



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 01-0296282

COMMISSION CALLED HEARING ON THE COMPLAINT OF ALTA MIRA LAND AND CATTLE, LP ALLEGING THAT LULING O&G, LLC DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE PURCELL, C.E. (10024) LEASE, SPILLER FIELD, CALDWELL COUNTY, TEXAS

APPEARANCES

FOR ALTA MIRA LAND AND CATTLE, LP:

Stephen M. Gerdes, II, Attorney at Law
Chico Parker

FOR LULING O&G, LLC:

Christopher Hotchkiss, Attorney at Law
Damon Wagley, Consultant
Roland Baker

PROCEDURAL HISTORY:

Notice of Hearing:	July 6, 2015
Hearing on the Merits:	August 5, 2015
Proposal for Decision:	December 18, 2015
Final Order:	February 23, 2016
Final Order Vacated:	June 7, 2016
Amended Proposal for Decision:	June 28, 2016
Heard by:	Laura Miles-Valdez, Hearings Examiner Brian K. Fancher, Technical Examiner
Prepared by:	Ryan M. Lammert, Administrative Law Judge

SUMMARY

In Docket No. 01-0296282, Alta Mira Land and Cattle, LP (“Alta Mira”) filed with the Commission a complaint letter challenging Luling O&G, LLC’s (“Luling”) “good faith claim” to a continued right to operate the Purcell, C.E. (10024) Lease, Spiller Field, located in Caldwell County, Texas (“Lease”). Specifically, Alta Mira alleges that the subject oil, gas and mineral lease has expired by its own terms for lack of production from the Lease. In response, Luling timely requested a hearing on the merits.

The sole issue before the Commission is whether Luling has a “good faith claim” to operate the Lease, as that term is defined in Statewide Rule 15. At the hearing on the merits, Luling acknowledged that the subject oil, gas and mineral lease had not produced oil or gas from the Lease since November 2014—and that the Lease was severed for violations of Commission rules—but nonetheless that the Lease was otherwise still in full force and effect because Luling was acting in “good faith” to remediate Lease violations. Luling also argued that because the Commission severed the Lease for violations of Commission rules, Luling couldn’t produce the Lease—a type of “force majeure” argument.

The record evidence demonstrates that Luling did not present a “good faith claim” to operate the Lease. The Administrative Law Judge and Technical Examiner (collectively, “Examiners”) recommend that the Commission order Luling to plug the subject wells, and cancel the plugging extensions for same.

EVIDENCE PRESENTED

The Lease is located in Caldwell County and Mr. Chico Parker is the surface owner of the land upon which the Lease and subject wells are located. Commission Staff appeared and presented Commission records of inspection reports conducted on the Lease and records documenting that the Lease has been severed.

Official Notice was taken of online Commission production records for the Lease from November 2014 to August 2015, which indicate that there has been zero (0) reported production from the Lease beginning December 2014 through August 2015.

LULING

In support of its argument that it has a “good faith claim” to operate the Lease, Luling asserts that it holds a currently valid lease. Testifying on behalf of Luling was Mr. Wagley, a contractor for Luling. Mr. Wagley indicated that he was hired approximately six months prior to the hearing by Luling “for their production.” Mr. Wagley offered in support of Luling’s claim that it has a “good faith claim” to operate the Lease, a copy of a Division Order dated 9/12/2012.¹ He testified that the Division Order was a “pretty

¹ Luling Ex. 4.

serious document” and that it documented how Luling was to pay “all the royalty and mineral owners.”²

Further, Mr. Wagley testified that the most recent sale of oil produced from the Lease occurred in either July or November of 2014.³ He indicated that Luling had “one of the original leases from the lease;” but, Luling was unable to present a chain of title documenting a valid lease from the base lease to the present lease. However, Luling late-filed a copy of a 2009 Assignment of the subject lease from CalTex Capital Resources, LLC (“CCR”) to Cal Tex Energy Company and EPE Partners, Ltd. (collectively referred to as “CEC”).

Luling asserts that the lease under which it is operating is currently valid and would be held by production, but the Lease has been severed by the Commission for Luling’s failure to comply with Commission rules. As a result of the severance, the Commission has ordered that production off the Lease be shut in for noncompliance with Commission rules, effectively blocking Luling’s ability to legally produce and sell oil and gas from the Lease. Mr. Wagley contends that but-for the Commission’s order severing the Lease, Luling would be able to legally produce the Lease, but that as of the date of the hearing, Luling had not produced off the Lease since the severance order.⁴

ALTA MIRA

In support that Luling does not have a “good faith claim” to operate the Lease, Alta Mira submitted photos demonstrating the poor and rusted-out condition of an onsite tank battery, which reportedly holds all production from the Lease. Alta Mira also presented testimony that the current lease contains a provision whereby the lease terminates upon cessation of continuous production for a period of 60 days.

Additionally, Alta Mira presented a series of leases for the subject property. The first lease offered into evidence is the original base lease executed in August 8, 1969, from C.E. Purcell and his wife, Ella Frances Purcell, as lessors, to Gaines R. Whittington, as lessee. The base lease contains the standard “held by production” language and a cessation of production clause which by its terms terminates the lease. Subsequent leases regarding the subject property executed through September 1985 were also submitted by Alta Mira, evidencing that the subject lease was renewed or re-leased on multiple occasions. No evidence of a currently valid lease was submitted by either party.

