

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

<u>APPLICANT:</u>	STEVEN V. REDGATE AND CONNIE S. REDGATE)	
)	
<u>RELIEF SOUGHT:</u>	DRILLING AND SPACING UNITS)	CAUSE CD NO.
)	201106112
)	
<u>LEGAL DESCRIPTION:</u>	SECTION 14, TOWNSHIP 25 NORTH, RANGE 14 WEST, WOODS COUNTY, OKLAHOMA)	
)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF A MOTION TO PRODUCE**

This Motion came on for hearing before **Michael L. Decker**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 28th day of November, 2011 and the 13th day of December, 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: **Gregory L. Mahaffey**, attorney, appeared for applicants/movants, Steven V. Redgate and Connie S. Redgate (collectively "Redgate"); **John E. Lee, III**, attorney, appeared for PNG Operating Company ("PNG"); 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 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 30th day of December, 2011. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

PNG APPEALS the ALJ's recommendation to grant Redgate's Motion to Produce.

Redgate filed this Motion to Produce on 11-15-2011 requesting the Commission, pursuant to OCC-OAC 165:5-11-1, for an order requiring PNG, the operator of the following-described well located on the captioned land, to 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 as to such well:

A. Lambert #3-14 well

1. Paydeck containing the names and addresses of working interest owners, overriding royalty interest owners and royalty owners, in such well and in the Red Fork (Cherokee) Sand common source of supply underlying the captioned lands; and

2. Monthly Production of Oil, Gas and Water for the time period of January 1, 2010 through October 31, 2011.

In support of the motion Redgate alleged that such information will be of assistance to the Commission to determine the issues in the captioned cause and such information is necessary for Redgate to properly prepare for trial.

Redgate filed its application on November 15, 2011 and its amended application on December 14, 2011 requesting that the Commission enter an order:

(a) amending the provisions of Order No. 54462, which order established 640 acre drilling and spacing units for the production of hydrocarbons from the Red Fork (Cherokee) Sand common source of supply, to delete there from said common source of supply underlying the said Section 14;

(b) establish 160 acre drilling and spacing units for the production of hydrocarbons from the Red Fork (Cherokee) Sand common source of supply underlying Section 14, T25N, R14W, Woods County, Oklahoma; and

(c) designate the Lambert #3-14 well as the unit well for the NE/4 of Section 14 for the Red Fork (Cherokee) Sand common source of supply.

By Order No. 54462, dated February 26, 1964, the Commission established 640 acre drilling and spacing units for the production of hydrocarbons from the Red Fork (Cherokee) Sand common source of supply underlying Section 14. Redgate alleges that since the date of said order there has been a change in conditions or knowledge of conditions in the area which necessitates amending

said order by deleting there from said common source of supply underlying said area.

Redgate alleges that the Red Fork (Cherokee) Sand is a prospective common source of supply lying within Section 14 and will be productive primarily of gas, that 160 acre units would be an appropriate sized drilling and spacing unit and that one well will adequately and effectively drain and recover the producible hydrocarbons underlying said area.

REPORT OF THE ALJ

ALJ Michael L. Decker reported that the Motion to Produce concerned the paydeck containing the names and addresses of working interest owners, overriding royalty interest owners and royalty owners in the Lambert #3-14 well in the Red Fork (Cherokee) Sand common source of supply. Redgate is also requesting for the last 20 months from January 2010 through October of 2011 the monthly production of oil and gas and water. PNG agreed to provide and produce the water production records from the well for the timeframe of January 1, 2010 through the present. The ALJ recommended that the Motion to Produce be granted concerning the production of the paydeck and the Motion to Produce be granted concerning the production information as to oil production from January 1 of 2010 through September of 2011. The gas production up through July of 2011 is apparently in the records of the Tax Commission, but the ALJ stated that if there is a record of that gas production since July that could be used and obtained, PNG should provide that information also.

POSITIONS OF THE PARTIES

PNG

- 1) **John E. Lee, III**, attorney, appeared on behalf of PNG on appeal of the Motion to Produce. The legal description of the land in this matter is Section 14, T25N, R14W, Woods County, Oklahoma.
- 2) PNG acknowledges receipt of Cause CD No. 201105585 Report of the Oil and Gas Appellate Referee on an Oral Motion to Produce, which also dealt with a motion to produce a paydeck, as well as Order No. 591989 in the same cause.
- 3) PNG asserts that a Commission order granting the motion in this matter would be offensive to Commission discovery rules OCC-OAC 165:5-11-

1(b)(3), 12 O.S. Section 3226(b)(1), and the Federal Rules of Civil Procedure 26(b)(1).

