NOVEMBER 15, 2001

PROPOSAL FOR DECISION
OIL & GAS DOCKET NOS. 10-0227038 THRU 10-0227042, 10-0227045 AND
NOS. 10-0229792 THRU 10-0229831
DISTRICT 10

IN RE: 46 APPLICATIONS OF PANTERA ENERGY COMPANY PUTATIVELY PURSUANT TO STATEWIDE RULE 38(D)(3) FOR 49 EXISTING GAS UNITS IN THE PANHANDLE, WEST FIELD, CARSON & GRAY COUNTIES, TEXAS.

APPEARANCES:	**REPRESENTING:**
APPLICANT -	
Andrew M. Taylor, Attorney Scott D. Herrick, President	Pantera Energy Company

PROCEDURAL HISTORY

Applications for Admin Grant Filed: (Dkts 10-0227038 - 42 & 10-0227045)	December 28, 2000
Application Denied by Examiner:	January 16, 2001
Request for Reconsideration Denied:	March 9, 2001
Interim Appeal Filed:	March 29, 2001
Interim Appeal Denied by Law:	May 15, 2001
Second App for Admin. Grant Filed: (Dkts 10-0229792 - 10-0229831)	September12, 2001
Second Applications Denied:	September 19, 2001
Hearing Held:	N/A - No request for hearing
PFD Circulated	November 15, 2001

PFD Prepared by: Colin K. Lineberry

STATEMENT OF THE CASE

Pantera Energy Company ("Pantera" or "applicant") seeks administrative approval of 46 applications, putatively under Statewide Rule 38(d)(3), for existing gas units in the Panhandle, West Field. Currently, Pantera has 46 such applications pending concerning 49 existing gas units. The 46 applications addressed in this proposal for decision were filed in two groups. The first group of six[1] was filed December 28, 2000 and the second group of 40 applications was filed on September 12, 2001. Pantera was notified that notice to offsets was required for each of these applications but it has refused to give notice and has not requested a hearing on any of these applications. Pantera continues to assert that the Commission is required to approve each of the pending applications administratively.

As no hearing has been held (or requested), it has been assumed for purposes of this recommendation that the facts stated in Pantera's applications are true. In addition, Pantera is hereby notified, pursuant to §2001.090 of the Texas Government Code, that official notice has been taken of the Commission docket files for each of the pending Pantera applications; the field Rules for the Panhandle, West Field; the Commission docket files for O&G Docket Nos. 6-96,025, 10-0217780, 10-0228770 & 10-0228772; Commission's Rulemaking File for the 1989 Amendments to Statewide Rule 38, and Complaint File No. 2000-040 (concerning Pantera's Interim Appeal in this matter). In addition, official notice has been taken of the following generally recognized facts within the area of the Railroad Commission's specialized knowledge: Spacing and density rules for Commission-designated fields are adopted, and exceptions to those rules granted, to prevent waste and to protect correlative rights. Density rules for a Commission designated-field are adopted based on evidence of the average drainage area of wells in the field. Development of an area in a Commission-designated field to a greater density than authorized by the density rule for that field likely, and presumptively, will cause the drainage of hydrocarbons from tracts adjoining the area.

PROCEDURAL HISTORY

Pantera's first group of 6 applications, filed on December 28, 2000, concern seven 640-acre units each of which currently has a producing well and at least one shut-in well that is also permitted for the Panhandle, West Field. Pantera obtained regular permits for two wells on each of the units without notifying its offsets by agreeing not to produce the second well on each unit concurrently with the existing well on the unit. The units are collectively composed of 35 tracts, all of which allegedly took their current size and shape prior to the attachment of field rules for the field. Field rules for the Panhandle West Field require 640 acre units. Pantera is the operator of each of the units

[1] Pantera actually filed 8 applications on December 28, 2000, however, after its interim appeal was denied, it requested a hearing on two of the applications. Those two applications were separately docketed and set for hearing as O&G Docket Nos. 10-0228770 & 10-0228772. After the hearing, orders of dismissal were entered on both of those dockets and Pantera has filed motions for rehearing which are currently pending.

and represents the interests of 100% of the lessees of the gas mineral interest in each of the units. Notice of the applications was not given to any entities other than Pantera itself.

The examiner assigned to Pantera's application declined to administratively approve dissolution of the units by letters mailed to Pantera's attorney on January 16, 2001. The letters specifically informed Pantera that it could request a hearings on its applications and that, "If Pantera seeks a hearing, please be advised that it will be required to provide notice of its application to ... any offsetting operators, and any offsetting unleased mineral interest owners." Pantera requested that this decision be reconsidered and submitted additional documentation regarding the proposed dissolution. On March 9, 2001, I issued a letter ruling denying administrative approval of Pantera's request and noting that Statewide Rule 38(h), which requires notice to, *inter alia*, offsetting operators and unleased mineral interest owners, rather than Rule 38(d)(3) set out the appropriate procedure for the relief sought by Pantera. On March 19, the last day to appeal that ruling, Pantera requested a 10-day extension of the time to appeal the ruling. That request was granted and Pantera timely filed its appeal on March 29, 2001. The Commission declined to issue an order on Pantera's appeal and, as a result, the appeal was denied by operation of law on May 15, 2001 pursuant to 16 TEX. ADMIN. CODE §1.30(c)(2). Pantera has never requested that these six applications be set for hearing and has not provided notice of the applications to offset operators and mineral interest owners.

