



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

AMENDED PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 20-0297249

HEARING ON THE APPLICATION OF EAGLE FORD OIL CO., INC., 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

APPEARANCES

FOR THE RAILROAD COMMISSION OF TEXAS:

Melissa Glaze, Staff Attorney, Enforcement Section
Mysti Doshier, Manager, P-5 Financial Assurance Unit

FOR EAGLE FORD OIL Co., INC.:

Jay B. Stewart, Attorney
Roland R. Baker, Consultant and Witness

PROTESTANTS:

Archie Carl Pierce, Attorney representing Donoly Brice, Charlynn Brice,
And the estate of James H. Haun
Karen Svoboda, Representing Herself

PROCEDURAL HISTORY:

Notice of Hearing:	December 15, 2015
Hearing on the Merits:	January 15, 2016
Proposal for Decision:	May 19, 2016
Amended Proposal for Decision:	May 20, 2016
Heard by:	Randall Collins, Administrative Law Judge Paul Dubois, Technical Examiner
Prepared by:	Dana Lewis, Administrative Law Judge

SUMMARY STATEMENT OF THE CASE

In Docket No. 20-0297249, Eagle Ford Co., Inc. (Operator No. 238351), (Eagle Ford), contests Commission Staff's (Staff) determination that renewal of its Form P-5 Organization Report (P-5) cannot be approved due to Eagle Ford's failure to comply with the inactive well requirements of Statewide Rule 15 (SWR 15). At the time of the hearing, Eagle Ford was the operator of 429 inactive wells. 314 of the 429 inactive wells were non-compliant. Although all 429 wells had W-3C's (Certification of Surface Equipment Removal for Inactive Wells)(W-3C) filed, 301 of the subject wells lacked an approved Form W-3X (Application for an Extension of Deadline for Plugging an Inactive Well), (W-3X), 99 wells had a delinquent H-15 form, one well had an H-15 failure (Test on Inactive Wells More than 25 Years Old) and 68 wells had good faith claim issues. Additionally, an enforcement docket had been referred to the Office of the Attorney General against Eagle Ford, which prevents renewal of Eagle Ford's P-5. ¹

Eagle Ford 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).² As a result, Eagle Ford failed to overcome Staff's determination that renewal of its P-5 cannot be approved.

Protestants, Archie Carl Pierce, an Attorney representing Donoly Brice, Charlynn Brice, and the estate of James H. Haun, as well as Karen Svoboda appeared to oppose renewal of Eagle Ford's P-5 on the basis that Eagle Ford does not have a good faith claim to operate some of the wells listed on Staff Exhibit 4.

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

EVIDENCE PRESENTED

ENFORCEMENT'S CASE

At hearing, Ms. Glaze, Enforcement Attorney, (Enforcement), submitted evidence demonstrating that Eagle Ford is the current operator of 314 wells that fail to comply with the inactive well requirements of SWR 15(d)(1).³

Enforcement submitted evidence demonstrating that Staff generated a "renewal packet" for Eagle Ford's P-5 renewal application on December 5, 2014.⁴ The evidence

¹ TEX. NAT. RES. CODE § 91.114, commonly referred to as Senate Bill 639.

² 16 TEX. ADMIN. CODE § 3.15(d)(1) (Inactive Well Requirements).

³ Staff Exh. 4.

⁴ Staff Exh. 1; Tr. pg. 10.

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 Eagle Ford – including an exhaustive list of Eagle Ford’s non-compliant wells.^{5, 6}

Mysti Doshier, Manager of the P-5 Financial Assurance Unit (Staff), testified that Eagle Ford’s P-5 renewal was due on March 1, 2015.⁷

Enforcement also submitted evidence demonstrating that, on March 10, 2015, Staff determined that Eagle Ford’s P-5 renewal should be denied solely because of non-compliance with the inactive well requirements of SWR 15(d)(1).⁸

By a letter dated March 10, 2015, Staff notified Eagle Ford that its P-5 renewal would be denied for failure to meet the inactive well requirements of SWR 15(d)(1) and granted Eagle Ford a 90-day extension from March 1, 2015 (the date the P-5 renewal was due) to complete work related to the non-compliant wells. Attached to the notice was an exhaustive list of Eagle Ford’s non-compliant wells accompanied by a description of their respective deficiencies-including lack of an approved Form W-3X, delinquent H-15 forms, H-15 failure and good faith claim issues. The 90-day extension expired on May 1, 2015.⁹

Ms. Doshier testified that a letter issued June 3, 2015, informing Eagle Ford that it remained non-compliant with the inactive well requirements of SWR 15(d)(1), and it had 30 days to request a hearing or gain compliance.¹⁰ Attached to the letter was an updated exhaustive list of Eagle Ford’s non-compliant wells accompanied by a description of their respective deficiencies.

Lastly, Staff testified that at the time of the hearing on January 14, 2016, 314 of the subject wells remained out of compliance with the inactive well requirements of Statewide Rule 15(d)(1).¹¹

⁵ Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

⁶ Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 1, eff. June 17, 2011.

