

OIL & GAS DOCKET NO. 10-0231524

COMMISSION CALLED HEARING TO CONSIDER THE STANDING OF PHILLIPS PETROLEUM COMPANY REGARDING BP AMERICA PRODUCTION COMPANY'S APPLICATIONS FOR AN EXCEPTION TO STATEWIDE RULE 38, BUCKLES GAS UNIT, WELL NO. 3 AND STATEWIDE RULES 37/38 FOR THE TRIPLETT "A" LEASE, WELL NO. 2, TEXAS HUGOTON FIELD, SHERMAN COUNTY, TEXAS

APPEARANCES:

REPRESENTING:

FOR PROTESTANT:

Tim George, Attorney
Joe Cochran, Attorney
Richard F. Strickland, Engineer

Phillips Petroleum Company

FOR APPLICANT:

Andrew Gallo, Attorney
Kenneth P. Juran, Engineer

BP America Production Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

OBJECTION TO STANDING FILED:

March 7, 2002

NOTICE OF HEARING:

June 4, 2002

DATE CASE HEARD:

June 12, 2002

HEARD BY:

James M. Doherty, Legal Examiner

Donna Chandler, Technical Examiner

PFD CIRCULATION DATE:

August 7, 2002

CURRENT STATUS:

Protested

STATEMENT OF THE CASE

This is a Commission called proceeding to consider the standing of Phillips Petroleum Company ("Phillips") to intervene in and protest two applications of BP America Production Company ("BP") for Statewide Rule 37 and/or 38 exceptions for wells on two leases in the Texas Hugoton Field, Sherman County, Texas. The examiners recommend that Phillips be denied standing.

On January 31, 2002, filed an application for a density exception permit under Statewide Rule 38 for its Buckles Gas Unit, Well No. 3, Texas Hugoton Field, Sherman County, Texas. This Rule 38 application was docketed as Oil & Gas Docket No. 10-0230599.

On February 15, 2002, BP filed an application for a spacing and density exception permit under Statewide Rules 37 and 38 for its Triplett "A" Lease, Well No. 2, Texas Hugoton Field, Sherman County, Texas. This Rule 37/38 application was docketed as Rule 37/38 Case No. 0230732.

Phillips filed notices of its intention to intervene in and protest both of the applications. On March 7, 2002, BP filed a request that Phillips be required to establish its standing before the applications were set for hearing. On March 20, 2002, the Assistant Director for the Oil and Gas Section of the Office of General Counsel forwarded to Phillips a request that Phillips provide a description of the basis for its assertion that it had standing to protest the applications. Phillips made this filing, and BP replied. On April 30, 2002, the Assistant Director for the Oil and Gas Section of the Office of General Counsel forwarded to Phillips and BP notice that the issue of Phillip's standing should be resolved at a hearing and not administratively, and that the application files were being forwarded to Docket Services.

Docket Services assigned Oil & Gas Docket No. 10-0231524 to the hearing on standing, and issued a Notice of Hearing on June 4, 2002. The hearing on standing was convened on June 12, 2002. Phillips was represented at the hearing by its attorneys, Tim George and Joe Cochran, and by Richard F. Strickland, Engineer. BP was represented at the hearing by its attorney, Andrew Gallo, and by Kenneth P. Juran, Engineer. Phillips presented evidence through the testimony and exhibits of Richard F. Strickland. BP presented evidence through the testimony and exhibits of Kenneth P. Juran. Pursuant to the request of Phillips, and without objection from BP, the examiners agreed to take official notice of the field rules for the Texas Hugoton Field and of the application packages in Oil & Gas Docket No. 10-0230599 and Rule 37/38 Case No. 0230732.

BACKGROUND

Field rules for the Texas Hugoton Field provide for 1250'/2500' spacing and 640 acre density.

BP's proposed Buckles Gas Unit, Well No. 3 ("Buckles #3") is to be drilled on the 640 acre Buckles Gas Unit in Section 379, Block 1T, T&NO RR Co. Survey, A-379, Texas Hugoton Field, in

Sherman County, Texas. An exception to Statewide Rule 38 is required for the Buckles #3 because there is an existing well on the Buckles Gas Unit, the Buckles Gas Unit No. 2, producing from the Texas Hugoton Field, and the proposed drilling unit for the Buckles #3 is assigned 320 acres of the 640 acre Buckles Gas Unit.

