



# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

April 22, 2005

**OIL AND GAS DOCKET NO. 03-0241490**

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**COMMISSION CALLED HEARING TO SUPERCEDE THE FINAL ORDER ISSUED JUNE 5, 2001 IN OIL & GAS DOCKET NO. 03-0227358, ARCO FEE (20107) LEASE, WELL NO. 2, THEUVENINS CREEK (YEGUA 6700) (89324900) FIELD, TYLER COUNTY, TEXAS, ENABLING S.S.G. PRODUCTION, INC. TO BECOME THE OPERATOR OF RECORD AND TO PRODUCE THE ABOVE-REFERENCED WELL.**

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### APPEARANCES:

#### FOR APPLICANT:

Sammie Griffith, President  
Larry Barrett, President

#### APPLICANT:

S.S.G. Production, Inc.  
International Consultants

### PROPOSAL FOR DECISION

#### PROCEDURAL HISTORY

<b>DATE OF REQUEST FOR ACTION:</b>	January 11, 2005
<b>NOTICE OF HEARING:</b>	February 11, 2005
<b>DATE CASE HEARD:</b>	March 1, 2005
<b>DATE HEARING CLOSED:</b>	March 7, 2005
<b>HEARD BY:</b>	Marshall Enquist, Hearings Examiner
<b>PFD CIRCULATION DATE:</b>	April 22, 2005

### STATEMENT OF THE CASE

This Hearing was set to consider the request of S.S.G. Production, Inc. (hereinafter "S.S.G.") to supercede the Final Order issued June 1, 2001 in Oil & Gas Docket No. 03-0227358, requiring International Consultants (hereinafter "International") to plug Well No. 2 on the Arco Fee (20107) Lease, Theuvenins Creek (Yegua 6700)(89324900) Field (hereinafter "subject lease"), and to recognize S.S.G. as the operator of record. S.S.G. asserts that it can restore the well to production and therefore the well should not be plugged. The prior operator, International, appeared at the hearing in support of the transfer.

The hearing was left open for receipt of a late-filed exhibit, a Memorandum of Oil and Gas Lease, and was closed upon receipt of that exhibit on March 7, 2005. Further delay was caused by the fact that S.S.G. made several errors in attempting to renew its P-5 and Financial Assurance and was shown as delinquent on Commission records until March 22, 2005. It would have been inappropriate to consider transferring the subject well to an operator who was delinquent.

### SUMMARY OF EVIDENCE

The examiner took official notice of the file and Final Order in Oil & Gas Docket No. 03-0227358 in which International was ordered to plug the subject well, Commission records related to International's most recent Commission Form P-5 (Organization Report) filing on April 22, 2004, and Commission records identifying the wells for which International is currently recognized as the operator.

The examiner also took notice of the file and Final Order in Oil & Gas Docket No. 03-0234248 in which S.S.G. previously applied for a superceding order. The superceding order in that application was denied because S.S.G. failed to present any evidence that would support a grant based on prevention of waste. S.S.G. appeared "pro se", that is, without legal representation in that docket, and with no knowledge of the requirements necessary to prove the need for a superceding order. A chastened S.S.G. now comes before the Commission with new evidence that does support a grant based on prevention of waste.

S.S.G. became a recognized P-5 Operator on March 10, 2003 and filed its most recent Organization Report with the Commission on March 22, 2005. It has posted financial assurance with the Commission in the form of a \$25,000 Letter of Credit, with an expiration date of May 30, 2006. S.S.G. is currently shown on Commission records as operating one well, but stated at the hearing that it has purchased three more which will soon appear in Commission records.

S.S.G.'s President, Sammie Griffith, appeared at the hearing and presented evidence in support of the application. The hearing was left open to allow S.S.G. to late-file a copy of the lease establishing its good-faith claim to operate the subject lease. On March 7, 2005, S.S.G. provided a copy of a Memorandum of Oil and Gas Lease between BP America Production Company and S.S.G.

