



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

**RULE 37 CASE NO. 0283304**  
**STATUS NO. 765200**  
**DISTRICT 03**

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**TO CONSIDER THE APPLICATION OF SUNDOWN ENERGY LP, FOR AN  
EXCEPTION TO STATEWIDE RULE 37 FOR ITS HARP LEASE, WELL NO. 1,  
WEIMAR, S. (WILCOX 9500 CHANNEL) AND WILDCAT FIELDS, COLORADO  
COUNTY, TEXAS**

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**HEARD BY:** Laura E. Miles-Valdez - Legal Examiner  
Paul Dubois - Technical Examiner

**APPEARANCES:**

**FOR APPLICANT:**  
George C. Neale, Attorney  
Tim Beck, Geologist  
Rick Johnston, Consulting Engineer  
Cameron Rice, Land Manager

**APPLICANT:**  
Sundown Energy LP

**FOR PROTESTANTS:**  
Carl Dawson, Attorney  
Brenda Bell

**REPRESENTING:**  
Brenda Bell and Heirs of Peyton and McKinnon

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

APPLICATION FILED:	June 21, 2013
NOTICE OF HEARING:	September 13, 2013
HEARING DATE :	November 5, 2013
PFD CIRCULATION DATE:	July 18, 2014

### STATEMENT OF THE CASE

Sundown Energy, LP ("Sundown" or "Applicant"), seeks an exception to the lease line spacing requirements of the field rules for the Weimar, S. (Wilcox 9500 Channel) and Wildcat Fields, in Colorado County, Texas. On June 21, 2013, Sundown made an application for a well permit for its Harp Lease, Well No. 1, Weimar, S. (Wilcox 9500 Channel) and Wildcat Fields, Colorado County, Texas. The proposed well is a directional "S" well and the bottom hole would be 183 feet from the lease line. Sundown Energy claims that the proposed non-regular location is necessary to prevent confiscation due to the unusual sub-surface geology and to protect correlative rights.

The surface location of the proposed well is 1,995 feet from the west line and 820 feet from the north line of the lease. The surface location is 5,995 feet from the west line and 4,400 feet from the north line of the J. Thompson Survey. The terminus is 183 feet from the east line and 467 feet from the south line of lease and 6,785 feet from the west line and 6,600 feet from the north line of the J. Thompson Survey. The directional "S" well proposed will be drilled vertically to set surface casing, directionally drilled over to the approximate bottomhole location and then vertically drilled to penetrate the target sands vertically. The proposed well is to be drilled to an approximate depth of 9,900 feet.

Field rules for the Wildcat Field are Statewide rules, which provide for 467 feet from the nearest lease line and 1200 feet between wells on the same lease in the same field and reservoir on 40.0 acre proration units. Field rules for the Weimar, S. (Wilcox 9500 Channel) Field are the Gas Statewide Rules, which provide for 467 feet from the nearest lease line and 1200 feet between wells on the same lease in the same field and reservoir on 40.0 acre proration units.

A Rule 37 exception is needed for the proposed Harp Lease, Well No. 1, because the bottomhole location of the well proposed is 183 feet to the east lease line. Carl Dawson, representing the heirs of Peyton and McKinnon, who own the "Brenda Bell" unleased tract located 183 feet from the proposed well, appeared at the hearing in protest.

### DISCUSSION OF THE EVIDENCE

#### Sundown Energy, LP.

Sundown Energy seeks an exception to the lease line spacing requirements of the field rules for the Weimar, S. (Wilcox 9500 Channel) and Wildcat Fields, in Colorado County. Sundown's proposed well bottomhole location is closer than 183 feet to the east lease line, which is closer than allowed by the field rules. Sundown Energy believes the requested exception is necessary to prevent confiscation of the hydrocarbons located under the Harp Lease due to the unusual sub-surface geology of the targeted formation and. Further, because of the sub-surface geology beneath the Harp Lease, there is no regular location that would access the target Wilcox 9500 channel sand (referred to as the "Weimar, S." by the RRC) formation. *See Exhibit I - Copy of Plat Map. (Attached).* The

Harp Gas Unit is approximately 352 acres and is located within 4.7 miles southeast of Weimar, Texas.

