

APPLICATION OF WILLOWBEND INVESTMENTS, INC., FOR A RULE 38 EXCEPTION TO DRILL THE MCKEE'S PORT UNIT, WELL NO. 1D, NEWARK, EAST (CADDO LIME) AND NEWARK, EAST (BARNETT SHALE) FIELDS, TARRANT COUNTY, TEXAS

APPEARANCES:

FOR APPLICANT:

George C. Neale
Rose Rohr
Lee Murchison
Jim Tull
David Little
Bruce Robertson
Sandy Robertson

APPLICANT:

Willowbend Investments, Inc.

FOR PROTESTANT:

David Gross
Joe Gonzalez
Kurt Miller
John P. Coalson
Kerry A. Pollard

Western Production Company

AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE APPLICATION FILED:

December 29, 2006

DATES OF HEARING:

April 10 and September 27, 2007

HEARD BY:

James M. Doherty, Hearings
Examiner

Thomas H. Richter, Technical Examiner

LAST TRANSCRIPT VOL. RECEIVED:

October 19, 2007

DATE AMENDED PFD CIRCULATED:

November 2, 2007

STATEMENT OF THE CASE

On May 22, 2006, the Commission administratively approved the issuance of Permit No. 61971 to Willowbend Investments, Inc. (“Willowbend”), to drill Well No. 1D on the 24.7009 acre McKee’s Port Unit in the Newark, East (Barnett Shale) Field, Tarrant County, Texas. This directional well was permitted at a regular bottom hole location in the Newark, East (Barnett Shale) Field, 387’ from the east line and 387’ from the north line of the McKee’s Port pooled unit. The Newark, East (Barnett Shale) Field has 330’ lease line spacing, and standard 320 acre and optional 20 acre proration units.

Well No. 1D was drilled by Willowbend in June-July 2006. At the time of the April 10, 2007, hearing, the well had been completed in the Newark, East (Barnett Shale) Field and was awaiting a pipeline connection. After the well was logged, Willowbend concluded that a dual completion of Well No. 1D in the Newark, East (Caddo Lime) Field would be productive. Accordingly, Willowbend now seeks an amended permit and Rule 38 exception permitting it to make a dual completion of the well in the Newark, East (Caddo Lime) Field. Unless the completion location of the well in the Newark, East (Caddo Lime) Field is on a tract which is a legal subdivision, the proposed completion in this field requires a Rule 38 exception, because the McKee’s Port pooled unit has only 24.7009 acres, and applicable field rules provide for 40 acre units. The proposed completion location in the Newark, East (Caddo Lime) Field is regular under the 330’ lease line well spacing rule that applies in this field.¹

The Willowbend application is opposed by Western Production Company (“Western”), an operator of acreage offsetting the McKee’s Port Unit to the west.

The application initially was heard on April 10, 2007, and a previous proposal for decision was issued on June 7, 2007. Western then filed exceptions and a motion to reopen, supported by an affidavit that drew into question certain testimony, and certain findings in the initial proposal for decision, to the effect that the bottom hole of the McKee’s Port Unit, Well No. 1D is on a tract which is a legal subdivision. By examiners’ ruling dated July 9, 2007, the hearing was reopened to receive additional evidence on the legal subdivision issue. Based on the evidence presented at the reopened hearing on September 27, 2007, the previous proposal for decision issued on June 7, 2007, is withdrawn, and this amended proposal for decision is issued.

¹ A copy of a plat of the McKee’s Port Unit showing the location of the McKee’s Port Unit, Well No. 1D introduced as Willowbend Exhibit No. 4 is attached to this proposal for decision as Appendix 1. A Willowbend filing made on May 24, 2007, stated that the as-drilled location of the McKee’s Port Unit, Well No. 1D at the top of the Caddo Lime interval is 387’ from the north line and 390’ from the east line of the Unit and 617’ from the north line and 457’ from the east line of the J. S. Thurmond Survey, A-1535, Tarrant County, Texas.

POSITIONS OF THE PARTIES

Willowbend

Willowbend asserts that Well No. 1D is a first well on the McKee's Port Unit, and the proposed completion interval in the Newark, East (Caddo Lime) Field is on a tract within the pooled unit which is a legal subdivision. Willowbend argues that under this theory, the well does not require a Rule 38 exception pursuant to Rule 38(d)(1).

Alternatively, Willowbend argues that its requested Rule 38 exception for the Newark, East (Caddo Lime) Field is necessary to prevent waste. It asserts that an unusual condition on the McKee's Port Unit is the existing wellbore of Well No. 1D, relying upon *Exxon Corporation v. The Railroad Commission of Texas*, 571 S.W.2d 497 (Tex. 1978).