Pantera filed its second group of 40 putative Rule 38(d)(3) applications concerning 42 existing Panhandle, West Field units on September 12, 2001. The 42 units are collectively composed of 122 tracts, all of which allegedly took their current size and shape prior to the attachment of field rules for the field. Pantera is the operator of each of the 42 units. For 40 of the 42 units, Pantera represents the interests of the lessees of 100% of the gas mineral interests in each of the units. For two of the units, there are unleased fractional gas mineral interests in at least one of the component tracts but Pantera represents the interests of lessees of at least part of the mineral interest in every tract comprising the unit.[2] Notice of the applications was not given to these unleased mineral interest owners or to any other entities, except Pantera itself.

On September 19, 2001, I sent a letter to Pantera noting that the facts underlying these applications were identical in all material respects to Pantera's previous putative Rule 38(d)(3) applications for other units in the Panhandle, West Field. I further noted that Pantera's appeal to the Commission of the Staff determination that offset operators were affected persons entitled to notice had been denied by operation of law. I further noted that, "As in the prior applications, Pantera is effectively seeking a density exception and must provide notice pursuant to Rule 38(h). ... Until

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[2] In Docket Nos. 10-0229792 and 10-0229794, Pantera's "form" application letter contains handwritten strikeouts and interlining indicating that, "there are unleased mineral interest owners of acreage within the ... unit(s) who have not yet received notice of this application. Pantera will provide notice." Pantera has never offered any proof that it has given notice to these unidentified interests holders who it acknowledges are entitled to notice. As a result, these two dockets could not be approved even if Pantera's arguments were accepted in full.

notice has been given to affected persons, including offsets, pursuant to Rule 38(h), as previously directed by the Commission, Pantera's Panhandle, West Field applications cannot be administratively processed or set for hearing." Pantera has not provided any evidence that it has given the required notice and has not requested a hearing on any of the second group of applications.

APPLICANT PANTERA'S POSITION

Pantera has denominated its applications as being pursuant to Rule 38(d)(3) and asserts that the Commission must accept that designation and consider only the wording of that subpart of Statewide Rule 38 in addressing the applications. The relevant portion of Rule 38(d)(3) states that an approved Railroad Commission unit may not be divided into its component tracts, if any of the tracts will be of substandard size,

> 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.

16 TEX ADMIN. CODE §38(d)(3). Pantera asserts that the list of persons entitled to notice is an exclusive list and that, under the facts of the applications it has filed, there are no persons entitled to notice.[3] Pantera further asserts that the language of sub-part (d)(3) is mandatory and that, as no one is entitled to notice and no protests have been filed, the applications must be granted administratively.

In support of its arguments, Pantera relies primarily upon its interpretation of the 1989 amendments to Rule 38(d)(3) and a conclusion of law in a 1991 Rule 38(d)(3) order. With regard to the 1989 amendments, Pantera notes that the final sentence on which it relies as mandating administrative approval was not in the version of the rule that was published for public comment. ***See*** 14 Tex. Reg 1575, 1576 (March 28, 1989). But, according to Pantera, "After public comment and review of the proposed rule, the Commission changed the language to add the specific provision that any unprotested application"will be granted administratively."[4]

The Commission Docket involving Statewide Rule 38(d)(3) cited by Pantera is Oil & Gas Docket No. 6-96,025 - Application of R & C Petroleum, Inc. Pantera contends that this docket is

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[3] As noted in footnote 2 above, Pantera has acknowledged that there are persons entitled to notice of two of its forty-six applications even under its reading of the rule but it has not identified those paties or provided any evidence that it has given notice to them.

[4]Pantera Appeal of Interim Ruling, p. 5 (Filed March 29, 2001).

"the identical fact situation presented by Pantera."[5] and relies on Conclusion of Law No. 1 in that docket which states that: "Notice of the [Rule 38(d)(3)] application is not necessary because the applicant is the only lessee within the unit and there are no unleased mineral interest owners." Pantera claims that failure to grant its applications administratively would be contrary to Texas law and would subject it to a different standard than other operators.

EXAMINER'S OPINION

Notice Required by Statewide Rule 38

The primary issue in this matter is notice to affected parties. Pantera seeks authority to triple its well density on the units at issue in the Panhandle, West Field from 49 to 147 without adding any additional acreage and without giving notice of its applications to any affected parties. The prescribed density in the Panhandle, West Field is one well per 640 acres. The relief sought by Pantera would authorize an average density of one well per 197 acres on the acreage operated by Pantera. Staff has consistently ruled, and the Commission has affirmed that ruling by denying Pantera's interim appeal, that Pantera is required to give notice of its putative Rule 38(d)(3) applications to its offsets who would be entitled to notice pursuant to Rule 38(h) if Pantera had properly designated the filings as applications for Rule 38 density exceptions.

