

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: DEVON ENERGY PRODUCTION)
CO., L.P.)

RELIEF SOUGHT: HORIZONTAL SPACING)

LEGAL DESCRIPTION: SECTION 11, TOWNSHIP 24)
NORTH, RANGE 1 EAST,)
NOBLE COUNTY, OKLAHOMA)

CAUSE CD NO.
201202914

APPLICANT: DEVON ENERGY PRODUCTION)
CO., L.P.)

RELIEF SOUGHT: WELL LOCATION EXCEPTION)

LEGAL DESCRIPTION: SECTION 11, TOWNSHIP 24)
NORTH, RANGE 1 EAST,)
NOBLE COUNTY, OKLAHOMA)

CAUSE CD NO.
201202915

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF MOTIONS TO VACATE EMERGENCY
ORDERS NO. 598010 AND 598011**

These Motions came on for hearing before **Susan R. Osburn**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 7th day of June, 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.

APPEARANCES: **Michael D. Stack**, attorney, appeared for applicants, Devon Energy Production Co., LP. ("Devon"); **Richard J. Gore**, attorney, appeared for Frances C. Edwards and Cow Creek Resources Inc. (collectively "Cow Creek"); 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 Motions to Vacate Emergency Order Nos. 598010 and 598011 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 22nd day of June, 2012. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

COW CREEK APPEALS the ALJ's recommendation to deny the Motions to Vacate Emergency Order Nos. 598010 and 598011.

Devon filed applications for emergency orders in CD 201202914 and CD 201202915 requesting that the Commission enter emergency orders granting authority to drill, test, and complete a well in the Mississippian, Woodford, Misener-Hunton and Sylvan common sources of supply. The emergency orders are temporary and are subject to the final determination of the Commission in these causes. In CD 201202914 Devon was requesting the Mississippian, Woodford, Misener-Hunton and Sylvan common sources of supply be established on a 640-acre horizontal drilling and spacing unit for Section 11. Currently, the Mississippi Chat is spaced on 40-acre drilling and spacing units. There are no producing wells in Section 11. The Application for Emergency Order in CD 201202915 stated that the horizontal well shall be completed as a cemented case hole at the following location:

Surface Location shall be no closer than 0 feet to the south line and no closer than 660 feet to the west line of Section 11, T24N, R1E;

Proposed location of the well's entry point to each common source of supply to be no closer than 0 feet to the south line and no closer than 660 feet to the west line of Section 11, T24N, R1E;

Proposed location of the well's top perforation in each common source of supply to be no closer than 150 feet to the south line and no closer than 660 feet to the west line of Section 11, T24N, R1E;

Proposed location of the well's final perforation in the wellbore shall be no closer than 0 feet to the north line and no closer than 660 feet to the west line of Section 11, T24N, R1E;

Devon requested that it be allowed to drill, test and complete a well prior to the date of the hearing on its application for a well location exception because financial damage, loss or detriment would be suffered by Devon if emergency

orders for a spacing and to drill, test and complete the above named common sources of supply was not issued herein prior to the hearing on the merits.

Devon's applications for emergency orders came on for hearing before an ALJ on the 15th day of May, 2012 and Devon was granted authority to drill, complete and test the well in the Mississippian, Woodford, Misener-Hunton and Sylvan common sources of supply underlying Section 11, but would not be allowed to produce said well pursuant to the emergency orders. Order No. 598010 and Order No. 598011 were issued on the 23rd day of May, 2012 granting authority to drill, complete and test the above referenced well.

On May 31, 2012 Cow Creek filed their Motions to Vacate Emergency Order Nos. 598010 and 598011. Cow Creek alleged that Devon had other locations they could drill and that there was no emergency as to Section 11 specifically. Cow Creek stated that it had already submitted evidence in Cause CD 201202300 that the drilling of a horizontal well in the Mississippi will destroy Cow Creek's ability to properly develop other potential formations. Cow Creek is the owner of minerals in the NW/4 of Section 11 and suggested to the Commission that Devon could drill its well in the E/2 of Section 11 far enough from the W/2 of Section 11 so as not to adversely impact the development of the W/2 of Section 11 thereby preserving the issues in this case for the hearing on the merits. Cow Creek alleged that Order Nos. 598010 and 598011 which issued in the captioned cause on May 23, 2012 should be vacated so that the issues involved could be adjudicated at the hearing on the merits.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

