

WAYNE CHRISTIAN, *CHAIRMAN*
CHRISTI CRADDICK, *COMMISSIONER*
RYAN SITTON, *COMMISSIONER*



DANA AVANT LEWIS, *DIRECTOR*

RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

OIL & GAS DOCKET NO. 20-0323829

**APPLICATION OF C E ENERGY LLC FOR UNRESTRICTED RENEWAL OF ITS P-5
AND TO CONTEST THE STAFF DETERMINATION THAT ITS P-5 CANNOT BE
RENEWED BECAUSE IT HAS NOT COMPLIED WITH THE INACTIVE WELL
REQUIREMENTS OF STATEWIDE RULE 15**

PROPOSAL FOR DECISION

HEARD BY:

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

PROCEDURAL HISTORY:

Hearing Date

and Close of Record:

March 12, 2020

Proposal for Decision Issued:

April 7, 2020

APPEARANCES:

For Staff –

Elaine M. Moore, Staff Attorney, Enforcement Section

For C E Energy LLC –

Doug Dashiell, Attorney

Scott Douglass & McConnico

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I. Statement of the Case

C E Energy LLC (“Operator” or “C E Energy”), Operator No. 140697, seeks a determination, contrary to Railroad Commission (“Commission”) staff’s (“Staff’s”) prior determination, that it is in compliance with the Commission’s inactive well rule and should thus be allowed to renew its Commission Form P-5 *Organization Report* (“Form P-5”).

The parties stipulated at the hearing for this case that C E Energy is not in compliance with inactive well requirements regarding five inactive wells. Operator represented at the hearing that it intends to be in compliance around March 28, 2020, and before there is a final order in this case.

The Administrative Law Judge and Technical Examiner (collectively “Examiners”) respectfully submit this Proposal for Decision (“PFD”) and recommend the Commission enter an order denying the renewal of Operator’s Form P-5.

II. Jurisdiction and Notice¹

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 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.²

In a letter to Operator dated July 2, 2019, Staff notified Operator that Staff had determined renewal of Operator’s Form P-5 should be denied because Operator was non-compliant with inactive well requirements; Staff provided the reasons for the

¹ The hearing audio file in this case is less than seven minutes and is referred to as “Audio” Staff’s exhibits are referred to as “Staff Ex. [exhibit no(s)].”

² Tex. Nat. Res. Code § 89.022(d); see also 16 Tex. Admin. Code § 3.15(g)(3).

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determination.³ This letter provided Operator 90 days to comply with the inactive well requirements.

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.⁴

In a letter dated October 2, 2019, Staff again notified Operator that Staff had determined renewal of Operator's Form P-5 should be denied because Operator was non-compliant with inactive well requirements; Staff again provided the reasons for the determination.⁵ The October 2 letter provided Operator 30 days to request a hearing regarding the determination. In a letter filed October 31, 2019, Operator requested a hearing, paid the required fee and provided a list of affected surface owners. This case followed.

On February 19, 2020, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Operator, Staff and surface owners, setting a hearing date of March 12, 2020. 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.⁶ The hearing was held on March 12, 2020, as noticed. Operator 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 non-compliant 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

³ Staff Ex. 2; Audio.

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

⁵ Staff Ex. 3; Audio.

⁶ *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.⁷ Section 89.022 of the Texas Natural Resource 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. . . .
- (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.⁸

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.⁹ 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.¹⁰

⁷ See 16 Tex. Admin. Code § 3.1(a)(1).

⁸ See also 16 Tex. Admin. Code § 3.15(d).

⁹ "Statewide Rule 15" is a reference to 16 Tex. Admin. Code § 3.15.

¹⁰ 16 Tex. Admin. Code § 3.15(d).

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For Operator to show compliance with inactive well requirements, Operator must show 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 cannot renew Operator's Form P-5.

IV. Discussion of Evidence

At the hearing, Operator and Staff stipulated and Staff provided Commission records showing that Operator has five non-compliant wells ("Wells"), which are identified in Attachment A of this PFD. The Wells are inactive and not in compliance with inactive well requirements.¹¹

C E Energy had one witness, Steven Keene, who is a petroleum engineer. He testified that all five wells are either (1) plugged and the paperwork needs to be filed with the Commission or (2) currently in the process of being plugged.¹² He expects them to be plugged and in compliance with Commission rules around March 28, 2020, and before a final order is issued in this case.

V. Examiners' Analysis

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

Section 89.022 of the Texas Natural Resources Code requires an operator of an inactive well to comply with inactive well requirements before the time of renewal of the operator's P-5.¹³ If the operator fails to achieve compliance before the renewal date, the Commission cannot renew the operator's P-5.¹⁴

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.¹⁵

The parties agreed and the evidence shows Operator has five non-compliant wells.

Statewide Rule 15 requires inactive wells to either (1) be plugged, (2) be put back into production or (3) be subject to plugging extensions.¹⁶ At the hearing, the parties

¹¹ Audio; Staff Ex. 4.

¹² Audio.

¹³ See Tex. Nat. Res. Code § 89.022(a).

¹⁴ See Tex. Nat. Res. Code § 89.022(c) and (d).

¹⁵ 16 Tex. Admin. Code § 3.15(a)(6).

¹⁶ 16 Tex. Admin. Code § 3.15(d).

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agreed the Wells are not in compliance with inactive well requirements, i.e. they are not plugged or subject to plugging extensions.

Pursuant to section 89.022 of the Texas Natural Resources Code, the Commission cannot renew Operator's organization report because Operator is non-compliant with Commission inactive well requirements. For these reasons, the Examiners recommend Operator's request for renewal of its P-5 should be denied and Operator ordered to place the Wells 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 Operator's request for renewal of its P-5 should be denied, and the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. C E Energy LLC ("Operator" or "C E Energy"), Operator No. 140697, is the current operator of record for the wells ("Wells") identified on Attachment A.
2. In a letter to Operator dated July 2, 2019, Railroad Commission ("Commission") staff ("Staff") notified Operator that Staff had determined renewal of Operator's Commission Form P-5 *Organization Report* ("Form P-5") should be denied because Operator was non-compliant with inactive well requirements; Staff provided the reasons for the determination. This letter provided Operator 90 days to comply with the inactive well requirements.
3. In a letter dated October 2, 2019, Staff again notified Operator that Staff had determined renewal of Operator's Form P-5 should be denied because Operator was non-compliant with inactive well requirements; Staff again provided the reasons for the determination. The October 2 letter provided Operator 30 days to request a hearing regarding the determination.
4. In a letter filed October 31, 2019, Operator requested a hearing, paid the required fee and provided a list of affected surface owners.
5. On February 19, 2020, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Operator, Staff and surface owners, setting a hearing date of March 12, 2020. 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.¹⁷

¹⁷ See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

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6. The hearing was held on March 12, 2020, as noticed. Operator and Staff appeared and participated at the hearing.
7. Commission records show and Operator agrees that Operator has five Wells non-compliant with Commission inactive well requirements.
8. The Wells have had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months. Each of the Wells meets the definition of an inactive well.
9. The Wells are not plugged, have not been placed back into production 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. The Commission has jurisdiction in this case. *See, e.g.*, Tex. Nat. Res. Code §§ 81.051, 89.021-89.030.
3. The Wells are not in compliance with the requirements of Statewide Rule 15. 16 Tex. Admin. Code § 3.15.
4. Operator 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. Operator failed to comply with the requirements of Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
6. Operator's Form P-5 may not be renewed or approved. Tex. Nat. Res. Code § 89.022(c).

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Recommendation

The Examiners recommend the Commission enter an order denying the renewal of Operator's Form P-5.

Respectfully,

DocuSigned by:
Jennifer Cook
C5ED86E8FF3C443
Jennifer Cook
Administrative Law Judge

DocuSigned by:
Ashley Correll
9BA42C7A9073423
Ashley Correll, P.G.
Technical Examiner

ATTACHMENT A

API No.	District	ID No.	Lease Name	Well No.
233 31855	10	05378	STEVENSON	3
233 81744	10	00899	HEDGECOKE- WHITTENBURG -A-	1
233 81745	10	00899	HEDGECOKE- WHITTENBURG -A-	2
233 81748	10	00899	HEDGECOKE- WHITTENBURG -A-	5
233 81749	10	00899	HEDGECOKE- WHITTENBURG -A-	6