Western

Western asserts that Willowbend did not prove that the proposed completion interval in the Newark, East (Caddo Lime) Field is on a legal subdivision or that the requested Rule 38 exception is necessary to prevent waste. According to Western, Willowbend's proof did not show any unusual subsurface condition under the McKee's Port Unit or that wells drilled at regular locations on offsetting tracts would be incapable of recovering reserves beneath the Unit in the Newark, East (Caddo Lime) Field.

DISCUSSION OF THE EVIDENCE

Willowbend

On May 22, 2006, Willowbend was issued Permit No. 61971 to directionally drill Well No. 1D on the McKee's Port Unit to a total depth of 7,500' in the Newark, East (Barnett Shale) Field, Tarrant County, Texas. This permit authorized the drilling of Well No. 1D 387' from the east line and 378' from the north line of the McKee's Port Unit and 452' from the east line and 613' from the north line of the Thurmond, J. S. Survey, A-1535.² Willowbend drilled Well No. 1D in June-July, 2006, and a directional survey showed that at the depth of the correlative interval for the Newark, East (Caddo Lime) Field from 3,072' to 3,142', the well is more than 330' from any surrounding pooled unit boundary, which is a regular under the applicable well spacing rule.

Well logs for the McKee's Port Unit, Well No. 1D showed that the well encountered the Newark, East (Barnett Shale) Field in an interval from 6,618' to 6,928'. Willowbend perforated the well in the Barnett Shale and fracture stimulated the well in March 2007. From well test results,

² The Newark, East (Barnett Shale) completion was permitted at a regular location under field rules providing for 330' lease line spacing and optional 20 acre drilling and proration units.

Willowbend calculated that Well No. 1D will initially produce 1,726 MCF per day from the Barnett Shale.³

When Well No. 1D was permitted and drilled in 2006, Willowbend's target was the Barnett Shale. At that time, Willowbend had pooled the 24.7009 acres making up the McKee's Port Unit for the depth of the Barnett Shale only. When Well No. 1D was drilled, Willowbend did not believe that it would have the option of making a dual completion in the Newark, East (Caddo Lime) Field. However, its opinion changed when the well was logged and the logs persuaded Willowbend that the well would be productive in the Caddo Lime interval. The present application for a permit to make a dual completion in the Caddo Lime was filed on December 29, 2006, and in January 2007, Willowbend filed, in Tarrant County, a "Correction of Designation of Pooled Unit" which pooled the 24.7009 acres in the McKee's Port Unit for all depths.⁴

The proposed completion interval of the McKee's Port Unit, Well No. 1D in the Newark, East (Caddo Lime) Field, is on the .5356 acre Craig White tract ("White tract"). A revised Form W-1A submitted by Willowbend at the reopened hearing stated that the White tract was established in its present size and shape on October 15, 1984, has remained as such since that date, and ownership of this tract has not been the same as or common to the ownership of any adjoining tract at any time after October 15, 1984.

The McKee's Port Subdivision, of which the White tract is a part, was dedicated on January 4, 1962. There has been no change in the size or shape of the White tract since that date. All of the lots now a part of the McKee's Port Subdivision came under the common ownership of Walter McKee on April 15, 1947. On May 21, 1970, the White tract, which was Lot 9 of the McKee's Port Subdivision⁵, and adjoining Lot 8 were deeded from Walter McKee et ux to Gloria F. Primm. On February 1, 1974, Lot 7, which adjoins Lot 8, was deeded from Walter McKee et ux to Gloria F. Primm. On October 15, 1984, Lots 7 and 8 were deeded from Gloria F. Primm to William W. Naillon, leaving Primm with the ownership of the White tract (Lot 9) only. Thus, although the White tract took its present size and shape on January 4, 1962, ownership of the White tract was common to the ownership of the adjoining Tract 8 from May 21, 1970, until October 15, 1984, and common to the ownership of the adjoining Tracts 7 and 8 from February 1, 1974, until October 15,

³ This calculation was made by methodology designed to determine the flow of dry gas, and during the time period used for the calculation, Well No. 1D produced some water. However, Willowbend believes that this factor would affect the calculation of what the well initially will produce from the Barnett Shale by no more than 10%.

⁴ According to Willowbend, it has not been uncommon for operators initially to permit wells in the Barnett Shale, and later to obtain amended permits for other productive intervals once a well has been drilled. Willowbend pointed to seven example wells drilled by other operators, including Western Production Company, where this was done.

⁵ The White tract is identified on the plat in Appendix 1 to this proposal for decision as Tract 6 because it is Tract 6 in the Willowbend McKee's Port pooled unit.

