



TEXAS OIL & GAS ASSOCIATION



January 26, 2011

via Hand Delivery

Mr. John Tintera
Executive Director
Railroad Commission of Texas
Post Office Box 12967
Austin, Texas 78711-2967

Re: Petition of the Texas Oil and Gas Association (TxOGA), Texas Independent Producers and Royalty Owners Association (TIPRO), Texas Alliance of Energy Producers (The Alliance), Panhandle Producers and Royalty Owners Association (PPROA), Permian Basin Petroleum Association (PBPA), and Historic Texas Ranches for Rulemaking and Emergency Rulemaking

Proposed Adoption of Amendment to Statewide Rule 3.1

Dear Mr. Tintera:

Please consider this letter as the Petition of The Texas Oil and Gas Association (TxOGA), Texas Independent Producers and Royalty Owners Association (TIPRO), Texas Alliance of Energy Producers (The Alliance), Panhandle Producers and Royalty Owners Association (PPROA), Permian Basin Petroleum Association (PBPA), and Historic Texas Ranches (hereinafter referred to as the "Texas Associations") for Emergency Rulemaking and for Rulemaking.

- The Texas Oil & Gas Association (TxOGA) is the largest and oldest petroleum organization in Texas, representing over 4,000 members. The membership of TxOGA produces in excess of 90 percent of Texas' crude oil and natural gas, operates nearly 100 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipeline mileage.
- Texas Independent Producers & Royalty Owners Association (TIPRO) is a trade association representing the interests of more than 2,100 independent oil and natural gas producers and royalty owners throughout Texas. Started in 1946, it is one of the nation's oldest and largest associations of this kind. Its members range from small

family-owned businesses to the largest publicly traded independent producers and mineral owners, as well as estates and trusts comprising millions of acres of production in Texas. These members own and produce more than 85% of the natural gas and 70% of the oil within Texas.

- Texas Alliance of Energy Producers (The Alliance) represents 3,349 members from 31 states, with 90% of those residing in Texas. Though the membership includes most of the largest domestic exploration corporations, most of the members are the owner, co-owner, or CEO of a small, independent exploration and production company. Six out of 10 member companies have 10 or less employees and 95% have less than 100 employees.
- Panhandle Producers & Royalty Owners Association (PPROA) is the trade association representing independent oil and gas producers, mineral royalty owners, and support companies in the Texas Panhandle, western Oklahoma, and southwestern Kansas since 1929.
- Permian Basin Petroleum Association (PBPA) is a regional trade association headquartered in Midland, Texas. It serves as an informed voice for all segments of the oil and gas industry in Austin and Santa Fe as well as Washington D.C.
- Kerry Knorpp represents numerous historic family ranches in the Upper and Lower Panhandle of Texas, consisting of more than three million oil and gas producing acres.

A state agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency:

(1) finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice; and

(2) states in writing the reasons for its findings under Subdivision (1).¹

As stated above, an emergency rule may be adopted to protect against a threat to the public welfare or to satisfy the requirements of a state law. As noted by the Texas Supreme Court,² the Commission has the statutory duty to prevent waste and to protect correlative rights.³ Therefore, the Commission may adopt an emergency rule in order to prevent waste and to protect correlative rights because such waste is a threat to the public welfare and is prohibited by state law.

The current rules and forms implementing H.B. 2259, passed last Regular Session, can result in the premature plugging of wells which could otherwise be used to enhance the recovery of oil and gas resources in this state. The loss of those wells would result in the waste of recoverable reserves. In addition to being prohibited by statute, such waste deprives the public of the use of those resources, deprives the state of the tax revenues attributable to those

¹ TEX. GOV'T CODE § 2001.034(a).

² *Texaco, Inc. v. R.R. Comm'n*, 583 S.W.2d 307, 310(Tex. 1979).

³ Nat. Res. Code §§85.045,85.046.

resources, and injures the correlative rights of the owners of those resources, thereby harming the general welfare of the public.

