OIL & GAS DOCKET NO. 06-0245016

APPLICATION OF PATRICIA C. NOWAK FOR FORMATION OF A POOLED UNIT PURSUANT TO THE MINERAL INTEREST POOLING ACT, PROPOSED WALDROP GAS UNIT 1-A, CARTHAGE (COTTON VALLEY) FIELD, PANOLA COUNTY, TEXAS

APPEARANCES:

FOR APPLICANT:	**APPLICANT:**
William Osborn Patricia Nowak	Patricia C. Nowak
FOR PROTESTANT:	**PROTESTANT:**
David Gross Larae Sanders Rhonda Kaschmitter Walter Burks	Comstock Oil & Gas, L.P.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE APPLICATION FILED:	October 17, 2005
DATE OF NOTICE OF HEARING:	November 16, 2005
DATE OF HEARING:	January 20, 2006
HEARD BY:	James M. Doherty, Hearings Examiner Thomas H. Richter, Technical Examiner
DATE CLOSING ARGUMENT FILED:	January 31, 2006
DATE TRANSCRIPT DELIVERED:	February 7, 2006
DATE OF LAST SUBMISSION:	May 19, 2006
DATE PFD CIRCULATED:	May 22, 2006

STATEMENT OF THE CASE

This is the forced pooling application of Patricia C. Nowak ("Nowak") filed pursuant to the Mineral Interest Pooling Act ("MIPA"). *See* Texas Natural Resources Code, Chapter 102. Nowak is the lessor of certain undivided and non-pooled mineral interests in two tracts that are included in a 657.428 acre voluntarily pooled unit, the Waldrop Gas Unit 1, Carthage (Cotton Valley) Field, in Panola County, Texas. Comstock Oil & Gas, L.P. ("Comstock") is the current operator of the 657.428 acre unit.

The Nowak application, as supplemented on November 1, 2005, proposes to force pool Nowak's leases into the proposed Waldrop Gas Unit 1-A, Well No. 1-5, Carthage (Cotton Valley) Field, Panola County, Texas, consisting of 339.558 acres (hereinafter referred to as 339 acres). The 339 acre force pooled unit proposed by Nowak includes the locations of four producing Comstock wells, the Waldrop Gas Unit 1-4, 1-5, 1-7, and 1-8.[1]

A hearing was held on January 20, 2006. The Nowak application was opposed at the hearing by Comstock. Written closing argument was filed by Nowak and Comstock on January 31, 2006. Issuance of a proposal for decision was deferred to accommodate an effort of the parties to reach a private settlement. On May 19, 2006, the parties advised that settlement negotiations were at an end.

APPLICABLE LAW

Pursuant to Texas Natural Resources Code §102.011, when two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the Commission has established the size and shape of proration units in field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, the Commission, on the application of an owner specified in §102.012 of the Code and for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well, plus 10 percent tolerance.

Pursuant to §102.013 of the Code, the applicant must set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit, and the Commission must dismiss the application if it finds that a fair and reasonable offer to pool voluntarily has not been made by the applicant. An offer by an owner of a royalty or any other interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other

[1] A plat showing the Comstock Waldrop Gas Unit 1 and the 339 acre force pooled unit proposed by Nowak is attached to this Proposal for Decision as Appendix 1.

owners within the existing proration unit are then sharing shall be considered a fair and reasonable offer.

BACKGROUND

The examiners have officially noticed Commission records relating to the discovery date and history of special field rules for the subject field. The Carthage (Cotton Valley) Field was discovered on May 1, 1968. The field is subject to special field rules providing for 467'/933' spacing and standard 320 acre proration units, plus 10% tolerance, with optional 40 acre proration units. The allocation formula is based on 100% acres and is suspended.

The 657.428 Waldrop Gas Unit 1 was formed by Sonat Exploration Company in 1991, shortly after Well No. 1-1 had been drilled. At that time, special field rules for the Carthage (Cotton Valley) Field provided for standard 320 acre proration units, with optional 160 acre proration units. Effective August 24, 1992, the field rules were amended to provide for standard 320 acre proration units, with optional 80 acre proration units. Optional 40 acre proration units were adopted for the field effective August 10, 2004.

Comstock acquired its interest in the unit in August 1995. Comstock drilled Well No. 1-2 on the unit in 2001. In 2005, Comstock drilled six more wells on the unit, Well Nos. 1-3, 1-4, 1-5, 1-6, 1-7, and 1-8. All of the unit wells are producing. At the time of the hearing, Comstock was in the process of completing one additional well on the unit, Well No. 1-10.

In October 2004, Nowak took leases of theretofore unleased and non-pooled mineral interests in two tracts in the Comstock unit. Nowak acquired a ½ interest in an 82 acre tract and a 5/12 interest in an 18 acre tract. Negotiations between Nowak and Comstock for sale and purchase, partition, or voluntary pooling of Nowak's leases into all or portions of Comstock's unit were unsuccessful, and this MIPA application ensued.

POSITIONS OF THE PARTIES

Nowak

Basing her position on Texas Natural Resources Code §102.013, which provides that an offer by an owner of any interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other owners within the existing proration unit shall be considered a fair and reasonable offer, Nowak argues that this is the most automatic sort of MIPA case, complicated only by the fact that proration units for wells on Comstock's voluntarily pooled unit have shrunk as field rules providing for optional proration units have been adopted. Nowak states that no provision of MIPA requires that the acreage covered by Nowak's leases be drained by wells on the Comstock unit.

Nowak asserts that the Commission should approve the application by force pooling Nowak's leases into a 339 acre unit, as proposed by Nowak. Because this proposed unit would include the locations of Well Nos. 1-4, 1-7, and 1-8, Nowak contends that the Commission should issue a "Code H" restriction requiring that Comstock shut in Well Nos. 1-4, 1-7, and 1-8 and produce them sequentially upon depletion of Well No. 1-5, subject to the right of Comstock to subdivide the force pooled unit into four smaller units, one for each of Well Nos. 1-4, 1-5, 1-7, and 1-8, with all owners pooled and sharing in all four wells.

Nowak also contends that the Commission should find that Comstock violated Texas Natural Resources Code §91.143 by making Form P-12 (Certificate of Pooling Authority) filings for wells on the Waldrop Gas Unit 1 that did not disclose any unleased or non-pooled undivided mineral interests in the tracts for which Nowak holds leases.

Comstock

Comstock argues that Nowak did not make a fair and reasonable offer to pool voluntarily, and for this reason, the Commission is required to dismiss Nowak's application. The asserted basis for this argument is that Nowak did not offer to pool into a proration unit for a single well, but instead offered to pool into a 339 acre unit covering roughly the southern one-half of Comstock's unit, which includes the location of four of Comstock's wells. Comstock asserts that MIPA authorizes force pooling only into a proration unit for a well.

