



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL AND GAS DOCKET NO. 8A-0298099**

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**THE APPLICATION OF HESS CORPORATION PURSUANT TO STATEWIDE RULE 50 FOR APPROVAL OF ITS FORM H-13 EOR POSITIVE PRODUCTION RESPONSE CERTIFICATION FOR THE SEMINOLE SAN ANDRES UNIT (360475), SEMINOLE (SAN ANDRES) FIELD, GAINES COUNTY, TEXAS**

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### PROPOSAL FOR DECISION

**HEARD BY:** Karl Caldwell – Technical Examiner  
Ryan Lammert – Administrative Law Judge

**APPEARANCES:**

**REPRESENTING:**

**APPLICANT:**

Hess Corporation

David Gross  
Anthony Houlihan  
Kimberley Gee  
Alfred Gomez  
Andrew J. Adams

### PROCEDURAL HISTORY

EOR Project Application (Form H-12) Received:	August 30, 2007
EOR Project Application (Form H-12) Approval Date:	August 30, 2007
Written Notification of Form H-12 Approval:	September 7, 2007
Application (Form H-13) Received:	September 24, 2012
Application (Form H-13) Administratively Denied:	October 31, 2012
Application (Form H-13) Re-Filed:	September 9, 2015
Second Administrative Denial of Application (Form-H-13):	September 9, 2015
Request for Hearing:	October 5, 2015
Notice of Hearing:	February 2, 2016
Date of Hearing:	April 28, 2016
Transcript Received:	May 12, 2016
Proposal For Decision Issued:	October 25, 2016

**STATEMENT OF THE CASE**

Hess Corporation (Hess) seeks Commission approval for certification of an enhanced oil recovery (EOR), positive oil production response for its Residual Oil Zone (ROZ) Stage 1 (Project F-01837D), Seminole San Andres Unit, Gaines County, Texas, pursuant to Statewide Rule 50 (16 Tex. Admin. Code § 3.50). Hess was notified in writing on September 7, 2007 that the project (Form H-12 *New or Expanded EOR Project and area designation Approval Application*) had been approved as a tertiary EOR project. Active operation (injection) commenced on October 31, 2007, and a positive response was observed on November 1, 2009. Hess filed the Form H-13 (*EOR Positive Production Response Certification Application*), on September 24, 2012, requesting approval of the application, with a requested certification date of November 1, 2009 for a positive response. The application was administratively denied by Commission staff on October 31, 2012 because Hess did not submit the Form H-13 within five (5) years of the approval date of the tertiary project as required by Statewide Rule 50. In the October 31, 2012, letter denying administrative approval of the Form H-13, the Oil and Gas Division informed Hess of its right to request a hearing, with a 30-day time period to inform the Commission of its request for a hearing. Hess decided not to request a hearing on the matter at that time.

Hess now seeks a second chance for Commission approval. On September 9, 2015, Hess re-filed the Form H-13 for the same ROZ Stage 1 EOR project, requesting approval of the application, with a requested certification date of November 1, 2009 for a positive response. Hess cited recent precedent set by the Commission in Oil and Gas Docket No. 8A-0291190 as the reason for re-submitting the Form H-13, and requests that the Commission exercise its discretion in approving the application. In a letter dated September 9, 2015, Oil and Gas Division Staff informed Hess that the Form H-12 *New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application* on file for Project No. F-01837D had expired, and therefore the application cannot be approved administratively. On October 5, 2015, Hess filed a request for hearing on its application for EOR positive production response certification. The Technical Examiner and Administrative Law Judge (“collectively Examiners”) conclude the application does not meet the requirements of Statewide Rule 50, and the facts in this case differ from the cases cited by Hess. As a result, the Examiners recommend that the application be denied.

**APPLICABLE LAW**

The present matter is governed by the Texas Tax Code §202.054(g) and Statewide Rule 50(g)(2)(A), which provide a severance tax reduction for successful secondary and tertiary recovery programs. The Texas Tax Code and Statewide Rule 50 require an applicant to apply for a positive production response certification within 5 years of project approval for a tertiary project. Pursuant to Texas Tax Code §202.054(g), the recovered oil tax rate applies “...if the application is filed...not later than five years from the date the Commission approves the project if the project is designated as a new or existing project that uses a tertiary recovery process....”

