



## RAILROAD COMMISSION OF TEXAS

### HEARINGS DIVISION

OIL AND GAS DOCKET NOS. 7B-0310819 AND 7B-0310820

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COMPLAINT OF MARILYN JONES THAT CHISHOLM OPERATING, INC. (149454) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE EATON (30068) LEASE, WELL NO. 2, BRITNI ANN (ELLENBURGER)) FIELD, CALLAHAN COUNTY, TEXAS.

COMPLAINT OF MARILYN JONES THAT CHISHOLM OPERATING, INC. (149454) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE EATON (233971) LEASE, WELL NO. 1, BRITNI ANN (ELLENBURGER) FIELD, CALLAHAN COUNTY, TEXAS.

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#### PROPOSAL FOR DECISION

#### HEARD BY:

Lynn Latombe, Administrative Law Judge  
Peter Buva, Technical Examiner

#### APPEARANCES:

For Complainant Marylyn Jones—  
Mr. Christopher Hotchkiss,  
Attorney

For Respondent Chisholm Operating, Inc.—  
Mr. Charles E. Schroeder, President

#### PROCEDURAL HISTORY:

Complaint Filed – April 19, 2018  
Notice of Hearing – July 10, 2018  
Hearing on the Merits – August 20, 2018  
Transcript Received – September 4, 2018  
Proposal for Decision Issued – November 16, 2018

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## **Statement of the Case**

Marilyn Jones ("Jones" or "Complainant"), filed with the Commission a complaint ("Complaint") challenging Chisholm Operating, Inc.'s ("Chisholm" or "Respondent") good faith claim to a continued right to operate the Eaton (30068) Lease, Well No. 2, Britni Ann (Ellenburger) Field, Callahan County, Texas ("Well No. 2") and the Eaton (233971) Lease, Well No. 1, Britni Ann (Ellenburger) Field, Callahan County, Texas ("Well No. 1"). The two subject leases are collectively referred to as "Leases" and Well No. 1 and Well No. 2 are collectively referred to as "Wells."

Complainant alleges that the underlying contractual lease had lapsed due to lack of production. When Chisholm did not respond to her communications, Complainant filed this Complaint. In response to the Complaint, Chisholm requested a hearing on the merits. Respondent alleges that the production of casing head gas is holding the underlying contractual lease.

The issue before the Commission are whether Chisholm has a good faith claim to operate the Wells, as that term is defined in Statewide Rule 15 and if it does not, whether Chisholm should be ordered to plug and abandon the Wells in accordance with Statewide Rule 14.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Railroad Commission ("Commission" or "RRC") grant the Complainant's request. The Examiners recommend that the Commission find that Chisholm failed to provide a reasonably satisfactory showing of a good faith claim to operate the Wells and the Wells should be ordered plugged in accordance with Statewide Rule 14.

## **Jurisdiction and Notice**

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 July 10, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Complainant and Respondent setting a hearing date of August 20, 2018. Consequently, all parties received more than 10 days' notice. The Notice contains: (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. The hearing was held on August 20, 2018, as noticed. Complainant and Respondent appeared at the hearing.

## **Applicable Legal Authority**

Complainant alleges the Commission's current operator of record, Respondent, does not have a good faith claim to operate the Lease. A "good faith claim" is defined in the Texas 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 currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.<sup>5</sup>

Texas Natural Resource Code § 89.002 defines how and when an operator assumes regulatory responsibility of a well. Texas Natural Resource Code § 89.002(a)(2) states:

"Operator" means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves.

Statewide Rule 58 states the required form and process for becoming the regulatory responsible operator of a well.<sup>6</sup> Statewide Rule 58(a)(1) states:

Each operator who seeks to operate any well subject to the jurisdiction of the Commission shall file with the commission's Austin office a commission form P-4 (certificate of compliance and transportation authority) for each property on which the wells are located.

Statewide Rule 15 provides the requirements for inactive wells.<sup>7</sup> 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.<sup>8</sup>

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

(d) Plugging of inactive land wells required.

<sup>5</sup> Tex. Nat. Res. Code § 89.002(11); 16 Tex. Admin. Code § 3.15(a)(5).

