

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**Oil & Gas Docket No. 8A-0310716**

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**APPLICATION OF KINDER MORGAN PRODUCTION CO LLC TO ADMINISTRATIVELY AMEND ITS FORM H-9 FOR INJECTION AUTHORITY UNDER STATEWIDE RULE 36 FOR THE TALL COTTON PROJECT, KINDER MORGAN BERGEN LEASE AND FUTURE LEASES, TALL COTTON (SAN ANDRES) FIELD, GAINES COUNTY, TEXAS**

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**Oil & Gas Docket No. 8A-0310718**

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**APPLICATION OF KINDER MORGAN PRODUCTION CO LLC TO AMEND FIELD RULES FOR THE TALL COTTON (SAN ANDRES) FIELD, GAINES COUNTY, TEXAS**

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**FINAL ORDER**

The Railroad Commission ("RRC" or "Commission") finds that after statutory notice in the above-docketed cases, heard on June 5, June 19 and October 3, 2018, the presiding Administrative Law Judge and Technical Examiner have made and filed a Proposal for Decision containing findings of fact and conclusions of law, which was served on all parties of record, and that this proceeding was duly submitted to the Railroad Commission of Texas at a conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the Proposal for Decision and the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts the following findings of fact and conclusions of law.

**Findings of Fact**

1. Kinder Morgan Production Company LLC ("Kinder Morgan" or "Applicant") filed an application requesting a determination that additional leases can be added administratively to its Tall Cotton Project after an initial hearing without need for additional hearings. Commission Staff ("Staff") maintains that Statewide Rule 36 requires a hearing to add additional leases or unit.
2. Applicant's Tall Cotton Project is a carbon dioxide (CO<sub>2</sub>) flood in the Sand Andres formation in Gaines County. The injections contain hydrogen sulfide (H<sub>2</sub>S) because as Kinder Morgan cycles the CO<sub>2</sub>, the CO<sub>2</sub> turns from sweet to sour.
3. When the project began, the CO<sub>2</sub> became gradually sour due to Kinder Morgan cycling the CO<sub>2</sub> with gas from the Field. When Kinder Morgan started the project, it injected pure pipeline CO<sub>2</sub> and over time the produced gas stream from the reservoir was commingled with the CO<sub>2</sub>, introducing H<sub>2</sub>S gas into the injection stream. At first, the levels of H<sub>2</sub>S were low and did not trigger a need for a hearing. As the project continued, the levels of H<sub>2</sub>S increased, requiring a hearing.

4. Kinder Morgan originally requested authorization for H<sub>2</sub>S injection on its Bergen Lease, Lease No. 70250, ("Lease") in the Tall Cotton (San Andres) Field ("Field"). In 2017, there was a Rule 36 H<sub>2</sub>S injection public hearing for Kinder Morgan's Tall Cotton Project ("Prior Hearing"). In the Prior Hearing, the Form H-9 and the contingency plan only cover wells on the Lease and the area of the Lease. In a letter dated March 8, 2017, Staff notified Kinder Morgan that the district office has no objection and because the injection project encompasses public roads and the ROE is in excess of 3,000 feet, a hearing is required. The approved Form H-9 was signed March 7, 2017. After the Prior Hearing, the Commission issued an order ("Prior Order") approving H<sub>2</sub>S injection on the Lease.
5. Kinder Morgan now seeks to expand the Tall Cotton Project into additional sections in the area. Thus far, the project (contained within Section 427) has produced over 1,403,490 barrels of oil and 1294731 thousand cubic feet of casinghead gas. Kinder Morgan is ready to expand into Section 426. Kinder Morgan anticipates the project could be expanded into 12-14 additional sections. Kinder Morgan's total expected project size is approximately 9,800 acres.
6. Kinder Morgan discussed with Staff its request for administrative approval to add leases to the authority granted by the Commission in the Prior Order. Staff notified Kinder Morgan that additional leases must be approved after a hearing if conditions exist triggering the hearing requirement.
7. Kinder Morgan sent a letter to Staff dated March 12, 2018, requesting a hearing on Staff's determination that additional hearings are required.
8. On May 7, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Kinder Morgan and Staff setting a hearing date of June 15, 2018. Consequently, the 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 June 15, 2018, as noticed. Applicant and Staff appeared at the hearing. The hearing was not completed on June 15, so the parties agreed to resume the hearing on June 19. The parties were also provided notice of and appeared at a post-hearing conference on October 3, 2018.
9. Applicant claims the Prior Hearing was sufficient to apply to the proposed expansion of the Tall Cotton Project under Statewide Rule 36. Kinder Morgan rejects Staff's interpretation and implementation of Statewide Rule 36 that expansions involving additional leases that have not previously been approved require a hearing for approval (if conditions exist triggering the hearing requirement).