Comstock argues further that even if Nowak made a fair and reasonable offer, the application must be denied because no well on Comstock's unit is draining the acreage in which Nowak has an interest, and forced pooling would not serve the purposes of preventing waste, protecting correlative rights, or avoiding of the drilling of unnecessary wells.[2]

Regarding Nowak's claim that Comstock violated Texas Natural Resources Code §91.143, Comstock responds that the purpose of showing unleased or non-pooled interests on Form P-12 is to enable the Commission to determine whether an internal property line exists for the purposes of Statewide Rule 37 and that Comstock has drilled no well on the unit closer than 467' to the tracts in which non-pooled interests exist. Comstock states further that it began showing the non-pooled interests on Forms P-12 after the deficiency in earlier filings was called to Comstock's attention by Nowak.

[2] This notwithstanding, Comstock's counsel argued at the hearing that if Nowak had made a fair and reasonable offer to pool voluntarily distinct portions of her leased acreage into proposed proration units for each of Well Nos. 1-4, 1-5, 1-7 and 1-8, he would have recommended that the offer be accepted because force pooling would have been inevitable.

DISCUSSION OF THE EVIDENCE

Nowak

In October 2004, after discovering fractional mineral interests in tracts within the Waldrop Gas Unit 1 that were not leased to Comstock, Nowak, who is a certified petroleum landman, took leases of these interests. These leases cover a ½ interest in an 82 acre tract and a 5/12 interest in an 18 acre tract. These leases were for a three year primary term, are currently in effect, and give Nowak a working interest in 48.5 net mineral acres within the Comstock Waldrop Gas Unit 1.

Nowak made a pooling offer to Comstock on September 23, 2005, which is the offer regarded by Nowak as meeting the MIPA requirement that an applicant for forced pooling make a fair and reasonable offer to pool voluntarily. However, considerable communications about pooling and pooling alternatives pre-dated the September 23, 2005, offer.

On November 24, 2004, Nowak sent Comstock a letter enclosing copies of her leases and requesting that Comstock contact her to discuss the situation. On January 7, 2005, Comstock sent Nowak a letter offering to purchase Nowak's leases for $20,000. On January 24, 2005, Nowak rejected this offer because it did not grant Nowak an overriding royalty.

On April 28, 2005, Nowak sent Comstock another letter stating that assignment of her leases to Comstock for $250.00 per net mineral acre and an overriding royalty on all unit wells was her preference, but stating also Nowak's willingness to consider various partition or pooling options: (1) a mutual and voluntary partition, or judicial partition, between Comstock and Nowak of the unit leasehold estate allocating to Nowak 100% of the working interest and net revenue interest, subject to her leasehold burdens, in a tract of 48.5 acres, along with spacing waivers from Comstock so that Nowak could drill her own well; (2) voluntary pooling of Nowak's leases into the Comstock unit, with Nowak receiving her proportionate share of the working interest and net revenue interest attributable to her oil and gas leases and paying her proportionate share of costs of all wells not yet paid out, and then participating in additional wells drilled on the unit; or (3) if voluntary pooling were not successful, initiation of an action to force pool Nowak's interests into the Comstock unit and becoming a working interest partner for all unit wells.

On July 5, 2005, counsel for Nowak sent counsel for Comstock a letter proposing voluntary pooling of Nowak's leases into a 640 acre unit. On August 1, 2005, counsel for Comstock responded that MIPA did not contemplate pooling of Nowak's leases into the entire Comstock unit and that Nowak had not made a valid offer to pool. This response offered as an alternative that Comstock would agree to a voluntary partition within the existing unit contemplating that: (1) Nowak would pool her leases, and, on the same day, partition the leasehold in the unit; (2) Comstock would partition to Nowak all leases within the unit only insofar as they pertain to wells drilled on 48.5 acres of the unit, with Comstock receiving all leases within the unit as to wells drilled elsewhere on the unit; (3) Nowak could choose either the north 48.5 acres of the tracts covered by her leases or the south 48.5 acres of these tracts; (4) Comstock would pay royalty to Nowak's lessors from date of pooling, and Nowak would indemnify Comstock for any claim of the said lessors for unit production

prior to the date of pooling; (5) Comstock would furnish Nowak its current division of interest for production from the unit, without warranty as to correctness; and (6) Nowak and Comstock would agree on locations so each could drill an additional well. In the alternative, Comstock offered to purchase Nowak's leases for the sum of $20,000, with no override, and to pool the leases it purchased and pay royalty to the lessors from the date of pooling.

By letter dated August 23, 2005, Nowak declined Comstock's partition offer and the cash purchase offer, and countered with an offer to sell Nowak's leases for $250.00 per net mineral acre and an override.

On September 23, 2005, Nowak's counsel sent counsel for Comstock the offer that culminated in this MIPA case. This offer proposed formation of a voluntary pooled unit of 339.558 acres, which was highlighted on an attached plat. The offer stated that the unit proposed would include the locations of two producing wells, the 1-4 and 1-5, and locations for two other wells that had been permitted, the 1-7 and 1-8. Nowak proposed that Comstock would be the operator of the proposed unit, that the unit would be limited to the depth interval correlative with the Carthage (Cotton Valley) Field, and that Nowak would contribute her leases to the unit.

The September 23, 2005, Nowak offer further proposed that production from the proposed unit be allocated on the basis of each owner's net pro rata share of surface acreage within the unit, and that the working interest owners share in the cost of drilling, operation, rework, and plugging of unit wells, based on each working interest owner's net pro rata share of acreage contributed to the unit. It was also proposed that Nowak's share of the costs would be taken out of her share of production from and after the effective date of the unit, plus a 10% risk penalty or such greater penalty as might be prescribed by the Commission if a MIPA case should be adjudicated.

The September 23, 2005, Nowak offer letter requested that if the 339.558 acres included in the proposed unit were then subject to a Joint Operating Agreement, a copy be provided to Nowak, as she anticipated ratification. This letter stated that if no such Joint Operating Agreement existed, Nowak proposed adoption of the most recent AAPL standard form (1989 version). Nowak stated that in either case, she was willing to enter into a Joint Operating Agreement that would be fair and reasonable to all parties, based on accepted industry standards for prudent operators.

On October 17, 2005, counsel for Comstock responded to Nowak's September 23, 2005, offer by stating that: (1) Nowak's proposed pooling was not acceptable, in that Nowak was not entitled to wholesale pooling into all producing wells on roughly one-half of Comstock's unit; (2) proposed pooling into a unit with multiple proration units was invalid; and (3) the partition offer made by Comstock in the letter of its counsel dated July 5, 2005, was renewed.

Nowak stated at the hearing that she is willing to come into Comstock's unit as a working interest owner on the same terms as the other working interest owners that are already in the unit, and believes that her September 23, 2005, offer to pool voluntarily was fair and reasonable.

With respect to the risk penalty issue, Nowak presented information regarding the development history of Comstock's unit. No dry holes have been drilled on the unit. When Nowak made a discovery request of Comstock for an isopach map of the unit, Comstock replied that it had none. Nowak concluded that Comstock believed it could drill safely on the unit without such a map, and it does not appear to Nowak that drilling of wells on the unit has been very risky.

