

PH  
4/1/11

**FILED**  
APR 01 2011

**BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA**

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**

<b><u>APPLICANT:</u></b>	<b>XTO ENERGY INC.</b>	)	
		)	
<b><u>RELIEF SOUGHT:</u></b>	<b>ESTABLISH A 640-ACRE DRILLING AND SPACING UNIT</b>	)	<b>CAUSE CD NO.</b>
		)	<b>201100650</b>
		)	
<b><u>LEGAL DESCRIPTION:</u></b>	<b>SECTION 3, TOWNSHIP 1 NORTH, RANGE 11 EAST, COAL COUNTY, OKLAHOMA</b>	)	
		)	
		)	

<b><u>APPLICANT:</u></b>	<b>XTO ENERGY INC.</b>	)	
		)	
<b><u>RELIEF SOUGHT:</u></b>	<b>WELL LOCATION EXCEPTION</b>	)	<b>CAUSE CD NO.</b>
		)	<b>201100651</b>
		)	
<b><u>LEGAL DESCRIPTION:</u></b>	<b>SECTION 3, TOWNSHIP 1 NORTH, RANGE 11 EAST, COAL COUNTY, OKLAHOMA</b>	)	
		)	
		)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON  
AN ORAL APPEAL OF APPLICATIONS FOR EMERGENCY ORDER**

These Applications for Emergency Orders came on for hearing before **Susan R. Osburn**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 22<sup>nd</sup> day of March, 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:** **Richard K. Books**, attorney, appeared for applicant, XTO Energy Inc. ("XTO"); **John C. Moricoli, Jr.**, attorney, appeared for SM Energy Company ("SM"); and **Jim Hamilton**, Deputy General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued her Oral Ruling on the Emergency applications 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 30<sup>th</sup>

day of March, 2011. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

**STATEMENT OF THE CASE**

SM appeals the decision of the ALJ on XTO's applications for emergency orders.

XTO filed its application on February 10, 2011 for an Order granting a location exception to the spacing pattern prescribed by: 1) Order No. 132149 issued July 5, 1977, which designated Section 3, T1N, R11E, Coal County, Oklahoma as a 640-acre drilling and spacing unit for the Hunton and Viola common sources of supply; and 2) the order to be issued in Cause CD 201100650 which XTO filed seeking a 640-acre drilling and spacing unit for the Caney, Mayes, Woodford and Sylvan common sources of supply for Section 3, T1N, R11E, Coal County, Oklahoma. XTO is requesting that it be allowed to locate its well as follows:

Surface location: 637 feet FNL and 710 feet FEL of Section 10, T1N, R11E, Coal County, Oklahoma.

Location of wellbore at entry into the producing common source of supply: No closer than zero feet FSL and no closer than zero feet FEL of Section 3, T1N, R11E, Coal County, Oklahoma.

Location of wellbore at first perforation: No closer than 165 feet FSL and no closer than 400 feet FEL of Section 3, T1N, R11E, Coal County, Oklahoma.

Location of wellbore at last perforation: No closer than 165 feet FNL and no closer than 400 feet FEL of Section 3, T1N, R11E, Coal County, Oklahoma.

Location of wellbore at exit from producing common source of supply and at bottomhole: No closer than 10 feet FNL and no closer than 330 feet FEL of Section 3, T1N, R11E, Coal County, Oklahoma.

XTO filed its spacing application for an order: 1) extending Order No. 551741 to include within its purview the Caney and Woodford common sources of supply underlying Section 3, T1N, R11E, Coal County, Oklahoma; and 2) establishing a 640-acre drilling and spacing unit for the Mayes and Sylvan common sources of supply underlying Section 3, T1N, R11E, Coal County, Oklahoma, by new spacing.

XTO states due to lease expiration, contractual commitments and rig availability, it is necessary for XTO to commence operations to drill said well prior to the date on which this cause is set for hearing.

XTO requests the Commission issue an Order authorizing XTO to drill a well at the location described above prior to a final determination in this cause.

