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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL AND GAS DOCKET NO. 20-0325507

APPLICATION OF MT ENERGY LLC (518947) 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
John Moore – Technical Examiner

PROCEDURAL HISTORY:

Hearing Date:	July 31, 2020
Transcript Received and Close of Record:	August 13, 2020
Proposal for Decision Issued:	November 6, 2020

APPEARANCES:

For Staff –

Elaine M. Moore, Staff Attorney
Office of General Counsel, Enforcement Section

For MT Energy LLC –

Michael Studer, Principal

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I. Statement of the Case

MT Energy LLC (“Operator” or “MT Energy”), Operator No. 518947, seeks a determination, contrary to Railroad Commission of Texas (“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”).

Staff provided evidence and MT Energy acknowledges that MT Energy is noncompliant with the Commission’s inactive well rule regarding five wells. MT Energy maintains it became the operator of these abandoned wells because it wants to bring these wells back into production, but the regulatory framework has made it difficult for MT Energy to achieve compliance.

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 September 3, 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 transcript in this case is referred to as “Tr. at [page(s)].” Staff’s exhibits are referred to as “Staff Ex. [exhibit no(s)].” Operator’s exhibits are referred to as “Operator 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 December 18, 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 December 18 letter provided Operator 30 days to request a hearing regarding the determination. Operator requested a hearing, paid the required fee, and provided a list of affected surface owners. This case followed.

On March 20, 2020, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Operator, Staff, and surface owners, setting a hearing date of July 31, 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 July 31, 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 the operator to engage in operations within the Commission's jurisdiction, such as drilling

³ Staff Ex. 1.

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

⁵ Staff Ex. 2.

⁶ See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

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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

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

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).

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, Staff had one witness who provided testimony and Commission records showing Operator has five non-compliant wells ("Wells"). The Wells are inactive and not in compliance with inactive well requirements.¹¹

Staff's witness was Jennifer Gilmore, the Manager of the Commission's P-5 Financial Assurance Unit. Ms. Gilmore oversees Staff's processing of P-5 filings, financial assurance and inactive well filings as they pertain to Statewide Rule 15¹² requirements. She is familiar with the inactive well status of MT Energy. She testified and provided Commission records demonstrating that as of the date of the hearing MT Energy was noncompliant with inactive well requirements for five Wells, preventing the renewal of MT Energy's Form P-5. She testified regarding the outstanding issues MT Energy needs to address to obtain compliance. For all five noncompliant Wells, MT needs an approved Commission Form W-3C *Certification of Surface Equipment Removal for an Inactive Well* certifying the following for the wells:

1. The electricity has been disconnected,
2. All production fluids have been purged, and
3. Surface equipment has been removed.

In addition, for one of the Wells, there is a Commission Form H-15 *Test on an Inactive Well More Than 25 Years Old* delinquency. The table below identifies each well and summarizes the outstanding compliance issues.¹³

Table of Noncompliant Wells

API No.	RRC District	ID No.	Lease Name	Well No.	Outstanding compliance issues
203 01430	06	15640	MT-Delrey #1	6	<ol style="list-style-type: none"> 1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed

¹¹ See, e.g., Staff Ex. 3, 4.

¹² 16 Tex. Admin. Code § 3.15.

¹³ Tr. at 9:13 to 13:23; Staff Ex. 3, 4.

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203 01461	06	15640	MT-Delrey #1	12	<ol style="list-style-type: none"> 1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed 4. H-15 delinquency preventing 14(b)(2) approval must be resolved
203 01465	06	15640	MT-Delrey #1	16	<ol style="list-style-type: none"> 1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed
203 01469	06	15640	MT-Delrey #1	17	<ol style="list-style-type: none"> 1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed
203 01470	06	15640	MT-Delrey #1	21	<ol style="list-style-type: none"> 1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed

Mr. Michael Studer, a principal of MT Energy, testified on behalf of MT Energy. Mr. Studer acknowledged the Wells are not in compliance, as discussed by Staff.¹⁴

Mr. Studer explained MT Energy's business plan was to take over abandoned wells and produce them. He stated MT Energy did a robust analysis to determine production forecasts for various abandoned wells before becoming the operator. He opined that the Commission would benefit from MT Energy's business plan of acquiring and producing currently abandoned wells by saving the cost of plugging the abandoned wells that MT Energy acquired and produced.¹⁵

¹⁴ Tr. at 16:22 to 40:2.

¹⁵ *Id.*; Operator Ex. 1 at 5-21.

