



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL & GAS DOCKET NO. 20-0321267**

**APPLICATION OF FULLSPIKE ENERGY, LLC (OPERATOR NO. 289935) 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:**

Ezra A. Johnson – Administrative Law Judge  
John L. Moore – Technical Examiner

**PROCEDURAL HISTORY:**

Hearing Request Date:	June 28, 2019
Notice of Hearing Date:	August 21, 2019
Hearing on the Merits Date:	September 23, 2019
Transcript Received:	October 10, 2019
Record Close Date:	October 3, 2019
Proposal for Decision Issued:	October 21, 2019

**APPEARANCES:**

**For Staff:**

Melissa Glaze, Staff Attorney, Enforcement Section  
Jennifer Gilmore, Manager, P-5 Financial Assurance Unit

**For Applicant Fullspike Energy, LLC:**

David Nelson, Attorney  
Everett Sparks, Consulting Engineer

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## **I. Statement of the Case**

Fullspike Energy, LLC ("Applicant"), Operator No. 289935, challenges the Railroad Commission ("Commission" or "RRC's") staff's ("Staff's") determination that renewal of its Commission Form P-5 *Organization Report* cannot be approved due to Applicant's failure to comply with the Commission's inactive well requirements of Statewide Rule 15.<sup>1</sup>

At the hearing the parties stipulate that Applicant was not in compliance with the inactive well requirements as to the following six (6) wells ("Wells"):

1. Norba-Dale-Lewis (05756) Lease, Well No. 11
2. Jeffery (07670) Lease, Well No. 13
3. Jeffery (07670) Lease, Well No. 7C
4. Jeffery (07670) Lease, Well No. 9
5. Jeffery (07670) Lease, Well No. 10
6. Jeffery (07670) Lease, Well No. 2

Applicant did not achieve compliance as of the close of the record in this matter.

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

## **II. Jurisdiction and Notice<sup>2</sup>**

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

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<sup>1</sup> 16 Tex. Admin. Code § 3.15.

<sup>2</sup> 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)]."

- (3) notify the operator that the operator has 90 days to comply with the requirements of this subchapter.<sup>3</sup>

In a letter to Applicant dated January 30, 2019, Staff notified Applicant of the determination that renewal of Applicant's Commission Form P-5 *Organization Report* ("P-5") should be denied because Applicant was non-compliant with inactive well requirements; Staff also provided the reasons for the determination.<sup>4</sup> This letter also provided Applicant 90 days to comply with the inactive well requirements.<sup>5</sup>

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.<sup>6</sup>

After the expiration of the 90 days provided in Staff's January 30, 2019 letter, in a letter dated June 4, 2019, Staff again notified Applicant of the determination that renewal of Applicant's P-5 should be denied because Applicant was non-compliant with inactive well requirements; Staff again provided the reasons for the determination.<sup>7</sup> The June 4, 2019 letter provides Applicant 30 days to request a hearing regarding this determination. In a letter filed June 28, 2019, Applicant requested a hearing. This case followed.

On August 21, 2019, the Commission's Hearings Division issued a Notice of Hearing for this case setting it for hearing on September 23, 2019.<sup>8</sup> The Notice of Hearing was sent to Staff and Applicant. Both Staff and Applicant appeared at the hearing.

### III. Applicable Legal Authority

Section 89.022 of the Texas Natural Resources Code ("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.<sup>9</sup> Section 89.022 specifically provides:

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<sup>3</sup> Tex. Nat. Res. Code § 89.022(d); *see also* 16 Tex. Admin. Code § 3.15(g)(3).

<sup>4</sup> Staff Ex. 2.

<sup>5</sup> *Id.*

<sup>6</sup> Tex. Nat. Res. Code § 89.022(e); *see also* 16 Tex. Admin. Code § 3.15(g)(4).

<sup>7</sup> Staff Ex. 3.

<sup>8</sup> *See* Notice of Hearing in this docket.

<sup>9</sup> *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.<sup>10</sup>

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.<sup>11</sup> 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.<sup>12</sup>

For Applicant to show compliance with inactive well requirements, Applicant 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 Applicant's P-5.

<sup>10</sup> See also 16 Tex. Admin. Code § 3.15(d).

<sup>11</sup> "Statewide Rule 15" refers to 16 Tex. Admin. Code § 3.15.

<sup>12</sup> 16 Tex. Admin. Code § 3.15(d).