- 1) **ALJ Susan R. Osburn** reported that she recommended denying the Cow Creek Motions to Vacate Emergency Order Nos. 598010 and 598011. The ALJ states that this matter concerns Motions to Vacate Emergency Order Nos. 598010 and 598011. The Motions to Vacate were heard on June 5, 2012. The ALJ states that Cow Creek was not present at the emergency order hearings.
- 2) The ALJ states that Cow Creek thought they had given Mr. Richard Gore, their attorney, notification to appear at hearing, but their attorney did not receive notification and did not appear. The ALJ states that Cow Creek timely filed their Motions to Vacate.
- 3) The ALJ states that the applicants challenged the motions as an improper collateral attack. The ALJ determined the motions to be a direct attack.
- 4) The ALJ states that Devon argued that a change in condition was necessary to file the motions. The ALJ determined a change in condition to be unnecessary. The ALJ states that, however, good cause (e.g., defective notice,

misrepresentation of possession of the right to drill) must be shown to vacate the emergency orders.

5) The ALJ states that Cow Creek argued that because they were not present at hearing and because they disagreed with the plan of development, Devon should not proceed under the emergency orders. The ALJ states that Cow Creek argued that to continue under the emergency orders would halt future development of Cow Creek.

6) The ALJ states that proper Commission process was followed and a finding of financial loss was established by Devon at the hearing on the emergency orders.

7) The ALJ states that the emergency orders are not defective, and therefore there is no reason to vacate Order Nos. 598010 and 598011.

POSITIONS OF THE PARTIES

COW CREEK

1) **Richard J. Gore**, attorney, appeared on behalf of Cow Creek, asserts that Devon filed for horizontal spacing in Section 10 and Section 11. Cow Creek contends that it requested an emergency order to drill a vertical well in a separate matter in Section 10 (CD 201202300). Cow Creek contends that that request was denied at initial hearing and denied on appeal. Cow Creek contends that the Commission has been inconsistent in this matter.

2) Cow Creek asserts that the property in question has been in Mr. Frances Edwards' family for multiple generations. Cow Creek asserts that Mr. Frances Edwards owns the N/2 of Section 10 and the NW/4 of Section 11. Cow Creek contends that there has been a producing well in the NE/4 of Section 10, and that an additional well was denied by the Commission.

3) Cow Creek asserts that Devon is attempting to drill a horizontal well in Section 10 and Section 11.

4) Cow Creek contends that it was denied its emergency order because the ALJ stated that all issues could be resolved at a hearing on the merits. Cow Creek contends that there is great difference between drilling vertically and drilling horizontally in Section 10 and Section 11, and that the issues should be resolved at a hearing on the merits.

5) Cow Creek asserts that Mr. Frances Edwards is a sophisticated party that has drilled around 14 wells in the prior year.

6) Cow Creek contends that, however, Mr. Frances Edwards is not sophisticated regarding Commission matters, as he has not filed or needed to file spacing applications for his shallow vertical oil wells.

7) Cow Creek asserts that their attorney did not receive notification of the emergency orders until after the hearing was held and the emergency orders were filed. Cow Creek contends that their Motions to Vacate were filed within the required 10 days after the emergency orders.

8) Cow Creek asserts, noted in paragraph 2 of the orders, that Devon stated that it held 80,000 acres in the area. Cow Creek contends that Devon could have drilled elsewhere or at least drilled in the E/2 of Section 11 as Cow Creek requested.

9) Cow Creek contends that Devon would not agree to modification, restriction, or limitation of the emergency orders. Cow Creek asserts that if the horizontal well were drilled in the E/2 of Section 11, it would not interfere with Mr. Frances Edwards' potential drilling in the NW/4.

10) Cow Creek contends that the Mississippi is the most produced formation in the region.

11) Cow Creek asserts that drilling a horizontal well in the NW/4 would destroy any ability to develop the area with vertical wells, creating waste. Cow Creek contends that Devon is drilling in the NW/4 specifically to frustrate Cow Creek's operations.

12) Cow Creek asserts that it wishes to maintain its working interest position in the section, and therefore would be responsible for one-quarter of the \$3,847,000 drilling cost.

