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*HEARINGS SECTION*

# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

May 31, 2005

**OIL & GAS DOCKET NO. 02-0242131**

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**APPLICATION OF PETROGEN, INC., TO DETERMINE THE APPLICABILITY AND/OR REDUCTION OF THE AMOUNT OF FINANCIAL ASSURANCE REQUIREMENTS UNDER STATEWIDE RULE 78(G)(2) FOR WELL NOS. 1, 2, & 3 ON THE EMILY P. HAWES LEASE, (RRC GAS ID NOS. 117158, 117363, AND 117364), CALHOUN COUNTY, TEXAS.**

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**APPEARANCES FOR APPLICANT PETROGEN, INC.:**

George Neale  
Sam Sen  
Bill Kerrigan  
Bob Tierney

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF REQUEST FOR HEARING:</b>	March 9, 2005
<b>DATE OF NOTICE OF HEARING:</b>	March 11, 2005
<b>DATE OF HEARING:</b>	March 30, 2005
<b>HEARD BY:</b>	Mark Helmueller, Hearings Examiner Margaret Allen, Technical Examiner
<b>DATE RECORD CLOSED:</b>	May 9, 2005
<b>DATE PFD CIRCULATED:</b>	May 31, 2005

**INTRODUCTION**

Petrogen, Inc. ("Petrogen") requests that the Commission determine that the provisions of Statewide Rule 78(g)(2) related to additional financial assurance for operators of bay wells are not applicable to Well No. 1, RRC Gas Id No. 117158(API No. 42-057-31340), Well No. 2, RRC Gas Id No. 117363 (API No. 42-057-31341), and Well No. 3, RRC Gas Id No. 117364, (API No. 42-057-31339) on the Emily P. Hawes Lease, Hawes (Basal Miocene) Field, ("subject wells"), Calhoun County, Texas. Alternatively, Petrogen requests that the Commission defer the implementation of the financial assurance requirements, as it was precluded from reworking the wells due to their presence within the Aransas National Wildlife Refuge on Matagorda Island, a winter nesting habitat of the endangered Whooping Crane. The examiners recommend that the Commission determine that the subject wells are land wells and are not subject to the additional financial assurance provisions of Statewide Rule 78(g)(2).

### STATEMENT OF CASE

Petrogen's Commission Form P-5 (Organization Report ) was due to be renewed on April 1, 2005. Prior to renewal, Petrogen was advised by the Commission's P-5/Financial Assurance Unit that its total financial security requirement for renewal of its P-5 would be \$205,000. This total reflects the financial security required by Rule 78(g)(1) in the amount of \$25,000, entry level financial security required of operators of bay wells by Rule 78(g)(2)(A) in the amount of \$60,000, and additional financial security required for non-producing bay wells (in excess of one) by Rule 78(g)(2)(B) in the amount of \$120,000.

### MATTERS OFFICIALLY NOTICED

The examiners have officially noticed Commission "On-Schedule Leases, Wells, Wellbores By Operator" records showing that Petrogen is the operator of 3 wellbores, all of which are currently classified on Commission records as bay wells. The total depth of the wellbores is 19,290 feet.

Petrogen was recognized as the operator of the subject wells by the Commission pursuant to Commission Form P-4s (Certificate of Compliance and Transportation Authority) approved on September 24, 2004. All three wells are completed in the Hawes (Basal Miocene) Field.

### APPLICABLE RULES

Statewide Rule 78(a)(5) defines a bay well as follows:

Bay well – Any well under the jurisdiction of the Commission for which the surface location is either:

(A) located in or on a lake, river, stream, canal, estuary, bayou, or other inland navigable waters of the state and which requires plugging by means other than conventional land-based methods, including, but not limited to, use of a barge, use of a boat, dredging, or building a causeway or other access road to bring in the necessary equipment to plug the well; or,

(B) located on state lands seaward of the mean high tide line of the Gulf of Mexico in water of a depth at mean high tide of not more than 100 feet that is sheltered from the direct action of the open seas of the Gulf of Mexico.

Rule 78(g)(2) requires the filing of additional financial security for operators of bay wells. As relevant here, in addition to other financial security required under Rule 78(g)(1), an operator of bay wells must file entry level financial security of \$60,000 and an additional \$60,000 for each non-producing bay well in excess of one.

### DISCUSSION OF EVIDENCE

Petrogen claims that the Commission has mistakenly applied the entry-level and inactive well financial assurance requirements for bay wells to its three wells. Petrogen presented evidence that the wells are all located on Matagorda Island and are accessible through the use of conventional equipment. Petrogen asserts that plugging the wells will not require any specialized equipment. However, Petrogen admits that there are additional transportation costs necessary to barge the equipment in from the mainland.

In the alternative, Petrogen requests temporary relief if Statewide Rule 78(g)(2) is deemed to be applicable to the subject wells. Petrogen claims it acquired its interests in the wells in late summer 2004 and was unable to work on the wells to restore production between October 15, 2004 and April 15, 2005 because the wells are in the Aransas National Wildlife Refuge, an area that includes the winter nesting grounds of the Whooping Crane, an endangered species. This use restriction is found in the Special Conditions of the Special Use Permit issued to Petrogen by the United States Department of the Interior, Fish and Wildlife Service. Petrogen asserts that the Hawes No. 1 well was sidetracked and recompleted on October 15, 2004. Petrogen intends to connect the well to an existing pipeline as soon as they are allowed back on the island to perform operations. Petrogen further asserts that re-entry operations into the Hawes No. 2 and No. 3 wells will be completed by July 1, 2005.

