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CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT:	**SM ENERGY COMPANY**	)	
		)	
RELIEF SOUGHT:	**INCREASED DENSITY**	)	**CAUSE CD NO.**
		)	**201105051-T**
		)	
LEGAL DESCRIPTION:	**ALL OF SECTION 34. TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	)	

APPLICANT:	**SM ENERGY COMPANY**	)	
		)	
RELIEF SOUGHT:	**SEPARATE ALLOWABLE NEWELL 1-34H WELL**	)	**CAUSE CD NO.**
		)	**201105052-T**
		)	
LEGAL DESCRIPTION:	**ALL OF SECTION 34. TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	)	

APPLICANT:	**SM ENERGY COMPANY**	)	
		)	
RELIEF SOUGHT:	**EXCEPTION OR VARIANCE TO OCCGR 165:10-3-28(c)(2)(B) FOR THE NEWELL 1-34H WELL**	)	**CAUSE CD NO.**
		)	**201105054-T**
		)	
LEGAL DESCRIPTION:	**ALL OF SECTION 34. TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	)	

APPLICANT:	**SM ENERGY COMPANY**	)
RELIEF SOUGHT:	**LOCATION EXCEPTION**	)
		) **CAUSE CD NO. 201105358-T**
LEGAL DESCRIPTION:		)
SURFACE LOCATION:	**ALL OF SECTION 27, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	)
BOTTOM HOLE LOCATION:	**ALL OF SECTION 34, TOWNSHIP 11 NORTH, RANGE 26 WEST, BECKHAM COUNTY, OKLAHOMA**	)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **Kathleen M. McKeown**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 15th day of December, 2011, at 8:30 a.m. in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **John C. Moricoli, Jr.** attorney, appeared on behalf of applicant, SM Energy Company ("SM"); **Charles L. Helm**, attorney, appeared on behalf of JMA Energy Company, LLC ("JMA"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 13th day of January, 2012, to which Exceptions were timely filed 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 27th day of February, 2012. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

JMA APPEALS the ALJ's recommendation that all of the SM applications should be granted. SM seeks to drill a 4th horizontal well (Newell #1-34H) for the Des Moines formation as it underlies the captioned lands. SM currently operates the two existing horizontal Des Moines wells in the unit (Sage #1-34H and Norma #1-34H) as well as the vertical Birdie #1-34 well completed in the Atoka and the Des Moines. In addition, SM is drilling the Elec #1-34H as a horizontal Des Moines well in the W/2 E/2 of Section 34, T11N, R25W, Beckham County. SM has primarily targeted the Marmaton "B" member of the Des Moines interval in the existing/drilling unit wells and, due to the limited drainage area encountered in the Marmaton "B", has determined that the only economic way to recover all of the reserves underlying the unit is by drilling four horizontal wells with separate gas allowables or sharing an increased unit allowable that protects the correlative rights of all parties entitled to production. An exception to the Commission rules regulating the proximity of the lateral portion of the Newell #1-34H to the Birdie #1-34 is also requested.

JMA controls an interest of less than 10% in the unit and has participated in the existing Des Moines wells drilled by SM. JMA is concerned that the proposed Newell #1-34H may not find sufficient Marmaton reserves to be economic. JMA advocates (at the very least) delaying the drilling of the Newell #1-34H until the Elec #1-34H has been completed, put on production for several months and the well information sufficiently reviewed and evaluated to see if the drilling of the Newell #1-34H is justified.

JMA TAKES THE POSITION:

(1) The Report of the Administrative Law Judge ("ALJ") is both contrary to the law and contrary to the evidence.

(2) The ALJ erred in the Recommendations paragraph on Page 3 of the Report stating "SM put on sufficient evidence and testimony that the Marmaton contains several productive members in the Des Moines common source of supply to warrant additional drilling on a horizontal basis to recover the reserves underlying the subject unit".

(3) The ALJ erred in the Recommendations paragraph on Page 3 of the Report stating "No controverting evidence as to the total reserve underlying the unit or the productive capabilities of the existing wells was presented by JMA".

