

REGULATORY ROAD COMMISSION OF TEXAS
LEGAL DIVISION

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OIL AND GAS DOCKET NO. 7B-94,162

APPLICATION OF SHAROCO CORPORATION FOR A MINERAL INTEREST POOLING
ACT FORMED 165.865 ACRE POOLED UNIT IN THE MINERAL WELLS (SOUTH
STRAWN, LOWER) FIELD, PALO PINTO COUNTY, TEXAS

APPEARANCES:

For Applicant:

Lloyd Muennink (Attorney)
Georgia Vandervoort
William I. Temple

Applicant:

Sharoco Corporation, Inc.

For Protestant:

Michael McElroy (Attorney)
M. S. McKaye
Michael Adkins

Protestant:

Michael Adkins

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE CASE HEARD: April 11, 1990
HEARD BY: Peggy S. Gray, Hearings Examiner
Donna Chandler, Technical Examiner
TRANSCRIPT DATE: May 9, 1990
CURRENT STATUS: Protested
PFD CIRCULATED: December 4, 1990

STATEMENT OF THE CASE

Sharoco Corporation, Inc. (hereinafter Sharoco or Applicant) seeks an order of this Commission that will force pool its 137.53 acres with the 28.326 drillsite acre tract of the Michael Adkins Lease, Well No. 1 (I.D. No. 007933), in the Mineral Wells (South Strawn, Lower) Field, Palo Pinto County, Texas to form a 165.856 acre pooled unit. Sharoco is the successor entity to Sunbelt Exploration, Inc. (hereinafter Sunbelt) pursuant to In Re: Sunbelt Exploration, Inc., Order Confirming Amended Plan of Reorganization Proposed by Vortt Exploration, Inc. entered on February 2, 1990 by the United States Bankruptcy Court for the Northern District of

Texas Dallas Division in Case No. 389-32977-HCA-11 (hereinafter Bankruptcy Order). Mike Adkins (hereinafter Adkins or Protestant) is protesting this application.

DISCUSSION OF EVIDENCE

I. Reservoir Discovery Date, Common Reservoir, and Field Rules.

Applicant stated that the Mineral Wells (South Strawn, Lower) Field is a common reservoir which was discovered and produced after March 8, 1961. The Adkins Well No. 1 (hereinafter Adkins Well or subject well) was drilled in 1979.

On November 19, 1990, in Oil and Gas Docket No. 7B-94,763 the Railroad Commission of Texas denied Adkin's application for a new field designation for Well No. 1, Palo Pinto County, Texas and ordered that the well continue to be prorated in the Mineral Wells, South (Strawn, Lower) Field.

In Oil & Gas Docket No. 7B-77,078, the Railroad Commission adopted permanent field rules, effective January 1, 1983. The field rules require 160 acre proration units with a 10% tolerance for a maximum unit size of 176 acres, 467' lease line spacing, and 1200' between well spacing. The allocation formula is 100% acreage.

Prior to 1983 the Adkins Well was producing from a lower zone in the Mineral Wells (South) Field, either the pregnant shale or one of the conglomerates. The well was recompleted in the Strawn A sand in 1983. The Form G-1, recompletion report, was filed on April 15, 1983.

II. Historical Review of the subject well and the previous unit.

In 1979 Vortt Exploration, Inc. (hereinafter Vortt) drilled, completed, and equipped the subject well on the Varnell-Seay Unit. This is the same pooled unit that Applicant is currently trying to form. In 1979, Vortt obtained leases on the Adkins, Varnell-Seay and Fowler tracts. The lease on the Protestant's tract was dated September 28, 1979. These tracts formed the original pooled unit in 1979. The Declaration of Pooling for the original Varnell-Seay Unit formed by Vortt was filed on October 17, 1979 in the deed records of Palo Pinto County. The Certificate of Pooling Authority (Form P-12) was executed on February 17, 1983 and was filed by Vortt with the Railroad Commission on February 25, 1983. Vortt sold the subject well as a prospect in which the working interest owners paid a third of the cost in return for a quarter interest. Vortt's quarter interest was a carried working interest. Vortt operated the subject well until June of 1983.