1984. Willowbend and Western agreed that October 15, 1984, the date Gloria F. Primm deeded Lots 7 and 8 to Naillon, leaving only the White tract under Primm's ownership, is the correct Form W-1A date for the White tract.

Gloria F. Primm testified that she purchased Lots 7, 8 and 9 of the McKee's Port Subdivision for the purpose of building a house. She subsequently sold these lots because she wound up building on another nearby lot which was property fronting on Eagle Mountain Lake. According to Primm, a residential structure is now located on Lots 7 and 8, as well as nearby on Lots 6 and 11 in the McKee's Port Subdivision, and the subdivision was developed primarily for residential use. Primm stated that when she acquired Lots 7, 8, and 9 she was not aware that she purchased both the surface and mineral estates or that the lots would be useful for any purpose other than residential use. To Primm's knowledge, these lots were not priced, either when Primm purchased or sold them, to account for any future mineral development, and Primm did not reserve any interest in the mineral estate when she sold the lots.

According to an independent professional petroleum landman retained by Willowbend, his title search indicates that the McKee's Port Subdivision was subdivided for residential purposes, and there are no mineral reservations in any of the conveyances affecting Lots 7, 8, and 9. There were no oil and gas leases taken on any property in the entire J. S. Thurmond Survey prior to the March 6, 1962, dedication date for the McKee's Port Subdivision, and within the entire McKee's Port Subdivision, there were no oil and gas leases taken on any lot prior to March 15, 2006, when Willowbend acquired its leases. A title search of a 25 survey area around the J. S. Thurmond Survey, covering a radius of about 1.5 miles and about 7 square miles, disclosed that from May 21, 1970, when Primm acquired Lots 8 and 9 in the McKee's Port Subdivision, through October 15, 1984, when she conveyed title to Lots 7 and 8, leaving her with ownership of the White tract only, only two oil and gas leases were taken anywhere in the area, and these two were taken in 1978 on properties about 1.5 miles to the west on the opposite side of Eagle Mountain Lake in Parker County. Other than these two leases, none other were taken anywhere in the 25 survey area until 1991. According to Willowbend's landman, Tarrant County was a "dead area" for oil and gas leasing activity until about 2000, when Barnett Shale leasing activity picked up.

A petroleum geologist who has done contract work for Willowbend presented an area map showing the locations of wells that are producing, or which have produced, from the Newark, East (Caddo Lime) Field, within roughly five miles of the McKee's Port Unit No. 1D. According to this geologist, two stratigraphic cross sections prepared by him demonstrate that the Caddo Lime is continuous across the area of the cross sections. The Caddo Lime interval most likely would be encountered by a well drilled in this area, but net pay comes and goes over relatively short distances, and whether a well drilled in the area would be commercially viable in the Caddo Lime is a separate issue. On the Willowbend cross sections, some wells have net pay in the Caddo Lime and others only about one-fourth mile away have no net pay. Maximum monthly average production of wells shown on the Willowbend cross sections ranges from 86 MCFD to 2,772 MCFD.

There is residential development on the surface in the area of the McKee's Port Unit, Well No. 1D. Homes are located to the south and west, and a road exists to the north. According to Willowbend's geologist, this is a very tight location to drill a well and the reason why Well No. 1D was required to be drilled directionally from Tract 12-A on the pooled unit to a bottom hole on the White tract, which is Tract 6 on the pooled unit. Residential structures surround the White tract.

Most of the wells in the area of the McKee's Port Unit, Well No. 1D are Barnett Shale completions. The discovery date of the Newark, East (Barnett Shale) Field is October 15, 1981, and the discovery date of the Newark, East (Caddo Lime) Field is October 25, 2002. There was no nearby production from the Caddo Lime prior to January 4, 1962, when the McKee's Port Subdivision was dedicated. The closest production as of that date was from a well about five miles away, producing from the Rhome (Caddo) Field.

The closest well producing from any field prior to the October 15, 1984, Form W-1A date was the Mitchell Energy Company LP James Paul Reed No. 3, which was in Parker County about 3.4 miles WNW of the present bottom hole location of the McKee's Port Unit, Well No. 1D on the White tract. Within the area, a total of 23 wells produced prior to October 15, 1984, none of which were in Tarrant County. These 23 wells were 3.4 to 7.9 miles distant from the present bottom hole location of Well No. 1D on the White tract, and only five of these wells were within 5.0 miles. These wells produced from the Reno (Strawn 2900), Wise County Regular, and Boonsville (Bend Congl., Gas) Fields. The first well that produced within 1.5 miles of the current location of Well No. 1D did not start to produce until February 1994.