(4) The ALJ erred in granting a new increased density request before a well has been drilled and completed under an existing increased density order. The Elec #1-34H well is drilling pursuant to an existing density order and is targeted for the same Marmaton "B" reservoir as the proposed new density well sought herein. Two horizontal wells have been drilled and completed in Section 34 in the Marmaton "B" reservoir. The first density well (Sage #1-34H) was successfully drilled and completed, and the second density well (Norma #1-34H) was drilled and completed with problems which limits its productivity. The Elec #1-34H well is currently drilling and it will soon be known whether this well can be successfully drilled and completed like the Sage #1-34H well, or unsuccessfully drilled and completed like the Norma #1-34H.

(5) The ALJ erred in failing to consider economic waste in arriving at the Conclusions and Recommendations. The cost to drill and complete a Marmaton "B" horizontal well is in excess of $8 million.

(6) The ALJ erred in failing to consider or discuss the absence of a change of conditions since increased density was previously authorized in the unit.

(7) The ALJ erred in failing to consider or discuss the variance in the Marmaton "B" reservoir across Section 34, T11N, R26W, Beckham County, Oklahoma.

(8) Wherefore, protestant JMA respectfully requests that the Report of the ALJ be reversed and that the Commission deny the applications of SM, or in the alternative, require the density relief be stayed until the present density well (Elec #1-34H) completes its current drilling operation and it can be determined whether the well can be successfully completed as an economic producer.

THE ALJ FOUND:

(1) All of the SM applications should be granted. SM put on sufficient evidence and testimony that the Marmaton contains several productive members in the Des Moines common source of supply to warrant additional drilling on a horizontal basis to recover the reserves underlying the subject unit. No controverting evidence as to the total reserve recovery underlying the unit or the production capabilities of the existing wells was presented by JMA. Rather, the JMA witness questioned the economics of the Newell #1-34H well based on the need for more reservoir information before JMA should be forced to decide whether or not to participate in this well. While it is apparent that

SM considers the Newell #1-34H a venture that should be pursued, JMA has always has the option to not participate in the subject well.

(2) SM presented substantial evidence that the Newell #1-34H should be drilled at the proposed location and given an exception to the wellbore spacing requirements as well as a separate allowable. SM is the operator of the existing unit wells and committed to development of the Marmaton "B" as it underlies the subject unit. Des Moines development has not occurred in the E/2 of the unit nor has it taken place in the immediate offsets east and northeast of Section 34. In that sense, the Newell #1-34H is a step out to the east and could spur additional drilling if successful. While all drilling is risky, SM has mapped the reservoir, reviewed well logs, calculated reserves and concluded that the Newell 1-34H is necessary to allow recovery of oil and gas underlying the unit. Granting the applications is the only way to ultimately protect the correlative rights of the unit owners and prevent waste.

(3) The concerns of JMA did not persuade the ALJ to deny the applications. JMA owns a small interest in the unit and, while a participant in the existing wells, is not an experienced operator in this area as it relates to horizontal Des Moines wells. While delaying the drilling of the Newell #1-34H for several months may allow more reservoir data to be collected from the Elec #1-3411, the data SM owns and implements daily as the operator of the unit wells and the driller of the Elec #1-34H, has already impacted the decision by SM to file these applications and pursue the drilling of an additional horizontal Marmaton "B" well in the unit. JMA must make its own decision whether or not to participate in the Newell #1-34H but such decision should not delay further development in this unit.

(4) Thus, in light of the aforementioned conclusions, it is the recommendation of the ALJ that the applications of SM in CD 201105051-T, CD 201105052-T, CD 201105054-T and CD 201105358-T be granted.

POSITIONS OF THE PARTIES

JMA

1) **Charles Helm**, attorney, appeared on behalf of JMA, the Appellant. JMA appeals the ALJ's Report concerning CD No. 201105051-T (increased density), CD No. 201105052-T (separate allowable), CD No. 201105054-T (exception or variance to OCC-OAC 165:10-3-28(c)(2)(B)), and CD No. 201105358-T (location exception).