Regarding Nowak's claim that Comstock violated Texas Natural Resources Code §91.143, Nowak presented copies of Forms P-12 filed by Comstock in connection with the permitting of Well Nos. 1-3, 1-4, 1-5, 1-6, and 1-10 that did not disclose any non-pooled interest in the tracts covered by Nowak's leases. Comstock did not file any Forms P-12 disclosing these non-pooled interests until October 10, 2005, after Nowak had complained about the failure to disclose.

A Form P-15 (Statement of Productivity of Acreage Assigned to Proration Units) filed by Comstock for the Waldrop Gas Unit 1, Well No. 1-2 on May 11, 2001, certified that a 338.148 acre proration unit for the well, which included the tracts in which Nowak has an interest, could reasonably be considered to be productive of hydrocarbons.

A plat showing the proposed location for the Waldrop Gas Unit 1, Well No. 1-6, filed by Comstock with the Kilgore District Office on September 6, 2005, depicted a 220 acre proration unit for Well No. 1-5 on the same unit. The acreage in which Nowak has an interest is included in this 220 acre proration unit, and this is why Nowak's application seeks to force pool into a proration unit for Well No. 1-5. Nowak believes that forced pooling will protect her correlative rights and those of her lessors by giving them an opportunity to share in the use and benefit of minerals under their tracts.

Nowak obtained in discovery a copy of the existing Joint Operating Agreement covering the Waldrop Gas Unit 1, and she is willing to sign and ratify this agreement without modification. She asserts that she is not asking to be treated differently than any of the other working interest owners in the unit who have already signed the Joint Operating Agreement.

Nowak had no information as to why her lessors did not lease to Sonat Exploration Company or why they were not included in the Waldrop Gas Unit 1 at the time the unit was formed. She confirmed that no well has been drilled on the unit any closer to her tracts than 467', and that the closest unit well is Well No. 1-8. Nowak stated that she did not know whether any tract in the unit is being drained by unit wells other than the drillsite tracts.

Memoranda from a Senior Landman at Comstock, apparently obtained by Nowak through discovery, pertain to the possible drilling of additional wells in the area of the tracts in which Nowak has an interest. A July 13, 2005, memorandum requested preparation of a plat showing the location of Well No. 1-9, with distances to the east line of Nowak's tracts. At the time, Comstock was considering permitting Well No. 1-9 in the southwest end of the unit, in the area of Nowak's tracts. A January 4, 2005, memorandum concerned valuation of Nowak's leases and stated that Nowak's 82 acre tract "is the one that really matters, loc. 16A." This memorandum stated that "Location 15A" could be moved. Comstock's Senior Landman explained that this latter memorandum was addressing

Comstock's plans for the field, and adjacent units, and that there had never been a plan to drill as many as 16 wells on the Waldrop Gas Unit 1.

Comstock has been paying royalties to its lessors in the tracts covered by Nowak's leases according to their fractional interests only, and not as if they owned 100% of the interest in these tracts. Comstock's Senior Landman testified that it never occurred to her that Comstock should approach the unleased owners in Nowak's tracts with an offer to lease them and include them in the unit. In November 1995, Scott Summers leased these interests and approached Comstock about including his leases in the unit, but this did not result in pooling of the interests.

Comstock

Comstock states that Nowak's proposed 339 acre forced pooled unit includes the locations of Comstock's Waldrop Gas Unit 1, Well Nos. 1-4, 1-5, 1-7, and 1-8. Well Nos. 1-1, 1-2, 1-3, and 1-6 are located on other parts of the unit, as is Well No. 1-10 which is currently being completed.

Nowak first proposed that Comstock purchase her leases for $250.00 per net mineral acre, and that she be given an override in all unit wells equal to the difference between existing lease burdens and 28%. Comstock responded with an offer to purchase Nowak's leases, burdened only by the existing 1/6 lease royalty, for $20,000, without giving Nowak any override. Comstock calculates that this offer was equal to $412 per net mineral acre. Nowak declined this offer, and later proposed certain partition and pooling options that she was willing to consider. In July 2005, Nowak proposed pooling of her leases into a 640 acre unit, with Nowak to share pro rata in unit production and costs, plus a 10% risk penalty. In August 2005, Comstock rejected the 640 acre pooling offer as unfair, but offered to partition the leasehold to create a 48.5 acre tract so that Nowak could drill her own well. This offer contemplated that Comstock would pool Nowak's leases so that Nowak's lessors would receive the benefit of all wells drilled on Comstock's 657 acre unit. Under this partition proposal, all royalty owners would also have participated in Nowak's well, and Nowak would have owned 100% of the working interest in the partitioned 48.5 acre tract. Comstock pointed out that its partition offer was superior to Nowak's August 2005 partition proposal, in that under Nowak's partition proposal, her lessors would have participated only in a well drilled on Nowak's 48.5 acres. At the hearing, Comstock stated that it remained willing to pursue the partition option.

Nowak declined Comstock's partition offer, and her September 23, 2005, offer to pool her leases into a proposed 339.558 acre unit followed. Comstock declined this offer, stating that the partition alternative that it previously had offered was still considered the most fair approach. During the week of the hearing, Comstock offered to counsel for Nowak a farm out of Comstock's leasehold interest in the two tracts covered by Nowak's leases, and Comstock represented at the hearing that it remains willing to enter into this farm out. Such a farm out would enable Nowak to drill two wells on the farm out acreage. The farm out offer was not accepted by Nowak. Comstock also remains willing to purchase Nowak's leases for $20,000, with no override to Nowak.

Comstock has no information as to why Nowak's lessors did not lease to Sonat or why they were not included in the Waldrop Gas Unit 1 when formed by Sonat. However, there is a potential upside to unleased/non-pooled owners in that, as cotenants, they are able to drill their own well. The owner of the unpooled interest in Nowak's 82 acre tract could have drilled two wells under optional 40 acre density now in effect.

Regarding Nowak's claim that Comstock violated Texas Natural Resources Code §91.143 by failing to disclose on Forms P-12 non-pooled interests in the tracts covered by Nowak's leases, Comstock's Senior Landman testified that she does not handle regulatory matters for Comstock, and receipt of notification of Nowak's leases did not cause her immediately to think about the need to revise Comstock's Form P-12 filings. Comstock's Senior Regulatory Analyst testified that Nowak's August 23, 2005, letter was Comstock's first notice that Nowak was complaining about Comstock's failure to show non-pooled interests on Forms P-12 for the Waldrop Gas Unit 1. Comstock began to show these non-pooled interests on Forms P-12 in October 10, 2005, filings with the Commission. Comstock believes that the purpose of the requirement for showing such non-pooled interests is to enable the Commission to determine whether a proposed well is at a location which is regular in relation to the non-pooled interest, and Comstock has not drilled any well on the subject unit that is any closer than 467' to the non-pooled interests in the unit.

If Comstock had drilled a well on the 82 acre tract now covered by one of Nowak's leases, it could not have required the non-pooled interest owner to ratify the unit, and that owner could have insisted on his or her drill site share. Comstock's Senior Landman stated that no Comstock well is now planned for the acreage covered by Nowak's leases, and confirmed that it would make no sense for Comstock to drill such a well if it were required to carry Nowak's interest. Absent something like the farm out or leasehold partition proposed by Comstock, Nowak would be required to carry Comstock's interest in the event she drilled a well on this acreage.

