

NO. D-1-GN-19-008123WILLIAMS MLP OPERATING, LLC
AND MOCKINGBIRD MIDSTREAM
GAS SERVICES, LLC
Plaintiffs,

vs.

RAILROAD COMMISSION OF TEXAS,
Defendant.§
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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345TH
____ JUDICIAL DISTRICT**ORIGINAL PETITION FOR JUDICIAL REVIEW**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC (collectively, “Williams”) file this Original Petition for Judicial Review of an order of the Railroad Commission of Texas (the “Commission”) entered in Oil and Gas Docket No. 01-0308609, *Application of Exco Operating Company, LP for Exceptions to Statewide Rule 32 for Various Leases, Briscoe Ranch (Eagle Ford) Field, Dimmit and Zavala Counties, Texas*, and would show the Court as follows:

I. INTRODUCTION

Natural gas flaring has long been recognized as wasteful and environmentally harmful. The Railroad Commission of Texas is vested with the duty to prevent the waste of oil and gas, and consonant with this duty, many years ago the Commission adopted its Statewide Rule 32 to regulate flaring.¹ In practice, however, for some years now the Commission has effectively disregarded its rule in the granting of flaring exceptions. This practice lies at the heart of this appeal.

¹ 16 TAC § 3.32. This rule is commonly referred to as Statewide Rule 32, the no-flaring rule, and the anti-flaring rule.

On August 6, 2019, by a split vote, the Commission issued its order granting an exception to the Commission's no-flaring rule to EXCO Operating Company, LP ("EXCO") for over 130 wells and 69 flare points (the "Order"). Notwithstanding its rule, the Commission authorized flaring based on EXCO's flawed economic model which virtually guarantees the grant of flaring exceptions. This flawed model, commonly used in flaring exception cases, considers only the so-called "gas economics" and notably ignores oil revenues from the same wells. Moreover, the exception was granted despite the fact that EXCO's wells are connected to a gathering system that is available to gather its gas, and there was therefore *no actual need* for the wasteful flaring. The grant of an exception to the no-flaring rule in this case is especially significant because this is the first known protested flaring application and the Commission approved the application despite there being no need to flare.

The Order vitiates and effectively negates the statutory prohibition of waste and the requirements of the Commission's Rule 32, resulting in an unfortunate contribution to the unnecessary, wasteful, and environmentally deleterious flaring of billions of cubic feet of natural gas. It reflects an evolved practice at the Commission under which it has not denied any of the more than 27,000 requests for flaring permits received in the past seven years.²

This Court should reverse the Commission's Order so that Rule 32 is interpreted and applied consistently with the Texas Constitution, the waste prevention statute, and court precedent to prevent waste.

² Rebecca Elliott, *Texas Showdown Flares Up Over Natural Gas Waste*, WALL ST. J. (July 17, 2019) ; *see also, Flaring Regulation*, Railroad Commission of Texas, available at <https://www.rrc.state.tx.us/about-us/resource-center/faqs/oil-gas-faqs/faq-flaring-regulation/> (showing that from Fiscal Year 2013 through Fiscal Year 2019, the Commission approved over 35,000 total venting and flaring permits).

II. DISCOVERY PLAN

Williams intends to conduct discovery, if any, under Level 3 of Texas Rule of Civil Procedure 190.4.

III. PARTIES

Plaintiff Williams MLP Operating, LLC is a gas utility pipeline under the Texas Utilities Code, Title 3, Subtitles A and B. It is the owner of the Eagle Ford Gathering System that provides gas gathering service to wells and leases at issue in EXCO's application that is the subject of the Commission's Order.

Mockingbird Midstream Gas Services, LLC is a wholly owned subsidiary of Williams MLP Operating, LLC. It is the operator of the Eagle Ford Gathering System that provides gas gathering service to wells and leases at issue in EXCO's application that is the subject of the Commission's Order.

Defendant, the Railroad Commission of Texas, is a state governmental agency. The Commission may be served with process by service of citation on its Executive Director, Mr. Wei Wang, at the Commission's offices located at 1701 North Congress Avenue, Austin, Texas 78701. *See* Tex. Gov. Code §2001.176(b)(2); Tex. R. Civ. P. 106(a)(1). Williams requests that the Clerk of the Court issue and deliver a citation to the Commission pursuant to Texas Rules of Civil Procedure 99 and 106(a)(1).

Williams will serve a copy of this Original Petition on the other parties of record in Oil & Gas Docket No. 01-0308609, EXCO Operating Company, LP and CNOOC Energy U.S.A., LLC by e-mail and by certified mail, return receipt requested. Tex. Gov. Code § 2001.176(b)(2). A complete list of the parties and their counsel can be found in the certificate of service attached to this Original Petition.

IV. JURISDICTION AND VENUE

This court has jurisdiction over this suit, an action brought pursuant to Texas Government Code Section 2001, Subchapter G, seeking judicial review of the Commission's orders and rulings made in Oil & Gas Docket No. 01-0308609.

Williams exhausted all administrative remedies. The presiding administrative law judge issued a Proposal for Decision on May 20, 2019. *See* Exhibit A. The Commission's Final Order was signed on August 6, 2019. *See* Exhibit B. Williams filed a Motion for Rehearing on August 30, 2019. *See* Exhibit C. The Commission considered the Motion for Rehearing at its open conference on October 22, 2019 and denied the motion, with one Commissioner dissenting. The Commission's Order Denying Motion for Rehearing was signed on October 22, 2019. *See* Exhibit D. Williams's action is timely filed, and this court has jurisdiction over this cause pursuant to Tex. Gov. Code § 2001.171.

Venue is mandatory in Travis County pursuant to Tex. Gov. Code § 2001.176(b)(1).

V. BACKGROUND

The Commission's Order granted EXCO's request to flare billions of cubic feet of casinghead natural gas and more than one million gallons of natural gas liquids (NGLs), despite the fact that the oil wells at issue are connected to a gathering system that can gather the gas.³ In granting the request, the Commission adopted EXCO's primary argument in the case, that flaring permission should be granted when the cost of gathering and treating the casinghead gas exceeds the revenues from the sale of the gas – completely disregarding not only the oil revenues, but the waste and environmental impacts caused by the flaring.

³ EXCO was joined in its request to flare before the Commission by one of its working interest owners, CNOOC Energy U.S.A., LLC, formerly known as OOGC America LLC. CNOOC is an arm of China's state-owned oil company, operating under the State-owned Assets Supervision and Administration Commission of the State Council of the People's Republic of China.

Texas courts have consistently upheld the Commission's actions to prevent waste by prohibiting flaring in situations such as EXCO's. As the Austin Court of Appeals wrote some 70 years ago in upholding a Commission no-flaring order and rejecting the type of "gas economics" arguments made by EXCO in this case:

If the prevention of waste of natural resources such as gas is to await the time when direct and immediate profits can be realized from the operation, there would have been little need for the people of Texas to have amended their Constitution by declaring that the preservation and conservation of natural resources of the State are public rights and duties and directing that the Legislature pass such laws as may be appropriate thereto (Sec. 59a, Art. 16, Tex. Constitution, Vernon's Ann.St.), for private enterprise would not need the compulsion of law to conserve these resources if the practice were financially profitable.⁴

The court correctly recognized, the "gas economics" position advocated by EXCO and CNOOC to support flaring in the case would effectively render the provisions of the Texas Constitution, statutes, and regulations meaningless. With positive "gas economics," operators have a strong incentive to always save and get the gas to market. It is only with "negative gas economics" that operators request an exception – an exception which under the "gas economics" test is virtually insured.

Unfortunately, the Commission authorized flaring in this case where the pipeline to take the gas is in place and connected to the wells. This approach to flaring exceptions effectively guarantees an exception if an operator applies for one, thus eviscerating the protections of Rule 32 and resulting in the needless waste of natural gas. This court should reverse that Order.

A. Procedural Background

On December 21, 2017, EXCO filed its application to flare at over 130 wells and 69 flare points with the Railroad Commission of Texas. On January 12, 2018, EXCO applied for a hearing

⁴ *R.R. Comm'n of Tex. v. Flour Bluff Oil Corp.*, 219 S.W.2d 506, 508 (Tex. App. - Austin 1949), *writ ref'd*.

to extend its flaring authority for a two year time period. Williams protested EXCO's application, and the Commission received Williams's protest on February 28, 2018.

The Commission docketed the hearing as Oil & Gas Docket No. 01-0308609. The hearing on the merits was held on May 23 and 24, 2018. The presiding administrative law judge issued a Proposal for Decision on May 20, 2019. The parties filed exceptions and replies to the Proposal for Decision. On August 6, 2019, the Commission issued its Order, which adopted the findings and conclusions of the Proposal for Decision and granted EXCO's application. Williams filed a timely Motion for Rehearing on August 30, 2019, and the motion was denied on October 22, 2019.

B. Texas has a long tradition of meaningful enforcement of its “no-flaring” laws and policies.

The wasteful flaring or venting of gas was common when oil production began in Texas more than a century ago. As a result, in 1917 the Texas Constitution was amended to prevent waste and the then-common practice of wasteful flaring was rejected, with language providing that “[t]he conservation and development of all of the natural resources of Texas... are... declared public rights and duties, and the Legislature shall pass all such laws as may be appropriate thereto.”⁵ Following this change, the Legislature imposed a duty on the Commission to “prevent waste [and] promote conservation.”⁶ The Commission's current Rule 32 is designed to achieve these objectives, and the Commission has repeatedly emphasized the importance of compliance with Rule 32. It provides that all gas “shall be utilized”⁷ and the Commission may not grant an

⁵ Texas Constitution, Art. 16, § 59.

⁶ Tex. Nat. Res. Code §§ 85.045 & 85.046(c); *Railroad Commission v. Flour Bluff Oil Corp.*, 219 S.W.2d 506 (Tex. Civ. App.—Austin 1949, writ refused).

⁷ 16 Tex. Admin. Code § 3.32(c).

exception to the general prohibition on flaring unless the operator proves a “*necessity*” for the release.⁸

The Texas Supreme Court and other Texas courts have consistently upheld Commission orders prohibiting flaring.⁹ The Commission’s Order in this case is indicative of a *dramatic* shift in recent years from the previous policy. This shift eviscerates the no-flaring rule and policy by effectively giving operators total discretion in deciding whether and how much to flare.¹⁰ This result should be rejected by this Court.

C. The Commission’s Order, if allowed to stand, would effectively negate the state’s longstanding no-flaring laws and policies.

The Commission’s Order authorized EXCO to flare *all* its casinghead gas, despite the fact that there is no “necessity” as required under Rule 32 – EXCO is connected to a gathering system that is available to gather its gas and indeed *did* gather gas from the wells for years. The situation is not like so many flaring cases, brought out of necessity “due to the wells being located in a new area of exploration where pipelines are not currently located.”¹¹

The Commission’s Order would give producers a blank check to flare its gas any time. This is contrary to Rule 32, the statutes, and case law. The Order should be reversed.

⁸ 16 Tex. Admin. Code § 3.32(f)(2).

⁹ See, e.g., *Railroad Commission v. Shell Oil Co.*, 206 S.W.2d 235, 237 (Tex. 1947); *Railroad Commission v. Sterling Oil and Refg.*, 218 S.W.2d 415 (Tex. 1949).

¹⁰ See *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006) (a court “must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous.”). The same principle applies to agencies such as the Railroad Commission.

¹¹ Attachment A, Proposal For Decision, p. 19.

VI. GROUNDS FOR REVERSAL

The Commission's Order should be reversed and remanded because the administrative findings, inferences, conclusions, or decisions are:

- a. In violation of a constitutional or statutory provision;
- b. In excess of the Commission's statutory authority;
- c. Affected by other error of law;
- d. Not reasonably supported by substantial evidence considering the reliable and probative evidence in the record; and/or
- e. Arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See Tex. Gov. Code §2001.174(2).

The Commission's Order is based on a standard that unlawfully vitiates statutory requirements and the requirements of the Commission's Rule 32. It is not supported by adequate and necessary findings of fact and conclusions of law, violates applicable Texas constitutional provisions and statutes, exceeds the Commission's authority, is not supported by substantial evidence considering the reliable and probative evidence in the record, constitutes arbitrary and capricious decision-making, constitutes an abuse of the Commission's discretion, and constitutes a clearly unwarranted exercise of discretion. As such, without correction, the Commission's Final Order prejudices Williams' substantial rights. Tex. Gov't Code § 2001.174.

Williams's Motion for Rehearing, a copy of which is attached as Attachment C, sets out in more detail specific errors of the Commission. In this Petition, Williams adopts and raises each of the points raised in its Motion for Rehearing, including, but not limited, to the following issues with the Proposal for Decision (attached at Attachment A), which was adopted by the Commission in its Order:

- Finding of Fact No. 11 (finding that EXCO proved that utilizing the Williams gas gathering system is uneconomical at this time) is not supported by substantial evidence of record, constitutes an arbitrary and capricious decision-making, constitutes an abuse of the Commission's discretion, exceeds the Commission's authority, and constitutes a clearly unwarranted exercise of discretion. Among other things, it is in error because it does not consider and take into account oil revenues from the production and sale of oil from the subject wells in finding that utilizing the Williams System is uneconomical.
- Finding of Fact No. 12 (finding that without a Commission order authorizing flaring, EXCO will have to shut the wells in, causing waste and possible harm to the reservoir) is not supported by substantial evidence of record and ignores that the evidence that the well can remain in production with its gas being gathered by Williams or that the well can be shut-in without harm to the oil and gas in the reservoir. It is also in error because it does not take into account the gas that would be wasted by flaring.
- Conclusion of Law No. 3 (concluding that the requested exceptions to flare casinghead gas meet the requirements of Rule 32) violates, ignores, exceeds the Commission's authority, and constitutes an abuse of discretion with respect to the binding precedent on statutory standard that provides that an operator – such as EXCO – cannot justify non-compliance with the prohibition on flaring casinghead gas on economic grounds and that, as a conservation measure, Texas Natural Resources Code § 85.045 does *not* “await the time when direct and immediate profits can be realized from the operation.” *Railroad Commission v. Flour Bluff Oil Corp.*, 219 S.W.2d 506, 508 (Tex. App.—Austin 1949, writ ref'd). Moreover, Conclusion of Law No. 3 constitutes a clearly unwarranted exercise of discretion, is not supported by substantial evidence of record, and constitutes an abuse of discretion with respect to the Statewide Rule 32. Conclusion of Law No. 3 and the Final Order in its entirety violates, ignores, exceeds the Commission's authority, and constitutes an abuse of discretion with respect to the Texas Constitution and statutes that require prevention of waste. Tex. Nat. Res. Code §§ 85.045 & 85.046; Texas Constitution, Art. 16, § 59. This conclusion and the order should be corrected to deny the requested exception to flare.
- Finding of Fact No. 1 (finding that notice was given to all parties entitled to notice) and Conclusion of Law No. 2 (concluding that all notice requirements have been satisfied) violate applicable constitutional provisions, statutes, and procedures related to procedural and substantive due process with respect to, among other things, the Commission's failure to require notice to all potentially affected persons, including Williams as a gatherer connected to the wells in question and in the position to gather the gas rather than its being flared.
- Finding of Fact No. 7 (finding that EXCO provided evidence that it does not currently have a contract with Williams to utilize the Williams gas gathering system) is not supported by substantial evidence in the record. EXCO has

acknowledged the dedication of the gas produced from the wells and leases to the Williams' System and has told the Commission that it has a contract with Williams for gathering the subject gas.

- Finding of Fact No. 8 (finding that EXCO proved the Williams gas gathering system is not available) is not supported by substantial evidence in the record. Based on the credible evidence of record, Williams' gathering system has been and is available to EXCO.
- Finding of Fact No. 9 (finding that EXCO proved the Williams gas gathering system is unable to take 100% of its produced gas even when the system is available) is contrary to the substantial evidence of record. The credible evidence of record shows that Williams' system was designed and constructed to take EXCO's production, including the flush production of EXCO's new wells, and Williams has consistently been able to take all of EXCO's gas that has been delivered to Williams' System.
- Finding of Fact No. 10 (finding that EXCO proved it does not currently have a contract for the sale of its produced gas) is contrary to the substantial evidence of record. As referenced in the proposal for decision and in the record, EXCO's has a contract to sell 100% of its gas to its affiliate – Raider Marketing.

VII. PRAYER

Plaintiffs Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC pray that the Commission be cited to appear and answer herein and that the Court reverse the Order, reverse the Findings of Fact and Conclusions of Law that are inconsistent with this Original Petition, and remand the cause to the Commission for action consistent with the statute and Rule 32, to avoid the unnecessary waste of natural gas. Plaintiffs also pray that the Court award it all costs of court and such other relief to which it may be entitled.

Respectfully submitted,

BY: /s/ John R. Hays, Jr. _____

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**ATTORNEYS FOR PLAINTIFFS WILLIAMS
MLP OPERATING, L.L.C. AND
MOCKINGBIRD MIDSTREAM GAS
SERVICES, L.L.C.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served via email or via certified mail, return receipt requested as indicated on this 20th day of November 2019.