BP's proposed Triplet "A" Lease, Well No. 2 ("Triplet #2") is to be drilled on the 640 acre Triplet "A" Lease in Section 62, Block 2B, GH&H RR Co./C. J. Burgess Survey, A-538, Texas Hugoton Field, in Sherman County, Texas. An exception to Statewide Rule 37 is required for the Triplet #2 because the well is proposed to be drilled 330' from the south line and 330' from the east line of the lease. An exception to Statewide Rule 38 is required for the Triplet #2 because there is an existing well on the Triplet "A" Lease, the Triplet Aquilla 1, producing from the Texas Hugoton Field, and the proposed drilling unit for the Triplet #2 is assigned 320 acres of the 640 acre lease.

A plat submitted with the Form W-1 for the proposed Buckles #3 in Section 379 indicates that BP is its own offset to the east (Section 378), northeast (Section 373), and southeast (Section 407), Chesapeake Exploration Limited Partnership is the offset operator to the west (Section 380), northwest (Section 371), southwest (Section 405), and south (Section 406), and Lasiter & Co., Inc., is the offset operator to the north (Section 372).

A plat submitted with the Form W-1 for the proposed Triplet #2 indicates that BP is its own offset to the west (Section 376), northwest (Section 375), southwest (Section 409), south (Section 410), and southeast (Section 46), and Devon Energy Production Company, L.P. is the offset operator to the east (Section 47), northeast (Section 48), and north (Section 61).

The examiners have officially noticed that BP filed waivers of objection to the requested Statewide Rule 37 and 38 exceptions for the Triplet #2, signed on behalf of Devon, and that only Phillips has filed notice of intent to intervene in and protest the applications in Oil & Gas Docket No. 10-0230599 (Buckles #3) and Rule 37/38 Case No. 0230732 (Triplet #2).

DISCUSSION OF THE EVIDENCE

Phillips' Evidence and Position

(a) Evidence

Phillips presented evidence through the testimony of Dr. Richard F. Strickland and exhibits sponsored by him. Dr. Strickland is a consulting petroleum engineer, and holds B.S., M.S. and PhD degrees in Petroleum Engineering from Texas A&M University.

Dr. Strickland presented a base map of a 45-Section area around and including the Buckles Gas Unit and Triplet "A" Lease, which, among other things, showed area acreage of which Phillips is the operator or in which it has an interest. A copy of the map is attached to this Proposal for Decision as Appendix 1. Phillips' operated acreage is depicted in solid yellow, and tracts in which

Phillips holds a nonoperating interest are hatched in yellow. The BP Buckles Gas Unit and the Triplett "A" Lease are shown in purple. This map, coupled with Dr. Strickland's testimony concerning it, showed that all of the Phillips operated acreage is at least one section away from the Buckles Gas Unit and the Triplett "A" Lease. The Phillips acreage shown on the area map includes two sections in which Phillips has an interest, but is not the operator. These include Section 377, where Phillips is the owner of a 47% nonoperating working interest and BP is operator, and Section 61, where Phillips leased acreage is pooled and the operator of the pooled unit is Devon. The acreage in Section 377, in which Phillips holds the nonoperating working interest, is between and one section away from the Buckles Gas Unit and the Triplett "A" Lease. The Phillips acreage in Section 61, which is pooled and operated by Devon, immediately offsets the Triplett "A" Lease to the north. The map showed that the nearest Phillips operated well to the proposed Buckles #3 is the Reid No. 1 in Section 408, and the nearest Phillips operated well to the proposed Triplett #2 is the Clara C 1R in Section 1.

The area map presented by Dr. Strickland showed the locations of currently active and shut-in wells in the 45-Section area. Shut-in wells identified by Dr. Strickland included the Hudson Gas Unit A 1 in Section 46, the Folsom Gas Unit 1 in Section 410, the Clark Gas Unit 1 in Section 376, the McKenzie 1 in Section 375, the Wohlford GU 1 in Section 409, and the Buckles Gas Unit 2 in Section 379.

Dr. Strickland also presented a series of stick cross sections, the lines of which were drawn on his 45-Section area map. The cross sections showed the tops of the Herrington and O'Dell Shale formations, as picked from electric logs, as seen in each well on the lines of the cross sections, and showed also the completion intervals of each well. Dr. Strickland testified that the cross sections showed that all area wells are completed in the same formations. He stated that he expected the proposed Buckles #3 well and the proposed Triplett #2 well to be completed in the same formations as the surrounding wells.

Dr. Strickland testified that he studied reservoir pressure obtained from wells in the 45-Section area shown on his area map. He presented an exhibit consisting of graphically displayed individual well plots of shut-in wellhead pressure versus time for each well and section. In sections where a replacement well had been drilled, the plots showed pressure history with time for both the original and replacement wells. Dr. Strickland testified that original reservoir pressure was about 450-500 psia. He noted that for the original wells he studied in the 45-Section area, first reported pressures (1966) were all about 140 psia along the western side of the area and to the east until somewhat higher first reported pressures, up to 240 psia, were observed on the eastern side of the area.