Although nominally in the form of Rule 38(d)(3) applications, Pantera's applications are, in fact, applications for density exceptions that should have been filed as exceptions to Statewide Rule 38.[6] Sub-part (d)(3) of Rule 38 applies to situations in which the applicant seeks the immediate dissolution of the regulatory unit designated at the Commission into its component tracts. Typically, applications pursuant to Rule 38(d)(3) are filed when the well on a unit has stopped producing, field rules have changed, or other events have transpired such that the original operator of a unit no longer

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[5]Id. at p. 7.

[6] The disingenuous nature of Pantera's assertions that it is not seeking density exceptions is highlighted by one of the two putative38(d)(3) applications in the first group of eight. Pantera eventually requested a hearing on those applications, but still refuses to give notice to any other party. In one of those units, designated as the Hodges Lease, Pantera applied for a Rule 38 density exception in 1997 (Oil & Gas Docket No. 10-0217780). The application was protested by Phillips Petroleum and Pantera subsequently withdrew its request for an exception permit. However, Pantera re-filed for the exact same well location with a restriction against concurrent production of the two wells, thereby avoiding density exception notice requirements. When the new well was completed, Pantera shut-in its existing well. Accordingly, if Pantera's current application, putatively under Rule 38(d)(3), is granted administratively without notice, as Pantera requests, Pantera could instantly begin producing both of these wells concurrently – effectively giving itself the density exception it withdrew in 1997. Pantera would then have successfully nullified Phillips timely and proper protest without notice or opportunity for hearing.

is the operator of all of the component tracts in the unit. The effect of the grant of the application is to immediately dissolve the unit and allow the operator to add component tracts from the old unit to another unit or to divide out tracts that it no longer holds a lease on from tracts it does have leases on.

By contrast, an applicant for a Rule 38 density exception for a unit continues to operate and hold leases on all tracts that comprise the unit and does not seek to reconfigure the areal extent of the unit in any way but seeks authority to add one or more additional wells to the unit acreage. If granted, the exception authorizes an additional well or wells, but the proration unit for the existing well remains unchanged until the operator chooses to drill or re-complete the authorized additional well and files completion papers assigning a portion of the existing proration unit acreage to the new well(s). An applicant for a density exception is required by Rule 38(h) to give notice of the application to all offset operators and unleased mineral interest owners and must offer proof that the exception is necessary to prevent waste or protect correlative rights.

Under sub-part (d)(3) of Rule 38, notice of an application is only expressly required to be given to "all current lessees and unleased mineral interest owners of each tract within the joined or unitized tract..." In this case, where Pantera continues to produce a well on the unit and continues to operate leases covering 100% of the interest in each tract, there are no parties (other than Pantera) that are required to be given notice under the terms of Rule 38(d)(3). If Rule 38(d)(3) applied to this situation, as urged by Pantera, Pantera would effectively be allowed to unilaterally grant itself exceptions to the density rule and circumvent the density requirements of the Panhandle, West Field without any notice to adversely affected offset operators and mineral interest owners.

In each of the pending applications, Pantera seeks to continue producing its currently producing well on the unit and to be granted authority to begin concurrently producing additional wells on the exact same acreage. The true character of the applications is confirmed by Pantera's statement in each of the applications that upon,

> ...completion of new or re-entry wells on any of the [acreage currently assigned to the unit] in the Panhandle, West Field, Pantera will file the necessary documents to establish or amend proration units for the existing well and any new or re-entered wells. Until then, the proration unit for the existing [unit well] remains unchanged.

Pantera is not seeking the current dissolution of the unit as would be granted in a true Rule 38(d)(3) application but is seeking contingent, prospective authority to add additional wells to the same unit acreage at any time in the future it chooses to do so. Pantera is seeking an exception to the density requirement in the Panhandle, West Field of one well per 640 productive acres. By cloaking its density exceptions in the ill-fitting form of Rule 38(d)(3), Pantera attempts to circumvent Commission rules applicable to density exceptions and thereby avoid the requirements of giving notice of its applied-for exceptions to offset operators who will be adversely affected and avoid having to offer proof that the exceptions are necessary to avoid waste or protect correlative rights.

Notice Required by Tex. Nat. Res Code §85.205

Even if Pantera's applications were truly Rule 38(d)(3) applications rather than thinly disguised Rule 38 exception applications, Pantera would be required to give notice to the affected offset operators. Notice to offset operators of the applications is required by both statute and due process. The correlative rights of offset operators, who must comply with the existing 640 acre spacing rule, will clearly be adversely impacted if Pantera is allowed to increase the density of wells on its tracts to an average of three times, and in some instances five, six and even twelve times, the standard density of one well for every 640 acres. The density provisions of Statewide Rule 38 and those contained in field rules such as the rules for the Panhandle West, Gas Field are enacted to protect correlative rights and prevent the waste of hydrocarbons. By statute, the Commission cannot grant exceptions to those rules except after adequate notice and an opportunity for hearing. ***See*** TEX. NAT RES. CODE §85.205; *Railroad Commission v. Torch Operating Company*, 912 S.W.2d 790, 792 (Tex. 1995). Offset operators are affected parties who are required to be given notice under §85.205 of the Texas Natural Resources Code..

