

deliberations  
NOV 27 2012

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

**FILED**  
NOV 16 2012

<b><u>APPLICANT:</u></b>	BEDFORD ENERGY INC.	)	<b>COURT CLERK'S OFFICE - OKC</b>
	6301 WATERFORD BLVD.	)	<b>CORPORATION COMMISSION</b>
	SUITE 403	)	<b>OF OKLAHOMA</b>
	OKLAHOMA CITY, OK 73118	)	
		)	
<b><u>RELIEF SOUGHT:</u></b>	CHANGE OF OPERATOR	)	<b>CAUSE CD NO.</b>
	TO OTC OPERATOR 22156	)	<b>201106562</b>
		)	
<b><u>LAND COVERED:</u></b>	SW/4 OF SECTION 19,	)	
	TOWNSHIP 16 NORTH	)	
	RANGE 2 EAST, LINCOLN	)	
	COUNTY, OKLAHOMA	)	

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

This Motion came on for hearing before **David D. Leavitt**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 15<sup>th</sup> day of May, 2012, 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. The ALJ took the matter under advisement after receiving the transcript of the hearing on June 14, 2012.

**APPEARANCES:** **Harlan Hentges**, attorney, appeared for Movants, Ramsey Property Management, LLC; Universal Energy Plus LLC; and Sooner Energy Plus, LLC ("Movants"); **William H. Huffman**, attorney, appeared for Applicant, Bedford Energy Inc. ("Bedford"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling in a written report 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 24<sup>th</sup> day of September, 2012. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

**STATEMENT OF THE CASE**

**BEDFORD FILED EXCEPTIONS** outside the time allowed to file exceptions to the ALJ's Report provided by the provisions of OCC-OAC 165:5-13-5(a)(2). Bedford attempts to take exceptions to the ALJ's recommendation in his Report filed August 9, 2012 that Movants' Motion to Dismiss be granted. The ALJ found that the jurisdiction over the subject matter of this cause properly lies with the District Court in Lincoln County, Oklahoma and the Federal Court in the Western District of Oklahoma, and there is no cause or controversy that is ripe for the Commission to hear at this time.

On June 24, 1981 the Commission established 160 acre drilling and spacing units for the production of gas and gas condensate from the Hunton Lime common source of supply underlying the SW/4 of Section 17, the W/2 and NE/4 of Section 19 and the SE/4 and NW/4 of Section 20, T16N, R2E, Lincoln County, Oklahoma and for the Prue common source of supply underlying the SW/4 of Section 17, all of Sections 18 and 19 and the W/2 and SE/4 of Section 20, T16N, R2E, Lincoln County, Oklahoma.

On March 1, 2001 the Commission permitted a well to be drilled in the SW/4 of Section 19, T16N, R2E, Lincoln County, Oklahoma, and the Merrick #19-0-1 well was subsequently drilled and completed. On December 12, 2001 the Commission issued Order No. 458753 authorizing Access Energy 3, LLC to dispose of salt water in the Arbuckle common source of supply using the Merrick #19-W-1 well located in the SW/4, SW /4, SW /4, SW/4 of Section 19 and the well was subsequently used for the disposal of saltwater. The permit was for the operation of a non-commercial saltwater disposal ("SWD") well. The Merrick #19-0-1 well and the Merrick #19-W-1 SWD well and equipment were allegedly abandoned to the surface owner due to non-production sometime in 2004.

Sometime thereafter, the Movants became involved with the wells in Section 19. Universal Energy Plus, LLC ("Universal") and Sooner Energy Plus, LLC ("Sooner") allegedly acquired ownership of the Merrick #19-0-1 well and the Merrick #19-W-1 SWD well in Section 19, the Merrick #24-0-3 well located in the SE/4 SW/4 of Section 24, T16N, R1E, and the Merrick #25-0-1 well located in the NW/4 SW/4 of Section 25, T16N, R1E, and made an agreement for Ramsey to operate the wells.

On or around December 6, 2010, the Commission authorized Ramsey Property Management, LLC ("Ramsey") to be the operator of the Merrick #19-0-1 well and the Merrick #19-W-1 SWD well. Ramsey plugged the Merrick #19-0-1 well on or around May 16, 2010 and continues to operate the Merrick #19-W-1 well

as a SWD well. The well takes produced water from two producing wells located in Sections 24 and 25 that are adjacent to Section 19.