4) PNG also asserts that the order is offensive to Commission procedure concerning drilling and spacing units, citing OCC-OAC 165:5-7-6(b).

5) PNG also asserts that the order offends the general rules concerning the certification of pleadings, citing OCC-OAC 165:5-7-1(e).

6) PNG contends that because Redgate stated that PNG was the only party entitled to notice per OCC-OAC 165:5-7-6 in the Application and the Amended Application, there is no need to produce the paydeck.

7) PNG states that a paydeck is derived from a division order title opinion and that a paydeck enumerates the parties entitled to a share of production in a given well and the quantum of the interest.

8) PNG asserts that a paydeck is proprietary and privileged, as it is generated from a division order title opinion and it is a confidential record of the operator.

9) PNG contends that it is proper to rely upon county records, rather than the paydeck, to determine the parties entitled to notice. PNG supports this contention by citing *Harry R. Carlisle Trust v. Cotton Petroleum Corp.*, 1986 OK 16, 732 P.2d 438, and *Cravens v. Corp. Comm'n*, 1980 OK 73, 613 P.2d 442.

10) PNG asserts that a paydeck is a secondary source and does not qualify as a source document for notice requirements.

11) PNG contends that petrophysical data is at issue in this proceeding, as noted by the ALJ's Report on page 2 and 3, therefore the paydeck is not relevant and is undiscoverable.

12) PNG asserts that as PNG received notice of the hearing, the paydeck is not relevant to the issue of notice.

13) PNG contends that because PNG received notice and because PNG did not have the standing to contest notice as defective for other parties, PNG could not challenge the Spacing Application on a lack of notice.

14) PNG states that it is not challenging the standing of Redgate to make the Spacing Application.

15) PNG asserts that the only issues relevant to the controversy are geology, engineering, drainage, etc., and that the paydeck is not relevant to these issues.

16) PNG contends that the paydeck is a confidential and propriety business record protected from disclosure. PNG cites OCC-OAC 165:5-11-1(b)(3), referenced in the Report of the Appellate Referee in CD 201105585, in support.

17) PNG asserts that because the paydeck is neither relevant nor needed, discovery ought to be denied. PNG cites *Am. Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 743 (D.C. Circuit 1987), in support.

18) PNG contends that the accompaniment of the Application by the Motion to Produce is a concession that the Application statement as to proper notice is not true and therefore the Application and Motion to Produce should be rendered a nullity.

19) PNG notes that, at the November 28, 2011, hearing, the ALJ continued the matter until Redgate's landman could complete the requisite title search in order that a diligent search concerning notice would be true and correct.

20) PNG asserts that the only reason cited by the ALJ in recommending that the Motion to Produce be granted at the December 12, 2011, hearing was consistency with previous matters. PNG contends that the ALJ provided insufficient justification for the recommendation to grant the Motion to Produce.

21) PNG states that the other requests in the motion (records concerning water and oil and gas production) have been addressed by the parties themselves.

22) PNG reasserts that compulsory production of the paydeck is abhorrent to the Commission's application process. PNG postulates that under this precedent, a party would use the subpoena or a motion to produce in order to find the respondents in a matter, rather than by utilizing the county records as is proper.

23) PNG contends that notice to an unknown party is provided through publication notice, and that Redgate's concern with unknown owners will be addressed through publication notice.

24) PNG assert that the diligence requirement discussed in *Cravens* and *Carlisle* is fulfilled by ascertaining the identity and location of interested parties at the county courthouse.

25) PNG urges that the Commission deny the Motion to Produce concerning the paydeck.

26) PNG contends that the parties have addressed the other matters contained in the Motion to Produce.

REDGATE

- 1) **Gregory L. Mahaffey**, attorney, appeared on behalf of Redgate in support of the Motion to Produce.
- 2) Redgate contends that though OCC-OAC 165:5-7-6 provides that parties are entitled to notice, the regulation does not state the manner in which the applicant is to determine the parties entitled to notice.
- 3) Redgate asserts that a paydeck will usually contain information sought by an ALJ in a hearing.
- 4) Redgate relates that a change in ownership is often submitted to an operator but not filed in the county clerk's office.
- 5) Redgate contends that a paydeck will account for interests that are not recorded in the county clerk's office (*e.g.*, non-consent interests under Joint Operating Agreements).
- 6) Redgate notes a recent matter involving Sandridge where a forgotten overriding royalty owner was discovered by referencing the paydeck.
- 7) Redgate admits error in the pleading clause of the Application which stated that Redgate had completed its search. The clause should have relayed that Redgate was in the process of completing the search.
- 8) Redgate contends that the ALJ submitted his recommendation that the paydeck be produced after hearing all of the arguments that are being raised in this proceeding.
- 9) Redgate asserts that there is no proprietary information contained in a paydeck, as all of the information is found in the county court house.
- 10) Redgate contends that it is seeking neither the division order title opinion, nor other legal opinions that may qualify as proprietary information.
- 11) Redgate asserts that the paydeck is circulated and provided to other parties such as purchasers, and therefore the paydeck is not proprietary.

