

CHRISTI CRADDICK, *CHAIRMAN*
RYAN SITTON, *COMMISSIONER*
WAYNE CHRISTIAN, *COMMISSIONER*



RANDALL D. COLLINS, *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 03-0304145: THE COMPLAINT OF LEEXUS OIL LLC THAT CREATIVE OIL & GAS OPERATING LLC (187005), DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE LONIE MAE #1-H (14106) LEASE, WELL NO. 1H AND THE ZONA, MARY UNIT (12987) LEASE, GIDDINGS (AUSTIN CHALK-3) FIELD, LEE COUNTY, TEXAS

OIL AND GAS DOCKET No. 03-0304144: THE COMPLAINT OF LEEXUS OIL LLC THAT CREATIVE OIL & GAS OPERATING LLC (187005), DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE ANSELL LEHMAN (23183) WELL NO. 1H AND THE ATLANTA HATFIELD LEASE (14599) WELL NO. 1H, GIDDINGS (AUSTIN CHALK-3) FIELD, LEE COUNTY, TEXAS

APPEARANCES

COMPLAINANT:

John Pieratt
Mark Jaehne

CREATIVE OIL & GAS OPERATING LLC:

Mark P. Gainey
David Pawelek

PROCEDURAL HISTORY:

Notice of Hearing:
Hearing on the Merits:
Proposal for Decision:
Heard by:

October 11, 2017
October 31, 2017
December 8, 2017
Clayton J. Hoover
Administrative Law Judge
Richard Eyster, P.G.
Technical Examiner

SUMMARY

In Docket Nos. 03-0304144 and 03-0304145, Leexus Oil LLC (“Complainant”) filed with the Commission a complaint letter challenging Creative Oil & Gas Operating, LLC’s (“Creative”) “good faith claim” to a continued right to operate four Leases in Lee County, Texas (“Leases”). Specifically, Leexus claims that Creative claims to be a successor operator under the applicable Joint Operating Agreements (“JOAs”), that Creative owns no working interest in the Leases and that Creative therefore does not qualify as a successor operator for contractual and legal purposes.

In response, Creative submitted various correspondence, election result tabulations, Leases and assignments to show that it was properly selected as successor operator in accordance with the terms of the JOAs.

Creative requested a hearing on the merits pursuant to a Motion for Rehearing of an Order signed by the Commission as a default item because Creative failed to respond to Leexus’ complaints.

The sole issue before the Commission is whether Creative has a “good faith claim” to operate the Leases, as that term is defined in Statewide Rule 15.

The record evidence demonstrates that Creative did not present a “good faith claim” to operate the Leases because the JOAs admitted into evidence clearly show that a successor operator must be a working interest owner and Creative owns no working interest. It is recommended that the Commission find that Creative does not have a good faith claim to continue operating the Leases.

EVIDENCE PRESENTED

CREATIVE

David Pawelek testified concerning the working interest ownership in each Lease and the results of an election he conducted for each of the four Leases in March or April, 2017, which, he contends, established Creative as the successor operator under the JOAs.¹ He stated several times that Creative Oil & Gas LLC is a separate entity from the operator, Creative, although they have common ownership.² He admits that Creative, the current operator, owns no working interest in any of the Leases.³

LEEXUS

In support of its argument that Creative has no “good faith claim” to operate the Leases, Leexus presented testimony that Creative owns no working interest and that Creative therefore cannot be operator. Testifying on behalf of Creative was Mr. Mark Jaehne.

¹ Transcript P 26 L 3 - to - P 27 L 17; Creative Ex. 14 and 15 (the applicable JOAs)

² Transcript P 18 L 13 - to - P 19 L 7

³ Transcript P 36 L 14 - to - P 37 L 20, P 48 L 21 - to - 25

Mr. Jaehne corroborated the testimony of Mr. Pawelek that Creative, the current operator, owns no working interest in any of the Leases.⁴ Mr. Jaehne also testified about conducting his own election establishing Leexus as Operator, his inability to obtain copies of the JOAs from Creative and other matters.⁵

OPINION

The sole issue before the Commission is whether Creative holds a “good faith claim” to a continuing right to operate the Leases. Statewide Rule 15(a)(5) defines “Good Faith Claim” 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 currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

