



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL AND GAS DOCKET NO. 20-0315681

APPLICATION OF PRAYER OIL & GAS PRODUCTION, LLC (OPERATOR NO. 675988) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT ITS FORM P-5 CANNOT BE RENEWED DUE TO NONCOMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15

PROPOSAL FOR DECISION

HEARD BY:

Kristi M. Reeve – Administrative Law Judge
Ashley Correll, P.G. – Technical Examiner

PROCEDURAL HISTORY:

Hearing Request Date:	October 9, 2018
Notice of Hearing Date:	May 3, 2019
Hearing on the Merits Date:	June 18, 2019
Transcript Received:	June 24, 2019
Record Close Date:	September 18, 2019
Proposal for Decision Issued:	October 1, 2019

APPEARANCES:

For Staff:

Timothy A. Poe, Program Specialist, Enforcement Section
Jennifer Gilmore, Manager, P-5 Financial Assurance Unit

For Applicant Prayer Oil & Gas Production, LLC:

Jonathan Wilfong, General Counsel
Joseph L. Presser, Jr., President

Table of Contents

I.	Statement of the Case	3
II.	Jurisdiction and Notice	3
III.	Applicable Legal Authority.....	4
IV.	Discussion of Evidence.....	7
	Prayer.....	7
	Staff	8
V.	Examiners' Analysis	9
VI.	Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law	10

I. Statement of the Case

Prayer Oil & Gas Production, LLC ("Prayer"), Operator No. 675988, challenges the Railroad Commission ("Commission") staff's ("Staff's") determination that renewal of its Commission Form P-5 *Organization Report* cannot be approved due to Prayer's failure to comply with the Commission's inactive well requirements of Statewide Rule 15.¹

At the hearing Prayer stated it was noncompliant with the inactive well requirements as to one (1) well. Staff agreed. On September 18, 2019, Prayer filed a status update. Prayer did not achieve compliance as of the close of record, September 18, 2019.

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

II. Jurisdiction and Notice²

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

In a letter to Prayer dated June 14, 2018, Staff notified Prayer that Staff had determined renewal of Prayer's Commission Form P-5 *Organization Report* ("P-5") should be denied because Prayer was noncompliant with the inactive well requirements; Staff provided the

¹ 16 Tex. Admin. Code §3.15

² The hearing transcript in this case is referred to as "Tr. at [pages:lines]." Exhibits are referred to by party name and exhibit number. For example, Prayer's as "Prayer Ex. [exhibit no(s)]."

³ Tex. Nat. Res. Code § 89.022(d); see also 16 Tex. Admin. Code § 3.15(g)(3).

reasons for the determination.⁴ This letter also provided Prayer 90 days to comply with the inactive well requirements.⁵

After the initial letter, 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.⁶

In a letter dated September 5, 2018, Staff again notified Prayer that Staff had determined renewal of Prayer's P-5 should be denied because Prayer was noncompliant with the inactive well requirements; Staff again provided the reasons for the determination.⁷ The September 5, 2018 letter provided Prayer 30 days to request a hearing regarding this determination. In a letter filed October 9, 2018, Prayer requested a hearing. This case followed.

On May 3, 2019, the Commission's Hearings Division sent a Notice of Hearing ("Notice") to Prayer, Staff and surface owners, setting a hearing date of June 18, 2019.⁸ 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.⁹ The hearing was held on June 18, 2019, as noticed. Prayer and Staff appeared and participated at the hearing.

III. Applicable Legal Authority

The Texas Natural Resources Code requires operators to comply with inactive well statutes and rules; if an operator is not in compliance, the Natural Resources Code mandates that the Commission refuse to renew a noncompliant operator's organization report.

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

⁴ Staff Ex. 1.

⁵ *Id.*

⁶ Tex. Nat. Res. Code § 89.022(e); see also 16 Tex. Admin. Code § 3.15(g)(4).

⁷ Staff Ex. 2.

⁸ See Notice of Hearing (issued May 3, 2019).

⁹ See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

the operator to engage in operations within the Commission's jurisdiction such as drilling or operating oil and gas wells in Texas.¹⁰ Section 89.022 of the Texas Natural Resources Code specifically provides:

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. . . .
- (b) Notwithstanding Subsection (a), a person who assumes responsibility for the physical operation and control of an existing inactive well must satisfy the requirements of Sections 89.023(a) (1) and (3) not later than six months after the date the commission approves the initial form described by Section 89.002(a)(2) and filed with the commission under which the person assumes responsibility for the well.
- (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.¹¹

Section 89.023 provides for an extension of the deadline for plugging an inactive well. Section 89.023 of the Texas Natural Resources Code provides in part:

EXTENSIONS OF DEADLINE FOR PLUGGING INACTIVE WELL.

- (a) The commission may grant an extension for the deadline for plugging an inactive well if the operator maintains a current organization report as required by Section 91.142 and if, on or before the date of renewal of the operator's organization report as required by that section, the operator files with the commission an application for an extension that includes...