STAFF

Staff presented evidence of inspection reports, Commission records regarding the current “delinquent” P-5 status for Luling, the current P-4 status of Luling indicating

² See Trns. Vol I, pg.12, lns. 2-4.

³ See Trns. Vol. I, pg. 6-20. Mr. Wagley testified that the lease had been “produced” in July or November 2014. However, prior testimony indicated that Luling reported selling a load of oil last in November 2015. Trns. Vol. I, pg. 10, pgs. 14-15.

⁴ Trns. Vol. I, pg. 15, lns. 11-12.

that there are numerous violations of Commission rules (Statewide Rules 8, 21, & 91) on the Lease, Commission records of Luling's reported production off the Lease, and the Commission's severance order. Staff's evidence demonstrated that the Lease has numerous field operations violations which are still out of compliance.

Luling's reported production from the Lease indicates minimal reported production for the time period from July 2013 to June 2015. In November 2014, a monthly production report filed by Luling indicated production of 10 barrels of oil produced and 21 barrels of oil-on-hand (stored in the tank battery). Since November 2014, Luling has reported either not reported production to the Commission or reported zero (0) production.

A November 2014 inspection report conducted by the District office documents numerous violations of Commission rules on the Lease—specifically violations of Statewide Rule 8/91, 21, 32, and 14(b)(2). Of note, that inspection report documents that the subject wells located on the Lease were not able to be produced as the wellheads were rusted shut and had “been inactive for some time.”⁵ Subsequent District Inspection Reports for the Lease conducted in December 2014, March 2015, and July 2015, all document on-going and unresolved violations of Statewide Rules 8/91, 21, 32, and 14(b)(2).

EXAMINERS' OPINION

In this Docket, the sole issue before the Commission is whether Luling holds a “good faith claim” to a continuing right to operate the Lease. Statewide Rule 15(a)(5) defines “Good Faith Claim” as:

A factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

The Commission's authority to determine a “good faith claim” arises from the *Magnolia* case. In discussing the Commission's authority to grant a drilling permit, the Texas Supreme Court stated, “The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts.”⁶ The Court concluded, “Of course, the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in *good faith*.”⁷

In the context of the right to continue operation of a lease, the Commission looks to the operator's lease and the production history from the lease. If the lease contains a

⁵ Staff Ex. 1, pg. 11, District Office Inspection report.

⁶ *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943).

⁷ *Id.* at 191 (emphasis added).

“cessation of production” clause with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—for example 12 months—the contractual lease will generally not be considered a “good faith claim” to operate the property. If the lease contains a “continuous operations clause” with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—again, for example 12 months—the operator would be required to provide some evidence that operations had continued in an effort to restore production with no lapse in operations greater than 60 or 90 days, as the case may be. Failing that, the contractual lease would no longer be considered a “good faith claim” to operate the lease, unless—as asserted in the instant Docket—the operator argues that it is relieved from producing or operating the lease because of a “force majeure” event.

The purpose of a “force majeure” clause in an oil and gas lease “is to excuse the lessee from non-performance of lease obligations when the non-performance is caused by circumstances beyond the reasonable control of the lessee ... or when non-performance is caused by an event which is unforeseeable at the time the parties entered the contract.”⁸ Also, “When a lessee raises a force-majeure clause as an excuse for nonperformance, the lessee bears the burden of proof to establish that defense.”⁹

Lastly, as explained in *Moore*, “If the regulation is within the control of the lessee, compliance is not prevented or the result of the regulation.”¹⁰

In the instant Docket, Luling does not contest that production has ceased from the Lease; but because it is precluded—by virtue of a Commission Final Order—from producing from the Lease, Luling maintains a “good faith claim” to a continuing right to operate the Lease.

The Examiners are not persuaded by Luling’s argument.

First, it should be noted that the parties do not assert that the Lease is held by production from the subject wells. The Examiners also note that, since November 2014, Luling has reported either not reported production to the Commission or reported zero (0) production. The Lease, by its own terms, expired in early 2015.

Second, the record evidence demonstrates that the Lease was most recently severed on November 18, 2014, for various violations of Commission rules. Since that time, Luling has been unable to legally produce hydrocarbons from the Lease. Accordingly, Luling has either not reported production to the Commission, or reported zero (0) production. The record evidence also demonstrates that Luling became the operator of record for the Lease on August 1, 2011—more than 3 years prior to the violations cited in the November 2014 severance.

⁸ *Hydrocarbon Mgmt., Inc. v. Tracker Exploration, Inc.*, 861 S.W.2d 427, 435–36 (Tex.App.-Amarillo 1993, no writ) (citations omitted).

⁹ *Moore v. Jet Stream Investments, Ltd.*, 261 S.W.3d 412, 420 (Tex. App. 2008).

¹⁰ *Id.* at 421 (emphasis added).

