



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 04-0303678

APPLICATION BY ASCENDANCE ENERGY PARTNERS, LLC (OPERATOR NO. 033892) FOR A GOOD FAITH CLAIM REVIEW REGARDING A P-4 TRANSFER OF RECORD OPERATOR FOR THE VILLARREAL LEASE (LEASE NO. 245754), WELL NO. 1, SEJITA, WEST FIELD, DUVAL COUNTY, TEXAS, FROM GREEN EXPLORATION COMPANY (OPERATOR NO. 330179) TO ASCENDANCE ENERGY PARTNERS, LLC

OIL & GAS DOCKET NO. 04-0303679

COMPLAINT BY BENITO VILLARREAL THAT GREEN EXPLORATION COMPANY (OPERATOR NO. 330179) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE VILLARREAL LEASE (LEASE NO. 245754), WELL NO. 1, SEJITA, WEST FIELD, DUVAL COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY:

Jennifer Cook – Administrative Law Judge
Paul Dubois – Technical Examiner

PROCEDURAL HISTORY:

Notice of Hearing:
Hearing Date:
Transcript Received:
Proposal for Decision Issued:

February 17, 2017
March 7, 2017
May 11, 2017
July 5, 2017

APPEARANCES:

For Applicant Ascendance Energy Partners, LLC:
Mr. Sidney Sharp

For Green Exploration Company and Duval Gas Gathering:
Mr. John Cantu

For Complainant Benito Villarreal:
Mr. Omar Villarreal, *Complainant's Son*
Mr. Mario Villarreal, *Complainant's Son*

For Railroad Commission Enforcement Staff:
Mr. David W. Cooney, Jr., *Director, Enforcement Section*
Ms. Melissa A. Glaze, *Staff Attorney, Office of General Counsel*

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I. Statement of the Cases

Two docketed cases are presented together in this Proposal for Decision ("PFD") because they have common facts, parties and legal issues.

In the first case (Oil & Gas Docket No. 04-0303678), Ascendance Energy Partners, LLC ("Applicant" or "Ascendance"), filed an application ("Application") for a good faith claim review because it seeks to become the Railroad Commission ("RRC" or "Commission") operator of record for the River Bend -A- Lease (Lease ID No. 31525), Well No. 1 (the "Well"). However, there is an RRC hold preventing a transfer of the Well due to a Commission Final Order issued on August 24, 2016, in Oil & Gas Docket No. 04-0298156 ("Prior Order"), ordering the current operator of record—Green Exploration Company ("Green"), Operator No. 330179—to plug the Well.

In the second case (Oil & Gas Docket No. 04-0303679), Benito Villarreal ("Complainant") filed a complaint ("Complaint") alleging that Green does not have a good faith claim to operate the Well and requesting that the Well be ordered plugged, consistent with the Prior Order. Green and Commission staff ("Staff") also participated in the hearing for these cases. Green maintains that Ascendance has a good faith claim to operate the Well and the Well should be transferred to Ascendance. Staff maintains that the Well should not be transferred due to Commission holds preventing the transfer. The gas gatherer identified for the Well, Duval Gas Gathering ("Duval"), participated at the hearing as well to address issues related to the gathering pipeline and a Commission hold on Duval.¹

Ascendance has contractual leases covering two-thirds of the mineral estate where the Well is located. Complainant is the owner of the remaining one-third of the mineral estate. Complainant asserts that producing the Well is not economical and requests that the Well be plugged. Complainant and Staff maintain that the Well cannot be transferred due to a Commission hold on Mr. Sidney Sharp. Mr. Sidney Sharp has a Commission hold preventing him from operating in Texas.

Regarding Ascendance's request for a good faith claim review and approval of a transfer of the Well from Green to Ascendance, the Administrative Law Judge and Technical Examiner ("Examiners") find that the Commission hold against Mr. Sharp prevents the transfer and recommend that the request for transfer be denied. The Examiners find that Mr. Sharp is in a position of control such that he was required to be identified in Ascendance's Commission Form P-5 Organization Report ("Form P-5"). Because there is a hold on Mr. Sharp, a transfer to Ascendance should not be approved. Any further analysis of whether Ascendance has a good faith claim is moot as immaterial.

¹ Mr. John Cantu, who is the principal of Green, is also the principal for Duval. He participated and testified on behalf of both Green and Duval. The Commission hold on Duval was resolved after the hearing and before the PFD was issued.

The Examiners recommend that the Commission grant Complainant's request to order Green to plug the Well. The Prior Order requires Green to plug the Well, yet Green has not done so. There has been no change in circumstances since the Prior Order was issued. The Well has not been produced in over twelve months. Green has no and is not eligible for plugging extensions. Green has no good faith claim and acknowledges in this proceeding that if the Well is not transferred to Ascendance, Green is obligated to plug it.

The Examiners respectfully submit this PFD and recommend that the Commission deny Ascendance's request to approve transfer of the Well to Ascendance. The Examiners further recommend that the Commission grant Complainant's request to require Green to plug the Well within a specified timeframe.

II. Jurisdiction and Notice²

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

On February 17, 2017, the Hearings Division of the Commission sent two Notice of Hearings ("Notices") via first class mail—one regarding the Complaint case and a separate one regarding the Application—to Applicant, Complainant, Green and Commission staff ("Staff") setting a hearing date for both cases of March 7, 2017.³ Consequently, all parties received more than 10 days' notice. Both Notices contained (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.⁴ The hearing was held on March 7, 2017, as noticed. Applicant, Complainant, Green and Staff appeared at the hearing. Duval also participated at the hearing.

III. Applicable Legal Authority

Applicant requests a good faith claim review to become the Commission record operator of the Well. Complainant alleges that the current operator, Green, does not have a good faith claim to operate the Well as that term is defined, and the well should be plugged. A "good faith claim" is defined in in the Natural Resources Code and in Commission rule as:

A factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a

² The hearing transcript in this case is referred to as "Tr. at [pages:lines]." Ascendance's exhibits are referred to as "Ascendance Ex. [exhibit no]." Complainant's exhibits are referred to as "Complainant Ex. [exhibit no]." Staff's exhibits are referred to as "Staff Ex. [exhibit no]." Neither Green nor Duval provided any exhibits.

³ See Notice of Hearings.

⁴ See TEX. GOV'T CODE §§ 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.45, 1.48.

currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.⁵

Regarding the Complaint, the applicable Commission rule is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.⁶ An inactive well is defined as:

An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.⁷

Rule 15 requires the plugging of inactive wells. Statewide Rule 15(d) states:

(c) Plugging of inactive land wells required.

(1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:

- (A) restore the well to active status as defined by Commission rule;
- (B) plug the well in compliance with a Commission rule or order; or
- (C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.⁸

So for an inactive well, operators must plug it, obtain a plugging extension or restore it to active status.

IV. Discussion of Evidence

Applicant provided the testimony of one witness and three exhibits. Complainant provided the testimony of two witnesses and nine exhibits. Green and Duval provided the testimony of one witness and no exhibits. Staff provided the testimony of one witness and two exhibits.

A. Summary of Applicant's Evidence and Argument

Applicant asserts it has contractual leases covering two-thirds of the mineral estate giving Ascendancy the right to operate the Well. Ascendancy claims that the contractual leases establish it has a good faith claim and asks that Commission operator of record

⁵ Tex. Nat. Res. Code § 89.002(11); 16 TEX. ADMIN. CODE § 3.15(a)(5).

⁶ Statewide Rule 15 refers to 16 TEX. ADMIN. CODE § 3.15.

⁷ 16 TEX. ADMIN. CODE § 3.15(a)(6).

⁸ 16 TEX. ADMIN. CODE § 3.15(d).

for the Well be transferred to Ascendance from Green.⁹ Applicant's only witness was Mr. Sidney Sharp.

