

Re: Commission called hearing to determine the Proper Operator of the Deason "A" Lease, East Texas Field, Rusk County, Texas

APPEARANCES:

FOR RESPONDENTS:

Lloyd Muennink

Robert Neal

Kids Oilfield Maintenance

RESPONDENT:

Attorney

Excel Oil & Gas, Inc.

No Appearance

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

NOTICE OF HEARING:

September 17, 1993

HEARING HELD:

October 22, 1993

TRANSCRIPT DATE:

N/A

PFD CIRCULATION DATE:

July 28, 1994

STATUS:

Contested Default

HEARD BY:

David Clarkson, Hearings Examiner

George Singletary, Technical Examiner

STATEMENT OF THE CASE

This is a Commission-called hearing to determine the proper operator of the Deason "A" Lease, in the East Texas Field, Rusk County, Texas. Excel Oil & Gas, Inc. ("Excel") submitted P-4 (Producer's Transportation Authority and Certificate of Compliance) which contained the signature of Excel as the old operator and named Kids Operating as the new operator. This was a single signature P-4 and contained only Excel's signature.

DISCUSSION OF THE EVIDENCE

Mr. Robert Neal, the vice-president of Excel Oil & Gas, Inc. ("Excel") appeared for his company. Excel is the current P-4 operator of the subject lease under a P-4 which became effective

December 1, 1989. Kids Oilfield Maintenance ("Kids") is referred to as various names throughout the record but is treated as one entity. Kids Operating was originally notified of the P-4 dispute on May 25, 1993 when they were sent notice and asked to respond within 14 days. This regular first class mail was not returned to the Commission. Kids Operating was served notice of the proper operator hearing by regular mail at the most recently known address supplied by Excel. This first-class mail was also not returned to the Commission and Kids did not appear at the hearing.

A copy of the "Assignment, Bill of Sale And Conveyance" of the subject lease from CORE Development, Inc. to Jay Pace and Kathy Vernon d/b/a Kids Oilfield Maintenance was entered into evidence (Exhibit 1). CORE Development, Inc. is the predecessor-in-interest and a sister corporation to Excel. Mr. Robert Neal, the only witness at the hearing and the only person to sign the Assignment, is the President of Core Development, Inc. and the Vice-President of Excel. The Assignment did not bear a filing stamp showing it was filed in Rusk County but did have a notarized acknowledgment attached to it.

Mr. Neal testified that in November, 1992, the pumper for the subject lease approached him and stated that he had a purchaser for the lease. Mr. Neal stated that the purchaser was Kids Operating and that the lease was sold for \$500. The sale was effective on December 1, 1992. A copy of a United States Postal Money Order in the amount of \$500.00 from K.I.D.'s Oilfield Service to CORE Development allegedly in payment for the subject lease was admitted as a late-filed exhibit. A copy of the deposit slip, filled out by hand, showing a deposit of \$500 and bearing the notation "KID" was entered as Exhibit 2. The deposit slip was dated 1/13/93 and was for a CORE Development, Inc. account. The deposit slip bore no bank stamp showing a processing date. Excel also entered an account summary showing that electricity for a particular account was cut off on December 3, 1992. Excel testified that this account was for the subject lease and that Kids Operating took over after the shut-off although all that is evident from the document is that the electricity was cut-off on December 3, 1992 (Exhibit 3).

As further evidence that the sale took place, Excel entered a letter dated February 22, 1993 from Mr. David W. Brown, (the person who signed the single signature P-4 for Excel and lists himself as a partner), to Mr. Bill Drury with the Railroad Commission in Austin (Exhibit 4). The letter references delinquent P-1s (Production Reports) and states that Excel sold the lease to Kids Oilfield Maintenance. Excel also admitted a letter to its working interest owners dated November 23, 1992 stating that an offer to purchase the subject lease for \$500 had been made. The letter further advises the working interest owners to allow Excel to assign their interest because the lease had incurred \$5,000 in net expenses through November 1992 and the sale "will allow us to pass on all the liability and expense to have the lease plugged out." (Exhibit 7).

