



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL & GAS DOCKET NO. 01-0312245**

**APPLICATION OF EXCO OPERATING COMPANY, LP (256915) FOR AN EXCEPTION TO STATEWIDE RULE 32 FOR THE WINTERBOTHAM ZAV (15744) LEASE, WELL NO. R 3H, BRISCOE RANCH (EAGLE FORD) FIELD, ZAVALA COUNTY, TEXAS**

### PROPOSAL FOR DECISION

**HEARD BY:** Robert Musick, P.G. - Technical Hearings Examiner  
Jennifer N. Cook - Administrative Law Judge

### PROCEDURAL HISTORY:

Application Filed:	June 20, 2018
Notice of Pre-Hearing Issued:	July 31, 2018
Pre-Hearing Conference:	September 7, 2018
Hearing Date:	December 18, 2018
Late-Filed Exhibits:	January 9, 2019
Hearing Transcript Received:	January 15, 2019
Close of Record:	January 29, 2019
Proposal for Decision Issued:	September 26, 2019

### APPEARANCES:

#### **For Applicant, EXCO Operating Company, LP:**

David Nelson, Attorney, *Gross and Nelson*  
Aaron Christian, Attorney, Arcadi Jackson

#### **Witnesses for the Applicant:**

Dale Miller, Graduate Engineer, Consultant, *Miller Consulting, Inc.*

#### **For Protestant, Williams MLP Operating, LLC/Mockingbird Midstream Gas Services, LLC**

John R. Hays, Jr., Attorney, *Jackson Walker, LLP*  
Jean Phillips, Attorney, *Jackson Walker, LLP*

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### **CASE SUMMARY<sup>1</sup>**

EXCO Operating Company, LP (“Exco”) (256915) seeks an exception to 16 Tex. Admin. Code § 3.32 (“Statewide Rule 32”) to flare casinghead gas from one flare point associated with Winterbotham ZAV (15744) Lease (“Lease”), Well No. R 3H (referred to as “Well No. R 3H” or “Subject Well”), in the Briscoe Ranch (Eagle Ford) Field (“Field”), in Zavala County, Texas. The Subject Well is not connected to a gas gathering system, although a gathering system is in close proximity and has historically serviced other wells on the Lease. No agreement is currently in effect to either sell or transport the gas. Exco was previously granted administrative flaring authority under Statewide Rule 32 for Well No. R 3H under Permit No. 32504. The administrative permit authorized 350 thousand cubic feet (“Mcf”) per day for a 90-day period from January 6, 2018 to April 6, 2018; and a second 90-day period authorizing 500 Mcf per day from April 7, 2018 to July 6, 2018, for a total of 180 days of administrative authority. To continue the flaring authority of casinghead gas, Exco requested a hearing to be conducted to seek continued flaring authority for the Well No. R 3H flare point. Exco is seeking flaring authority of 500 Mcf per day for two years expiring July 6, 2020 but indicated in the hearing that a reduced volume would be acceptable to Exco.

The application is protested by Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC (collectively, “Williams” or “Protestants”). Williams is the operator of a gas gathering system located approximately 1,000 feet from the Subject Well and has historically provided a sales pipeline to other nearby wells on the Lease. In its opening statement as a protestant, Williams claims that the gas from Well No. R 3H is covered by a dedication agreement, and is addressed in Oil and Gas Docket No. 01-0308609, where Exco requested to flare wells on the Lease. Williams also asserts that Exco does not take in consideration both oil and gas revenues in their economic assessment but limits their evaluation to potential casinghead gas volumes generated from the Subject Well on the Lease. Williams argues that Exco is in violation of Commission’s rules.

Based on the evidence presented at the hearing, the Technical Examiner and Administrative Law Judge (collectively, “Examiners”) recommend approval of the flaring authority as described in this proposal for decision (“PFD”), with a daily maximum flaring authority of 266 Mcf/day, from July 7, 2018 to July 6, 2020.

