

APPEARANCES: **Richard K. Books**, and **Emily P. Smith**, attorneys, appeared for Chesapeake Operating, Inc. and Chesapeake Exploration, L.L.C. ("Chesapeake"); **Gregory L. Mahaffey**, attorney, appeared for The Keiffer Living Trust dated May 27, 1993; Vera Ruth Mathis, The McMurtrey Joint Revocable Trust dated May 28, 1994; Carol Ward, Trustee of the Russell O. and Loren Rauh Family Trust; and The Wessels Living Trust dated May 21, 1999 (collectively "Movants"); **Richard A. Grimes**, attorney, appeared for Kirkpatrick Oil & Gas, LLC ("Kirkpatrick"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued her Oral Ruling on the Motion to Produce 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 2nd day of March, 2012. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

MOVANTS APPEAL the denial of the Motion to Produce documents and well information pertaining to request numbers 2, 4, 14 and 15 of Movant's Motion to Produce.

Chesapeake submits that the available geological data indicates that Section 3, T26N, R12W of the IM, Alfalfa County, Oklahoma is wholly or substantially underlain by the Mississippian formation, as a common accumulation of hydrocarbons, being prospectively gas productive, separate and distinct from and not in communication with any other common accumulation of oil and/or gas. In the interest of securing the greatest ultimate recovery of oil and gas, preventing the various types of waste and protecting correlative rights of oil and gas and preventing the various types of waste and protecting correlative rights, the initial boundaries of the Mississippian common source of supply of gas should be established so as to cover and include said Section 3, which section should be formed on a 640-acre drilling and spacing unit for such formation underlying said section.

Movants request that the Commission enter an order (a) vacating Order No. 40711 as to the Basal-Cherokee Sand common source of supply; (b) establishing 160-acre drilling and spacing units for the production of gas and gas condensate from the Basal-Cherokee Sand common source of supply underlying Section 3, T26N, R12W, Alfalfa County, Oklahoma; and (c)

designating the Mathis #1 well as the unit well for the SE/4 of Section 3 for the Basal-Cherokee Sand common source of supply. Movants further request that the order to be entered in this cause be made effective on some date prior to the date of the hearing.

Movants would request that the Commission, pursuant to OCC-OAC 165:5-11-1, enter an order requiring Chesapeake to produce for inspection and copying certain documents and well information.

Movants note that Chesapeake is the operator of the Juletta #1H well in Section 35-27N-12W, Alfalfa County and the McMurtrey #1H well in Section 34-27N-12W, Alfalfa County, Oklahoma and request that Chesapeake produce for inspection and copying, but no later than five days after service of an order of production, the documents and well information set forth below:

- (1) Monthly production records on the above-described wells, including oil production, gas production, water production and number of days on;
- (2) All well logs, including but not limited to, neutron-density, sonic or acoustic, electric resistivity, micro logs, computer processed logs and mud logs;
- (3) All hydrocarbon sales volumes to date;
- (4) All hydrocarbon production volumes to date;

In support of this motion, Movants would show the Commission that such information will be of assistance to the Commission to determine the issues in the captioned cause, and such information is necessary for Movants to properly prepare for trial.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

(1) **ALJ SUSAN OSBURN** recommended denying the Movants Motion to Produce. Request #4 in Movant's Motion to Produce was: "All well logs, including but not limited to, neutron-density, sonic or acoustic, electric resistivity, micro logs, computer processed logs and mud logs." Said documents requested to be produced were what the Commission would normally consider "proprietary information" and the ALJ recommended denial of the confidential data.

(2) The Movants Motion to Produce request #2, #14, and #15 concern production data which is public data, data that was in the public domain that

could be readily obtained by the Movants pursuant to public records. In addition such public production information was irrelevant at this time.

(3) The production information can be used to calculate drainage, but in the present case Chesapeake has conceded that one well in this 640-acre unit will not drain 640 acres. Chesapeake is not taking the position that one well will drain 640 acres in this horizontal unit. Instead they are taking the position that they need the 640-acre horizontal unit so that long laterals may be drilled and multiple wells may be drilled to get maximum flexibility as to the number of wells needed to be drilled.

(4) The ALJ therefore recommended denial of the Movants Motion to Produce both the proprietary logs and the production information records.

POSITIONS OF THE PARTIES

MOVANTS

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Movants, stated that the Movants own most of the mineral interest underlying Section 3 if not all of the mineral interest. In October of last year Movants filed their application which was amended in December in Cause CD 201105586 concerning spacing of the Basal-Cherokee sand common source of supply. In mid-December Chesapeake filed its spacing application, Cause CD 201105586 requesting horizontal spacing for the Mississippian formation. A motion to consolidate these two spacing applications was granted on February 13, 2012 in Order No. 594066.

2) The original Motion to Produce by Movants requested production of 18 items (documents and well information) from Chesapeake. However Chesapeake and Movants have agreed that Chesapeake will provide to the Movants all information requested other than items #2, #4, #14 and #15.

