

Railroad Commission of Texas Votes Against Mandatory Oil Production Cuts

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Yesterday, the Railroad Commission of Texas (“RRC”) voted by a 2-1 margin to dismiss the request that had been filed in late March of this year by two producers to determine reasonable market demand for oil and the need for curtailment of oil production in Texas.[i]

Over the last several weeks, the proposal was the subject of significant and widespread interest as the agency wrestled with determining the appropriate regulatory response to current market imbalances that have had a devastating effect on the oil and gas sector. The RRC considered the request at two prior open meetings during which numerous interested stakeholders expressed diverging views on the merits of mandatory production cuts.[ii] During its consideration of the issue at its last regularly scheduled open meeting on April 21, 2020, the RRC formed a Blue Ribbon Task Force on Oil Economic Recovery (“Blue Ribbon Task Force”) to provide recommendations for action to the RRC, and Commissioner Ryan Sitton requested that a [draft Order](#) be prepared that would have, among other things, imposed a temporary 20 percent oil production cut contingent on cuts implemented by other states and countries.

Yesterday’s decision was not unexpected. Prior to the meeting, both Chairman Wayne Christian and Commissioner Christi Craddick indicated that they would not support mandated cuts, and Commissioner Sitton, an early proponent of proration, indicated that the imposition of prorationing measures did not have traction.[iii] Instead, the RRC decided to allow operators to determine the appropriate level of production cuts but undertook alternative steps to provide relief to the industry. While the RRC did not mandate any kind of production cuts, the RRC did approve certain measures intended to ease the regulatory obligations applicable to producers in Texas. This regulatory relief, based on input from the Blue Ribbon Task Force and RRC staff, came in the form of three Orders issued yesterday setting forth temporary exceptions to certain administrative rules.

The first Order sets forth a temporary exception to 16 Texas Administrative Code (TAC) § 3.78 and suspends certain filing fees and surcharges with the intent of incentivizing the construction of additional storage facilities and providing financial relief to operators. This temporary exception is effective as of May 5, 2020, and remains in effect until December 31, 2020, but is subject to extension or modification.

The second Order sets forth a temporary exception to 16 TAC § 3.95 and specifically provides for the filing of an application for an underground hydrocarbon storage facility located in a geological formation other than an underground salt formation. An applicant for such a facility would need to demonstrate that the formation is confined so as to prevent waste or uncontrolled escape of crude oil and would also be required to demonstrate that the proposed storage facility will be created, operated and maintained in a manner that will prevent waste of stored crude oil, uncontrolled escape of crude oil, pollution of subsurface water and danger to life and property in accordance with the requirements of the Texas Natural Resources Code. To expedite the permitting process for both applications for storage facilities located in underground salt formations and applications for storage facilities located in other geologic formations, an exception to the mandatory hearing requirement set forth in 16 TAC § 3.95(e)(4) is also provided. This temporary exception is effective as of May 5, 2020, and remains in effect for one year subject to extension or modification.

The third Order adopted by the RRC is intended to provide operational flexibility and relief to operators. This third Order includes four temporary exceptions to RRC regulations as follows:

1. 16 TAC § 3.8(d)(4)(H) providing an exception regarding the amount of time that is allowed to dewater, backfill and compact certain pits;
2. 16 TAC § 3.13(d) providing an exception regarding the amount of time for which alternate tubing/casing programs may be granted;
3. 16 TAC § 3.14(b)(2) providing an exception regarding the amount of time to commence plugging operations on dry or inactive wells; and
4. 16 TAC § 3.107(b) providing an exception regarding recommended minimum penalties.

The aforementioned temporary exceptions are effective as of May 5, 2020, but, depending on the exception, remain in effect for varying time periods (although all are subject to future extension or modification). The [Notice to Operators](#) describing these temporary exceptions (along with the underlying Orders) includes an admonishment that “[n]o operator shall construe these exceptions as exceptions to a rule regulating public safety, health, or the prevention of pollution.”

Other subjects addressed during yesterday’s meeting included a discussion of the report issued by the Blue Ribbon Task Force that set forth numerous potential relief opportunities, including those related to operations, permitting, timelines, tax policy and deadlines, storage and pipeline capacity (“[Report](#)”). The Report indicates that specific relief opportunities should be considered for small operators (defined as those producing 1,000 bbls/day or less of crude oil). Since the recommendations offered by the Blue Ribbon Task Force captured items both within and outside of the RRC’s jurisdiction (e.g., continued pursuit of utilization of the Strategic Petroleum Reserve and funding by Congress), it was indicated that the Report had been shared with various agencies and legislative bodies. It was also noted that the RRC needs to continue to devote attention to natural gas flaring issues and requested that the Blue Ribbon Task Force provide additional recommendations related to the reduction of flaring in June of this year.

Thus, while prorating may no longer be on table in Texas for the time being, consideration of measures that may be needed to address the dire conditions currently being faced by the oil and gas sector will continue to receive significant attention.

[i] View the archived RRC webcast [here](#).

[ii] See our previous reports, [Railroad Commission of Texas Considers Oil Production Cuts](#) (April 15, 2020) and [Railroad Commission of Texas Delays Vote on Oil Production Cuts](#) (April 22, 2020).

[iii] See news articles [here](#) and [here](#).

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