



**RAILROAD COMMISSION OF TEXAS**  
**HEARINGS DIVISION**

**OIL & GAS DOCKET NO. 20-0279073**

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**TO CONSIDER THE APPLICATION OF TOGS ENERGY, INC. FOR THE UNRESTRICTED RENEWAL OF ITS P-5 AND TO CONTEST THE STAFF DETERMINATION THAT THE P-5 CANNOT BE RENEWED DUE TO NON-COMPLIANCE WITH THE INACTIVE WELL REQUIREMENTS OF STATEWIDE RULE 15**

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**HEARD BY:** Laura E. Miles-Valdez - Legal Examiner  
Andres Trevino, P.E. - Technical Examiner

**REVIEWED BY:** Richard Atkins, P.E. - Technical Examiner

**PROCEDURAL HISTORY OF CASE:**

30-day letter sent:	October 31, 2012
Request for hearing received:	December 3, 2012
Notice of Hearing sent:	December 12, 2012
Hearing Held:	January 10 & April 12, 2013
Final Transcript Received:	May 1, 2013
PFD Issued:	December 19, 2013

**APPEARANCES:**

**REPRESENTING:**

**APPLICANT:**

Benjamin Bratelli, Attorney  
Whitney P. Tharpe, Attorney  
David M. Chandler  
C.J. Green

TOGS Energy, Inc.

**STAFF:**

Kristi Reeve, Attorney  
Maria Castro  
Sheila Weigand  
Mark England

Railroad Commission - Enforcement Staff

**FOR PROTESTANT:**

Paula Powell, Attorney  
Debra Christian  
LaRue Decker  
Andrew Hawley

Debra Christian

**EXAMINERS' REPORT AND PROPOSAL FOR DECISION**

**STATEMENT OF THE CASE**

Pursuant to 16 TAC §3.15, the Railroad Commission (Commission) on June 29, 2012, sent notification to the Applicant, TOGS Energy, Inc. (TOGS) that the Commission's P-5 Financial Assurance Unit determined TOGS's Organization Report (Form P-5) should be denied due to its failure to meet the inactive well requirements contained within Statewide Rule 15. (Staff's 90-day letter). Staff's 90-day letter outlined numerous violations of Commission rules, including TOGS's failure to provide a good faith claim to operate the George Jones (#07555) Lease (George Jones Lease) and the Calvin Young (#08662) Lease (Calvin Young Lease); TOGS's H-15 failure violations for wells on the A.R. Loden -C- (#06861) Lease (A.R. Loden -C- Lease), the George Jones Lease, and the Calvin Jones Lease; and an H-5 violation on the Camp A&B (#07695) Lease (Camp A&B Lease). On November 1, 2012, the Commission received TOGS's Request for a Hearing pursuant to 16 TAC §3.15(g)(4). Notice of the hearing was sent out on November 8, 2012, notifying TOGS that a hearing on its P-5 renewal would be held on January 10, 2013.

Hearings were conducted on January 10, 2013 and April 12, 2013, in which TOGS and Railroad Commission Staff (Staff) appeared and presented evidence. Also appearing and presenting evidence was Ms. Debra Christian, an interested party who filed the good faith claim complaint against TOGS in 2011.

**APPLICABLE LAW**

Statewide Rule 14(b)(2) requires "Plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed unless the Commission or its delegate approves a plugging extension under [16 TAC] 3.15 of this title."

Statewide Rule 15(a)(5) defines a "good faith claim" as, "[a] factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate."

Statewide Rule 15(d)(1) requires "[a]n operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either: (A) restore the well to active status as defined by Commission rule; (B) plug the well in compliance with a Commission rule or order; or (C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.

Statewide Rule 15(e)(1-5) provides for the extension of the deadline for plugging an inactive land well if the Commission or its delegate approves the operator's W-3X, the operator has a current organization report (P-5), the operator has a good faith claim to a continuing right to operate the well, the well is in compliance with Commission rules and orders, and, if the well is more than 25 years old, the operator successfully conducts and the Commission approves a fluid level or hydraulic pressure test for the well.

Statewide Rule 15 (f)(2)(B)(vi) governs and generally requires that an operator applying for an extension of the deadline for plugging an inactive land well include documentation which demonstrates that the operator has conducted a successful fluid level test or hydraulic pressure test of the well and the operator has paid the required filing fee.

