

THE APPLICATION OF KINDER MORGAN CO₂ COMPANY, L.P. FOR APPROVAL OF FORM H-13, POSITIVE PRODUCTION RESPONSE CERTIFICATION, YATES FIELD UNIT, YATES FIELD, PECOS COUNTY, TEXAS

HEARD BY: Donna K. Chandler, Technical Examiner

APPEARANCES:

Applicant:

Doug Dashiell
Kelly Stark

Representing:

Kinder Morgan CO₂ Company, L.P.

PROCEDURAL HISTORY

Request for Hearing:	March 6, 2009
Notice of Hearing:	March 13, 2009
Date of Hearing:	April 1, 2009
Proposal For Decision Issued:	May 6, 2009

EXAMINER'S REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

Kinder Morgan CO₂ Company, L.P. ("Kinder Morgan") requests that the Commission approve its Form H-13, Positive Production Response Certification, for its Yates Field Unit. The certification was administratively denied by the Commission's Technical Permitting Section.

DISCUSSION OF THE EVIDENCE

Applicant's Evidence

On February 2, 2004, Kinder Morgan filed Form H-12 pursuant to Statewide Rule 50 for approval of a new tertiary recovery project on the 26,000 acre Yates Field Unit in the Yates Field. On February 10, 2004, Commission staff verbally informed Kinder Morgan's attorney that the actual approval letter had not yet been generated, but that the approval of the H-12 would have an effective date of February 2, 2004.

On February 27, 2004, Kinder Morgan contacted Commission staff by email about the approval of the Form H-12 because Kinder Morgan had intended to begin CO₂ injection on March 1, 2004. The Form H-12 approval letter had not yet been generated. Statewide Rule 50 specifies that Form H-12 must be approved by the Commission prior to injection operations. Commission staff confirmed by email that the H-12 approval date would be February 2, 2004.

On or about July 19, 2004, Kinder Morgan received the H-12 approval letter from Commission staff. The letter was dated February 2, 2004 and the H-12 approval date was indicated to be February 2, 2004. The letter further stated that Form H-13, Positive Production Response Certification Application, must be filed within five years of the H-12 approval date.

On February 10, 2009, the Commission received Kinder Morgan's Form H-13 for the project. By this time, over 160 BCF of CO₂ had been injected into the Yates Field Unit and a positive production response was first noted in July 2004. Production continued to increase, and by December 2008, production from the Unit was almost 16,000 BOPD higher than the production rate would have been without the injection. Kinder Morgan requested a certification date of March 1, 2009. The Yates Field Unit was already receiving a tax credit for a steam injection project, which will expire in 2013. Kinder Morgan therefore requested a certification date of March 1, 2009, which would extend the tax credit for the unit until March 1, 2019.

On February 10, 2009, the date the H-13 was received by the Commission, staff denied the certification because it was filed more than five years subsequent to the H-12 approval date of February 2, 2004.

EXAMINER'S OPINION

The examiner recommends that Kinder Morgan's request for Positive Production Response Certification be denied. Statewide Rule 50(g)(2)(A) states "...The Operator shall apply for a positive production response certificate within three years of project approval date for secondary projects, and within five years of project approval for tertiary projects, to qualify for the recovered oil tax rate." Further Texas Tax Code §202.054 (g)(2) requires that the application for certification of positive production response must be filed not later than five years from the date the commission approves the tertiary recovery project. This section is set out below:

g) Subject to the provisions of Subsections (b) and (h) of this section, the recovered oil tax rate applies to oil on which a tax is imposed by this chapter for the 10 years beginning the first day of the month following the date the commission certifies that, in the case of an enhanced recovery project including a co-production project, a positive production response has occurred or, in the case of an expansion, other than related to a co-production project, incremental production has occurred, if the application for certification is filed: (1) not later than three years from the date the commission approves the project if the project is designated as a new or existing project other than a co-production project that uses a secondary recovery process; or (2) not later than five years from the date the commission

approves the project if the project is designated as a new or existing project that uses a tertiary recovery process or is a co-production project.

Additionally, the statute does not provide for exception of the filing deadline.

Kinder Morgan believes that February 10, 2004 would be an appropriate date for H-12 approval date because on that date Commission staff first notified Kinder Morgan (verbally) that the application would be approved. In the alternative, Kinder Morgan believes that February 27, 2004 would be an appropriate date for H-12 approval because on that date Commission staff provided email correspondence that the application would be approved. However, notations recorded on both these dates indicate that the **effective** date of the H-12 approval would be February 2, 2004. This effective date is again repeated in the Commission's actual approval letter issued in July 2009. Kinder Morgan's own filing of Form H-13 indicates an H-12 approval date of February 2, 2004. (See attachments).

Kinder Morgan did not meet the requirement for filing Form H-13 prior to the five year filing deadline. Kinder Morgan's representative admitted at the hearing that the filing of the Form H-13 was inadvertently a few days late and that Kinder Morgan was aware of the February 2, 2009 filing deadline.

FINDINGS OF FACT

1. At least ten days notice of the hearing in this docket was provided to all interested persons.
2. On February 2, 2004, Kinder Morgan filed Form H-12 pursuant to Statewide Rule 50 for approval of a new tertiary recovery project on the 26,000 acre Yates Field Unit in the Yates Field.
3. On or about July 19, 2004, Kinder Morgan received the H-12 approval letter from Commission staff.
 - a. On February 10, 2004, Commission staff verbally informed Kinder Morgan's attorney that the approval of the H-12 would have an effective date of February 2, 2004.
 - b. On February 27, 2004, Commission staff informed Kinder Morgan by email that the Form H-12 would have an approval date of February 2, 2004.
 - c. The Commission's actual approval letter was dated February 2, 2004 and the H-12 approval date was indicated to be February 2, 2004.
 - d. The letter stated that Form H-13, Positive Production Response Certification Application, must be filed within five years of the H-12 approval date.
4. Kinder Morgan was aware of the Form H-12 approval date and that Form H-13 was

required to be filed within five years of the H-12 approval date.

5. CO₂ injection was commenced on or about March 1, 2004 and a positive production response was first noted in July 2004.
6. On February 10, 2009, the Commission received Kinder Morgan's Form H-13 for the positive production response certification for the project.
7. On February 10, 2009, Commission staff denied the positive production response certification because it was filed more than five years subsequent to the H-12 approval date of February 2, 2004.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Kinder Morgan CO₂ Company, L.P. did not meet the requirements of Statewide Rule 50(g)(2)(A) for Positive Production Response Certification.
4. The Commission has no discretion to grant an exception to the five year filing deadline in Tax Code §202.054 (g)(2)

EXAMINER'S RECOMMENDATION

Based on the above findings and conclusions, the examiner recommends denial of the application for positive production response certification for the Yates Field Unit.

Respectfully submitted,

Donna K. Chandler
Technical Examiner