<sup>6</sup> Statewide Rule 58 refers to 16 Tex. Admin. Code § 3.58.

<sup>7</sup> Statewide Rule 15 refers to 16 Tex. Admin. Code § 3.15.

<sup>8</sup> 16 Tex. Admin. Code § 3.15(a)(6).

- (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.<sup>9</sup>

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

Statewide Rule 15(e) allows plugging extensions only if five specified criteria are met as follows:

- (1) the Commission or its delegate approves the operator's Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);
- (2) the operator has a current organization report;
- (3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;
- (4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and
- (5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.<sup>10</sup>

Thus, absent a good faith claim to operate, wells are not eligible for extensions to the plugging requirements in Statewide Rule 14 and 15 according to Statewide Rule 15(e).

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<sup>9</sup> 16 Tex. Admin. Code § 3.15(d).

<sup>10</sup> 16 Tex. Admin. Code § 3.15(e).

In sum, Respondent must report production for active wells. If the Wells are inactive, they must be plugged or have plugging extensions. If Respondent does not have a good faith claim to operate the Wells, then they are not eligible for plugging extensions.

### **Discussion of Evidence<sup>11</sup>**

Complainant had no witness other than herself and offered fifteen exhibits. Respondent had no witness other than Mr. Charles Schroeder and offered three exhibits.

### **Summary of Complainant's Evidence and Argument**

Complainant asserts Chisholm does not have a good faith claim, the wells are inactive and should be plugged by Chisholm. Jones provided a copy of the Oil and Gas Lease ("Contractual Lease") executed December 14, 2006.

Complainant brought the Complaint on behalf of herself and her brothers, Merrill Wayne Eaton and Marshall Dwayne Eaton. Complainant testified that the Contractual Lease terminated six months after the end of the primary term if not held by production. She further testified and provided photos as to the current condition of the property. The pictures show the area around the Wells overgrown with brush. Complainant testified that the Wells are not operational. Electricity has been disconnected.

Commission records indicate that there has been no reported production from Well No. 1 since May 2015. In May 2015, Well No. 1 was converted to a disposal well. There has been no reported injection for Well No. 1 since August 2016. Commission records indicate that there has been no reported production from Well No. 2 since August 2016. Complainant testified that they stopped getting royalty checks in August-September of 2016.<sup>12</sup>

### **Summary of Respondent's Evidence and Argument**

Respondent asserts that he has a good faith claim to operate the lease because he has a currently valid oil and gas lease. Respondent produced oil from the Wells. Respondent testified that they were operating at a loss and decided to shut in the Wells and let gas produce.<sup>13</sup> Respondent testified that the gas is, "just casing gas flowing up through the tubing"<sup>14</sup> which is captured by a pipeline and sold to West Texas Gas ("WTG"), a gas purchaser. Respondent explains that the amounts of gas sales are so small that they are not enough to distribute sales proceeds to Complainant.

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<sup>11</sup> The transcript for the hearing on August 20, 2018 is referred to as "Tr.[page no(s).] at [pages: lines]."

<sup>12</sup> Tr. 21 at 21-24

<sup>13</sup> Tr. 29 at 14-16.

<sup>14</sup> Tr. 38 at 11-12.



Respondent testified that his Exhibit B demonstrates a history of all production on the Wells. Respondent's Exhibit B is composed of internal business records that differ from the records of the Railroad Commission. The entries in the "Historical Distribution Summary Listing" which is part of Exhibit B demonstrate months long gaps in production, the last production occurring in January 2018. Respondent testified that production was not reported to the Commission due to a clerical error on the part of the Railroad Commission or his own. Respondent gave conflicting testimony as to whether the electricity had been disconnected or not. Initially Respondent testified that the electricity had not been disconnected. Later, Respondent testified that Well No. 2 "does produce oil if they hook the electricity back up."<sup>15</sup>

### **Examiners' Analysis**

The issue before the Commission are whether Chisholm holds a good faith claim to a continuing right to operate the Wells and if not, whether Chisholm should be ordered to plug the Wells in accordance with Statewide Rule 14. The Examiners recommend the Complainant's request for relief be granted and the Commission find there was no reasonably satisfactory showing of a good faith claim to operate the Wells and the Wells should be ordered plugged.