Comstock's Senior Regulatory Analyst described the history of proration units on the Waldrop Gas Unit 1. Sonat formed a 160 acre proration unit for Well No. 1-1, before the unit was formed. When Well No. 1-2 was completed in 2001, Comstock designated a 319.28 acre proration unit for Well No. 1-1 and a 338.148 acre proration unit for Well No. 1-2. When Well No. 1-3 was completed in 2005, Comstock designated proration units as follows: Well No. 1-1: 124.927 acres; Well No. 1-2: 78.401 acres; and Well No. 1-3: 454.100 acres. When Well No. 1-4 was completed in 2005, the proration unit for Well No. 1-3 was reduced to 43.465 acres, and a 410.645 acre proration unit was designated for Well No. 1-4. When Well No. 1-5 was completed, a Form P-15 dated August 24, 2005, reduced the proration units for Well Nos. 1-2, 1-3, and 1-4 to 73.901, 30.8, and 60.8 acres, respectively, and a 367.00 acre proration unit was designated for Well No. 1-5. When Well No. 1-6 was completed, a Form P-15 dated August 31, 2005, reduced the proration unit for Well No. 5 to 220 acres, and a 140 acre proration unit was designated for Well No. 1-6. When Well Nos. 1-7 and 1-8 were completed, Forms P-15 dated October 10, 2005, reduced the proration units for all wells to 40 acres, except by error the plats associated with the Forms P-15 did not include a proration unit for Well No. 1-4.

According to Comstock's Senior Regulatory Analyst, until the October 10, 2005, Form P-15 filings were made, Comstock did not realize that it was allowed to assign 40 acres per well and not required to assign all acreage in the unit to the proration units for unit wells.

A District Manager for Comstock's East Texas District, who also holds a degree in petroleum engineering, presented production rate information for Well Nos. 1-3 through 1-8 on the Waldrop Gas Unit 1, beginning with the highest daily rate during the first two weeks of production and then the daily rate for successive 30 day periods over a total period of 180 days from the date of first production. Well No. 1-3 had a good initial rate, and production held up well over a 180 day period. Subsequent wells, except for Well No. 1-6, generally had lower initial rates and lower production during subsequent months. Cotton Valley wells generally exhibit rapid rate decline, on the order of 60-75%, over 18 months and then the rate tends to stabilize. Well No. 1-6 had the highest initial rate of all unit wells, but then the rate declined rapidly. As Comstock moved south with drilling wells on the unit, initial rates declined significantly. The initial rates for Well Nos. 1-7 and 1-8 were significantly lower than previous wells, and the production rate dropped off faster. As compared to an initial rate for Well No. 1-3 of 2,615 MCFD, the initial rate for Well No. 1-7 was 1,530 MCFD, and the initial rate for Well No. 1-8 was 1,090 MCFD. At the end of 120 days, the comparative production rates for Well Nos. 1-3, 1-7 and 1-8 were: Well No. 1-3: 510 MCFD; Well No. 1-7: 305 MCFD; and Well No. 1-8: 300 MCFD.

Costs booked by Comstock to date for drilling and completing Well Nos. 1-7 and 1-8, which are the unit wells closest to Nowak's leases, are about $1.3 million and $1.4 million, respectively. When Comstock made the decision to drill Well Nos. 1-3 through 1-8, Comstock estimated that it needed an ultimate recovery of 750-800 MMCF per well to make the wells economical. Based on initial rates and expected rate of decline, Comstock's District Manager does not believe that Well Nos. 1-7 and 1-8 will pay out, and knowing what it knows today, Comstock would not have drilled these two wells. The other unit wells that are located within Nowak's proposed 339 acre force pooled unit, Well Nos. 1-4 and 1-5, are expected to pay out. Comstock will not drill any additional wells in the southwestern part of the Comstock unit.

Comstock's District Manager believes that there is always mechanical risk associated with the drilling of wells. Based on Comstock's experience with drilling of four wells on the 339 acres included in Nowak's proposed force pooled unit, two of which are projected not to pay out, Comstock's District Manager believes that if forced pooling is ordered, a 50% risk penalty would be appropriate.

Comstock performed no engineering study of the radial drainage capability of Well Nos. 1-7 and 1-8, and has not performed any reserve estimates for unit wells. Nonetheless, based on low initial rates and low daily production rates after 120 days of production, Comstock's District Manager does not believe that Well Nos. 1-7 and 1-8 are draining any of the acreage covered by Nowak's leases. He believes that a low initial rate correlates with a smaller effective drainage radius and that wells, such as the 1-7 and 1-8, making 300 MCFD after 120 days of production are draining less than 40 acres.

EXAMINERS' OPINION

As the owner of a working interest in oil and gas, Nowak has standing to file this application pursuant to Texas Natural Resources Code ("Code") §102.012. The Carthage (Cotton Valley) Field is a field to which MIPA applies, in that the discovery date for the field was May 1, 1968, a date after the date of the decision in *Atlantic Refining Co. v. Railroad Commission*, 346 S.W.2d 801 (Tex. 1961). *See* §102.003 of the Code. Nowak proposes to pool her leases for the Carthage (Cotton Valley) Field for which the Commission has prescribed special field rules, Nowak proposes to pool two or more separately owned tracts in this common reservoir, and at least one of the owners of the right to drill has drilled a well on the existing and proposed proration unit, all as required by §102.011 of the Code. All of the acreage proposed to be force pooled is productive, as evidenced by Form P-15 (Statement of Productivity of Acreage Assigned to Proration Units) filed with the Commission by Comstock. *See* §102.018 of the Code.

The making of an offer to pool voluntarily is a jurisdictional prerequisite to invoking the MIPA. Absent a voluntary offer that is fair and reasonable, the Commission must dismiss a force pooling application for want of jurisdiction. *See* §102.013(b) of the Code.

Nowak made a fair and reasonable offer to pool voluntarily. Comstock is correct that the MIPA contemplates force pooling into a proration unit,[3] and Nowak offered to pool voluntarily into a 339 acre unit that includes the locations of four Comstock wells and does not precisely conform to the proration unit designated by Comstock for any unit well. However, the offer that is a jurisdictional prerequisite to invoking the MIPA is an offer to pool voluntarily, and when negotiating for voluntary pooling, the parties are not strictly confined to the sort of force pooled unit that might be ordered upon adjudication of an application under the MIPA. For example, an offer to pool acreage which is non-productive may be nonetheless fair and reasonable, even though under the MIPA, the Commission may force pool only such acreage which at the time of its order reasonably appears to lie within the productive limits of the reservoir; and an offer to pool that does not include a risk penalty may be fair and reasonable, even though under the MIPA, in the case of an owner who elects to have his proportionate share of drilling and completion costs reimbursed solely out of production, the Commission is authorized to impose a risk penalty of up to 100% of the drilling and completion costs. *Buttes Resources Co. v. Railroad Com'n*, 732 S.W.2d 675 (Tex. App.-Houston

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[3] Under Texas Natural Resources Code §102.011, the authority of the Commission to force pool pertains to two or more separately owned tracts of land in a common reservoir *for which the Commission has established the size and shape of proration units*, where there are separately owned interests in oil and gas *within an existing or proposed proration unit* and the owners have not agreed to pool, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well *on the existing or proposed proration unit* to the common reservoir. Under §102.012(1) of the Code, the owner of any interest in oil and gas *in an existing proration unit* may apply under the MIPA for the pooling of mineral interests. Under §102.013(c) of the Code, an offer of the owner of any interest in oil and gas *within an existing proration unit* to share on the same yardstick basis as the other owners *within the existing proration unit* are then sharing is to be considered a fair and reasonable offer. Under §102.014(a) of the Code, the Commission may not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of *the standard proration unit* for the reservoir, to pool his interest with others, unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool voluntarily. See also *Carson v. Railroad Com'n of Texas*, 669 S.W.2d 315, 317 (Tex. 1984), wherein the Texas Supreme Court held that the Legislature's intent in adding subsection (c) to §102.013 of the Code was to permit small acreage owners to "muscle in" to a larger established "proration unit".

1987, writ ref'd n.r.e.).

Nowak proposed formation of a 339 acre unit because §102.011 of the Code authorizes the Commission to force pool separate interests into a unit "within an area containing the approximate acreage of the proration unit," and field rules for the Carthage (Cotton Valley) Field provide for 320 acre standard proration units, plus 10% tolerance. At least for the purpose of her offer to pool voluntarily, Nowak was not required to gerrymander the proposed unit so that it included only a single Comstock well.

A fair and reasonable offer to pool voluntarily is one which takes into consideration those relevant facts, existing at the time of the offer, which would be considered important by a reasonable person in entering into a voluntary agreement concerning oil and gas properties. *Carson v. Railroad Com'n of Texas*, 669 S.W.2d 315, 318 (Tex. 1984). Because the MIPA does not define "fair and reasonable offer," this is a matter left to the Commission's discretion. *Railroad Com'n v. Pend Oreille Oil & Gas*, 817 S.W.2d 36, 40 (Tex. 1991). At the time of Nowak's September 23, 2005, offer, Comstock knew that it had designated a 220 acre proration unit for the Waldrop Gas Unit 1, Well No. 1-5, and Nowak's leases were of interests in tracts included in this proration unit. By November 1, 2005, letter, a copy of which was sent to Comstock, Nowak supplemented her application filed pursuant to the MIPA to designate Well No. 1-5 as the unit well for the force pooled unit she was proposing. Although negotiations between Nowak and Comstock resulted in a number of Comstock offers of other alternatives, at no time did Comstock counter with an offer that would have resulted in pooling of Nowak's working interest into the proration unit for Well No. 1-5 or any other well on the Comstock unit. Although the MIPA does not require a counteroffer, it is a factor to consider in determining whether an applicant for a forced pooling order has made an offer to pool voluntarily that is fair and reasonable. *Railroad Com'n v. Pend Oreille Oil & Gas, supra* at page 43.

At the time of Nowak's September 23, 2005, offer to pool voluntarily, Nowak was the owner of a working interest in oil and gas within an existing proration unit designated by Comstock.[4] Nowak proposed formation of a 339 acre pooled unit that included the entirety of the proration unit for Well No. 1-5, as well as additional acreage within the Comstock unit, and offered to participate in the proposed unit on the same yardstick basis as other working interest owners. Pursuant to §102.013(c) of the Code, such an offer must be considered fair and reasonable. *Carson v. Railroad Com'n of Texas, supra* at page 317 (". . . the intent of the Legislature in adding subsection (c) was to permit small acreage owners to "muscle in" to a larger established proration unit, and to provide that the only offer required from the small acreage owner in order to "muscle in" is to offer to share in the royalties on an acreage basis.").

[4] No particular significance is to be accorded the fact that after Nowak made her September 23, 2005, offer to pool voluntarily, Comstock made Form P-15 filings with associated plats that reduced the size of the proration unit for Well No. 1-5 to 40 acres and left unit acreage in the area of Nowak's leases unassigned to the proration unit for any well. Under the holding in *Carson v. Railroad Com'n of Texas, supra*, whether an offer to pool voluntarily is fair and reasonable is judged by the relevant facts existing at the time of the offer. Otherwise, an operator of acreage proposed to be force pooled could frustrate the purposes of the MIPA simply by the shuffling of acreage in proration units after receipt of an offer to pool voluntarily.

In its written closing argument, Comstock argues that even if Nowak's offer to pool voluntarily was fair and reasonable, the Nowak application is fundamentally defective because Nowak's acreage is not being drained by any well on the Waldrop Gas Unit 1, citing *Railroad Commission v. Broussard*, 755 S.W.2d 951 (Tex. App.-Austin 1988, writ denied).

Comstock's "no drainage" argument based on *Broussard* is flawed for several reasons. First, the evidence does not establish conclusively that no gas is being drained from Nowak's acreage. It is not disputed that Nowak's acreage is productive in the common reservoir, and at the time of Nowak's offer to pool voluntarily, Comstock had included that acreage in the proration unit for Well No. 1-5. Nowak was simply without information regarding drainage by unit wells. Comstock's District Manager had the opinion that no drainage of Nowak's acreage by unit wells was occurring, based on production rate data and the distance of unit wells from Nowak's acreage, but conceded that calculated drainage areas for Cotton Valley wells were "all over the map," and no engineering study of the radial drainage capability of the unit wells closest to Nowak's acreage had been performed. All that can be said is that there is no conclusive evidence, one way or the other, as to whether any unit wells have drained, or are draining, gas from the tracts under lease to Nowak.

Secondly, *Broussard* was a case involving a proposal to force pool adjoining acreage into a voluntarily pooled unit, not a case controlled by §102.013(c) involving an offer by an owner of an interest in oil and gas *within an existing proration unit* to share on the same yardstick basis as other owners within the existing proration unit. This section of MIPA provides that such an offer *shall* be considered fair and reasonable, and does not mention drainage. Drainage is not a critical issue under §102.013(c), because the *acreage* sought to be force pooled is already voluntarily pooled and included in an existing proration unit, and it appears to be presumed in the MIPA that forced pooling is necessary to protect correlative rights. See, for example, Oil & Gas Docket Nos. 4-81,768, 4-81,769, and 4-81,770; *Applications of Dr. George J, Merriman Et Al. Under the Mineral Interest Pooling Act to Pool Into the McCord Exploration Company Doyle E. London Well Nos. 2-C, 2-T, and 1-T In, Respectively, the Doughty (Frio 8460'), Doughty (Frio 9376'), and Doughty (8550') Fields, Nueces County, Texas* (Hubenak PFD, Final Order dated August 20, 1984); and Oil & Gas Docket No. 5-68,961; *Application of William B. Pope to Establish A Pooled Unit In the Reed (Haynesville) Field, Freestone County, Texas* (Schultz PFD, Final Order dated March 15, 1979), wherein, notwithstanding the absence of any findings about drainage, applications by interest owners of productive acreage in existing proration units to force pool their interests into the proration units were granted on the basis of findings that the applicants had made an offer to share on the same yardstick basis as other owners in compliance with §102.013(c) and conclusions of law that force pooling was necessary to protect correlative rights.

