RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL

August 27, 2004

OIL AND GAS DOCKET NO. 8A-0239664

COMMISSION CALLED HEARING TO SUPERCEDE THE DEFAULT ORDER ISSUED NOVEMBER 29, 2001 IN DOCKET NO. 8A-0224550 REQUIRING PLUGGING OF WELL NO. 7 ON THE PARRAMORE, J.H. "B" (12977) LEASE, BLOCK F (TANNEHILL) FIELD, KING COUNTY,

APPEARANCES:

FOR APPLICANT:	**APPLICANT:**
Ana Maria Marsland-Griffith	Patton Exploration, Inc.
Robert Patton	" "

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	July 23, 2004
NOTICE OF HEARING:	August 10, 2004
DATE CASE HEARD:	August 25, 2004
HEARD BY:	Mark Helmueller, Hearings Examiner Thomas Richter, Technical Examiner
PFD CIRCULATION DATE:	August 27, 2004

STATEMENT OF THE CASE

This hearing was set to consider the request of Patton Exploration, Inc. (hereinafter "Patton") to supercede Default Order issued November 29, 2001 in Docket No. 8A-0224550 requiring plugging of Well No. 7 on the Parramore, J.H. "B" (12977) Lease, Block F (Tannehill) Field, King County (hereinafter "subject lease"). Patton claims that it restored the well to production and that the well should not be plugged.

SUMMARY OF EVIDENCE

The examiners took official notice of the file regarding Patton's request for approval of a single-signature Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), records related to Sundown's most recent Commission Form P-5 (Organization Report) filing, and records identifying the number of wells for which Patton is currently recognized as the operator. Patton filed its most recent Organization Report with the Commission on January 27, 2004. Patton has posted financial assurance with the Commission in the form of a $50,000 bond.

Patton currently operates 97 wells. For the purpose of calculation of the required financial assurance amount, the subject well is already included in the 97 wells for which Patton is listed as the operator of record.

The prior operator of the subject lease, Helmcamp, Inc. (hereinafter "Helmcamp"), submitted a Commission Form P-4 for the subject lease effective January 1, 2000. In Oil & Gas Docket No. 8A-0224550, Helmcamp was ordered to plug Well No. 7 for violations of Statewide Rule 14(b)(2). Commission records show that Well No. 7 was permitted on August 9, 1996. Patton obtained copies of records from the driller showing that the well was drilled and completed in November 1997. Helmcamp did not file any of the required paperwork for the drilling and completion of Well No. 7 and never reported any production.

On July 30, 2002, the Commission approved a single-signature P-4 recognizing Patton as the operator of the subject lease. Three wells on the lease were not required to be plugged under the Commission's Final Order in Oil & Gas Docket No. 8A-0224550. Patton restored production in November 2002 and has reported consistent production and sales since that time.

Patton advises that it was unaware that the Commission had ordered Well No. 7 to be plugged. Patton contends that it thought it was the operator of Well No. 7 pursuant to the Commission's approval of the P-4. After being advised that Well No. 7 was subject to a plug only order, Patton shut-in the well, filed the instant request, and retained counsel.

Because it was not aware of the plug only requirement, Patton included Well No. 7 in its actions to restore production on the lease. As part of bringing the subject lease into compliance, Patton filed a Commission Form W-2 (Oil Well Potential Test, Completion or Recompletion Report, and Log) for Well No. 7 on November 14, 2002. The well has been producing since that time, at a rate of 1 to 2 barrels per day. Patton also believes that the well is a good candidate for an injection well for salt water produced in association with the oil from the formation. Patton notes that the current injection well on the lease is older, and it believes such a recently drilled well would be an ideal substitute if the older well developed any mechanical integrity problems.

Helmcamp does not possess any interest in the well and is not affiliated with Patton. Patton obtained a new lease from the mineral interest owner in August 2002.

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 have on file with the Commission, 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.