Notice Required by Due Process

In addition to the statutory requirement, notice to affected parties with correlative property interest is also required by due process. Due process requires that the operators of offset tracts be given notice of Pantera's applications that affect them and an opportunity to protest the applications. The requirements of procedural due process apply to the deprivation of those interests encompassed by the Fourteenth Amendment's protection of life, liberty and property. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972); ***see also***, *Ramirez v. Ahn*, 843 F.2d 864, 867 (5th Cir.1988), *cert. denied*, 489 U.S. 1085 (1989); *Bexar County Sheriff's Civil Service Commission v. Davis*, 802 S.W.2d 659, 661 (Tex. 1990).

The constitutional due process guarantee applies to administrative proceedings in which a protected interest is implicated. ***See*** *Lewis v. Metropolitan Savings & Loan Association*, 550 S.W.2d 11, 13 (Tex. 1977); *Francisco v. Board of Dental Examiners*, 149 S.W.2d 619, 622 (Tex. Civ. App. -- Austin 1941, *writ ref'd*). The Texas Supreme Court has recognized that due process attaches to the property rights that arise from a mineral estate. *Railroad Commission v. Torch*, 912 S.W.2d 790, 792 (Tex. 1995); *Railroad Commission v. Graford Oil Corp.*, 557 S.W.2d 946, 953 (Tex. 1977). The Supreme Court has held that, "The essence of due process is the requirement that `a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.'" *Matthews v. Eldridge*, 424 U.S. 319, 348, 96 S.Ct. 893, 909, 47 L.Ed.2d 18 (1976) (citation omitted). To comply with due process, the notice must be reasonably calculated, under all the circumstances, to apprize interested parties of the pending action and afford them an opportunity to present their objections. *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 13, 98 S.Ct. 1554, 1562, 56 L.Ed.2d 30 (1978); ***see also*** *Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813 (Tex. 1983).

Railroad Commission v. Torch Operating Company

Pantera seeks to require the Commission to consider its applications exclusively under the inapplicable (d)(3) subpart of Rule 38 it has designated without reference to the remainder of Rule 38. This is clearly improper. However, even if that subpart is considered in the vacuum advocated by Pantera, the fact that offsets are not listed as parties entitled to notice in sub-part (d)(3) does not preclude the Commission from requiring that affected parties be given notice of the applications when notice is required by statute and to afford them due process. Pantera's assertion that the Commission cannot find that a party is affected and entitled to notice of an application, when that party is not in the class explicitly required to be given notice under a Commission rule, has recently been considered and rejected by the Texas Supreme Court.

In *Railroad Commission v. Torch Operating Company*, 912 S.W.2d 790 (Tex. 1995), the Supreme Court addressed an application for temporary field rules pursuant to Statewide Rule 43. The applicant in Torch, gave notice to all operators of tracts offsetting the discovery well tract in strict compliance with the notice requirements under Statewide Rule 43. Goodrich was a lessee of a tract offsetting the pooled unit for the discovery well, but not the drill site tract, and was therefor not within the class explicitly entitled to notice under Rule 43. *Id*. at 791. The Commission, nonetheless, found that Goodrich was an affected party entitled to notice of the temporary field rule hearing. *Id*. at 792. As a result of the failure to give Goodrich notice, the Commission concluded that the temporary field rules were void as to Goodrich. *Id.* The Supreme Court noted that due process attaches to the property rights of an operator of an offset mineral estate. *Id*. The court further noted that §85.205 of the Texas Natural Resources Code requires the Commission to ensure that no rule or order is adopted except after adequate notice and a hearing have been provided. *Id*. The Supreme Court then reversed the Court of Appeals and upheld the Commission's determinations regarding notice, stating that, " ... adequate notice was an appropriate factor for the Commission to consider ..." *Id*. at 793.

Pantera's Authority

The authority cited by Pantera does not support its rigid interpretation of the notice requirements of subpart (d)(3) of Rule 38. The only Commission Docket involving Statewide Rule 38(d)(3) cited by Pantera, Oil & Gas Docket No. 6-96,025 - Application of R & C Petroleum, Inc., does not support Pantera's contention that it is entitled to administrative approval of its application without notice to affected offsets. That docket is not "the identical fact situation presented by Pantera," as Pantera asserts in its appeal. The critical difference between the two cases is the fact that R & C Petroleum sought to dissolve one standard-size 80-acre unit and to immediately reform a standard-size 80-acre unit, deleting some of the component tracts of the original unit and adding other tracts. The signed Commission order granting the R & C request specifically finds that there "is no indication that the unit revision is intended to subvert the density provisions of Rule 38."

