

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

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CORPORATION COMMISSION
OF OKLAHOMA

<u>APPLICANT:</u>	ROCKFORD ENERGY) PARTNERS III, LLC))	
<u>RELIEF GRANTED:</u>	FLARING OF GAS FOR THE) CRAIG RANCH #8-1H WELL)	CAUSE CD NO. 201104178
<u>LAND COVERED:</u>	SECTIONS 8 AND 17,) TOWNSHIP 17 NORTH, RANGE) 20 WEST, DEWEY COUNTY,) OKLAHOMA)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF AN EMERGENCY APPLICATION**

This application for emergency order came on for hearing before **Susan R. Osburn**, Administrative Law Judge ("ALJ") for the Oklahoma Corporation Commission, at 9 a.m. on the 24th and 30th day of August and the 6th day of September, 2011, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for purpose of taking testimony and reporting to the Commission.

APPEARANCES: **J. Fred Gist**, attorney, appeared for applicant, Rockford Energy Partners III, LLC ("Rockford"); **Richard A. Grimes**, attorney, appeared for Trailneft Gaz Co., LLC and Craig Ranches, Inc. (collectively "Craig Ranches"); **Susan Conrad**, Assistant General Counsel for the Conservation Division, appeared for the Oklahoma Corporation Commission; and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance, for the Oklahoma Corporation Commission.

The Administrative Law Judge ("ALJ") issued her Oral Ruling on the emergency application to which Oral Exceptions were timely lodged and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 8th day of September, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

Rockford, as Operator, drilled the Craig Ranch #8-1H well at a surface location in Section 17, T17N, R20W, Dewey County, Oklahoma. In accordance with the appropriate location exception order, the well was directionally drilled into the adjoining 640-acre drilling and spacing unit comprised of Section 8, T17N, R20W, Dewey County, Oklahoma. The well was completed as a producing horizontal well in the Cottage Grove common source of supply.

There is a gas pipeline system in the immediate area, but not in Section 17, the site of the wellhead of the Craig Ranch # 8-1H well. It is owned and operated by DCP Midstream, LP ("DCP"). DCP has agreed to install a new pipeline to connect the Craig Ranch #8-1H well to the DCP pipeline. However, DCP has not been able to reach agreement with the owner of the surface, Craig Ranches, in said Section 17 that contains said well for the purpose of gaining access to the property for construction of this pipeline. DCP has filed a Petition in Case No. CV 2011-25 in the District Court of Dewey County, Oklahoma. DCP filed an Application for Temporary Restraining Order in said cause, seeking an order that will allow DCP immediate access to the subject lands for the purpose of building the necessary pipeline to connect the Craig Ranch #8-1H well to the DCP system. The Application for Temporary Restraining Order has been heard in part by the District Court of Dewey County, but further hearing has been scheduled for September 27, 2011. Absent an agreement or a court order, DCP is not able to construct the pipeline to this well.

In the absence of a pipeline connection, Rockford cannot produce oil from the well without venting or flaring the gas from said well. The gas produced by the well from said common source of supply contains over 100 parts per million ("ppm") of hydrogen sulfide ("H₂S"). Therefore, under the applicable Commission rule, OCC-OAC 165:10-3-15, the gas from the well must be flared. Rockford submitted its Form 1022, Application to Flare Gas, from said well to the Oklahoma Corporation Commission Oil & Gas Conservation Division and said Application was approved administratively by the Commission, in accordance with OCC-OAC 165:10-3-15, on July 1, 2011. This authorized the flaring of gas from said well for a period of 30 days, or until July 31, 2011. On July 21, 2011, the Commission granted an extension of said flaring permit for an additional 20 days, with an expiration date of August 20, 2011.

On August 17, 2011, the Commission advised Rockford that it would not administratively grant another extension of the flaring permit. The Commission further advised Rockford to file a new application to flare gas with the Commission Court Clerk's office, in accordance with the Commission rules of procedure. However, the Commission also granted an extension of the current flaring permit to August 25, 2011.

Rockford is requesting in this application that the Commission issue an order authorizing Rockford to flare gas from said Craig Ranch #8-1H well for a period of 60 days, or until such time as the well is hooked up to a suitable pipeline and flaring is no longer necessary. Without this authority to flare the gas, Rockford will be forced to shut in the well. It is necessary to flare the gas in order to avoid potential damage to the wellbore and the loss of valuable recoverable hydrocarbons. Granting the application is therefore necessary to prevent waste and to protect correlative rights.