Via service of Citation and e-mail and/or certified mail, return receipt requested

RAILROAD COMMISSION OF TEXAS

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John R. Hays, Jr.

NO. _____

**WILLIAMS MLP OPERATING, LLC
AND MOCKINGBIRD MIDSTREAM
GAS SERVICES, LLC**

Plaintiff,

vs.

RAILROAD COMMISSION OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

____ **JUDICIAL DISTRICT**

ORIGINAL PETITION FOR JUDICIAL REVIEW

Exhibit A



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

Oil and Gas Docket No. 01-0308609

Application of EXCO Operating Company, LP for an Exception to Statewide Rule 32 for Sixty-Nine Flare Points on Various Leases, Briscoe Ranch (Eagleford) Field, Dimmit and Zavala Counties, Texas

PROPOSAL FOR DECISION

HEARD BY: Kristi M. Reeve – Administrative Law Judge
Richard Eyster, P.G. – Technical Examiner

TECHNICAL REVIEW BY: Robert Musick, P.G. – Technical Examiner

PROCEDURAL HISTORY:

Application Filed Date:	December 21, 2017
Request for Hearing:	January 12, 2018
Protest Received:	February 28, 2018
Notice of Hearing Date:	February 8, 2018
Prehearing Conference Held:	March 14, 2018
Hearing on the Merits Held:	May 23 and 24, 2018
Briefing Due on Bankruptcy:	June 1, 2018
Transcript Received:	June 14, 2018 and September 11, 2018
Late Filed Exhibits Due:	June 1, 2018
Bankruptcy Brief Filed:	June 1, 2018
Response to Bankruptcy Brief Due:	June 15, 2018
Closing Statements and Response Filed:	July 6, 2018 to July 27, 2018
Post-Hearing Conference:	September 5, 2018
Notice of Withdrawal of Proof of Claim from Bankruptcy:	September 25, 2018
Close of Record:	September 25, 2018
Proposal for Decision Issued:	May 20, 2019

APPEARANCES:

For Applicant, EXCO Operating Company, LP:

David Nelson, Attorney, *Gross and Nelson*

T. Gregory Jackson, Attorney, *Morgan, Lewis & Bockius LLP*

Aaron Christian, Attorney, *Morgan, Lewis & Bockius LLP*

Witnesses for Applicant:

Heather Summerfield, General Counsel, *EXCO Operating Company, L.P.*
Tyler Farquharson, VP, CFO and Treasurer, *EXCO Operating Company, L.P.*
Phillip Points, Senior Regulatory Specialist, *EXCO Operating Company, L.P.*
Dale Miller, Graduate Engineer, Consultant, *Miller Consulting, Inc.*

For Intervenor, OOGC America LLC:

Brian Sullivan, Attorney and PE, *McElroy, Sullivan, Miller & Weber, LLP*
Paul Tough, Attorney, *McElroy, Sullivan, Miller & Weber, LLP*
Kelli Kenney, Attorney, *McElroy, Sullivan, Miller & Weber, LLP* (September 5, 2019)
Krystal Eversdyk, Paralegal, *McElroy, Sullivan, Miller & Weber, LLP*
Sean Johnson, Managing Counsel, *OOGC America, LLC*
Myles F. Reynolds, Attorney, *Vinson & Elkins* (withdrew as counsel July 31, 2018)

For Intervenor, U.S. Energy Development Corporation:

Bill G. Spencer, Consultant, *Bill G. Spencer Consulting, LP*
Chris Spencer for Bill G. Spencer, *Bill G. Spencer Consulting, LP* (September 5, 2018)

For Protestant, Williams MLP Operating, LLC/Mockingbird Midstream Gas Services, LLC

Richard A. Howell, Attorney, *Jackson Walker, LLP*
John R. Hays, Jr., Attorney, *Jackson Walker, LLP*

Witnesses for Protestant:

John Porch, SVP Engineering, *Williams MLP Operating, LLC/Mockingbird Midstream Gas Services, LLC*
Jim Cantwell, Midstream Expert Witness

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I. Statement of the Case¹

EXCO Operating Company, LP (“EXCO” or “Applicant”)² seeks an exception to Statewide Rule 32³ to flare casinghead gas (“gas”) from 69 flare points on various leases consisting of 138 wells, Briscoe Ranch (Eagleford) Field, Dimmit and Zavala Counties, Texas. The wells are currently connected to a gas gathering system (“system” or “pipeline”), which was previously utilized for the sale of approximately 70% of the gas via an agreement between EXCO and the prior owner of the subject wells. No agreement is currently in effect to either sell or transport the gas. No gas has been transported via the system since December 31, 2017. EXCO has been flaring under administrative exceptions and a Commission Final Order in Oil and Gas Docket No. 01-0299832.⁴

The application is protested by Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC, (collectively, “Williams”). Williams is the operator of the connected gas gathering system. In Williams’ Notice of Protest, Williams states, “Williams believes the gas EXCO seeks to flare is dedicated to Williams and that Williams has a right and interest in gathering it.”⁵ Williams stated in its opening statement, “We are protesting EXCO’s request to flare millions of Mcf of gas that should be safely and reliably handled otherwise.”⁶

OOGC America LLC (“OOGC”) and U.S. Energy Development Corporation (“U.S. Energy”) appeared as intervenors. OOGC is the non-operating working interest owner of 128 of the 138 wells that are the subject of this Docket.⁷ OOGC states it owns roughly 30% of the production from the subject wells.⁸ U.S. Energy is an offset operator. Following a prehearing conference, OOGC and U.S. Energy aligned with EXCO.

This is a case of first impression. This is the first protested Statewide Rule 32 application. Statewide Rule 32 was adopted effective December 4, 1996. Since that time, thousands of applications have been approved either administratively or via Commission order.⁹ This application is not protested by adjacent operators in the field, or landowners, but by the midstream. Additionally, this is the first time an operator has sought to flare nearly 100% of its gas (that not used for on-lease purposes) while connected to a gathering system that states it is “available” to take the gas.

¹ The transcript for the hearing in this case is in multiple parts and is referred to as either “Prehearing,” “Merits,” or “Post-hearing,” then by volume if applicable, and page and line numbers. For example: “Merits Tr. V1. pg., ln.”. Exhibits are referred to by “sponsoring operator name [Exhibit No.]”.

² EXCO may also refer to its affiliate Raider Marketing, LP.

³ Statewide Rule 32 refers to 16 Tex. Admin. Code § 3.32.

⁴ EXCO Exhibit No. 9, Statewide Rule 32(i)(4).

⁵ Williams’s Notice of Protest at 1.

⁶ Merits Tr. V1. pg. 33, ln. 17-21.

⁷ Prehearing Tr. pg. 8, ln. 6.

⁸ Prehearing Tr. pg. 8, ln. 5.

⁹ See <https://www.rrc.texas.gov/about-us/resource-center/faqs/oil-gas-faqs/faq-flaring-regulation/>.

After much consideration, the Technical Examiner and Administrative Law Judge (collectively, "Examiners") conclude EXCO has met its burden of proof under Statewide Rule 32 and recommend the application be granted and the flaring permits issued. The Examiners find the recommendation appropriate at this time given the issues involved and given the fact that EXCO would need flaring authority even if the Williams' system was available, to account for low pressure issues, periodic upset and maintenance, and for the remainder of the gas the Williams system is unable to take. This recommendation should not be taken as an indication that the Examiners would recommend flaring for all gas in the future or if the facts were different. "EXCO has stated it's hope to cease flaring, and ideally sell its casinghead gas at a profit."¹⁰ The Examiners encourage EXCO to vigorously seek a solution to flaring the majority of its gas, that it make a good-faith attempt to direct the gas to or utilize the gas for purposes and uses authorized by law, in accordance with Statewide Rule 32(i)(2), prior to the expiration of the recommended authority.

II. Jurisdiction and Notice

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission¹¹ with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Statewide Rule 32 contains no notice of application requirements either for administrative applications or for exceptions sought via hearing, such as the immediate case. However, Commission practice for exceptions sought via hearing has been to provide notice to all adjacent operators in the field.

On February 8, 2018, the Hearings Division of the Commission sent a Notice of Hearing ("Notice") to the parties and to any offset/adjacent operators in the field setting a hearing date of March 14, 2018.¹² Consequently, the parties received more than 10 days' notice. The Notice contains: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short and plain statement of the matters asserted.¹³ By letter sent March 7, 2018, to all on the service list, the noticed hearing was converted to a prehearing conference. The prehearing conference was held on March 14, 2018, as noticed. The purpose of the prehearing conference was to determine the parties and party status, set a docket control order if necessary, and set a date for the hearing on the merits. EXCO, Williams, OOGC and U.S. Energy appeared at the prehearing conference. After hearing argument, the parties were aligned, with EXCO as the applicant and OOGC and U.S. Energy in support

¹⁰ EXCO's Response to Williams' Closing Brief at 11.

¹¹ Commission refers to Railroad Commission of Texas.

¹² See Notice of Hearing.

¹³ See Tex. Gov't Code §§ 2001.051, 052; 16 Tex. Admin. Code §§ 1.42, 1.45.

of approval of EXCO's application and Williams in opposition. The parties agreed on the record to a hearing on the merits for May 23, 2018, continued to May 24, 2018, if necessary. The parties were also provided notice of and appeared at a post-hearing conference on September 5, 2018.

III. Applicable Legal Authority

Statewide Rule 32 governs the utilization for legal purposes of natural gas and casinghead gas produced under the jurisdiction of the Commission. Per current practice, applications to vent or flare will initially be approved for incremental periods no longer than forty-five days, up to a maximum of 180 days. In the event an operator anticipates a need for additional time for venting and flaring, the Commission can grant an extension only when and if the operator demonstrates the need for such an extension. Pursuant to SWR 32(i)(3), an operator shall file an application and fee for renewal of an exception with the Commission at least 21 days prior to expiration of the existing exception.

Statewide Rule 32(j)(1) states:

An operator may request a hearing on any application for an exception or exception renewal required by this section.¹⁴

EXCO seeks relief pursuant to Statewide Rule 32(h)(4), which states:

Requests for exceptions for more than 180-days and volumes greater than 50 mcf of hydrocarbon gas per day shall be granted only in a final order signed by the commission.¹⁵

Additionally, EXCO seeks relief under Statewide Rule 32(f)(2)(E), which states:

(f) Gas Releases in Oil and Gas Production Operations. (2) The commission or the commission's delegate may administratively grant or renew an exception to the requirements or limitations of this subsection subject to the requirements of subsection (h) to allow additional releases of gas if the operator of a well or production facility presents information to show the necessity for the release. The volume of gas that is released must be measured or estimated in accordance with §3.27 of this title (relating to Gas To Be Measured and Surface Commingling of Gas) and reported on the appropriate commission form and shall be charged to the operator's allowable production. Necessity for the release includes, but is not limited to, the following situations: (E) Avoiding curtailment of gas production which will result in a reduction of ultimate recovery from a gas well or oil reservoir.

¹⁴ 16 Tex. Admin. Code § 3.32(j)(1).

¹⁵ 16 Tex. Admin. Code § 3.32(h)(4).

EXCO is currently flaring 20 of the 69 flare points via authority granted by the Commission in the Final Order of Oil & Gas Docket No. 01-0299832, authority expiring March 11, 2018, and administrative exceptions for the remaining flare points expiring December 5, 2017, or on dates thereafter.¹⁶ Statewide Rule 32(h) states in part:

The commission or the commission's delegate may administratively grant an exception authorized by this section provided that the requirements of this subsection are met.¹⁷

On December 21, 2017, EXCO filed the current application and request for hearing.¹⁸ EXCO has continued to flare per Statewide Rule 32(h)(7), which states in part:

If an operator files an application, accompanied by the required fee, for renewal of an existing exception to the requirements of this section at least 21 days before the expiration of the existing exception and the existing authority expires before the commission acts on the application, the operator is authorized to continue to operate under the existing authority pending final commission action on the application.¹⁹

Historically, permits to flare have been granted for situations where the cost to build the facilities to treat and/or transport the gas is uneconomical, for line pressure issues, line capacity issues, or to allow flaring during periodic upset or maintenance. Economics have been based solely on the estimated value of the gas. For those previously granted authority, they have stated or shown that waste will result if the wells are shut-in due to the inability to flare through an ultimate reduction of recoverable hydrocarbons and/or damage to the reservoir.²⁰

IV. EXCO's Acquisition of the Wells, Sales/Gathering Agreement, and Bankruptcy

EXCO purchased the wells from Chesapeake Exploration, L.L.C. ("Chesapeake Exploration") in 2013.²¹ The gathering agreement associated with the wells, to which Williams is a party, EXCO rejected. Therefore, EXCO did not become a party to that gathering agreement as a result of the purchase of the Chesapeake Exploration assets.²²

¹⁶ EXCO Exhibit No. 9.

¹⁷ 16 Tex. Admin. Code § 3.32(h).

¹⁸ Dale Miller letter filed with the Oil and Gas Division and referred to the Hearings Division on January 3, 2018.

¹⁹ 16 Tex. Admin. Code § 3.32(h)(7).

²⁰ See <https://rrc.texas.gov/hearings/dockets/oil-gas-proposals-for-decision-and-orders/index-for-332/>.

²¹ EXCO Exhibit No. 1.

²² Merits Tr. V1. pg. 44, ln. 3-12.

EXCO and Chesapeake Energy Marketing ("Chesapeake") entered into an agreement, Transaction Confirmation No. 7, a NAESB (North American Energy Standards Board) agreement, whereby EXCO sold the gas to Chesapeake, and Chesapeake nominated the gas to Williams' system.²³ Following an attempt by EXCO to gain Chesapeake's approval to assign Transaction Confirmation No. 7 to a third party, Chesapeake terminated the agreement effective May 31, 2017.²⁴ Prior to the hearing, EXCO filed suit against Chesapeake in federal court.²⁵

Mr. Farquharson, EXCO's VP, CFO and Treasurer, testified "the agreement between EXCO and Chesapeake was a fixed price with the agreement between Chesapeake and Williams as a cost of service model, at a rate higher than the fixed price EXCO had agreed to pay Chesapeake."²⁶ Chesapeake was responsible for paying any gap between its EXCO agreement and its agreement with Williams. EXCO is currently in litigation with Chesapeake regarding termination of this agreement.²⁷ The day after termination of Transaction Confirmation No. 7, EXCO shut in over 70 wells.²⁸ Afterwards, EXCO and Chesapeake entered into a series of month-to-month transaction confirmations until the end of 2017, which allowed EXCO to produce all of its wells.²⁹ Evidence was presented to show that Williams and EXCO have attempted to reach a gathering agreement. No agreement was reached during the time the record was open, nor have the parties notified the Examiners that an agreement has been reached since.

On January 15, 2018, EXCO filed bankruptcy. Prior to the bankruptcy filing, EXCO filed the subject application, on December 21, 2017, for an exception to Statewide Rule 32. On March 14, 2018, at the prehearing conference, EXCO's counsel indicated that the Statewide Rule 32 application should proceed notwithstanding the bankruptcy. In subsequent briefing, Williams showed support for the statement, contending there would be no violation of the automatic stay,³⁰ as the application is a post-petition proceeding at the request of the debtor.³¹ In briefing, EXCO agreed, but went on to indicate that in its opinion, an order directing EXCO to use Williams' system would be a violation of the automatic stay.

²³ Merits Tr. V1. pg. 67-73 and pg. 111-112 and EXCO Exhibit No. 2.

²⁴ Merits Tr. V1. pg. 73, ln. 1-16 and EXCO Exhibit No. 3.

²⁵ Merits Tr. V1. pg. 45, ln. 1-15.

²⁶ Merits Tr. V1. pg. 76, ln. 18-22.

²⁷ Merits Tr. V1. pg. 45, ln. 12-15 and Merits Tr. V1, pg. 81, ln. 16-18.

²⁸ Merits Tr. V1. pg. 81, ln. 11-15.

²⁹ Merits Tr. V1. pg. 81-85.

³⁰ In United States bankruptcy law, an automatic stay is an automatic injunction that halts certain actions after a debtor has declared bankruptcy. The automatic stay begins the moment the bankrupt petition is filed. Under special circumstances, an order granting relief from the automatic stay may be obtained from the bankruptcy court. See <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics>.

³¹ See Williams' filing dated May 23, 2018, discussing bankruptcy and applicable case law and Merits Tr. V1. pg. 32-35.

On April 16, 2018, Williams filed two proofs of claim in EXCO's bankruptcy proceeding. On May 22, 2018, EXCO filed an adversary proceeding in the bankruptcy court seeking redress of Williams' violation (per EXCO) of the automatic stay due to Williams activities in this Docket as a result of Williams' argument that EXCO has a contractual obligation to dedicate all of its casinghead gas to Williams.³² EXCO requested that the present case be continued so that the bankruptcy court could address the issue.³³ Williams argued the issue of dedication is a contract and property issued for the courts, and not for the Commission to decide.³⁴ To that end, Williams filed a proof of claim in the bankruptcy court.³⁵ EXCO advanced a determination on the dedication would provide EXCO with an understanding of what options are available and may possibly make the present application moot.³⁶

The Examiners proceeded with the hearing on the merits but held the record open awaiting a determination of the bankruptcy court regarding dedication of the gas. On September 24, 2018, Williams filed with the bankruptcy court an unopposed motion for leave to withdraw its proofs of claim from the bankruptcy.³⁷

On September 25, 2018, the Examiners received notice of Williams' withdrawal and the record for the immediate case was closed.

