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RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

OIL & GAS DOCKET NO. 20-0303368

APPLICATION OF ATM ENERGY GROUP, LLC (OPERATOR NO. 036608) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT ITS FORM P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15

PROPOSAL FOR DECISION

HEARD BY:

Jennifer Cook – Administrative Law Judge
Karl Caldwell – Technical Examiner

PROCEDURAL HISTORY:

Hearing Request Date:	January 26, 2017
Notice of Hearing Date:	April 28, 2017
Hearing Date:	May 31, 2017
Transcript Received:	June 14, 2017
Record Close Date:	July 14, 2017
Proposal for Decision Issued:	September 12, 2017

APPEARANCES:

For Staff –

Jessica Mendoza, Staff Attorney, Enforcement Section

For Atlas Operating LLC –

Robert Matzig, Manager

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I. Statement of the Case

ATM Energy Group, LLC ("ATM"), Operator No. 036608, seeks a determination, contrary to Railroad Commission ("Commission" or "RRC's") staff's ("Staff's") prior determination, that it is in compliance with the Commission's inactive well rules and should thus be allowed to renew its Commission Form P-5 *Organization Report*.

The parties stipulate that ATM was not in compliance with inactive well requirements as to one well. At the hearing, ATM indicated it expected to be in compliance within 30 days of the hearing. However, ATM did not achieve compliance as of the close of record, July 14, 2017.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Commission deny ATM's request to allow renewal of ATM's organization report and order ATM to bring the non-compliant well into compliance with inactive well requirements.

II. Jurisdiction and Notice¹

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. Additionally, section 89.022 of the Texas Natural Resources Code specifically requires operators to comply with Commission inactive well rules and prevents the Commission from renewing an operator's organization report if that operator is out of compliance.

Prior to the Commission issuing an order refusing to renew an operator's organization report, Staff must first determine that the operator has failed to comply with the inactive well requirements, and Staff must:

- (1) notify the operator of the determination;
- (2) provide the operator with a written statement of the reasons the organization report does not qualify for renewal; and
- (3) notify the operator that the operator has 90 days to comply with the requirements of this subchapter.²

In a letter to ATM dated September 12, 2016, Staff notified ATM that Staff had determined renewal of ATM's Commission Form P-5 *Organization Report* ("P-5") should be denied because ATM was non-compliant with inactive well requirements; Staff also provided the

¹ The hearing transcript in this case is referred to as "Tr. at [pages:lines]." Staff's exhibits are referred to as "Staff Ex. [exhibit no(s)]." ATM's exhibits are referred to as "ATM Ex. [exhibit no(s)]."

² TEX. NAT. RES. CODE § 89.022(d); see also 16 TEX. ADMIN. CODE § 3.15(g)(3).

reasons for the determination.³ This letter also provided ATM 90 days to comply with the inactive well requirements.⁴

After the expiration of the 90 days, the Natural Resources Code requires the following additional notification:

[T]he authorized commission employee or designated person shall determine whether the organization report qualifies for renewal and notify the operator of the determination. If the authorized commission employee or designated person determines that the organization report does not qualify for renewal because the operator has continued to fail to comply with the requirements of this subchapter, the operator, not later than the 30th day after the date of the determination, may request a hearing regarding the determination.⁵

After the expiration of the 90 days provided in Staff's September 12, 2016 letter, in a letter dated January 4, 2017, Staff again notified ATM that Staff had determined renewal of ATM's P-5 should be denied because ATM was non-compliant with inactive well requirements; Staff again provided the reasons for the determination.⁶ The January 4, 2017 letter provides ATM 30 days to request a hearing regarding this determination. In a letter filed January 26, 2017, ATM requested a hearing. This case followed.

On April 28, 2017, the Commission's Hearings Division issued a Notice of Hearing for this case setting it for hearing on May 31, 2017.⁷ The Notice of Hearing was sent to Staff and ATM. Both Staff and ATM appeared at the hearing.

III. Applicable Legal Authority

The Texas Natural Resource Code requires operators to comply with inactive well statutes and rules; if an operator is not in compliance, the Natural Resources Code mandates that the Commission refuse to renew a non-compliant operator's organization report.

Section 89.022 requires operators to plug inactive wells or obtain plugging extensions in compliance with Commission rules and statutes. Otherwise, the Commission must refuse to renew an operator's organization report, which is required for the operator to engage in operations within the Commission's jurisdiction such as drilling or operating oil and gas wells in Texas.⁸ Section 89.022 of the Texas Natural Resource Code specifically provides:

³ Staff Ex. 3.

⁴ *Id.*

⁵ TEX. NAT. RES. CODE § 89.022(e); see also 16 TEX. ADMIN. CODE § 3.15(g)(4).

⁶ Staff Ex. 4.

⁷ See Notice of Hearing (issued April 28, 2017).

⁸ See 16 TEX. ADMIN. CODE § 3.1(a)(1).

PLUGGING OF INACTIVE WELLS REQUIRED.

- (a) Except as provided by Section 89.023, on or before the date the operator is required to renew the operator's organization report required by Section 91.142, an operator of an inactive well must plug the well in accordance with statutes and commission rules in effect at the time of plugging. . . .
- (c) The commission may not renew or approve the organization report . . . for an operator that fails to comply with the requirements of this subchapter. . . .
- (f) If the commission determines following the hearing that the operator has failed to comply with the requirements of this subchapter or the operator fails to file a timely request for a hearing, the commission by order shall refuse to renew the organization report. The organization report remains in effect until the commission's order becomes final.⁹

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.¹⁰ Statewide Rule 15(d) states:

(d) 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.¹¹

For ATM to show compliance with inactive well requirements, ATM must show that it is in compliance with Statewide Rule 15 such that all inactive wells have either been restored to active status, plugged or subject to approved plugging extensions. Otherwise, the Commission must refuse to renew ATM's P-5.