Statewide Rule 15(g) provides that the Commission or its delegate may administratively deny an application for a plugging extension for an inactive well if it does not meet the requirements of this section. Specifically, subsection 15(g)(4) states that "[i]f, after the expiration of the 90-day period specified in paragraph (3)(C) of this subsection, the Commission or its delegate determines that the operator remains out of compliance with the requirements of this section, the Commission delegate shall mail the operator a second written notice of this determination. The operator may request a hearing. The operator must file a written request for hearing and the hearing fee of \$4,500 with the Office of General Counsel, Hearings Section, Docket Services, no later than 30 days from the date the second written notice was mailed to the operator. In the request for hearing, the operator must identify by its assigned American Petroleum Institute (API) number each inactive well for which the operator is seeking a hearing to contest the determination that the well remains out of compliance. If the operator fails to timely file a request for hearing and the required hearing fee, the Commission shall enter an order denying the plugging extension request and denying renewal of the operator's organization report without further notice or opportunity for hearing."

Statewide Rule 15(h) provides that the Commission or its delegate may revoke an extension of a deadline for plugging an inactive well if the Commission or its delegate determines, after notice and opportunity for hearing, that the applicant is ineligible for an extension.

Statewide Rule 15(l) governs fluid level and hydraulic pressure tests (H-15) for inactive wells more than 25 years old.

Statewide Rule 15(m) governs fluid level and hydraulic pressure tests (H-15) for inactive wells less than 25 years old.

### **MATTERS OFFICIALLY NOTICED**

The hearings examiners took official notice of the Commission production database for the George Jones Lease Well Nos. 1, 2, 3, and 8, which indicated no production from the subject wells for the past 13 years.

**DISCUSSION OF THE EVIDENCE**

On January 10, 2013, a hearing to consider Staff's determination that TOGS's P-5 should not be renewed due to noncompliance with the inactive well requirements of Statewide Rule 15 was held. This case presents two issues. First, whether TOGS violated 16 TAC §3.15(d) by failing to properly report H-5 results on the Camp A&B Lease and H-15 fluid level tests for wells on the A.R. Loden -C- Lease, the George Jones Lease, and the Calvin Jones Lease. Second, whether TOGS has a good faith claim to operate the George Jones Lease and the Calvin Young Lease in accordance with 16 TAC §3.15(e)(3). During the January 10, 2013 hearing, the examiners heard testimony limited to TOGS's inactive well violations.

Mr. Chandler testified for TOGS regarding the history and current status of the four (4) leases at issue.<sup>1</sup> Each of the leases have inactive wells enumerated in Staff's 90-day letter.

Testifying for Staff were: Ms. Maria Castro, Manager of the P-5 Department; Ms. Sheila Weigand, Investigator with the Commission; and Mr. Mark England, Engineering Specialist for the Field Operations Section. Ms. Castro testified generally as to the status of TOGS's H-15 compliance for the inactive wells at issue; the issuance of the Staff's 90-day letters; and the general procedures associated with the P-5 program. Ms. Weigand testified generally about a set of forms previously filed by Mr. Chandler involving some of the leases at issue; production reported on the subject leases; and how the Commission handles good faith claim complaints. Mr. England testified as about TOGS's reported H-15 fluid level results for the past fifteen (15) years, and the process by which H-15 fluid level tests are generally conducted.

On April 12, 2013, the hearing resumed and the examiners heard testimony limited to the good faith claim allegations. Mr. Chandler presented testimony and evidence on behalf of TOGS. Ms. Christian testified about her 2011 complaint which alleged that TOGS does not have a good faith claim to operate the George Jones Lease. Also, testifying for Ms. Christian were: Ms. LaRue Decker, a landman and Mr. Andrew Hawley, who is familiar with the George Jones Lease.

**APPLICANT'S EVIDENCE**

Mr. Chandler provided the bulk of TOGS's evidence. Ms. Cecilia Jeanette Greene, who works for Mr. Chandler, testified briefly about TOGS's efforts to attempt to transfer some of the wells at issue to another company owned by Chandler. Mr. Chandler acknowledged that of the four leases at issue, only one complies with the SWR 15 requirement that operators terminate electric

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<sup>1</sup> A.R. Loden -C- (#06861) Lease, George Jones (#07555) Lease, Calvin Young (#08662) Lease, and Camp A&B (#07695) Lease

service to a well's production site after 1-year of inactivity.<sup>2</sup> Mr. Chandler testified the George Jones, Calvin Young, and Camp A&B leases all have electric service. He testified in more detail about the violations alleged in Staff's 90-day letter for each lease listed below. Specifically:

LEASE #1: A.R. LODEN -C- (#06861)

H-15

Mr. Chandler's testimony acknowledged existing H-15 violations on the A.R. Loden -C- Lease. He stated he would like to place the inactive wells back into production, but he has not been able to because of difficulty in getting electric service out to the well sites. Chandler asserted he tried to get into compliance with HB 2259 (SWR 15) by attempting to transfer the wells on the A.R. Loden -C- Lease to one of his other companies, Acirema. However, the Commission has not granted his request to transfer the wells due to the pending outcome of this hearing. Mr. Chandler claimed he would be able to bring the A.R. Loden -C- Lease into compliance if TOGS was given an additional six (6) months time.

Mr. Chandler acknowledged the H-15 fluid levels reported for the A.R. Loden -C- Lease were failing results because they were not 250 feet from the base of the useable quality water contrary to Commission rules.

LEASE #2: GEORGE JONES (#07555)

Good Faith Claim

Mr. Chandler presented ten (10) exhibits in support of TOGS's good faith claim to operate the George Jones Lease. The George Jones 1930 base lease was executed on November 30, 1930. The base lease executed by Mrs. Callie Jones (the wife of George Jones) and eleven (11) other individuals, who conveyed their mineral interests to Dr. E.E. Terry and W.M. Langston. The base lease included 100 acres of the G.W. Hooper Survey in Gregg County and contained the standard "held by production" clause, which allows the lessee to continue operating on the property as long as it is producing a minimum paying amount of oil or gas.

TOGS offered six (6) assignments of working interests in a portion of the George Jones base lease as proof of its good faith claim to operate. The first assignment was executed in February 2000 by Gene Powell, et. al. and granted to Energy 2000, Inc., all rights to the North 20 acres of the 40.46 acres tract out of the G.W. Hooper Survey which is part of the original 100 acre George Jones Lease. This assignment contained a horizontal severance and transferred: "Insofar and only insofar as said lease covers rights from the surface of the earth down to the base of the Woodbine formation in the North 20 acres of the 40.46 acre tract out of the G.W. Hooper Survey." TOGS's next five assignments offered into evidence transferred this same interest. The final assignment submitted assigned to TOGS its interest in the George Jones Lease and was executed on January 1, 2005.

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<sup>2</sup> Tex. Nat. Res. Code §89.029(a)(1) and SWR 15(f)(2)(A).

TOGS next presented evidence demonstrating that parts of the George Jones (#07555) Lease are included in gas unitization for the Stuckey-Thrasher Gas Unit executed on January 24, 1994. Paragraph 11 of Exhibit "A" to the Declaration of Unitization lists the George Jones (#07555) Lease in the unitization. While the third paragraph to the Declaration appears to limit the formation to include "from 100' below the base of the Woodbine Formation found at approximately 3,625' to 100 feet beneath the base of the Cotton Valley Sand Formation at approximately 10,715' . . ."; the Declaration contains a clause which states: "the production of gas and other products from the pooled interval from a gas well on any part of said unit acreage shall constitute production of such products from all of the leases contained in such unit."

Mr. Chandler demonstrated the Stuckey-Thrasher gas unit has been consistently producing from February 1998 to the present by submitting Commission database production records. TOGS also submitted late-filed exhibits demonstrating pooling authority for the George Jones Lease.

H-15

TOGS presented no specific testimony regarding the H-15 fluid level violations for the George Jones Lease. Instead, Mr. Chandler stated that for all wells out of H-15 compliance he would like to place the wells back into production and just needed more time to come into compliance.

LEASE #3: CAMP A&B (#07695)

H-15

TOGS's testimony as to the current status of the H-5 tests for the Camp A&B Well, No. 1A was limited. Mr. Chandler stated he attempted to get into compliance with HB 2259 (SWR 15) by attempting to transfer the well on the Camp A& B Lease to Acirema, one of his other companies. Like the A.R. Loden -C- Lease, the Commission has not approved the transfer of the well due to the pending outcome of this hearing.