13) Cow Creek requests that the Commission vacate the emergency orders or modify the orders to limit drilling to the E/2 of the section. Cow Creek contends that Devon would be able to drill a one mile lateral in the E/2 and that the geology in the E/2 is the same as the geology in the W/2.

14) Cow Creek asserts that the orders are inconsistent decisions.

15) Cow Creek reasserts that Devon could drill in the E/2, could wait to drill until a hearing on the merits, or could drill in another location in the area.

16) Cow Creek asks that the recommendation of the ALJ be reversed.

DEVON

- 1) **Michael D. Stack**, attorney, appeared on behalf of Devon, contends that the orders concerning Section 10 and Section 11 are not inconsistent. Devon asserts that in Section 10 there was already a producing vertical well in place, and that in Section 11 there is not yet a producing well. Devon contends that it backed off drilling in Section 10 because of Mr. Frances Edwards' protest and because there was a producing well in place. Devon asserts that the Commission denied Cow Creek's request to drill an addition vertical well in Section 10.
- 2) Devon contends that it filed its request for emergency orders without any knowledge of an issue in Section 11 because there was no producing well in the section. Devon asserts that their emergency orders were approved by the Commission and that it has already begun dirt work on the site. Cow Creek's request in Section 10 for another vertical well was because if Cow Creek could get another vertical well in Section 10 then that well under Commission rules has the right to produce. Devon contends that Cow Creek's assertions in their Motions to Vacate that no operations have commenced on the site is incorrect and that the attorney for Cow Creek admitted to this. Devon asserts that it has spent the money necessary to prepare the drilling site and it therefore cannot now change locations.
- 3) Devon contends that it would be impossible for Cow Creek to have notified its attorney, Mr. Gore, on May 4, 2012, to protest the Section 11 matter at the time it also notified its attorney, Mr. Gore, to protest the Section 10 matters. Devon asserts that it did not file the Section 11 matter until May 10, 2012. Devon reasserts that Cow Creek could not have advised its attorney to protest the Section 11 matters at the time it also advised its attorney to protest the Section 10 matters.
- 4) Devon reasserts that it backed off drilling in Section 10, and decided to pursue drilling in Section 11.
- 5) Devon contends, contrary to assertions in the Motions to Vacate, that it only had two potential locations to drill the sweet spot it desired to drill, either in Section 10 or in Section 11.
- 6) Devon asserts that it backed out of Section 10 because of Cow Creek's producing well in Section 10.
- 7) Devon contends that the emergency orders state that the Helmerich & Payne Rig #378 was in the process of being moved to the sections from Canadian County. Devon asserts that the Section 11 location was the only location available for the rig. Devon contends that the rig has a day rate of

\$25,302 or \$17,302 upon 30 day notification. Devon asserts that the rig has been with the company for 797 days. Devon contends that it did not want to risk losing the rig.

8) Devon asserts that notice in the emergency orders was proper, and that there has not been a change of condition or knowledge since the issuance of the orders. Devon contends that it is improper to vacate the order without such a showing, even if timely. Devon asserts that Cow Creek has not even provided an adequate explanation for its absence at hearing.

9) Devon cites *State ex rel. v. Comm'n of Land Office v. Corp. Comm'n*, 590 P.2d 674 (Okl. 1979), and contends that the case holds that a change in condition must precede a modification of a final order of the Commission. Devon contends that an emergency order is a final order.

10) Devon contends that jurisdiction was proper in this matter.

11) Devon also cites *Landowners, Oil, Gas & Royalty Owners v. Corp. Comm'n*, 415 P.2d 942 (Okl. 1966). Devon contends that this case holds that the Supreme Court of Oklahoma is not authorized to weigh evidence on appeal from a Commission order, and that the Supreme Court must uphold a Commission order supported by substantial evidence. Devon contends that there was substantial evidence presented in support of the emergency orders, and that there was proper jurisdiction over the parties.

12) Devon asserts that it relied on the Commission's emergency orders and has begun the process and expense of drilling under these orders.

13) Devon contends that the spacing of Section 11 covers four zones – the Mississippian, the Woodford, the Misener-Hunton, and the Sylvan.

14) Devon reasserts that there are no producing wells in Section 11.