In stark contrast, Pantera does not seek to actually dissolve and reform its units with different

acreage but to dissolve the units in name only while continuing to operate the exact same unit acreage, but effectively increasing the density of its units from forty-nine wells on 29,011 acres to 147 wells on the exact same 29,011 acres. Pantera's putative unit dissolutions are solely for the purpose of subverting the density provisions of Rule 38.

Similarly, contrary to Pantera's implication, there was no comment to the proposed rule demanding the addition of a mandatory requirement that unprotested applications be approved or that the Commission be stripped of discretion to require additional notice. Further, this additional language was never published for public comment and the preamble to the rule contains no discussion or explanation of the intent of the language. In short, the rulemaking history does not mandate, or even support, Pantera's interpretation of Rule 38(d)(3). As noted above, regardless of the notice provisions in Rule 38(d)(3), §85.205 of the Natural Resources Code and due process require the Commission to give notice to offsets as persons affected by the relief sought by the applications.

Legal Subdivision Status

Pantera has argued that it is not circumventing the density rule and that no density exception is required because the component tracts took their size and shape prior to the adoption of field rules and are therefore each "legal subdivisions" entitled to a well in the field. This argument ignores Pantera's treatment of the tracts for the last 60 years. Status as legal subdivisions was lost when the operator elected to unitize the tracts in the 1930s. After enjoying the advantages, including increased allowables, of this regulatory merger of the tracts for some 60 years, Pantera does not retain the right to unilaterally negate the merger of the tracts and, without notice to affected offsets and other parties, treat the component tracts as legal subdivisions again.

Further, even if the tracts could be properly "restored" to legal subdivision status, each tract would not automatically be entitled to a well. On these facts, the owners of the component tracts may well have already had a fair and reasonable opportunity to recover the underlying gas by virtue of their interest in production from the unit wells and therefore not be entitled to a well on their sub-standard tracts. *See* ***Railroad Commission of Texas v. Williams***, 356 S.W.2d 131 (Tex. 1962); ***Musick v. Railroad Commission of Texas***, 747 S.W.2d 892 (Tex. App. -- Austin 1988, *writ denied*).

Conclusion

Rule 38(d)(3) is simply not the proper provision for the relief Pantera seeks. The relief Pantera seeks by the applications is indistinguishable from the relief it would obtain if the applications were properly classified as application for density exceptions - Pantera seeks to be granted authority to add wells to its existing acreage, while maintaining its existing units until it elects to add the well(s). For the foregoing reasons, Pantera's request for authority to add existing wells to its existing unit acreage does require an exception to the density rule and notice should be given under the provisions of Statewide Rule 38(h) and not 38(d)(3). Granting Pantera's application without notice to affected offsets, as urged by Pantera, would allow Pantera to effectively grant itself

density exceptions and subvert the density rule for the Panhandle, West Field.

If Pantera's applications had been properly filed as density exceptions, notice to offset operators and mineral interest owners would be expressly required under Rule 38(h). Regardless of how the applications are styled by Pantera, offset mineral interest owners and operators will clearly be adversely affected by the requested authorization of substantially increased well density on the Pantera acreage. Due process and applicable statute require that notice of the applications be given to those offsets. As the required notice has not been given, the Commission lacks jurisdiction to take any action on the applications other than dismiss them or stay proceedings until notice is given. ***See*** *Nixon v. Cowan*, 135 S.W.2d 96, 99 (Tex. Comm'n App. 1940, *opinion adopted*); *Bourland v. City of San Antonio*, 347 S.W.2d 660, 661 (Tex. Civ. App. -- San Antonio 1961, *no writ*); *De Loach v. Moore*, 185 S.W.2d 195, 198 (Tex. Civ. App. -- El Paso 1944, *no writ*). A Commission order on the merits entered without proper notice is void. ***See*** *Greer v. Railroad Commission*, 117 S.W.2d 142, 145 (Tex. Civ. App. -- Austin 1938, *writ dism'd*); *State v. Blue Diamond Oil Corp.*, 76 S.W.2d 852, 853 (Tex. Civ. App. -- Austin 1934, *no writ*).

As notice to affected offset operators is required and Pantera has refused to give that notice, I recommend that the Commission enter the attached final order dismissing, without prejudice, all of Pantera's pending putative Rule 38(d)(3) applications and that staff be ordered not to accept for filing the applications, or any substantially, similar applications, unless Pantera provides a list of affected offsets as set out in Rule 38(h) and requests that notice of the applications be given to those parties by the Commission.