EXAMINERS' OPINION

Patton claims that it can meet the requirements to be recognized as the operator of the subject lease and restore the well to active production. However, this claim is complicated by the Final Order requiring that Helmcamp plug the well. It is the examiners' 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. Patton 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 new lease agreement Patton obtained from the mineral interest owners. Patton also has a $50,000 bond in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107.

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, that in cases where a well has not reported any production or injection activity for a lengthy period of time, that the Commission will require that the well be plugged.

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. - Austin1979, *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 Default Order entered against Helmcamp was a "plug only" order as to Well No. 7. Therefore, Patton must show that a new order superceding the "plug only" provision of the Default Order is necessary to prevent waste.

Application of Waste Standard

Patton has presented sufficient evidence to support the entry of a superceding order to prevent waste. Patton verified that the well was completed in the permitted formation and has restored it to production. Patton has produced the well at the average rate of 1-2 barrels per day since November 2002. and immediately shut-in the well when it was advised of the plug only requirement. It is the examiners' opinion that the successful completion and production of the well for almost two years is adequate evidence to establish that superceding the existing "plug only" order is necessary to prevent waste. Additionally, there is a potential that the well could be used for disposal of lease produced water, thereby extending the economic viability of the other producing wells on the subject lease. Accordingly the examiners' conclude that an order superceding the plug only provision in the Default Order should be entered, and Patton should be recognized as the operator of the subject well.

Based on the record in this docket, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Patton Exploration, Inc., (hereinafter "Patton"), was given at least 10 days notice of this proceeding. Patton appeared at the hearing and presented evidence.

2. Patton filed its most recent Commission Form P-5 (Organization Report) on January 27,2004. Patton has posted financial assurance with the Commission in the form of a $50,000 bond. Patton currently operates 97 wells, and is listed in Commission records as the operator of Well No. 7 on the Parramore, J.H. "B" (12977) Lease.

3. Helmcamp, Inc. (hereinafter "Helmcamp"), submitted a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), for the subject lease effective January 1, 2000

4. Commission records show that Well No. 7 was permitted on August 9, 1996. Patton obtained copies of records from the driller showing that the well was drilled and completed in November 1997. Helmcamp did not file any of the required paperwork for the drilling and completion of Well No. 7 and never reported any production.

5. In Oil & Gas Docket No. 8A-0224550, Helmcamp was ordered to plug Well No. 7 on the subject lease for a violation of Statewide Rule 14(b)(2).

6. On July 30, 2002, the Commission approved a single-signature P-4 recognizing Patton as the operator of the subject lease.

7. Patton restored production on the subject lease in November 2002 and has reported consistent production and sales since that date.

8. Patton was unaware that the Commission had ordered Well No. 7 to be plugged and commenced operations to produce the well in the original permitted formation. Patton filed a Commission Form W-2 (Oil Well Potential Test, Completion or Recompletion Report, and Log) for Well No. 7 on November 14, 2002. The well has been producing since that time, at a rate ofl to 2 barrels per day.

9. Patton obtained a new lease from the mineral interest owner in August 2002.

10. Superceding the requirement in the Default Order entered in Oil & Gas Docket No. 8A-0224550 that Well No. 7 be plugged is necessary to prevent waste as the well has been completed and is capable of producing oil at a rate of 1 to 2 barrels per day.

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. Patton has a good faith claim of a continuing right to operate the subject lease.

4. Patton 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 lease.

5. A Final Order superceding the "plug only" provision in the Default Order entered in Oil & Gas Docket No. 8A-0224550 applicable to Well Nos. 7 on the subject lease is necessary to prevent waste.

RECOMMENDATION

The examiners recommend that the Commission grant the request to supercede the provisions in the Default Order entered in Oil & Gas Docket No. 8A-0224550 requiring plugging of Well No. 7 on the Parramore, J.H. "B" (12977) Lease. The examiners further recommend that all other provisions of the Master Default Order remain in full force and effect.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Thomas Richter
Technical Examiner