

OIL & GAS DOCKET NO. 04-0241509

**APPLICATION OF BOSS EXPLORATION & PRODUCTION CORPORATION TO
CONSIDER AN EXCEPTION TO THE FINANCIAL SECURITY REQUIREMENTS FOR
BAY WELLS IN VARIOUS RED FISH BAY FIELDS, NUECES COUNTY, TEXAS**

APPEARANCES:

FOR APPLICANT:

John G. Soule
Mike Pawelek

APPLICANT:

Boss Exploration & Production Corp.

FOR OBSERVER:

James M. Irwin, Jr.

OBSERVER:

Texas General Land Office

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:

January 13, 2005

DATE OF NOTICE OF HEARING:

February 1, 2005

DATE OF HEARING:

March 10, 2005

HEARD BY:

James M. Doherty, Hearings
Examiner

Donna Chandler, Technical Examiner

DATE RECORD CLOSED:

March 31, 2005

DATE PFD CIRCULATED:

April 12, 2005

STATEMENT OF THE CASE

This is the application of Boss Exploration & Production Corporation (“Boss”) for an exception to the financial security requirements of Statewide Rule 78 for certain bay wells in various Red Fish Bay Fields, Nueces County, Texas. The requested exception relates to 29 inactive wellbores (involving 38 wells) in Redfish Bay presently operated by IBC Petroleum, Inc. (“IBC”). Boss proposes to become the designated operator of these wells, but does not wish, at this time, to

file the additional financial security that is required for inactive bay wells by Statewide Rules 78(g)(2)(B) and 78(j)(1). A list of the IBC wells proposed to be acquired by Boss is attached to this proposal for decision as Appendix 1.

The application is unopposed. A hearing was held on March 10, 2005, and Boss appeared and presented evidence. The record was held open until March 31, 2005, to permit Boss to file a copy of a well plugging bond presently on file with the City of Corpus Christi, Texas, in the name of IBC.

APPLICABLE LAW

Pursuant to §91.103 of the Texas Natural Resources Code (“Code”), any person, including any firm, partnership, joint stock association, corporation, or other organization, required to file an organization report under §91.142 of the Code must execute and file with the Commission a bond, letter of credit, or cash deposit.

Pursuant to §91.104 of the 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 11-99 wells is \$50,000.¹

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(g)(4) provides that an operator may request a reduction in the entry level financial security for bay wells and/or the additional financial security for inactive bay wells

¹ At the time of the hearing, Boss was the operator of 11 wellbores. Boss would become the operator of 40 wellbores if the 29 wellbores presently operated by IBC were transferred to Boss as proposed.

required by Statewide Rule 78(g)(2)(A), which can be approved administratively if the operator provides documentation that it currently has acceptable financial security in place to satisfy requirements established by local authorities and such financial security can be called on by or assigned to the Commission.

Statewide Rule 78(g)(5) provides that an operator of bay wells may request the Commission to consider a reduction in the additional financial security required by Statewide Rule 78(g)(2)(B) for inactive bay wells. The Statewide Rule 78(g)(5) reduction may not exceed 25% of the operator's certified and independently audited net worth for the most recently completed fiscal year less the Commission's estimate of the operator's plugging liability for all active bay and/or offshore wells.

Under Statewide Rule 78(g)(5)(A), a reduction may be approved administratively if: (1) the operator has either five or fewer bay and offshore wells or at least one-half of the operator's bay and offshore wells are producing; (2) the operator provides certification of net worth from an independent auditor who has employed generally accepted accounting principles; (3) the reduction does not exceed 25% of the operator's certified net worth less the Commission's estimate of the operator's plugging liability for all active bay and offshore wells; and (4) the operator's wells have not been found by Commission staff to be violating or to have violated any Commission rule that resulted in pollution or in any hazard to the health and safety of the public in the last 12 months.

Statewide Rule 78(j)(1) provides that the Commission will not approve a transfer of operatorship submitted for any well or lease unless the operator acquiring the well or lease has on file with the Commission financial security in an amount sufficient to cover both its current operations and the wells or leases being transferred.