Dr. Strickland observed that the data in his individual well plots showed orderly and uniformly dropping pressures versus time, that the shape of the pressure curves was similar throughout the area, with some "scatter" in the data for some wells, and that, in general, replacement wells came in at similar pressures to the wells replaced in the same section. He agreed that shut-in wellhead pressures are a mix of all pressures in all formations to which the wellbores are open, and

that some formations might have higher pressures if they could be measured individually. He also agreed that some wells in the 45-Section area came on at higher pressures than other nearby wells.

Dr. Strickland concluded that his pressure versus time plots and stick cross sections demonstrated that the formations that comprise the Texas Hugoton Field in the 45-Section area are continuous and in pressure communication. He concluded, in particular, that the formations beneath the Buckles Gas Unit and the Triplett "A" Lease are continuous and in pressure communication with formations beneath the Phillips owned and/or operated acreage within the area.

Dr. Strickland also presented an exhibit graphically displaying production rate versus time plots for each well in the 45-Section area. He stated his conclusion that the area wells had exhibited a fairly uniform decline and behavior throughout the area. He observed that the existing wells on the Buckles Gas Unit and the Triplett "A" Lease currently are producing at a rate better than or comparable to surrounding wells.

Dr. Strickland testified that gas moves in response to a pressure drop, and that well drainage areas are dynamic. He stated that drainage areas change with time, and are a function of relative well rates and well densities. According to Dr. Strickland, production from a wellbore establishes a pressure distribution throughout the drainage area, and pressure distribution is a function of reservoir properties, such as porosity and permeability, reservoir thickness, saturations and the producing rates of wells.

Dr. Strickland stated his opinion that every section of the 45-Section area included in his area map currently is being drained. In his opinion, if second wells are permitted on the Buckles Gas Unit and the Triplett "A" Lease, they will establish their own drainage areas out of the drainage area of other area wells, causing a ripple effect. Dr. Strickland believes that, if all other things remain the same, the ripple effect will extend out and cause the drainage areas of other area wells to "move around a little bit". In his opinion, the pressure wave created by production of BP's proposed wells will affect drainage areas of wells in the entire area. He equated this to a domino-like effect where the pressure wave from BP's proposed wells will cause the reshaping of drainage areas of wells located on the immediately offsetting sections, which, in turn, will cause reshaping of drainage areas of wells a section or more away, including the drainage area of wells on the Phillips acreage. Theoretically, in a reservoir where the formations are continuous and in pressure communication, the ripple effect will extend all the way out to the reservoir boundary, although it will diminish as it moves out and might be difficult to measure at the outer boundary.

Dr. Strickland stated the opinion that the ripple effect which will be created by production from BP's proposed wells will cause the drainage areas of Phillips' area wells to change, that gas currently existing under the proration units for such wells will be lessened, and that the ultimate recoveries for these wells will be diminished.

In response to questions on cross-examination, Dr. Strickland acknowledged that, assuming continuous formations in pressure communication, a no flow boundary lies somewhere on a line

between every pair of producing wells in the 45-Section area shown on his area map, and that the no flow boundary is the point at which one molecule of gas will move toward one wellbore and just on the other side a molecule of gas will move toward the other wellbore.

(b) Position

Phillips takes the position that since there is a potential for diminished ultimate recovery as a result of production from BP's proposed wells, Phillips is an affected person within the meaning of Statewide Rules 37/38. It asserts that the case law pertaining to standing before administrative agencies is to the effect that the right to appear in agency proceedings is to be liberally construed in order to allow the agency the benefit of diverse viewpoints. It makes the further point that since Statewide Rule 38 provides for notice to *all* "affected persons", and for the purpose of notice contains a presumption that "affected persons" *include* operators and unleased mineral interest owners of adjacent offset tracts, the rule must contemplate that operators of tracts only one section removed from a drillsite tract may also be affected.

BP's Evidence and Position

(a) Evidence

BP presented evidence through the testimony of Kenneth Juran and exhibits sponsored by him. Mr. Juran is a Reservoir Engineer employed by BP. Mr. Juran is a registered engineer in Texas and Colorado, and holds a B.S. degree in Mechanical Engineering from the South Dakota School of Mines and Technology.

