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*HEARINGS SECTION*

# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

April 6, 2005

**OIL AND GAS DOCKET No. 03-0241876**

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**COMMISSION CALLED HEARING TO SUPERCEDE THE FINAL ORDER ISSUED DECEMBER 10, 2003 IN DOCKET No. 03-0229544 REQUIRING PLUGGING OF WELL No. 2C ON THE OLIVER (11316) GERSTNER LEASE, OLIVER (FRIO 8640) FIELD, WELL No. 2T ON THE OLIVER GERSTNER LEASE, (RRC GAS ID No. 049527), OLIVER (FRIO 8750, E.) FIELD, AND WELL No. 3 ON THE KLOSS, ED. L. LEASE (RRC GAS ID No. 049931), OLIVER (FRIO 8640) FIELD, BRAZORIA COUNTY, AND TO ENABLE CORNERSTONE ENERGY, INC., TO BECOME THE OPERATOR OF RECORD FOR THE ABOVE-REFERENCED LEASES AND WELLS.**

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**APPEARANCES:**

**FOR APPLICANT:**  
Dale Miller

**APPLICANT:**  
Cornerstone Energy, Inc.

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF REQUEST FOR ACTION:</b>	February 16, 2005
<b>NOTICE OF HEARING:</b>	March 16, 2005
<b>DATE CASE HEARD:</b>	April 1, 2005
<b>HEARD BY:</b>	Mark Helmueller, Hearings Examiner Thomas Richter, Technical Examiner
<b>PFD CIRCULATION DATE:</b>	April 6, 2005

**STATEMENT OF THE CASE**

Cornerstone Energy, Inc. (hereinafter "Cornerstone") requests that the Commission supercede the provisions in the Final Order entered in Docket No. 03-0229544 requiring plugging of a dual completion wellbore, listed on Commission records as Well No. 2C on the Oliver (11316) Gerstner Lease, Oliver (Frio 8640) Field, Well No. 2T on the Oliver Gerstner Lease, (RRC Gas ID No. 049527), Oliver (Frio 8750, E.) Field (hereinafter the "Gerstner Well"); and, an injection well, Well No. 3 on the Kloss, Ed. L. Lease (RRC Gas ID No. 049931), Oliver (Frio 8640) Field, (hereinafter the "Kloss Well") Brazoria County (hereinafter "subject leases"). Cornerstone intends to restore the Gerstner Well to production and to use the Kloss Well for disposal of produced water. Cornerstone also requests that it be recognized as the operator of the subject leases.

### SUMMARY OF EVIDENCE

The examiners took official notice of records related to Cornerstone's most recent Commission Form P-5 (Organization Report), and records identifying the wells it currently operates. Cornerstone filed its most recent P-5 on July 30, 2004. Cornerstone has posted financial assurance with the Commission in the form of a \$50,000 cash deposit. Cornerstone currently operates 12 wellbores with a total depth of 119,685 feet.

The prior operator of the subject leases, MP Energy, Inc. (hereinafter "MP Energy"), submitted Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance) which were approved by the Commission on September 29, 1997. The Gerstner Well is a dual completion wellbore that has been shut-in since February 1997. The Kloss Well is a disposal well that has been inactive since December 1996. The Commission ordered MP Energy to plug the Gerstner Well and the Kloss Well due to violations of Statewide Rules 8 and 14 on December 9, 2003, in Oil & Gas Docket No. 03-0229544. MP Energy was further ordered to pay an administrative penalty of \$11,000.00. MP Energy does not possess any current interest in the wells and is not affiliated with Cornerstone. To date, the wells have not been plugged and are on the Commission's list of orphan wells. Cornerstone has filed single signature P-4s for the subject leases.

Cornerstone obtained a new lease for producing the Gerstner Well and has secured an option agreement for the operation of the Kloss Well as a salt water disposal well. Cornerstone believes that it can return the wellbores into compliance and recover additional reserves from the Gerstner Well that will otherwise not be recovered.

The Kloss Well is currently shut-in and has an active disposal well permit. Cornerstone asserts it will bring this well into compliance to dispose of the produced water from the Gerstner Well. The Gerstner Well was producing large amounts of water when the wellbore was shut-in, and it is estimated that the well will produce approximately 200 BWPD when the wellbore is brought back into production utilizing gas lift or an Electrical Submersible Pump.

As previously noted, the Gerstner Well is a dual completion well. The casing side completion is in the Oliver (Frio 8640) Oil Field. This completion cumulatively produced 130,950 barrels of oil and 976,081 MCF of casinghead gas as of February 1997 when the well was shut-in. Cornerstone believes that this well can be equipped with artificial lift equipment and ultimately produce an additional 92,847 barrels of oil.