Rockford is seeking an application for Emergency Order for immediate authority to commence flaring of gas from said Craig Ranch #8-1H well, and to continue to flare said gas during the pendency of this cause. In the absence of a pipeline connection, which Rockford is currently unable to secure, Rockford cannot produce the well without venting or flaring the gas from said well. It is necessary to flare the gas in order to avoid potential damage to the wellbore and to avoid the loss of valuable recoverable hydrocarbons. In addition, if the well is shut in, the owners in the well will not be able to recover the significant costs incurred in drilling and completing the well. In order to avoid a substantial financial loss, it is necessary for Rockford to obtain an emergency order which will allow Rockford, as Operator of the well, to flare gas from said Craig Ranch #8-1H well during the pendency of this cause.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ Susan R. Osburn stated that after taking into consideration all of the facts, circumstances and evidence presented, it is the recommendation of the ALJ that the emergency request be granted for Rockford to flare for 60 days. It is also the recommendation of the ALJ that Rockford be required to use a scrubber vessel to further reduce H₂S levels. All of the safety precautions previously used should be reviewed to confirm that they are still properly functioning and that additional flags be put up at the four sides of the site.

Rockford urged as a financial loss the delayed money from production, a possible reservoir damage and cost to regain production when they get the well back on production. It is the opinion of the ALJ that delayed money from production is not a financial loss. However, it is the opinion of the ALJ that revenues lost due to formation damage and costs to return the well to production are. This Cottage Grove well produces a lot of water and Rockford's engineer testified that after mechanical shut-ins and the Commission shut-in of the well, upon resuming production, it has never returned to the previous rates of production. Given the short terms of production it is hard to determine if this reduced production is permanent or if the operator can bring it back to earlier production rates. If they cannot, the damage may be

permanent. If they can, it may be costly. In either event it would constitute a financial loss.

While prevention of waste is a primary concern of the Commission, certainly the Commission is not insensitive to the issue of H₂S and concerns regarding life, health, and safety to humans, animals, and the environment. The ALJ notes that much of the proper action of the operator was instigated by the landowner, Craig ranches/Paul Laubach initially regarding the venting and later, it appears, Rockford became cooperative with the Technical Department only after the well was shut-in and thereafter obtained permits to flare. Rockford seems to be on track now.

However, it would be a further recommendation of the ALJ that Rockford or its representatives meet with the Commission Technical Department and formulate a schedule for keeping the Technical Department informed regarding H₂S levels and production information.

On this site the Craig Ranch #8-1H well was producing from the Cottage Grove. The associated H₂S levels were noted by Craig Ranches/Paul Laubach, who is a participant in the well. He has reports of the H₂S production. He realized Rockford must be venting it. So he inquired of Rockford if the H₂S could be flared. Two or three days later flaring commenced. The operator Rockford first vented in late March or early April and began flaring in early May. In April they hired F.A.S.T., a H₂S Safety Services company to help them in regard to their H₂S production. Rockford did not obtain a permit for the flaring. Apparently the Rockford operational engineer did not know of the requirement and he left in early June. During that month the remaining engineer on-site, Ms. Morgan, realized the need and commenced action to obtain a 1022 permit to flare. Also during this time the landowner lodged a complaint with the Commission.

The Commission Technical Department shut-in the well. Shortly after that Rockford met with the Technical Department and within a day obtained a 1022 permit. See Exhibit A. This 1022 permit was extended by Exhibits B and C permits. Thereafter Rockford was advised that Technical would not administratively extend authorization to flare and that Rockford would have to seek an order.

During production of the well there have been reports of workers having eye irritation, shortness of breath and the H₂S alarms have been going off with H₂S rates from 10 to 28 ppm. Besides F.A.S.T. assisting in monitoring the H₂S problem, Rockford also has a H₂S safety expert, Mr. Ingle, to advise them further. The employees on the site wear personal monitors and there were signs on the site to alert persons coming on the site of the H₂S. They also had additional fresh air monitors installed when H₂S levels of 300 ppm began showing up in the equipment. And they have a safety trailer with additional equipment and wind socks.

Before this last shut-in by the Commission the operator obtained a scrubber vessel to reduce H₂S levels to meet the pipeline specs. The pipeline is delayed due to a district court action between the pipeline company and Craig Ranches/Paul Laubach, the landowner here. The scrubbers should reduce H₂S levels to about 4 ppm or less before it is flared.

