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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 20-0324854

APPLICATION OF RICKAWAY ENERGY, CORP. (OPERATOR NO. 710557) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT ITS FORM P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15

PROPOSAL FOR DECISION

HEARD BY:

Ezra A. Johnson – Administrative Law Judge
Ashley Correll, P.G. – Technical Examiner

PROCEDURAL HISTORY:

Hearing Request Date:	January 16, 2020
Notice of Hearing Date:	February 5, 2020
Hearing on the Merits Date:	February 24, 2020
Record Close Date:	February 24, 2020
Transcript Received:	March 19, 2020
Proposal for Decision Issued:	May 7, 2020

APPEARANCES:

For Applicant Rickaway Energy, Corp.:

Ronald L. Rickaway, President
William Wiley

For Staff:

Adam R. Aldrete, Staff Attorney, Enforcement Section
Jennifer Gilmore, Manager, P-5 Financial Assurance Unit

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I. Statement of the Case

Rickaway Energy, Corp. ("Applicant" or "Rickaway"), Operator No. 710557, challenges the Railroad Commission ("Commission" or "RRC's") staff's ("Staff's") determination that renewal of its Commission Form P-5 *Organization Report* cannot be approved due to Applicant's failure to comply with the Commission's inactive well requirements of Statewide Rule 15.¹

Staff denied Applicant's Form P-5 renewal because Applicant was not in compliance with the inactive well requirements as to the following four (4) ("Wells"):

1. Kerr, L.A. (11155) Lease, Well No. 2
2. Martinez, Homero T. (07805) Lease, Well No. 15
3. Heirholzer, Clifford (09177) Lease, Well No. 2
4. Spinach Elaine Unit (10149) Lease, Well No. F 1

Staff argues that Applicant is not entitled to a plugging extension as to these inactive Wells. Applicant argues that it is entitled to a plugging extension because it restored to production ten percent of the number of inactive land wells operated by Applicant at the time of the last annual renewal of Applicant's organization report.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Commission deny Applicant's request to allow renewal of its organization report and order Applicant to bring the non-compliant wells into compliance with 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

¹ 16 Tex. Admin. Code § 3.15.

² The hearing transcript in this case is referred to as "Tr. at [pages:lines]." Staff's exhibits are referred to as "Staff Ex. [exhibit no(s).]" and Rickaway's exhibit is referred to as "Rick. Ex. 1."

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

In a letter to Applicant dated July 26, 2019, Staff notified Applicant of the determination that renewal of Applicant's Commission Form P-5 *Organization Report* ("P-5") should be denied because Applicant was non-compliant with inactive well requirements; Staff also provided the reasons for the determination.⁴ This letter also provided Applicant 90 days to comply with the inactive well requirements.⁵

After the expiration of the 90 days, the Texas 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

After the expiration of the 90 days provided in Staff's July 26, 2019 letter, in a letter dated December 18, 2019, Staff again notified Applicant of the determination that renewal of Applicant's P-5 should be denied because Applicant was non-compliant with inactive well requirements.⁷ Staff again provided the reasons for the determination. The December 18, 2019 letter provides Applicant 30 days to request a hearing regarding this determination. In a letter filed January 16, 2020, Applicant requested a hearing. This case followed.

On February 5, 2020, the Commission's Hearings Division issued a Notice of Hearing for this case, setting it for hearing on February 24, 2020.⁸ The Notice of Hearing was sent to Staff and Applicant. Both Staff and Applicant appeared at the hearing.

III. Applicable Legal Authority

Section 89.022 of the Texas Natural Resources Code ("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 the operator to engage in operations within the Commission's jurisdiction, such as drilling or operating oil and gas wells in Texas.⁹ Section 89.022 specifically provides:

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

⁴ Staff Ex. 2.

⁵ *Id.*

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

⁷ Staff Ex. 3.

⁸ See Notice of Hearing in this docket.

⁹ See 16 Tex. Admin. Code § 3.1(a)(1).