Willowbend's petroleum geologist believes that a substantial amount of reserves could be recovered from the Caddo Lime interval if Well No. 1D were permitted to be dual completed.

Willowbend's geologist did not prepare an isopach map for the Newark, East (Caddo Lime) Field in this area. He had not studied any pressure data, and could not say whether wells producing in the area from the Newark, East (Caddo Lime) are pressure connected. However, there is no geologic impediment to such communication. On August 6, 2007, Western Production Company permitted its Semple IRI Caddo Lease, Well No. 1, a directional well that has been drilled offsetting the Willowbend McKee's Port Unit to the same Caddo interval for which Willowbend seeks to permit the McKee's Port Unit, Well No. 1D. The bottom hole of this Western well is about 450' from the McKee's Port Unit.

A petroleum engineer who has done contract work for Willowbend calculated estimated ultimate recovery for the McKee's Port Unit, Well No. 1D from the Newark, East (Barnett Shale) Field. Because Well No. 1D has not yet produced, an analogous well, the Tom Dennis No. 1 about 1.4 miles away was used for this purpose. According to Willowbend's petroleum engineer, the Tom Dennis No. 1 exhibited shut-in pressure after flow back similar to Well No. 1D, and the calculated initial rate of production for Well No. 1D is similar to the initial production of the Tom Dennis well. A decline curve of the Tom Dennis No. 1 demonstrated an estimated ultimate recovery for that well of 2.2 BCF, and so Willowbend's petroleum engineer estimated an ultimate recovery for the McKee's Port Unit, Well No. 1D of 2.0 BCF from the Barnett Shale.

Willowbend's petroleum engineer also performed volumetric calculations of original gas in place under the McKee's Port Unit in the Newark, East (Caddo Lime) Field. Based on these calculations, original gas in place is 295,610 MCF. According to Willowbend, prior to the recent drilling by Western of the Semple IRI Caddo Lease, Well No. 1, the nearest well in this field was 9,000' away, and there had been no drainage of the gas under Willowbend's pooled unit.

In the opinion of Willowbend's petroleum engineer, there are no existing wells that will recover the 295,610 MCF of gas from the Newark, East (Caddo Lime) Field beneath the McKee's Port Unit, and wells drilled at regular locations on adjoining lands could not effectively and efficiently recover this gas either. His opinion about the capability of wells drilled at regular locations on adjoining lands to recover this gas is based on "typical spacing and drainage in the Caddo." However, some wells in the Caddo, such as the F. H. Walsh Operating Co., Inc., Indian Creek LIC well, possibly drain larger areas, and Willowbend's petroleum engineer could not say what wells at regular locations on adjoining lands would recover, or what Well No. 1D would recover, from the Caddo Lime. Nonetheless, based on cumulative production of existing wells, he believes that a Caddo Lime well in this area would likely have cumulative production closer to the 107,000 MCF of the CD Consulting & Operating Co., Pent No.1 than the 1,312,416 MCF of the F. H. Walsh Operating Co., Inc., Indian Creek LIC well, shown on one of the Willowbend stratigraphic cross sections.

Willowbend's petroleum engineer believes that the drilling of a new well to recover the 295,610 MCF of gas beneath the McKee's Port Unit in the Newark, East (Caddo Lime) Field would not be economically justified. A new directional well would cost \$626,339 to drill and \$630,000 to operate over 35 years. Assuming a recovery of 295,610 MCF of gas, a gas price of \$6.00 per MCF, and a .75 net revenue interest, the new directional well would yield a profit of \$73,909. A new vertical well would cost \$485,825 to drill and \$630,000 to operate over 35 years. Assuming a recovery of 295,610 MCF of gas, a gas price of \$6.00 per MCF, and a .75 net revenue interest, the new vertical well would yield a profit of \$214,423. Willowbend's petroleum engineer would not recommend the drilling of a new well to recover 295,610 MCF of gas, but believes that this would be ample recovery to justify Willowbend's proposed dual completion of the McKee's Port Unit, Well No. 1D.

Western

Western developed evidence by cross-examination of Willowbend's witnesses and presented the argument of its legal counsel. Otherwise, its evidence was limited to the testimony of an oil and gas regulatory consultant who presented a map of well locations existing within a 5 mile radius of the White tract prior to the October 15, 1984, Form W-1A date. In addition to the producing wells disclosed by Willowbend's similar study, this map showed 9 dry holes and 3 abandoned locations. The closest producing well, dry hole, or abandoned location was in Parker County 3.26 miles from the White tract.

