BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
MAY 15 2012
COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT:	**GULF EXPLORATION, L.L.C.**	)
RELIEF SOUGHT:	**WELL LOCATION EXCEPTION**	) **CAUSE CD NO. 201105823**
LAND COVERED:	**THE S/2 NW/4 AND ALL OF THE NW/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 8 EAST, COAL COUNTY, OKLAHOMA**	)

REPORT OF THE OIL AND GAS APPELLATE REFEREE ON AN ORAL APPEAL OF A MOTION TO PRODUCE AND A MOTION TO AMEND PRE-HEARING CONFERENCE AGREEMENT

These Motions came on for hearing before **David Leavitt**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 7th day of March, 2012, at 8:30 a.m. 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 the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **J. Fred Gist**, attorney, appeared on behalf of applicant, Gulf Exploration, L.L.C. ("Gulf"); **Gregory L. Mahaffey**, attorney, appeared on behalf of Sandstone Energy Acquisition Corp. ("Sandstone"); **Richard A. Grimes**, attorney, appeared on behalf of Weston Resources, Inc. and GEC, L.L.C. (collectively "Weston"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Report on the Motions on the 7th day of March, 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 2nd

day of April, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

GULF APPEALS the ALJ's recommendation to grant the Motion to Produce and the Motion to Amend Pre-hearing Conference Agreement. The ALJ also recommended that the parties submit new dates for discovery and for the merit hearing to the Commission.

MOTION TO AMEND PRE-PREHEARING CONFERENCE AGREEMENT

Weston and Sandstone request that the Commission amend the Pre-Hearing Conference Agreement filed in this cause. Weston and Sandstone request that this Commission issue an order amending the PCA on file in Cause CD 201105823 to allow additional exhibits to be exchanged.

MOTION TO PRODUCE

Sandstone requests the Commission, pursuant to OCC-OAC 165:5-11-1, issue an order requiring Gulf, operator of the Wallace #2-17 well located on or offsetting the captioned land, to produce for inspection and copying, but no later than 5 days after service of an order or production, the documents and well information set forth as to such well: (1) All pressure tests; (2) Monthly production records on the above-described well, including oil production, gas production, water production and number of days on; (3) all test results on the above described well, including the pressure buildup tests which are not available publicly through Commission records; (4) all well logs, including but not limited to, neutron-density, sonic or acoustic, electric resistivity, micro logs, computer processed logs and mud logs; (5) any drill-stem test reports and analyses; (6) any petrologic, petrographic or mineralogic reports, including any core analyses; (7) all detailed drilling and completion information, i.e. daily and morning reports; (8) all flow test information such as back pressure tests and deliverability tests; (9) all bottom hole tests and analysis reports; (10) all cased hole wireline surveys; (11) all gas analyses; (12) all crude oil distillation analyses; (13) all PVT analyses; (14) all hydrocarbon sales volumes to date; (15) all hydrocarbon production volumes to date; (16) all stimulation treatment reports; (17) any and all deviation surveys, including but not limited to, Totco single shots during the drilling phase; and (18) all pumper gauge sheets from first production to date. Sandstone believes that such information will be of assistance to the Commission in order to determine the issues in the captioned

cause, and such information is necessary for Sandstone to properly prepare for trial.

ORAL REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ David Leavitt stated that Gulf was seeking a well location exception and Sandstone protested Gulf's well location exception application. Sandstone made the argument that it needed more time and more information in order to be able to present an adequate case at trial. The information Sandstone needed concerned well information for the Wallace #2-17 well which is an offset well. The ALJ made his recommendation based upon protecting the correlative rights of Sandstone by allowing them to have the information they needed to put on an adequate trial. The ALJ recommended therefore that the Motion to Produce and the Motion to Amend Prehearing Conference Agreement be granted. Said documents produced for inspection and copying would be provided no later than 5 days after service of an Order of Production and Sandstone would have an additional 7 days from the receipt of those documents to present any amended exhibits and Gulf would also get 7 days after Sandstone's presentation of new exhibits to submit any additional exhibits.