The Commission implements its responsibilities under Texas Tax Code §202.054(g) and Statewide Rule 50(g)(2)(A) by the administration of three forms, each initiated by operator action and follow by a Commission action:

**Form H-12, New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application;**

**Operator Action:** Submit Form H-12 to request Commission approval of the EOR project as a prerequisite to eligibility for the EOR severance tax rate reduction. Form H-12 must be submitted before injection activities begin.

**Commission Action:** If the H-12 is approved, the operator will be issued a Project and Area Designation Approval. The H-12 approval date starts the clock on subsequent requirements.

**Form H-13, EOR Positive Production Response Certification Application; and**

**Operator Action:** Form H-13 must be filed to request Commission certification that a positive production response has occurred. The operator is permitted to file once a positive production response occurs. However, the form must be filed no later than five years of project and area designation (Form H-12) approval. The operator is responsible for monitoring the project timing.

**Commission Action:** Commission certification of the H-13 positive production response entitles the operator to apply to the Comptroller of Public Accounts for a reduced severance tax rate for a period of time. Commission staff does not and is not responsible for notifying operators of the pending expiration of the Form H-13 filing period.

**Form H-14, Enhanced Oil Recovery Reduced Tax Annual Report.**

**Operator Action:** This form must be filed each year that the project is eligible for the reduced tax rate. Form H-14 must be filed within 30 days of the anniversary of the certification date of positive production response and annually thereafter.

**Commission Action:** Forms H-14 are forwarded to the Comptroller of Public Accounts. Commission staff notifies operators of a delinquent H-14, based on the anticipated filing date (30 days after the expiration of the five year period for tertiary recovery projects).

**DISCUSSION OF THE EVIDENCE**

**Background/History**

Hess is the operator of the Seminole San Andres Unit ("SSAU " or "Unit"). The SSAU is an existing 17,211 acre unit, located in the northeastern corner of the Central Basin Platform in

the Permian Basin. The predominant productive reservoir in this area is the San Andres Formation. Due to the close proximity of the SSAU to the boundary of the Central Basin Platform, the San Andres Formation is a shelf-edge type carbonate at this location. The San Andres (Seminole) Field ("field") was discovered in 1936. The Seminole San Andres Unit was unitized in 1969, and waterflood operations commenced in that same year. Hess started to CO<sub>2</sub> flood the main pay zone ("MPZ") in the field in 1983. The San Andres Residual Oil Zone ("ROZ") lies directly underneath the SSAU MPZ in the field and contains oil at a residual saturation. The reservoir rock is dolomite in both the MPZ and ROZ. The average oil column thickness of the MPZ is 154 feet, whereas the average thickness of the ROZ is 236 feet. The average porosity in the MPZ is 12%, compared to 11 % in the ROZ. The average permeability in the MPZ is 10 millidarcies (md) while the ROZ average permeability is 12 md. As far as porosity and permeability, the MPZ and ROZ have similar properties. Alfred Gomez, geological advisor for Hess's Permian asset which includes the SSAU, stated that over time, in part as a result of waterflood operations conducted in the MPZ, the water saturation in the MPZ became higher than the water saturation in the ROZ. This occurrence led Hess to investigate whether they could produce oil from the ROZ.

#### Residual Oil Zone (ROZ) Stage 1 EOR Project

Hess filed the Form H-12, *Application for New EOR Project Approval and Area Designation* for its 2,388 acre ROZ Stage 1 EOR project on August 30, 2007. The ROZ Stage 1 area is 2,388 acres, which is a smaller subset of the entire SSAU. The San Andres ROZ had never been the subject of either secondary or tertiary recovery operations within the 2,388 acre area of this new EOR project. The Form H-12 indicated the method of recovery to be used as miscible fluid displacement. On the Form H-12 Hess estimated the project cost to be \$569,360,000 and anticipated injection to begin in October 2007.