Mr. Juran sponsored a series of excerpts of transcribed testimony of Dr. Strickland given in recent Commission proceedings pertaining to the Texas Hugoton Field, where Dr. Strickland addressed the subject of no flow boundaries between well pairs. Mr. Juran agreed with previous testimony given by Dr. Strickland to the general effect that the pressure transient of a well stops when it hits a no flow boundary.

Mr. Juran presented an exhibit on which he had drawn theoretical no flow boundaries around the locations of BP's proposed Buckles #3 and Triplet #2, based on an assumption that the no flow boundaries will lie equidistant between the proposed locations and other producing wells in the vicinity of the proposed locations. The theoretical no flow boundaries of BP's proposed wells thus constructed were shown to lie short of any of Phillips' acreage in the area. Mr. Juran had the opinion that the actual drainage areas of the proposed wells would not be as extensive as reflected by these theoretical no flow boundaries. Mr. Juran agreed that production rates of BP's proposed wells cannot now be known and that actual no flow boundaries will be determined by, among other things, the production rates of the various well pairs used to construct the theoretical no flow boundaries.

Mr. Juran also presented an exhibit on which he drew lines connecting well pairs

immediately surrounding the proposed well locations, thus drawing a “box” around each proposed well location. He expressed the opinion that the no flow boundary between the proposed wells and surrounding wells could not extend outside the boxes so depicted, and, in fact, should fall somewhere short of the boxes.

Mr. Juran presented a further excerpt from previous testimony of Dr. Strickland in recent Commission proceedings pertaining to the Texas Hugoton Field wherein Dr. Strickland expressed the view that when a new well is drilled in the vicinity of an existing well, if the wells are competing for reserves, a drop off in the production rate of the existing well should be expected. Mr. Juran agreed with this view.

Mr. Juran then presented a series of production plots (rate versus time) for particular well pairs in the 45-Section area for the purpose of demonstrating the effect, if any, of the drilling of replacement wells on the production decline trend of other pre-existing wells nearby. For example, one exhibit compared production plots for the Ennis-Lacy 1 in Section 377 (a well in which Phillips owns a nonoperating working interest) and the Clark Gas Unit 2 in Section 376, which wells are located about 3,450' apart directly between the Buckles Gas Unit and the Triplett “A” Lease. Mr. Juran testified that the Ennis-Lacy 1 had been producing for many years when, in late 1998, the Clark Gas Unit 2 was drilled as a replacement well for the Clark Gas Unit 1. The Clark Gas Unit 2 came in at about 8,000 mcf per month and then declined to about 5,500 mcf per month. Mr. Juran testified from his production plot that although these two wells located about 3,450' apart had been producing concurrently for a period of three years, there had been no drop in the production decline trend of the Ennis-Lacy 1.

Mr. Juran presented similar production plot comparisons for the Buckles Gas Unit #2 in Section 379 and the Brown GU 1 in Section 378 (4,150' apart), the Wohlford Gas Unit 2409 in Section 409 and the Reid 1 (a Phillips operated well) in Section 408 (5,150' apart), the Folsom Gas Unit 2 in Section 410 and the Triplett, Aquilla 1 in Section 62 (3,850' apart), and the McKenzie 2 in Section 375 and the Hudner 1 (in which Phillips has a nonoperating interest) in Section 61 (3,500' apart). As to each of these comparisons, Mr. Juran testified that his production plots showed that the drilling of a replacement well near a preexisting well, and concurrent production of both wells for a period of years, had not caused any drop in the production decline trend for the preexisting well. Mr. Juran’s conclusion was that the wells studied in his production plot comparisons were not competing for the same reserves. Mr. Juran agrees that there is some continuity of the formations beneath the Buckles and Triplett tracts, but he does not agree that the entire formations are continuous.

Mr. Juran also presented a similar exhibit consisting of a production plot (rate versus time) comparison of the Hudson Gas Unit “A” 2040 in Section 46, and the Clara C 1R and Clara C (Phillips operated wells) in Section 1. Mr. Juran testified that the Clara C produced for many years, until the Clara C 1R was drilled as its replacement well in early 2000. The Hudson Gas Unit “A” 2040 was said to be about 2,000' from the Clara C. Mr. Juran stated that when the Hudson Gas Unit “A” 2040 came on in 1999, it jumped to more than 20,000 mcf per month and then declined to 5,000

mcf per month. The Clara C 1R came on in about January 2000 at about 10,000 mcf per month and then declined to 4,200 mcf per month. The Clara C, when it ceased producing around January 2000, was making only about 800 mcf per month. Mr. Juran observed that both of the new wells, the Hudson Gas Unit "A" 2040 and the Clara C 1R, came in with rates 20 times the Clara C, even though they were no more than about 2,000' apart. He concluded that the new wells were not competing for the same reserves as the Clara C well.

