

APPLICATION OF GROVER R. DAVIDSON PURSUANT TO STATEWIDE RULE 78 TO CONSIDER A REDUCTION IN FINANCIAL ASSURANCE REQUIREMENTS FOR INLAND WATERWAY WELLS FOR HIS OPERATIONS IN THE STATE OF TEXAS

APPEARANCES:

FOR APPLICANT:

Grover R. Davidson

APPLICANT:

Grover R. Davidson

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

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| DATE OF REQUEST FOR HEARING: | May 9, 2008 |
| DATE OF NOTICE OF HEARING: | May 13, 2008 |
| DATE OF HEARING: | May 30, 2008 |
| HEARD BY: | James M. Doherty, Hearings Examiner |
| DATE RECORD CLOSED: | June 2, 2008 |
| DATE PFD CIRCULATED: | July 11, 2008 |

STATEMENT OF THE CASE

This is the application of Grover R. Davidson (“Davidson”) for a reduction in the financial assurance required by Statewide Rule 78(g)(2) for the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J, Boling Field, Wharton County, Texas. These wells have been classified as inland waterway wells requiring bay well financial assurance. Davidson is the operator of the three wells classified as inland waterway wells, which are inactive, and six wells classified as land wells. These nine wells have total depth of 8,920'. Unless the requested reduction is approved, Davidson will be required to file financial assurance of at least \$197,840 to renew his Form P-5 organization report for his renewal year which commenced March 1, 2008.

A hearing was held in this docket on May 30, 2008. At the applicant’s request, the hearing was held telephonically, and Davidson appeared to represent himself. No one appeared in opposition to the application. The record of the hearing was held open until June 2, 2008, to permit Davidson to late-file certain information requested by the examiner.

APPLICABLE LAW

Pursuant to §91.104 of the Texas Natural Resources Code, a person required to file a bond, letter of credit, or cash deposit under §91.103 of the Code who is an inactive operator or who operates one or more wells must, at the time of filing or renewing an organization report required by §91.142 of the Code, file an individual bond as provided under §91.1041 of the Code, a blanket bond as provided under §91.1042 of the Code, or a letter of credit or cash deposit in the same amount as required for an individual bond under §91.1041 of the Code or a blanket bond under §91.1042 of the Code.

Pursuant to §§91.1041(b) and 91.1042(b) of the Code, the Commission is authorized to set by rule the amount of the financial security for an operator of bay and offshore wells at a reasonable amount that exceeds the amount provided by §§91.104(a) and 91.1042(a) of the Code.

Statewide Rule 78(g)(1) provides the base amount of financial security required of all operators. The base amount of blanket bonds, letters of credit, or cash deposits required of operators of 10 or fewer wells is \$25,000. Alternatively, an operator may file an individual bond in an amount equal to \$2.00 per foot of the total depth of all wells operated.

Statewide Rule 78(g)(2) provides for the filing of additional financial security for operators of bay wells. Pursuant to Statewide Rule 78(g)(2)(A), all operators of bay wells must file entry level financial security of no less than \$60,000 in addition to the financial security required by Statewide Rule 78(g)(1). Statewide Rule 78(g)(2)(B) requires additional financial security of \$60,000 for each inactive bay well in excess of one.

Statewide Rule 78(a)(5) defines “bay well” as any well under the Commission’s jurisdiction for which the surface location is, as here pertinent, located in or on a lake, river, stream, canal, estuary, bayou, or other inland navigable waters of the state and which requires plugging by means other than conventional land-based methods, including, but not limited to, use of a barge, use of a boat, dredging, or building a causeway or other access road to bring in the necessary equipment to plug the well.

BACKGROUND¹

This is Davidson’s fourth successive request for a reduction in the financial assurance required by Statewide Rule 78(g)(2) for the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J. In three prior dockets, Oil & Gas Docket No. 03-0242400 (Final Order served November 2, 2005), Oil & Gas Docket No. 03-0246950 (Final Order served August 23, 2006), and Oil & Gas

¹ Except as otherwise noted, this discussion of “Background” derives mainly from official notice of the proposals for decision and final orders in Oil & Gas Docket Nos. 03-0242400, 03-0246950, and 03-0251941 and Commission mainframe databases, to which Davidson had no objection.

