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Texas Case Law and Regulatory Update

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I. Gas Market Developments

A. Legislation

There are no developments in this area since September 2015, since the Texas Legislature has not met.

B. Regulatory Enactments

The Railroad Commission amended §3.78 of Title 16 to implement a fee for groundwater protection determination letters as provided in Texas Natural Resources Code §91.0115(b). House Bill 2694 (HB 2694), enacted by the 82nd Texas Legislature (Regular Session, 2011) added §91.0115 to the Texas Natural Resources Code, which transferred to the Railroad Commission the responsibility for issuing a letter of determination stating the total depth of surface casing required for an oil or gas well by §91.011. Section 91.0115(b) authorized the Railroad Commission to charge a fee in an amount to be determined by the Railroad Commission for a letter of determination and to charge an additional fee not to exceed \$75 for processing a request to expedite a letter of determination. These adopted amendments to §3.78 implement the Commission's authority to charge a fee for each request for a determination letter. The Commission will continue to charge an additional fee for a request to expedite a determination letter. The Commission states the fee will ensure that the Commission recovers funds necessary for Commission staff to prepare groundwater protection determination letters, including the study and evaluation of electronic access to geologic data and surface casing depths necessary to protect usable groundwater in this state.

<http://www.sos.texas.gov/texreg/archive/January292016/Adopted%20Rules/16.ECONOMIC%20REGULATION.html#57>

The Railroad Commission adopted amendments to §§3.5, 3.31, 3.38, 3.40, 3.45, 3.51, 3.52 and 3.86 of Title 16 to establish a procedure for designating certain fields as unconventional fracture treated fields ("UFT fields"). A UFT field is a field in which horizontal drilling and hydraulic fracturing must be used in order to recover resources from all or part of the field and which is developed using either vertical or horizontal drilling techniques. This designation includes shale formations, such as the Eagle Ford and Barnett Shale, in which the drainage of a wellbore is based upon the area reached by the hydraulic fracturing treatments rather than conventional flow patterns. The substantive amendments to incorporate this concept are adopted in §3.86(i) - (l), with supporting and conforming amendments proposed in the other sections. Additionally, the Commission adopts amendments to update various Commission requirements related to the drilling of horizontal drainhole wells as defined in §3.86(a)(5). The Commission adopts these amendments to incorporate common special field rule provisions, which apply on a field-by-field basis, into rules that apply statewide. The amendments will reduce and simplify field rule hearings, resulting in a more efficient regulatory process.

<http://www.sos.texas.gov/texreg/archive/January292016/Adopted%20Rules/16.ECONOMIC%20REGULATION.html#54>

The Railroad Commission adopted amendments to §3.16, which reflect changes in Texas statutes relating to the confidentiality of well logs. House Bill 878 (83rd Legislature, Regular Session, 2013) amended Texas Natural Resources Code §91.552 and §91.553 to streamline the procedures for requesting a period of confidentiality for a well log. The Commission has been complying with the HB 878 procedures for requesting confidentiality, and adopts amendments to §3.16(d) to conform the rule's requirements to the statutory requirements. Amendments are also adopted to subsections (a) and (c) to change the term "basic electric log" to "electric log," which is the term used in the applicable statutes.

<http://www.sos.texas.gov/texreg/archive/February192016/Adopted%20Rules/16.ECONOMIC%20REGULATION.html#71>

C. Railroad Commission Cases

Oil and Gas Docket No. 20-0292777, *Targa Liquids Marketing and Trade LLC Against West Texas Pipeline Partners LP as Owner of West Texas LPG Pipeline System*. Targa is a shipper of natural gas liquids on the West Texas intrastate pipeline, and received service under market based rate tariffs filed at the Railroad Commission. West Texas cancelled those tariffs (by notice filed with the Commission), adopting new ones (with new rates) that it did not file at the Commission for 10 months. Targa received service during those months, paying the new tariff rates. After West Texas filed the new tariffs with the Commission (with a disclaimer stating that the filing was for informational purposes and West Texas did not submit to the Commission's jurisdiction), Targa filed a complaint seeking a refund of all the amounts it paid under the new tariffs before West Texas filed them that exceeded the amounts that would have been due under the cancelled tariffs. Targa claimed that West Texas could not "opt out" of common carrier status and fail to file tariffs with the Commission, and therefore all charges under the new tariffs were invalid before West Texas filed them with the Commission. The Commission denied Targa's complaint, ultimately finding it could not provide any remedy for West Texas' actions. Although it did not explain this finding, the proposal for decision indicated that no remedy was available because the consequence of failing to file a tariff when required is an administrative penalty, not a refund. Yet, the Commission concluded that West Texas was a common carrier subject to Commission jurisdiction, that Rule 3.71 (21) obligated it to file its effective tariffs with the Commission (without the disclaimer), and that the Commission does possess authority to require a common carrier to refund or reimburse invalid charges outside the context of a ratemaking proceeding. The Commission also referred West Texas' failure to file its tariffs to the Enforcement Division for further proceedings.

<http://www.rrc.state.tx.us/media/31600/20-0292777-jbd-cmp-ord.pdf>

GUD No. 10358, *Commission Remand Rate Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296*. The Commission held in the Eastman Chemical complaint against Westlake (Docket 10296) that a natural gas liquids intrastate pipeline is a common carrier subject to Commission rate jurisdiction. Eastman had complained that Westlake's new rates and tariffs, which it attempted to apply in 2013, were discriminatory and should be set aside in favor of a Commission-determined rate. The Commission found that it had jurisdiction over the complaint, determined that Westlake's tariffs were discriminatory, and

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