1. Ascendance's case in chief and Mr. Sharp's direct testimony

Applicant provided a Form P-4 "Certificate of Compliance and Transportation Authority" ("Form P-4") requesting that it be designated the Commission operator of record for the Well.¹⁰ The Form P-4 is signed by Mr. Hildegardo Humberto Garza Jr. on behalf of Ascendance and by Mr. John Cantu on behalf of the current operator, Green. Mr. Sharp testified that Mr. Garza is the owner of Ascendance. The gas gatherer listed is Duval.¹¹

Applicant provided two contractual leases ("Leases"). Both Leases are dated January 26, 2017, and both leases identify Ascendance as the lessee. For one of the Leases, Natalia V. Villarreal is the lessor and for the other, Maria Dolores Villarreal is the lessor.¹² Maria Dolores Villarreal and Natalia Villarreal are Complainant's sister and sister-in-law. Each owns one-third of the mineral estate where the Well is located and Natalia Villarreal is the surface estate owner of the property where the Well is located. Mr. Sharp testified that Applicant provided Complainant the same opportunity to lease his portion of the mineral estate, but Complainant declined.¹³

Mr. Sharp testified that Ascendance has an active Form P-5 with Mr. Garza identified as the only officer. Mr. Sharp testified that Mr. Garza was the only officer listed on the Form P-5 because Mr. Garza is the person who provided the funds to meet the Commission financial assurance requirements.¹⁴ Commission records reflect that Ascendance's P-5 status with the Commission is active. Ascendance's mailing address according to Commission records is P.O. Box 338 in Hebbronville, Texas (the "Box 338 Address").¹⁵

Mr. Sharp testified that there is a pipeline from the Well that traverses a neighboring landowner's property. Mr. Sharp testified he has a verbal or "gentlemen's agreement" with the neighboring landowner, whose name is Mr. Fritz Hofstetter; the agreement is to pay Mr. Hofstetter \$15.00 per foot of pipeline on Mr. Hofstetter's property. Mr. Sharp explained that the current record operator, Green, was unable to reach agreement with Mr. Hofstetter due to a dispute between Mr. John Cantu—the principal for Green and Duval—and Mr. Hofstetter. Mr. Sharp stated he fully intends to produce the Well.¹⁶

Mr. Sharp testified that Mr. Cantu has laid approximately five miles of a two-inch pipeline and if Mr. Cantu is required to plug the Well, Mr. Cantu will remove his pipeline

⁹ Tr. at 13:11 to 13:21.

¹⁰ Ascendance Ex. 1.

¹¹ See, e.g., Tr. at 16:13 to 16:17.

¹² Ascendance Exs. 2, 3.

¹³ Tr. at 16:13 to 16:17, 21:25 to 22:12; 134:9 to 134:18.

¹⁴ Tr. at 27:7 to 28:16.

¹⁵ See, e.g., Complainant Ex. 5 at 2.

¹⁶ Tr. at 112:20 to 113:16; Tr. at 42:13 to 44:7.

and it will be unavailable. Mr. Sharp testified that the Well is a marginal well such that it will not be economical to drill another well and lay another pipeline. He testified that because the infrastructure is already in place, he thinks it will be economical but only if the Well can be produced utilizing the pipeline that is already in place. He testified that successful four-point tests have been conducted on the Well.¹⁷

2. Cross examination of Mr. Sharp

A substantial portion of the hearing consisted of the cross examination of Mr. Sharp. Mr. Sharp testified that he was appearing in this case as an agent for Ascendance.¹⁸ Mr. Sharp testified that the Well has never been produced.¹⁹

Mr. Sharp acknowledged that the pipeline laid by Mr. Cantu on behalf of Duval has sections missing and is aboveground. He stated that Ascendance intends to repair and bury the pipeline.²⁰ Mr. Sharp acknowledged that Duval's pipeline is the only tap within 10 miles that the tap is located on Mr. Hofstetter's land.²¹ Mr. Sharp estimates that there are five or six sections of Duval's pipeline missing and each section is about eight feet.²²

Mr. Sharp acknowledged that he did not offer Mr. Hofstetter a written contract. Mr. Sharp stated that Ascendance plans to wait until the Commission approves the transfer of the Well from Green before offering Mr. Hofstetter a written contract. Mr. Sharp testified that Ms. Maria Dolores and Natalia Villarreal have each received a \$2,500 lease bonus pursuant to the Leases.²³ Mr. Sharp estimates that the total amount that he would pay Mr. Hofstetter based on the verbal agreement at 800 feet of pipeline on Mr. Hofstetter's property at \$15.00 per foot would be approximately \$12,000.00 as a one-time fee.²⁴

Mr. Sharp testified about another operator, Dakota Oil Company ("Dakota"). He stated that Dakota is his daughter Ashley Sharp's company and that she is the sole owner. He testified that Ashley Sharp was the sole owner for the company for approximately five or six years.²⁵ Mr. Sharp testified that Ashley started Dakota when she was approximately 24. Mr. Sharp testified that Ashley Sharp's knowledge of the industry comes from what Mr. Sharp told her and what she observed.²⁶ Mr. Sharp testified that Dakota is a sole proprietorship.²⁷

Mr. Sharp testified that his son and daughter, Ashley Sharp, are his only children in the oil business. He testified that Dakota is Ashley Sharp's only involvement with the oil industry. His son, Travis Sharp, has what Mr. Sharp refers to as a "lease service."²⁸

¹⁷ Tr. at 33:13 to 36:18.

¹⁸ Tr. at 101:3 to 101:20.

¹⁹ Tr. at 100:13 to 101:2.

²⁰ Tr. at 38:22 to 42:12.

²¹ Tr. at 60:4 to 61:11.

²² Tr. at 95:23 to 97:18.

²³ Tr. at 45:24 to 46:1.

²⁴ Tr. at 98:19 to 100:12.

²⁵ Tr. at 50:22 to 51:10.

²⁶ Tr. at 107:7 to 107:21.

²⁷ Tr. at 111:3 to 111:6.

²⁸ Tr. at 72:20 to 74:12.

Mr. Sharp does not have an office and operates out of his house. He testified that the only company he is associated with is Sidney Sharp Contract Gauging ("Sharp Gauging"). As to the types of business activities of Sharp Gauging, Mr. Sharp testified that Sharp Gauging mainly gauges wells; specific tasks include, for example, recording wellhead pressure and tank oil and water readings; Sharp Gauging submits the records to the client for payment on mostly a monthly basis.²⁹

Mr. Sharp testified that Mr. Garza teaches high school algebra.³⁰ Regarding Mr. Sharp's association with Ascendance, Mr. Sharp originally testified that he only performs gauging work for Ascendance, but acknowledged he is the one who negotiated the Leases and does whatever needs to be done.³¹

Mr. Sharp testified that he has not been paid for negotiating the Leases for Ascendance. When asked about the terms of his agreement with Ascendance, Mr. Sharp testified that "basically it's kind of open." When asked what the agreement was on the day of the hearing, he stated:

Today I don't really have an agreement with him [Mr. Garza] on behalf of [Ascendance], nothing in writing, or just what we've talked about.

He further testified that Mr. Garza sends him some money every month or so even though there is no agreement as to how Mr. Sharp is to be paid and Mr. Sharp does not bill Mr. Garza. Specifically, Mr. Sharp stated:

Question: But he sent you money monthly?

Answer: It's --

Question: By check?

Answer: Probably like every other month or --

Question: How does he decide how much to send you?

Answer: I guess he just figures out -- I don't send him a bill.

...

Question: Are you supposed to get money if the wells are productive?

Answer: If it turns out commercial and good, then he had said that we would enter into some kind of a partnership or whatever, you know.

²⁹ Tr. at 74:13 to 75:25; 76:17 to 77:16.

³⁰ Tr. at 80:15 to 80:22.

³¹ Tr. at 83:25 to 85:13.

Question: But you don't have that right now?

Answer: No.

Question: You don't have anything in writing, but you anticipate a partnership in writing if the wells --

Answer: If we're successful.³²

Mr. Sharp testified that when he was a Commission recognized operator under his personal name as a sole proprietor, he filed for bankruptcy and the wells for which he was the Commission record operator were plugged at the State's expense.³³

B. Summary of Complainant's Evidence and Argument

Complainant owns one-third of the mineral estate where the Well is located. Complainant asserts that the Commission operator of record for the Well cannot be transferred to Ascendance because Mr. Sharp is barred from operating in Texas, Mr. Sharp is an officer and person of control of Ascendance, and consequently, Ascendance is barred from operating in Texas.³⁴ Complainant believes it is not economically feasible to produce the Well and that Ascendance and Green are trying to transfer the well to avoid having to plug it.³⁵

Complainant provided a series of texts that occurred on January 3, 2017 between Mr. Omar Villarreal and Mr. Sharp regarding the Well.³⁶ A portion of the text series reads:

Mr. Villarreal: Are you the Owner / Officer of record for Ascendance Energy Partners?

Mr. Sharp: Partner/Secretary

Mr. Villarreal: Who's the owner?

Mr. Sharp: Humberto Garza and I are partners. On this particular well, I am the owner.³⁷

During cross examination, Mr. Sharp testified that the texts are accurate and he was not deceptive when referring to himself as a partner and owner.³⁸ Mr. Sharp further testified that as far as his role in Ascendance, he "can do everything - - anything and everything."³⁹

³² Tr. at 87:21 to 89:23.

³³ Tr. at 101:21 to 102:5.

³⁴ Tr. at 14:3 to 15:4.

³⁵ Tr. at 33:13 to 36:18.

³⁶ Complainant Ex. 1; Tr. at 25:1 to 26:12.

³⁷ Complainant Ex. 1 at 2-3.

³⁸ Tr. at 27:25 to 28:7; 104:10 to 104:21.

³⁹ Tr. at 28:17 to 28:20.