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<sup>1</sup> The transcript for the pre-hearing conference held on September 7, 2018, is referred to as PHC Tr. [pg:ln(s)] and the transcript for the hearing held on December 18, 2018, is referred to as “Hearing Tr. [pg:ln(s)]”. Applicant’s exhibits are referred to as “PHC Exco Ex. [exhibit no.]” or “Hearing Exco Ex. [exhibit no.]”; and the protestant’s exhibits are referred to as “PHC Williams Ex. [exhibit no.]” or “Hearing Williams Ex. [exhibit no.]”.

## **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 June 14, 2018, a request for a hearing was received from Exco to consider granting a flaring permit for two years for Well No. R 3H.<sup>2</sup> On July 31, 2018, the Hearings Division of the Commission sent a Notice of Hearing (“Notice”) to the Applicant and all off-set operators in the Field setting a hearing date for September 7, 2018.<sup>3</sup> 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.<sup>4</sup> By letter sent September 4, 2018, to all on the service list, the noticed hearing was converted to a prehearing conference. The purpose of the prehearing conference was to determine the parties and party status, set a docket control order if necessary, and set a date for the hearing on the merits. On September 7, 2018, a pre-hearing conference was held. The parties agreed on the record to a hearing on the merits for December 18, 2018. On December 18, 2018, a hearing on the merits was held. Applicant and Protestants attended and participated in both the pre-hearing conference and the hearing on the merits.

## **APPLICABLE LEGAL AUTHORITY**

Statewide Rule 32 governs the utilization for legal purposes of natural gas and casinghead gas produced under the jurisdiction of the Commission. Per current practice, applications to administratively flare casinghead gas will initially be approved for incremental periods, up to a maximum of 180 days. In the event an operator anticipates a need for additional time beyond the 180 days to flare, the Commission can grant an extension only when and if the operator demonstrates the need for such an extension through a hearing scheduled by the Commission. Pursuant to Statewide Rule 32(i)(3), an operator shall file an application and fee for renewal of an exception with the Commission prior to the expiration of the existing exception.

Statewide Rule 32(j)(1) states:

An operator may request a hearing on any application for an exception or

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<sup>2</sup> Hearing Exco Exhibit No. 8.

<sup>3</sup> See Notice of Hearing issued July 31, 2018.

<sup>4</sup> See Tex. Gov’t Code §§ 2001.051, .052; 16 Tex. Admin. Code §§ 1.41, 1.42, 1.45, 3.46.

exception renewal required by this section.<sup>5</sup>

Exco seeks relief pursuant to Statewide Rule 32(h)(4), which states:

Requests for exceptions for more than 180-days and volumes greater than 50 mcf of hydrocarbon gas per day shall be granted only in a final order signed by the commission.<sup>6</sup>

Additionally, Exco seeks relief under Statewide Rule 32(f)(2)(E), which states:

(f) Gas Releases in Oil and Gas Production Operations. . . .

(2) The commission or the commission's delegate may administratively grant or renew an exception to the requirements or limitations of this subsection subject to the requirements of subsection (h) to allow additional releases of gas if the operator of a well or production facility presents information to show the necessity for the release. The volume of gas that is released must be measured or estimated in accordance with § 3.27 of this title (relating to Gas To Be Measured and Surface Commingling of Gas) and reported on the appropriate commission form and shall be charged to the operator's allowable production. Necessity for the release includes, but is not limited to, the following situations: . . . .

(E) Avoiding curtailment of gas production which will result in a reduction of ultimate recovery from a gas well or oil reservoir.

On June 20, 2018, Exco filed the current application and request for hearing.<sup>7</sup> Exco has continued to flare per Statewide Rule 32(h)(7), which states in part:

If an operator files an application, accompanied by the required fee, for renewal of an existing exception to the requirements of this section at least 21 days before the expiration of the existing exception and the existing authority expires before the commission acts on the application, the operator is authorized to continue to operate under the existing authority pending final commission action on the application.<sup>8</sup>

Historically, permits to flare have been granted for situations where the cost to build the facilities to treat and/or transport the gas is uneconomical, for line pressure

<sup>5</sup> 16 Tex. Admin. Code § 3.32(j)(1).

<sup>6</sup> 16 Tex. Admin. Code § 3.32(h)(4).

<sup>7</sup> Hearing Exco Exhibit No. 8.