A good faith claim is defined 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 currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.<sup>16</sup>

Respondent claims he has a good faith claim to operate the Lease by showing he has a valid oil and gas lease or "Contractual Lease". The Contractual Lease requires continual operations after the primary term, and the primary term ended in 2009. Respondent testified that the well can produce oil, but it is not cost effective for Respondent to produce the oil. Respondent testified that he is keeping the Contractual Lease alive by producing casing head gas from Well No. 2 in very small amounts. Respondent's claim that there has been production of casing head gas to "hold the lease" is not born out by Commission records. Respondent's explanation that Railroad Commission Records are incorrect due to a clerical error on the Commission's part or his own is unsupported by any evidence.

According to Commission records, there has been no production on Well No. 1 since May 2015. Well No. 1 was converted to a disposal well in May 2015. There is no reported injection on Well No. 1 since August of 2016. There has been no reported production on Well No. 2 since August 2016. Railroad Commission records reflect that

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<sup>15</sup> Tr. 42 at 6-7.

<sup>16</sup> Tex. Nat. Res. Code § 89.002(11); 16 Tex. Admin. Code § 3.15(a)(5).

years prior to 2015 for Well No. 1, and 2016 for Well No. 2, Respondent regularly reported monthly production.

To prove continued production on the Wells, Respondent provided internal business documents that were not consistent with the official records of the Railroad Commission. Respondent claims that his internal business records reflect all production from the Wells.<sup>17</sup> The records provided by Respondent do not appear to be complete when examined in comparison to Railroad Commission Records and the testimony of both Complainant and Respondent. These records indicate production on Well No. 2 began in 2015. It appears production began much earlier.

Respondent's records indicate months long gaps in production on Well No. 2 after 2016. Additionally, Respondent's records indicate there has been no production on Well No. 2 since January 2018. Respondent's argument that the Contractual Lease is being held with gas production is not supported by his own records which show that production has not been constant and, according to its own exhibit, ended in January 2018.

Respondent is attempting to prove his good faith claim by showing he has a valid Contractual Lease. To determine if the Contractual Lease has terminated for lack of production, production records have been offered by both parties. There are two sets of records to show production, the official records of the RRC as self-reported over years by Respondent and the internal business documents provided by Respondent at hearing.

Respondent's claim that a clerical error on the part of the RRC or himself caused the failure to report this alleged production is not only unsupported with any evidence but is undercut by the years of previous successful production reporting made by Respondent. These years of successful reporting demonstrate not only Respondent's understanding of the clerical process to report production but the responsibility to truthfully report production as required by Statewide Rule 58. In examining both sets of records and considering the testimony of both parties, the most credible records of production are the Railroad Commission's records which demonstrate production ended in 2016.

Complainant provided sufficient evidence to demonstrate that the Lease Respondent relies on has terminated for lack of production. Respondent has failed to make a reasonably satisfactory showing of his good faith claim to operate the Lease.

The Examiners recommend the Complainant's request for relief be granted. The Examiners recommend the Commission find Respondent failed to provide a reasonably satisfactory showing of a good faith claim to operate the Wells, and order Respondent to plug the Wells in accordance with Commission rules.

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<sup>17</sup> Tr. 29 at 8-10.



## **Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law**

Based on the record in this case and evidence presented, the Examiners recommend the Commission find that Chisholm Operating, Inc. does not have a good faith claim and order the Wells plugged and abandoned in accordance with Statewide Rule 14. The Examiners recommend the Commission adopt the following Findings of Fact and Conclusions of Law.