Docket No. 03-0251941 (Final Order served September 12, 2007), the Commission approved Davidson's request for financial assurance reduction relating to Davidson's 2005, 2006, and 2007 Form P-5 renewals, subject to conditions. In these prior dockets, the reductions approved by the Commission permitted Davidson to renew his organization report by filing financial assurance in an amount equal to the amount required by Statewide Rule 78(g)(1) for land wells. If, as Davidson requests, the same relief were granted in the present docket, Davidson's financial assurance requirement to renew his Form P-5 organization report for his renewal year commencing March 1, 2007, would be \$17,840.²

Davidson is a small operator of nine shallow wells on four leases in the Boling Field in Wharton County. These wells range in depth from 239' to 2,622'. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, which are Davidson's wells classified as wells in an inland waterway, range in depth from 795' to 840'. The examiner has officially noticed the Production Data Query database which shows that during the period January 2007 through March 2008, Davidson's total reported production from all leases was 105 barrels of oil and 12 MCF of casinghead gas.

The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J ("subject wells") were drilled as land wells by a previous operator in 1982. Davidson became the operator of these wells in 1986 and produced the wells as land wells until January 1999, when production ceased because water had encroached on the location of the wells.

The wells are located in a natural drainage area that drains toward the San Bernard River in Wharton County. Water collects in this drainage area as the result of rainfall. When Davidson commenced to operate the subject wells in 1982, a mining company was engaged in the mining of sulfur in the area and used pumps to remove water that collected in the drainage way. However, a successor landowner discontinued this practice, and water gradually encroached on the location of the subject wells by early 1999.

In 2002, Phillips Petroleum Company obtained a certificate of adjudication from the Texas Commission on Environmental Quality to impound water in the area, and it appears that ConocoPhillips now uses the area for storage of water. Two relatively large and connected lakes have formed in the area. The evidence suggests that collection of water into these lakes is the result of run off into a natural subsidence area, and also possibly is a function of how levees are maintained

² Davidson's Form P-5 was due for renewal on March 1, 2008, and currently is delinquent. Severance of Davidson's leases based on this delinquency has been held in abeyance pending the final outcome of Davidson's request for financial assurance reduction in this docket.

and how much water is released from the lakes into the San Bernard River.³ Water released into the river flows down the river bed to a ConocoPhillips refinery at Sweeney, Texas, where it is extracted and apparently used in the refinery operation.

Davidson claims that at one time ConocoPhillips agreed to drain water from the upper lake to allow Davidson access to the subject wells for the purpose of plugging them, but this never happened. Davidson is a plaintiff in a class action lawsuit filed in Wharton County against ConocoPhillips and others, wherein claims are being made regarding plaintiffs' damages arising from maintenance of the water impoundment. A June 7, 2005, letter to Davidson's attorney from an attorney apparently representing ConocoPhillips stated that his client had begun de-watering the lake at the Sweeney refinery to allow Davidson access to abandon the subject wells, although the context of the letter may suggest that continuation of this effort was dependent on settlement of the class action lawsuit. In any event, the water has not been drained away from the subject wells. Although the water level in the lake around Davidson's wells has receded as compared to last year due to a lack of rainfall, the B. M. Floyd "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, depending on the well, are still covered by 5' to 25' of water.⁴

DISCUSSION OF THE EVIDENCE

Davidson requests a reduction in financial assurance applicable to wells in an inland waterway, because the B. M. Floyd "B" (19205) Lease, Well Nos. 1A, 2L, and 3J were drilled and operated for many years as land-based wells. Water encroached on the location of the wells, and has been artificially maintained around the wells ever since, through no fault or control of Davidson. According to Davidson, he is a "little guy trying to survive." Davidson's total revenues from the oil and gas business during 2007 amounted to about \$10,000, and requiring Davidson to file financial assurance in the amount of \$197,840 would impose a severe hardship.