<sup>8</sup> 16 Tex. Admin. Code § 3.32(h)(7).

issues, line capacity issues, or to allow flaring during periodic upset or routine maintenance. Economics have been based on the estimated value of the gas. For those previously granted authority, they have stated or shown that waste will result if the wells are shut-in due to the inability to flare through an ultimate reduction of recoverable hydrocarbons and/or damage to the reservoir.<sup>9</sup>

## **DISCUSSION OF THE EVIDENCE**

Exco provided testimony of one witness, Mr. Dale Miller, and 14 exhibits at the hearing. Williams did not provide any evidence at the hearing but chose to submit a late filed written response that included 15 exhibits.

### **Applicant's Evidence**

Exco suggests it meets the criteria to grant a flaring exception pursuant to Statewide Rule 32. At the time of the hearing, the well flared an average of 83 Mcf of casinghead gas per day based on production reports. Exco indicates construction of a pipeline to connect Well No. R 3H will cost in excess of half-million dollars and is uneconomic at this time. Therefore, Exco is seeking flaring authority under Statewide Rule 32.<sup>10</sup>

#### **i. Field, Lease and Well**

Mr. Dale Miller, graduate engineer, testified on behalf of Exco. He testified that Well No. R 3H was completed on the Winterbotham ZAV (15744) Lease in the Briscoe Ranch (Eagle Ford) Field (Field No. 12018200) in Zavala County, Texas.<sup>11</sup> The Subject Well is the only one on the pad, although initially two additional wells identified as Well Nos. R 4H and R-5H were scheduled to be drilled.<sup>12</sup>

Well No. R 3H is 17,330 feet total measured depth (MD), which includes 6,652 feet of vertical well casing and approximately 10,500 feet of horizontal drainhole casing.<sup>13</sup> The Subject Well was completed on January 28, 2015, under Drilling Permit No. 776144 and assigned API No. 42-507-33091.<sup>14</sup>

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<sup>9</sup> See <https://rrc.texas.gov/hearings/dockets/oil-gas-proposals-for-decision-and-orders/index-for-332>.

<sup>10</sup> Hearing Tr. Pg. 9, Lns. 1-25.

<sup>11</sup> Hearing Exco Exhibit No. 5.

<sup>12</sup> Hearing Tr. Pg. 18, Lns. 15-25.

<sup>13</sup> Hearing Tr. Pg. 21, Lns. 1-25; Hearing Exco Exhibit No. 4.

<sup>14</sup> Hearing Exco Exhibit No. 4.

Mr. Miller testified that the initial potential test performed immediately after completion of the Subject Well and reported on Commission Form W-2 indicates potential production is: 571 barrels of oil ("BO") per day; 133 Mcf per day of casinghead gas; and 299 barrels per day of water.

## ii. Flaring Authority

Mr. Miller testified that all the recovered gas was being used at their central facilities for operational purposes until January 2018.<sup>15</sup> Until January 2018, Exco was using their low gas volumes by running all their heater treaters and everything else.<sup>16</sup> Commission records indicate flaring commenced January 1, 2018 and has continued up to the hearing date. Mr. Miller testified that as of October 1, 2018, an average of 83.5 Mcf per day has been flared.<sup>17</sup>

Exco was previously granted administrative flaring authority under Statewide Rule 32, for Well No. R 3H and its associated flare point under Permit No. 32504.<sup>18</sup> The administrative permit authorized 350 Mcf per day for a 90-day period from January 6, 2018 to April 6, 2018; and a second 90-day period authorizing 500 Mcf per day from April 7, 2018 to July 6, 2018, for a total of 180 days of administrative authority.<sup>19</sup>

To continue the flaring authority of casinghead gas, Exco requested a hearing for Well No. R 3H and its associated flare point.<sup>20</sup> Exco is seeking flaring authority of 500 Mcf per day for two years, from July 7, 2018 to July 6, 2020, but indicated they would not object to a reduced volume.<sup>21</sup> Mr. Miller stated, "We are not flaring anywhere near 500 Mcf per day from this well, ....we're just saying we don't have a pipeline."<sup>22</sup>

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<sup>15</sup> Hearing Tr. Pg. 25, Lns. 8-14.

