

August 8, 2000

OIL & GAS DOCKET NO. 03-0223968

APPLICATION OF SANDEL ENERGY, INC., FOR APPROVAL UNDER STATEWIDE RULE 38(d)(3) FOR DIVISION OF THE B.B. HICKS GAS UNIT INTO ITS SEPARATE TRACTS WITH THE RULES OF THE COMMISSION APPLICABLE TO EACH TRACT, MARTINS PRAIRIE (SUB-CLKVLE) FIELD, GRIMES COUNTY, TEXAS

APPEARANCES:

REPRESENTING:

FOR APPLICANT:

Jamie Nielson, Attorney
Joe Sandel
Don Rhodes, Consultant

Sandel Energy, Inc.
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FOR PROTESTANTS:

Neva Laverne Cook Beene
Etha Cook Curtis
Lawrence Jarvis

Self
Self
Self

AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

APPLICATION FILED:	February 7, 2000
NOTICE OF HEARING:	March 30, 2000
DATE CASE HEARD:	May 1, 2000
TRANSCRIPT RECEIVED:	No Transcript
PFD CIRCULATION DATE:	June 30, 2000
AMENDED PFD CIRCULATION DATE:	August 8, 2000
HEARD BY:	Mark J. Helmueller, Legal Examiner Margaret Allen, Technical Examiner
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

Sandel Energy, Inc. ("Sandel") has applied for approval under Statewide Rule 38(d)(3) to divide the B.B. Hicks Gas Unit ("Hicks Unit") in Grimes County into its separate component tracts. The Hicks Unit produced from the Martins Prairie (Sub-Clkvle) Field through the B.B. Hicks Well No. 2. The B.B. Hicks Well No. 2 is located on the Marguerite H. Frasher et al. Lease ("Frasher Tract") which contains 224 acres.

The Martins Prairie (Sub-Clkvle) Field was discovered April 28, 1978. The field was initially subject to spacing and density requirements of 467-foot spacing to the nearest lease line and 40-acre density. The current field rules were adopted February 22, 1982, and set forth 933-foot lease line spacing and 640-acre density requirements.

The application is protested by Neva Laverne Cook Beene, Etha Cook Curtis and Lawrence Jarvis. The Protestants are mineral interest owners in tracts that were part of the Hicks Unit. The Protestants believe their acreage should participate in the B.B. Hicks Well No. 2 with Sandel's Frasher Tract.

ISSUES PRESENTED

1. Should the 640 acre Hicks Unit be dissolved by the Railroad Commission as provided by Rule 38 (d)(3)?
2. If the Hicks Unit is dissolved, should the 224 acre Frasher Tract be treated as a legal subdivision entitled as a matter of law to a well to prevent confiscation?
3. Does the evidence establish the need for a well on the Frasher Tract to prevent confiscation or waste?
4. Will Protestants be materially affected by Commission action on this application?

SANDEL'S POSITION AND EVIDENCE

Sandel presented evidence that the Frasher Tract attained its current size and shape on October 28, 1944. On August 31, 1981, Cashco formed the 640-acre Hicks Unit by filing a "Designation of Gas Unit" in Grimes County. A correction to the unit designation was filed on February 23, 1982. The lands pooled were comprised of 20 tracts covered by 43 oil, gas and mineral leases. The lease for the Frasher Tract and the leases for the tracts in which the protestants have an interest contain provisions that: (1) the lease terminates after 60 or 90 days of non-production; (2) the lessee has the right to pool; and (3) pooling would not cause a conveyance of interests between tracts in the pooled unit. Accordingly, the affected tracts did not come under common ownership and control.

Subsequent to the formation of the Unit, Cashco filed a Form P-12 (Certificate of Pooling Authority) with the Railroad Commission on September 24, 1982. The Form P-12 established the Hicks Unit as a single entity for regulatory purposes.

On September 15, 1981, Sandel's predecessor, Cashco Oil Company ("Cashco"), completed the B.B. Hicks Well No. 2 on the lease in the Martins Prairie (Sub-Clkvle) Field. At the time the well was drilled it was subject to 467 foot lease line spacing requirement and a 40-acre density requirement. The well did not require an exception to Statewide Rule 37 at the time it was drilled. The well reported production from the Martins Prairie (Sub-Clkvle) Field until March 1995. From June 1, 1994 until March 31, 1995 commission records reveal minimal production from the well totaling 378 mmcf of natural gas, with 4 months reporting no production at all.