Hess was notified in writing of the approval of the Form H-12 for an initial tertiary enhanced recovery project – miscible displacement for the ROZ Stage 1 EOR on September 7, 2007. The letter indicated that the Form H-12 approval date was August 30, 2007, which was the date the application was received. The letter also stated that the Form H-13, *Positive Production Response Certification Application* must be received by the Commission within five (5) years of the above Form H-12 approval date. Once Form H-13 is approved and the date of positive production response is certified, oil production from the lease will be eligible for the reduced oil severance tax rate.

#### ROZ Stage 1 Tertiary Enhanced Recovery Project Summary

To Mr. Gomez's knowledge, the ROZ Stage 1 project is the largest commercial-scale ROZ CO<sub>2</sub> tertiary recovery project. Andrew Adams, Asset Director for Hess's Permian Asset, estimates that Hess has spent approximately \$136 million in deepening existing wells, as the ROZ is below the main pay zone, in addition to drilling new wells targeting the ROZ, and tying new infrastructure into existing infrastructure. Hess has also spent approximately \$158 million for the Seminole gas processing plant expansion. The gas plant expansion included a new technology called membrane separation which strips out CO<sub>2</sub>, as CO<sub>2</sub> is injected and CO<sub>2</sub> is recovered and must be processed at a gas plant. The existing plant was at full capacity so the

plant had to be expanded to handle an additional 70 million cubic feet of CO<sub>2</sub> per day. In total, Hess invested a total of approximately \$294 million in physical infrastructure, facilities and equipment before even demonstrating a positive production response. Mr. Adams expects to spend an additional \$250 million for CO<sub>2</sub>.

When Hess considers the implementation and the overall economics of an EOR project they consider all costs it will incur, both the upfront capital costs invested, as well as the ongoing operating costs. Hess also considers other incentives such as the taxes that will be paid, and also the rebates for those taxes that Hess would be required to pay.

Hess estimates 29 million barrels of oil (29 MMBO) will be recovered over the life of ROZ Stage 1 EOR project. This EOR project has also yielded additional benefits. For example, the fact that this project was a commercial success has laid the groundwork for Hess to undertake additional development, consisting of ROZ Stage 2, 3, and 4 which have subsequently been implemented as a result of the success of ROZ Stage 1. Hess anticipates these efforts will result in continued production until 2080, which will have a positive impact on the city of Seminole, as Hess is the largest single employer in Seminole. In Mr. Adams estimation, Hess has extended the life of this field by at least 30 years with the CO<sub>2</sub> flood, particularly in the ROZ reservoir that underlies the MPZ. With the future developments planned for the ROZ, Mr. Adams estimates that Hess will be producing the field until 2080. Currently, Hess is expecting to be able to hold the current production rate of 20,000 to 21,000 barrels of oil per day (BOPD) level for the next 20 years. With expanding and extending the residual oil development CO<sub>2</sub> flood into more areas of the field. Mr. Adams estimates production will start to decline after 20 years, but will remain economically viable until the year 2080.

#### Positive Production Response and Submission of Form H-13

Statewide Rule 50(g)(1) requires the operator to apply-for and receive approval of a new EOR project or an expansion of an existing EOR project prior to commencing active operation. As previously mentioned, Hess submitted the Form H-12 for approval on August 30, 2007 and was notified in writing of its approval on September 7, 2007, with a Form H-12 approval date of August 30, 2007.

Active operation, or injection operations for the ROZ Stage 1 EOR project commenced on October 31, 2007. From the date active operations commenced until approximately late-2008, oil production from the project area was in decline. After late-2008, production started to increase. Mr. Adams testified that by November, 1, 2009, Hess was "comfortable" that the increase in production was a result of the ROZ Stage 1 EOR project CO<sub>2</sub> injection.

