways (Canadian River and Red River) crossing the system and numerous creeks that feed into the waterways, D-S Pipe Line is concerned about its environmental liability in case of a major leak.

Also, the company wished to abandon the system because its operation had become uneconomical. From September 1993 to August 1994 the system generated an after tax net income of $41,000. The wells connected to the system produced only a third of 1976's production, the year D-S Pipe Line acquired the system. The average daily throughput at the time of abandonment was 3,289 barrels of oil. Over 90% of the leases have an average daily production of three to five barrels. As a result, most of the producers on the system require transportation service no more than once a month or once every two months. The $41,000 of net income would not provide sufficient funds to upgrade the system and would not cover any depreciation expense. If a portion of the depreciation expense for storage facilities used in conjunction with the system is allocated to the system, the after tax return drops to 1.51%. A complete repair of the existing system would cost approximately $1,461,000. To recoup that amount, the company would need to increase its tariff twenty cents (from 45¢ per BO to 65¢ per BO) to achieve a return of 7.00%.

D-S Pipe Line generally must spend about $1,230 to repair a leak with a clamp. When it has to replace pipe, the cost runs approximately $1,885. Leaks that require environmental clean-up can result in additional expenses of approximately $5,000 due to the stringency of environmental regulations. If D-S Pipeline continues to average 100 leaks a year, it could incur substantial repair costs that would not be covered by net income at recent levels.

No producer was denied a market because of the disconnection. Alternate transportation arrangements were made before the disconnection occurred. D-S Pipe Line was merely the transporter of the oil; its gathering charges were paid by the purchasers of

the crude. Therefore, alternate transportation facilities were arranged by the purchasers. Diamond Shamrock, an affiliate of D-S Pipe Line who purchases approximately 65% of the production from the leases in question, arranged for Mission Petroleum Carriers to truck the oil to market connections.

Other buyers of the leases' volumes are Scurlock Permian, Texaco, and Phillips Pipeline, all of whom have arranged alternate means of transportation for producers formerly connected to D-S Pipe Line. D-S Pipe Line's Senior Crude Oil Buyer testified that the area in which the pipeline gathered is laced with pipelines in "spaghetti bowl" fashion, so that there has been the availability of other pipeline facilities. The buyers who pay the transportation charges arranged in large part for carriage by their own trucking or pipeline affiliates in the area.

All 99 producers received notice of this hearing and none appeared or registered a written objection to the disconnection.

RECOMMENDATION

Based on the foregoing evidence in the record as a whole, the examiners recommend that the Commission issue permission to D-S Pipe Line to abandon its Panhandle Gathering system as the system is depicted on Exhibits 1 - 5.

However, the examiners believe a penalty is warranted for D-S Pipe Line's violations of Section 111.025 of the Texas Natural Resources Code and Statewide Rule 73 promulgated thereunder. Since the violations do not relate to safety or the prevention or control of pollution, it will be necessary to refer this matter to the Attorney General to institute a civil action to recover the penalty, pursuant to Section 111.263 of the Texas Natural Resources Code.

D-S Pipe Line argues that no penalty should be recommended because D-S Pipe Line informed the Commission of the need to cease operations and kept the Commission advised that no producer had raised an objection.

On the contrary, D-S Pipe Line stated to the Commission that "effective immediately" it was ceasing operations "due to possible safety and environmental risks in the future." Letter to Richard Buerger dated September 27, 1994. It also indicated that by copy of the letter it was requesting each operator's written consent to disconnect. The Commission responded to the letter as follows:

> Since your statement that 'the pipeline poses possible safety and environmental risks in the future' indicates that you do not have a current problem, the Commission will assume that connections will remain in place until consent forms have been received from all operators. When all consent forms have been received and submitted, the Commission will consider abandonment of the line. If this matter causes you immediate concern, you may wish to call a hearing to abandon the line without operator consent.

Letter from Richard Buerger dated September 23, 1994.

D-S Pipe Line simply proceeded with abandonment without consent forms and without requesting a hearing. The Commission's response belies D-S Pipe Line's assertion that the Commission acquiesced to its immediate cessation of operations. The Commission continued to ask D-S Pipe Line to provide proof of operator consent. D-S Pipe Line replied that rather than operator consent, it deemed it more efficient to notify operators of the disconnection and the need to file new Form P-4s to reflect the change of gatherers and/or to sign a new contract with Diamond Shamrock. The notice to producers states: "This letter will serve as written notice that Diamond Shamrock will 'shut down' the D-S pipeline gathering system on September 15, 1994." This does not sound like a request to obtain consent, as D-S Pipe Line represented to the Commission it would do. Rather, it simply announces a fact.

D-S Pipe Line acted without Commission permission or operator consent although it was informed by the Commission that either was a pre-abandonment requirement under Rule 73. The examiners recommend a penalty of $5,000.00 and initiation of an action by the Attorney General to recover that amount.

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

FINDINGS OF FACT

1. At least ten (10) days notice was given to applicant D-S Pipe Line Corporation and to all operators served by D-S Pipe Line Corporation's Texas Plains Panhandle Gathering System in Carson, Gray, Hutchinson, and Wheeler Counties, Texas.

2. D-S Pipe Line operated and managed a pipeline (Permit #0138) in Texas for the transportation of crude petroleum to or for the public for hire.

3. D-S Pipe Line acquired the system in 1976. The system is in excess of seventy years old and contains over 300 miles of pipe which gathered crude oil from wells located on approximately 380 leases.

4. D-S Pipe Line ceased gathering operations in September 1994 and disconnected all wells; the System was purged in December 1994.

5. D-S Pipe Line did not obtain the written consent of all operators served by the System to the disconnection and did not request a hearing to abandon the System without operator consent.

6. The Texas Plains Panhandle Gathering System has averaged 118 leaks per year for the years 1987-1994.

7. The average expense to repair a leak is $1,230, and $1,885 if pipe must be replaced.

8. The expense estimate to clean up the site after a leak in accordance with regulatory standards is $5,842.

9. Major waterways, such as the Canadian and Red Rivers, cross and are in proximity to the System.

10. A minimum upgrading and repair cost for the System would be $1.4 million, which would include installation of the equipment.

11. The average daily throughput in the System is 3,289 barrels of oil with over 90% of the connected leases having an average production of three to five barrels of oil per day.

12. The last year of operation the System earned a net income of $41,000.

13. No producer has been denied a market because of the disconnection.

14. No producer has registered a written objection to the disconnection.

15. D-S Pipe Line did not request written consent from operators; rather, D-S Pipe Line notified operators that the System would be shut down on September 15, 1994.

CONCLUSIONS OF LAW

1. Notice of hearing was timely given to all persons required to be notified by Statewide Rule 73.

2. The Commission has jurisdiction over the subject matter of this proceeding.

3. D-S Pipe Line is a common carrier.

4. The abandonment of D-S Pipe Line's Texas Plains Panhandle Gathering System is in the public interest.

5. D-S Pipe Line violated Statewide Rule 73 and Section 111.025 of the Texas Natural Resources Code by abandoning the System without the Commission's permission or the written consent of all operators on the System.