DISCUSSION OF THE EVIDENCE

At the time of the hearing, Boss was the operator of 11 bay wellbores in the Redfish Bay area. The examiners have officially noticed Commission Certificate of Compliance and Transportation Authority (Form P-4) records establishing that all of these wells were acquired from IBC, seven effective August 31, 2004, and four effective February 1, 2005. At the time of the hearing, 6 of the bay wells operated by Boss were classified by the Commission as producing wells, and 5 were classified as inactive wells. Of the 5 Boss bay wells classified as "inactive," one had been producing since February 2005 and was expected to be classified as "active" within about 60 days, one had been recompleted in March 2005 and was expected to be classified as "active" within 90-120 days, and one was in the process of recompletion and, if successful, was expected to be "active" within 120-150 days. Boss planned to plug the two remaining inactive bay wells.

The examiners have also officially noticed Commission Organization Report (Form P-5) records establishing that Boss has an active organization report, and was first organized as an operator on August 31, 2004. As of the date of the hearing, Boss had filed financial security with the Commission in the form of a \$385,000 bond. According to testimony at the hearing, Boss planned to increase this financial security to \$410,000.

Between July 2004 and March 2005, the bay wells operated by Boss had produced 935,777 MCF of gas and 58,363 barrels of oil. According to Boss, the Redfish Bay area wells were purchased by IBC out of bankruptcy in 1999. About 750 BCF of gas has been produced from the Redfish Bay fields as a whole, mostly from upper Frio sands. Recently acquired seismic data suggests that lower Frio sands are present in the Redfish Bay area and have the potential to be productive.

The examiners have officially noticed Commission Organization Report (Form P-5) records establishing that IBC was first organized with the Commission as an operator on February 5, 1998, IBC last filed an Organization Report with the Commission on January 21, 2004, and IBC's Organization Report has been delinquent since February 1, 2005.

Effective June 1, 2004, Boss purchased 100% of the assets of IBC.² According to Boss, IBC was owned by a German investment company that has ceased funding of IBC's operations. There is no common ownership between IBC and Boss, but Michael Pawelek, who is Boss' President, was a Vice President of IBC from July 2000 until January 2005.

Boss proposes to become the designated operator of the 29 inactive bay wellbores (and 38 inactive bay wells) of which IBC remained the designated operator as of the date of the hearing. Twenty-two of the wells, and 15 of the wellbores, proposed to be acquired from IBC are located on State tracts having no currently effective oil and gas leases.³ Of the 29 wellbores which Boss proposes to acquire from IBC, 15 are believed by Boss to be candidates for reentry, and 14 are believed by Boss to require plugging.⁴ Six of the wellbores that are believed by Boss to be candidates for reentry are located on State tracts where the oil and gas leases have lapsed.⁵ Boss

² Included in the assets purchased are two certificates of deposit in the amount of \$250,000 each which collateralize a \$500,000 well plugging bond in IBC's name on file with the City of Corpus Christi, Texas, covering "most" of the wells that Boss proposes to acquire from IBC. Boss has discussed with the City of Corpus Christi the transfer of this bond into Boss' name, and, according to Boss, the City is willing to do this if and when the Commission approves the transfer of IBC's wells to Boss. In the event there should be any entitlement, upon transfer of IBC's wells to Boss, of a refund of the \$50,000 cash deposit on file with the Commission as IBC's financial security, Boss also claims ownership of this deposit.

³ State tracts on which leases have lapsed are State Tracts 352, 397, 414, 416, 422, 423, 424, 444, 445, and 456.

⁴ Evidence presented at the hearing established that from July 2000 through January 2005, when Boss' President was an officer of IBC, IBC did not plug and abandon any wells, although it did reenter and recomplete one formerly inactive well. Since Boss was organized as an operator with the Commission in August 2004, Boss has not plugged and abandoned any wells, although it has reentered and recompleted three formerly inactive wells, including one that presented a possible pollution problem.

