RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0323591

APPLICATION OF SABINAL ENERGY OPERATING, LLC (742122) PURSUANT TO STATEWIDE RULE 50 FOR APPROVAL OF ITS FORM H-12 NEW OR EXPANDED ENHANCED OIL RECOVERY PROJECT AND AREA DESIGNATION FOR THE WESTBROOK SOUTHEAST (20847) UNIT LEASE, WESTBROOK FIELD, MITCHELL COUNTY, TEXAS

AMENDED PROPOSAL FOR DECISION

HEARD BY: Ezra A. Johnson – Administrative Law Judge
John L. Moore – Technical Examiner

PROCEDURAL HISTORY:

Application Filed -	September 23, 2019
Notice of Hearing -	December 3, 2019
Hearing -	December 20, 2019
Transcript Received -	December 31, 2019
Close of Record -	February 19, 2020
Proposal for Decision Issued -	April 28, 2020
Amended Proposal for Decision Issued	May 20, 2020

APPEARANCES:

For Applicant Sabinal Energy Operating, LLC -
Bill Hayenga, Attorney, *McElroy, Sullivan, Miller & Weber, L.L.P.*
Robert Partlow, Production Engineer

For Railroad Commission of Texas -
Jessica H. Mendoza, Attorney, Office of General Counsel
Paul Dubois, Assistant Director, Technical Permitting, Oil and Gas Division

Table of Contents

I. Statement of the Case

On September 23, 2019, Sabinal Energy Operating, LLC ("Sabinal" or "Applicant") filed an application ("Application") for approval and certification for tax incentive for an initial tertiary enhanced recovery project via seismic stimulation pursuant to Statewide Rule 50[1] and sections 202.052 and 202.054 of the Texas Tax Code. The Application is for the Westbrook Southeast Unit (RRC ID 20847) Lease ("Unit"). The Unit is prorated in the Westbrook Field, Mitchell County, Texas. As of July 2017, there were 280 producing oil wells and 242 injection wells active across the Unit.

In August 2017, Energen Resources Corporation ("Energen") installed two seismic tools on the Unit and began seismic stimulation operations. These two seismic tools remain in operation on the Unit. Energen did not submit a Form H-12 prior to the installation of the seismic tools or otherwise seek Commission approval for the project under Statewide Rule 50 at any time prior to assigning the Unit to Diamondback Energy in November 2018. Similarly, Diamondback Energy did not seek Commission approval of the seismic stimulation operation prior to the transfer of the Unit to Sabinal in July 2019.

Upon review by Commission staff ("Staff") with the Oil and Gas Division of the Railroad Commission ("Commission"), the Application was denied for failure to apply for project approval prior to commencing active operations as required by Statewide Rule 50(g)(1). Applicant then requested that this matter be referred to the Hearings Division pursuant to Statewide Rule 50(g)(2)(C). Staff appeared at the hearing held in this matter on December 20, 2019, and asserted that Staff lacked the discretion to grant administrative approval of the Application after commencement of active operations as the plain language of statewide Rule 50 and the Texas Tax Code.

The Administrative Law Judge ("ALJ") and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Commission deny the Application.

II. Jurisdiction and Notice[2]

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. In addition, Texas Tax Code §202.054(l) grants to the Commission broad discretion promulgating rules and orders necessary to administer the designation, operation and

[1] Statewide Rule 50" refers to 16. Tex. Admin. Code §3.50.
[2] The transcript for the hearing held on December 20, 2019, is referred to as "Tr. at [pg:ln(s)]". Applicant's exhibits are referred to as "Sab. Ex. [exhibit no]," and exhibits submitted by Staff are referred to as "Staff Ex. [exhibit no]."

termination of enhanced recovery[3] projects and expansions for the purpose of obtaining the recovered oil tax rate outlined in section 202.052 of the Texas Tax Code.

On December 3, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Sabinal and Staff setting a hearing date of December 20, 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.[4] The hearing was held on December 20, 2019, as noticed. Sabinal and Staff appeared at the hearing.

