

April 22, 2005

OIL AND GAS DOCKET NO. 04-0241769

COMMISSION CALLED HEARING TO SUPERCEDE THE FINAL ORDERS ISSUED MARCH 23, 2004 IN OIL & GAS DOCKET NOS. 04-0233184 AND 04-0232636 REQUIRING PLUGGING OF WELL NO. 1, ADAMI MARTINEZ (130338) LEASE, NEELY (BRUNI 1900) FIELD, DUVAL COUNTY AND WELL NO. 1, PEREZ-ROWDEN (11711) LEASE, NEW MALO SUENO (CROCKETT) FIELD, WEBB COUNTY, AND WELL NO. 1, ELVA L. DINN (08334) LEASE, SANTO NINO, N.W. (QUEEN CITY) FIELD, WEBB COUNTY, TEXAS.

APPEARANCES:

FOR APPLICANT:

Rex White, Attorney
Mike Harvey, President

APPLICANT:

Wallis Energy, Inc.
Wallis Energy, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	February 8, 2005
NOTICE OF HEARING:	February 11, 2005
DATE CASE HEARD:	March 4, 2005
DATE HEARING CLOSED:	March 28, 2005
HEARD BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	April 22, 2005

STATEMENT OF THE CASE

This Hearing was set to consider the request of Wallis Energy Inc. (hereinafter "Wallis") to supercede the Final Orders issued March 23, 2004, in Docket No. 04-0233184, requiring plugging of Well No. 1 on the Adami Martinez (130338) Lease, Neely (Bruni 1900) Field, Duval County, and in Docket No. 04-0232636, requiring plugging of Well No. 1, Elva L. Dinn (08334) Lease, Santo Nino (Queen City) Field, Webb County and to recognize Wallis as the operator of record. Wallis asserts that it can restore Well No. 1 on the Martinez Lease and Well No. 1 on the Dinn Lease to production and therefore the wells should not be plugged.

Although the Notice of Hearing also references Well No. 1 on the Perez-Rowden (11711)

Lease, New Malo Sueno (Crockett) Field, Webb County, this well was apparently plugged by the prior operator before issuance of a Final Order. Wallis does not request the transfer of the plugged well.

The hearing was held open for receipt of a late-filed exhibit, being two-signature P-4s for the subject wells. The two-signature P-4s submitted at the hearing listed the prior operator as Tri-Star Oil & Gas, Inc. Commission records indicated that the subject wells were still operated by Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. The corrected P-4s were received March 28, 2005 and the hearing was closed.

SUMMARY OF EVIDENCE

The examiner took official notice of the Final Order in Oil & Gas Docket Nos. 04-0233184 and 04-0232636, Commission records related to Wallis' most recent Commission Form P-5 (Organization Report) filing, and Commission records identifying the wells for which Wallis is currently recognized as the operator.

Wallis filed its most recent Organization Report with the Commission on May 6, 2004, and has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit. Wallis currently operates 83 wells.

Wallis' president, Mike Harvey, appeared at the hearing and presented evidence in support of the application. Wallis provided copies of assignments, base leases and affidavits to support its good faith claim.

The current Commission recognized operator of the Elva L. Dinn Lease, Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. (Op. # 514225) (hereinafter "Luttrell"), submitted Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance), for the Elva Dinn Lease effective December 1, 1987. In Oil & Gas Docket No. 04-0232636, Luttrell was ordered to plug well No. 1, Elva L. Dinn Lease, N.W. Santo Nino (Queen City) Field, Webb County and pay an administrative penalty of \$2,250.00.

The current Commission recognized operator of the Adami Martinez Lease, Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. (Op. # 514225) submitted Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance) effective February 1, 1991. In Oil & Gas Docket No. 04-0233184, Luttrell was ordered to plug Well No. 1, Adami Martinez Lease, Neely (Bruni 1900) Field, Duval County, and pay an administrative penalty of \$4,000 less \$400 already received.

Wallis seeks to become the designated operator of the subject wells and has stated that it has no officers in common with Luttrell or any connection to Luttrell. Luttrell received notice of this hearing at its P-5 Organization Report address, but did not appear in protest. The superceding order sought by Wallis would be effective only as to transferring the operatorship of the subject wells and removing the plug-only requirement. The Final Orders in Oil & Gas Docket Nos. 04-0233184 and

04-0232636 would remain in effect as to the requirement that Luttrell pay administrative penalties.

Regarding the Elva Dinn Well No. 1, Wallis has provided a copy of a new lease from the Dinn Mineral Trusts to Ocean Energy, Inc, a copy of an extension of the primary term of the lease granted to Ocean Energy and Devon Louisiana Corporation, and a copy of an Assignment of Interest and Bill of Sale to Wallis in the Elva Dinn #1 from Four A Resources, Inc., apparently another interest owner in the well. Wallis believes the Elva Dinn No. 1 can produce 8 to 10 BPD currently. Wallis plans to stimulate the well by re-perfing and acidizing and hopes for production of 20 to 25 BOPD. Wallis bases this belief on the performance of similar wells which it operates in the nearby Malo Sueno Field, which is stratigraphically equivalent to the Neely (Bruni 1900) Field, being a differently named field only due to fault separation.