⁵ These are State Tract 352, Well No. 1; State Tract 414, Well Nos. 6, 6-L, and 6-U (multiple completion); State Tract 416, Well No. 2; State Tract 422, Well No. 6; State Tract 445, Well No. 1; and State Tract 456, Well No. 1. Boss will renominate these tracts with the hope of being the successful bidder for new oil and gas leases.

believes the average reentry and recompletion cost and the average plugging cost per well will be about \$50,000.

Boss stated at the hearing that it was incorporated in August 2004. It asserted that at the time it formulated its business plan, the financial security requirement for operators of 11-99 wells was only \$50,000, and although it was aware the Commission was considering some changes in required financial security, it “had no idea” that its total financial security requirement would turn out to be in excess of \$2,000,000. Considering its financial security requirement for the active and inactive bay wells it already operated and the financial security requirement for the 29 inactive bay wellbores it proposed to acquire from IBC, Boss’ total financial security requirement, as of the date of the hearing, was \$2,090,000.⁶ Boss asserted that because it is a newly organized company without audited financial statements, surety companies require Boss to post cash collateral in an amount equal to the face amount of the bond written for Boss.⁷ Boss does not believe that it could post cash collateral of \$2,090,000, and, at the same time, pursue its plan to reenter and/or plug the wells proposed to be acquired from IBC. Capital advanced by its Dallas investment group owners was earmarked for the assets acquisition from IBC and for reentry and/or plugging, as required, of the IBC wells, and the investors are not willing to sign personal guarantees required by surety companies.

By this application Boss requests that the Commission permit Boss to take a transfer from IBC of the 29 inactive bay wellbores (and 38 inactive bay wells) presently operated by IBC without requiring Boss to post, at this time, the additional financial security required for these wellbores by Statewide Rule 78(g)(2)(A) (\$1,740,000). Boss proposes that this relief be granted in return for Boss’ commitment as follows:

- (1) Boss will maintain a bond or letter of credit on file with the Commission in the amount of \$410,000 unless its total financial security requirement under Statewide Rule 78 drops below that amount;
- (2) On the one-year anniversary of the effective date of the Commission’s Final Order in this docket, Boss will have no more than 20 inactive wellbores not covered by a bond or letter of credit on file with the Commission;

Whether or not new leases can be acquired, Boss is willing to assume the plugging liability with respect to these wells, if this application is approved and the wells are transferred to Boss.

⁶ This is based on base financial security of \$50,000 for an operator of 11-99 wells, entry level financial security of \$60,000 for an operator of bay wells, and additional financial security for a total of 33 inactive bay wellbores of \$1,980,000.

⁷ Boss asserted at the hearing that it could not qualify under Statewide Rule 78(g)(5) for a reduction in the additional financial security for inactive wells required by Statewide Rule 78(g)(2)(B) for essentially the same reason, i.e., because it does not have audited financial statements with a certification of Boss’ net worth.

(3) On the two-year anniversary of the effective date of the Commission's Final Order in this docket, Boss will have no more than 10 inactive wellbores not covered by a bond or letter of credit on file with the Commission;

(4) On the three-year anniversary of the effective date of the Commission's Final Order in this docket, Boss will have no inactive wellbores not covered by a bond or letter of credit on file with the Commission; and

(5) Boss will maintain a plugging bond with the City of Corpus Christi in the amount of \$500,000, or increase the amount of its bond or letter of credit with the Commission to the extent that the bond on file with the City of Corpus Christi is less than \$500,000, until the three-year anniversary of the effective date of the Commission's Final Order in this docket.

Boss asserts that the Commission's choices are to approve Boss' application and permit Boss to acquire the 29 inactive bay wellbores presently operated by IBC without filing, at this time, the additional financial security required by Statewide Rule 78(g)(2)(B) or deny the application and leave the 29 inactive bay wellbores with IBC, which has only \$50,000 of financial security and, according to Boss' belief, no assets. Boss stated that if the application is denied, Boss would simply acquire the IBC wells one at a time, as Boss is able to file the required financial security.