15) Devon contends that Cow Creek would be required to pay 1/4th of the drilling costs, or around \$1 million.

16) Devon reasserts that it spent money in reliance upon properly issued Commission orders. Devon contends that the Motions to Vacate should be denied.

17) Devon contends that *Grison Oil Corp. v. Corporation Commission*, 99 P.2d 134 (Okl. 1940) states that it is the duty of the ALJ to listen to the experts. Devon contends that at hearing for the emergency orders the ALJ fulfilled this duty. Devon asserts that *Palmer Oil Corp. v. Phillips Petroleum Co.*, 231 P.2d 997 (Okl. 1951), also supports this proposition.

18) Devon reasserts that the emergency orders are valid and that it would like to proceed under those orders.

RESPONSE OF COW CREEK

1) Cow Creek asserts that Section 11 was undeveloped because Mr. Frances Edwards was saving the interest for his children.

2) Cow Creek contends that its share as a working interest owner in a Section 11 horizontal well would be \$961,750.

3) Cow Creek asserts that there are mistakes in the Motions to Vacate due to attorney error.

4) Cow Creek reasserts that there must be an alternative drilling site in the 80,000 acres owned by Devon in the region.

5) Cow Creek contends that the emergency orders are not final orders, as Commission rules allow an emergency order to be vacated upon a motion within 10 days of issuance. Cow Creek asserts that the ALJ concluded that the emergency orders were not final orders, that the Motions to Vacate did not require a change in condition, and that the Motions to Vacate were not a collateral attack. Cow Creek contends that an order is not a final order until it cannot be appealed. Cow Creek asserts that vacating a Commission order that is not final does not require a change in condition.

6) Cow Creek contends it has a valid basis to vacate the order or, alternatively, modify the order to limit it to the E/2 of Section 11. Cow Creek asserts that Devon could have drilled another well and approached Section 11 after a hearing on the merits.

CONCLUSIONS

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

1) The Referee finds the ALJ's recommendation to deny the Cow Creek Motions to Vacate Emergency Orders No. 598010 and 598011 is supported by the facts and circumstances adduced before the ALJ and free of any abuse of discretion on the part of the ALJ. The ALJ heard the motions as an experienced jurist and has considered the arguments and the facts presented.

The Referee, upon review, can find no reason to vary that determination. The ALJ as the initial trier of fact determines whether a certain and definite financial loss was established under the emergency applications to justify the ruling.

2) OCC-OAC 165:5-17-1 provides:

(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order. However, a motion to reopen the record after an order has been entered shall not be considered a proper motion to seek relief from the order. The motion shall specifically state:

(1) The parts or provisions of the order sought to be set aside or modified or from which relief is sought.

(2) The specific modifications or other relief sought by the motion.

(3) The specific grounds relied upon for relief.

(b) Such motion shall be set for hearing before the Commission, unless referred. A copy of the motion, including notice of the date set for hearing, shall be served by the movant on each party of record by regular mail, facsimile, electronic mail or in person. If any motion filed pursuant to this Section is placed on the emergency or regular docket for hearing, the movant shall give at least five (5) days written notice to all respondents listed on the affidavit of mailing and all parties of record.

3) It is important to determine the intent of the Commission in enacting the rule using the plain meaning or wording of the rule, giving the words their ordinary and common definitions. As acknowledged by the court in *Oglesby v. Liberty Mutual Insurance Company*, 832 P.2d 834 (Okla. 1992):

The determination of legislative intent controls judicial statutory construction. Legislative intent is determined from the language of the statute in light of its general purpose and object. We presume that the Legislature intends what it expresses in a statute. Except when a contrary intention plainly appears, the words used are given their ordinary and common definitions (footnotes omitted).

There is a presumption that a Commission order is valid, reasonable and just. 52 O.S. 1981 Section 111; *Mustang Production Company v. Corporation Commission of the State of Oklahoma*, 771 P.2d 201 (Okl. 1989). As stated by the Court in *Oklahoma Gas and Electric Company v. State*, 225 P. 710 (Okl. 1924):

Under Section 22 Article 9, of the Constitution, all orders made by the Corporation Commission are presumed to be reasonable until the contrary is made to be appear; this presumption in favor of the reasonableness of orders made by the Corporation Commission was created by the Constitution of the state for a definite purpose and cannot be disregarded by this court unless the contrary is made to appear...