Similar to the logic expressed in *Moore*, the Examiners conclude that Luling failed to successfully assert “force majeure” as an affirmative defense to the lease expiring by its own terms. In *Moore*, an assignee of an oil and gas lease failed to secure the necessary financial assurance from the Commission so that it could produce its newly acquired wells.¹¹ The Commission ordered the wells shut-in and to cease production due to the operator’s noncompliance with Commission rules requiring financial assurance from the operator.¹² The *Moore* court concluded that, because alternative remedies were available to the operator to avoid Commission action, the operator could not assert “force majeure” as a defense to maintain the lease.¹³

Here, Luling argues that it cannot produce from the Lease because it is severed. But for the Lease being severed, Luling would be able to produce the lease in quantities sufficient to demonstrate a “good faith claim” to a continuing right to operate the Lease. Comparable to *Moore*, Luling had remedies available to it to prevent the Lease from being severed—namely, to address the Lease violations in a timely manner. Had Luling rectified the cited Commission violations, there would have been no cause to sever the Lease, in this case. At the time of hearing, the Lease had been severed for a period of approximately eight (8) months and Commission staff testified that the Lease was non-compliant at that time. Thus, compliance with Commission rules was within the control of Luling, and compliance with the lease terms was neither prevented or the result of same.

For these reasons, the Examiners conclude that Luling did not present a “good faith claim” to operate the Lease and recommend that the Commission order Luling to plug the subject wells, and cancel the plugging extensions for same.

CONCLUSION

The Examiners conclude that Luling did not present a “good faith claim” to operate the Lease and make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACTS

1. On or about March 17, 2015, Alta Mira Land and Cattle, LP filed with the Commission a written complaint alleging that Luling O&G, LLC did not hold a “good faith claim” to operate the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas.
2. Alta Mira Land and Cattle, LP is the surface estate owner of the subject property.
3. By letter mailed March 30, 2015, Luling O&G, LLC was notified of the complaint.

¹¹ *Id.* at 419.

¹² *Id.*

¹³ *Id.* at 421.

4. At least ten days notice was given to Luling O&G, LLC, Respondent, and Alta Mira Land and Cattle, LP, Complainant.
5. The notice established a deadline of April 17, 2015, by which Luling could either (A) request a hearing on the merits of the complaint; or, (B) submit written evidence that it held a good faith claim to operate the subject property, pursuant to Tex. Gov't Code §§ 2001.056 and 2001.062(e).
6. Luling O&G, LLC requested a hearing on the merits.
7. A Notice of Hearing was issued July 6, 2015.
8. A Hearing on the merits was held on August 5, 2015.
9. A Proposal for Decision was issued on December 18, 2015.
10. A Final Order was issued on February 23, 2016.
11. The Final Order was vacated on June 7, 2016.
12. Luling O&G, LLC holds Operator No. 512575.
13. Luling O&G, LLC is the Form P-4 Record Operator of the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas.
14. The Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas, was severed for violations of Statewide Rules.
15. Luling O&G, LLC did not present a current lease or assignment for the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas.
16. Luling O&G, LLC has an active Form P-5 and has financial assurance in place in the form of a \$250,000.00 cash deposit, which expires on July 31, 2016.
17. Luling O&G, LLC is the operator of 268 wells, of which 154 are in Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE § 3.14(b)(2)] inactive status.
18. Since November 2014, the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas, has had either no reported production or zero (0) reported production.
19. A "good faith claim" is defined in Commission Statewide Rule 15(a)(5) as "a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate." [16 TEX. ADMIN. CODE § 3.15(a)(5)].

20. Luling O&G, LLC failed to successfully assert a “force majeure” defense, to excuse it from non-performance of Lease obligations.
21. Luling O&G, LLC failed to present evidence sufficient to demonstrate that it has a “good faith claim” to operate Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas.
22. Absent a “good faith claim” to operate, the subject wells are not eligible for an extension to the plugging requirements of Statewide Rule 15(e)(3).
23. Absent eligibility for an extension to the plugging requirements of Statewide Rule 15(e)(3), the plugging extensions of the subject wells should be cancelled pursuant to Statewide Rule 15(h).
24. The plugging extensions for the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas, should be cancelled pursuant to Statewide Rule 15(h) and the wells plugged.

CONCLUSIONS OF LAW

1. Proper notice of an opportunity for a hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Luling O&G, LLC does not have a “good faith claim” to operate the Villarreal (ID No. 245754) Lease, Well No. 1, Sejita, West Field, Duval County, Texas.
4. The Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas, is not eligible for an extension to the plugging requirements of Statewide Rule 15(e)(3).
5. The plugging extensions for the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas, should be cancelled pursuant to Statewide Rule 15(h).

RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend the Commission enter an order cancelling the plugging extensions for the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas.

The Administrative Law Judge and Technical Examiner also recommend the Commission enter an order directing Luling O&G, LLC to plug all wells on the Purcell, C.E. (10024) Lease, Spiller Field, Caldwell County, Texas.

RESPECTFULLY SUBMITTED,



RYAN M. LAMMERT
Administrative Law Judge



BRIAN FANCHER
Technical Examiner