6. A person who violates Section 111.025 of the Texas Natural Resources Code, and a rule promulgated thereunder, is subject to a penalty of not less than $100 nor more than $1,000 for each offense recoverable in the name of the state in a district court in Travis County. Each day a violation continues constitutes a separate offense.

Respectfully submitted,

Meredith Kawaguchi

Meredith Kawaguchi
Legal Examiner

Doug Johnson
Technical Examiner

MFK\ds

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET
NO. 10-0207681

RE: COMMISSION-CALLED PROCEEDING TO GIVE D-S PIPE LINE CORPORATION AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AS TO ITS TEXAS PLAINS PANHANDLE GATHERING SYSTEM, CARSON, GRAY, HUTCHINSON, AND WHEELER COUNTIES, TEXAS

FINAL ORDER

The Commission finds that, after statutory notice in the above-numbered docket heard on March 29, 1995, the presiding examiners have made and filed a report and recommendation containing findings of fact and conclusions of law, for which service was not required; that the proposed application is in compliance with all statutory requirements; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the examiners' report and recommendation, the findings of fact and conclusions of law contained therein, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is ORDERED by the Railroad Commission of Texas that D-S Pipe Line Corporation's abandonment of its Texas Plains Panhandle Gathering System is approved.

It is further ORDERED that this proceeding be referred to the Texas Attorney General for the institution of a civil proceeding to recover a penalty of $5,000 in the name of the State.

Done this _____ day of _____, 1995.

RAILROAD COMMISSION OF TEXAS

_____
CHAIRMAN

_____
COMMISSIONER

_____
COMMISSIONER

ATTEST:

_____
SECRETARY

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 10-0207681

RE: COMMISSION-CALLED PROCEEDING TO GIVE D-S PIPE LINE CORPORATION AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AS TO ITS TEXAS PLAINS PANHANDLE GATHERING SYSTEM, CARSON, GRAY, HUTCHINSON, AND WHEELER COUNTIES, TEXAS

ORDER GRANTING MOTION FOR REHEARING

D-S Pipe Line Corporation timely filed a Motion for Rehearing in the captioned cause requesting that the Commission vacate its Order issued on July 18, 1995, insofar as the order requires a referral of the proceeding to the Attorney General for collection of a civil penalty. As settlement of this matter and in lieu of referral to the Attorney General, D-S Pipe Line Corporation requests that the Commission accept a private contribution in the amount of FIVE THOUSAND DOLLARS ($5,000.00) for deposit in the Railroad Commission of Texas Oil Field Cleanup Fund.

The Commission has considered D-S Pipe Line Corporation's Motion for Rehearing and is of the opinion that the motion has merit.

It is therefore ORDERED that the Motion for Rehearing is GRANTED; that portion of the July 18 Order referring D-S Pipe Line Corporation to the Attorney General is vacated.

It is further ORDERED that an amended order shall be entered in accordance with this ruling.

Done this 29 day of August, 1995.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:
SECRETARY

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET
NO. 10-0207681

RE: COMMISSION-CALLED PROCEEDING TO GIVE D-S PIPE LINE CORPORATION AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AS TO ITS TEXAS PLAINS PANHANDLE GATHERING SYSTEM, CARSON, GRAY, HUTCHINSON, AND WHEELER COUNTIES, TEXAS

FINAL ORDER

The Commission finds that, after statutory notice in the above-numbered docket heard on March 29, 1995, the presiding examiners have made and filed a report and recommendation containing findings of fact and conclusions of law, for which service was not required; that the proposed application is in compliance with all statutory requirements; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the examiners' report and recommendation, the findings of fact and conclusions of law contained therein, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is ORDERED by the Railroad Commission of Texas that D-S Pipe Line Corporation's abandonment of its Texas Plains Panhandle Gathering System is approved.

It is further ORDERED that this proceeding be referred to the Texas Attorney General for the institution of a civil proceeding to recover a penalty of $5,000 in the name of the State.

Done this 18th day of July, 1995.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:
SECRETARY

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL AND GAS DOCKET
NO. 10-0207681

RE: COMMISSION-CALLED PROCEEDING TO GIVE D-S PIPE LINE CORPORATION AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AS TO ITS TEXAS PLAINS PANHANDLE GATHERING SYSTEM, CARSON, GRAY, HUTCHINSON, AND WHEELER COUNTIES, TEXAS

FINAL ORDER

The Commission finds that, after statutory notice in the above-numbered docket heard on March 29, 1995, the presiding examiners have made and filed a report and recommendation containing findings of fact and conclusions of law; that the proposed application is in compliance with all statutory requirements; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the examiners' report and recommendation, the findings of fact and conclusions of law contained therein, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is ORDERED by the Railroad Commission of Texas that D-S Pipe Line Corporation's abandonment of its Texas Plains Panhandle Gathering System is approved.

In settlement of this matter, the Railroad Commission of Texas and D-S Pipe Line Corporation have agreed and stipulated as follows:

That D-S Pipe Line Corporation has placed in the possession of the Railroad Commission of Texas a private contribution in the amount of FIVE THOUSAND DOLLARS ($5,000.00), as authorized by §89.084(a) and §91.111(c)(3) of the Texas Natural Resources Code, for deposit in the Railroad Commission of Texas Oil Field Cleanup Fund, in lieu of the Railroad Commission referring this matter to the Attorney General for a penalty action.

Done this 29th day of August, 1995.

RAILROAD COMMISSION OF TEXAS

Barry Williamson
CHAIRMAN

COMMISSIONER

Carole Keeton Rylander
COMMISSIONER

ATTEST:
Ruth Williams
SECRETARY

BARRY WILLIAMSON, *CHAIRMAN*
CAROLE KEETON RYLANDER, *COMMISSIONER*
CHARLES R. MATTHEWS, *COMMISSIONER*

MARY ROSS MCDONALD, *ACTING GENERAL COUNSEL*
LARRY BORELLA, *ASST. DIRECTOR*
OIL & GAS SECTION

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL

OIL AND GAS DOCKET NO. 01-0208194

COMMISSION-CALLED HEARING ON THE COMPLAINT OF MARK IV OPERATING, INC. TO GIVE VALERO TRANSMISSION, L.P., AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AS TO ITS 16" PIPELINE IN WILSON COUNTY, TEXAS.

