



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL AND GAS DOCKET NO. 01-0292902

THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY LP PURSUANT TO STATEWIDE RULE 32 FOR THE MORRILL RANCH LEASE (01-16035), EAGLEVILLE (EAGLE FORD-1) FIELD, MCMULLEN COUNTY, TEXAS

OIL AND GAS DOCKET NO. 02-0293280

THE APPLICATION OF BURLINGTON RESOURCES OIL & GAS COMPANY LP PURSUANT TO STATEWIDE RULE 32 FOR THE RUCKMAN RANCH UNIT (02-09731), EAGLEVILLE (EAGLE FORD-2) FIELD, DEWITT COUNTY, TEXAS

HEARD BY: Karl Caldwell – Technical Examiner
Cecile Hanna – Administrative Law Judge

PROPOSAL FOR DECISION PREPARED BY: Karl Caldwell – Technical Examiner
Randall Collins – Administrative Law Judge

PROCEDURAL HISTORY:

Request For Hearing:	October 3 & 14, 2014
Notice of Hearing:	October 21, 2014
Hearing Held:	November 19, 2014
Request for Additional Evidence:	December 22, 2014
Additional Evidence Received:	January 20, 2015
Request for Clarification of Evidence:	May 18, 2015
Clarification of Additional Evidence Received:	May 22, 2015
Letter to Staff:	July 10, 2015
Staff's Response Received:	August 7, 2015
Proposal for Decision Issued:	February 24, 2016

APPEARANCES:

APPLICANT :

Jamie Nielson
Hilary Gleitz

REPRESENTING:

Burlington Resources Oil & Gas Company LP

OBSERVERS:

George P. Morrill, III
Frank Morrill

Self; GP Morrill, II, Meredith Morrill.
Self

EXAMINERS' REPORT AND RECOMMENDATION**STATEMENT OF THE CASE**

On September 2, 2014, Burlington Resources Oil & Gas Company LP ("Burlington") received a Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or other Carrier Connection from the Commission, citing a violation of Statewide Rule 32¹ for failure to obtain a permit to flare/vent casinghead gas for the Morrill Ranch Lease, Lease No. 01-16035 ("Morrill Lease"). On October 1, 2014, Burlington filed a request for hearing to establish its compliance with Statewide Rule 32 for the Morrill Lease. Burlington argues that flaring activities on the subject lease are exempt from the permitting requirements of Statewide Rule 32.

On October 2, 2014 Burlington received a Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or other Carrier Connection citing a violation of Statewide Rule 32 for failure to obtain a permit to flare/vent casinghead gas for the Ruckman Ranch Unit, Lease No. 02-09731 ("Ruckman Unit"). On October 10, 2014, Burlington filed a request for hearing to establish its compliance with Statewide Rule 32 for the Ruckman Unit. The Examiners consolidated the Morrill Lease and Ruckman Unit dockets in a hearing on November 6, 2014.

The evidence in the record shows the monthly volumes of gas flared for the Morrill Lease and the Ruckman Unit exceed an average of 50 Mcf per day per lease. Based on the evidence, the Examiners conclude that the Applicant failed to show that the flared volumes are exempt pursuant to Statewide Rule 32. Therefore, the Examiners conclude that an exception to Statewide Rule 32 to flare casinghead gas on the Morrill Lease and the Ruckman Unit is required. The Examiners recommend granting Burlington a two-year permit to flare casinghead gas for the Morrill Lease and the Ruckman Unit.

APPLICABLE LAW

16 T.A.C. §3.32 Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes

(a)(3) Lease production facilities--Production, separation, treating, compression, flowlines, storage, and other production handling equipment employed on a lease in the production of gas, condensate, and oil.

¹ 16 Tex. Admin. Code § 3.32 (Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes).

(a)(4) Low pressure separator gas--Gas separated or liberated from a gas-liquid stream in a low pressure separation facility. Low pressure separation facilities include but are not limited to separators, treaters, free water knockouts, and other associated equipment.

(a)(5) Tank vapors--Gas which evolves from oil, condensate, or water when placed in a gunbarrel or storage tank.

(d) Exempt Gas Releases.

