

COMMISSION CALLED HEARING TO DETERMINE THE PROPER OPERATOR OF THE TARVER UNIT, GIDDINGS (AUSTIN CHALK-3) FIELD, LEE COUNTY, TEXAS.

APPEARANCES:

FOR COMPLAINANT:

Adolphus Bracy Jr.

Nancy Pyle

COMPLAINANT:

John C. Tarver Estate

FOR RESPONDENT:

Lloyd Muennink

RESPONDENT:

Anchor Operating Co.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

APPLICATION FILED:

December 1, 1993

NOTICE OF HEARING:

January 31, 1994

DATE CASE HEARD:

March 3, 1994

HEARD BY:

Jeffrey T. Pender, Hearings Examiner

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

PFD CIRCULATION DATE:

May 11, 1994

CURRENT STATUS:

Protested

STATEMENT OF THE CASE

On December 1, 1993, Mr. Adolphus Bracy Jr. ("Bracy") submitted a Form P-4 requesting that he be designated on Commission records as the operator of the Tarver Unit No. 1 well (18541) in the Giddings (Austin Chalk-3) Field, Lee County, Texas. The John C. Tarver Estate, lessor of the mineral estate producing to the Tarver Unit Well No. 1 supports the designation of Adolphus Bracy Jr. as operator of the Unit. The current operator, Anchor Operating Company ("Anchor")

protests this application. Bracy claims that Anchor's lease terminated on either September 28, 1993 or November 29, 1993 because of cessation of operations for longer than 90 days as provided for in the lease.

DISCUSSION OF THE EVIDENCE

It is undisputed that the last production from the subject unit was reported in June, 1993. Field reports introduced by Anchor indicate that on August 30 and 31, the workover contractor moved a rig to the Tarver Unit site, rigged up and checked the rod spacing. No problems were detected so the contractor rigged-down and moved off location. Two hours of work were reported for each of the two days.

It is common practice for an operator to check the rod spacing on a non-producing well in anticipation of putting the well back on production. No explanation was offered by Anchor for moving off location after verifying the acceptable condition of the rod and pump spacing. There is no apparent reason in the record why Anchor could not have put the well on production at that time or continued to pursue the workover past August 31st until production was reestablished.

A few months later Cardinal Well Services Inc., was again hired to work on the Tarver Unit well. According to business records submitted by Anchor (Anchor Exhibit 5), a workover rig arrived at the Tarver Unit site on November 26, 1993 and rigged up. At the request of the examiners, Anchor late filed copies of the original Cardinal Well Service Inc., field reports from which Anchor Exhibit 5 was purportedly constructed. Unlike the records submitted by Anchor at the hearing, the Cardinal Well Service reports show that a workover rig did not move in and rig up until December 2, 1993.

EXAMINERS' OPINION

The main issue in this hearing is whether the lease operator, for Commission purposes, should be Bracy or Anchor. In order to change the person designated by the Commission as the operator for Commission purposes, the applicant must demonstrate that they have a good faith claim to operate the lease and that the other person does not. If both parties appear to have a good faith claim, the parties must settle the dispute in district court. An operator can make a good faith claim to operate only when they control working interest or claim the right to operate under an operating agreement.

Approval of a Form P-4 does not transfer legal title. It merely indicates that the Commission recognizes the approved applicant as the person entitled to move hydrocarbons off of the lease. The P-4 operator is also the person who will be presumed responsible for maintaining the lease in compliance with Commission rules.

In this matter, the lease terms and the common law control which person has a good faith claim to operate the Tarver Unit Lease.

LEASE TERMS

Clause 2 of the underlying lease states that the lease shall remain in force during for a term of five years (primary term):

"...and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days."

"Operations" are defined in clause 6 of the lease:

"whenever used in this lease the word "operations" shall mean operations for any of the following: drilling, testing, completing, **reworking**, recompleting, deepening, plugging back or repairing of a well..." (bold emphasis added)

COMMON LAW

The case law defining "reworking operations" is scarce. However, the Amarillo Court of Appeals, in Cox v. Stowers, 786 S.W.2d 102,105 (Tex. App.-- Amarillo 1990, no writ) concluded that the term means:

"any and all actual acts, work or operations in which an ordinarily competent operator, under the same or similar circumstances, would engage in a good faith effort to cause a well or wells to produce oil or gas in paying quantities."

