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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL & GAS DOCKET NO. 02-0315435

COMPLAINT OF ELSIE OPIELA AND ADRIAN OPIELA REGARDING MAGNOLIA OIL & GAS OPERATING LLC'S (521544) AUDIOSLAVE A LEASE, WELL NO. 102H, PERMIT NO. 839487, SUGARKANE (AUSTIN CHALK) FIELD, KARNES COUNTY, TEXAS

EXAMINERS:

Jennifer Cook, Administrative Law Judge
Petar Buva, Technical Examiner

PROCEDURAL HISTORY:

Hearing Date - January 23, 2019
Close of Record - June 20, 2019
Proposal for Decision Issued - August 30, 2019

APPEARANCES:

For Complainants Elsie Opiela and Adrian Opiela -

John McFarland and Nicholas C. Miller
Graves Dougherty Hearon & Moody

For Respondent Magnolia Oil & Gas Operating LLC -

Mark Hanna and Stephanie Kover
Scott Douglass & McConnico

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I. Statement of the Case

Elsie Opiela and Adrian Opiela (“Complainants”) filed a complaint (“Complaint”) against Magnolia Oil & Gas Operating LLC (“Respondent” or “Magnolia”) regarding Respondent’s drilling permit, Permit No. 839487, authorizing Respondent to drill a horizontal well, Well No. 102H (the “Well”) on its Audioslave A Lease in the Sugarkane (Austin Chalk) Field in Karnes County, Texas. Complainants are mineral interest owners of one of the three tracts traversed by the Well. Complainants claim Magnolia lacks a good faith claim to operate the Well and request that the permit for the Well be revoked.

The Well is a horizontal well that has been identified by Respondent to the Railroad Commission (“Commission” or “RRC”) as a Production Sharing Agreement (“PSA”) wellbore. Complainants assert the Commission does not have authority to issue drilling permits for wells in which the operator relies on PSAs for its right to operate. Complainants maintain that the underlying oil and gas lease for one of the tracts does not grant pooling authority, and as mineral interest owners they have not consented to pool or signed a PSA; thus, Magnolia does not have a good faith claim. Complainants also claim the Well does not meet the criteria established by Commission precedent for qualifying as a PSA well because Magnolia relies on various types of agreements as PSAs, such as consents to pool.

Respondent asserts that the Commission does have authority to issue drilling permits for PSA wells. Respondent maintains that for PSA wells, the Commission requires additional documentation than required for allocation wells. Respondent argues that since PSA wells require more documentation than allocation wells and the Commission has already determined the documentation—underlying written agreements for all tracts produced from—is sufficient for it to approve a drilling permit, it follows that PSAs are also sufficient. Respondent further maintains that the agreements it has do qualify as PSAs as that term is defined in Commission guidance. All are written agreements containing a method to allocate production, which is what is required in the definition of PSA in Commission forms.

The Administrative Law Judge and Technical Examiner (collectively “Examiners”) respectfully submit this Proposal for Decision (“PFD”) and recommend the Commission deny Complainants’ request that the permit for the Well be revoked.

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.

¹ The hearing transcript in this case is referred to as “Tr. at [pages].” Complainants’ exhibits are referred to as “Complainants Ex. [exhibit nos.].” Respondent’s exhibits are referred to as “Respondent Ex. [exhibit nos.]”

Complainants served the Complaint to Respondent on May 11, 2018.² On October 16, 2018, the Hearings Division of the Commission sent an Agreed Scheduling Order to Complainants and Respondent, setting a hearing date of January 23, 2019. Consequently, the parties received more than 10 days' notice. The hearing was held on January 23, 2019, as noticed. Complainants and Respondent appeared and participated at the hearing.

III. Applicable Legal Authority

Complainant alleges the Commission's current operator of record, Respondent, does not have a good faith claim to operate the Well because Respondent's contractual lease does not authorize pooling and they believe such an authorization is necessary to drill a horizontal well across multiple tracts. A good faith claim is defined in the Texas Natural Resources Code and 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.³

IV. Discussion of Evidence

Complainant provided exhibits and no witnesses. Respondent provided exhibits and one witness.

A. Background facts.

The Complaint regards Respondent's drilling permit, Permit No. 839487, authorizing Respondent to drill the Well. The Well has been identified to the Commission as based on a PSA.⁴ Originally, the drilling permit application for the Well identified the well as an allocation well, and Enervest Operating, L.L.C. was identified as the operator. Thereafter the permit was amended to be identified as a PSA well with Respondent as the operator. According to Commission guidance, both allocation wells and PSA wells are horizontal wells in which the producing wellbore traverses more than one tract.⁵ For an allocation well, the operator represents to the Commission that it holds leases covering each tract traversed by the wellbore.⁶ For a PSA, the operator certifies to the Commission

² See *Magnolia Oil & Gas Operating LLC's Closing Brief* ("Respondent's Closing Brief") at 4-5.