LEASE #4: CALVIN YOUNG (#08662)

Good Faith Claim

TOGS presented a notebook of twelve (12) exhibits in support of its good faith claim to operate the Calvin Young Lease. The base lease executed in May 1927 conveyed from Calvin V. Young and his wife, Callie Young, to S.E. Gray 393-acres located in Rusk County, Texas. A copy of a 2001 lease assignment containing acreage from the Calvin Young 393-acre lease was admitted. This same acreage was subsequently assigned to TOGS. The Calvin Young Lease, and the subsequent assignments, all contain the standard "held by production" language common within the oil and gas industry. Commission records demonstrated continuous production from the lease from 1997 to the present.

**STAFF'S EVIDENCE**

LEASE #1: A.R. LODEN -C- (#06861)

H-15

The Staff's testimony regarding TOGS's H-15 test violations for the A.R. Loden -C- Lease Wells Nos. 4, 5, 6, 8, 10, 11, and 12, demonstrated no history of H-15 compliance. H-15 well fluid level testing (pursuant to SWR 15) is conducted to determine whether a well has a potential to impact groundwater. A failing H-15 fluid level test indicates a well poses a significant risk of polluting groundwater. A passing H-15 fluid level test result must demonstrate a fluid level in the well is 250 feet or more below the base of useable quality water.

Mr. Mark England presented a spreadsheet of H-15 results reported by TOGS. Mr. England compiled the spreadsheet after noticing that for numerous years TOGS's reported passing H-15 results showing the exact same fluid level year after year. Such a consistent H-15 well fluid level from year to year is near impossible to obtain given a variety of well and reservoir factors. Mr. England testified occasionally district staff require a "must witness" H-15 test be conducted under the supervision of Commission district staff. When TOGS fluid level tests have been witnessed by Commission staff the majority have had failing H-15 fluid level results.

The H-15 reported results for the A.R. Loden -C- wells indicated they were still out of compliance. The spreadsheet showed that in 2012 there were no H-15 fluid level tests reported for the seven wells at issue on this lease and all re-tests conducted in 2011 failed to meet H-15 standards. Additionally, for most wells on the lease, the same H-15 levels were reported for the previous five years. Yet, the likelihood of a well having the exact same H-15 test results year after year is impossible.

With regard to the A.R. Loden -C- Lease, Well No. 4, TOGS reported H-15 test fluid level results for the years 2006 to 2010 were the exact same number for all 5 years - 2363 feet from surface. The Commission witnessed H-15 fluid level test for 2011 showed fluid levels were actually only 749 feet from the surface - a failing result. TOGS did not report an H-15 fluid level test in 2012.

For the A.R. Loden -C- Lease, Well No. 5, TOGS did not report H-15 levels for five years - from 2006 to 2010. The Commission witnessed H-15 fluid level test for 2011 was 1365 feet from the surface - a failing H-15 test fluid level result. TOGS did not report an H-15 fluid level in 2012.

For the A.R. Loden -C- Lease, Well No. 6, from 2006 to 2010 TOGS reported the exact same fluid level for all 5 years - 1512 feet from surface. The Commission witnessed H-15 fluid level test conducted by TOGS for 2011 found the fluid level to be only 266 feet from the surface - a failing H-15 test fluid level result. TOGS did not report an H-15 fluid level test in 2012.

For the A.R. Loden -C- Lease, Well No. 8, TOGS reported the exact same H-15 fluid level results for five years from 2006 to 2010 - 2105 feet from surface. When the Commission witnessed

the H-15 fluid level test in 2011, the fluid level was actually only 749 feet from the surface, another failing H-15 fluid level test result. TOGS did not report an H-15 fluid level test in 2012.

For the A.R. Loden -C- Lease, Well No. 10, TOGS reported the exact same H-15 test fluid level for five years from 2006 to 2010 - 1797 feet from surface. When the Commission witnessed the H-15 fluid level test in 2011, the fluid level in the well was only 603 feet from the surface and the well failed the H-15 fluid level test. TOGS did not report an H-15 fluid level test in 2012.

For the A.R. Loden -C- Lease, Well No. 11, TOGS reported identical H-15 fluid level test results fluid level for five years from 2006 to 2010 - 1991 feet from surface. The Commission witnessed H-15 fluid level test for 2011 was only 452 feet from the surface - a failing H-15 result. TOGS failed also to report an H-15 fluid level test in 2012.