III. Applicable Legal Authority

The Texas Tax Code ("Tax Code") grants an oil and gas severance tax incentive for enhanced recovery projects:

> For oil produced in this state from a new or expanded enhanced recovery project that qualifies under Section 202.054 of this code, the rate of the tax imposed by this chapter is 2.3 percent of the market value of the oil.[5]

Oil produced from a new or expanded enhanced recovery project qualifies for the recovered oil tax rate if, before the project begins active operation, the Commission approves the project and designates the area to be affected by the project.[6] The Commission has broad discretion in administering the approval process, and is charged by the Tax Code with adopting and enforcing any appropriate rules or orders that the Commission finds necessary concerning the designation, operation, and termination of enhanced recovery projects.[7]

Statewide Rule 50 provides in relevant part that:

> [i]n order to be eligible for the recovered oil tax rate as provided in the Tax Code, §202.052(b), the operator shall apply for and be granted Commission approval of a new EOR project or an expansion of an existing EOR project, *prior to commencing active operation* . . . . For a project to be approved the operator shall:
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> (A) prove that it qualifies as an EOR project;
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> (B) designate the area to be affected by the project and obtain Commission approval of the designation; and

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[3] An "enhanced recovery project" or "EOR project," is defined in the Texas Tax Code as, "the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of any miscible, immiscible, chemical, thermal, or biological process . . . ." Texas Tax Code §202.054(a)(3).

[4] *See* Tex. Gov't Code §§2001.051, 052; 16 Tex. Admin. Code §§1.42, 1.45.

[5] Tex. Tax Code §202.052.

[6] Tex. Tax. Code §202.054(b).

[7] Tex. Tax. Code §202.054(l).

> (C) if production from the wells within the project area is reported with production from wells not in the project area, designate the method to account for and report production from the project area.[8]

The recovered oil tax rate applies to oil produced from the proposed project area for 10 years, beginning on the first day of the month the Commission certifies that a positive production response has occurred if an application for certification of that response is filed not later than five years from the date the Commission approves the project.[9]

IV. Matters Officially Noticed

At the request of Sabinal and without objection from Staff, the Examiners take official notice of the following facts, materials, records and documents:

1. Statewide Rule 50.
2. Texas Tax Code section 202.054.
3. Commission Form H-12 *New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application* and Form H-13 *EOR Positive Production Response Certification Application*.
4. The published holding in *Occidental Permian Ltd., v. Railroad Comm'n*, 47 S.W.3d 801, Tex. App.—Austin 2001).
5. Proposals for Decision in Oil and Gas Docket Nos. 8A-0291190, 08-0298460, 8A-0296035, and 8A-0240292.
6. Final Order in Oil and Gas Docket No. 8A-0240292 dated November 23, 2004, approving the use of seismic stimulation as an enhanced recovery project.
7. Bill Analysis for House Bill 428 dated April 25, 1989.

In addition, after providing all parties with notice and an opportunity to respond, the Examiners take official notice of the following facts, materials, records and documents in Oil and Oil and Gas Docket No. 8A-0219868:

1. August 6, 1998 hearing transcript.
2. Motion for Rehearing.
3. Final Order.
4. Proposal for Decision.

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[8] 16 Tex. Admin. Code §3.50(g)(1) (emphasis added).
[9] Tex. Tax. Code §202.054(g).

5. Facts or matters recited, noticed, approved or included in these materials, records and documents.

V. Discussion of Evidence Submitted

Sabinal appeared at the hearing and provided nine exhibits and witness testimony from Robert Partlow, Production Engineer, in support of the Application. Staff appeared and provided three exhibits in response.

A. Evidence Submitted by Applicant

Sabinal seeks initial Commission approval under Statewide Rule 50 for a tertiary enhanced recovery project installed on the Westbrook Southeast Unit by Energen Resources Corporation ("Energen") in August 2017.[10] The Westbrook Southeast Unit ("Unit") was unitized by Commission order upon application by FINA in 1968.[11] Energen acquired the Unit in 2002.[12] By Final Order dated August 20, 2002, in Oil and Gas Docket No. 08-0231733-34, the Unit was amended at Energen's request for secondary recovery purposes.[13] Energen operated the Unit until November 2018, when it was sold to Diamondback Energy ("Diamondback").[14] Shortly thereafter, Diamondback sold the Unit to Sabinal in July 2019.[15] Sabinal is the operator of record for the Unit.[16]

Applied Seismic Research manufactured the seismic stimulation tools placed in operation on the Unit by Energen.[17] Sabinal introduced into the record a paper authored by Bill Wooden, an engineer with Applied Seismic Research, explaining the seismic stimulation process and describing improved production results in proximity to the installed location of the tool.[18] The paper touts immediate positive production responses when the tool is installed in a receptive environment.[19] According to the paper, average production improvements of twenty-five percent were observed in the Clearfork Carbonate formation, which is the target interval for the Unit.[20] The Wooden paper further describes improvements in oil production due to seismic stimulation up to 1.4 miles away from the tool's location.[21]