³ Tex. Nat. Res. Code § 89.002(11); 16 Tex. Admin. Code § 3.15(a)(5).

⁴ See, e.g. Respondent Ex. 1 at 2.

⁵ Examiners Ex. 1 at 7. In Respondent's closing brief, Respondent requests that official notice of *Oil & Gas Division Form P-16 Instructions and Guidelines for Drilling Permit Application (Form W-1)*, last revised February 2019, which discusses PSA and allocation wells. Respondent's Closing Brief at 7. The Examiners agreed that the document should be part of the record. On June 13, 2019, the Examiners issued a letter proposing to take official notice of the document and referring to it as Examiners Exhibit 1. The deadline for any party to object was June 28, 2019. There was no objection.

⁶ *Id.*

that at least 65% of the mineral and working interest owners from each tract have signed an agreement as to how proceeds will be divided.⁷

The chronology of the Well follows:

- May 1, 2018: Enervest Operating, L.L.C. files an application to drill the Well via the Commission's Form W-1, *Application for Permit to Drill, Recomplete or Re-enter* ("Form W-1"), identifying the Well as a new horizontal well. The Well was identified as an allocation well.⁸
- May 3, 2018: The Commission approves the application and issues the drilling permit for the Well.⁹
- May 7, 2018: The Well was spudded.¹⁰
- August 29, 2018: An amended application is filed listing Respondent as the operator. The Well is identified as a PSA well.¹¹
- August 30, 2018: The amended permit for the Well listing Respondent as the operator is issued by the Commission.¹²

The Well traverses three tracts. An excerpt from the plat for the Well follows on the next page.¹³

⁷ *Id.*

⁸ Respondent Ex. 1 at 2, Attachment 2.

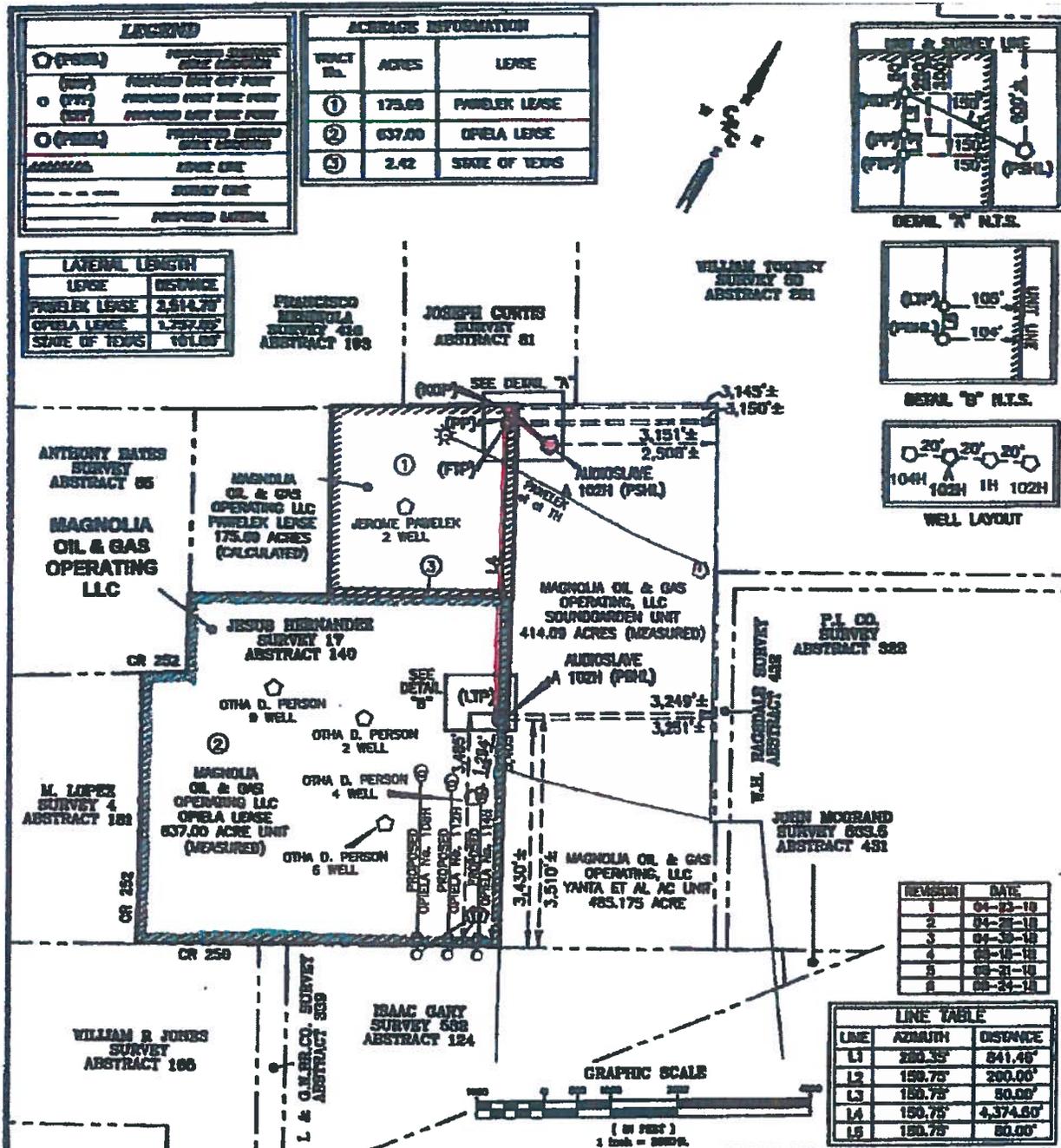
⁹ Respondent Ex. 1 at 2, Attachment 3.