2) JMA prays that the Appellate Referee find that it is not proper at the time to grant the Application of SM for increased density at this time for the

Des Moines common source of supply in Section 34, 11N, 26W, Beckham County, Oklahoma.

3) JMA notes the four cases (*i.e.*, increased density, separate allowable, exception or variance to OCC-OAC 165:10-3-28(c)(2)(B) and location exception) involved in this matter, deal with the proposed increased density Newell #1-34H well in the E/2 E/2 of Section 34.

4) JMA requests that its written exceptions be incorporated into its oral arguments.

5) JMA discusses Exhibit 2, SM production map which displays the Newell #1-34H well. JMA states that the zone of interest in this matter is the Des Moines, which is spaced as a 640-acre drilling and spacing unit in Section 34.

6) JMA asserts that historically the area was drilled with vertical wells at a deeper horizon (the Atoka). JMA contends that SM drilled the Birdie #1-34 (completed in 2005) in the SE/4 of Section 34, which comingled the Atoka and the Des Moines.

7) JMA asserts that there are three horizontal wells drilled in Section 34, the Sage #1-34H, the Norma #1-34H, and the Elec #1-34H. JMA notes that the Elec #1-34H is absent from the exhibits.

8) JMA contends that the Application for Increased Density in the present proceeding was filed on September 30, 2011 before the Elec #1-34H commenced drilling under a prior increased density. JMA asserts, therefore, that at the time this new density was filed in CD No. 201105051-T there was still an unused density for the Des Moines for a proposed horizontal well in Section 34.

9) JMA states that it is a working interest owner in Section 34 of approximately 10%, and that it has participated in the development of various wells. JMA states that it is a participant in the Sage #1-34H, the Norma #1-34H, and the Elec #1-34H. JMA asserts that it costs $8 million to drill and complete a horizontal well in the Des Moines in Section 34. JMA contends that the Des Moines is predominately a gas reservoir.

10) JMA asserts that because of the current low price of natural gas, it is necessary for JMA to know the capability of production of the Newell #1-34H for cost-benefit analysis. JMA asserts that the development history of Section 34 has been erratic, and it is therefore important to know the outcome of the Elec #1-34H well before this application for Increased Density is approved.

11) SM's Exhibit 6 shows the ultimate recovery of the Sage #1-34H will be 3.99 BCF. JMA asserts that the Norma #1-34H did not have comparable

favorable results. JMA contends that the anticipated ultimate recovery of the Norma #1-34H is 1.6 to 1.8 BCF. JMA asserts that the allowable, the calculated open flow, and the rate of the Norma #1-34H is half of that of the Sage #1-34H. JMA contends that the Norma #1-34H has fallen off dramatically since initial production. JMA asserts that the Norma #1-34H will not reach pay-out. JMA contends that there was unrefuted testimony supporting this notion at hearing. JMA asserts that the minimum ultimate recovery to reach pay-out is 2.8 BCF.

12) JMA contends that the Elec #1-34H well is currently engaged in drilling. JMA asserts that SM argues that the Elec #1-34H well will have an ultimate recovery of 3.16 BCF. JMA contends that the ultimate recovery of the Elec #1-34H well cannot be determined until the well is completed. JMA asserts that this is because of the disparity between the prior two horizontal wells drilled in the section (*e.g.*, the Sage #1-34H and the Norma #1-34H).

13) JMA asserts the witness for SM, Mr. Buck Walsh, stated at the hearing that a separate allowable was necessary due to the expense of operations. JMA contends the witness for SM, Mr. Buck Walsh, stated at the hearing that the Norma #1-34H was not a good completion or that there were issues with the fracing process in that well. JMA contends that internally SM believed that the Norma #1-34H encountered bad fracing stimulation early and that SM has revised the completion protocol because of this for the Elec #1-34H.

14) JMA states that it is protesting because it is necessary to have the results from the Elec #1-34H well before an additional well is drilled. JMA asserts that the engineering witness for SM, Mr. Buck Walsh, stated that it is impossible to determine the results for a Des Moines well until completion.

15) JMA contends that the Elec #1-34H will be the first well drilled under the new protocol derived from the Norma #1-34H. JMA requests that increased density be postponed until the results of the Elec #1-34H well (drilled under the new protocol) are known.