<sup>16</sup> Hearing Tr. Pg. 25, Lns. 8-12.

<sup>17</sup> Hearing Tr. Pg. 25, Lns. 15-25.

<sup>18</sup> Hearing Exco Exhibit No. 7.

<sup>19</sup> *Id.*

<sup>20</sup> Hearing Exco Exhibit No. 8.

<sup>21</sup> Hearing Tr. Pg. 43, Lns. 1-11.

<sup>22</sup> Hearing Tr. Pg. 43, Lns. 12-17.

### iii. Production Data

Exco provided oil and gas production data from January 1, 2015 to October 1, 2018, a 46-month period.<sup>23</sup> The oil production data indicates an average of 4,565 BO/Month based on a 46-month time period with the highest oil production reported at 13,486 BO for February 2015. Mr. Miller testified the production data indicates the most recent monthly average is 1,822 BO per month,<sup>24</sup> showing a decline which is expected for the reservoir.<sup>25</sup>

The gas production data indicates an average casinghead gas volume of 4,899 Mcf per month over a 45-month time period starting in February 2015 to October 1, 2018.

Mr. Miller testified the remaining recoverable oil and gas reserves are based on the production data<sup>26</sup> using a hyperbolic decline curve for an unconventional reservoir.<sup>27</sup> He testified he has not calculated the ultimate recovery of oil from the well, but gas reserves are estimated at 241,715 Mcf based on the production data and decline curve for the reservoir.<sup>28</sup>

### iv. Pipeline

Williams' gas gathering line is not connected to the Subject Well. The Williams gas gathering line is a 6.63-inch intra-state gas pipeline system located approximately one thousand feet to the West of Well No. R 3H.<sup>29</sup> Mr. Miller also testified that the Williams gas gathering line is not the closest gas gathering line to the Subject Well.<sup>30</sup> A natural gas gathering line, not associated with the Williams gathering line, is the closest gas conveyance line located approximately 150 feet west of the Subject Well.<sup>31</sup>

Mr. Miller testified that the Williams pipeline system has been physically connected to other wells on the Lease, including the R 1H Well (API No. 33089), with its well pad

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<sup>23</sup> Hearing Exco Exhibit No. 6.

<sup>24</sup> Hearing Tr. Pg. 49, Lns. 1-25.

<sup>25</sup> Hearing Tr. Pg. 31, Ln. 1-7.

<sup>26</sup> Hearing Tr. Pg. 30, Lns. 23-25.

<sup>27</sup> Hearing Tr. Pg. 31, Ln. 1-7.

<sup>28</sup> Hearing Tr. Pgs. 31 and 56, Ln. 1-25.

<sup>29</sup> Hearing Tr. Pg. 19, Lns. 12-15; Hearing Exco Exhibit Nos. 2, 3, 11.

<sup>30</sup> Hearing Tr. Pg. 19, Lns. 22-25.

<sup>31</sup> The external Commission web page's geographical information system map viewer referenced by Mr. Miller in his testimony identifies the Energy Transfer Company's natural gas gathering line to be the nearest gas gathering system located about 150 feet from the well.



located about 1,500 feet to the southwest of the Subject Well.<sup>32</sup> Mr. Miller asserts the R 3H Well was not connected because of the low volume of gas being produced from the beginning, about 133 Mcf per day on initial completion.<sup>33</sup>

**v. Need to Flare – Economic Assessment**

The hearing record indicates connecting to the Williams gathering system is uneconomic at this time.<sup>34</sup> Exco presented economic estimates that connecting and selling the gas to Williams gathering system will result in a net loss over the lifetime of the well. The economic estimates considered the net gas sales over the lifetime of the well at \$543,858.75, minus the operations costs of \$108,771.75, the Texas State Severance Tax of \$40,789.35, and the pipeline connection fee of \$435,000, which establishes a net loss of \$40,702 over the lifetime of the well.<sup>35</sup>