Accordingly, I recommend that the Commission adopt the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Pantera Energy Company ("Pantera" or "applicant") has filed 46 applications ("subject applications"), putatively pursuant to Statewide Rule 38(d)(3) [16 TEX. ADMIN. CODE §3.38(d)(3)], concerning 49 gas units ("Pantera units") it operates in the Panhandle, West Field ("Panhandle Field"). Each of the subject applications has been assigned a docket number and the applications are specifically identified as follows:

    a. Docket No. 10-0229792, concerning the Osborne Unit, Well No. 2R (Gas ID No. 182860), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on September 12, 2001.

    b. Docket No. 10-0229793, concerning the Osborne Unit, Well No. 1 (Gas ID No. 024376), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

c. Docket No. 10-0229794, concerning the Davis Unit, Well No. 1 (Gas ID No. 162784), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

d. Docket No. 10-0229795, concerning the Wells A Unit, Well No. 1R (Gas ID No. Not Yet Assigned), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

e. Docket No. 10-0229796, concerning the Wall Unit, Well No. 1 (Gas ID No. 159213), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on September 12, 2001.

f. Docket No. 10-0229797, concerning the Walker Unit, Well No. 1 (Gas ID No. 024398), for the Panhandle, West Field, in Carson & Gray Counties, consisting of 4 tracts, filed on September 12, 2001.

g. Docket No. 10-0229798, concerning the McIlroy Unit, Well No. 1 (Gas ID No. 024372), and the Tricia Unit, Well No. 1 (Gas ID No. 129988) for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

h. Docket No. 10-0229799, concerning the Thornburg Unit, Well No. 1 (Gas ID No. 024390), for the Panhandle, West Field, in Carson County, consisting of 4 tracts, filed on September 12, 2001.

i. Docket No. 10-0229800, concerning the Purvis Unit, Well No. 1 (Gas ID No. 164565), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on September 12, 2001.

j. Docket No. 10-0229801, concerning the Pope Unit, Well No. 1 (Gas ID No. 024382), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

k. Docket No. 10-0229802, concerning the Pickens Unit, Well No. A 1 (Gas ID No. 024380), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

l. Docket No. 10-0229803, concerning the Percival Unit, Well No. 1 (Gas ID No. 023973), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

m. Docket No. 10-0229804, concerning the Mongole Unit, Well No. 1R (Gas ID No. 164742), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

n. Docket No. 10-0229805, concerning the McConnell, R.S. Unit, Well No. 8R (Gas ID No. 181125), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

o. Docket No. 10-0229806, concerning the McConnell, R.S. Unit, Well No. 5 (Gas ID No. 024368), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

p. Docket No. 10-0229807, concerning the Martin -B- Unit, Well No. 1 (Gas ID No. 024374), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

q. Docket No. 10-0229808, concerning the Kuykendall Unit, Well No. 1 (Gas ID No. 085886), for the Panhandle, West Field, in Carson County, consisting of 4 tracts, filed on September 12, 2001.

r. Docket No. 10-0229809, concerning the Kalka Unit, Well No. 1 (Gas ID No. 024359), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

s. Docket No. 10-0229810, concerning the Jendrusch Unit, Well No. 1 (Gas ID No. 024358), for the Panhandle, West Field, in Carson County, consisting of 5 tracts, filed on September 12, 2001.

t. Docket No. 10-0229811, concerning the Bednorz Estate Unit, Well No. 4R (Gas ID No. 171264), and the Haiduk Unit, Well No. 1 (Gas ID No. 024353) for the Panhandle, West Field, in Carson County, consisting of 12 tracts, filed on September 12, 2001.

u. Docket No. 10-0229812, concerning the Witter Unit, Well No. 2 (Gas ID No. 024405), for the Panhandle, West Field, in Carson County, consisting of 5 tracts, filed on September 12, 2001.

v. Docket No. 10-0229813, concerning the White Deer Inv. Unit, Well No. 1 (Gas ID No. 024401), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

w. Docket No. 10-0229814, concerning the Bednorz Estate Unit, Well No. 1R (Gas ID No. 164744), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

x. Docket No. 10-0229815, concerning the Barrett Unit, Well No. 1 (Gas ID No. 023080), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed

on September 12, 2001.

y. Docket No. 10-0229816, concerning the Bischel Unit, Well No. 1R (Gas ID No. Not Yet Assigned), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

z. Docket No. 10-0229817, concerning the Bryan, E. F. Unit, Well No. 1 (Gas ID No.024334), for the Panhandle, West Field, in Carson County, consisting of 4 tracts, filed on September 12, 2001.

aa. Docket No. 10-0229818, concerning the Chadwick Unit, Well No. 1 (Gas ID No.023246), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on September 12, 2001.

bb. Docket No. 10-0229819, concerning the Click Unit, Well No. 1 (Gas ID No. 024338), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

cc. Docket No. 10-0229820, concerning the Culbertson Unit, Well No. 106 (Gas ID No. 162623), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

dd. Docket No. 10-0229821, concerning the Duncan Unit, Well No. 1 (Gas ID No. 024342), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

ee. Docket No. 10-0229822, concerning the Fields, J. W. Unit, Well No. 1 (Gas ID No. 024347), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on September 12, 2001.

ff. Docket No. 10-0229823, concerning the Fields, J. W. Unit, Well No. 2 (Gas ID No. 024348), for the Panhandle, West Field, in Gray County, consisting of 4 tracts, filed on September 12, 2001.

gg. Docket No. 10-0229824, concerning the Frashier Unit, Well No. 1 (Gas ID No. 024349), for the Panhandle, West Field, in Gray County, consisting of 4 tracts, filed on September 12, 2001.

hh. Docket No. 10-0229825, concerning the Gordzelik Unit, Well No. 1 (Gas ID No. 024351), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

ii. Docket No. 10-0229826, concerning the Bell -E- Unit, Well No. 2 (Gas ID No.

