

RAILROAD COMMISSION REGULATION AND PRACTICE UPDATE

Glenn E. Johnson
KELLY HART & HALLMAN LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
512-495-6423
512-495-6401 FAX
glenn.johnson@kellyhart.com

UT Law CLE 2020
Fundamentals of Oil, Gas and Mineral Law
March 26, 2020

RAILROAD COMMISSION REGULATION AND PRACTICE UPDATE

I. Short History of Railroad Commission Regulation of Oil and Gas Production and Pipelines

A. Introduction

The Railroad Commission was created in 1891 to regulate the railroad industry, but in 1901 Spindletop became the first Texas great oil gusher. That well and the field it discovered ended the State of Pennsylvania's monopoly on oil production.

B. Oil & Gas Conservation

Because most the oil was transported by rail, the Railroad Commission was given authority over the regulation of oil pipelines in 1917 and to regulate oil and gas production. Its conservation function was, initially, an accounting function in that it reported the amount of oil that was produced, the amount of oil that was stored in, usually, earthen pits, the amount of oil that was transported, the amount of oil that was received at refineries and the amount of refined product that came out of the refineries.

In 1919 the Commission adopted Rule 37 establishing spacing for the oil and gas industry. This was a conservation function in that because oil is owned in place, every property owner that has retained his mineral rights had a right to drill a well and in town lots such as the town of Kilgore that overlay the East Texas Field. As part of its conservation function in 1928, the Commission began prorationing oil production. Prorationing continued until 1972 when the prorationing of oil ceased because the market demand was so far in excess of what Texas could produce. The Legislature passed the Common Purchaser Act giving the Commission authority to regulate the purchase and transport of oil without discrimination.

In October 1930, the East Texas Field was discovered and by April 1931, the Commission issued its first proration order providing for an allowable in excess of 1000 barrels per day per well. At the time that proration order became effective, the East Texas field was producing one million barrels of oil per day, one-third of the natural production and the price of oil has dropped to 10.4 cents a barrel.

In 1931, the Legislature amended the Common Purchaser Act to provide for the ratable purchase of natural gas requiring no discrimination from gas produced in a field. In November 1932, the Legislature hurriedly enacted the Market Demand Act removing the prohibition of consideration of economic waste or limitation of production to market demand and authorized the Railroad Commission to determine the reasonable market demand and prorate production accordingly.

In 1935, the Texas Supreme Court held that the Railroad Commission had the power under conservation regulations to promulgate the spacing rule (Rule 37). In 1944, the Texas Supreme Court upheld a Court of Civil Appeals decision that held that the Commission had the authority to order someone to drill a directional hole to kill a cratered well that was wasting oil and gas resources. In 1951, the Legislature established the Liquefied Petroleum Gas Division as a separate department within the Railroad Commission. In August 1965, the Legislature enacted the Mineral Interest Pooling Act making it effective for all fields discovered subsequent to the March 8, 1961

decision involving the Normana Field authorizing the Railroad Commission to provide for pooling of mineral interests for an oil and gas well under certain conditions. Unlike other states, such as Oklahoma and Louisiana, Texas does not have compulsory unitization and the only compulsory assignment of acreage to a well in Texas is pursuant to the Mineral Interest Pooling act.

C. Pipeline and Gas Utility Regulations

In 1917, the Commission was given the authority over pipelines that were declared to be common carriers. The over-drilling of the fields created depleted pressures leaving dead oil in the ground thereby wasting it.

In 1920, the transportation and sale of natural gas was declared to be a public utility and the Railroad Commission was given jurisdiction over transporting gas and appellate authority over city decisions regarding natural gas rates.

In 1979, the Railroad Commission approved a settlement agreement ending the Lavaca Gathering dispute with its 400 Texas customers, creating Valero Energy Corporation. The settlement involved the dropping of more than 1.6 billion dollars in lawsuits and other claims brought against Lavaca for alleged breach of gas supply contracts dating back to the early 1970s.

D. Summary

The Railroad Commission of Texas no longer has any regulations pertaining to railroads. Its regulation of transportation of trucks and buses is now with the Texas Department of Transportation. It does regulate the oil and gas industry, the gas utility industry, the liquefied petroleum gas industry, the surface mining industry and has extensive environmental regulations pertaining to all those industries. It has authority to regulate the disposal of carbon dioxide by injection into the ground and the authority to regulate the liquefied natural gas industry in Texas. The Commission Mission Statement is:

Our mission is to serve Texas by our stewardship of natural resources and the environment and our support of enhanced development and economic vitality for the benefit of Texas.

II. Significant Rule Changes Pertaining to Oil and Gas Regulation

A. Railroad Commission Amendments to (16 Tex. Admin. Code § 3.40) Relating to Assignment of Acreage to Pool Development and Proration Units

The Commission adopted Amendments to Statewide Rule 40 on February 12, 2020 to allow the same surface acreage to be assigned to more than one well an unconventional fracture treated (UFT) field where mineral ownership is severed at different depths below the surface. Specifically Sections 3.40(e)(2)(B), (e)(3), and (g) were revised. The amendments provide that field rule applications regarding multiple assignment of acreage in unconventional fracture treated fields for two years are prohibited.

This amendment deals with the issue of consolidated fields in which there is differing ownership between various formations within the field. Rule 40 has historically required no “double assignment” of acreage in a field. These changes do allow the double assignment of

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Railroad Commission Regulation and Practice Update

Also available as part of the eCourse

[Oil and Gas: Railroad Commission Regulation and Practice Update](#)

First appeared as part of the conference materials for the
2020 Fundamentals of Oil, Gas and Mineral Law session

"Railroad Commission Regulation and Practice Update"