⁷ Tr. pg. 10.

⁸ Staff Exh. 2.

⁹ See Staff Exhibit 2, which indicates the 90 day period expired on May 31, 2015, contrary to Staff Exhibit 1, which indicates the 90 day extension expired on June 3, 2016.

¹⁰ Tr. pg. 11.

¹¹ Attached Appendix 1, admitted in record at hearing, identifies the subject wells and their respective deficiencies.

EAGLE FORD'S CASE

Roland Baker, consultant for Eagle Ford, appeared at the hearing with counsel for Eagle Ford, Jay Stewart.

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

In its direct case, Eagle Ford did not contest staff's evidence and admitted Eagle Ford had not met its requirements in a timely manner, due to what Mr. Stewart referred to as a "regulatory time bomb."

Mr. Stewart explained in his opening statement that Eagle Ford acquired the wells at issue in a bankruptcy "fire sale" in March of 2011, when its financial arm, Rio Bravo, LLC, (Rio Bravo),¹² signed an agreement with CalTex Energy Co. (CalTex) and the Railroad Commission (RRC) to assume operating authority and responsibility for all of CalTex's wells, which were the subject of CalTex's Chapter 13 Bankruptcy proceeding.¹³ Subsequently, as Mr. Stewart noted, Eagle Ford determined that CalTex's swabbing authority for the wells under an exception to SWR 21, is operator specific rather than well specific.¹⁴ As such, Eagle Ford acquired hundreds of wells they believed could be produce through swabbing, only to learn that, in fact, they had no means of production. Mr. Stewart indicated that the situation was further exacerbated by the relatively new enforcement of House Bill 2259 through SWR 15.

Mr. Stewart expressed Eagle Ford's intent to work diligently to bring non-compliant wells into compliance with all Commission rules and requirements. As evidence of Eagle Ford's commitment to rectify the situation, Mr. Stewart elicited testimony from Roland Baker, a certified petroleum geologist, appearing on behalf of Applicant. Mr. Baker outlined the steps taken to bring wells into compliance, and agreed with Ms. Doshier's testimony that 99 wells had been resolved.¹⁵

He further testified that the wells could become active again through various means, such as Eagle Ford obtaining an exception to SWR 21 to produce the well by swabbing.¹⁶ However, to his knowledge, Eagle Ford had not sought a permit to swab these wells.¹⁷

Further, Mr. Baker stated that he was unaware that one of the wells had an H-15 failure, and suggested that it needed to look into it.¹⁸ He also discussed the expense

¹² Eagle Ford is Rio Bravo's successor in interest. Tr. pg. 32.

¹³ Except for 5 wells that CalTex was unable to transfer due to regulatory restrictions on the leases. *See* Eagle Ford's Exhibit 2.

¹⁴ Tr. pg. 33, line 18- page 34, line 15.

¹⁵ Tr. pg. 41.

¹⁶ Tr. pg.

¹⁷ Tr. pg. 46.

¹⁸ Tr. pg.25.

associated with filing fees for the W-3X and H-15 forms, noting that, “[i]t’s a function of filing fees and money.”¹⁹

PROTESTANTS’ CASE

Archie Carl Pierce, an Attorney representing Donoly Brice, Charlynn Brice, and the estate of James H. Haun, appeared to protest on behalf of his clients, and to offer two exhibits. The exhibits are Railroad Commission Final Order in Docket No. 01-0283901 and a final judgment in the 207th District Court, Caldwell County, Texas. Based on these two exhibits, Mr. Pierce argued that Eagle Ford has no legal right to operate the leases as to his clients.

Karen Svoboda appeared on her own behalf to provide evidence that Eagle Ford does not have a good faith claim to operate the JA Svoboda lease, RRC No. 09662 due to non-production. The lease at issue is not listed on Staff’s Exhibit 4.

ADMINISTRATIVE NOTICE

The parties agreed for the Administrative Law Judge who conducted the hearing, Randall Collins, to take administrative notice of any updates to Staff Exhibit 4, which may reduce the total number of non-compliant wells. A review of Railroad Commission records as of the drafting of this proposal for decision, reflects that Eagle Ford continues to have hundreds of wells out of compliance with SWR 15.

ADMINISTRATIVE LAW JUDGE’S ANALYSIS

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 with the Commission an approved organization report”²⁰ 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 15.²¹ 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.²²

¹⁹ Tr. pgs. 42-45.

²⁰ 16 TEX. ADMIN. CODE § 3.1(a)(1).

²¹ TEX. NAT. RES. CODE § 89.022(c).

²² 16 TEX. ADMIN. CODE § 3.15(d)(1).