EXAMINERS' OPINION

The Willowbend McKee's Port Unit, Well No. 1D is the first well drilled on the .5356 acre White tract, which is a component tract of the McKee's Port pooled unit. Pursuant to Statewide Rule 38(d)(1), an exception to the minimum density provision is not required for the first well in a field on a lease, pooled unit, or unitized tract composed of substandard acreage, when the leases, *or the drill site tract of a pooled unit* or unitized tract took its present size and shape prior to the date of attachment of the voluntary subdivision rule.

The voluntary subdivision rule appears in Statewide Rule 37(g). Pursuant to Statewide Rule 37(g)(3), the date of attachment of the voluntary subdivision rule is the date of discovery of oil, gas, or geothermal resource production in a certain continuous reservoir, regardless of the subsequent lateral extensions of such reservoir, provided that such rule does not attach in the case of a segregation of a small tract by fee title conveyance which is not located in an oil, gas, or geothermal resource field having a discovery date prior to the date of such segregation.

The purpose of the voluntary subdivision rule is to prevent circumvention of the spacing and density rules through the voluntary subdivision of tracts, and the basic test is whether the subdivision was made in contemplation of oil and gas development.⁶ Small tracts created by deed are voluntary subdivisions only if the subdivision by deed occurred after the voluntary subdivision rule attached. Generally, the rule attaches when an area is proved to be productive of oil or gas. The date of attachment is presumptively the discovery date listed by the Railroad Commission for the oldest reservoir accessible from the subject tract, but this presumption can be overcome by evidence supporting an earlier or later date under Statewide Rule 37(g)(7), so that innocent parties may have their rights protected.⁷ Smith & Weaver, *Texas Law of Oil and Gas*, Vol. 2, Chapter 9, Sec. 9.6(C)(2) at page 9-60, 61 (Matthew Bender 2007); Railroad Commission of Texas, *Texas Oil and Gas, Discussions of Law, Practice and Procedure* at page 30.

For the purposes of this case, it must be determined whether the voluntary subdivision rule had attached to the White tract as of October 15, 1984. Previously, the White tract had been under common ownership with adjacent tracts, but on October 15, 1984, the White tract was segregated by deed conveyance of the adjacent tracts. The examiners conclude that the voluntary subdivision rule had not attached to the White tract as of October 15, 1984, because there was no oil or gas production, drilling, or leasing activity in the vicinity of the White tract as of that date that would

⁶ Whether a tract was subdivided in contemplation of oil and gas development must be determined objectively from all the relevant facts and circumstances. A tract will be a voluntary subdivision if it was created by deed after oil and gas were discovered in the area of the tract, even though the parties to the deed knew nothing about nearby oil or gas discoveries and had no intent to circumvent Statewide Rules 37 or 38. *Nash v. Shell Petroleum Corp.*, 120 S.W.2d 522, 524 (Tex. Civ. App. - Austin 1938, writ dismissed w.o.j.).

⁷ Rule 37(g)(7) provides that the date of attachment of the voluntary subdivision rule for a reservoir, under any special circumstances which the Commission deems sufficient to provide for an exception, may be established other than as prescribed in Rule 37(g)(3)-(6), so that innocent parties may have their rights protected.

have caused a reasonable expectation that the White tract would be productive of oil or gas.

The evidence shows that as of October 15, 1984, no well was producing from any field any closer than 3.4 miles from the present bottom hole location of the McKee's Port Unit, Well No. 1D on the White tract. The closest producing well at the time was the Mitchell Energy Company LP James Paul Reed No. 3, on the opposite side of Eagle Mountain Lake in Parker County. There were only five producing wells within five miles of the current location of Well No. 1D. No well was producing from any part of the McKee's Port Subdivision, and the first well that produced from a location within 1.5 miles of the current location of Well No. 1D commenced production in February 1994, almost ten years *after* the White tract was segregated from the adjoining tracts. Of the 23 wells within about 8 miles of the current location of Well No. 1D that produced prior to October 15, 1984, none were in Tarrant County.

Neither the White tract or any other lot in the McKee's Port Subdivision had ever been the subject of an oil and gas lease until Willowbend took its leases on March 15, 2006. As of October 15, 1984, there was no nearby oil and gas leasing activity either. As of that date, oil and gas leases had been taken on only two tracts within 1.5 miles of the present location of the McKee's Port Unit, Well No. 1D, and these two 1978 era leases pertained to tracts on the opposite side of Eagle Mountain Lake in Parker County, about 1.5 miles away. In the 13 years following 1978, no other oil and gas leases were taken on properties within 1.5 miles of the present location of Well No. 1D until leases to the east were taken in 1991, some seven years after the October 15, 1984, segregation date for the White tract.