V. Request for Interim Rate

On March 2, 2018, OOGC filed a Motion for Interim Order to Prevent Waste ("Interim Rate Motion"). OOGC requested that: (1) Williams be compelled to accept into its gathering system all of the casinghead gas currently being flared by EXCO; (2) set an interim rate of \$0.405 for gathering and compression and \$0.23 for treating of said casinghead gas to market; and (3) make the interim rate effective until the conclusion of the pending Commission Gas Utilities Docket No. 10606 ("GUD Docket No. 10606").³⁸ GUD Docket No. 10606 is an active docket and currently set for hearing on June 18, 2019.

OOGC argued that Williams had "ceased to provide pipeline services to the EXCO wells and currently refuses to take the gas from these wells unless it is paid an 'unjust

³² Merits Tr. V1. pg. 15-17.

³³ Merits Tr. V1. pg. 17, ln. 18-24.

³⁴ Merits Tr. V1. pg. 21, ln. 8-13.

³⁵ Merits Tr. V1. pg. 27, ln. 3-5.

³⁶ Merits Tr. V1. pg. 38, ln. 12-16.

³⁷ See Williams' September 25, 2018 filing.

³⁸ See OOGC America LLC's Motion for Interim Order to Prevent Waste, pg. 1.

and unreasonable' rate for its services, in violation of Texas law."³⁹ OOGC stated that the current volume of the gas at market is approximately \$3.00 MMBtu and Williams has offered to reconnect if EXCO pays a new rate of \$6.57 MMBtu.⁴⁰ At the time of the hearing, EXCO was flaring under authority granted via a Commission Final Order and administrative authority.⁴¹ OOGC contends that Williams is the cause of the waste.⁴² Williams contends that it only need turn a valve for the gas to begin flowing through its system, and that no disconnection has occurred.⁴³

On March 12, 2018, Williams filed its Response to OOGC's Motion for Interim Order and Response to EXCO's Flaring Application opposing OOGC's Motion. Williams contends that OOGC's request for "interim relief is correct in only one regard – it is waste for the casinghead gas from EXCO's oil wells to be flared when EXCO produces."⁴⁴ Williams stated it would be improper to set an interim rate given there is another docket regarding the same issue already at the Commission. Williams further argues that an OOGC's request for interim rate for gas gathering is procedurally barred, as an interim order in a proceeding an order that is later superseded by a final order in the same proceeding, and this matter is a separate proceeding.⁴⁵

The Examiners questioned if an interim rate making would violate the automatic stay. EXCO's general counsel, Heather Summerfield, believes "we would need bankruptcy approval for an interim rate to apply to the debtors because [...] it is a commercial factor."⁴⁶

The ALJ limited the scope of the hearing to the Statewide Rule 32 application.

VI. Discussion of the Evidence

EXCO provided the testimony of two witnesses and 26 exhibits.⁴⁷ Williams provided the testimony of two witnesses and 31 exhibits.

³⁹ See OOGC America LLC's Motion for Interim Order to Prevent Waste, pg. 2.

⁴⁰ See OOGC America LLC's Motion for Interim Order to Prevent Waste, pg. 2.

⁴¹ EXCO Exhibit No. 9.

⁴² See OOGC America LLC's Motion for Interim Order to Prevent Waste, pg. 2.

⁴³ Merits Tr. V1. pg. 24, ln. 1-2 and *see also* Williams's Notice of Protest, pg. 2.

⁴⁴ See Williams' Response to OOGC's Motion for Interim Order and Response to EXCO's Flaring Application pg. 1.

⁴⁵ See Williams' Response to OOGC's Motion for Interim Order and Response to EXCO's Flaring Application, pg. 2 and 9.

⁴⁶ Merits Tr. V1. pg. 38, ln. 19-25.

⁴⁷ EXCO's late filed exhibit number 24 is admitted over the objection of Williams. However, exhibit 24 is admitted along with the clarifying information provided by Williams in its June 15, 2018 written objection and will be view it totality with that document.

A. Summary of Applicant's Evidence and Argument

EXCO is requesting to flare sour casinghead gas from 138 oil wells connected to 69 flare points on various leases, Briscoe Ranch (Eagleford) Field, Dimmit and Zavala Counties, Texas, as shown in Appendix 1, Attachment A of the PFD, for a period of approximately two years through March 11, 2020.⁴⁸

EXCO does not seek to flare the casinghead gas produced [...] in perpetuity. EXCO's flaring is temporary in nature and was directly caused by Williams' unreasonable demands in exchange for utilizing the Williams System and Chesapeake's wrongful termination of Transaction Confirmation No. 7.⁴⁹

EXCO argues that due to the contract issues, EXCO does not, nor has it ever, had a gathering agreement with Williams, therefore Williams' pipeline is unavailable to EXCO.⁵⁰ Additionally, EXCO does not have a contract for the sale of the gas to Chesapeake. The Williams system is only connected to Chesapeake. Therefore, when considering the connected system, the only available purchaser of the gas is Chesapeake.⁵¹ EXCO is asserting that connecting to Williams' pipeline would be uneconomic and without a flaring exception EXCO will have to shut in the 138 wells which could cause damage to the wells and the reservoir resulting in a waste of hydrocarbons. EXCO states that even if it was able to utilize the Williams pipeline, the pipeline has not been able to take 100% of the gas since 2015, thus, flaring authority would still be necessary.

i. Need to Flare: Gathering System Restrictions and Waste

EXCO's Exhibit No. 21 is a copy of a Commission Final Order in Oil and Gas Docket No. 01-0299832, signed June 21, 2016, whereby EXCO was granted authority to flare from March 11, 2016 to March 11, 2018 due to periodic upsets and line maintenance, with some of the flare points being the subject of the present docket.⁵² EXCO's Exhibit No. 11 are copies of the exceptions to Statewide Rule 32 granted under administrative authority for the remaining wells that are the subject of this docket.⁵³ The present docket is for flaring authority for both the flare points authorized in the June 21, 2016 Final Order and those authorized under administrative authority.

Philip Points, Senior Regulatory Specialist for EXCO, testified that since Transaction Confirmation No. 7 went into effect, Williams has never been able to take all

⁴⁸ Appendix 1. Flare points and volumes.

⁴⁹ EXCO's Response to Williams' Closing Brief at 3.

⁵⁰ Merits Tr. V1. pg. 46, ln. 1-19 and pg. 315, ln. 5-9, where Mr. Porch stated that Williams could not purchase the gas, but that it had a marketing affiliate that could.

⁵¹ Merits Tr. V2. pg. 174, ln. 10-25. Mr.

⁵² Merits Tr. V1. pg. 238-239 and EXCO Exhibit No. 21.

⁵³ Merits Tr. V1. pg. 135-137 and EXCO Exhibit No. 11.

of the gas EXCO produced. Approximately 30% or more of EXCO's gas needs to be flared due to the inability of Williams to take the gas into its system. For a subset of the 138 wells, the wells are low pressure wells, with a pressure lower than that of the pipeline. Thus, the gas cannot be put into the pipeline without additional mechanical assistance, which is uneconomic at this time. For the remaining wells, the need to flare was due to upsets or when the gathering system is down for maintenance.⁵⁴ Mr. Points stated that some of the wells would qualify under Statewide Rule 32 to flare without an exception, as the daily flare volume is less than 50 mcf.⁵⁵ Dale Miller, graduate engineer and technical expert witness for EXCO, testified that in reviewing production for the year of 2017, flaring occurred during the time that the gas was being sold, which shows that EXCO needs a Statewide Rule 32 exception, whether it sells its gas or not.⁵⁶

In a situation where a gathering system cannot always take the gas, an operator must choose to either flare or shut in the impacted well(s). EXCO chooses to flare – as it must produce the wells.⁵⁷ Mr. Miller stated that if these horizontal wells were shut in, due to failure to be permitted to flare, there could be an ultimate reduction of recovery from the wells. "You do not want to do that in an unconventional reservoir, such as the Briscoe Ranch (Eagleford), as you would stop the pressure sink into the well bores, which the hydrocarbons are migrating towards to be produced. That would result in a significant reduction in the total recovery from the wells."⁵⁸ EXCO argues Statewide Rule 32(f)(2)(E) provides for an exception applicable to this issue where "curtailment of gas production [...] will result in a reduction of ultimate recovery from a gas well or oil reservoir."⁵⁹ EXCO's position is if the only alternative to flaring is shutting in the well, and a shut-in could reduce the ultimate recovery of hydrocarbons, Statewide Rule 32(f)(2)(E) permits flaring.⁶⁰

Mr. Points testified that approximately 9,000 bbls of oil is produced each day the wells remain active, oil that would go unrecovered if the wells were shut in due the inability to flare.⁶¹ Mr. Miller stated that in 2017, for the 138 wells, EXCO produced more than 3.3 million barrels of oil from the leases and delivered 2.1 million Mcf of gas for sale to the Williams pipeline and flared 448,000 Mcf of gas, about 20 or 25%, now it's less than 2 million as the wells are declining.⁶² EXCO estimates 29,142,707 Mcf of gas remains that can be produced from the 138 wells.⁶³

⁵⁴ Merits Tr. V1. pg. 141-144 and EXCO Exhibit No. 13.

⁵⁵ Merits Tr. V1. pg. 145, ln. 16-25.

⁵⁶ Merits Tr. V1. pg. 227, ln. 8-24. EXCO Exhibit No. 19.

⁵⁷ Merits Tr. V1. pg. 144-145.

⁵⁸ Merits Tr. V1. pg. 236-237.

⁵⁹ See Statewide Rule 32(f)(2)(E) and EXCO's Closing Statement.

⁶⁰ *Id.*

⁶¹ Merits Tr. V1. pg. 161, ln. 6-20.

⁶² Merits Tr. V1. pg. 253-254.

⁶³ EXCO Exhibit No. 15.

ii. Need to Flare: Economics

Mr. Points, EXCO's Senior Regulatory Specialist for Texas and North Louisiana, stated that connecting EXCO's wells to the Williams' pipeline is uneconomic and would cause a loss of \$146,305,496.24. He further testified:

The projected cost of service totals \$191,467,584.99. The net gas sales associated with these volumes is \$62,292,536. [...] as you take out operating expenses and severance tax, that number drops to \$45,162,088.75. The final calculation is total revenue with the cost of service included. You get to a negative \$146 million or \$146,305,496.24 precisely.⁶⁴

EXCO has an average net revenue interest across this area of 75 percent, excluding anything that would be owed to royalty owners. For its calculations, EXCO assumed a price of gas of \$2.85, an industry standard estimate of operating expenses of 20 percent. EXCO included a state severance tax of 7 and one-half percent. Williams is charging a cost of service price of \$6.47 per Mcf at 1 MmBTU.⁶⁵ EXCO maintains that it is uneconomical to sell the gas under Williams' proposed cost of service price.

Williams argued that the cost of producing the gas and delivering it via Williams' system should be subsidized by the oil revenues. Mr. Miller recounted that the use of oil revenues to subsidize gas revenues has not previously been utilized in Statewide Rule 32 exceptions. Historically, Mr. Miller stated, in Statewide Rule 32 exception cases, "if the gas itself being produced won't pay the freight, you get a Statewide Rule 32 exception."⁶⁶ In the over one hundred cases Mr. Miller has participated in for Statewide Rule 32 exceptions, he has never been involved in any cases where the Commission has considered oil sales when determining the economic feasibility of the sale of gas.⁶⁷

EXCO calculated that Williams' argument would result in twelve and one half percent of the revenue from the oil going to pay to take the gas, figuring, for example, if 17,088 bbls of oil are produced at a price of \$57 per bbl.⁶⁸ When including a hyperbolic decline curve of 2 to 3 percent, the terminal rate is quicker – creating a wedge of recovery that would be lost without the Statewide Rule 32 exception and would cause a waste of oil recovery.⁶⁹

⁶⁴ Merits Tr. V1. pg. 155, ln. 9-16 and EXCO Exhibit No. 15.

⁶⁵ Merits Tr. V1. pg. 154, ln. 9-21 and EXCO Exhibit No. 15.

⁶⁶ Merits Tr. V1. pg. 271-272.

⁶⁷ Merits Tr. V1. pg. 240-241.

⁶⁸ Merits Tr. V1. pg. 276-278.

⁶⁹ Merits Tr. V1. pg. 277-278.

iii. Availability of Pipeline

EXCO argues that it needs to flare the majority of its gas (that is not used on lease) due to the pipeline being unavailable. The valves connecting the wells to the gathering system have been shut by Williams.⁷⁰ On cross examination Mr. Miller testified that saying the receipt points are connected to a pipeline is difficult, given the valves are currently shut. "So, there's a valve that stops them from being connected to the Williams system."⁷¹ Additionally, "EXCO does not have a gathering agreement with Williams and never has."⁷²

iv. Safety

EXCO presented evidence regarding compliance with Statewide Rule 36 in the form of Commission Forms H-9 (Oil, Gas, or Geothermal Resource Operations in Hydrogen Sulfide Areas).⁷³ Mr. Points testified that to his knowledge EXCO complies with Statewide Rule 36 and there have been no violations of Statewide Rule 36 during his tenure with EXCO.

On direct, Williams' presented evidence through its technical expert witness, Mr. Cantwell, that the Williams system is better able to safely handle the H₂S gas.⁷⁴ On cross, Mr. Cantwell discussed his field tour of the Williams facilities and of the EXCO well pads (reviewed at a distance). With regard to the EXCO well pads and flares, Mr. Cantwell stated:

I was concerned about the lack of certain support facilities around the flares. I have no knowledge, but as I mentioned today I think in a long-term flaring of 100 percent of this produced gas there will be some issues associated with the lease equipment that's burning sour gas in the flare setups.⁷⁵

While Mr. Cantwell admitted that he was unaware of any violations of Statewide Rule 36, he felt the flare stacks could be higher and painted with a reflective paint. In his opinion, the EXCO flare facilities are unsafe the way they are constructed, but he does not know if the flare scheme is not in compliance with Statewide Rules.⁷⁶

On rebuttal, Mr. Points clarified EXCO's H₂S safety measures.

EXCO has several components monitored. Most of every piece of equipment for pressure and temperature is monitored through a SCADA

⁷⁰ Merits Tr. V1. pg. 250, Ln. 6-10.

⁷¹ Merits Tr. V1. pg. 250, Ln. 17-23.

⁷² Merits Tr. V1. pg. 25, Ln. 18-20.

⁷³ Merits Tr. V1. pg. 148-151 and EXCO Exhibit No. 14.

⁷⁴ ???

⁷⁵ Merits Tr. V2. pg. 108, Ln. 6-16.

⁷⁶ Merits Tr. V2. pg. 107-110.

system that gets radioed in to our head – Dallas headquarters. We've got a 24-hour manned control room where at least three operators at any given time are watching all of these readings come in. We've got predetermined thresholds for high pressure, low pressure, high temperature, no temperature. Depending on what those levels are is what happens or what "call out" gets made. In a lot of instances if the alarm is significant enough the well itself will ESD or emergency shutdown. That happens within a number of seconds of a certain type of failure. If the flare were to go out [...] the well would shut in [...] in a matter of seconds.⁷⁷

EXCO's position is that it is able to safely flare its sour gas due to the processes it has in place, both at the site locations and at its Dallas headquarters.

B. Protestant's Evidence and Argument

Williams' protest is based on several factors: i) dedication of the gas to the Williams system; ii) safety concerns based on the high quantity of H₂S; iii) waste due to the amount of gas to be flared; iv) pipeline availability.

Mr. Porch, Williams' SVP of Engineering, stated:

We don't want the Railroad Commission to allow EXCO to waste this gas when we have a much more – tremendously safer way to dispose of the gas and the acid gas, and it's tremendously more environmentally friendly also.⁷⁸

i. Dedication of Gas

The parties agree that the dedication of the gas is a contract issue to be determined by a court. Prior to the hearing, Williams filed a proof of claim with the bankruptcy court for a determination regarding the dedication of the gas. Williams later withdrew the claim. The issue of dedication of the gas will not be addressed further within this PFD.⁷⁹

ii. Safety

Williams alleges the set-up of the EXCO flaring system is unsafe. Mr. James Cantwell, a resident of North Carolina, with a degree in Mechanical Engineering from the University of Texas at Austin, was Williams' technical expert witness and testified regarding Williams' safety concerns. Mr. Cantwell has worked in the oil and gas industry in various capacities for approximately 32 years, with the majority of his experience on

⁷⁷ Merits Tr. V2. pg. 161, ln. 6-25 and Merits Tr. V2. pg. 162, ln. 1.

