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DOCKET # 17-0105
RAILROAD COMMISSION
OF TEXAS

RAILROAD COMMISSION OF TEXAS

OIL & GAS DOCKET NO. 20-0304691

P-5 ORGANIZATION REPORT OF CHESTNUT EXPLOR. AND PROD., INC.

STAFF'S RESPONSE TO MOTION FOR REHEARING

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the P-5 Financial Assurance Unit of the Railroad Commission of Texas and files this its reply to the Motion for Rehearing filed June 5, 2017, by Chestnut Explor. And Prod., Inc., Operator No. 147847 (hereinafter "Respondent") to the Commission's Final Order ("Order") issued May 10, 2017, in the above captioned docket, and in support thereof would show the following:

COMPLIANCE STATUS

1. Commission records show that Respondent remains out of compliance with the requirements of 16 Texas Admin. Code § 3.15 (Statewide Rule 15). Respondent is the operator of record of 33 inactive wellbores affecting its current Organization Report (Form P-5) renewal cycle, all of which remain noncompliant with the requirements of Statewide Rule 15 as more fully discussed below.

STANDARD OF REVIEW OF MOTION FOR REHEARING

2. The motion for rehearing before an administrative agency is the functional equivalent of a motion for new trial before a trial court. General Rules of Practice and Procedure §1.149 governs the procedure for filing of motions for rehearing at the Railroad Commission of Texas ("Commission"). This section is not currently in accord with V.T.C.A., Government Code §2001.146 (amended in the 84th Legislature, effective September 1, 2015; conforming amendments to the Commission's General Rules of Practice and Procedure have not yet been completed), the general provisions regarding the filing of motions for rehearing before administrative agencies. Where conflict arises, the provisions of V.T.C.A., Government Code §2001.146 govern. Additionally, V.T.C.A., Government Code §2001.146, effective September 1, 2015, added new requirements for all motions for rehearing. V.T.C.A., Government Code §2001.146(g), states that a motion for rehearing must identify with particularity findings of fact or

conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. V.T.C.A., Government Code §2001.146(g) further states that the motion must also state the legal and factual basis for the claimed error.

3. With regard to motions for new trial before trial courts in default judgment cases, the law is well settled that the movant must demonstrate certain elements in order to set aside the judgment. A motion for new trial is addressed to the courts discretion and the court's ruling will not be set aside in the absence of a showing of abuse of discretion. *Strackbein v. Prewitt*, 671 S.W.2d 37 (Tex.1984). However, as stated by the Texas Supreme Court in *Craddock v. Sunshine Bus Lines, Inc.*, 134 Tex. 388, 133 S.W.2d 124 (Comm'n App. 1939, opinion adopted):

[w]hile trial courts have some measure of discretion in the matter, as, in truth, they have in all cases governed by equitable principles, it is not an unbridled discretion to decide cases as they might deem proper, without reference to any guiding rule or principle. *Id.* at 126.

The *Craddock* court then set forth the guiding rule or principle for trial courts to follow to determine whether to grant a motion for a new trial:

A default judgement should be set aside and a new trial ordered in any case in which the failure of defendant to answer before judgement was not intentional, or the result of conscious indifference on his part, but was due to a mistake or accident; provided the motion for a new trial sets up a meritorious defense and is filed at a time when the granting thereof will occasion no delay or otherwise work an injury to the plaintiff. *Id.*

These requirements apply to a post-answer default judgment as well as to other types of default judgments. See, *Grissom v. Watson*, 704 S.W.2d 325 (Tex.1986) and *Ivy v. Carrell*, 407 S.W.2d 212, 213 (Tex.1966).

4. The Commission has chosen to follow similar motion for new trial rationale for reviewing motions for rehearing in cases involving default enforcement orders by applying *Craddock*. See, *Anderson v. R.R. Comm'n of Tex.*, 963 S.W.2d 217, 219 (Tex. App.--Austin 1998, writ denied). General Rules of Practice and Procedure §1.49(d)(1) provides that if a respondent fails to appear at a scheduled hearing a default final order may be issued by the Commission without further notice. Applying the *Craddock* test to the context of this docket, a rehearing may be granted:

- (1) if Respondent's failure to appear at the scheduled hearing was neither intentional nor the result of conscious indifference, but was due to accident or mistake;
- (2) if Respondent presents a meritorious defense; and
- (3) if a rehearing will not delay or work any injury to the Commission or its mission.

Additionally, V.T.C.A., Government Code §2001.146(g) requires that a motion for rehearing must:

- (1) identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous; and
- (2) state the legal and factual basis for the claimed error.

Therefore, it would be consistent with existing Commission policy and court decisions reviewing motions for rehearing to apply the *Craddock* standard, as well as those outlined in V.T.C.A., Government Code §2001.146(g), to motions for rehearing of those dockets that appeared on the Rule 15 Inactive Well Docket due to the operator's failure to gain compliance or request a hearing following notice of impending denial of P-5 renewal within the prescribed time requirement set forth in said notice.