12) Redgate contends that the paydeck is relevant as ownership provides which parties are entitled to notice.

13) Redgate asserts that its aim in moving for production of the paydeck was to give all parties entitled to notice their required notice and to avoid any ambiguities.

14) Redgate provides the example of Bird Creek Resources – a party Redgate provided notice to in accordance with county records. However that interest was sold and Bird Creek Resources was not actually entitled to notice. Thus, this is an illustration that county records do not provide as accurate a representation of ownership as the paydeck.

15) Redgate contends that *Carlisle* holds that notice does not affect ownership interests.

16) Redgate asserts that it is seeking production of the paydeck to avoid notice issues at hearing.

17) Redgate asserts that the paydeck is relevant as it accounts for deeds or assignments provided to the operator as evidence of ownership.

18) Redgate contends that the paydeck is not proprietary and that the *Am. Standard Inc. v. Pfizer Inc.*, 828 F.2d 734 (D.C. Circuit 1987) does not address this matter.

19) Redgate asserts that the McMurtrey case, CD 201105585, addresses this matter. The Commission denied a motion for oral argument and accepted the Recommendation of the Appellate Referee with the provision that the operator may provide the paydeck to the ALJ but must redact any proprietary information.

20) Redgate requests that the Appellate Referee uphold the ruling of the ALJ.

RESPONSE OF PNG

1) PNG asserts that Redgate's correction to the Application (*i.e.*, that Redgate was in the process of conducting its search) renders the pleading incomplete and not in compliance with OCC-OAC 165:5-7-6.

2) PNG contends that as a paydeck is generated from a division order title opinion, which is prepared by an attorney and purchased, it is proprietary in nature.

- 3) PNG claims that when title is ambiguous, all potential owners are typically provided notice.
- 4) PNG asserts that parties not of record are entitled to notice by publication, and that all parties to which notice is required are discoverable through county records.
- 5) PNG contends, referencing the example of Bird Creek Resources, that actual knowledge is a sufficient remedy to unrecorded ownership, and that production of the paydeck is unnecessary.
- 6) PNG reasserts that granting the Motion to Produce sets bad precedent and encourages mineral owners to unfairly move for production of documents from operators.
- 7) PNG claims that a landman will not be presented by PNG as a witness on its behalf at hearing. PNG intends only to present technical evidence at the hearing.
- 8) PNG asserts that to grant the Motion to Produce would be an abuse of discretion.
- 9) PNG notes that as a grant of the Motion to Produce is not a final appealable order, the only remedy available to PNG to prevent harm would be an extraordinary writ.

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 Redgate's Motion to Produce the PNG paydeck concerning the Lambert #3-14 well with the redaction of any proprietary information is in accordance with the weight of the evidence, prior interpretations of the Commission's discovery rules and free of reversible error. Redgate's request for production of the paydeck is relevant information and data that Redgate must present concerning the notice requirement and the diligent effort required by Redgate to inform all affected parties in its spacing application.
- 2) Redgate is requesting the paydeck containing the names and addresses of working interest owners, overriding royalty interest owners and royalty owners, in the Lambert #3-14 well in the Red Fork (Cherokee) Sand common source of supply underlying Section 14. Redgate is also requesting the

monthly production of oil, gas and water for the time period of January 1, 2010 through October 31, 2011. The attorney for PNG at the appellate argument held before the Referee on December 30, 2011 stated that PNG has no opposition to providing water production data from January 10, 2011 through December of 2011; oil production data from January 10, 2011 to December 2011; and gas production from July 4, 2011 to December 2011.

3) As stated previously in Cause CD No. 201105585 (the McMurtrey case involving a Motion to Produce the operator's paydeck) the use of the paydeck to establish the names and addresses of working interest owners, overriding royalty interest owners and royalty owners is a common practice at the Commission by land witnesses concerning drilling and spacing units as a method to justify the validity of notice in these proceedings.

