

**RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS SECTION**

OIL AND GAS DOCKET NO. 09-0266449

THE APPLICATION OF CHESAPEAKE OPERATING COMPANY PURSUANT TO THE MINERAL INTEREST POOLING ACT TO FORM A UNIT FOR WELL NO. 1-H, UNIVERSITY WEST UNIT, NEWARK, EAST (BARNETT SHALE) FIELD, TARRANT COUNTY, TEXAS

FINAL ORDER

The Commission finds that, after statutory notice in the above-numbered docket, heard on September 13 and November 1, 2010, the examiners have made and filed a report and proposal for decision containing findings of fact and conclusions of law, which was served on all parties of record, and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the proposal for decision and the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own findings of fact 2-6, 8-9, 11-15, 17-24 and 28-34 and conclusions of law 1 and 2 contained in the proposal for decision, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein, except that findings of fact 28 through 34 are hereby re-numbered as findings of fact 25 through 31. The Commission further adopts substitute and additional findings of fact and conclusions of law as follows:

Findings of Fact:

1. At least thirty (30) days notice of the September 13, 2010 hearing was provided to all persons affected by these dockets. The notice of hearing for Oil & Gas Dkt. No. 05-0265656 expressly notified all parties that, in addition, to consideration of the complaint regarding alleged failure of notice of Chesapeake's September 1, 2009 application for the University West 1H, "the Commission may also consider whether a new Rule 37 exception permit should be issued for the Chesapeake Operating, Inc., University West Unit, Well No. 1H, Newark, East (Barnett Shale) Field, Tarrant County, Texas, at the same location, and subject to the same terms, conditions, and restrictions specified in Drilling Permit No. 684313, issued October 20, 2009 . . . "
7. On July 2, 2009, Chesapeake filed another W-1 [Application #3] now indicating the University West Unit consisted of 60.603 acres and increasing the lateral to approximately 3500' with about 2400' of the lateral declared as NPZ. As a result of declaring that it would limit its perforations to only about 1100' of the lateral, Chesapeake represented that no unleased tracts were within 330' of the perforated interval and Chesapeake's third permit for the well was approved and issued administratively on July 7, 2009.

10. On August 19, 2009, Chesapeake again re-filed [Application #5] seeking a permit for the University West 1H with the same surface location and wellbore track as in the previous two iterations but this time again declaring no perforation zones ("NPZs") over 2/3 of the wellbore with only about 1100' of the 3500' lateral to be perforated. With the NPZ limitations, Chesapeake represented that there were no unleased tracts within 330 feet and the permit was approved administratively on August 21, 2009.
16. Chesapeake drilled the University West 1H in accordance with the permit issued on October 20, 2009.
32. Production of the entire length of the University West 1H is necessary to provide Chesapeake and its lessors a reasonable opportunity to recover their fair share of hydrocarbons from the Newark, East Barnett Shale Field beneath the University West Unit.
33. The location of the University West 1H is reasonable.
34. Chesapeake expressly withdrew all offers to lease the unleased owners, each of whom own individual residential lots ("offerees"), on June 2, 2010 when it submitted its MIPA pooling offer to the unleased owners.
35. The only option afforded the offerees in Chesapeake's MIPA pooling offer was to agree, within 14 days, to join the unit as working interest owners.
36. Chesapeake's pooling offer stated that the offerees would be provided with a copy of the governing joint operating agreement ("JOA") after they provided a signed and notarized letter agreeing to join the University West Unit and to be governed by the JOA.
37. As working interest owners, the offerees would be required to pay substantial up-front costs prior to receiving any payment from production and to pay a share of ongoing operating expenses while all other residential lot owners in the unit have come in as lessees without an obligation to pay up-front costs or to pay for ongoing operating expenses.
 - a. At the time of the June 2, 2010, MIPA pooling offer Chesapeake estimated the well costs for University West 1H as \$2,260,970.62 and estimated the protestants share of those costs to be various amounts averaging \$8,502.13 each.
 - b. By the September 13, 2010, hearing, Chesapeake estimated well costs had risen to \$2,950,739.00 and it estimated the protestants share of those cost to be various amounts averaging \$10,350.57 each.
 - c. Under the JOA, the offerees would be billed by the last day of each month and would be required to pay their proportionate share of the preceding month's operating expenses for the well within 15 days of receiving the bill.

Conclusions of Law:

3. Under Rule 1.46 of the Commission's General Rules of Practice and Procedure [16 Tex. Admin. Code §1.46], an applicant may only substitute notice by publication for direct mail notice when an applicant is "... unable, after due diligence, to locate ..." a person who is entitled to notice.
4. When the address of an affected person is known, notice by publication is not notice reasonably calculated to apprise that person of an application and afford him an opportunity to present his objections.
5. The protestants did not receive legally sufficient notice as required by due process and Texas Natural Resources Code §85.205 of Chesapeake's September 1, 2009, Application #6 for the University West 1H.
6. The Railroad Commission lacked jurisdiction to administratively issue the permit issued to Chesapeake on October 20, 2009 for the University West 1H and the permit should be cancelled.
7. Based on the evidence presented at the hearing in these dockets that began on September 13, 2010, the granting of a Rule 37 exception allowing the production of the entire length of the University West 1H is necessary to protect correlative rights and prevent the confiscation of hydrocarbons.
8. A fair and reasonable offer to pool is a jurisdictional prerequisite to consideration of an MIPA application by the Commission.
9. The fairness and reasonableness of an MIPA pooling offer must be judged from the viewpoint of the party being forced to pool.
10. Chesapeake's MIPA pooling offer for the University West Unit was not fair and reasonable when judged from the viewpoint of the unleased mineral owners.

Therefore, it is **ORDERED** by the Railroad Commission of Texas that the application of Chesapeake Operating, Inc. pursuant to the Mineral Interest Pooling Act to form a unit for Well No. 1H, University West Unit, Newark, East (Barnett Shale) Field, Tarrant County, Texas be, and is hereby, **DISMISSED**, without prejudice.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been

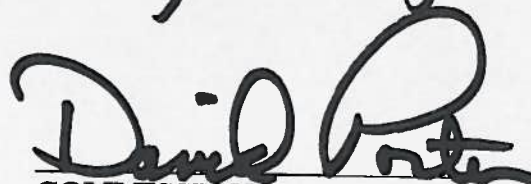
notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

Done this 11th day of October, 2011.

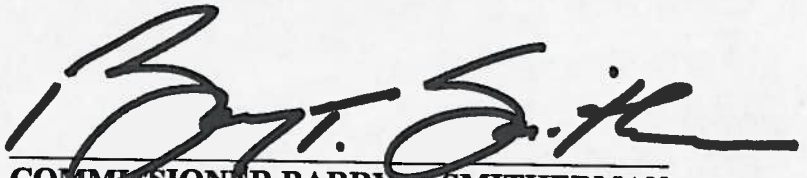
RAILROAD COMMISSION OF TEXAS



CHAIRMAN ELIZABETH AMES JONES


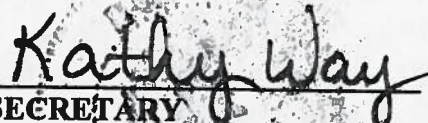


COMMISSIONER DAVID PORTER



COMMISSIONER BARRY T. SMITHERMAN

ATTEST:

SECRETARY