Mr. Sharp acknowledged that the address he provided to Mr. Villarreal via text⁴⁰—P.O. Box 777 in Hebbronville (“Box 777 Address”)—is an address he used in a past business, not associated with Ascendance.⁴¹ Mr. Sharp testified that the Box 777 Address is his wife’s address and that Mr. Sharp’s business address is P.O. Box 216 (“Box 216 Address”).⁴² He stated that Mr. Garza, the only person identified as an officer on Ascendance’s Form P-5, lives in Bruni, Texas. The Form P-5 address for Ascendance is the Box 338 Address in Hebbronville. Mr. Garza is a fulltime teacher in Bruni, Texas. Mr. Sharp stated that Mr. Garza is wealthy and invests in different businesses. Regarding Mr. Garza’s role in Ascendance, Mr. Sharp testified:

Question: Would it be safe to say he's more of an investor in Ascendance than a natural owner.

Answer: No, sir. I guess he's the owner, I mean, of the -- I don't know on his rental properties but on Ascendance I guess his name is on the P-5 and he's the owner.⁴³

On cross, Mr. Sharp testified that Mr. Garza is not in the oil business and that Ascendance is the first time that Mr. Garza has been involved with operating a well. Mr. Sharp has been in the oil business for 38 years. Mr. Sharp testified that Mr. Garza “mainly just likes to make money.”⁴⁴

Complainant noted that the Leases identify Ascendance’s address as the Box 777 Address.⁴⁵ Mr. Sharp testified that his wife pays to maintain the Box 777 Address. Complainant provided a record of correspondence with a U.S. Postal Inspector stating that the Box 777 Address is listed as belonging to Dakota.⁴⁶

Complainant provided a Commission Form P-4 for the transfer of a well to Dakota signed by Mr. Sharp, identifying himself as the “Agent” for Dakota and identifying himself as an “Authorized agent of current owner operator.”⁴⁷ Complainant provided another Form P-4 transferring a well from “Dakota Oil Company” that is signed by “Ashley Sharp,” identifying herself as an “Authorized Employee of previous operator.”⁴⁸

Complainant provided additional Commission records regarding Dakota.⁴⁹ Dakota’s Form P-5 status with the Commission is delinquent.⁵⁰ According to Commission records, Dakota is “NON-COMPLIANT: SB639.”⁵¹ On a Form P-5 filed for Dakota on August 6, 2013, Dakota’s address is listed as the Box 777 Address. The Form P-5 has

⁴⁰ Complainant Ex. 1 at 3.

⁴¹ Tr. at 36:25 to 37:20.

⁴² Tr. at 46:2 to 46:22.

⁴³ Tr. at 46:22 to 48:19.

⁴⁴ Tr. at 65:18 to 66:6.

⁴⁵ Applicant Exs. 2, 3 at 1; Tr. at 61:15 to 61:22.

⁴⁶ Complainant Ex. 2; Tr. at 50:13 to 50:17.

⁴⁷ Complainant Ex. 3 at 1.

⁴⁸ Complainant Ex. 3 at 2.

⁴⁹ Complainant Ex. 4.

⁵⁰ Complainant Ex. 4 at 1.

⁵¹ *Id.*

the signature of what purports to be Ashley Sharp as "Owner." As pointed out by Mr. Omar Villarreal, the signature of Ashley Sharp on the Form P-4⁵² does not appear to be the same signature as the signature of Ms. Sharp on the Form P-5.⁵³ In contrast, the "Sharp" part of Ms. Sharp's purported signature on the Form P-5 appears practically identical to Mr. Sharp's signature on a Form P-4.⁵⁴ During the hearing, Mr. Sharp acknowledged that the signatures were "pretty much identical" and that the signature on the Form P-4 is his.⁵⁵ Mr. Sharp also acknowledged that the printed handwriting of "Sharp" on the Form P-5 purported to be signed by Ms. Sharp and the printed "Sharp" on the Form P-4 prepared by Mr. Sharp are also "close" and "similar."⁵⁶ Mr. Sharp did deny that he prepared the Form P-5 and denied being an owner of Dakota.⁵⁷

Mr. Sharp testified that Dakota is no longer in business. He testified that Dakota's wells stopped producing. He testified that part of the problem with Dakota was due to wells transferred to Dakota from Marwell Petroleum ("Marwell"). The wells transferred to Dakota from Marwell were approximately five 10,000-foot wells. Marwell plugged two wells but left three inactive and unplugged, in violation of inactive well requirements. Because Dakota was the record operator of the wells, Dakota was held responsible for the violations, its Form P-5 was not renewed and consequently Dakota's status with the Commission is delinquent, meaning that Dakota cannot operate in Texas. Notably, when discussing this situation, he referred to Dakota as if he were involved, using terms such as "we" and "our," as opposed to referring to it as Ms. Ashley Sharp's sole company. For example, he testified:

Our hands were tied because we couldn't go in because the landowner wouldn't give us permission because he only wanted Marwell to go in.⁵⁸

Mr. Sharp confirmed that Dakota's email address starting "Sidney.sharp...@..." on Dakota's Form P-5 filed on May 1 2013⁵⁹—identifying Lydia Sharp as the only officer with the title of "owner"—is his email address; this Form P-5 was for the year starting approximately August 1, 2012. That same email address was also provided on Dakota's Form P-5 filed on July 22, 2013⁶⁰—identifying Ashley Sharp as the only officer with the title of "owner;" this Form P-5 was for the year starting approximately August 1, 2013.⁶¹

Mr. Sharp testified regarding his responsibilities as an agent for Dakota. He testified that he would do the Railroad Commission paperwork and assist with solving any problems that arose, such as the problem with Marwell.⁶²

⁵² Complainant Ex. 3 at 2.

⁵³ Complainant Ex. 4 (second to last page).

⁵⁴ Complainant Ex. 3 at 2.

⁵⁵ Tr. at 56:10 to 56:24.

⁵⁶ Tr. at 57:7 to 58:6.

⁵⁷ See, e.g., Tr. at 59:20 to 59:23.

⁵⁸ Tr. at 66:11 to 68:17.

⁵⁹ Complainant Ex. 4 at 9-10.

⁶⁰ Complainant Ex. 4 at 11-12.

⁶¹ Tr. at 107:1 to 107:6.

⁶² Tr. at 77:20 to 78:2.

Mr. Sharp testified that the address 404 West Gruy in Hebbronville ("Gruy Address") is his home address. The Gruy Address is identified as the street address for Dakota in all the Dakota Form P-5s in evidence: Dakota's Form P-5s filed August 2005, September 2006, November 2007, September 2008, September 2009, May 2013 and August 6, 2013.⁶³ Tanya Lynn Sharp aka Tanya Ramirez is his daughter and she is listed as the only officer as "owner" of Dakota on Dakota's Form P-5s filed August 2005, September 2006, November 2007, September 2008 and September 2009.⁶⁴ Lydia Sharp, Mr. Sharp's wife, is listed as the only officer as "owner" of Dakota on Dakota's Form P-5s filed May 2013.⁶⁵ Ashley Sharp is listed as the only officer as "owner" of Dakota on Dakota's Form P-5s filed May 2013,⁶⁶ which is the last Form P-5 Dakota filed.⁶⁷ This appears to be the only Dakota Form P-5 submitted on behalf of Ashley Sharp. Dakota's mailing address on its Form P-5 is the Box 777 Address except the Form P-5 filed September 1, 2006, which lists the Box 216 Address.⁶⁸

On cross examination, Mr. Sharp testified that he has access to the Box 777 Address and the Box 216 Address. Those are the only two that he, and his wife, have access to. He does not know what mailing addresses his children use.⁶⁹ He acknowledged that Ashley Sharp did not live at the Gruy Address in 2013 when the Form P-5 listing her as owner was filed.⁷⁰

Complainant provided a Commission enforcement Final Order in Oil & Gas Docket No. 04-0213033 issued on August 26, 1997, against Mr. Sharp ("Sharp Order") for violation of Commission inactive well rules. The Sharp Order requires Mr. Sharp to plug two wells (none being the Well or the Dakota wells) and pay a penalty of \$3,000.⁷¹

Complainant provided Commission records showing that the P-5 Status of Mr. Sharp as an operator is inactive and Mr. Sharp is identified as "NON-COMPLIANT: SB639."⁷²

Complainant provided Commission records regarding Duval.⁷³ The only officer identified to the Commission is Mr. Juan Eric Cantu, as President and Vice President. Duval's Form P-5 status is active. Mr. Villarreal and Mr. Cantu confirmed that the officer identified on Duval's Form P-5 is the same Mr. John Cantu who was participating in the hearing.⁷⁴

⁶³ Complainant Ex. 4.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 1.

⁶⁸ Complainant Ex. 4.

⁶⁹ Tr. at 71:7 to 72:19.

⁷⁰ Tr. at 108:1 to 111:2.

⁷¹ Complainant Ex. 6.

⁷² Complainant Ex. 7.

⁷³ Complainant Ex. 8.

⁷⁴ Tr. at 142:22 to 142:25.

