



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

### PROPOSAL FOR DECISION

**OIL AND GAS DOCKET NO. 03-0300449**

**COMPLAINT OF GEORGE F. TACQUARD AGAINST JK EXPLORATION & PRODUCTION, INC. (OPERATOR NO. 433012), ALLEGING THAT JK EXPLORATION & PRODUCTION, INC. DOES NOT HAVE A GOOD FAITH CLAIM TO OPERATE THE TACQUARD, GEORGE ET AL (224962) LEASE, WELL NO. 1, TOTAL ECLIPSE (UP INTREPID FRIO) FIELD, GALVESTON COUNTY, TEXAS**

### APPEARANCES

#### **FOR COMPLAINANT:**

George F. Tacquard

#### **FOR JK EXPLORATION & PRODUCTION, INC.:**

Varun Kumar, President

#### **PROCEDURAL HISTORY:**

Complaint Submitted:	May 9, 2016
Record Closed:	July 29, 2016
Proposal for Decision:	August 31, 2016
Prepared by:	Ryan M. Lammert, Administrative Law Judge

### SUMMARY

In Docket No. 03-0300449, George F. Tacquard ("Complainant") filed with the Commission a complaint letter challenging JK Exploration and Production, Inc.'s ("JK") "good faith claim" to a continued right to operate the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas ("Lease"). Specifically, Complainant alleges that the subject oil, gas and mineral lease has expired by its own terms for lack of production from the Lease. In response, JK timely filed with the Administrative Law Judge ("ALJ") evidence of its "good faith claim" to a continued right to operate the Lease. JK did not request a hearing on the matter.

The sole issue before the Commission is whether JK has a “good faith claim” to operate the Lease, as that term is defined in Statewide Rule 15. The record evidence demonstrates that JK did not present a “good faith claim” to operate the Lease. The ALJ recommends that the Commission order JK to plug the subject well, and cancel the plugging extension for same.

### EVIDENCE PRESENTED

On May 9, 2016, Complainant submitted to the Commission a complaint letter challenging JK’s “good faith claim” to a continued right to operate the Lease. Specifically, Complainant argues that the subject “well has not been in production for more than a year” and requests that the subject well be plugged. In support of that argument, Complainant submitted an oil, gas and mineral lease dated June 11, 2006, from David W. Tacquard, as lessor, to Jerry S. Webb, as lessee, purporting to cover the subject land, for a primary term of fifteen (15) months. Germane to Complainant’s argument is that the subject oil, gas and mineral lease expired by its own terms for lack of production subsequent to the expiration of the primary term.

In a letter dated May 12, 2016, the ALJ notified JK that, on or before June 13, 2016, it must either: (1) file evidence demonstrating that JK Exploration & Production, Inc. holds a “good faith claim” to a continuing right to operate the Lease; or (2) request a hearing on the matter. On June 9, 2016, JK responded to the ALJ’s May 12, 2016, letter.

In its response, JK did not dispute Complainant’s assertion that the subject well has not been in production for more than a year, but, nonetheless, argues that it “has successfully operated the property as per the definitions of the mineral lease and has never let more than 90 (ninety) consecutive days pass without operation.” JK did not supply any evidence in support of that assertion at that time.

In a letter dated June 10, 2016, the ALJ informed JK that because it elected to submit evidence of its “good faith claim”—rather than request a hearing on the matter—it waived its right to a hearing on the matter, pursuant to TEX. GOV’T CODE § § 2001.056 and 2001.062(e). In that same letter, the ALJ also directed Complainant to review JK’s response and submitted evidence, and thereby permitted it an opportunity to submit any relevant objections, rebuttal evidence, or other relevant argument contradicting JK’s response and submitted evidence.

On June 17, 2016, Complainant submitted to the Commission its reply to JK’s response. In its reply, Complainant offered statements contradicting JK’s claim that the subject oil, gas and mineral lease is in full force and effect. To that end, Complainant asserts that JK visited the subject well only twice in a period of 14 months, thus negating JK’s claim that the lease has not expired.

On July 6, 2016, Complainant submitted to the Commission a reply to JK’s June 9, 2016, response. In its reply, Complainant offered the following evidence: (1) copy of online Commission records showing the production history for the subject well from

September 2013 through July 2016; and (2) seven (7) photographs offered for the purposes of demonstrating lack of operations at the subject well.

In a letter dated July 26, 2016, JK proffered two “work tickets” dated March 30, 2016, and May 24, 2016, as evidence demonstrating that operations had taken place on the Lease.

Lastly, in a letter dated July 6, 2016, the ALJ proposed to the parties to take Official Notice of Commission records reflecting production from the Lease for the time period beginning January 2010 through July 2016. Neither party objected to that proposal.

On August 1, 2016, Official Notice was taken of online Commission production records for the Lease from January 2010 through July 2016, which indicate that there has been either no reported production or zero (0) reported production from the Lease beginning May 2014 through December 2014, and, also, February 2015 through April 2016 and no reported production beginning May 2014 through December 2014, and also beginning May 2016 through July 2016.

#### ADMINISTRATIVE LAW JUDGE’S OPINION

In this Docket, the sole issue before the Commission is whether JK holds a “good faith claim” to a continuing right to operate the Lease. Statewide Rule 15(a)(5) defines “Good Faith Claim” as:

A factually supported claim based on a recognized legal theory to a continuing possessory right in the 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 Commission’s authority to determine a “good faith claim” arises from the *Magnolia* case. In discussing the Commission’s authority to grant a drilling permit, the Texas Supreme Court stated, “The function of the Railroad Commission in this connection is to administer the conservation laws. When it grants a permit to drill a well it does not undertake to adjudicate questions of title or rights of possession. These questions must be settled in the courts.”<sup>5</sup> The Court concluded, “Of course, the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in *good faith*.”<sup>6</sup>

In the context of the right to continue operation of a lease, the Commission looks to the operator’s oil, gas and mineral lease and the production history from the Commission-recognized lease. If the oil, gas and mineral lease contains a “cessation of production” clause with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—for example 12 months—the contractual lease will generally not be considered a “good faith claim” to operate the property. If the oil, gas

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<sup>5</sup> *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943).

<sup>6</sup> *Id.* at 191 (emphasis added).

and mineral lease contains a “continuous operations clause” with a term of 60 or 90 days, and the production history of the lease indicates a lengthy period of non-production—again, for example 12 months—the operator would be required to provide some evidence that operations had continued in an effort to restore production with no lapse in operations greater than 60 or 90 days, as the case may be.

In the instant Docket, JK does not contest that production has ceased from the Lease, but that the Lease is nonetheless in full force and effect pursuant to the subject oil, gas and mineral lease’s “continuous operations clause”. That portion of the subject oil, gas and mineral lease states that:

Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of fifteen (15) months from the date hereof, hereinafter called “primary term”, *and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.* (emphasis added).

The subject oil, gas and mineral lease defines “operations”, to wit:

Whenever used in this lease the word “operations” shall mean operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or other minerals, excavating a mine, production of oil, gas sulphur or other mineral, whether or not in paying quantities.

However, the ALJ is not persuaded by JK’s argument.

First, it should be noted that JK does not assert that the subject oil, gas and mineral lease is held by production from the subject well. The ALJ also notes that, since February 2015, JK has either not reported production to the Commission or reported zero (0) production from the Lease.

Second, JK last reported production from the Lease in January 2015. Accordingly, the subject oil, gas and mineral lease has not been held by production since that date, and it was therefore incumbent upon JK to present evidence sufficient to demonstrate that the subject oil, gas and mineral lease is valid through the “continuous operations clause”. JK submitted two (2) “work tickets” as evidence that operations—as defined by the subject oil, gas and mineral lease—were conducted on the subject well.

The first submitted “work ticket” is dated March 30, 2016, and notes that Slatex Well Service, Inc. performed work on the “George Tacquard #1”, including the installation of a master valve and needle valve. Per the terms of the subject oil, gas and mineral lease,

this “work ticket” *may* have held the lease in full force and effect for the time period between March 30, 2016, and June 28, 2016.<sup>7</sup>

The second submitted “work ticket” is dated May 24, 2016, and notes that JLW Express Services Inc. performed work on the “Tacquard well”, including valve checks. Per the terms of the subject oil, gas and mineral lease, this “work ticket” *may* have held the lease in full force and effect for the time period between May 24, 2016, and August 22, 2016.<sup>7</sup>

JK failed to submit evidence of “operations” (or other evidence sufficient to demonstrate its “good faith claim”) for the time period including May 2015 through March 30, 2016, a period of time in excess of 90 days. Without evidence demonstrating “operations” within that time period, the ALJ is of the opinion that the 90-days continuous operations clause was exceeded. Having exceeded the continuous operations clause (and without evidence of production), JK cannot demonstrate a “good faith claim” to operate the Lease. Without a “good faith claim” to a continuing right to operate the Lease, the subject well on the subject acreage is no longer eligible for a plugging extension and JK is required to plug the wellbore.

For these reasons, the ALJ concludes that JK did not present a “good faith claim” to operate the Lease and recommend that the Commission order JK to plug the subject well, and cancel the plugging extension for same.

#### CONCLUSION

The ALJ concludes that JK did not present a “good faith claim” to operate the Lease and make the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACTS

1. At least ten days notice was given to Complainant George F. Tacquard and Respondent JK Exploration and Production, Inc.
2. Complainant George F. Tacquard is a surface estate owner and a mineral estate owner of the subject property.
3. On or about May 9, 2016, Complainant George F. Tacquard submitted to the Commission a complaint letter challenging JK Exploration and Production, Inc.’s “good faith claim” to a continued right to operate the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas.
4. On or about May 9, 2016, Complainant George F. Tacquard submitted an oil, gas and mineral lease dated June 11, 2006, from David W. Tacquard, as lessor, to

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<sup>7</sup> It is important to recognize that the ALJ does not purport to analyze the *legal* sufficiency of the activities described in the two “work tickets” to qualify as “operations”, as defined by the subject oil, gas and mineral lease and Texas case law. The ALJ endeavors only to review the submitted evidence for its sufficiency to cover the period of time where no production was reported from the subject well.