Rockford's certified safety specialist reviewed the safety equipment set up on the site using the June 23rd measurements from the well of 140 MCFDG and 150 ppm H₂S and using a 24 hour flare to establish a radius of exposure to H₂S if vented. He used the formula in the Commission rules and calculated a 9 foot radius of exposure indicating that outside of the 9 foot radius the H₂S would be less than 100 ppm and it would not affect a public area as defined in the rules. He explained the radius of exposure would be much smaller since flaring converts the H₂S to sulphur dioxide ("SO₂"), over which the Commission has no jurisdiction. He testified that the flaring was the industry preferred way of handling H₂S rather than venting. He had no concerns about the Commission allowing the requested flare considering the low concentration of H₂S and low gas flow, especially if a scrubber is installed. He acknowledged there were other methods which are stricter than the calculations he used but he used the method to determine a radius of exposure as required by the Commission rules.

The Staff of the Commission's Technical Department agreed his analysis satisfied Commission rules. In his experience Mr. Ingle did state that safe levels for public exposure would be about 10 ppm or less. The Commission field staff visited the site five times, four of which the well was not shut-in. And at each of those times the H₂S air monitor readings were in the range of 1 to 2 ppm. The readings from the lab analysis and the first field test of H₂S and the gas flow stream were very close at about 150 ppm. Although, as well production increased the H₂S and the flow stream increased.

Since this is a flaring situation and since H₂S converts to SO₂, neither the field staff nor the Technical Department had an objection to authorizing a flare but only for short periods. So they declined to administratively permit a further 60 day flare here. They typically permit for only short periods of time. And given the 60 day request felt any further authorization to flare should be by Commission order. Otherwise, they had no objection to the request for flaring here.

The landowner, Craig Ranches/Paul Laubach, has expressed grave concerns about the flare since he has noted the H₂S odor a mile distance from the site. Although he usually runs cattle in the area he felt it necessary to move them away from the site. He also has deer stands that he and others use in season. The landowner is a participant in the well via one of his companies, so he has the well reports sent to working interest owners from the operator. As the

surface owner he is in litigation with the pipeline company as to access to the land.

He first became aware of the H₂S through reports from the operator's engineering company of April 20, 2011 of 200 to 300 ppm H₂S. He contacted Rockford regarding whether they need to flare at these rates rather than vent. A day or two later he saw that Rockford began the flaring. In June he contacted the district office regarding the H₂S smell. And, thereafter, the Commission became involved. Paul Laubach was not included in the conference that the Technical Department had with Rockford representatives. After the second permit was issued Paul Laubach filed an application to vacate the permit. He explained he is more concerned with safety issues than with delayed or lost revenues if the well is shut-in. He is concerned with the safety of himself, his tenants, his cattle as well as Rockford employees and any county employees who would use the nearby county roads or anyone else who might traverse the area.

Craig Ranches' expert, Dr. Marshall, a specialist in industrial hygiene, criticized the Commission rule required equation used to determine H₂S radius of exposure noting that it is not as strict as other methods and doesn't take into consideration wind, terrain, or temperature. He testified that the equation doesn't show the H₂S concentration outside the radius of exposure. He opined that 1 ppm H₂S would be a safe level for an 8 hour period. He explained the EPA has air pollution dispersion models to predict safe levels that would be preferred. And the models are also preferred to the Pasquill-Gifford equation in the Commission rules. He noted that the Pasquill-Gifford equation does not indicate dispersion of SO₂ in the area. He recommended several actions that he felt the operator should do to insure protection of humans, environment, and animals in the area.

These recommendations exceed what is required in the rules. While the ALJ finds these suggestions would be appropriate to support a rule change, she notes that, in fact, the operator has come into compliance with Commission requirements. It is noted that compliance came only after Paul Laubach inquired about venting and after the Commission initially shut-in the well for flaring.

At this point Rockford has come into compliance and the Technical Department has no objection to a 60 day temporary period to flare.

As to the recommended scheduled times that Technical sets up for Rockford furnishing data to Technical, it is the further recommendation of the ALJ that any data be also furnished to Paul Laubach.

POSITIONS OF THE PARTIES

CRAIG RANCHES

1) **Richard A. Grimes**, attorney, appearing on behalf of Craig Ranches, stated that the Craig Ranch #8-1H well was first completed on January 18, 2011. The well was completed in the Cottage Grove common source of supply as a oil well. H₂S was first detected on or about April 20, 2011 with 200 to 300 ppm. There is no accurate evidence as Rockford was unable to provide it. Thereafter at a point in time the well began to produce gas which contained H₂S. The Rockford engineer issued a report of gas production on May 2, 2011, a report issued by Rockford which applied to the day before. There was some undefined period of time in which gas was being vented and not being flared containing H₂S.