The tubing side is completed in the Oliver (Frio 8750, E.) Gas Field. This completion cumulatively produced 1,936,843 MCF of gas and 32,821 barrels of condensate as of November 1976 when this completion was shut-in. After it produces the reserves from the casing side completion, Cornerstone believes that the tubing side completion can be placed on compression allowing for the additional recovery of reserves. It is estimated that the re-completion in this zone could ultimately produce an additional .564 Bcf of gas and 41,941 barrels of condensate.

Based on a review of the type log of the Gerstner Well, Cornerstone believes that there could possibly be additional zones within the wellbore that are productive of hydrocarbons. Cornerstone asserts that if this wellbore were plugged and abandoned, the additional reserves that could possibly be recovered from these zones will be abandoned, thereby causing waste.

#### **AUTHORITY**

Texas Natural Resources Code §85.049(a) provides:

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

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

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

Texas Natural Resources Code §89.042(a) provides:

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

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

Under Statewide Rules 14 and 58, 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

Cornerstone claims that it can meet the requirements to be recognized as the operator of the subject leases and restore the Gerstner Well to active production while using KlossWell for the disposal of produced water. However, this claim is complicated by the Final Order requiring that MP Energy plug the wells. 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. Cornerstone 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 to produce the Gerstner Well and the option agreement to use the Kloss Well for disposal. Cornerstone also has a \$50,000 cash deposit in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107. Additionally, the prior operator, MP Energy does not retain any interest in the wells.

#### **Superceding a Final Order to Prevent Waste**

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

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

A "plug only" order falls under the Commission's authority in Texas Natural Resources Code §89.042. Further, the courts recognize that a Commission order to plug a well "is entitled to the same weight and finality as an order granting or refusing a permit to drill a well." *Wrather Petroleum*

*Corporation v. Railroad Commission*, 230 S.W.2d 388, 390 (Tex.App. - Austin 1950, *reh 'g denied*) citing *Railroad Commission of Texas v. Gulf Production Co.*, 132 S.W.2d 254, 256, (Tex. 1939). Finally, the findings of fact are not “technical prerequisites” but satisfy a “substantial statutory purpose.” *Morgan Drive Away, Inc. v. Railroad Commission*, 498 S.W.2d 147, 150 (Tex.1973); *Railroad Commission of Texas v. R. J. Palmer*, 586 S.W.2d 934 (Tex.App. - Austin 1979, *no writ*).

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

### **Application of Waste Standard**

Cornerstone has presented sufficient evidence to support the entry of a superceding order to prevent waste. Cornerstone showed that the wells were abandoned because the volume of water produced from the Gerstner Well made continued production uneconomical. Cornerstone’s estimate of recoverable reserves reasonably concludes that the Gerstner Well will produce approximately 143,000 barrels of oil and condensate and approximately .564 Bcf of natural gas. Additionally, the log submitted supports Cornerstone’s interpretation that another interval in the Gerstner Well may have potential production.

Cornerstone has met all requirements necessary for the entry of a Final Order superceding the plug only provisions in the Final Order entered in Oil & Gas Docket No. 03-0241876. Accordingly the examiners conclude that an order superceding the plug only provision should be entered, and Cornerstone should be recognized as the operator of the subject leases. Due to the failure of the MP Energy to appear at the hearing in this matter to contest Cornerstone’s request to be recognized as the operator of the subject leases, the 30 day notice requirement for approval of the single signature P-4s should also be deemed to be satisfied. All other provisions in the Final Order shall remain in full force and effect.

### **FINDINGS OF FACT**

1. Cornerstone Energy, Inc. (hereinafter “Cornerstone”), was given at least 10 days notice of this proceeding. Cornerstone appeared at the hearing and presented evidence. The prior operator, MP Energy, Inc. was provided with notice of this proceeding directed to its most recent address as reported in Commission records. No appearance was made by MP Energy, Inc.
2. Cornerstone filed its most recent P-5 on July 30, 2004. Cornerstone has posted financial assurance with the Commission in the form of a \$50,000 cash deposit. Cornerstone currently operates 12 wellbores with a total depth of 119,685 feet.

