



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 20-0317952

APPLICATION OF RBE WICHITA, LLC (685834) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT ITS P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15

OIL & GAS DOCKET NO. 20-0317955

APPLICATION OF RBE JACK ARCHER, LLC (685832) FOR UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT ITS P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15

PROPOSAL FOR DECISION

HEARD BY:

Jennifer Cook – Administrative Law Judge
Petar Buva – Technical Examiner

PROCEDURAL HISTORY:

Hearing Date:	April 29, 2019
Transcript Received:	May 6, 2019
Status of Compliance Update Provided:	May 29, 2019
Proposal for Decision Issued:	July 8, 2019

APPEARANCES:

For Staff –

Melissa Glaze, Staff Attorney, Enforcement Section

For RBE Wichita, LLC and RBE Jack Archer, LLC –

David Nelson, Attorney for Applicants
Gross & Nelson

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I. Statement of the Case

RBE Wichita, LLC ("Wichita"), Operator No. 685834, and RBE Jack Archer, LLC ("Archer"), Operator No. 685832, (collectively referred to as "Operators") seek a determination, contrary to Railroad Commission ("Commission" or "RRC") staff's ("Staff's") prior determination, that they are in compliance with the Commission's inactive well rule and should thus be allowed to renew their Commission Form P-5s *Organization Report* ("Form P-5s").

The parties agree Operators are not in compliance with inactive well requirements. At the hearing, Operators indicated they expected to be in compliance within 30 to 45 days of the hearing, which would be by June 13, 2019. Operators also stated they would file documentation once compliance was achieved. However, as of today no documentation has been filed.

The Administrative Law Judge and Technical Examiner (collectively "Examiners") respectfully submit this Proposal for Decision ("PFD") and recommend the Commission deny Operators' requests to allow renewal of Operators' organization report and order Operators to bring the non-compliant wells into compliance with inactive well requirements.

II. Jurisdiction and Notice¹

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. Additionally, section 89.022 of the Texas Natural Resources Code specifically requires operators to comply with Commission inactive well rules and prevents the Commission from renewing an operator's organization report if that operator is out of compliance.

Prior to the Commission issuing an order refusing to renew an operator's organization report, Staff must first determine the operator has failed to comply with the inactive well requirements, and Staff must:

- (1) notify the operator of the determination;
- (2) provide the operator with a written statement of the reasons the organization report does not qualify for renewal; and
- (3) notify the operator that the operator has 90 days to comply with the requirements of this subchapter.²

¹ The hearing transcript in this case is referred to as "Tr. at [page(s)]." Staff's exhibits are referred to as "Staff Ex. [exhibit no(s)]." Operators' exhibits are referred to as "Operators Ex. [exhibit no(s)]."

² Tex. Nat. Res. Code § 89.022(d); see also 16 Tex. Admin. Code § 3.15(g)(3).

In letters to the Operators dated October 16, 2018, Staff notified Operators that Staff had determined renewal of Operators' Form P-5s should be denied because Operators were non-compliant with inactive well requirements; Staff provided the reasons for the determinations.³ These letters provided Operators 90 days to comply with the inactive well requirements.

After the initial letter, the Natural Resources Code requires the following additional notification:

[T]he authorized commission employee or designated person shall determine whether the organization report qualifies for renewal and notify the operator of the determination. If the authorized commission employee or designated person determines that the organization report does not qualify for renewal because the operator has continued to fail to comply with the requirements of this subchapter, the operator, not later than the 30th day after the date of the determination, may request a hearing regarding the determination.⁴

In letters dated January 3, 2019, Staff again notified Operators that Staff had determined renewal of Operators' Form P-5s should be denied because Operators were non-compliant with inactive well requirements; Staff again provided the reasons for the determinations.⁵ The January 3 letter provides Operators 30 days to request a hearing regarding the determinations. In letters filed February 4, 2019, Operators requested a hearing. This case followed.

On April 1, 2019, the Hearings Division of the Commission sent two Notices of Hearing ("Notices"), one for each of the Operators, to Operators, Staff and surface owners, setting a hearing date of April 29, 2019. Consequently, the parties received more than 10 days' notice. The Notice contains (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.⁶ The hearing was held on April 29, 2019, as noticed. Operators and Staff appeared and participated at the hearing.

III. Applicable Legal Authority

The Texas Natural Resources Code requires operators to comply with inactive well statutes and rules; if an operator is not in compliance, the Natural Resources Code mandates that the Commission refuse to renew a non-compliant operator's organization report.

³ Staff Ex. 2.

⁴ Tex. Nat. Res. Code § 89.022(e); see also 16 Tex. Admin. Code § 3.15(g)(4).

⁵ Staff Ex. 3.