In a 1977 Houston 1st Court of Appeals case, the court said the commencement of operations required a "bona fide intent to proceed thereafter with diligence toward the completion of a producing well." Bell v. Mitchell Energy Corp., 553 S.W. 2d 626,632 (Tex. App. -- Houston [1st Dist.] 1977, no writ).

More recently the Amarillo Court summarized the law concerning what constitutes work sufficient to maintain a lease when production has ceased. Hydrocarbon Management Inc. v. Tracker Exploration Inc., 861 S.W.2d 427 (Tex. App. -- Amarillo 1993, no writ).

Operations conducted by the lessee to maintain the lease must be of a nature that would cause the well to produce and must be reasonably intended to cause the well to produce. *Id.* at 438.

The examiners believe that the work conducted by Cardinal Well Services, Inc. for Anchor in late August 1993 did not constitute bona fide workover operations sufficient to establish a good faith claim that the lease was held. Though checking rod spacing is a valid workover activity, when it is conducted as an isolated event in the middle of a five month period devoid of any other operations that would lead to the reestablishment of production on the Tarver Unit, it is difficult to believe that the work was reasonably intended to cause the well to produce. More likely the sole purpose of checking the rod spacing was to provide an argument that rework operations were conducted thereby saving the lease. Sufficient workover operations were never commenced because there was never a bona fide intent to proceed thereafter with diligence.

Because the late August work did not constitute workover operations the lease expired of its own terms on September 28, 1993; 90 days after the last reported production.

Even if the lease did not expire in late September, Anchor lost the lease on November 29, 1993 for failure to commence any operations on the lease in the prior 90 consecutive days from August 31st to November 29th. Though Anchor-employee prepared records show that a workover rig moved on site at the Tarver Unit on November 26th, late-filed copies of field reports prepared by Cardinal Well Services' field representatives clearly show that the rig did not move in and rig up until December 2nd. Sufficient evidence in the record exists to find that the work commenced by Cardinal Well Services, Inc. on December 2, 1993 was bona fide workover operations that would have saved the lease had they commenced on or before November 29, 1993.

FINDINGS OF FACT

1. Adolphus Bracy Jr. and Anchor Operating Company received at least 10 days notice of this hearing by first class mail. Both parties appeared.
2. Adolphus Bracy Jr. applied on Form P-4 (Producer's Transportation Authority and Certificate of Compliance) to be designated the operator of the Tarver Unit Well No. 1 on December 1, 1993 over the protest of the current operator, Anchor Operating Company.
3. The John C. Tarver Estate, lessor of the mineral estate producing to the Tarver Unit Well No. 1, supports the designation of Adolphus Bracy Jr. as operator of the Tarver Unit Well No.1.
4. Clauses 2 and 6 of the subject lease require reworking operations to be conducted with no cessation of those operations for more than 90 consecutive days in order to hold the lease after the end of the primary term.
5. The last production from the Tarver Unit Well No. 1 occurred no later than June 30, 1993.
6. Cardinal Well Services, Inc., under hire by Anchor, checked the rod spacing at the Tarver Unit Well No. 1. on August 30 and 31, 1993. This work did not constitute bona fide rework operations because Anchor did not intend to diligently pursue a rework to cause the well to produce at that time.
7. Cardinal Well Services, Inc., under hire by Anchor, commenced bona fide rework operations on the Tarver Unit Well No. 1 on December 2, 1993. More than 90 consecutive days had passed since the work conducted on August 30 and 31, 1993.
8. No other rework operations were conducted on the Tarver Unit between August 30, 1993 and January 24, 1994.

CONCLUSIONS OF LAW

1. Proper Notice of Hearing was timely given to all persons legally entitled to notice.
2. All things have occurred or been accomplished to give the Commission jurisdiction in this matter.

3. Anchor Operating Company does not have a good faith claim to remain on Commission records as the operator of the Tarver Unit Well No. 1.

4. Adolphus Bracy does have a good faith claim to be designated on Commission records as the operator of the Tarver Unit Well No. 1.

EXAMINERS' RECOMMENDATION

Based on the above findings of fact and conclusions of law, the examiners recommend that the Commission order the application of Adolphus Bracy (Form P-4 dated December 1, 1993) be approved such that the operator on Commission records is changed from Anchor Operating Company to Adolphus Bracy Jr. as to the Tarver Unit Well No. 1 (18541), Lee County, Texas.

Respectfully submitted,

Jeffrey T. Pender
Hearings Examiner, Legal Division

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