¹⁰ Respondent 1 at 2.

¹¹ Respondent 1 at 2, Attachments 1, 2.

¹² *Id.*

¹³ Respondent Ex. 1 at Attachment 2.



The Well (in red) is located near and is parallel to the eastern boundary of the tracts. The top tract labeled ① is referred to as the Pawelek Tract. Tract ② is referred to by the parties as the Person Tract. Tract ③ is a state highway that runs the two tracts and is referred to as the Highway Tract. The first take point is in the northeast corner of the Pawelek Tract and traverses the Pawelek Tract and the Highway Tract and goes on to the Person Tract.¹⁴

¹⁴ *Id.*; Tr. at 16-18.

Respondent provided a Declaration (“Declaration”) of Denise Ojeda Speer (“Declarant”) in support of Magnolia.¹⁵ Declarant is a landman and an employee of Enervest as the Manager—Land, Magnolia South. Declarant reviewed documentation regarding the three tracts traversed by the Well, including title opinions and the chains of titles for the tracts, in preparing the Declaration.¹⁶ The Declaration has underlying documentation as attachments.

Complainants are successors to a contractual lease covering the Person Tract. Complainants own the executive interest and 1/4th of the royalty interest in the Person Tract. Complainants have not signed a PSA, a consent to pool or a ratification of a pooled unit for the Well.¹⁷ Regarding the Person Tract, 65.625% of the mineral interest owners signed either a PSA, consent to pool or ratification of unit, all setting forth a method of dividing proceeds.¹⁸ While the mineral interest owners who signed the documents have a non-executive interest, Declarant states that deeds creating non-executive interests indicate that the holders of the non-executive interests retain and hold the right to pool.¹⁹

Regarding the Pawelek Tract, the underlying contractual lease provides pooling authority and contains a method of dividing proceeds. 68.993% of the mineral interest owners are either lessors or have ratified the contractual lease.²⁰ Regarding the Highway Tract, the General Land Office (“GLO”) has signed a pooling agreement which contains a method of dividing proceeds. The GLO represents 100% of the mineral interests in the Highway Tract.²¹

B. Summary of Complainants’ Evidence and Argument

Complainants assert that Commission rules do not define or mention PSA or allocation wells and consequently there is no authority for the Commission to issue PSA permits or allocation well permits.²² Complainants claim Respondent does not have a good faith claim because they have not consented to pool or signed a PSA for the Person Tract. Complainants further assert Respondent has failed to secure the requisite percentage of PSAs from the necessary parties.²³ Complainants request that the drilling permit for the Well be revoked.

In Complainants’ contractual lease, there is no authority to pool in that it has been stricken from the form lease. Complainants maintain there is no authority to pool and Complainants have not signed any PSA. Complainants assert that consequently, Respondent cannot comply with the terms of the contractual lease; it cannot pay royalties from the production of hydrocarbons from the leased premises because Respondent

¹⁵ Respondent Ex. 1; Tr. at 34-35.

¹⁶ *Id.* at 2-3.

¹⁷ Respondent Ex. 1 at 2-3; Tr. at 18-29.

¹⁸ Respondent Ex. 1 at 3-8, Attachments 5 at 1, 6-16.