Davidson has asserted that ConocoPhillips has decided to do nothing in the way of lowering the water level around Davidson's wells to allow Davidson access for the purpose of plugging the wells.⁵ He believes that the Commission should pursue the matter with ConocoPhillips to require

³ Davidson claims that in 1999, a levee to the north and east of the lakes was breached, and this breach allows rainfall run-off to drain into the lakes. Davidson says that the breach was never repaired because the landowner was interested in collecting water into the lakes. A valve system and spillway at the other end of the lakes permits water from the lakes to be released into the San Bernard River. Davidson claims that the water level in the lakes is being artificially controlled by ConocoPhillips which releases water from the lakes according to the needs of the Sweeney Refinery.

⁴ According to Davidson, if the water level continues to recede due to a lack of rain, it may be possible to plug at least two of the subject wells by pushing dirt around the locations of the wells.

⁵ In 2002, Davidson furnished the District Office with correspondence from Phillips Petroleum Company that took the position that the area around Davidson's wells had been naturally flooded, and Phillips did not have

that waters be drained sufficiently to allow Davidson to plug the subject wells. Davidson has stated his willingness and intention to plug the subject wells when water has been drained from around them and the wells can be plugged by conventional land-based methods.

Davidson believes that, in the meantime, the subject wells are not presenting any threat to usable quality water. He asserts that the wells are not leaking and have no real prospect of leaking because valves are shut in, and the wells are completed in a tight sand. Davidson has been inspecting the location of the wells at least monthly, and believes that if the wells were leaking, this could be observed on the surface of the water around the wells. Davidson says further that closely spaced holes were drilled throughout the Boling Field area by a sulfur mining operator which was not required to cement casing in the holes, so that the area was not environmentally protected. Davidson believes that all water sands in the area are invaded with mine water, and there is no drinkable water in the field area.

The class action lawsuit filed against ConocoPhillips on behalf of Davidson and various other plaintiffs, which has been pending since at least 2005, has not yet gone to trial on the merits. There has, however, been some movement in the case since Davidson's financial assurance reduction case last year. According to a letter from Davidson's attorneys, on May 22, 2008, the Judge of the 23rd District Court in Wharton County denied motions for summary judgment filed by ConocoPhillips and another defendant. Davidson's attorneys have advised by this letter that one form of relief sought by Davidson in this litigation is the draining of impounded water from his property.

EXAMINER'S OPINION

The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J were drilled as land wells and produced as such for 17 years before the area around the wells became flooded. Water encroached on the locations of the wells through no fault of Davidson. However remote the current prospects may seem, the subject wells are susceptible to being plugged by conventional land-based methods when and if water recedes or is drained or pumped from the area around the wells. Responsibility for causing this to happen may be settled as the result of pending litigation. There is no evidence that in the meantime the subject wells are presenting an imminent threat to usable quality water. The Commission has, during the three previous years, approved a financial assurance reduction for Davidson based on essentially the same facts as are presented here. In the circumstances, the examiner recommends that Davidson be granted an exception to the provisions of Statewide Rule 78(g)(2), allowing Davidson to renew his Form P-5 organization report for his renewal year commencing March 1, 2008, by filing financial assurance in an amount equal to the amount required under Statewide Rule 78(g)(1), which in this case is \$17,840, subject to the same conditions as were contained in the Commission's final orders in Oil & Gas Docket Nos. 03-0242400, 03-0246950, and 03-0251941.

the responsibility to remove the water by drainage or pumping.