An inactive well is defined as “an unplugged well that has been spudded or has been equipped with cemented casing and has no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.”²³

In the instant matter, Eagle Ford failed to “obtain approval of the Commission or its delegate for an extension of the deadline for plugging” the inactive wells indicated on Staff Exhibit 4.²⁴

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.²⁵

Terms and conditions to apply for an extension of deadline for plugging an inactive land well are dictated by SWR 15(f).²⁶

At the hearing on January 15, 2016, it was incumbent upon Eagle Ford to provide evidence sufficient to demonstrate that it had secured from the Commission the necessary extensions of plugging deadline for each of its 314 inactive wells. Eagle Ford failed to present such evidence. Rather, Eagle Ford submitted evidence only of the reason it found itself with so many non-compliant wells, the efforts it had made to bring 99 wells into compliance, and its *intent* to achieve compliance on a number of other wells. Even assuming Eagle Ford is able to accomplish its intent, the best evidence lends to the conclusion that they will not bring all of the wells into compliance expediently.

The evidence of record in this case shows that Eagle Ford is the current operator of 314 oil or gas wells that fail to meet the requirements of Statewide Rule 15(d)(1).

²³ 16 TEX. ADMIN. CODE § 3.15(a)(6).

²⁴ 16 TEX. ADMIN. CODE § 3.15(d)(1)(C).

²⁵ 16 TEX. ADMIN. CODE § 3.15(e).

²⁶ 16 TEX. ADMIN. CODE § 3.15(f).

Eagle Ford failed to secure from the Commission approved extensions of deadline for plugging 314 of its inactive land wells. As a result, each of Eagle Ford's 314 inactive wells is non-compliant with the inactive well requirements of SWR 15; accordingly, Eagle Ford failed to overcome Commission Staff's determination that renewal of its P-5 cannot 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 Eagle Ford 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. Applicant, Eagle Ford Oil Co., Inc. (Eagle Ford), 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. Eagle Ford holds Railroad Commission Operator Number 238351.
3. Eagle Ford 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 10, 2015, Eagle Ford 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 Eagle Ford'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 314 non-compliant wells into compliance.
 - c. The 90 day extension expired on May 31, 2015.
5. On June 3, 2015, Eagle Ford 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 Eagle Ford's non-compliant wells and included a description of their respective deficiencies.
 - c. The notice stated that if an order denying renewal of the P-5 Organizational Report became Final, all P-4 Certificates of Compliance would be cancelled and all leases severed.
 - d. The notice established a 30-day deadline by which Eagle Ford could request a hearing to challenge Commission staff determination.
6. Eagle Ford timely requested a hearing on June 30, 2015.
7. A hearing on this matter was conducted on January 15, 2016.
8. At the hearing, Eagle Ford presented no evidence of compliance with regard to the 314 wells indicated as non-compliant on Appendix 1 attached hereto.
9. Although Eagle Ford affirmed its *intent* to achieve compliance, at the time of the hearing, it was not compliant with 16 TEX. ADMIN. CODE § 3.15(d)(1).
10. Eagle Ford's own evidence suggests it will require significant financial resources to bring the wells into compliance.
11. The oil and gas wells identified on Appendix 1 as noncompliant fail to meet the requirements of Statewide Rule 15 as follows:
 - a. 301 of the wells identified on Appendix 1 lack an approved Form W-3X (Application for an Extension of Deadline for Plugging an Inactive Well).
 - b. 99 of the wells identified on Appendix 1 have a delinquent Form H-15 (Test on Inactive Wells More than 25 Years Old).
 - c. 68 of the wells identified on Appendix 1 have issues regarding good faith claims, which must be resolved before a plugging extension can be granted.
 - d. 1 of the wells identified on Appendix 1 (Millie Hartfield, District 1, Lease No. 11452) had an H-15 failure.
12. At the time of the hearing, Eagle Ford had an active enforcement docket referral to the Office of the Attorney General.
13. Protestants, Donoly Brice, Charlynn Brice, and the estate of James H. Haun, provided credible evidence that Eagle Ford lacks a good faith claim to operate 25 wells located on Leyendecker, R. F. "A" (02203) Lease and the Leyendecker, R. F. -B- (02203) Lease, as noted on Staff's Exhibit 4.

14. The the JA Svoboda lease, RRC No. 09662, which is the basis for Karen Svoboda's protest, is not listed on Staff Exhibit 4, and therefore is not relevant to this docket.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction pursuant to TEX. NAT. RES. CODE §81.051.
2. Eagle Ford 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.
3. Eagle Ford failed to comply with the requirements of TEX. NAT. RES. CODE, Chapter 89, Subchapter B-1 and 16 TEX. ADMIN. CODE § 3.15.
4. Eagle Ford'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 Eagle Ford's P-5 Organization Report.
2. the Commission cancel all P-4 Certificates of Compliance issued to Eagle Ford and sever all related pipeline or other carrier connections.
3. that Eagle Ford be directed to place the subject wells into compliance with all Commission Statewide Rules.

RESPECTFULLY SUBMITTED,

DANA AVANT LEWIS
Administrative Law Judge

PAUL DUBOIS
Technical Examiner