3. The prior operator of Well No. 2C on the Oliver (11316) Gerstner Lease, Oliver (Frio 8640) Field, Well No. 2T on the Oliver Gerstner Lease, (RRC Gas ID No. 049527), Oliver (Frio 8750, E.) Field (hereinafter the "Gerstner Well"), and Well No. 3 on the Kloss, Ed. L. Lease (RRC Gas ID No. 049931), Oliver (Frio 8640) Field, (hereinafter the "Kloss Well") Brazoria County (hereinafter "subject leases"), MP Energy, Inc. (hereinafter "MP Energy"), submitted Commission Form P-4s (Producer's Transportation Authority and Certificate of Compliance) which were approved by the Commission on September 29, 1997.
4. The Gerstner Well is a dual completion wellbore that has been shut-in since February 1997. The Kloss Well is a disposal well that has been inactive since December 1996. The Commission ordered MP Energy to plug the Gerstner Well and the Kloss Well due to violations of Statewide Rules 8 and 14 on December 9, 2003, in Oil & Gas Docket No. 03-0229544. MP Energy was further ordered to pay an administrative penalty of \$11,000.00. MP Energy does not possess any current interest in the wells and is not affiliated with Cornerstone.
5. Cornerstone obtained a new lease for producing the Gerstner Well and has secured an option agreement for the operation of the Kloss Well as a salt water disposal well.
6. The Kloss Well is currently shut-in. A disposal well permit allows for disposal of up to 500 BWPD. The Gerstner Well was producing large amounts of water when the wellbore was shut-in, and it is estimated that the well will produce approximately 200 BWPD when the wellbore is brought back into production utilizing gas lift or an Electrical Submersible Pump. Any produced water from the Gerstner Well will be disposed of in the Kloss Well.
7. The Gerstner Well is a dual completion well which may produce approximately 143,000 barrels of oil and/or condensate and .564 Bcf of natural gas from the existing completions.
  - A. The casing side completion is in the Oliver (Frio 8640) Oil Field. This completion cumulatively produced 130,950 Bbls of oil and 976,081 MCF of casinghead gas as of February 1997 when the well was shut-in.
  - B. If equipped with artificial lift equipment, the casing side completion may ultimately produce an additional 92,847 barrels of oil.
  - C. The tubing side is completed in the Oliver (Frio 8750, E.) Gas Field. This completion cumulatively produced 1,936,843 MCF of gas and 32,821 barrels of condensate as of November 1976 when this completion was shut-in.
  - D. Placing the tubing side completion on compression may allow production of additional reserves. It is estimated that the re-completion in this zone could ultimately produce an additional .564 Bcf of gas and 41,941 barrels of condensate.

8. Superceding the requirement in the Final Order entered in Oil & Gas Docket No. 03-0229544 requiring plugging of Well No. 2C on the Oliver (11316) Gerstner Lease, Oliver (Frio 8640) Field; Well No. 2T on the Oliver Gerstner Lease, (RRC Gas ID No. 049527), Oliver (Frio 8750, E.) Field; and, Well No. 3 on the Kloss, Ed. L. Lease (RRC Gas ID No. 049931), Oliver (Frio 8640) Field, Brazoria County is necessary to prevent waste.

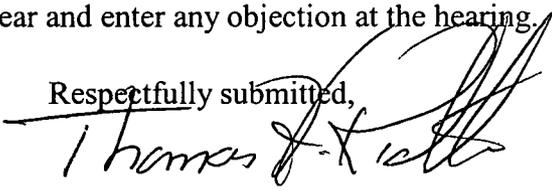
### CONCLUSIONS OF LAW

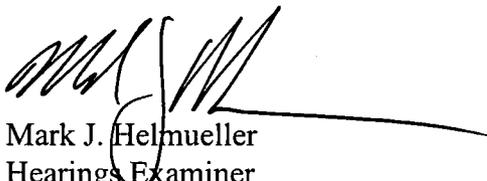
1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Cornerstone has a good faith claim of a continuing right to operate the subject leases.
4. Cornerstone has filed financial assurance 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 Final Order entered in Oil & Gas Docket No. 03-0229544 requiring plugging of Well No. 2C on the Oliver (11316) Gerstner Lease, Oliver (Frio 8640) Field; Well No. 2T on the Oliver Gerstner Lease, (RRC Gas ID No. 049527), Oliver (Frio 8750, E.) Field; and, Well No. 3 on the Kloss, Ed. L. Lease (RRC Gas ID No. 049931), Oliver (Frio 8640) Field, is necessary to prevent waste.

### RECOMMENDATION

The examiners recommend that the Commission grant the request to supercede the provisions in the Oil & Gas Docket No. 03-0229544 requiring plugging of Well No. 2C on the Oliver (11316) Gerstner Lease, Oliver (Frio 8640) Field; Well No. 2T on the Oliver Gerstner Lease, (RRC Gas ID No. 049527), Oliver (Frio 8750, E.) Field; and, Well No. 3 on the Kloss, Ed. L. Lease (RRC Gas ID No. 049931), Oliver (Frio 8640) Field, Brazoria County. The examiners further recommend that all other provisions of the Final Order remain in full force and effect. Finally, the examiners recommend that Cornerstone Energy, Inc. be recognized as the operator of the of the subject leases pursuant to the single signature Commission Form P-4s it submitted and the failure of the prior operator to appear and enter any objection at the hearing.

Respectfully submitted,

  
Thomas H. Richter  
Technical Examiner

  
Mark J. Helmueller  
Hearings Examiner