Based on the record in this case, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. At least ten (10) days notice of hearing in this docket was sent to Grover R. Davidson ("Davidson"), and Davidson appeared at the hearing and presented evidence.
2. Davidson's Form P-5 organization report was due for renewal on March 1, 2008. Because Davidson is the designated operator of nine wells having total depth of 8,920', and three of these wells, the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J, Boling Field, Wharton County, Texas, have been classified as inactive wells in an inland waterway, Davidson is required to file financial assurance of at least \$197,840 to renew his Form P-5 organization report, unless an exception to or reduction of the financial assurance requirements of Statewide Rule 78(g)(2) is approved by the Commission.
3. Davidson is a small operator of nine shallow wells on four leases in the Boling Field in Wharton County. These wells range in depth from 239' to 2,622'. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J range in depth from 795' to 840'. During the period January 2007 through March 2008, Davidson reported total production from all leases of 105 barrels of oil and 12 MCF of casinghead gas.
4. Being unable to file financial assurance in the amount of \$197,840, Davidson could not renew his Form P-5 organization report on the March 1, 2008, due date, and his organization report has been in delinquent status since that date.
5. By this application, Davidson requests that the Commission approve a reduction in the amount of financial assurance that Davidson is required to file in order to renew his Form P-5 organization report. This is the fourth successive year in which Davidson has made a request for financial assurance reduction.
6. In three prior dockets, Oil & Gas Docket No. 03-0242400 (Final Order served November 2, 2005), Oil & Gas Docket No. 03-0246950 (Final Order served August 23, 2006), and Oil & Gas Docket No. 03-0251941 (Final Order served September 12, 2007), on essentially the same facts as are presented in the present docket, the Commission approved a reduction in the financial assurance that Davidson was required to file in order to renew his Form P-5 organization reports for the renewal years commencing March 1, 2005, March 1, 2006, and March 1, 2007. In these prior dockets, the reductions approved by the Commission permitted Davidson to renew his organization report by filing financial assurance equal to the amount required by Statewide Rule 78(g)(1), subject to conditions. Based on these approvals and the total depth of wells he then operated, Davidson filed approved financial assurance for his 2005, 2006, and 2007, renewal years in the amount of \$18,580.

7. In the present docket, Davidson requests that he be granted the same relief from financial assurance requirements as was granted in Oil & Gas Docket Nos. 03-0242400, 03-0246950, and 03-0251941. If this relief were approved, Davidson's financial assurance requirement would be \$17,840 to renew his organization report for the renewal year commencing March 1, 2008.
8. The financial assurance required of Davidson under Statewide Rule 78 is greatly impacted by classification of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J as inactive inland waterway wells. This classification alone serves to increase Davidson's financial assurance requirement under Statewide Rule 78 by \$180,000.
9. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J were drilled by a previous operator in 1982 as land wells. Davidson became the operator of the wells in 1986 and produced them as land wells until early 1999, when water encroached on the locations of the wells making continued production impossible.
10. The Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J are located in a natural drainage area that drains toward the San Bernard River in Wharton County. Water collects in this drainage area as the result of rainfall and a breach in a levee system that has gone unrepaired. When Davidson commenced to operate the subject wells in 1986, a mining company was engaged in the mining of sulfur in the area and used pumps to pump out water that collected in the drainage way. However, a successor landowner discontinued this practice, and water gradually encroached on the location of the subject wells by early 1999.
11. In 2002, Phillips Petroleum Company, now ConocoPhillips, obtained a certificate of adjudication from the Texas Commission on Environmental Quality allowing Phillips to impound water in the area for use in a refinery operation at Sweeney, Texas. Water is released from this water storage area into the San Bernard River and flows down the river bed to the refinery where it is extracted for use by ConocoPhillips in the refinery operation.
12. Two relatively large and connected lakes have formed in the area, and the westernmost of these lakes now covers the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J with 8' to 15' of water. Formation of the lakes is the result of rainfall run off into a natural subsidence area and may also have been affected by the manner in which adjacent levees are constructed and maintained and the amount of water that is released by ConocoPhillips into the San Bernard River.
13. ConocoPhillips has declined to take steps to drain or pump water away from the locations of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J so that Davidson might produce the wells or plug them. Davidson is a plaintiff in a class action lawsuit against ConocoPhillips and others, now pending in Wharton County, wherein claims are being asserted for flooding of plaintiffs' properties. Davidson believes that this lawsuit may resolve the question of responsibility for draining water away from the Floyd, B. M. "B"

(19205) Lease, Well Nos. 1A, 2L, and 3J.