POSITIONS OF THE PARTIES

GULF

1) **J. Fred Gist**, attorney, appeared on behalf of Gulf, stating that the Motion to Produce seeks information which Gulf feels is proprietary and the Motion to Amend Prehearing Conference Agreement seeks to allow Sandstone to submit additional exhibits in the case which Gulf believes is inequitable.

2) The Gulf well location application was filed on November 2, 2011. Mr. Mahaffey on behalf of Sandstone filed its protest on November 10, 2011 and on November 30, all parties signed a Prehearing Conference Agreement setting the protest for January 25 through January 27, 2012. The Prehearing Conference Agreement set time limits for submitting Motions and exchanging Exhibits. On January 17, 2012, Sandstone provided a letter to Gulf listing two witnesses and two exhibits. Those two exhibits were two maps that were actually maps prepared by Gulf submitted in an earlier case. There were no Sandstone geological maps or interpretations. Weston also provided two maps which showed the existing spacing and the location of a couple of wells, but there was no geological interpretation. One of the maps that Sandstone introduced was from a location exception case that Gulf had presented earlier covering the Wallace #2-17 well, the subject of Sandstone's Motion to Produce. The case

number was CD 201103474. Sandstone was the respondent in that case. That case was heard on August 8, 2011 with an order issuing on August 22, 2011. Sandstone has had knowledge of the request to drill the Wallace #2-17 well since July of 2011. The drilling permit filed with the Commission shows that the Wallace #2-17 well was spud on December 13, 2011. December 13, 2011 was a month before the exhibit exchange and Sandstone had ample time to file Motions to Produce but they did not.

3) The Prehearing Conference Agreement states that Motions are supposed to be filed and heard 9 days before the hearing date which would be January 16. The exhibits were exchanged on January 17, but Sandstone did not provide any of their own maps.

4) The record was opened January 25 before Judge Leavitt and the case was continued concerning some notice questions.

5) At that time, Sandstone had three or four geological maps of Gulf's. After seeing Gulf's exhibits and the case being continued, Sandstone now asks for well information on the Wallace #2-17 and they want to come in with new exhibits, new geological maps. In other words, now that they see we have such good evidence, they want to submit their own exhibits. This is patently unfair. The Prehearing Conference Agreement says you are supposed to exchange on January 17. They have geologists, but they did not submit any exhibits. Sandstone has not provided any reason why they couldn't have introduced those exhibits or submitted them by January 17 and met the deadline of the Prehearing Conference Agreement.

6) Thus, Gulf feels like the Motion to Amend the Prehearing Conference Agreement to allow new exhibits is inequitable. It violates the Prehearing Conference Agreement. It violates the whole purpose of the Prehearing Conference Agreement which is to provide situations concerning a level playing field. Everybody should exchange their exhibits on the same day at the same time where there is no advantage. No one person gets to see the other's first and then come back with new ones. That is exactly what they are asking to do in the present situation and Gulf feels it is inequitable and should be denied.

7) With regard to the Motion to Produce they are asking for logs from the Wallace #2-17 well. When Gulf drilled that well they spent $1.5 million drilling that well and Sandstone owns no interest in that well. Weston does not own any interest in that well. Those logs are filed under Commission rules for confidential treatment which means they are under seal for one year. They are confidential and we think they are proprietary. Weston and Sandstone own interests in other wells, but they do not own an interest in the Wallace #2-17 well. The Wallace #2-17 well was spud in December and there was no request for any information before exhibit exchange. Only after they have seen our maps and our exhibits do they want additional information. This is a matter of

fair play and a level playing field. We therefore feel both of the Motions should be denied.

SANDSTONE

1) **Gregory L. Mahaffey**, attorney, appeared on behalf of Sandstone in support of the Motion to Produce and the Motion to Amend Prehearing Conference Agreement.

2) Judge Leavitt heard the same arguments by Gulf and rejected them. Judge Leavitt was assigned the case and already opened the record in the case. The case was continued at the request of Gulf after we had a half-day of trial.

3) The maps that were provided by Gulf show a purported fault running down to the south of Wallace #2-17 well and the only maps that were exchanged by Sandstone are the maps that Gulf has done. Sandstone believes that Gulf has moved the fault and they don't know if there is justification for a different placement of the fault. Thus, there is no question that the information being requested in the Motion to Produce is relevant.