APPEARANCES:

FOR RESPONDENT:	**RESPONDENT:**
Andy Taylor (Attorney) Steve Webb Leroy Lamprecht Lynne Chenault	Valero Transmission, L.P.
James Mann (Attorney) Robert Cox	Midcon Texas Pipeline Corp.
Larry Gunn Carl Lambeck	City of Stockdale
FOR COMPLAINANT:	**COMPLAINANT:**
Dick Marshall (Attorney) Kurt Von Plonski Alfred Bacon Gene Day	M IV Ops., Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	February 9, 1995
DATE CASE HEARD:	May 26, 1995
HEARD BY:	Jeffrey T. Pender, Hearings Examiner Charles Dickson, Technical Examiner
PFD CIRCULATION DATE:	November 6, 1995
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

Valero Transmission, L.P. ("Valero") owns a 16-inch pipeline in Wilson County through which it transported natural gas for Midcon Texas Pipeline Corporation ("Midcon"). Midcon purchased approximately 150-200 MCFG/day from the complainant, Mark IV Operating, Inc. ("M IV"), and transported it through its line to a delivery point at Valero's 16" pipeline. The gas delivered to Midcon was from M IV's wells on the Jerome Flieller, Jr. (13924), the Reed, D.P.(13926) and the Glenwinkle Unit No. 1 (13925) Leases in the Cindy Ann (Austin Chalk, Oil) Field ("M IV's wells").

On the complaint of its customer, the City of Stockdale ("City"), that the BTU content of the gas, as delivered, exceeded safe levels, Valero investigated and determined that M IV was the source of the high BTU gas. Valero has refused to take M IV's gas and M IV has filed this complaint.

APPLICABLE LAW

Statewide Rule 73(a) requires that:

> "No pipeline shall disconnect from any well or lease without first obtaining permission from the Commission, or without the written consent of the operator."

In a recent Rule 73 case also involving Valero (Docket No. 04-0207250; Final Order signed August 29, 1995) the Commission found that Valero violated Rule 73(a) by "disconnecting" an affected operator before seeking its written consent. Rule 73(a) requires either prior permission from the Commission or prior written consent from the operator before disconnecting. The Commission also found that when Valero abandoned its plans to resume service, the respondent effectively "disconnected" under the Rule.

However, not all suspensions of service constitute a disconnect under Rule 73(a). Because Section 111.091 of the Texas Natural Resources Code permits the Commission to order the maintenance of only "reasonable connections", the Commission must grant permission to disconnect a producer if to do otherwise would be unreasonable under the circumstances. Section 111.091, however, does not define the term "reasonable connection." In determining whether a connection is reasonable, one must strike a balance between the need to preserve the Commission's ability to prevent undue discrimination and waste and the need for pipeline operators to be able to conduct legitimate pipeline operations without unnecessary governmental interference. Therefore, when determining whether a disconnection in violation of Rule 73(a) has occurred, the following are relevant considerations:

1. The existence of contract provisions giving the pipeline the right to disconnect

under the relevant circumstances or other evidence of written consent by the producers;

2. Whether the pipeline can make a profit from maintaining the connection;
3. Risk to the environment and public health and safety in maintaining the connection;
4. The potential for off-lease drainage by competing wells;
5. Whether the pipeline takes from other operators in the field.
6. Whether there will be any unjust discrimination between fields as a result of the suspension of service.
7. Reasonableness of the period of time required to do the maintenance or other operations proposed or conducted during the suspension of service;
8. The good faith and diligence of the pipeline in conducting the work during the suspension of service;
9. The availability of alternate transportation;
10. The necessity for venting/flaring gas and the amount;
11. The risk of permanently losing a well whose production is shut-in because of the suspension of service and the amount of potentially lost production; and
12. Other circumstances that have bearing on maintaining the balance between the need to preserve the Commission's ability to prevent undue discrimination and waste and the need for pipeline operators to be able to conduct legitimate pipeline operations without unnecessary governmental interference.

DISCUSSION OF THE EVIDENCE

In April, 1994, City of Stockdale residents began complaining that the gas delivered by the City burned with a very hot, rich, yellow-orange flame. The City notified its supplier, Valero, that it was delivering gas with an unacceptable high BTU content. After investigating the matter, both Valero and the City agreed that the BTU level was high enough to cause concern for public safety.

As explained by Mr. Webb, an engineer for Valero, high BTU gas does not burn completely at a low pressure, residential burner tip. This incomplete combustion causes the formation of excess carbon monoxide. In some instances, the heavier hydrocarbon fraction (gasoline, kerosene and diesel) condenses out of the gas and gathers in low spots of the gas line or escapes, unburned, at the burner tip.

Mr. Webb testified that Valero experienced a similar situation with the City of Pearsall where the delivery of 1180 BTU/cu.ft. gas was responsible for causing several fires at residential water heaters. After discovering the cause of the fires Valero started requiring all new Austin Chalk tie-ins, producing casinghead gas, to deliver at 1,100 BTU/cu.ft., and maintain alarms and shut downs on all systems.

Valero determined that the high BTU gas entering the City of Stockdale's distribution system was coming from Midcon's connection which received its gas, exclusively, from M

IV's wells. The BTU content of the gas upstream from Midcon's reception point measured only 1,020 BTU/cu.ft. After the receipt of M IV's gas, the stream measured in the 1,200 BTU/cu.ft. range, 150 BTU/cu.ft. over the limit which Valero has endeavored to maintain in its contract with the City. In June and July, 1994, when M IV delivered none of its gas to the City, the BTU content at the City gate dropped from an average of 1,175 to 1013 BTU/cu.ft. In May, 1994, Valero asked M IV to shut-in its wells that feed the Midcon line.

Between May and December, 1994, M IV spent over $20,000 and committed to a 1 year, $2,060/month rental agreement to install refrigeration and drier equipment to reduce/eliminate the liquids problem. On September 2, 1994, M IV arranged to have Midcon "pig" its 1 1/2 mile line from the dehydrator on the Glenwinkle Lease to Valero's line. No liquids were recovered. The test was witnessed by M IV's pumper, Dale Thorman and a technician with Compressor Systems, Inc., Allen Remmer. M IV ran its gas for another two weeks when Valero, again, told them to shut-in. Valero claimed that M IV did not get the BTU content below 1,100 BTU/cu.ft., a level Valero believed would be acceptable. M IV indicated that a refrigeration unit capable of reducing the BTU content below 1,100 BTU/cu.ft. would be cost prohibitive.

At an October meeting with the City and Valero, M IV offered to sell its gas at whatever the "lean line" specifications were and forego any BTU bonus. The City agreed to the arrangement and consented to a 30-day test period. Valero would not agree to the test without an indemnification from Midcon for any damages flowing from the receipt of M IV's gas. In December, Midcon refused Valero's request for indemnification. After determining that the nearest connection was 1.5 miles to the south, M IV reclassified the wells as oil wells and obtained flaring authority. On February 3, 1995, Valero asked the Commission to approve its decision to discontinue transporting Midcon's (M IV) gas. On February 10, 1995, M IV filed its complaint with the Commission.

Since December, 1994, M IV has flared an average of 1,451 MCF/month from the three affected leases, well within its permits. An estimated 18 barrels per month of "natural gasoline" is also flared.

All parties agree that if the dehydrator was repositioned upstream from the refrigeration unit, an additional reduction in BTU content was possible. M IV requested that the hearing be temporarily adjourned to test the idea. Valero agreed that the idea was probably technically sound, but that it would not, at this time, commit to taking the gas. The hearing was continued for 60 days to allow M IV and Valero to conduct the test.

In a letter to the examiners dated July 12, 1995, Valero indicated that, again, it would not accept M IV's gas; its reasons being the same as those stated earlier at the hearing. M IV pointed out in its response to Valero's letter that Valero refused to cooperate in conducting any test despite Valero's apparent agreement at the hearing to do so and despite M IV's repeated attempts to contact Valero representatives to set up the test. M IV stated that it was still ready, willing, and able to move the dehydrator, install primary and

secondary kill switches and install gas scrubbers at the Midcon-Valero reception point and at the City gate.

In the same post-hearing letter of July, 12, 1995, Valero raised, for the first time, that it was contractually not obligated to take M IV's gas if it exceeded 0.2 gallons of "natural gasoline" per MCF and that by M IV's own testimony the gas contains in excess of 0.5 gallons per MCF.

EXAMINER'S OPINION

The examiners believe that Valero's actions do not constitute a "disconnect" under Rule 73(a). Valero's actions were ordinary and prudent pipeline operations not requiring Commission approval. Though Valero was making a profit operating the connection, it refuses to continue service due to safety reasons. Undue discrimination has not occurred in this case. There are no other wells served by Midcon's line and the record contains no evidence that Valero takes high BTU gas from any other producer into its 16" pipeline in Wilson County.

Valero demonstrated that M IV's gas was the cause of the high BTU content of the gas entering the City's distribution system. Its Exhibit 4 shows that the BTU content of the gas delivered to the city decreased from an average of 1,175 in April and May, 1994 to an average of 1,013 in the months following M IV's disconnection. Valero's experience with the City of Pearsall demonstrates the need to keep the BTU content low when the gas will be ultimately used for residential consumption.

As set out in Art. VI.G of the Valero/Midcon contract, Valero is not obligated to transport Midcon's gas if it contains "in excess of two-tenths (0.2) gallons per thousand (1000) cubic feet of those certain liquefiable hydrocarbons commonly referred to as natural gasoline..." (defined as the i-C4+ fractions of the gas). It is undisputed that the gas at the outlet of the Glenwinkle Lease exceeds these specifications, even with the refrigeration and dehydration equipment in line. M IV Exhibit 8 indicates that the gas will yield 0.526 gallons per MCF, over twice the amount permitted in the contract.

Valero maintains that in order to insure the safety of the City residents, it would take M IV's gas only if M IV could reduce the BTU content below 1,100 BTU/cu.ft. and provide assurance that the connection would shut down automatically if the BTU content ever exceeded that level. (tr. 17, 9-18). Valero's position is reasonable. However, because a test of the modified system's ability to deliver gas within these specifications has never been conducted, the examiners recommend that M IV can demonstrate that it is able to consistently supply gas at 1,100 BTU/cu.ft. or less, at the outlet of the Glenwinkle Lease, the Commission should require Valero, after notice and opportunity for a hearing, to reconnect at the Midcon-Valero reception point and resume taking M IV's gas.

The examiners believe this recommendation is necessary to prevent the waste of

substantial quantities of gas, to adequately protect the safety of the citizens of the City of Stockdale and will honor the expressed intent of the parties.

FINDINGS OF FACT

1. Notice of hearing in Docket No. 01-0208194 was given to Valero Transmission L.P. ("Valero") and to all affected persons on March 23, 1995 by first class mail. Valero attended the hearing represented by its attorney, Andy Taylor.

2. Prior to December, 1994, Mark IV Operating, Inc. ("M IV") delivered gas from its Jerome Flieller, Jr. (13924), Reed, D.P., (13926) and the Glenwinkle Unit No. 1 (13925) Leases, ("the subject wells") to a line owned by Midcon Texas Pipeline Corporation ("Midcon"). Midcon purchased approximately 150-200 MCFG/day from M IV and transported it through its line ("Midcon line") to a delivery point ("Midcon-Valero reception point") at Valero's 16" pipeline in Wilson County.

3. In May, 1994, Valero requested M IV to shut in the subject wells because the gas from those wells had an unacceptably high BTU content.

4. The natural gas from the subject wells contains in excess of 1,100 BTU/cu.ft. and presents an unreasonable risk to the safety of the people of the City of Stockdale, Texas. The burning of natural gas containing in excess of 1,100 BTU/cu.ft. in residential water heaters creates a fire hazard. The excess carbon monoxide generated by the burning of high BTU content gas also creates a public safety hazard.

5. M IV installed refrigeration and dehydration equipment at a cost of $20,000 and made a 1-year lease commitment at $2,060/month in an effort to reduce the BTU content. M IV was able to reduce the BTU content to only 1,109 BTU/cu.ft.

6. In December, 1994, after Valero continued to refuse to take the gas, M IV reclassified the subject wells as oil wells and obtained permits to flare a total of 241 MCFD from the subject wells. M IV flares an average of 1,451 MCF/month and 18 barrels/month of "natural gasoline" that would otherwise be transported through the Midcon line to Valero's 16" pipeline.

7. Valero and M IV agreed that Valero would take the gas from the subject wells only if the BTU content could be brought below 1,100 BTU/cu.ft. and M IV provides adequate assurances that the safety of the residential customers in the City of Stockdale would not be compromised.

8. At the hearing, Valero, M IV and the City of Stockdale tentatively agreed to conduct a test to determine if certain reconfigurations of equipment and the installation of certain safety devices would lower the BTU content of the gas sufficiently and

provide adequate safety assurances. The hearing was continued to give the parties an opportunity to conduct the test. M IV was ready, willing and able to perform the test but Valero refused to participate.

9. Requiring Valero to resume taking M IV's gas if M IV can deliver gas from the subject wells at less than 1,100 BTU/cu.ft., is necessary to prevent the waste of a substantial amount of hydrocarbons.

10. Valero did make a profit operating and servicing the connection with Midcon.

11. There will be no undue discrimination between producers in the Cindy Ann (Austin Chalk) Field if Valero is permitted to permanently disconnect the subject wells. M IV is the only operator in the Cindy Ann (Austin Chalk, Oil) Field serviced by the Midcon line.

12. The nearest alternative gas transportation pipeline is about 1.5 miles to the south and is owned by Union Ridge Oil & Gas.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.

2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.

3. Valero has not violated Statewide Rule 73(a) by refusing to take M IV's gas at the Midcon-Valero connection.

RECOMMENDATION

The examiner's recommend that the above findings and conclusions be adopted.