Jerry S. Webb, as lessee, which covers the subject land, for a primary term of fifteen (15) months.

5. On or about May 12, 2016, the Administrative Law Judge notified JK Exploration and Production, Inc. that, on or before June 13, 2016, it must either: (1) file evidence demonstrating that JK Exploration & Production, Inc. holds a “good faith claim” to a continuing right to operate the Lease; or (2) request a hearing on the matter.
6. JK Exploration and Production, Inc. did not request a hearing on the matter.
7. JK Exploration and Production, Inc. elected to file evidence with the Administrative Law Judge demonstrating that JK Exploration & Production, Inc. holds a good faith claim to a continuing right to operate the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas.
8. Complainant George F. Tacquard and Respondent JK Exploration and Production, Inc. waived their right to a hearing on the matter pursuant to TEX. GOV'T CODE § § 2001.056 and 2001.062(e).
9. On or about June 9, 2016, JK Exploration and Production, Inc. timely responded to the Administrative Law Judge's May 12, 2016, letter.
10. On or about June 10, 2016, the Administrative Law Judge informed JK Exploration and Production, Inc. that because it had elected to submit evidence of its “good faith claim”—rather than request a hearing on the matter—it had waived its right to a hearing on the matter, pursuant to TEX. GOV'T CODE § § 2001.056 and 2001.0629(e).
11. On or about June 10, 2016, Administrative Law Judge directed Complainant George F. Tacquard to review JK Exploration and Production, Inc.'s response and submitted evidence, and thereby permitted Complainant George F. Tacquard an opportunity to submit any relevant objections, rebuttal evidence, or other relevant argument contradicting JK Exploration & Production, Inc. response and submitted evidence.
12. On or about June 17, 2016, Complainant George F. Tacquard submitted to the Commission its reply to JK Exploration and Production, Inc.'s June 9, 2016, response.
13. On or about July 6, 2016, Complainant George F. Tacquard submitted to the Commission its reply to JK Exploration and Production, Inc.'s June 9, 2016, response.

14. On or about July 26, 2016, JK Exploration and Production, Inc. submitted to the Commission two “work tickets” dated March 30, 2016, and May 24, 2016, as evidence demonstrating that operations had taken place on the Lease.
15. On or about July 6, 2016, the Administrative Law Judge proposed to the parties to take Official Notice of Commission records reflecting production from the Lease for the time period beginning January 2010 through July 2016. Neither party objected to that proposal.
16. On or about August 1, 2016, Official Notice was taken of online Commission production records for the Lease from January 2010 through July 2016, which indicate that there has been either no reported production or zero (0) reported production from the Lease beginning May 2014 through December 2014, and, also, beginning February 2015 through July 2016.
17. JK Exploration and Production, Inc. holds Operator No. 433012.
18. JK Exploration and Production, Inc. is the Form P-4 Record Operator of the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas.
19. JK Exploration and Production, Inc. has an active Form P-5 and has financial assurance in place in the form of a \$50,000.00 cash deposit, which expires on February 28, 2017.
20. JK Exploration and Production, Inc. is the operator of 35 wells, of which 19 are in Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE § 3.14(b)(2)] inactive status.
21. Beginning February 2015 and continuing till June 2016, the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas, has had either no reported production or zero (0) reported production.
22. JK Exploration and Production, Inc. failed to submit evidence demonstrating that it had performed “operations” on the Lease beginning February 2015 through March 29, 2016, exceeding the “continuous operations clause” contained in the subject oil, gas, and mineral lease.
23. A “good faith claim” is defined in Commission Statewide Rule 15(a)(5) as “a factually supported claim based on a recognized legal theory to a continuing possessory right in the 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.” [16 TEX. ADMIN. CODE § 3.15(a)(5)].
24. JK Exploration and Production, Inc. failed to present evidence sufficient to demonstrate that it has a “good faith claim” to operate the Tacquard, George et al

(224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas.

25. Absent a “good faith claim” to operate, the subject well is not eligible for an extension to the plugging requirements of Statewide Rule 15(e)(3).
26. Absent eligibility for an extension to the plugging requirements of Statewide Rule 15(e)(3), the plugging extension of the subject well should be cancelled pursuant to Statewide Rule 15(h).

#### CONCLUSIONS OF LAW

1. Proper notice of an opportunity for a hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. JK Exploration and Production, Inc. does not have a “good faith claim” to operate the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas.
4. The Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas, is not eligible for an extension to the plugging requirements of Statewide Rule 15(e)(3).
5. The plugging extension for the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas, should be cancelled pursuant to Statewide Rule 15(h).
6. The Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas, should be ordered plugged.

**RECOMMENDATIONS**

The Administrative Law Judge recommends that the Commission enter an order cancelling the plugging extension for the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas.

The Administrative Law Judge also recommends that the Commission enter an order directing JK Exploration and Production, Inc. to plug the Tacquard, George et al (224962) Lease, Well No. 1, Total Eclipse (Up Intrepid Frio) Field, located in Galveston County, Texas.

RESPECTFULLY SUBMITTED,

  
RYAN M. LAMMERT  
Administrative Law Judge