4) Some of the data that is being requested is not proprietary data. Things like production and pressure tests. While logs could be proprietary the rules of evidence promote informed evidence be provided. In other words where the fault should be placed or whether the location exception ought to be granted.

5) The Motion to Produce statute requires production of any document that is not privileged which constitutes and contains evidence relevant to the subject matter or may reasonably lead to such evidence. The statute also notes that business records shall not be deemed privileged as such and confidential business records and information will be protected from disclosure except where directly relevant to the issues in the case. Sandstone has no objection to a protective order concerning the proprietary log, with the stipulation that it will only be used for the defense of this case and will be returned to them at the end of the case.

6) The acreage is all leased anyway. Everything is held by production, so it is not like you are going to gain some competitive advantage and be able to go out and buy leases on that particular prospect.

7) Here the information is directly relevant and the judge assigned to the case felt that this geological issue needed to be flushed out and therefore granted the Motions.

8) While the Prehearing Conference Agreement does level the playing field, and deadlines should not be taken lightly, the Commission, however, can grant an exception to any of its' rules for good cause shown. There was a discovery cut-off date but once the case was continued, in fact it's been continued now for three months, there is no longer a pressing trial issue. The judge therefore was entitled to revisit the geological aspect, allowing the parties to have additional exhibits levels the playing field and they will have a chance to submit additional exhibits also.

9) The Commission exchanges exhibits the same day and you do not have a chance to rebut it. The judge has a wide discretion to control his own docket and once he agreed to the continuance requested by Gulf, then he has discretion to re-open the discovery time period and to allow the parties to get additional evidence and to prepare exhibits.

10) Gulf must furnish any documents or data that is required within five days after an order is issued and Sandstone then would have seven days to submit any additional exhibits. This is not a long period of time. They are going to get to submit additional exhibits so it is not an unlevel playing field.

11) The Wallace #2-17 well was spud and not logged until just a few days before the exhibit exchange. Sandstone did not oppose the Wallace #2-17 well. If Sandstone had filed a Motion to Produce and tried to get the information before the date of the last hearing, the logs would most likely not have been available. They are available now. When Gulf continued this case, the Commission could then have the data available to see how it impacts their placement of the fault and whether there is going to be any adverse effect by this well. It can be determined whether this location exception is needed or rather it will adversely impact offsets. Therefore, the data requested is relevant. It is the newest data out there. The pressure and production data and the logs from the Wallace #2-17 well are relevant, Sandstone would respectfully request that Judge Leavitt's ruling be affirmed. In an area that's already held by prior production, why does Gulf care if that data is used and available to the Commission to either challenge or corroborate the request for a location exception?

WESTON

1) The Wallace #2-17 well was drilled under a location exception and the maps that were used in that case were time maps based on seismic, not subsurface data. The map that we were given at the exhibit exchange in the present case is not a time map. It is based upon subsurface data. That was the first subsurface information we saw and the first map, because they had used before a seismic based map.

2) The Commission's position has always been that if a party uses proprietary information within its possession, and it makes the choice to use the proprietary information, the other side should not be deprived then from the opportunity to see it.

3) The Commission has always said that if you have data you are not going to use in a trial or in a proceeding in a case, then it would be considered as proprietary information. In the present case, however, these maps use the data that Sandstone's Motion is seeking. In other words, Gulf is going to use that proprietary information and data in the present case. The Commission is not going to allow Gulf to put a map in the case to try and convince the judge of the correctness of the case, but not let the other side look at it.

4) It doesn't make logical sense since they continued this case on their own Motion that we do not have the opportunity in advance of the hearing to see a log that they are going to use and that they have found important enough to now prepare a subsurface data map rather than a seismic map.

5) Weston therefore would support all of the statements made by Sandstone, but would add the above statements.

RESPONSE OF GULF

1) Gulf does not want to repeat what it has said before and believes the same arguments previously made still apply. Weston gave a vivid example that after they saw Gulf's maps they said that those maps weren't like their old maps, and now since we have seen new maps that are based on different control, Sandstone and Weston want to respond to those. Thus, they saw our case and now they want to come in with new exhibits. That's the part that is unfair.