Mr. Miller testified gross oil revenue for the Subject Well is approximately \$91,100 per month; and gross gas revenue is about \$7,594.50. If both are combined, the well will generate \$98,694.50/month.<sup>36</sup> Mr. Miller testified that combining the oil and gas revenue may result in a net positive revenue compared to the net loss when using gas revenues only, but he argued that several assumptions are being used that do not exist on this pipeline system to get to that net positive value. For example, there is no accounting for a proposed charge of \$5.92 per MMBtu for gas that Williams has proposed to charge Exco to go through their pipeline.<sup>37</sup> Also, Mr. Miller asserted that a gas pipeline connection fee of \$195,000, along with the operational costs established in the economic assessment, allow gas prices (at \$3.00) and low gas volumes will result in a loss.<sup>38</sup> The economic assessment does not take into consideration any treatment for the elevated concentrations of hydrogen sulfide (“H<sub>2</sub>S”) gas associated with the Subject Well.<sup>39</sup>

Mr. Miller testified the oil is the primary component and objective for the oil well.<sup>40</sup> He claims that gas production is typically less than 20 percent of the total revenue

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<sup>32</sup> Hearing Tr. Pg. 49, Lns. 1-25.

<sup>33</sup> Hearing Tr. Pg. 72-73, Lns. 1-25.

<sup>34</sup> Hearing Exco Exhibit No. 9.

<sup>35</sup> Hearing Tr. Pg. 32-37, Lns. 1-25; Hearing Exco Exhibit No. 9.

<sup>36</sup> Hearing Tr. Pgs. 49-52, Lns. 1-25.

<sup>37</sup> Hearing Tr. Pgs. 54-55, Lns. 1-25.

<sup>38</sup> Hearing Tr. Pg. 32-37 and 72-73, Lns. 1-25; Hearing Exco Exhibit No. 9.

<sup>39</sup> Hearing Tr. Pgs. 44, Lns. 1-25.

<sup>40</sup> Hearing Tr. Pg. 38, Lns. 24-25 and Pg. 39, Lns 1-15.

generated from an oil well.<sup>41</sup> He alleges that if oil revenue is included in the economic equation, then the operator will reach an economic limit before that well should be abandoned because money is being paid to a pipeline company to produce gas.<sup>42</sup>

**vi. Hydrogen Sulfide**

Gas from the Subject Well has elevated hydrogen sulfide (“H<sub>2</sub>S”) levels. Williams contends that flaring H<sub>2</sub>S gas has risks.<sup>43</sup> Well No. R 3H produces sour casinghead gas with H<sub>2</sub>S concentrations of 5,288 parts per million (“ppm”) based on the Form H-9 Certificate No. 082150.<sup>44</sup>

**Protestant’s Evidence and Argument**

Williams indicates a gathering system is physically connected to another well on the same lease, the R 1H Well.<sup>45</sup> Williams claims the gas from Well No. R 3H, the Subject Well for this case, is covered by a dedication and addressed in Oil and Gas Docket No. 01-0308609 (the “Parallel Exco case”).<sup>46</sup> Williams asserts that this case and the Parallel Exco case (O&G Docket No. 01-0308609) show fallacious economic calculations that do not take both oil and gas revenues into consideration, but limit the economic assessment and justification for flaring to the potential revenue associated with the gas stream associated with the lease wells.<sup>47</sup>

In the hearing, Williams requested to take official notice of oil and gas docket 01-0308609, a two-day hearing regarding flaring associated with the Lease. It was determined by the administrative law judge that Williams had an option to conduct an oral presentation during the hearing to enter information into the hearing record; or provide a late filed written presentation to enter evidence into the hearing record for consideration by the Examiners. Williams chose to submit a written presentation.<sup>48</sup>

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<sup>41</sup> Hearing Tr. Pg. 40, Lns. 1-25.

<sup>42</sup> Hearing Tr. Pg. 41 and 42, Lns. 1-25.

<sup>43</sup> Hearing Tr. Pg. 79, Lns. 9-12.

<sup>44</sup> Hearing Tr. Pg. 44, Lns. 1-25; Pg. 44, Lns. 1-25; Hearing Exco Exhibit Nos. 11 and 12.

<sup>45</sup> Hearing Tr. Pg. 48, Lns. 1-25.

<sup>46</sup> Hearing Tr. Pg. 11, Lns. 8-12.

<sup>47</sup> Hearing Tr. Pg. 12, Lns. 1-25.