**REPORT OF THE ADMINISTRATIVE LAW JUDGE**

**ALJ Susan Osburn** reported that she recommended granting the XTO emergency applications. There were two XTO reasons for the emergency applications. One was that XTO had approximately 66 acres going to expire on April 9, 2011 which represented about \$132,000 value to XTO. Protestant SM pointed out that XTO could have gotten a top lease or extended their leases. The testimony was on cross-examination by SM that the lessors were very sophisticated people and they would not extend these leases. The second basis for the emergency applications was rig availability. XTO has a rig that they have been using in the general area and they like the crew and the performance of the rig and they are moving that rig from Pittsburg County to this well in Coal County next. Then the rig will go to Marshall County. SM pointed out that XTO is an active company and that they could use this rig some place else besides in Section 3 of Coal County. The XTO witness stated that yes they could come back to Coal County but mobilization and moving the rig costs would run XTO about \$100,000 to 200,000 more if they had to move the rig around. If XTO uses the schedule they have now from Pittsburg County to the next county, Coal County, and not have to move the rig two counties away to Marshall County and then bring it back to Coal County, they will save money. Therefore XTO either has the loss of leases or the mobilization costs as their financial loss. SM argued that they had created their own emergency on the lease expiration as they could have moved sooner. The ALJ however felt that XTO had demonstrated there was a financial loss and therefore she granted the emergency applications.

**POSITIONS OF THE PARTIES**

**SM**

1) **John C. Moricoli, Jr.**, attorney, appearing on behalf of SM, stated normally the horizontal drilling of an Arkoma Woodford well would not be a problem, however, in this situation it is a problem. SM is going to oppose these applications because this area that we are talking about is different from most

of the other Woodford area. SM operates in Section 2 to the east at a legal location. This Section 2 well is probably the best Woodford well in Oklahoma. It's about three years old, started out making about 8 MMCFGPD, it is now making 3 MMCFGPD. There's no question in SM's mind that the placement of XTO's well in Section 3 is encroaching upon the common unit boundary between Sections 2 and 3 and will adversely impact Section 2. SM believes that XTO can drill their well at a legal location in Section 3.

2) Insofar as the leases are concerned, XTO should be obligated to make some attempt to renew or extend these leases as opposed to coming to the Commission requesting emergency relief prior to the entry of any final order in this matter.

3) As far as concerns the rig issue, XTO has put themselves in this position by their own decisions. The engineer for XTO stated that they would retain this rig. There is no ifs and or buts about it, the rig will be retained regardless of the consequences. XTO is under no obligation to keep the rig. They are under no obligation to pay standby time. Because they want to keep the rig they are going to extend the contract and place themselves in a position that if they don't have a location for the rig as it comes off the location it is on right now in Pittsburg County, they will have to pay standby time. That is their own decision. This does not rise to the level of the necessary financial type of factual situation that would authorize this type of emergency or extraordinary relief. They are putting themselves in that position and to the extent there is an emergency they have done this intentionally with full knowledge of the facts. This is no reason for the granting of the emergency application.

4) When XTO and SM tries these cases in a protested hearing in the middle of May the well will be almost completed and XTO will have spent several million dollars to drill it. Whoever hears this case is going to be looking at the fact that the well has been drilled and all this money has been spent. This will tip the scales regardless of what the evidence shows and because the well has been drilled they will be granted these applications. This will be extremely prejudicial to the owners in Section 2, regardless of what allowable you might set on the well, unless the allowable is so restrictive that it makes the venture uneconomic. The statement is always made in an emergency proceeding that the applicant drills the well at his peril and knows that it is subject to the final disposition of the case, but because the well has already been drilled these cases will not be denied. In this situation they never have been denied. Without the well already being drilled SM believes there is good probability that these applications will be denied, and the well would have to be drilled at a legal location. This is not the type of case that an emergency order ought to be entered authorizing the drilling of a well under the facts that we have before us. SM would therefore ask that the recommendations of the ALJ be reversed.

XTO

1) **Richard K. Books**, attorney, appearing on behalf of XTO, stated that this is exactly the type of case where an emergency order should be granted. XTO has shown two separate means of financial loss. XTO believes either one of those financial losses would warrant the granting of emergency applications routinely.

2) XTO owns 230 acres and SM owns 135 acres. Operations is not an issue in this case.