⁶ See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

Section 89.022 requires operators to plug inactive wells or obtain plugging extensions in compliance with Commission rules and statutes. Otherwise, the Commission must refuse to renew an operator's organization report, which is required for the operator to engage in operations within the Commission's jurisdiction, such as drilling or operating oil and gas wells in Texas.⁷ Section 89.022 of the Texas Natural Resource Code specifically provides:

PLUGGING OF INACTIVE WELLS REQUIRED.

- (a) Except as provided by Section 89.023, on or before the date the operator is required to renew the operator's organization report required by Section 91.142, an operator of an inactive well must plug the well in accordance with statutes and commission rules in effect at the time of plugging. . . .
- (c) The commission may not renew or approve the organization report . . . for an operator that fails to comply with the requirements of this subchapter. . .
- (f) If the commission determines following the hearing that the operator has failed to comply with the requirements of this subchapter or the operator fails to file a timely request for a hearing, the commission by order shall refuse to renew the organization report. The organization report remains in effect until the commission's order becomes final.⁸

The applicable Commission rule in this case is Statewide Rule 15 (or "Rule 15"), which provides inactive well requirements.⁹ Statewide Rule 15(d) states:

(d) 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

⁷ See 16 Tex. Admin. Code § 3.1(a)(1).

⁸ See *also* 16 Tex. Admin. Code § 3.15(d).

⁹ Statewide Rule 15 is a reference to 16 Tex. Admin. Code § 3.15.

the deadline for plugging an inactive well.¹⁰

For Operators to show compliance with inactive well requirements, Operators must show they are in compliance with Statewide Rule 15 such that all inactive wells have either been restored to active status, plugged or subject to approved plugging extensions. Otherwise, the Commission cannot renew Operators' Form P-5s.

IV. Discussion of Evidence

At the hearing, Operators and Staff agreed and Staff provided Commission records showing that Wichita has 22 non-compliant wells and Archer has 5 non-compliant wells (collectively referred to as the "Wells"). The Wells are inactive and not in compliance with inactive well requirements.¹¹ A list of Wichita's non-compliant wells is attached as Appendix A and a list of Archer's non-compliant wells is attached as Appendix B.¹² Staff had one witness, Jennifer Gilmore, who is a permitting specialist and the team lead for the P-5 Financial Assurance Unit. She testified about the Commission process and the determination that Operators are non-compliant.¹³

Operators had one witness, Everette Sparks, who is a consultant with over 30 years of experience. He has been a consultant for Operators since the summer of 2018. He testified that Operators have expended resources and have made progress towards compliance. For example, according to Mr. Sparks, Operators had performed Form H-15, *Test on an Inactive Well More Than 25 Years Old*, fluid level tests on 59 wells as of the date of the hearing. Prior to the hearing, Operators had more non-compliant wells that are now compliant.¹⁴ According to Mr. Sparks, Operators have also plugged some wells and due to heavy rainfall are on standby to plug more. Mr. Sparks provided invoices and other documentation of Operators' efforts towards compliance.¹⁵

At the hearing, Operators estimated they would be in compliance approximately 45 days after the hearing, weather permitting.¹⁶ At the hearing, the parties also agreed to file a status report approximately a month after the hearing and documentation of compliance once compliance was achieved. According to a status report Staff filed on May 29, 2019, there had been no change in the number of non-compliant wells. As of the date of this PFD, no documentation of compliance has been filed.

V. Examiners' Analysis

The Examiners recommend Operators' request for renewal of their organization reports be denied and Operators be ordered to comply with inactive well rules. The parties

¹⁰ 16 Tex. Admin. Code § 3.15(d).

¹¹ Tr. at 9-35; Staff Ex. 1-10.

¹² These lists come from a compliance status update Staff filed on May 29, 2019. According to the update, Wichita still has 22 non-compliant wells and Archer still has 5 non-compliant wells.

¹³ Tr. at 9-35.

¹⁴ See, e.g., Staff Ex. 2, 7.

¹⁵ Tr. at 35-56; Operators Ex. 1-5.

¹⁶ Tr. at 9.

do not dispute the facts in this case or that Operators are not in compliance with inactive well rules.

Section 89.022 of the Texas Natural Resources Code requires an operator of an inactive well to comply with inactive well requirements before the time of renewal of the operator's P-5.¹⁷ If the operator fails to achieve compliance before the renewal date, the Commission cannot renew the operator's P-5.¹⁸

The definition of an inactive well is:

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.¹⁹

The parties agreed and the evidence shows Wichita has 22 non-compliant wells and Archer has 5 non-compliant wells.

Statewide Rule 15 requires inactive wells to either (1) be plugged, (2) be put back into production or (3) be subject to plugging extensions.²⁰ At the hearing, the parties agreed the Wells are not in compliance with inactive well requirements, i.e. they are not plugged or subject to plugging extensions.

Pursuant to section 89.022 of the Texas Natural Resources Code, the Commission cannot renew Operators' organization reports because Operators are non-compliant with Commission inactive well rules. For these reasons, the Examiners conclude Operators' request for renewal of their P-5s should be denied and Operators should be ordered to place the Wells in compliance with Statewide Rule 15.