On September 24, 2012 Hess filed Form H-13 EOR Positive Production Response Certification Application. The Form H-13 filed contained the following information:

- Date(s) of RRC project and area designation approval: August 30, 2007
- Date active operation (injection) began: October 31, 2007
- Date positive production response first occurred: November 1, 2009

- Date requested as certification date: November 1, 2009
- Signature date: September 21, 2012

The application for positive response certification filed by Hess also included the following attachments as required by Statewide Rule 50(2)(B)(i)-(iii):

- Attachment 1: Plat showing project outline and wells;
- Attachment 2: SSAU Well Status for all producing wells and injection wells;
- Attachment 3: Lease production and injection volumes in tabular form;
- Attachment 4: Lease production graph of monthly volumes (oil, water, total gas);
- Attachment 5: Lease injection graph of monthly volumes (water, CO<sub>2</sub>); and
- Attachment 6: Lease active producer and injector well count.

In a letter dated October 31, 2012, Commission Staff informed Hess that Form H-13 cannot be approved because it was received more than five years after the H-12 approval date of August 30, 2007. The Form H-13 was dated September 21, 2012, and was filed-stamped at the Austin office on September 24, 2012. The letter referenced Statewide Rule 50(g)(2)(C), whereby the applicant shall have the right to a hearing, upon request, if the Commission denies administrative approval. The letter requested Hess to notify the Commission within thirty days of the date of the letter if it wished to request a hearing. Hess did not request a hearing on the administrative denial within the 30-day time period. Hess contemplated filing a request for hearing, but at that time there was no precedent for the Commission approving a late-filed Form H-13 solely as a result of an operators' oversight in missing the deadline to timely file Form H-13. In this case, Hess's personnel conducting the operations inadvertently considered the start date for the 5-year period for filing Form H-13 to be October 31, 2007, which was the date active operation commenced.

### **Recent Commission Precedent and Hess's Requested Action**

Hess's request is that the Commission exercise the discretion authorized by the Texas Tax Code § 202.054 (l) and approve Hess's original Form H-13, even though it was filed 24 days past the deadline for filing in 2012. Hess points to recent Commission precedent in which two applications have been approved in which Form H-13 was late-filed in each case. In Oil and Gas Docket No. 8A-0291190, Apache Corporation's Form H-13 was approved, even though Form H-13 was late-filed. In Oil and Gas Docket No. 8A-0296035, Parallel Petroleum, LLC's Form H-13 was approved even though Parallel Petroleum, LLC did not demonstrate a positive response within the statutory time period, and Form H-13 was late-filed.

To institute this application, Hess filed an updated Form H-13 on September 9, 2015. In the application, Hess described the same project, with the same information contained in the original filing in 2012, but included updated production plots to show production since the original filing date, up to July 2015. The Form H-13 lists the requested certification date as November 1, 2009, which is the date the positive production response was observed and the same date listed on Hess's original filing of Form H-13 in 2012.

In a letter dated September 9, 2015 Technical Permitting Staff stated that the Commission had received Hess's Form H-13, and that the Form H-12 on file had expired. Therefore, the application could not be approved administratively. The Form H-12 approval date was August 30, 2007. The letter stated that the application for certification must be filed not later than five years from the date the Commission approves the project as a new or existing project that uses a tertiary recovery process. Once again, Hess was informed that pursuant to Statewide Rule 50(g)(2)(C), the applicant shall have the right to a hearing, upon request, if the Commission denies administrative approval, and to notify the Commission within 30 days of the date of the letter if Hess wished to request a hearing. On October 5, 2015, the Commission received a request for a hearing.

Hess's counsel admits that in 2012 Hess filed the original Form H-13 approximately three-and-a-half weeks past the deadline for filing. Following administrative denial of the Form H-13 Hess elected not to request a hearing. Now, Hess has re-filed Form H-13 for the purposes of requesting a hearing.

#### **EXAMINERS' ANALYSIS OF THE EVIDENCE**

To summarize the series of events, the following time line is presented with regard to Hess and Commission actions:

- August 30, 2007:* The Commission receives Form H-12 for the ROZ Stage 1 (Project No. F-01837D), an initial tertiary enhancement project.
- September 7, 2007:* The Commission informs Hess in writing of the approval of Form H-12 for the ROZ Stage 1 (Project No. F-01837D), an initial tertiary enhancement project. The approval letter states the project approval date is August 30, 2012. The letter also directs Hess to file Form H-13 after the project has demonstrated a sustained positive production response, and that Form H-13 must be submitted within five years of the August 30, 2007 project approval date.
- October 31, 2007:* Commencement of active operation (injection) for ROZ Stage 1, Project No. F-01837D.
- November 1, 2009:* A sustained positive production increase for the ROZ Stage 1 EOR Project F-01837D was observed by Hess.
- August 30, 2012:* The statutory deadline for filing Form H-13 passes for the ROZ Stage 1 EOR Project F-01837D.
- September 24, 2012:* The Commission receives Hess's Form H-13 for the ROZ Stage 1 EOR Project F-01837D.

- October 31, 2012:* Commission staff denies Hess's Form H-13 because it was received more than five years after the Form H-12 approval date of August 30, 2007. Hess is informed of its right to request a hearing pursuant to Statewide Rule 50 (g)(2)(C) and to inform the Commission within 30 days of its intent to request a hearing.
- November 30, 2012:* Deadline to file a request for hearing on administrative denial of Form H-13. No request for hearing received.
- January 27, 2015:* In Oil and Gas Docket No. 8A-0291190 the Commission approved Apache Corporation's Form H-13 for its Adair San Andres Unit even though Apache filed the Form H-13 approximately five-and-a-half months late.
- September 9, 2015:* Hess re-submits Form H-13 for the ROZ Stage 1 EOR Project F-01837D citing recent precedent set by the Commission in Oil and Gas Docket No. 8A-0291190.
- September 9, 2015:* Commission staff administratively denies Hess's Form H-13 because the Form H-12 on file has expired. Hess is informed of its right to request a hearing pursuant to Statewide Rule 50 (g)(2)(C) and to inform the Commission within 30 days of its intent to request a hearing.
- October 5, 2015:* The Commission receives a request for hearing from Hess.

The Examiners conclude that the evidence shows the EOR project meets the positive production response requirements of Statewide Rule 50(g)(2)(A). The Examiners conclude that the application for positive response certification (Form H-13) dated and signed by Hess on September 21, 2012 and received by the Commission on September 24, 2012 contained the required production and injection graphs, supporting tabular data, and plat as required by Statewide Rule 50 to illustrate a positive production response. The ROZ Stage 1 EOR tertiary recovery project was approved on August 30, 2007 and active operation (injection) commenced on October 31, 2007. By late-2008, production started to increase, an increase that is attributed to the ROZ Stage 1 EOR project CO<sub>2</sub> injection.

However, the Examiners also conclude that the application for positive response certification does not meet the administrative requirements of Statewide Rule 50(g)(2)(A). The operator is required to apply for a positive production response certificate within five years of project approval for tertiary projects. Hess filed Form H-13 more than five years after the approval date of the tertiary recovery project, having missed the 5-year deadline by 24 days (Form H-13 approval date: August 30, 2007, and the Form H-13 was filed on September 24, 2012). Consequently, the Examiners do not find that either the Texas Tax Code or Statewide Rule 50 provide for an exception, variance, or extension of the filing period.



Hess argues the Commission has broad discretion under the Texas Tax Code to interpret Statewide Rule 50. Nonetheless, the Examiners cannot reach a finding of fact that Hess's application meets the requirements of the Texas Tax Code or Statewide Rule 50. Hess offered two recent cases as precedents in which the Commission certified an applicant's Form H-13 as the reasoning for re-submitting its Form H-13 at this time:

1. On January 27, 2015, the Commission found in Oil & Gas Docket No. 8A-0291190 that Apache Corporation's Form H-13 was technically complete and met the positive production response requirements of Statewide Rule 50. In the Apache case, a positive production response was observed within the statutory time period, but through administrative oversight, Apache failed to file the Form H-13 in a timely manner. The Commission concluded in the Apache case that the application was technically complete, and therefore met the requirements of Statewide Rule 50. The Commission determined the appropriate certification date was July 8, 2014, the date Apache filed the Form H-13.
2. On December 15, 2015, the Commission found in Oil & Gas Docket No. 8A-0296035 that Parallel Petroleum LLC's Form H-13 was technically complete and met the positive production response requirements of Statewide Rule 50. In the Parallel case, a positive production response was not observed within the statutory time period, and occurred a few months after the three-year statutory deadline. The Commission concluded in the Parallel case that the application was technically complete, and therefore met the requirements of Statewide Rule 50. The Commission determined the appropriate certification date was March 10, 2015, the date Parallel filed the Form H-13.

The present case differs from these two cases cited by Hess in that in Oil and Gas Docket Nos. 8A-0291190 and 8A-0296035 the operator requested a hearing within 30 days of being informed that the Form H-13 was administratively denied. In this case, Hess elected not to request a hearing in response to the Form H-13 being administratively denied. Instead, Hess has re-filed the same Form H-13 that had been administratively denied approximately two years and ten months earlier. Hess did not offer any cases where an application that had previously been denied and considered closed was then re-filed and considered for approval.

Another difference in the present case and the two previous cases cited by Hess is the requested certification date. In this case, Hess is requesting a certification date of November 1, 2009, which is the date a positive production response first occurred. In Oil & Gas Docket Nos. 8A-0291190 and 8A-0296035 the Commission determined that the appropriate certification date was the date that the Form H-13 was filed.

The Examiners do not find that either the Texas Tax Code or Statewide Rule 50 provide for an exception, variance, or extension of this filing period. The Examiners, therefore, cannot conclude that Hess has met all requirements of Statewide Rule 50(g)(2)(A) for its positive production response certification and therefore recommend that the application be denied.

**FINDINGS OF FACT**

1. Notice of this hearing was given to all parties entitled to notice.
2. The Commission approved Hess Corporation's (Form H-12) for the ROZ Stage 1 initial tertiary enhanced recovery project, with an approval date of August 30, 2007.
3. According to the provisions of the Texas Tax Code and Statewide Rule 50(g)(2)(A), Hess had until August 30, 2012 to apply for a positive production response certificate.
4. The tertiary recovery project demonstrated a positive production response on November 1, 2009, within the five-year time frame established by Statewide Rule 50.
5. The Form H-13, EOR Positive Production Response Certification Application, was received by the Commission on September 24, 2012, approximately 24 days after the August 30 2012, statutory deadline.
6. On October 31, 2012, Commission staff administratively-denied Hess Corporation's Form H-13 application because it was received more than five years after the From H-12 approval date of August 30, 2007 and informed Hess Corporation of its right to request a hearing.
7. On September 9, 2015 Hess Corporation re-filed the Form H-13 EOR Positive Production Response Certification Application.
8. On September 9, 2015 Commission staff administratively-denied Hess Corporation's Form H-13 because the Form H-12 on file had expired, and informed Hess Corporation of its right to request a hearing.
8. On October 5, 2015 the Commission received a hearing request on the matter.

**CONCLUSIONS OF LAW**

1. Resolution of the subject application is a matter committed to the jurisdiction of the Railroad Commission of Texas. Tex. Nat. Res. Code § 81.051.
2. All notice requirements have been satisfied. 16 Tex. Admin. Code § 1.45.
3. Hess Corporation did not meet the requirements of Texas Tax Code § 202.054(g) or Statewide Rule 50(g)(2)(A) for positive production response certification.
4. Statewide Rule 50 does not provide the Examiners with direction or discretion to amend the filing periods or otherwise recommend the certification sought by Hess Corporation.

EXAMINERS' RECOMMENDATION

Based on the above findings of fact and conclusions of law, the Examiners recommend that Hess Corporation's application for positive production response certification for the ROZ Stage 1 EOR tertiary recovery project be denied.

Respectfully submitted,



Karl Caldwell  
Technical Examiner



Ryan M. Lammert  
Administrative Law Judge