



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

OIL & GAS DOCKET NO. 08-0278431

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**COMMISSION CALLED HEARING TO PROVIDE CRYSTAL RIVER OIL & GAS, LLC AN OPPORTUNITY TO SHOW CAUSE WHY PERMIT NO. 544671 FOR THE MONROE GAS UNIT NO. 2, WELL NO. 1 QUITO (WOLFCAMP) FIELD [NOW THE PHANTOM (WOLFCAMP) FIELD], WARD COUNTY, TEXAS SHOULD NOT BE CANCELLED DUE TO NON-COMPLIANCE WITH STATE WIDE RULE 37**

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### APPEARANCES:

**FOR RESPONDENT:**

Jay Stewart, Atty.

**REPRESENTING:**

CRYSTAL RIVER OIL & GAS, LLC

**FOR COMPLAINANT:**

Dan Miller, Atty.

**COMPLAINANT :**

SWEPI, LP

### PROPOSAL FOR DECISION

### PROCEDURAL HISTORY

<b>DATE COMPLAINT FILED:</b>	May 9, 2012
<b>DATE OF NOTICE OF HEARING:</b>	September 27, 2012
<b>DATE OF HEARING:</b>	January 24, 2015
<b>DATE TRANSCRIPT RECEIVED:</b>	February 3, 2015
<b>DATE PFD CIRCULATED:</b>	April 16, 2015

**HEARD BY:**

Hearings Examiner:

Laura Miles Valdez

Technical Examiner:

Karl Caldwell



### STATEMENT OF THE CASE

This is a Commission-Called case which arises as a result of a complaint filed in 2012, alleging that the Monroe Gas Unit No. 2 Well No. 1 (the "Well") was re-entered in violation of Statewide Rule 37, based on the Well's proximity to the southern lease line boundary. The complaint was originally filed by John A. Langoff of EGL Resources against Chesapeake Operating, Inc. The successor in interest to the original Complainant, EGL Resources, is now SWEPI, LP. The successor in interest to the original Respondent is now Crystal River Oil & Gas, LLC.

The sole dispute before the Commission in this Docket is whether the Well was re-entered in 2004 at a regular location (*i.e.*, no more than 467-feet from the lease line). However, where the actual lease line lays is the crux of the dispute between the parties, as the conveying leases at issue (the "Leases") do not clearly denote the exact latitude and longitude coordinates of the lease boundaries.

Notice of this hearing was sent to all interested parties on January 5, 2015. The hearing was called on January 26, 2015. The Examiners recommend that the Commission dismiss this docket for lack of jurisdiction over the interpretation of underlying title at issue.

### APPLICABLE LAW AND STATUTES

Statewide Rule 37 prohibits the drilling of wells less than 467 feet<sup>1</sup> from the nearest lease line, unless an exception is obtained. 16 Tex. Admin. Code §3.37(a)(1).

An oil and gas lease gives the leaseholder the right to drill wells anywhere on the lands covered by the lease. *See generally Magnolia Petroleum v. Railroad Commission*, 170 S.W.2d 189 (Tex. 1943); *see also Stephens County v. Mid-Kansas Oil & Gas Co.*, 254 S.W. 290 (Tex. 1923).

The function of the Railroad Commission in this connection is to administer conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate title or rights of possession. These questions must be settled in the courts. When the permit is granted, the permittee may still have no such title as will authorize him to drill on the land. *Magnolia Petroleum*, 170 S.W.2d at 191; *see also Altgelt, et. al. v. Texas Co.*, 101 S.W.2d 1104 (Tex. Civ. App.—Austin, 1937, rehearing den'd).

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<sup>1</sup> The applicable subject Field Rules are the Statewide Field Rules, which set out the minimum lease line spacing distances; here the minimum lease line spacing is 467 feet.

### DISCUSSION OF THE EVIDENCE

The subject well is an existing well<sup>2</sup> that was reentered in April 2004, by Chesapeake Operating, Inc. On February 9, 2004, the Respondent, Crystal River, received two leases which included the Well.