On June 27, 1994, Cashco released some, but not all, of the leases in the Hicks Unit. Cashco did not release Protestants Neva Laverne Cook Beene's and Etha Cook Curtis' interests in the 52.22-acre Etha Cook Curtis tract, apparently due to production from a different field. On September 1, 1994, Cashco filed a Dissolution of Gas Unit. Finally, on March 3, 1995, Anna L. Jarvis and Lawrence V. Jarvis executed a lease to Union Pacific Resources Company covering acreage formerly in the Hicks Unit.

Sandel replaced Cashco as operator of the B.B. Hicks Well No. 2 on July 1, 1999. Sandel worked over the well and installed an artificial lift system. This brought the well back into production. Sandel could not estimate its current recoverable reserves because it was not yet able to estimate the productive acreage.

PROTESTANTS' POSITION AND EVIDENCE

Protestants Neva Laverne Cook Beene and Etha Cook Curtis own interests in the 52.22-acre Etha Cook Curtis tract. Sandel is the successor in interest for the lessee of the original lease interest. Protestant Lawrence Jarvis owns an interest in the 17.78-acre Plumer Jarvis tract. As previously noted, Mr. Jarvis executed a new lease with Union Pacific Resources Company in March 1995.

Protestants believe their land should be pooled with the Frasher Tract for the restored production in the B.B. Hicks Well No. 2. Protestants' direct case consisted of testimony and two exhibits demonstrating payment from Cashco for past production from the B.B. Hicks Well No. 2 and other wells in the vicinity. Ms. Curtis took issue with Sandel's position that the B.B. Hicks Well No. 2 had ceased producing for five years. Ms. Curtis claimed that the B.B. Hicks Well No. 2 did not stop producing, but rather Cashco made a business decision not to produce the well.

EXAMINERS' OPINION

A. Applicability of Statewide Rule 38 (d)(3)

Dissolution of a unit is governed by Statewide Rule 38 (d)(3) which provides:

If two or more separate tracts are joined or unitized for oil, gas, or geothermal development and accepted by the Commission, the joined or unitized tracts may not thereafter be divided into the separate tracts with the rules of the Commission applicable to each separate tract, if the division results in any tract composed of substandard acreage at the time of the division, unless and until the Commission approves such division after application, notice to all current lessees and unleased mineral interest owners of each tract within the joined or unitized tract, and an opportunity for hearing. If written waivers are filed or if a protest is not filed within the time set forth in the notice of application, the application will be granted administratively.

Dissolution of a unit pursuant to Rule 38 (d)(3) may be granted if the dissolution of the unit will not cause waste or confiscation and will not result in the circumvention of Commission rules. If a tract in the unit is a legal subdivision at the time the unit is formed, does not come under common ownership and control with other tracts in a unit, and there are no subdivisions of the tract after the formation of the unit, the tract reverts to its legal subdivision status upon dissolution of the unit. The primary purpose of an application under Rule 38 (d)(3) is the restoration of each individual tract's pre-pooling status.

In this case, it appears that the contractual agreement that created the Hicks Unit was dissolved as a result of the decrease in reported production from the B.B. Hicks Well No. 2 beginning in June 1995. The leases involved all contain termination clauses for cessation of production. Documentary evidence of the dissolution includes the release of some of the tracts from the Hicks Unit and the Dissolution of Gas Unit filed in 1994.

Sandel further demonstrated that the Frasher Tract is a legal subdivision that achieved its size and shape 34 years before the discovery of the field. The lease agreements for the tracts comprising the Hicks Unit, all contain language that the individual component tracts would not be subject to common ownership and control. There is also no evidence of any subdivision of the Frasher Tract after the Hicks Unit was formed. Because the tract never came under common ownership and control, and it was not subdivided after the creation of the Hicks Unit, the Frasher Tract retained its status as a legal subdivision.

Sandel also established that it was entitled to produce the well to prevent confiscation. The B.B. Hicks Well No. 2 is the only well in the Martins Prairie (Sub-Clkvle) Field. It logically follows that Sandel is not an owner in an adjacent tract producing out of the subject field from wells within

the drainage area of the Frasher Tract. Accordingly, the mineral interest owners for the Frasher Tract are entitled to a well to have a reasonable opportunity to recover the hydrocarbons under the tract.

B. Impact on the Protestants

As to the Protestants' desire to participate in the B.B. Hicks Well No. 2, the Railroad Commission does not have jurisdiction to pool their interests outside of an application for forced pooling under the Mineral Interest Pooling Act (Tex. Nat. Res. Code Ann § 102.01 et seq.(West 1993)). See Tex. Nat. Res. Code Ann. §85.046(7) (West 1993).; Jones v. Killingsworth, 403 S.W.2d 325, 328 (Tex. 1966). Applications for forced pooling have not been filed by the Protestants.