<sup>48</sup> Hearing Tr. Pg. 86, Lns. 1-25.

Williams submitted part of the Parallel Exco case as its evidence. Williams' focused on the following factors discussed below:

**i. Dedication of Gas**

Williams alleges that the gas associated with the Lease is dedicated to Williams by agreement. Williams submitted the gas gathering contractual agreement between Mockingbird Midstream Gas Services, LLC and Chesapeake Exploration, LLC as evidence of their claim. Williams argues that the contract is relevant to the Subject Docket because it establishes the availability of a gas gathering system to the Subject Well. In addition, Williams argues that Exco is aware of the availability of the gathering system. The following documents were provided by Williams to support their argument that Exco is aware of the gas gathering pipeline and the gas is dedicated to Williams by agreement:

- Buyer Acknowledgement;
- Exco's statement regarding contract with Williams;
- Exco's Exhibit 18 in Docket No. 01-0308609;
- Exco's Exhibits 2 and 4 in Docket No. 01-0308609;
- Excerpts of the Testimony of Tyler Farquharson in Docket No. 01-0308609;
- Excerpts of the Testimony of Philip Points in Docket No. 01-0308609; and
- Excerpts of the Testimony of Jim Cantwell in Docket No. 01-0308609.

Exco maintains that there is a business dispute between it and Williams, and that Williams is protesting this case in an attempt to force Exco to give its gas to Williams. However, the parties do not agree on the monetary terms that would apply if Exco did use Williams as a gas gatherer.

**ii. Waste**

Williams contends that flaring constitutes waste. Exco contends that not flaring will result in the waste of oil.

**iii. Availability of Pipeline**

Williams contends its pipeline is available for Exco and always has been available. Williams asserts that the gas gathering system was expanded at no upfront cost to Exco to accommodate gas gathering from wells on the Lease.

**EXAMINERS' ANALYSIS OF THE EVIDENCE**

The case is not unusual except that it is protested by a midstream. In this case, the operator has received administrative authority for a 180-day period as allowed by Statewide Rule 32 and is seeking to continue to flare casinghead gas based on similar

circumstances observed in hundreds of flaring authority cases that have been heard by the Commission. The Examiners' recommend approval of the flaring authority as established by Attachment A to this PFD. Below is a brief analysis of the primary issues discussed in this case:

**i. Availability of Pipeline**

Williams provided documentation in an attempt to show that casinghead gas from the Lease is dedicated by a contractual agreement to Williams. However, Williams and Exco are not in agreement about the terms of any contractual agreement between the two of them. The Examiners have concluded whether or not there is a dedication of the gas is a contractual dispute which the Examiners decline to decide.

Williams argues that the sales pipeline located about 1,000 feet from the Subject Well is available to Exco, although not physically connected to the Subject Well. The Examiners conclude the sales pipeline cannot convey casinghead gas recovered by the Subject Well because it is not connected, therefore the pipeline is currently unavailable.

**ii. Gas Economic Assessment**

In the hearing, Exco performed a gas economic assessment which estimates connecting the gas from the Subject Well to the Williams gas gathering system will result in a net loss for gas stream revenue. Exco's gas economic assessment included:

- Lease agreement requirements;
- operational costs;
- low volumes of gas produced from the Subject Well based on production data;
- a prediction of future low volumes of gas based on the hyperbolic decline curve;
- the connection fee for connecting the well to Williams gathering system; and
- casinghead gas revenue based on the market price per Mcf.

In addition, Mr. Miller indicated that the revenue loss established in the economic assessment does not include treatment costs of the casinghead gas from the Subject Well to remove elevated concentrations of H<sub>2</sub>S.

The Examiners found Exco's economic assessment consistent with historic economic assessments in other flaring authority cases.

**iii. Waste**

Exco's waste argument is rooted in the ultimate loss of recoverable oil should Exco not be able to flare and need to shut in the wells. Exco's expert technical witness, Mr. Miller, testified that if the Subject Well is required to be shut in, due to failure to be

permitted to flare, there could be an ultimate reduction of recovery of oil from the Subject Well.