#### Crystal River's Position

In support of its argument that it did not violate Statewide Rule 37, Crystal River offered into evidence copies of the two leases it received in February of 2004, prior to re-entering the Well. Both leases contained a Granting Clause which stated that it conveyed "The North 1/4 (N4) of the North 1/4 (N4) of Section 6, Block 1 of the W&NW RR Survey of Ward County, Texas, ..." <sup>3</sup>. The Granting Clause in the Leases each have language indicating that the lease was for forty (40) acres. (One lease had language after the "North 1/4 (N/4)..." and stated that the conveyed lease "contain[ed] forty (40) mineral acres, more or less" <sup>4</sup> and the other lease stated it "contain[ed] forty (40) acres, more or less." <sup>5</sup>)

Further, both leases contain language as to the "Acreage Held" by the lease. In the first lease in which Cynthia Day Stratton O'Malley, Clifton Jairus Stratton, III, and Joanna Lenore Stratton Roze, conveyed to Crystal River Oil & Gas, LLC (hereinafter "the Stratton Lease"), the acreage held by that lease includes: "(1) 40 acres surrounding each producing oil well and 320 acres surrounding each producing gas well..." <sup>6</sup> In the second lease, in which Monroe Properties, Inc. and Lee M. Stratton Living Trust convey to Crystal River Oil & Gas, LLC (hereinafter "the Monroe Lease"), the acreage held by that lease includes: "(1) 40 acres surrounding each producing oil well and 320 acres surrounding each producing gas well..." <sup>7</sup>

Crystal River asserts that the Granting Clause, taken in conjunction with the "Acreage Held" clauses contained within each lease, demonstrates that the mineral interests it received, and that the Leases conveyed, were 40 acres surrounding and centered on the 1979 Well.

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<sup>2</sup> The Well was originally drilled in 1979 and completed in a shallower field, the Soda Lake/Fusselman Field. See SWEPI Exh. 1

<sup>3</sup> Crystal River Exh. 1, pg 1, paragraph 1 & Crystal River Exh. 2, pg 1.

<sup>4</sup> Crystal River Exh. 1, pg 1, paragraph 1.

<sup>5</sup> Crystal River Exh. 2, pg 1.

<sup>6</sup> Crystal River Exh. 1, pg 9, paragraph 18. A. (1).

<sup>7</sup> Crystal River Exh. 2, pg 7, paragraph 12. A. (1).

**SWEPI's Position**

SWEPI seeks relief from the Commission and asserts that Crystal River's permit should be cancelled since the reentry was on the lease line and there was no Statewide Rule 37 exception granted nor was any Statewide Rule 37 exception sought at the hearing.

SWEPI contends that the language of the Leases clearly indicates that 40 acres granted to Crystal River were the northern most quarter of the northern most quarter of Section 6, Block 1. As a result of the clear language of the Leases, SWEPI alleges that Crystal River's well is in violation of Statewide Rule 37 since the well is located on the actual lease line. SWEPI disputes Crystal River's contention that the drafters of the Leases intended to provide 40 acres surrounding the existing well, where the center of the 40-acre tract sits in the dead-middle of the tract. SWEPI asserts that the only issue in this docket is whether, when Crystal River reentered the subject well, it drilled at a regular location that met the requirements of Statewide Rule 37. Because the well was reentered on the lease line, the reentry could not have met the requirements of Statewide Rule 37, which requires wells in this field to be 467 feet from any lease line.