¹⁹ Respondent Ex. 1 at 7.

²⁰ Respondent Ex. 1 at 2, 8-12, Attachments 5 at 2, 17-21.

²¹ Respondent Ex. 1 at 12, Attachment 22.

²² *Closing Brief by Complainants Elsie Opiela and Adrian Opiela, Jr.* at 2 (filed February 21, 2019) (“Complainants Closing Brief”);

²³ *Id.*; Tr. at 35-37.

cannot measure what portion comes from the leased premises and instead must estimate production.²⁴

Complainants argue that allocation wells violate Statewide Rule 26. Complainants argue that Statewide Rule 26 requires all liquid hydrocarbons to be measured before leaving the lease. Complainants maintain that an allocation well violates Statewide Rule 26 because the hydrocarbons come from more than one lease and are not measured before leaving each lease because there is only one wellhead.²⁵

Complainants also claim allocation wells violate Statewide Rule 40.²⁶ Statewide Rule 40 contains requirements regarding pooling.²⁷ Complainants maintain that operators who want to combine acreage from separate leases to form a drilling unit are required to create a pooled unit.²⁸

Complainants assert that even if the Commission does have the authority to approve permits for PSA wells, Respondent has not met the Commission's requirements for qualifying for a PSA well. Complainants maintain that the PSAs Respondent relies on include pooling consents and unit ratifications which do not qualify as PSAs.

Complainants maintain that the mineral interest owners of the Person Tract, the same tract for which Complainants are mineral interest owners, who signed agreements with Respondent are non-participating royalty owners who do not have authority to authorize Respondent to pool or to sign PSAs.²⁹

C. Summary of Respondent's Evidence and Argument

Respondent's only witness was expert witness, James Clark. Mr. Clark is a consulting petroleum engineer with almost 30 years of industry experience. He has testified before the Commission in the past.³⁰

Mr. Clark testified that Commission practice is to issue permits for allocation wells and PSA wells. For an allocation well, the Commission requires the applicant to have a contractual agreement, such as a lease, for each tract that the proposed well traverses. For a PSA well, the Commission requires that each tract that the well traverses have at least 65% of the mineral and working interest owners who have signed an agreement. When amending the permit for the Well, Respondent represented that 100% of the working and mineral interest owners had signed an agreement for the Pawelek Tract and the Highway Tract. It represented that 100% of the working interest owners and 65.62% of the mineral interest owners for the Person Tract had signed agreements. Mr. Clark asserts that Respondent could have applied for an allocation well because it has

²⁴ Complainants Closing Brief at 8, Exhibit P.

²⁵ Tr. at 75-79; Complainants Ex. 19-20; Complainants Closing Brief at 13-15; *see also* 16 Tex. Admin. Code § 3.26(a)(2).

²⁶ Complainants Closing Brief at 13-14.

²⁷ 16 Tex. Admin. Code § 3.40.

²⁸ Complainants Closing Brief at 13.

²⁹ Complainants Closing Brief at 17-18.

³⁰ Tr. at 41-42; Respondent Ex. 2.

contractual agreements covering all three tracts. Respondent chose to file as a PSA well because it does meet the 65% threshold. Mr. Clark testified that allocation wells do not require the additional information required when designating a well as a PSA well.³¹

Mr. Clark researched Commission records and provided information about how many allocation wells and PSA wells the Commission approved in 2017 and 2018. The information is summarized in the table below:³²

	Allocation wells in 2017	PSA wells in 2017	Allocation wells in 2018	PSA wells in 2018
New permit applications approved	1647	285	2688	327
Total permit applications approved (new and amendments)	2130	381	3577	456

Mr. Clark opined that in his experience, the Well meets the standards required by the Commission to qualify as a PSA well. All the PSAs relied on by Respondent are agreements in writing that contain a method of allocating production. Respondent relies on various types of documents, such as consents to pool, that also contain a method of allocating production. Mr. Clark testified he is not aware of any form PSA that the Commission requires and that the applicant provides a representation that it has PSA agreements and does not provide the underlying documentation; the Commission generally does not see the actual PSAs.³³

Regarding the mineral interest owners of the Person Tract who have signed written agreements with Respondent, Respondent maintains that they did retain the right to pool. Respondent maintains that their mineral interests were "carved out" of the mineral estate and the right to pool was part of the rights carved out.³⁴

V. Examiners' Analysis

The Examiners recommend the Commission deny the motion to dismiss that Applicant filed while this case was pending. The Examiners recommend the Commission find that Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Well, and deny Complainants' request that the permit for the Well be revoked.