10. Staff maintains Statewide Rule 36 provides for H<sub>2</sub>S injection approval on a lease-by-lease (or unit-by-unit) basis. Staff asserts it has been Commission practice to require a hearing for injection on a lease that has not been previously approved for H<sub>2</sub>S injection.
11. Alternatively (in Docket No. 8A-0310718), Applicant requests a field rule allowing H<sub>2</sub>S project expansions to be administratively approved. Applicant proposed the following field rule:

Rule 5: Operators of Enhanced Recovery Operations may administratively amend Form H-9 and contingency plans without the need for additional public hearings after an initial public hearing. Notice of the amended H-9 must be provided to persons within an H<sub>2</sub>S radius of exposure. District Staff must approve the H-9 before the amended or expanded operations may commence.
12. Applicant asserts it is entitled to a field rule amendment due to the remote location of the project, the unique nature of greenfield flood operations, the substantial delay that would be incurred by unnecessary hearings, the prevention of waste, the protection of correlative rights and the lack of any negative impact to public safety.

#### Conclusions of Law

1. Proper notice of hearing was timely issued to 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. Statewide Rule 36 is silent regarding whether a separate hearing is required for each Commission lease, such that a project on one lease cannot expand beyond that lease without another public hearing.
4. The Commission has discretion to implement Statewide Rule 36 such that if a project expands beyond the identified Commission lease that was approved, a hearing is required to add the new lease.
5. The Commission's current implementation of Statewide Rule 36 is legally sufficient and reasonable.
6. Applicant's request to require change in the implementation of Statewide Rule 36 should be denied.
7. Applicant's request for a field rule allowing H<sub>2</sub>S project expansions to be administratively approved should be granted.

It is **ORDERED** that Kinder Morgan Production Company LLC's application to require Commission staff to grant administrative approval of hydrogen sulfide injection into additional leases other than its Bergen (70250) Lease, which is approved for H<sub>2</sub>S injection (see, e.g., Oil & Gas Docket No. 8A-0304335), is **DENIED**. It is **ORDERED** that Kinder Morgan Production Company, LLC's application to amend the field rules for the Tall Cotton (San Andres) Field is **GRANTED**. The field rules for the Tall Cotton (San Andres) Field are hereby amended to add the following Rule 5:

Rule 5: Operators of Enhanced Recovery Operations may administratively amend Form H-9 and contingency plans without the need for additional public hearings after an initial public hearing. Notice of the amended H-9 must be provided to persons within an H<sub>2</sub>S radius of exposure. District Staff must approve the H-9 before the amended or expanded operations may commence.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code § 2001.142, by agreement under Tex. Gov't Code § 2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code § 2001.146(e). If a timely motion for rehearing of an application is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code § 2001.146(e) and 16 Tex. Admin. Code § 1.128(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 100 days from the date the Commission Order is signed.

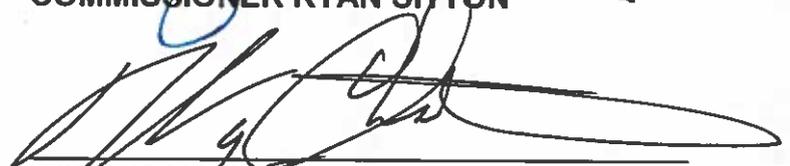
Each exception to the Proposal for Decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

Signed on February 26, 2019.

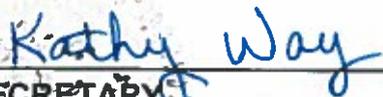
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COMMISSIONER WAYNE CHRISTIAN

ATTEST

  
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SECRETARY