14. The locations of the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J were flooded due to circumstances beyond any control of Davidson. ConocoPhillips has a water easement in the lands covered by the lake which covers these wells and the right to use water from this lake. Davidson has no control over the water level around the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J.
15. If ConocoPhillips will not permanently drain water from the area of the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J so that the wells can be produced, but will temporarily remove the water covering these wells by pumping, Davidson will plug the wells as soon as they can be accessed on dry land.
16. Valves on the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J are shut in, and the wells are not leaking. There is no evidence that these wells are currently posing an imminent threat of pollution of any usable quality water source.
17. The Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J are susceptible to being plugged by conventional land-based methods if water around the wells recedes due to lack of rainfall or due to intentional drainage of the body of water that currently surrounds the wells.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. The financial assurance requirements of Statewide Rule 78(g)(2) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.78(g)(2)] are subject to reduction pursuant to Statewide Rules 78(g)(4) and 78(g)(5) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §§3.78(g)(4) and 3.78(g)(5)], or if the operator requests a hearing, by the granting of an exception to the requirements of Statewide Rule 78(g)(2).
4. Whether an exception to, or reduction in, the financial assurance requirements of Statewide Rule 78(g)(2) should be approved is a matter within the Commission’s discretion.
5. The flooded condition of the Floyd, B. M. “B” (19205) Lease, Well Nos. 1A, 2L, and 3J may be temporary, and these wells may be susceptible of plugging by conventional land-based methods if water recedes due to lack of rainfall or drainage, thus removing the wells from the definition of “bay wells” in Statewide Rule 78(a)(5) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.78(a)(5)].

6. Grover R. Davidson is entitled to an exception to the financial assurance requirements of Statewide Rule 78(g)(2) for his Form P-5 organization report renewal year commencing March 1, 2008, based on the following factors: (a) the flooded condition of the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and 3J may be temporary, and these wells may be susceptible of plugging by conventional land-based methods if water recedes due to lack of rainfall or drainage; (b) the subject wells were drilled as land wells and operated as such for 17 years before the wells were flooded; (c) the flooded condition of the subject wells was and is beyond the control of Grover R. Davidson; (d) there is no evidence that the subject wells are currently presenting an imminent threat of pollution of any usable quality water source; and (e) Grover R. Davidson's entitlement to a financial assurance reduction will be subject to further Commission review when his Form P-5 organization report is due for renewal as of March 1, 2009.

7. Grover R. Davidson should be permitted to renew his Form P-5 organization report for his renewal year commencing March 1, 2008, by filing an amount of financial assurance equal to the amount required under Statewide Rule 78(g)(1), subject to the following conditions: (a) within 30 days of the date on which the final order becomes administratively final, Grover R. Davidson shall file at a minimum the amount of financial assurance required by Statewide Rule 78(g)(1) and make such other filings as may be necessary to renew his organization report for the period March 1, 2008, through February 29, 2009; (b) in the event Grover R. Davidson does not, within 30 days of the date the Final Order becomes administratively final, file at a minimum the amount of financial assurance required by Statewide Rule 78(g)(1) and renew his organization report for the period March 1, 2008, through February 29, 2009, the P-4 certificates of compliance for all leases operated by Davidson shall be canceled and their pipeline or other carrier connections shall be severed; (c) Grover R. Davidson shall plug the Floyd, B. M. "B" (19205) Lease, Well Nos. 1A, 2L, and/or 3J, if prior to February 29, 2009, waters are removed from around such wells, the removal of waters is only temporary, and the wells can be plugged by conventional land-based methods, as determined by the Commission's Field Operations Section; and (d) this Final Order shall not apply to the amount of financial assurance required of Grover R. Davidson to renew his organization report on March 1, 2009.

RECOMMENDATION

The examiner recommends that the attached Final Order be adopted allowing Grover R. Davidson to renew his Form P-5 organization report for his renewal year commencing March 1, 2008, by filing financial assurance in an amount equal to the amount required by Statewide Rule 78(g)(1), subject to conditions.

Respectfully submitted,

James M. Doherty
Hearings Examiner