

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 08-0321908 / TRACKING NO. 49330

APPLICATION OF JETTA PERMIAN, LP (432284) PURSUANT TO STATEWIDE RULE 9 FOR A PERMIT TO DISPOSE OF OIL AND GAS WASTE BY INJECTION INTO A POROUS FORMATION NOT PRODUCTIVE OF OIL OR GAS FOR THE NEWPORT STATE UNIT 72-32 LEASE, WELL NO. 20D, TOYAH LAKE, WEST (DELAWARE) FIELD, REEVES COUNTY, TEXAS

ORDER OF DISMISSAL

The Commission finds that, after notice, a prehearing conference was heard by a Commission Administrative Law Judge and Technical Examiner ("Examiners") on October 1, 2019, for the purpose of considering any outstanding motions, establishing a hearing date, setting a procedural schedule, and addressing other preliminary matters as determined by the Examiners. The Commission finds the protest of Apache Corporation should be dismissed and adopts the following findings of fact and conclusions of law.

FINDINGS OF FACTS

1. On or about August 31, 2018, Jetta Permian, LP (Operator No. 432284) ("Jetta" or "Applicant") submitted to the Railroad Commission of Texas (the "Commission") an application pursuant to Statewide Rule 9 for a commercial permit to inject fluid into a reservoir not productive of oil or gas for the Newport State Unit 72-32 Lease, Well No. 20D, Toyah Lake, West (Delaware) Field, Reeves County, Texas (the "Application").
2. On November 8, 2018, notice of the Application was published in the Pecos Enterprise, a newspaper of general circulation in Reeves County, Texas.
3. On or about November 6, 2018, Applicant mailed the Application to the owner of record of the surface tract on which the well is to be located; each commission-designated operator of any well located within one-half mile of the proposed disposal well; the county clerk of the county in which the well is to be located; the city clerk or other appropriate city official of any city where the well is to be located within the municipal boundaries of the city; and owners of record of each surface tract that adjoins the proposed disposal tract.
4. On September 18, 2018, Apache Corporation ("Apache") filed with the Commission a timely protest of the Application.
5. On July 25, 2019, the Oil and Gas Division forwarded the Application and a draft permit to the Hearings Division.

6. On September 4, 2019, the Hearings Division of the Commission sent an Amended Notice of Prehearing Conference ("NOPHC") on the Application setting a prehearing conference date of October 1, 2019. The NOPHC notified the parties that all motions filed at least ten days prior to the prehearing conference would be heard at the prehearing conference. The NOPHC notified the parties that failure to appear at the prehearing conference may result in dismissal of that party's claim or protest.
7. On September 20, 2019, Jetta filed Applicant's Motion to Dismiss Apache Corporation's Protest.
8. On September 30, 2019, Apache filed Apache Corporation's Response to Jetta Permian, LP's Motion to Dismiss.
9. On October 1, 2019, a Prehearing Conference was conducted. Jetta and Apache appeared and presented evidence in support of their motions. Luxe Operating LLC appeared as an observer.
10. At the Prehearing Conference Jetta argued Apache is not an affected person, as Apache is not the surface owner at this location, nor does Apache have a well within a half-mile of the proposed location.¹ Jetta stated that a review of Apache's map shows Apache's nearest leasehold to be 2.39 miles away, with its nearest well located over 4 miles away.²
11. At the Prehearing Conference Apache argued it is an "affected person entitled to standing because they will suffer economic harm or actual injury and economic damage as a result of the proposed disposal operation."³ Apache further argued that the threshold at this point in the proceeding is low, as it does not need to show it will ultimately prevail on the merits, only that it has an interest which may be materially affected, only that there is a potential to suffer harm, of which Apache meets that burden.⁴ In support of its arguments, Apache had 3 witnesses: McKennon Laas, Senior Landman; Brian Stachitus, Geophysical Manager; and Brian Bohm, Hydrogeologist/Environmental Sustainability Adviser. Apache has a large leasehold in the Alpine High, of over 300,000 gross acres in Reeves County.⁵ Apache's closest well to the proposed injection well is a water supply well located 4.37 miles away.⁶ Apache stated it is concerned for its public license, as "any kind of issue that would happen out – in or around the Alpine High, the public perceives it as Apache's fault initially."⁷ Apache continued that within this tight-knit community, a perceived injury by Apache would harm Apache's ability to pick up another lease and for the leaseholds it already holds, for property owners to be

¹ Tr. Page 8-9.

² Tr. Page 9.

³ Tr. Page 10.

⁴ *Id.*

⁵ Tr. Page 18.

⁶ Tr. Page 21.

⁷ Tr. Page 24.

okay with Apache performing operations.⁸ Apache expressed concern for its over billion dollar investment in the Alpine High.⁹ Apache explains social license to operate as, “ if an incident were to occur on or near our operations activity, it potentially offers the license – or the revocation of our license due to public perception of our ability to sustainably operate an oil and gas facility.”¹⁰ To show harm would occur if the proposed well was drilled, Apache stated it has 3-D seismic data, unavailable to the Commission, that shows two faults near the proposed well and showing graben features are present within the Delaware Mountain Group which would allow for the migration of fluids.¹¹ Apache stated its 3-D seismic stops just short of where the proposed well is to be located.¹² Apache believes a prudent company would not “knowingly put a disposal well so close to known faults [...] and the problem with having faults is you’re trying to inject into a certain zone in the Delaware Mountain Group. And by having close proximity to a fault fracture system, there’s no way that you can say that you have top seal integrity that the fluids are going to be contained where you inject them.”¹³ Apache believes that “any injection in close proximity to these fault fracture corridors has a very, very strong likelihood of migrating outside the injection zone.”¹⁴ Apache stated it uses groundwater in its operations.¹⁵ Apache’s closest well, its water supply well produces water from the Rustler Aquifer. Apache argued that the “Rustler Aquifer would be the first groundwater interval, the base of usable-quality water; EPA term, underground source of drinking water, that would be affected or impacted in groundwater contamination occurred through upward migration.”¹⁶ When asked how Apache would be impacted if there was groundwater contamination from the proposed Jetta well, Apache responded, “Apache [...] is kind of the spotlight operator when it comes to southern Reeves County. So, any operational incident related to oil and gas that occurs that potentially would result in groundwater contamination or any impact to – we’re kind of – have the spotlight shown on us.”¹⁷ Apache also discussed its belief that if and when anything goes wrong within the industry in Reeves County, it negatively impacts its relationship with property owners, the public and various local governments, Apache’s proactive presence within Reeves County in various forms, its own review of the area and its sharing of data with operators regarding prospective disposal wells.¹⁸

12. 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

⁸ *Id.*

⁹ Tr. at 25.

¹⁰ Tr. at 90.

¹¹ Tr. at 37-38.

¹² Tr. at 48.

¹³ Tr. at 39.

¹⁴ Tr. at 44.

¹⁵ Tr. at 94.

¹⁶ Tr. at 94 -96.

¹⁷ Tr. at 96-97.

¹⁸ Tr. at 104 – 113.

well is located and commission-designated operators of wells located within one-half mile of the proposed disposal well.¹⁹

Further, in the preamble to Statewide Rule 9 it states:

[T]he rule has also been changed to make it clear that only “affected persons,” as now defined in the adopted rule, or local governments, are entitled to a hearing on the application unless the director of the underground injection control determines that a hearing is in the public interest.²⁰

13. Apache’s argument of injury to its “social license” does not elevate Apache from a member of the general public to one of an affected person. As such, Apache is not an affected person.
14. Applicant requested to have the docket dismissed and the application remanded for administrative consideration.

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, 3.9.
2. The Commission has jurisdiction in this case. *See, e.g.*, Tex. Nat. Res. Code § 81.051.
3. Apache’s protest should be dismissed for lack of standing. *See* 16 Tex. Admin. Code §§ 1.35, 1.101, 1.107, 3.9.
4. Applicant’s request to have this Hearings Division case dismissed and the Application remanded to the permitting program for administrative processing is just and reasonable pursuant to 16 Tex. Admin. Code § 1.107.

ORDERING PROVISIONS

The protest of Apache Corporation is **DISMISSED** for lack of standing.

The hearing scheduled for February 26, 2020 through February 28, 2020 is **CANCELLED**.

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

²⁰ *See* 7 Tex. Reg. 651, 653 (1982) (adopting amendment to Statewide Rule 9); 7 Tex. Reg. 655, 656 (1982) (adopting amendment to Statewide Rule 46).

The above captioned and docketed case in the Hearings Division is **DISMISSED WITHOUT PREJUDICE** and the above-referenced Application is **REMANDED** for administrative consideration.

It is **ORDERED** that the Application is not to be remanded until this Order of Dismissal is final and effective.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the 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 pursuant to Tex. Gov't Code § 2001.146(e). If a timely motion for rehearing 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 the parties are notified of this order in accordance with Tex. Gov't Code § 2001.144.

Signed December 19, 2019.



Dana Avant Lewis, Director
Hearings Division