Mr. Juran testified that the closest Phillips acreage to the Buckles Gas Unit tract is more than one mile away from the BGU tract boundary, and more than 1 3/4 mile away from the proposed Buckles #3. He stated further that the closest Phillips acreage to the proposed Triplett #2 is just shy of one mile away and there is a producing well between the Phillips acreage and the Triplett #2 location. Mr. Juran also testified that all of the well pairs studied in his production plot comparisons, where production from replacement wells was said not to have affected the production decline trend of nearby preexisting wells, are closer than is any Phillips acreage to BP's proposed wells.

Mr. Juran expressed the opinion that neither of BP's proposed wells will have any effect on any Phillips tract.

In response to cross-examination, Mr. Juran agreed that interference at drainage boundaries is difficult to see in the flow rates of adjacent wells, but he stated that he would expect to see such interference in the flow rates of wells competing for reserves after a period of time during which both wells were producing, i.e., within 2-3 years. Mr. Juran also stated that he agrees with the basic concept of the ripple effect. He does not believe that the drainage area of either of BP's proposed wells will extend to any Phillips tract. He conceded that he had not studied the question of whether the ripple effect created by the carving out of a drainage area by the proposed Buckles #3 will extend over to Phillips' Reid No.1. He conceded also that it is possible that the ripple effect from the proposed Triplett #2 will alter the drainage area of Phillips' Clara C 1R, but he does not believe it would be significant. It is his opinion that the Triplett #2 will not affect the Clara C 1R.

(b) Position

BP takes the position that in order to establish that Phillips is an affected person with standing to protest BP's applications, Phillips must show that reserves will be drained from a Phillips' tract or that a Phillips' tract will have ultimate recovery less than it would have had but for BP's proposed wells. BP asserts that Phillips has not shown that it will be affected.

EXAMINERS' OPINION

The issue for determination by the examiners is whether Phillips has standing to protest BP's

applications. Provisions of the Administrative Procedure Act (“APA”) [TEX. GOV’T. CODE ANN. §2001.001 *et seq.*] and the Commission’s own procedural rules [16 TEX. ADMIN. CODE §1.1 *et seq.*] do not materially assist this determination. APA §2001.003 defines a “contested case” as “. . . a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.” APA §2001.051 provides that in a contested case, each “party” is entitled to an opportunity for hearing after reasonable notice of not less than 10 days and to respond and to present evidence and argument on each issue involved in the case. APA §2001.003 defines a “party” simply as “a person or state agency named or admitted as a party”. The APA furnishes no criterion for admitting parties to agency hearings. *Texas Industrial Traffic League v. Railroad Commission of Texas*, 628 S.W.2d 187, 196 (Tex. App.-Austin) rev’d on other grounds, 633 S.W.2d 821 (Tex. 1982).

The Commission’s General Rules of Practice and Procedure, in §1.61, provide that “parties” to contested cases before the Commission are applicants, protestants, petitioners, complainants, respondents, and intervenors. A “protestant” is defined in §1.62 merely as “a person or agency, including the agency staff, opposing an application or petition submitted to the Commission”. Section 1.64 provides for intervention in contested cases by any person or agency “who has a justiciable or administratively cognizable interest and who is not an applicant, petitioner, complainant, respondent, or protestant”.

Statewide Rules 37 and 38 speak only indirectly to the issue of who has standing to protest applications seeking Rule 37/38 exceptions. Rule 37(a)(2)(A) provides that where, as here, an exception to the minimum lease line spacing requirement is sought, the applicant shall file a list of the mailing addresses of all “affected persons,” who, for tracts closer to the well than the greater of one-half (½) of the prescribed minimum between well spacing distance, *include* (1) the designated operator; (2) all lessees of record for tracts that have no designated operator; and (3) all owners of record of unleased mineral interests. Rule 38(h)(1) requires that applicants seeking a density exception file a list of the names and addresses of all “affected persons” and that for the purpose of giving notice of a Rule 38 application, the Commission presumes that affected persons *include* “the operators and unleased mineral interest owners of all adjacent offset tracts, and the operators and unleased mineral interest owners of all tracts nearer to the proposed well than the prescribed minimum lease line spacing distance”.

Under both Rule 37 and Rule 38, the Commission’s designee may determine that a person otherwise entitled to notice is “unaffected” (Rule 37) or “not affected” (Rule 38) upon written request and showing by the applicant that: (1) competent, convincing geological or engineering data indicate that drainage of hydrocarbons from the particular tracts subject to the request will not occur due to production from the proposed well; and (2) notice to the particular operators and unleased mineral interest owners would be unduly burdensome or expensive.

