



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0317789

COMPLAINT OF RIDGE PETROLEUM, INC. THAT ENERGY OPS, LLC (251851) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE ARCO-CUMMINS "D" (24206) LEASE, WELL NOS. 1, 2 AND 1D, HENDERSON FIELD, WINKLER COUNTY, TEXAS

PROPOSAL FOR DECISION

EXAMINERS:

Jennifer Cook
Administrative Law Judge
Ashley Correll, P.G.
Technical Examiner

PROCEDURAL HISTORY:

| | |
|--------------------------------|-------------------|
| Hearing Date - | July 9, 2019 |
| Close of Record - | August 19, 2019 |
| Proposal for Decision Issued - | November 14, 2019 |

APPEARANCES:

For Complainant Ridge Petroleum, Inc. -
John Hicks
Scott, Douglass & McConnico, LLP

For Respondent Energy Ops, LLC -
J.D. Benton
French Benton

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I. Statement of the Case¹

Ridge Petroleum, Inc. ("Complainant") filed a complaint ("Complaint") claiming Energy Ops, LLC ("Respondent" or "Energy") does not have a good faith claim to operate the Arco-Cummins "D" (24206) Lease, Well Nos. 1, 2 and 1D ("Wells"), in the Henderson Field, in Winkler County, Texas. Complainant is an operator of a disposal well in the same section as the three Wells. Complainant claims Energy has no good faith claim to operate the Wells, so the Wells should be ordered plugged. Energy claims it has a good faith claim to operate the Wells.

Complainant operates a disposal well ("Complainant's SWD") in the area that recently was approved for increased disposal capacity. Complainant seeks to have the Wells plugged to prevent the Wells from becoming a conduit for fluids from the disposal zone and causing pollution. Complainant asserts the underlying contractual lease relied on by Respondent has terminated. The Wells have been shut-in for years and Complainant provides an executed termination of the underlying contractual lease signed by both the lessor and Respondent, as lessee.

Respondent claims it has filed a lawsuit to take over Complainant's SWD.² Respondent's goal is to take over Complainant's disposal well and convert the three Wells into disposal wells.³ Respondent acknowledges that issues regarding who can operate the Wells have not been raised in the pending lawsuit.⁴

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Railroad Commission ("Commission" or "RRC") 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.

II. 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 7, 2019, the Hearings Division of the Commission sent an Amended Notice of Hearing ("Notice") to Complainant and Respondent, setting a hearing date of July 9, 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

¹ The hearing transcript in this case is referred to as "Tr. at [page(s)]." Complainant's exhibits are referred to as "Complainant Ex. [exhibit no(s)]." Respondent's exhibits are referred to as "Respondent Ex. [exhibit no(s)]."

² Tr. at 9.

³ Tr. at 13.

⁴ *Id.*

to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.⁵ The hearing was held on July 9, 2019, as noticed. Complainant and Respondent appeared and participated at the hearing.

III. Applicable Legal Authority

Complainant alleges the Commission's current operator of record, Respondent, does not have a good faith claim to operate the Wells. 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.⁶

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.⁷ 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.⁸

Rule 15 requires the plugging of inactive wells. Statewide Rule 15(b)(1) 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.⁹

⁵ See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

⁶ Tex. Nat. Res. Code § 89.002(11); 16 Tex. Admin. Code § 3.15(a)(5).

⁷ Statewide Rule 15 refers to 16 Tex. Admin. Code § 3.15.

⁸ 16 Tex. Admin. Code § 3.15(a)(6).

⁹ 16 Tex. Admin. Code § 3.15(d)(1).

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

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.¹⁰

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

IV. Discussion of Evidence

Complainant operates a disposal well in the area that recently was approved for increased disposal capacity. Complainant seeks to have the Wells plugged to prevent the Wells from becoming a conduit for fluids from the disposal zone and causing pollution. Complainant asserts the underlying contractual lease relied on by Respondent has terminated.¹¹

Respondent claims it has filed a lawsuit to take over Complainant's SWD.¹² Respondent's goal is to take over Complainant's disposal well and convert the three Wells into disposal wells.¹³ Respondent acknowledges that issues regarding who can operate the Wells have not been raised in the pending lawsuit.¹⁴

¹⁰ Emphasis added.

¹¹ See, e.g., Tr. at 14-15.

¹² Tr. at 9.

¹³ Tr. at 13.

¹⁴ *Id.*

A. Summary of Complainant's Evidence and Argument

Complainant operates a disposal well in the area that recently was approved for increased disposal capacity. Complainant seeks to have the Wells plugged to prevent the Wells from becoming a conduit for fluids from the disposal zone and causing pollution.¹⁵

Complainant requests that the Commission order the plugging of the following three of Respondent's Wells¹⁶ on the Arco-Cummins "D" Lease:

1. Well No. 1 (API No. 495-30405), which was completed in 1976;
2. Well No. 2 (API No. 495-31576), which was completed in 1983; and
3. Well No. 1D (API No. 495-04512), which was completed in 1937 and converted to a disposal well in 1977.¹⁷

Complainant operates Complainant's SWD, which is a disposal well in the vicinity of and in the same section as the Wells.¹⁸

Complainant provided a letter dated March 7, 2019, filed by Respondent in response to the Complaint. In the letter, Respondent claims that it is attempting to acquire Complainant's SWD and is also attempting to convert the Wells into disposal wells.¹⁹

Complainant also provided a memorandum of the lease agreement ("Written Agreement") in which Respondent is the lessee and which authorized Respondent to operate the Wells effective December 4, 2017; the Written Agreement authorizes Respondent to operate the Wells as commercial disposal wells.²⁰ Complainant also provided a termination of the Written Agreement dated March 1, 2018, which is notarized and signed by both the lessor and Respondent as the lessee.²¹

According to Commission records Well No. 1 was shut-in in 1998, Well No. 2 was shut-in in 2013, and Well No. 1D was shut-in in 2016.²² There has been no reported production on the Arco-Cummins "D" Lease since September 2011.²³

Complainant has a permit issued by the Commission to operate Complainant's SWD as a commercial disposal well. The permit was recently amended to increase the permitted injection volume from 8,500 to 22,500 barrels per day.²⁴

¹⁵ See, e.g., Tr. at 14-15.

¹⁶ Complainant Ex. 5 (An approved Commission P-4 Form *Certificate of Compliance and Transportation* identifying Respondent as the operator for the Wells).

¹⁷ Tr. at 15-18, 25-29; Complainant Ex. 1, 1A, 6-9, 12. See, e.g., Tr. at 36.

¹⁸ Tr. at 15-18; Complainant Ex. 1B.

¹⁹ Complainant Ex. 2; Tr. at 19-23.

²⁰ Complainant Ex. 1C, 14; Tr. at 15-18, 33-36.

²¹ Complainant Ex. 1D, 15; Tr. at 15-18, 33-36.

²² Complainant Ex. 10; Tr. at 29-30.

²³ Complainant Ex. 13; Tr. at 32-33.

²⁴ Tr. at 30-31; Complainant Ex. 11.

B. Summary of Respondent's Evidence and Argument

Respondent offered no evidence at the hearing.²⁵ Respondent's representative claims that it has a right to operate Complainant's SWD, and there is a pending lawsuit on that issue. Respondent acknowledges Complainant has a wastewater disposal agreement to operate Complainant's SWD on the same section as the Wells. Respondent claims Respondent is the "landowners' royalty" on the section where Complainant's SWD is located and has disputed Complainant's authority to operate Complainant's SWD in pending litigation.²⁶

On July 22, 2019, Respondent filed the current petition in the pending litigation. In the petition, Respondent has sued Complainant regarding claims involving Complainant's SWD. There are no allegations or claims regarding the Wells.

V. Examiners' Analysis

The Examiners recommend Complainant's request for relief be granted. The Examiners recommend the Commission find there was not a reasonably satisfactory showing of a good faith claim to operate the Wells, and the Wells should be ordered plugged.

Complainant alleges Respondent does not have a good faith claim to operate the Wells. 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.²⁷

The origin of the "good-faith claim" requirement comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.²⁸ In discussing the Commission's authority to grant a drilling permit, the Court stated:

The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts.²⁹

²⁵ Tr. at 37.

²⁶ Tr. at 37-49.

²⁷ 16 Tex. Admin. Code § 3.15(a)(5).

²⁸ *Id.*; see *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943); see also *Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946); *Rosenthal v. R.R. Comm'n of Tex.*, 2009 WL 2567941, *3 (Tex. App.—Austin 2009, pet. denied); *Pan Am. Petroleum Corp. v. R.R. Comm'n of Tex.*, 318 S.W.2d 17 (Tex. Civ. App.—Austin 1958, no writ).

²⁹ *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

The Court went on to state:

Of course, the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property. If the applicant makes a reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit; neither is it ground for suspending the permit or abating the statutory appeal pending settlement of the title controversy.³⁰

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.³¹ A showing of a good faith claim does not require an applicant to prove title or a right of possession. It is sufficient for an applicant to make a reasonably satisfactory showing of a good faith claim.³²

In this case, there is an executed termination of the Written Agreement authorizing Respondent to operate the Wells. Respondent provides no other agreement to operate or other representation from a surface or mineral owner authorizing Respondent to operate the Wells. Respondent relies upon a lawsuit it has filed against Complainant in an attempt to take over Complainant's SWD. The lawsuit does not contain claims regarding the Wells. A lawsuit consists of unproved allegations. It is not an authorization to operate.

For these reasons and based on the record, 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.

VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record and evidence presented, the Examiners recommend the Commission find Respondent failed to provide a reasonably satisfactory showing of a good faith claim to operate the Wells, grant Complainant's request to have the Wells ordered plugged, and adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Ridge Petroleum, Inc. ("Complainant") filed a complaint ("Complaint") claiming Energy Ops, LLC ("Respondent" or "Energy") does not have a good faith claim to

³⁰ *Id.* at 191 (emphasis added).

³¹ *Id.*; see also *Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946); *Rosenthal v. R.R. Comm'n of Tex.*, 2009 WL 2567941, *3 (Tex. App.—Austin 2009, pet. denied) (mem. op.); 56 Tex. Jur. 3d Oil and Gas § 737, *Adjudication of title to property and contract rights*.

³² *Id.*

- operate the Arco-Cummins "D" (24206) Lease, Well Nos. 1, 2 and 1D ("Wells"), in the Henderson Field, in Winkler County, Texas.
2. Complainant is an operator of a disposal well ("Complainant's SWD") in the vicinity of and in the same section as the three Wells and is concerned that the inactive Wells may act as a conduit for migration of fluids from the disposal interval if not properly plugged.
 3. Respondent is the Commission operator of record for the Wells.
 4. On June 7, 2019, the Hearings Division of the Commission sent an Amended Notice of Hearing ("Notice") to Complainant and Respondent, setting a hearing date of July 9, 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 July 9, 2019, as noticed. Complainant and Respondent appeared and participated at the hearing.
 5. According to Commission records, the Wells were completed as follows:
 - a. Well No. 1 (API No. 495-30405) was completed in 1976;
 - b. Well No. 2 (API No. 495-31576) was completed in 1983; and
 - c. Well No. 1D (API No. 495-04512) was completed in 1937, and was converted to a disposal well in 1977.
 6. Respondent executed a lease agreement ("Written Agreement") to operate the Wells effective December 4, 2017; the Written Agreement authorized Respondent to operate the Wells as commercial disposal wells. On March 1, 2018, the Written Agreement was terminated pursuant to a written termination, which is notarized and signed by both the lessor and Respondent as the lessee.
 7. According to Commission records Well No. 1 was shut-in in 1998, Well No. 2 was shut-in in 2013, and Well No. 1D was shut-in in 2016.³³ There has been no reported production on the Arco-Cummins "D" Lease since September 2011.³⁴
 8. Complainant has a permit issued by the Commission to operate Complainant's SWD as a commercial disposal well. The permit was recently amended to increase the permitted injection volume from 8,500 to 22,500 barrels per day.³⁵
 9. There is insufficient evidence that Respondent has a good faith claim to a continuing right to operate the Wells.

³³ Complainant Ex. 10; Tr. at 29-30.

³⁴ Complainant Ex. 13; Tr. at 32-33.

³⁵ Tr. at 30-31; Complainant Ex. 11.

10. Absent a "good faith claim" to operate, the Wells are not eligible for extensions to the plugging requirements in Statewide Rule 14 and 15.
11. Any plugging extensions for the Wells should be canceled and the Wells should be plugged.

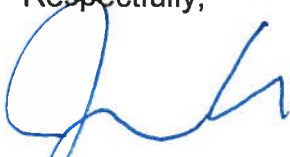
Conclusions of Law

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. The Wells are "inactive wells" as that term is defined in Commission rule. 16 Tex. Admin. Code § 3.15(a)(6).
4. There was not a reasonably satisfactory showing that Respondent has a good faith claim of a continuing right to operate the Wells. 16 Tex. Admin. Code § 3.15(a)(5).
5. The Wells are not eligible for plugging extensions. 16 Tex. Admin. Code § 3.15(c).
6. Commission rules require that the Wells be plugged, and associated equipment should be removed.
7. The Wells are required to be placed in compliance with all Commission rules, included Statewide Rules 8, 13, 14, 15 and 91. 16 Tex. Admin. Code §§ 3.8, 3.13, 3.14, 3.15 and 3.91.
8. Respondent is responsible for plugging the Wells and bringing the lease into compliance with Commission rules. *See, e.g.,* 16 Tex. Admin. Code § 3.58(a)(1), (a)(2).

Recommendations

The Examiners recommend the Commission find there was no reasonably satisfactory showing that Respondent has a good faith claim to operate the Wells, and grant Complainant's request to have the Wells ordered plugged and the lease brought into compliance with Commission rules.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Jennifer Cook', with a stylized, cursive script.

Jennifer Cook
Administrative Law Judge

A handwritten signature in blue ink, appearing to read 'Ashley Correll', with a stylized, cursive script.

Ashley Correll, P.G.
Technical Examiner