2) Rockford's engineer was employed by Rockford at the time of these original circumstances but was not the engineer responsible for the operation of the well. It was a prior engineer no longer employed by Rockford who had that responsibility. She was not the one directly involved up until some time in June of this year. There is a deficiency in the record about the actual timing but we know that there was a point when gas was being vented into the atmosphere containing H₂S. After inquiry to Rockford by the landowner Paul Laubach (who is the principle of Craig Ranches), Rockford immediately thereafter began to flare gas from the well.

3) The rules of the Commission OAC-OCC 165:10-3-15 unequivocally require that if you are going to flare or vent gas in a quantity in excess of 50 MCPD you must obtain a permit from the Commission. That permit can be sought and obtained administratively or you can file an application. You must by Commission rules always flare gas that contains H₂S. Craig Ranches is concerned about the volume that you can flare or vent by Commission rules. OCC-OAC Rule 165:10-3-15(b)(3) provides that if H₂S content of gas exceeds 100 ppm, then the gas must be flared. An operator may vent or flare up to 50 MCFD without a permit.

4) The gas was vented and/or flared by Rockford from sometime in April of 2011 to the end of June, 2011 illegally with no permit. The Rockford engineer testified she was not responsible but surmised that the prior Rockford engineer just didn't know about the Commission rules. The Rockford engineer replacement did not know the actual volume of gas that was flared or vented illegally and the ALJ didn't inquire of that. Two plus months of venting or flaring gas in violation of Commission rules occurred prior to the end of June, 2011 and the record is absent of the volumes that were flared or vented.

5) Craig Ranches is the surface owner. Trailneft Gaz Co., LLC is a working interest owner. They have a very small working interest in the Craig Ranch #8-1H well. Craig Ranches is also a mineral owner leased to Rockford so it has a royalty interest in the well. Paul Laubach is one of the officers of Craig Ranches and is the owner of Trailneft Gaz Co., LLC. Based upon Paul Laubach's observation of odors and other circumstances with the well, he ultimately called the District Oklahoma Corporation Commission office and made a complaint concerning what was going on with the well. On June 21, 2011 the testimony was of David Howard, working for the Commission, that he went to the well site and made some observations. He ultimately came to a conclusion and passed it on to his superiors that the well was not in compliance with the Commission rules. As a result of Rockford not making a timely response to the Commission inquiries, the well was shut in on June 27, 2011. However, thereafter on July 1, 2011 Exhibit A, Form 1022 Flaring Permit, was issued administratively without a hearing and approved by Ron Duncan for a 30 day time period to expire on July 31, 2011. The estimated amount to be vented or flared was 250 MCFPD. The Form 1022 provided that gas must be flared if the H₂S content of the gas exceeds 100 ppm. On the expiration of that Form 1022, a second 1022 permit was issued, Exhibit B, for 20 days to expire on August 20, 2011, with the same conditions. A third permit Form 1022 for a short five days was issued on August 18, 2011 to expire on August 25, 2011 with the same parameters.

6) There was evidence on cross examination of the Rockford engineer and through Craig Ranches' expert witness, because of Craig Ranches receipt of drilling reports, that on August 3rd and 4th the H₂S alarms that were on-site installed by Rockford had been going off. They were reporting 10 ppm to 28 ppm of H₂S observed in and around the well site including equipment.

7) In the present case there is an operator who violates rules of the Commission which are designed to prevent waste meaning the volume of gas you can vent or flare without authority from the Commission and they have violated the second rule to protect the public which is the flaring of H₂S gas in excess of 100 ppm without a permit. Rockford presents a witness who cannot tell the ALJ how long the gas was vented into the atmosphere containing H₂S; cannot tell the ALJ how much gas has actually vented or flared; and despite those facts is given the emergency relief that they have requested. They are given the relief requested because the ALJ specifically found they had complied with a formula that is provided for in OCC-OAC Rule 165:10-3-16 described as the Pasquill-Gifford equation and is referenced in 165:10-3-16(b)(2).

8) Rockford brought in an expert H₂S in safety engineer. He used the Pasquill-Gifford formula and calculated an area of concern or radius of concern. He then testified that there was no issue concerning harm. Craig Ranches put on a certified industrial hygienist with a PhD. He has worked this

area for years, both including H₂S, oil and gas matters and non-oil and gas matters, including the City of Oklahoma City concerning their water. He is familiar with the various formulas that are in discussion. He noted that the Pasquill-Gifford equation was a 1951 equation which was outdated.