The issue of standing before administrative agencies is not extensively treated in reported judicial decisions. Case law developed in other factual contexts is to the effect that, as a general

proposition, a person's right to appear in an agency proceeding should be liberally recognized since an agency should be apprised of diverse viewpoints in order to determine where the public interest lies and how it should be furthered. *Texas Industrial Traffic League v. Railroad Commission of Texas*, *supra* at p. 197; *Railroad Com'n of Texas v. Ennis Transp. Co.*, 695 S.W.2d 706, 710 (Tex. App.-Austin 1985, ref. n.r.e.); *Fort Bend County v. Texas Parks & Wildlife Com'n*, 818 S.W.2d 898, 899 (Tex. App. - Austin 1991, no writ); *Texas Rivers Protection Ass'n v. Texas Natural Resource Conservation Comm'n*, 910 S.W.2d 147, 151 (Tex. App. - Austin 1995, writ denied).

However, it has also been held by at least one court that in general, the allowance or denial of petitions for intervention in administrative proceedings rests in the discretion of the agency, and ordinarily, reviewing courts do not overturn agency orders concerning the propriety of intervention. *Railroad Com'n of Texas v. Ennis Transp. Co.*, *supra* at p. 710. Another court decision held that courts must defer to an agency's interpretation of its own regulations pertaining to the issue of standing, unless the interpretation is plainly erroneous or inconsistent with the language of the rule. *H. G. Sledge, Inc. v. Prospective Investment and Trading Co. Ltd.*, 36 S.W.3d 597 (Tex. App. - Austin 2000, writ denied).

The cases dealing directly with the issue of standing in administrative agency proceedings appear to turn on the language of relevant statutory or agency rules provisions. The few cases dealing with standing in Railroad Commission oil and gas proceedings have focused on the question of whether the party seeking standing would be "affected" by the requested agency action. *Railroad Comm'n v. Graford Oil Corp.*, 557 S.W.2d 946, 953 (Tex. 1977) ("We do have before us, and we do hold, that owners of unleased lands, whose interests would be materially affected, had a right to be heard at the Commission level."); *H. G. Sledge, Inc. v. Prospective Investment and Trading Co. Ltd.*, *supra* at p. 600 ("Rule 37 requires that all 'affected persons' be given notice of applications filed under the rule and an opportunity for a hearing.") Furthermore, it appears to be well established that even though certain persons are presumed, by provisions of Statewide Rules 37 and 38, to be "affected" for the purpose of notice, the listing of such persons in the rules is not exclusive, and others may be determined to be affected persons with standing. *H. G. Sledge, Inc. v. Prospective Investment and Trading Co.*, *supra* at p. 603.

In this case, Phillips is not among those persons presumed by Statewide Rules 37/38, for the purpose of notice, to be "affected" by BP's applications. When Phillips' standing to protest the applications was challenged by BP, the burden was placed on Phillips to show its "affected" status. While the showing required of Phillips is something short of a showing that it will be affected to a degree sufficient to warrant disapproval of the applications on the merits, nonetheless, the demonstrated effect must be more than theoretical. In the context of this case, the examiners conclude that Phillips is required to show that its interests will be affected by drainage of hydrocarbons from Phillips operated acreage, or that ultimate recovery from Phillips' tracts will be lessened, due to production from BP's proposed wells.

The only acreage in which Phillips owns an interest that is an adjacent offset tract to either the Buckles Gas Unit or the Triplett "A" Lease is in Section 61 immediately to the north of the

Triplett “A” Lease. Phillips’ interest in Section 61 is a nonoperating interest, in that the Phillips’ leased acreage has been pooled and Devon has been designated operator of the pooled unit. The examiners conclude that for the purpose of Rule 37/38 applications, Phillips’ interest in Section 61 is represented by Devon. Devon has signed a waiver of objection to BP’s Rule 37/38 application for the Triplett #2 well, and the examiners conclude that Phillips is bound by the waiver. Even had Devon not signed a waiver, since Phillips did not show that its interest in Section 61 differed in any respect from that of Devon, and Devon did not protest BP’s application, Phillips’ nonoperating interest in Section 61 would not confer standing. *H. G. Sledge, Inc. v. Prospective Investment and Trading Co. Ltd., supra*. In addition, the examiners conclude that Phillips did not show that its nonoperating interest in Section 61 will be affected by the Triplett #2 well.