The Commission’s authority to determine a “good faith claim” arises from the *Magnolia* case. In discussing the Commission’s authority to grant a drilling permit, the Texas Supreme Court stated, “The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts.”⁶ It also states, “... the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in *good faith*.”⁷

In the context of the right to continue operation of each lease, the Commission looks to Creative’s lease or assignment and the Joint Operating Agreements applicable to the Leases. Each JOA contains an “Additional Provision” in Section L concerning removal of an operator and selection of a successor operator. That provision reads as follows:

“If Operator ... no longer owns an interest hereunder in the Contract Area, ... , Operator shall be deemed to have resigned without any action by Non-Operators, except the selection of a successor.”

Such provision clearly establishes that the successor operator must be selected from the group of existing working interest owners.

There is no controversy that the JOAs bind the parties and apply to the four Leases. There is also no controversy that Creative Oil & Gas Operating, LLC, the current operator, owns no working interest in any of the Leases. Therefore, Creative cannot claim to have been legally selected as the successor operator pursuant to Paragraph L. of the JOAs.

⁴ Transcript P 69 L 24 - to - P 70 L 9

⁵ Leexus Ex. 1 ; Transcript P 57 L 14 - to - P 63 L 7

⁶ *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943).

⁷ *Id.* at 191 (emphasis added).

For these reasons, the Administrative Law Judge and Technical Examiner conclude that Creative did not present a "good faith claim" to operate the Leases.

FINDINGS OF FACT

1. On or about March 16, 2017, Leexus Oil LLC filed with the Commission a written complaint alleging that Creative did not hold a "good faith claim" to operate the Lonie Mae #1-H (14106) Lease, Well No. 1H, the Zona, Mary Unit (12987) Lease, the Ansell Lehman (23183) Well No. 1H and the Atlanta Hatfield Lease (14599) Well No. 1H, Giddings (Austin Chalk-3) Field, Lee County, Texas. A hearing was requested and held on October 31, 2017. All parties received notice and appeared at the hearing.
2. Leexus Oil LLC is a working interest owner of the subject property.
3. Creative is the current Form P-4 Record Operator of the Lonie Mae #1-H (14106) Lease, Well No. 1H, the Zona, Mary Unit (12987) Lease, the Ansell Lehman (23183) Well No. 1H and the Atlanta Hatfield Lease (14599) Well No. 1H, Giddings (Austin Chalk-3) Field, Lee County, Texas.
4. Creative has an active Form P-5.
5. Creative provided testimony and documentary evidence that it was properly elected successor operator under the relevant Joint Operating Agreements, but admitted that it owns no working interest in any of the Leases.
6. Leexus established that because Creative owns no working interest, it is not a proper operator under the language of Paragraph L. of the Additional Provisions of the respective Joint Operating Agreements.
7. A "good faith claim" is defined in Commission Statewide Rule 15(a)(5) 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 currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate." [16 TEX. ADMIN. CODE § 3.15(a)(5)].

CONCLUSIONS OF LAW

1. Proper notice was timely issued to all persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. It is undisputed that Paragraph L. of the applicable Joint Operating Agreements requires a successor operator to be selected from remaining working interest owners.

4. Therefore, Creative Oil & Gas Operating, LLC cannot legally serve as successor operator and, consequently, does not have a "good faith claim" to operate the Lonie Mae #1-H (14106) Lease, Well No. 1H, the Zona, Mary Unit (12987) Lease, the Ansell Lehman (23183) Well No. 1H and the Atlanta Hatfield Lease (14599) Well No. 1H, Giddings (Austin Chalk-3) Field, Lee County, Texas.

RECOMMENDATION

The Administrative Law Judge and Technical Examiner recommend the Commission find that Creative Oil & Gas Operating, LLC does not have a "good faith claim" to operate the Lonie Mae #1-H (14106) Lease, Well No. 1H, the Zona, Mary Unit (12987) Lease, the Ansell Lehman (23183) Well No. 1H and the Atlanta Hatfield Lease (14599) Well No. 1H, Giddings (Austin Chalk-3) Field, Lee County, Texas.

RESPECTFULLY SUBMITTED,



CLAYTON J. HOOVER
Administrative Law Judge



RICHARD EYSTER, P.G.
Technical Examiner