Williams waste argument is rooted on the waste of gas, should Exco be granted authority to flare. However, Williams argued that the failure to use or sell all the gas produced is unlawful. Statewide Rule 32 allows for the flaring and venting of gas, so long as it complies with Statewide Rule 32, or when an exception to Statewide Rule 32 is obtained.

The Examiners conclude that the primary value of the well is oil since the Subject Well's casinghead gas has elevated H<sub>2</sub>S concentrations. The Examiners give weight to Exco's gas economic analysis which is consistent with other Statewide Rule 32 cases.

#### **iv. Flaring Volumes**

Exco is seeking flaring authority for casinghead gas from the Subject Well of 500 Mcf per day for a period of two years, from July 7, 2018 to July 6, 2020. Exco's proposed flaring volume is consistent with its administrative authority under Permit No. 32504.<sup>49</sup>

Exco presented production and flaring volumes for the Subject Well from the initial completion date on January 1, 2015 to October 1, 2018.<sup>50</sup> The average flaring volume is about 83 Mcf / day, based on the October 2018 flaring data, which was the last month flaring volume available prior to the December 2018 hearing.

It is noted that the deliverability of gas is based on 100% of the gas produced from the Subject Well since the well is not connected to a sales line. Testimony from Mr. Miller indicates that gas volumes will decrease over time based on a hyperbolic decline curve, thus it is expected that the volumes represented in the hearing are maximum values based on the decline curve testimony. The gas deliverability for the Subject Well over a 12-month period, starting on November 1, 2017 through October 1, 2018, averages 3,956 Mcf / month of casinghead gas, with the maximum one month production volume being 8,105 Mcf for December 2017 (the peak production) and the one-month minimum production volumes being 2,589 Mcf for October 2018 (the lowest production).

Based on the production volumes discussed above and the hyperbolic decline expected as per the testimony, the Examiners conclude that 500 Mcf / day of flaring authority, or an equivalent volume of 15,250 / month is not warranted based on the production and flaring authority history. The Examiners recommend that a daily maximum volume be established based on the hearing record. The Examiners have taken the peak volume in the 12-month period preceding the hearing of 8,105 Mcf / month, (the

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<sup>49</sup> Hearing Exco Exhibit No.7.

<sup>50</sup> Hearing Exco Exhibit No.6.

December 2017 reported volume) and established a daily maximum value to ensure Exco would be compliant with the flaring permit conditions for the Subject Well. The Examiners' recommend flaring authority for the Subject Well to be 266 Mcf/day or 8,113 Mcf / month, based on the maximum one-monthly production volume (December 2017) of 8,105 Mcf within one year of the hearing.<sup>51</sup> The monthly volume of 8,105 Mcf was divided by a 30.5 (average days in a month) to obtain the daily maximum value of 266 Mcf/day. The daily volume to be flared is not out of the norm of what is typically authorized in other similar cases.<sup>52</sup>

#### **v. Summary and Recommendation**

Exco does not have a contract to gather, transport, or sell its gas. In addition, Williams gathering system is not connected to the Subject Well and associated flare point. Williams' protest appears to be motivated by a desire for the Commission to force Exco to enter into a contract with Williams, the terms of which appear to be at a substantial financial loss to Exco.

Based on the record in this case, the Examiners recommend Exco be granted an exception to Statewide Rule 32 for Well No. R 3H and associated flare point, with a daily maximum flaring authority of 266 Mcf/day, from July 7, 2018 to July 6, 2020. The volumes and period of flare authority are summarized in Attachment A of the PFD. The Examiners recommend the Commission adopt the following findings of fact and conclusions of law.

#### **FINDINGS OF FACT**

1. The following is the procedural history for the docket:
  - a. On June 14, 2018, a request for a hearing was received from EXCO Operating Company, LP ("Exco") (256915). Exco seeks an exception to Statewide Rule 32 to flare casinghead gas from one flare point associated with Winterbotham ZAV (15744) Lease ("Lease"), Well No. R 3H (referred to as "Well No. R 3H" or "Subject Well"), in the Briscoe Ranch (Eagle Ford) Field ("Field"), in Zavala County, Texas;
  - b. The application is protested by Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC (collectively, "Williams");
  - c. On July 31, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to the Applicant and all off-set operators in the Field setting a hearing date for September 7, 2018. Consequently, the parties received more than 10 days' notice. The Notice contains (1) a statement of the time, place, and nature

<sup>51</sup> Hearing Exco Exhibit No.6.