In June 1983 Vortt sold the subject well to Sunbelt. Vortt related companies retained an overriding royalty interest for Vortt. No overriding royalties were conveyed to Sunbelt. Sunbelt

produced the subject well from June 1983 to February 1987. In March 1987 Sunbelt shut-in the subject well due to a gas price dispute with Southwestern Gas Pipeline, Inc. (hereinafter Southwestern). The subject well was shut-in until October 1988, when the Protestant began producing the subject well.

The Adkins Lease, dated September 28, 1979, had a shut-in royalty provision which required shut-in royalties to be paid commencing ninety days after the well was first shut-in. Sunbelt failed to pay shut-in royalties allowing the leases in the pooled unit to terminate. The lawsuit between Southwestern and Sunbelt was decided on June 2, 1987. Sunbelt filed for protection under Chapter 11 of the Bankruptcy Code on January 1, 1989. In September of 1989 Sunbelt brought Adkins into the Railroad Commission stating that their lease had terminated, they wanted to force pool his acreage and they complained about his production.

On November 19, 1990, in Oil and Gas Docket No. 7B-94,762 the Railroad Commission of Texas approved the application of Michael H. Adkins under the provisions of Statewide Rule 38(d)(3), to divide the Adkins Unit into its separate tracts with the rules of the Commission applicable to each separate tract for the Mineral Wells, South (Strawn, Lower) Field.

Sharoco is trying to re-form the Varnell-Seay Unit. Applicant obtained a lease from Jimmy Seay dated June 14, 1989 (effective October 1, 1988) with a three-sixteenths (3/16ths) royalty. This lease covers the tract on Site C of the proposed Varnell-Seay Unit to the south and south-east of the Protestant's tract. Also, Applicant obtained a lease from Elizabeth Diann Reddell (a\k\ a E. Diann Fowler Reddell) and her husband Sandy Reddell on June 5, 1989 (effective October 1, 1990) with a one-eighth (1/8th) royalty. This tract lies to the south of the Jimmy Seay tract. Applicant was unable to lease the Protestant's tract. The Protestant owns 100% of the surface and minerals on his unleased tract.

III. Notice.

The notice of hearing on the application of Sunbelt was issued on March 9, 1990. On March 30, 1990 an amended notice of hearing was issued which named Sharoco as the successor in interest to Sunbelt. Applicant stated that the subject property and the voluntary offer to pool did not change. The hearing was held on April 11, 1990.

IV. Well name.

Applicant has requested that the name of the subject well be changed from the Adkins Well No. 1 to the Varnell-Seay Unit Well No. 1.

V. Operator.

Sharoco has requested that it be designated operator of the proposed unit, because it: (1) is an oil and gas producing company; (2) has more efficient and cost effective operations, because it owns nine other wells in this area; (3) has common compression facilities; (4) is the representative under gas purchase agreements with Southwestern Gas Pipeline, Inc.; (5) is familiar with the individual well and the area; and (6) has employees in the field.

Adkins has requested that he be designated operator if the proposed unit is formed, because either Vortt, Sunbelt, or Sharoco have: (1) allowed the tank to overflow in the past causing staining on the surrounding ground; (2) provided inadequate fencing allowing cows to enter the area and turn on the valves, or to lick around the tank area possibly causing arsenic poisoning of three cows; (3) left gates open; (4) not maintained the road; and (5) provided inadequate field inspections (several times per month). Protestant inspects the property five to six times a week when tending his cattle. Protestant has locked Applicant off the lease for approximately the last two years, not allowing them to maintain their equipment. Protestant testified that Applicant has not maintained this equipment for the last ten years.