The evidence shows that, with the exception of Phillips nonoperating interest in Section 61, all of Phillips’ acreage is non-adjacent and significantly removed from the Buckles Gas Unit and the Triplett “A” Lease. Phillips’ acreage is at least one mile away from the Buckles Gas Unit in every direction. Its closest acreage is about 1 3/4 mile from the proposed location of the Buckles #3. Except for Phillips nonoperating interest in Section 61, Phillips’ acreage is also at least one mile away from the Triplett “A” Lease.

The evidence also shows that between the proposed locations for the Buckles #3 and the Triplett #2, on the one hand, and, on the other, tracts in which Phillips has an interest, there are producing wells with drainage areas and no flow boundaries precluding any drainage of hydrocarbons from Phillips’ acreage by BP’s proposed wells.

The examiner’s conclude that Dr. Strickland’s testimony pertaining to the “ripple effect” to be caused by the carving out of drainage areas of the proposed wells is insufficient to establish that Phillips’ acreage will be adversely affected by BP’s proposed wells. The ripple effect theory holds that, even if it is assumed that the proposed wells will not drain any Phillips’ tract, the drainage areas carved out by the proposed wells will push against the drainage areas of surrounding wells causing all area drainage areas, including the drainage areas of Phillips’ wells, to adjust and reform. Theoretically then, if Phillips is correct that the formations in the reservoir are uniformly continuous and in pressure communication, every operator and unleased mineral owner in the reservoir has standing, since, as Dr. Strickland confirmed, the “ripple” will continue out to the boundary of the reservoir.

The examiners conclude that mere expression of the ripple effect theory and the possibility that well drainage areas will be reformed in some unknown degree to affect ultimate recovery of reserves from beneath tracts more than a mile away from the proposed wells is too speculative and uncertain to establish that Phillips is an “affected person” with standing. Phillips did not show that it will be affected by the proposed wells in any way different from other non-adjacent operators in the field.

The ripple effect theory is largely dependent on an assumption that the formations beneath the Buckles/Triplett area are uniformly continuous and in pressure communication. Phillips

evidence of continuous formations and pressure communication consists of a showing that area wells are usually completed in the same formations and pressure versus time and rate versus time plots demonstrating what Phillips believes to be similar well behavior throughout the area. The examiners conclude that there is some degree of continuity of the formations in this reservoir, but evidence submitted by BP tending to establish that several years of production by replacement wells apparently had no effect on the production decline trend of preexisting wells nearby draws into question whether there is uniform continuity and pressure communication throughout the area beneath the Buckles/Triplett tracts and the surrounding tracts.

Dr. Strickland testified that production from a wellbore establishes a pressure distribution throughout the well's drainage area and that pressure distribution is a function of porosity, permeability, reservoir thickness, saturations, and producing rates of wells. Of these various factors, only the producing rates of wells is treated specifically in Phillips' evidence. Left uncertain is the probable drainage areas to be created by BP's proposed wells, the drainage areas of wells immediately surrounding the locations of the proposed wells, and the drainage areas of Phillips' most proximate wells. Several years of production by replacement wells drilled in the area closer to Phillips' wells than the wells they replaced have had no apparent "ripple effect" on the production trend of Phillips' wells. There is little basis for determining that production from BP's proposed wells will cause a reformation of the drainage areas of surrounding wells in a way that will adversely affect ultimate recovery of Phillips' tracts more than a mile away from the proposed wells.

Because Phillips did not establish that it is a person "affected" by BP's applications, the examiners recommend that the Commission find that Phillips does not have standing. Based on the record in this docket, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Notice of hearing was sent to all persons entitled to notice of this proceeding. Representatives of Phillips Petroleum Company ("Phillips") and BP America Production Company ("BP") appeared at the hearing and presented evidence.
2. In Oil & Gas Docket No. 10-0230599, BP filed a Form W-1 application seeking a density exception permit under Statewide Rule 38 for its Buckles Gas Unit, Well No. 3 ("Buckles #3"), Texas Hugoton Field, Sherman County, Texas. The Buckles #3 is proposed to be drilled on the 640 acre Buckles Gas Unit in Section 379, Block 1T, T&NO RR Co. Survey, A-379, Sherman County, Texas.
3. In Rule 37/38 Case No. 0230732, BP filed a Form W-1 application for a spacing and density exception permit under Statewide Rules 37 and 38 for its Triplett "A" Lease, Well No. 2 ("Triplett #2"), Texas Hugoton Field, Sherman County, Texas. The Triplett #2 is proposed to be drilled on the 640 acre Triplett "A" Lease in Section 62, Block 2B, GH&H RR Co./C. J. Burgess Survey, A-538, Sherman County, Texas.

