



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### PROPOSAL FOR DECISION

**OIL AND GAS DOCKET NO. 20-0297248**

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**HEARING ON THE APPLICATION OF MER RESOURCES, INC. (OPERATOR NO. 559709) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST STAFF DETERMINATION THAT ITS P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15**

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#### APPEARANCES

##### **FOR THE RAILROAD COMMISSION OF TEXAS:**

Heather Pharr, Staff Attorney, Enforcement Section  
Mysti Doshier, Manager, P-5 Financial Assurance Unit  
Bill Drury, Enforcement Section

##### **FOR MER RESOURCES, INC.:**

Martin Frankel, Attorney  
Stan Dedmon, Agent

##### **PROCEDURAL HISTORY:**

Notice of Hearing:	August 13, 2015
Hearing on the Merits:	September 14, 2015
Proposal for Decision:	April 15, 2016
Heard by:	Marshall Enquist, Administrative Law Judge Karl Caldwell, Technical Examiner
Prepared by:	Dana Avant Lewis Administrative Law Judge

### SUMMARY

In Docket No. 20-0297248, MER Resources, Inc. (Operator No. 559709), (MER), contests Commission Staff's (Staff) determination that renewal of its Form P-5 Organization Report (P-5) cannot be approved due to MER's failure to comply with the inactive well requirements of Statewide Rule 15 (SWR 15). MER is the current operator of 37 non-compliant oil or gas wells (subject wells). All 37 of the subject wells lack an approved Form W-3X (Application for an Extension of Deadline for Plugging an Inactive Well), (W-3X), and 35 of the 37 wells lack a certified W-3C (Certification of Surface Equipment Removal for Inactive Wells), (W-3C).

An agent for MER appeared at the hearing, but failed to present evidence sufficient to show that it was in compliance with the inactive well requirements of SWR 15. The record evidence demonstrates that the subject wells fail to comply with SWR 15, specifically SWR 15(d)(1).<sup>1</sup> As a result, MER failed to overcome Staff's determination that renewal of its P-5 cannot be approved.

The Administrative Law Judge and Technical Examiner recommend that the Commission deny the unrestricted renewal of MER's P-5 and order MER to bring the subject wells into compliance with the inactive well requirements of SWR 15.

### EVIDENCE PRESENTED

#### ENFORCEMENT'S CASE

At hearing, Ms. Pharr, Enforcement Attorney, (Enforcement), submitted evidence demonstrating that MER is the current operator of 37 wells that fail to comply with the inactive well requirements of SWR 15(d)(1).

Enforcement submitted evidence demonstrating that, on December 5, 2014, Staff generated a "renewal packet" for MER's P-5 renewal application. The evidence indicates that the "renewal packet" included information related to House Bill 2259 (annual requirements for an operator to address its inventory of inactive wells in order to obtain renewal of its annual organization report), House Bill 3134 (procedures to be followed subsequent to Commission Staff determination that an operator is not in compliance inactive well requirements), and SWR 15, as it was relevant to MER – including an exhaustive list of MER's 37 non-compliant wells.<sup>2, 3</sup>

Mysti Doshier, Manager P-5 Financial Assurance Unit (Staff), testified that MER's P-5 renewal was due on March 1, 2015.

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<sup>1</sup> 16 TEX. ADMIN. CODE § 3.15(d)(1) (Inactive Well Requirements).

<sup>2</sup> Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

<sup>3</sup> Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 1, eff. June 17, 2011.

Enforcement also submitted evidence demonstrating that, on March 12, 2015, Staff determined that MER's P-5 renewal should be denied solely because of non-compliance with the inactive well requirements of SWR 15(d)(1).

By notice dated March 12, 2015, Staff notified MER that its P-5 renewal would be denied for failure to meet the inactive well requirements of SWR 15(d)(1) and granted MER a 90-day extension to complete compliance work related to the non-compliant wells.

Attached to the notice was an exhaustive list of MER's 37 non-compliant wells accompanied by a description of their respective deficiencies. The evidence showed that 35 of the 37 wells lacked a W-3C form and that all 37 lacked an approved W-3X.

The 90-day extension expired on May 31, 2015. Staff testified that a letter issued June 3, 2015, informing MER that it remained non-compliant with the inactive well requirements of SWR 15(d)(1), was sent by regular and certified mail. Attached to the letter was an exhaustive list of MER's 37 non-compliant wells accompanied by a description of their respective deficiencies – identical in content to the March 12, 2015, notice.

Lastly, Staff testified that at the time of the hearing on September 14, 2015, all of the subject wells remained out of compliance with the inactive well requirements of Statewide Rule 15(d)(1).<sup>1</sup>

#### MER'S CASE

Stan Dedmon, agent for MER, appeared at hearing with counsel for MER, Martin Frankel.

MER failed to provide evidence, or otherwise articulate a legal basis, to contradict proof that MER is responsible for its failure to comply with the inactive well requirements of SWR 15.

In its direct case, MER did not contest staff's evidence and admitted MER had not met its filing requirements in a timely manner, due to extraneous personal factors.