⁷⁸ Merits Tr. V1. pg. 307, ln. 15-22.

⁷⁹ Merits Tr. V1. pg. 15-17; pg. 21, ln. 8-13; pg. 27, ln. 3-5; and Williams' September 25, 2018 filing.

the midstream side.⁸⁰ Mr. Cantwell has provided expert testimony in multiple states, both in federal and state proceedings.⁸¹

Mr. Cantwell conducted a field tour of the Williams and EXCO facilities, created a schematic of the gas gathering system, took photographs, as well as created other documents used in preparation of the hearing. In Mr. Cantwell's opinion, the Williams system is safer, as it has pilot burners and fuel lines that keep flares lit 24/7, separators, remote monitor equipment, they are just better able to handle high H₂S gas.⁸²

Mr. Cantwell had significant problems with the EXCO installations, such as the flares not being tall enough, the flares not being surrounded by barricades, not painted a reflective color, possible venting from the red pots used to catch any liquids sent to the flare. Mr. Cantwell did not notice any remote monitoring equipment or visual alarms. In his opinion, the flares are not set up appropriately from a safety and environmental perspective given the quality (rich) of gas to be flared. Williams alleged EXCO's flare design is not as safe as if the gas goes through a gas line.⁸³ Mr. Cantwell stated that he has never been associated with a request to flare 100 percent of the volume produced from a well all of the time, especially given the H₂S concentration.

On cross, Mr. Cantwell admitted that there are ways to make the flare scheme better. Though in his opinion, the EXCO flare scheme is unsafe the way they are executed, but he does not know if the scheme is not in compliance with Statewide Rules.⁸⁴

iii. Waste

Williams argues that under Statewide Rule 32, all gas shall be utilized.⁸⁵ "EXCO is seeking to flare literally millions of Mcf of gas and it has been doing so."⁸⁶ Williams argues that under Statewide Rule 32, all gas shall be utilized.⁸⁷ Williams promotes that EXCO's flaring is an "elective waste of natural gas, NGLs, and condensate [...] as EXCO's sour gas can be delivered into Williams' pipeline for safe, environmentally-appropriate gathering, treating, and sale."⁸⁸

To Williams, EXCO's request to flare all of its casinghead gas, despite the existence of an available, connected pipeline, "stands in direct challenge to the Commission."⁸⁹ Williams' attorneys argue that:

⁸⁰ Merits Tr. V2. pg. 7-9.

⁸¹ Merits Tr. V2. pg. 11.

⁸² Merits V2. pg. 45-65 and see Williams' Exhibit Nos. 19 and 24.

⁸³ Merits Tr. V2. pg. 14, 45-50.

⁸⁴ Merits Tr. V2. pg. 107-110.

⁸⁵ Merits Tr. V1. pg. 48, ln. 20-21.

⁸⁶ Merits Tr. V1. pg. 48, ln. 5-7.

⁸⁷ Merits Tr. V1. pg. 48, ln. 20-21.

⁸⁸ See Williams' Closing Brief at. 4.

⁸⁹ See Williams' Closing Brief at 4 and 6-7.

Texas law makes waste of natural resources illegal, and the Legislature imposed a duty on the Commission to “prevent waste [and] promote conservation.” Tex. Nat. Res. Code §§ 85.045 & 85.046(c); *Railroad Commission v. Flour Bluff Oil Corp.*, 219 S.W.2d 506 (Tex. Civ. App.—Austin 1949, writ refused). Rule 32 mandates that gas “shall be utilized for purposes and uses authorized by law.” 16 Tex. Admin. Code § 3.32(c). To obtain an exception, EXCO must plead and prove a “necessity” for the requested flaring. *Id.* But EXCO’s requested flaring is purely elective waste of natural gas, NGLs, and condensate that is proscribed by the text and purpose of Texas law because EXCO’s sour gas can be delivered into Williams’ pipeline for safe, environmentally-appropriate gathering, treating, and sale. EXCO’s requested exception to Rule 32 is, by its own admission, unprecedented and extraordinary. Granting EXCO’s request would effectively render Rule 32 meaningless.⁹⁰ The only appropriate course of action is to deny EXCO’s request. [...] For the past eighty years, the Texas Supreme Court and other Texas courts have upheld Commission orders that prohibit flaring. [...] The Commission has the duty to enforce Texas’ anti-flaring policy, and when it enforces that policy, its decisions will be upheld.⁹¹

iv. Availability of Pipeline

Williams contends its pipeline is available for EXCO and always has been. Williams states it has not told EXCO it is unavailable. Williams’ has attempted to negotiate an agreement with EXCO for the last several years.⁹²

EXCO, or its affiliate, need only nominate the gas to begin the process. Previously, Chesapeake nominated for EXCO.⁹³ Williams disagrees with EXCO and OOGC that its pipeline is disconnected. Williams’ states it would only take a few seconds to turn the valve, a process that would take approximately one to two days, as they would need to go to each of the 69 receipt points.⁹⁴ Mr. Porch stated, “Saying that when a valve is closed it’s disconnected, it’s like saying your kitchen faucet is disconnected because it’s turned off.”⁹⁵

Mr. Cantwell testified that closing the valves was something a prudent operator would do in light of the circumstances. If no flow, the valve should be closed; that way there is not minor volumes of gas going through meter. It prevents the producer from getting a bill that was really just surges and not deliveries. More importantly, shutting the

⁹⁰ *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006) (a court “must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous.”).

⁹¹ See Williams’ Closing Brief at 4.

⁹² Merits V1. Pg. 305-306.

⁹³ Merits Tr. V1. pg. 299, ln. 6-24.

⁹⁴ Merits Tr. V1. pg. 304-305.

⁹⁵ Merits Tr. V1. pg. 306, ln. 4-7.

valve keeps backflow from the system. If a breach in the pipeline occurs and the valve was not closed the entire volume of the system could feed back and feed a fire. It is easy to just open a valve again and receive gas.⁹⁶ Mr. Cantwell affirmed the Williams system is "currently operational. It's not like something that has to be resurrected from the past and months of work to reinstate service on the system. It's a matter of opening the valves."⁹⁷

v. Application Flawed: Applications and Economics

Williams cites to EXCO's applications to show the applications were flawed at the start, as the basis for obtaining a flaring exception was false. EXCO's applications and datasheets filed with the Commission state that the basis for the requested flare authority is due to the fact that the pipeline is "down" or "out of service."⁹⁸

Williams also takes issue with EXCO's economic evidence. First, Williams argues that economics cannot be considered in the Docket, as economics only applies in relation to applications due to low pressure gas.⁹⁹ Second, EXCO's economic numbers are a snapshot and do not include all production.

Mr. Cantwell argued that it was inappropriate to analyze the economics related to flaring by looking only at the natural gas element and not looking at NGL condensate and crude oil that is also produced at the same time, as one cannot produce one without the other. Mr. Cantwell urged that one must understand the total well stream economics when spending millions of dollars to drill a well. He likened the gas in an oil well to produced water:

You can't decide that you don't like water disposal costs and pour it on the ground. You have to comply with the regulations. I don't agree that the uneconomics of solely the gas-related portion of the production being negative are a justification for flare, long term and a nonemergency basis.¹⁰⁰

⁹⁶ Merits Tr. V2. Pg. 58-59.

⁹⁷ Merits V2. pg. 84, ln. 17-22.

⁹⁸ See Williams' Closing Brief at 9 citing to Exco's Flaring Datasheets. All applications state that Exco "will need to flare the casinghead gas from the well *due to Gathering System being down. Wells will return to sales as soon as the gathering system begins accepting gas again.*" Next, Exco's applications all contain either one or two mutually exclusive statements, either: (1) "There is a connection available but the *line is out of service* leaving no option but to flare the gas. It is a sour gas system;" or "There is *no connection is available.*" Exco's filings are part of the record and were also attached to Williams' Motion to Exclude Evidence.

⁹⁹ See Statewide Rule 32(f)(2)(C): Gas Releases in Oil and Gas Production Operations. Volumes of low pressure gas that can be measured with devices routinely used in oil and gas exploration, development, and production operations and that are not directed by an operator to a gas gathering system, gas pipeline, or other marketing facility, or other purposes and uses authorized by law due to mechanical, physical, or economic impracticability.

¹⁰⁰ Merits V2. pg. 96, ln. 11-16.

VI. Examiners' Analysis

The present case is one of first impression for the Commission for two reasons. First, an operator is seeking authority to flare all of its gas, except that which is used for on-lease purposes, while connected to a pipeline. Second, the applications are protested by the operator of the connected and "available" pipeline.

The Commission's website states:

Flaring of casinghead gas for extended periods of time may be necessary if the well is drilled in areas new to exploration. In new areas of exploration, pipeline connections are not typically constructed until after a well is completed and a determination is made about the well's productive capability. Other reasons for flaring include: gas plant shutdowns; repairing a compressor or gas line or well; or other maintenance. In existing production areas, flaring also may be necessary because existing pipelines may have reached capacity. [...] Other reasons for granting an extension include operators needing additional time for well cleanup and pending negotiations with landowners.¹⁰¹

The present case is not one of necessity to flare all of its gas due to the wells being located in a new area of exploration where pipelines are not currently located. The present case is not one of an operator needing to flare some of its gas solely due to periodic upset or maintenance. The present case is one of an operator seeking authority to flare all of its gas, except that which is used for on-lease purposes, due to the fact it does not have a contract to use the gas gathering system and the purchaser of its gas has cancelled its contract to purchase the gas.

i. Availability of Pipeline

EXCO and OOGC both argued that Williams' pipeline connected is unavailable. Williams disputes this fact, stating that it only need turn the valves. Extensive time during the hearing was spent in disagreement regarding whether closing the valves makes the pipeline unavailable. The question of availability should not hinge on valve closure alone. The Examiners find it more appropriate to view availability in its totality, with great weight given to the lack of a contract to utilize the connected system.

EXCO does not, nor has it ever had a contract with Williams for the gathering and transportation of its gas. EXCO's utilization of Williams' system was via contract with the prior owner of wells. When that contract was cancelled, EXCO made attempts to continue to utilize the Williams' system. For a period of time it was successful. Then it was not. It

¹⁰¹ See <https://www.rrc.texas.gov/about-us/resource-center/faqs/oil-gas-faqs/faq-flaring-regulation/>.

remains a possibility that EXCO will obtain the right to utilize the Williams system in the future.

Williams, EXCO, and OOGC presented evidence regarding the cost Williams is seeking for use of its gathering system. Prior to this case, a gas rate case was filed with the Commission which included this same gathering system, GUD Docket No. 10606. OOGC is a party in that case. OOGC filed a Motion for Interim Rate Making in the present case seeking to obtain a lower rate in the interim until the Commission acts on GUD Docket No. 10606, so that the gas could be transported more economically than at the rate Williams was currently demanding. The Examiners have declined to enter into the issue of rate. The rate case is set for hearing June 18, 2019.

Statewide Rule 32 does not define the term “available,” nor is the term defined anywhere else in the Commission’s Statewide Rules. When a term is not defined, Tex. Gov’t Code Ann. § 311.011 provides, “words phrases shall be read in context and construed according to the rules of grammar and common usage.” Merriam-Webster defines “available” as “accessible,” “obtainable,” “free and able to do something at a particular time.”¹⁰²

The Examiners find the Williams pipeline is not “available.” For the pipeline to be “available,” EXCO must be able to access the system, be free and able to utilize the system. Due to a lack of contract between EXCO and Williams, the closed valves controlled by Williams, EXCO is not free to access and utilize Williams’ pipeline. Without a contract it is not possible for EXCO to utilize Williams’ pipeline; therefore, the pipeline is not available.

ii. Need to Flare: Waste

EXCO’s waste argument is rooted in the ultimate loss of recoverable oil should EXCO not be able to flare and need to shut in the wells. EXCO’s expert technical witness, Mr. Miller, testified that if these horizontal wells were shut in, due to failure to be permitted to flare, there could be an ultimate reduction of recovery of oil from the wells.

You do not want to do that in an unconventional reservoir, such as the Briscoe Ranch (Eagle Ford), as you would stop the pressure sink into the well bores, which the hydrocarbons are migrating towards to be produced. That would result in a significant reduction in the total recovery from the wells.¹⁰³

No evidence was presented by EXCO in support, but Mr. Cantwell, Williams’ technical expert, agreed with Mr. Miller.

¹⁰² <https://www.merriam-webster.com/dictionary/available>.

¹⁰³ Merits Tr. V1. pg. 236-237.

When you drill a horizontal lateral and you have several feet of pipe that's open and you frac it and complete it you don't want that reservoir to see a back pressure, whether from a high receipt point pressure or being shut in or anything to the difference. I agree with him that the momentum of that gas and liquid leaving the reservoir is important to capture, and to maintain, and achieving and maintaining these pressures is critical to the full and efficient depletion of those reserves.¹⁰⁴

Williams waste argument is rooted on the waste of gas, should EXCO be granted authority to flare. However, Williams would have one believe that the failure to use or sell all of the gas produced is unlawful, and this is simply not the case. Statewide Rule 32 allows for the flaring and venting of gas, so long as it complies with Statewide Rule 32 or when an exception to Statewide Rule 32 is obtained.

Williams argues the amount of gas to be flare is substantial. EXCO estimates 29,142,707 Mcf of gas remains to be produced from the 138 wells.¹⁰⁵ The Examiners find that while the total remaining to be recovered is substantial, the majority of that volume will not be produced within the period of time EXCO is seeking to flare. The amount of gas EXCO is seeking authority flare is contained in Appendix 1, Attachment A of the PFD. The average per day amount sought is 14,181 Mcf for all 69 flare points, an average of 206 MCF/d. The per flare point daily volume to be flared is not unreasonable, as it is not out of the norm of what is typically authorized.¹⁰⁶

Statewide Rule 32(f)(2)(E) provides for an exception applicable to the present issue where "curtailment of gas production [...] will result in a reduction of ultimate recovery from a gas well or oil reservoir."¹⁰⁷

iii. Need to Flare: Economics

Evidence of the economics associated with connecting to a pipeline are commonplace in Statewide Rule 32 hearings. The Economics are always given in relation to the market value of the gas and the cost of getting that gas to market. Williams expert, Mr. Cantwell, argued the cost of selling the gas should be evaluated with the inclusion of the oil profit. Thus, a shortfall on the gas side, would be offset by a profit on the oil side. While this argument is not without merit, it is not consistent with previous Commission practice. Mr. Cantwell admitted on cross that he had never appeared at a Commission hearing to testify as an expert witness and had not researched how the Commission handled Statewide Rule 32 matters in the past.¹⁰⁸

¹⁰⁴ Merits V2. pg. 74, ln. 18-22.

¹⁰⁵ EXCO Exhibit No. 15.

¹⁰⁶ See Previous Commission Order contained at: <https://rrc.texas.gov/hearings/dockets/oil-gas-proposals-for-decision-and-orders/index-for-332/>.

¹⁰⁷ See Statewide Rule 32(f)(2)(E) and EXCO's Closing Statement.

¹⁰⁸ Merits V2. pg. 102-104.

The Examiners find, in evaluating EXCO's current economic model of the cost of producing the oil (should it enter into a contract with Williams under the currently offered terms, \$191,467,584.99) versus the net revenue of the gas (\$45,162,088.75), EXCO provided sufficient evidence to show it would be uneconomical to connect to the Williams system at this time and produce the gas, at a calculated net loss of \$146,305,496.24.

iv. Need to Flare: Gathering System Restrictions

EXCO presented evidence to show that even when utilizing the Williams pipeline, flaring was necessary. Williams has never been able to take all of the gas EXCO has produced, with approximately 30% or more of EXCO's gas needing to be flared due to the inability of Williams to take the gas into its system.¹⁰⁹ In that regard, EXCO's request is not unlike the hundreds, if not thousands of others previously received and approved in accordance with Statewide Rule 32.¹¹⁰

Williams stated numerous times throughout the hearing and it is multitude of filings, that its pipeline was available to take *ALL* of EXCO's gas. However, Williams failed to provide any evidence to dispute EXCO's evidence that a flaring exception would be necessary for line pressure issues, periodic upset or maintenance.

v. Safety

It is uncontested that Williams' gathering system is constructed in a safe manner. EXCO states it flare points are as well. Williams contention that EXCO's flares are unsafe because they are not constructed to the standard of a gathering system is not persuasive. Williams failed to present sufficient evidence to support its contention that EXCO's flares are unsafe.

vi. Summary

The Examiners found it difficult to evaluate EXCO's application without giving great weight to the main reason EXCO is requesting to flare. EXCO does not have a contract to gather, transport, or sell its gas. To the Examiners, Williams' protest appears to be motivated by a desire for the Commission to force EXCO to enter into a contract with Williams, the terms of which appear to be at a substantial financial loss to EXCO. Had EXCO requested to continue flaring authority, flaring the same amounts contained here, for any of the following purposes: periodic upset or maintenance; capacity; and/or low pressure – given the evidence presented, the Examiners would have likely recommended approval. It's the addition of the connection and previous use of the Williams pipeline that makes this case so difficult. There is a connection to a gathering system. The majority of

¹⁰⁹ Merits Tr. V1. pg. 141-144 and EXCO Exhibit No. 13.