Finally, for the A.R. Loden -C- Lease, Well No. 12, TOGS reported identical H-15 test fluid level results for the years 2006 to 2010 - 1814 feet from surface. The Commission witnessed H-15 fluid level test conducted by TOGS in 2011 showed fluid levels only 781 feet from the surface - another failing H-15 test fluid level result. TOGS failed to report an H-15 fluid level test in 2012.

LEASE #2: GEORGE JONES (#07555)

Good Faith Claim

Staff did not present evidence or testimony regarding whether or not TOGS holds a good faith claim to operate the George Jones Lease.

H-15

Staff's evidence demonstrated TOGS's actions regarding H-15 testing on the George Jones Lease mirrored the A.R. Loden -C- Lease. Specifically, the reported H-15 fluid levels reported by TOGS for the George Jones Lease, Well No. 1 for the years 2006 to 2011 were identical for all 6 years - 1791 feet from surface. When Commission staff witnessed the TOGS H-15 test in 2012, the fluid level in the well was actually only 1243 feet below the surface and the well failed the H-15 test. Similarly, TOGS reported identical H-15 fluid level test result for Well No. 2, for six years from 2006 to 2011 - 1845 feet from surface. When the Commission witnessed TOGS's testing, the H-15 fluid level test for 2012 was actually 1323 feet from the surface, a failing result.

The evidence concerning the remaining two wells on the George Jones Lease followed the well-established fact pattern. TOGS reported identical fluid levels for the six years from 2006-2011 for Well Nos. 3 and 8. These unwitnessed tests reflected passing fluid levels indicating the wells did not pose a threat to water resources. However, in 2012 when the Commission required TOGS to conduct the tests under Commission supervision, both wells showed much higher fluid levels and failed the H-15 tests. In fact, the fluid level in Well No. 3 was found to be only one foot from the surface and the Well No. 8 fluid level was actually 1194 feet from the surface, also a failing result.

LEASE #3: CAMP A&B (#07695)

H-5

The Staff's evidence on the status of the H-5 test violation for the Camp A&B Lease, Well No. 1A indicated the well is still out of compliance as of the date of the hearing. Specifically, TOGS's H-5 test was due April 2009 and has still not been performed.

LEASE #4: CALVIN YOUNG (#08662)

Good Faith Claim

Staff presented no evidence controverting TOGS's assertion of a good faith claim to operate the Calvin Young Lease.

**PROTESTANT DEBRA CHRISTIAN'S EVIDENCE**

LEASE #2: GEORGE JONES (#07555)

Good Faith Claim

Ms. LaRue Decker, a landman testifying for Ms. Christian, presented a 1990 assignment from Amoco Production Company to Gene Powell Investments. This assignment transferred a portion of the George Jones Lease: "Insofar and only insofar as said lease covers rights from the surface of the earth down to the base of the Woodbine formation in the North 20 acres of the 40.46 acre tract out of the G.W. Hooper Survey." Ms. Decker also submitted a "run sheet" and a flow chart containing a list of all instruments filed of record in the courthouse in Gregg County pertaining to the George Jones Lease. However, she did not testify about the details of either the run-sheet or flow chart, nor did she testify as to any conclusion regarding the lease's current status.

The Protestant presented two other witnesses, Mr. Andrew Hawley and Ms. Debra Christian. The bulk of their testimony was outside of the scope of the hearing. They discussed the general conditions on the George Jones Lease well sites, the family history of Mr. George Jones and his heirs, and some of their personal interactions with Mr. Chandler. Ms. Christian testified she owns the surface estate covering the George Jones Lease and she pays taxes on the surface estate.

**EXAMINERS' OPINION AND DISCUSSION**

The examiners recommend the renewal of TOGS's P-5 (Operator No. 861181) be DENIED. The evidence supports the conclusion that TOGS failed to meet its burden of proof in establishing compliance with SWR 15(g) by failing to conduct passing H-15 tests on numerous inactive wells; thereby preventing 16 TAC §14(b)(2) approval as required pursuant to 16 TAC §3.15(d).

As a preliminary matter, TOGS challenged the standing of Ms. Christian to protest TOGS's renewal of its P-5. While Ms. Christian claimed to have an interest in the surface estate covering the George Jones lease acreage, claimed to be a trustee for some of the George Jones heirs, and testified she paid the taxes on the land covering the lease, her actual ownership in the lease or surface estate covering the lease is not required.<sup>3</sup> Ms. Christian appeared as an interested party to the proceedings and as such, she was granted such designation.