3) The first financial loss is lease expiration. The precise evidence was that there was 65.6 acres that will expire on April 9, 2011. The evidence reflected there are 15 separate leases comprising that 65.6 acres. There are fewer mineral owners than 15 but they own in several tracts and these are sophisticated people. Therefore, when they leased these acres they made XTO take separate leases on each of the separate tracts within the unit. This is a sophisticated family that leases here and throughout Oklahoma. The evidence was that XTO tried to lease another member of the family and they refused to lease to XTO altogether. The evidence was that the price XTO has paid for leases is \$2,000 an acre when they can get it leased. The financial loss at the face value of the leases is \$130,000 and it's a sizable interest. It is 10% of the unit. It is almost half of the total interest owned by SM. SM owns 20% of the unit. This therefore is a significant financial loss.

4) The other financial loss is the rig. The evidence was that this is just not just any rig. This is a 1500 horsepower rig, a big rig. It has a top drive which is special; it has two very large pumps that are not on every rig; and it is a new rig with a new configuration which allows it to better and more quickly drill these horizontal wells. XTO has had it under contract for three years. It is an experienced crew. If we let this rig go, getting another rig capable of drilling these kinds of horizontal wells isn't an equal replacement. The evidence also reflected that this rig's standby cost is \$22,500 per day.

5) XTO now has four rigs in Pittsburg County including this one, and they are running out of places to drill in Pittsburg County. XTO is moving two of those rigs out of Pittsburg County including this one, the Cactus #1-36, because they have no place else to go in Pittsburg County. They are moving this rig from Pittsburg County to Marshall County. In between Pittsburg County and Marshall County is Coal County, this prospect. The evidence further reflected that the only place XTO has in Coal County is this one well in Section 3. If they don't do this well in Section 3 on the way from Pittsburg County to Marshall County, they then would have to take this rig back from Marshall County to Coal County for one well, and then take it back again to

Marshall County. If we don't go to Coal County on the way from Pittsburg County to Marshall County then XTO will have to pay an increase in costs for mobilization between \$100,000 and \$200,000. This is additional financial loss. It would thus be a financially economical thing to try to get this well drilled in Coal County before it has to go to Marshall County.

6) Thus, XTO has expiring leases and if we don't use this rig on the way to Marshall County it will cost us between \$100,000 and \$200,000 to come back for one well. XTO also has the \$22,500 day standby rate. However one looks at this situation, there are two kinds of financial loss.

7) If XTO only had a lease expiration problem, an emergency order would be warranted. If we only had the \$100,000 or \$200,000 mobilization fee, that would require an emergency order.

8) The XTO witnesses understood that XTO was doing this at their own risk and XTO was subject to the final outcome of the protested case.

9) The reason that this well is a problem for SM in the present situation is that SM has a really good well in the offset unit Section 2. This issue however is for the merit hearing, i.e. whether XTO should be entitled to this location or whether it should be at a legal location.

10) SM has argued that XTO has not attempted to extend their leases. The evidence showed why. However, even if XTO was able to obtain extensions, there would be a financial loss with 15 leases involved. What if we only obtained half of those lease extensions? Then XTO would be out the money for the extensions and an emergency order would still be needed because of the remaining leases that were not able to be extended. Here there are 15 leases that need to be extended, all from this sophisticated family. XTO's actions therefore are prudent.

11) There is absolutely no evidence that XTO manufactured this emergency. The leases are going to expire and the movements of the rig from Pittsburg County to Marshall County and then back to Coal County resulting in \$100,000 to \$200,000 mobilization fee is not manufactured. XTO understands that it is drilling at its own risk just like every other protested emergency. XTO's attorney does not recall a single protested emergency matter that has ever been reversed on that basis. XTO is using this emergency procedure to avoid financial loss and is willing to take the risk that the Commission may deny the proposed location. An emergency application could be granted to XTO on either the rig issue or the lease expiration issue and therefore XTO respectfully requests that the ALJ be affirmed.

12) The evidence also reflected and SM and XTO agree that the emergency applications requested by XTO would only allow XTO to commence operations

to drill this well, not to test, complete or produce the proposed well prior to the date on which these causes are set for protested hearing.