4. Field rules for the Texas Hugoton Field provide for 1250'/2500' spacing and 640 acre density.
5. An exception to Statewide Rule 38 is required for the Buckles #3 because there is an existing well on the Buckles Gas Unit, the Buckles Gas Unit No. 2, producing from the Texas Hugoton Field, and the proposed drilling unit for the Buckles #3 is assigned 320 acres.
6. An exception to Statewide Rule 37 is required for the Triplett #2 because the well is proposed to be drilled 330' from the south line and 330' from the east line of the lease. An exception to Statewide Rule 38 is required for the Triplett #2 because there is an existing well on the Triplett "A" Lease, the Triplett Aquilla 1, producing from the Texas Hugoton Field, and the proposed drilling unit for the Triplett #2 is assigned 320 acres.
7. Phillips filed notices of intention to intervene in and protest the applications of BP in Oil & Gas Docket No. 10-0230599 and Rule 37/38 Case No. 0230732. No other intervention or protest was filed. BP filed an objection challenging Phillips' standing to protest.
8. Phillips is not the operator, unleased mineral interest owner, or lessee of a tract having no designated operator, with respect to any tract which is an adjacent offset to the Buckles Gas Unit or the Triplett "A" Lease, or which is nearer to the proposed Buckles #3 or Triplett #2 than the minimum lease line spacing distance provided by field rules for the Texas Hugoton Field, or which is closer to the Triplett #2 than one-half ($\frac{1}{2}$) of the minimum between well spacing distance provided by field rules for the Texas Hugoton Field.
9. The only acreage in which Phillips has an interest which is an adjacent offset to the Buckles Gas Unit or the Triplett "A" Lease is in Section 61 immediately to the north of the Triplett "A" Lease. Phillips' leased acreage in Section 61 is pooled, and the designated operator of the pooled unit is Devon Energy Production Company, L.P. Devon signed a waiver of objection to BP's application for Rule 37 and Rule 38 exceptions for the Triplett #2, and BP submitted the waiver in Rule 37/38 Case No. 0230732.
10. Phillips presented no evidence that its interest in Section 61 is not adequately represented by Devon.
11. The closest Phillips acreage to the Buckles Gas Unit is more than one mile away, and more than 1 3/4 mile away from the proposed location of the Buckles #3.
12. The closest acreage of which Phillips is operator is more than one mile away from the Triplett "A" Lease. The acreage in Section 61, in which Phillips has a nonoperating interest, is only slightly less than one mile from the proposed location of the Triplett #2.
13. Between the proposed locations of the Buckles #3 and the Triplett #2, on the one hand, and,

on the other, acreage in which Phillips has an interest, there are producing wells with drainage areas and no flow boundaries precluding any drainage of hydrocarbons from Phillips' acreage by BP's proposed wells.

14. Several years of production by replacement wells drilled in the area of the Buckles Gas Unit and the Triplett "A" Lease had no effect on the production decline trend of other pre-existing wells closer to the replacement wells than are Phillips' wells to the proposed Buckles #3 and Triplett #2.
15. Phillips did not show that the production from the proposed Buckles #3 and/or Triplett #2 wells will result in drainage of any Phillips tract.
16. Phillips did not show that production from the proposed Buckles #3 and/or Triplett #2 wells will lessen the ultimate recovery of reserves from any Phillips tract.
17. Phillips did not show that it will be affected by the drilling and production of BP's Buckles #3 well and/or Triplett #2 well.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely 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. Phillips Petroleum Company is not a person affected by the applications of BP America Production Company for a density exception permit for its Buckles Gas Unit, Well No. 3, Texas Hugoton Field, Sherman County, Texas, and for a spacing and density exception permit for its Triplett "A" Lease, Well No. 2, Texas Hugoton Field, Sherman County, Texas, within the provisions of Statewide Rules 37 and 38 [16 TEX. ADMIN. CODE §3.37 and 3.38].
4. Phillips Petroleum Company does not have standing to intervene in and protest the applications of BP America Production Company in Oil & Gas Docket No. 10-0230599 and Rule 37/38 Case No. 0230732.

RECOMMENDATION

The examiners recommend that the Commission enter the attached order denying standing to Phillips Petroleum Company to intervene in and protest the applications of BP America Production Company in Oil & Gas Docket No. 10-0230599 and Rule 37/38 Case No. 0230732 and

referring these dockets for disposition according to the provisions of Statewide Rule 37(h)(2)(A) and Statewide Rule 38(h)(3)(B).

Respectfully submitted,

James M. Doherty
Legal Examiner

Donna Chandler
Technical Examiner