024328), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on September 12, 2001.

jj. Docket No. 10-0229827, concerning the Bell -E- Unit, Well No. 3 (Gas ID No. 024329), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on September 12, 2001.

kk. Docket No. 10-0229828, concerning the Urbanczyk -B- Unit, Well No. 2 (Gas ID No. 024393), for the Panhandle, West Field, in Carson County, consisting of 4 tracts, filed on September 12, 2001.

ll. Docket No. 10-0229829, concerning the Urbanczyk -B- Unit, Well No. 3 (Gas ID No. 024394), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on September 12, 2001.

mm. Docket No. 10-0229830, concerning the Urbanczyk, L. T. Unit, Well No. 1 (Gas ID No. 024392), for the Panhandle, West Field, in Carson County, consisting of 2 tracts, filed on September 12, 2001.

nn. Docket No. 10-0229831, concerning the Huff -O- Unit, Well No. 1R (Gas ID No. 166473), for the Panhandle, West Field, in Gray County, consisting of 3 tracts, filed on September 12, 2001.

oo. Docket No. 10-0227038, concerning the Urbanczyk Unit, Well No. 4R (Gas ID No. 170416), for the Panhandle, West Field, in Carson County, consisting of 5 tracts, filed on December 28, 2000.

pp. Docket No. 10-0227039, concerning the Sheridan Unit, Well No. 3R (Gas ID No. 167478), for the Panhandle, West Field, in Carson County, consisting of 3 tracts, filed on December 28, 2000.

qq. Docket No. 10-0227040, concerning the Powers Unit, Well No. 1R (Gas ID No. 170531, for the Panhandle, West Field, in Gray County, consisting of 5 tracts, filed on December 28, 2000.

rr. Docket No. 10-0227041, concerning the Kotara-Holmes Unit, Well No. 1R (Gas ID No. 168357), for the Panhandle, West Field, in Carson County, consisting of 4 tracts, filed on December 28, 2000.

ss. Docket No. 10-0227042, concerning the Benedict Unit, Well No. 1R (Gas ID No. 160767), for the Panhandle, West Field, in Gray County, consisting of 2 tracts, filed on December 28, 2000.

tt. Docket No. 10-0227045, concerning the Bell Unit, Well No. 1R (Gas ID No. 167910), and the Sargent Unit, Well No. 4 (Gas ID No. 163517) for the Panhandle, West Field, in Gray County, consisting of 6 tracts, filed on December 28, 2000.

2. Pantera has not given notice of the subject applications to offset operators, offset unleased mineral interest owners or to any other person or entity.

3. The Pantera units are comprised of 147 component tracts. None of the component tracts contain 640 acres and 28 of the tracts are less than 100 acres in size. The Pantera units collectively contain 29,010.92 acres and 49 active, producing wells with an average well density of one well every 592 acres.

4. The field rules for the Panhandle Field specify a maximum regular density of one well per 640 acres. The Panhandle Field is a prorated field in which acreage is the primary component in determining the production allowable assigned to a well.

5. Density rules are based on the average estimated drainage area of wells in a Commission-designated field and are adopted by the Railroad Commission to prevent waste and protect correlative rights.

6. Exceptions to the density rules for any field may be granted, pursuant to the terms of Statewide Rule 38, which requires, *inter alia*, notice to affected persons and proof that the exception is necessary to prevent waste of hydrocarbons or to protect the correlative rights of the applicant. The parties affected by a requested density exception are defined in Statewide Rule 38(h) [16 TEX. ADMIN CODE §3.28(h)]as presumptively including the operators and unleased mineral interest owners of all adjacent offset tracts.

7. Exceeding the maximum density specified for a field requires an exception to Statewide Rule 38, unless the proposed well will be the first well on a legal subdivision, that is, a tract that took its current size and shape prior to the adoption of the current density requirement and that conformed to the then-existing density requirement at the time it took its current size and shape.

8. Pantera is the designated operator of each of the Pantera units and Pantera is the lessee or represents the interests of the lessees of 100% of the gas mineral interests in 47 of the 49 Pantera units. For two of the units, there are unleased fractional gas mineral interests in at least one of the component tracts but Pantera represents the interests of lessees of at least part of the mineral interest in every tract comprising the unit.

9. Pantera alleges that each of the 147 component tracts in the Pantera units was a legal subdivision at the time Pantera incorporated it into the Pantera units.