## **CONCLUSIONS**

**The Referee finds that the Oral Report of the Administrative Law Judge should be affirmed.**

- 1) The Referee finds the ALJ's determination to recommend the granting of the emergency applications based on her finding of a substantial financial loss to be supported by the weight of the evidence and free of reversible error.
- 2) The ALJ is the initial finder of fact and had the opportunity to observe the witnesses and assess their demeanor, assess their credibility, and assign the appropriate weight to their opinions. *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okla. 1940).
- 3) As the Supreme Court stated in *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okla. 1951):

Under the holding of this Court and that of courts generally, *Chicago, R.I. & P. Ry. Co. v. Pruitt*, 67 Okla. 219, 170 P. 1143; 22 C.J. 728, sec. 823, 32 C.J.S., Evidence, §567, p. 378, the weight to be given opinion evidence is, within the bounds of reason, entirely for the determination of the jury or of the court, when trying an issue of fact, it taking into consideration the intelligence and experience of the witness and the degree of attention he gave to the matter. The rule should have peculiar force herein where by the terms of the Act the Commission is recognized as having peculiar power in weighing the evidence.

- 4) The ALJ as the trier of fact determined that two financial losses would occur if the emergency orders weren't granted. Either one of these financial losses would warrant the granting of emergency applications.
- 5) The first financial loss is lease expiration. There are 65.6 acres that will expire on April 9, 2011. The lessors are a sophisticated family that leases here and throughout Oklahoma. The evidence was that there were 15 separate leases comprising this 65.6 acres. It was unlikely that this sophisticated family would extend these leases as asserted by SM. XTO's evidence was that even if XTO was able to obtain extensions there would be a financial loss as most likely not all of the leases could be extended. Thus XTO would be out the

money for the extensions, but an emergency order would still be needed because of the remaining leases that were not able to be extended. The Referee agrees with XTO's contention that XTO's actions in this lease expiration situation were prudent.

6) The second financial loss concerns rig availability. The evidence presented by XTO was that there were 4 rigs in Pittsburg County, including the Cactus #1-36 rig which XTO wants to use for the present drilling of this well in Section 3. The evidence was that the Cactus #1-36 well is an unusual rig. It is a 1500 horse power rig (a large rig); has a top drive which is special; has two very large pumps that are not on every rig; and it is a new rig with a new configuration which allows it to better and more quickly drill these horizontal wells.

7) XTO now has four rigs in Pittsburg County, including the Cactus #1-36 rig, and they are running out of places to drill in Pittsburg County. XTO is moving two of these rigs out of Pittsburg County including the Cactus #1-36 because they have no place else to go in Pittsburg County. XTO wants to move the Cactus #1-36 rig from Pittsburg County to Coal County which is on the way from Pittsburg County to Marshall County where they plan to take the rig after they drill the present well. The only place XTO has in Coal County is the proposed well in Section 3. If XTO does not take this rig to Section 3 on the way from Pittsburg County to Marshall County then they would have to take this rig back from Marshall County to Coal County for one well and then take it back again to Marshall County. This would result in XTO paying an increase in cost for mobilization between \$100,000 and \$200,000. XTO also has a \$22,500 day standby rate if they do not use this well.

8) Thus, XTO has two situations presenting significant financial loss. Under either situation the Referee believes emergency orders would be warranted. The ALJ considered the same factors which were argued by the parties on appeal when she made her decision after her opportunity to observe the witnesses and determine their demeanor. The Referee can find no reason to vary that determination.

9) The Referee notes that while the XTO proposed well will be allowed to be drilled under the emergency applications, the orders to issue under the emergency applications are temporary orders and the granting of authority and the well's allowable are still subject to the merit hearing. XTO takes the risk that the applications may be denied or the allowable restricted on the proposed well if there is evidence showing the proposed well could occasion waste or cause a violation of correlative rights of the owners within the common source of supply.

10) Under the above listed circumstances, the Referee can find no reason to vary the recommendation of the ALJ and the ALJ should be affirmed.

**RESPECTFULLY SUBMITTED THIS 1<sup>st</sup> day of April, 2011.**

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy  
Commissioner Cloud  
Commissioner Anthony  
Jim Hamilton  
ALJ Susan R. Osburn  
Richard K. Books  
John C. Moricoli, Jr.  
Office of General Counsel  
Michael L. Decker, OAP Director  
Oil Law Records  
Court Clerks – 1  
Commission Files