**EXAMINERS' OPINION**

The courts have long recognized that the Railroad Commission cannot adjudicate the question of title to property on which a permit is sought, even though the validity of its order granting a permit may depend upon that question. *Railroad Commission v. Lamb*, 81 S.W.2d 161, 162, (Tex. Civ. App.—Austin, 1935). Further, the court has held that “[w]here a bona fide title or boundary question is raised before the commission as to ownership of the land is involved, the proper order for the commission is to deny the permit, or withhold action on it, until the question is removed by either by agreement of the parties or by adjudication in a court of competent jurisdiction.” *Altgelt v. Texas Co.*, 101 S.W.2d 1104, 1106 (Tex. Civ. App.—Austin, 1937, rehearing den'd.). In general, like other state administrative agencies, the Commission has only those powers that the Legislature expressly confers upon it and any implied powers that are necessary to carry out the express responsibilities given to it by the Legislature. *Public Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 316 (Tex. 2001) (explaining that while this case directly relates to the PUC it also relates to the administrative agencies generally). It is not enough that the power claimed by the Commission be reasonably useful to the Commission in discharging its duties; the power must be either expressly conferred or necessarily implied by statute. The agency may not exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes. *Id.*

The Examiners are of the opinion that the crux of this dispute is a title dispute; specifically, the interpretation of the Leases and a determination of what was granted in the Leases. Accordingly, the Commission does not have jurisdiction over whether the Well is in violation of Statewide Rule 37. Because Statewide Rule 37 requires a definite lease line boundary, the Examiner is unable to make a determination of whether the Well violates Statewide Rule 37. Absent a title determination by the

appropriate district court of which specific tract of land was granted, the Commission is unable to conclusively determine whether or not the Well re-entry was in violation of Statewide Rule 37.

The Examiners conclude that the Commission should dismiss the docket because the Commission does not have jurisdiction over interpretation of title conveyed within the Leases, which is required for the Examiners to make the preliminary determination as to where the lease line boundary lies.

Based on the record in this case, the Examiners recommend adoption of the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. Notice of this hearing was provided by mail to all interested parties at mailing addresses provided by the applicant at least 30 days prior to the hearing.
2. In February of 2004, Crystal River received two leases granting it the right to operate the Monroe Gas Unit No. 2, Well No. 1.
  - a. Both leases contained a Granting Clause which states that it conveys "The North 1/4 (N4) of the North 1/4 (N4) of Section 6, Block 1 of the W&NW RR Survey of Ward County, Texas, ...".
  - b. The Granting Clause in the Leases each have language indicating that the lease was for forty (40) acres.
  - c. One lease has language after the "North 1/4 (N4)..." section stating that the lease conveyed "contain[s] forty (40) mineral acres, more or less" and the other lease stated it "contain[s] forty (40) acres, more or less."
3. On April 22, 2004, the subject well, the Monroe Gas Unit No. 2 Well No. 1, was re-entered and issued Permit #544671 (API # 42-475-31812). The subject well was re-completed to a total depth of 19,250.
4. The subject well re-entered a well originally drilled in 1979, which at the time was drilled at a legal location.

### **CONCLUSIONS OF LAW**

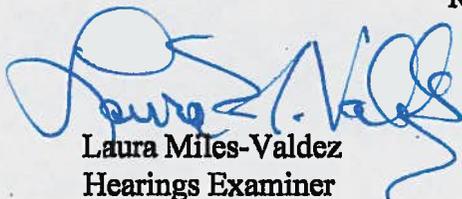
1. Pursuant to 16 Texas Administrative Code §1.45, notice of the hearing was given to all interested parties by mailing the notices to their last known addresses at least 30 days before the hearing.

2. The Commission lacks jurisdiction over the interpretation of the two Leases at issue, which define the lease boundaries pertinent to the Monroe Gas Unit No. 2 Well No. 1 ("the Well"), in accordance with the Texas Supreme Court's holding in *Altgelt, et. al. v. Texas Co.*, 101 S.W.2d 1104 (Tex. 1937) and *Magnolia Petroleum v. Railroad Commission*, 170 S.W.2d 189 (Tex. 1943).

**RECOMMENDATION**

The Examiners recommend that the docket be **DISMISSED** for lack of jurisdiction.

Respectfully submitted,

  
Laura Miles-Valdez  
Hearings Examiner

  
Karl Caldwell  
Technical Examiner