(1) Releases of gas that are not readily measured by devices routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants, such as meters, are not required by the commission to be reported or charged against lease allowable production and are not subject to the remaining requirements of this section. Releases of gas exempt from the requirements of this section under this paragraph include, but are not limited to, the following:

(A) tank vapors from crude oil storage tanks, gas well condensate storage tanks, or salt water storage tanks, including makeup gas for gas blanket maintenance;

(F) gas released at a wellsite during drilling operations and prior to the completion date of the well, including gas produced during air or gas drilling operations or gas which must be separated from drilling fluids using a mud-gas separator, or mud-degasser; or

(G) gas released at a wellsite during initial completion, recompletion in another field, or workover operations in the same field, including but not limited to perforating, stimulating, deepening, cleanout, well maintenance or repair operations.

(f) Gas Releases in Oil and Gas Production Operations.

(1) The following releases of gas resulting from routine oil and gas production operations are necessary in the efficient drilling and operation of oil and gas wells and are hereby authorized subject to the requirements of subsection (e) of this section. The released gas shall be measured or estimated in accordance with §3.27 of this title (relating to Gas To Be Measured and Surface Commingling of Gas) and reported and charged against lease allowable production.

(A) Gas may be released for a period not to exceed ten producing days after initial completion, recompletion in another field, or workover operations in the same field,

(E) Low pressure separator gas, not to exceed 15 mcf/d of hydrocarbon gas per gas well or 50 mcf/d of hydrocarbon gas per commission-designated oil lease or commingling point for commingled operations, may be released.

(2) The commission may grant an exception to the requirements or limitations of this subsection subject to the requirements of subsection (h) to allow additional releases of gas. The volume of gas that is released must be measured or estimated in accordance with §3.27 (Gas To Be Measured and Surface Commingling of Gas) and reported on the appropriate commission form

and shall be charged to the operator's allowable production. Necessity for the release includes, but is not limited to, the following situations:

(C) Volumes of low pressure gas that can be measured with devices routinely used in oil and gas exploration, development, and production operations and that are not directed by an operator to a gas gathering system, gas pipeline, or other marketing facility, or other purposes and uses authorized by law due to mechanical, physical, or economic impracticability;

(h) Exceptions.

- (1) The request for an exception shall be accompanied by the fee required by §3.78(b)(5) of this title (relating to Fees and Financial Security Requirements).
- (2) An administrative exception shall not exceed a period of 180 days.
- (3) The 180-day limitation shall not apply for volumes of gas less than or equal to 50 mcf of hydrocarbon gas per day for each gas well, commission-designated oil lease, or commingled vent or flare point.
- (4) Requests for exceptions for more than 180 days and for volumes greater than 50 mcf of hydrocarbon gas per day shall be granted only in a final order signed by the commission.

BURLINGTON'S EVIDENCE

Morrill Ranch Lease

Burlington operates oil wells on its 12,722 acre Morrill Lease in McMullen County. As of November 6, 2014, Burlington had completed ten (10) oil wells on the Morrill Lease in the Eagleville (Eagle Ford-1) Field.² Monthly Morrill Lease production from May 2013, through September 2014, increased with time as new wells were completed and brought on-line. Monthly production in September 2014, was 57,977 barrels of oil (BO) with 47,477 Mcf of casinghead gas produced. Of the 47,477 Mcf of gas produced in September 2014, 2,194 Mcf was used as lease or field fuel (Code 01), 43,380 Mcf was delivered to a transmission line (sales) (Code 02) and 1,903 Mcf was flared (Code 04).³

Ruckman Ranch Unit

The Ruckman Unit (02-09731) covers 3,737 acres. As of November 6, 2014, Burlington had completed thirteen (13) oil wells on the Ruckman Unit in the Eagleville (Eagle Ford-2) Field.⁴ Monthly lease production from May 2013, through September 2014, increased with time

² Exhibit Nos. M2 and M3.

³ Monthly Production Report (PR) code numbers.

⁴ Exhibits R2 and R3. Exhibit R3 is the result of a November 2014 oil proration query from the Railroad Commission's website which indicates 13 wells completed on the Unit in the Eagleville (Eagle Ford-2) Field

as more wells were completed and brought on-line.⁵ Monthly production in September 2014 was 184,375 BO, with 314,382 Mcf of casinghead gas produced. Of the total monthly casinghead gas produced, 2,685 Mcf was used as lease or field fuel (Code 01), 305,411 Mcf was delivered to a transmission line (sales) (Code 02), 4,779 Mcf was delivered to a processing plant (Code 03), and 1,507 Mcf was flared (Code 04).