Respectfully submitted,

Jeffrey T. Pender
Hearings Examiner

Charles Dickson
Technical Examiner

JTP/bjw

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION
OIL AND GAS SECTION

OIL & GAS DOCKET NO. 01-0208194

RE: COMMISSION-CALLED HEARING ON THE COMPLAINT OF MARK IV OPERATING, INC., TO GIVE VALERO TRANSMISSION, L.P., AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE FOUND IN VIOLATION OF STATEWIDE RULE 73 AS TO ITS 16' PIPELINE IN WILSON COUNTY, TEXAS.

FINAL ORDER

The Commission finds that, after statutory notice in the above-numbered docket, heard on May 26, 1995, the presiding examiners have made and filed a report and proposal for decision containing findings of fact and conclusions of law, which was served on all parties of record, and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the proposal for decision, the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own the findings of fact and conclusions of law contained in the proposal for decision, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is **ORDERED** by the Railroad Commission of Texas that the action against Valero Transmission, L.P. ("Valero") for violations of Statewide Rule 73(a) as to its 16" pipeline in Wilson County ("subject pipeline") is hereby **DISMISSED.**

It is **FURTHER ORDERED** by the Railroad Commission of Texas that upon a showing by Mark IV Operating, Inc., ("M IV") that it can deliver gas containing less than 1,100 BTU/cu.ft., on a saturated basis, to the Glenwinkle Unit No. 1 (13925) Lease outlet ("outlet"); such showing to be made within ninety (90) days from the date that this order becomes final, Valero shall resume taking the gas delivered to the outlet.

It is **FURTHER ORDERED** by the Commission that this order shall not be final and effective until 20 days after it is actually mailed to the parties by the Commission; provided that if a motion for rehearing is filed by any party at interest within such 20-day period, this order shall not become final until such motion is overruled, or if rehearing is granted, this order shall be subject to further action by the Commission.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Done this 12th day of December, 1995.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY

CAROLE KEETON RYLANDER, *CHAIRMAN*
CHARLES R. MATTHEWS, *COMMISSIONER*
BARRY WILLIAMSON, *COMMISSIONER*

MARY ROSS MCDONALD, *ACTING GENERAL COUNSEL*
LARRY BORELLA, *ASST. DIRECTOR*
OIL & GAS SECTION
LEGAL DIVISION

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
January 22, 1996

OIL AND GAS DOCKET NO. 03-0210393

APPLICATION OF MIDCON TEXAS PIPELINE CORP. PURSUANT TO STATEWIDE RULE 73 TO DISCONNECT ITS INDEX 61 PIPELINE, POLK, HARDIN AND JEFFERSON COUNTIES, TEXAS

Heard by: Meredith Kawaguchi, Legal Examiner

Procedural History

Application received: October 2, 1995
Hearing held: December 7, 1995

Appearances

	Representing
James E. Mann	MidCon Texas Pipeline Corp.

EXAMINER'S REPORT AND RECOMMENDATION

STATEMENT OF THE CASE

On December 7, 1995, a hearing was held on MidCon Texas Pipeline Corp.'s ("MidCon") unprotested application to retire the northern portion of its Index 61 natural gas pipeline in Polk, Hardin and Jefferson Counties, Texas. The section of pipeline MidCon wishes to retire consists of approximately 35 miles of a 67-year old pipeline that was originally constructed with a combination of acetylene weld and Dresser couplings, because electric arc welding was not technically feasible for field construction in 1928. The retirement of Index 61 is part of a three-year plan to retire all Dresser coupling lines.

There are only three supply sources connected to Index 61: Delhi Gas Marketing Corp. ("Delhi"), Jandar Exploration, L.C. ("Jandar") and UMC Petroleum Corp. ("UMC"). Delhi has signed a consent to have the Index 61 connection with Delhi disconnected. Jandar has signed no written consent nor has it filed a protest. Moreover, Jandar has not delivered any natural gas into the Index 61 system in the past year. UMC is delivering gas into the Index 61 system, but has filed no protest.

AGE AND CONDITION OF THE PIPELINE

MidCon has identified the northern section of Index 61 as having a higher risk than most normal pipelines due to the coating condition, the pipe condition and the fact that it was constructed with Dresser couplings. Index 61 was built in 1928 and is now 67 years old. At the time it was constructed, the pipe was coated with a very thin layer of coal-tar enamel coating. The pipe was originally designed to operate at 660 psig, but now has a maximum allowable operating pressure of 345 psig due to its condition.

The pipeline was not constructed with electric welding. "Double joints" of pipe were constructed in the yard before being taken out to the field. The double joints were formed by butting two joints of pipe together and rolling the pipe joints during the acetylene welding. The double joints were transported to the field and the double joint sections were connected to each other with Dresser couplings. Dresser couplings are compression fittings which have a rubber seal to hold the gas in the pipe. Such fittings offer no mechanical strength to prevent the pipes from pulling apart. The earth overburden over the pipeline in the ditch holds the pipeline in place. Such couplings are analogous to the type of fittings used to connect the trap underneath a kitchen sink.

The northern section of Index 61 has experienced significant coating failure as evidenced by Exhibits 6 and 7. "Cathodic protection" is a method of reducing pipeline corrosion by inducing a small DC voltage and current through the length of the pipeline. The coating condition is indicated by the amount of electric current needed to maintain that cathodic protection. The worse the coating, the more current needed to protect the pipeline. Exhibit 6, for example, shows that 140 amps per mile is needed to provide cathodic protection in a section of the line between the 30 and 35-mile markers. The amperage required indicates that 75% of the coating has failed in that area. Some sections of the line require four to five rectifiers per mile in order to maintain cathodic protection. A power line has been constructed along the pipeline right-of-way solely to provide the electricity required to maintain cathodic protection on the pipeline. Corrosion has become severe in some sections of the pipeline and MidCon has experienced up to 118 leaks in the northern section.

Dresser coupling "pullout" is of particular concern on the Index 61 pipeline. As noted, the Dresser couplings themselves do not prevent the pipe from moving laterally in the ditch, but rather such movement is prevented by the dirt around the pipeline. In areas where the cover over the pipeline has been reduced or overburden has been removed during maintenance work, the pipeline sections can move and pull out of the Dresser couplings. Once the pipe starts moving, it may become a projectile with a gas force behind it. There has been at least one Dresser coupling pullout resulting in an explosion and a fire on Index 61. Fortunately the pullout occurred in a remote area and there were no injuries or fatalities. MidCon desires to retire all Dresser coupled systems before those systems become liabilities.

THE NORTHERN SECTION OF INDEX 61 IS NOT AN ECONOMICALLY-VIABLE PIPELINE SYSTEM

The only production on the system is from UMC. Exhibit 4 demonstrates that production into Index 61 averages 58.03 MMBtu a day. Neither Delhi nor Jandar have delivered any volumes into the pipeline in the last year. The annual operating and maintenance cost of the northern 35 miles of Index 61 is $156,403 (Exhibit 5). With only 58 MMBtu/d on the system, the average operating and maintenance cost per MMBtu is $7.27. Replacement of Index 61 with a similar line would cost $300,000 per mile.