³¹ Tr. at 47-63, 110-111; Respondent Ex. 4; Examiner Ex. 1 at 4; See also Respondent Ex. 5-8.

³² Tr. at 63-64; Respondent Ex. 9.

³³ Tr. at 69-71; 82-85.

³⁴ *Magnolia Oil & Gas Operating, LLC's Closing Brief* at 15-16; Respondent Ex. 1 at Attachments 8, 9.

A. The Examiners recommend denial of Respondent's motion to dismiss because it is based on the *Klotzman* case, which involved an allocation well, not a PSA.

While this case was pending, Magnolia filed a motion to dismiss claiming the Commission has already rejected Complainants' arguments in the *Klotzman* case ("*Klotzman*")³⁵ and the *Monroe* case ("*Monroe*")³⁶. Both are resulted in Commission final orders. The issues in *Klotzman* and *Monroe* are whether the Commission can issue permits for allocation wells and whether having contractual leases for all tracts to be traversed by the allocation well is sufficient for a good faith claim. In those cases, the Commission concluded that it does have authority and obtaining contractual oil and gas leases for each tract traversed is sufficient to show a good faith claim.

In this case, the issues regard a PSA well, and not an allocation well. Neither *Klotzman* nor *Monroe* address PSA wells. Additionally, one issue in this case is whether the PSAs relied upon by Magnolia are sufficient for the Commission to approve a drilling permit for the Well. The Examiners recommend the Commission deny the motion to dismiss.

B. Consistent with past Commission practice, the Examiners recommend the Commission find it has authority to grant drilling permits for wells on tracts covered by PSAs.

The Examiners find Complainants' assertion that Commission rules do not authorize the Commission to approve permits for wells covered by a PSA unconvincing. The Commission has already determined that it has authority to issue drilling permits for allocation wells. On September 24, 2013, the Commission entered a final order in *Klotzman* concluding that an operator with an oil and gas lease had a sufficient good faith claim to drill an allocation well. The Commission rejected the argument that an applicant must show it has pooling authority to establish it has a good faith claim to drill an allocation well.

On December 18, 2017, the Commission, through the Hearings Division, entered an order in *Monroe*, dismissing the complaint as unnecessarily duplicative. In *Monroe*, the complainants were mineral interest owners requesting a drilling permit for an allocation well be revoked, alleging the operator did not have authority to drill an allocation well and the Commission does not have authority to approve a permit for an allocation well. In *Monroe*, the Commission found that *Monroe* involved the same issue that was decided in *Klotzman* because in *Klotzman*, the Commission concluded that it did have authority to issue permits for allocation wells and a contractual oil and gas lease covering

³⁵ Tex. R.R. Comm'n, *Application of EOG Resources, Inc. for its Klotzman Lease (Allocation), Well No. 1H, (Status No. 744730), Eagleville (Eagleford-2) Field, Dewitt County, as an Allocation Well Drilled on Acreage Assigned from Two Leases*, Oil and Gas Docket No. 02-0278952 (Final Order issued Sept. 24, 2013).

³⁶ Tex. R.R. Comm'n, *Complaint of Monroe Properties, Inc., et al. that Devon Energy Production CO, L.P. Does Not Have a Good Faith Claim to Operate the N I Helped 120 (Alloc) Lease, Well No. 6H, Phantom (Wolfcamp) Field, Ward County, Texas*, Oil and Gas Docket No. 08-0305330 (Order of Dismissal issued Dec. 18, 2017) and (order denying motion for rehearing issued Feb. 13, 2018).

all tracts to be traversed by the subject well is a sufficient showing of a good faith claim to operate.

In this case, there is no dispute that Magnolia has written agreements covering all tracts to be traversed by the Well. In addition, Magnolia has written agreements with over 65% of the mineral interest owners in each tract, giving it the right to operate this Well. For the same reasons found in *Klotzman* and *Monroe*, the Examiners find Complainants' claim that the Commission does not have authority to issue permits for PSA wells unconvincing. According to section 81.051 of the Texas Natural Resources Code:

The [C]ommission has jurisdiction over all . . . oil and gas wells in Texas . . . and . . . persons owning or engaged in drilling or operating oil or gas wells in Texas.³⁷

Complainants offer no precedent that the Commission does not have jurisdiction to regulate PSA wells. Since according to the Natural Resources Code, the Commission has jurisdiction over "all" oil wells, it is reasonable to conclude the Commission has jurisdiction to regulate PSA wells. It appears that Complainants do not dispute jurisdiction but instead claim that since there is no Commission rule addressing PSA wells, there is no authority for the Commission to issue permits for PSA wells.