VI. Illegal production.

The subject well is currently shut-in due to Protestant producing the well according to an allowable which was based on the previous 165.856 Sunbelt proration unit, instead of an allowable based on his 28.326 acre tract. The Commission ordered Adkins to shut-in his well until he filed for a Rule 38(d)(3) exception which allows the division of a unit after joinder or unitization. As of March 1990 the Adkins Well was listed on the proration schedule as being a 165.856 acre unit. Adkins wishes to produce the well on a small acreage tract with a smaller allowable to prolong the life of the well. On November 19, 1990, the Commission in Docket No. 7B-94,762 granted Adkins request for an exception to Statewide Rule 38(d)(3).

Sharoco has requested in the offer to pool that Adkins pay 82.92132% of the income from the production occurring from October 1988 until June 1989 from this well to Sharoco to distribute to the other interest owners. Sharoco's offer did not provide for a deduction of the protestant's operating costs.

VII. Prevention of confiscation and the drilling of unnecessary wells.

The subject well has produced 254,106 mcf as of June 1989. Protestant produced the well from October 1988 to June 1989

producing 24,011 mcf (\$36,016.50). Applicant claims that Protestant drained their property by producing the subject well without a valid allowable.

Temple testified that the Adkins Well with its thick porosity zone appears to be spaced correctly and capable of draining approximately 160 acres. He believes that it would be unlikely that the 160 acres it is draining are totally removed geographically from the well. Temple believes that based on his P over Z calculations that one well is not capable of draining the entire reservoir and another well would have to be drilled to the north on the F. H. Gray Survey. The sand is known to extend to the north due to well control, but it is not known how far the sand extends to the south. It is known that it does not extend past the Shires Well and the Wiggington Well to the south.

Applicant believes the two non-productive wells to the south further emphasize the fact that it would be unfair for Sharoco and the other interest owners to require them to drill an unnecessary well in an area that does have a certain amount of geological risk.

Applicant testified that the forced pooling is requested to recreate the previously existing pooled unit and to prevent the drilling of unnecessary wells. Applicant claims that pooling would prevent the drilling of an unnecessary well because the subject well can drain a 165 acre unit. Temple testified that the subject well is now draining an area which is larger than 28 acres and is draining the Sharoco acreage. If pooling were not approved Applicant would be forced to drill another well to recover the reserves under their acreage. There is approximately 325,000 mcf of recoverable gas remaining under the unit, with a value of between \$250,000 to \$300,000. The cost of drilling, the risk factor, and the operating costs make drilling a new well an unattractive economic venture for Sharoco.

Applicant stated that if Protestant produces his well on his own tract he will receive approximately 17% of a full 160 acre allowable under the current proration schedule, which is less than the well is capable of producing. If the acreage is pooled, the well will receive a full allowable based on the 165.856 acre pooled unit. Protestant countered that it may not be reasonable to produce the balance of the proposed proration unit out of the subject well, because all of Sharoco's acreage may not be productive.

The pooling offer allows Adkins to receive a pro rata share of production from a full 165 acre proration. Sharoco believes that Adkins' consideration will be that his allowable will not be reduced to 28 acres, and he will not suffer drainage from other companies in the reservoir. However, there are currently no other wells completed in the Strawn A sand. Protestant owns 100% of the well. If he joins in the pooling his interest will be reduced from 100% to approximately 17.1%. Therefore, Protestant does not believe

this offer is reasonable since it dilutes his ownership.

VIII. Reasonableness of the offer to pool.

The offer proposes that the production from the proposed unit be allocated on the basis of each owners pro rata share of the acreage within the unit, with all interest owners sharing on the same yardstick basis.

The final offer to pool is dated April 2, 1990. The offer was sent to Protestant by certified mail. The offer was received by Protestant on April 5, 1990. The offer stated, "[f]ailure to reply to this proposal within five (5) days from the date hereinabove shall be deemed a refusal and rejection to accept this offer to pool." Therefore, Protestant received the offer on April 5, 1990, a reply was due on April 7, 1990, and this hearing was held on April 11, 1990.