16) JMA asserts that in an increased density hearing, a change in condition must be shown by the applicant.

17) JMA contends that the commission is prohibited from authorizing development that results in economic waste.

18) JMA asserts that the ALJ based her decision on a showing of large amount of recoverable gas via traditional volumetric analysis.

19) JMA contends that the ALJ misunderstood the evidence, thinking that SM would be drilling a horizontal well for all of the six Marmaton components,

"A", "B", "C", "D", "E" and "F". JMA asserts that the "B" Marmaton component is the only horizontally drilled component in the Sage #1-34H well. the Norma #1-34H well, the Elec #1-34H well, and the proposed Newell #1-34H well. JMA contends SM admitted to this.

20) JMA contends SM was granted increased density to drill the Sage #1-34H well and the Norma #1-34H well under Order No. 572092, and a second increased density Order No. 578476 to drill the horizontal Elec #1-34H well.

21) JMA asserts that between the first and second application for increased density, SM's estimate of gas underlying Section 34 fell from 111.7 BCF to 67 BCF, based on the same geologic data. JMA contends that in the present matter, SM's estimates of the underlying gas is 19.5 BCF.

22) SM's explanation was that in the present case they only produced volumetrics on the Marmaton "B" component, whereas SM had computed volumetrics on all six components of the Marmaton in the previous increased density applications.

23) JMA asserts that the ALJ only considered the amount of gas underlying the section and did not consider prior results of wells or drilling economics.

24) JMA contends that SM did not note its prior increased density applications prior to drilling its first horizontal well in the section.

25) JMA asserts that SM is seeking an increased density exception as a fall-back, just as in the prior applications for Section 34. JMA contends that the differences between the estimates of the gas reservoir underlying Section 34 evidence the impropriety of relying upon some of this SM volumetric data to grant the increased density exception.

26) JMA asserts the reasonableness of JMA's request that the approval of the present increased density be delayed until the results of the Elec #1-34H are known. JMA requests that the matter be remanded to the ALJ to determine the status of drilling for the Elec #1-34H.

27) JMA notes that its 10% interest in an $8 million well is a large interest for a small, privately held company. JMA contends that the ALJ implied that a small working interest owner should not receive the same attention as a large interest holder.

SM

1) **John C. Moricoli, Jr.**, attorney, appeared on behalf of SM, the Applicant and asserts the propriety of the ALJ's ruling.

2) SM contends that JMA exchanged no exhibits prior to the hearing and that JMA presented one witness, Mr. Davis, at the hearing. SM asserts that Mr. Davis' testimony was sparse and related only to the economics of drilling in the area. SM asserts that drilling economics are not a consideration in the Commission's charge to prevent waste. SM contends that an argument that the Commission should consider drilling economics has been rejected in the past. SM asserts that drilling economics are a private consideration which influence the decision to participate in a well, rather than a consideration for the Commission.

3) SM contends that the proper definition of economic waste is a determination whether an additional well is necessary to efficiently produce the oil and gas in place. SM asserts that the proper determination for economic waste is whether the existing well can effectively and efficient produce the spaced reserves. SM reasserts that the Commission is an inappropriate forum to debate business decisions.

4) SM contends that the "B" interval of the Marmaton, an interval of 1,800 to 1,900 feet with high porosity, is the interval being drilled by SM. SM asserts that multiple laterals cannot be drilled when drilling horizontally, therefore the geologic data support drilling the "B" interval as SM has done. SM asserts that the exhibits support the presence of 19.5 BCF of RGIP in the "B" interval of the Marmaton.

5) SM contends that proper engineering methodology supported the determination that the Elec #1-34H would have an ultimate recovery of 3.16 BCF.

6) SM asserts that the data from the Sage #1-34H and the Norma #1-34H show that there will be significant remaining reserves, even after the drilling of the Elec #1-34H.

7) SM contends that, under contract, JMA has the right to choose whether to participate in an additional well, therefore JMA's rights will not be adversely affected by the permitting of an additional well.