A single signature P-4, signed by Excel and dated March 19, 1993 was also entered into evidence. This single signature P-4 was not processed. No record of an active or inactive P-5 (Organization Report) for Kids was entered into evidence.

EXAMINER'S OPINION

Kids was noticed of the proper operator hearing for the subject lease by regular first class mail. When personal service is required, service by first class mail to the person's last known address shall be deemed sufficient, unless otherwise required by law. 16 T.A.C. §1.48(g). Since the first class mail was not returned, Kids is presumed to have gotten notice of the hearing.

"Operator" is defined in Tex. Nat. Res. Code Ann. §89.002 (a)(2) (Vernon 1993) as "a person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation". All exhibits presented at the hearing were evidence of the paper transfer of the lease from Excel to Kids. All the exhibits presented were documentation of the sale which was generated and signed by Excel. The only evidence presented to show that Kids took over physical operation and control of the well in December 1992 was the uncontroverted testimony of Robert Neal stating that Kids had the electricity hooked up in its name.

Excel Oil & Gas, Inc. is the present operator of record as listed on the Railroad Commission P-4 form (Producer's Transportation Authority and Certificate of Compliance) and is operator responsible for physical operation and control of the subject well since December 1, 1991. The examiners are of the opinion that Excel met its burden of proof in showing that Kids is responsible for the physical operation and control of the subject well. Excel presented evidence of the sale of the Deason "A" Lease to Kids and presented evidence that Kids took over physical operations and control of the well.

Kids has not met the financial assurance requirements to be approved as an operator by the Commission and records of the Commission do not show that Kids ever had an approved P-5 (Organization Report) filed with the Commission.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondents were given at least 10 days' notice by regular first-class mail. Excel appeared at the hearing. Respondent, Kids Operating, was noticed at the address provided by Excel. The regular first-class envelope was not returned to the Commission and Kids Operating did not appear at the hearing.
2. Excel Oil & Gas, Inc. designated itself as the operator of the subject lease by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission. The Form P-4 was effective on December 1, 1991.
3. Mr. Robert Neal is the president of CORE Development, Inc. and the vice-president of Excel Oil & Gas, Inc.
4. Exhibits sponsored by Excel Oil & Gas were admitted into evidence:

a. An Assignment, Bill of Sale And Conveyance purporting to transfer ownership of the subject lease from CORE Development, Inc. to Jay Pace and Kathy Vernon d/b/a Kids Oilfield Maintenance on December 1, 1992 was signed by Mr. Robert Neal as president of CORE Development, Inc.;

b. A copy of a United States Postal Money Order in the amount of \$500.00 from K.I.D.s Oilfield Service to CORE Development.

c. A copy of a deposit slip for a Core Development, Inc. account No. 11368727 at the Bosque County Bank dated 1/13/93 listing a check for \$500 with the handwritten notation of "KID";

d. A power company electrical account summary for CORE Development, Inc. showing electrical service termination on December 3, 1992;

e. A November 13, 1992 letter addressed to the working interest owners and signed by Mr. Robert Neal stating that an unidentified purchaser had offered \$500 for the Deason Lease.

f. A February 22, 1993 letter from Excel to Mr. Bill Drury of the Railroad Commission stating that the subject lease had been sold to Kids Oilfield Maintenance effective December 1, 1992.

5. Excel Oil & Gas, Inc. was responsible for the physical operation of the subject wells prior to Excel disconnecting electrical service on the subject lease in December, 1992.

6. Kids Operating took over physical operation and control of the subject lease by hooking up electrical service in its name in December, 1992.

6. Kids Operating does not have a valid P-5 (Organization Report) on file with the Railroad Commission.

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. Kids Operating is the operator of the subject lease pursuant to TEX. NAT. RES. CODE ANN. §89.002 (a) (2) (Vernon Supp. 1993).

RECOMMENDATION

The examiners recommend that the above findings and conclusions be adopted and the attached Final Order removing Excel Oil & Gas, Inc. and naming Kids Operating as the P-4 operator of the subject leases be adopted.

Respectfully submitted,

David Clarkson
Legal Examiner

George Singletary
Technical Examiner