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

**FILED**

JAN 14 2011

COURT CLERK'S OFFICE — OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

<b><u>APPLICANT:</u></b>	<b>HUSKY VENTURES, INC.</b>	)	
		)	
<b><u>RELIEF SOUGHT:</u></b>	<b>HORIZONTAL WELL</b>	)	<b>CAUSE CD NO.</b>
	<b>DRILLING AND SPACING</b>	)	<b>201004032</b>
	<b>UNITS</b>	)	
		)	
<b><u>LAND COVERED:</u></b>	<b>SW/4 OF SECTION 18 AND</b>	)	
	<b>N/2 NW/4 OF SECTION 19,</b>	)	
	<b>TOWNSHIP 16 NORTH, RANGE</b>	)	
	<b>4 WEST, LOGAN COUNTY,</b>	)	
	<b>OKLAHOMA</b>	)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON  
AN ORAL EXCEPTION OF A MOTION TO REOPEN**

This Motion came on for hearing before **Michael Decker**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 8<sup>th</sup> day of November, 2010, 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:** **Karl F. Hirsch**, attorney, appeared for applicant, Husky Ventures, Inc. ("Husky"); **Richard A. Grimes**, attorney, appeared for movant, Payne Exploration Company ("Payne"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling on the Motion to Dismiss 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 29<sup>th</sup> day of November, 2010. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

**STATEMENT OF THE CASE**

**HUSKY APPEALS** the ALJ's recommendation to grant the Payne Motion to Reopen record in this cause for the purpose of setting the cause for hearing on a protested hearing docket for the taking of additional evidence. This cause was heard and recommended by an ALJ as an uncontested application on October 12, 2010. Payne was not provided notice of that uncontested hearing and was unaware of said hearing.

Payne owns oil and gas leasehold interests in Section 19, T16N, R4W, Logan County, Oklahoma including ownership in the S/2 NW/4 and the SW/4 of said section. Payne intends to develop the common source of supply, the Hunton, described in Husky's application on the basis of horizontal units. Payne believes an irregular unit recommended in this cause was created based upon ownership and will result in waste by the drilling of too short a lateral.

Payne learned of Husky's application on October 25, 2010 and did not have the opportunity to participate in the uncontested hearing which preceded the recommendation by the ALJ. Payne requests the record in this cause be reopened for further hearing and additional evidence which was not presented to the ALJ. The evidence will address the appropriate size and shape of a horizontal unit design for the purpose of avoiding waste. No order has entered in this cause.

**THE ALJ FOUND:**

(1) It was the position of Payne that the spacing application presented by Husky on October 12, 2010 as an uncontested matter to the ALJ should be reopened. This is a spacing application on a horizontal basis for a 240-acre tract. It was recommended in the context of the motion that the cause be reopened because Payne had a parallel spacing that had been recently filed and was proposing that the Hunton formation be spaced on 320s instead of the 240 acre size.

(2) The crux of the dispute from a spacing standpoint appears to be the length of the lateral that would be utilized to drill the Hunton formation. Husky is planning a 240 acre spacing unit which would result in a lateral that is 3,848 feet. Payne proposes a 320 acre spacing unit which would allow for the drilling of a longer lateral of 4,000 feet to test the Hunton formation.

(3) Payne also stated that there was a title opinion obtained that covered the 80 acre tract which was the N/2 NW/4 of Section 19 which was a portion of the proposed 240 acre unit which indicated there was an interest that was owned by Willis Drilling Company which is a subsidiary of Unit Drilling instead

of the company known as D.I. Energy. This interest covers 53 acres in the 80 acre tract. Thus, Payne argued that this was a failure of notice because the spacing application had been presented to the ALJ on an uncontested basis and the notice reflected was to D.I. Energy not Unit. It was the claim of Payne that the updated title opinion showed that D.I. Energy was not the owner of the interest. This would be a valid reason to reopen the cause so that there was proper notice to a major mineral owner in the vicinity of this proposed spacing unit. Husky objected to the reopening on the basis that the information that Husky had at the time of the hearing was as shown and testified to and it would be improper for the claim of lack of notice to be presented by Payne since they were not the party that was affected.

(4) The ALJ made his recommendation for the cause to be reopened because of the potential for dispute about the size of the spacing for the Hunton. Also there was an issue about the notice where a substantial piece of the acreage would be affected. Since this was an uncontested application and the order had not been submitted, it would be best if the cause be reopened so that consideration could be given as to whether the spacing should be 320 acres or 240 acres for the Hunton.

## **POSITIONS OF THE PARTIES**

### **HUSKY**

1) **Karl F. Hirsch**, attorney, appearing on behalf of Husky, stated Husky objects to the reopening. Husky stresses three points. First, the arguments given before the ALJ were all arguments of counsel without evidence presented. Husky argues that since no evidence was presented, those arguments shouldn't be considered as evidence and shouldn't be permitted to promote the filing of the Motion to Reopen.

2) Second, Payne has never stated that Payne was entitled to notice of this application. Further, Payne was not surprised and is simply unhappy with the result that was pled in the application. It wasn't until later that Payne came back. Husky argues that a party should not be permitted to have an opportunity to reopen in order to present evidence of what they think should be different.

3) Third, the problem with the notice is an issue with a third party and Payne can't bring that issue before the Commission. Husky argues that the constitutional rights of one can't be argued by another. Husky states if notice was improper to a third party and a spacing order is issued, only the third

party has the right to complain. Both Husky and Payne agreed to withhold an order as long as there would be a one week continuance on the hearing of the motion. Further, Husky had no knowledge of the notice issue and the withholding of the order had nothing to do with the notice issue. Husky believes the ALJ shouldn't have granted or recommended reopening because new evidence was presented to him concerning notice, and Payne missed their opportunity to present their conflicting evidence. Husky argues that notice to a third party cannot be raised by Payne in this case.

**PAYNE**

1) **Richard A. Grimes**, attorney, appeared on behalf of Payne, stated there was a misrepresentation to the original ALJ because the geologist for Husky said they could drill a 4,000 foot well. Mr. Grimes argues that Husky cannot drill a 4,000 foot lateral and still be within the 330 feet recommended. Payne states Payne's lateral is over 400 feet longer. A lateral can be drilled longer in a 320 acre unit. Payne argues that the longer the lateral, the more oil and gas can be produced and conversely, the less waste of oil and gas.

2) Payne points out there was incorrect evidence presented about the length of Husky's proposed lateral. Husky is suggesting it could be 4,000 feet and it couldn't be. Further, there was no opportunity for Payne to present evidence about whether 320 acre unit would be more appropriate than the 240 acre unit. Payne states they weren't given notice about this application and learned of it when Payne was getting ready to file their own spacing application and found the spacing plat showed the Husky application had been filed. Therefore, they were not "late in the game" as Husky argues. Further, when Payne filed the Motion to Reopen there was no order. Payne argues that it will be up to the ALJ who hears the case on the merits which is better, a shorter lateral, or a longer lateral. Payne states it will put on evidence to show there is a company that owns 53 mineral acres in the N/2 NW/4 of Section 19 to which there was no notice given.

3) Payne points out that the Supreme Court has held a party attacking a final order cannot come in after the fact and present as a reason for vacating a final order lack of notice to a third party. Payne states this situation is distinguishable from the case at bar because there is no final order in this instance. Therefore, the Commission should not ignore an allegation that 53 acres of minerals were left out.

**RESPONSE OF HUSKY**

1) Husky argues that Payne had never received actual notice because they did not own in the area of the application and are not in the area that was spaced.

### **CONCLUSIONS**

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

1) The Referee finds the ALJ's recommendation to grant the Motion to Reopen to be supported by the facts and circumstances adduced before the ALJ and free of any abuse of discretion. The Referee, upon review, can find no reason to vary that determination. The Referee also notes that the granting of a Motion to Reopen is discretionary on the part of the Commission. The Commission rule on reopening states at OCC-OAC 165:5-13-3(p):

(p) **Reopening the record.** Any person may file and serve, by regular mail, on all parties of record a motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for purpose of examining its jurisdiction....

2) The Referee finds that the Commission's mandate is to prevent waste and protect correlative rights under the Conservation laws. 52 O.S. Section 87.1. As stated in *Winter v. Corporation Commission of Oklahoma*, 660 P.2d 145 (Okl. 1983):

...Having been given a choice of remedies, it is incumbent upon the Commission to use the remedy which will best prevent waste and protect correlative rights...

Allowing the record to be reopened for additional testimony concerning the appropriate size of the unit designed for the purpose of avoiding waste will follow and adhere to the above stated mandate.

3) Payne is proposing a spacing unit for the Hunton formation on a 320 acre basis instead of the 240 acre unit proposed by Husky. The dispute from a spacing standpoint appears to be the length of the lateral that would be utilized to drill the Hunton formation. The Husky's 240 acre spacing unit would result in a lateral being 3,848 feet instead of the 4,000 foot lateral proposed by Payne. There was also an issue about the notice which was brought forth by Payne that there is a substantial piece of acreage where present owners may not have received notice of Husky's spacing application and hearing. Since this was an uncontested application and the order has not issued, the above stated Commission rule on reopening (OCC-OAC 165:5-13-3(p)) would allow the record to be reopened "for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of examining its jurisdiction." Thus the ALJ's recommendation to grant the Motion to Reopen should be affirmed.

**RESPECTFULLY SUBMITTED THIS 14<sup>th</sup> day of January, 2011.**

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy  
Commissioner Cloud  
Commissioner Anthony  
Jim Hamilton  
ALJ Michael L. Decker/OAP Director  
Karl F. Hirsch  
Richard A. Grimes  
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