EXAMINERS' OPINION

The examiners recommend that the Boss application be denied. Statewide Rule 78(j)(1) provides that the Commission may not approve a transfer of operatorship submitted for any well or lease unless the operator acquiring the well or lease has on file with the Commission financial security in amount sufficient to cover both its current operations and the wells or leases being transferred.

The examiners cannot recommend a reduction in the amount of additional financial security required for bay wells pursuant to Statewide Rule 78(g)(4) based on a documentation of financial security filed with local authorities, because the well plugging bond presently filed with the City of Corpus Christi is in IBC's name, this bond apparently does not cover all of the 29 wellbores which Boss proposes to acquire from IBC⁸, and Boss did not establish that this bond is now, or ever will be, subject to the call of the Commission.

The examiners cannot recommend a reduction pursuant to Statewide Rule 78(g)(5) in the amount of additional financial security required for inactive bay wells to the extent of 25% of Boss' independently audited and certified net worth, less the Commission's estimate of Boss' plugging

⁸ Boss asserted at the hearing that the IBC well plugging bond on file with the City of Corpus Christi covers "most" of the wells that Boss proposes to acquire from IBC.

liability for its active bay wells, because Boss presented no evidence concerning its net worth, if any.

There are no other bay well financial security reduction provisions in Statewide Rule 78. This rule does not provide for the granting of exceptions to financial security requirements in general or to bay well financial security requirements in particular.⁹ Boss fairly characterizes its application as a request for a “delay,” in Boss’ particular case, of the implementation of the Statewide Rule 78 bay well financial security requirements, but Statewide Rule 78 does not provide for any such delay either.¹⁰

Even were there provisions in Statewide Rule 78 for the granting of “exceptions” to financial security requirements for bay wells, the examiners could not justify the recommendation of an exception in Boss’ case. By reason of its acquisition of all of the assets of IBC, Boss is now the owner of all 29 inactive wellbores of which IBC is the designated operator. Subject to the Commission’s approval, Boss now controls which of these wellbores will be transferred to Boss and when.¹¹ Boss correctly asserts that leaving these wellbores with IBC is not an attractive choice, but approval of Boss’ application is only moderately more attractive. Boss has told the Commission nothing about its financial ability to plug these wells. Boss proposes that the Commission permit Boss to take a transfer from IBC of all 29 inactive bay wellbores now, while permitting Boss to maintain maximum financial security of \$410,000, which is only \$60,000 more than required for the bay wells that Boss already operates. Boss then would become the operator of a total of 40 bay wellbores, of which, under present circumstances, 34 would be classified as “inactive”. At least during the first year, the \$410,000 of financial security which Boss is willing to maintain would compare to the Statewide Rule 78(g) actual financial security requirement of \$2,090,000 and the

⁹ Whether the Commission should start down the path of granting exceptions to the financial security requirements of Statewide Rule 78 is a policy decision for the Commissioners. The examiners do not make agency policy.

¹⁰ In adopting amendments to Statewide Rule 78 to provide additional financial security requirements for bay and offshore wells, the Commission considered and rejected proposals for a delay or phase-in of these requirements. Notwithstanding Boss’ assertion at the hearing that in formulating its business plan, Boss “had no idea” of the magnitude of the bay and offshore well bonding requirement that the Commission ultimately would adopt, the examiners have officially noticed Commission records establishing that as early as December 2003, Boss’ President, Michael Pawelek, who was then a Vice President of IBC, was informed of the bay and offshore well financial security proposals being considered by the Commission. On December 16, 2003, Mr. Pawelek, acting on behalf of IBC, filed a letter with the Commission commenting on the proposals, and, among other things, proposed that the Commission delay implementation of the bay and offshore financial security requirements for “small independents” as long as they plugged one well per year until all plugging requirements had been satisfied.

¹¹ Although not an issue directly involved here, the Commission does not approve a transfer of a well or lease where there is evidence that the proposed new operator does not have a good faith claim of a current right to operate the well or lease. Twenty-two of the IBC wells, and 15 of the wellbores, that Boss proposes to acquire are located on State tracts for which there is no currently effective oil and gas lease in place.