On January 3, 2011, Bedford allegedly acquired all of the working interests in valid oil and gas leases covering the mineral interest in the lands described in the SW/4 of Section 19, T16N, R2E, Lincoln County, Oklahoma. On October 24, 2011, the Commission issued Bedford a permit to drill an oil and gas well in the SW/4 of Section 19. Bedford then applied to re-enter the plugged Merrick #19-0-1 well and the Merrick #19-W-1 SWD well in September 2011 for an apparent purpose of producing hydrocarbons from the Merrick #19-0-1 well and converting the SWD well into an oil and gas well. Bedford then filed its application to become the operator of the SWD well in December 2011.

On January 12, 2012, Bedford allegedly became the owner of Universal and Sooner through an order of the Bankruptcy Court. Since Sooner and Universal allegedly own the Merrick #24-0-3 well and the Merrick #25-0-1 well, Bedford effectively amended its application to change operators on April 13, 2012 to include these wells.

The ownership and control of the wells in Sections 19, 24 and 25 are currently the subject of disputes between Bedford and the Movants that are before the District Court of Lincoln County, Oklahoma and the Federal Court in the Western District of Oklahoma. The District Court has issued an order prohibiting Bedford or its representatives from claiming to own Universal except in a State or Federal Court in which the District Court decreed that the Commission is not considered a state or federal court for this purpose. The District Court has also issued an order enjoining Bedford from entering upon the five acres on which the Merrick #19-W-1 well is located and prohibiting Bedford or its representatives from approaching or conducting surveillance on the people who work for Ramsey at the well.

On April 13, 2012, Bedford filed its Motion to set a hearing date for its application to change operators. The Movants subsequently protested Bedford's Motion and filed this present Motion to Dismiss on May 5, 2012. Both parties then filed their briefs and responses, and the hearing on the motions was held in front of the ALJ on May 15, 2012 where the parties presented arguments and evidence. The ALJ then took the cause under advisement after receiving the transcript on June 14, 2012 and issued his report.

**BEDFORD TAKES THE POSITION:**

1) Bedford submits exceptions to the Report of ALJ David D. Leavitt pursuant to OCC-OAC 165:5-13-5.2. Bedford requests reversal of the ruling of the ALJ to "dismiss this above CD cause". The dismissal of this cause, before Bedford has been granted an evidentiary hearing which concerns many PD

issues, denies due process to Bedford. Further, since the District Court in Lincoln County has refused to rule on entitlement to SWD operations, deferring to the Oklahoma Corporation Commission, this ruling of dismissal would leave applicant without jurisdictional venue. Bedford disagrees with the ALJ's Report and conclusions as to alleged facts not in evidence, and the resulting conclusions of law.

2) This appeal is on the issues of: a) jurisdiction; b) due process; and c) conclusions of law based on facts not in evidence. The record lacks any evidence from Sooner or Universal to provide the ALJ with grounds to hold that Sooner is not in fact controlled by Bedford. A record could be made showing Bedford as the controlling entity and as the controlling entity thereupon has standing as the owner of the SWD well. Therefore Bedford would have the ability to control and the right to convert this SWD well to a production well. As a production well, Bedford may be appointed as the oil and gas operator. The Commission has the power to remove Ramsey as the SWD well operator, especially when it exercises the power to appoint an oil and gas well operator over the SWD use. The SWD well is according to protestant's ruined. Therefore there is little loss in value and an alternative disposal well can be found and be available for less cost than the rework of this SWD well. This SWD well has a 9 inch cased wellbore to the Arbuckle and would make an excellent horizontal launch platform. Granting operations to Bedford would immediately allow the SWD well to be permitted by application to be a production wellbore.

**THE ALJ FOUND:**

1) After taking into consideration the pleadings in the cause and the arguments of the attorneys, it was the recommendation of the ALJ that the Movants Motion to Dismiss be granted. The jurisdiction over the subject matter of this cause properly lies with the District Court in Lincoln County, Oklahoma, and in the Federal Court in the Western District of Oklahoma. Thus there is no cause or controversy that is ripe for the Commission to hear at this time.

2) The Commission is a tribunal of limited jurisdiction charged with overseeing the conservation of oil and gas and its jurisdiction is limited to the resolution of public rights. See *New Dominion, LLC v. Parks Family Company, LLC*, 216 P.3d 292 (Ok.Civ.App. 2008). The Commission's jurisdiction and authority is limited to what is expressly or by necessary implication conferred upon it by the Constitution and statutes. See *Merritt v. Corporation Commission*, 438 P.2d 495 (Okl. 1968). Matters involving the private rights of the parties are reserved to the District Court. See *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl. 1984). As held by the Oklahoma Supreme Court:

That the Commission is a tribunal of limited jurisdiction is well established in Oklahoma jurisprudence. It possesses only such authority as is expressly or by necessary implication conferred upon it by the Constitution and statutes of Oklahoma. If no Commission jurisdiction stands expressly conferred or necessarily implied, either by the constitution or by statute, its order would be void. The function of the Commission is to protect the rights of the body politic; private rights and obligations of private parties lie within the purview of the District Court...The Commission is without authority to hear and determine disputes between two or more private persons or entities in which the public interest is not involved.