<sup>52</sup> See Previous Commission Order contained at: <https://rrc.texas.gov/hearings/dockets/oil-gas-proposals-for-decision-and-orders/index-for-332/>.

- 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;
- d. On September 4, 2018, a letter to all on the service list was sent to provide notice that the hearing scheduled for September 7, 2018, was converted to a prehearing conference;
  - e. The prehearing conference was held on September 7, 2018, as noticed. The purpose of the prehearing conference was to determine the parties and party status, set a docket control order if necessary, and set a date for the hearing on the merits. The parties agreed on the record to a hearing on the merits for December 18, 2018; and
  - f. A public hearing was held on December 18, 2018; Applicant and Williams appeared and participated.
2. Exco provided evidence it does not currently have a contract with Williams to utilize the Williams gas gathering system.
  3. The Subject Well is not connected to a gas gathering system.
  4. Williams is the operator of a gas gathering system located approximately 1,000 feet from the Subject Well and has historically provided a sales pipeline to other nearby wells on the Lease.
  5. To continue the flaring authority of casinghead gas, Exco requested a hearing to be conducted to seek continued flaring authority for Well No. R 3H flare point. Exco is seeking flaring authority of 500 Mcf / day for two years, from July 7, 2018 to July 6, 2020.
  6. Exco was previously granted administrative flaring authority under Statewide Rule 32 for Well No. R 3H under Permit No. 32504. The administrative permit authorized 350 thousand cubic feet ("Mcf") per day for a 90-day period from January 6, 2018 to April 6, 2018; and a second 90-day period authorizing 500 Mcf per day from April 7, 2018 to July 6, 2018, for a total of 180 days of administrative authority.
  7. Exco proved through its calculations that utilizing the Williams gas gathering system is uneconomical at this time, resulting in a calculated net loss of \$40,702.
  8. Based on the hyperbolic decline expected for the reservoir, 500 Mcf / day of flaring authority is not warranted based on the production and flaring authority history. The daily maximum volume in the 12-month period preceding the hearing was 8,105 Mcf /

month. The recommended daily maximum value for the Subject Well is 266 Mcf/day or 8,113 Mcf / month, based on the maximum one-monthly production volume of 8,105 Mcf divided by a 30.5 (average days in a month).

9. Without a final order authorizing the flaring, Exco will have to shut the wells in, causing waste and possible harm to the reservoir.

### **CONCLUSIONS OF LAW**

1. Resolution of the subject application is a matter committed to the jurisdiction of the Railroad Commission of Texas. Tex. Nat. Res. Code § 81.051 and § 81.052.
2. All notice requirements have been satisfied. 16 Tex. Admin. Code § 1.45.
3. The authority to flare 266 Mcf / day of casinghead gas satisfies the requirements of Statewide Rule 32. 16 Tex. Admin. Code § 3.32 (h).


### **EXAMINERS' RECOMMENDATION**

Based on the above findings of facts and conclusions of law, the Examiners recommend the Commission enter an order authorizing a flaring exception to Statewide Rule 32 for EXCO Operating Company, LP, for the Well No. R 3H. The Examiners recommend approval of the flaring authority as established in Attachment A of this PFD and further described in the proposed Final Order.

Respectfully submitted,



Robert Musick, P.G.  
Technical Examiner



Jennifer N. Cook  
Administrative Law Judge



## Attachment A

### Proposed Flare Exception Authority

Flare Permit No.	Lease Name & Well Number	Lease ID	Permit Start Date	Permit End Date	Maximum Flare Volume Mcf/Day	Casinghead Gas or Gas Well Gas	H <sub>2</sub> S (ppm)	H-9 Cert. No.
32504	*Winterbotham ZAV Lease, Well No. R 3H	15744	7/7/2018	7/6/2020	266 Mcf/Day	Casinghead	5,288	082150

\* Currently Equipped with a Flare Stack

Notes: Mcf / Day – Thousand Cubic Feet per Day