Commission's estimate of Boss' total well plugging liability of \$2,400,000.¹²

While it is true that if Boss' commitment were fulfilled, Boss would have no wellbores not covered by the required financial security on the 3-year anniversary of the effective date of the Commission Final Order granting Boss' application, Boss' promise to achieve compliance within 3 years is not a satisfactory substitute for the financial security requirements of Statewide Rule 78(g). Boss' commitment is not subject to effective enforcement from the standpoint of ensuring that the 29 inactive bay wellbores which Boss proposes to acquire from IBC ultimately will be plugged without the use of State funds.¹³

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

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. Boss Exploration & Production Corporation ("Boss") appeared at the hearing and presented evidence.
2. By this application, Boss requests that the Commission grant an exception to Statewide Rule 78(g)(2)(B) in order to permit Boss to take a transfer from IBC Petroleum, Inc. ("IBC") of 29 inactive bay wellbores (involving 38 wells) in Redfish Bay without requiring Boss to file, at this time, the financial security required by Statewide Rule 78(g)(2)(B).
3. If the application is approved and the 29 inactive bay wellbores presently operated by IBC are transferred to Boss, Boss is willing to commit as follows:
 - (a) Boss will maintain a bond or letter of credit on file with the Commission in the amount of \$410,000, unless its total financial security requirement under Statewide Rule 78 drops below that amount;
 - (b) On the one-year anniversary of the effective date of the Commission's Final Order in this docket, Boss will have no more than 20 inactive wellbores not covered by a bond or letter of credit on file with the Commission;

¹² If this magnitude of reduction in additional bay well financial security were sought as a reduction based on net worth pursuant to the provisions of Statewide Rule 78(g)(5), Boss would be required to demonstrate a certified and independently audited net worth of \$7,080,000.

¹³ It is not enough to say that use of State funds to plug some of the IBC wells may also be necessary if the Boss application is denied. This is a risk that is presented by every application for a reduction in bay and offshore well financial security.

- (c) On the two-year anniversary of the effective date of the Commission's Final Order in this docket, Boss will have no more than 10 inactive wellbores not covered by a bond or letter of credit on file with the Commission;
 - (d) On the three-year anniversary of the effective date of the Commission's Final Order in this docket, Boss will have no inactive wellbores not covered by a bond or letter of credit on file with the Commission; and
 - (e) Boss will maintain a plugging bond with the City of Corpus Christi, Texas, in the amount of \$500,000, or increase the amount of its bond or letter of credit with the Commission to the extent that the bond on file with the City of Corpus Christi is less than \$500,000, until the three-year anniversary of the effective date of the Commission's Final Order in this docket.
4. At the time of the hearing in this docket, Boss was the operator of 11 bay wellbores in the Redfish Bay area. All of these wells were acquired by transfer from IBC. At the time of the hearing, 6 of the bay wells operated by Boss were classified by the Commission as producing wells, and 5 were classified as "inactive" wells. Boss had the expectation that 3 of its "inactive" bay wells would be reclassified as "active" within no more than 150 days, because the wells had started to produce or were in the process of being recompleted in anticipation of production.
 5. At the time of the hearing in this docket, Boss had an active organization report and had filed financial security with the Commission in the form of a \$385,000 bond.
 6. As of the date of the hearing in this docket, the organization report of IBC had been delinquent since February 1, 2005.
 7. Effective June 1, 2004, Boss purchased 100% of the assets of IBC. There is no common ownership between Boss and IBC, but Michael Pawelek, who is Boss' President, was a Vice President of IBC from July 2000 until January 2005.
 8. The June 1, 2004, assets acquisition from IBC resulted in Boss' ownership of two \$250,000 certificates of deposit which collateralize a \$500,000 well plugging bond on file in the name of IBC with the City of Corpus Christi, Texas. Boss considers that the bond on file with the City of Corpus Christi covers "most" of the wells Boss proposes to acquire from IBC. This bond is not currently subject to the call of the Railroad Commission.
 9. Twenty-two of the wells, and 15 of the wellbores, proposed to be acquired from IBC are located on State tracts having no currently effective oil and gas leases.