Testifying on behalf of Sundown Energy was Mr. Tim Beck, a petroleum geologist. The proposed Harp Gas Unit is 352 acres and the surface location of the proposed well is located west of Protestants's unleased tract, referred to as the "Brenda Bell tract". Sundown Energy proposes to drill a directional well to the southeast---toward the Brenda Bell tract---with a bottom hole location terminating 183 feet from the lease line. Mr. Beck explained the proposed well will target the Wilcox 9500 sand, the productive sand located in the Weimar, S. Field. According to seismic data presented in a well log cross-section of nearby wells, there is a shale channel from 9,600 ft to approximately 9,850 ft. Mr. Beck testified that the shale channel extends east toward the proposed well and ends briefly past the 467 ft regular lease-line boundary. Therefore, any regular 467 ft well location would encounter this non-productive shale channel.

Further, Mr. Beck testified Sundown has drilled six wells targeting the Wilcox 9500 sand, which has helped demarcate for Sundown, the shale channel characteristics. Based on this data, Sundown would encounter the target sand at a subsurface elevation of approximately 9,248 feet. This location would allow Sundown to drain the attic reserves held in the targeted formation. According to Mr. Beck's testimony, there is no regular location on the Harp lease, nor on the Brenda Bell land, which would access the attic reserves held in the targeted formation. Mr. Beck acknowledges that the proposed well will drain reserves under portions of the Brenda Bell tract.

Next, Mr. Rick Johnston, a petroleum engineer testified as to the recoverable gas under the Harp Unit to be 125 million MCF of gas, which he characterized as a substantial amount of gas. Further, Mr. Johnston testified that the proposed location is a reasonable location which would allow Sundown to recover the 125 million MCF of reserves. He stated that there is a better location, which would gain structure and thickness into the targeted formation. However, this other location would require moving the proposed well more to the southeast and therefore, closer to the Brenda Bell tract.

Mr. Johnston testified that Sundown applied for the "Wildcat Field"<sup>1</sup> exception in case they encounter some stray sands shallower than the proposed well while drilling the proposed well. Sundown would want to produce any productive Wildcat field sands it encounters while drilling for the targeted Wilcox, S. 9500 sands.

Next, Mr. Cameron Rice, Sundown land manager, testified as to Sundown's leasing attempts for the Brenda Bell tract. In July 2008, Sundown first contacted the mineral owners of the Brenda Bell tract, attempting to lease their minerals. Mr. Rice stated that Sundown has tried to lease the Brenda Bell tract through contacts made in September 2008, December 2010, January 2011, February 2011, April 2011, and March of 2012. In early 2012, Mr. Rice learned of unresolved "title issues" with the Brenda Bell tract and sometime after this Sundown stopped leasing negotiations

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<sup>1</sup> A "Wildcat Field" is a formation in which the reservoir is not currently recognized as a "field" and therefore, does not have Commission field rules.

with the Brenda Bell tract owners. While unable to lease the Brenda Bell tract and because of other lease obligations, Sundown decided to precede with the current Rule 37 exception application.

### **PROTESTANTS BRENDA BELL AND HEIRS OF PEYTON AND MCKINNON**

Protestant Brenda Bell owns a portion of the unleased adjacent "Brenda Bell Et. Al." tract, which is compromised of two tracts from the McKinnon estate and the Henry Peyton estate. Ms. Bell testified that there are currently 31 heirs who have an interest in the McKinnon estate and the Henry Peyton estate tracts; however, legal title has not been transferred in either tract for approximately 100 years. As a result, applications of heirship have been filed with a probate court, which would legally confer title to the rightful heirs for the McKinnon estate and the Henry Peyton estate tracts. Ms. Bell stated 27 of the 31 heirs have agreed to consolidate the McKinnon estate and the Henry Peyton estate tracts and those 27 individuals are willing to lease their interests in the unleased McKinnon estate and Henry Peyton estate tracts.