9) The Pasquill-Gifford equation is designed to tell you how the H₂S will be dispersed into the atmosphere. The equation is designed to identify for you the area of concern. The formula does not tell you what happens outside the area of concern. The calculation by Rockford's expert involved a radius of 9 feet. What about the area outside that radius? Dr. Marshall, Craig Ranches witness, said that the Pasquill-Gifford equation tells you nothing about that. Some federal agency studies say that as low as 1 ppm H₂S is dangerous, and can have serious affects upon humans, animals and the environment. The Pasquill-Gifford equation also does not factor in wind, temperature or terrain. If you are in a windy area this equation assumes one mile per hour constant wind. It has no assumption about temperature. Temperature changes how gas is dispersed. If you are in an area where you have terrain changes, the gas will be dispersed in different ways. These are the problems with this formula. The expert for Craig Ranches admitted that the formula is in the Oklahoma Commission rules. Craig Ranches' problem is that this formula is antiquated and has adverse affects.

10) Also, when you burn H₂S the resulting gas is SO₂. David Howard the field inspector opined that SO₂ has more risk involved than H₂S. SO₂ as noted by our expert is not covered by the rules of the Commission. The ALJ therefore ruled because Rockford calculated correctly under the Commission rules (under a 60 year old formula) that her hands were tied. The Commission is recommending an antiquated formula without ever considering what affects that process will have outside the calculated area of concern. Their only reason for doing this is that Rockford would have a financial loss if they shut their well in and waste of oil. The ALJ said I am willing to trade whatever risks are there concerning the H₂S, in exchange for Rockford not being able to produce the well which would constitute waste.

11) This well has removed Craig Ranches' ability to use their land as they had to move their cattle off the well site. Workers on site have reported eye irritation and shortness of breath related to H₂S. Inside the 9 foot radius death occurs. Their response was that they have oxygen tanks and safety measures in place to address the H₂S.

ROCKFORD

1) **J. Fred Gist**, attorney, appeared for Rockford, and stated the ALJ made a clear recommendation based on the evidence before her. This is an application for an emergency order to allow flaring of gas. It is not a hearing on the merits. The issue is whether or not Rockford will suffer financial loss if it's not allowed to flare gas. That evidence is absolutely unrefuted. The reservoir engineer put on evidence, seven or eight graphs to show exactly what's happened to that well. The evidence shows, without anyone refuting such evidence, that the well can't produce unless the gas is either sold in pipe line or flared. The Rockford engineer showed that the reservoir has not responded each time they brought the well back on production after being shut in. It has come in at a lower rate of oil and gas each time. Her testimony was that she believes the reservoir has been permanently damaged because it makes so much water that the water sitting on the wellbore for extended periods of time will and has caused damage to the reservoir. It reduces the productive ability of the well long term. Short term, the cost of restoring production has cost Rockford each time. Rockford paid \$78,000 the last time it was shut in in order to bring it back on production. They will now have to do that again. They will have to put on a bigger pump to pump the water out and a bigger generator in order to get the water off. This evidence was unrefuted and Rockford will suffer financial loss if they are not allowed to continue to flare the well. The ALJ in order to prevent that type of waste recommended an emergency flaring. The Commission said there is no problem with flaring the well and approved it with two extensions. And they would have again except Rockford was asking for 60 more days.

2) The same people, Craig Ranches, are protesting the connection to the gas pipeline which is in the immediate area. DCP Pipe line has entered into a gas contract with Rockford and DCP has agreed to build a pipe line to connect the Craig Ranch #8-1H well. However DCP has not been able to reach agreement with the surface owner who is Craig Ranches. Craig Ranches does not want us to have a pipe line to connect the well and yet they don't want us to flare either. This is bizarre, because they own 117 acres of minerals and Paul Laubach's Trailneft Gaz Co., LLC actually participated in the well, yet they have done everything they can to block access to the land by the pipeline. Now they are opposing flaring. They signed an oil and gas lease and got paid a huge bonus. They have gotten surface damages and \$20,000 for hunting rights because some of the hunting rights might be interfered with. This argument that there is taking of property is absolutely ludicrous. If Craig Ranches does not like flaring then why won't they let DPC build a pipeline to connect the well. DPC filed for a Temporary Restraining Order in District Court in Dewey County to allow them to use their right-of-way to give them access to the well to build the pipeline to the wellhead. Craig Ranches hired a lawyer for district

court to oppose it. There have been two hearings. The August 29th hearing was held, and it has been continued again. It is set for September 27, 2011, so who knows how long it might be before the pipeline issue is settled.

3) Craig Ranches has also prevented all the other royalty owners from receiving their share of production and prevented the working interest owners from receiving their revenues after spending approximately \$6 million to drill and complete the well.