APPLICATION OF REVIEW STANDARDS

5. Respondent's Motion for Rehearing does not meet the first *Craddock* test. Respondent, in its Motion for Rehearing, does not assert that it failed to request a hearing due to accident or mistake. It is the position of the P-5 Financial Assurance Unit that Respondent's failure to request a hearing was intentional or the result of conscious indifference. Rather than being due to any accident or mistake, Respondent's failure to request a hearing is most evidently the result of Respondent's conscious decision not to. For this reason, the Motion for Rehearing should be denied.

6. The second element of the *Craddock* test requires a person filing a motion for rehearing to raise a meritorious defense. P-5 Financial Assurance Unit feels that Respondent's Motion for Rehearing does not raise a meritorious defense. Commission records indicate that Respondent has failed to file an acceptable *Application for an Extension of Deadline for Plugging an Inactive Well* (Form W-3X) with respect to 33 wells; has failed to complete surface cleanup

activities and to certify such work by the filing of a *Certification of Surface Equipment Removal for an Inactive Well* (Form W-3C) on two wells; and has failed to maintain 6 wells in compliance with Commission rules such that plugging extensions cannot presently be granted, all as detailed on the attached listing.

With respect to its E.A. Turner "D" (01676) #1, E.A. Turner "D" (08362) #6, E.A. Turner (07889) #2, and its Lee Turner C (09521) #3 wells, Commission records show that this are 25-year old inactive wellbores and are therefore required to undergo periodic testing to ensure that they do not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas. By notices issued May 30, 2016 (for wells 2 and 6) and April 28, 2016 (for wells 1 and 3), Respondent was directed to perform such a test. No test was performed and Respondent was deemed delinquent on this requirement on August 2, 2016 (wells 2 and 6), and September 2, 2016 (wells 1 and 3). Respondent has not subsequently brought these wells into compliance and all four leases remain under severance orders due to the delinquency.

With respect to its E.A. Turner "D" (01676) Well Nos. 5 and 9R, Commission records show that these are permitted injection wells and are required by the terms of their permit to undergo periodic mechanical integrity testing to ensure that injected fluids are confined to the permitted interval. Respondent did not perform the initial test required for these wells but did report injection. Respondent was deemed delinquent on these tests as of August 25, 2016. Respondent has not subsequently brought these wells into compliance.

Respondent, in its Motion for Rehearing, does not contest staff's determination that the subject wells are noncompliant with the requirement of Commission rules. Respondent states that it "has been diligent in compliance efforts to the Railroad Commission." This is refuted by the fact that none of the wells reported to Respondent on its P-5 renewal packet on September 2, 2016, have been brought into compliance. Respondent, in its Motion for Rehearing, further states that it "is working to submit all requirements to TX RRC as quickly as possible" and that it "is now working diligently to meet all of Texas Railroad Commission's requirements and all requirements are in process of being completed." Staff contends that this clearly indicates that Respondent has no meritorious defense and that the motion is filed solely for the purpose of further delay.

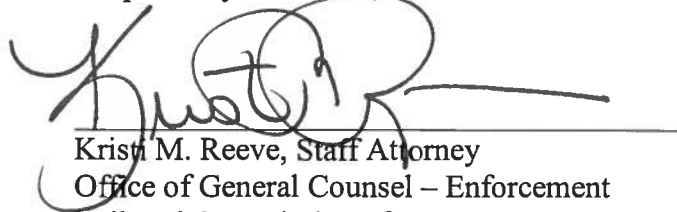
Accordingly, the operator is not currently in compliance with the requirements of Rule 15, was not in compliance at the time the Final Order was entered, and has no meritorious defense. For these reasons, the Motion for Rehearing fails the second part of the *Craddock* test and should be denied.

7. The third element of the Craddock test requires that a rehearing not work any injury to the agency or its mission. Granting a rehearing in this case will work an injury to the Commission and its mission by condoning Respondent's inactions while thwarting the Commission's legitimate compliance efforts, resulting in further delay and expense. Respondent's Motion for Rehearing should be denied as a matter of law.

8. Respondent, in its Motion for Rehearing, fails to identify any specific Finding of Fact, Conclusion of Law, or other actions which constitute error on the part of the Commission. By failing to identify any particular error of the Commission in its Order or provide a legal basis for any error, pursuant to V.T.C.A., Government Code §2001.146, Respondent's Motion for Rehearing is fatally deficient. Therefore, Respondent's Motion for Rehearing should be denied as a matter of law.

WHEREFORE, the P-5 Financial Assurance Unit requests that Respondent's Motion for Rehearing be denied and the Commission's Order in the captioned docket become final.