⁹ See also 16 TEX. ADMIN. CODE § 3.15(d).

¹⁰ Statewide Rule 15 refers to 16 TEX. ADMIN. CODE § 3.15.

¹¹ 16 TEX. ADMIN. CODE § 3.15(d).

IV. Discussion of Evidence

At the beginning of the hearing, ATM and Staff stipulated in agreement that one of ATM's wells is inactive and not in compliance with inactive well requirements.¹² ATM's non-compliant well is Well No. 1D on the Vaughan, Isabel Lease, Lease No. 02055.¹³

Without objection, Staff submitted the following five exhibits documenting pertinent facts regarding the case:¹⁴

1. A general timeline of events;¹⁵
2. Statement of information regarding the status and dates of correspondence relating to ATM's inactive wells;¹⁶
3. Letter dated September 12, 2016 with attachments from Staff to ATM providing initial notice to ATM of the determination to not renew ATM's P-5 and providing 90 days to achieve compliance;¹⁷
4. Letter dated January 4, 2017 with attachments from Staff to ATM providing second notice to ATM of the determination to not renew ATM's P-5 and providing 30 days to request a hearing;¹⁸ and
5. Identifying information about the Well.¹⁹

ATM's main interests at the hearing were to request more time and show the good faith efforts it has taken and is taking to achieve compliance. ATM estimated it would be in compliance approximately two weeks from the hearing and requested 30 days to accommodate any unforeseen delays.²⁰ The Examiners explained that logistically she did not anticipate making a recommendation within 30 days of the hearing regardless and consequently granted ATM's request.²¹

At the hearing, the parties also agreed to provide a joint status update after the end of the 30-day period. On July 14, 2017, Staff filed a status report that the Well remains non-compliant.

¹² Tr. at 7:12 to 8:5.

¹³ Staff Ex. 5; Tr. at 9:11 to 10:4.

¹⁴ Tr. at 8:6 to 9:1.

¹⁵ Staff Ex. 1.

¹⁶ Staff Ex. 2.

¹⁷ Staff Ex. 3.

¹⁸ Staff Ex. 4.

¹⁹ Staff Ex. 5.

²⁰ Tr. at 10:6 to 12:4.

²¹ Tr. at 12:23 to 13:9.

V. Examiners' Analysis

The Examiners recommend that ATM's request for renewal of its organization report be denied and that ATM be ordered to comply with inactive well rules. The parties do not dispute the facts in this case or that ATM is not in compliance with inactive well rules.

Section 89.022 of the Texas Natural Resources Code requires an operator of an inactive well to comply with inactive well requirements before the time of renewal of the operator's P-5.²² If the operator fails to achieve compliance before the renewal date, the Commission is required to refuse to renew the operator's P-5.²³

The definition of an inactive well is:

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.²⁴

The parties stipulate that the Well is an inactive well.

Statewide Rule 15 requires inactive wells to either (1) be plugged, (2) be put back into production or (3) be subject to plugging extensions.²⁵ The parties stipulate the Well is not in compliance with inactive well requirements, i.e. it is not plugged or subject to plugging extensions.

Pursuant to section 89.022 of the Texas Natural Resources Code, the Commission cannot renew ATM's organization report because ATM is non-compliant with Commission inactive well rules. For these reasons, the Examiners conclude that ATM's request for renewal of its P-5 should be denied and ATM should be ordered to place the Well in compliance with Statewide Rule 15.

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 ATM's request for renewal be denied, ATM be ordered to comply with Statewide Rule 15, and that the Commission adopt the following findings of fact and conclusions of law.

²² See TEX. NAT. RES. CODE § 89.022(a).

²³ See TEX. NAT. RES. CODE § 89.022(c) and (d).

²⁴ 16 TEX. ADMIN. CODE § 3.15(a)(6).

²⁵ 16 TEX. ADMIN. CODE § 3.15(d).

Findings of Fact

1. ATM Energy Group, LLC ("ATM"), Commission Operator No. 036608, is the current operator of Well No. 1D, Isabel Vaughan Lease (Lease ID No. 02055).
2. In a letter to ATM dated September 12, 2016, Staff notified ATM that Staff had determined renewal of ATM's Commission Form P-5 *Organization Report* ("P-5") should be denied because ATM was not compliant with inactive well requirements; Staff also provided the reasons for the determination. This letter also provided ATM 90 days to comply with the inactive well requirements.
3. In a letter dated January 4, 2017, Staff again notified ATM that Staff had determined renewal of ATM's P-5 should be denied because ATM was non-compliant with inactive well requirements; Staff again provided the reasons for the determination. The January 4, 2017 letter provides ATM 30 days to request a hearing regarding this determination.
4. In a letter filed and dated January 26, 2017, ATM requested a hearing.
5. As the parties stipulated, the Well has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months. The Well meet the definition of an inactive well.
6. The Well is not plugged, has not been placed back into production and does not have plugging extensions.
7. The Well is not in compliance with the requirements of Statewide Rule 15.

Conclusions of Law

1. ATM 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. ATM failed to comply with the requirements of TEX. NAT. RES. CODE §§ 89.021-89.030 and 16 TEX. ADMIN. CODE § 3.15.
3. ATM's Commission Form P-5 *Organization Report* may not be renewed or approved. TEX. NAT. RES. CODE § 89.022(c).

Recommendations

The Examiners recommend the Commission enter an order denying the renewal of ATM's Form P-5 *Organization Report*. The Examiners also recommend that ATM be ordered to place the Well into compliance with Statewide Rule 15.

Respectfully,



Jennifer Cook
Administrative Law Judge



Karl Caldwell
Technical Examiner