Finally, *Broussard* does not hold that failure of a MIPA applicant to prove drainage means that an offer to pool voluntarily is *per se* unfair and unreasonable. *Broussard* stands for the simple proposition that in the case of an application to force pool *adjoining* acreage, not within an existing proration unit, where the evidence establishes no drainage by a well into which pooling is requested, the Commission might reasonably conclude that an offer to pool voluntarily is not fair or reasonable.

To conclude that Nowak made an offer to pool sufficiently fair and reasonable to invoke the Commission's jurisdiction under the MIPA is not, however, the end of the inquiry, for the Commission's order must observe the limitations of the MIPA and be made on terms and conditions

that are fair and reasonable that will afford the owners of each tract or interest in the unit the opportunity to produce or receive his fair share. *See* §102.017 of the Code.

The MIPA contemplates that the Commission may order force pooling into a proration unit, and a proration unit is, by definition, unique to a single well.[5] This concept becomes difficult to apply where force pooling is proposed into an existing pooled unit that has been extensively developed and proration units for wells have changed over time as additional wells have been drilled or field rules have been amended. Nonetheless, the Commission may not at once force pool the entirety of Nowak's acreage into a 339 acre unit which includes all or portions of the proration units for multiple wells.

For the proposition that her offer to pool voluntarily was fair and reasonable, Nowak relies heavily on the provisions of §102.013(c) of the Code pertaining to offers by owners in an existing proration unit to participate on the same yardstick basis as other owners in the existing proration unit. At the time of Nowak's offer to pool voluntarily, the acreage she had under lease was in an existing proration unit for Well No. 1-5 only. The examiners conclude that an order force pooling Nowak's leases into a 220 acre unit coextensive with the proration unit for Well No. 1-5, as it existed on the date of Nowak's offer to pool voluntarily, subject to the right of Comstock voluntarily to add other acreage from the Waldrop Gas Unit 1 sufficient to make the resulting unit equal in size to the standard proration unit for the Carthage (Cotton Valley) Field plus 10% tolerance, will be fair and reasonable.[6]

While a facially appealing argument can be made that it is not fair to force pool Nowak's acreage into a 220 acre unit for Well No. 1-5 when there is no evidence that such acreage is contributing to the production of that well, there are other factors that make such force pooling fair and reasonable. At the time of Nowak's offer to pool voluntarily, Comstock had elected to include Nowak's acreage in a 220 acre proration unit for Well No. 1-5. Had the allocation formula for the subject field not been suspended, all the acreage in the proration unit would have contributed to the well's allowable. Under §102.013(c) of the Code, an offer by an owner of an interest in oil and gas within an existing proration unit to participate in the unit on the same basis as the other owners must be considered fair and reasonable.

Although Comstock is the lessor of only a portion of the mineral interest in the 82 acre and 18 acre tracts covered by Nowak's leases, Comstock had entitlement to pool all of this acreage into the Waldrop Gas Unit 1 and to include all of the acreage in the proration unit for Well No. 1-5.

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[5] See, for example, §102.017 of the Code which requires that a Commission order under the MIPA describe the land included in the unit, identify the reservoir to which it applies, and "designate the location of *the well*."

[6] The proviso that Comstock shall be permitted voluntarily to add other acreage from the Waldrop Gas Unit 1 to the force pooled unit sufficient to make the unit equal in size to the standard proration unit for the field is fair and reasonable. Nowak proposed a force pooled unit roughly equal in size to the standard proration unit for the field, plus 10% tolerance. Section 102.011 of the Code provides that if the requirements of MIPA are satisfied, the Commission shall establish and pool all interests in a unit containing the approximate acreage of the proration unit. See also *Buttes Resources Co. v. Railroad Com'n, supra*, where the Commission's forced pooling order had pooled only 22 acres of the 55 acres proposed for forced pooling, but had left Buttes the option to voluntarily pool an additional 33 originally productive acres that had watered out, so that Buttes might obtain a better allowable.

Comstock's lessors in this acreage have entitlement to royalties on production from Well No. 1-5 and all other unit wells, whether or not the acreage is contributing to the production of these wells. In contrast, Nowak and her lessors, who have almost equal interests in the same acreage, are not pooled by Comstock, and because no well has been drilled on their tracts, they have no present opportunity to participate in the production of any well on the unit of which their acreage is a part. Under different circumstances, Nowak or her lessors could have simply ratified Comstock's unit and gained entitlement to participate in all unit wells.[7] Under present circumstances, Comstock enjoys the use and benefit of all the acreage, but pays royalty to its lessors under the 82 acre and 18 acre tracts based only on their fractional interests, retaining the money that would otherwise be paid as royalty to Nowak's lessors if they were leased to Comstock and pooled into the unit.

There is no dispute about the fact that the acreage covered by Nowak's leases is productive in the subject field. As cotenants, both Comstock and Nowak have the right to drill a well on this acreage, but under present circumstances, it is not practical for either to do so. Comstock concedes that it would make no sense for Comstock to drill a well there, having to carry the 48.5% interest of Nowak, and if Nowak were to drill such a well, she would be required to carry Comstock's 51.5% interest.[8] In counteroffers, Comstock attempted to address this problem by offering partition and farm out options that apparently would have given Nowak 100% of the working interest in a well she drilled on her acreage. However, the MIPA focuses on the issue of whether the applicant for forced pooling has been afforded a reasonable opportunity to *pool* voluntarily, and Comstock has not proposed any option that would have resulted in the pooling of Nowak's working interest into any well on the Comstock unit.

Nowak offered to pool her interest on the following terms: (1) Comstock will be the operator of the force pooled unit; (2) the unit will be limited to the depth interval correlative with the Carthage (Cotton Valley) Field; (3) production from the force pooled unit will be allocated on the basis of each owner's net pro rata share of surface acreage within the unit; (4) the working interest owners in the force pooled unit will share in the cost of drilling, operation, rework, and plugging of the unit well, based on each working interest owner's net pro rata share of acreage contributed to the unit; (5) Nowak's share of the costs will be taken out of her share of production from and after the effective date of the unit, plus a 10% risk penalty; (6) Nowak will ratify the existing Joint Operating Agreement for the Waldrop Gas Unit 1. The examiners recommend adoption of these proposals as conditions of the Commission's order, except that the examiners recommend a risk penalty of 25%.[9]

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[7] A cotenant may either ratify or repudiate a pooling or unitization agreement or lease executed by another concurrent owner that covers his interest. However, Nowak cannot simply ratify Comstock's unit because the unit declaration pools leases rather than tracts.

[8] At the hearing, Comstock's counsel sized up this dilemma another way: "Why would you want a free riding 50 percent partner where you bear all the risk . . . of drilling, and then if you do make a well . . . you end up having to share after payout 50 percent with your partner."