It should be further noted that Protestant Jarvis signed a new lease of his mineral interests in March 1995 after the prior operator released his tract, filed a dissolution of unit and stopped reporting production. The execution of the new lease indicates an understanding that the contractual Hicks Unit was dissolved. This understanding contradicts the current protest to the dissolution of the designated regulatory unit.

Accordingly, the examiners believe that Sandel's application for dissolution of the Hicks Unit under Statewide Rule 38(d)(3) should be granted and recommend adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At least ten (10) days notice of hearing was sent to all current lessees and unleased mineral interest owners of each tract within the B.B. Hicks Gas Unit ("Hicks Unit"). Notice of the application was published in the Navasota Examiner-Review, a newspaper of general circulation in Grimes County, Texas on March 2, 9, 16, and 23, 2000. Notice of the hearing was published in the Navasota Examiner-Review on April 4, 13, 20 and 27, 2000.
2. Sandel Energy, Inc. ("Sandel") has applied for approval under Statewide Rule 38(d)(3) for division of the Unit into its separate tracts, with the rules of the Railroad Commission applicable to each tract.
3. On September 15, 1981, Cashco Oil Company ("Cashco") completed the B.B. Hicks Well No. 2 on the Marguerite H. Frasher et al. lease ("Frasher Tract") in the Martins Prairie (Sub-Clkvle) Field.
4. The Martins Prairie (Sub-Clkvle) Field was subject to Statewide Rules of 467-foot lease line spacing and 40-acre density at the time the B.B. Hicks Well No. 2 was drilled. The current field rules were adopted February 22, 1982, which set forth 933-foot lease-line spacing and 640-acre density requirements. The well was at a regular location at the time it was drilled under the Statewide Rule which were in effect.

5. The Frasher Tract contains 224 acres and achieved its current size and shape on October 28, 1944. The Martins Prairie (Sub-Clkvle) Field was discovered April 28, 1978.
6. On August 31, 1981, Cashco formed the 640-acre Hicks Unit by filing a "Designation of Gas Unit" in the records of Grimes County. A correction to the unit designation was filed in the Grimes County records by Cashco on February 23, 1982. Oil, gas and mineral leases covering tracts in the Hicks Unit provide that pooling would not cause a conveyance of interest between tracts owners in the unit.
7. Cashco filed a Form P-12 (Certificate of Pooling Authority) and plat with the Railroad Commission on September 24, 1982, to establish the Hicks Unit as a single entity for regulatory purposes.
8. The contractual agreement that created the Hicks Unit has been dissolved and is no longer in effect.
 - a. On June 27, 1994, Cashco filed a Release of Oil, Gas and Mineral Leases in the records of Grimes County.
 - b. On September 1, 1994, Cashco filed a Dissolution of Gas Unit in the records of Grimes County.
 - c. There was no production from the B.B. Hicks Well No. 2 from March 1995 to February, 2000.
9. The B.B. Hicks Well No. 2 is the only producing well in the Martins Prairie (Sub-Clkvle) Field.
10. Sandel is not an owner in any adjacent tracts which are producing out of the subject field from wells within the drainage area of the Frasher Tract.
11. Dissolution of the Hicks Unit into its separate component tracts will afford the owners of the Frasher Tract a reasonable opportunity to produce the hydrocarbons in the Martins Prairie (Sub-Clkvle) Field under their tract through production from the B.B. Hicks Well No. 2 and will not cause waste or confiscation.
12. Dissolution of the Hicks Unit will not prevent the interest owners of any tract previously within the Hicks Unit from having a reasonable opportunity to recover the hydrocarbons underlying their tracts in the Martins Prairie (Sub-Clkvle) Field.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things have occurred and been accomplished to give the Commission authority to decide this matter.
3. The Hicks Unit should be dissolved into its separate tracts for regulatory purposes with the rules of the Railroad Commission applicable to each tract.
4. The Frasher Tract was a legal subdivision prior to the formation of the Hicks unit and regains that status upon this dissolution of the unit by the Railroad Commission.
5. The mineral interest owners of the Frasher Tract are entitled to a well to allow them the opportunity to produce the reserves under the tract.
6. The approval of this application will allow for the orderly and efficient development of the subject tracts.
7. Dissolution of the Hicks Unit will not result in the circumvention of Commission rules.

EXAMINERS' RECOMMENDATION

The examiners recommend approval of Sandel's application for approval of the division of the B.B. Hicks Gas Unit, Martin Prairie (Sub-Clkvle) Field, Grimes County, Texas, such that the rules of the Railroad Commission are applicable to each separate tract.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Margaret Allen
Technical Examiner