The offer stated that the Applicant will have 82.92132% of the unit and pay that percentage of operating costs, and that Protestant will have 17.07868% of the unit and pay that percentage of operating costs.

The offer to pool does not offer to pay any consideration to Protestant, stating that "... Adkins never took any risk or paid anything to produce this well." ... 'Since Adkins has not paid anything for the wellhead equipment, casing, tubing, or drilling costs, Adkins will have a profit for this pooling by free ownership of 17.07868 percent ownership of the above-mentioned wellhead equipment by accepting this pooling offer." The offer does not request the Protestant to pay any costs for pooling. Applicant testified that Protestant did not have any drilling or completion costs when he started producing, because he was a royalty owner during the four years the well was produced by Vortt and Sunbelt.

Protestant believes that Sunbelt abandoned the equipment and that he now owns it. Protestant sent a letter dated May 18, 1988 addressed to Mr. Temple of Sunbelt which gave Sunbelt thirty days to contact Adkins concerning the removal of equipment. Temple believes that the equipment belongs to Sunbelt and that Sunbelt did not need to respond because of the lawsuit filed in the bankruptcy court on January 1, 1989.

Protestant claims that he incurred costs which included defending title to the subject well, and maintaining, producing and equipping the well for the last two years. Protestant testified that he replaced Sharoco's rusty, faulty, hole ridden, leaking storage tank with a new tank, and placed a new fence around the new tank. Protestant has left intact the pipe running from the wellhead underground to the tanks to prevent damage to the separator and tank. Protestant has disconnected Sunbelt's meter and meter house from the wellhead.

Protestant testified that the equipment listed on Sharoco's Exhibit 15 remaining in his well includes the packer, casing, tubing, and the orbit valve. Adkins' claims ownership to all of the equipment listed on Sharoco's Exhibit 15. Protestant has offered to allow Sharoco to remove all equipment which he has replaced.

Protestant takes the position that he owns the equipment on the lease, and that the offer to pool is not fair and reasonable since Sharoco is not offering consideration for the equipment or any other expenses he has incurred. Temple agreed that if the equipment was not in use and was not a factor then it would not be part of a reasonable offer. (Tr. p.125).

Applicant estimated the salvage value of the subject well to be \$18,048.00. Sharoco estimated that the total cost to drill an offset well would be approximately \$120,000.00.

Protestant paid property taxes on the Adkins Well in January 1990. The county valued the subject well at \$173,280.00. Protestant has incurred over \$35,052.62 (including legal fees, phone bills, \$3,358.91 in equipment) in expenses.

Protestant believes the value of the Adkins Well is greater than the Applicant's offering price; because, the well is in a producing reservoir with approximately 325 million cubic feet of recoverable reserves remaining and it has produced approximately 250 million cubic feet of gas. Prior to the wells recompletion in the Strawn A sand in 1983 the well had produced approximately 110 million cubic feet of gas and 500 barrels of condensate from the Mineral Wells (South Conglomerate) Field.

Applicant believes that if Sharoco drills a well on their property to the south there is a risk factor, because two dry holes exist to the south of the proposed unit. McKaye believes the offer is unreasonable because no risk assessment or consideration was offered as consideration for the well.

IX. Operating Agreement.

The operating agreement has the following provision:

"Article III. Interests of Parties, B.
Interests of Parties in Costs and Production:
Unless changed by other provisions, all costs and liabilities incurred in operations under this agreement shall be borne and paid, and all equipment and materials acquired in operations on the Contract Area shall be owned, by the parties as their interests are set forth in Exhibit "A". In the same manner, the parties shall also own all production of oil and gas

from the Contract area subject to the payment of royalties to the extent of 20% which shall be borne as hereinafter set forth.

Regardless of which party has contributed the lease(s) and/or oil and gas interest(s) hereto on which royalty is due and payable, each party entitled to receive a share of production of oil and gas from the Contract Area shall bear and shall pay or deliver, ... to the extent of its interest in such production, the royalty amount stipulated hereinabove and shall hold the other parties free from any liability therefor. No party shall ever be responsible, however, on a price basis higher than the price received by such party, to any other party's lessor or royalty owner... ."

