



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 04-0288055

APPLICATION OF WALLIS ENERGY, INC. PURSUANT TO STATEWIDE RULE 58(d)(3) TO CONSOLIDATE THE ROWDEN-PEREZ (04673) LEASE, AMADO PEREZ (07863) LEASE, AMADO PEREZ "B" (11764) LEASE AND AMADO PEREZ "C" (11765) LEASE SUCH THAT THE LEASES ARE PRODUCED INTO A SINGLE TANK BATTERY WITHOUT SEPARATE MEASUREMENT, MALO SUENO (5550 SAND) FIELD, WEBB COUNTY, TEXAS.

APPEARANCES

FOR WALLIS ENERGY, INC.:

James S. Vreeland, Attorney at Law
Rex H. White, Jr., Attorney at Law
Mike W. Harvey, President, Wallis Energy, Inc.

FOR PROTESTANTS:

Joe Perez
Servando Leal
Margot Perez
Francine Rowden
Pete Leal
Christine Luttrell
Seline Chapa
Genaro Perez, Jr.

HEARING ON THE MERITS: May 12, 2014

HEARD BY: Michael R. Crnich, Legal Examiner
Karl Caldwell, Technical Examiner

PFD PREPARED BY: Terry J. Johnson, Legal Examiner

SUMMARY

Under authority of Statewide Rule 58(d)(3) [16 TEX. ADMIN. CODE § 3.58(d)(3)], Wallis Energy, Inc. (Wallis) requests permission to consolidate four Webb County oil leases, allowing production into a common tank battery without separate measurement. Protestants are royalty interest holders who oppose the consolidation. It is recommended that consolidation be approved.

APPLICANT'S CASE

Wallis is the record operator and sole working interest owner of the subject leases. The acreage assigned to these leases is covered by an April 6, 1950 base oil and gas lease. Subsequent litigation over the land resulted in a 1955 partition order that expressly declared the partition of the minerals to be subject to the base lease. In terms of Wallis' responsibility to the royalty interest holders, the base lease is a "community lease". A community lease arises where lessors of separate tracts include those tracts in a single oil and gas lease. As a result, and in the absence of an express provision to the contrary, the royalties payable under the lease have been pooled.¹ Because a community lease renders the protestants' interests in the subject leases functionally identical, the consolidation is warranted under Rule 58(d)(3).

PROTESTANTS' CASE

Joe Perez

Mr. Perez appeared on behalf of his father, Adrian Perez, Jr. Mr. Perez asserts that the consolidation should not be approved "based on Wallis Energy being unethical and not operating in good faith". Mr. Perez stated that royalties have either not been paid or not been paid correctly, that only one well produces oil, that Wallis has written hot checks, stolen 3,600 barrels of oil, made misrepresentations on its filings with the Commission, had its employees commit trespass on his property and that its operations pollute.

Servando Leal

Mr. Leal appeared on behalf of his mother, Virginia V. Leal. He stated that royalties were incorrect, there was "phantom production", Wallis lacks integrity and needs to be held accountable.

¹*Ruiz v. Martin*, 559 S.W.2d 839, 842 (Tex. App.—San Antonio 1977, writ ref'd n.r.e.)

Margot Perez

Ms. Perez stated that Wallis did not provide enough information and that the information it did provide was an “insult to our intelligence”.

Francine Rowden

Ms. Rowden stated that she was not in favor of consolidation, that the previous operator did not notify her as required before selling her lease to Wallis, that royalty payments are inconsistent, that Wallis used to keep the leases neat.

Pete Leal

Mr. Leal appeared on behalf of the Leal Family Irrevocable Trust. Mr. Leal stated that he still has a grudge about the hot checks but that he was willing to try and work something out on Wallis’ consolidation.

Christine Luttrell

Ms. Luttrell appeared on behalf of herself and her nephew, Luke Claffland. Ms. Luttrell stated that she was tired of fighting to get division orders and of trying to find out from Wallis the extent of her interest in the properties, and that she doesn’t like the way she has been treated by Wallis.

Selena Chapa

Ms. Chapa appeared on behalf of Eva Perez-Hernandez and Minerva Pena. Ms. Chapa stated that she was concerned about payment, that she has a difficult time communicating with Wallis, and that she was not going to be taken advantage of by Wallis.

Genaro Perez, Jr.

Mr. Perez stated that he has been waiting three years for Wallis to remove some light poles from the property and wants an honest operator that takes the royalty owners into account.

APPLICANT’S REBUTTAL

Mike Harvey, president of Wallis, testified that Wallis had been involved in several lawsuits with Joe Perez and in settlement of one of them, Mr. Perez had agreed to take over cleanup of the lease that was apparently involved in

the suit. Mr. Harvey stated that Mr. Perez denied him access to the property, so he did not know that the lease had not been cleaned up at the time Wallis filed its certification of cleanup.

Mr. Harvey disputed Mr. Perez' claim that Wells 2, 8 and 9 are not producing and asserted that they are in fact "very good wells". He further stated that wells 6, 9, 10 and 11 have been set up for production by gas lift.

With regard to the hot checks, Mr. Harvey testified that Wallis had suffered financial losses at the time, and what had happened was "unfortunate". Currently, he said, royalties are being paid into a suspense account because the royalty owners have not appointed an agent for receipt of payment despite a December 21, 2012 notice to them that an agent was necessary. "There's always been some—a portion of the Perez family that's always been unhappy," he said.

Mr. Harvey testified that consolidation of the four leases and commingling their production is necessary because placing extra tank batteries would be very expensive. Commingling production, he said, is necessary to get the final production out of the leases.