MER's agent indicated its intent to quickly achieve compliance with all Commission rules and requirements, and asserted its willingness to work diligently with Staff to attain compliance.

#### ADMINISTRATIVE LAW JUDGE'S OPINION

Pursuant to Statewide Rule 1, “. . . no organization . . . operating wholly or partially within this state . . . for the purpose of performing operations within the jurisdiction of the Commission shall perform such operations without having on file

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<sup>1</sup> Attached Appendix 1, admitted into record at hearing, identifies the subject wells and their respective deficiencies.

with the Commission an approved organization report . . . .”<sup>1</sup> Accordingly, an operator seeking to conduct oil and gas operations within the State must have a current, active Form P-5 Organization Report on file with the Commission.

Texas law expressly conditions renewal of a P-5 on an operator’s compliance with the requirements of SWR 15.<sup>2</sup> Among other things, the rule establishes a deadline for plugging an inactive well. Unless the current operator obtains an extension of the plugging deadline, it must either re-establish production or plug the well within the deadline established by Commission rules.<sup>3</sup>

An inactive well is defined as “an unplugged well that has been spudded or has been equipped with the cemented casing and has no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.”<sup>4</sup>

In the instant matter, MER failed to “obtain approval of the Commission or its delegate for an extension of the deadline for plugging” its 37 inactive wells.<sup>5</sup>

In order to obtain an extension of deadline for plugging an inactive land well, it is necessary that:

- (1) the Commission or its delegate approves the operator's W-3X;
- (2) the operator has a current Form P-5 Organization Report;
- (3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;
- (4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and
- (5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.<sup>6</sup>

Terms and conditions to apply for an extension of deadline for plugging an inactive land well are dictated by SWR 15(f).<sup>7</sup>

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<sup>1</sup> 16 TEX. ADMIN. CODE § 3.1(a)(1).

<sup>2</sup> TEX. NAT. RES. CODE § 89.022(c).

<sup>3</sup> 16 TEX. ADMIN. CODE § 3.15(d)(1).

<sup>4</sup> 16 TEX. ADMIN. CODE § 3.15(a)(6).

<sup>5</sup> 16 TEX. ADMIN. CODE § 3.15(d)(1)(C).

<sup>6</sup> 16 TEX. ADMIN. CODE § 3.15(e).

<sup>7</sup> 16 TEX. ADMIN. CODE § 3.15(f).

At the hearing on September 14, 2015, it was incumbent upon MER to provide evidence sufficient to demonstrate that it had secured from the Commission the necessary extensions of plugging deadline for each of its 37 inactive wells. MER failed to present such evidence. Rather, MER submitted evidence only of its *intent* to achieve compliance.

The evidence of record in this case shows that MER is the current operator of 37 oil or gas wells which fail to meet the requirements of Statewide Rule 15(d)(1). MER failed to secure from the Commission approved extensions of deadline for plugging 37 of its *inactive land wells*. *As a result, each of MER's 37 inactive wells is non-compliant with the inactive well requirements of SWR 15; and, thus, MER failed to overcome Commission Staff determination that renewal of its P-5 cannot not be approved.*

A list of the subject wells, which also identifies compliance deficiencies as of the date of hearing, is attached as Appendix 1. Appendix 1 is hereby incorporated by reference for all purposes.

### CONCLUSION

The Administrative Law Judge and Technical Examiner find that MER should be denied unrestricted renewal of its P-5 Organization Report and make the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. Respondent, MER Resources, Inc. (MER), was given at least 10 days notice of the hearing by certified and regular mail, addressed to the most recent P-5 (Organizational Report) address.
2. MER holds Railroad Commission Operator Number 559709.
3. MER is the current operator of the wells identified on attached Appendix 1, which is hereby adopted and incorporated by reference for all purposes.
4. On March 12, 2015, MER was sent notification from the Commission's P-5 Financial Assurance Unit that renewal of its P-5 Organization Report would be denied for failure to meet the inactive well requirements of 16 TEX. ADMIN. CODE § 3.15(d)(1).
  - a. The notice identified each of MER's non-compliant wells and included a description of their respective deficiencies.
  - b. The notice provided a 90 day extension period to complete work needed to bring the 37 non-compliant wells into compliance.
  - c. The 90 day extension expired on May 31, 2015.

5. On June 3, 2015, MER was sent notification from the Commission's P-5 Financial Assurance Unit that renewal of its P-5 Organization Report would be denied for failure to meet the inactive well requirements of 16 TEX. ADMIN. CODE § 3.15(d)(1).
  - a. The notice was sent by regular and certified mail.
  - b. The notice identified each of MER's non-compliant wells and included a description of their respective deficiencies.
  - c. The notice established a 30-day deadline by which MER could request a hearing to challenge Commission staff determination.
6. MER timely requested a hearing on the matter.
7. A hearing on this matter was conducted on September 14, 2015.
8. MER presented no evidence of compliance at the hearing.
9. Although MER affirmed its *intent* to achieve compliance quickly, Mer's agent acknowledged that it was non-compliant at the time of the hearing .
10. The oil and gas wells identified on Appendix 1 fail to meet the requirements of Statewide Rule 15.
  - a. 35 of 37 wells lack a Form W-3C (Certification of Surface Equipment Removal for Inactive Wells).
  - b. Each well identified lacks an approved Form W-3X (Application for an Extension of Deadline for Plugging an Inactive Well).
11. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto, Ronald S. Sumner and Diane Sumner, are individuals who held a position of ownership or control in MER.