10. Offset operators and unleased mineral interest owners will be adversely affected by the relief

sought by Pantera in the subject applications as it would substantially increase the density of development of the Pantera tracts beyond that authorized by the field rules for the Panhandle Field and likely drain or increase drainage of gas from beneath tracts adjoining the Pantera units.

11. Although denominated by Pantera as applications pursuant to Statewide Rule 38(d)(3) for unit dissolutions, the substantive effect of the relief sought in the subject applications is to grant Pantera 98 Statewide Rule 38 density exceptions for the Panhandle Field.

    a. Pantera does not request that any of the Pantera units be immediately dissolved but requests that it be prospectively authorized to increase the number of wells on the acreage in the Pantera units to 147 active wells from the current 49 active wells.

    b. Pantera requests that each of the Pantera units maintain its current size and shape until some future date when Pantera chooses to add one or more additional wells.

    c. Pantera is the operator of all of the component tracts and is not adding or deleting tracts from the currently designated units. Before and after the relief it seeks Pantera would be operating all wells and leases on the exact same 29,010.92 acres.

    d. The current authorized average density on Pantera's 29, 010.92 acres would decrease from one well per 592 acres to one well per 197 acres if Pantera is granted the relief it seeks.

12. Pantera has been notified repeatedly of the requirement that it give notice of the subject applications to offset operators as affected parties but has refused to give notice of the applications to any person or entity and has not requested a hearing on any of the subject applications.

    a. By letter dated January 16, 2001, Pantera was notified by Commission staff that its initial group of applications could not be processed administratively and that it was required to provide notice of the applications to " ... any offsetting operators and any offsetting unleased mineral interest owners."

    b. By letter dated March 9, 2001, Pantera, which had sought reconsideration of the previous staff determination, was notified by Commission staff that its initial group of applications " ...require an exception to the density rule and should proceed under the provisions of Statewide Rule 38(h) and not 38(d)(3)."

    c. The Railroad Commission confirmed staff's determination that the initial group of the subject applications required a density exception and that notice to offsetting operators and unleased mineral interest owners was required when it denied Pantera's appeal of those determinations by operation of law on May 15, 2001.

d. Following the filing of the second group of the subject applications, Pantera was notified by Commission staff by letter dated September 19, 2001, that, as in the earlier applications, Pantera was effectively seeking a density exception and that it was required to provide notice of its applications pursuant to Rule 38(h).

e. Pantera has not submitted any evidence that it has provided notice of the subject applications to any offsetting operators, offsetting unleased mineral interest owners, or to the unleased mineral interest owners within the Pantera units who it acknowledges are entitled to notice.

13. Pantera has attempted, by denominating its applications as pursuant to Statewide Rule 38(d)(3), to circumvent the density rule in the Panhandle Field and avoid the requirements of giving notice of its density exception applications to affected persons and of providing proof that the relief sought is necessary to prevent waste or protect correlative rights.

CONCLUSIONS OF LAW

1. Proper notice of the Pantera applications has not been given to all persons legally entitled to notice.

2. The subject applications, which have been improperly denominated by Pantera, in substance seek exceptions to the density requirements of the Panhandle Field, and should have been filed and designated as applications for density exceptions pursuant to Statewide Rule 38 [16 TEX. ADMIN. CODE §3.38].

3. The operators and unleased mineral interest owners of all adjacent offset tracts to the Pantera units are affected persons and entitled to notice of the subject applications for tracts to which they adjoin pursuant to Statewide Rule 38(h) [16 TEX. ADMIN. CODE §3.38(h)].

4. Regardless of how the subject applications are denominated, the operators and unleased mineral interest owners of all adjacent offset tracts to the Pantera units are affected persons and are required to receive notice of the applications for units to which they adjoin pursuant to Texas Natural Resources Code §85.205.

5. Regardless of how the subject applications are denominated, the operators and unleased mineral interest owners of all adjacent offset tracts to the Pantera units are affected persons having property rights in their respective mineral estates and due process requires that they receive notice of the subject applications for units to which they adjoin.

6. Any of the component tracts of the Pantera units that were legal subdivisions at the time they

were merged with other tracts to form the currently existing Pantera units lost status as legal subdivisions for regulatory purposes at the time they were included as component tracts in units that were designated to the Commission for proration purposes.

7. Even if the component tracts of the Pantera units regained status as legal subdivisions, each tract would not necessarily be entitled to a well, if the owners of the minerals in the tract have already been afforded a fair and equal opportunity to recover their fair share of the gas in place beneath their tracts.

8. As Pantera has not given notice of the subject applications to adversely affected parties entitled to notice, including offset operators and unleased mineral interest owners, the Railroad Commission lacks jurisdiction to take any action on the applications other than to dismiss them or stay them until proper notice is given.

RECOMMENDATION

As notice of the subject applications that is required by Commission rule, due process, and §85.201 of the Texas Natural Resources Code has not been given and Pantera has failed for an extended period to give the required notice, I recommend that each of the subject applications be dismissed without prejudice in accordance with the attached proposed final order.

Respectfully submitted,

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Colin K. Lineberry
Assistant Director
Oil & Gas Section, OGC