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

Based on the record in this case and evidence presented, the Examiners recommend Operators' requests for renewal be denied, Operators be ordered to comply with Statewide Rule 15, and the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. RBE Wichita, LLC ("Wichita"), Operator No. 685834, and RBE Jack Archer, LLC ("Archer"), Operator No. 685832, (collectively referred to as "Operators") are the current operators of record for the wells identified on Attachment A and B (the

¹⁷ See Tex. Nat. Res. Code § 89.022(a).

¹⁸ See Tex. Nat. Res. Code § 89.022(c) and (d).

¹⁹ 16 Tex. Admin. Code § 3.15(a)(6).

²⁰ 16 Tex. Admin. Code § 3.15(d).

"Wells"). Wichita is the operator for the wells on Attachment A and Archer is the operator for the wells on Attachment B.

2. In letters to the Operators dated October 16, 2018, Staff notified Operators that Staff had determined renewal of Operators' Commission Form P-5s *Organization Report* ("Form P-5s") should be denied because Operators were non-compliant with inactive well requirements; Staff also provided the reasons for the determinations. These letters also provided Operators 90 days to comply with the inactive well requirements.
3. In letters dated January 3, 2019, Staff again notified Operators that Staff had determined renewal of Operators' Form P-5s should be denied because Operators were non-compliant with inactive well requirements; Staff again provided the reasons for the determinations. The January 3 letter provides Operators 30 days to request a hearing regarding the determinations. In letters filed February 4, 2019, Operators requested a hearing.
4. In letters filed February 4, 2019, Operators requested a hearing.
5. The Wells have had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months. Each of the Wells meets the definition of an inactive well.
6. The Wells are not plugged, have not been placed back into production and do not have plugging extensions.

Conclusions of Law

1. Proper notice of hearing was timely issued to persons entitled to notice. *See, e.g.,* Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.
2. The Commission has jurisdiction in this case. *See, e.g.,* Tex. Nat. Res. Code §§ 81.051, 89.021-89.030.
3. The Wells are not in compliance with the requirements of Statewide Rule 15. 16 Tex. Admin. Code § 3.15.
4. Operators have been provided notice and an opportunity for hearing regarding compliance with Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
5. Operators failed to comply with the requirements of Tex. Nat. Res. Code §§ 89.021-89.030 and 16 Tex. Admin. Code § 3.15.
6. Operators' Form P-5s may not be renewed or approved. Tex. Nat. Res. Code § 89.022(c).

Recommendation

The Examiners recommend the Commission enter an order denying the renewal of Operators' Form P-5s. The Examiners also recommend that Operators be ordered to place the Wells into compliance with Statewide Rule 15.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jennifer Cook', with a stylized, flowing script.

Jennifer Cook
Administrative Law Judge

A handwritten signature in black ink, appearing to read 'Petar Buva', with a stylized, flowing script.

Petar Buva
Technical Examiner

API No.	Dist	ID No.	Lease Name	Well No.
485 15200	09	14850	BURNETT	30W
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 15216	09	14850	BURNETT	B 13
Must resolve Field Operations H-15 failure preventing 14(b)(2) approval				
485 30624	09	13837	BURNETT -C-	4
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 34405	09	14850	BURNETT	39
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 34408	09	14850	BURNETT	41
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 34430	09	14850	BURNETT	42
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 34634	09	13837	BURNETT -C-	8
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 34635	09	13837	BURNETT -C-	7
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 36060	09	14850	BURNETT	44
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 36063	09	14850	BURNETT	40
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 36271	09	14850	BURNETT	45
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 36389	09	13837	BURNETT -C-	9
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 36390	09	14850	BURNETT	48
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 36804	09	14850	BURNETT	47
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 90239	09	13837	BURNETT -C-	2
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				

485 90690	09	14850	BURNETT	13
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 90692	09	14850	BURNETT	14
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 90698	09	14850	BURNETT	17
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 90705	09	14850	BURNETT	23
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 90706	09	14850	BURNETT	24
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 90711	09	14850	BURNETT	29
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
485 90720	09	14850	BURNETT	B 6
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				

API No.	Dist	ID No.	Lease Name	Well No.
009 01573	09	26491	MAHLER "A"	1
Electricity must be disconnected (certify on Form W-3C)				
Must resolve Field Operations H-15 delinquency preventing 14(b)(2) approval				
Must resolve District Office field rule violation issue preventing 14(b)(2) approval				
237 30116	09	16215	RUTH	1
Surface equipment must be removed (certify on Form W-3C)				
237 31952	09	18756	MAXWELL, VIRGIL E.	1
Surface equipment must be removed (certify on Form W-3C)				
237 32561	09	16215	RUTH	2
Surface equipment must be removed (certify on Form W-3C)				
237 36550	09	121742	RUTH	10
Surface equipment must be removed (certify on Form W-3C)				