System-Generated Violation of Statewide Rule 32

Burlington is reporting volumes of gas flared to the Commission in its monthly production reports for each of the Morrill Lease and the Ruckman Unit. Since Burlington does not have an exception to Statewide Rule 32 to flare casinghead gas, Burlington has received a Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or other Carrier Connection from the Commission (“notice”) for the Morrill Lease and the Ruckman Unit. The notices cite a violation of Statewide Rule 32 for each of the Morrill Lease, and Ruckman Unit for failure to obtain a permit to flare/vent casinghead gas.

BURLINGTON’S POSITION

It is Burlington’s position that the sources of gas flared on each of the leases are exempt releases under Statewide Rule 32. Therefore, Burlington is not required to obtain a Statewide Rule 32 exception for these releases. If Burlington is not allowed to continue to flare gas on the Morrill Lease and Ruckman Unit, oil production would cease. According to Burlington, the flared volumes reported to the Commission for each of the Morrill Lease and Ruckman Unit includes:

- (1) Completion gas for periods that do not exceed ten days, and;
- (2) Tank vapors.

Burlington notes that releases of gas at a wellsite during drilling operations prior to the completion date of the well, and gas released for a period of ten (10) producing days or less after initial completion, recompletion, or workover operations are exempt releases under Statewide Rule 32 subparagraphs (d)(1)(G) and (f)(1)(A) for which a flaring permit is not required.

Burlington argues that releases of tank vapors are specifically identified as exempt releases under Statewide Rule 32(d)(1)(A). Therefore, no permit is required to flare such releases. Burlington’s interpretation is that the tank vapor exemption is not conditioned on whether or not the volume of tank vapor is measured. Burlington has provisions in the Morrill Lease agreement and in the Ruckman Unit agreement that requires royalties to be paid on tank vapors. As a result, Burlington has installed a device to measure all gas directed to the flare on the Morrill Lease and on the Ruckman Unit, including tank vapors. Burlington reports the total volume of gas measured and flared to the Commission. The fact that Burlington is required to measure and pay royalty on tank vapors does not extinguish the exemption, even if Burlington reports those volumes to the Commission.

⁵ Exhibit R4.

Burlington also contends that there is no provision in Statewide Rule 32 that sets a maximum permitted release volume over which the exemption is not applicable. Burlington agrees that Statewide Rule 32(d)(1) could be interpreted such that the exemptions only apply if the “[r]eleases of gas are not readily measured by devices routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants.” Burlington does not advocate that interpretation because, in its opinion:

- 1) the interpretation is contrary to the plain language of the subsection taken as a whole;
- 2) operators would never know if the releases were exempt because the existence of the exemption would hinge on a subjective judgment of whether the device was “routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants”; and
- 3) the determination in this case, or any other inquiry by the Commission or its staff, that the use of a device to measure tank vapors had at some point become “routine” would immediately render a vast number of tank vapor releases in the state to be in violation of Statewide Rule 32.

Regardless, Burlington asserts that they have shown that under such alternative interpretation, the releases are exempt. Burlington believes the exemption is due to the measurement of tank vapors and reporting these volumes using a device which is not routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants.

Burlington’s Device for Measuring Flared Gas

Burlington is using a single, Fox Model FT3 Thermal Gas Mass Flow Meter and Temperature Transmitter (“Thermal Gas Mass Flow Meter”) to measure all gas diverted to the permanent flare point on each of the Morrill Lease and Ruckman Unit.⁶ In the opinion of Hiliary Gleitz, Burlington’s gas measurement advisor, this is not a device routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants. “This is the first time that we [Burlington] have used this particular type device in measuring any type of a flow stream on a production lease.”⁷ In Mr. Gleitz’s opinion, this device is “used in HVAC systems and air supply systems. They’re used in the refineries as part of process controls.”⁸ The devices that Mr. Gleitz considers to be routinely used “would be an orifice differential-type meter...an ultrasonic meter, a Coriolis meter, a vortex meter...Those are the most prominent[ly] used devices for measuring gas flow.”⁹ Mr. Gleitz considers this to be a special application because of the low pressure and low velocity of the gas vapors.

⁶ See Block Diagram, Figure 1.

⁷ Tr. pg. 29, ln 11 – 13.

⁸ Tr. pg. 29, ln 16 – 18.

⁹ Tr. pg. 30, ln 5 – 10.

Fate of Gas from Lease Production Facilities on the Morrill Lease and the Ruckman Unit

Upon production, hydrocarbons pass through a high-pressure separator which separates the free water from the gas and oil. The gas is directed from the top of the high-pressure separator to a high-pressure pipeline. Any free water that is readily separated from the oil and gas goes to the water production tank. From the high-pressure separator, any remaining fluids go to a low-pressure separator where any oil is separated from the low-pressure gas. Any additional water that separates under a lower pressure goes to a water production tank. The low-pressure gas is sent to a low-pressure pipeline.

All of the residual vapors that are liberated from the crude oil, while in tanks awaiting trucking, are directed to the flare point. This gas volume is measured by the Thermal Gas Mass Flow Meter prior to reaching the flare point. Similarly, vapors liberated from water in the water production tank are directed to the flare to be measured by the Thermal Gas Mass Flow Meter prior to being flared.

Mr. Gleitz stated that tank vapors from the crude oil tanks are flared rather than sold since the gas exits the oil storage tanks at a pressure just above six (6) ounces, and it is a very low volume, which is uneconomical to be gathered, compressed, and made marketable. In order to market these tank vapors, additional pipelines and compression would be required for each tank battery to increase the pressure from six ounces to 55 pounds. Burlington has determined that such an operation would not be economic and would yield a negative cash flow. Furthermore, it is not technically feasible to direct the tank vapors to sales because the vapors would condense to liquid on compression and liquid hydrocarbons could not be placed into a gas gathering line. Therefore, the vapors are directed to the flare point on the lease.

Gas from recently-completed wells on the Morrill Lease and Ruckman Unit is also directed to the flare point on each lease. This volume of gas is also measured by the Thermal Gas Mass Flow Meter. Burlington's current on-lease operations direct gas associated with initial flowback fluid to the permanent flare point on each lease. According to Mr. Gleitz, this gas is:

not marketable because of the high concentration of inert gases that are associated with the completion, fracing, et cetera of the well. So the vapors are not marketable. They have to be flared whether through the existing flare at the battery or a temporary flare that can be brought in to the lease and set up on the battery or set up on the workover unit. They have to be flared either way. We choose to just put them into our existing flare and allow them to be burned until the well is cleaned up to the level we can put the production back into its normal operation, and all of those vapors then would go into the pipeline for sales...Rule 32 allows us to flare these vapors. Whether through a temporary flare or through an existing flare.¹⁰

¹⁰ Tr. pg 40, ln 17 – pg. 41, ln 17.

Once a well is in normal production, this completion gas is not directly diverted to the flare point.

An Exception to Statewide Rule 32, if Required

Only as a form of alternative relief, Burlington put on a case supporting the grant of an exception to Statewide Rule 32. If the Commission determines that the the gas diverted to a flare point on the Morrill Lease or on the Ruckman Unit requires a flaring permit, Burlington believes circumstances for each of the Morrill Lease and Ruckman Unit justify the permit, given: 1) the low volumes and pressures involved, 2) economic and technical prohibition against directing the tank vapors to market, and 3) oil production on both the Morrill Lease and Ruckman Unit would cease unless Burlington were granted a permit to burn casinghead gas in a flare.

If an exception to Statewide Rule 32 is required, Burlington requests that the exception be backdated to December 1, 2012. Burlington made an interpretation to the rule, which was made in good faith that no flaring permit was necessary for the Morrill Lease or the Ruckman Unit. Both the Morrill Lease and Ruckman Unit are large in terms of acreage, and Burlington plans to drill additional wells in the future. As more wells are brought on-line, production will increase. At the same time, as producing wells mature, per-well production will decrease. Mr. Gleitz, Burlington's gas measurement advisor, stated that he does not have any way at this point in time to estimate the volume of gas that would have to be flared from the either the Morrill Lease or the Ruckman Unit in the future.

Burlington Exhibit M4 lists the monthly flaring volumes for the Morrill Lease between October 2013 and September 2014. The volume of gas flared during this period ranges from a low of 701 Mcf for December 2013, to a high of 5,567 Mcf for January 2014.