### **EXAMINERS' OPINION**

This a Rule 37 exception case that is based on prevention of confiscation. An owner of oil and gas is entitled to an opportunity to recover the reserves underlying his tract, and any denial of that opportunity amounts to confiscation. *Atlantic Refining Co. v. Railroad Commission*, 346 S.W.2d 801 (Tex. 1961); *Imperial American Resources Fund, Inc. v. Railroad Commission*, 557 S.W.2d 280 (Tex. 1977). An applicant seeking an exception to Rule 37 based on prevention of confiscation must prove that granting of the requested exception permit is necessary to afford the mineral owners a reasonable opportunity to recover their fair share of hydrocarbons currently in place under the subject lease, or the equivalent in kind. The applicant must show that: (1) it is not possible to recover its fair share from wells drilled at regular locations; and (2) the proposed irregular location is reasonable.

The examiners are of the opinion that approval of the Rule 37 exception requested by Sundown Energy is necessary to prevent confiscation. There is no dispute as to the technical data presented by Sundown: (1) it is not possible to recover its fair share from a well drilled at regular locations; and (2) the proposed irregular location is reasonable. Further, there was no dispute that a substantial amount of reserves, approximately 125 Million MCF, are estimated to be in and under the Harp tract, which would not otherwise be recovered. There is no regular location on the Harp Lease where the targeted Weimar, S. (Wilcox 9500) sand reserves can be accessed. Little evidence was presented regarding the necessity of an exception for the Wildcat Field. However, Sundown's request for a Wildcat Field exception to allow them to produce any incidental hydrocarbons encountered while drilling for the targeted Weimar, S. (Wilcox 9500) Field is reasonable.

The crux of the controversy between the parties concerns whether or not Sundown should have delayed its application until the Protestants were able to resolve heirship and then offer to lease the unleased Brenda Bell et. at. tract upon resolution of the heirship proceedings.

The examiners conclude Sundown Energy has proven that its proposed location for the Harp Unit Well No. 1 is reasonable as the least irregular location that will still enable Sundown to recover its fair share of the recoverable reserves beneath its tract. Further, the proposed location would allow for greater recovery of hydrocarbons in the attic of the targeted structure. Wells must be drilled high on structure in this reservoir to maximize recovery of reserves in the attic of the targeted feature. Sundown's proposed location is reasonable even though it is only 183 feet from the Brenda Bell Et. Al. tract. Positioning the well at this location is necessary to place the well high on structure and recover the current reserves beneath the Harp Lease.

The examiners recommend that Sundown Energy, LP, be granted a Rule 37 exception for the Harp Lease, Well No. 1, Weimar, S. (Wilcox 9500 Channel) and Wildcat Fields, Colorado County, Texas.

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 this hearing was provided to all affected persons as defined by Statewide Rule 37(a)(2) and 37(a)(3).
2. Sundown Energy, LP ("Sundown" or "Applicant"), seeks an exception to the lease line spacing requirements of the field rules for the Weimar, S. (Wilcox 9500 Channel) and Wildcat Fields, in Colorado County, Texas because the bottomhole location of the well proposed is closer than 183 feet to the east lease line, which is closer than allowed by the field rules.
3. The surface location of the proposed well is 1,995 feet from the west line and 820 feet from the north line of lease. The surface location is 5,995 feet from the west line and 4,400 feet from the north line of the J. Thompson Survey. The terminus is 183 feet from the east line and 467 feet from the south line of lease and 6,785 feet from the west line and 6,600 feet from the north line of the J. Thompson Survey. The proposed well is to be drilled to an approximate depth of 9,900 feet.
4. Field rules for the Wildcat Field are Statewide rules, which provide for 467 feet from the nearest lease line and 1200 feet between wells on the same lease in the same field and reservoir on 40.0 acre proration units. Field rules for the Weimar, S. (Wilcox 9500 Channel) Field are the Gas Statewide Rules, which provide for 467 feet from the nearest lease line and 1,200 feet between wells on the same lease in the same field and reservoir on 40.0 acre proration units.
5. A Rule 37 exception is needed for the proposed Harp Lease, Well No. 1, to prevent confiscation of the reserves beneath the Harp Lease. Sundown Energy demonstrated that:

- a. it is not possible to recover its fair share from a well drilled at regular locations;
  - b. the proposed irregular location is reasonable because it is the least irregular location that will still enable Sundown to recover its fair share of the recoverable reserves beneath its tract;
  - c. the estimated recoverable gas beneath this lease is estimated at 125 million mcf; and
  - d. the proposed well will target the Wilcox 9500 sand, the productive sand located in the Weimar, S. Field.
6. A Rule 37 exception is needed for the proposed Harp Lease, Well No. 1, because the bottomhole location of the well proposed is 183 feet to the east lease line.
  7. The application is opposed by Protestant Brenda Bell, who owns an interest in a portion of the unleased adjacent "Brenda Bell Et. Al." tract, which is comprised of two tracts from the McKinnon estate and the Henry Peyton estate. The McKinnon estate and the Henry Peyton estate tracts are subject to unadjudicated heirship determinations, because legal title to the tracts has not been transferred to the proper heirs for approximately 100 years.
  8. Wells must be drilled high on structure in this reservoir to maximize recovery of reserves in the attic of the targeted feature.
  9. Seismic data presented indicates there is a shale channel which appears from 9,600 ft to approximately 9,850 ft. This shale channel extends east toward the proposed well and ends briefly past the 467 ft regular lease-line boundary. Any regular 467 ft well location would encounter this non-productive shale channel.
  10. The recoverable gas beneath this lease is estimated to be 125 million mcf. Protestants did not provide any contrary estimates of the amount of gas in place or currently recoverable gas beneath the Harp Lease or under the Brenda Bell tract.
  11. There is no regular location on the Harp Lease where the proposed Harp Well No. 1 would encounter the target reservoir. A regular location 467 feet from the east line and 467 feet from the south line of the lease, would not encounter the target fields.
  12. Sundown's proposed location for the Harp Well No. 1 is reasonable.
    - a. Sundown's proposed location for the Harp Lease Well No. 1 targets a high structural position in the attic of the structure located under the Harp Lease.
    - b. Drilling the Harp Well No. 1 at the location proposed by Sundown Energy will maximize recovery of reserves from beneath the Harp Lease.

- c. There is no regular location on the Harp Lease where the proposed Harp Well No. 1 would encounter the target sand formation.
  - d. The proposed location is the least irregular location that will still enable Sundown to recover its fair share of the recoverable reserves beneath its tract.
13. Sundown Energy did not present geologic evidence regarding the Wildcat Field. Sundown's request for a Wildcat Field exception to allow them to produce any incidental hydrocarbons encountered while drilling for the targeted Wilcox, S. 9500 Field is reasonable in light of the fact that Sundown is targeting the Weimar, S. (Wilcox 9500 channel) field.

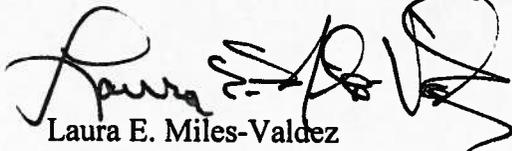
**CONCLUSIONS OF LAW**

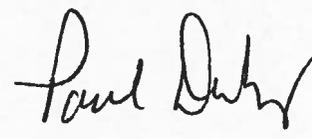
- 1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
- 2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.
- 3. Approval of a Rule 37 exception for the Harp Lease, Well No. 1, Weimar, S. (Wilcox 9500 Channel) and Wildcat Fields, in Colorado County, Texas is necessary to prevent confiscation and protect the correlative rights of mineral owners.

**RECOMMENDATION**

The examiners recommend that the application of Sundown Energy LP for a Rule 37 exception for the Weimar, S. (Wilcox 9500 Channel) and Wildcat Fields, in Colorado County, Texas be GRANTED to prevent confiscation.