We propose that the Commission adopt an emergency rule and a permanent rule to specify the procedures to be followed after the Commission or its delegate determines administratively that a refiled annual organization report does not qualify for renewal or approval. The proposed new rule:

(1) would require notice to the operator of the alleged reasons the organization report does not qualify for renewal or approval and would provide for a period of time for the operator to resolve those issues,

(2) if the alleged issues are not resolved administratively, would require a hearing directing the operator to demonstrate why the alleged reasons the organization report cannot be renewed or approved are not correct, and

(3) would provide that the operator's prior organization report remain effective until the Commission's final and appealable order that the refiled annual organization report does not qualify for renewal or approval.

The text of the proposed rule is contained in the Attachment to this letter.

The proposed rule is authorized by Texas Natural Resources Code Sections 89.022(c) and 91.142.

The proposed rule would establish specific procedures to afford operators an opportunity to receive notification of any alleged deficiencies in the refiled annual organization report so that those deficiencies can be resolved, either administratively or through the hearing process, if necessary. Additionally, under the proposed rule the prior organization report would remain **effective** until the Commission determines by order that the refiled report does not qualify for renewal or approval, thus avoiding any shut-in of production or suspension of drilling and development operations during the pendency of the Commission's review (with the attendant threats of waste and harm to correlative rights) that could occur if the operator must suspend operations because it does not yet have an approved organization report. Such a shut-in of production or a suspension of drilling and development activities and operations would be contrary to the public interest and would pose an imminent peril to the public health, safety, or welfare.

Given the fact that an operator must either plug inactive wells or obtain an exception as a condition to renewal of its organization report required by Nat. Res. Code §91.142, there is a substantial risk that operators will be required to pre-maturely plug inactive wells in order to avoid being prohibited from conducting oil and gas operations in Texas.

The result is that inactive wells that would otherwise be used in production activities will be pre-maturely plugged as a result. Oil or natural gas that would otherwise be recovered in projects will not be recovered because it will be impractical to drill new wells to replace the inactive wells. The failure to recover otherwise recoverable reserves results in waste and failure to protect the correlative rights of the interest owners.

Organization reports become due every month. Therefore there is an ongoing, current and existing threat of pre-mature plugging of wells that would otherwise be used to enhance oil and gas recovery in Texas. The Commission may, under these circumstances, enact an emergency rule to temporarily amend Rule 3.1 so that the rule remedies this situation.

The adoption of an emergency rule is therefore authorized because the emergency rule can prevent waste, protect correlative rights, and prevent a threat to the public interest in the production of oil and gas, as required by state law.

We respectfully request that the Commission promptly adopt this proposed rule both as an emergency rule effective immediately and as a permanent rule.

Please contact me if you have any questions or if you require any additional information.

Sincerely,



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Attachments

CC: Elizabeth Ames Jones, Chair, Railroad Commission of Texas
Michael Williams, Commissioner, Railroad Commission of Texas
David Porter, Commissioner, Railroad Commission of Texas

P-5 Nonrenewal Hearing Process Amendment

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(i) If after administrative review of a refiled annual organization report, the Commission or its delegate determines administratively that the organization report does not qualify for renewal or approval, the Commission or its delegate will notify the organization of the administrative determination, provide the organization with a written statement describing the reasons why the organization report does not qualify for renewal or approval, and advise the organization that it has a 90-day time period to resolve satisfactorily each reason why the organization report does not qualify for renewal or approval. The Commission or its delegate may grant up to three 30-day extensions of this time period for good cause. If after that time period the Commission or its delegate determines administratively that the organization has not satisfactorily resolved each reason why the organization report does not qualify for renewal or approval, the operator may request a hearing regarding that administrative determination. The organization's prior organization report shall remain in effect during the administrative review process and during any resulting hearing until an order of the Commission that the refiled annual organization report does not qualify for renewal or approval and becomes final and appealable.