Complainant's first witness was Mr. Fritz Hofstetter. Mr. Hofstetter owns property in Duval County near the Well.⁷⁵ He said the pipeline on his property that Ascendance intends to utilize has been cut and sliced.⁷⁶ He testified that for him to allow Mr. Sharp to utilize the pipeline on his property, it would have to be fixed, inspected and buried thirty-six inches deep.⁷⁷

Mr. Hofstetter testified that Mr. Sharp called him at the end of 2016 and he told him that he would like to utilize the pipeline running from the Well on his property. The two met New Year's Eve and went to the property and looked at the pipeline.⁷⁸

Mr. Hofstetter discussed the deterioration of the relationship between him and Mr. Cantu. Mr. Hofstetter stated that Mr. Cantu had discussed suing him to get a right-of-way on Mr. Hofstetter's property. Mr. Hofstetter testified that because he now knows that Mr. Cantu is the principal of Duval, and he has no written agreement, he has doubts that Mr. Sharp was ever going to provide a written agreement.⁷⁹

Mr. Hofstetter testified that he was not aware that Mr. Sharp was subject to a Senate Bill 639 hold until the hearing and that he would not have verbally agreed with him had he known.⁸⁰

Mr. Omar Villarreal testified on behalf of Complainant. He testified that in a prior Commission proceeding, Mr. Cantu argued that the force majeure clause of Green's lease contract would extend the lease because he could not reach a legal agreement with Mr. Hofstetter; this proceeding resulted in the Prior Order and Green was ordered to plug the Well. Mr. Villarreal testified that he consulted with his father and as a family, they (Complainant and his sons) decided against entering into a contract with Mr. Sharp. Mr. Villarreal testified that he warned his aunts that Mr. Sharp and Mr. Cantu had "pending issues" with the Commission and Mr. Villarreal did not believe they were "being straightforward with their dealings." Even though his aunts ultimately signed the Leases, Mr. Villarreal believes that there is no intent to produce the Well and it is not economically feasible.⁸¹

Mr. Villarreal testified that Complainant is asking the Commission to rule against transferring the record operator of the Well from Green to Ascendance. Complainant's position is that Mr. Sharp has violated the rules of the Commission and the proposed transfer should be denied. Complainant further requests that the order requiring Green to plug the Well be enforced. Mr. Villarreal maintains that Mr. Sharp is an owner and partner of Ascendance and an owner, if not the only owner, of Dakota.⁸²

⁷⁵ Tr. at 120:23 to 121:2.

⁷⁶ Tr. at 121:3 to 121:20.

⁷⁷ Tr. at 121:21 to 123:4.

⁷⁸ Tr. at 125:12 to 126:12.

⁷⁹ Tr. at 126:13 to 127:20; 132:6 to 133:4.

⁸⁰ Tr. at 127:21 to 128:20.

⁸¹ Tr. at 138:6 to 140:6.

⁸² Tr. at 177:1 to 178:8.

C. Summary of Green and Duval's Evidence and Argument

Green is the current operator of record for the Well. Green requests that the Commission approve transfer of the Well to Ascendance.⁸³

Mr. Cantu testified on behalf of Green and Duval.⁸⁴ Mr. Cantu's asserts that to establish a good faith claim, the acquiring operator needs to (1) have an approved Form P-5 on file, (2) provide a valid written oil and gas lease covering at least one percent of the mineral estate and (3) complete a Form P-4 to transfer a well from the old operator to the new operator. Mr. Cantu asserts these requirements have been met. He maintains the issues are simple and that other information is not relevant.

Mr. Cantu testified that he (i.e. Duval) had problems completing the pipeline on Mr. Hofstetter's property. He testified he was unable to complete the pipeline because of the differences he had with Mr. Hofstetter's father originally and then Mr. Hofstetter. Mr. Cantu maintains that he remembers the conversations with the Hofstetters "very differently" than Mr. Hofstetter testified to. Mr. Cantu believes Duval has a valid pipeline easement across Mr. Hofstetter's property and that Mr. Cantu could have sued Mr. Hofstetter long ago, but he did not want to do so.

Mr. Cantu testified that the is a marginal well that it could be produced economically. He testified that due to the many complications in getting the Well to production, he is ready to plug the Well. However, if Mr. Sharp is interested in the Well, Mr. Cantu is agreeable to the proposed transfer as it will save him the cost of plugging the Well. He testified that if the Commission does not approve the transfer, he will promptly plug the Well. He acknowledged that through Duval, Mr. Cantu owns the pipeline on Mr. Hofstetter's property and that Mr. Sharp relies on to be able to get the gas from the Well to market.⁸⁵

Mr. Cantu testified that Green has been the operator of the Well for approximately three to four years. During that time, the Well has not been connected to a pipeline and has not been produced.⁸⁶

D. Summary of Staff's Evidence and Argument

Staff asserts that the evidence demonstrates that Mr. Sharp has a history of being in a position of ownership and control of operators on whose Form P-5 he is not listed and that the evidence supports a Commission finding that Mr. Sharp should be on the Ascendance Form P-5. Staff asserts that Mr. Sharp has a Commission hold, which prevents a transfer of the Well to Ascendance. Staff's position is that Ascendance should not be transferred the Well and the Form P-4 attempting to do so should not be approved.⁸⁷

⁸³ Tr. at 15:7 to 15:20.

⁸⁴ Tr. at 145:9 to 145:11.

⁸⁵ Tr. at 145:17 to 149:1; 150:4 to 151:1.

⁸⁶ Tr. at 151:6 to 151:21.

⁸⁷ Tr. at 178:18 to 179:7.

Staff's only witness was Sheila Weigand. Ms. Weigand works at the Commission as an investigator. As part of her job, she is involved with Form P-4 transfer issues. She has worked at the Commission for over 37 years and has worked on Form P-4 transfer issues for approximately 20 to 30 years. She became involved in the Form P-4 issues in this case. In the past, a Commission transfer hold was placed on Green for this Well because the Prior Order found no good faith claim and ordered the Well plugged. Due to the hold, the Form P-4 to transfer the Well from Green to Ascendance was not approved. In discussions with Mr. Cantu, Mr. Cantu expressed concern that Green's Form P-5 would not be renewed due to the inactive and unplugged status of the Well, since he is the current record operator of it; for these reasons, he requested that the hearing in this case occur as soon as possible. Ms. Weigand also had discussions with Mr. Garza regarding the Form P-4 issues, and described her conversation with Mr. Garza as follows:

Answer: I went to the P-5 because this was my first dealing with Ascendance. I had no previous dealings with Ascendance; actually had never heard of that company before, but since I had the P-4 I knew that that was going to transfer to. I looked on the P-5. I called the phone number and asked to speak to Hildegardo Humberto Garza.

Question: Mr. Garza?

Answer: Yes. And he said, "This is me" and I told him who I was and he said, "Well, I don't have very much time. I'm on my way to school. I'm a teacher." I said, "That's okay. It won't take me long" and I said, "I just need to clarify. We need to have a hearing here at the Commission related to this Ascendance P-4 on the Villarreal lease."

Question: So pardon me for jumping in, but you told him you were talking about the Ascendance P-5 -- or P-4 on the Villarreal lease?

Answer: Absolutely.

Question: And he, based on our records, was the only person we had in our records associated with Ascendance?

Answer: That is correct.

Question: What happened next in your conversation?

Answer: And he said -- again, he said, "I'm a teacher. I've got to get to the class." He said, "You need to call and talk to my partner," and I said, "Okay. Who's your partner?" He said, "Sidney Sharp." I said, "Okay. Do you have Mr. Sharp's telephone

number?" He said, "Yes." He gave me the phone number, and I said, "Okay. I will call Mr. Sharp, but it is okay with you if we have this hearing on this date?" He said, "It's okay with me as long as it's okay with Mr. Sharp." So at that point I called Mr. Sharp.

...

Question: Had you ever had any dealings with Mr. [Garza] before what we're talking about here today?

Answer: No. I never even heard of the man. That was the first conversation I've had with him in my life.

Question: Did he give you any indication that he was in any way involved in the oil and gas aspects of this company?

Answer: No. He said he was a teacher and he was going to class. I think he did say one other thing. He said he was an accountant, and I needed to talk to his partner about the oil and gas part of it. So he gave me --

Question: Gave you...