Mr. Partlow testified that there are 268 producing wells in the Westbrook Field, which includes the Clearfork Carbonate formation.[22] There are 260 producing Westbrook

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[10] Tr. at 23:17-22.
[11] Tr. at 26:11-15.
[12] Tr. at 25:1-8.
[13] Tr. at 27:4-5.
[14] Tr. at 27:16-21.
[15] *Id.*
[16] Tr. at 27:21-24.
[17] Tr. at 28:22 – 29:23.
[18] Sab. Ex. 4.
[19] *Id.*
[20] Tr. at 31:13-17; Sab. Ex. 4.
[21] Tr. at 31:18-23; Sab Ex. 4.
[22] Tr. at 34:2-8.

Field wells located within 1.25 miles of the tool locations on the Unit.[23] A positive production response was observed on the Unit and the surrounding area almost immediately after the installation of the seismic stimulation tools in 2017.[24] Based upon the inflection point in the production decline curve observed after the tools were installed, Mr. Partlow estimated that the reduction in severance tax would make it possible to continue seismic stimulation operations and extend the economic life of the Unit by as many as twelve additional years. Mr. Partlow predicted that his seismic stimulation tools would add two million barrels of oil to the estimated recoverable reserves from the Unit and result in an estimated $1.4 million in additional severance tax revenue to the State over the life of the project.[25] Sabinal's estimates showed that it would take approximately 15 years to realize a net increase in severance tax collections from enhanced production on the Unit if the project were approved.[26]

If the project is not approved by the Commission and the reduction in severance tax for this project is not realized, Mr. Partlow testified that Sabinal will discontinue seismic stimulation operations on the Unit.[27] The existing tools have reached the end of their operational life and must be replaced. The monthly cost of operating the tools is $200,000.[28] It would be uneconomic to continue stimulation operations under these circumstances unless the severance tax is reduced.[29] Mr. Partlow further testified that, without Commission approval of the project, the economic life of the wells on the Unit will be shorter and recoverable hydrocarbons will be stranded.[30] In addition, the State of Texas would not realize an estimated $1.4 million in additional severance tax revenue.[31]

B. Evidence Submitted by Staff

Staff did not provide testimony in response to Sabinal's presentation but did enter three exhibits into the record. The first two exhibits consist of the relevant sections of the Texas Tax Code and Statewide Rule 50. The third exhibit from Staff is a letter from the Commission's Oil and Gas Division dated October 15, 2019, denying administrative approval of Sabinal's application. This letter states that the application was administratively denied because it was not submitted prior to commencing active operation of the project, as stated in the Tax Code and Statewide Rule 50.[32]

VI. Examiners' Analysis

The Texas Tax Code outlines a two-step process for obtaining the recovered oil tax rate for a tertiary recovery project. An operator must first file an application with the

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[23] Id.; Sab. Ex. 5.
[24] Tr. at 33:1 – 34:5; Sab. Ex. 8.
[25] *Id.*
[26] *Id.*
[27] Tr. at 45:11-25.
[28] *Id.*
[29] *Id.*
[30] Tr. at 40:2 – 41:5.
[31] Sab. Ex. 8.
[32] Staff Ex. 3.

Commission designating the area to be affected by the project and obtain Commission approval of that designation. After receiving this approval, the operator may commence active operations on the project and begin measuring any positive production response. The second step of the approval process is to present evidence to the Commission of any positive production response within three to five years of the project approval date and obtain a certification of that response, depending on the type of project undertaken.

The plain language of both the Texas Tax Code and Statewide Rule 50 requires that an application for the recovered oil tax rate be filed with and approved by the Commission prior to the commencement of active tertiary recovery operations. Neither the Texas Tax Code nor Statewide Rule 50 provides for an exception, variance or extension for this filing requirement. In this matter, Energen commenced active tertiary operations on the Unit in August 2017. Energen did not submit a Form H-12 prior to the installation of the seismic tools or otherwise seek Commission approval for the project under Statewide Rule 50 at any time. Sabinal filed the Application on September 23, 2019.