4) Rockford believes that flaring should be permitted because it is in compliance with the Commission rules. The Commission Staff has approved it. There is considerable safety equipment on-site. The well site is not in a town. The closest dwelling is 1.5 miles away. There might be the occasional cow but there's no evidence of any harm to any animal. F.A.S.T. is the safety company that Rockford hired in April when H₂S was noted by the operator. They have put up signs and flags.. They have a safety trailer for the benefit of the workers. Rockford also has in place a scrubber. The gas from the wellhead flows into the scrubber which actually absorbs the H₂S and reduces the H₂S down to 4 ppm. The ALJ has required this but Rockford has already done this and is certainly willing to continue doing it.

5) Rockford should have complied with getting a permit before July 1, 2011. Management of Rockford should have known better, but apparently the engineer in charge at Rockford did not know he was required to get a permit. He is no longer with the company. All of these arguments deal with what has happened in the past. They deal with an enforcement action. There is an enforcement action pending before the Commission presently, so those issues will be addressed in that proceeding.

6) Rockford's goal since the end of June has been to get into compliance with the flaring. They have provided the Pasquill-Gifford equation to show the radius of exposure. Exhibits O, P and Q are not refuted. Exhibit O shows that with a 150 ppm and 140 MCFPD the radius of exposure of 100 ppm is 9 feet. Even if you had a bigger volume you would still have a limited radius of exposure. The well site is 400 feet by 400 feet with the closest dwelling 1.5 miles away.

7) Only one drilling report in August has said that a truck driver had complained of irritated eyes but no one knows what caused that. There was also one time when the monitors went off. That's why they have the safety people out there to take care of those things. The Staff witness said they checked the monitors and each time he went out there it has never been more than 1 to 2 ppm.

8) The Pasquill-Gifford equation that Craig Ranches is complaining about is used by the Texas Railroad Commission, Oklahoma and several other states.

If Craig Ranches doesn't like the Pasquill-Gifford equation then they should start a rulemaking. The Pasquill-Gifford formula Craig Ranches says does not take into account wind. Rockford's expert said the more wind the better, because wind disperses the H₂S. Wind would make the radius of exposure even smaller and that's why the equation does not take into account the wind.

9) This is clearly not a public area but a rural area and Rockford has put multiple safety standards in effect.

10) If Craig Ranches thinks that other calculations should be used then they can start a rule making and they then can present the other rules that are in existence. At the hearing Craig Ranches' expert was asked what other methods did he have that would give a different number, and he did not have any testimony concerning such method. He proposed to study it for months.

11) The evidence was that the amount of gas that they flared amounts to about \$30,000. The proceeds they recovered for just the oil from the Craig Ranch #8-1H well is over \$1.5 million. That is a pretty good tradeoff for flaring the gas and by having on-going production they avoid further damage to the reservoir. The well has been shut in since last week and Rockford would like to have this emergency order in place so they can bring the well back on production.

12) The SO₂ issue is also a red herring. There is no evidence of even how much SO₂ there is or whether SO₂ is a problem, but it is not within the jurisdiction of the Commission. If it was anybody's jurisdiction it would be under Oklahoma Department of Environmental Quality ("ODEQ") jurisdiction. Craig Ranches needs to go there. If there's a problem with risk to workers then they are covered by Occupational Safety & Health Administration ("OSHA"). Craig Ranches can go to OSHA. The Commission has limited jurisdiction. There is nothing that gives them jurisdiction over SO₂. they don't need it as they are not in the air quality business. There is a whole other agency to do that.

13) Rockford believes the Report of the ALJ is supported by the evidence. The financial loss is unrefuted. This is not a hearing on the merits. There is no substantial reason to deviate from the existing Commission rules. Rockford is in compliance with those rules and they will abide by the recommendations of the ALJ to put out more flags, to report regularly to the Technical Staff of the Commission and to Paul Laubach/Craig Ranches concerning the H₂S reports. Rockford feels that the \$80,000 additional cost to bring the well back on and the possible damage to the wellbore is sufficient financial loss and the Oral Report should be affirmed with Rockford being allowed to flare at least 60 days.

OKLAHOMA CORPORATION COMMISSION

CONSERVATION DIVISION

- 1) **Susan Conrad**, Assistant General Counsel for the Conservation Division, appeared for the Oklahoma Corporation Commission and stated that Mr. Grimes stated that Exhibit A Form 1022, issued July 31, 2011 was without a hearing and two subsequent Forms 1022 were issued without hearings. The Commission Rule OCC-OAC 165:10-3-15(c)(1) states that the Conservation Division may administratively grant a permit to vent or flare on a daily basis gas volumes in excess of 50 MCFPD if the operator applies for the permit on Form 1022. OCC-OAC 165:10-3-15(d)(1) also provides that if the Conservation Division denies a Form 1022 application for a well, the operator of a well may apply for an order permitting venting or flaring of gas.
- 2) As Rockford noted, the Conservation Division has filed an enforcement action against Rockford for not obtaining a permit for the flaring of this well in EN 201100057.
- 3) The Commission Rule OCC-OAC 165:10-3-16 is designed to protect people from harm due to H₂S release from gas, not SO₂. Rockford noted DEQ regulates air quality and OSHA addresses workers' protection.
- 4) The Technical Services Department is not objecting to Rockford's application for an emergency order.

RESPONSE OF CRAIG RANCHES

- 1) Mr. Grimes stated that the Commission staff witness testified that he had zero experience with H₂S and he relies upon David Howard for recommendations. David Howard's experience is that he has gone to four one day seminars on an annual basis. In those one day seminars, 30 minutes is devoted to discussion of H₂S. It's the same discussion each year. It is not new. Effectively he's been given 30 minutes worth of training in H₂S. He said he's had to respond to several hundred circumstances involving H₂S, but his training is a high school diploma. He has no education beyond 30 minutes of training with H₂S. Compare that to Craig Ranches witness. Craig Ranches' Dr. Mitchell is a specialist in industrial hygiene, and has far more experience than the Commission's David Howard.

2) Do we have to wait until we have injuries and death as a result of this H₂S before anything is done? Exhibit U, Rockford's expert report, had another driver with eye irritation and shortness of breath. H₂S alarms were going off all day with 10 ppm to 28 ppm of H₂S. Dr. Marshall testified that these are the symptoms you first experience with H₂S. The Commission rules don't require any sort of study of H₂S's harm to humans, animals or the environment. Craig Ranches' expert does not agree that the DEQ would accept jurisdiction of this matter because this is not a refinery which is what they address. This is an individual well.

3) What we are supposed to do is to ignore Craig Ranches' expert in these circumstances about the Pasquill-Gifford formula and its deficiencies until there is a rule making, and then convince the Commission to do away with the Pasquill-Gifford formula.

CONCLUSIONS

The Referee finds the recommendation of the ALJ in her Oral Report to grant the Emergency Application should be affirmed.

1) The Referee finds the ALJ's determination to recommend the granting of Rockford's emergency application is supported by substantial evidence, free of reversible error and should be affirmed.

2) The ALJ is the trier of fact. It is the ALJ's duty as the trier of fact to observe the demeanor of the witnesses, assess their credibility and assign the appropriate weight to their opinions. *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okl. 1940).

3) The Referee notes that the Emergency Order sought by Rockford is an interlocutory order, not final, and subject to the determination to be made on the merits. As the Court stated in *DLB Energy Corporation v. Oklahoma Corporation Commission*, 805 P.2d 657 (Okl. 1991):

An interlocutory order is an order which is not "final". Whenever a tribunal's ruling does not culminate in a judgment, its decision is interlocutory. Interlocutory orders do not operate to preclude a party from proceeding further in the cause nor do the orders prevent judgment. The issuance of an interlocutory order leaves the parties in court to try the issues on the merits...(footnotes omitted)

The emergency application is a temporary order and will not prejudice the hearing on the merits. Rockford is willing to take the risk that the Commission may deny Rockford's application to continue to flare gas for the Craig Ranch #8-1H well.

4) The Referee notes that the ALJ as the trier of fact determined that a financial loss existed. It was the opinion of the ALJ that revenues lost due to formation damage and costs to return the well to production, approximately \$78000, was a financial loss established under the emergency application to justify the ruling.

5) Craig Ranches has expressed concerns concerning the flare and the harmful affects of H₂S/hydrogen sulfide. Craig Ranches filed Cause CD 201103789 on August 2, 2011 seeking to vacate Rockford's permit to flare gas at the Craig Ranch #8-1H well. Craig Ranches has contacted the manager of the Oil and Gas Division of the Corporation Commission and objected to the flaring of gas at the well. Craig Ranches has requested that no further extension of authority to flare be given. Also, on August 2, 2011 Craig Ranches in Cause CD 201103789 requested an application for an emergency order seeking to immediately revoke and terminate the authority given to Rockford to flare gas from the Craig Ranch #8-1H well. On September 6, 2011 Order No. 588834 issued from the Commission which dismissed CD 201103789. CD 201103789 was announced as dismissed at docket call by Craig Ranches as provided by OCC-OAC Rule 165.

6) The Craig Ranches' expert specialist in industrial hygiene, criticized the Commission rule requiring the Pasquill-Gifford equation used to determine the H₂S radius of exposure, noting that it is not as strict as other methods and doesn't take into consideration wind, terrain, or temperature. He testified that the equation doesn't show the H₂S concentration outside the radius of exposure. He explained the EPA has air pollution dispersion models to predict safe levels that would be preferred. He also indicated that Craig Ranches believed that the Commission rules do not insure protection of humans, environment and animals in the area. The Referee, however, agrees with the ALJ and believes this assertion is something that the hearing on the merits can address in accordance with the OCC-OAC Rule 165:10-3-16(b)(2) which states:

(2) For all operations subject to this Section, the radius of exposure shall be determined, except in the cases of storage tanks, by the following Pasquill-Gifford equations or by other methods approved by the Commission such as air dispersion models accepted or approved by the U.S. Environmental Protection agency.

Concerning the protection of humans, environment and animals in the area, these matters can be brought to the attention of ODEQ and OSHA.

7) Craig Ranches also asserted that the Commission's use of the Pasquill-Gifford equation does not indicate dispersion of SO₂ in the area. H₂S converts to SO₂, however SO₂ problems are not within the purview/jurisdiction of the Commission.

8) Rockford has hired the company of F.A.S.T., a H₂S safety services company from Dumas, Texas, to monitor the H₂S problem. Their expert testified that he used the Pasquill-Gifford formula and calculated a 9 foot radius of exposure, indicating that outside of the 9 foot radius, the H₂S would be less than 100 ppm and also would not affect a public area. The Rockford expert stated that considering the low concentration of H₂S and low gas flow, especially if a scrubber is installed, he would have no concerns. The Staff of the Commission's Technical Department agreed with his analysis and has no objection to the granting of this emergency application.

9) The Commission field staff has visited the site five times, four of which the well was not shut in. The H₂S air monitor readings were in the range of 1 to 2 ppm. The Commission Technical Department has no objection to the granting of this emergency application for a 60 day temporary period to flare.

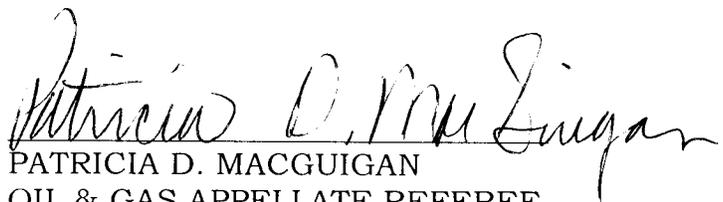
10) Lastly, the Referee would agree with the ALJ's further recommendation that Rockford meet with the Commission Technical Department and formulate a schedule for keeping the Technical Department informed regarding H₂S levels and production information. Further, the Referee agrees with the recommendation of the ALJ that any data provided by Rockford to the Commission Technical Department should also be furnished to Paul Laubach/Craig Ranches.

11) Where the ALJ had the opportunity to observe the witnesses and assess their demeanor and assign the weight to the Rockford expert opinion as prescribed in *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okla. 1951), and where the Commission Technical Department has no objection to this emergency application and agrees that Rockford has complied with Commission rules; upon review, the Referee can find no reason to vary the ALJ's determination.

12) The Referee also notes that the Craig Ranch #8-1H well initially was venting this gas without any authority from the Commission. The owner of Craig Ranches is a participant working interest owner in the well. He received reports of the H₂S production and initially realized that Rockford was venting gas in late March or early April. The landowner then inquired of Rockford if the H₂S should be flared. Rockford in early May began flaring. The flaring was done without approval of the Corporation Commission and Paul Laubach

lodged a complaint with the Commission. The well was thereafter shut in by the Commission's Technical Department. Rockford then met with the Technical Department and obtained an administratively approved Form 1022 allowing Rockford to vent 250 MCF from 7-1-11 for 30 days to 7-31-2011. This permit was extended by Exhibits B and C Forms 1022 administratively approving venting 250 MCF a day from 7-31-2011 to 8-20-2011 and Exhibit C allowing 250 MCF a day approved for five days from 8-20-2011 to 8-25-2011. Thereafter Rockford was advised that the Technical Department of the Commission would not administratively extend authorization to flare and that Rockford would have to seek an order, which Rockford is attempting to do in this proceeding. Any retribution or consequences concerning Rockford's noncompliance with Commission rules will be determined in the complaint against Rockford filed by the Commission in EN 201100057 which is currently pending before the Commission.

RESPECTFULLY SUBMITTED THIS 12th day of September, 2011.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Cloud
Commissioner Anthony
Jim Hamilton
ALJ Susan R. Osburn
J. Fred Gist
Richard A. Grimes
Susan Conrad
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