Answer: -- gave me Mr. Sharp's name and phone number and so I called him.⁸⁸

Ms. Weigand provided Commission records regarding Ascendance and Dakota.⁸⁹ Ascendance has a \$25,000 line of credit as its financial assurance on file with the Commission. Ascendance is currently the record operator for eight wells. Two of Ascendance's wells were transferred to it from Marwell. Ms. Weigand provided three Form P-4s showing a well transferred to Dakota on June 20, 2013 (signed by Mr. Sharp on behalf of Dakota), from Dakota to Marwell in July 2014 (this Form P-4 is signed by Ashley Sharp for Dakota) and from Marwell to Ascendance in July 2016.⁹⁰

Ms. Weigand testified about Mr. Sharp's status at the Commission regarding Senate Bill 639. Ms. Weigand provided a print out of a Commission record from the Commission's mainframe identifying operator "Sidney C. Sharp," Commission Operator No. 771090, as "NON-COMPLIANT: SB639."⁹¹ It also indicates that Mr. Sharp's P-5 status with the Commission is inactive. The mailing address listed is the Box 216 Address and the street address is the Gruy Address; the addresses in the Commission mainframe are the addresses provided by the operator—in this case Mr. Sharp—in the operator's most recent Form P-5. The case triggering the non-compliance with Senate Bill 639 is listed as Docket No. 04-0213033. Ms. Weigand testified that the SB 636 bar was on Mr.

⁸⁸ Tr. at 152:15 to 158:3.

⁸⁹ Staff Ex. 1.

⁹⁰ Tr. at 158:4 to 165:13.

⁹¹ Staff Ex. 2.

Sharp individually because he was a sole proprietor at the time he was an active operator; he was Sidney C. Sharp doing business as Sidney C. Sharp, sole proprietor.

Ms. Weigand testified as to Commission practice regarding SB 639 bars. When the Commission enters an order against an operator with violations triggering the restrictions in TEX. NAT. RES. CODE § 91.114(a)(1), such as the Sharp Order, it is Commission practice to not to approve Form P-4 transfers involving those operators until the violations are addressed and penalties and costs are paid. It is also Commission practice to not approve transfers involving persons in a position of ownership or control of those operators for the period identified in TEX. NAT. RES. CODE § 91.114(a)(2).⁹²

Ms. Weigand testified that the debt Mr. Sharp owes is over \$18,000 for plugging two wells and remediating pollution. Mr. Sharp did not testify or provide evidence that the debt was paid.⁹³

Mr. Sharp via Ascendance was provided an opportunity to file, within two weeks from the hearing date, information on the Senate Bill 639 status of Mr. Sharp and Dakota. Nothing was filed.⁹⁴

V. Examiners' Analysis

The Examiners recommend that the Commission deny Ascendance's request to approve transfer of the Well to Ascendance. The Examiners further recommend that the Commission grant Complainant's request to require Green to plug the Well.

A. The Examiners recommend that Ascendance's request for approval of transfer of the Well and request for a good faith claim review be denied due to the Commission hold on Mr. Sharp.

Applicant requests a good faith review and that the Well be transferred to Applicant as the Commission operator of record. Applicant relies on the Leases covering two-thirds of the mineral estate, which allows Applicant to operate the Well. Green also requests approval of the transfer. Complainant and Staff assert that the Commission hold on Mr. Sharp prevents approval of the transfer. The Examiners find the evidence supports denial of the transfer and request for a good faith claim review because Commission holds prevent a transfer of the Well to Applicant.

Typically, a Form P-4 signed by the current and proposed operator of record does not require a hearing for approval and it is processed administratively. In this case, there is an RRC hold preventing a transfer of the Well due to a Commission Final Order issued on August 24, 2016 in Oil & Gas Docket No. 04-0298156, finding that Green does not have a good faith claim to operate the Well and requiring the Well to be plugged. Like the Complaint, that case arose because of a complaint filed by Complainant and after a

⁹² Tr. at 165:15 to 169:16.

⁹³ Tr. at 171:18 to 172:12.

⁹⁴ Tr. at 179:15 to 180:2.

hearing in which Complainant's sons appeared on behalf of Complainant. The Commission found that Green had no good faith claim because the lease agreement relied upon had terminated for lack of production.⁹⁵

It is Commission practice to initiate a new case and require a good faith review if a request to transfer and produce a well is received and there is a Commission order outstanding finding no good faith claim to operate the well and requiring that well to be plugged. The reason Ascendance has requested a good faith review is to facilitate a transfer of the Well to it. Ascendance relies on the Leases to demonstrate that it has a good faith claim and thus, the Well should be transferred.

However, as discussed below, the Examiners find that Commission holds prevent the proposed transfer of the Well. As such, a good faith claim review will not result in approval of the transfer and the issue of a good faith claim is moot.

1. The Examiners find that the Commission hold on Mr. Sharp prevents the proposed transfer of the Well.

The Natural Resources Code prohibits approval of Form P-4s for operators found to violate Commission statutes or rules relating to safety or pollution.⁹⁶ For persons in a position of control or ownership of such operators, the Natural Resources Code prohibits approval of Form P-4s involving those persons as well.⁹⁷ The prohibition against operators found in violation lasts until the operator remedies the violation and pays all penalties and costs.⁹⁸ The prohibition against persons in control of such operators lasts approximately seven years after an order containing findings of the violations is final.⁹⁹

a. The Examiners find Mr. Sharp is a person in position of ownership or control of Ascendance as that term is defined in TEX. NAT. RES. CODE § 91.114.

Commission rules require an entity's Form P-5 to identify each officer, director, general partner, owner of more than 25% ownership interest or trustee of the organization.¹⁰⁰ Ascendance's Form P-5 does not identify Mr. Sharp. The Natural Resources Code provides that a person can be in a position of ownership or control regardless of whether the person's name is on the Form P-5. Specifically, it states:

Regardless of whether the person's name appears or is required to appear on the organization report required by Section 91.142, a person holds a position of ownership or control in an organization if:

⁹⁵ See Tex. R.R. Comm'n, *The Complaint of Benito R. Villarreal Alleging that Green Exploration Company (Operator No. 330179) Does not Have a Good Faith Claim to Operate the Villarreal (245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas*, Oil and Gas Docket No. 04-0298156 (August 24, 2016) (Final Order and Proposal for Decision).

⁹⁶ TEX. NAT. RES. CODE § 91.114(a)(1).

⁹⁷ TEX. NAT. RES. CODE § 91.114(a)(2).

⁹⁸ TEX. NAT. RES. CODE § 91.114(d).

⁹⁹ See TEX. NAT. RES. CODE § 91.114(a)(2).

¹⁰⁰ 16 TEX. ADMIN. CODE § 3.1(a)(4)(C); see also TEX. NAT. RES. CODE § 91.114(a)(2).

- (1) the person is:
 - (A) an officer or director of the organization;
 - (B) a general partner of the organization;
 - (C) the owner of a sole proprietorship organization;
 - (D) the owner of at least 25 percent of the beneficial interest in the organization; or
 - (E) a trustee of the organization; or
- (2) the person has been determined by a final judgment or final administrative order to have exerted actual control over the organization.¹⁰¹

Both Mr. Garza and Mr. Sharp represented that Mr. Sharp is a partner in Ascendance. Mr. Sharp texted Mr. Villarreal that he is a partner in Ascendance and owner of the Well.

The experience and activities of Mr. Garza and Mr. Sharp indicate Mr. Sharp is responsible for Ascendance's activities regulated by the Commission. Mr. Sharp negotiated the Leases, negotiated with Mr. Hofstetter and was Ascendance's point of contact with Mr. Cantu. The Leases contain Mr. Sharp's address as the address for Ascendance. Mr. Sharp has years of experience engaging in operations regulated by the Commission while Mr. Garza has none. Mr. Garza is a full-time teacher and his only activity related to Ascendance in the record is providing the financial assurance and signing Form P-4s and the Form P-5. Moreover, Ascendance has entered into business arrangements with associates of Mr. Sharp such as Marwell and Dakota, indicative of Mr. Sharp's involvement in Ascendance's business decisions.

Mr. Sharp's testimony regarding the arrangement between Mr. Garza and Mr. Sharp resembles a partnership. Mr. Sharp testified that there is no current written agreement. He testified that he has not been paid for work performed regarding the Well because the Well has not been profitable thus far. This testimony indicates that he is not being paid for work performed—like an employee or contractor—but anticipates sharing in profits, similar to a partnership or a shared ownership arrangement. He further testified that he anticipates that he and Mr. Garza will enter into a written partnership agreement if the Well becomes profitable.

The Examiners find that the evidence in the record supports a finding that Mr. Sharp is a person who holds a position of ownership or control in Ascendance. The evidence supports a finding that Mr. Sharp is a partner and owner in Ascendance. The Examiners further find that the evidence supports a finding that Mr. Sharp is required to be identified on Ascendance's Form P-5.

¹⁰¹ TEX. NAT. RES. CODE § 91.114(c).

- b. According to Commission records, there is a Commission hold on Mr. Sharp, which prevents the proposed transfer of the Well to Ascendance.**

The potential impact to the proposed Well transfer arises due to Mr. Sharp's association with Ascendance. If Mr. Sharp is in a position of ownership or control of Ascendance, then Commission hold against Mr. Sharp extends to Ascendance.