This provision in the Operating Agreement appears to require that each party pay 20% of their share of production to the operator for payment of royalties. Sharoco plans to pool three tracts to form the Varnell-Seay Unit: (1) the Varnell-Seay Lease of which Sharoco is the lessee and is responsible for the payment of a 3/16ths (18.75%) royalty, (2) the Fowler Lease of which Sharoco is the lessee and is responsible for the payment of a 1/8th (12.5%) royalty, and (3) the Adkins Lease which is unleased and owned 100% by Mike Adkins, for which Adkins is not responsible for the payment of any royalty (0%).

Protestant believes that the offer is unfair since it would make him liable for the payment of royalties for leases he did not contribute to the unit. Applicant interprets this provision to mean that on a pro rata basis Adkins would receive 20% of the revenues, under his 28 acres paid to him as royalty and 80% paid to him as a working interest owner.

The Applicant testified that the offer does not include any provision prohibited in §102.015.

X. Bankruptcy order.

The Bankruptcy Order, Item 4 states, "Sharoco or its designees or assignees shall be the operator of the Sunbelt wells under the existing operating agreements and will be the seller's representative under gas purchase contracts." Item 5 states, "Sharoco is authorized and empowered in the name of Sunbelt or its own name to pursue the existing proceedings before the Railroad Commission with respect to claims against Michael Adkins for pooling the lands in the Varnell-Seay Unit on behalf of Sunbelt and its lessors. And the advisory proceedings pending in the court against Michael Adkins and brought by Sunbelt." Mr. Temple

believes the damages and value of the equipment are part of the lawsuit. The Bankruptcy Order, further states "Sharoco shall hold the legal title to said oil and gas leases in constructive trust for the benefit of the historical owners of the working interests and the overriding royalty interests, their heirs and assigns, as they existed on July 6, 1983, when Vortt executed its Partial Assignment to Sunbelt, subject, however, to any valid increase of lessor's royalty under leases executed since said date." Sharoco believes that the proposed operator should be Sharoco or its assign or designee, based on the terms of the Bankruptcy Order.

XI. Productive Acreage.

William I. Temple testified on behalf of the Applicant. At the beginning of the hearing the Applicant was not aware of the McKenzie Company's Shires Well No. 1 ("Shires Well") and the Wiggington Well which do not have a productive interval in the Strawn A sand, but only contain a possible remnant of this sand interval. These wells are in close proximity to the south lease lines of the proposed unit.

Adkins' Exhibit No. 2 (a copy of Sharoco's Exhibit No. 10) has added the Shires Well which is located just inside the 20' contour line and the Wiggington Well that lies just outside of the 10' contour line on Sharoco's gross pay map. The Shires Well is located 460' from the upper south lease line of the proposed unit and 330' from the lower west lease line of the proposed unit.

Applicant's Exhibit 10 is a Structure and Isopach Map of the subject field. This map was prepared by Vortt for an earlier field rule hearing and did not take into consideration the two non-productive above-referenced wells. On Exhibit 10 Applicant has depicted the proposed unit within the productive limits of the Strawn A sand. Applicant's Exhibit 17 is an amended copy of Applicant's Exhibit 10. Exhibit 17 takes into consideration the remnant of the Strawn A sand in the Shires Well and the Wiggington Well. Applicant's Exhibit 17 depicts that a portion of the 137.53 acres it is attempting to pool is not within the productive limits of the subject field. However, the Applicant still maintained that the acreage within the proposed unit lies within the confines of the potentially productive acreage. Applicant bases this opinion on the belief that acreage should be presumed productive unless condemned by a dry hole.