¹¹⁰ See <https://rrc.texas.gov/hearings/dockets/oil-gas-proposals-for-decision-and-orders/index-for-332/> and <https://rrc.texas.gov/about-us/resource-center/faqs/oil-gas-faqs/faq-flaring-regulation/>.

the gas could be sold. Only the gathering system is not currently available and there is not currently a purchaser for the gas connected to that gathering system. There are not any contracts at present to provide for an alternate solution for EXCO that involves anything other than shutting in the wells. For these reasons, the Examiners recommend granting EXCO authority to flare for a limited time to allow EXCO to resolve these issues. The Examiners encourage EXCO to resolve its issues as quickly as possible so that the majority of its gas may be sold.

VII. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record in this case, the pendency of GUD Docket No. 10606, EXCO's pending litigation, and Commission precedent, the Examiners recommend EXCO be granted an exception to Statewide Rule 32 from various start dates listed in Appendix 1, Attachment A of the Proposal for Decision ("PFD") to March 11, 2020 for the amounts therein listed. The Examiners recommend the Commission adopt the following findings of fact and conclusions of law.

Findings of Fact

1. Notice of this hearing was given to all parties entitled to notice at least ten days prior to the date of hearing.
2. On January 12, 2018, EXCO applied for a hearing to extend the flaring authority more than 21 days before the authority granted via Commission Final Order expired and before, some but not all of the flaring authority granted via administrative permit expired.
3. EXCO is requesting to flare casinghead gas for a two year for the time period, where applicable, for the dates and volumes contained in Appendix 1, Attachment A, of the PFD.
4. The application is protested by Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC, (collectively, "Williams").
5. OOGC America LLC and U.S. Energy Development Corporation appeared as intervenors at the hearing and aligned with EXCO in the hearing on the merits.
6. A public hearing was held on May 23, 2018 and May 24, 2018, with a post hearing conference held on September 5, 2018.
7. EXCO provided evidence it does not currently have a contract with Williams to utilize the Williams gas gathering system.

8. EXCO proved the Williams gas gathering system is not available.
9. EXCO proved the Williams gas gathering system is unable to take 100% of its produced gas even when the system was available.
10. EXCO proved it does not currently have a contract for the sale of its produced gas.
11. EXCO proved through its calculations that utilizing the Williams gas gathering system is uneconomical at this time, resulting in a calculated net loss of \$146,305,496.24
12. Without a final order authorizing the flaring, EXCO will have to shut the wells in, causing waste and possible harm to the reservoir.

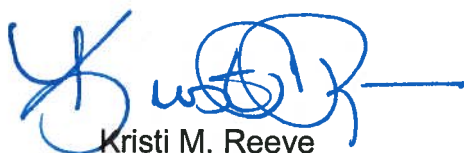
Conclusions of Law

1. Resolution of the subject application is a matter committed to the jurisdiction of the Railroad Commission of Texas. Tex. Nat. Res. Code § 81.051.
2. All notice requirements have been satisfied. 16 Tex. Admin. Code § 1.45.
3. The requested exceptions to flare casinghead gas from the subject wells meet the requirements of Statewide Rule 32. 16 Tex. Admin. Code § 3.32(h).

Examiners' Recommendation

Based on the above Findings of Fact and Conclusions of Law, the Examiners recommend exceptions to Statewide Rule 32 for the leases and flare points listed in Attachment A of Appendix 1 of the PFD as requested by EXCO Operating Company, LP. be granted.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Kristi M. Reeve', with a horizontal line extending to the right.

Kristi M. Reeve
Administrative Law Judge

A handwritten signature in blue ink, appearing to read 'Robert Musick', with a horizontal line extending to the right.

Robert Musick, P.G
Technical Examiner

Appendix 1 Attachment A

Proposed Flare Exception Authority

Flare Permit No.	Lease Name & Well Number	Lease ID	Permit Start Date	Permit End Date	Proposed Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas	H2S (ppm)	H-9 Cert. No.
25667	Allee Unit A #1H*	15313	3/12/2018	3/11/2020	130	Casinghead	5	078725
24782	Berdoll DIM #A1H*	16620	3/12/2018	3/11/2020	932	Casinghead	2	078728
24786	Berdoll DIM #B1H*	16620	3/12/2018	3/11/2020	278	Casinghead	2	078728
32582	Coleman Unit ZAV #C1H	18315	4/13/2018	3/11/2020	65	Casinghead	8,759	085801
32583	Coleman ZAV B #1H & Coleman Unit ZAV A #5H	17910 & 17776	4/13/2018	3/11/2020	65	Casinghead	4,379	087242
32584	Coleman ZAV #D2H & #D3H	17448	4/13/2018	3/11/2020	80	Casinghead	6,494	083811
25668	Flying G Unit DIM #2H*	17478	3/12/2018	3/11/2020	112	Casinghead	8	081723
24785	Gonzalez Unit A Dim #1H*	15689	3/12/2018	3/11/2020	506	Casinghead	2	078740
24894	Howett ZAV #A3H & #B1H*	18015	3/12/2018	3/11/2020	183	Casinghead	20,000	087547
24895	Kim DIM #B1H*	16447	3/12/2018	3/11/2020	204	Casinghead	3	078741
25665	KM North ZAV #A1H & #A5H*	15963	3/12/2018	3/11/2020	117	Casinghead	2,253	081136
25656 (33295)	KM South ZAV #B3H & #B5H & Bauerle Unit ZAV 1H*	17123 & 19189	3/12/2018	3/11/2020	275	Casinghead	2,628	081108
32585	KM-Miller Unit ZAV #1H & #2H	18398	4/13/2018	3/11/2020	185	Casinghead	4,228	089596
32586	KM-Miller Unit ZAV #3H & #4H*	18398	4/13/2018	3/11/2020	550	Casinghead	4,228	089596
24630	LLM ZAV #E3H & #E6H*	15624	3/12/2018	3/11/2020	405	Casinghead	200	Submitted
32581	Old River Ranch DIM #C1H*	15560	4/13/2018	3/11/2020	150	Casinghead	4	Submitted
25719	Pena Creek I #1H*	15375	3/12/2018	3/11/2020	505	Casinghead	6	078743
25718	Pena Creek I #4H*	15375	3/12/2018	3/11/2020	196	Casinghead	6	078743
24783	Pena Creek I #5H*	15375	3/12/2018	3/11/2020	204	Casinghead	6	078743
25720	Pena Creek I #6H*	15375	3/12/2018	3/11/2020	223	Casinghead	6	078743
32587	Robert Walker Unit ZAV A #7H & Robert Walker Unit ZAV B #1H	17819 & 17827	4/13/2018	3/11/2020	75	Casinghead	3,171 & 4,983	086810 & 086811
25660	Silva Unit DIM #1H*	16555	3/12/2018	3/11/2020	105	Casinghead	3	078752
25662	Tauber Unit C DIM #3H*	16639	3/12/2018	3/11/2020	164	Casinghead	2	078754
30131	Tidwell East ZAV #A1H & #A3H*	16636	12/21/2017	3/11/2020	250	Casinghead	11,437	081143
30089	Tidwell East ZAV #D1H & #D3H*	16636	12/21/2017	3/11/2020	250	Casinghead	11,437	081143
32593	Traylor South ZAV #G1H & #G2H	15766	4/13/2018	3/11/2020	95	Casinghead	32,842	078255
30129	Traylor North #A2H, #A3H & #A4H*	15412	12/21/2017	3/11/2020	250	Casinghead	5,572	079495
32930	Traylor North #C1H*	15412	3/12/2018	3/11/2020	160	Casinghead	5,572	079495
32588	Traylor North #D1H & Traylor Unit ZAV L #4H*	15412 & 18230	4/13/2018	3/11/2020	145	Casinghead	5,572 & 20,000	079495 & 082627
32589	Traylor North #D2H, #D3H & #D5H*	15412	4/13/2018	3/11/2020	145	Casinghead	5,572	079495
32956	Traylor North #F3H*	15412	3/12/2018	3/11/2020	150	Casinghead	5,572	079495
32937	Traylor North #I1H, #I3H, #I4H & #I5H*	15412	3/12/2018	3/11/2020	150	Casinghead	5,572	079495
32932	Traylor South ZAV #A3H & #A4H*	15766	3/12/2018	3/11/2020	150	Casinghead	32,842	078255
32933	Traylor South ZAV #B1H, #B2H, #B3H & #B4H*	15766	3/12/2018	3/11/2020	250	Casinghead	32,842	078255
32590	Traylor South ZAV #C1H & #C2H*	15766	4/13/2018	3/11/2020	145	Casinghead	32,842	078255
32591	Traylor South ZAV #C3H, #C4H & #C5H*	15766	4/13/2018	3/11/2020	200	Casinghead	32,842	078255

Flare Permit No.	Lease Name & Well Number	Lease ID	Permit Start Date	Permit End Date	Proposed Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas	H2S (ppm)	H-9 Cert. No.
32935	Traylor South ZAV #C6H & Traylor Unit ZAV L #1H*	15766 & 18230	3/12/2018	3/11/2020	200	Casinghead	32,842 & 20,000	078255 & 082627
32592	Traylor South ZAV #F1H & #F5H	15766	4/13/2018	3/11/2020	115	Casinghead	32,842	078255
32594	Traylor South ZAV #G3H, #G4H & #G5H*	15766	4/13/2018	3/11/2020	150	Casinghead	32,842	078255
30130	Traylor South ZAV #H1H, #H2H, #H3H*	15766	12/21/2017	3/11/2020	200	Casinghead	32,842	078255
30088	Traylor South ZAV #H4H & #H5H*	15766	12/21/2017	3/11/2020	300	Casinghead	32,842	078255
32595	Traylor South ZAV #I1H, #I2H & #I3H*	15766	4/13/2018	3/11/2020	270	Casinghead	32,842	078255
32934	Traylor South ZAV #J1H	15766	3/12/2018	3/11/2020	75	Casinghead	32,842	078255
32596	Traylor Unit ZAV L #2H & #3H	18230	4/13/2018	3/11/2020	100	Casinghead	20,000	082627
32597	Traylor Unit ZAV M #2H	17867	4/13/2018	3/11/2020	65	Casinghead	2,718	087548
32598	Traylor Unit ZAV M #4H & #6H*	17867	4/13/2018	3/11/2020	140	Casinghead	2,718	087548
32599	Traylor Unit ZAV N #4H, #5H & #6H*	17653	4/13/2018	3/11/2020	100	Casinghead	4,077	087549
32936	Traylor Unit ZAV N #1H, #2H & #3H	17653	3/12/2018	3/11/2020	300	Casinghead	4,077	087549
25659	Traylor West ZAV #C1H & #C4H*	15993	3/12/2018	3/11/2020	111	Casinghead	5,714	081142
24784	Von Rosenberg Unit A DIM #1H*	15612	3/12/2018	3/11/2020	842	Casinghead	10	066669
25658	Votaw Unit A DIM #1H*	16642	3/12/2018	3/11/2020	139	Casinghead	3	075163
32940	Winterbotham ZAV #U1H & #U2H*	15744	3/12/2018	3/11/2020	200	Casinghead	5,288	082150
30086	Winterbotham ZAV #A1H, #A2H, #A3H & #A4H*	15744	12/21/2017	3/11/2020	200	Casinghead	5,288	082150
30087	Winterbotham ZAV #B1H & #B2H*	15744	12/21/2017	3/11/2020	250	Casinghead	5,288	082150
32600	Winterbotham ZAV #B3H, #B4H & #D1H	15744	4/13/2018	3/11/2020	160	Casinghead	5,288	082150
32939	Winterbotham ZAV #D2H, #S1H & #S2H*	15744	3/12/2018	3/11/2020	300	Casinghead	5,288	082150
32938	Winterbotham ZAV #F1H & #F2H*	15744	3/12/2018	3/11/2020	200	Casinghead	5,288	082150
32601	Winterbotham ZAV #G2H, #V1H & #V2H*	15744	4/13/2018	3/11/2020	185	Casinghead	5,288	082150
32602	Winterbotham ZAV #G3H & #N1H*	15744	4/13/2018	3/11/2020	110	Casinghead	5,288	082150
32603	Winterbotham ZAV #H2H, #H3H & #I1H*	15744	4/13/2018	3/11/2020	120	Casinghead	5,288	082150
32604	Winterbotham ZAV #I2H & #I3H	15744	4/13/2018	3/11/2020	100	Casinghead	5,288	082150
32605	Winterbotham ZAV #J1H & #J2H	15744	4/13/2018	3/11/2020	135	Casinghead	5,288	082150
32941	Winterbotham ZAV #K1H & #J3H*	15744	3/12/2018	3/11/2020	175	Casinghead	5,288	082150
32606	Winterbotham ZAV #K2H	15744	4/13/2018	3/11/2020	70	Casinghead	5,288	082150
25666 (33294)	Winterbotham ZAV #M1H & #M5H & Miller Unit ZAV 2H*	15744 & DP # 818285	3/12/2018	3/11/2020	325	Casinghead	5,288	082150
32607	Winterbotham ZAV #N2H & #N3H	15744	4/13/2018	3/11/2020	80	Casinghead	5,288	082150
32608	Winterbotham ZAV #O1H, #O2H, #O3H & #O5H	15744	4/13/2018	3/11/2020	190	Casinghead	5,288	082150
32609	Winterbotham ZAV #Q1H & #Q2H	15744	4/13/2018	3/11/2020	160	Casinghead	5,288	082150
32610	Winterbotham ZAV #R1H	15744	4/13/2018	3/11/2020	65	Casinghead	5,288	082150

* Currently
Equipped with a
Flare Stack

Appendix 1 Attachment B

Previously Approved Flare Exception Authorities

Previous Flare Permit No.	Lease Name & Well Number	Lease ID	Previous Exception Type	Previous Permit or Authority End Date	Previous Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas
25667	Allee Unit A #1H*	15313	Docket No. 01-0299832	3/11/2018	130	Casinghead
24782	Berdoll DIM #A1H*	16620	Docket No. 01-0299832	3/11/2018	932	Casinghead
24786	Berdoll DIM #B1H*	16620	Docket No. 01-0299832	3/11/2018	278	Casinghead
32582	Coleman Unit ZAV #C1H	18315	Admin.	4/12/2018	65	Casinghead
32583	Coleman ZAV B #1H & Coleman Unit ZAV A #5H	17910 & 17776	Admin.	4/12/2018	65	Casinghead
32584	Coleman ZAV #D2H & #D3H	17448	Admin.	4/12/2018	80	Casinghead
25668	Flying G Unit DIM #2H*	17478	Docket No. 01-0299832	3/11/2018	112	Casinghead
24785	Gonzalez Unit A Dim #1H*	15689	Docket No. 01-0299832	3/11/2018	506	Casinghead
24894	Howett ZAV #A3H & #B1H*	18015	Docket No. 01-0299832	3/11/2018	183	Casinghead
24895	Kim DIM #B1H*	16447	Docket No. 01-0299832	3/11/2018	204	Casinghead
25665	KM North ZAV #A1H & #A5H*	15963	Docket No. 01-0299832	3/11/2018	117	Casinghead
25656 (33295)	KM South ZAV #B3H & #B5H & Bauerle Unit ZAV 1H*	17123 & 19189	Docket No. 01-0299832 and Admin.	3/11/2018	300	Casinghead
32585	KM-Miller Unit ZAV #1H & #2H	18398	Admin.	4/12/2018	185	Casinghead
32586	KM-Miller Unit ZAV #3H & #4H*	18398	Admin.	4/12/2018	550	Casinghead
24630	LLM ZAV #E3H & #E6H*	15624	Docket No. 01-0299832	3/11/2018	405	Casinghead
32581	Old River Ranch DIM #C1H*	15560	Admin.	4/12/2018	150	Casinghead
25719	Pena Creek I #1H*	15375	Docket No. 01-0299832	3/11/2018	505	Casinghead
25718	Pena Creek I #4H*	15375	Docket No. 01-0299832	3/11/2018	196	Casinghead
24783	Pena Creek I #5H*	15375	Docket No. 01-0299832	3/11/2018	204	Casinghead
25720	Pena Creek I #6H*	15375	Docket No. 01-0299832	3/11/2018	223	Casinghead
32587	Robert Walker Unit ZAV A #7H & Robert Walker Unit ZAV B #1H	17819 & 17827	Admin.	4/12/2018	75	Casinghead
25660	Silva Unit DIM #1H*	16555	Docket No. 01-0299832	3/11/2018	105	Casinghead
25662	Tauber Unit C DIM #3H*	16639	Docket No. 01-0299832	3/11/2018	164	Casinghead
30131	Tidwell East ZAV #A1H & #A3H*	16636	Admin.	12/7/2017	250	Casinghead
30089	Tidwell East ZAV #D1H & #D3H*	16636	Admin.	12/6/2017	250	Casinghead
32593	Traylor South ZAV #G1H & #G2H	15766	Admin.	4/12/2018	95	Casinghead
30129	Traylor North #A2H, #A3H & #A4H*	15412	Admin.	12/10/2017	250	Casinghead
32930	Traylor North #C1H*	15412	Admin.	3/11/2018	160	Casinghead
32588	Traylor North #D1H & Traylor Unit ZAV L #4H*	15412 & 18230	Admin.	4/12/2018	145	Casinghead
32589	Traylor North #D2H, #D3H & #D5H*	15412	Admin.	4/12/2018	145	Casinghead
32956	Traylor North #F3H*	15412	Admin.	3/11/2018	150	Casinghead
32937	Traylor North #I1H, #I3H, #I4H & #I5H*	15412	Admin.	3/11/2018	150	Casinghead
32932	Traylor South ZAV #A3H & #A4H*	15766	Admin.	3/11/2018	150	Casinghead
32933	Traylor South ZAV #B1H, #B2H, #B3H & #B4H*	15766	Admin.	3/11/2018	250	Casinghead
32590	Traylor South ZAV #C1H & #C2H*	15766	Admin.	4/12/2018	145	Casinghead
32591	Traylor South ZAV #C3H, #C4H & #C5H*	15766	Admin.	4/12/2018	200	Casinghead

Previous Flare Permit No.	Lease Name & Well Number	Lease ID	Previous Exception Type	Previous Permit or Authority End Date	Previous Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas
32935	Traylor South ZAV #C6H & Traylor Unit ZAV L #1H*	15766 & 18230	Admin.	3/11/2018	200	Casinghead
32592	Traylor South ZAV #F1H & #F5H	15766	Admin.	4/12/2018	115	Casinghead
32594	Traylor South ZAV #G3H, #G4H & #G5H*	15766	Admin.	4/12/2018	150	Casinghead
30130	Traylor South ZAV #H1H, #H2H, #H3H*	15766	Admin.	12/10/2017	200	Casinghead
30088	Traylor South ZAV #H4H & #H5H*	15766	Admin.	12/5/2017	300	Casinghead
32595	Traylor South ZAV #I1H, #I2H & #I3H*	15766	Admin.	4/12/2018	270	Casinghead
32934	Traylor South ZAV #J1H	15766	Admin.	3/11/2018	75	Casinghead
32596	Traylor Unit ZAV L #2H & #3H	18230	Admin.	4/12/2018	100	Casinghead
32597	Traylor Unit ZAV M #2H	17867	Admin.	4/12/2018	65	Casinghead
32598	Traylor Unit ZAV M #4H & #6H*	17867	Admin.	4/12/2018	140	Casinghead
32599	Traylor Unit ZAV N #4H, #5H & #6H*	17653	Admin.	4/12/2018	100	Casinghead
32936	Traylor Unit ZAV N #1H, #2H & #3H	17653	Admin.	3/11/2018	300	Casinghead
25659	Traylor West ZAV #C1H & #C4H*	15993	Docket No. 01-0299832	3/11/2018	111	Casinghead
24784	Von Rosenberg Unit A DIM #1H*	15612	Docket No. 01-0299832	3/11/2018	842	Casinghead
25658	Votaw Unit A DIM #1H*	16642	Docket No. 01-0299832	3/11/2018	139	Casinghead
32940	Winterbotham ZAV #U1H & #U2H*	15744	Admin.	3/11/2018	200	Casinghead
30086	Winterbotham ZAV #A1H, #A2H, #A3H & #A4H*	15744	Admin.	12/6/2017	200	Casinghead
30087	Winterbotham ZAV #B1H & #B2H*	15744	Admin.	12/6/2017	250	Casinghead
32600	Winterbotham ZAV #B3H, #B4H & #D1H	15744	Admin.	4/12/2018	160	Casinghead
32939	Winterbotham ZAV #D2H, #S1H & #S2H*	15744	Admin.	3/11/2018	300	Casinghead
32938	Winterbotham ZAV #F1H & #F2H*	15744	Admin.	3/11/2018	200	Casinghead
32601	Winterbotham ZAV #G2H, #V1H & #V2H*	15744	Admin.	4/12/2018	185	Casinghead
32602	Winterbotham ZAV #G3H & #N1H*	15744	Admin.	4/12/2018	110	Casinghead
32603	Winterbotham ZAV #H2H, #H3H & #I1H*	15744	Admin.	4/12/2018	120	Casinghead
32604	Winterbotham ZAV #I2H & #I3H	15744	Admin.	4/12/2018	100	Casinghead
32605	Winterbotham ZAV #J1H & #J2H	15744	Admin.	4/12/2018	135	Casinghead
32941	Winterbotham ZAV #K1H & #J3H*	15744	Admin.	3/11/2018	175	Casinghead
32606	Winterbotham ZAV #K2H	15744	Admin.	4/12/2018	70	Casinghead
25666 (33294)	Winterbotham ZAV #M1H	15744	Docket No. 01-0299832	3/11/2018	124	Casinghead
32607	Winterbotham ZAV #N2H & #N3H	15744	Admin.	4/12/2018	80	Casinghead
32608	Winterbotham ZAV #O1H, #O2H, #O3H & #O5H	15744	Admin.	4/12/2018	190	Casinghead
32609	Winterbotham ZAV #Q1H & #Q2H	15744	Admin.	4/12/2018	160	Casinghead
32610	Winterbotham ZAV #R1H	15744	Admin.	4/12/2018	65	Casinghead

* Currently
Equipped with
a Flare Stack

NO. _____

**WILLIAMS MLP OPERATING, LLC
AND MOCKINGBIRD MIDSTREAM
GAS SERVICES, LLC**

Plaintiff,

vs.

**RAILROAD COMMISSION OF TEXAS,
*Defendant.***

§
§
§
§
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§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ **JUDICIAL DISTRICT**

ORIGINAL PETITION FOR JUDICIAL REVIEW

Exhibit B

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

OIL AND GAS DOCKET NO. 01-0308609

**APPLICATION OF EXCO OPERATING COMPANY, LP FOR AN EXCEPTION TO
STATEWIDE RULE 32 FOR SIXTY-NINE FLARE POINTS ON VARIOUS LEASES,
BRISCOE RANCH (EAGLEFORD) FIELD, DIMMIT AND ZAVALA COUNTIES, TEXAS**

FINAL ORDER

The Commission finds that after statutory notice in the above-numbered docket heard on May 23 and 24, 2018, the presiding Technical Examiner and Administrative Law Judge (collectively, "Examiners") have made and filed a proposal for decision containing findings of fact and conclusions of law, for which service was required; that the proposed application of EXCO Operating Company, LP is in compliance with all statutory and regulatory requirements; and that this proceeding was duly submitted to the Railroad Commission of Texas at a conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the Examiners' proposal for decision ("PFD") and the findings of fact and conclusions of law contained therein, hereby adopts as its own the findings of fact and conclusions of law contained therein, and incorporates said findings of fact and conclusions of law as if fully set out and separately stated herein.

Therefore, it is **ORDERED** by the Railroad Commission of Texas that EXCO Operating Company, LP ("EXCO") is hereby **GRANTED** an exception to Statewide Rule 32 (16 Tex. Admin. Code § 3.32) for 69 Flare Points on Various Leases, Briscoe Ranch (Eagleford) Field, Dimmitt and Zavala Counties, Texas. EXCO is authorized to flare casinghead gas from various dates listed in Appendix 1, Attachment A of this Order to March 11, 2020, a period of approximately 2 years, at the volumes list in Attachment A of Appendix 1 of this Order.

The authority is granted, provided all production is reported on the appropriate Commission forms. EXCO Operating Company, LP shall file the Statewide Rule 32 Exception Data Sheet and, shall file at the same time, the appropriate Commission required administrative Statewide Rule 32 Exception gas flaring fee for all wells.

Each exception to the Examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

It is further **ORDERED** by the Commission that this order shall not be final and effective until 25 days after the order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code § 2001.142, by agreement under Tex. Gov't Code § 2001.147, or by written Commission order issued pursuant to Tex. Gov't Code § 2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case

prior to its being overruled by operation of law is hereby extended until 100 days from the date the parties are notified of this order in accordance with Tex. Gov't Code § 2001.144.

SIGNED August 6, 2019.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN WAYNE CHRISTIAN

Christi Craddick

COMMISSIONER CHRISTI CRADDICK

Ryan Sitton

COMMISSIONER RYAN SITTON

ATTEST:

Sharon Walter

Deputy SECRETARY



Appendix 1 Attachment A

Flare Exception Authority

Flare Permit No.	Lease Name & Well Number	Lease ID	Permit Start Date	Permit End Date	Proposed Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas	H2S (ppm)	H-9 Cert. No.
25667	Allee Unit A #1H*	15313	3/12/2018	3/11/2020	130	Casinghead	5	078725
24782	Berdoll DIM #A1H*	16620	3/12/2018	3/11/2020	932	Casinghead	2	078728
24786	Berdoll DIM #B1H*	16620	3/12/2018	3/11/2020	278	Casinghead	2	078728
32582	Coleman Unit ZAV #C1H	18315	4/13/2018	3/11/2020	65	Casinghead	8,759	085801
32583	Coleman ZAV B #1H & Coleman Unit ZAV A #5H	17910 & 17776	4/13/2018	3/11/2020	65	Casinghead	4,379	087242
32584	Coleman ZAV #D2H & #D3H	17448	4/13/2018	3/11/2020	80	Casinghead	6,494	083811
25668	Flying G Unit DIM #2H*	17478	3/12/2018	3/11/2020	112	Casinghead	8	081723
24785	Gonzalez Unit A Dim #1H*	15689	3/12/2018	3/11/2020	506	Casinghead	2	078740
24894	Howett ZAV #A3H & #B1H*	18015	3/12/2018	3/11/2020	183	Casinghead	20,000	087547
24895	Kim DIM #B1H*	16447	3/12/2018	3/11/2020	204	Casinghead	3	078741
25665	KM North ZAV #A1H & #A5H*	15963	3/12/2018	3/11/2020	117	Casinghead	2,253	081136
25656 (33295)	KM South ZAV #B3H & #B5H & Bauerle Unit ZAV 1H*	17123 & 19189	3/12/2018	3/11/2020	275	Casinghead	2,628	081108
32585	KM-Miller Unit ZAV #1H & #2H	18398	4/13/2018	3/11/2020	185	Casinghead	4,228	089596
32586	KM-Miller Unit ZAV #3H & #4H*	18398	4/13/2018	3/11/2020	550	Casinghead	4,228	089596
24630	LLM ZAV #E3H & #E6H*	15624	3/12/2018	3/11/2020	405	Casinghead	200	Submitted
32581	Old River Ranch DIM #C1H*	15560	4/13/2018	3/11/2020	150	Casinghead	4	Submitted
25719	Pena Creek I #1H*	15375	3/12/2018	3/11/2020	505	Casinghead	6	078743
25718	Pena Creek I #4H*	15375	3/12/2018	3/11/2020	196	Casinghead	6	078743
24783	Pena Creek I #5H*	15375	3/12/2018	3/11/2020	204	Casinghead	6	078743
25720	Pena Creek I #6H*	15375	3/12/2018	3/11/2020	223	Casinghead	6	078743
32587	Robert Walker Unit ZAV A #7H & Robert Walker Unit ZAV B #1H	17819 & 17827	4/13/2018	3/11/2020	75	Casinghead	3,171 & 4,983	086810 & 086811
25660	Silva Unit DIM #1H*	16555	3/12/2018	3/11/2020	105	Casinghead	3	078752
25662	Tauber Unit C DIM #3H*	16639	3/12/2018	3/11/2020	164	Casinghead	2	078754
30131	Tidwell East ZAV #A1H & #A3H*	16636	12/21/2017	3/11/2020	250	Casinghead	11,437	081143
30089	Tidwell East ZAV #D1H & #D3H*	16636	12/21/2017	3/11/2020	250	Casinghead	11,437	081143
32593	Traylor South ZAV #G1H & #G2H	15766	4/13/2018	3/11/2020	95	Casinghead	32,842	078255
30129	Traylor North #A2H, #A3H & #A4H*	15412	12/21/2017	3/11/2020	250	Casinghead	5,572	079495
32930	Traylor North #C1H*	15412	3/12/2018	3/11/2020	160	Casinghead	5,572	079495
32588	Traylor North #D1H & Traylor Unit ZAV L #4H*	15412 & 18230	4/13/2018	3/11/2020	145	Casinghead	5,572 & 20,000	079495 & 082627
32589	Traylor North #D2H, #D3H & #D5H*	15412	4/13/2018	3/11/2020	145	Casinghead	5,572	079495
32956	Traylor North #F3H*	15412	3/12/2018	3/11/2020	150	Casinghead	5,572	079495
32937	Traylor North #I1H, #I3H, #I4H & #I5H*	15412	3/12/2018	3/11/2020	150	Casinghead	5,572	079495
32932	Traylor South ZAV #A3H & #A4H*	15766	3/12/2018	3/11/2020	150	Casinghead	32,842	078255
32933	Traylor South ZAV #B1H, #B2H, #B3H & #B4H*	15766	3/12/2018	3/11/2020	250	Casinghead	32,842	078255
32590	Traylor South ZAV #C1H & #C2H*	15766	4/13/2018	3/11/2020	145	Casinghead	32,842	078255
32591	Traylor South ZAV #C3H, #C4H & #C5H*	15766	4/13/2018	3/11/2020	200	Casinghead	32,842	078255

Flare Permit No.	Lease Name & Well Number	Lease ID	Permit Start Date	Permit End Date	Proposed Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas	H2S (ppm)	H-9 Cert. No.
32935	Traylor South ZAV #C6H & Traylor Unit ZAV L #1H*	15766 & 18230	3/12/2018	3/11/2020	200	Casinghead	32,842 & 20,000	078255 & 082627
32592	Traylor South ZAV #F1H & #F5H	15766	4/13/2018	3/11/2020	115	Casinghead	32,842	078255
32594	Traylor South ZAV #G3H, #G4H & #G5H*	15766	4/13/2018	3/11/2020	150	Casinghead	32,842	078255
30130	Traylor South ZAV #H1H, #H2H, #H3H*	15766	12/21/2017	3/11/2020	200	Casinghead	32,842	078255
30088	Traylor South ZAV #H4H & #H5H*	15766	12/21/2017	3/11/2020	300	Casinghead	32,842	078255
32595	Traylor South ZAV #I1H, #I2H & #I3H*	15766	4/13/2018	3/11/2020	270	Casinghead	32,842	078255
32934	Traylor South ZAV #J1H	15766	3/12/2018	3/11/2020	75	Casinghead	32,842	078255
32596	Traylor Unit ZAV L #2H & #3H	18230	4/13/2018	3/11/2020	100	Casinghead	20,000	082627
32597	Traylor Unit ZAV M #2H	17867	4/13/2018	3/11/2020	65	Casinghead	2,718	087548
32598	Traylor Unit ZAV M #4H & #6H*	17867	4/13/2018	3/11/2020	140	Casinghead	2,718	087548
32599	Traylor Unit ZAV N #4H, #5H & #6H*	17653	4/13/2018	3/11/2020	100	Casinghead	4,077	087549
32936	Traylor Unit ZAV N #1H, #2H & #3H	17653	3/12/2018	3/11/2020	300	Casinghead	4,077	087549
25659	Traylor West ZAV #C1H & #C4H*	15993	3/12/2018	3/11/2020	111	Casinghead	5,714	081142
24784	Von Rosenberg Unit A DIM #1H*	15612	3/12/2018	3/11/2020	842	Casinghead	10	066669
25658	Votaw Unit A DIM #1H*	16642	3/12/2018	3/11/2020	139	Casinghead	3	075163
32940	Winterbotham ZAV #U1H & #U2H*	15744	3/12/2018	3/11/2020	200	Casinghead	5,288	082150
30086	Winterbotham ZAV #A1H, #A2H, #A3H & #A4H*	15744	12/21/2017	3/11/2020	200	Casinghead	5,288	082150
30087	Winterbotham ZAV #B1H & #B2H*	15744	12/21/2017	3/11/2020	250	Casinghead	5,288	082150
32600	Winterbotham ZAV #B3H, #B4H & #D1H	15744	4/13/2018	3/11/2020	160	Casinghead	5,288	082150
32939	Winterbotham ZAV #D2H, #S1H & #S2H*	15744	3/12/2018	3/11/2020	300	Casinghead	5,288	082150
32938	Winterbotham ZAV #F1H & #F2H*	15744	3/12/2018	3/11/2020	200	Casinghead	5,288	082150
32601	Winterbotham ZAV #G2H, #V1H & #V2H*	15744	4/13/2018	3/11/2020	185	Casinghead	5,288	082150
32602	Winterbotham ZAV #G3H & #N1H*	15744	4/13/2018	3/11/2020	110	Casinghead	5,288	082150
32603	Winterbotham ZAV #H2H, #H3H & #I1H*	15744	4/13/2018	3/11/2020	120	Casinghead	5,288	082150
32604	Winterbotham ZAV #I2H & #I3H	15744	4/13/2018	3/11/2020	100	Casinghead	5,288	082150
32605	Winterbotham ZAV #J1H & #J2H	15744	4/13/2018	3/11/2020	135	Casinghead	5,288	082150
32941	Winterbotham ZAV #K1H & #J3H*	15744	3/12/2018	3/11/2020	175	Casinghead	5,288	082150
32606	Winterbotham ZAV #K2H	15744	4/13/2018	3/11/2020	70	Casinghead	5,288	082150
25666 (33294)	Winterbotham ZAV #M1H & #M5H & Miller Unit ZAV 2H*	15744 & DP # 818285	3/12/2018	3/11/2020	325	Casinghead	5,288	082150
32607	Winterbotham ZAV #N2H & #N3H	15744	4/13/2018	3/11/2020	80	Casinghead	5,288	082150
32608	Winterbotham ZAV #O1H, #O2H, #O3H & #O5H	15744	4/13/2018	3/11/2020	190	Casinghead	5,288	082150
32609	Winterbotham ZAV #Q1H & #Q2H	15744	4/13/2018	3/11/2020	160	Casinghead	5,288	082150
32610	Winterbotham ZAV #R1H	15744	4/13/2018	3/11/2020	65	Casinghead	5,288	082150

* Currently
Equipped with a
Flare Stack

Appendix 1 Attachment B

Previously Approved Flare Exception Authorities

Previous Flare Permit No.	Lease Name & Well Number	Lease ID	Previous Exception Type	Previous Permit or Authority End Date	Previous Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas
25667	Allee Unit A #1H*	15313	Docket No. 01-0299832	3/11/2018	130	Casinghead
24782	Berdoll DIM #A1H*	16620	Docket No. 01-0299832	3/11/2018	932	Casinghead
24786	Berdoll DIM #B1H*	16620	Docket No. 01-0299832	3/11/2018	278	Casinghead
32582	Coleman Unit ZAV #C1H	18315	Admin.	4/12/2018	65	Casinghead
32583	Coleman ZAV B #1H & Coleman Unit ZAV A #5H	17910 & 17776	Admin.	4/12/2018	65	Casinghead
32584	Coleman ZAV #D2H & #D3H	17448	Admin.	4/12/2018	80	Casinghead
25668	Flying G Unit DIM #2H*	17478	Docket No. 01-0299832	3/11/2018	112	Casinghead
24785	Gonzalez Unit A Dim #1H*	15689	Docket No. 01-0299832	3/11/2018	506	Casinghead
24894	Howett ZAV #A3H & #B1H*	18015	Docket No. 01-0299832	3/11/2018	183	Casinghead
24895	Kim DIM #B1H*	16447	Docket No. 01-0299832	3/11/2018	204	Casinghead
25665	KM North ZAV #A1H & #A5H*	15963	Docket No. 01-0299832	3/11/2018	117	Casinghead
25656 (33295)	KM South ZAV #B3H & #B5H & Bauerle Unit ZAV 1H*	17123 & 19189	Docket No. 01-0299832 and Admin.	3/11/2018	300	Casinghead
32585	KM-Miller Unit ZAV #1H & #2H	18398	Admin.	4/12/2018	185	Casinghead
32586	KM-Miller Unit ZAV #3H & #4H*	18398	Admin.	4/12/2018	550	Casinghead
24630	LLM ZAV #E3H & #E6H*	15624	Docket No. 01-0299832	3/11/2018	405	Casinghead
32581	Old River Ranch DIM #C1H*	15560	Admin.	4/12/2018	150	Casinghead
25719	Pena Creek I #1H*	15375	Docket No. 01-0299832	3/11/2018	505	Casinghead
25718	Pena Creek I #4H*	15375	Docket No. 01-0299832	3/11/2018	196	Casinghead
24783	Pena Creek I #5H*	15375	Docket No. 01-0299832	3/11/2018	204	Casinghead
25720	Pena Creek I #6H*	15375	Docket No. 01-0299832	3/11/2018	223	Casinghead
32587	Robert Walker Unit ZAV A #7H & Robert Walker Unit ZAV B #1H	17819 & 17827	Admin.	4/12/2018	75	Casinghead
25660	Silva Unit DIM #1H*	16555	Docket No. 01-0299832	3/11/2018	105	Casinghead
25662	Tauber Unit C DIM #3H*	16639	Docket No. 01-0299832	3/11/2018	164	Casinghead
30131	Tidwell East ZAV #A1H & #A3H*	16636	Admin.	12/7/2017	250	Casinghead
30089	Tidwell East ZAV #D1H & #D3H*	16636	Admin.	12/6/2017	250	Casinghead
32593	Traylor South ZAV #G1H & #G2H	15766	Admin.	4/12/2018	95	Casinghead
30129	Traylor North #A2H, #A3H & #A4H*	15412	Admin.	12/10/2017	250	Casinghead
32930	Traylor North #C1H*	15412	Admin.	3/11/2018	160	Casinghead
32588	Traylor North #D1H & Traylor Unit ZAV L #4H*	15412 & 18230	Admin.	4/12/2018	145	Casinghead
32589	Traylor North #D2H, #D3H & #D5H*	15412	Admin.	4/12/2018	145	Casinghead
32956	Traylor North #F3H*	15412	Admin.	3/11/2018	150	Casinghead
32937	Traylor North #I1H, #I3H, #I4H & #I5H*	15412	Admin.	3/11/2018	150	Casinghead
32932	Traylor South ZAV #A3H & #A4H*	15766	Admin.	3/11/2018	150	Casinghead
32933	Traylor South ZAV #B1H, #B2H, #B3H & #B4H*	15766	Admin.	3/11/2018	250	Casinghead
32590	Traylor South ZAV #C1H & #C2H*	15766	Admin.	4/12/2018	145	Casinghead
32591	Traylor South ZAV #C3H, #C4H & #C5H*	15766	Admin.	4/12/2018	200	Casinghead

Previous Flare Permit No.	Lease Name & Well Number	Lease ID	Previous Exception Type	Previous Permit or Authority End Date	Previous Maximum Flare Volume (MCFD)	Casinghead Gas or Gas Well Gas
32935	Traylor South ZAV #C6H & Traylor Unit ZAV L #1H*	15766 & 18230	Admin.	3/11/2018	200	Casinghead
32592	Traylor South ZAV #F1H & #F5H	15766	Admin.	4/12/2018	115	Casinghead
32594	Traylor South ZAV #G3H, #G4H & #G5H*	15766	Admin.	4/12/2018	150	Casinghead
30130	Traylor South ZAV #H1H, #H2H, #H3H*	15766	Admin.	12/10/2017	200	Casinghead
30088	Traylor South ZAV #H4H & #H5H*	15766	Admin.	12/5/2017	300	Casinghead
32595	Traylor South ZAV #I1H, #I2H & #I3H*	15766	Admin.	4/12/2018	270	Casinghead
32934	Traylor South ZAV #J1H	15766	Admin.	3/11/2018	75	Casinghead
32596	Traylor Unit ZAV L #2H & #3H	18230	Admin.	4/12/2018	100	Casinghead
32597	Traylor Unit ZAV M #2H	17867	Admin.	4/12/2018	65	Casinghead
32598	Traylor Unit ZAV M #4H & #6H*	17867	Admin.	4/12/2018	140	Casinghead
32599	Traylor Unit ZAV N #4H, #5H & #6H*	17653	Admin.	4/12/2018	100	Casinghead
32936	Traylor Unit ZAV N #1H, #2H & #3H	17653	Admin.	3/11/2018	300	Casinghead
25659	Traylor West ZAV #C1H & #C4H*	15993	Docket No. 01-0299832	3/11/2018	111	Casinghead
24784	Von Rosenberg Unit A DIM #1H*	15612	Docket No. 01-0299832	3/11/2018	842	Casinghead
25658	Votaw Unit A DIM #1H*	16642	Docket No. 01-0299832	3/11/2018	139	Casinghead
32940	Winterbotham ZAV #U1H & #U2H*	15744	Admin.	3/11/2018	200	Casinghead
30086	Winterbotham ZAV #A1H, #A2H, #A3H & #A4H*	15744	Admin.	12/6/2017	200	Casinghead
30087	Winterbotham ZAV #B1H & #B2H*	15744	Admin.	12/6/2017	250	Casinghead
32600	Winterbotham ZAV #B3H, #B4H & #D1H	15744	Admin.	4/12/2018	160	Casinghead
32939	Winterbotham ZAV #D2H, #S1H & #S2H*	15744	Admin.	3/11/2018	300	Casinghead
32938	Winterbotham ZAV #F1H & #F2H*	15744	Admin.	3/11/2018	200	Casinghead
32601	Winterbotham ZAV #G2H, #V1H & #V2H*	15744	Admin.	4/12/2018	185	Casinghead
32602	Winterbotham ZAV #G3H & #N1H*	15744	Admin.	4/12/2018	110	Casinghead
32603	Winterbotham ZAV #H2H, #H3H & #I1H*	15744	Admin.	4/12/2018	120	Casinghead
32604	Winterbotham ZAV #I2H & #I3H	15744	Admin.	4/12/2018	100	Casinghead
32605	Winterbotham ZAV #J1H & #J2H	15744	Admin.	4/12/2018	135	Casinghead
32941	Winterbotham ZAV #K1H & #J3H*	15744	Admin.	3/11/2018	175	Casinghead
32606	Winterbotham ZAV #K2H	15744	Admin.	4/12/2018	70	Casinghead
25666 (33294)	Winterbotham ZAV #M1H	15744	Docket No. 01-0299832	3/11/2018	124	Casinghead
32607	Winterbotham ZAV #N2H & #N3H	15744	Admin.	4/12/2018	80	Casinghead
32608	Winterbotham ZAV #O1H, #O2H, #O3H & #O5H	15744	Admin.	4/12/2018	190	Casinghead
32609	Winterbotham ZAV #Q1H & #Q2H	15744	Admin.	4/12/2018	160	Casinghead
32610	Winterbotham ZAV #R1H	15744	Admin.	4/12/2018	65	Casinghead

* Currently Equipped with a Flare Stack

NO. _____

**WILLIAMS MLP OPERATING, LLC
AND MOCKINGBIRD MIDSTREAM
GAS SERVICES, LLC**

Plaintiff,

vs.

RAILROAD COMMISSION OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

____ **JUDICIAL DISTRICT**

ORIGINAL PETITION FOR JUDICIAL REVIEW

Exhibit C

FILED
JAN 17 2020 3:14
RAILROAD COMMISSION
OF TEXAS

**IN THE RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**APPLICATION OF EXCO
OPERATING COMPANY, LP
FOR AN EXCEPTION TO
STATEWIDE RULE 32 FOR
VARIOUS LEASES, BRISCOE
RANCH (EAGLEFORD) FIELD,
DIMMIT AND ZAVALA COUNTIES,
TEXAS**

§
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Oil and Gas Docket No. 01-0308609

WILLIAMS' MOTION FOR REHEARING

Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC (collectively, “Williams”) file this Motion for Rehearing in the above-referenced matter in response to the final order signed on August 6, 2019 (the “Order”), in which the Railroad Commission of Texas (by a 2-1 vote) granted EXCO Operating Company, LP’s (“Exco”) requested exception to Statewide Rule 32 for over 130 wells and 69 flare points.

I. INTRODUCTION

Flaring is an issue because waste is a problem. It was for this reason that more than one hundred years ago the Texas Constitution was amended to give the Legislature the authority to promote “[t]he conservation and development of all of the natural resources of this State.”¹ Two years later, in 1919, the Legislature acted to prohibit the waste of oil and gas and directed the Railroad Commission to enforce the prohibition. This prohibition, which is consistent with our market economy, lies at the heart of the Commission’s Rule 32 on flaring – a rule and prohibition which has been consistently upheld by the courts for

¹ Texas Constitution, Art. 16, Sec. 59.

over seven decades.² It is a rule and prohibition that has long been part of the free market framework of the Texas oil and gas industry.

A central challenge for the Commission has emerged in this case, which is the first known instance where a request for an exception to allow flaring has been protested.³ The challenge is that the approach to exceptions that has evolved and has been followed for many years vitiates and effectively negates the statutory prohibition of waste and the requirements of Rule 32. This is because the evolved approach to flaring exceptions effectively guarantees an exception if an operator applies for one. The result is an unfortunate contribution to the unnecessary and wasteful flaring of billions of cubic feet of natural gas.

This challenging situation is not of recent making, and not that of the current Commission. Rather, as with other problematical situations in law and public policy, the current approach to flaring developed not by conscious design, but as a result of many years of unchallenged and unprotested requests for exceptions.⁴

Having inherited this problematic situation on flaring, this Commission now has the opportunity to address the issue in a manner that will allow the various considerations of waste and economics to be reconciled consistent with the Texas Constitution, the waste-prevention statute, and the Commission's no-flaring rule.

Under these circumstances it would be appropriate for the Commission to grant rehearing for the purpose of remanding this case to the ALJ for further consideration through the taking of evidence and arguments that bear on the issues raised in this case.

² It has long been recognized that there is a place for regulation in a free market economy where short-term interests may conflict with longer-term goals. The classic piece by Scott Gordon, *Economics and the Conservation Question*, 1 J. LAW AND ECONOMICS 110 (1958) is helpful on these issues.

³ Under Commission rules, an operator who seeks to flare need not give notice to connected or nearby gas pipeline operators. Thus, many pipelines may have found out too late that an operator sought to flare gas that could otherwise have been gathered and used for beneficial purposes.

⁴ The flaring exception cases have not been protested because notice is not given to gatherers, such as Williams, who would have an interest in and provide an alternative to flaring.

Further, such a remand could allow a review of certain factual and legal issues discussed below which merit a different outcome.

II. SUMMARY: PRIMARY ISSUES OF LAW, POLICY, AND FACT

A. Policy, Law, and Standards for Exceptions.

The evolved practice on exceptions to the no-flaring rule that has been inherited by this Commission calls for adjustment. As applied, it effectively vacates the statutory prohibitions against waste and the Commission's rule on flaring. This directly results from the "gas economics" standard that has become the norm in flaring exception cases and upon which Exco bases its case. As applied, the standard ensures an exception any time the cost of gathering and treating the casinghead gas exceeds the revenues from the sale of the gas. Even though the wells are oil wells, which are drilled for the oil, the oil revenues are completely disregarded. This is flawed economics; at a minimum, all costs should be compared to all revenues. The facts in this case illustrate this point. For it is clear that a correct economic calculation (if any economic calculation is to be used) yields a strong case against flaring in this case. This is because the value of the oil produced plus the value of the gas, including liquids, vastly exceeds the cost of having the gas treated and gathered to market.

This evolved standard effectively negates the prohibitions against flaring because producers have every reason to market the gas if the "gas economics" are positive and obtain a flaring exception if the "gas economics" are negative.⁵ Producers have little

⁵ An alternative way of looking at the economics was discussed at the August 6, 2019, Commissioners' Conference. It was suggested that one should compare the value of the flared gas to the value of oil that would not be produced if a well is shut-in. Unfortunately, that comparison has difficulties of its own. As with the "gas only" economics that has been used for many years to justify flaring, such a standard would virtually always justify flaring of casinghead gas and negate the prohibition against wasteful flaring. Moreover, leaving oil in the ground until the casinghead gas can be captured for beneficial use is not waste. See, *Railroad Commission v. Flour Bluff Oil Corp.*, 219 S.W.2d 506 (Tex. Civ. App.—Austin 1949, writ refused) (a producer *cannot* justify non-compliance with the prohibition on flaring casinghead gas on economic grounds because the regulation of wasteful flaring does not "await the time when direct and immediate profits can be realized from the operation.").

incentive to expend time and resources on helping develop means to save the gas for beneficial uses, whether by pipeline, compressed natural gas, local electric generation or otherwise.

The evolved policy is flawed in yet another manner. While it purports to take into account the possible waste of oil, it makes no attempt to weigh any potential waste of oil against the waste of gas through flaring. This could be accomplished through a Barrels of Oil Equivalent (BOE) weighing of the energy value of oil that could be shown to be wasted against the energy value of gas lost through flaring.⁶

It is a long-standing principle that statutes and regulations should not be interpreted in a manner that effectively renders them meaningless.⁷ Unfortunately, this is exactly what has evolved over the years under the Commission's no-flaring rule.

B. The law and policy of waste prevention supports the prohibition of flaring in this case.

The Commission has long had the duty to “prevent waste [and] promote conservation.”⁸ As applied to flaring, Texas Supreme Court and other Texas courts have consistently upheld Commission orders prohibiting flaring. For example, in 1947, the Texas Supreme Court upheld the Commission's authority to shut in Shell Oil Company's production in an oil field until it made use of its casinghead gas.⁹ A few years later, the Texas Supreme Court upheld another decision that shut-in fields based on the operator's

⁶ It is important to note that oil that remains in the ground awaiting the means to save rather than flare the casinghead gas is by no means wasted as a result of the delay in production.

⁷ See *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006) (a court “must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous.”). The same principle applies to agencies such as the Railroad Commission.