The evidence discloses that the McKee's Port Subdivision was subdivided for residential use. There are no mineral reservations in any of the conveyancing documents in the chain of title for the White tract or the adjoining tracts once owned in common by Gloria F. Primm. Primm purchased the White tract and adjoining lots 7 and 8 in the McKee's Port Subdivision for the purpose of building a house there. She sold lots 7 and 8, and later the White tract, because she had acquired a preferred lakefront lot on which to build. The possibility of future oil and gas development was not considered in pricing these lots when Primm purchased and sold them. While Primm's "good intent" is not controlling, there are no facts associated with her sale on October 15, 1984, of Lots 7 and 8, and retention of the White tract, that suggest a "subdivision" of property in contemplation of oil and gas development.

These facts just recited are sufficient to rebut the presumption that the voluntary subdivision rule attached to the White tract on the discovery date for the oldest reservoir accessible from this tract.⁸ See *Brown v. Hitchcock*, 235 S.W.2d 478 (Tex. Civ. App. - Austin 1951, writ ref'd), in which

⁸ The evidence shows that the fields accessible from the White tract are the Newark, East (Caddo Lime) and Newark, East (Barnett Shale) Fields. The discovery date for the Newark, East (Caddo Lime) Field is October 25, 2002, which is 18 years later than the October 15, 1984, Willowbend Form W-1A date. The discovery date for the Newark, East (Barnett Shale) Field is October 15, 1981. The evidence shows that as of October 15, 1984, the well closest to the present location of the McKee's Port Unit, Well No. 1D producing from the Newark, East (Barnett Shale) Field was in Wise County 6.4 miles away.

the Court concluded that the voluntary subdivision rule had not attached to small tracts subdivided after the discovery date of the Garza Field, where at the time of the subdivisions the nearest producing well was 3.5 miles away, and the small tracts were in unproven territory and had been subdivided for residential use without consideration for possible oil and gas development; and *Railroad Commission v. Delhi-Taylor Oil Corp.*, 302 S.W.2d 273 (Tex. Civ. App. - Austin 1957, writ ref'd n.r.e.) in which the Court concluded that the voluntary subdivision rule had not attached to a 0.8 acre tract subdivided after the discovery date for the McAllen Gas Field, where the 0.8 acre tract had been subdivided and purchased for the building of a drive-in restaurant, and on the subdivision date, the nearest well was 1.3 miles away, and the area immediately around the 0.8 acre tract was unproven.⁹

Western's argument that the mineral owners of the White tract lost their entitlement to a first well when the White tract was pooled by Willowbend into the 24.7009 acre McKee's Port Unit cannot be sustained. This argument is squarely contradicted by the language of Statewide Rule 38(d)(1).

Furthermore, the examiners are guided by the decision in Oil & Gas Docket No. 08-0211129; *Application of Oryx Energy Company for an Exception to Statewide Rule 38 to Drill Its Well No. 2, Brown Altman Acct 4 Unit, Emperor (Devonian) Field, Winkler County, Texas* (Final Order issued April 15, 1997), wherein the Commission found that Oryx was entitled to a first well on a 40 acre legal subdivision that had been pooled with a 120 acre voluntary subdivision after special field rules had attached, provided the well was located on the 40 acre legal subdivision and not the 120 acre voluntary subdivision. The proposal for decision of Examiners Lineberry and Richter, issued February 19, 1997, concluded that "While Oryx is not entitled to a well at the applied-for location [on the 120-acre voluntary subdivision] on the substandard Oryx Unit, the examiners agree with Oryx that the addition of voluntarily subdivided acreage to the 40 acre drill site tract . . . did not destroy the entitlement of the 40 acre tract to a well." (PFD at page 12) The decision of the Commission was affirmed in *Exxon Corp. v. Railroad Com'n of Texas*, 993 S.W.2d 704 (Tex.App.-Austin 1999, no pet.) wherein the Austin Court of Appeals observed that because the 40 acre drill site tract was a legal subdivision, there attached to the mineral owner a right to a reasonable opportunity to recover a fair share of the underlying minerals (993 S.W.2d at page 705) and rejected Exxon's argument that the 40 acre tract vanished as a legal subdivision when it was pooled with the 120 acre voluntary subdivision (993 S.W.2d at pages 710-711).

The McKee's Port Unit, Well No. 1D will be a first well in the Newark, East (Caddo Lime) Field on the McKee's Port pooled unit. The proposed completion interval of the well in this field is on a tract within the pooled unit that is a legal subdivision. Accordingly, under Rule 38(d)(1), a Rule 38 exception is not required for the proposed dual completion in the Newark, East (Caddo Lime) Field.