The Rhodes-Green Well and the Lawson-Stacio Well are located approximately 2700' to the north of the Adkins Well and are approximately 1200' apart. Cross-sections across the area show that the Rhodes-Green Well, the Lawson-Stacio Well and the Adkins Well are the only wells drilled which contain a productive interval in the Strawn A sand. Currently, the Adkins Well is the only well completed and producing from the Strawn A sand. The Strawn A sand is not being drained by any other completions in intervals above

or below the Strawn A sand.

Based on a review of isopach maps of other strawn sands in the area, Temple believes that the Strawn A sand is a bar sand and there are several intervals of sand development which occurred during different periods. Each of these intervals is developed in porosity pods that are either separated from each other or contiguous, depending on the individual sand body. An analysis of the well logs shows that the Strawn A sand is very lenticular and it develops in several areas of the field with no apparent communication. The Strawn A sand is separated both horizontally and vertically from other zones.

McKaye testified that there is a remnant of sand in the Shires Well with approximately 1% sand porosity. McKaye believes that the sand ends somewhere between the Adkins Well and the Shires Well and that only through the drilling of additional wells will the location of the zero boundary line be determined. McKaye agreed that you could reasonably place a zero line at the Shires Well to the south-east of the proposed unit; the Squires Heirs Well No. 1 ("Squires Well") to the west, the Glidewell Well No. 1 to the southwest, the Whitis Well to the east, and the Rhodes-Green Unit II Well No. 1 to the north-west. These wells do not contain the Strawn A sand.

Protestant believes the sand extends in a northerly direction from the Varnell-Seay Unit. McKaye testified that this channel sand starts and disappears very abruptly with sharp edges both in an east-west and north-south direction. From the Adkins Well to the Shires Well and the Glidewell Well the sand disappears. In 2400' the sand goes from zero at the Squires Well to the south to 24' in the Adkins Well. The sand also goes from 0' in the Squires Well to the west to 24' in the Adkins Well only 1500' away.

McKaye testified that channel sands have abrupt boundaries instead of thinning to the edges of the channel. He therefore believes that the Strawn A sand ends somewhere between the Adkins Well and the Shires Well. Applicant argues that since channel sands have abrupt boundaries, it is possible that the Strawn A sand is thick all the way out to the Shires Well and ends abruptly at the Shires Well.

McKaye believes that the Strawn A sand is a channel sand that can completely disappear anywhere from 1200' to 2400' from a well where the sand exists. There is no log indication of the sand being in communication with other sands because there is 100' of shale interval from the bottom of the sand body to the top of the pregnant shale. There is another 45' to 50' of shale between the top of the sand to the bottom of the overlying sand member.

EXAMINERS' OPINION

The time period in which the offer was open did not give a reasonable amount of time for Protestant to respond to the offer or to point out objectionable aspects of the offer. The Protestant is an unleased mineral interest owner, who pays no royalty. The proposed operating agreement requires the Protestant to pay a 20% royalty which will unfairly burden and dilute his share. The proposed unit includes non-productive acreage. The Texas Natural Resource Code §102.018 states that "the Commission shall pool only the acreage, which at the time of its order reasonably appears to lie within the productive limits of the reservoir. Applicant's Exhibit 17 depicts part of the acreage which they are proposing to pool as lying outside of the productive limits of the reservoir.

FINDINGS OF FACT

1. All interested parties were given at least thirty (30) days' notice of the hearing of this application in the form and manner prescribed by the Railroad Commission and by §102.016 of the Texas Natural Resources Code.
2. The Mineral Wells (South Strawn, Lower) Field ("subject field") was discovered and produced after March 8, 1961. Permanent field rules were adopted, effective January 1, 1983, in Docket No. 7B-77,078.
3. The Adkins Well No. 1 (I.D. No. 007933) is the well made the subject of this application and is located on the Protestant's tract.
4. The Railroad Commission has designated the subject field to be a common reservoir in Oil and Gas Docket No. 7B-94,763.
5. There are separately owned interests in the subject field.
6. The allocation formula for the subject field is 100% acreage.
7. The standard proration unit for the field is 160 acres plus 10% tolerance.
8. The State of Texas does not have a direct or indirect interest in the tracts to be pooled.
9. The subject well is draining the Applicant's tract.
10. The tracts the Applicant proposes to pool to form the Varnell-Seay Unit are the:
 - a. Jimmy Seay Tract. Jimmy Seay signed a lease with Sunbelt Exploration, Inc. dated June 14, 1989 (effective October 1, 1988) with a three-sixteenths (3/16ths) royalty.