According to Commission records in evidence, Mr. Sharp is identified as non-compliant with "SB639" due to violations committed by Mr. Sharp, as identified in a Commission enforcement Final Order in Docket No. 04-0213033 ("Sharp Enforcement Order").¹⁰² In the Sharp Enforcement Order, Sharp is found responsible for violation of inactive well requirements in Statewide Rule 14(b)(2) regarding two inactive wells.¹⁰³ Mr. Sharp is ordered to correct the violations and pay a penalty of \$3,000.00. The order also contains findings of fact and conclusions of law that the violations are a hazard to the public health and involve pollution.¹⁰⁴ Additionally, Mr. Sharp's status with the Commission is inactive.

"SB639" refers to Senate Bill 639 that was passed in 1995 and amended TEX. NAT. RES. CODE § 91.114 to prohibit approval of organization reports (i.e. Form P-5s) and certificates of compliance (i.e. Form P-4s) from persons or entities that have been found to be in violation of certain Commission regulations, mainly violations relating to safety or the prevention or control of pollution.¹⁰⁵ The hold can be removed when the operator corrects the conditions constituting the violations, pays all penalties and pays all state cleanup and plugging costs.¹⁰⁶ There was no evidence that Mr. Sharp remedied the violations, paid penalties or paid clean up and plugging costs. There was evidence that the State paid plugging and remediation costs.

The Examiners find based on the evidence that the Commission hold on Mr. Sharp prevents the proposed transfer of the Well to Ascendance.

2. The Examiners find that the Commission hold on Dakota prevents the proposed transfer of the Well due to Mr. Sharp's association with Dakota.

According to Commission records, there is a Commission hold on Dakota. Based on the evidence, the Examiners find that Mr. Sharp is a person of ownership or control of Dakota. As such, the Commission hold on Dakota extends to Mr. Sharp. As discussed above, the Examiners find Mr. Sharp is a person of ownership or control of Ascendance. Pursuant to TEX. NAT. RES. CODE § 91.114(a)(2), the Examiners find that there should be

¹⁰² Complainant Ex. 6 and 7; Tex. R.R. Comm'n, *Enforcement Action for Alleged Violations Committed by Sidney C. Sharp, as to the Pauline Fenner (00698) Lease, Well Nos. 2 and 3, Elva (Dinn) Field, Duval County, Texas*, Oil and Gas Docket No. 04-0213033 (August 26, 1997) (Final Order).

¹⁰³ 16 TEX. ADMIN. CODE § 3.8(d)(1), 3.98.

¹⁰⁴ Sharp Enforcement Order at 1 (Findings of Fact ¶ 6), 2 (Conclusions of Law ¶ 5).

¹⁰⁵ Act of 1995, 74th Leg., R.S., ch. 617 (S.B. 639), § 1, eff. Sept. 1, 1995 (codified at TEX. NAT. RES. CODE § 91.114).

¹⁰⁶ See TEX. NAT. RES. CODE § 91.114(d).

a Commission hold against Mr. Sharp due to Dakota which should extend to Ascendance in this case and the Well transfer should not be approved.

a. According to Commission records, there is a Commission hold on Dakota.

According to Commission records in evidence, Dakota is identified as non-compliant with "SB639" due to violations committed by Dakota.¹⁰⁷ Additionally, Dakota's status with the Commission is delinquent.

There are four Commission enforcement Final Orders ("Dakota Enforcement Orders")¹⁰⁸ issued on April 22, 2014, and one order denying approval of Dakota's Form P-5 ("Dakota Form P-5 Order")¹⁰⁹ issued February 18, 2014, which invoke restrictions on Dakota pursuant to TEX. NAT. RES. CODE § 91.114.

In the Dakota Enforcement Orders, Dakota is found responsible for violations of TEX. NAT. RES. CODE § 85.166 and Statewide Rules 3, 8(d)(1), 13(b)(1)(B), 14(b)(2), 58(a)(1) and 73(i).¹¹⁰ Dakota is ordered to correct the violations¹¹¹ and pay penalties of \$12,000.00, \$15,500.00, \$26,286.00 and \$45,100.00.¹¹² The orders also contain findings of fact and conclusions of law that the violations are a hazard to the public health and safety and involve pollution.¹¹³ In the Dakota Form P-5 Order, the Commission found that Dakota's Form P-5 should not be renewed for inactive well rule violations. In these orders,

¹⁰⁷ Sharp Enforcement Order at 1 (Findings of Fact ¶ 6), 2 (Conclusions of Law ¶ 5).

¹⁰⁸ Tex. R.R. Comm'n, *Enforcement Action for Alleged Violations Committed by Ashley Sharp, Sole Proprietor, Dakota Oil Company (197406), on the Laurel Lease, Well No. 1 (154266), Tom Shearman (8000) Field, and the Dela Garza, Lolita Benavides Lease, Well No. 1 (201251), Tiffany (Wilcox Carrizo) Field, Webb County, Texas, Oil & Gas Docket No. 04-0269452 (April 22, 2014) (Final Order) ("Dakota Enforcement 1"); Enforcement Action for Alleged Violations Committed by Ashley Sharp, Sole Proprietor, Dakota Oil Company (197406), on the Gonzales Lease, Well No. 2 (166972), Cuba Libre (3rd Hinnant) Field, and the Van Es Lease, Well No. 2 (168716), Cuba Libre (3rd Hinnant) Field, Webb County, Texas, Oil & Gas Docket No. 04-0269470 (April 22, 2014) (Final Order) ("Dakota Enforcement 2"); Enforcement Action for Alleged Violations Committed by Ashley Sharp, Sole Proprietor, Dakota Oil Company (197406), on the Flores, Daniel Lease, Well No. 1 (083467), Schwarz (8700) Field, and the Flores, Daniel Lease, Well No. 2 (084021), Schwarz (8700-A) Field, Webb County, Texas, Oil & Gas Docket No. 04-0286085 (April 22, 2014) (Final Order) ("Dakota Enforcement 3"); Enforcement Action for Alleged Violations Committed by Ashley Sharp, Sole Proprietor, Dakota Oil Company (197406), on the Flores, Daniel Lease, Well No. 6 (111473), 7 (112905) and 4 (125170) Schwarz (Flores) Field, Webb County, Texas, Oil & Gas Docket No. 04-0286087 (April 22, 2014) (Final Order) ("Dakota Enforcement 4").*

¹⁰⁹ Tex. R.R. Comm'n, *In Re: P-5 Organization Report of Dakota Oil Company*, Oil & Gas Docket No. 20-0287023 (February 18, 2014) (Final Order).

¹¹⁰ Dakota Enforcement 1 at 3 (Conclusions of Law ¶ 3); Dakota Enforcement 2 at 4 (Conclusions of Law ¶ 3); Dakota Enforcement 3 at 3 (Conclusions of Law ¶ 3); Dakota Enforcement 4 at 3 (Conclusions of Law ¶ 3); see also 16 TEX. ADMIN. CODE §§ 3.3, 3.8(d)(1), 3.13(b)(1)(B), 3.14(b)(2), 3.58(a)(1), 3.73(i).

¹¹¹ Dakota Enforcement 1 at 4 (ordering provision ¶ 1); Dakota Enforcement 2 at 4 (ordering provision ¶ 1); Dakota Enforcement 3 at 4 (ordering provision ¶ 1); Dakota Enforcement 4 at 4 (ordering provision ¶ 1).

¹¹² Dakota Enforcement 1 at 4 (ordering provision ¶ 2); Dakota Enforcement 2 at 5 (ordering provision ¶ 2); Dakota Enforcement 3 at 4 (ordering provision ¶ 2); Dakota Enforcement 4 at 4 (ordering provision ¶ 2).

¹¹³ See, e.g., Dakota Enforcement 1 at 2 (Findings of Fact ¶ 5), 3 (Conclusions of Law ¶ 6); Dakota Enforcement 2 at 2 (Findings of Fact ¶ 5), 4 (Conclusions of Law ¶ 7); Dakota Enforcement 3 at 2-3 (Findings of Fact ¶¶ 5, 13, 18, 21), 4 (Conclusions of Law ¶ 7); Dakota Enforcement 4 at 2-3 (Findings of Fact ¶¶ 5, 11, 16, 18), 3 (Conclusions of Law ¶ 7).

the Commission concludes that Dakota and persons who held a position of ownership or control of Dakota are subject to the restrictions in TEX. NAT. RES. CODE § 91.114.¹¹⁴

b. The Examiners find Mr. Sharp is a person in position of ownership or control of Dakota.

Commission rules require an entity's Form P-5 to identify each officer, director, general partner, owner of more than 25% ownership interest, or trustee (hereinafter controlling entity) of the organization.¹¹⁵ Dakota's Form P-5 does not identify Mr. Sharp. The Natural Resources Code provides that a person can be in a position of ownership or control regardless of whether the person's name is on the Form P-5.¹¹⁶

While Mr. Sharp originally testified that Dakota was his daughter Ashley Sharp's business as a sole proprietorship, Commission records reflect otherwise. According to Commission records, Ashley Sharp was not the listed owner until the last Form P-5 filed by Dakota in August 2013. In fact, in the only Form P-5 identifying Ashley Sharp as the owner, the handwriting appears identical to other forms signed by Mr. Sharp and does not appear similar to other forms signed by Ashley Sharp even though it purports to be signed by her. The evidence supports that more likely than not the Form P-5 for Dakota purportedly submitted by Ashley Sharp was actually prepared by Mr. Sharp and Mr. Sharp is the true author of Ashley's signature on that form.

