

December 14, 2004

OIL AND GAS DOCKET NO. 01-0241036

COMMISSION CALLED HEARING TO SUPERCEDE THE PROVISIONS IN THE FINAL ORDER ISSUED AUGUST 7, 2001 IN DOCKET NO. 01-0224176 REQUIRING PLUGGING OF WELL NOS. 3 & 5 ON THE TROELL, CHAS. T. (01380) LEASE, PLEASANTON, S. (CARRIZO SAND) FIELD, WELL NO. 4 ON THE TROELL, CHAS. T. (01393) LEASE, PLEASANTON, S. (QUEEN CITY) FIELD, AND WELL NO. 5 ON THE TROELL, CHARLES T. -A- (01389) LEASE, PLEASANTON, S. (CARRIZO SAND), AND TO SUPERCEDE THE PROVISIONS IN THE FINAL ORDER ISSUED AUGUST 7, 2001 IN DOCKET NO. 01-0224175 REQUIRING PLUGGING OF WELL NOS. 1, 2, 3, 4, 5, & 6 ON THE TROELL, CHARLES T. (01387) LEASE, PLEASANTON, S. (CARRIZO SAND) FIELD, AND WELL NO. 8 ON THE TROELL, CHAS T. (02923) LEASE, PLEASANTON, S. (SPARTA) FIELD, ATASCOSA COUNTY, TEXAS AND TO RECOGNIZE REC WELL SERVICE, INC., AS THE OPERATOR OF RECORD.

APPEARANCES:

FOR APPLICANT:

Ron Rickaway

APPLICANT:

REC Well Service, Inc.

EXAMINER'S PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	November 14, 2004
NOTICE OF HEARING:	December 2, 2004
DATE CASE HEARD:	December 13, 2004
HEARD BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	December 14, 2004

STATEMENT OF THE CASE

This hearing was set to consider the request of REC Well Service, Inc. (hereinafter "REC") to supercede the Final Orders issued August 7, 2001 in Docket Nos. 01-0224175 and 01-0224176 requiring Tango Oil Co. to plug 11 wells on 5 leases in Atascosa County. REC claims that if it is recognized as the operator, it can restore the wells to production, thereby eliminating the need to plug the wells.

SUMMARY OF EVIDENCE

The examiner took official notice of records related to REC's most recent Commission Form P-5 (Organization Report) filing, records identifying the wells which REC currently operates, the Final Orders entered in Docket Nos. 01-0224175 and 01-0224176, and the single signature P-4 file for REC's request to be recognized as the operator of the subject leases and wells.

REC filed its most recent P-5 on August 2, 2004. REC has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit. REC currently operates 45 wells with a total depth of 97,375 feet.

The prior operator, Tango Oil Co. (hereinafter "Tango"), submitted Commission Form P-4s (Certificate of Compliance and Transportation Authority) effective June 19, 1997 for the Troell, Charles T. -A- (01389) Lease, and effective June 1, 1997 for the Troell, Chas. T. (01393), Troell, Charles T. (01387), Troell, Chas. T. (01380), and Troell, Chas T. (02923) Leases (hereinafter collectively referred to as the "Troell Leases"). The last reported production for the Troell Leases occurred on or before September 1, 1995. Tango does not possess any current interest in the Troell Leases, is not affiliated with REC, and received notice of REC's application sent to Tango's last P-5 address. Tango did not appear at the hearing in this matter.

The provisions in the Final Order issued August 7, 2001 in Docket No.01-0224176 required Tango to plug Well Nos. 3 & 5 on the Troell, Chas. T. (01380) Lease, Pleasanton, S. (Carrizo Sand) Field, Well No. 4 on the Troell, Chas. T. (01393) Lease, Pleasanton, S. (Queen City) Field, Well No. 5 on the Troell, Charles T. -A- (01389) Lease, Pleasanton, S. (Carrizo Sand) Field and to pay an administrative penalty of \$4,000 for four violations of Statewide Rule 14(b)(2). The provisions in the Final Order issued August 7, 2001 in Docket No.01-0224175 required Tango to plug Well Nos. 1, 2, 3, 4, 5, & 6 on the Troell, Charles T. (01387) Lease, Pleasanton, S. (Carrizo Sand) Field, and Well No. 8 on the Troell, Chas T. (02923) Lease, Pleasanton, S. (Sparta) Field and to pay an administrative penalty of \$7,000 for seven violations of Statewide Rule 14(b)(2).

On October 1, 2004, REC obtained an assignment of a farmout agreement from ExxonMobil which it asserts covers the Troell Leases. REC asserts the original lease remains valid due to continuous production from the C.T. Troell (01385) Lease. Commission records for the C.T. Troell (01385) Lease confirm continuous production from January 1993 to the present.

REC provided records and testimony showing that the wells were abandoned by Tango because it did not have a permit to discharge produced water from the wells into Metate Creek. REC notes that the operator on the adjacent lease has been granted this type of discharge authority and is currently producing 40 bopd at a 98% water cut from 8 wells. REC believes that it can obtain similar permits for the Troell Leases. REC also notes that it possesses a similar permit for 18 wells it operates in Wilson

County. Additionally, REC believes that its structure map shows that the wells are located near the top of structure for the Carrizo Sand formation. REC believes that with the discharge permit, it can restore production to at least 20 bopd collectively on the Troell Leases.

AUTHORITY

Texas Natural Resources Code §85.049(a) provides:

On a verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent or lessen the waste.

Texas Natural Resources Code §89.041 establishes the affirmative statutory responsibility of the Commission concerning abandoned wells:

If it comes to the attention of the commission that a well has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Texas Natural Resources Code §89.042(a) provides:

If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

Texas Natural Resources Code §91.107 requires that an operator file financial assurance in the form of a bond, letter of credit or cash deposit in the amount necessary for both existing wells operated and any wells being transferred, prior to Commission approval of the transfer.

Under Statewide Rule 14, the Commission may require a person seeking to be recognized as the operator of a well to provide evidence of a good faith claim of a continuing right to operate.

EXAMINER'S OPINION

REC claims that it can meet the requirements to be recognized as the operator of the Troell Leases and restore the wells to active production. However, this claim is complicated by the Final Order requiring that Tango plug the wells. It is the examiner's conclusion that an order superceding a Commission Final

Order is warranted if the operator shows: 1) that it has a good faith claim of a continuing right to operate the well or lease; 2) that it has met the financial assurance requirements of Texas Natural Resources Code §91.107; and 3) that a superceding order is necessary to prevent waste. REC has satisfied all of these requirements.

The first two factors apply to all transfers of inactive wells, not just cases where a well is ordered to be plugged. Any operator seeking to acquire an existing well which has been inactive for more than 12 months must show that it has a good faith claim of a continuing right to operate the well upon demand by the Commission. This requirement is found in Statewide Rule 14(b)(2). Additionally, the operator must meet the requirements of Texas Natural Resources Code §91.107 as the Commission may not approve the transfer of an existing well unless the new operator has filed financial assurance with the Commission in the form of a bond, letter of credit or cash deposit.

In this case, a good faith claim of a right to operate is established by the assignment and records showing that the original lease remains in effect due to continuous production. REC also has a \$50,000 letter of credit in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107. Additionally, the prior operator, Tango, does not retain any interest in the wells.

Superceding a Final Order to Prevent Waste

Default Orders in Commission Enforcement Proceedings generally require an operator to plug a well for a violation of Statewide Rule 14(b)(2) if there is no reported production from the well (or injection for injection and disposal wells) in the past 48 months. These "plug only" orders reflect the Commission policy to require plugging of wells which are in violation of Commission rules and have been inactive for an extended period.

To support these "plug only" orders, a Finding of Fact identifies when the well or lease last reported any production or injection activity. An additional finding of fact addresses the statutory requirement in Texas Natural Resources Code §89.041, by finding that the unplugged well is causing or is likely to cause pollution of fresh water above or below the ground.

A "plug only" order falls under the Commission's authority in Texas Natural Resources Code §89.042. Further, the courts recognize that a Commission order to plug a well "is entitled to the same weight and finality as an order granting or refusing a permit to drill a well." *Wrather Petroleum Corporation v. Railroad Commission*, 230 S.W.2d 388, 390 (Tex.App. - Austin 1950, *reh'g denied*) citing *Railroad Commission of Texas v. Gulf Production Co.*, 132 S.W.2d 254, 256, (Tex. 1939). Finally, the findings of fact are not "technical prerequisites" but satisfy a "substantial statutory purpose." *Morgan Drive Away, Inc. v. Railroad Commission*, 498 S.W.2d 147, 150 (Tex.1973); *Railroad Commission of Texas v. R. J. Palmer*, 586 S.W.2d 934 (Tex.App. - Austin 1979, *no writ*).

Under Texas Natural Resources Code §85.409(a), the Commission may supercede a rule or order if evidence presented at a hearing shows that waste is taking place or is reasonably imminent. In this case, the Final Orders entered against Tango were “plug only” orders as to the 11 wells. Therefore, REC must show that a new order superceding the “plug only” provisions of the Final Orders is necessary to prevent waste.

Application of Waste Standard

REC has presented sufficient evidence to support the entry of a superceding order to prevent waste. REC provided records and testimony showing that the wells on the Troell Leases were abandoned by Tango because it did not have a permit to discharge the produced water from the wells into a creek. REC believes that it can obtain such a permit. The facts that REC has similar discharge permits and that a discharge permit has been granted for wells completed in the same formation on the adjacent lease supports this belief.

REC has also submitted its interpretation of the structure of the Carrizo Sand formation and claims that the production history on the adjacent lease for wells completed in the same formation support its conservative estimate that the 11 wells on the Troell Leases can be restored to produce at least 2 bopd per well. This evidence establishes the possibility that production may be restored on the Troell Leases. Accordingly, a superceding order may be necessary to prevent waste.

The examiner is unable to evaluate under the evidence presented the success or failure of REC's plans to be obtain the necessary permit. Additionally, it is not possible to conclusively establish that REC's interpretation of the structure of the Carrizo formation coupled with production from wells on an adjacent lease completed in the same formation reservoir show that REC can restore production at an average of at least 2 bopd per well. However, the risk that REC will be unable to obtain a discharge permit and/or will not restore production in the Carrizo Sand is not a basis for denying REC either the **opportunity** to restore production or recognizing REC as the operator of the Troell Leases where REC met all the other requirements to operate the wells. Accordingly, the examiner recommends that the Commission enter an order: 1) superceding the plug only provisions in the Final Orders; and 2) recognizing REC as the operator of the Troell Leases.

FINDINGS OF FACT

1. REC Well Service, Inc. (hereinafter “REC”), was given at least 10 days notice of this proceeding. REC appeared at the hearing and presented evidence.
2. REC filed its most recent Commission Form P-5 (Organization Report) on August 2, 2004. REC has posted financial assurance with the Commission in the form of a \$50,000 Letter of Credit.

REC currently operates 45 wells with a total depth of 97,375 feet.

3. The prior operator, Tango Oil Co. (hereinafter "Tango"), submitted Commission Form P-4s (Certificate of Compliance and Transportation Authority) effective June 19, 1997 for the Troell, Charles T. -A- (01389) Lease, effective June 1, 1997 for the Troell, Chas. T. (01393), Troell, Charles T. (01387), Troell, Chas. T. (01380), and Troell, Chas T. (02923) Leases (hereinafter collectively referred to as the "Troell Leases"). The last reported production for the Troell Leases occurred on or before September 1, 1995. Tango does not possess any current interest in the Troell Leases, is not affiliated with REC, and received notice of REC's application sent to Tango's last P-5 address. Tango did not appear at the hearing.
4. The provisions in the Final Order issued August 7, 2001 in Docket No.01-0224176 required Tango to plug Well Nos. 3 & 5 on the Troell, Chas. T. (01380) Lease, Pleasanton, S. (Carrizo Sand) Field, Well No. 4 on the Troell, Chas. T. (01393) Lease, Pleasanton, S. (Queen City) Field, Well No. 5 on the Troell, Charles T. -A- (01389) Lease, Pleasanton, S. (Carrizo Sand) and to pay an administrative penalty of \$4,000 for four violations of Statewide Rule 14(b)(2).
5. The provisions in the Final Order issued August 7, 2001 in Docket No.01-0224175 required Tango to plug Well Nos. 1, 2, 3, 4, 5, & 6 on the Troell, Charles T. (01387) Lease, ~~Pleasanton~~, S. (Carrizo Sand) Field, Well No. 8 on the Troell, Chas T. (02923) Lease, Pleasanton, S. (Sparta) Field, and to pay an administrative penalty of \$7,000 for seven violations of Statewide Rule 14(b)(2).
6. REC obtained an assignment of a farmout agreement from ExxonMobil for the Troell Leases on October 1, 2004. The original lease from which the farmout was granted reportedly remains valid due to continuous production from the C.T. Troell (01385) Lease.
7. Commission production records for the C.T. Troell (01385) Lease confirm continuous production from January 1993 to the present.
8. The Troell Leases were abandoned by Tango because it did not have a permit to discharge produced water into Metate Creek. REC notes that the operator on the adjacent lease has been granted this type of discharge authority and is currently producing 40 bopd at a 98% water cut from 8 wells. REC believes that it should be able to obtain a similar permit based on both the permit granted to the adjacent operator and the fact that it has such a permit related to 18 other wells it operates in Wilson County.
9. A structure map prepared by a local geologist and submitted by REC shows that the subject wells are located at high points on the structure for the Carrizo Sand formation. REC believes that it can restore production on the Troell Leases to at least 20 bopd collectively from the 11 wells

based on the performance of the wells completed in the same formation on the adjacent lease.

10. Superceding the provisions in the Final Order issued August 7, 2001 in Docket No.01-0224176 which require Tango to plug Well Nos. 3 & 5 on the Troell, Chas. T. (01380) Lease, Pleasanton, S. (Carrizo Sand) Field, Well No. 4 on the Troell, Chas. T. (01393) Lease, Pleasanton, S. (Queen City) Field, and Well No. 5 on the Troell, Charles T. -A- (01389) Lease, Pleasanton, S. (Carrizo Sand) is necessary to prevent waste.
11. Superceding the provisions in the Final Order issued August 7, 2001 in Docket No.01-0224175 which require Tango to plug Well Nos. 1, 2, 3, 4, 5, & 6 on the Troell, Charles T. (01387) Lease, Pleasanton, S. (Carrizo Sand) Field, and Well No. 8 on the Troell, Chas T. (02923) Lease, Pleasanton, S. (Sparta) Field is necessary to prevent waste.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. REC has a good faith claim of a continuing right to operate the subject leases.
4. REC has filed financial assurance in the type and amount required under Texas Natural Resources Code §91.107 to be approved as the operator of the subject leases.
5. A Final Order superceding the "plug only" provision in the Final Order issued August 7, 2001 in Docket No.01-0224176 which require Tango to plug Well Nos. 3 & 5 on the Troell, Chas. T. (01380) Lease, Pleasanton, S. (Carrizo Sand) Field, Well No. 4 on the Troell, Chas. T. (01393) Lease, Pleasanton, S. (Queen City) Field, and Well No. 5 on the Troell, Charles T. -A- (01389) Lease, Pleasanton, S. (Carrizo Sand) is necessary to prevent waste. All other provisions in the Final Order should remain in full force and effect.
6. A Final Order superceding the "plug only" provision in the Final Order issued August 7, 2001 in Docket No.01-0224175 which require Tango to plug Well Nos. 1, 2, 3, 4, 5, & 6 on the Troell, Charles T. (01387) Lease, Pleasanton, S. (Carrizo Sand) Field, and Well No. 8 on the Troell, Chas T. (02923) Lease, Pleasanton, S. (Sparta) Field is necessary to prevent waste. All other provisions in the Final Order should remain in full force and effect.

RECOMMENDATION

The examiner recommends that the Commission grant the request to supercede the provisions in the Final Orders issued August 7, 2001 in Docket Nos. 01-0224175 and 01-0224176 requiring Tango

Oil Co. to plug of 11 wells on the Troell Leases in Atascosa County and recognize REC Well Service, Inc. as the operator of record for the Troell Leases. The examiner further recommends that all other provisions of the Final Orders remain in full force and effect.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner