



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

Oil & Gas Docket No. 03-0271864

COMMISSION – CALLED HEARING ON THE COMPLAINT OF TEXAS PETROLEUM INVESTMENT COMPANY THAT THE COMMINGLING PERMIT NO. 03-5442 ISSUED TO INLAND MINERALS MANAGEMENT FOR ITS WHITE, R.M. (00097) LEASE AND ANAHUAC MAIN FRIO OIL UNIT (20022) LEASE IN THE ANAHUAC (02468001) FIELD, CHAMBERS COUNTY, TEXAS BE REVOKED.

APPEARANCES:

Complainant:

Texas Petroleum Investment Company

Mickey R. Olmstead,
McElroy, Sullivan & Miller, L.L.P.
Steve Sandlin
Leigh Dickson
James Edwards

Respondent:

Inland Minerals Management

Lloyd A. Muennick
Cary Carmack
Casey Glenn Carmack

PROPOSAL FOR DECISION PROCEDURAL HISTORY

COMPLAINT FILED:	March 14, 2011
NOTICE OF HEARING ISSUED:	August 5, 2011
HEARING HELD:	November 29, 2011
HEARD BY:	Gene Montes, Hearings Examiner Richard Atkins, Technical Engineer
PROPOSAL FOR DECISION CIRCULATED:	April 5, 2012

STATEMENT OF THE CASE

Inland Minerals Management (Inland) is the current P-4 operator of the Anahuac Main Frio Unit (20022) Lease, Well No. 1, Anahuac Field, Chambers County. Inland also operates the White, R.M. (00097) Lease, Well No. 30, Anahuac Field, Chambers, County. Inland filed an *Application for Exception to Statewide Rule (SWR) 26 and 27* and obtained a commingling permit, Permit No. 03-5442, in June of 2011. The permit authorized Inland to commingle production from the Anahuac Main Frio Unit (20022) Lease, Well No. 1 and the White, R.M. (00097) Lease, Well No. 30.

Texas Petroleum Investment Company ("TPIC") filed this complaint alleging that the comingling Permit No. 03-5442 should be revoked. A hearing was held to provide TPIC an opportunity to establish the following:

1. Whether production from the Anahuac Main Frio Unit (20022) Lease, Well No. 1 is being commingled with production from another well or wells in violation of Statewide Rule 26;
2. Whether the bottomholes of the well bores are on Inland's leases;
3. Whether the subject wells are producing from the fields for which they are permitted;
4. Whether the Form W-10 filed by Inland dated February 17, 2011 and received by the Commission on February 22, 2011 was falsified in violation of Commission rules and applicable statutes;
5. Whether waste will occur if Inland plugs back the Anahuac Main Frio Unit (20022) Lease, Well No. 1; and,
6. Whether Inland has a good faith claim to produce the White, R.M. (00097) Lease, Well No. 30 if its underlying lease has terminated for lack of production.

TPIC requests that the P-4 *Certificate of Compliance and Transportation Authority* issued to Inland to operate the Anahuac Main Frio Unit (20022) Lease, Well No. 1 be terminated because all production from that well is taken from oil and gas reservoirs within leases held by TPIC and not by Inland. Thus, TPIC asserted that by operating the Anahuac Main Frio Unit (20022) Lease, Well No. 1, Inland is taking TPIC's oil and gas. TPIC also raised an additional contention that it alleged invalidated the P-4 *Certificate of Compliance and Transportation Authority* issued to Inland to operate that well. TPIC alleged that Inland does not have a continuing good faith claim to support its right to operate the Anahuac Main Frio Unit (20022) Lease, Well No. 1 because the underlying lease, upon which Inland's authority to operate that well is allegedly based, has terminated because Inland failed to produce during the primary term of the lease. TPIC contends, that, as a result, Inland's P-4 *Certificate of Compliance and Transportation Authority* should be revoked for the Anahuac Main Frio Unit (20022) Lease, Well No. 1 and White, (00097) R.M. Lease, Well No. 30.

DISCUSSION OF EVIDENCE

A. Introduction

This case is focused upon the operation of two oil wells: Anahuac Main Frio Unit (20022) Lease, Well No. 1 and the White, R.M. (00097) Lease, Well No. 30. The surface location of these wells is within an area leased by several mineral interest owners, lessors ("R.M. White Family Heirs") to Machaira Energy, LLC., lessee ("Machaira Energy"). The lease is referred to herein as the Machaira Energy Lease. The Machaira Energy Lease encompasses 232.428 acres. Inland holds a P-4 *Certificate of Compliance and Transportation Authority* to operate those wells. An aerial photograph depicting the approximate surface location of these wells is attached as Appendix 1 to this *Proposal for Decision*. The photograph does not depict the entire area encompassed by the Machaira Energy Lease. The area shown in the photograph, however, encompasses much of one of the original tracts included in the original Anahuac Main Frio Unit (20022) Lease.

The Anahuac Main Frio Unit (20022) Lease is depicted in Appendix 2 to this *Proposal for Decision*. The Anahuac Main Frio Oil Unit was established in 1987 by Sun Exploration and Production Company ("Sun Exploration"). It was originally made up of five tracts of land as shown on Appendix 2. The Anahuac Main Frio Unit (20022) Lease, Well No. 1 is a directional well. The wellhead is located in the area north of the pooled unit. That area is outside the pooled unit and is now leased to Machaira Energy. The bottomhole of that well is within the southeast area of the pooled unit. The bottomhole is within the area now held by TPIC by virtue of two separate leases ultimately assigned to TPIC. The central issue in this case revolves around the good faith claim of Inland to operate a well that has a bottomhole off of the Machaira Energy Lease, that has a perforated area off of the Machaira Energy Lease, and that produces from a zone that is outside of the Machaira Energy Lease.

A hearing in this matter was held on November 29, 2011. At the hearing TPIC presented three witnesses: Steve Sandlin, a TPIC employee who was qualified as an expert in land management issues; Leigh Dickson, a TPIC employee who was qualified as an expert in petroleum engineering; and James Edwards, a landman and a mineral interest owner of the area encompassed by the Machaira Energy Lease. Inland presented the following witnesses: Cary Carmack, a contract consultant for oil field operations and Casey Glenn Carmack the owner of Inland as designated on Commission records.

B. Form W-1 Permit To Drill the Anahuac Main Frio Unit (20022) Lease Well No. 1.

Sun Exploration filed a form W-1 on May 21, 1987, to drill the Anahuac Main Frio Unit (20022) Lease, Well No. 1 as a directional well. The application was amended on December 11, 1987. The original and amended applications indicated that a Rule 37 permit was required

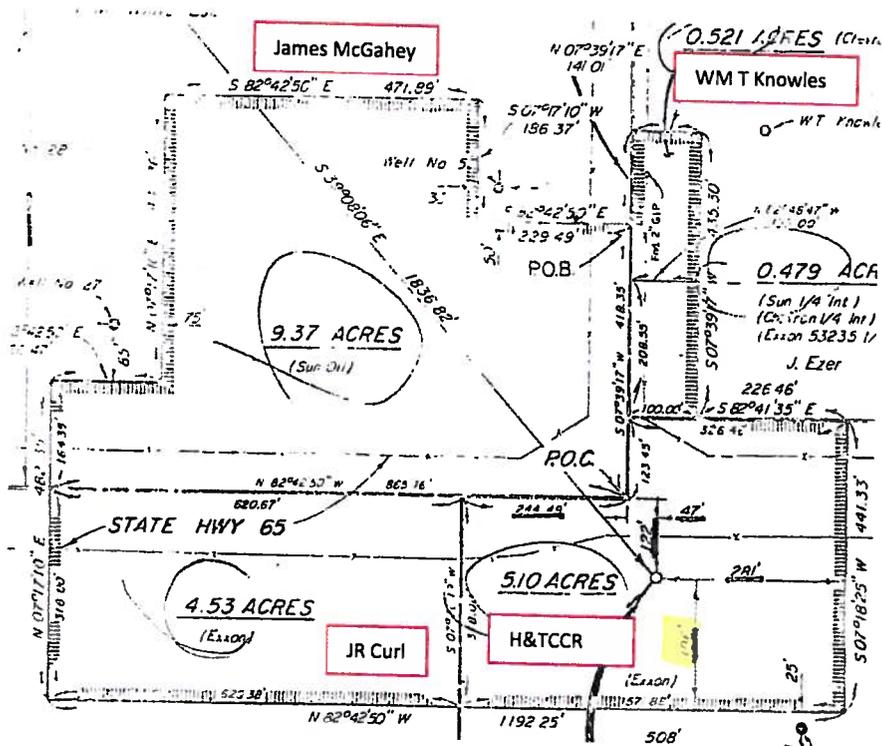
because the proposed bottomhole location was less than the required 233 feet from a lease line. The Anahuac Field was discovered in 1935 and produces from the Marginulina and Frio Sands at an average depth of 7140 feet. The proposed well was intended to produce oil from the Frio Sands. The proposed completion depth of the proposed well was 7400 feet.

As part of the application Sun Exploration filed a *Certificate of Pooling Authority*. The pooled unit contained twenty (20) acres and was comprised of five tracts of land.

1. Two tracts, totaling a single (1) acre, from the W.T. Knowles Survey, Abstract 472;
2. A single tract, made up of 9.37 acres, from the James McGahey Survey, Abstract 18;
3. A single tract, made up of 4.53 acres, from the J.R. Curl Survey, Abstract 587; and,
4. A single tract, made up of 5.10 acres, from the H&T.C. R.R. Survey, Abstract 112.

These tracts are set out in Figure 1, below.

Figure 1, TPIC Ex. 1, Detail of Pooled Unit: Pre-Drilled Plat¹



A Rule 37 permit was required because as is shown on the amended pre-drill location plat, the bottomhole of the well was 196 feet from the southern boundary of the pooled unit. The applicable field rules required 233 foot spacing from the unit boundary.

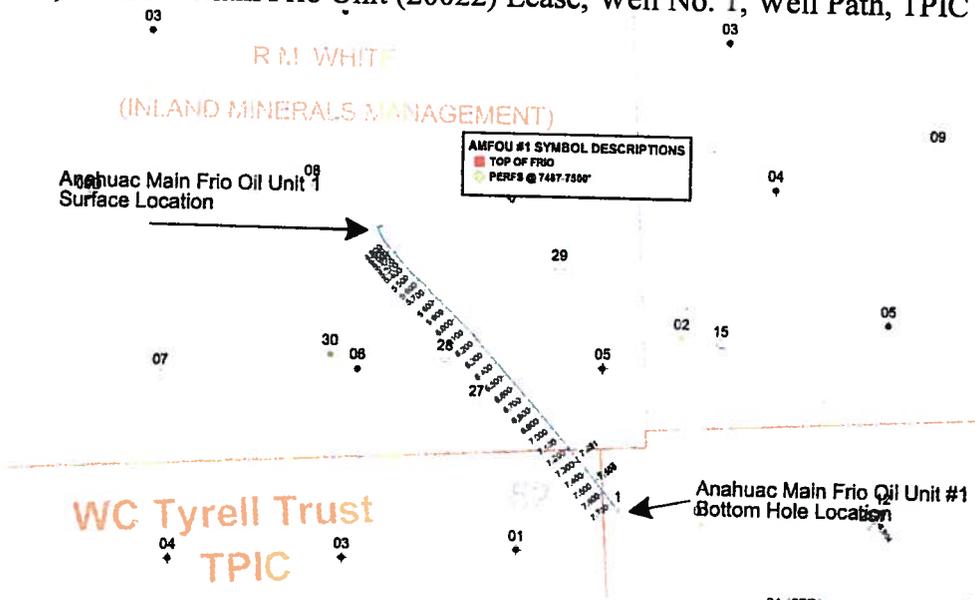
¹ This is only a portion of the plat that was filed. The surface location of the well-head, located outside the pooled unit north of the 9.37 acres, from the James McGahey Survey, Abstract 18, is not depicted on Figure 1 but appears on the full copy of this plat that is attached as Appendix 2 to this Proposal for Decision.

The Anahuac Main Frio Unit (20022) Lease was originally established by Sun Operating Limited Partnership, Exxon Corporation (“Exxon”) and Chevron who were working interest owners of the various tracts that comprised the unit. The *Declaration of Pooled Unit* provided that the unit would remain in effect so long as there was a well on the unit capable of producing pooled substances with no cessation of more than ninety (90) consecutive days. The *Declaration of Pooled Unit* also provided that the unit would remain in effect so long as drilling or reworking operations were being conducted in search of pooled substances with no cessation of more than ninety (90) consecutive days. The application indicated that a Rule 37 exception was required as the bottomhole of the well was less than 233 feet to the southern boundary of the pooled unit.

C. The as Drilled Path of the Anahuac Main Frio Unit (20022) Lease, Well No. 1.

The permit was granted and Sun Exploration drilled the proposed well. The Anahuac Main Frio Unit (20022) Lease, Well No. 1 is a directional well. The surface location is on the James McGahey Survey. It is located outside of the original pooled unit; it is northwest of the pooled unit boundary. The bottomhole location is on the H&T.C.R.R. Survey. In this area, the top of the Frio Sands along the path of the wellbore is at 7,281 feet. The perforations of this well are between 7,487 feet and 7,500 feet. The top of the Frio Sands and the perforated interval all fall within the original 4.53 acres, from the J.R. Curl Survey, Abstract 587, contained within the Anahuac Main Frio Oil Unit. Figure 2 describes the well path of the Anahuac Main Frio Oil Unit Well No. 1.

Figure 2, Anahuac Main Frio Unit (20022) Lease, Well No. 1, Well Path, TPIC Ex. 30



The top of the Frio Sands in this area is denoted on Figure 2 by the red square and is at a measured depth of 7,281 feet. The perforations are at 7,487 feet to 7,500 feet. An enlarged version of Figure 2 is attached as Appendix 3, to this *Proposal for Decision*.

D. Subsequent History of Anahuac Main Frio Unit (20022) Lease: Operators and Leases.

The original P-4 *Certificate of Compliance and Transportation Authority* for the Anahuac Main Frio Unit (20022) Lease was issued to Sun Exploration on March 14, 1988. The certificate to operate this well was transferred to various entities from that date until October 8, 2010, when it was transferred from CWC Oil & Gas to Inland. Table 1 below provides a summary of the Form P-4 certificate history.

Table 1
P-4 Operator History for the Anahuac Main Frio Unit (20022) Lease, TPIC Exhibit 4

Date	Operator
03/14/1988	Sun Exploration and Production Co. – Lafayette
06/26/1989	Oryx Energy Company
05/21/1990	Headington Oil Company
07/02/1997	Live Oak Gas Company
07/25/2000	Safari Production Co.
10/01/2003	IPACT
01/19/2005	CWC Oil & Gas
10/08/2010	Inland Minerals Management

The well ceased production in 1991 and was off production for many years. Three tracts of land in the original pooled unit were subsequently leased to Machaira Energy and TPIC. Since 1991, the pressure in the well has increased and interest in production from the Anahuac Main Frio Unit (20022) Lease, Well No. 1 recently intensified. From October 2010 through September 2011, Inland reported production of 532 barrels of oil from that well.

Machaira Energy executed an oil and gas lease with the R.M. White Family Heirs, the Machaira Energy Lease. The total area encompassed by the lease was 232.428 acres. This area included the original 9.37 acres, from the James McGahey Survey, Abstract 18, contained within the original Anahuac Main Frio Unit (20022) Lease. The Machaira Energy Lease included the following oil wells within the White, R.M. (00097) Lease: Well Nos. 4D, 9D, 24D, and 30. Well Nos. 4D, 9D, and 24D are injection wells. On the other hand, Well No. 30 is an oil well. The Machaira Energy Lease also purported to include the Anahuac Main Frio Unit (20022) Lease, Well No. 1. The Machaira Energy Lease also included the following gas wells: Well No. 7 (154525), Well No. 27 (191840), Well No. 28 (109497), and Well No. 29 (191838).

Cary Carmack, who at the time of the hearing identified himself as a consultant for Inland, appears to have negotiated on behalf of Machaira Energy. The legal description for the Machaira Energy Lease is set out below in Figure 3.

Figure 3, Machaira Energy Lease Tract Description, TPIC Ex. 34.

LEGAL DESCRIPTION

Tract 1:
A tract in the James McCashey League, Abstract Eighteen (18), beginning in the Southeast corner of said League and bearing West 3,836 feet for the Southwest corner of said League, thence North 2,628 feet for the Northwest corner, thence East 3,836 feet for the Northeast corner, thence South 2,628 to the place of beginning, containing 231.428 acres, more or less, from the surface of the Earth down to 8,000 feet below the surface.

Tract 2:
1 acre in the form of a square on a north/south axis surrounding Well Number 24D (API No. 042-071-01296) also located in Chambers County, from the surface of the Earth down to 8,000 feet below the surface.

These tracts include the wells listed in the attached correspondence from Cary Carmack dated December 3, 2009.

As noted therein, the description stated that the two tracts included the wells listed in the attached correspondence from Cary Carmack dated December 3, 2009. In that correspondence Cary Carmack included the list of wells that he asserted were included in the Machaira Energy Lease. The list purported to include the Anahuac Main Frio Unit (20022) Lease, Well No. 1. A copy of the correspondence is included as Figure 4 below.

Figure 4, Machaira Energy Lease Attached Correspondence, TPIC Ex. 34.

MACHAIRA ENERGY, LLC
Strategic Energy Solutions

West Loop South
Suite 201
Dallas, TX 75401
713.561.0097

December 3, 2009

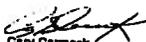
To: James Thompson
From: Cary Carmack

Subject: White Hairs Lease - Anahuac Field

As we have discussed, Machaira Energy, LLC is providing you with a list of the existing well-bores on the White Hairs property. This list includes well #, Railroad Commission of Texas lease ID #, and API #.

Well #	RRC#	API#
1	20022	042-071-31820
4D	00087	042-071-01388
7	184828	042-071-01485
8D	00087	042-071-01402
11D	071848	042-071-01403
24D	00087	042-071-01288
27	181848	042-071-30802
28	108487	042-071-30821
29	181838	042-071-30847
30	00087	042-071-31844

I plan to have your two thousand dollar fee in hand Monday, December 7. When we meet Monday, at that time, I will also have a plat available.

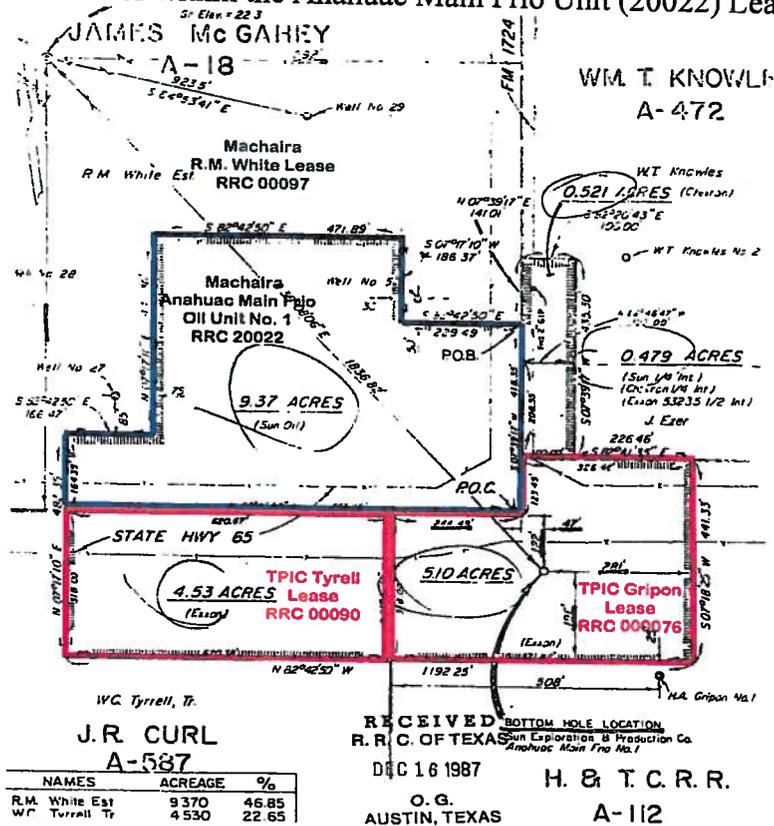
Regards,

Cary Carmack

The primary term of the lease was one year from January 1, 2010 to December 31, 2010. Inland did not provide any evidence that established that the lease was transferred from Macharia Energy to Inland. Inland provided no record evidence that Inland is a successor in interest to the Machaira Energy Lease, that it is entitled to operate any of the wells included in the area encompassed by that lease, or that it is the contract operator for Machaira Energy.

In 2003 through an assignment and bill of sale from Exxon, TPIC acquired oil and gas mineral leases on two tracts of land. A portion of those two tracts included two areas that made up two tracts of the original Anahuac Main Frio Unit (20022) Lease. TPIC acquired an oil and gas lease on 320 acres of land (Tyrell Lease). This area included the original 4.53 acres, from the J.R. Curl Survey, Abstract 587, contained within the Anahuac Main Frio Oil (20022) Unit. TPIC also acquired an oil and gas mineral lease on 442.3 acres of land (Gripon Lease). This lease is held by production from wells outside of the original Anahuac Main Frio Unit (20022) Lease. This area included the original 5.10 acres, from the H&T.C. R.R. Survey, Abstract 112, contained within the Anahuac Main Frio Oil Unit. Exxon was the predecessor in interest of those leases and through an assignment transferred its interest to TPIC.

Thus, through various conveyances of oil and gas leases the original tracts included in the pooled unit created at the time Sun Exploration filed its W-2 for Well No. 1, in the Anahuac Main Frio Unit (20022) Lease, were conveyed to TPIC and Machaira Energy. Figure 3, below sets out the current lease arrangements. It should be emphasized that the perimeter of each lease is larger than the boundaries of the original tracts in the pooled unit. Thus, for example, TPIC's leased interest extends beyond the original 9.63 acres outlined in Figure 5.

Figure 5, Current Leases within the Anahuac Main Frio Unit (20022) Lease, TPIC Ex. 2



E. Production from the White, R.M. (00097) Lease, Well No. 30, the gas wells included in the Machaira Energy Lease, and the Anahuac Main Frio Unit (20022) Lease, Well No. 1.

As noted above, the Machaira Energy Lease included the following gas wells: Well No. 7 (154525), Well No. 27 (191840), Well No. 28 (109497), and Well No. 29 (191838). No evidence was presented of any gas production from January 1, 2010 through December 31, 2010 attributable to those wells. At the hearing, TPIC presented the online production report for the White, R.M. (00097) Lease, Well No. 30 and the Anahuac Main Frio Unit (20022) Lease, Well No. 1. The data presented is summarized below at Table 5.

Table 5

Production of Oil Reported in 2010 (BBL)		
Month	Anahuac Main Frio Oil (20022) Well No. 1	White, R.M. (00097) Well No. 30
January	No Rpt	0
February	No Rpt	0
March	No Rpt	0
April	No Rpt	0
May	No Rpt	0
June	No Rpt	0
July	No Rpt	0
August	No Rpt	0
September	20	16
October	40	125
November	29	80
December	12	51

Total production, as ultimately reported by Inland from the Anahuac Main Frio Unit (20022) Lease, Well No. 1 through September of 2011 was 532 barrels.

TPIC presented evidence indicating that the White, R.M. (00097) Lease, Well No. 30 did not have a flow line attached on December 21, 2010 and on January 7, 2011. An inspection

conducted on December 21, 2010 found that all wells in the White, R.M. (00097) Lease were shut in and that Well No. 30 did not have a flow line attached to it.² TPIC witnesses and one of the mineral owners of the Machaira Energy Lease observed that the well did not have a flow line attached on January 7, 2011.³ On the other hand, the Anahuac Main Frio Unit (20022) Lease, Well No. 1 had a flow line connected that terminated at a tank.

Inland disputed the contention that a flow line was not attached to the R.M. White Lease (00097) Well No. 30 in 2010. The only documentary evidence in support of Inland's contention was a report prepared by Inland and provided to TPIC during discovery entitled, *Inland Minerals Management R.M. White Oil Lease Activity*. That report appears to contradict the Commission inspection report by noting that on December 20, 2010, one day before the inspection was conducted, Inland found a leak and repaired the flow line to Well No. 30. The exact same notation is made for November 5, 2010. The entries for November and December are somewhat inconsistent with the entry for February 9, 2010. The entry made for that date stated that Inland finished connecting the fittings for a flow line and installed the flow line itself to Well No. 30.⁴ None of the witnesses for Inland explained why a flow line would have been disconnected on a certain day and reconnected on another day.

Only three comments were made by Cary Carmack regarding the flow line to Well No. 30. First, Cary Carmack noted that the connecting flow line had been wrought with damage from tractors and the elements:

And the decision was made by Inland to remove completely these flow lines, some of them were above ground, and to start over with new flows (sic) lines.⁵

Second, Cary Carmack noted that Inland "answered a lot of questions as to flow line travel, angles, and all that. There were some flow lines that have been identified as still being good; others bad."⁶ Third, Cary Carmack attempted to explain how oil flowed from White, R.M. (00097) Lease, Well No. 30 in the following exchange:

Q: So any production from Well No. 30 after February 11, obviously, went through the flow line.

A: That is correct

Q: Where did the well – where did the oil that you produced prior to February 2011 go?

² TPIC Ex. 17, December 21, 2010 District Office inspection.

³ TPIC Ex. 23, Photograph of Well No. 30, January 7, 2011, Tr. p. 75 (Direct Testimony of Leigh Dickson), Tr. p. 141 (Direct Testimony of James Edwards).

⁴ TPIC Ex. No. 20.

⁵ Tr. p. 162.

⁶ Tr. p. 178.

A: Well, this was the reason the flow line was replaced because I can't answer that. We were flowing the well. We know what oil went into the tank when Well 30 was flowing, but it was my feeling at the time being at the field level that we perhaps had oil going somewhere else, but I couldn't nail it down.

Q: So you're claiming that Well No. 30 produced prior to January 1st 2011?

A: Yes, sir.

Q: But you do not know where that oil went?

A: I don't know where all of it went, but I do know that when oil went into the tank, I was able to keep notes on that oil

Casey Glenn Carmack provided limited testimony regarding the flow lines. He suggested that sometimes the production from the R.M. White (00097) Lease, Well No. 30 would be flowed to a truck. The testimony, however, was not clear and unequivocal. Casey Glenn Carmack testified that a truck was used "sometimes." He did not specify when a truck was used or whether it was used to collect product directly from the well or the tank. Furthermore, he equivocated and conceded that his knowledge of operations in the field was limited because when asked the means used to flow the well he indicated that he was not "out there at that time."⁷

TPIC also presented evidence that the production reports for both leases had been amended on several occasions. The initial production report for September, 2010 for the White, R.M. (00097) Lease was filed in December, 2010, amended in June, 2011, and amended again on November 12, 2011, seventeen days before the hearing. In fact, the production reports for the White, R.M. (00097) Lease for the entire period from September 2010 through April 2011 were amended in June of 2011. The final production reports for that entire period appear to have been filed on November 12, 2011, seventeen days before the hearing in this case.

Similarly, the production reports for the Anahuac Main Frio Unit (20022) Lease for September, October, November, and December of 2010 were initially filed in June, 2011. They were all amended on November 12, 2011, on the same day that the reports for the White, R.M. (00097) Lease were amended a second time.

F. Commingling Permit No. 5442

The P-4 *Certificate of Compliance and Transportation Authority* on file for Inland was effective October 8, 2010.⁸ Inland filed its application for a commingling Permit 3-5442 on May 10, 2011. The effective date requested on the Commingling Permit was September 15, 2010.

⁷ Tr. p. 208 (Direct Testimony of Casey Carmack).

⁸ TPIC Ex. No. 5.

Thus, the requested effective date predated the date the application was filed and also the effective date of the P-4 *Certificate of Compliance and Transportation Authority*. The permit application requested that Inland be allowed to commingle production from two leases: R.M. White (00097) Lease and the Anahuac Main Frio Unit (20022) Lease. The permit application asserted that the royalty interests and working interest were the same with respect to identity and percentage of the two leases. TPIC requested that the permit be revoked because the assertion made on the application regarding the identity of the interest owners on the two leases was false. At the hearing, Inland conceded that the permit should be revoked.

F. Inland Organization and History of Violation of Cary Carmack

TPIC asserted that Cary Carmack has a position of control within Inland. Two witnesses testified on behalf of Inland: Cary Carmack and his son, Casey Glenn Carmack. Cary Carmack was Inland's principal witness. The P-5 on file with the Commission for Inland indicates that Casey Glenn Carmack is the owner of Inland and that he is the sole proprietor of Inland. Cary Carmack testified that he is a contract consultant for oil field operations and a contract pumper. He currently works as a consultant for Inland and other operators. He testified that he does not have an ownership interest in Inland.

TPIC asserted that a P-4 *Certificate of Compliance and Transportation Authority* could not be issued to Inland because Cary Carmack held a position of ownership and control within the organization. TPIC presented an extensive history of enforcement cases against Cary Carmack that spanned the period from 1988 through 2011. Penalties paid by Cary Carmack for those cases totaled \$10,500.00. Total penalties and costs that remained uncollectible in that period totaled \$276,744.23. A summary of the enforcement cases is attached to this Proposal for Decision as Appendix 4.

TPIC witnesses testified that as issues regarding the Anahuac Main Frio Unit (20022) Lease, Well No. 1 developed TPIC representatives would discuss the matter with Inland representatives. The only representative from Inland to discuss these issues with TPIC prior to the hearing was Cary Carmack. The witnesses asserted that until the hearing, none of them had met Casey Glenn Carmack.

H. TPIC Good Faith Claim to Operate Anahuac Main Frio Unit (20022) Lease, Well No. 1.

TPIC has a surface use agreement from the surface owners where the surface of the Anahuac Main Frio Unit (20022) Lease, Well No. 1 is located. The surface use agreement provides TPIC the authority to access that well. Additionally, TPIC provided evidence that it has oil and gas leases covering the mineral property where the perforated interval and the bottomhole of the well is located.

EXAMINERS' OPINION

1. Introduction

An operator shall secure from the Commission a P-4 *Certificate of Compliance and Transportation Authority* showing compliance with the oil and gas conservation laws and rules of the state and the Commission before connecting with any oil or gas pipeline.⁹ It is well established that the Commission does not have the power or authority of deciding ownership of the title of land.¹⁰ The Commission does, however, have the “same power to appraise objections made of the issuance of a permit as it has to appraise the title upon which the application for a permit is based.”¹¹ Thus, while the Commission may not determine title, it may evaluate the underlying basis on which a claim is based.

A P-4 *Certificate of Compliance and Transportation Authority* entitles the holder of the instrument to move hydrocarbons off of the lease. It is well established that the Commission “should deny a permit if it does not appear to it that the applicant has a good-faith claim in the property.”¹² TPIC requests that Inland’s P-4 *Certificate of Compliance and Transportation Authority* to operate the Anahuac Main Frio Unit (20022) Lease and the White, R.M. (00097) Lease be revoked. Further, TPIC requests that the P-4 *Certificate of Compliance and Transportation Authority* for the Anahuac Main Frio Unit (20022) Lease be transferred to TPIC.

2. Inland’s Good Faith Claim to Operate the Anahuac Main Frio Unit (20022) Lease, Well No. 1 and the R.M. White (00097) Lease, Well No. 30.

Inland has not established that it has a good faith claim to operate the Anahuac Main Frio Unit (20022) Lease or the White, R.M. (00097) Lease, Well No. 30. Inland’s good faith claim to operate the Anahuac Main Frio Unit (20022) Lease fails for three reasons. First, Inland has not established a right to operate any wells pursuant to the Machaira Energy Lease as no evidence was presented that Inland was a successor in interest to that lease or that Inland is an operator for Machaira Energy. Second, all production from the Anahuac Main Frio Unit (20022) Lease is from mineral property not covered by the Machaira Energy Lease. Third, even if Inland had established that it was a successor in interest to the Machaira Energy Lease or an operator for the lessee, the lease expired at the end of the primary term of the lease.

Inland’s basis for its claim to operate either well was not articulated at the hearing. Inland appears to argue that the Machaira Energy Lease forms the basis of Inland’s good-faith claim for the P-4 *Certificate of Compliance and Transportation Authority* to operate both wells. At the hearing, however, no evidence was provided to establish the transfer of this lease to

⁹ Tex. Nat. Res. Code Ann. § 85.161.

¹⁰ *Trapp v. Shell Oil Co.*, 198 S.W. 2d 424, 437 (Tex. 1946).

¹¹ *Cheesman v. Amerada Petroleum Corp.*, 227 S.W.2d 829, 832 (Tex. Civ. App. – Austin, 1950, no writ).

¹² *Magnolia Petroleum Co., v. Railroad Commission*, 170 S.W. 2d 189, 191 (Tex. 1943).

Inland. While Cary Carmack apparently negotiated the lease on behalf of Machaira Energy there is no evidence that Inland acquired any interest in that lease as a successor to Machaira Energy.¹³ Alternatively, no evidence was provided that Inland was the contract operator for Machaira Energy.

Even if Inland had established that the Machaira Energy Lease had been transferred to Inland, TPIC has established that all oil produced from Anahuac Main Frio Unit (20022) Lease, Well No. 1 is produced from property subject to an oil and gas lease held by TPIC and not by Inland. The pre-drilled plat filed by the original applicant for the well indicated that the bottomhole of the well was located on property now under lease by TPIC. TPIC established that the entire perforated area along the wellbore is in the area now under lease by TPIC. TPIC asserted that the top of the perforation was at 7,487 feet. Cary Carmack, Inland's own principal witness, asserted that the top perforation was at 7,400 feet.¹⁴ Both locations are within the TPIC leased area and are off the Machaira Energy Lease. Furthermore, evidence presented by TPIC's petroleum geologist indicated that the top of the Frio Sands at this location is within the area now under lease by TPIC. Cary Carmack who testified on behalf of Inland disputed that fact. Inland's witness, however, is not qualified as an expert and no supporting evidence was provided to substantiate the claim. TPIC offered expert testimony regarding the location of the top of the producing formation and offered evidence to substantiate the witness's analysis. The Examiners find that the weight of the credible evidence established that the top of the Frio Sand along the path of the wellbore and the entire producing interval is within the area leased by TPIC.

The Machaira Energy Lease cannot form the basis of Inland's good-faith claim to operate a well that produces oil and gas under TPIC's leases. The fact that the original production was on the south side of the original unit was conceded by Cary Carmack. Cary Carmack did not dispute that the well was a directional well and he conceded that "the original production zone had been on the south side of the lease line, which today is operated by TPIC."¹⁵ Finally, James Edwards, one of the mineral interest owners that leased to Machaira Energy, and a landman himself, testified that the rights to the Anahuac Main Frio Unit (20022) Lease, Well No. 1 could not have been conveyed as part of the Machaira Energy Lease because that well is off-lease, as related to the leased area included in the Machaira Energy Lease. The Examiners find that Inland has not established a good-faith claim to operate the Anahuac Main Frio Unit (20022) Lease, Well No. 1.

¹³ Section 21 of the lease, related to assignment of the lease, provides that the lease may be assigned. A condition of assignment, however, is the written consent of the lessors. As noted, no evidence of the assignment, or the consent of the lessors to assign the lease to Inland was provided. Assignment would not be required if Inland acted as the operator of Machaira Energy. As noted above, no evidence was provided that Inland acted as Machaira Energy's contract operator.

¹⁴ Tr. p. 184 (Direct Testimony of Cary Carmack): "[T]here's a strip log identifying the new perforations with the top perforations being - top of the perforations being at 7,400 feet."

¹⁵ Tr. p. 171 (Direct Testimony of Cary Carmack.)

Further, the Machaira Energy Lease expired due to lack of production during the primary term and cannot form the basis of a good faith claim to operate Well No. 1. The evidence related to this point centered upon the flow lines used to move production from the Well No. 30 off of the lease and on inaccuracies alleged regarding Inland's production reports. Evidence presented at the hearing established that the White, R.M. (00097) Lease, Well No. 30 was incapable of production until February of 2011.

An inspection of that well conducted on December 21, 2010 established that a flow line was not installed on Well No. 30 at the time of the inspection. On January 7, 2011, employees of TPIC observed that a flow line was not installed on that well. James Edwards a mineral lessor of the Machaira Energy Lease confirmed that no flow line was connected to Well No. 30 on that day.¹⁶ Inland did not provide any testimony that explained why the flow line would be temporarily disconnected from Well No. 30 in December 2010 and January of 2011 and then reconnected during the same month to allow production from the well. Cary Carmack could not explain how oil flowed from the well prior to February 2011. When asked to explain the path of produced oil prior to February 2011, Cary Carmack stated that he could not answer that. The suggestion by Casey Glenn Carmack that production was flowed into a truck was not credible. Casey Glenn Carmack conceded he was not there at the time and Cary Carmack testified that he, not Casey Glenn Carmack, was the individual with responsibility in the field.¹⁷

The only documentary evidence related to the flow line produced by Inland, and provided by TPIC at the hearing, was a document prepared by Inland entitled, *Inland Minerals Management, R.M. White Oil Lease Activity*. That document indicated that a leak was found on the flow line the day before the Commission inspection and that the leak was repaired. It does not indicate that the flow line was removed and any contention that the flow line was attached to Well No. 30 is contradicted by the Commission inspection report and the observation made by TPIC employees on January 7, 2011. Furthermore, no additional documentary evidence, such as receipts for expenses related to the repair of the flow line, was provided at the hearing.

An entry included in the *Inland Minerals Management, R.M. White Oil Lease Activity* document appears to be inconsistent with the contention that a flow line was previously attached to Well No. 30 prior to February 9, 2011. Inland noted that on February 9, 2011, Inland "[f]inished [c]onnecting flow line Well 30" and installed "fittings for flow line to Well No. 30" It does not explain whether the alleged existing line was previously removed. The discrepancy in the document was never explained. The Examiners find that the weight of the credible evidence presented at the hearing indicates a flow line was not connected to Well No. 30 until February 2011. On the other hand, the Anahuac Main Frio Unit (20022) Lease, Well No. 1 had a flow line

¹⁶ Tr. p. 141 (Direct Testimony of James Edwards).

¹⁷ Tr. p. 223 (Cross Examination of Cary Carmack).

attached to it and no evidence was presented that the well was disconnected at any time from September 2010 through April of 2011.

Evidence of production reports filed for the White, R.M. (00097) Lease and the Anahuac Main Frio Unit (20022) Lease presented at the hearing established that the production reports for the last quarter of 2010 were inaccurate. The only well capable of producing oil on the White, R.M. (00097) Lease is Well No. 30. The online production report produced at the hearing, and entered into the record of this case, indicated that there had been no production from January to August from the White, R.M. (00097) Lease. Thus, there was no production on the lease during that period. Similarly, no report was filed for the Anahuac Main Frio Unit (20022) Lease. No party disputes these facts. The dispute involving the production reports focuses on the four month period that spans from September to December of 2010.

In December of 2010, Inland reported production from the White, R.M. (00097) Lease for September, October, and November. Production for December was reported in February of 2011. Inland did not file a report for the Anahuac Main Frio Unit (20022) Lease at that time. In June of 2011, Inland filed production reports for the White, R.M. (00097) Lease for each month from September 2010 through May of 2011. These production reports amended the original production reports filed by Inland for that lease. At the same time, Inland filed the production reports for the period from September through May 2011 for the Anahuac Main Frio Unit (20022) Lease. Except for the September 2010 production report filed for the White R.M. (00097) Lease each report was filed on the same day, June 20, 2011. The reports were amended again on November 12, 2011, eighteen days before the hearing in this case. On that day, Inland amended the production reports for the White, R.M. (00097) Lease and the Anahuac Main Frio Unit (20022) Lease for the period that spanned September 2010 through October 2011.

There is a disparity in the production reports. For example, the production report filed in June 2011 for the period from September 2010 to April 2011 for the White, R.M. (00097) Lease showed a total production of 895 barrels. The amendments filed on November 12, 2011, reduced that amount to 708 barrels, a reduction of 187 barrels. The production report filed on June 20, 2011 for the period from September 2010 to April 2011 for the Anahuac Main Frio Unit (20022) Lease showed a total production of 90 barrels. The amendments filed on November 12, 2011, increased that amount to 182 barrels, an increase of 92 barrels. The amounts reported are summarized below in Tables 6 and 7.

Table 6
 Production Reported for the White, R.M. (00097) Lease
 September 2010 through April 2011

	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11
Original	0	198	104	68	68	190	186	81
6/20/2011	0	198	104	68	68	190	186	81
11/12/2011	16	125	80	51	56	98	129	153

Table 7
Production Reported for the Anahuac Main Frio Unit (20022) Lease
September 2010 through April 2011

	Sep-10	Oct-10	Nov-10	Dec-10	11-Jan	11-Feb	Mar-11	Apr-11
6/20/2011(Original)	90	0	0	0	0	0	0	0
6/24/2011								4
6/29/2011						14	0	70
11/12/2011	20	40	29	12	42	23	0	16

TPIC focused its attention on the 2010 period from September through December. TPIC specifically requested that the production reports for that period be corrected. At the hearing, TPIC focused its cross examination on that period. Inland's own witness twice conceded that when Inland first started operating, production was shown only under White, R.M. (00097) Lease.¹⁸ Thus, the first production reports for the White, R.M. (00097) Lease necessarily had to reflect production from both wells. As the White, R.M. (00097) Lease, Well No. 30 was shut-in and not capable of production, all the production recorded was necessarily from the Anahuac Main Frio Unit (20022) Lease, Well No. 1.

It was not until after the application for the Commingling Permit No. 03-5442 was filed in May of 2011 that the production reports were amended to reflect production from both leases. Cary Carmack claimed that amended production numbers were the result of a correction that was made after review of the field notes. Thus, in the case of the September 2010 production reports, the production report for the White R.M. (00097) Lease was amended in November of 2011 to reflect that there were sixteen barrels of production from that lease. The September production report filed for the Anahuac Main Frio Unit (20022) Lease was initially filed on June 20, 2011, more than nine months after the reporting month. Inland noted 90 barrels of production. The same field notes apparently required a second correction in November of 2011 when the report was amended to reflect 20 barrels of production. No explanation of the error was proffered by Inland. Furthermore, the alleged field notes were not offered at the hearing. The Examiners find that the testimony is not credible, does not explain how multiple amendments for the same month would have been required from the same set of field notes, and suggests that the production reflected in the production reports filed with the Commission is unreliable.

Taken together, the evidence produced at the hearing regarding production from the White, R.M. (00097) Lease suggests that the only producing well on the lease, Well No. 30, was incapable of production during 2010, and that the data regarding production from the White, R.M. (00097) Lease during that period is not accurate. Table 8 below consolidates the key evidence related to production from the White, R.M. (00097) Lease and the Anahuac Main Frio

¹⁸ Tr. P. 160 (Direct Testimony of Cary Carmack) & Tr. p. 216 (Cross Examination of Cary Carmack).

Unit (20022) Lease from January through December of 2010. The Examiners find that the weight of the credible evidence presented at the hearing indicates that there was no production from the White R.M. (00097) Lease, Well No. 30 from January 2010 through December 31, 2010. The Examiners find that all production shown for 2010 was from the Anahuac Main Frio Unit (20022) Lease, Well No. 1.

Table 8

Summary of Evidence Reporting Production						
Jananuary - December 2010						
Month	White, R.M. (00097) Lease			Anahuac Main Frio Ooil Unit (20022)		
January (2010)	0			No Rpt		
February	0			No Rpt		
March	0			No Rpt		
April	0			No Rpt		
May	0			No Rpt		
June	0			No Rpt		
July	0			No Rpt		
August	0			No Rpt		
9/15 Requested Effective Date of Comingling Permit *						
	Dec-2010**	Jun-2011	Nov-12-2011	Dec-2010	Jun-2011	Nov-12-2011
September	0	0	16	No Rpt	90	20
October	198	198	125	No Rpt	0	40
November	104	104	80	No Rpt	0	29
12/21 Inspection - No flow line installed on Well No. 30.***						
December	68	68	51	No Rpt	0	12
On 01/07 - TPIC witness Observed No flow line installed on Well No. 30.****						
4/18/2011 - Commission Inspection Noted the the R.M. White (00097) Well No. 1 Anahuac Main Frio Oil Unit (20022) Well No. 30 produce to same 210 bbl tank.						
5/10/11 Commingling Permit Application Filed						

- * TPIC Ex. 32, Application for Exception to Statewide Rules (SWR) 26 and 28.
- **Indicates month or date reported.
- ***TPIC Ex. 17, District Office Inspection Report, 12/21/10.
- ****TPIC Ex. 23, Photograph of Well No. 30, January 7, 2011 & Tr. p. 23.

As noted above, the Machaira Energy Lease included three gas wells: Well No. 7 (154525), Well No. 27 (191840), Well No. 28 (109497), and Well No. 29 (191838). Although Cary Carmack mentioned the existence of these wells in his testimony, no evidence was provided of any production attributable to those wells from January 1, 2010 through December 31, 2010.¹⁹ Inland's failure to prove that the R.M., White (00097) Lease Well No. 30 produced during the primary term of the lease means that the Machaira Energy Lease terminated for lack of production. A fact confirmed by James Edwards, one of the mineral interest owners that was a party to that lease.

Thus, Inland's good faith claim to operate the Anahuac Main Frio Unit (20022) Lease fails for three reasons. First, Inland has not established a right to operate any wells pursuant to the Machaira Energy Lease as no evidence was presented that Inland was a successor in interest to that lease or that Inland is an operator for Machaira Energy. Second, all production from the Anahuac Main Frio Unit (20022) Lease is from mineral property not covered by the Machaira Energy Lease. Third, even if Inland had established that it was a successor in interest to the Machaira Energy Lease or an operator for the lessee, the lease expired during the primary term of the lease.

3. Cancellation of the Commingling Permit No. 03-5442.

TPIC requested that the Commingling Permit No. 03-5442 be revoked. As noted above, Inland asserted in its application that the royalty and working interest of the R.M., White (00097) Lease and the Anahuac Main Frio Unit (20022) Lease were the same with respect to identity and percentage. The evidence in this case, however, establishes that the oil and gas produced from the Anahuac Main Frio Unit (20022) Lease, Well No. 1 is within the area leased by TPIC. The top of the Frio Sands along the path of the well bore is at 7,281 feet. The perforations of this well are between 7,487 feet to 7,500 feet. The top of the Frio Sands and the perforated interval all fall within the original 4.53 acres, from the J.R. Curl Survey, Abstract 587, contained within the Anahuac Main Frio Oil Unit. The oil and gas produced from the R.M., White (00097) Lease is produced from the area leased to Machaira Energy. Furthermore, it appears from testimony in this case that Inland was aware of the separate working interests at the time it filed its application for the commingling permit. In response to a specific question from counsel for Inland Cary Carmack suggested that he was aware of the bottomhole location of the Anahuac Main Frio Unit (20022) Lease, Well No. 1:

Q. So when you filed to commingle Well No. 30 and Well No. 1, you didn't know that the Well No. 1 was a horizontal (sic) well, did you?

¹⁹ Tr. p. 178 (Direct Testimony of Cary Carmack). "Well 7, which has not been discussed. There's a Well 27 and 29, which to date are classified as gas wells but originally drilled as oil wells." Production records at the Commission indicate that no production was reported for these wells.

A. Well, we didn't know that it had a deviated bottomhole location until after we were able to research some of this; and then, when we found out it was deviated, we know that the original production zone had been on the south side of the lease line, which today is operated by Texas Petroleum *We did discuss the deviated bottomhole location with various officials of District Three in Houston.* They wanted to make sure that we had a procedure in place to accurately record production, and they suggested that we use a commingling permit. I originally had requested that a P-6 combination of lease numbers be instituted, but they thought that, temporarily, a commingling might be a better reflection of what's going on. And that if this ever came to an issue, it could be revoked or rescinded, which we've already told counsel and Mr. Examiner that we would do.²⁰

It would appear from this exchange that the consultant for Inland was aware that the working interests of the two leases were not owned by the same individuals or entities at the time the application for the commingling permit was filed. It is also apparent that Inland concurs that the permit should be revoked. Based upon the evidence in this proceeding the Examiners find that the Commingling Permit No. 3-5442 should be revoked because the application does not accurately reflect the ownership interest in the leases. Namely, the ownership interests were not identical. The result was that the commingling permit was issued administratively without notice and hearing. Furthermore, the Examiners find that there was no good-faith claim to have requested Commingling Permit No. 3-5442. Accordingly, the Examiners find that that the permit should be revoked and declared invalid from the date of issuance.

4. Commingling of Production from R.M., White (00097) Lease Well No. 30 and Anahuac Main Frio Unit (20022) Lease, Well No. 1

TPIC witnesses asserted that any production, prior to January of 2011, that was recorded for R.M. White (00097) Well No. 30 and allegedly commingled with production from the Anahuac Main Frio Unit (20022) Lease, Well No. 1, actually came from the Anahuac Main Frio Oil (20022) Unit Well No. 1.²¹ Once the R.M. White (00097) Well No. 30 was connected to a flow line in February of 2011, both the R.M. White (00097) Well No. 30 and the Anahuac Main Frio Unit (20022) Lease, Well No. 1 were flowed to the same tank.²² The Examiners find that based upon the evidence presented in this case it appears that all production recorded for 2010 was actually produced from Anahuac Main Frio Unit (20022) Lease, Well No. 1. This is consistent with the statement made by Cary Carmack that prior to June 20, 2011 all production from the Anahuac Main Frio Unit (20022) Lease, Well No. 1 was being assigned to the White R.M. (00097) Lease.²³ Furthermore, this was done even though Inland had not yet been issued

²⁰ Tr. p. 171 – 172 (emphasis added).

²¹ Tr. p. 40 – 41.

²² TPIC Ex. 18 (Railroad Commission Inspection of April 18, 2011) & Tr. p. 64.

²³ Tr. p. 216 (Cross Examination of Cary Carmack).

commingling Permit 03-5442.²⁴ The Examiners find that Inland's filings suggested that in 2010 there was commingling. The weight of the evidence, however, indicates that commingling occurred only in the reported filings to the Commission.

5. Whether waste will occur if Inland plugs back the Anahuac Main Frio Unit (20022) Lease, Well No. 1.

If the Anahuac Main Frio Unit (20022) Lease, Well No. 1 were plugged back the only way to recover the reserves under TPIC's leases would be to drill a new vertical well. Leigh Dickson, who testified on behalf of TPIC, explained that based upon the information available, a vertical replacement well on leases held by TPIC would not be economically feasible. Thus, if the existing Anahuac Main Frio Unit (20022) Lease, Well No. 1 were plugged back, the reserves would be left in place and ultimately those reserves would be lost. He estimated that the cost of drilling a new well was about \$750,000. It was Mr. Dickson's opinion that whatever recoverable reserves in place in that formation would not justify the financial risk of drilling a new well. The Examiners find that if the Anahuac Main Frio Unit (20022) Lease, Well No. 1 were plugged back to a point behind the leases held by TPIC, the reserves remaining within the leases held by TPIC would be lost. Before any action to plug back the well is taken the operator must ensure compliance with Rule 38(d)(3).²⁵

6. Issues related to the Form W-10 filed February 22, 2011 and ownership of Inland

TPIC challenged the information contained in the Form W - 10 filed by Inland. Inland submitted the Form W-10 to the Commission for the R.M., White (00097) Lease Well No. 30 and the Anahuac Main Frio Unit (20022) Lease. The form indicated that the White, R.M. (00097) Well No. 30 was tested on October 16, 2010, and the Anahuac Main Frio Unit (20022) Lease, Well No. 1 was tested on October 18, 2010. The report indicates that 5 Mcf of natural gas was produced from the R.M., White (00097) Lease Well No. 30 and 2 Mcf of natural gas was produced from the Anahuac Main Frio Unit (20022) Lease, Well No. 1. The TPIC witnesses testified, however, that on January 7, 2010, they observed that the R.M., White (00097) Lease Well No. 30 had no equipment to measure gas. Inland provided no testimony or evidence to rebut the evidence presented by TPIC. The Examiners find that Inland failed to establish how the gas recorded on the Form W-10 was measured and therefore, the entries on the form, were inaccurate.

TPIC also asserted that Section 91.114 of the Natural Resources Code provides that the Commission may not accept an organization report or an application for a permit if the

²⁴ Tr. p. 217 (Cross Examination of Cary Carmack)

²⁵ Whether Inland remains as the certified operator of the Anahuac Main Frio Oil (20022) Unit Well No. 1 or TPIC is granted the P-4 Certificate of Compliance and Transportation Authority, the certified operator must, of course, be compliance with Rule 37 and 38.

organization or a person who holds a position of ownership or control in the organization violated a statute or commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution. Application of this provision is premised on the assertion that Cary Carmack, who is precluded from being an operator pursuant to this section is actually in control of Inland. The Examiners find that TPIC has not established that Cary Carmack is the owner of Inland or in control of Inland.

7. TPIC Good Faith Claim to Operate the Anahuac Main Frio Unit (20022) Lease.

TPIC has requested that it be granted a P-4 *Certificate of Compliance and Transportation Authority* to operate the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1. Inland has failed to establish that it has a good faith claim to operate that well. On the other hand, TPIC has established that it possesses an oil and gas lease for the hydrocarbons produced from the Anahuac Main Frio Unit (20022) Lease, Well No. 1. TPIC has also established that it has the authority, by virtue of a lease agreement with the surface owner to access the surface location of the Anahuac Main Frio Unit (20022) Lease, Well No. 1. Thus, TPIC has established that it is entitled to a P-4 *Certificate of Compliance and Transportation Authority* to operate the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 and the Examiners find that issuance of such a permit is justified.

Inland appears to argue that the Machaira Energy Lease provides Inland with all interest to the borehole from the surface location to the lease line of the Machaira Energy Lease and the Gripon Lease. As noted above, Inland has not established that it is the successor an interest to the Machaira Energy Lease. The Examiners express no opinion on potential civil issues, if any, raised by the fact that the well bore for the Anahuac Main Frio Unit (20022) Lease, Well No. 1, traverses property owned or leased by the R.M. White Family Heirs.²⁶

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 the hearing in this docket was sent to all parties entitled to notice. Both Texas Petroleum Investment Company ("TPIC") and Inland Minerals Management ("Inland") appeared at the hearing and presented evidence.

²⁶ At this time, the pooled unit formed by Sun Explorations remains intact for regulatory purposes. Further, it is undisputed that the well bore does not penetrate the field for which it is permitted until after it crosses onto TPIC's lease and TPIC's assertion that it has acquired the right to use the off-lease surface location for the well is similarly undisputed. The issues raised by Inland are property issue outside of the scope of the Commission's jurisdiction. Furthermore, those issues require evaluation of facts that are not in evidence in this proceeding regarding the status of title of the R.M. White Family Heirs and easements that may impact title.

2. Inland currently holds a P-4 *Certificate of Compliance and Transportation Authority* to operate the White, R.M. (00097) Lease Well No. 30 and the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1.
3. The Anahuac Main Frio Oil (20022) Unit was created by pooling five tracts of land.
 - a. Two tracts, totaling a single (1) acre, from the W.T. Knowles Survey, Abstract 472;
 - b. A single tract, made up of 9.37 acres, from the James McGahey Survey, Abstract 18;
 - c. A single tract, made up of 4.53 acres, from the J.R. Curl Survey, Abstract 587; and,
 - d. A single tract, made up of 5.10 acres, from the H&T.C. R.R. Survey, Abstract 112.
4. The Anahuac Main Frio Oil (20022) Unit was originally established in 1988.
5. Sun Exploration and Production Company filed a Certificate of Pooling Authority and requested a Rule 37 permit to drill the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1. The well was intended to produce oil from the Frio Sands.
6. The Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 is a directional well. The surface location of the well is off of the pooled unit and the bottomhole location of the well is on a 5.10 acre tract included in the pooled unit within the H&T.C. R.R. Survey, Abstract 112.
7. In the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 the top of the Frio Sands is encountered at 7,281 feet.
8. The perforations of the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 are between 7,487 feet and 7,500 feet.
9. The total depth of the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 is at 7,825 feet.
10. On January 1, 2010, Machaira Energy, LLC. ("Machaira Energy") executed an oil and gas lease with the R.M. White Family Heirs ("Machaira Energy Lease").
11. The Machaira Energy Lease encompasses 232.428 acres. This area includes the original 9.37 acres from the James McGahey Survey, Abstract 18, contained within the original Anahuac Main Frio Oil Unit (20022) Lease.
12. The surface of location of the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 is located in the area encompassed by the Machaira Energy Lease.
13. The Machaira Energy Lease included the following wells within the White, R.M. Lease (00097): Well Nos. 4D, 9D, 24D, and 30. Wells Nos. 4D, 9D, and 24D are injection wells. Well No. 30 is an oil well. The Machaira Energy Lease also purported to include

- the Anahuac Main Frio Oil Unit (20022) Well No. 1. The Machaira Energy Lease also included the following gas wells: Well No. 7 (154525), Well No. 27 (191840), Well No. 28 (109497), and Well No. 29 (191838).
14. The primary term of the Machaira Energy lease was January 1, 2010 to December 31, 2010.
 15. There is no evidence that established that Inland is the successor in interest to Machaira Energy or that Inland operates on behalf of Machaira Energy.
 16. On January 1, 2003, through an assignment and bill of sale from Exxon, TPIC acquired an oil and gas mineral lease on a 320 acre tract (Tyrell Lease). This area included the original 4.53 acres, from the J.R. Curl Survey, Abstract 587, contained within the Anahuac Main Frio Oil Unit (20022) Lease. TPIC acquired an oil and gas mineral lease on 442.3 acres of land (Gripon Lease). This area included the original 5.10 acres, from the H&T.C. R.R. Survey, Abstract 112, within the Anahuac Main Frio Oil Unit.
 17. The bottomhole and the perforated interval of the Anahuac Main Frio Oil (20022) Unit Well No. 1 are located on mineral property leased by TPIC.
 18. The top of the Frio Sands encountered in the Anahuac Main Frio Oil (20022) Unit is located on mineral property leased by TPIC.
 19. Any production from the Anahuac Main Frio Oil (20022) Unit Well No. 1 is from mineral property leased by TPIC and not from the property covered by the Machaira Energy Lease.
 20. TPIC requested transfer of the P-4 *Certificate of Compliance and Transportation Authority* for the Anahuac Main Frio Oil Unit (20022) Lease from Inland to TPIC.
 21. There has not been any production from the gas wells encompassed by the Machaira Energy Lease: Well No. 7 (154525), Well No. 27 (191840), Well No. 28 (109497), and Well No. 29 (191838).
 22. The White, R.M. (00097) Lease Well No. 30 did not have a flow line attached on December 21, 2010 or on January 7, 2011.
 23. Inland attached a flow line to the White, R.M. (00097) Lease Well No. 30 on February 9, 2011.
 24. Inland could not explain where oil produced prior to February of 2011 from White, R.M. (00097) Lease Well No. 30 flowed.
 25. Well No. 30 is the only well capable of producing oil on the White, R.M. (00097) Lease.

26. Inland reported production from the White, R.M. (00097) Lease for each of the following months: September, October, November, December of 2010 and January of 2011.
27. The production records identified in Finding of Fact No. 26, for September, October, November, December of 2010 and January of 2011 were amended twice: Once in June of 2011 and once in November of 2011.
28. As no flow line was installed on the White, R.M. (00097) Lease Well No. 30 until February 9, 2011 no production could have occurred from that well from September 2010 until February 2011.
29. The production reports filed by Inland for the White, R.M. (00097) Lease for September, October, November and December of 2010 and January 2011 were inaccurate as there was no production from that well during that period.
30. Inland filed its Application for Exception to Statewide Rule (SWR) 26 and Rule 27 (Commingling Permit) on May 10, 2011 for two wells: White, R.M. (00097) Lease Well No. 30 and Anahuac Main Frio (20022) Unit Well No. 1.
31. Inland requested an effective date for the Commingling Permit of September 15, 2010.
32. Inland's requested effective date predated the date of its P-4 *Certificate of Compliance and Transportation Authority* for the Anahuac Main Frio Oil Unit (20022) Well No. 1.
33. Inland's application for a Commingling Permit asserted that the royalty interest and that working interest of the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 and the R.M. White Lease (00097) Well No. 30 were the same.
34. Commingling Permit No. 03-5442 was granted administratively without notice or hearing on June 31, 2011.
35. The royalty interest and working interests of the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 and the White, R.M. (00097) Lease, Well No. 30 are not the same and were not the same at the time Inland filed its commingling application.
36. Inland did not establish that it has good-faith claim to operate the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 because Inland has not provided evidence of a good faith claim to the hydrocarbons produced by the wells:
 - a. Inland did not establish that it holds an oil and gas lease that provides Inland with the right to produce the well,
 - b. The Manchaira Energy Lease did not provide Inland any right to produce hydrocarbons that are off the property covered by the lease, the lease, and

- c. Inland did not establish that the Manchaira Energy Lease was perpetuated beyond the primary term of the lease by production or other operations or that the lease has current effect.
37. Inland did not establish that it has a good-faith claim of a right to operate White, R.M. (00097) Lease Well No. 30 because Inland has not provided evidence of a good faith claim to the hydrocarbons produced by the wells:
 - a. Inland did not establish that it holds an oil and gas lease that provides Inland with the right to produce the well, and
 - b. Inland did not establish that the Manchaira Energy Lease was perpetuated beyond the primary term of the lease by production or other operations or that the lease has current effect.
38. If the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 is plugged back to a location not on TPIC's lease the only way to recover hydrocarbon reserves from the leases held by TPIC within the area of the original unit would be to drill a new well.
39. A vertical replacement well on the leases held by TPIC would not be economically feasible and the existing reserves would be lost.
40. The last date for production recorded from the Anahuac Main Frio Oil Unit (20022) Lease prior to September 2011 was in 1991. Production commenced again in September of 2011.
41. The Anahuac Main Frio Oil Unit (20022) Lease was accepted by the Commission for regulatory purposes.
42. The Commission has not approved the dissolution of the Anahuac Main Frio Oil Unit (20022) Lease pooled unit.

Conclusions of Law

1. Proper notice was 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. The Commission may require an operator who files a form P-4 for the purpose of changing the designation of an operator for a lease or well to provide to the Commission evidence that the transferee has the right to operate the lease or well. 16 Tex. Admin. Code § 3.58(a)(1).

4. In order to prevent waste, to promote conservation or to protect correlative rights, the Commission may administratively approve the surface commingling of oil, gas, or oil and gas production from two or more tracts of land producing from the same Commission-designated reservoir or from one or more tracts of land producing from different commission-designated reservoirs when the following conditions are met:
 - a. The tracts or commission-designated reservoirs have identical working interest and royalty interest ownership in identical percentages and therefore there is no commingling of separate interests;
 - b. Production from each tract and each commission-designated reservoir is separately measured and therefore there is no commingling of separate interests; or
 - c. When the tracts or commission-designated reservoirs do not have identical working interest and royalty interest ownership in identical percentages and the Commission has not received a protest to an application within 21 days of notice of the application being mailed by the applicant to all working and royalty interest owners or, if publication is required, within 21 days of the date of last publication and the applicant provides:
 - i. a method of allocating production to ensure the protection of correlative rights, in accordance with paragraph (3) of this subsection; and
 - ii. an affidavit or other evidence that all working interest and royalty interest owners have been notified of the application by certified mail or have provided applicant with waivers of notice requirements; or
 - iii. in the event the applicant is unable, after due diligence, to provide notice by certified mail to all working interest and royalty interest owners, a publisher's affidavit or other evidence that the commission's notice of application has been published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the tracts that are the subject of the application are located. 16 Tex. Admin. Code § 3.26(b).
5. If two or more separate tracts are joined to form a unit for oil or gas development, the unit is accepted by the Commission, and the unit has produced hydrocarbons in the preceding twenty (20) years, the unit may not thereafter be dissolved into the separate tracts with the rules of the commission applicable to each separate tract if the dissolution results in any tract composed of substandard acreage for the field from which the unit produced, unless the Commission approves such dissolution. 16 Tex. Admin. Code § 3.38(d)(3)(A).
6. Inland did not establish that it has a good faith claim to a right to operate the R.M. White (00097) Lease Well No. 30 or the Anahuac Main Frio Oil Unit (20022) Well No. 1.
7. Texas Petroleum Investment Company established that it has a good faith claim to a right to operate the Anahuac Main Frio Oil (20022) Unit Well No. 1.

8. Commingling Permit No. 03-5442 is void and should be revoked because the permit was granted without providing the notice and opportunity for hearing required by Statewide Rule 26(b). 16 Tex Admin. Code § 3.26(b).
9. Commingling Permit No. 03-5442 should be revoked because Inland Minerals Management did not establish that it has a good faith claim to a right to operate the Anahuac Main Frio Oil Unit (20022) Lease, Well No. 1 or the R.M White (00097) Lease, Well No. 30.
10. An operator wishing to operate the Anahuac Main Frio Oil (20022) Unit, Well No. 1 as an individual lease tract basis is required first to seek the Commission approval for dissolution of the Anahuac Main Frio Oil Unit (20022) Lease pooled and comply with any applicable well spacing and well density requirements.

Recommendation

The Examiners recommend that the above findings and conclusions be adopted and that the attached Final Order revoking the Commingling Permit No. 03 – 5442 issued to Inland Minerals Management be approved and that the permit be revoked as of the date of issuance. Furthermore, the Examiners recommend that the P-4 *Certificate of Compliance and Transportation Authority* held by Inland Minerals management to operate the Anahuac Main Frio Oil Unit (20022) be cancelled and that the request of TPIC to have the P-4 *Certificate of Compliance and Transportation Authority* to operate the Anahuac Main Frio Oil Unit (20022) transferred be approved. Further, Texas Petroleum Investment Company is hereby designated as the operator of the Anahuac Main Frio Oil Unit (20022) Lease pursuant to a P-4 *Certificate of Compliance and Transportation Authority*, as set out in the attached Final Order.

Respectfully submitted,



Gene Montes
Hearings Examiner



Richard Atkins
Technical Examiner