Prior to the 2013 Form P-5, some of the years Mr. Sharp's wife was listed as Dakota's owner and some of the years Mr. Sharp's other daughter Tanja Ramirez was listed as the owner. Mr. Sharp acknowledges that the mailing address for Dakota over the years is his home address and that Ashley Sharp did not live there during the timeframe that she is identified as the owner of Dakota. Mr. Sharp also admitted that the mailing addresses for Dakota are the two addresses that belong to him and his wife. Despite records reflecting that his wife and daughter Tanja Ramirez were owners of Dakota over time, Mr. Sharp testified that they were not involved in the oil and gas business; he testified that he, his son and daughter Ashley are the only family members that have been involved in the oil and gas business. He further acknowledged that he is the person in his family that has experience and that Ashley Sharp's only experience is from working with him while she was growing up.

Mr. Sharp's testimony about Dakota was inconsistent and inconsistent with Commission records. He acknowledged that he was involved in preparing Dakota's paperwork and assisting with issues as they arose. He testified in detail to Dakota's dealings regarding Marwell, demonstrating strong personal knowledge. Instead of referring to Dakota in the third person, he referred to Dakota operations in terms of "we" and "our" demonstrating his close involvement in Dakota's operations.

¹¹⁴ See Dakota Enforcement 1 at 4; Dakota Enforcement 2 at 4; Dakota Enforcement 3 at 4; Dakota Enforcement 4 at 4; Dakota Form P-5 Order at 2.

¹¹⁵ 16 TEX. ADMIN. CODE § 3.1(a)(4)(C); *see also* TEX. NAT. RES. CODE § 91.114(a)(2).

¹¹⁶ TEX. NAT. RES. CODE § 91.114(c).

The Examiners find that the evidence in the record supports a finding that Mr. Sharp is a person who holds a position of ownership or control in Dakota. The Examiners further find that the evidence supports a finding that Mr. Sharp is and was required to be identified on all Dakota's Form P-5s.

c. The Examiners find the proposed transfer should not be approved due to the hold on Dakota, which extends to Mr. Sharp.

The Dakota Enforcement Orders and the Dakota Form P-5 Order were issued in 2014. The Natural Resources Code provides:

the commission may not accept an organization report . . . or approve a certificate of compliance . . . if . . . a person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization and during that period of ownership or control the other organization violated a statute or commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.¹¹⁷

According to this provision, because Mr. Sharp holds a position of ownership and control in both Ascendance and Dakota, the Commission should not approve the Form P-4 transfer of the Well due to the Commission SB 639 hold on Dakota, which originated in 2014 or thereafter.

For these reasons, the Examiners find that the proposed Well transfer should not be approved and should be denied.

B. The Examiners recommend the Commission grant Complainant's request to require Green to plug the Well.

Complainant asserts Green does not have a good faith claim and requests that the Commission order the Well plugged. The Prior Order already concludes Green does not have a good faith claim and orders Green to plug the Well. Circumstances have not changed since that would lead to a different result—particularly if the Well is not transferred to Ascendance as Ascendance requests. There is evidence and no one disputes that there has been no production of the Well in years. Green acknowledges it has no good faith claim and that it is required to plug the Well if the proposed Well transfer is not approved.

Green is the current record operator of the Well. The operator of record for a well is required to comply with inactive well rules and requirements.¹¹⁸ The well has not been produced in over 12 months and therefore, is an inactive well as that term is defined in

¹¹⁷ TEX. NAT. RES. CODE § 91.114(a)(2).

¹¹⁸ See, e.g., TEX. NAT. RES. CODE §§ 89.011, 89.022; 16 TEX. ADMIN. CODE §§ 3.14(b)(2), 3.58.

Commission rules and statutes.¹¹⁹ Because it is an inactive well, Green must plug it, obtain a plugging extension, or restore it to active status.¹²⁰ Green has not restored the Well to active status. Because Green has no good faith claim, it is not eligible for plugging extensions,¹²¹ which the Commission also concluded in the Prior Order. Despite the Prior Order ordering Green to plug the Well, Green has not done so. The Examiners find that the evidence supports Complainant's request that the Commission order Green to plug the Well should be granted and recommend that the Commission provide a specified timeframe for when the Well must be plugged.

For these reasons, the Examiners find that based on the evidence provided, Commission holds on Mr. Sharp prevent the proposed Well transfer to Ascendance. The Examiners further find that Green should be ordered to plug the Well within a specified timeframe, and recommend that the Well be required to be plugged within sixty days of the Commission order in this case becoming final.

VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record in this case and evidence presented, the Examiners recommend that the Commission deny Ascendance's request to approve transfer of the Well to Ascendance. The Examiners further recommend that the Commission grant Complainant's request to require Green to plug the Well.

Findings of Fact

1. Ascendance Energy Partners, LLC ("Applicant" or "Ascendance"), Operator No. 033892), filed an application ("Application") for a good faith review because it seeks to become the Railroad Commission ("RRC" or "Commission") operator of record for the River Bend -A- Lease, Lease ID No. 31525, Well No. 1 (the "Well"), but there is an RRC hold preventing a transfer of the Well due to a final order issued on August 24, 2016 in Oil & Gas Docket No. 04-0298156 ("Prior Order"). In the Prior Order, the Commission finds that the current operator of record—Green Exploration Company ("Green"), Operator No. 330179—does not have a good faith claim to operate the Well and orders Green to plug it. A Commission administrative case was initiated to address the Application in Oil & Gas Docket No. 04-0303678.
2. Shortly after the Application was filed, Benito Villarreal ("Complainant") filed a complaint ("Complaint") alleging that Green does not have a good faith claim to operate the Well and requesting that the Well not be transferred and instead be ordered plugged, consistent with the Prior Order. A Commission administrative case was initiated to address the Complaint in Oil & Gas Docket No. 04-0303679.
3. Complainant owns one-third of the mineral estate where the Well is located.

¹¹⁹ 16 TEX. ADMIN. CODE § 3.15(a)(6); *see also* TEX. NAT. RES. CODE § 89.002(a)(12).

¹²⁰ *See* 16 TEX. ADMIN. CODE § 3.15(d).

¹²¹ *See* 16 TEX. ADMIN. CODE §§ 3.15(e).

4. On February 17, 2017, the Hearings Division of the Commission sent two Notice of Hearings ("Notices") via first class mail—one regarding the Complaint case and a separate one regarding the Application—to Applicant, Complainant, Green and Commission staff ("Staff") setting a hearing date for both cases of March 7, 2017. Consequently, all parties received more than 10 days' notice. Both Notices contained (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.
5. The hearing was held on March 7, 2017, as noticed. Applicant, Complainant, Green and Staff appeared at the hearing. The gas gatherer identified as part of the proposed transfer of the Well, Duval Gas Gathering ("Duval"), also participated at the hearing.

I. Ascendance's Application

6. Applicant provided a Form P-4 "Certificate of Compliance and Transportation Authority" ("Form P-4") requesting that it be designated the Commission operator of record for the Well. The Form P-4 is signed by Mr. Hildegardo Humberto Garza Jr. on behalf of Ascendance and by Mr. John Cantu on behalf of Green. The gas gatherer listed is Duval.
7. To establish a good faith claim, Applicant provided two written leases ("Leases"). Both Leases are dated January 26, 2017, and both Leases identify Ascendance as the lessee. For one of the Leases, Natalia V. Villarreal is the lessor and for the other, Maria Dolores Villarreal is the lessor. Each owns one-third of the mineral estate where the Well is located and Natalia Villarreal is the surface estate owner of the property where the Well is located.
8. Ascendance has an active Commission Form P-5 "Organization Report" ("Form P-5") with Mr. Garza identified as the only officer.

A. Sidney Sharp's Role in Ascendance

9. Mr. Garza and Mr. Sharp represented that Mr. Sharp is a partner in Ascendance. Mr. Sharp represented himself as an owner of the Well.
10. Mr. Sharp negotiates on behalf of Ascendance. In written leases, Mr. Sharp's address is the address identified as Ascendance's address. Mr. Sharp has years of experience engaging in operations regulated by the Commission while Mr. Garza has none. Mr. Garza is a full-time teacher and the only activity he performed related to Ascendance that is in evidence is providing the financial assurance and signing Form P-4s and the Form P-5. Ascendance has entered into business arrangements with associates of Mr. Sharp.