4) OCC-OAC 165:5-11-1(b)(3) 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.

5) In the case of *Boswell v. Schultz*, 175 P.3d 390 (Okla. 2007), the Supreme Court determined:

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.

6) In *State ex rel, Protective Health Services v. Billings Fairchild Center, Inc.*, 158 P.3d 484 (Okla.App. 2007) the Court of Appeals determined:

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 Company*, 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...."

7) The Motion to Produce the paydeck in the present case is in conformance with the Commission's discovery rule listed above. A change in ownership may be submitted to an operator but not filed in the county clerk's office. A paydeck will account for interests that are not recorded in the county clerk's office. An example would be nonconsent interests under joint operating agreements. Any proprietary information such as social security numbers, or tax ID information can be redacted by PNG. Redgate is seeking production of the paydeck to avoid notice issues at the hearing, and the paydeck is relevant as ownership provides which parties are entitled to notice. Redgate is not seeking the division order title opinion nor other legal opinions that may qualify as proprietary information. The paydeck is usually circulated and provided to other parties such as purchasers and therefore is not proprietary. Redgate's request therefore is in accordance with the Commission's discovery rules and the Oklahoma Discovery Code. See 12 O.S. Section 3226. As stated by the Referee in the McMurtrey Report issued December 1, 2011:

The information sought is not proprietary information or confidential information. This is the type of data that is of public record or within a company's files that is normally agreed to be divulged upon request for production of documents and it is used by landmen to verify proper notice being given to mineral owners. Some of the best evidence would be who the operator is paying the revenue to. The Referee agrees with McMurtrey that where there is a production payment or nonconsent interest, those are things you really can't tell from record ownership. There are different things that could be in the Linn paydeck which are not of record. The Taylor-Heath #1 well has been producing for over 40 years and the best evidence would be the operator's paydecks. The quantum of interest is not proprietary. The Referee understands that McMurtrey is going to hire people to check the title, but at the hearing McMurtrey does not want to have the witness state who the owners are and then have the Linn witness state that their paydeck does not show the same interest and therefore dispute the notice by McMurtrey.

8) For the same reasons stated in the Referee's McMurtrey Report the Referee finds the Oral Report of the ALJ in the present case should be affirmed.

9) The Supreme Court of Oklahoma in *Cravens v. Corporation Commission*, 613 P.2d 442 (Okl. 1980) states:

Since the case of *Mullane v. Central Hanover Bank and Trust Company*, 339 U.S. 306, 314 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950) promulgated standards which must be met before notice of service by publication is effective, this Court has consistently required due diligence in giving notice of a proceeding to persons whose rights could be adversely affected. In *Bomford v. Socony Mobil Oil Company*, 440 P.2d 713 (Okl. 1968), we stated due process requires this notice to be given by means reasonably calculated to inform all affected parties.

* * *

Regardless of the statutory provisions for publication alone applicants were required to use due diligence in notifying receiver of their application under the principles of *Bomford* and *Mullane*.

* * *

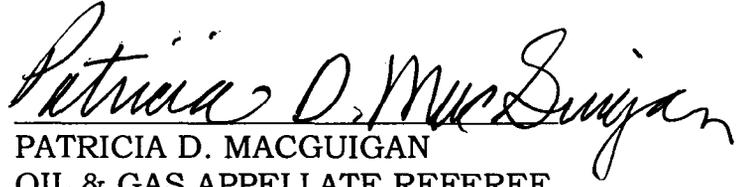
Accordingly we hold when applicant seeks to establish a drilling and spacing unit which includes a producing leasehold and the applicant knows of the identity of parties owning (sic) an interest therein or can with due diligence ascertain same, such applicant must not only give the notice required by statute and rule but must comply with the standards of *Bomford* and *Mullane*.

10) In the present case clearly having the paydeck showing the parties who own an interest and participate in production; showing any recent change in ownership; and showing nonconsent interests under a joint operating agreement would be helpful in complying with the standards of *Bomford* and *Mullane* to use due diligence in notifying proper parties entitled to notice in a drilling and spacing unit application.

11) For all of the above stated reasons the Oral Report of the ALJ granting Redgate's Motion to Produce PNG's paydeck should be affirmed, with any

proprietary information such as social security numbers or tax information redacted.

RESPECTFULLY SUBMITTED THIS 15th day of February, 2012.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
Michael L. Decker, OAP Director/ALJ
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