(3) at least one of the following:

¹⁰ See 16 Tex. Admin. Code § 3.1(a)(1).

¹¹ See also 16 Tex. Admin. Code § 3.15(d).

(A) documentation that since the preceding date that the operator's organization report was required to be renewed the operator has plugged, or restored to active operations as defined by commission rule, a number of inactive wells equal to or greater than 10 percent of the number of inactive wells operated by the operator on that date....

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides the inactive well requirements.¹² 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.¹³

Texas Natural Resource Code § 89.002 defines how and when an operator assumes regulatory responsibility of a well and how and when an operator ceases to be the regulatory responsible operator. 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. [***] In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention of pollution at the time of the sale or conveyance and once the person who acquires the well or right to operate the well:

¹² Statewide Rule 15 refers to 16 Tex. Admin. Code § 3.15.

¹³ 16 Tex. Admin. Code § 3.15(d).

- (A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission;
- (B) has a commission-approved organization report as required by Section 91.142;
- (C) has a commission-approved bond, letter of credit, or cash deposit under Sections 91.103-91.107 covering the well; and
- (D) places the well in compliance with commission rules.¹⁴

Statewide Rule 58 states the required form and process for becoming the regulatory responsible operator of a well.¹⁵ 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 [***].¹⁶

For Prayer to show compliance with the inactive well requirements, Prayer must show that it is in compliance with Statewide Rule 15 such that all inactive wells have either been restored to active operations, plugged or subject to approved plugging extensions. Otherwise, the Commission must refuse to renew Prayer's P-5.

IV. Discussion of Evidence

At the hearing, Prayer and Staff agreed that Prayer had one (1) well not in compliance with the inactive well requirements due to the failure to file a Commission Form W-3C *Certification of Surface Equipment Removal for an Inactive Well*.¹⁷ Prayer needed to file the Form W-3, certifying it had purged the tanks and vessels on the McKee (Gas Id No. 273197) Lease, Well No. 1 ("Well").¹⁸

Prayer

Prayer had one (1) exhibit and one (1) witness, Mr. Joseph L. Presser, Jr. its President.

Prayer's exhibit was the front page of an Oil, Gas and Mineral Lease, dated October 1, 2018, between Legacy Trust Company and Islands International.¹⁹ Prayer explained that it had gone to the lease to purge the tank and discovered a tree had fallen on the road. Prayer hired a consultant to remove the tree. When Prayer inquired as to removal of the tree, it was informed that a mineral lease had been taken by said

¹⁴ Tex. Nat. Res. Code § 89.002(a)(2).

¹⁵ Statewide Rule 58 refers to 16 Tex. Admin. Code § 3.58.

¹⁶ 16 Tex. Admin. Code § 3.58(a)(1).

¹⁷ Tr. at 19:9-24.

¹⁸ Staff Ex. 3.

¹⁹ Prayer Ex. A.

consultant. The mineral lease included the acreage where the McKee Lease is located, and included the Well, all equipment, and the right-of-way. Prayer represented that it cannot access the property, as that would be trespass and if it purged the tanks, it would be purging fluids that do not belong to it. Prayer stated it consulted an oil and gas attorney about the matter, but the attorney was unable to assist. Prayer stated the company ("Islands") who took the mineral lease did not have a P-5 at the time, and Prayer had agreed to remain the operator while Islands obtained a P-5. As part of the agreement, Prayer requested a description of the property so that it could put together an operating agreement. Islands provided the first page of its mineral lease. After which point, Prayer has been unable to reach Islands. Prayer affirmed that Legacy Trust Company is the mineral owner and its belief that Prayer does not have a good faith claim to the minerals.²⁰

On September 9, 2019, the ALJ requested an update from Prayer. The record was reopened to include the update in the record. Staff did not file a response. In Prayer's update Prayer stated it had been able to contact Islands and is working with them to get in compliance. Prayer indicated it had contacted three midstream companies to possibly utilize their services, if necessary, to purge the tanks. In conclusion, Prayer asserted it is working out logistics with Island and is hoping to have the issues resolved "in the next few weeks."²¹

Staff

Staff submitted three (3) exhibits:²²

1. Letter dated June 14, 2018, with attachments from Staff to Prayer providing initial notice to Prayer of the determination to not renew Prayer's P-5 and providing 90 days to achieve compliance;
2. Letter dated September 5, 2018 with attachments from Staff to Prayer providing second notice to Prayer of the determination to not renew Prayer's P-5 and providing 30 days to request a hearing; and
3. Identifying information about the noncompliant wells, including what is required to gain compliance.

Two members of Staff attended the hearing and testified, Jennifer Gilmore, manager of the P-5 Financial Assurance Unit and Timothy A. Poe, Program Specialist. Mr. Poe testified as to the compliance letters, Prayer's noncompliant Well, and what is necessary to achieve compliance.²³ Ms. Gilmore testified that Prayer is a June renewal and the current hearing is for Prayer's 2018 P-5 renewal.²⁴

²⁰ Tr. at 9:22 to 14:20.

²¹ Prayer Update letter dated September 16, 2019.

²² Tr. at 23:1-25 and Staff Ex. 1, 2, and 3.

²³ *Id.*

²⁴ Tr. at 20:21 to 21:22.

V. Examiners' Analysis

The Examiners recommend that Prayer's request for renewal of its organization report be denied and that Prayer be ordered to comply with the inactive well rules. The parties do not dispute the facts in this case or that Prayer is not in compliance with the inactive well rule.

Section 89.022 of the Texas Natural Resources Code requires an operator of an inactive well to comply with the inactive well requirements before the time of renewal of the operator's P-5.²⁵ If the operator fails to achieve compliance before the renewal date, the Commission is required to refuse to renew the operator's P-5.²⁶

The definition of an inactive well is:

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.²⁷

Statewide Rule 15 requires inactive wells to either: (1) be plugged; (2) be put back into production; or (3) be subject to plugging extensions.²⁸ The parties agree the Well is not in compliance with inactive well requirements.²⁹

In defense of its noncompliant status, Prayer provided the first page of an Oil, Gas and Mineral Lease in an attempt to show it can't bring the Well into compliance, as it no longer has control over the Well. However, Texas Natural Resource Code § 89.002 is clear as to when regulatory responsibility ends. As Islands has not filed a form to be designated the regulatory responsible operator and said form has not been approved, Prayer remains the regulatory responsible operator of the Well.

The mineral lease provided by Prayer is incomplete. As such, the Examiners are unable to determine if the document was even executed. And even if the mineral lease was executed, it contains an agreement date of October 1, 2018, with a primary term of six (6) months. It appears, given the fact the Well remains inactive, that this mineral lease has likely expired by its own terms. In fact, if Prayer was made aware of this mineral lease near the date of the agreement, Prayer has had almost a year to either succeed in transferring the lease or in achieving compliance with the inactive well rule.

Pursuant to section 89.022 of the Texas Natural Resources Code, the Commission cannot renew Prayer's organization report because Prayer is noncompliant with the Commission's inactive well rule. For these reasons, the Examiners conclude that Prayer's

²⁵ See Tex. Nat. Res. Code § 89.022(a).

²⁶ See Tex. Nat. Res. Code § 89.022(c) and (d).

²⁷ 16 Tex. Admin. Code § 3.15(a)(6).

²⁸ 16 Tex. Admin. Code § 3.15(d).

²⁹ Tr. at 19:9-24.

request for renewal of its 2018 P-5 should be denied, and Prayer should be ordered to place the Well in 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 Prayer's request for renewal be denied, that Prayer 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. Prayer Oil & Gas Production, LLC ("Prayer"), Commission Operator No. 675988, is the current operator of the McKee (Gas Id No. 273197) Lease, Well No. 1 ("Well").
2. In a letter to Prayer dated June 14, 2018, Staff notified Prayer that Staff had determined renewal of Prayer's Commission Form P-5 *Organization Report* ("P-5") should be denied because Prayer was not compliant with the inactive well requirements; Staff provided the reasons for the determination. This letter also provided Prayer 90 days to comply with the inactive well requirements.
3. In a letter dated September 5, 2018, Staff again notified Prayer that Staff had determined renewal of Prayer's P-5 should be denied because Prayer was noncompliant with the inactive well requirements; Staff again provided the reasons for the determination. The September 5, 2018 letter provides Prayer 30 days to request a hearing regarding this determination.
4. In a letter filed October 9, 2018, Prayer requested a hearing.
5. On May 3, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") on the Application setting a hearing date of June 18, 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 June 18, 2019 as noticed. Prayer and Staff appeared and participated at the hearing.
6. At the June 18, 2019 hearing, Prayer and Staff agreed one (1) well was noncompliant with the inactive well requirements of Statewide Rule 15.
7. On September 18, 2019, Prayer filed an update on the compliance status of the Well. On that date, the Well remained noncompliant. The Well has had no reported

production, disposal, injection, or other permitted activity for a period of greater than 12 months. Thus, the Well meets the definition of an inactive well.

8. The Well is not plugged, has not been placed back into active operations, and does not have a plugging extension.
9. The Well is not in compliance with the requirements of Statewide Rule 15.

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, 89.021-89.030.
3. The Well is not in compliance with the requirements of Statewide Rule 15. 16 Tex. Admin. Code § 3.15.
4. Prayer has been provided notice and an opportunity for hearing regarding compliance with Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
5. Prayer failed to comply with the requirements of Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
6. Prayer'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 Prayer's Form P-5 *Organization Report*. The Examiners also recommend that Prayer be ordered to place the McKee (Gas Id No. 273797) Lease, Well No. 1 into compliance with Statewide Rule 15.

Respectfully Submitted,


Kristi M. Reeve
Administrative Law Judge


Ashley Correll, P.G.
Technical Examiner