"And the only way to get the wells to run all the time is to communitize the gas or commingle the gas for the motors to run."

[. . .]

"But we need to be able to commingle all of that casinghead gas just to be able to have enough fuel and gas lift to run that thing."

Without consolidation, he said, the economic return from production would not justify the cost of operating the leases.

DISCUSSION AND RECOMMENDATION

On May 12, 2014, a hearing was convened, by Legal Examiner Michael R. Crnich, as the lead examiner, and Technical Examiner Karl Caldwell, to consider Willis' application. After the hearing was conducted, Examiner Crnich resigned from his position with the Commission. Consequently, the director of the hearings division assigned Legal Examiner Terry J. Johnson in replacement of Examiner Crnich. See 16 TEX. ADMIN. CODE § 1.121(c) (Replacement of Examiner).

Under Statewide Rule 58,² where mineral and royalty ownership in the properties are identical, the Commission may authorize an operator to consolidate two or more leases if the consolidation “will not cause waste, harm correlative rights or result in the circumvention of commission rules”.³ Although the record shows that these protestants have had a long and difficult relationship with Wallis and its predecessors, the evidence that is relevant to the pending application supports consolidation of the subject leases.

Waste, Correlative Rights and Circumvention of Rules

There is no evidence in the record that would justify a finding that consolidation of the subject leases would result in a circumvention of commission rules. Stated another way, the protestants failed to identify any commission rule that would be circumvented if the pending request is approved.

The record demonstrates that consolidation will neither cause waste nor harm correlative rights. To the contrary, the evidence shows that consolidation will prevent waste by facilitating the collection of the fuel that will be used to power the motors that are necessary to produce hydrocarbon reserves which would otherwise be abandoned as economically unrecoverable. Accordingly, production of these reserves inures directly to the benefit, not the harm, of protestants’ correlative rights.

Identity of Interest

Protestants’ predecessors in title owned separate tracts of land in Webb County. The record shows that as mineral estate lessors, they entered into a single 1950 oil and gas lease which included these separate tracts. Wallis argues, without credible challenge, that Texas law recognizes such an instrument as a “community lease” which, in the absence of an express prohibition, authorizes pooling of the royalties that are payable under the lease. An examination of the cited cases confirms this view. The leading case, *Ruiz v. Martin*⁴, unambiguously articulates that interpretation and has remained good law for 37 years.

² 16 TEX. ADMIN. CODE § 3.58 (Certificate of Compliance and Transportation Authority; Operator Reports)

³Id., §3.58(d)(3)

⁴ *Ruiz*, 559 S.W.2d at 842.

Protestants assert that the Amado Perez "B" Lease pays a royalty different from that of the other leases. Because of this differential, they argue that the community lease doctrine does not apply. This misconstrues the standard. The community lease doctrine arises when owners of *separate tracts* combine those tracts in a *single lease*. It is undisputed that protestants' predecessors have done so. And for purposes of Statewide Rule 58, the evidence supports the conclusion that mineral and royalty ownership of the leases is identical.

The examiners recommend that the Commission adopt the following findings and conclusions and enter a final order approving the requested consolidation.

FINDINGS OF FACT

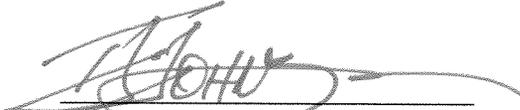
1. Wallis Energy, Inc. (Wallis) holds Operator Number 893997.
2. Wallis is the operator of record for the following leases in Webb County, Texas: Rowden-Perez (04673); Amado Perez (07863); Amado Perez "B" (11764); and Amado Perez "C" (11765).
3. Wallis seeks to consolidate the subject leases for production into a single tank without separate measurement pursuant to authority of Statewide Rule 58 [16 TEX. ADMIN. CODE 3.58(d)(3)].
4. Protestants' predecessors in title owned separate tracts of land in Webb County when, on or about April 6, 1950, they entered into a single oil and gas lease (Base Lease) that included these separate tracts.
5. The acreage assigned to the subject leases is covered by the Base Lease.
6. The Base Lease is a community lease that contains no express provision against pooling.
7. For purposes of Statewide Rule 58, the mineral and royalty ownership in the subject leases is identical in all respects.
8. Consolidation of the subject leases will allow the collection of sufficient casinghead gas to power gas-lift recovery for the involved wells.

9. If the subject leases cannot be consolidated, the economic return from production would not justify the cost of operation.
10. Consolidation of the subject leases will allow production of hydrocarbon reserves that would otherwise go unrecovered.
11. There is no evidence in the record to show that consolidation of the subject leases will result in the circumvention of Commission rules.
12. Consolidation of the subject leases will not cause waste.
13. Consolidation of the subject leases will not harm correlative rights.

CONCLUSIONS OF LAW

1. Resolution of the subject application is a matter committed to the jurisdiction of the Railroad Commission of Texas. Tex. Nat. Res. Code §81.051
2. As required by Statewide Rule 58, the application of Wallis Energy, Inc., to consolidate the Rowden-Perez (04673), Amado Perez (07863), Amado Perez "B" (11764) and Amado Perez "C" (11765) Leases in Webb County, is supported by a preponderance of the evidence and should be granted. 16 TEX. ADMIN. CODE § 3.58(d)(3)

RESPECTFULLY SUBMITTED on this the 8th day of
December, 2014.



TERRY J. JOHNSON
Hearings Examiner



KARL CALDWELL
Hearings Examiner