

February 9, 2005

OIL AND GAS DOCKET NO. 04-0240738

COMMISSION CALLED HEARING TO SUPERCEDE THE FINAL ORDER ISSUED FEBRUARY 25, 2003 IN DOCKET NO. 04-0228276 REQUIRING PLUGGING OF WELL NOS. 1 & 4 ON THE COOKE, C. N. (01588) LEASE, LONDON GIN FIELD, NUECES COUNTY, AND TO ENABLE WESTERN GULF OIL & GAS, LLC, TO BECOME THE OPERATOR OF RECORD FOR THE ABOVE-REFERENCED WELLS.

APPEARANCES:
FOR APPLICANT:
Dale Miller

APPLICANT:
Western Gulf Oil & Gas, LLC

REVISED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	September 28, 2004
NOTICE OF HEARING:	November 2, 2004
DATE CASE HEARD:	November 17, 2004
RECORD CLOSED:	December 14, 2004
HEARD BY:	Mark Helmueller, Hearings Examiner
REVISED PFD CIRCULATION DATE:	February 9, 2005

STATEMENT OF THE CASE

This hearing was set to consider the request of Western Gulf Oil & Gas, LLC (hereinafter "Western") to supercede the Final Order entered in Docket No. 04-0228276 requiring plugging of Well Nos. 1 and 4 on the Cooke, C. N. (01588) Lease, London Gin Field, Nueces County (hereinafter "subject lease"). Western intends to restore one well to production and use one well for disposal of lease produced water. It therefore requests that the wells should not be plugged.

SUMMARY OF EVIDENCE

The examiner took official notice of records related to Western's most recent Commission Form P-5 (Organization Report), and records identifying the wells which Western currently operates.

Western filed its most recent P-5 on December 14, 2004. Western has posted financial assurance with the Commission in the form of a \$50,000 letter of credit. Western currently operates 47 wellbores with a total depth of 307,559 feet.

The prior operator of the subject lease, ARXA International Energy, Inc. (hereinafter "ARXA"), submitted a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) which was approved by the Commission on August 28, 1998. ARXA never reported using Well No. 1 for disposal activity, and last reported production from Well No. 4 in January 1999. In Oil & Gas Docket No. 04-0228276, ARXA was ordered to plug Well Nos. 1 and 4 for violations of Statewide Rule 14(b)(2), was found to be in violation of Statewide Rule 8(d)(1) for an unauthorized discharge of oil, and was ordered to pay an administrative penalty of \$5,000.00. ARXA does not possess any current interest in the wells and is not affiliated with Western.

Western obtained an assignment of the original September 1, 1948 lease from ARXA's successor, King Resources, Inc. on July 20, 2004. Western believes the original lease remains in force and effect due to continuous production from the Cooke, C. N. Unit (12293) Lease. Commission production records for the Cooke, C. N. Unit (12293) Lease from January 1999 to the present confirm this continuous production.

Western provided records and testimony showing that the wells were abandoned because the large volume of water produced from Well No. 4 made continued production uneconomical. Western believes that it can produce up to 17,321 barrels of oil over the next 12 ½ years at an initial rate of 7 bopd based on the last full month of production from Well No. 4 in January 1999. Additionally, Western believes that the log interpretations show that another interval in Well No. 4 may have potential production. Finally, Western believes that it could potentially restore production in Well No. 4 to an even higher level if it installs a downhole jet pump.

AUTHORITY

Texas Natural Resources Code §85.049(a) provides:

On a verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent or lessen the waste.

Texas Natural Resources Code §89.041 establishes the affirmative statutory responsibility of the Commission concerning abandoned wells:

If it comes to the attention of the commission that a well has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Texas Natural Resources Code §89.042(a) provides:

If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

Texas Natural Resources Code §91.107 requires that an operator file financial assurance in the form of a bond, letter of credit or cash deposit in the amount necessary for both existing wells operated and any wells being transferred, prior to Commission approval of the transfer.

Under Statewide Rule 14, the Commission may require a person seeking to be recognized as the operator of a well to provide evidence of a good faith claim of a continuing right to operate.

EXAMINER'S OPINION

Western claims that it can meet the requirements to be recognized as the operator of the subject lease and restore Well No. 4 to active production while using Well No. 1 for the disposal of produced water. However, this claim is complicated by the Final Order requiring that ARXA plug the wells. It is the examiner's conclusion that an order superceding a Commission Final Order is warranted if the operator shows: 1) that it has a good faith claim of a continuing right to operate the well or lease; 2) that it has met the financial assurance requirements of Texas Natural Resources Code §91.107; and 3) that a superceding order is necessary to prevent waste. Western has satisfied all of these requirements.

The first two factors apply to all transfers of inactive wells, not just cases where a well is ordered to be plugged. Any operator seeking to acquire an existing well which has been inactive for more than 12 months must show that it has a good faith claim of a continuing right to operate the well upon demand by the Commission. This requirement is found in Statewide Rule 14(b)(2). Additionally, the operator must meet the requirements of Texas Natural Resources Code §91.107 as the Commission may not approve the transfer of an existing well unless the new operator has filed financial assurance with the Commission in the form of a bond, letter of credit or cash deposit.

In this case, a good faith claim of a right to operate is established by the assignment and records showing that the original 1948 lease remains in effect due to continuous production from the Cooke, C. N. Unit (12293) Lease. Western also has a \$50,000 Letter of Credit in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107. Additionally, the prior operator, ARXA, does not retain any interest in the wells.

Superceding a Final Order to Prevent Waste

Final Orders in Commission Enforcement Proceedings generally require an operator to plug a well for a violation of Statewide Rule 14(b)(2) if there is no reported production from the well (or injection for injection and disposal wells) in the past 48 months. These “plug only” orders reflect the Commission policy to require plugging of wells which are in violation of Commission rules and have been inactive for an extended period.