[9] In the circumstances, a 25% risk penalty is more fair and reasonable than the 10% proposed by Nowak or the 50% proposed by Comstock. No dry holes have been drilled on the Waldrop Gas Unit 1 and eight producing wells have been drilled and completed on the unit in the subject field. All of this development has been accomplished without the creation of an isopach map of the producing formation, indicating Comstock's level of confidence that wells drilled on the unit would be productive. These facts weigh against a risk penalty as high as 50%. On the other

Pooling of Nowak's leases into the 220 acre proration unit for Well No. 1-5, subject to these terms and the right of Comstock voluntarily to add other acreage from the Waldrop Gas Unit 1 sufficient to make the resulting unit equal in size to the standard proration unit for the Carthage (Cotton Valley) Field plus 10% tolerance, will serve the purpose of protecting the correlative rights of Nowak and her lessors.

A decision on Nowak's claim that Comstock violated §91.143 of the Natural Resources Code by failing to disclose in Form P-12 filings a non-pooled interest in the 82 acre and 18 acre tracts covered by Nowak's leases is not necessary to disposition of Nowak's MIPA application. Accordingly, the examiners make no recommendation regarding this claim. This claim will be referred by the examiners to the Enforcement Section of the Office of General Counsel for review.

FINDINGS OF FACT

1. At least 30 days notice of the hearing in this docket was given to all interested parties. Patricia C. Nowak ("Nowak") and Comstock Oil & Gas, L.P. ("Comstock") appeared at the hearing and presented evidence.

2. Nowak has filed an application pursuant to the Mineral Interest Pooling Act ("the MIPA") requesting that the Commission forcibly pool Nowak's interest in 18 and 82 acre tracts, included in the existing Comstock Waldrop Gas Unit 1 657.428 acre voluntarily pooled unit in the Carthage (Cotton Valley) Field, into a 339.558 acre (hereinafter referred to as "339 acre") force pooled unit.

3. The Nowak application is opposed by Comstock, which is the operator of the Waldrop Gas Unit 1.

4. The Carthage (Cotton Valley) Field was discovered on May 1, 1968. The field is subject to special field rules providing for 467'/933' well spacing and standard 320 acre proration units, plus 10% tolerance, with optional 40 acre proration units. The allocation formula for the field is based on 100% acres and is suspended.

5. The Waldrop Gas Unit 1 was formed by Sonat Exploration Company in 1991, shortly after Well No. 1-1 had been drilled.

6. Comstock acquired its interest in the Waldrop Gas Unit 1 in August 1995. Comstock drilled Well No. 1-2 on the unit in 2001. In 2005, Comstock drilled six more wells on the unit, Well Nos. 1-3, 1-4, 1-5, 1-6, 1-7, and 1-8. All of the unit wells are producing, and at the time of the hearing, Comstock was completing one additional well on the unit, Well No. 1-10.

7. In October 2004, after discovering undivided mineral interests in 18 acre and 82 acre tracts included in the Waldrop Gas Unit 1 that were unleased and non-pooled, Nowak took oil and

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hand, evidence presented by Comstock that two of four wells drilled on the 339 acre unit proposed by Nowak may never pay out, and the possibility of encountering mechanical problems with the drilling of any well, suggest that Comstock took a greater risk than the minimal 10% proposed by Nowak when it drilled Well No. 1-5.

gas leases of these interests. This provided Nowak with a 5/12 leasehold interest in the 18 acre tract and a ½ leasehold interest in the 82 acre tract, and thus a working interest in 48.5 mineral acres within the Waldrop Gas Unit 1.

8. In November 2004, Nowak sent Comstock copies of her oil and gas leases and a series of communications between Nowak and Comstock followed regarding disposition of these leases.

   a. Nowak first proposed that Comstock purchase her leases for $250.00 per net mineral acre and that she be given an override in all unit wells equal to the difference between existing lease burdens and 28%. Comstock responded to this proposal with an offer to purchase Nowak's leases, burdened only by the existing 1/6 lease royalty, for $20,000.00, without giving Nowak an override. This Comstock offer was rejected by Nowak.

   b. In April 2005, Nowak sent Comstock a letter stating that assignment of her leases to Comstock for $250.00 per net mineral acre plus an override to Nowak on all unit wells was still her preference, but stating also a willingness to consider: (1) a partition between Comstock and Nowak of the unit leasehold estate allocating to Nowak 100% of the working interest and net revenue interest, subject to leasehold burdens, in a tract of 48.5 acres, along with spacing waivers from Comstock so that Nowak could drill her own well; or (2) voluntary pooling of Nowak's leases into the entire 657.428 acre Waldrop Gas Unit 1, with Nowak to receive her proportionate share of the working interest and net revenue interest attributable to her leases, with Nowak to pay her proportionate share of costs of all wells not yet paid out, and with Nowak then participating in additional wells drilled on the unit.

   c. In July 2005, Nowak proposed voluntary pooling of her leases into a 640 acre unit. Comstock responded on July 5, 2005, that the MIPA did not contemplate pooling of Nowak's leases into the entire Comstock unit and that Nowak had not made a valid offer to pool. As an alternative, Comstock stated that it would agree to a voluntary partition of the existing unit contemplating that: (1) Nowak would pool her leases, and, on the same day, partition the leasehold in the unit; (2) Comstock would partition to Nowak all leases within the unit only insofar as they pertained to wells drilled on 48.5 acres of the unit, with Comstock receiving all leases within the unit as to wells drilled elsewhere on the unit; (3) Nowak could choose either the north 48.5 acres of the tracts covered by her leases or the south 48.5 acres of these tracts; (4) Comstock would pay royalty to Nowak's lessors from the date of pooling; and (5) Nowak and Comstock would agree on locations so each could drill an additional well. In the alternative, Comstock reiterated its prior offer to purchase Nowak's leases for the sum of $20,000.00, with no override to Nowak, and to pool the leases it purchased so that Nowak's lessors would participate in the production of all unit wells.

   d. In August 2005, Nowak rejected Comstock's partition offer and cash purchase offer, and countered with an offer to sell her leases to Comstock for $250.00 per net mineral acre, with an override on all unit wells to Nowak.

9. On September 23, 2005, Nowak sent Comstock the offer that culminated Nowak's application pursuant to the MIPA.

    a. Nowak proposed formation of a 339 acre voluntarily pooled unit depicted on an attached plat. This proposed unit comprised roughly the southern ½ of the Waldrop Gas Unit 1.

    b. Nowak's offer stated that the 339 acre unit would include the locations of the Waldrop Gas Unit 1, Well Nos. 1-4, 1-5, 1-7, and 1-8.

    c. Nowak's offer proposed that Comstock would be the operator of the proposed 339 acre unit, the unit would be limited to the depth interval correlative with the Carthage (Cotton Valley) Field, and Nowak would contribute her leases to the unit.

    d. Nowak's offer proposed that production from the proposed 339 acre unit be allocated on the basis of each owner's net pro rata share of surface acreage within the unit, and that the working interest owners share the cost of drilling, operation, rework, and plugging of unit wells, based on each working interest owner's net pro rata share of acreage contributed to the unit. Nowak proposed that her share of the costs would be taken out of her share of production from and after the effective date of the unit, plus a 10% risk penalty or such greater penalty as might be prescribed by the Commission if a MIPA case should be adjudicated.

    e. Nowak's offer requested a copy of any existing Joint Operating Agreement covering the 339 acres to be included in the proposed unit, stating that she anticipated ratification. The offer stated that if no such JOA existed, Nowak was proposing adoption of the most recent AAPL standard form (1989) version, but that, in any event, Nowak was willing to enter into a JOA that would be fair and reasonable to all parties.