**Good Faith Claim**

In general, Statewide Rule 15(a) defines a "good faith claim" as a factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate. The Texas Supreme Court recognized in good faith claim challenges brought before the Commission the applicant need only make a "reasonably satisfactory showing of a good-faith claim of ownership in the property, the mere fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit. . .".<sup>4</sup> The Third Court of Appeals in relying on *Magnolia* noted ". . .while a permit applicant is not required to prove title or right of possession in the property affected by the permit, and the [C]ommission has no power to decide that question, the applicant nonetheless must make "a reasonably satisfactory showing of a good-faith claim of ownership" in the property."<sup>5</sup> Here, TOGS demonstrated a good faith claim to operate the George Jones (#07555) Lease and the Calvin Young (#08662) Lease.

**George Jones (#07555) Lease:**

TOGS's submittal of the original base lease and assignments of the relevant portions of the base lease from 2000 to 2005; its late-filed evidence of pooling authority; the declaration of gas unitization; and historical production records demonstrate a good faith claim to operate under the George Jones Lease. No controverting evidence was presented to dispute the base lease, the assignments, the pooling authority amendments for the lease, the declaration of gas unitization, or the production data for the relevant gas lease presented by TOGS.

While Protestant's evidence demonstrated a complicated lease and assignment history, no evidence submitted controverted TOGS's "reasonably satisfactory showing of a good-faith claim of ownership." Protestant argued the base lease did not contain pooling authority, however TOGS filed evidence of pooling authority in filing the pooling amendments. Additionally, Protestant argued that

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<sup>3</sup> Ms. Christian did not to present actual evidence of any ownership interest in the George Jones Lease or surface estate covering the lease, held personally or by any other party she claimed to represent.

<sup>4</sup> *Magnolia Petroleum Co. v. R.R. Comm'n of Tex.*, 170 S.W.2d 189, 191 (Tex. 1943).

<sup>5</sup> *Rosenthal v. R.R. Comm'n of Tex.*, No. 03-09-00015-CV, 2009 WL 2567941 (Tex. App.—Austin, Aug. 20, 2009, pet. denied) (mem. op.).

because TOGS received its lease interest in the George Jones Lease from the surface down to the Woodbine, and the Stuckey-Thrasher gas lease covers production “from 100' below the base of the Woodbine Formation found at approximately 3,625' to 100 feet beneath the base of the Cotton Valley Sand Formation at approximately 10,715 feet,” TOGS failed to demonstrate the George Jones Lease has been held by production from the pooled Stuckey-Thrasher gas unit. Protestant’s argument is essentially: TOGS’s interest in the George Jones Lease is no longer held by production since the pooled interest does not contribute to the productive formation of the Stuckey-Thrasher Gas Unit. However, the Declaration states: “the production of gas and other products from the pooled interval from a gas well on any part of said unit acreage shall constitute production of such products from all of the leases contained in such unit.” Arguments regarding the validity of a lease and its terms are outside of the Commission’s jurisdiction. Therefore, based on the evidence presented, the examiners conclude the George Jones Lease has been held by production under pooled production from the Stuckey-Thrasher Gas Unit.

Final determinations of the validity of a lease (or assignments of a lease) are not within the jurisdiction of the Commission. An operator is not mandated to prove the absolute validity of the base lease or subsequent transfers and assignments from the base lease forward. An operator is only required to demonstrate a reasonable good faith claim. TOGS provided: a copy of its base lease for the George Jones Lease; subsequent assignments of relevant portions of that lease; pooling authority; unitization of the lease which was included in the Stuckey-Thrasher gas unit; and proof of continuous production from the gas unit. No evidence indicated a lapse in production for the unitized gas lease (the Stuckey-Thrasher Gas Unit). No evidence presented disputed the base lease nor the assignments presented. Therefore, TOGS has a good faith claim to operate the George Jones (#07555) Lease.

*Calvin Young (#08662) Lease:*

TOGS presented the base lease; subsequent assignments; and historical production records, as sufficient evidence of its good faith claim to operate the Calvin Jones Lease. No evidence presented by Staff or the Protestant challenged this evidence. Therefore, TOGS has shown a good faith claim to operate the Calvin Young (#08662) Lease.

*Failure to perform required H-15 well integrity tests*

The evidence presented by Staff, as well as the Applicant’s own testimony, demonstrates TOGS failed to comply with Commission rules regarding H-15 fluid level testing. The evidence presented by Staff demonstrated that TOGS reported the exact same H-15 test fluid level results for multiple years for many of its wells. These wells when re-tested during a Commission witnessed test all had failing H-15 test fluid levels. TOGS consistently incorrectly reported its H-15 fluid level results for numerous years. TOGS also failed to conduct the required H-5 test on Well 1-A, on the Camp A&B Lease. Further, TOGS admitted it had not shut off electricity to inactive wells as required by Statewide Rule 15(f)(2)(a).

The examiners conclude TOGS failed to comply with the inactive well requirements of Statewide Rule 15 (16 TAC §3.15). The testimony and evidence submitted demonstrates TOGS failed to resolve Field Operations H-15 violations; thereby, preventing 16 TAC 3.14(B)(2) approval. Accordingly, the examiners recommend that the Organization Report, Form P-5, for TOGS Energy, Inc., be denied.

**FINDINGS OF FACT**

1. Notice of this hearing was given to all affected persons at least ten days prior to the date of hearing.
2. TOGS failed to conduct passing H-15 well integrity tests for for the A.R. Loden -C- (#06861) Lease Wells Nos. 4, 5, 6, 8, 10, 11, and 12, for the 2011 reporting year.
3. TOGS failed to conduct passing H-15 well integrity tests for for the A.R. Loden -C- (#06861) Lease Wells Nos. 4, 5, 6, 8, 10, 11, and 12, for the 2012 reporting year.
4. TOGS failed to terminate electrical service to the George Jones (#07555), Calvin Young (#08662) and Camp A&B (#07695) Leases, all of which have been inactive for more than one year and remain inactive.
5. TOGS demonstrated a good faith claim to operate under the George Jones (#07555) Lease.
6. TOGS demonstrated the George Jones (#07555) Lease has been held by production through production on the pooled Stuckey-Thrasher Gas Unit (#167387) since 1998.
7. TOGS failed to conduct passing H-15 well integrity tests for the George Jones (#07555) Lease, Well Nos. 1, 2, 3, and 8, for the 2012 reporting year.
8. TOGS failed to report a H-5 well fluid level test since 2009 for the Camp A&B (#07695) Lease, Well No. 1A.
9. TOGS demonstrated a good faith claim to operate under the Calvin Young (#08662) Lease.
10. TOGS demonstrated prima facie evidence that there has been continuous production from the same base lease pooled with the Calvin Young (#08662) Lease from 1997 to the present

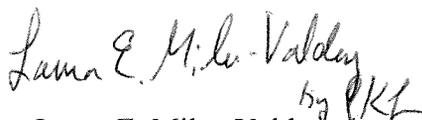
**CONCLUSIONS OF LAW**

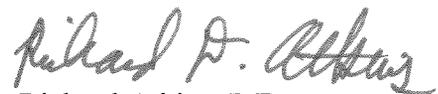
1. Proper notice was issued as required by all applicable codes and regulatory statutes.
2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.
3. TOGS failed to comply with 16 TAC §3.15(g) in performing and passing H-15 well integrity tests for the A.R. Loden -C- (#06861) Lease Wells Nos. 4, 5, 6, 8, 10, 11, and 12.
4. Pursuant to 16 TAC §3.15(e)(3) TOGS has a good faith claim to operate under the George Jones (#07555) Lease.
5. TOGS failed to comply with 16 TAC §3.15(g) in performing and passing H-15 well integrity tests for the George Jones (#07555) Lease, Well Nos. 1, 2, 3, and 8.
6. TOGS failed to comply with 16 TAC §3.15 in performing and reporting a H-5 well fluid level test since 2009 for the Camp A&B (#07695) Lease, Well No. 1A.
7. TOGS failed to comply with 16 TAC §3.15(f)(2)(A), which requires timely termination of electrical services to inactive leases, as to the George Jones (#07555), the Calvin Young (#08662), and the Camp A&B (#07695) Leases.
8. Pursuant to 16 TAC §3.15(e)(3) TOGS has a good faith claim to operate under the Calvin Young (#08662) Lease.

**EXAMINERS' RECOMMENDATION**

The examiners recommend that the renewal of the Organization Report (Form P-5) for TOGS Energy, Inc., (Operator No. 861181) be DENIED.

Respectfully submitted,

  
by   
Laura E. Miles-Valdez  
Legal Examiner

  
Richard Atkins, P.E.  
Technical Examiner