⁸ Tex. Nat. Res. Code §§ 85.045 & 85.046(c).

⁹ *Railroad Commission v. Shell Oil Co.*, 206 S.W.2d 235, 237 (Tex. 1947).

flaring of casinghead gas.¹⁰ In doing so, the Court addressed the role of the Commission in enforcing Texas policy against waste:

The Legislature has many times amended the statutes so as to define in plain and specific language the public policy of this State with respect to the conservation of oil and gas and to prevent their waste. The duty to enforce these statutes is placed on the Railroad Commission. ***The Legislature realized the great value of oil and gas and the importance of the task and duty placed on the Railroad Commission to conserve same for the use of the public and . . .to prevent the waste of oil and gas.***

...

If this gas, which is an important natural resource, is to be conserved, some action is necessary to prevent its further unnecessary waste. ***It will be too late to speculate on what to do when the gas is exhausted.***¹¹

Further, during the same period *the Austin Court of Appeals affirmed a Commission order shutting in wells, saying that an operator cannot justify non-compliance with the prohibition on flaring casinghead gas on economic grounds.* The regulation of wasteful flaring does *not* “await the time when direct and immediate profits can be realized from the operation.”¹² To the contrary, the anti-flaring law prevails because the “Constitution... [requires] the preservation and conservation of natural resources.”¹³ This controls over the “gas economics” standard that has come to be used for judging flaring exceptions.¹⁴

¹⁰ *Railroad Commission v. Sterling Oil and Refg.*, 218 S.W.2d 415 (Tex. 1949).

¹¹ *Id.* at 418 and 421 (emphasis added).

¹² *R.R. Comm'n of Tex. v. Flour Bluff Oil Corp.*, 219 S.W.2d 506, 508 (Tex. Civ. App. – Austin 1949, writ refused).

¹³ *Id.*

¹⁴ In this regard, we respectfully note that the two hypotheticals from dicta in *Shell Oil* and relied on by Commissioner Sitton at the August 6, 2019, Commissioners’ Conference for the proposition that cost must be a factor to consider in flaring applications do not reasonably support such a position. In one, the court made it clear that of course flaring should be prohibited as wasteful where the operator had an “easily accessible and inexpensively available” pipeline outlet. In the other, the court posited a situation where no beneficial use of casinghead gas was reasonably available. Those are not the facts in this case.

III. A NUMBER OF POINTS BEAR FURTHER CONSIDERATION.

The discussion in the Proposal for Decision and in the two Commissioners' conferences indicates that clarity is needed with respect to certain facts surrounding Exco's request.

First, Exco's flaring application is – by its own admission – unprecedented.¹⁵ Neither Exco nor any of its witnesses have identified any precedent allowing an exception to Rule 32 when a gatherer is connected and available to gather the operator's gas. Exco is connected to a gathering system that is available to gather Exco's gas and *did* gather gas from the wells for years. Williams gathered **2.1 Bcf** of Exco's gas in 2017 alone.¹⁶ Exco is seeking authorization to flare *all* its casinghead gas, despite the fact that there is no "necessity" as required under Rule 32.

Second, the evidence does not support Exco's assertion that denying the application would result in the waste of oil; the gas can be gathered rather than flared.

Exco's assertion that any shut-in of the wells would cause oil to be lost as a result of reservoir damage was not supported by any study or attempt to quantify the amount of oil that might be lost. Indeed, if a petroleum engineering study were done it would allow quantification of any such loss and may well demonstrate that no oil at all would in fact be lost. Finally, such a study would allow a weighing of the claimed possible waste of oil against the certain waste of gas by flaring. And, if there is no reservoir damage, there is no waste of oil – it is simply left in the ground awaiting later production. That sort of delay is not waste.

¹⁵ In response to a question from Administrative Law Judge Kristi Reeve, Exco's expert, Mr. Dale Miller, testified that while he has appeared on behalf of operators in "at least a hundred" flaring application hearings involving multiple flare points, *none* of those hearings involved an operator who is connected to a pipeline but who seeks to electively flare all of its casinghead gas. May 23, 2018 Trans. at 240:8-12 & 270:16-24.

¹⁶ Exco Exhibit 19.

Third, the assertion that Williams is trying to force a contract on an unwilling Exco is not correct. Exco purchased its wells and leases from Chesapeake in 2013 with full knowledge of the gathering system rate and agreed to pay the then-existing gathering rate charged by Williams. Exco considered that rates to be acceptable.¹⁷ This necessarily means that Exco saw the situation as making economic sense. At the time it bought the wells, and since that time, Exco has acknowledged that its gas *is dedicated to the Williams System and that it is obligated to deliver the gas under contract with Williams*.¹⁸ It was aware that the gas was being gathered and not flared, and it freely elected to continue that practice -- for a 20-year term. Exco certainly was also aware of the provisions of Rule 32 that form an important part of the market framework for production of oil and gas in Texas. Exco's subsequent decision to flare runs counter to its free market decision to purchase the wells and to continue having the gas gathered to the market rather than being flared.

Fourth, the suggestion was made during the August 6 Commissioners' conference to the effect that Exco's flaring was necessary because the Williams System could only handle 70% of Exco's gas. This justification for a flaring exception is not correct and is contrary to the record. Indeed, Exco admits that Williams' System gathered the gas produced from Exco's wells for more than four years, and the record shows that it has capacity to gather substantially all of Exco's gas now and in the future. Based on its design and construction, Williams' System was "able not only to handle the delivered volumes, it was able to handle the flush production."¹⁹ Additionally, Exco's own exhibit – its

¹⁷ See May 23, 2018 Trans. at 103:18-104:1. Of note, Exco bought the wells at issue *knowing that it would take a loss* on its gas, but it agreed to do so – in its Chief Financial Officer's words – because of the tremendous value of the oil and the value of the "overall business deal with Chesapeake." *Id.*

¹⁸ In connection with the acquisition, Exco signed a "Buyer Acknowledgment," which states, "EXCO hereby acknowledges that the interests in the oil, gas, or mineral leases sold to EXCO... by Chesapeake... **are subject to the obligation to deliver Dedicated Gas produced from the Properties under and as specified (and as 'Dedicated Gas' is defined in) that certain Gas Gathering Contract Cost of Service – Eagle Ford**" with Mockingbird Midstream Gas Services, LLC. See Williams' Hearing Exhibit 6 (emphasis added).

¹⁹ See May 24, 2018 Trans. at 78:5-7.

“Casinghead Gas Disposition” chart – shows that for the 69 flare points at issue, Williams gathered 2.1 Bcf of Exco’s gas in 2017, and Exco used 60% of the remaining casinghead gas for lease fuel. That same exhibit also shows that Exco flared about 13.7% of its gas.²⁰ The record also shows that Williams never refused to take Exco’s gas or curtailed receipts due to lack of capacity on its system.²¹ Williams can take all the gas Exco is willing to deliver.²² Thus, the suggestion that Williams caused Exco’s flaring or that flaring is needed due to lack of capacity is not correct. Regrettably, while Exco’s flaring application has been pending, Exco has flared billions of cubic feet of gas that otherwise could have been gathered and put to beneficial uses for power, heat, and as a petrochemical industry feedstock.

Fifth, in reliance on its dedication to Williams’ system and *at no up-front cost to Exco*, Williams spent millions of dollars to expand its system to connect Exco’s new wells and add receipt points between 2013 and 2017.²³ This was in addition to the more than \$1 billion already invested in the System at no upfront cost to Exco. Allowing Exco to waste the gas through flaring will discourage new capital spending by midstream companies to build gathering systems in Texas that would avoid even more flaring.

²⁰ Thus, Exco directed 86.3% of its total casinghead gas production to Williams’ system or used it for lease use. *See* Ex. 19 at p. 1 (summary chart). Williams did not cause Exco to flare. Rather, Exco flared its entire production for a limited sub-set of wells for which it did not seek connections (despite the availability of Williams’ system and its willingness to connect at no upfront cost to Exco). *Id.* at p. 1 (Flare Point 1). For the rest, Exco flared nothing or flared relatively small quantities of gas – that would not require the unprecedented blank check of a flaring permit is seeks in this docket – due to maintenance or upsets. *Id.* at p. 1 (Flare Points 17, 18, 19, and 20).

²¹ May 24, 2018 Trans. at 83:3-15.

²² *See* May 24, 2018 Trans. at 83 (Williams’ system has taken “[a]ll of the casing head gas that was delivered,” and it has never shown an “inability or unwillingness or lack of capacity to handle it.”); *see id.* at 78 (“The system was able not only to handle the delivered volumes, it was able to handle the flush production.”).

²³ *See* May 23, 2018 Trans. at 332:8-24.

Sixth, from an environmental standpoint, burning the gas in flares is not equivalent to its beneficial use elsewhere. Much of Texas natural gas production is not burned at all, but rather used as a petrochemical feedstock. Moreover, the hydrogen sulfide content of Exco's gas is 50 to 300 times greater than the 100 ppm danger threshold set by the Commission's Rule 36; the H₂S is in concentrations between 5,000 and 32,000 ppm. When this gas is burned in a flare the H₂S it is converted to sulfur dioxide (SO₂). Sulfur dioxide is one of six criteria pollutants identified in the Clean Air Act which require specific consideration; the others are carbon monoxide, lead, ground-level ozone, nitrogen dioxide, and particulate matter.²⁴

IV. OBJECTIONS TO SPECIFIC FINDINGS AND CONCLUSIONS

Section 2001.141 of the Texas Government Code requires that the order be supported by findings of fact and conclusions of law separately stated and based on the record. The Final Order does not satisfy these requirements.

A. The Final Order Requires Correction.

Without correction, the Commission's Final Order is based on a standard that unlawfully vitiates statutory requirements and the requirements of the Commission's Rule 32. It is not supported by adequate and necessary findings of fact and conclusions of law, violates applicable Texas constitutional provisions and statutes, exceeds the Commission's authority, is not supported by substantial evidence considering the reliable and probative evidence in the record, constitutes arbitrary and capricious decision-making, constitutes an abuse of the Commission's discretion, and constitutes a clearly unwarranted exercise of discretion. Tex. Gov't Code § 2001.174. As such, without correction, the Commission's Final Order prejudices Williams' substantial rights. *Id.*

²⁴ See generally, 40 C.F.R. pt. 50; see also, Environmental Protection Agency NAAQS Table, available at <https://www.epa.gov/criteria-air-pollutants/naaqs-table> (accessed August 28, 2019). Sulfur dioxide causes not only deteriorated air quality but also acid rain that harms waters, livestock, and crops.

B. Findings of Fact, Conclusions of Law, and Ordering provisions are in Error.

Williams takes specific exception to the Findings of Fact, Conclusions of Law, and ordering provisions as enumerated below.

Finding of Fact No. 1 and Conclusion of Law No. 2 violate applicable constitutional provisions, statutes, and procedures related to procedural and substantive due process with respect to, among other things, the Commission's failure to require notice to all potentially affected persons, including Williams as a gatherer connected to the wells in question and in the position to gather the gas rather than its being flared. To correct these errors the Commission should insure that proper notice is given.

Finding of Fact No. 7 is not supported by substantial evidence in the record. Exco has acknowledged the dedication of the gas produced from the wells and leases to the Williams' System and has told the Commission that it has a contract with Williams for gathering the subject gas. To correct this error this finding should be deleted.

Finding of Fact No. 8 is not supported by substantial evidence in the record. Based on the credible evidence of record, Williams' gathering system has been and is available to Exco. The finding should be corrected accordingly.

Finding of Fact No. 9 is contrary to the substantial evidence of record. The credible evidence of record shows that Williams' system was designed and constructed to take Exco's production, including the flush production of Exco's new wells, and Williams has consistently been able to take all of Exco's gas that has been delivered to Williams' System. This finding should be corrected accordingly.

Finding of Fact No. 10 is contrary to the substantial evidence of record. As referenced in the proposal for decision and in the record, Exco has a contract to sell 100% of its gas to its affiliate – Raider Marketing. This finding should either be corrected or deleted as unnecessary.

Finding of Fact No. 11 is not supported by substantial evidence of record, constitutes an arbitrary and capricious decision-making, constitutes an abuse of the Commission's discretion, exceeds the Commission's authority, and constitutes a clearly unwarranted exercise of discretion. Among other things, it is in error because it does not consider and take into account oil revenues from the production and sale of oil from the subject wells in finding that utilizing the Williams System is uneconomical. This finding should either be corrected to take oil revenues into account or deleted as not necessary to a proper consideration of this matter.

Finding of Fact No. 12 is not supported by substantial evidence of record and ignores that the evidence that the well can remain in production (with its gas being gathered by Williams) or that the well can be shut-in without harm to the oil and gas in the reservoir. It is also in error because it does not take into account the gas that would be wasted by flaring. It should be corrected to take the loss of flared gas into account.

Conclusion of Law No. 3 violates, ignores, exceeds the Commission's authority, and constitutes an abuse of discretion with respect to the binding precedent on statutory standard that provides that an operator – such as Exco – cannot justify non-compliance with the prohibition on flaring casinghead gas on economic grounds and that, as a conservation measure, Texas Natural Resources Code § 85.045 does *not* “await the time when direct and immediate profits can be realized from the operation.” *Railroad Commission v. Flour Bluff Oil Corp.*, 219 S.W.2d 506, 508 (Tex. App.—Austin 1949, writ refd). Moreover, Conclusion of Law No. 3 constitutes a clearly unwarranted exercise of discretion, is not supported by substantial evidence of record, and constitutes an abuse of discretion with respect to the Statewide Rule 32. Conclusion of Law No. 3 and the Final Order in its entirety violates, ignores, exceeds the Commission's authority, and constitutes an abuse of discretion with respect to the Texas Constitution and statutes that require prevention of waste. Tex. Nat. Res. Code §§ 85.045 & 85.046; Texas Constitution, Art. 16, § 59. This conclusion and the order should be corrected to deny the requested exception to flare.

The Ordering provision granting the requested flaring exception to Rule 32 is in error for the reasons detailed above. It should be corrected to deny the requested exception.

V. CONCLUSION

The Commission has the opportunity in this case to review and modernize the standards for flaring exceptions that it has inherited. Those standards evolved over many years with the unfortunate result of effectively negating the Commission's no-flaring rule and prohibitions against waste as flaring exceptions have come to be routinely granted and never denied. The facts of this case provide a sound basis for the Commission to take a second look.

WHEREFORE, PREMISES CONSIDERED, Williams prays that this motion be considered and that the Commission either vacate the Final Order and deny Exco's flaring request or, alternatively remand to the ALJ for the taking of additional evidence and arguments to allow further consideration of the facts of this case and the flaring exception standards that should be considered.

Respectfully submitted,

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**ATTORNEYS FOR WILLIAMS MLP
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MOCKINGBIRD MIDSTREAM GAS
SERVICES, L.L.C.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served via email or via certified mail, return receipt requested as indicated on this 30th day of August 2019.

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SN Operating, LLC (via certified mail, return receipt requested)
1000 Main Street, Suite 3000, Houston, TX 77002

US Energy Development Corp. (via certified mail, return receipt requested)
1521 N. Cooper Street, Suite 700, Arlington, TX 76011

Chesapeake Energy (via certified mail, return receipt requested)
P.O. Box 18496, Oklahoma City, OK 73154

Buffco Production, Inc. (via certified mail, return receipt requested)
P.O. Box 2243, Longview, TX 75606

Virtex Operating Company, Inc. (via certified mail, return receipt requested)
615 N. Upper Broadway, Corpus Christi, TX 78401

/s/ Richard A. Howell
Richard A. Howell

NO. _____

**WILLIAMS MLP OPERATING, LLC
AND MOCKINGBIRD MIDSTREAM
GAS SERVICES, LLC**

Plaintiff,

vs.

RAILROAD COMMISSION OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

____ **JUDICIAL DISTRICT**

ORIGINAL PETITION FOR JUDICIAL REVIEW

Exhibit D

RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

OIL & GAS DOCKET NO. 01-0308609

APPLICATION OF EXCO OPERATING COMPANY, LP FOR AN EXCEPTION TO
STATEWIDE RULE 32 FOR VARIOUS LEASES, VARIOUS WELLS, BRISCOE RANCH
(EAGLE FORD) FIELD, DIMMIT AND ZAVALA COUNTIES, TEXAS

ORDER DENYING MOTION FOR REHEARING

Notice of an open meeting to consider this order was duly posted pursuant to Chapter 551 (Open Meetings) of the Texas Government Code.

On August 30, 2019, Williams MLP Operating, LLC and Mockingbird Midstream Gas Services, LLC (collectively, "Williams") timely filed a motion for rehearing. Timely replies were filed by EXCO Operating Company, LP and CNOO Energy U.S.A. LLC.

IT IS ORDERED that Williams' Motion for Rehearing is **DENIED**.

Signed on October 22, 2019.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN WAYNE CHRISTIAN

COMMISSIONER CHRISTI CRADDICK

COMMISSIONER RYAN SITTON

ATTEST:



Deputy SECRETARY