Regarding the Adami Martinez Well No. 1, Wallis has provided a copy of the base lease, an Assignment and Bill of Sale from Luttrell, a mineral deed transferring a 50% mineral interest in the relevant lands to Francine Rowden and a December, 2003 ratification of the base lease by Francine Rowden as its good faith claim to operate the Adami Martinez Lease. Wallis states that the well, when drilled, yielded 100 mcf/day, but that gas in 1988 was about \$1.00 per mcf and it was not then considered economic to run pipe to the nearest carrier pipeline. Because gas currently sells for \$5-6 per mcf, it would now be economically viable to connect the well to a pipeline.

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 have, on file with the Commission, 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.

The Commission may require a person seeking to be recognized as the operator of a well to provide evidence of a good faith claim, as defined in SWR 14(a)(1)(E), of a continuing right to operate.

EXAMINER'S OPINION

Wallis asserts that it can meet the requirements to be recognized as the operator of the subject lease and restore the wells to active production. However, this claim is complicated by the Final Order requiring that Luttrell plug the wells. An order superceding a Commission Final Order may be 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. Wallis 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 show that it has met the requirements of Texas Natural Resources Code §91.107 which preclude the Commission from approving the requested transfer of an existing well to a new operator 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 the Adami Martinez Lease is established by Wallis' provision of the base lease, Assignment and Bill of Sale from Luttrell, Mineral Deed transferring an undivided 50% mineral interest to Francine Rowden, and the December, 2003 ratification of the base lease by Francine Rowden. A good faith claim to operate the Elva Dinn Lease is established by Wallis' provision of a new lease from the Dinn Mineral Trusts to Ocean Energy and Devon Louisiana Corporation, and a copy of an Assignment and Bill of Sale in the Elva Dinn Well No. 1 from Four A Resources, Inc. Wallis has a \$50,000 Letter of Credit in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107.

Superceding a "Plug Only" 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, that in cases where a well is in violation of Commission rules and has not reported any production or injection activity for a lengthy period of time, that the Commission will require that the well be plugged.

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*).

In this case, the Final Order entered against Luttrell was a “plug-only” order. As noted above, Wallis must show that a superceding order is necessary to prevent waste.

Application of Waste Standard

In this docket, the question is whether Wallis presented sufficient evidence that an order superceding a “plug-only” order is necessary to prevent waste. It is the examiner’s conclusion that Wallis presented sufficient evidence to support the entry of a superceding order to prevent waste.

Wallis proposes to restore production to the wells previously operated by Luttrell. The testimony supports Wallis’ claim that the Elva Dinn Well No. 1 can be restored to economic production, primarily due to the current high price per barrel of oil. By re-perfing and acidizing the wells, Wallis hopes to further increase this well’s productive capacity. Wallis also asserts that the gas in the Adami Martinez Well No. 1 can be economically produced merely by running a connection to a pipeline. The examiner expresses no opinion as to the likelihood of success in this venture to the degree that Wallis anticipates. However, the risk that Wallis’ attempt to restore production may not be completely successful is not a basis for denying it the opportunity to restore production where Wallis has met all the other requirements to operate the wells. It is likely that Wallis’ efforts will result in the recovery of at least some hydrocarbons that would not otherwise be recovered. Accordingly the examiner concludes that an order superceding the plug only provisions in the Final Orders will prevent waste.