### **Findings of Fact**

1. On or about April 13, 2018, Marilyn Jones, on behalf of herself and her brothers, filed with the Commission a written complaint ("Complaint") alleging that Chisholm Operating, Inc. (Operator No. 149454) does not have a good faith claim to operate the Eaton (233971) Lease, Well No. 1, Britni Ann (Ellenburger) Field, Callahan County, Texas or the Eaton (30068) Lease, Well No. 2, Britni Ann (Ellenburger) Field, Callahan County, Texas ("Wells")
2. Marilyn Jones, Merrill Wayne Eaton, and Marshall Dwayne Eaton are mineral owners of the Wells subject of the Complaint.
3. On or about December 14, 2006, Complainants and Operator executed an Oil and Gas Lease ("Contractual Lease").
4. The lease states that the primary term of the lease is three years and as long thereafter as oil and gas or either is produced from the leased premises.
5. On or about April 26, 2018, Chisholm Operating, Inc. was notified of the Complaint when the Hearing Division requested the operator to submit evidence to the administrative law judge of its good faith claim or request a hearing.
6. On May 25, 2018, Chisholm Operating, Inc. requested a hearing on the merits.
7. On July 10, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") via first-class mail to Marilyn Jones and Chisholm Operating, Inc. setting a hearing date of August 20, 2018. The Notice contains: (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. The hearing was held on August 20, 2018. Consequently, all parties received more than 10 days' notice. Complainant and Respondent appeared at the hearing.

8. Commission records indicate that Chisholm Operating, Inc. designated itself to the Commission as the operator of the Eaton (233971) Lease, Well No. 1, Britni Ann (Ellenburger) Field, Callahan County, Texas, effective August 6, 2007.
9. Commission records indicate that there has been no reported oil or gas production from the Eaton (233971) Lease, Well No. 1, since May 2015 when it was converted to an injection well.
10. Commission records indicate that there has been no reported injection into the Eaton (233971) Lease, Well No. 1 since August 2016.
11. Commission records indicate that Chisholm Operating, Inc. designated itself to the Commission as the operator of the Eaton (30068) Lease, Well No. 2, Britni Ann (Ellenburger) Field, Callahan County, Texas, effective March 15, 2008.
12. Commission records indicate that there has been no reported production from the Eaton, Lease No. 30068 since August 2016.
13. Commission records are the most credible records from which to determine production from the Wells.
14. Electricity has been disconnected from the Wells.
15. The wells are not operational. The surrounding areas are overgrown with brush.
16. 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)].
17. Operator is defined as a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. [Tex. Nat. Res. Code § 89.002(a)(2)].

### **Conclusions of Law**

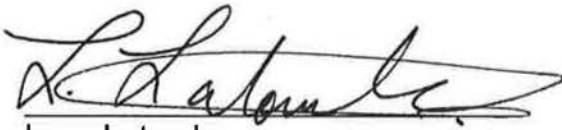
1. Proper notice of hearing was timely issued to appropriate persons entitled to notice. See, e.g., TEX. GOV'T CODE §§ 2001.051, 052; 16 TEX. ADMIN. CODE §§ 1.42, 1.45.
2. The Commission has jurisdiction in this case. See, e.g., TEX. NAT. RES. CODE § 81.051.

3. Chisholm has not provided sufficient evidence that it has currently a valid oil and gas lease.
4. Chisholm Operating, Inc. does not have a good faith claim to operate the Eaton (233971) Lease, Well No. 1, Britni Ann (Ellenburger) Field, Callahan County, Texas or the Eaton (30068) Lease, Well No. 2, Britni Ann (Ellenburger) Field, Callahan County, Texas.
5. Chisholm Operating, Inc., as the regulatory operator of the Eaton (233971) Lease, Well No. 1, Britni Ann (Ellenburger) Field, Callahan County, Texas, and the Eaton (30068) Lease, Well No. 2, Britni Ann (Ellenburger) Field, Callahan County, Texas has the plugging obligation.

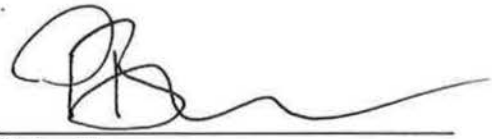
### Recommendations

The Administrative Law Judge and Technical Examiner recommend the Commission find that Chisholm Operating Inc. does not have a good faith claim to operate the Eaton (30068) Lease, Well No. 2, Britni Ann (Ellenburger) Field, Callahan County, Texas or the Eaton (233971) Lease, Well No. 1, Britni Ann (Ellenburger) Field, Callahan County, Texas, and order Chisholm Operating, Inc. to plug the Wells and abandon the Lease in accordance with Statewide Rule 14.

Respectfully Submitted,



Lynn Latombe  
Administrative Law Judge



Peter Buva  
Technical Examiner