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.¹⁰

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.¹¹ 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.¹²

Texas Natural Resources Code § 89.002 defines how and when an operator assumes regulatory responsibility of a well:

¹⁰ See also 16 Tex. Admin. Code § 3.15(d).

¹¹ "Statewide Rule 15" refers to 16 Tex. Admin. Code § 3.15.

¹² 16 Tex. Admin. Code § 3.15(d).

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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:

- (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.¹³

For an operator to show compliance with inactive well requirements, it must confirm 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 must refuse to renew the operator's Form P-5. As to any inactive land well it has operated for more than 12 months, an operator may obtain an extension of deadline for plugging if 10% of the number of inactive land wells operated at the time of the last annual renewal of the operator's organization report are plugged or restored to active operation, as defined by Commission rule.¹⁴

IV. Discussion of Evidence

A. Evidence Presented by Staff

At the hearing, Staff appeared and presented six exhibits by and through witness Jennifer Gilmore, Manager of the Commission's P-5 Financial Assurance Unit, which were admitted into the record:

1. A general timeline of events and statements of information regarding the status and dates of correspondence relating to Applicant's inactive wells;¹⁵
2. Letter dated January 30, 2019, with attachments from Staff to Applicant providing initial notice to Applicant of the determination to not renew Applicant's P-5 and providing 90 days to achieve compliance;¹⁶

¹³ Tex. Nat. Res. Code § 89.002(a)(2).

¹⁴ See 16 Tex. Admin. Code § 3.15(f)(2)(B)(i).

¹⁵ Staff Ex. 1.

¹⁶ Staff Ex. 2.

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3. Letter dated June 4, 2019, with attachments from Staff to Applicant providing second notice to Applicant of the determination to not renew Applicant's P-5 and providing 30 days to request a hearing;¹⁷
4. Identifying information about the noncompliant wells, including what is required to gain compliance;¹⁸
5. Form P-4 *Certificate of Compliance and Transportation Authority* for the Crouch (10028) Lease, Well No. 1, Crown E., Navarro Field, Atascosa County, Texas ("Crouch Lease"); and¹⁹
6. HB 2259 Timeline, Rickaway Energy, Corp (710557).²⁰

Ms. Gilmore testified that Rickaway would be eligible to apply for a plugging extension for the current P-5 renewal cycle if ten percent of the inactive wells on its inventory from the previous year's renewal date were plugged or restored to active status.²¹ In this instance, Rickaway's renewal date for the previous year was September 1, 2018.²² None of the inactive wells listed on Applicant's inventory as of September 1, 2018, were plugged or restored to production prior to September 1, 2019.²³ Accordingly, Ms. Gilmore argued that Rickaway did not comply with Statewide Rule 15(f)(2)(B)(i) and was not entitled to a plugging extension or renewal of its Form P-5 for the current renewal cycle.²⁴

Ms. Gilmore further stated that Rickaway cannot claim credit for restoring the Crouch Lease to production in 2019 because that well was not listed on Applicant's inactive well inventory as of September 1, 2018.²⁵ She testified that Rickaway did not become the operator of record for the Crouch Lease until the Form P-4 was administratively approved on December 7, 2018.²⁶ The fact that the Form P-4 was filed on April 18, 2018, with an effective date of March 1, 2018, would not change this. Because the Commission gives operators six months after transfer of operatorship to bring a well into compliance, Ms. Gilmore indicated that the Commission has always looked to the approval date of the relevant Form P-4s in administering annual renewals of operator organization reports.²⁷ As an example, Ms. Gilmore noted that Applicant would never have come into compliance with Statewide Rule 15 if the Crouch Lease had to be plugged or restored to active status within six months of March 1, 2018.²⁸

¹⁷ Staff Ex. 3.

¹⁸ Staff Ex. 4.

¹⁹ Staff Ex. 5.

²⁰ Staff Ex. 6.

²¹ Tr. at 19:22 – 20:4

²² Staff Ex. 6.

²³ Tr. at 20:10-12.