*Rogers v. Quicktrip Corp.*, 230 P.3d 853 (Okl. 2010).

3) In a similar vein, the Oklahoma Supreme Court has held that the District Court is the proper forum to resolve disputes related to the ownership of property, including mineral rights, and to quiet title. See *Nilsen v. Ports of Call Oil Co.*, 711 P.2d 98 (Okl. 1985). Although the Commission has authority under statute to select the operator of an oil and gas well, it lacks jurisdiction to determine if an operator has acted prudently or should be removed as an operator solely with respect to its conduct affecting the surface estate involving the private rights of parties rather than public rights. See *Sampson Resources Co. v. Cont'l Oil Co.*, 702 P.2d 19 (Okl. 1985).

4) The Commission does have the jurisdiction, power and authority to make and enforce rules, regulations and orders governing and regulating the handling, storage and disposal of salt water for the purpose of preventing pollution of surface and subsurface waters of this state. See 52 O.S. Section 139 and *Merritt v. Corporation Commission*, 438 P.2d 495 (Okl. 1968). The Commission's police power, however, can only occur within the context of preserving and respecting the constitutional rights of the regulated community. As held by the United States Supreme Court:

The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the *Fourteenth Amendment*. *Hairston v. Danville & Western Ry. Co.*, 208 U. S. 598, 605, 28 Sup. Ct. 331, 52 L. Ed. 637, 13 Ann. Cas. 1008. When this seemingly absolute protection is found to be qualified by the police power,

the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States.

The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle. *Bowditch v. Boston*, 101 U. S. 16, 25 L. Ed. 980. In general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders. *Spade v. Lynn & Boston Ry. Co.*, 172 Mass. 488, 489, 52 N. E. 747, 43 L. R. A. 832, 70 Am. St. Rep. 298. We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.

*Pennsylvania Coal Co v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322, 28 A. L. R. 1321 (1922).

5) As stated by the Movants, the real cause and controversy behind Bedford's application to change operators is a dispute over the ownership of a SWD well in Section 19 and two oil and gas wells in Sections 24 and 25. This dispute currently lies in the District Court in Lincoln County and the Federal Court in the Western District, and there is no reason, basis or justification for the Commission to hear Bedford's application to change operators in the SWD well until the quiet title actions in the other courts are resolved. As held repeatedly by the Oklahoma Supreme Court, quiet title actions involving land and minerals are disputes between private parties and are reserved to the District Court. *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl. 1984). The Commission doesn't have the authority to hear and determine disputes between two or more private persons or entities in which the public interest is not involved. *Rogers v. Quicktrip Corp.*, 230 P.3d 853 (Okl. 2010)

6) Bedford argues that the quiet title action in the courts can occur concurrently with its application to change operators before the Commission, citing several orders where the Commission heard a cause while related cases were ongoing in district court. In these orders, the Commission's jurisdiction

and authority to act were based upon a legitimate public interest that didn't conflict with the cases being heard in the other courts.

7) In the *Marlin* cause, the Commission had jurisdiction over the selection of the operator because the operation was for the production of oil and gas and had nothing to do with the surface estate. Here the Commission appointed Marlin as an alternate operator in the unit as a convenience to Marlin so that they could have the necessary regulatory orders in place when and if they were allowed to move forward by the District Court. The Commission did not make Marlin the unit operator or remove the other party from being an operator in the unit, so the other party's ability to operate a well in the unit wasn't taken away by the Commission.

8) In the *Todd* cause, the Commission ordered an operator, Todd, to plug an oil and gas well in the unit and Todd failed to do so. The Commission consequently revoked Todd's surety bond and appointed another operator in the unit because Todd had violated an order of the Commission. In the *Earnhardt* cause, Root Oil & Gas was acting as an operator without a permit and didn't have the required surety bond and plugging agreement, and the Commission ordered Root to secure a change of operator from Earnhardt to an operator bonded by the Commission. The Commission took actions against Todd and Root because they failed to obey an order or comply with the rules of the Commission, and it is in the public interest for the Commission to enforce the rules and orders under its jurisdiction.

9) In the *Hoover* cause, the Commission selected Hoover to be the unit operator because Hoover was a very experienced operator and the other party, Watts, didn't appear competent to operate an oil and gas well. The Commission removed Watts as the operator because it is in the public's interest that only experienced and capable operators be entrusted with the drilling and operation of wells in the state.

10) Here Bedford requests that the Commission remove Ramsey as operator over the SWD well in Section 19. Bedford's request is not to be appointed as an alternative operator in the unit, as in the Marlin cause, but to have Ramsey removed as the operator of the SWD well and itself appointed so that it can acquire the wellbore for its own use. Granting Bedford's request would be tantamount to the Commission using its police power to take away Ramsey's legitimate right to use the SWD well to assist in the production of oil and gas from wells in Sections 24 and 25 without providing any compensation to Ramsey.

11) Bedford makes its request but has failed to show a compelling reason for the Commission to act at this time. Ramsey hasn't violated any of the rules and orders of the Commission, appears to be an experienced and competent operator and is the operator of record for the SWD well. Given that the ownership of the wells in Section 19, 24 and 25 is disputed, the Commission

does not appear to have a legal basis or authority to use its police power to deprive Ramsey of its lawful use of the SWD well just to benefit Bedford.

12) Granting Bedford's request to remove Ramsey as the operator would also not be in the public's interest because doing so would leave no one in charge of the operation of the SWD well. The Commission may have the power to remove Ramsey as the operator but does not have the power to appoint Bedford, because the District Court in Lincoln County has prohibited Bedford from entering upon the 5 acres on which the SWD well is located. Bedford can't operate the SWD well if it can't physically access the well or the well-site. A Commission order appointing Bedford as the operator of the SWD well would be an impermissible collateral attack upon an order of the District Court.

13) The ALJ notes that Bedford has the right to drill in the unit and can commence operations to produce hydrocarbons at any time regardless of who operates the SWD well. Bedford can also apply for a permit to drill and operate a new SWD well and isn't constrained to use the well currently operated by Ramsey.

## **POSITIONS OF THE PARTIES**

### **BEDFORD**

1) **William H. Huffman**, appearing on behalf of Bedford, has taken over this case and was unaware of filing dates. The exceptions were filed by Bedford outside of the ten day period allowed under OCC-OAC 165:5-13-5(a)(2). The attorney previously working on the case was more than likely unaware of the Commission rules on exceptions. Understanding that the exception may not be considered because of the untimely filing, Bedford is interested in preserving an opinion that is without prejudice so they can re-file when the District Court matter is resolved.

2) The main reason why the ALJ granted the motion to dismiss on this application to change operator was because there is pending litigation in District Court on the matter. Bedford argues that simply because there is a dispute in district court, that should not keep the Commission from performing functions within their jurisdiction. The Commission's jurisdiction to operate and to conduct its business is separate and apart from what transpires in the district court.

3) The Commission issued Order No. 458753 in December of 2001 permitting a noncommercial disposal well. The Commission gave authority to Access Energy 3, LLC to operate the Merrick 19-W-1 disposal well. Thus, there is a party that doesn't own any interest that is still the designated operator of

the SWD well. Bedford is applying to be operator because they have a problem with Ramsey continuing as operator when they have no interest in the well.

4) The district court put an injunction on Bedford to keep them from entering the five acres in ownership dispute until resolution of the case. This was important in the ALJ order granting the motion to dismiss. Bedford argues that the Commission has the jurisdiction to determine who should operate the well, not the district court.

5) When there is a change of operator or ownership, the Commission requires certain actions be taken such as running new MIT tests on the well. The Commission retains jurisdiction over the well and granting the motion to dismiss deprives Bedford of its opportunity to be heard and circumvents the Commission's jurisdiction.

6) Bedford believes that the ALJ should be reversed and the application should be put back on the docket so the merits can be heard and the evidence be brought out concerning the operation of the well.

### MOVANTS

1) **Harlan Hentges**, appeared on behalf of the Movants, urges that any lawyer that practices in front of any tribunal should learn the tribunal's rules and abide by them. Bedford's exceptions were filed out of time and thus in violation of Commission rule OCC-OAC 165:5-13-5(a)(2).

2) Ramsey argues that Bedford does not seek any relief that is within the jurisdiction of the Commission to grant. They don't ask for any relief related to waste, correlative rights or pollution. This is a SWD well.

3) Bedford's repeated argument is that Bedford owns an interest in the property, SW/4 of Section 19. Sometimes they claim that Bedford owns the Movants. These aren't issues that the Corporation Commission can resolve. Those disputes are pending in Lincoln County District Court. It has been the subject of at least two federal court cases in the Western District. Ramsey believes that the numerous cases filed by Bedford on this same issue are to exhaust the resources of the Movants.

4) Ramsey supports the Report of the ALJ and believes it should not be reversed.

## RESPONSE OF BEDFORD

- 1) Bedford contends that Ramsey is in violation of Order No. 458753 because they are disposing of water on a nonproducing oil and gas lease. When you dispose of water on a nonproducing oil and gas lease the Commission's rules say the well becomes a commercial disposal well. Due to this violation, Bedford argues that Ramsey should be removed as operator.
- 2) Bedford believes that at the very least this is an issue of fact that is outstanding and needs to be resolved by the Commission.

## CONCLUSIONS

**The Referee finds that the Bedford Exceptions to the Report of the Administrative Law Judge must be dismissed as they were not perfected (timely filed) pursuant to OCC-OAC 165:5-13-5(a)(2).**

- 1) OCC-OAC 165:5-13-5(a)(2) provides:

Exceptions to the report from the hearing on the merits. Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) days in which to file exceptions to the report before the Commission en banc. To perfect an exceptions, written exceptions must be filed within ten (10) days after filing of the Report of the Administrative Law Judge. The person filing exceptions shall serve copies of the exceptions and notice of hearing for the exceptions on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after the expiration of the ten (10) day period for filing the exceptions.

- 2) The ALJ's Report was filed on August 9, 2012. According to the above quoted rule August 20, 2012 would be the last day that an appeal could be filed by Bedford. OCC-OAC 165:5-13-5. Bedford filed its Exception of Applicant Bedford Energy Inc. of Report of Administrative Law Judge under OCC-OAC 165:5-13-5.2 Against Findings in Cause CD 201106562 on August 23, 2012. The Court Clerk's Office, Oklahoma City Corporation Commission of Oklahoma file stamped Bedford's document on August 23, 2012.

3) OCC-OAC 165:5-1-4(j) states that documents submitted for filing must be addressed to the Court Clerk and all documents shall be deemed received upon the date file stamped by that office. OCC-OAC 165:5-1-4-6(a) provides:

(a) **Computation of time.** In computing any period of time prescribed by statute or by the rules of this Chapter, the day of the act, event, or default from which the designated period of time begins to run shall be omitted and the last day of the designated period shall be included, unless the last day falls on a Saturday, Sunday, or legal holiday or official agency closing, in which case the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday or official agency closing.

4) The ALJ's Report was filed on August 9, 2012 and on the same date a copy of the Report of the ALJ and a standard letter was mailed to Bedford. The standard letter stated:

This report will be filed as of the date of this letter with the Court Clerk's office. Under the provisions of OCC-OAC 165:5-13-5(a)(2), you will have ten days thereafter in which to file any exceptions and notice of hearing with the Court Clerk's office in Tulsa or Oklahoma City if you so desire.

5) In this particular case Bedford's EXCEPTION OF APPLICANT BEDFORD ENERGY INC. OF REPORT OF ADMINISTRATIVE LAW JUDGE UNDER OAC 165:5-13-5.2 AGAINST FINDINGS IN CAUSE CD 201106562 was filed on August 23, 2012 which was outside the time allowed by the rules. Also, filed on August 23, 2012 was Bedford's notice concerning the hearing regarding his attempted appeal which was set for September 24, 2012 at 8:30 a.m.

6) Therefore, the Referee finds that Bedford's exceptions were not timely filed. Thus, pursuant to OCC-OAC 165:5-13-4(c) "The Commission shall enter such order as shall be deemed appropriate upon consideration of the report."

7) In addition, the Referee would like to further state that the ALJ's recommendation in his Report of the Movants' Motion to Dismiss should be granted as it is supported by law, the weight of the evidence and is free of reversible error. The Referee would adopt the Report of the ALJ as fully and completely as if set out herein. The controversy between the Movants and

Bedford is a dispute over the ownership of a salt water disposal well in Section 19 and two oil and gas wells in Sections 24 and 25. The dispute is in the District Court of Lincoln County and the Federal Court in the Western District. The District Court is the proper forum to resolve disputes relating to the ownership of property, including mineral rights, and quiet title. See *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984); *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98 (Okl. 1985); and *Rogers v. Quicktrip Corp.*, 230 P.3d 853 (Okl. 2010).

**RESPECTFULLY SUBMITTED THIS 16<sup>th</sup> day of November, 2012.**

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas  
Commissioner Anthony  
Commissioner Murphy  
Jim Hamilton  
ALJ David D. Leavitt  
Harlan Hentges  
William H. Huffman  
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