4) Up until the Emergency Order Nos. 598010 and 598011 become final the Commission has the power to reopen and set aside or vacate the emergency orders. As stated by the Supreme Court in *Turpen v. Oklahoma Corporation Commission*, 769 P.2d 1309 (Okl. 1988):

Oklahoma jurisprudence treats a motion to modify a Commission order differently from that of a district court. Commission orders automatically become final after 30 days. Once an order has become final, its vacation is beyond that agency's power. The Commission is without authority even to review and modify the order unless statutory notice of a hearing concerning the proposed modification is given to all interested parties. Even during the 30 day period before an order becomes "final" in the sense of passing beyond the reach of appellate review the Commission may act upon a motion to rehear, modify or reconsider its order but is not required to do so. It is well established that the Commission has no power to entertain a rehearing or reconsideration request of a

decision after an appeal from it has been made to this court.

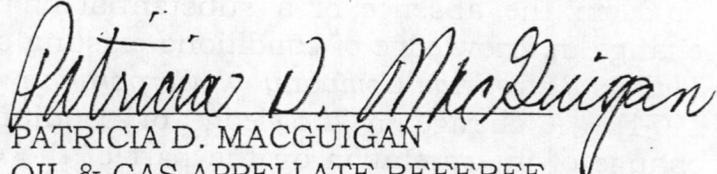
5) In addition, the Corporation Commission is without authority to entertain an application to amend or modify a prior order which has become final, in the absence of a substantial change of conditions or substantial change in knowledge of conditions existing since the prior order was entered. *Phillips Petroleum Company v. Corporation Commission*, 482 P.2d 607 (Okl. 1971). A change in knowledge or conditions does not encompass a mere change of interpretation on the part of the Commission but encompasses an acquisition of additional or new data or the discovery of new scientific or technical knowledge since the date the original order was entered.

6) Order Nos. 598010 and 598011 are not final orders. However, Cow Creek must show that under OCC-OAC Rule 165:5-17-1(a)(3) the specific grounds relied upon to vacate these orders. Cow Creek submitted evidence in Cause CD 201202300 that the drilling of a horizontal well in the Mississippi will destroy Cow Creek's ability to properly develop other potential formations. Cow Creek is the owner of minerals in the NW/4 of Section 11 and alleges that Devon has other locations they could drill and that there is no emergency as to Section 11. However, there was definitive evidence presented by Devon determining that a certain and definite financial loss would occur. The evidence reflected that the Helmerich & Payne Rig #378 had been under contract since May of 2008. The day rate on the rig is \$25,635 per day with additional costs associated with the rig being on hold of an additional \$35,000 per day. The contract with the Helmerich & Payne Rig #378 does have a 30 day notice provision for terminating the use of the rig, however, the operator would be obligated to pay \$17,302 per day for each day the rig is not used in the 30 day notification time. There was also evidence that there was no other location for this rig to go to and that the location and pad had already been prepared by Devon.

7) The ALJ found that there was a substantial financial loss without the issuance of the two emergency orders, which was supported by the weight of the evidence and free of reversible error. The Referee therefore believes that under these circumstances and evidence the emergency orders were warranted. The orders provide that the operator is allowed to drill, test and complete a well prior to the date of the merit hearing in this matter. The Referee notes that while the proposed well will be allowed to be drilled under the emergency orders issued, the emergency applications are temporary orders and the granting of authority and the well's allowable are still subject to the merit hearing. Devon takes the risk that the applications may be denied or the allowable restricted on the proposed well if there is evidence showing that the proposed well could occasion waste or cause a violation of the correlative rights of the owners within the common sources of supply.

8) Under the above listed circumstances, the Referee can find no reason to vary the recommendation of the ALJ and the ALJ should be affirmed.

RESPECTFULLY SUBMITTED THIS 28th day of June, 2012.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Murphy
Commissioner Anthony
Commissioner Douglas
Jim Hamilton
ALJ Susan R. Osburn
Michael D. Stack
Richard J. Gore
Office of General Counsel
Michael L. Decker, OAP Director
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PROGRAM	C.P.S.	SCANNED	INDEXED
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