10. On October 17, 2005, Comstock rejected Nowak's September 23, 2005, pooling offer and renewed Comstock's July 5, 2005 voluntary partition offer.

11. Also on October 17, 2005, Nowak filed her application with the Commission pursuant to the MIPA, attaching copies of Nowak's September 23, 2005, voluntary pooling offer and Comstock's October 17, 2005, letter rejecting Nowak's voluntary pooling offer. On November 1, 2005, Nowak supplemented her application by letter requesting that the notice of hearing on the MIPA application specify, among other things, that the unit well for the proposed 339 acre unit was Well No. 1-5.

12. During the week prior to the hearing, Comstock offered to farm out to Nowak its leasehold interest in the 18 acre and 82 acre tracts, which would have enabled Nowak to drill two wells on the acreage in these tracts, but this offer was not accepted by Nowak.

13. The acreage sought to be forcibly pooled by Nowak is productive in the Carthage (Cotton Valley) Field.

14. Nowak made a fair and reasonable offer to pool voluntarily.

    a. At the time of Nowak's offer, Comstock's leases of the 18 acre and 82 acre tracts in which Nowak holds a leasehold interest were pooled into the Waldrop Gas Unit 1 and the 18 acre and 82 acre tracts were included in a 220 acre existing proration unit established by Comstock for the Waldrop Gas Unit 1, Well No. 1-5 pursuant to Form P-15 dated August 31, 2005.

    b. Nowak offered to pool her leasehold interest into a unit that included the existing proration unit for the Waldrop Gas Unit 1, Well No. 1-5, as it existed on the date of the offer, plus additional acreage sufficient to make the proposed unit the approximate size of the 320 acre standard proration unit prescribed by special field rules for the Carthage (Cotton Valley) Field, plus the 10% tolerance allowed by the special field rules.

    c. Nowak offered to participate on the same yardstick basis as other owners in the unit, including the owners in then existing proration unit for the Waldrop Gas Unit 1, Well No. 1-5.

    d. Comstock rejected Nowak's offer to pool voluntarily and did not make a counteroffer to pool Nowak's leasehold interest into the proration unit for any well on the Waldrop Gas Unit 1.

15. Comstock has not drilled a well on the 18 acre or 82 acre tracts in which Nowak holds a leasehold interest and has no plan to do so.

16. At the time of Nowak's offer to pool voluntarily, the 18 acre and 82 acre tracts in which Nowak holds a leasehold interest were included by Comstock in the proration unit for the Waldrop Gas Unit 1, Well No. 1-5, but Nowak and her lessors were not participating in any unit production. Comstock's lessors in the same tracts were being paid royalties based only on their fractional undivided interests, and money that would otherwise have been paid as royalties to Nowak's lessors had they been leased to Comstock and pooled was being retained by Comstock.

17. Between August 1995, when Comstock acquired its interest in the Waldrop Gas Unit 1, and October 2004 when Nowak obtained her leases, Comstock did not attempt to lease the interests of Nowak's lessors or to pool them into the Waldrop Gas Unit 1. In November 1995, a prior lessee took leases of these interests and approached Comstock about pooling them, but pooling did not result.

18. As a cotenant in the 18 acre and 82 acre leasehold, Nowak has the right to drill a well on these tracts, but because she is the owner of only 48.5% of the working interest in this 100 acres, it is not currently feasible to do so. No prudent operator would assume 100% of the risk of drilling a well, knowing that if the well ever paid out, 51.5% of the profit of the well would have to be paid over to a cotenant owning 51.5% of the working interest.

19. Nowak's offer to pool does not provide for an operating agreement containing any of the following provisions: (a) preferential right of the operator to purchase mineral interests in the unit; (b) a call on or option to purchase production from the unit; (c) operating charges that include any part of district or central office expense other than reasonable overhead charges; or (d) prohibition against nonoperators questioning the operation of the unit.

20. Nowak's offer to pool does not apply to land owned by the State of Texas nor to land in which the State of Texas has an interest directly or indirectly.

21. No dry holes have been drilled on the Waldrop Gas Unit 1. As of the date of the hearing, eight wells had been drilled and successfully completed on this unit in the Carthage (Cotton Valley) Field, and all these wells were producing. Two of the unit wells, Well Nos. 1-7 and 1-8 had lower initial rates than other wells and, after 120 days of production, had declined to about 300 MCFD. There is a possibility that Well Nos. 1-7 and 1-8 will not pay out.

22. Pooling of Nowak's leases into the 220 acre proration unit for the Waldrop Gas Unit 1, Well No. 5, as this proration unit existed at the time of Nowak's offer to pool voluntarily, with Nowak to share on the same yardstick basis as the other owners within such existing proration unit, as proposed in Nowak's offer to pool, subject to a 25% risk penalty, and subject further to the right of Comstock voluntarily to pool additional productive acreage not to exceed the amount necessary to make the resulting unit approximately equal in size to the standard proration unit for the Carthage (Cotton Valley) Field, plus 10% tolerance, is fair and reasonable and necessary to protect correlative rights.

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. Patricia C. Nowak made a fair and reasonable offer to pool voluntarily as required by Texas Natural Resources Code §102.013.

4. Pursuant to Texas Natural Resources Code §102.011, the Commission has authority to forcibly pool separately owned interests in oil and gas within an existing or proposed proration unit in a common reservoir, where the owners have not agreed to pool their interests and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste.

5. The Commission's authority to order forced pooling under the Mineral Interest Pooling Act [Texas Natural Resources Code, Chapter 102] is limited to the pooling of separately owned interests in oil and gas into an existing or proposed proration unit for a well, and the Commission may not at once forcibly pool the entirety of the interest of Patricia C. Nowak into a unit which includes the location of multiple wells and all or portions of multiple proration units.

5. The application of Patricia C. Nowak meets the requirements of the Mineral Interest Pooling Act [Texas Natural Resources Code, Chapter 102] to the extent approved in the Commission's Final Order in this docket.

6. Approval of the application of Patricia C. Nowak to the extent set forth in the Commission's Final Order in this docket is necessary to protect correlative rights within the meaning of Texas Natural Resources Code §102.011.

7. Approval of the application of Patricia C. Nowak to the extent set forth in the Commission's Final Order in this docket is fair and reasonable and will afford the owner or owners of each tract or interest in the unit the opportunity to produce or receive each owner's fair share within the meaning of Texas Natural Resources Code §102.017(a).

RECOMMENDATION

The examiners recommend that the application of Patricia C. Nowak pursuant to the Mineral Interest Pooling Act be approved to the extent set forth in the attached recommended final order.

Respectfully submitted,

James M. Doherty
Hearings Examiner

Thomas H. Richter, P.E.
Technical Examiner