Respectfully submitted,



Kristi M. Reeve, Staff Attorney
Office of General Counsel – Enforcement
Railroad Commission of Texas
State Bar No. 24049997
Telephone No. (512) 463-8589
FAX No. (512) 463-6989
P. O. Box 12967
Austin, Texas 78711-2967


June 8, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Response to Motion for Rehearing, in Oil and Gas Docket No. 20-0304691, on the persons named below by depositing same in the United States Mail, first-class postage fully prepaid, on this 8th day of June, 2017 properly addressed as follows:

CHESTNUT EXPLOR. AND PROD., INC.
2201 N CENTRAL EXPWY STE 240
RICHARDSON TX 75080

LISA BARFIELD, AUTHORIZED REPRESENTATIVE
CHESTNUT EXPLOR AND PROD INC
12955 WILLOW PLACE WEST #691485
HOUSTON TX 77269



Kristi M. Reeve, Staff Attorney
Office of General Counsel – Enforcement
Railroad Commission of Texas

API No.	Dist	ID No.	Lease Name	Well No.
183 84762	6E	07248	ANDERSON, GEO. Electricity must be disconnected (certify on Form W-3C) No approved W-3X on file	2
183 84763	6E	07248	ANDERSON, GEO. Electricity must be disconnected (certify on Form W-3C) No approved W-3X on file	3
239 03074	02	172144	TURNER, E. A. "D" No approved W-3X on file	3
239 03077	02	01676	TURNER, E. A. "D" No approved W-3X on file Must resolve Field Operations H-15 delinquency preventing 14(b)(2) approval	1
239 03078	02	09243	TURNER, E.A. No approved W-3X on file	2
239 03079	02	01676	TURNER, E. A. "D" No approved W-3X on file	4
239 03080	02	01676	TURNER, E. A. "D" No approved W-3X on file Must resolve UIC H-5 Test issue preventing 14(b)(2) approval	5
239 03081	02	08362	TURNER, E. A. "D" No approved W-3X on file Must resolve Field Operations H-15 delinquency preventing 14(b)(2) approval	6
239 32022	02	07761	TURNER, E.A. "D" No approved W-3X on file	8
239 32037	02	08761	TURNER, LEE "C" No approved W-3X on file	1
239 32197	02	07889	TURNER, E.A. No approved W-3X on file Must resolve Field Operations H-15 delinquency preventing 14(b)(2) approval	2
239 32202	02	09521	LEE TURNER C No approved W-3X on file Must resolve Field Operations H-15 delinquency preventing 14(b)(2) approval	3

239 32237	02	01676	TURNER, E. A. "D"	9R
No approved W-3X on file				
Must resolve UIC H-5 Test issue preventing 14(b)(2) approval				
239 32681	02	08171	TURNER, E.A	4
No approved W-3X on file				
239 33591	02	271225	TURNER-PLUMMER	1
No approved W-3X on file				
239 33600	03	271289	TURNER-PLUMMER	2
No approved W-3X on file				
489 00202	04	03366	SAUZ RANCH MULATOS PASTURE	78
No approved W-3X on file				
489 00205	04	03390	SAUZ RANCH MULATOS PASTURE	10
No approved W-3X on file				
489 00279	04	03366	SAUZ RANCH MULATOS PASTURE	64
No approved W-3X on file				
489 00306	04	03366	SAUZ RANCH MULATOS PASTURE	47
No approved W-3X on file				
489 00330	04	13450	SAUZ RANCH MULATOS PASTURE	19
No approved W-3X on file				
489 30028	04	03366	SAUZ RANCH MULATOS PASTURE	152
No approved W-3X on file				
489 30637	04	12283	SAUZ RANCH MULATOS PASTURE	166
No approved W-3X on file				
489 30640	04	03366	SAUZ RANCH MULATOS PASTURE	169
No approved W-3X on file				
489 30652	04	162349	SAUZ RANCH MULATOS PASTURE	170
No approved W-3X on file				
489 30659	04	12283	SAUZ RANCH MULATOS PASTURE	167
No approved W-3X on file				
489 30673	04	12649	SAUZ RANCH MULATOS PASTURE	175
(Multi)	04	13769	SAUZ RANCH MULATOS PASTURE	175
No approved W-3X on file				

489 30868	04	12550	SAUZ RANCH MULATOS PASTURE	188
No approved W-3X on file				
489 30869	04	04287	SAUZ RANCH MULATOS PASTURE	213
No approved W-3X on file				
489 30875	04	03390	SAUZ RANCH MULATOS PASTURE	206
No approved W-3X on file				
489 30878	04	12550	SAUZ RANCH MULATOS PASTURE	202
No approved W-3X on file				
489 30908	04	03390	SAUZ RANCH MULATOS PASTURE	215
No approved W-3X on file				