Burlington Exhibit R4 lists the monthly flaring volumes for the Ruckman Unit between October 2013 and September 2014. No flared volumes were reported from October 2013 to March 2014. On April 2014, the monthly flare volume was 21 Mcf. The maximum monthly volume of gas flared between April 2014 and September 2014 was 2,976 Mcf in July 2014.

MORRILL'S POSITION

Mr. George P. Morrill, III is a lessor/royalty owner of the Morrill Lease who appeared representing self and other lessor/royalty owners. Mr. Morrill stated his desire that the Commission not take any action that would result in wells being shut in on the Morrill Lease.

RAILROAD COMMISSION STAFF'S POSITION

In a letter dated August 7, 2015, Commission Staff ("Staff") stated that it considers this to be a highly unusual situation and there is some ambiguity in Statewide Rule 32. Staff does not believe that Burlington has acted unreasonably or that it should be found to have violated Statewide Rule 32. Staff agrees that the Commission does not generally require tank vapors to be measured and reported as it is generally assumed that the volume will be *de minimis* and a Commission-enforced requirement that tank vapors be measured and reported would be unduly

burdensome. However, in this case, Burlington is measuring and reporting the volume of tank vapors flared and the cumulative volume is far from *de minimis*; 2,522 to 4,354 Mcf per month for the preceding six months for each of the leases. Staff's understanding of the intent of Statewide Rule 32(d)(1) to be an exemption of tank vapors from a Commission-imposed duty to measure and report where the volumes are so small that they cannot be measured with typical oilfield measuring devices; not to exempt all tank vapor releases under all circumstances. In this situation, without a Commission mandate, Burlington is electing to capture, measure, and report the volume of tank vapors flared and that the reported volume consistently exceeds the 1,500 Mcf per month guideline employed by Staff for requiring a permit.¹¹ Under the current circumstances, Staff believes Burlington should be required to obtain a permit for the releases under Statewide Rule 32. Staff would have no objection to such a permit being issued as part of this proceeding, for an indefinite period and for monthly volumes not to exceed 10,000 Mcf per month for the single flare point on each of the leases.

Additional Commission Records Officially Noticed

The Examiners take official notice of all lease production and well completion information reported to the Commission for the Morrill Lease and the Ruckman Unit as of October 13, 2015.

Morrill Lease

A production query for the Morrill Lease shows that production for the lease commenced in December 2012. For the time period from December 2012, to August 2015, the monthly volume of gas flared from the lease has exceeded a daily average of 50 Mcf for thirty (30) of the thirty-three (33) months with reported production. A production and disposition query for the Morrill Lease during this same time period shows that the volume of gas flared ranged from a low of 2,298 Mcf in November 2014 (77 Mcf per day, on average) to a high of 5,273 Mcf in April 2015, (176 Mcf per day, on average). The total number of wells completed on the lease, according to Commission records as of August 13, 2015 is fourteen (14) wells.

Ruckman Unit

An oil proration query for the Ruckman Unit shows a total of twenty (20) wells have been completed on the unit as of August, 2015. A production and disposition query for the Ruckman Unit shows flared gas volumes have been reported for every month from April, 2014, up to August, 2015, the most current report on file. The volume of gas flared ranges from a low of 21 Mcf in April 2014, to a high of 5,867 Mcf in April 2015. The volume of gas flared reported for the most recent month is 2,627 Mcf (a daily average of approximately 85 Mcf) for August 2015.

A production query for the Ruckman Unit shows that production commenced in January 2012. For the time period from January 2012 through May 2014, there were only three months with reported flare volumes. In each of these three months, the daily average volume for the

¹¹ 50 Mcf per day average

month was less than 50 Mcf. Flare volumes have been reported in every month since from June 2014. During this time period, the daily average flare volume per month has exceeded 50 Mcf in in thirteen (13) of the fifteen (15) months.

EXAMINERS' ANALYSIS OF THE EVIDENCE

The Applicant's key legal and technical arguments in both cases hinge on rule interpretation and the Examiners are not aware of any similar cases. The key issues are further complicated by the Applicant's use of a single meter on each lease to measure all sources of gas sent to the flare. Differences in time, with regard to an exception in Statewide Rule 32 for the release of completion gas for a period not to exceed ten producing days, and the reporting of lease production and disposition on a monthly basis, further complicates matters in each of these cases.

Completion Gas

The language addressing the flaring of completion gas in Statewide Rule 32 in both 32(d)(1)(G) and 32(f)(1) is fairly plain. However, there are subtle differences, such as the physical location of where the gas is released. Statewide Rule 32(d)(1)(G) refers specifically to gas *released at a wellsite* during initial completion, as opposed to gas piped to another location. In the current cases, Burlington's witness testified that Burlington chooses to direct completion gas to the existing flare on each of the leases, as opposed to a temporary flare set up on a workover unit. Therefore, in both cases, the flaring of completion gas is subject to the requirements of Statewide Rule 32(f)(1), *Gas Releases in Oil and Gas Production Operations*.

There is no maximum volume restriction in the amount of gas that may be flared under Statewide Rule 32(f)(1)(A). However, the amount of gas flared is limited by time, as *gas may be released for a period not to exceed ten producing days* after initial completion, recompletion in another field, or workover operation in the same field. In addition, the released gas shall be measured or estimated in accordance with Statewide Rule 27, related to gas to be measured, reported and charged against lease production. Based on the evidence, Burlington is measuring the released gas with the Thermal Gas Mass Flow Meter on each of the leases, and this gas is reported on production reports. The Applicant did not provide any evidence to show when any of the wells were completed, and the number of days completion gas was flared on the Morrill Lease or Ruckman Unit.

Tank Vapors

The crux of this issue lies in the interpretation of exempt gas releases, Statewide Rule 32(d). The Applicant argues that releases of tank vapors are specifically identified as exempt releases under Statewide Rule 32(d)(1)(A) and, therefore, no permit is required to flare such releases. The Applicant further argues that the fact that the volumes are measured and reported to the Commission does not extinguish the exemption.

Staff's interpretation of the intent of Statewide Rule 32(d)(1) is to be an exemption of tank vapors from a Commission-imposed duty to measure and report where the volumes are so small that they cannot be measured with typical oilfield measuring devices; not to exempt all tank vapor releases under all circumstances. In this situation, without a Commission mandate, Burlington is electing to capture, measure, and report the volume of tank vapors flared and that the reported volume consistently exceeds the 1,500 Mcf per month guideline (50 Mcf per day, on average), employed by Staff for requiring a permit.

The Examiners' interpretation of Statewide Rule 32 is more similar to Staff's interpretation than the Applicant's interpretation. The Examiners' conclude that the Applicant's interpretation of Statewide Rule 32 fails to consider the interplay between subsection (d)(1) and (d)(1)(A). The Applicant has essentially interpreted the rule to read as 32(d)(A), whereby the measurement requirements in (1) are eliminated from the rule.

The facts in this case show that the Applicant is measuring releases of gas that include tank vapors. The releases are readily measured. The device used to measure the releases is located at a fixed position. The location of the device is located in-line with the gas line that directs all gas to the flare point on each of the leases.

The Applicant also provided an alternative interpretation of Statewide Rule 32(d)(1) that focused on the language in the rule addressing whether the measuring device is "routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants, such as meters." The Applicant asserts that tank vapors are exempt releases subject to this alternative interpretation on the basis that the device Applicant uses is a device not routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plant.

The Examiners do not agree with this interpretation. The Examiners' interpretation of Statewide Rule 32 (d)(1), is not read as a two-part condition that must both be satisfied due to the absence of a comma between the words "measured" and "by". The action is whether or not the gas can be readily measured, and in these two cases the gas is being readily measured. The Examiners conclude the qualifying description of the device is to avoid undue burden on the operator. That is, the operator is not expected to be required to exhaust all possible measures in trying to measure releases of gas, and therefore a reference to the type of device expected to be used for gas measurement.

In addition, the Examiners also conclude that the evidence in this case fails to support the Applicant's alternative interpretation of Statewide Rule 32(d)(1)(A). Statewide Rule 32(f)(1) requires gas releases in oil and gas production operations to be measured or estimated in accordance with Statewide Rule 27 *Gas To Be Measured and Surface Commingling of Gas*, and the gas released is required to be reported and charged against lease production. Therefore, the completion gas that Burlington is flaring is required to be measured or estimated by rule. Burlington has installed the Thermal Gas Mass Flow Meter to measure all releases of gas that is flared. Therefore, the same device that measures the ten-day completion gas as required by Statewide Rule 32(f)(1)(A) is also measuring the tank vapors. As a result, the Examiners conclude that a device that meets the requirements of a device that measures or estimates the volume of gas released and burned in a flare in accordance with Statewide Rule 32(f)(1) should

also be considered to be routinely used in oil and gas operations in accordance with Statewide Rule 32(d)(1).

Further evidence that fails to support the Applicant's interpretation of the device not being commonly used in the operation of oil wells, etc. is the sales brochure for the Thermal Gas Mass Flow Meter. This sales brochure shows a picture of gas being flared from an offshore rig on the front cover and the manufacturer's description of the meter notes its value in monitoring applications such as flares, and vents (Burlington Exhibit No. M18). This device may not be a device that the Applicant has routinely used in oilfield operations. However, the Examiners conclude that the device is marketed for oilfield operations as demonstrated by the front cover of the exhibit and description of the various applications of the meter.

Lastly, Burlington contends that even though tank vapors are measured in these two cases, there is no provision in Statewide Rule 32 that sets a maximum permitted release volume over which the exemption is no longer applicable. The Examiners agree that there is no threshold release volume that revokes an exemption. Releases of gas are either exempt, or non-exempt. However, the Examiners conclude that there is a threshold maximum volume of measured tank vapors that dictates whether an exception to Statewide Rule 32 is required. Statewide Rule 32(h)(3) and 32(h)(4) requires an exception for volumes greater than 50 Mcf of hydrocarbon gas per day. Based on the evidence, and the Examiners conclude that Burlington failed to show that the monthly volumes flared are exempt pursuant to Statewide Rule 32. Specifically, the Applicant failed to show that the average release of tank vapors was not greater than 50 Mcf per day for each of the Morrill Lease and the Ruckman Lease. Historically, operators are required to request a hearing for an exception to Statewide Rule 32 to flare volumes in excess of 50 Mcf per day for more than 180 days pursuant to Statewide Rule 3.32(h)(4). Therefore, the Examiners conclude that an exception to Statewide Rule 32 is required and recommend the Commission grant Burlington an exception to Statewide Rule 32.

Flare Permit Provisions

The Applicant requested that if an exception to Statewide Rule 32 is required, that the exception be backdated to December 1, 2012. Statewide Rule 32(i)(4) contains a provision, that if an application is filed for renewal of an existing exception to the requirements of Statewide Rule 32 at least 21 days before the expiration of the existing exception, and the existing authority expires before the Commission acts on the application, the operator is authorized to continue to operate under the existing authority pending final Commission action on the application. In both of these cases, the Applicant did not have existing authority. Recently, in cases where an operator has requested an exception to Statewide Rule 32 and either does not have prior authority, the final order is backdated to the date the request for a hearing for an exception to Statewide Rule 32 was received by the Commission. Since the Commission received a request for a hearing for the Morrill Lease on October 1, 2014, and for the Ruckman Unit on October 10, 2014, the Examiners recommend backdating the exception to these dates. Furthermore, Staff's letter dated August 7, 2015 stated that Staff did not believe that the Applicant should be found to have violated Statewide Rule 32, and simply believes that the Applicant should be required to obtain a permit for the releases. Therefore, the Examiners recommend no further Commission

action be taken against the Applicant in each of these cases, other than the requirement to obtain a permit to flare gas.

The Applicant also requested that if a permit were deemed necessary in each of these cases, that the permit have no time limit or volume restriction. The Examiners conclude that the Applicant provided no evidence to support the request to flare an infinite volume of gas for an indefinite period of time in the two cases. Burlington's witness stated that there was no way to estimate the future volume of gas that may need to be flared from the production of wells on the either the Morrill Lease or the Ruckman Unit. However, the Examiners conclude that the absence of an estimate fails to justify a permit with no limitations. Burlington did not provide any drilling schedules, completion schedules or any estimate of the number of wells or completion dates for any wells that may be completed in the future.