The current Commission-recognized operator of the subject lease, International, submitted a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), for the lease effective October 1, 1996. In Oil & Gas Docket No. 03-0227358, International was ordered to plug the Arco Fee (20107) Lease Well No. 2 and pay an administrative penalty of \$2,000 pursuant to a Final Order entered on June 5, 2001, for a violation of Statewide Rule 14(b)(2). The well last produced on or before January 1, 1993. S.S.G. has submitted a two signature Form P-4 to designate itself as the operator of the subject lease and has stated that it has no officers in common with International or any connection to International. International received notice of this hearing at its P-5 Organization Report address, and appeared in support of S.S.G.. The superceding order

sought by S.S.G. would be effective only to transfer the operatorship of the subject well and supercede the plug-only requirement. The Final Order in Oil & Gas Docket No. 03-0227358 has been satisfied regarding the \$2,000 administrative penalty. International paid that penalty in full by check received by the Commission on March 4, 2003.

The subject well was drilled by North American Exploration, but was sold when North American went into bankruptcy. The purchaser, International, neglected the well due to more lucrative consulting work available overseas. This resulted in an Enforcement hearing (O&G Docket No. 03-0227358) against International on April 30, 2001.

S.S.G. states that the well will need to be re-equipped and the two perforated zones in the well individually isolated to test for water production. S.S.G. believes the well was producing a profitable amount of oil from the first set of perforations and only began to have water problems when a second horizon was perforated. On July 5, 2004, with only three lengths of tubing in the hole, S.S.G. flowed the well for 1 hour during which time it flowed gas, oil and water. On July 21, 2004, S.S.G. flowed the well again, producing gas and oil briefly, after which the well was shut in. S.S.G. has already run additional tubing in the well, and, after testing, plans to isolate the water zone with a packer and try to produce the well either by flowing it or installing a pumping unit.

Well No. 2 on the Arco Fee Lease is the only well in the Theuvenins Creek (Yegua 6700) Field, which makes it difficult to estimate future production from the well. However, if the well's production is similar to that of other wells in nearby Yegua sands, and in light of the recent flow tests of the well, S.S.G. believes the well will ultimately produce 5 to 8 BOPD. S.S.G. asserts these hydrocarbons would be wasted if the well is plugged according to Commission order.

In the event that the well should not meet expectations and prove uneconomical to operate, S.S.G. will convert the well, and use it for disposal of water produced by the Arco Fee Well No. 1. The Arco Fee No. 1, operated by S.S.G., is only 1200 feet away and there is an existing flow line connecting the two wells. S.S.G. is currently bearing the expense of trucking produced water off the Arco Fee lease and could extend the economic life of the Arco Fee Well No. 1, thus preventing waste in that well, by disposing of the water on-lease in the Arco Fee Well No. 2.

#### **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.

The Commission may require a person seeking to be recognized as the operator of a well to provide evidence of a good faith claim, as defined in SWR 14(a)(1)(E), of a continuing right to operate.

### **EXAMINER'S OPINION**

S.S.G. asserts 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 International plug the well. An order superceding a Commission Final Order may be 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. S.S.G. 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 show that it has met the requirements of Texas Natural Resources Code §91.107 which preclude the Commission from approving the requested transfer of an existing well to a new operator 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 the subject leases is established by virtue of the Memorandum of Oil and Gas Lease between BP America Production Company and S.S.G. S.S.G. is a currently recognized P-5 operator and has a \$25,000 Letter of Credit in place which satisfies the financial assurance requirement under Texas Natural Resource Code §91.107.

### **Superceding a "Plug Only" 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, that in cases where a well is in violation of Commission rules and 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. - Austin 1979, *no writ*).

In this case, the Final Order entered against International was a "plug-only" order. As noted above, S.S.G. must show that a superceding order is necessary to prevent waste. In a prior application, Docket No. 03-0234248, S.S.G. was denied a superceding order. The new application would be considered subject to "res judicata" and denied unless S.S.G. presents new evidence or there are changed circumstances. In the prior denied application, S.S.G. expressed its mere opinion that with the installation of new tubing, and a packer, production could be restored. Between the time of the prior denied application and the present application, S.S.G. installed just three lengths of tubing to test their theory and briefly (1 hour) flowed the well for test purposes, producing gas, oil and water. Based on the successful results, S.S.G. has installed additional tubing and awaits the result of this application before expending funds to install a packer to isolate the water-producing interval. The examiner believes the test performed by S.S.G. constitutes new evidence justifying the present recommended grant.