Commission rules require a permit to drill "any oil well."³⁸ The Commission has adopted rules providing a process for obtaining drilling permits for wells. The standard for determining whether the operator can get a permit is whether the operator has a "good faith claim" to operate. This is in Commission rule and has been acknowledged by the Texas Supreme Court.³⁹

The Examiners are not persuaded that the Commission has to adopt a rule to expressly address each type of documentation or contractual arrangement that can be utilized to show a good faith claim to operate a well. The Texas Supreme Court has already provided a standard for such demonstration. According to the Court—consistent with Commission rules—the standard for an operator to demonstrate a right to operate sufficient to obtain a permit is: "a reasonably satisfactory showing of a good faith claim" to operate the well.⁴⁰ The Commission is not required to adopt rules specifying what qualifies as a good faith claim.

Complainants claim PSA wells, as well as allocation wells, violate Statewide Rules 26 and 40. In *Klotzman* and *Monroe*, the Commission did not find these arguments persuasive, and the Examiners are not persuaded in this case. Complainant acknowledges, "Since the *Klotzman* case, no court has addressed the legality of PSA or allocation wells."⁴¹ Complainant further acknowledges "significant disagreement exists

³⁷ Tex. Nat. Res. Code § 81.051(a)(2), (a)(4); see also, e.g., Tex. Nat. Res. Code ch. 85.

³⁸ See, e.g., 16 Tex. Admin. Code § 3.5(a).

³⁹ See, e.g., *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943); 16 Tex. Admin. Code § 3.15(a)(5); see also *Trapp v. Shell Oil Co.*, 198 S.W.2d 424, 437-38 (Tex. 1946).

⁴⁰ [cite]

⁴¹ Complainants Closing Brief at 5.

among the legal community as to the legality of allocation wells.”⁴² The Commission’s authorization of PSA wells has been in consonance with Commission rules as indicated by the history of approval of both allocation and PSA wells.⁴³

Complainants’ reliance on *Browning Oil Co. v. Luecke*,⁴⁴ (“*Browning case*”) is misplaced. The *Browning case* was decided prior to the *Klotzman case* and considered in the *Klotzman case*. The *Browning case* does not establish that pooling authority is required for authority to drill an allocation well. For example, Ernest Smith, Professor of Law at the University of Texas School of Law and co-author of the *Texas Law of Oil & Gas* treatise, has written an article on this issue and concludes that pooling authority is not required to drill an allocation well.⁴⁵ Regarding the *Browning case*, he states:

Browning does not hold that, where a lease is silent on pooling, a lessee is required to obtain pooling authority before the lessee can drill a horizontal well that crosses lease lines. And the result that *Browning* dictates—i.e. that each lessor whose tract is traversed by the horizontal well should be paid the royalties due under his or her lease—is exactly the result that should obtain for the horizontal allocation well.⁴⁶

For these reasons, the Examiners recommend the Commission find it does have authority to issue permits for PSA wells in addition to allocation wells.

C. The Examiners recommend the Commission find Respondent has provided a reasonably satisfactory showing of a good faith claim and deny Complainants’ request for relief.

The Examiners recommend Complainants’ request for relief be denied. The Examiners recommend the Commission find there was a reasonably satisfactory showing of a good faith claim to operate the Well and the permit for the Well should not be revoked.

Complainants allege Respondent does not have a good faith claim to operate the Well. 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.⁴⁷

⁴² *Id.*

⁴³ See, e.g., Respondent Ex. 9.

⁴⁴ 38 S.W.3d 625 (Tex. App.—Austin 2000, pet. denied).

⁴⁵ Ernest E. Smith, *Applying Familiar Concepts to New Technology: Under the Traditional Oil and Gas Lease, A Lessee Does Not Need Pooling Authority to Drill a Horizontal Well that Crosses Lease Lines*, TEX. J. OF OIL, GAS, AND ENERGY LAW Vol. 12:1 (2017).

⁴⁶ *Id.* at 10.

⁴⁷ 16 Tex. Admin. Code § 3.15(a)(5).

