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August 9, 1994

OIL AND GAS DOCKET NO. 7C-0205078

COMMISSION CALLED HEARING TO GIVE HARVARD PETROLEUM CORPORATION AN OPPORTUNITY TO APPEAR AND SHOW CAUSE WHY IT SHOULD NOT BE HELD IN VIOLATION OF COMMISSION RULE REGARDING ITS ANDERSON LEASE, KURT W. BOLEY (STRAWN, UPPER) FIELD, TOM GREEN COUNTY, TEXAS

HEARD BY: Thomas H. Richter, P. E., Technical Examiner
David Clarkson, Hearings Examiner, Legal Division

DATE OF HEARING: June 3, 1994

APPEARANCES:

REPRESENTING:

Respondent/Applicant:

Ronald C. Schultz, Jr. Lawyer
Jeff Harvard

Harvard Petroleum Corp.

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

This hearing was held to allow Harvard Petroleum Corp. an opportunity to appear and show cause why it should not be held to have been in violation of Statewide Rule 32 for its Anderson lease (11769), Kurt W. Boley (Strawn, Upper) Field subsequent to the expiration of Harvard Permit No. 7C-816 on September 19, 1992.

Harvard Petroleum also requests at this time that the Commission grant an exception for gas flaring authority of up to 40 MCF of gas per day in order to prevent the waste of otherwise recoverable oil.

DISCUSSION OF THE EVIDENCE

The Kurt W. Boley (Strawn, Upper) Field was discovered December 28, 1985 by completion of the Michael S. Ruff-Anderson Well No. 1 through perforations from 5,562' to 5,565' subsurface depth. This has always been a one well field. Cumulative reported production is 19,170 BO and 33,412 MCF of gas. Harvard Petroleum Corp. became operator effective September, 1, 1986.

When the subject well was originally completed and tested (2/27/85) the following was reported on Form W-2: 114 BOPD, 175 MCFD, 10 BWPD, gas-oil ratio 1535:1 with a flowing tubing pressure

of 120 PSI. The closest pipeline is located approximately one mile from the well. The pipeline is a 600 PSI line operated by Conoco.

The well was tested June 9, 1992 by Doug Bell Petroleum Services. The result was 107 MCFD with an H₂S concentration of 380 PPM. The Texas Air Control board granted exception by Permit No. X-21896. The Commission granted an administrative 90 day flare permit effective June 19, 1992 which expired September 19, 1992 (Permit No. 7C-816).

Harvard contacted Pinnacle Natural Gas Company and entered into negotiations to purchase its gas. Pinnacle's letter of July 28, 1992 included a fully executed Gas Purchase Contract covering commitment of the Anderson Well No. 1. At that time Pinnacle, was waiting on gas purchase proposal from Conoco.

Pinnacle's letter of September 18, 1992 indicates that all negotiations with the resale purchaser have been completed, including a mutually agreeable delivery point. Pinnacle also contacted a representative for the landowner on whose property it planned to construct the gathering line and was awaiting terms and conditions. Pinnacle had also purchased the requested H₂S monitoring equipment to install at the well site. The letter further stated that barring any right-of-way problem, the well should be connected in 30 days.

Pinnacle's letter of October 22, 1992 states that it was too costly to obtain an agreeable right-of-way for the small volume of gas. Thus Pinnacle's agreement with Harvard was terminated. The right-of-way problem lies with the fact that Harvard does not have a mineral lease under the surface of the property it must cross to get to the Conoco pipeline.

On March 11, 1994, Harvard requested a Rule 32 exception from the Commission. Harvard states that there is no alternative but to flare the gas or plug the well. If the well is shut-in, the lease will be jeopardized. On March 22, 1994, the exception was administratively denied. On March 28, 1994, the Commission approved a show-cause hearing be held.

The submitted production decline analysis estimates remaining recoverable reserves to be 886 BO and 8,862 MCF of gas. This is based on an initial rate of 150 BOPM and final rate of 112 BOPM declining at 6%. At the examiners' request the well was tested June 21, 1994 with the following results: 6.68 BOPD, 39.2 MCFD and 48 BWPD. If Harvard were to lay the pipeline using the direct route, the expense is estimated at \$206,800.00. The revenue derived from sales will not justify the pipeline. Additionally the three-stage gas compressor and dehydrator will use 10 to 20% of the gas volume.

The estimate of remaining recoverable gas is unreliable. Four tests have been run on the well:

1. Orig W-2 (Date of Test 12/27/85)
175 MCFD, 114 BOPD
2. Retest W-2 (Date of Test 3/11/90)
<1 MCFD, 17 BOPD
3. Doug Bell Petroleum Services (Date of Test 6/9/92)
107 MCFD
4. W-10 Test (Date of Test 6/21/94)
39.2 MCFD, 6.68 BOPD

These tests confirm the variability of the casinghead gas production.

Harvard presented a memorandum from Paul Stagg to Willis Steed dated December 11, 1986 which noted a permit to flare had been granted on April 3, 1986. Subsequent to the hearing, there was discovered an April 3, 1986 Commission letter from Bishop McKendree, Engineer, addressed to the operator (at that time, Michael S. Ruff Interests) granting authority to flare 30 MCFD of casinghead gas pending connection to a sales line. There is no evidence that the permit was ever revoked.

The evidence in the record shows that building a gas line to the only available market (a high pressure, sweet gas line) located over one mile away is uneconomical even when you consider the revenue from the oil and gas volumes and ignore the gas consumed by the compressor and dehydrator. The Anderson No. 1 is (and always has been) an extremely marginal well. The oil production can barely support the costs of operating the well, let alone finance the cost of an uneconomic gas line. If Harvard is not permitted to continue to flare the gas, the well will be lost and the few remaining reserves lost. Therefore, Harvard would appear to be entitled to an exception to Statewide Rule 32 based on waste.

Harvard requests that the Commission grant Harvard's request for an exception to Statewide Rule 32. Additionally, Harvard requests that the order not provide for the referral of this matter to the Attorney General for penalties. Harvard stated to the examiners in a late filed exhibit that the Commission has a policy of not assessing penalties unless an operator refuses to comply with Commission rules. Harvard makes the following analogy and argument. "A typical legal enforcement file involving well plugging or other violations of pollution prevention rules contains documents showing that the district office has given the operator an opportunity to place the well into compliance before forwarding the matter for assessment of administrative penalties. If the operator plugs the well or gets a 14(b)(2) exception, the matter comes to an end and penalties are not assessed. Violation of pollution prevention and safety rules is a much more severe matter than violations of conservation regulations, which is reflected in the fine differential authorized by statute. (Tex. Nat. Res. Code Ann § 85.381) Harvard is actively seeking compliance and has not tried to violate any Commission rules. To treat Harvard more severely for this minor violation is tremendously unfair when you consider that: (1) Harvard actively sought a market and a market was not available, (2) Harvard has always been eligible for the flaring exception (its never been economical to market the gas), and (3) there has been no waste of gas, which in the context of flaring would be the flaring of gas when the gas could have been marketed economically. (See Tex. Nat. Res. Code Ann. § 85.046(a)(11))."

EXAMINERS' OPINION

The evidence indicates the Anderson Well No. 1 was granted Commission authority to flare casinghead gas up to 30 MCFD on April 3, 1986. There is no expiration date indicated on the flare permit that Harvard received on April 3, 1986. Without knowing the circumstances surrounding the granting of the April 3, 1986 exception, (ie: whether Harvard was expected to pursue a pipeline connection immediately) the examiners can not say that Harvard could not rely on this permit for an extended period of time. The Commission may grant an exception to the prohibition against allowing casinghead gas to escape into the air based upon the unavailability of a pipeline, Statewide Rule 32(a)(2)(c). The examiners are of the opinion that this permit expired on June 19, 1992 when a temporary permit was issued. The subject well was in violation of Statewide Rule 32 commencing the day after the temporary flaring permit terminated on September 19, 1992. Since none of the casinghead gas that was reported to the Commission was continuously measured with an orifice meter during the life of the well, we can only accept what was reported between the completion of the well and the time the temporary permit was issued. On a cumulative basis, the 30 MCFD flared while the permit was active is greater than the reported production.

The evidence indicates that the operator did actively pursue a pipeline connection in 1992, but was unable to obtain one through no fault of the operator.

The examiners believe there is sufficient data to estimate the volume of casinghead gas flared between September 20, 1992 and the hearing date on June 3, 1994 (assume 20 months). The volume of casinghead gas measured June 9, 1992 was 107 MCFD and the volume measured June 21, 1994 was 40 MCFD. Using these volumes as initial and final volumes and an exponential decline, the volume of gas flared is estimated to be 44,000 MCF of gas for the 20 month period. Based on \$2.00 per MCF, Harvard avoided a state severance tax of \$6,600.00 (44,000 MCF x \$2.00/MCF x 7.5%). It should be noted that production reports showing the casinghead gas disposition code: 4 (vented or flared), were correctly filed during the violation period.

The examiners believe that Harvard should be granted a permanent flaring permit to permit the ultimate recoverable oil from under the tract. This is a one well field that is in the final stage of economic depletion. To deny a permit will result in the well being plugged and the ultimate loss of 886 BO.

The examiners believe that Harvard violated Statewide Rule 32. The operator failed to pursue further permits to flare whether temporarily or permanently. Harvard dropped the ball! It knew when the temporary flare permit expired and failed to timely file for new flare authority. The examiners are recommending that Harvard be referred to the Attorney General for violations of Statewide Rule 32.

FINDINGS OF FACT

Based on the evidence presented, the examiners propose the following findings:

1. Notice of this hearing was given to all operators in the subject field at least ten (10) days prior to the hearing.
2. Harvard Petroleum Corp. responded to the call of the hearing.
3. The hearing was called by the Commission to give Harvard Petroleum Corporation the opportunity to show cause why it should not be found in violation of flaring casinghead gas on the Anderson lease.
 - a. Harvard Petroleum requests Commission authority to flare up to 40 MCFD from its Anderson well No. 1.
4. The Kurt W. Boley (Strawn, Upper) Field was discovered December 28, 1985 by completion of the Michael S. Ruff - Anderson Well No. 1 through perforations from 5,562' to 5,565' subsurface depth.
 - a. This has always been a one well field.
 - b. Reported cumulative oil production is 19,170 BO.
 - c. Harvard Petroleum Corporation became operator effective September 1, 1986.
 - d. The well produces casinghead gas containing H₂S in a concentration of 380 PPM.
5. The subject well was granted Commission authority on April 3, 1986 to flare up to 30 MCFD

- pending a pipeline connection.
6. Harvard Petroleum commenced gas contract negotiations with Pinnacle Natural Gas Corp. in the summer of 1992.
 - a. The closest pipeline operated by Conoco, is over 1.25 miles away and transports sweet gas at approximately 600 PSI.
 - b. Pipeline negotiations were terminated in October 1992 due to the lack of agreement with the surface landowner of the adjacent tract for right-of-way easement privileges over the surface. Harvard did not have a mineral lease for this adjacent tract.
 7. Harvard Petroleum requested and received a Commission flare permit effective June 19, 1992 to flare up to 107 MCFD until September 19, 1992.
 - a. The previous Commission flare permit authority issued April 3, 1986 had no expiration date.
 - b. The subject well is currently shut-in.
 8. Using the production test of June 7, 1992 of 107 MCFD and the tests of June 21, 1994 of 40 MCFD the estimated volume of casinghead gas flared from October 1992 to May 1994 using an exponential decline is approximately 44,000 MCF of gas.
 - b. Reported casinghead gas production for the period from October 1992 through May 1994 is not reliable as the casinghead gas was not continuously measured.
 - c. The state severance tax avoided by flaring the casinghead gas and not selling it is \$6,600.00.
 9. The remaining recoverable oil estimated to be recovered from the Anderson Well No. 1 is 886 BO.
 - a. The economics do not justify connecting the subject well to the pipeline.
 - b. If the well is not granted a permit to flare the casinghead gas, the well will be plugged and abandoned.

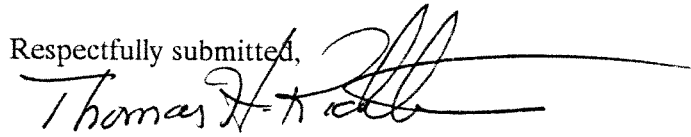
CONCLUSIONS OF LAW

1. Proper notice was given to all persons entitled to notice or prescribed by Commission rules.
2. All things have been accomplished to give the Commission jurisdiction to consider and decide this matter.
3. Harvard Petroleum Corporation violated Statewide Rule 32 set forth in 16 T.A.C. §3.32. The Anderson (11769) Well No. 1 was in violation for 20 months.
4. Harvard Petroleum met its burden of showing that the applied for exception is necessary to prevent waste.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions of law, the examiners recommend that the application of Harvard Petroleum Corporation for authority to flare up to 40 MCF of casinghead gas per day from its Anderson Well No. 1 in the Kurt W. Boley (Strawn, Upper) Field be approved pursuant to Statewide Rule 32(a)(2)(c). It is further recommended that Harvard be found in violation of Statewide Rule 32 for flaring casinghead gas from the Anderson lease.

Respectfully submitted,



Thomas H. Richter, P.E.
Technical Hearings Examiner



David Clarkson
Hearings Examiner, Legal Division

THR:DC:mne

Date of Commission action _____