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

FINDINGS OF FACT

1. Wallis Energy, Inc. (hereinafter "Wallis") and Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. (hereinafter "Luttrell") were given at least 10 days notice of this proceeding. Wallis appeared at the scheduled time and place for the hearing through its owner-operator Mike Harvey and presented evidence. Luttrell did not appear.
2. Wallis filed its first Commission Form P-5 (Organization Report) with the Commission on June 1, 1992. Wallis has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit .
3. Luttrell was recognized as the operator of the Adami Martinez Lease (130338) Lease, Well No. 1 (hereinafter "Martinez lease") after filing Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance), effective February 1, 1991.
4. In Oil & Gas Docket No. 04-0233184, Luttrell was ordered to plug the Adami Martinez Well No. 1 and pay an administrative penalty of \$4,000 less \$400 already paid pursuant to a Final Order entered on March 23, 2004 for violation of Statewide Rules 14(b)(2) and 32(g)(1).
5. Luttrell was recognized as the operator of the Elva Dinn (08334) Lease, Well No. 1, (hereinafter "Dinn lease") after filing Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance), effective December 1, 1987.
6. In Oil & Gas Docket No. 04-0232636, Luttrell was ordered to plug the Elva Dinn Well No. 1 and pay an administrative penalty of \$2,250 pursuant to a Final Order entered on March 23, 2004 for violations of Statewide Rules 3(a) and 14(b)(2).
7. Wallis holds a new lease from the Dinn Mineral Trusts to Ocean Energy and Devon Louisiana Corporation, and an Assignment and Bill of Sale to Wallis in the Elva Dinn Well No. 1 from Four A Resources, Inc., thereby demonstrating its possession of a currently effective right to operate the Elva Dinn Well No. 1.
8. Wallis possesses a copy of the base lease, an Assignment and Bill of Sale from Luttrell, a Mineral Deed transferring an undivided 50% mineral interest in the relevant lands to Francine Rowden, and a December, 2003 ratification of the base lease by Francine Rowden, thereby demonstrating its possession of a currently effective right to operate the Adami Martinez Well No. 1..
9. Superceding the requirement in the Final Order entered in Oil & Gas Docket No. 04-0233184 that the Adami Martinez Well No. 1 be plugged is necessary to prevent waste.
 - (a) Due to the "plug only" order in the referenced docket, the Adami Martinez Well No.

- 1 is currently unable to produce.
- (b) Connecting the Adami Martinez Well No. 1 to a pipeline will allow it to be restored to production.
 - (c) The well may produce up to 100 mcf per day.
10. The requirement in the Final Order in Oil & Gas Docket 04-0233184 that Luttrell pay an administrative penalty of \$4,000 less \$400 already paid will remain in effect.
 11. Superceding the requirement in the Final Order entered in Oil & Gas Docket No. 04-0232636 that the Elva Dinn Well No. 1 be plugged is necessary to prevent waste.
 1. Due to the “plug only” order in the referenced docket, the Elva Dinn Well No. 1 is currently unable to produce.
 2. Re-perfing and acidizing of the Elva Dinn Well No. 1 will allow it to be restored to production.
 3. The well may produce 8 to 10 BOPD as currently configured and may produce 20 to 25 BOPD after re-perfing and acidization.
 12. Wallis has submitted a Form P-4 (Certificate of Compliance and Transportation Authority) requesting the transfer of the Adami Martinez (130338) Lease, Well No. 1 from Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. To Wallis Energy, Inc.
 13. Wallis has submitted a Form P-4 (Certificate of Compliance and Transportation Authority) requesting the transfer of the Elva L. Dinn (08334) Lease, Well No. 1 from Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. To Wallis Energy, Inc.

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. Wallis has a good faith claim of a right to operate the the Adami Martinez lease and the Elva Dinn Lease.
4. Wallis 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 Final Order entered in Oil & Gas Docket No. 04-0233184 requiring plugging of Well No. 1 on the Adami Martinez (130338) Lease, Neely (Bruni

- 1900) Field, Duval County, and approval of a change of operator of the well to Wallis Energy, Inc. is necessary to prevent waste.
6. A Final Order superceding the Final Order entered in Oil & Gas Docket No. 04-0232636 requiring plugging of Well No. 1 on the Elva Dinn (08334) Lease, N.W. Santo Nino (Queen City) Field, Webb County, and approval of a change of operator of the well to Wallis Energy, Inc. is necessary to prevent waste.
 7. The Final Order in this Docket superceding the Final Order in Oil & Gas Docket No. 04-0233184 is effective only as to the disposition of Well No. 1 on the Adami Martinez (130338) Lease, Neely (Bruni 1900) Field, Duval County, and does not relieve Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. of its obligation to pay an administrative penalty of \$4,000 less \$400 already paid to the Railroad Commission.
 8. The Final Order in this docket superceding the Final Order in Oil & Gas Docket No. 04-0232636 is effective only as to the disposition of Well No. 1 on the Elva Dinn (08334) Lease, N.W. Santo Nino (Queen City) Field, Webb County, and does not relieve Thomas Bruce Luttrell d/b/a T. Bruce Luttrell Oil & Gas Opr. of its obligation to pay an administrative penalty of \$2,250.00 to the Railroad Commission.

RECOMMENDATION

The examiner recommends that the Commission grant Wallis' request to supercede the provisions in the Final Orders entered in Oil & Gas Docket No. 04-0233184 requiring plugging of Well No. 1 on the Adami Martinez (130338) Lease in Duval County and in Oil & Gas Docket No. 04-0232636 requiring plugging of Well No. 1 on the Elva Dinn (08334) Lease in Webb County, and approve the change of operator of both wells to Wallis Energy, Inc. The examiner further recommends that all other provisions of the Final Order in Oil & Gas Docket Nos. 04-0233184 and 04-0232636 remain in full force and effect.

Respectfully submitted,

Marshall Enquist
Hearings Examiner