The Examiners also conclude that Staff's suggestion of granting flare permits for a maximum volume of 10,000 Mcf per month for an indefinite period of time is unsupported by any evidence in the record. According to Commission records, the highest monthly volume of gas flared on the Morrill Lease is 5,567 Mcf in January, 2014. The highest monthly volume of gas flared on the Ruckman Unit is 5,867 Mcf, which occurred in April 2015. Based on historical flare volumes, the Examiners recommend granting a maximum monthly flare volume of 6,000 Mcf per month for each of the Morrill Lease and the Ruckman Unit.

The recent Commission precedent for the maximum length of time an exception to Statewide Rule 32 has been granted to flare volumes in excess of 50 Mcf per day is two years. Therefore, the Examiners recommend granting the Applicant an exception to Statewide Rule 32 for a period of two years from the date a final order is granted for each of these cases. Prior to the expiration of the two year period, if there is still a need to flare gas produced on the Morrill Lease or Ruckman Unit in volumes greater than an average daily volume of 50 Mcf, Burlington may request a permit renewal/extension.

FINDINGS OF FACT

1. Proper notice of this hearing was given to offset operators at least ten days' prior to the date of hearing. There were no protests to the application.
2. Burlington Resources Oil & Gas Company LP ("Burlington") is the record operator for the Morrill Ranch Lease (01-16035), Eagleville (Eagle Ford-1) Field, McMullen County, Texas ("Morrill Lease").
 - a. On September 2, 2014, Burlington received a Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or other Carrier Connection from the Commission, citing a violation of Statewide Rule 32 (Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes) for failure to obtain a permit to flare/vent casinghead gas for the Morrill Lease.
 - b. Burlington does not have a flaring permit for the permanent flare point on the Morrill Lease.

- c. In the twelve month period from October 2013 through September 2014, Burlington reported gas flared from the Morrill Lease in each of the twelve months.
 - d. The maximum monthly volume of gas flared from the Morrill Lease between October 2013, and September 2014, occurred in January 2014. The volume of gas flared was 5,567 Mcf.
3. Burlington is the record operator for the Ruckman Ranch Unit (02-09731), Eagleville (Eagle Ford-2) Field, DeWitt County, Texas (“Ruckman Ranch Unit”).
 - a. Wells on the Ruckman Ranch Unit are completed in the in the Eagleville (Eagle Ford-2) Field in DeWitt County, Texas.
 - b. On October 2, 2014 Burlington received from the Commission a Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or other Carrier Connection citing a violation of Statewide Rule 32 (Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes) for failure to obtain a permit to flare/vent casinghead gas for the Ruckman Ranch Unit.
 - c. On October 10, 2014, Burlington filed a request for hearing to establish its compliance with Statewide Rule 32 for the Ruckman Unit.
 - d. The maximum flared gas volume reported for the Ruckman Ranch Unit was 5,867 Mcf in April, 2015.
4. A single device measures all gas flared on the Morrill Lease and a single device measures all gas flared on the Ruckman Ranch Unit.
5. The device used to measure the volume of gas flared is the Model FT3 Thermal Gas Mass Flow Meter.
6. All gas flared is directed to a permanent flare point in each case.
7. The gas flared from the Morrill Lease and the Ruckman Unit includes low pressure gas that is not directed to sales due to mechanical and economic impracticality and gas associated with well completions that is not marketable during initial flowback due to the presence of high concentrations of inert gases.
8. The monthly volume of gas flared from the Morrill Lease exceeds a daily average of 50 Mcf per day.
9. The monthly volume of gas flared from the Ruckman Unit exceeds a daily average volume of 50 Mcf per day.

10. An exception to Statewide Rule 32 and a permit to flare daily volumes of gas in excess of 50 Mcf is required.

CONCLUSIONS OF LAW

1. Proper notice was issued as required by all applicable statutes and regulatory codes.
2. All things have occurred and been accomplished to give the Commission jurisdiction in this matter.
3. The requested authority to flare casinghead gas satisfies the requirements of Title 16, Texas Administrative Code 3.32(h).

EXAMINERS' RECOMMENDATION

The Examiners' recommend the Commission grant an exception to Statewide Rule 32 authorizing Burlington to flare a maximum volume of 6,000 Mcf per month for each of the Morrill Lease and the Ruckman Unit for a period of two years from the date of the signed Final Order.

Respectfully Submitted,



Karl Caldwell
Technical Examiner



Randall Collins
Administrative Law Judge