Petrogen also submits that plugging estimates for the wells prepared by Hodges Engineering, Inc. show that the only additional cost to plug these wells is a \$3,000.00 per day barge rental fee. If all three wells are plugged in one project, the additional cost is estimated at \$12,000.00.

### EXAMINERS' OPINION

The application of Petrogen for a determination that Petrogen, Inc. is not required to file additional financial assurance as required by Statewide Rule 78(g)(2) as the operator of the subject wells should be granted. The definition of a bay well in Rule 78(a)(5) plainly indicates that the additional financial security requirements are not applicable to the subject wells.

There are two possible definitions of a bay well under Rule 78(a)(5). First, a well may be located "in or on a lake, river, stream, canal, estuary, bayou, or other inland navigable waters of the state." Second, a well may be located "in water of a depth at mean high tide of not more than 100 feet that is sheltered from the direct action of the open seas of the Gulf of Mexico." It is immediately apparent from both possible definitions that a well must be located in or on water in order to be defined as a bay well.

It is undisputed that these wells are land wells on Matagorda Island and are not located on or in water. They may be "access challenged" for a variety of reasons, including their location on an island which requires a boat or barge to reach, as well as limitations on operations associated with the winter nesting habitat of an endangered species. However, neither of these access issues provide

a basis for classifying these wells as bay wells under either definition of a bay well in Rule 78(a)(5). Accordingly, the examiners recommend that the Commission determine that these wells are not subject to the additional financial assurance requirements of Rule 78(g)(2) as they are not bay wells as defined by Rule 78(a)(5).

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

#### FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. Petrogen, Inc. ("Petrogen") appeared at the hearing and presented evidence.
2. Petrogen requests that the Commission determine that the provisions of Statewide Rule 78(g)(2) related to additional financial assurance for operators of bay and offshore wells are not applicable to its operation of Well Nos. 1, 2, & 3 on the Emily P. Hawes Lease, (RRC Gas Id Nos. 117158, 117363, and 117364), ("subject wells"), Calhoun County, Texas.
3. Commission "On-Schedule Leases, Wells, Wellbores By Operator" records show that Petrogen is the operator of 3 wellbores, all of which are currently classified on Commission records as bay wells. The total depth of the wellbores is 19,290 feet.
4. Petrogen was recognized as the operator of the subject wells pursuant to Commission Form P-4s (Certificate of Compliance and Transportation Authority) approved on September 24, 2004. All three wells are completed in the Hawes (Basal Miocene) Field.
5. The subject wells are land wells located on Matagorda Island. The well sites are not located on or in water and can be accessed using conventional equipment.

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties to this hearing have been performed or have occurred.
3. Well No. 1 on the Emily P. Hawes Lease, (RRC Gas Id No. 117158), API No. 42-057-31341, Hawes (Basal Miocene) Field, Calhoun County, Texas, is not a bay well as defined under Statewide Rule 78(a)(5).
4. Well No. 2 on the Emily P. Hawes Lease, (RRC Gas Id No. 117363), API No. 42-057-31340, Hawes (Basal Miocene) Field, Calhoun County, Texas, is not a bay well as defined under Statewide Rule 78(a)(5).

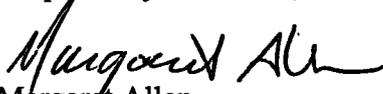
5. Well No. 3 on the Emily P. Hawes Lease, (RRC Gas Id No. 117364), API No. 42-057-31339, Hawes (Basal Miocene) Field, Calhoun County, Texas, is not a bay well as defined under Statewide Rule 78(a)(5).
6. Petrogen, Inc. is not required to file additional financial assurance for the operation of Well No. 1 on the Emily P. Hawes Lease, (RRC Gas Id No. 117158), Hawes (Basal Miocene) Field, Calhoun County, Texas under Statewide Rule 78(g)(2).
7. Petrogen, Inc. is not required to file additional financial assurance for the operation of Well No. 2 on the Emily P. Hawes Lease, (RRC Gas Id No. 117363), Hawes (Basal Miocene) Field, Calhoun County, Texas under Statewide Rule 78(g)(2).
8. Petrogen, Inc. is not required to file additional financial assurance for the operation of Well No. 3 on the Emily P. Hawes Lease, (RRC Gas Id No. 117364), Hawes (Basal Miocene) Field, Calhoun County, Texas under Statewide Rule 78(g)(2).

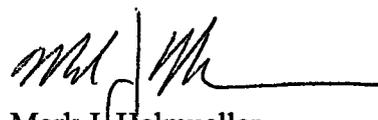
**RECOMMENDATION**

The examiners recommend that the Commission determine that Petrogen, Inc. is not required to file additional financial assurance as required by Statewide Rule 78(g)(2) as the operator of the following three wells, as the wells are not bay wells as defined by Rule 78(a)(5):

1. Well No. 1, Emily P. Hawes Lease, (RRC Gas Id No. 117158), Hawes (Basal Miocene) Field, API No. 42-057-31340;
2. Well No. 2, Emily P. Hawes Lease, (RRC Gas Id No. 117363), Hawes (Basal Miocene) Field, API No. 42-057-31341; and
3. Well No. 3, Emily P. Hawes Lease, (RRC Gas Id No. 117364), Hawes (Basal Miocene) Field, API No. 42-057-31339.

Respectfully submitted,

  
Margaret Allen  
Technical Examiner

  
Mark J. Helmueller  
Hearings Examiner