Respectfully submitted,

  
Laura E. Miles-Valdez  
Legal Examiner

  
Paul Dubois  
Technical Examiner



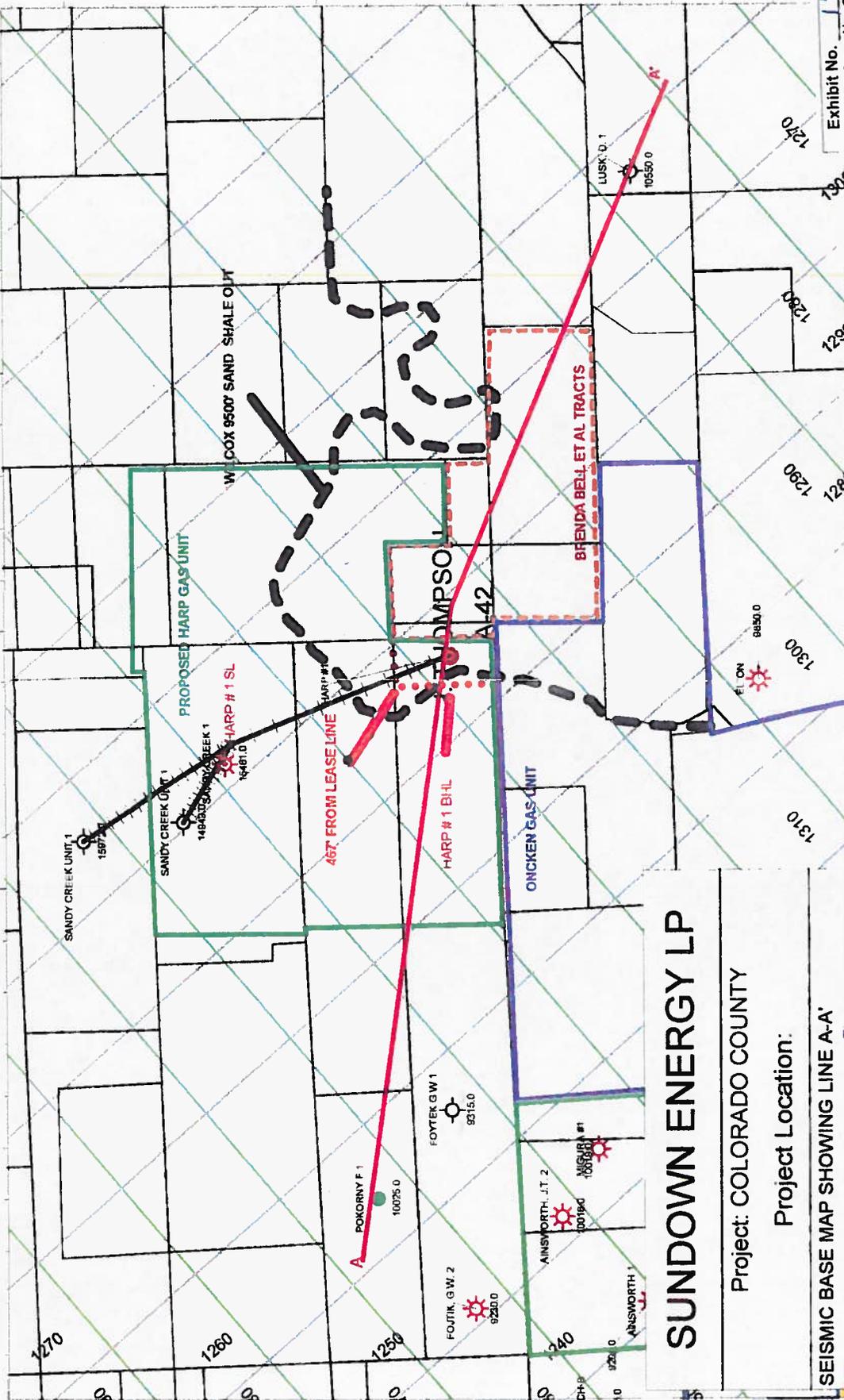
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Exhibit No. 0283304  
 Rule 37 Case No. 0283304  
 Date: November 5, 2013  
 Sundown Energy LP

**Rule 37 Case No.  
 0283304-765200  
 Proposal for Decision  
 Exhibit 1**

# SUNDOWN ENERGY LP

Project: COLORADO COUNTY

Project Location:

SEISMIC BASE MAP SHOWING LINE A-A'