3) The Movants believe recent production data is not contained in the public records. The production data lags behind at least a few months from the operator to the public records. The Movants believe drainage will be an issue on the size and shape of the units requested by Movants and Chesapeake. The Movants believe drainage information is relevant to know how much a well will drain a unit. If the well will only drain 160 acres then the unit to be formed should be 160 acres.

4) Generally logs are confidential information. In the present case Movants are not competitors with Chesapeake. They are mineral owners and are concerned about the size and shape of the units that should be established. Some of the best production data on what is an appropriate size unit can be

obtained from Chesapeake since Chesapeake has already drilled two wells in Sections 34 and 35 to the north of Section 3. Chesapeake can't stipulate that they will not use this production data at the protested hearing. If they are going to use this data then the Movants should be able to see it. The Movants would be willing to sign an appropriate confidentiality agreement.

CHESAPEAKE

1) **Richard K. Books**, attorney, appearing on behalf of Chesapeake, stated that the Movants have made demand upon Chesapeake to drill a Mississippi well and the demand is a predicate to a lawsuit. The Commission has always been very diligent to make sure that people didn't do their district court work in discovery at the Corporation Commission.

2) Chesapeake has stipulated that they are not going to take the position that one well can drain 640 acres. This is a horizontal drilling and spacing unit with a horizontal wellbore. Thus, this is very different from the original types of cases where the main consideration was drainage. Instead, in a horizontal drilling and spacing unit, the main thrust is going to be that Chesapeake needs 640-acre spacing to accommodate the long lateral involved here. Once you determine that drainage is not going to be Chesapeake's case or position then the traditional analysis that is raised by the Movants concerning drainage is not relevant as these logs will not be needed nor the production information needed to say that one well will or will not drain 640 acres.

3) Chesapeake has agreed to furnish everything that the Movants have requested except two categories, logs and production information. It is a rarity that porosity logs are run in horizontal wells. In a horizontal spacing unit the idea of what a well will drain is not the relevant issue. The relevant issue is they need 640-acre units to get long laterals and to give maximum flexibility with the number of wells that need to be drilled.

4) Movants are requesting despadding of the Cherokee so they can get their leases back. If they can get their Cherokee despaced before Chesapeake can get a well in the ground for the deeper zones they'll get their leases back. The drainage issue is not going to be the reason why the spacing is granted. The reason that the Movants need the production information is to determine drainage. Logs are proprietary as admitted by Movants. Logs are used to determine drainage and again Chesapeake would assert that drainage is an irrelevant issue in these cases.

5) Much of the production data is public record and Chesapeake shouldn't have to furnish anything that is public record. The Movants are asserting that the public data is not as current as the data held by Chesapeake, but there has been no evidence as to how far behind they are or any lack of information in the public records. Again, however the production data goes to the issue of drainage which is not going to be an issue involved in Chesapeake's spacing, because Chesapeake's justification for the spacing is based upon the need to get the laterals as far and as long as possible and the flexibility for wells.

CONCLUSIONS

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

1) The Referee finds that the ALJ's recommendation to deny the Motion to Produce is in accordance with the weight of the evidence, prior interpretations of the Commission's discovery rules and free of reversible error.

2) OCC-OAC 165:5-11-1(b) provides in relevant part:

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the cause, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the cause.

3) The ALJ's ruling generally comports with the Commission's interpretation of said discovery rule. The Commission has always been reluctant and sought to protect an operator from divulging proprietary information, i.e. well logs concerning the Chesapeake Juletta #1H-35 well and the Chesapeake McMurtrey #1H-34 well, that it obtained as a result of taking the risk of drilling and completing a well and paying the associated costs therefore. The oil and gas industry is unique and competitive with an operator's actions clouded in secrecy in order to gain a competitive advantage in development of a field.

4) The production information requested by the Movants can be obtained through public records. Usually the Commission will not require a company to produce public documents that are available to Movant from public records due to time, expense and use of company facilities to provide such data which can be easily pulled by one interested in those documents from the public files at its own expense. As stated by Chesapeake, even though the public records may not be as current as Chesapeake's own records, this production information is only relevant to the issue of drainage. As stated by Chesapeake, said production data and well logs used to determine drainage is not a primary or relevant issue to obtain horizontal spacing. Horizontal spacing pertains to how long the lateral will be and the flexibility of drilling multiple wells within the spacing unit.

5) On the other hand if Chesapeake chooses to use the proprietary log information or the production data to calculate drainage at the protested hearing, then Chesapeake may be required to produce the proprietary log data and the production data not contained in public records at the protested proceeding so an opposing party such as the Movants can have their experts review the data for use in cross examination of Chesapeake's experts or to allow the Movants experts to offer a different interpretation of the proprietary log data and production data.

6) For the above stated reasons the Referee recommends that the Oral Report of the ALJ denying Movant's Motion to Produce items #2, #4, #14 and #15 should be affirmed.

RESPECTFULLY SUBMITTED THIS 6th day of March, 2012.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Susan R. Osburn
Richard K. Books
Emily P. Smith
Gregory L. Mahaffey
Richard A. Grimes

Office of General Counsel
Michael L. Decker, OAP Director
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