Due to the condition of the line, the northern section of Index 61 can be operated at no more than 345 psig. Due to the low operating pressure of Index 61, it cannot be connected to or integrated with the normal commercial pipeline grid. Most major intrastate and interstate pipelines operate in excess of 600 pounds. Any gas on Index 61 can only be flowed to what few markets are physically located on that pipeline.

ALTERNATE TRANSPORTATION IS AVAILABLE

The MidCon Texas Pipeline Index 62 pipeline is located a few feet away in the same right-of-way as Index 61. The line is available and has always been available for connection. The Index 62 pipeline is a modern, welded steel pipeline. Index 62 operates at normal pipeline pressures and is integrated into the pipeline grid. The Index 62 MAOP varies between 890 pounds and 1,032 pounds.

As noted above, Jandar, Delhi and UMC are the only three connections to Index 61 at this time. Neither Delhi nor Jandar have produced any gas in 1995. Nothing has been done on the pipeline facility to prevent Jandar or Delhi from flowing gas during 1995.

The gas purchase contracts covering the gas flowing into Index 61 are "spot contracts." The contract term runs from month to month. There is no obligation on behalf of the buyer to purchase any quantity of gas and no obligation on behalf of the seller to deliver any quantity of gas. The price is set monthly.

MidCon made all producers on Index 61 an offer to reroute their gas to Index 62 at the producers' expense. Delhi, Jandar and UMC received the same offer as any other producers.

UMC would have to increase its compression in order to connect to Index 62. UMC has indicated to MidCon that it is not economic for them to do so. However, if UMC would commit to enough gas production to eventually pay out facilities, it has been MidCon's practice to provide that cost "up front" for the producer. UMC has not requested any alternative arrangements from MidCon and UMC has not filed a protest in this docket.

MidCon purchases UMC's gas at a meter station. MidCon has no dedication of acreage, wells or leases to the contract. MidCon has been buying the gas from UMC at a sales meter and such gas has not been identified to MidCon as coming from a particular well or wells. UMC simply indicates how much volume UMC will deliver and an agreement is reached on the price. MidCon therefore has no knowledge as to the number or location of UMC's wells behind the point at which it is purchased. MidCon does not know if UMC has another market for the gas or whether UMC can use the gas in lease operations.

FINDINGS OF FACT

1. Notice in Docket No. 03-0210393 was given to the only three entities connected to Index 61 by first class mail. No protests were filed. MidCon appeared at the hearing held on December 7, 195, and presented the testimony in this docket.

2. The northern section of Index 61 is 67 years old and consists of 35 miles of 18" natural gas pipeline.

3. There has been significant corrosion on Index 61 with as many as 118 leaks. Index 61 was originally constructed with a very thin layer of a coal-tar enamel coating which has since deteriorated. In some sections as much as 75% of the coating is no longer on the pipeline.

4. When Index 61 was constructed, such pipelines were built with Dresser couplings rather than being welded together. Dresser couplings do not provide mechanical strength and the pipelines are subject to "pull out" which can result in damage to persons and property.

5. The deteriorated coating on the pipe, the fact that the pipeline is not welded together and the corroded condition of the pipeline creates a safety risk which justifies retirement of the pipeline.

6. The annual operating cost of the northern section of Index 61 is $156,403. Of that amount, approximately $40,000 is spent just for electricity and ground bed replacement to maintain cathodic protection. The average production remaining on Index 61 is 58 MMBtu/d. The average operating and maintenance cost on Index 61 is therefore $7.72 per MMBtu. The pipeline is not economically viable. All production comes from UMC.

7. Of the three connections on Index 61, only one is actually producing gas into the pipeline.

8. The application has not been protested by any producer remaining on the system.

9. All producers were given a uniform offer to connect to Index 62 which is only a few feet away at the producers' expense. However, where producers would commit to delivering enough volumes to pay out needed facilities, it has been MidCon's practice to provide the cost of those facilities for producers.

10. Disconnecting all remaining connections from Index 61 will not result in any discrimination against any producer.

11. The northern section of Index 61 has reached the end of its physical and economic life.

CONCLUSIONS OF LAW

1. Proper notice of hearing was given to all affected persons.

2. The Commission has jurisdiction to grant this application pursuant to Statewide Rule 73.

3. The requirements of Rule 73 have been satisfied by showing that it is reasonable to retire Index 61 due to its physical conditions and lack of economic viability.

EXAMINER'S RECOMMENDATION

Based on the above findings and conclusions, the examiner recommends that the application of MidCon Texas Pipeline Corp. pursuant to Statewide Rule 73 to disconnect its Index 61 Pipeline in Polk, Hardin and Jefferson Counties, Texas be granted.

Respectfully submitted,

Meredith Kawaguchi

Meredith Kawaguchi
Legal Examiner

MFK/ds

Date of Commission Action: January 23, 1996

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
OIL AND GAS SECTION

OIL AND GAS DOCKET
NO. 03-0210393

APPLICATION OF MIDCON TEXAS PIPELINE CORP. PURSUANT TO STATEWIDE RULE 73 TO DISCONNECT ITS INDEX 61 PIPELINE, POLK, HARDIN AND JEFFERSON COUNTIES, TEXAS

FINAL ORDER

The Commission finds that after statutory notice in the above-numbered docket heard on December 7, 1995, the presiding examiner has made and filed a report and recommendation containing findings of fact and conclusions of law, for which service was not required; that the proposed application is in compliance with all statutory requirements; and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the examiner's report and recommendation and the findings of fact and conclusions of law contained therein,hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is ordered by the Railroad Commission of Texas the application of Midcon Texas Pipeline Corp. for approval to disconnect its Index 61 Pipeline pursuant to Statewide Rule 73 in Polk, Hardin and Jefferson Counties, Texas, be and it is hereby approved.

Done this 23 day of January, 1996.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY

CHARLES R. MATTHEWS, *CHAIRMAN*
BARRY WILLIAMSON, *COMMISSIONER*
CAROLE KEETON RYLANDER, *COMMISSIONER*

LINDIL C. FOWLER, JR., *GENERAL COUNSEL*
LARRY BORELLA, *ASST. DIRECTOR*
OIL & GAS SECTION

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL

OIL AND GAS DOCKET NO. 09-0218876

THE APPLICATION OF WARREN PETROLEUM COMPANY, LP PURSUANT TO STATEWIDE RULE 73 TO DISCONNECT THE J.R. LINDLEY, E. MCKINNEY LEASE, WELL NO. 1 AND E. MCKINNEY "A" LEASE, WELL NO. 1, YOUNG COUNTY REGULAR (GAS) FIELD, YOUNG COUNTY, TEXAS

APPEARANCES:

FOR APPLICANT:	**APPLICANT:**
John R. Hayes, Jr. - Attorney	Warren Pet. Co., L.P.
R. Len Hesseltine - Vice President	Warren Pet. Co., L.P.
FOR PROTESTANT:	**PROTESTANT:**
James Lindley	Lindley Oil Properties
Rob Lindley - Vice President	Lindley Oil Properties