Being 96.331 acres, out of Block 1, F. H. Gray Survey, Abstract No. 195, Palo Pinto County, Texas.

- b. Reddell Tract. Elizabeth Diann Reddell (a\k\a E. Diann Fowler Reddell) and her husband Sandy Reddell signed a lease with Sunbelt Exploration, Inc. dated June 5, 1989 (effective October 1, 1990) with a one-eighth (1/8th) royalty. Being 41.20 acres, more or less out of Block 2, F. H. Gray Survey, Abstract No. 195, being that same land as described in the Deed of Trust recorded in Volume 131, Page 408, of the deed Records of Palo Pinto County, Texas.
 - c. Adkins Tract. The Applicant was unable to lease the Protestant's tract. The Protestant owns 100% of the surface and minerals on his unleased tract. Being 28.326 acres, more or less, and being all of Share No. 8 which was set aside to Ida Adkins and Mike Adkins in a Partition Suit dated August 9, 1979 and recorded in Volume 9, pages 404-414 of the District Clerk's Records of Palo Pinto County, Texas.
11. The Applicant, Sharoco Corporation, seeks to pool its 137.53 acres with the Protestant's, Michael Adkins, 28.326 drillsite acre tract.
 12. Applicant has made an offer to pool voluntarily with the Protestant.
 13. Protestant has not agreed to the pooling offer made by the Applicant.
 14. Taking into account those relevant facts existing at the time of the offer, which would be considered important by a reasonable person in entering into a voluntary pooling agreement concerning oil and gas properties, and from the standpoint of the offeree, the offer of Applicant was not fair and reasonable, because:
 - a. Some of the acreage which the Applicant seeks to pool is not productive.
 - b. The offer would require the Protestant to pay a 20% royalty for leases which he did not contribute to the proposed unit. Currently the Applicant does not pay any royalties.
 - c. The offer reduces the Protestant's share of production from 100% to 17.1%.
 - d. The offer requires Protestant to pay Applicant 82.92132% of income from production occurring between October 1988

until June 1989, without allowing the deduction of any expenses incurred by the Protestant.

- e. The offer does not offer any consideration for the subject well or the equipment.
15. Pooling would violate the correlative rights of the Protestant, because unproductive acreage would be pooled with his productive acreage.

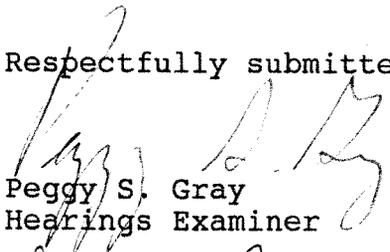
CONCLUSIONS OF LAW

1. Proper notice of the hearing was timely given to all persons legally entitled to notice in the form and manner prescribed by the Commission and statute.
2. All things necessary to invoke the jurisdiction of the Commission in these matters have been done and the Commission has jurisdiction.
3. The State of Texas has no ownership in any property made the subject of this application.
4. The voluntary pooling offer of the Applicant was not a fair and reasonable offer to pool as is required by §102.013(b) Texas Natural Resources Code.
5. The Applicant has not complied with the requirement to make a fair and reasonable offer to pool.

EXAMINERS' RECOMMENDATION

Based on the above findings of fact and conclusions of law, the Examiners recommend dismissal of the application made the subject of this hearing.

Respectfully submitted,


Peggy S. Gray
Hearings Examiner


Donna Chandler
Technical Examiner