⁹ The Court reached this conclusion notwithstanding the fact that prior to the subdivision date, oil and gas leases had been taken on nearby tracts to the north, east, and west of the 0.8 acre tract.

Based on the record in this case, 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 sent to all affected persons, including operators and owners of record of unleased mineral interests in all offset tracts adjacent to the McKee's Port Unit and all such operators and unleased mineral interest owners of all tracts nearer to the proposed Well No. 1D than the applicable minimum lease line spacing distance.
2. On May 22, 2006, the Commission administratively approved the issuance of Permit No. 61971 to Willowbend Investments, Inc. ("Willowbend"), to drill Well No. 1D on the 24.7009 McKee's Port Unit in the Newark, East (Barnett Shale) Field, Tarrant County, Texas. This directional well was permitted at a regular bottom hole location 387' from the east line and 387' from the north line of the McKee's Port pooled unit.
3. The Newark, East (Barnett Shale) Field has 330' lease line spacing, and standard 320 acre and optional 20 acre drilling and proration units.
4. Well No. 1D was drilled by Willowbend in June-July 2006. In March 2007, the well was perforated, fracture stimulated, and tested in the Barnett Shale interval. According to Willowbend, at the time of the April 10, 2007, hearing, production of the well from the Barnett Shale was awaiting a pipeline connection.
5. According to choke nipple gas flow calculations, the McKee's Port Unit, Well No. 1D will have an initial flow rate of 1,726 MCF per day from the Newark East (Barnett Shale) Field.
6. Based on decline curve analysis of production of an analogous well, the Tom Dennis No. 1, which had similar shut-in pressure after flow back and a similar initial rate, the McKee's Port Unit, Well No. 1D has an estimated ultimate recovery from the Newark, East (Barnett Shale) Field of 2.0 BCF of gas.
7. When the McKee's Port Unit, Well No. 1D was permitted and drilled in 2006, Willowbend's target was the Barnett Shale. At that time, Willowbend had pooled the 24.7009 acres making up the McKee's Port Unit for the depth of the Barnett Shale only, and Willowbend did not believe that it would have the option of making a dual completion in the Newark, East (Caddo Lime) Field.
8. After the McKee's Port Unit, Well No. 1D was logged, Willowbend determined from the logs that the well would be productive in the Caddo Lime interval, if the well could be dual completed in the Caddo Lime.
9. The present application for a permit to make a dual completion in the Caddo Lime was filed on December 29, 2006, and in January 2007, Willowbend filed, in Tarrant County, a

“Correction of Designation of Pooled Unit” which pooled the 24.7009 acres in the McKee’s Port Unit for all depths. Well No. 1D would be the first well in the Newark, East (Caddo Lime) Field on the McKee’s Port Unit.

10. Field rules for the Newark, East (Caddo Lime) Field provide for 330' lease line spacing and 40 acre drilling units.
11. In the Newark, East (Caddo Lime) interval, Well No. 1D is at a regular location under the applicable well spacing rule, being more than 330' from any surrounding pooled unit boundary.
12. The discovery date of the Newark, East (Barnett Shale) Field is October 15, 1981, and the discovery date of the Newark, East (Caddo Lime) Field is October 25, 2002.
13. The proposed completion interval of the McKee’s Port Unit, Well No. 1D in the Newark, East (Caddo Lime) Field is on the .5356 acre Craig White tract (“White tract”), which is a component tract of the McKee’s Port 24.7009 acre pooled unit.
14. The White tract is a part of the McKee’s Port Subdivision, which was dedicated on January 4, 1962. There has been no change in the size or shape of the White tract since that date.
15. The lots in the McKee’s Port Subdivision came under the common ownership of Walter McKee on April 15, 1947.
16. On May 21, 1970, the White tract, which was Lot 9 of the McKee’s Port Subdivision, and adjoining Lot 8 were deeded from Walter McKee et ux to Gloria F. Primm (“Primm”), and on February 1, 1974, Lot 7, which adjoins Lot 8, was deeded from Walter McKee et ux to Primm.
17. On October 15, 1984, Lots 7 and 8 of the McKee’s Port Subdivision were deeded from Primm to William W. Naillon, leaving Primm with the ownership of the White tract (Lot 9) only.
18. The White tract has not been under common ownership with any adjacent tract since October 15, 1984.
19. The White tract was not pooled with any adjoining lands after October 15, 1984, prior to the formation of the McKee’s Port Unit by Willowbend.
20. As of October 15, 1984, when Primm made a deed conveyance of Lots 7 and 8 of the McKee’s Port Subdivision, retaining only the White tract, there was no basis for a reasonable expectation that the White tract would be productive of oil or gas, and the White tract was not established as a separate tract in its present size and shape in contemplation of oil and gas development.

- a. The McKee's Port Subdivision is a residential subdivision.
- b. When Primm acquired the White tract and adjoining Lots 7 and 8, she did so with purpose of building a house there.
- c. At the time Primm acquired the White tract and adjoining Lots 7 and 8, and at the time she sold these lots, the lots were not priced on the basis that they might be productive of oil or gas.
- d. No mineral reservations are contained in any of the conveyancing documents in the chain of title to the White tract or Lots 7 and 8 up to and including October 15, 1984.
- e. No oil and gas leases were taken on any lot in the entire McKee's Port Subdivision prior to March 15, 2006, when Willowbend took its leases.
- f. From May 21, 1970, when Primm acquired the White tract and adjoining Lot 8 in the McKee's Port Subdivision, through October 15, 1984, when Primm conveyed title to Lots 7 and 8, only two oil and gas leases were taken anywhere within a 1.5 mile radius (approximately seven square miles) of the current location of the McKee's Port Unit, Well No. 1D on the White tract, and these two 1978 leases were on properties about 1.5 miles to the west on the opposite side of Eagle Mountain Lake in Parker County.
- g. In the 13 years following 1978, no other oil and gas leases were taken on properties within 1.5 miles of the current location of the McKee's Port Unit, Well No. 1D until leases to the east were taken in 1991, about seven years after October 15, 1984.
- h. Reservoirs accessible from the White tract are the Newark, East (Barnett Shale) and Newark, East (Caddo Lime) Fields. The Newark, East (Caddo Lime) Field was not discovered until about 18 years after October 15, 1984. The Newark, East (Barnett Shale) Field had been discovered three years prior to October 15, 1984, but as of October 15, 1984, the well closest to the present location of the McKee's Port Unit, Well No. 1D producing from the Newark, East (Barnett Shale) Field was in Wise County 6.4 miles away.
- i. As of October 15, 1984, no well was producing from any field any closer than 3.4 miles from the current location of the McKee's Port Unit, Well No. 1D on the White tract. This well was on the opposite side of Eagle Mountain Lake in Parker County.
- j. Of 23 wells within about 8 miles of the current location of the McKee's Port Unit, Well No. 1D that produced prior to October 15, 1984, none were in Tarrant County.
- k. The first well that produced from a location within 1.5 miles of the current location of the McKee's Port Unit, Well No. 1D commenced production in February 1994,

almost 10 years after the White tract was segregated from the adjoining tracts on October 15, 1984.

21. Willowbend is not the operator of any well on the McKee's Port Unit or on any nearby lands which is capable of recovering gas reserves in the Newark, East (Caddo Lime) Field beneath the McKee's Port Unit.
22. Original gas in place beneath the McKee's Port Unit in the Newark, East (Caddo Lime) Field is a volumetrically calculated 295,610 MCF.

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. Pursuant to Statewide Rule 38(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.38(d)(1)], a Rule 38 density exception is not required for the first well in a field on a lease, pooled unit, or unitized tract composed of substandard acreage, when the lease, or the drill site tract of a pooled unit or unitized tract took its present size and shape prior to the date of the attachment of the voluntary subdivision rule in Statewide Rule 37(g) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.37(g)].
4. The .5356 acre Craig White tract took its present size and shape as a separate tract prior to the date of the attachment of the voluntary subdivision rule.
5. The .5356 acre Craig White tract is a legal subdivision.
6. Pursuant to Statewide Rule 38(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.38(d)(1)], a Rule 38 exception is not required for the proposed dual completion of the McKee's Port Unit, Well No. 1D in the Newark, East (Caddo Lime) Field, because this well will be a first well in this field, and the well is on a drill site tract which is a legal subdivision.
7. Willowbend Investments, Inc., has established its right to a regular drilling permit to dual complete the McKee's Port Unit, Well No. 1D in the Newark, East (Caddo Lime) and Newark, East (Barnett Shale) Fields, and the application for an exception to Statewide Rule 38 should be dismissed.

RECOMMENDATION

The examiners recommend that Willowbend be granted an amended drilling permit to dual complete the McKee's Port Unit, Well No. 1D in the Newark, East (Caddo Lime) and Newark, East (Barnett Shale) Fields, Tarrant County, Texas, and that Willowbend's application for an exception to Statewide Rule 38 be dismissed as unnecessary under Statewide Rule 38(d)(1).

Respectfully submitted,

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Hearings Examiner

Thomas H. Richter
Technical Examiner