Sabinal concedes that the Application was filed long after active tertiary recovery operations commenced on the Unit. Sabinal further acknowledges that the statutory scheme for the recovered oil tax rate does not include any expressly stated exception, variance or extension for the requirement to obtain Commission approval prior to project commencement. Instead, Sabinal argues that the broad administrative discretion granted to the Commission by the Texas Tax Code includes the implied authority to approve the seismic stimulation project on the Unit regardless of when the Application was filed. Sabinal further argues that it is difficult to designate the area to be affected by seismic stimulation. Accordingly, the issue to be decided in this matter is the extent of the Commission's discretion under the Texas Tax Code to approve a seismic stimulation tertiary recovery project that was commenced by another operator more than two years prior to the filing of the application.

At the hearing, Sabinal requested that the Examiners take official notice of several prior final orders of the Commission concerning the second step of the tax rate approval process – the certification of positive response. In each of these prior matters noticed at the request of Sabinal, the Commission rejected the examiners' recommendation and certified a positive production response for the associated enhanced oil recovery project despite the operator's failure to timely file the certification request. Sabinal argues that these prior orders show a consistent exercise of discretion by the Commission against the deadlines specified in the statute for the second step of the tax rate program and that similar discretion should be exercised in this matter concerning the first.

These prior actions by the Commission certifying a positive production response after untimely request are readily distinguishable from the circumstances of this case. Fundamentally, they concern a different step in the application process. In each of the above-described matters, the operator assumed financial risk for a tertiary recovery project and obtained Commission approval prior to commencement of active operations. Here, Sabinal is requesting that the Commission overturn a business decision made by

a prior operator two years prior to the filing of the Application. This is contrary to the plain language of the Texas Tax Code and at least one prior Commission final order expressly denying a late-failed application for failure to comply with the first step of the recovered oil tax rate application process.

A. *Occidental Permian Ltd., v. Railroad Commission*

Sabinal also asked that the Examiners take official notice of the holding in *Occidental Permian Ltd., v. Railroad Commission*.[33] In *Occidental*, the operator was denied Commission approval for its enhanced recovery expansion project because it failed to obtain that approval prior to commencing operations. On appeal to the Texas Third Court of Appeals, the operator complained that the Commission's denial of the application was arbitrary and capricious because the examiners considered facts and evidence outside of the official record in the case.

Specifically, the operator in *Occidental* failed to request a hearing on the administrative denial of its application until nearly two years after the tertiary recovery expansion project at issue was commenced. In the subsequent hearing, the operator, then Amoco and later Altura, claimed that there was no indication in the notice of administrative denial pointing to the need to request a hearing. Altura further argued that waiting for a hearing after administrative denial would have delayed the proposed expansion of the existing CO_2 flood project at issue and caused the loss of recoverable reserves. The examiners recommended denial of the application for failure to obtain Commission approval of the expansion project prior to commencement:

> Amoco made a business decision in 1996, that proceeding with its project without a tax reduction was preferable (and presumably more profitable) than taking a chance that the project would be delayed. The unambiguous terms of Rule 50 (and the underlying statue – Tax Code §202.054(c)) preclude the Commission from relieving Altura of the consequences of Amoco's business decision.[34]

The Commission accepted that recommendation and denied the application. In its final order, the Commission adopted all of the findings of fact and conclusions of law reached in the examiners' proposal for decision. "Altura's expanded tertiary recovery project *does not qualify* for certification under Statewide Rule 50 or §202.054 of the Texas Tax Code."[35] In upholding the Commission's denial of the application, the Third Court of Appeals noted that, "prior approval is *required* by the tax code for an operator to be eligible for the reduced production tax rate for oil production from expanded enhance oil recovery projects."[36]

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[33] 47 S.W.3d 801 (Tex. App.—Austin 2001).
[34] Oil and Gas Docket No. 8A-0219868, *Application of Altura Energy Ltd.*, Examiners' Proposal for Decision (10-22-1998), p. 4.
[35] *Id.* at 5 (emphasis added).
[36] *Occidental*, 47 S.W.3d at 809 (emphasis added).

The motion for rehearing filed by Altura, found at page 124 of the case file for Oil and Gas Docket No. 8A-0219868, has also been officially noticed by the Examiners in this case. The arguments for rehearing raised in that motion are instructive to the Examiners' recommendation in this matter and are set forth here in relevant part:

> 1. Section 202.054(l), Tax Code, delegates to the Commission 'broad discretion' in administering the section and mandates that the Commission 'shall adopt . . . appropriate . . . orders that the commission finds necessary . . . concerning the designation, operation . . . of enhanced recovery projects and expansions." An order approving the application of Altura is necessary because:
>
> > a. Amoco began the 'expansion' after the Commission acquired jurisdiction over the matter by the application of Amoco.
> >
> > b. Amoco began 'expansion' of the existing project to avoid the loss of substantial recoverable reserves and prevent waste.
> >
> > c. Amoco began the 'expansion' at a time when Commission policy had become unsettled through staff administrative denials as to whether increased injection of CO_2 would qualify as an 'expansion' of an existing tertiary miscible project under §202.054, Tax Code.
> >
> > d. The Commission's policy regarding approval of a CO_2 'expansion,' although settled in 1995 by the Amerada Hess docket, became unsettled by staff administrative denials of the Amoco, Exxon and Amerada Hess (H-13) applications. Amoco (now Altura) could not have obtained final approval before Amoco had to begin "expansion" in October 1996 to prevent the loss of recoverable hydrocarbons from the project and before the final order in the Exxon docket in January 1997.
> >
> > e. Altura's 'expansion' of the existing project qualifies as an expansion of an existing enhanced recovery project consistent with Commission policy affirmatively established in the Exxon docket in January 1997.
> >
> > f. Commission approval of the 'expansion' project will permit Altura to continue the project as originally proposed by the application, which will result in the ultimate recovery of incremental production in the amount of 12 million barrels of crude oil.
>
> 2. The Findings of Fact and Conclusions of Law adopted by the Order disregard the 'broad discretion' delegated to the Commission by §202.054, Tax Code, and the statutory duty of the Commission to do all things necessary to prevent waste by approval of a qualified expansion of an

> enhanced recovery project. The Order interprets Sec. 202.054, Tax Code, in a strict and arbitrary manner in derogation of and contrary to the Commission's broad discretion and duty to prevent waste where the Commission has the opportunity to do so.
>
> 3. Under the facts presented, there is no legal impediment in §202.054(b), Tax Code, to Commission approval of Altura's application. The Commission may approve the Altura application effective August 22, 1996, the date of staff administrative denial of the application" Approval as of that date conforms the application to the statutory requirement that the Commission approve the expansion before active expansion of the project began in October 1996.
>
> 4. Commission grant of the Altura application will not 'open the door' to other applications for approval of 'expansions' of existing enhanced recovery projects because Commission policy approving "expansion" by increased CO2 injection was firmly settled in January 1997.[37]

Altura thus raised arguments similar to those now being made by Sabinal in its effort to obtain retroactive approval for a tertiary recovery project; uncertainty surrounding the application process justifies the exercise of discretion by the Commission under the Texas Tax Code to approve an untimely application. Altura further argued that the Commission's failure to exercise this discretion would cause waste. The Commission did not consider this reasoning sufficient to grant the motion for rehearing. The legislative history of House Bill 428, which added the enhanced oil recovery tax rate program to the Texas Tax Code, makes clear why the Commission should expressly reject Sabinal's similar arguments in this case.

B. House Bill 428

Sabinal requested that the Examiners take official notice of the Bill Analysis for House Bill 428 ("HB 428") dated April 25, 1989. The Examiners take particular notice of the following passage articulating the intentions of the program's supporters:

> The restrictions included in HB 428 would ensure that the tax break would *not become a tax loophole* for the oil industry. The provisions of the bill would apply to a limited time period, so that only projects launched and approved during this period would qualify for the reduction. Projects already in operation, which are generally considered the "easy" enhanced recovery projects, *would not qualify*. In order to qualify for the tax break, the project would have to produce oil that otherwise would not have been recovered. The entire process would be overseen at several steps along the way by

[37] Oil and Gas Docket No. 8A-0219868, Applicant's Motion for Rehearing (12-2-1998) p. 5-7. The Examiners note in particular Altura's concern about "opening the door" to existing projects if the Commission exercised discretion to accept the late filed application.

> the railroad commission and the comptroller to ensure that only oil that meets the requirements of HB 428 gets the tax reduction.[38]

The supporters of HB 428 expressed a clear concern against use of the enhanced oil recovery tax rate program as a "tax loophole." They believed that the language of the act was drafted so that "easy" existing projects would not qualify for the reduced tax rate. Presumably, there is no "easier" enhanced oil recovery project than one commenced two years prior to the application (by another operator) for which the applicant has assumed almost no risk. Sabinal's request to retroactively approve an existing project under the present circumstances is thus directly contrary to the expressed intent of the bill's supporters at the time of the enactment of HB 428.[39]

Sabinal's request is also directly contrary to the plain language of Statewide Rule 50 and the underlying statute. While it is true that the Texas Tax Code grants the Commission broad discretion to administer the enhanced oil recovery tax rate application process, approving Sabinal's request would create an exception that swallows the rule and ignores the stated intent of the underlying statutory language. Endeavor made a business decision in August 2017 that proceeding with its seismic stimulation project without a tax reduction was preferable. The unambiguous terms of Rule 50 and the Texas Tax Code preclude the Commission from relieving Sabinal of the consequences of Endeavor's business decision.[40] The Examiners recommend that the Commission decline to do so in this case.

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

Based on the record and evidence presented, the Examiners recommend the Commission deny Sabinal's Application and adopt the following findings of fact and conclusions of law:

Findings of Fact

1. On September 23, 2019, Sabinal Energy Operating, LLC ("Sabinal" or "Applicant"), filed an application ("Application") for approval of its Form H-12 *New or Expanded Enhanced Oil Recovery Project and Area Designation* for the Westbrook Southeast (20847) Unit Lease, Westbrook Field, Mitchell County, Texas.

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[38] Bill Analysis for House Bill 428, April 25, 1989, p. 3 (emphasis added).

[39] Statewide Rule 50 and the Texas Tax Code have been amended to extend the application filing deadline for the enhanced oil recovery tax rate. The reference to "existing projects" in the HB 428 Bill Analysis thus refers to projects existing at the time of enactment.

[40] *See Railroad Comm'n v. Citizens for Safe Future*, 336 S.W.3d 619, 625 (Tex. 2011) (internal quotations omitted) ("In our serious consideration inquiry, we will generally uphold an agency's interpretation of a statute it is charged by the Legislature with enforcing, so long as the construction is reasonable and does not contradict the plain language of the statute.").

2. The Westbrook Southeast Unit ("Unit") was unitized by Commission order upon application by FINA in 1968.[41]

3. Energen Resources Corporation ("Energen") acquired the Unit in 2002.

4. By Final Order dated August 20, 2002, in Oil and Gas Docket No. 08-0231733-34, the Unit was amended at Energen's request for secondary recovery purposes.

5. By final order in Oil and Gas Docket No. 8A-0240292, dated November 23, 2004, the Commission approved the use of seismic stimulation as an enhanced recovery method under Statewide Rule 50.

6. Energen placed two seismic stimulation tools on the Unit in August 2017.

7. Energen did not submit a Form H-12 prior to the installation of the seismic tools or otherwise seek Commission approval for the project under Statewide Rule 50 at any time.

8. Energen operated the Unit until it was sold to Diamondback Energy ("Diamondback") in November 2018. Shortly thereafter, Diamondback sold the Unit to Sabinal in July 2019. Sabinal is the operator of record for the Unit.

9. On October 15, 2019, Sabinal's Application was administratively denied because it was not submitted prior to commencing active operation of the seismic stimulation tools on the Unit.

10. On December 3, 2019, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Sabinal and Staff setting a hearing date of December 20, 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 December 20, 2019, as noticed. Sabinal and Staff appeared at the hearing.

11. The Application was filed after active tertiary recovery operations commenced on the Unit.

12. Sabinal does not dispute its failure to submit Form H-12 in a timely manner.

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[41] Tr. at 26:11-15.

Conclusions of Law

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice, and all applicable notice requirements have been satisfied. *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. Sabinal does not meet the requirements of Texas Tax Code §202.054(g) or Statewide Rule 50(g)(1).

4. Prior approval is required by Texas Tax Code §202.054(g) for an operator to be eligible for the reduced production tax rate for oil production from new or expanded enhanced oil recovery projects.[42]

Recommendations

Based on the evidence included in the record of this proceeding and argument of counsel presented at the hearing, the Examiners recommend denial of Sabinal Energy Operating, LLC's Application for approval of its Form H-12 *New or Expanded Enhanced Oil Recovery Project and Area Designation* for the Westbrook Southeast (20847) Unit Lease, Westbrook Field, Mitchell County, Texas.

Respectfully submitted,

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Ezra A. Johnson
Administrative Law Judge

DocuSigned by:
john moore
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John L. Moore
Technical Examiner

[42] *Occidental*, 47 S.W.3d at 809.