

**Texas District Court Rejects the Railroad Commission of Texas's  
Purported Authority to Permit PSA Wells**

*By Bradley L. Hart, Hamilton & Squibb, LLP*

On May 12, 2021, the 53rd Judicial District Court of Travis County, Texas left the Texas oil and gas industry in a state of confusion after reversing and remanding the Railroad Commission of Texas's Final Order in Oil & Gas Docket No. 02-315435, by finding, among other things, that (i) the Commission does not have the authority to approve permits for allocation and PSA wells, and (ii) the Commission should review relevant title documents in determining whether a permit applicant has a good faith claim to operate the well.<sup>1</sup>

Magnolia Oil & Gas Operating LLC ("Magnolia") obtained a permit from the Railroad Commission to drill the Audioslave A 102H well ("Audioslave Well"), which was designated as a production sharing well ("PSA well"). A PSA well is a horizontal well that crosses more than one tract/lease without pooling such tracts/leases with at least 65% of the mineral and working interest owners having signed an agreement as to how proceeds will be divided.<sup>2</sup>

Elsie Opiela and Adrian Opiela, Jr. ("Opielas") own mineral interests in one of the tracts traversed by the Audioslave Well. The Opielas' mineral interests are leased to Magnolia, but such lease does not allow pooling and does not authorize the drilling of an allocation or PSA well. The Opielas did not sign any form of production sharing agreement.<sup>3</sup>

The Opielas originally filed a complaint with the Commission seeking revocation of the permit for the Audioslave Well and arguing that (i) the Commission does not have the authority to grant permits for PSA wells since the "Commission rules do not define or mention PSA or allocation wells," and (ii) Magnolia did not make a good faith claim to drill the Audioslave Well in the permitted location because the Opielas did not consent to pooling in their oil and gas lease, nor did they execute a production sharing agreement.<sup>4</sup>

The Examiners of the complaint recommended the Commission deny the Opielas' requests, remaining consistent with the previously decided *Klotzman* case, wherein the Commission determined that (i) it had the authority to permit allocation wells under Section 81.051 of the Texas Natural Resources Code, and (ii) the permit applicant established a good faith claim to drill an allocation well without proving its pooling authority.<sup>5</sup> First, to justify the Commission's authority

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<sup>1</sup> *Opiela v. Railroad Commission of Texas*, No. D-1-GN-20-000099.

<sup>2</sup> Texas R.R. Comm'n, *Complaint of Elsie Opiela and Adrian Opiela Regarding Magnolia Oil & Gas Operating LLC's (521544) Audioslave A Lease, Well No. 102H, Permit No. 839487, Sugarcane (Austin Chalk) Field, Karnes County, Texas*, Oil & Gas Docket No. 02-315435, Proposal for Decision at 4-5 (Final Order issued Oct. 1, 2019).

<sup>3</sup> *Id.* at 4-7.

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Id.* at 10-11 (citing Tex. R.R. Comm'n, *Application of EOG Resources, Inc. for its Klotzman Lease (Allocation), Well No. 1H, (Status No. 744730, (Eagleville (Eagleford-2) Field, DeWitt County, as an Allocation Well Drilled on Acreage Assigned from Two Lease*, Oil and Gas Docket No. 02-0278952 (Final Order issued Sept. 24, 2013)).

to permit PSA wells, the Examiners relied on Section 81.051 of the Texas Natural Resources Code, which states that the Commission “has jurisdiction over all . . . oil and gas wells in Texas” and 16 Texas Administrative Code § 3.5(a) requiring operators to obtain from the Commission a “permit to drill . . . any oil well, gas well, or geothermal resource well.” Second, the Examiners cited the Commission’s rule that proof of a current oil and gas lease is sufficient evidence to establish “a reasonably satisfactory showing of a good faith claim” to obtain a permit to drill a well.<sup>6</sup>

Following the Examiners’ Proposal for Decision, the Commission issued the Final Order on October 1, 2019, denying the Opielas’ requests.<sup>7</sup>

After the Commission rejected the Opielas’ motion for rehearing, the Opielas sought judicial review of the Final Order by the 53rd District Court of Travis County, Texas. The Court, having considered the entire administrative record and the parties’ arguments, came to a different conclusion than the Commission, reversing and remanding the Commission’s Final Order and finding that:

1. The Commission erred in adopting rules for allocation and PSA well permits without complying with the requirements of the Administrative Procedure Act, Tex. Gov’t Code § 20001.001 et seq., and further erred in applying those rules by issuing well permits for the Audioslave Well; and
4. The Commission erred in finding that Magnolia showed a good faith claim of right to drill the Audioslave Well.<sup>8</sup>

The Commission and Magnolia filed an appeal of the District Court’s decision on June 7, 2021, in the 3rd District Court of Appeals of Texas.<sup>9</sup> Given the prevalence of PSA wells in Texas, the Commission and Magnolia’s appeal is unsurprising and will certainly be closely watched by the industry. To date, the Commission has not stopped granting permits for PSA wells.

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<sup>6</sup> 16 Tex. Admin. Code § 3.15(a)(5).

<sup>7</sup> Texas R.R. Comm’n, *Complaint of Elsie Opiela and Adrian Opiela Regarding Magnolia Oil & Gas Operating LLC’s (521544) Audioslave A Lease, Well No. 102H, Permit No. 839487, Sugarcane (Austin Chalk) Field, Karnes County, Texas*, Oil & Gas Docket No. 02-315435 (Final Order issued October 1, 2019).

<sup>8</sup> *Opiela v. Railroad Commission of Texas*, No. D-1-GN-20-000099.

<sup>9</sup> *R.R. Comm’n of Tex. v. Opiela*, 03-21-00258-CV (Tex. App.—Austin 2021).