To support these “plug only” orders, a Finding of Fact identifies when the well or lease last reported any production or injection activity. An additional finding of fact addresses the statutory requirement in Texas Natural Resources Code §89.041, by finding that the unplugged well is causing or is likely to cause pollution of fresh water above or below the ground.

A “plug only” order falls under the Commission’s authority in Texas Natural Resources Code §89.042. Further, the courts recognize that a Commission order to plug a well “is entitled to the same weight and finality as an order granting or refusing a permit to drill a well.” *Wrather Petroleum Corporation v. Railroad Commission*, 230 S.W.2d 388, 390 (Tex.App. - Austin 1950, *reh’g denied*) citing *Railroad Commission of Texas v. Gulf Production Co.*, 132 S.W.2d 254, 256, (Tex. 1939). Finally, the findings of fact are not “technical prerequisites” but satisfy a “substantial statutory purpose.” *Morgan Drive Away, Inc. v. Railroad Commission*, 498 S.W.2d 147, 150 (Tex.1973); *Railroad Commission of Texas v. R. J. Palmer*, 586 S.W.2d 934 (Tex.App. - Austin 1979, *no writ*).

Under Texas Natural Resources Code §85.409(a), the Commission may supercede a rule or order if evidence presented at a hearing shows that waste is taking place or is reasonably imminent. In this case, the Final Order entered against ARXA was a “plug only” order as to Well Nos. 1 and 4. Therefore, Western must show that a new order superceding the “plug only” provisions of the Final Order is necessary to prevent waste.

Application of Waste Standard

Western has presented sufficient evidence to support the entry of a superceding order to prevent waste. Western showed that the wells were abandoned because the volume of water produced from Well No. 4 made continued production uneconomical. Western’s estimate of recoverable reserves reasonably relies on the last full month of performance from Well No. 4 in January 1999 to conclude that over the next 12 ½ years the well will produce up to 17,321 barrels of oil at an initial rate of 7 bopd. Additionally, the log submitted supports Western’s interpretation that another interval in Well No. 4 may have potential production.

Western has met all requirements necessary for the entry of a Final Order superceding the plug only provisions in the Final Order entered in Oil & Gas Docket No. 04-0228276. Accordingly the examiner concludes that an order superceding the plug only provision should be entered, and Western should be recognized as the operator of the subject wells. All other provisions in the Final

Order shall remain in full force and effect.

FINDINGS OF FACT

1. Western Gulf Oil & Gas, LLC (hereinafter “Western”), was given at least 10 days notice of this proceeding. Western appeared at the hearing and presented evidence.
2. Western filed its most recent Commission Form P-5 (Organization Report) on December 14, 2004. Western has posted financial assurance with the Commission in the form of a \$50,000 letter of credit. Western currently operates 47 wellbores with a total depth of 307,559 feet.
3. The prior operator of the Cooke, C. N. (01588) Lease, London Gin Field, Nueces County (hereinafter “subject lease”), ARXA International Energy, Inc. (hereinafter “ARXA”), submitted a Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) for the subject lease which was approved by the Commission on August 28, 1998. ARXA never reported using Well No. 1 for disposal activity, and last reported production from Well No. 4 in January 1999.
4. In Oil & Gas Docket No. 04-0228276, ARXA was ordered to plug Well Nos. 1 and 4 for violations of Statewide Rule 14(b)(2), was found to be in violation of Statewide Rule 8(d)(1) for an unauthorized discharge of oil, and was ordered to pay an administrative penalty of \$5,000.00. ARXA does not possess any current interest in the wells and is not affiliated with Western.
5. Western obtained an assignment of the original September 1, 1948 lease from ARXA’s successor, King Resources, Inc. on July 20, 2004.
6. The September 1, 1948 lease remains in force and effect due to continuous production from the Cooke, C. N. Unit (12293) Lease. Commission production records for the Cooke, C. N. Unit (12293) Lease from January 1999 to the present confirm this continuous production.
7. Well Nos. 1 and 4 on the subject lease were abandoned because the large volume of water produced from Well No. 4 made continued production uneconomical.
8. An estimate of recoverable reserves based on the last full month of performance for Well No. 4 in January 1999 shows that up to 17,321 barrels of oil at a rate of 7 bopd may be produced from Well No. 4 over the next 12 ½ years. Additionally, the log for Well No. 4 confirms Western’s interpretation that another interval in Well No. 4 may have potential production.
9. Superceding the requirement in the Final Order entered in Oil & Gas Docket No. 04-0228276 that Well Nos. 1 and 4 on the Cooke, C. N. (01588) Lease, London Gin Field, Nueces County be plugged is necessary to prevent waste.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Western has a good faith claim of a continuing right to operate the subject lease.
4. Western has filed financial assurance in the type and amount required under Texas Natural Resources Code §91.107 to be approved as the operator of the subject lease.
5. A Final Order superceding the “plug only” provision in the Final Order entered in Oil & Gas Docket No. 04-0228276 requiring that Well Nos. 1 and 4 on the Cooke, C. N. (01588) Lease, London Gin Field, Nueces County be plugged is necessary to prevent waste..

RECOMMENDATION

The examiner recommends that the Commission grant the request to supercede the provisions in the Final Order entered in Oil & Gas Docket No. 04-0228276 requiring that Well Nos. 1 and 4 on the Cooke, C. N. (01588) Lease, London Gin Field, Nueces County. The examiner further recommends that all other provisions of the Final Order remain in full force and effect. Finally, the examiner recommends that Western Gulf Oil & Gas, LLC be recognized as the operator of the Cooke, C. N. (01588) Lease.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner