



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL & GAS DOCKET NO. 7C-0300318**

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**COMPLAINT OF THE PHILIP FARMAR FAMILY THAT SYMOC, LLC (OPERATOR NO. 833599) DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE ROCK PEN NORTH LEASE (LEASE NO. 15577), WELL NOS. 1, 2 AND 5, ROCK PEN (CLEARFORK) FIELD, IRION COUNTY, TEXAS**

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### PROPOSAL FOR DECISION

**HEARD BY:**

Jennifer Cook – Administrative Law Judge  
Richard Eyster, P. G. – Technical Examiner

**PROCEDURAL HISTORY:**

Complaint Filed:	October 2, 2014
Hearing Request Form Filed:	April 29, 2016
Notice of Hearing:	May 20, 2016
Hearing Date:	July 11, 2016
Transcript Received:	July 27, 2016
Record Closed:	July 27, 2016
Proposal for Decision Issued:	September 23, 2016

**APPEARANCES:**

**For Complainant –**  
Mr. John Hicks, Attorney  
*Scott Douglass & McConnico, LLP*

Phillip Farmar

**For SYMOC, LLC –**  
Mr. Grant Lee, Pro Se

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## **I. Statement of the Case**

The Phillip Farmar family (“Complainant”) filed a complaint claiming that SYMOC, LLC (“SYMOC”) does not have a good faith claim to operate the Rock Pen North Lease (the “Lease”), Well Nos. 1, 2, and 5 (the “Wells”), Rock Pen (Clearfork) Field, Irion County, Texas. Complainant requests that the Wells be ordered plugged.

The Administrative Law Judge and Technical Examiner (collectively “Examiners”) respectfully submit this Proposal for Decision (“PFD”) and recommend the Railroad Commission (“Commission”) grant Complainant’s request to have the Wells ordered plugged. The Examiners have determined that SYMOC does not have a good faith claim to operate the Wells.

## **II. Jurisdiction and Notice<sup>1</sup>**

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

On May 20, 2016, the Hearings Division of the Commission sent a Notice of Hearing via first class mail to both Complainant and SYMOC setting a hearing date of July 11, 2016. Consequently, both parties received more than 10 days’ notice. The Notice of Hearing contained (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.<sup>2</sup> The hearing was called to order on July 11, 2016, as noticed. Both parties appeared at the hearing.

## **III. Applicable Legal Authority**

Complainant alleges that SYMOC does not have a “good faith claim” to operate the Wells as that term is defined by Commission rule and that the Wells should therefore be plugged.

The applicable Commission rule in this case is Statewide Rule 15 (or “Rule 15”), which provides inactive well requirements.<sup>3</sup> An inactive well is defined as:

An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.<sup>4</sup>

Rule 15 requires the plugging of inactive wells. Statewide Rule 15(d) states:

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<sup>1</sup> The hearing transcript in this case is referred to as “Tr. at [pages:lines]”. The Complainant’s exhibits are referred to as “Complainant Ex. [exhibit no.]”. SYMOC’s exhibits are referred to as “SYMOC Ex. [exhibit no]”.

<sup>2</sup> See TEX. GOV’T CODE §§ 2001.051 and 052; 16 TEX. ADMIN. CODE §§ 1.45 and 1.48.

<sup>3</sup> Statewide Rule 15 refers to 16 TEX. ADMIN. CODE § 3.15.

<sup>4</sup> 16 TEX. ADMIN. CODE § 3.15(a)(6).

(c) Plugging of inactive land wells required.

- (1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:
  - (A) restore the well to active status as defined by Commission rule;
  - (B) plug the well in compliance with a Commission rule or order; or
  - (C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.<sup>5</sup>

So for an inactive well, operators must plug it, obtain a plugging extension, or restore it to active status.

Rule 15(e) allows plugging extensions only if five specified criteria are met as follows:

- (1) the Commission or its delegate approves the operator's Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);
- (2) the operator has a current organization report;
- (3) *the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;***
- (4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and
- (5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.<sup>6</sup>

Thus, absent a good faith claim to operate, wells are not eligible for extensions to the plugging requirements in Statewide Rule 14 and 15 according to Statewide Rule 15(e).

A "good faith claim" is defined in Commission Statewide Rule 15(a)(5) as:

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<sup>5</sup> 16 TEX. ADMIN. CODE § 3.15(d).

<sup>6</sup> (Emphasis added).

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.<sup>7</sup>

In sum, if the Wells are inactive, they are required to be plugged or have plugging extensions. If SYMOC does not have a good faith claim to operate the Wells, then it is not eligible for plugging extensions warranting an order to plug the Wells.

#### **IV. Discussion of Evidence**

Complainant provided the testimony of one witness and twelve exhibits. SYMOC provided the testimony of one witness and two exhibits.

The following is a summary of the evidence substantially in the order that it was presented.

##### **A. Summary of Complainant's Evidence and Argument**

Complainant provided an organization query report of SYMOC from Commission records showing that SYMOC's status with the Commission is "Delinquent" and that SYMOC is subject to a final and unappealable Commission order. Regarding the referenced Final Order, it states:

Pursuant to Tex. Nat. Res. Code §91.114, the Commission is prohibited from accepting a P-5 Organization Report filing, approving any permits, or issuing any P-4 Certificates of Compliance for an operator with an unsatisfied order/judgment of this type.<sup>8</sup>

Complainant also provided a copy of the Final Order referenced in the printout.<sup>9</sup> In the order, it finds that one of the Wells—Well No. 5—is not in compliance with inactive well requirements in Statewide Rule 15.<sup>10</sup> The Final Order cancels all of SYMOC's filed Certificates of Compliance and Transportation Authority ("Form P-4") and orders that SYMOC's annual filing of the Commission Organization Report ("Form P-5") shall not be renewed until Well No. 5 is brought into compliance.

Complainant provided a report of Commission records of production from the Lease.<sup>11</sup> The records show that there has been zero production or no reporting of production for the Lease since June 2014.

Peter Farmer testified on behalf of the Complainant. He is one of the interest owners of the property where the Lease is located.<sup>12</sup> He provided photographs he has taken of the Lease.<sup>13</sup>

<sup>7</sup> 16 TEX. ADMIN. CODE 3.15(a)(5).

<sup>8</sup> Complainant Ex. 1.

<sup>9</sup> Complainant Ex. 2.

<sup>10</sup> Statewide Rule 15 refers to 16 TEX. ADMIN. CODE § 3.15.

<sup>11</sup> Complainant Ex. 3.

<sup>12</sup> Tr. at 13:5 to 13:15.

The photographs show that Well No. 5 has a pool of oil around the wellhead; there is a 20-foot pipe in the wellhead and a pile of old rods that Mr. Farmer stated had been laying there a long time.<sup>14</sup> He provided pictures of Well No. 2 showing that the well is overgrown with brush, it has the wrong operator's name listed on the well, all the valves are closed, and the rod is dirty and does not appear to have been operated for a long period of time.<sup>15</sup> He provided pictures of Well No. 1 showing the valve is open, there are no bolts holding the head onto the casing and it is not connected to any pipes.<sup>16</sup> Mr. Farmer provided other photographs showing the general dilapidated condition of the Lease.<sup>17</sup> Mr. Farmer further testified all of the photographs are fair and accurate representations of the condition of the Lease when he visited the month prior to the hearing.<sup>18</sup>

Mr. Farmer described the Lease as being in disrepair, overgrown with brush, and not having been operated in quite some time. He testified that Well No. 5 has been in that condition for many years. He testified that SYMOC does not have a good faith claim to operate the Lease and requested an order that the Wells be plugged.<sup>19</sup>

Complainant also provided the underlying Oil and Gas Lease between the Complainant, as lessor and OGP Energy Co., Inc., as lessee<sup>20</sup> and the Assignment of Oil and Gas Lease ("Assignment"), assigning SYMOC the lessee's rights under the Oil and Gas Lease.<sup>21</sup> The Oil and Gas Lease was entered into on September 16, 2004 and provides that:

[T]his lease shall remain in force for a term of three (3) years from this date (hereinafter called primary term) and as long thereafter as oil and gas, or either of them is produced in paying quantities from the lands hereby leased.<sup>22</sup>

The Assignment was executed on June 10, 2014.<sup>23</sup> Complainant provided an approved Form P-4 showing that SYMOC became the Commission operator of record for the Lease effective June 1, 2014.<sup>24</sup> Mr. Grant Lee, SYMOC's witness, acknowledged signing the Form P-4, which states:

By signing this certificate as the Current Operator, I certify that all statements on this form are true and correct and I acknowledge responsibility for the regulatory compliance of the subject lease including plugging of well(s) pursuant to Rule 14. I further acknowledge that I assume responsibility for the physical operation, control, and proper plugging of each well designated in this filing. I also

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<sup>13</sup> Tr. at 13:16 to 13:24.

<sup>14</sup> Tr. at 13:25 to 16:8; Complainant Ex. 4 at A-D.

<sup>15</sup> Tr. at 16:9 to 18:20; Complainant Ex. 4 at E-G.

<sup>16</sup> Tr. at 18:21 to 19:20; Complainant Ex. 4 at H-J.

<sup>17</sup> Tr. at 19:21 to 20:24; Complainant Ex. 4 at K-O.

<sup>18</sup> Tr. at 20:25 to 21:3.

<sup>19</sup> Tr. at 21:19 to 22:7.

<sup>20</sup> Complainant Ex. 6.

<sup>21</sup> Complainant Ex. 5.

<sup>22</sup> Complainant Ex. 6 at 1.

<sup>23</sup> See, e.g., Complainant Ex. 5 at 2.

<sup>24</sup> Complainant Ex. 7; Tr. at 27:16 to 28:20. SYMOC became the Commission operator of record for the Wells prior to the date of the Commission Final Order.

acknowledge I will remain designated as the Current Operator until a new certificate designating a new Current Operator is approved by the Commission.<sup>25</sup>

Complainant provided a letter written by Mr. Grant on behalf of SYMOC sometime after October 28, 2014 in response to notification that the Lease was terminated due to non-production. In the letter, Mr. Grant acknowledges a lack of due diligence on SYMOC's part and provides two alternatives, either there be a new lease for the Wells, or SYMOC states it will remove the equipment on the property and plug the Wells.<sup>26</sup> Complainant also provided correspondence from Complainant's representatives informing SYMOC that Complainant was not interested in a new lease.<sup>27</sup> In response to being informed that Complainant was not interested in a new lease, Mr. Grant wrote:

Thanks for your response. We will begin to remove the equipment from the property as requested as soon as possible.

Lastly, Complainant provided two prior Commission Final Orders as examples of orders that find the operator of record does not have a good faith to operate particular wells, and orders the wells plugged. Complainant seeks the same remedy.<sup>28</sup>

## **B. Summary of SYMOC's Evidence and Argument**

Mr. Lee Grant testified on behalf of SYMOC and is one of SYMOC's principals according to Commission records.<sup>29</sup> Mr. Lee acknowledges that SYMOC became the operator of the Lease in June 2014 and that SYMOC has never produced oil from the Wells and never reported production for the Wells.<sup>30</sup> Mr. Lee acknowledges SYMOC has no good faith claim to operate the Lease or the Wells.<sup>31</sup> Mr. Lee claims that the prior operator who assigned the Lease to SYMOC assigned them a lease that was no longer valid due to lack of production. Mr. Lee believes the prior operator fraudulently assigned SYMOC a terminated lease but acknowledges that that is an issue not within the purview of the Commission to decide.<sup>32</sup> Ideally, Mr. Lee would like the Commission to hold the prior operator responsible for plugging the Wells.<sup>33</sup>

## **V. Examiners' Analysis**

The Examiners recommend that Complainant's request to have the Wells plugged be granted and that the Commission find that SYMOC does not have a good faith claim to operate the Wells.

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<sup>25</sup> Complainant Ex. 7 at 1.

<sup>26</sup> Tr. at 29:1 to 31:8; Complainant Ex. 8.

<sup>27</sup> Complainant Exs. 11 and 12.

<sup>28</sup> Tr. at 33:13 to 34:17; Complainant Exs. 9 and 10.

<sup>29</sup> See, e.g., Complainant Ex. 1.

<sup>30</sup> Tr. at 26:13 to 27:10.

<sup>31</sup> Tr. at 9:21 to 10:12.

<sup>32</sup> See, e.g., Tr. at 36:9 to 37:24.

<sup>33</sup> Tr. at 40:1 to 40:25. Mr. Lee also provided some correspondence between the parties, which is consistent with the other exhibits, and testimony. SYMOC Ex. 1.

Complainant alleges that SYMOC does not have a good faith claim to operate the Well sand the Commission should order that the Wells be plugged. A good faith claim is defined in Commission rule 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.<sup>34</sup>

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.<sup>35</sup> A showing of a good faith claim does not require proof of title or a right of possession. It is sufficient for an applicant to make “a reasonably satisfactory showing of a good-faith claim,” and another’s good faith dispute of title or possessory interest will not alone defeat an applicant.<sup>36</sup>

In this case, SYMOC made no showing of a good faith claim and acknowledged that no good faith claim exists. Both Complainant and SYMOC agree that the underlying Oil and Gas Lease that would be the only basis for SYMOC’s claim is no longer valid and has terminated. It is not within the jurisdiction of the Commission to make a determination regarding SYMOC’s dispute with the prior owner, whether the claims sound in contract<sup>37</sup> or in tort<sup>38</sup>. Any assertion SYMOC might have against the prior operator is more properly addressed in the court system. The Examiners conclude that SYMOC does not have a good faith claim to operate the Wells.

There is also no dispute that the Wells meet the definition of inactive wells. Both parties acknowledge and Commission records support that there has been no production from any of the Wells since at least June 2014, which is more than the twelve months provided for in the definition of inactive well. Because SYMOC has no good faith claim to operate the Wells, the Wells are no eligible for plugging extensions and are required to be plugged pursuant to Statewide Rules 14 and 15, as provided for in Statewide Rule 15(e).<sup>39</sup>

By filing and obtaining approval of a Form P-4, SYMOC became the Commission operator of the Wells and took responsibility for maintaining them in compliance.<sup>40</sup> According to Statewide Rule 3.58(a)(2), SYMOC is bound to maintain compliance until there is another approved Form P-4 on file with the Commission. Specifically, Statewide Rule 3.58(a)(2) states:

(2) An approved certificate of compliance and transportation authority shall bind the operator until another operator files a subsequent certificate and the

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<sup>34</sup> 16 TEX. ADMIN. CODE 3.15(a)(5).

<sup>35</sup> *Magnolia Petroleum Co. v. R.R. Comm’n*, 170 S.W.2d 189, 191 (Tex. 1943); *see also Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946); *Rosenthal v. R.R. Comm’n of Tex.*, 2009 WL 2567941, \*3 (Tex. App.—Austin 2009, pet. denied) (mem. op.); 56 Tex. Jur. 3d *Oil and Gas* § 737, *Adjudication of title to property and contract rights* (June 2016 Update).

<sup>36</sup> *Id.*

<sup>37</sup> *See, e.g., Valero Transmission Co. v. Mitchell Energy Corp.*, 743 S.W.2d 658, 660 (Tex. App.—Houston[1<sup>st</sup> Dist.] 1987, no writ).

<sup>38</sup> *See FPL Farming Ltd. v. Env’tl. Processing Sys., L.C.*, 351 S.W.3d 306 (Tex. 2011)

<sup>39</sup> 16 TEX. ADMIN. CODE § 3.14 and 3.15.

<sup>40</sup> *See* 16 TEX. ADMIN. CODE § 3.58.

Commission has approved the subsequent certificate and transferred the property on commission records to the subsequent operator.

As the current Commission operator of record, SYMOC is responsible for plugging the Wells and otherwise maintaining the Lease in compliance with Commission rules.

For these reasons, the Examiners conclude that based on the evidence provided, SYMOC does not have a good faith claim to operate the inactive Wells and they should be ordered plugged. Complainant's request for relief should be granted.

## **VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law**

Based on the record in this case and evidence presented, the Examiners recommend that the Commission grant Complainant's request that the Wells be plugged, find that SYMOC does not have a good faith claim to operate the Wells, order the Wells plugged, and adopt the following findings of fact and conclusions of law.

### **Findings of Fact**

1. On October 2, 2014, the Phillip Farmar family ("Complainant") filed a complaint that SYMOC, LLC ("SYMOC") does not have a good faith claim to operate the Rock Pen North Lease (the "Lease"), Well Nos. 1, 2 and 5 (the "Wells"), Rock Pen (Clearfork) Field, Irion County, Texas. Complainant requests that the Wells be ordered plugged.
2. On April 25, 2016, SYMOC filed a request for hearing.
3. On May 20, 2016, the Hearings Division of the Commission sent a Notice of Hearing via first class mail to both Complainant and SYMOC setting a hearing date of July 11, 2016. Consequently, both parties received more than 10 days' notice. The Notice of Hearing contained (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.
4. At the hearing on July 11, 2016, both Complainant and SYMOC appeared.
5. Complainant asserts that SYMOC does not have a good faith claim to operate the Wells, there has been no production from the Wells since at least June 2014, and the Wells should be ordered plugged.
6. 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).

7. SYMOC became the Commission record operator of the Wells effective June 1, 2014 and is the current record operator of the Wells.
8. There has been no production for the Wells since at least June 2014 and SYMOC acknowledges there has been no production from the Wells since at least June 2014.
9. SYMOC acknowledges it has no good faith claim to operate the Wells.
10. Both parties acknowledge that the Oil and Gas Lease that forms the sole basis for any claim by SYMOC to operate the Wells is invalid and has terminated.
11. SYMOC is delinquent in filing the annual Commission Organization Report (Form P-5).
12. In a Commission Final Order, the Commission ordered that SYMOC not be permitted to renew its Commission Organization Report (Form P-5) and severed all of SYMOC's Certificates of Compliance and Transportation Authority (Form P-4) until SYMOC brings inactive Well No. 5 on the Lease into compliance with the inactive well requirements. Tex. R.R. Comm'n, *In Re: P-5 Organization Report of SYMOC, LLC*, Oil & Gas Docket No. 20-0298617 (November 3, 2015) (final order).
13. SYMOC does not have a good faith claim to operate the Wells.
14. Absent a "good faith claim" to operate, the Wells are not eligible for extensions to the plugging requirements in Statewide Rule 14 and 15 as provided for in Statewide Rule 15(e).
15. The Wells should be plugged.

#### **Conclusions of Law**

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice. *See, e.g.*, TEX. GOV'T CODE §§ 2001.051 and 052; 16 TEX. ADMIN. CODE §§ 1.45 and 1.48.
2. The Commission has jurisdiction in this case. *See, e.g.*, TEX. NAT. RES. CODE § 81.051.
3. The Wells are inactive wells as that term is defined in Commission rule. 16 TEX. ADMIN. CODE § 3.15(a)(6).
4. SYMOC does not have a good faith claim to continue operating the Wells. 16 TEX. ADMIN. CODE § 3.15(a)(5).
5. The Wells should be ordered plugged. 16 TEX. ADMIN. CODE §§ 3.14 and 3.15.
6. SYMOC is responsible for plugging the Wells. *See, e.g.*, 16 TEX. ADMIN. CODE §§ 3.58(a)(2).

### Recommendations

The Examiners recommend the Commission enter an order granting Complainant's request that the Wells be plugged, finding that SYMOC does not have a good faith claim to operate the Wells, and ordering the Wells plugged.

Respectfully,



Jennifer Cook  
Administrative Law Judge



Richard Eyster, P.G.  
Technical Examiner