8) SM asserts that uncertainties are universal in the oil and gas industries, rather than specific to the Marmaton "B" Des Moines as JMA implies.

9) SM contends that the engineering data show that 10.5 BCF will remain unrecovered in the Marmaton "B" interval of the Des Moines after the drilling of the Elec #1-34H. SM asserts that it is economically prudent to pursue these reserves.

10) SM contends that Mr. Davis, a witness for JMA, neglected to include the significant liquids contained in the Marmaton "B" interval in his testimony, relying solely on the gas-in-place and the low level of gas prices. Oil at $100 a barrel affects the economics in a meaningful way. SM asserts that the production reports showed a substantial amount of condensate and oil to be produced over the productive lives of the wells in the section.

11) SM contends that the unrebutted geologic data (the reservoir, the initial amount of gas recoverable, the 10.5 BCFG remaining after ultimate recovery of the existing wells, etc.) support the need for the proposed additional Newell #1-34H well.

12) SM asserts that drilling economics of the proposed well is beyond the scope of proper considerations of the Commission. SM also asserts the volatility of drilling economics, which are influenced by the price of gas. SM asserts that actual waste of oil and gas would be remedied by the drilling of the additional well. SM contends that this showing was unrebutted by JMA.

13) SM reasserts the propriety of the decision of the ALJ.

RESPONSE OF JMA

1) JMA asserts that Mr. Davis testified that the revenue received from the recovery of the liquids would be exceeded by the operating costs of the well.

2) JMA asserts that it is improper to rely solely upon the volumetric evidence. JMA contends the ALJ should have also considered the results of the wells in Section 34, as well as the costs to drill.

3) JMA asserts that if the volumetric data presented by SM in CD 201002954-T resulting in Order No. 578476 (111.7 BCF of gas in place) were relied upon, a need for more wells than what could be feasibly placed in the unit would be shown.

4) JMA contends that it is premature to grant an increased density exception without the data from the Elec #1-34H. JMA asserts that the principles of economic waste mandate that a well pay out. JMA contends that SM did not present evidence that the Norma #1-34H was economical.

5) JMA reasserts that because there was a disparity in production between the Sage #1-34H well and the Norma #1-34H well, the Commission should wait to grant the increased density exception until the Elec #1-34H well is completed and producing.

6) JMA asserts that if it elects not to participate in a new well, it will lose its 10% working interest.

7) JMA contends that there has not been a change in condition since the prior order, under which the ALJ found that one additional well was necessary and the volumetrics presented showed 67 BCF remaining reserves in the Section 34 unit. JMA asserts that a change of condition cannot be shown until the Elec #1-34H well is completed. JMA requests that the matter be remanded to the ALJ to determine the status of the Elec #1-34H well and that decision be delayed until that well is drilled to total depth and completed.

RESPONSE OF SM

1) SM contends that the prior orders only show that an additional well is proper, rather than that one additional well will effectively drain the spacing unit as JMA asserts.

CONCLUSIONS

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

1) The Referee finds that the ALJ wrote a well reasoned report based upon the evidence presented before her. In her Report the ALJ explains and discusses the issues raised by the evidence and law as regards the determination to grant the applications. The ALJ discusses the differences between the interpretations of the SM engineer and the JMA engineer and her reasons to accord greater weight to the opinions of the SM witnesses. JMA provided no exhibits at the hearing and JMA presented only one witness, an engineer, whose testimony related to the economics of drilling the proposed Newell #1-34H in the Section 34 area. JMA asserts, based upon the estimated $8 million well cost of the Newell #1-34H well and based on their engineer's assumption of the thinning of the Marmaton "B" formation in the SE/4 of Section 34, the SM applications should be denied or at least continued to allow

the Elec #1-34H to finish drilling to determine the production possibilities of said well. JMA submits that if the Elec #1-34H well is uneconomic than the presently proposed Newell #1-34H would not be needed.

2) The Referee is of the opinion however that drilling economics should not be a consideration in the Commission's obligations to prevent waste. Drilling economics are a private consideration which would influence the decision by JMA to participate in a well. The proper definition of economic waste is a determination whether an additional well is necessary to efficiently produce the oil and gas in place in Section 34.