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

APPLICATION FILED:	February 27, 1998
NOTICE OF HEARING:	March 18, 1998
DATE CASE HEARD:	April 6, 1998
HEARD BY:	D. W. Ortman, Hearings Examiner T. Richter, Technical Examiner
DATE TRANSCRIPT RECEIVED:	April 31, 1998
PFD CIRCULATION DATE:	May 13, 1998
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

Warren Petroleum Company, L.P. ("Warren") operates a gas gathering system in Young County which it acquired in 1996. In addition to the gathering system and compressor station, Warren acquired the two metering skids measuring gas delivered from Well No. 1 on the E. McKinney "A" Lease and Well No. 1 on the E. McKinney Lease (the "subject wells" and the "subject leases"). Warren has requested permission, pursuant to Statewide Rule 73, to disconnect the subject wells from its gas gathering system. Lindley Oil and Gas Properties, operator of the wells and owner of the 2 mile pipeline connecting the wells to Warren's gathering system, protests.

On December 1, 1990 Lindley entered into a five year contract to sell gas from the subject wells to J. H. Taylor Gas Company. Lindley's contract included a provision which extended the contract until either party gives 30 days notice. In September 1997, Warren notified Lindley that it intended to disconnect the two wells from its gathering system due to the low quality of the gas, caused by the high nitrogen content. Lindley objected and negotiations were conducted pursuant to the Commission's informal complaint procedure. Informal negotiations were unsuccessful and Warren requested a hearing on its application.

Warren maintains that the subject wells produce such a small volume of gas that it is not economic to maintain meter runs that measure the gas. Warren also argues that the nitrogen content of the gas produced exceeds the inlet specifications of its processing plant.

Lindley argues that stimulation of the subject wells may produce larger quantities of gas. Lindley also argues that the gas produced from the wells may be blended with other gas before reaching the conditioning plant to decrease the overall nitrogen content to within the plant specifications.

LEGAL STANDARD

Statewide Rule 73(a) states in part:

> No pipeline shall disconnect from any well or lease without first obtaining permission from the Commission, or without the written consent of the operator.

16 T.A.C. §3.68

The Natural Resources Code imposes a duty on common purchasers to purchase oil or gas "without unjust or unreasonable discrimination between fields in this state." Tex. Nat. Res. Code §111.086(a). The Texas Natural Resources Code permits the Commission to order maintenance of "reasonable connections." Tex. Nat. Res. Code §111.091.

DISCUSSION OF THE EVIDENCE

Applicant's evidence and position:

Warren stated that is in the business of gathering gas and stipulated that Warren is a common purchaser of gas. Warren argued that it is interested in gathering the gas from the Lindley wells if the wells produce at a higher rate than they produced in January and February of 1998. Warren introduced an exhibit documenting the decline in production from the wells for 14 months beginning in January 1997. The average production for the two wells has declined from 14.7 Mcf/D in January 1997 to 2.8 Mcf/D in January and February of 1998.

Warren introduced a separate exhibit evidencing its costs to maintain the two meter runs which measure gas produced by the subject wells. Warren estimates that the value of gas into the pipeline is $2.20/MMBtu (or $1.63/Mcf). Maintaining the two meter runs costs Warren approximately $832/month.

Warren's witness also testified that the wells produce gas containing approximately 27% nitrogen and that its compression plant was not equipped to process gas with a high nitrogen content.

Protestant's evidence and position:

Lindley offered no evidence but testified that the wells may produce higher volumes of gas after they are stimulated. Lindley argued that Taylor, Warren's predecessor, had blended the gas to increase its Btu content and to reduce the overall percentage of nitrogen.

EXAMINER'S OPINION

This is not a case based on a price dispute. Although Warren has notified Lindley of its intent to disconnect the subject wells from the gathering system, Warren has continued to pay Lindley for the very small amounts of gas taken; the proceeds have been deposited by Warren into a suspense account for Lindley's credit. Lindley did not argue that the price Warren had paid for its gas when the wells were producing commercial quantities was discriminatory or otherwise unfair and Lindley's testimony convinced the examiners that even Lindley believed he had been paid a fair price for the gas produced by the two wells subject to this proceeding. Instead, the dispute is over Warren's intention to disconnect the wells due to the low volume of gas produced by the wells, the low Btu content of the gas and the cost for Warren to meter and gather the gas.

In a previous proceeding involving a disconnection due to low quality gas (see the examiner's Proposal for Decision in Oil and Gas Docket No. 01-0208194) the Commission considered the following to determine whether a proposed disconnection was reasonable:

1. The existence of contract provisions giving the pipeline the right to disconnect under the relevant circumstances, or other evidence of written consent by the producers;

2. Whether the pipeline can make a profit from maintaining the connection;

3. Risk to the environment and public health and safety in maintaining the connection;

4. The potential for off-lease drainage by competing wells;

5. Whether the pipeline takes from other operators in the field.

6. Whether there will be any unjust discrimination between fields as a result of the suspension of service.

7. Reasonableness of the period of time required to do the maintenance or other operations proposed or conducted during the suspension of service;

8. The good faith and diligence of the pipeline in conducting the work during the suspension of service;

9. The availability of alternate transportation;

10. The necessity for venting/flaring gas and the amount;

11. The risk of permanently losing a well whose production is shut-in because of the suspension of service and the amount of potentially lost production; and

12. Other circumstances that have a bearing on maintaining the balance between prevention of undue discrimination and waste and the need for pipeline operators to be able to conduct operations without unnecessary interference.

Several of these considerations including the reasonableness of the time required to do maintenance, the good faith and the diligence of the pipeline in conducting the work (items 7 and 8 above) are relevant only to disconnections as a result of planned maintenance work or other temporary disconnection and are not relevant to the facts in this docket. Similarly, Item 3 above, is pertinent to a planned maintenance activity but is not pertinent to the facts and circumstances of this case; Warren's application causes no appreciable risk to the public.

Determining whether a permanent disconnection is reasonable is a balance between the need to prevent undue discrimination (see item 12 above) and the interest of pipeline operators to conduct cost effective operations. Some factors previously considered include: whether the gatherer has taken gas from the producer in the past; whether there is a physical impediment to the purchase of additional gas from the subject wells; and whether the volume of gas is substantial. (See the examiner's Proposal for Decision in Oil and Gas Docket No. 02-0204130 dated March 8, 1994.) Whether a disconnection is unjust or unreasonable is a question for the Commission.

In January 1997 the average total production of the Well No. 1 on the E. McKinney Lease and Well No. 1 on the McKinney "A" Lease ("subject wells") was 457 Mcf, or 14.7 Mcf/d. Production from the two wells has declined approximately 80% in the preceding year to 2.8 Mcf/d. Warren's expenses to gather the gas from these two wells exceeded its revenue by approximately $1410 in January and February of 1998. Warren may reasonably expect to lose $8460, or more, in one year if its application to disconnect is not approved.

