

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL & GAS DOCKET NO. 08-0317254

APPLICATION OF BOYKIN ENERGY LLC (085182) PURSUANT TO STATEWIDE RULE 9 FOR A COMMERCIAL PERMIT TO DISPOSE OF OIL AND GAS WASTE BY INJECTION INTO A POROUS FORMATION NOT PRODUCTIVE OF OIL AND GAS FOR THE LANDMARK SWD LEASE, WELL NO. 2, PHANTOM (WOLFCAMP) FIELD, REEVES COUNTY, TEXAS

OIL AND GAS DOCKET NO. 08-0317258

APPLICATION OF BOYKIN ENERGY LLC (085182) PURSUANT TO STATEWIDE RULE 9 FOR A COMMERCIAL PERMIT TO DISPOSE OF OIL AND GAS WASTE BY INJECTION INTO A POROUS FORMATION NOT PRODUCTIVE OF OIL AND GAS FOR THE LANDMARK SWD LEASE, WELL NO. 1, PHANTOM (WOLFCAMP) FIELD, REEVES COUNTY, TEXAS

FINAL ORDER

The Railroad Commission of Texas ("Commission") finds that after statutory notice in the above-docketed case, heard on May 1, 2, 6, and 7, 2019, the presiding Technical Examiner and Administrative Law Judge have made and filed a Proposal for Decision containing findings of fact and conclusions of law, which was served on all parties of record, and that this proceeding was duly submitted to the Commission at a conference held in its offices in Austin, Texas.

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

Findings of Fact

1. Boykin Energy, LLC (Operator No. 085182) filed separate applications requesting commercial disposal authority pursuant to Statewide Rule 9 *Dispose of Oil and Gas Waste into a Formation Not Productive of Oil and Gas* for the Landmark SWD No. 1 Well and the Landmark SWD No. 2 Well ("Landmark Lease SWDs"). The applications for the two SWDs are identical.
2. Notice of the applications for Landmark Lease SWDS were published in the *Pecos Enterprise*, a newspaper having general circulation in Reeves County, on August 16, 2018. On August 17, 2018, a copy of Form W-14 for the Landmark Lease SWDs was mailed to the surface owners of adjacent tracts and the Reeves County Clerk. There are no operators or record within one-half mile of the Landmark Lease

SWDs. The initial published notice of the applications in the *Pecos Enterprise* did not include the words "COMMERCIAL DISPOSAL WELL", as required. This notice deficiency was corrected by republishing the corrected notice in the *Pecos Enterprise*.

3. The applications are protested by Apache Corporation, an operator whose nearest production is approximately three (3) miles from the Landmark Lease and whose leaseholds are approximately two (2) miles from the Landmark Lease.
4. On February 20, 2019, the Hearings Division of the Commission sent a Joint Notice of Prehearing Conference ("Notice") via first-class mail to Applicant and all affected parties setting a prehearing conference date of March 12, 2019.
 - a. The Notice contains (1) a statement of the time, place, and nature of the pre-hearing conference; (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.
 - b. The prehearing conference was held on March 12, 2019. Both Applicant and Protestant appeared and participated.
 - c. At the pre-hearing conference, the parties agreed to commence the hearing on the merits on May 1, 2019.
 - d. The hearing on the merits was held on May 1, 2, 6, and 7, 2019.
 - e. Applicant and Protestant attended and participated in the hearing on the merits.
 - f. All parties received more than 10 days' notice of the hearings and an opportunity for hearing.
5. The injection site for the two proposed Landmark Lease SWDs is a fifty-eight (58) acre tract and the injection interval is proposed to be into the Cherry Canyon and Brushy Creek formations at measured depths from 4,800 feet to 6,400 feet.
6. On April 15, 2019, Applicant filed *Boykin Energy LLC's Motion to Dismiss Protest for Lack of Standing* ("Motion") against Apache claiming Apache lacks standing as a protestant. On April 25, 2019, Apache filed *Apache Corporation's Response to Boykin Energy, LLC's Motion to Dismiss* ("Response") in response to the Motion. The Motion was heard in conjunction with the hearing on the merits starting May 1, 2019.

7. Applicant claims Apache is not an "affected person" as that term is defined in Statewide Rule 9. According to the rule, a valid protest can only be made by an affected person. An affected person is defined as:

a person who has suffered or will suffer actual injury or economic damage other than as a member of the general public or as a competitor, and includes surface owners of property on which the well is located and commission-designated operators of wells located within one-half mile of the proposed disposal well.¹

To qualify as an affected person, Apache must show that it is "a person who has suffered or will suffer actual injury or economic damage other than as a member of the general public."

8. Apache failed to provide sufficient evidence that it is an affected person.
9. Apache is not an affected person entitled to protest.

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; 16 Tex. Admin. Code §§ 1.41, 1.42, 1.45, 3.46.
2. The Commission has jurisdiction in this case. *See, e.g.*, Tex. Nat. Res. Code § 81.051; Tex. Water Code §§ 27.031, 27.051(b).
3. Apache is not an affected person and its protest of these applications are not proper pursuant to Statewide Rule 9.
4. In accordance with Statewide Rule 9, Applicant's motion to dismiss should be granted.

Ordering Provisions

It is **ORDERED** that *Boykin Energy LLC's Motion to Dismiss Protest for Lack of Standing* ("Motion") against Apache claiming Apache lacks standing as a protestant is **GRANTED**. The above captioned and docketed case is **DISMISSED** from the Hearings Division and the above-referenced application is **REMANDED** for administrative consideration.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the Commission's order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code § 2001.142, by agreement under Tex. Gov't Code § 2001.147, or by written Commission Order issued

¹ 16 Tex. Admin. Code § 3.9(E)(ii); *see also* 16 Tex. Admin. Code § 3.46(c)(5)(B).

pursuant to Tex. Gov't Code § 2001.146(e). If a timely motion for rehearing of an application is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 100 days from the date Commission Order is signed.

Each exception to the Examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are **DENIED**.

Signed on December 17, 2019.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN WAYNE CHRISTIAN



COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

ATTEST:



SECRETARY

Deputy