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 grant the Motion to Produce and the Motion to Amend Prehearing Conference Agreement is in accordance with the weight of the evidence, prior interpretations of the Commission's discovery rules and free of reversible error. The Referee would also affirm the recommendation of the ALJ that Gulf would have 5 days after service of an order to produce the documents and both Sandstone and Gulf would have an additional 7 days from the receipt of those documents by Sandstone to submit any additional exhibits.

2) OCC-OAC 165:5-11-1(b) provides in 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 Supreme Court in *Boswell v. Schultz,* 175 P.3d 390 (Okl. 2007) stated:

"The purpose of modern discovery practice and procedure is to promote the discovery of the true facts and circumstances of the controversy, rather than to aid in their concealment."

4) The Oklahoma Court of Civil Appeals determined in *State ex rel. Protective Health Services v. Billings Fairfield Center, Inc.*, 158 P.3d 484 (Okl. Civ. App. 2007):

"Civil trials no longer are to be conducted in the dark. Discovery, consistent with recognized privileges, provides for the parties to obtain the fullest possible knowledge of the issues and facts before trial. *Rozier v. Ford Motor Co.* 573 F.2d 1332, 1346 (5th Cir. 1978). "The aim of these liberal discovery rules is to 'make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent'" Id.

5) The Oklahoma Supreme Court has also stated in *Unit Rig and Equipment Company v. East*, 514 P.2d 396 (Okl. 1973):

> "Our discovery procedures are broad and, with certain limitations (see *Giles v. Doggett* Okl., 500 P.2d 574, 516, and cases there cited), it is not necessary that questions be limited to those which would be admissable in court. *State ex.rel. Westerheide, et al. v. Shilling, Judge*, 190 Okl. 305, 123 P.2d 674. Evidence which might lead to the disclosure of admissable evidence is discoverable. *Carmen v. Fishel*, Okl., 418 P.2d 963.

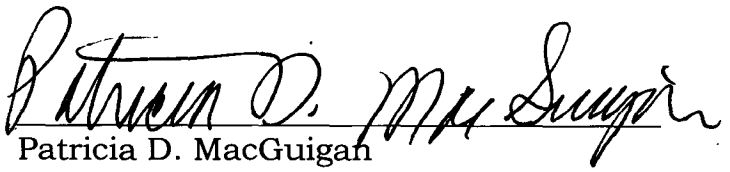
6) The request by Sandstone for the documents and well information concerning the Gulf Wallace #2-17 well located on an off setting portion of the captioned land is relevant and is the newest data concerning pressure production data and logs in this area.

7) The Commission has always been reluctant and sought to protect an operator from divulging proprietary information that it obtained as a result of taking a 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.

8) The operator may be required to produce the proprietary data in the proceedings so an opposing party can have its experts review the data for use in cross-examination of the operator's expert(s) or to allow the opposing parties' expert(s) to offer a different interpretation of the proprietary data. In the present case the information and logs requested will be used to either challenge or corroborate Gulf's requests for location exceptions. Apparently the map that was presented by Gulf after the exhibit exchange in this case was based on subsurface data. It was the first subsurface information given as Gulf's first map given was a seismic based map. If a party/Gulf uses proprietary information and data that it has within its possession then the opposition/Sandstone should not be deprived of the opportunity to see it. Gulf was the one who continued this case and it does not make logical sense that the opposition/Sandstone should not have the opportunity in the advance of the continued hearing to see a log that Gulf used to prepare a subsurface data map rather than a seismic map.

9) Since the geological data and requests for production including the logs are relevant to the determination of whether to grant Gulf's proposed applications and the matter was continued by Gulf, the Referee finds that these documents are particularly relevant to the issues in this cause and would affirm the ALJ's granting of these motions.

RESPECTFULLY SUBMITTED THIS 16th day of May, 2012.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:fl

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ David Leavitt
J. Fred Gist
Gregory L. Mahaffey
Richard A. Grimes
Office of General Counsel
Michael L. Decker, OAP Director
Oil Law Records
Court Clerks – 1
Commission Files