3) The Marmaton "B" interval of the Des Moines is from 1,800 to 1,900 feet thick and the evidence presented showed said interval to have high porosity. SM provided exhibits and engineering methodology reflecting that the total recoverable gas in Section 34 is 19.5 BCF in the Marmaton "B" interval of the Des Moines with the remaining reserves in Section 24 after the drilling of the Elec #1-34H being 10.5 BCF.

4) The ALJ noted the difference between the two engineering experts in their testimony and opinions. However, the conclusions of the ALJ found that the SM three experts' testimony to be more credible. The ALJ is the initial finder of fact. It is the ALJ's duty as the finder of fact to observe the demeanor of the witnesses, assess their credibility, and assign appropriate weight to their opinions. *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okl. 1940).

5) The Referee finds that JMA has failed to satisfy its burden of persuasion and its burden of production by the weight of the evidence. In administrative proceedings, the applicant seeking relief has two burdens: the burden of persuasion (that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose); and the burden of production (a party's obligation to come forth with evidence to support its claim). *Director, Office of Workers' Compensation Program, Department of Labor v. Maher Terminals, Inc.*, 512 U.S. 267, 272, 275 (U.S. 1994).

6) It is the duty of the ALJ to assign the weight to the expert opinion presented before her. The Oklahoma Supreme Court addresses this issue concerning the assignment of weight to expert testimony in direct conflict in *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okla. 1951) stating:

> ...At the hearing herein the testimony adduced was chiefly that of petroleum engineers and geologists who testified on the basis of both personal surveys made and of an interpretation of the accumulated data in the hands of the Commission. **The testimony of**

> **these experts was in direct conflict but that of each was positive upon the issue. Under the circumstances the objection is necessarily addressed to only the weight of the evidence.** Under the holding of this Court and that of courts generally, Chicago, R.I. and P. Ry. Co. v. Pruitt, 67 Okl. 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. Since the evidence before the Commission was competent and sufficient if believed, to sustain the order we must, and do, hold that the order is sustained by the evidence and that the contention is without merit. *Ft. Smith & W. Ry Co. v. State*, 25 Okl. 866, 108 P. 407; *Bromide Crushed Rock Co. v. Dolese Brothers Co.*, 121 Okl. 40, 247 P. 74. (Emphasis added)

7) The ALJ based her recommendations on her assessment of the demeanor and credibility of the experts and assigned the appropriate weight she believes should be applied to their opinions. As noted above, that is the ALJ's function.

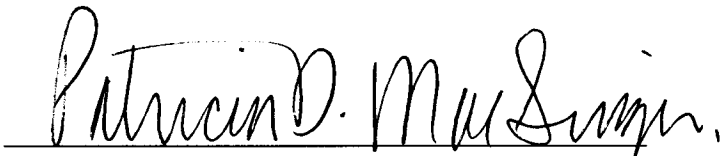
8) When it comes to the appraisal of expert opinions, it is clear the Commission must follow the procedure set forth in *Haymaker v. Oklahoma Corporation Commission*, 731 P.2d 1008 (Ok1.App. 1986) wherein the Court of Appeals stated:

> ...Proper appraisal of the expert testimony requires observance of the following benchmark principle approved in *Downs v. Longfellow Corp.*, 351 P.2d 999 (Okl. 1960):
>
> > "The reasons given in support of the opinions [of an expert witness] rather than the abstract opinions are of importance, and the opinion is of no greater value than

> the reasons given in its support. If no rational basis for the opinion appears, or if the facts from which the opinion was derived do not justify it, the opinion is of no probative force, and it does not constitute evidence sufficient to...sustain a finding or verdict."

9) The ALJ discussed and supported her decision based on the evidence before her. The Referee can find no reason to vary that determination. Thus, based on the proceeding rationale, the Referee recommends that the Report of the ALJ be affirmed.

RESPECTFULLY SUBMITTED THIS 9th day of March, 2012.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Kathleen M. McKeown
John C. Moricoli, Jr.
Charles L. Helm
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