The origin of the “good-faith claim” requirement comes from the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission of Texas*.⁴⁸ In discussing the Commission’s authority to grant a drilling permit, the 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.⁴⁹

The Court went on to state:

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. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property. If the applicant makes a reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit; neither is it ground for suspending the permit or abating the statutory appeal pending settlement of the title controversy.⁵⁰

The Commission does not adjudicate questions of title or right to possession, which are questions for the court system.⁵¹ A showing of a good faith claim does not require an applicant to prove title or a right of possession. It is sufficient for an applicant to make a reasonably satisfactory showing of a good faith claim.⁵²

PSAs are what Respondent relies on for a good faith claim. Complainants claim they, as mineral interest owners of the Person Tract, have not consented to pooling and have not signed a PSA such that Magnolia lacks the authority necessary to operate the Well. Complainants also assert that Magnolia’s PSAs are insufficient because Magnolia relies on various types of written agreements as PSAs, including consents to pool. Complainants provide no legal authority for what qualifies as a PSA. Complainants acknowledge that there is no legal precedent regarding what authorization is required for allocation wells or PSA wells and that legal minds differ. While Complainants’ claims may rise to a bona fide lease dispute, such will not defeat a good faith claim.

The Commission has previously determined that one written oil and gas lease covering the tracts the well traverses is a reasonably satisfactory showing of a good faith

⁴⁸ *Id.*; see *Magnolia Petroleum Co. v. R.R. Comm’n of Tex.*, 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); *Pan Am. Petroleum Corp. v. R.R. Comm’n of Tex.*, 318 S.W.2d 17 (Tex. Civ. App.—Austin 1958, no writ).

⁴⁹ *Magnolia Petroleum Co. v. R.R. Comm’n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

⁵⁰ *Id.* at 191 (emphasis added).

⁵¹ *Id.*; 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.

⁵² *Id.*

claim to operate an allocation well.⁵³ It follows that written agreements with 65% of the mineral interest owners of each tract is sufficient to get a permit to operate a well, in this case a PSA well.

Complainants claim even if PSAs were enough to show a good faith claim, some of Magnolia's PSAs do not qualify as PSAs, such as consents to pool. According to the instructions for Form P-16 *Acreage Designation*, which is a form filed when applying for a drilling permit, the term PSA is defined as follows:

PSA (PRODUCTION SHARING AGREEMENT WELLBORE): For purposes of this document, a horizontal wellbore crossing two or more tracts/leases and for which the operator certifies that at least 65% of the MINERAL and WORKING interest owners from each tract within the developmental unit have signed an agreement as to how proceeds will be divided. The wellbore need not be perforated within each tract of the developmental unit.⁵⁴

The pertinent language in the definition defines a PSA as a written agreement containing "agreement as to how proceeds will be divided." Complainants do not argue that any of the documents relied on by Respondent fail to contain an agreement as to how proceeds will be divided. Instead, Complainants argue that the definition should be narrowly construed to preclude certain types of documents, such as consents to pool. Yet, Complainants offer no legal authority for such construction.

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 defeat the good faith claim.⁵⁵ While Complainants may have established there is a bona fide lease dispute as to whether Magnolia has a right to operate, that is insufficient to defeat Magnolia's good faith claim. The Examiners recommend the Commission deny Complainants' request that the permit for the Well be revoked.

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

Based on the record and evidence presented, the Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith

⁵³ Tex. R.R. Comm'n, *Complaint of Monroe Properties, Inc., et al. that Devon Energy Production CO, L.P. Does Not Have a Good Faith Claim to Operate the N I Helped 120 (Alloc) Lease, Well No. 6H, Phantom (Wolfcamp) Field, Ward County, Texas*, Oil and Gas Docket No. 08-0305330 (Order of Dismissal issued Dec. 18, 2017) and (order denying motion for rehearing issued Feb. 13, 2018) ("*Monroe*"); Tex. R.R. Comm'n, *Application of EOG Resources, Inc. for its Klotzman Lease (Allocation), Well No. 1H, (Status No. 744730), Eagleville (Eagleford-2) Field, Dewitt County, as an Allocation Well Drilled on Acreage Assigned from Two Leases*, Oil and Gas Docket No. 02-0278952 (Final Order issued Sept. 24, 2013) ("*Klotzman*").

⁵⁴ Examiners Ex. 1 at 7.

⁵⁵ *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.

claim to operate the Well, deny Complainants' request to have Magnolia's permit revoked, and adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Elsie Opiela and Adrian Opiela ("Complainants") filed a complaint ("Complaint") against Magnolia Oil & Gas Operating LLC ("Respondent" or "Magnolia") regarding Respondent's drilling permit, Permit No. 839487, authorizing Respondent to drill a horizontal well, Well No. 102H (the "Well"), on its Audioslave A Lease in the Sugarkane (Austin Chalk) Field in Karnes County, Texas. Complainants request that the permit for the Well be revoked.
2. Complainants served the Complaint to Respondent on May 11, 2018. On October 16, 2018, the Hearings Division of the Commission sent an Agreed Scheduling Order to Complainants and Respondent, setting a hearing date of January 23, 2019. Consequently, the parties received more than 10 days' notice. The hearing was held on January 23, 2019, as noticed. Complainants and Respondent appeared and participated at the hearing.
3. Magnolia is the current record operator of the Well, and Magnolia has classified the Well as a Production Sharing Agreement ("PSA") wellbore on Commission forms.
 - a. On May 1, 2018, Enervest Operating, L.L.C. files an application to drill the Well via the Commission's Form W-1, *Application for Permit to Drill, Recomplete or Re-enter* ("Form W-1"), identifying the Well as a new horizontal well. The Well was identified as an allocation well.
 - b. On May 3, 2018, the Commission approved the application and issued the drilling permit for the Well.
 - c. On May 7, 2018, The Well was spudded.
 - d. On August 29, 2018, an amended application was filed listing Respondent as the operator. The Well was identified as a PSA well.
 - e. On August 30, 2018, the amended permit for the Well listing Respondent as the operator was issued by the Commission.
4. The Well traverses three tracts referred to as the Pawelek Tract, the Person Tract and the Highway Tract, which is a state highway that runs between the other two tracts. The first take point is in the northeast corner of the Pawelek Tract and traverses the Pawelek Tract and the Highway Tract and goes on to the Person Tract. Respondent has written agreements covering all three tracts.

5. Complainants are successors to a contractual lease covering the Person Tract. Complainants have not signed a PSA, a consent to pool or a ratification of a pooled unit for the Well.
6. Magnolia designated the Well as a PSA well on Commission forms.
7. For a PSA, the operator certifies to the Commission that at least 65% of the mineral and working interest owners from each tract have signed an agreement as to how proceeds will be divided.
8. Regarding the Person Tract, 65.625% of the mineral interest owners signed either a PSA, consent to pool or ratification of unit, all setting forth a method of dividing proceeds.
9. Regarding the Pawelek Tract, the underlying contractual lease provides pooling authority and contains a method of dividing proceeds. 68.993% of the mineral interest owners are either lessors or have ratified the contractual lease.
10. Regarding the Highway Tract, the General Land Office ("GLO") has signed a pooling agreement which contains a method of dividing proceeds. The GLO represents 100% of the mineral interests in the Highway Tract.
11. Magnolia certified to the Commission that at least 65% of the mineral and working interest owners from each of the three tracts traversed have signed an agreement as to how proceeds will be divided.
12. According to the instructions for Form P-16 *Acreage Designation*, which is a form filed when applying for a drilling permit, the term PSA is defined as follows:

PSA (PRODUCTION SHARING AGREEMENT WELLBORE): For purposes of this document, a horizontal wellbore crossing two or more tracts/leases and for which the operator certifies that at least 65% of the MINERAL and WORKING interest owners from each tract within the developmental unit have signed an agreement as to how proceeds will be divided. The wellbore need not be perforated within each tract of the developmental unit.
13. All of the written agreements relied on by Magnolia as PSAs contain an agreement as to how proceeds will be divided.
14. Magnolia has PSAs with at least 65% of all mineral interest owners and working interest owners for each of the tracts traversed by the Well.
15. The Commission has previously determined that written oil and gas leases covering the tracts the well traverses are a reasonably satisfactory showing of a good faith claim to operate an allocation well. It follows that written agreements

with 65% of all mineral interest owners and all working interest owners for each tract the well produces from is sufficient to get a permit to operate a well, in this case a PSA well.

16. Magnolia has a good faith claim to operate the Well.
17. Complainants claim that their contractual lease covering the Person Tract does not contain pooling authority and Complainants have not signed a PSA such that Magnolia does not have a right to drill the Well. Complainant also claims that some of the documents relied on by Magnolia are not PSAs and some of the mineral interest owners of the Person Tract who did sign agreements did not have authority.
18. While Complainants may have a bona fide lease dispute as to whether Magnolia has a right to operate, that is insufficient to defeat Magnolia's good faith claim.
19. While the Complainants may have a bona fide lease dispute with Magnolia, the determination of whether there has been a breach and the appropriate remedy is outside the jurisdiction of the Commission.

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.
3. Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Well. 16 Tex. Admin. Code § 3.15(a)(5).
4. Complainants' request that the Commission revoke Respondent's permit for the Well should be denied.

Recommendations

The Examiners recommend the Commission find Respondent provided a reasonably satisfactory showing of a good faith claim to operate the Well, and deny Complainants' request that the permit for the Well be revoked.

Respectfully,



Jennifer Cook
Administrative Law Judge



Petar Buva
Technical Examiner