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Mr. Studer testified MT Energy purchased the subject lease in 2018 when the lease had 21 orphaned wells. He explained that at the time MT Energy did not have experience in orphaned wells and the Commission's orphaned well program. He said MT Energy's ambition was to return the wells to production. He claims, because of MT Energy's unfamiliarity with the Commission's program, MT Energy innocently obtained the abandoned wells on the lease. He maintained that MT Energy is an amateur and not a sophisticated operator regarding the Commission's orphaned well program.¹⁶

Mr. Studer testified Well No. 21 is in a landowner's backyard and the landowner does not want intrusions. He stated MT Energy has a valid contractual lease but has had difficulty working through issues with the landowner regarding this well. He maintained MT Energy was not aware of this well's location and Staff should have informed MT Energy about this issue prior to MT Energy becoming the operator for this well. He alleged the Commission required MT Energy to become the operator of this well as part of a package in becoming the operator of other wells. He acknowledged MT Energy voluntarily signed the Form P-4 to take over this well. He believes, due to difficulties with the landowner, MT Energy merely took over the liability from the Commission to plug this well. He claims there was no actual possibility to bring it back to production due to the situation with the landowner.¹⁷

Mr. Studer discussed the efforts MT Energy has made to get the abandoned wells it obtained back into production; he also discussed the timeline of those efforts. He claimed the weather has caused delays due to what he referred to as "record rainfall." He stated the area was flooded such that getting workover rigs to wells was impossible at times. He argued the weather prevented MT Energy from complying with the deadlines for obtaining plugging extensions for the Wells.¹⁸

Regarding the requirement to remove equipment in order for MT Energy to be in compliance, Mr. Studer stated MT Energy wants the opportunity to continue utilizing the equipment and still has the goal of putting the Wells back into production. He testified MT Energy has not removed the equipment for the Wells because it still wants to bring the Wells back into production. He testified the electricity has been disconnected and production lines have been purged for the Wells but acknowledged there has been no certification to the Commission regarding these efforts towards compliance.¹⁹

Mr. Studer claimed the reason MT Energy went into the abandoned well business is because he is the founder of what he characterized as a large environmental and hazardous waste cleanup company. He testified he is familiar with groundwater protection and groundwater impacts. He argued that he understands the interest in protecting the environment but there is also an interest in having a regulatory program that will attract operators to take over abandoned wells in order to bring them back into production. He opined that currently the Commission's abandoned well program does not

¹⁶ Tr. at 16:22 to 40:2.

¹⁷ *Id.*

¹⁸ *Id.*; Operator Ex. 1 at 3-4.

¹⁹ Tr. at 16:22 to 40:2; Operator Ex. 1 at 2.

do this and is arguably punitive. To provide an example, he stated if there is a fluid level test failure, the only alternative is to perform a mechanical integrity test. He claimed some of these tests are unnecessary and prevent operators from being able to bring abandoned wells back into production. He claimed the current scheme is too expensive and there needs to be more flexibility for it to be economical for operators to take abandoned wells and bring them back to production. He alleged Texas is going to incur substantial plugging expenses due to the lack of incentive for operators to acquire abandoned wells in an effort to bring those wells back to production.²⁰

Mr. Studer concluded in stating that he appreciates Staff's time, the efforts of those he has dealt with in District 6, and those he has dealt with in trying to work through these compliance issues. He maintained that the regulatory framework makes it difficult for operators to take over abandoned wells to try to bring them back into production.²¹

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 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-5.²² If the operator fails to achieve compliance before the renewal date, the Commission cannot renew the operator's P-5.²³

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.²⁴

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.²⁵ At the hearing, the parties agreed the Wells are not in compliance with inactive well requirements.

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

²⁰ Tr. at 16:22 to 40:2.

²¹ Tr. at 42:13 to 43:13.

²² See Tex. Nat. Res. Code § 89.022(a).

²³ See Tex. Nat. Res. Code § 89.022(c) and (d).

²⁴ 16 Tex. Admin. Code § 3.15(a)(6).

²⁵ 16 Tex. Admin. Code § 3.15(d).

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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. MT Energy LLC ("Operator" or "MT Energy"), Operator No. 518947, is the current operator of record for the subject wells.
2. In a letter to Operator dated September 3, 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 December 18, 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 December 18 letter provided Operator 30 days to request a hearing regarding the determination.
4. Operator requested a hearing, paid the required fee, and provided a list of affected surface owners.
5. On March 20, 2020, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to Operator, Staff, and surface owners, setting a hearing date of July 31, 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.²⁶
6. The hearing was held on July 31, 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.

²⁶ See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

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8. For all five noncompliant wells, MT needs an approved Commission Form W-3C *Certification of Surface Equipment Removal for an Inactive Well* certifying the following for the wells:
- a. The electricity has been disconnected,
 - b. All production fluids have been purged, and
 - c. Surface equipment has been removed.

In addition, for one of the wells, there is a Commission Form H-15 *Test on an Inactive Well More Than 25 Years Old* delinquency. The table below identifies each well and summarizes the outstanding compliance issues.

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203 01461	06	15640	MT-Delrey #1	12	<ul style="list-style-type: none"> 1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed 4. H-15 delinquency preventing 14(b)(2) approval must be resolved
203 01465	06	15640	MT-Delrey #1	16	<ul style="list-style-type: none"> 1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed
203 01469	06	15640	MT-Delrey #1	17	<ul style="list-style-type: none"> 1. Electricity must be disconnected

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					2. Production fluids must be purged 3. Surface equipment must be removed
203 01470	06	15640	MT-Delrey #1	21	1. Electricity must be disconnected 2. Production fluids must be purged 3. Surface equipment must be removed

9. 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.
10. 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
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Jennifer Cook
Administrative Law Judge

DocuSigned by:
John Moore
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John Moore
Technical Examiner