#### CONCLUSIONS OF LAW

1. MER Resources, Inc., has been provided notice and an opportunity for hearing regarding compliance with TEX. NAT. RES. CODE §§ 89.021-89.030 and 16 TEX. ADMIN. CODE § 3.15.
2. The Commission has jurisdiction pursuant to TEX. NAT. RES. CODE §81.051.
3. MER failed to comply with the requirements of TEX. NAT. RES. CODE, Chapter 89, Subchapter B-1 and 16 TEX. ADMIN. CODE § 3.15.

4. MER's P-5 Organization Report may not be renewed or approved. TEX. NAT. RES. CODE § 89.022(c).

**RECOMMENDATIONS**

The Administrative Law Judge and Technical Examiner recommend the following:


1. the Commission enter an order denying the unrestricted renewal of MER's P-5 Organization Report.
2. the Commission cancel all P-4 Certificates of Compliance issued to MER and sever all related pipeline or other carrier connections.
3. that MER be directed to place the subject wells into compliance with all Commission Statewide Rules.

RESPECTFULLY SUBMITTED,



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DANA AVANT LEWIS  
Administrative Law Judge



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KARL CALDWELL  
Technical Examiner

P51WI Listing for 559709 - MER RESOURCES - 9/10/2015 8:31:16 AM										
API No	Dist	ID No	Lease Name	Well No	W3C	W3X	Denials	SI Date	Multi	Notes
049 30243	7B	11842	TISCHLER	1 S		NO		04/2011		
049 31563	7B	14272	BUSBEE	1 S	NO	NO		07/2013		
049 31687	7B	14272	BUSBEE	2 S	NO	NO		07/2013		
049 31764	7B	14272	BUSBEE	3 S	NO	NO		07/2013		
049 33783	7B	14272	BUSBEE	4	NO	NO		07/2013		
049 33785	7B	14272	BUSBEE	6	NO	NO		07/2013		
049 34446	7B	14272	BUSBEE	7	NO	NO		07/2013		
049 35301	7B	14272	BUSBEE	B 4	NO	NO		07/2013		
049 35302	7B	14272	BUSBEE	B 3	NO	NO		07/2013		
049 35304	7B	14272	BUSBEE	D 1	NO	NO		07/2013		
049 35377	7B	14272	BUSBEE	B 5	NO	NO		07/2013		
049 35399	7B	14272	BUSBEE	1BC	NO	NO		07/2013		
049 35424	7B	14272	BUSBEE	2BC	NO	NO		07/2013		
049 35576	7B	27574	BEEN	1A	NO	NO		10/2013		
049 35580	7B	27574	BEEN	3A	NO	NO		10/2013		
049 35581	7B	27574	BEEN	2A	NO	NO		10/2013		
049 35582	7B	27574	BEEN	4A	NO	NO		10/2013		
049 35587	7B	27574	BEEN	5A	NO	NO		10/2013		
049 35593	7B	27574	BEEN	6 B	NO	NO		10/2013		
049 35599	7B	27574	BEEN	8 B	NO	NO		10/2013		
049 35612	7B	27574	BEEN	9 B	NO	NO		10/2013		
049 35613	7B	27574	BEEN	10 B	NO	NO		10/2013		
049 35616	7B	27574	BEEN	17 D	NO	NO		10/2013		
049 35617	7B	27574	BEEN	16 D	NO	NO		10/2013		
049 35623	7B	27574	BEEN	18 D	NO	NO		10/2013		
049 35626	7B	27574	BEEN	19 D	NO	NO		10/2013		
049 35627	7B	27574	BEEN	20 D	NO	NO		10/2013		
049 35629	7B	27574	BEEN	21 E	NO	NO		10/2013		
049 35631	7B	27574	BEEN	22 E	NO	NO		10/2013		
049 35632	7B	27574	BEEN	23 E	NO	NO		10/2013		
049 35633	7B	27574	BEEN	24 E		NO		06/2011		
049 35636	7B	27574	BEEN	25 E	NO	NO		10/2013		
049 35641	7B	27574	BEEN	26 F	NO	NO		10/2013		
049 35642	7B	27574	BEEN	27 F	NO	NO		10/2013		
049 35644	7B	27574	BEEN	29 F	NO	NO		10/2013		
049 35645	7B	27574	BEEN	30 F	NO	NO		10/2013		
049 35646	7B	27574	BEEN	28 F	NO	NO		10/2013		

**O&G Docket No.  
20-0297248  
Appendix 1  
to Proposal for Decision**