**Application of Waste Standard**

In this docket, the question is whether S.S.G. presented sufficient evidence that an order superceding a "plug-only" order is necessary to prevent waste. It is the examiner's conclusion that S.S.G. presented sufficient evidence to support the entry of a superceding order to prevent waste.

S.S.G. proposes to restore production to the well previously operated by International. The testimony supports S.S.G.'s claim that the well was not produced due to the bankruptcy of the original operator, North American Exploration, combined with inattention to the well by its second operator, International, due to business opportunities overseas. By isolating the zone that is producing excessive amounts of water, S.S.G. hopes to restore the well to productive status. S.S.G. believes that its attempts at testing the well indicate it will produce 5 to 8 BOPD. The examiner expresses no opinion as to the likelihood of success in this venture to the degree that S.S.G. anticipates. However, the risk that S.S.G.'s attempt to restore production may not be completely successful is not a basis for denying it the opportunity to restore production where S.S.G. has met all the other requirements to operate the well. It is likely that S.S.G.'s efforts will result in the recovery of at least some hydrocarbons that would not otherwise be recovered. Accordingly the examiner concludes that an order superceding the plug-only provisions in the Final Order will prevent waste.

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

**FINDINGS OF FACT**

1. S.S.G. Production, Inc. (hereinafter "S.S.G.") and International Consultants (hereinafter "International") were given at least 10 days notice of this proceeding. S.S.G. appeared at the scheduled time and place for the hearing through its president Sammie Griffith and presented evidence. International appeared in support of the application.
2. S.S.G. filed its first Commission Form P-5 (Organization Report) with the Commission on March 10, 2003. S.S.G. filed its most recent P-5 renewal with the RRC on March 22, 2005 and has posted financial assurance with the Commission in the form of a \$25,000 Letter of Credit.
3. International was recognized as the operator of the Arco Fee (20107) Lease (hereinafter "subject lease") after filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective October 1, 1996.
4. In Oil & Gas Docket No. 03-0227358, International was ordered to plug the Arco Fee (20107) Lease Well No. 2 and pay an administrative penalty of \$2,000 pursuant to a Final Order entered on June 5, 2001 for a violation of Statewide Rule 14(b)(2).

5. S.S.G. possesses a currently effective oil and gas lease from BP America Production Co., giving it the right to operate the subject well.
6. Superceding the requirement in the Final Order entered in Oil & Gas Docket No. 03-0227358 that the Arco Fee (20107) Lease Well No. 2 be plugged is necessary to prevent waste.
  - (a) The well is estimated to be capable of production in the range of 5 to 8 BOPD, with some gas and a large volume of water.
  - (b) Isolation of a water-producing horizon in the well, if successful, would significantly reduce operating expenses for the well, resulting in a longer life for the well and a greater cumulative production.
7. The requirement in the Final Order in Oil & Gas Docket 03-0227358 that International pay an administrative penalty of \$2,000 has been satisfied by International's delivery of a check in that amount to the Commission on March 4, 2003.
8. S.S.G has filed a two-signature Form P-4 (Certificate of Compliance and Transportation Authority) requesting a change of operator for the subject well from international Consultants to S.S.G. S.S.G. has also filed an application requesting that the Commission supercede the Final Order in Oil & Gas Docket No. 03-0227358 ordering International Consultants to plug the subject well and pay an administrative penalty.

#### 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. S.S.G. has a good faith claim of a right to operate the subject lease.
4. S.S.G. 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 Final Order entered in Oil & Gas Docket No. 03-0227358 requiring plugging of Well No. 2 on the Arco Fee (20107) Lease, Theuvenins Creek (Yegua 6700) Field, Tyler County and approval of a change of operator of the well to S.S.G. Production, Inc. is necessary to prevent waste.
6. The Final Order in this Docket superceding the Final Order in Oil & Gas Docket 03-0227358 is effective only as to the disposition of Well No. 2 on the Arco Fee (20107) Lease, Theuvenins Creek (Yegua 6700) Field, Tyler County.

**RECOMMENDATION**

The Examiner recommends that the Commission grant S.S.G.'s request to supercede the provisions in the Final Order entered in Oil & Gas Docket No. 03-0227358 requiring plugging of Well No. 2 on the Arco Fee (20107) Lease and approve the Form P-4 transfer of the subject well to S.S.G.

Respectfully submitted,



Marshall Enquist  
Hearings Examiner