11. There is no current written agreement between Mr. Sharp and Mr. Garza regarding Ascendance. Mr. Sharp has not been paid for work performed regarding the Well because the Well has not yet been profitable. Mr. Sharp anticipates that he and Mr. Garza will enter into a written partnership agreement if the Well becomes profitable.
12. Mr. Sidney Sharp is a person who holds a position of ownership or control in Ascendance.

B. Sidney Sharp's Status with the Commission

13. It is Commission practice that an operator subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(1) is placed on Commission hold in the Commission's mainframe database such that Form P-4s transfers involving such operators are not approved. The Commission hold is in place until the operator corrects the underlying violations as well as pays all penalties and state cleanup and plugging costs as specified in TEX. NAT. RES. CODE § 91.114(d).
14. It is Commission practice that a person subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(2) is placed on Commission hold in the Commission's mainframe database such that Form P-4s transfers involving such persons are not approved. The Commission hold is in place for the time period specified in TEX. NAT. RES. CODE § 91.114(a)(2).
15. According to Commission records, Mr. Sharp is identified as non-compliant with "SB639" due to violations committed by Mr. Sharp identified in a Commission enforcement Final Order in Docket No. 04-0213033 ("Sharp Enforcement Order"). In the Sharp Enforcement Order, Sharp is found responsible for violation of inactive well requirements in Statewide Rule 14(b)(2) regarding two inactive wells. Mr. Sharp is ordered to correct the violations and pay a penalty of \$3,000.00. The order also contains findings of fact and conclusions of law that the violations are a hazard to the public health and involve pollution. Additionally, Mr. Sharp's status with the Commission is inactive.
16. There is a Commission hold on Mr. Sharp in his individual capacity and Mr. Sharp is subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(1). Mr. Sharp has not remedied the violations, paid the assessed penalties and reimbursed the State for remediation and plugging costs associated with the Sharp Enforcement Order.

C. Dakota's Status with the Commission and Sidney Sharp's Association with Dakota

17. According to Commission records, Dakota is identified as non-compliant with "SB639" due to violations committed by Dakota. Additionally, Dakota's status with the Commission is delinquent. There are four Commission enforcement Final

Orders ("Dakota Enforcement Orders")¹²² issued on April 22, 2014, and one order denying approval of Dakota's Form P-5 ("Dakota Form P-5 Order")¹²³ issued February 18, 2014. In the Dakota Enforcement Orders, Dakota is found responsible for violations of TEX. NAT. RES. CODE § 85.166 and Statewide Rules 3, 8(d)(1), 13(b)(1)(B), 14(b)(2), 58(a)(1) and 73(i). Dakota is ordered to correct the violations and pay penalties of \$12,000.00, \$15,500.00, \$26,286.00 and \$45,100.00. The orders also contain findings of fact and conclusions of law that the violations are a hazard to the public health and safety and involve pollution. In the Dakota Form P-5 Order, the Commission found that Dakota's Form P-5 should not be renewed for inactive well rule violations. In the orders, the Commission concludes that Dakota and persons who hold a position of ownership or control of Dakota are subject to the restrictions in TEX. NAT. RES. CODE § 91.114.

18. There is a Commission hold on Dakota and Dakota is subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(1).
19. There is a Commission hold on Dakota and persons who hold a position of ownership or control are subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(2).
20. While Mr. Sharp originally testified that Dakota was his daughter Ashley Sharp's business as a sole proprietorship, Commission records reflect otherwise. According to Commission records, Ashley Sharp was not the listed owner until the last Form P-5 filed by Dakota in August 2013. In this only Form P-5 identifying Ashley Sharp as Dakota's owner, the handwriting appears identical to other forms signed by Mr. Sharp and does not appear similar to other forms signed by Ashley Sharp even though it purports to be signed by her. The evidence supports that more likely than not the Form P-5 for Dakota purportedly submitted by Ashley Sharp was actually prepared by Mr. Sharp and Mr. Sharp is the true author of Ashley's signature on that form.
21. Prior to Dakota's 2013 Form P-5, some of the years Mr. Sharp's wife was listed as Dakota's owner and some of the years Mr. Sharp's other daughter Tanya Ramirez was listed as the owner. The street address for Dakota over the years is Mr. Sharp home address and Ashley Sharp did not live at that address during the timeframe that she is identified as the owner of Dakota. The mailing addresses for Dakota are the two addresses that belong to Mr. Sharp and his wife. Despite records reflecting that his wife and daughter Tanya Ramirez were the only owners of Dakota over time, Mr. Sharp testified that they were not involved in the oil and gas business. Mr. Sharp acknowledged that he is the person in his family that has experience in the oil and gas business and that Ashley Sharp's only experience is from working with him while she was growing up.

¹²² Commission Oil & Gas Docket Nos. 04-0269452, 04-0269470, 04-0286085 and 04-0286087.

¹²³ Commission Oil & Gas Docket No. 20-0287023.

22. Mr. Sharp's testimony about Dakota was inconsistent and inconsistent with Commission records.
23. Mr. Sharp testified that he is involved in preparing Dakota's paperwork and assisting with issues involving Dakota as they arise. He testified in detail to Dakota's dealings. While testifying at the hearing for these cases, instead of referring to Dakota in the third person, he referred to Dakota in the second person, using terms such as "we" and "our."
24. Mr. Sidney Sharp is a person who holds a position of ownership or control in Dakota.
25. As a person who holds a position of ownership or control in Dakota, Mr. Sharp is subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(2).

D. The Impact of the Commission Holds and TEX. NAT. RES. CODE § 91.114 Restrictions on the Proposed Well Transfer to Ascendance

26. The Commission hold on Mr. Sharp prevents the proposed transfer to Ascendance because Mr. Sharp is a person who holds a position of ownership or control in Ascendance.
27. The Commission hold on Dakota prevents the proposed transfer to Ascendance because Mr. Sharp is a person who holds a position of ownership or control in both Dakota and Ascendance.
28. The proposed transfer of the Well to Ascendance should not be approved.
29. The Commission should deny Ascendance's request to approve transfer of the Well to Ascendance.

II. The Complaint

30. The Prior Order finds that Green does not have a good faith claim to operate the Well, that the Well is inactive and that Green is not eligible for plugging deadline extensions for the Well. The Prior Order cancels any and all plugging extensions for the Well and orders Green to plug the Well.
31. Green has not plugged the Well and remains the Commission operator of record for the Well.
32. There has been no production from the Well and the Well is inactive.
33. Green does not have a good faith claim to operate the Well.

34. Absent a good faith claim to operate, the Well is not eligible for extensions to the plugging requirements in Statewide Rule 14 and 15 as provided for in Statewide Rule 15(e).
35. There are no plugging extensions for the Well and the Well is not eligible for plugging extensions.
36. Green acknowledges that it is responsible for plugging the Well if the proposed transfer of the Well to Ascendance is not approved.
37. The Well should be plugged.
38. The Commission should grant Complainant's request to require Green to plug the Well.

Conclusions of Law

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice. See, e.g., TEX. GOV'T CODE §§ 2001.051, .052; 16 TEX. ADMIN. CODE §§ 1.45, 1.48.
2. The Commission has jurisdiction in this case. See, e.g., TEX. NAT. RES. CODE § 81.051.
3. Mr. Sidney Sharp is a person who holds a position of ownership or control in Ascendance and should be identified as such on Ascendance's Form P-5.
4. Mr. Sharp is subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(1).
5. Dakota is subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(1).
6. Persons who hold a position of ownership or control of Dakota are subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(2).
7. Mr. Sidney Sharp is a person who holds a position of ownership or control in Dakota and should be identified as such on Dakota's Form P-5.
8. As a person who holds a position of ownership or control in Dakota, Mr. Sharp is subject to the restrictions in TEX. NAT. RES. CODE § 91.114(a)(2).
9. Because of the restrictions on Mr. Sharp, the Well cannot and should not be transferred to Ascendance as proposed. TEX. NAT. RES. CODE § 91.114.
10. Green does not have a good faith claim, as that term is defined in Statewide Rule 15(a)(5), to continue operating the Well. 16 TEX. ADMIN. CODE § 3.15(a)(5).

11. The Well is not eligible for plugging extensions and the Well should be plugged.
12. The Commission should deny Ascendance's request to approve transfer of the Well to Ascendance.
13. The Commission should grant Complainant's request to require Green to plug the Well.

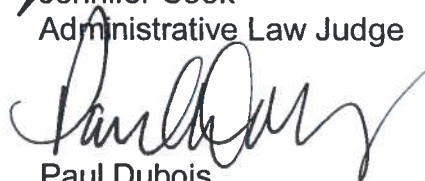
Recommendations

The Examiners recommend that the Commission deny Ascendance's request for a good faith claim review and Ascendance's request to approve transfer of the Well to Ascendance. Examiners further recommend that the Commission grant Complainant's request to require Green to plug the Well and to provide a deadline to plug the Well of sixty days after the Commission's order in this case is final.

Respectfully,



Jennifer Cook
Administrative Law Judge



Paul Dubois
Technical Examiner