10. Of the 29 inactive bay wellbores that Boss proposes be transferred from IBC to Boss, 15 are considered by Boss to be candidates for reentry and 14 are considered to be candidates for plugging. Six of the wellbores that are believed by Boss to be candidates for reentry are located on State tracts for which there is no currently effective oil and gas lease.
11. As of the date of the hearing in this docket, Boss financial security requirement for the wells already operated by Boss was \$350,000.
12. As of the date of the hearing in this docket, considering the wells already operated, the total amount of financial security required to be filed by Boss in order for the Commission to transfer the 29 inactive bay wellbores from IBC to Boss was \$2,090,000.
13. Boss considers that it cannot qualify under Statewide Rule 78(g)(5) for a reduction in the additional financial security required for inactive bay wells by Statewide Rule 78(g)(2)(B), based on net worth, because Boss is a newly organized company without independently audited financial statements certifying net worth. Boss did not present any of its financial statements or other financial information at the hearing.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties to this hearing have been performed or have occurred.
3. Boss Exploration & Production Corporation (“Boss”) is required to file financial security in the form of a bond, letter of credit, or cash deposit pursuant to §91.103 of the Texas Natural Resources Code (“Code”).
4. Pursuant to §91.104 of the Code, Boss must 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.
5. Pursuant to §§91.1041(b) and 91.1042(b) of the Code, the Railroad Commission is authorized to set by rule the amount of 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.

6. As the operator of more than ten but less than 100 wells, Boss is required by the Commission's Statewide Rule 78(g)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)(1)] to file financial security in the base amount of \$50,000.
7. As the operator of bay wells, Boss is required by the Commission's Statewide Rule 78(g)(2)(A) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)(2)(A)] to file additional entry level financial security in the amount of \$60,000.
8. As the operator of inactive bay wells, Boss is required by the Commission's Statewide Rule 78(g)(2)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)(2)(B)] to file additional inactive bay well financial security in the amount of \$60,000 for each inactive bay well in excess of one.
9. In order to receive the Commission's approval of a transfer of operatorship of wells or leases from IBC Petroleum, Inc. to Boss, Boss is required by the Commission's Statewide Rule 78(j)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(j)(1)] to file financial security in an amount sufficient to cover both its current operations and the wells or leases being transferred.
10. Boss is not entitled to a reduction in the entry level financial security for bay wells and/or the additional financial security required for inactive bay wells under the financial security reduction provisions of the Commission's Statewide Rule 78(g)(4) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)(4)] because Boss did not provide documentation or otherwise prove that it currently has acceptable financial security in place to satisfy requirements established by local authorities and such financial security can be called on by or assigned to the Commission.
11. Boss is not entitled to a reduction in the additional financial security required by the Commission's Statewide Rule 78(g)(2)(b) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)(2)(B)] for inactive bay wells under the financial security reduction provisions of the Commission's Statewide Rule 78(g)(5) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)(5)] because Boss did not prove its independently audit and certified net worth.
12. The Commission's Statewide Rule 78 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78] makes no express provision for the granting of exceptions to the financial security requirements of the rule, except as provided in the financial security reduction provisions of Statewide Rule 78(g)(4) and Statewide Rule 78(g)(5).
13. Boss did not make proof sufficient to justify the granting of an exception to the financial security requirements of the Commission's Statewide Rule 78(g) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(g)] or the Commission's Statewide Rule 78(j) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78(j)].

14. The application of Boss for an exception to the Commission's Statewide Rule 78 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.78] should be denied.

RECOMMENDATION

The examiners recommend that the application of Boss Exploration & Production Corporation be denied and that the attached final order be issued.

Respectfully submitted,

James M. Doherty
Hearings Examiner

Donna Chandler
Technical Examiner