²⁴ Tr. at 20:13-15.

²⁵ Tr. at 20:5-9.

²⁶ Tr. at 19:3-8; Staff Ex. 6.

²⁷ Tr. at 21:2-6.

²⁸ Tr. at 20:19 – 21:1.

B. Evidence Presented by Applicant

Applicant appeared at the hearing and presented one exhibit, consisting of the following:

- a. Form P-5 *Organization Report* for Rickaway Energy, Corp. for the 2019-2020 renewal cycle;
- b. Form P-4 Notification for the Crouch Lease dated December 7, 2018, showing an effective date of March 1, 2018, for the transfer of operatorship from Watson Energy Investments, LLC (900277) to Rickaway; and
- c. Letter to Londa A. Burford dated September 4, 2019, on Rickaway letterhead.²⁹

Mr. Ronald Rickaway argued at the hearing that Applicant is entitled to a plugging extension for the Wells after restoring the Crouch Lease to active status on May 13, 2019.³⁰ Mr. Rickaway believes that the effective date of the Form P-4 for the Crouch Lease should govern under Statewide Rule 15(f)(2)(B)(i).³¹ He further claimed that legal documents are treated as effective on the date specified for that purpose even if that date precedes ultimate approval, and the Crouch Lease Form P-4 should be treated the same way.³² If the effective date for the Form P-4 is taken into consideration, he argued, the Crouch Lease would have been on Rickaway's inactive well inventory as of September 1, 2018.³³ Restoring the Crouch Lease to active status in 2019 would thus entitle Rickaway to a plugging extension for the Wells and renewal of its Form P-5.³⁴

C. Examiners' Analysis

An "inactive well" is defined in Statewide Rule 15 as, "[a]n 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."³⁵ Section 89.022 requires the operator of an inactive well to comply with the Commission's inactive well requirements before the time of renewal of the operator's P-5.³⁶ Statewide Rule 15 requires inactive wells to either (1) be plugged, (2) be put back into production or (3) be subject to plugging extensions.³⁷ If the operator fails to achieve compliance with these prerequisites before the renewal date, the Commission is required to refuse to renew the operator's P-5.³⁸

In this case, the parties agree that the Wells are inactive and that they are not plugged. The only matter to be decided, therefore, is whether Applicant is entitled to a plugging extension under Statewide Rule 15(f)(2)(B)(i). To answer this question, the

²⁹ Rick. Ex. 1.

³⁰ Tr. at 15:3 – 16:12.

³¹ Tr. at 16:22 – 17:2.

³² *Id.*

³³ Tr. at 16:22 – 17:2.

³⁴ *Id.*

³⁵ 16 Tex. Admin. Code § 3.15(a)(6).

³⁶ See Tex. Nat. Res. Code § 89.022(a).

³⁷ 16 Tex. Admin. Code § 3.15(d).

³⁸ See Tex. Nat. Res. Code § 89.022(c) and (d).

status of Applicant's inactive well inventory, "operated at the time of the last annual renewal of the operator's organization report," *i.e.* September 1, 2018, with regard to the transfer of the Crouch Lease must be resolved.

Statewide Rule 15 does not define the meaning of the phrase, "operated at the time of the last annual renewal of the operator's organization report." Staff maintains that using the effective date of a Form P-4 transfer for this purpose, as demanded by Applicant, is contrary to longstanding Commission practice. Staff further argues that this would be unworkable. The Examiners agree. An operator who "assumes responsibility for the physical operation and control of an existing inactive well," is given six months from the date the Commission approves the Form P-4 to bring the inactive well into compliance with Statewide Rule 15.³⁹ Treating the effective date of the Form P-4 transfer as the date an operator assumes responsibility for an inactive well would have the effect of substantially reducing, and in certain circumstances eliminating, the statutorily prescribed grace period outlined in Section 89.022. Such a rule would disincentivize operators to take over inactive and orphan wells contrary to the stated purpose of Chapter 89 of the Texas Natural Resources Code:

[I]t is necessary and desirable to provide additional means so that wells . . . that have been abandoned and are leaking salt water, oil, gas or other deleterious substances into fresh water formations or on the surface of the land, may be plugged, replugged, or repaired by or under the authority and direction of the commission.⁴⁰

The Examiners find that the Crouch Lease was not part of Applicant's inactive well inventory on September 1, 2018, and recommend that Applicant's request for renewal of its P-5 be denied. Applicant should be ordered to come into compliance with Statewide Rule 15.

V. Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record in this case and evidence presented, the Examiners recommend that Applicant's request for renewal of its P-5 be denied, that Applicant 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. Rickaway Energy, Corp. ("Applicant"), Operator No. 710557, is the current operator of the following wells at issue ("Wells"):
 - a) Kerr, L.A. (11155) Lease, Well No. 2
 - b) Martinez, Homero T. (07805) Lease, Well No. 15
 - c) Heirholzer, Clifford (09177) Lease, Well No. 2

³⁹ See Tex. Nat. Res. Code § 89.022(b).

⁴⁰ See Tex. Nat. Res. Code § 89.001. The Examiners note further that under Tex. Nat. Res. Code § 89.002, a transfer of operatorship is not complete until the well is placed in compliance with Commission rules.

d) Spinach Elaine Unit (10149) Lease, Well No. F 1

2. In a letter to Applicant dated July 26, 2019, staff ("Staff") of the Railroad Commission ("Commission") notified Applicant of the determination that renewal of Applicant's Form P-5 *Organization Report* ("P-5") should be denied because Applicant was non-compliant with inactive well requirements; Staff also provided the reasons for the determination. This letter also provided Applicant 90 days to comply with the inactive well requirements.
3. After the expiration of the 90 days provided in Staff's July 26, 2019 letter, Staff again notified Applicant in writing on December 18, 2019, of the determination that renewal of Applicant's P-5 should be denied because Applicant was non-compliant with inactive well requirements. Staff again provided the reasons for the determination. The December 18, 2019 letter provides Applicant 30 days to request a hearing regarding this determination.
4. In a letter filed January 16, 2020, Applicant requested a hearing.
5. On February 5, 2020, the Commission's Hearings Division issued a Notice of Hearing for this case, setting it for hearing on February 24, 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. The hearing was held on February 24, 2020, as noticed. Applicant and Staff appeared and participated at the hearing.
6. Applicant and Staff agree that the Wells are inactive and have not been plugged.
7. Applicant is not entitled to a plugging extension for the Wells under Statewide Rule 15 (f):
 - a. As to those wells included on the Applicant's inactive well inventory on or before September 1, 2018, Applicant did not plug any such well or restore it to active production operations prior to September 1, 2019.
 - b. The Crouch (10028) Lease, Well No. 1, Crown E., Navarro Field, Atascosa County, Texas ("Crouch Lease"), was restored to active production operations by Applicant in 2019 but was not part of Applicant's inactive well inventory on September 1, 2018; the Commission did not approve the transfer of operatorship of the Crouch Lease until December 7, 2018.

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.

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2. Applicant was provided proper notice and opportunity for hearing regarding compliance with Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
3. The Commission has jurisdiction in this case. See, e.g., Tex. Nat. Res. Code §§ 81.051, 89.021-89.030.
4. Applicant failed to comply with the requirements of Tex. Nat. Res. Code §§ 89.021-89.029 and 16 Tex. Admin. Code § 3.15.
5. Applicant's Commission Form P-5 *Organization Report* may not be renewed or approved. Tex. Nat. Res. Code § 89.022(c).

VI. Recommendation

The Examiners recommend the Commission enter an order denying the renewal of Applicant's Form P-5 *Organization Report*. The Examiners also recommend that Applicant be ordered to place the Wells into compliance with Statewide Rule 15.

Respectfully,

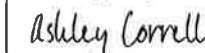
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Ezra A. Johnson
Administrative Law Judge

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Ashley Correll, P.G
Technical Examiner