



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**OIL & GAS DOCKET NO. 7B-0280369**

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**APPLICATION OF US. FUELS, INC. TO SUPERCEDE THE FINAL ORDERS ISSUED IN DOCKET NO. 7B-0276424 REQUIRING THE PLUGGING OF THE BARNES, P.H. (25394) LEASE, WELL NOS. 1 AND 13A, AND IN DOCKET NO. 7B-0274801 REQUIRING THE PLUGGING OF THE P.H. BARNES (08680) LEASE, WELL NOS. 1, 2, 6, 7, 10, 11C, AND 12CB, BROWN COUNTY REGULAR FIELD, BROWN COUNTY, TEXAS AND TO ENABLE US. FUELS, INC. TO BECOME THE OPERATOR OF RECORD FOR THOSE WELLS**

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### APPEARANCES

**APPLICANT**

David Jakobot

**REPRESENTING:**

US. Fuels, Inc.

**PROTESTANTS**

Harry Witherspoon

Himself

Kristi Reeve

Mark England

Sheila Weigand

Railroad Commission of Texas  
Office of General Counsel,  
Enforcement Section

### PROCEDURAL HISTORY

NOTICE OF HEARING:

January 30, 2013

SUPPLEMENTAL NOTICE OF HEARING:

February 4, 2013

HEARING:

February 13, 2013

PROPOSAL FOR DECISION:

December 3, 2013

HEARD BY:

Michael Crnich, Hearings Examiner  
Brian Fancher, Technical Examiner

### PROPOSAL FOR DECISION

### STATEMENT OF THE CASE

By its application, US. Fuels, Inc. ("US Fuels") seeks to supercede the provisions of Commission Final Orders entered in Oil & Gas Docket No. 7B-0276424 and 7B-0274801, which collectively require that C & C Petroleum Management, LLC plug the following wells: Well

Nos. 1 and 13A on the Barnes, P.H. (25934) Lease, and Wells Nos. 1, 2, 6, 7, 10, 11C, and 12CB on the P.H. Barnes (08680) Lease, in the Brown County Regular Field in Brown County, Texas.

US Fuels, through its President, David Jakobot (“Jakobot”), appeared at the hearing. Harry Witherspoon (“Witherspoon”), landowner and owner of certain mineral interests in the leases, appeared to protest the application of US Fuels and presented evidence. The Commission Enforcement Section (“Commission Staff”) also appeared in protest and presented evidence and witness testimony. Witherspoon and the Commission Staff both argued that US Fuels did not meet the requirements for superceding a plug order and becoming the operator of the wells ordered to be plugged.

### EXAMINER’S OPINION

An order to supercede a Commission Final Order requiring that certain wells be plugged may be warranted if the new operator establishes: (1) that it possesses a good faith claim to a continuing right to operate the wells or leases; (2) that plugging the wells may result in the waste of hydrocarbons; (3) that it currently complies with the financial assurance requirements of Texas Natural Resources Code §91.107; and (4) that the former and new operator are not affiliated to the extent that the supercede application is merely an attempt to circumvent the requirement that the former operator plug its wells.

#### Good Faith Claim

US Fuels failed to establish that it possesses a good faith claim to a continuing right to operate the two leases.

To support its claim to the right to operate, US Fuels relied on an October 1, 2009 oil and gas lease between Clara Maxine Barnes Mayfield, as lessor, and Brent Marlowe and Bridget Marlowe, as lessee. Further, US Fuels presented an “Amendment to Oil and Gas Lease,” which purported to extend the primary term of the 2009 lease from two years to four years. The Amendment was signed in October 2012 by Sharon Cook, individually and as trustee of the Clara M. Carter Living Trust, as lessor, and by US Fuels, as lessee.

US Fuels failed to establish that the 2009 lease and the subsequent lease amendment are currently valid. First, the Applicant did not present a theory or evidence to suggest how the 2009 lease was maintained in effect until the amendment. The 2009 lease contains a 90-day cessation of production clause. Lease Number 25394 has had no reported production since October 2009, and Lease Number 08680 had zero reported production from January 2012 through October 2012. Therefore, it appears that the 2009 lease had terminated by the time of Amendment. Second, an “Assignment of Oil and Gas Lease” introduced by Witherspoon shows that the lessee’s leasehold interest in the 2009 lease appears to have been assigned to C & C Petroleum Management LLC. US Fuels failed to introduce any evidence showing that C & C then assigned its interest to US Fuels or showing how US Fuels obtained the leasehold interest; therefore, there was no evidence to support the proposition that US Fuels had authority to execute an amendment as a lessee. Further, Sharon Cook signed the amendment as a trustee for the Clara Carter living trust; however, Commission Staff presented evidence showing that Clara Carter passed away in

May 2012. Thus, by October 2012, the Clara Carter Living Trust likely no longer existed, and its trustee ostensibly had no authority to execute a lease amendment.

### Prevention of Waste

US Fuels failed to present any credible evidence that superceding the 2012 Final Orders and allowing it to operate the wells would prevent the ultimate waste of hydrocarbons. With respect to the wells on the P.H. Barnes (08680) Lease and Well No. 13A on the Barnes, P.H. (25394) Lease, US Fuels admitted that these wells need to be plugged. US Fuels showed a keener interest in becoming operator of Well No. 1 on the Barnes, P.H. (25394) Lease (the “mineshaft well”). When the examiners questioned US Fuels about the basis for its belief that hydrocarbons could be produced from the mineshaft well, US Fuels was unable to cite any credible tests, reports, or data from nearby wells – items typically relied upon by an applicant in a supercede proceeding. Rather, Jakobot believed that all that was required to make the mineshaft well produce was to flip a switch to a pumping unit and wait.

In contrast, Commission Staff presented evidence that operation of the subject wells would not be economically viable. Mr. Mark England, an engineer from Field Operations, testified that over a period of approximately 20 years, the two subject leases have had reported disposition of 1685 barrels of oil. This cumulative reported production results in a monthly average of 3.5 barrels per lease. England testified that it was not possible to operate economically the wells at this level of production. Furthermore, Ms. Sheila Weigand testified that Commission inspection reports, which noted how much oil was in the lease tanks, were inconsistent with the reported production. Her testimony and explanation led the examiners to conclude that it is highly doubtful that the 81 barrels of oil reported as produced by C & C from May to December 2011 were ever actually produced. In fact, there is no evidence in the record to suggest that the mineshaft well was ever economically viable. Both Commission Staff and Witherspoon described that the concept of the mineshaft well – implemented at least once by an early operator of the well – was to place a microwave antenna into the mineshaft. Activation of the microwave antenna supposedly would “loosen the oil” and enable it to flow into the horizontal shafts. To the knowledge of the examiners, this particular mineshaft and microwave method of production is the only instance of such among the vast inventory of wells in the State of Texas.

### Affiliation Between Former Operator and the Applicant

The applicant seeking to supercede a final plugging order and to become operator of record must demonstrate that it is separate from and unaffiliated with operator against whom the plugging order was entered. In other words, the applicant must satisfy the Commission that its supercede application is not an attempt to circumvent the plugging responsibility assessed to a former operator. Commission Staff presented some evidence indicating that there is some affiliation between US Fuels (Jakobot) and C & C. For example, C & C filed a letter with the Commission asking that its mailing address be changed to the P-5 location address of US Fuels. In addition, US Fuels (Jakobot) filed several production reports as agent for C & C. While it is true that Jakobot is not formally listed as an officer or owner of C & C on Commission records,

there is evidence of a friendly and cooperative relationship between the two entities that casts serious doubt on whether the requirement that they not be affiliated has been satisfied.

Based on the record in this proceeding, the examiner recommends the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. The Commission gave US Fuels, Inc. ("US Fuels") at least ten days notice of this proceeding. US Fuels appeared at the hearing. The Railroad Commission Enforcement Section and Harry Witherspoon appeared as Protestants at the hearing.
2. A Final Order in Oil & Gas Docket No. 7B-0276424, entered December 4, 2012, ordered C & C Petroleum Management, LLC ("C & C") to plug the Barnes, P.H. (25394) Lease, Well Nos. 1 and 13A, and to pay an administrative penalty of \$4,750.
3. A Final Order in Oil & Gas Docket No. 7B-0274801, entered December 4, 2012, ordered C & C to plug the P.H. Barnes (08680) Lease, Well Nos. 1, 2, 6, 7, 10, 11C, and 12CB, and to pay an administrative penalty of \$11,250.
4. US Fuels failed to present evidence sufficient to show that US Fuels possesses a good faith claim to a continuing right to operate the wells on the Barnes, P.H. (25394) Lease and the P.H. Barnes (08680) Lease (together, the "Leases").
5. US Fuels failed to present any credible evidence that superceding the "plug only" provisions in the Final Orders for Oil & Gas Docket Nos. 7B-0276424 and 7B-0274801 is necessary to prevent the waste of hydrocarbons.
  - a. The record contains no evidence that plugging the wells on the Leases as ordered will result in the waste of hydrocarbons.

### CONCLUSIONS OF LAW

1. The Commission timely issued proper notice of the hearing in this matter to persons entitled to receive notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. US Fuels, Inc. does not have a good faith claim to a continuing right to operate the Barnes, P.H. (25394) Lease, Well Nos. 1 and 13A, or the P.H. Barnes (08680) Lease, Well Nos. 1, 2, 6, 7, 10, 11C, and 12CB.
4. Superceding the provisions of the Final Orders for Oil & Gas Docket Nos. 7B-0276424 and 7B-0274801 that require C & C Petroleum Management LLC to plug these wells would not prevent waste.

### RECOMMENDATION

The examiners recommend that the Commission deny the request to supercede the provisions of the Final Orders in Oil & Gas Docket Nos. 7B-0276424 and 7B-0274801, which require C & C Petroleum Management LLC to plug the Barnes, P.H. (25394) Lease, Well Nos. 1 and 13A, and the P.H. Barnes (08680) Lease, Well Nos. 1, 2, 6, 7, 10, 11C, and 12CB.

Respectfully Submitted,



Michael R. Crnich  
Hearings Examiner

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**FINAL ORDER**

The Commission finds that, after statutory notice in the above-numbered docket, heard on February 13, 2013, the examiners have made and filed a report and proposal for decision containing findings of fact and conclusions of law, which was served on all parties of record, and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the proposal for decision and the findings of fact and conclusions of law contained therein, and any exceptions and replies thereto, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

It is therefore **ORDERED** that the application of US. Fuels, Inc. for an order superceding the Commission's Final Orders signed in Oil & Gas Docket Nos. 7B-0276424 and 7B-0274801 is **DENIED**.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 90 days from the date the parties are notified of the order.

Done this \_\_\_\_ day of January 2013.

**RAILROAD COMMISSION OF TEXAS**

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**CHAIRMAN BARRY T. SMITHERMAN**

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**COMMISSIONER DAVID PORTER**

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**COMMISSIONER CHRISTI CRADDICK**

**ATTEST:**

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**SECRETARY**