Warren's economic break-even point to gather gas from these two wells is approximately 510 Mcf/month. The wells produced 88 Mcf in January and 78 Mcf in February; for an average of 83 Mcf for the two months. The volume of gas produced by the two wells must increase by approximately 700% if Warren is to recover its costs of metering and transporting the gas. Two meter runs currently are in place on the subject leases. For comparison Warren presented an exhibit assuming that the gas from both wells were metered by one meter run and the expenses are reduced accordingly. Warren's cost analysis shows that even if only one meter run were employed to measure and deliver the gas from both wells, that the volume of gas produced does not cover Warren's gathering and metering costs.

In addition, Warren argued that inlet specification of its conditioning plant is 5% nitrogen; the gas produced by the subject wells contains approximately 27% nitrogen. Warren conceded that it was paying less for the subject gas due to the lower Btu content but argued that it cannot blend the gas from the subject leases because it takes gas with varying nitrogen content from several primary sources on a short term basis and can no longer predict the nitrogen content of content of gas which its plant will process on a given day. Warren's short term supply contracts for gas of varying nitrogen contents from different sources precludes it from blending gas from the subject wells to raise the nitrogen content. Warren's witness testified that it would cost $5 to $10 million dollars to upgrade its plant to accept gas with 27% nitrogen. Warren has no need for the gas produced by the subject wells and Warren does not accept new gas connections when the gas quality is below the plant inlet specifications. Warren has no need for the gas produced by the subject wells.

Neither applicant nor protestant introduced evidence regarding the availability of alternate transportation for the gas produced from the subject wells. The parties have engaged in informal negotiations and have not developed any alternatives.

RECOMMENDATION

Based on the record in this case the examiners recommend the Commissioners adopt the above Findings of Facts and Conclusions of Law:

FINDINGS OF FACT

1. Notice of this hearing was given to all interested parties.

2. Warren Petroleum Co., L.P. ("Warren") has currently meters and transports gas from the E. McKinney Lease, Well No. 1 or the E. McKinney "A" Lease, Well No. 1 (the "subject wells" and the "subject leases.") Warren has given Lindley Oil Properties ("Lindley") 30 days notice of its intent to disconnect the subject wells from its gathering system.

3. Warren has applied to the Commission for permission, pursuant to Statewide Rule 73 to disconnect its pipeline and gathering system from the subject wells on the subject leases. Warren operates a gathering system which is a common purchaser of gas.

4. In December 1990, Lindley entered into a five year contract to sell gas produced from the subject wells to J.H. Taylor (Warren's predecessor in interest). This contract included an annual renewal clause but could be terminated by either party with 30 days notice. Warren has given the necessary notice; Warren has no contract to purchase the gas produced by the subject wells from the subject lease.

5. In January and February 1998 the average total production of the subject wells was 85 Mcf. The gas produced from the subject wells is high in nitrogen (approximately 27%) and therefore low in Btu content. The average production of the two wells has declined by more than 80% in the year preceding February 1998 to 2.8 Mcf/d.

6. Warren's cost to maintain the two meter runs measure gas from the subject wells is approximately $832/month. Warren cannot make a reasonable profit, or any profit, by gathering gas from the subject wells.

7. Warren's break-even point to meter the total volume of gas produced by the two wells is 510 Mcf/month. The average total production of the subject wells is less than 20% of the volume required for Warren to break-even on its metering costs.

8. Lindley has not undertaken steps to stimulate the wells to increase production since being notified by Warren in September 1997 that Warren intended to disconnect the two wells.

9. Warren has no need for the gas produced by the subject wells.

10. Disconnecting Warren's gathering system from the subject wells will not result in the waste of a significant amount of hydrocarbons.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to all persons legally entitled to notice.

2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.

3. Warren's proposal to disconnect the subject wells from its gathering system does not discriminate within the meaning of Texas Natural Resources Code §111.086(a).

4. Warren's proposal to disconnect the subject wells from its gathering system is reasonable and just within the meaning of Texas Natural Resources Code §111.086(a).

CONCLUSION

The examiners recommend that Warren Petroleum, L.P.'s application to disconnect the J.R. Lindley, E. McKinney Lease, Well No. 1 and the E. McKinney "A" Lease, Well No. 1, Young County Regular (gas) Field be **GRANTED.**

Respectfully submitted,

D. W. Ortman
Hearings Examiner

T. Richter
Technical Examiner

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 09-0218876

APPLICATION OF WARREN PETROLEUM, L.P., PURSUANT TO RULE 73, TO DISCONNECT THE J. R. LINDLEY, E. MCKINNEY LEASE, WELL NO. 1 AND E. MCKINNEY "A" LEASE, WELL NO. 1, YOUNG COUNTY REGULAR (GAS) FIELD, YOUNG COUNTY, TEXAS

FINAL ORDER

The Commission finds that after statutory notice the captioned enforcement proceeding was heard by the examiners who have made and circulated a Proposal for Decision containing Findings of Fact and Conclusions of Law and such proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the Proposal for Decision, the Findings of Fact and Conclusions of Law contained therein, and any exceptions and replies thereto, hereby adopts as its own the Findings of Fact and Conclusions of Law contained in the Proposal for Decision, and incorporates said Findings of Fact and Conclusions of Law as if fully set out and separately stated herein.

IT IS ACCORDINGLY ORDERED THAT the application of Warren Petroleum, L.P. to disconnect the J. R. Lindley, E. McKinney Lease, Well No. 1 and E. McKinnery "A" Lease, Well No. 1 is **GRANTED.**

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after it is actually mailed to the parties by the Commission; provided that if a motion for rehearing of the application is filed by any party at interest within such 20-day period, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Done this _____ day of _____, 1998.

RAILROAD COMMISSION OF TEXAS

_____
CHAIRMAN

_____
COMMISSIONER

_____
COMMISSIONER

ATTEST:

_____
SECRETARY

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
OIL AND GAS SECTION

OIL AND GAS DOCKET NO. 09-0218876

APPLICATION OF WARREN PETROLEUM, L.P., PURSUANT TO RULE 73, TO DISCONNECT THE J. R. LINDLEY, E. MCKINNEY LEASE, WELL NO. 1 AND E. MCKINNEY "A" LEASE, WELL NO. 1, YOUNG COUNTY REGULAR (GAS) FIELD, YOUNG COUNTY, TEXAS

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IT IS ACCORDINGLY ORDERED THAT the application of Warren Petroleum, L.P. to disconnect the J. R. Lindley, E. McKinney Lease, Well No. 1 and E. McKinney "A" Lease, Well No. 1 is **GRANTED.**

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after it is actually mailed to the parties by the Commission; provided that if a motion for rehearing of the application is filed by any party at interest within such 20-day period, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Done this 14th day of July, 1998.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY