



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 20-0300529

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**THE APPLICATION OF JENEX PETROLEUM CORPORATION (OPERATOR NO. 431135) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT THE P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15**

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### APPEARANCES

#### **FOR APPLICANT JENEX PETROLEUM CORPORATION:**

Brett Jensen, President

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

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

#### **FOR PROTESTANT PETTY FAMILY INTERESTS:**

Beth Townsend, Attorney at Law  
Greg Bilbro, Consultant

#### **PROCEDURAL HISTORY:**

Notice of Hearing:	August 15, 2016
Hearing on the merits:	October 12, 2016
Close of record:	October 31, 2016
Proposal for Decision:	November 9, 2016
Heard by:	Ryan M. Lammert, Administrative Law Judge Richard Eyster, P.G., Technical Examiner

### SUMMARY

In Docket No. 20-0300529, Jenex Petroleum Corporation (Operator No. 431135), (“Jenex”), challenges the Commission staff’s determination that renewal of its Form P-5 *Organization Report* (“P-5”) cannot be approved due to Jenex’s failure to comply with the inactive well requirements of Statewide Rule 15(d)(1) (generally, “SWR 15”).<sup>1</sup> Jenex is the current operator of ten (10) non-compliant oil wells—each well has a failed Form H-5 *Disposal/Injection Well Pressure Test Report*, (“H-5”), which requires a resolution.

Jenex appeared at hearing, but failed to present evidence sufficient to show that it is in compliance with the inactive well requirements of SWR 15. The record evidence demonstrates that the subject wells are not in compliance with the inactive well requirements of SWR 15, and, as a result, Jenex unsuccessfully challenged the Commission staff’s determination that renewal of its P-5 cannot be approved.

The Administrative Law Judge and Technical Examiner (collectively, “Examiners”) recommend that the Commission deny the unrestricted renewal of Jenex’s P-5.

### EVIDENCE PRESENTED

#### JENEX

Jenex asserted that it is actively working to achieve compliance with the inactive well requirements of SWR 15.<sup>2</sup> Jenex testified that, of its ten non-compliant wells, four wells are plugged and abandoned.<sup>3</sup> Jenex further testified that it would continue to work to plug and abandon the remaining non-compliant wells.<sup>4</sup> However, other than its testimony, Jenex did not offer any evidence to support those assertions.

At the hearing on the merits, the Administrative Law Judge proposed to take Official Notice of Commission database records reflecting the Form W-3 *Plugging Record* approval date (if any) for each of the non-compliant wells subject to this docket. As of October 31, 2016, Commission database records show that each non-compliant well lacks a Commission-approved Form W-3 *Plugging Record*.

#### STAFF

The Enforcement Section of the Office of General Counsel for the Railroad Commission of Texas (“Staff”) submitted evidence demonstrating that Jenex is the current operator of ten

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

<sup>2</sup> Tr., pg. 12, lns. 2 – 15.

<sup>3</sup> Tr., pg. 12, lns. 20 – 22.

<sup>4</sup> Tr., pg. 12, lns. 7 – 15.

(10) wells that fail to comply with the inactive well requirements of SWR 15(d)(1).<sup>5</sup> Staff testified that the non-compliant wells have “failed H-5 test issues”.<sup>6</sup> Staff states that an H-5 test is a “pressure test to determine the integrity of the well”<sup>7</sup> necessary to ensure that usable quality groundwater is protected.<sup>8</sup>

Staff also submitted evidence showing that Jenex’s P-5 renewal was due on January 1, 2016.<sup>9</sup> Staff then submitted evidence demonstrating that, on October 2, 2015, Commission staff generated a “renewal packet” for Jenex’s P-5 renewal application.<sup>10</sup> The evidence indicates that the “renewal packet” included information related to House Bill 2259<sup>11</sup> (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<sup>12</sup> (procedures to be followed subsequent to Commission staff determination that an operator is not in compliance with the inactive well requirements), and SWR 15, as each is relevant to Jenex – including Jenex’s non-compliant wells.<sup>13</sup>

Staff then submitted as evidence a “notice letter” issued on April 6, 2016, demonstrating that Commission staff notified Jenex that its P-5 renewal would be denied for failure to meet the inactive well requirements of SWR 15.<sup>14</sup> Attached to the notice letter was an exhaustive list of Jenex’s 10 non-compliant wells, accompanied by a description of their respective deficiencies. Of the 10 wells, the evidence shows that each well required a resolution to an H-5 failure.<sup>15</sup>

Staff submitted a second notice letter issued on April 11, 2016, as evidence that Commission staff once again informed Jenex that it remained non-compliant with the inactive well requirements of SWR 15.<sup>16</sup> Attached to the letter was an exhaustive list of Jenex’s 10 non-compliant wells accompanied by a description of their respective deficiencies – identical in content to the April 6, 2016, notice.<sup>17</sup>

Lastly, Staff testified that none of Jenex’s wells were in compliance with the inactive well requirements of SWR 15 at the time of the hearing on October 12, 2016.<sup>18</sup>

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<sup>5</sup> See Staff Exhs. 2, 3, and 4.

<sup>6</sup> Tr., pg. 20, ln. 16.

<sup>7</sup> Tr., pg. 20, lns. 19 – 20.

<sup>8</sup> See Tr., pg. 20, lns. 21 – 23.

<sup>9</sup> Staff Exh. 1.

<sup>10</sup> *Id.*

<sup>11</sup> Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

<sup>12</sup> Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 1, eff. June 17, 2011.

<sup>13</sup> Staff Exh. 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Staff Exh. 3.

<sup>17</sup> *Id.*

<sup>18</sup> Tr., pg. 21, lns. 5 – 21.

### PETTY FAMILY INTERESTS

In its opening statement, Petty Family Interests (“Petty”) stated that, “[Petty] plans to put on some evidence about Jenex and their ability to be a good-faith operator.”<sup>19</sup> Without objection from the parties, Petty submitted into evidence twenty-three (23) exhibits demonstrating (what Petty concludes is) Jenex’s failure to operate its leases and wells responsibly.<sup>20</sup> Petty’s exhibits included a previous Commission Final Order entered against Jenex, previous Enforcement actions filed against Jenex (some of which were settled or closed), and various current complaints filed by affected surface and/or affected mineral owners against Jenex.<sup>21</sup>

### EXAMINERS’ OPINION

Statewide Rule 1 provides that “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.”<sup>22</sup> Accordingly, an operator seeking to conduct oil and gas operations within the State must have on file with the Commission a current and active Form P-5 *Organization Report*.

Moreover, Texas law expressly conditions renewal of a P-5 on an operator’s compliance with the requirements of SWR 15.<sup>23</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>24</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>25</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;

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<sup>19</sup> Tr., pg. 13, lns. 19 – 21.

<sup>20</sup> See Petty Exhs. 1 – 23; Tr., pg. 40, lns. 5 – 6.

<sup>21</sup> See Petty Exhs. 1 – 23.

<sup>22</sup> 16 TEX. ADMIN. CODE § 3.1(a)(1).

<sup>23</sup> 16 TEX. NAT. RES. CODE § 89.022(c).

<sup>24</sup> 16 TEX. ADMIN. CODE § 3.15(d)(1).

<sup>25</sup> 16 TEX. ADMIN. CODE § 3.15(a)(6).

- (2) the operator has a current organization report (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>26</sup>

Terms and conditions to apply for an extension of deadline for plugging an inactive land well are dictated by SWR 15(f).<sup>27</sup>

At the hearing on the merits, it was incumbent upon Jenex to submit evidence that it had obtained approval of the Commission or its delegate of an extension of the deadline for plugging its inactive well, or, to otherwise provide evidence of compliance with the inactive well requirements of SWR 15. Jenex failed to present such evidence.

Chiefly, Jenex failed to provide evidence sufficient to demonstrate that it had successfully conducted a fluid level or hydraulic pressure test establishing that the subject well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

Moreover, Jenex also failed to demonstrate that it had restored the wells to active status, as defined by Commission rule. Jenex also did not submit proof that it had plugged the wells in compliance with a Commission rule or order.

The evidence of record in this case shows that Jenex is the current operator of ten (10) oil wells which fail to meet the requirements of Statewide Rule 15(d)(1). Jenex failed to secure from the Commission approved extensions of deadline for plugging its inactive land wells. Additionally, Jenex failed to re-establish production from the wells, or otherwise plug the wells in accordance with Commission rules. As a result, Jenex's inactive wells are non-compliant with the inactive well requirements of SWR 15; and, thus, Jenex failed to overcome Commission Staff determination that renewal of its P-5 cannot be approved.

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<sup>26</sup> 16 TEX. ADMIN. CODE § 3.15(e).

<sup>27</sup> 16 TEX. ADMIN. CODE § 3.15(f).

The Administrative Law Judge hereby incorporates by reference, and attached as Appendix 1, Staff's Exhibit 4, being Commission records reflecting the P-5 Renewal Status of the subject wells, as of the date of the hearing.

### CONCLUSION

The Examiners agree with Staff that Jenex should be denied unrestricted renewal of its P-5 Organization Report and makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. Jenex Petroleum Corporation holds Operator No. 431135.
2. Jenex Petroleum Corporation is the current operator of the wells identified on attached Appendix 1, which is hereby adopted and incorporated by reference for all purposes.
3. On or about April 6, 2016, Jenex Petroleum Corporation 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). The notice identified each of Jenex Petroleum Corporation's non-compliant wells and included a description of their respective deficiencies.
4. On or about April 11, 2016, Jenex Petroleum Corporation 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). The notice identified each of Jenex Petroleum Corporation's non-compliant wells and included a description of their respective deficiencies. The notice also established a 30-day deadline by which Jenex Petroleum Corporation could request a hearing to challenge Commission staff determination.
5. Jenex Petroleum Corporation timely requested a hearing on the matter.
6. At hearing, Jenex Petroleum Corporation presented evidence insufficient to demonstrate compliance with the inactive well requirements of 16 TEX. ADMIN. CODE § 3.15(d)(1)
6. The oil wells identified on Appendix 1 fail to meet the requirements of Statewide Rule 15. Appendix 1 is hereby adopted and incorporated by reference for all purposes.
  - a. The wells all have a Form H-5 failure.

7. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto Brett Jensen, is an individual who held a position of ownership or control of Jenex Petroleum Corporation.

#### CONCLUSIONS OF LAW

1. Jenex Petroleum Corporation 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. All things necessary to the Commission attaining jurisdiction have occurred.
3. Jenex Petroleum Corporation failed to comply with the requirements of TEX. NAT. RES. CODE, Chapter 89, Subchapter B-1 and 16 TEX. ADMIN. CODE § 3.15.
4. Jenex Petroleum Corporation'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 Commission enter an order denying the unrestricted renewal of Jenex Petroleum Corporation's P-5 Organization Report.

The Administrative Law Judge and Technical Examiner also recommend that the Commission cancel all P-4 Certificates of Compliance issued to Jenex Petroleum Corporation and sever all related pipeline or other carrier connections.

The Administrative Law Judge and Technical Examiner also recommend that Jenex Petroleum Corporation be directed to place the subject wells into compliance with all Commission Statewide Rules.

The Administrative Law Judge and Technical Examiner also recommend that Brett Jensen be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114(a)(2).

RESPECTFULLY SUBMITTED,



RYAN M. LAMMERT  
Administrative Law Judge



RICHARD EYSTER, P.G.  
Technical Examiner