#### IV. Discussion of Evidence

At the hearing, Staff appeared and presented four exhibits by and through witness Jennifer Gilmore, Manager of the Commission's P-5 Financial Assurance Unit, which were admitted into the record without objection:

1. A general timeline of events and statements of information regarding the status and dates of correspondence relating to Applicant's inactive wells;<sup>13</sup>
2. Letter dated January 30, 2019, with attachments from Staff to Applicant providing initial notice to Applicant of the determination to not renew Applicant's P-5 and providing 90 days to achieve compliance;<sup>14</sup>
3. Letter dated June 4, 2019, with attachments from Staff to Applicant providing second notice to Applicant of the determination to not renew Applicant's P-5 and providing 30 days to request a hearing;<sup>15</sup> and
4. Identifying information about the noncompliant wells, including what is required to gain compliance.<sup>16</sup>

Applicant appeared and presented three exhibits, consisting of printouts from the Commission's oil and gas data query system, by and through witness Everett Sparks, consulting engineer, which were admitted without objection. Applicant and Staff agreed on the record that the six (6) Wells are inactive and not in compliance with the inactive well requirements.<sup>17</sup> Staff's and Applicant's exhibits show the six (6) Wells to be noncompliant.<sup>18</sup>

#### V. Examiners' Analysis

An "inactive well" is defined in Statewide Rule 15 as, "[a]n 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>19</sup> Section 89.022 requires the operator of an inactive well to comply with the Commission's inactive well requirements before the time of renewal of the operator's P-5.<sup>20</sup> Statewide Rule 15 requires inactive wells to either (1) be plugged, (2) be put back into production or (3) be subject to plugging extensions.<sup>21</sup> If the operator fails to achieve compliance with these prerequisites before the renewal date, the Commission is required to refuse to renew the operator's P-5.<sup>22</sup>

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<sup>13</sup> Staff Ex. 1.

<sup>14</sup> Staff Ex. 2.

<sup>15</sup> Staff Ex. 3.

<sup>16</sup> Staff Ex. 4.

<sup>17</sup> Tr. at 14:2-8 and Tr. at 18:8-18.

<sup>18</sup> Staff Ex. 1 and 4.

<sup>19</sup> 16 Tex. Admin. Code § 3.15(a)(6).

<sup>20</sup> See Tex. Nat. Res. Code § 89.022(a).

<sup>21</sup> 16 Tex. Admin. Code § 3.15(d).

<sup>22</sup> See Tex. Nat. Res. Code § 89.022(c) and (d).

The parties do not dispute the facts in this case. The parties agree that Applicant is not in compliance with inactive well rules. Accordingly, the parties agree that the wells at issue in this matter are inactive, that they are not plugged, and that they are not subject to plugging extensions. Given these agreed facts, the Commission cannot renew Applicant's organization report. The Examiners conclude that Applicant's request for renewal of its P-5 should be denied and Applicant should be ordered to come into 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 Applicant's request for renewal be denied, that Applicant be ordered to comply with Statewide Rule 15, and that the Commission adopt the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. Fullspike Energy, LLC ("Applicant"), Commission Operator No. 289935, is the current operator of the following wells at issue ("Wells"):
  - Norba-Dale-Lewis (05756) Lease, Well No. 11
  - Jeffery (07670) Lease, Well No. 13
  - Jeffery (07670) Lease, Well No. 7C
  - Jeffery (07670) Lease, Well No. 9
  - Jeffery (07670) Lease, Well No. 10
  - Jeffery (07670) Lease, Well No. 2
2. In a letter to Applicant dated January 30, 2019, Staff notified Applicant that Staff had determined renewal of Applicant's Commission Form P-5 *Organization Report* ("P-5") should be denied because Applicant was not compliant with the inactive well requirements; Staff also provided the reasons for the determination. This letter also provided Applicant 90 days to comply with the inactive well requirements.
3. In a letter dated June 4, 2019, Staff again notified Applicant that Staff had determined renewal of Applicant's P-5 should be denied because Applicant was non-compliant with the inactive well requirements; Staff again provided the reasons for the determination. The June 4, 2019 letter provides Applicant 30 days to request a hearing regarding this determination.
4. In a letter dated June 28, 2019, Applicant requested a hearing.
5. On August 21, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Applicant and Staff setting a hearing date of September 23, 2019. 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 September 23, 2019, as noticed. Applicant and Staff appeared and participated at the hearing.

6. Applicant and Staff agree that the Wells are not in compliance with the requirements of Statewide Rule 15:
  - a. The Wells are inactive.
  - b. The Wells are not plugged.
  - c. The Wells have not been placed back into active status and do not have plugging extensions.

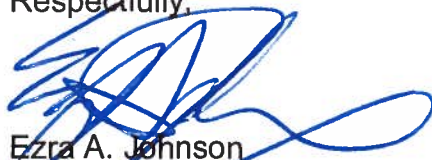
### CONCLUSIONS OF LAW

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. Applicant was provided proper notice and opportunity for hearing regarding compliance with Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
3. The Commission has jurisdiction in this case. See, e.g., Tex. Nat. Res. Code §§ 81.051, 89.021-89.030.
4. Applicant failed to comply with the requirements of Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
5. Applicant's Commission Form P-5 *Organization Report* may not be renewed or approved. Tex. Nat. Res. Code § 89.022(c).

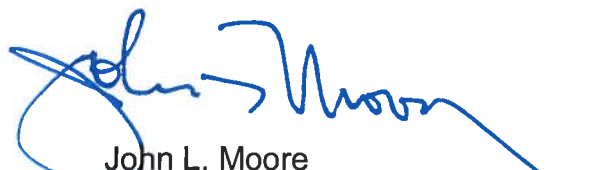
### Recommendation

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

Respectfully,



Ezra A. Johnson  
Administrative Law Judge



John L. Moore  
Technical Examiner