BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT:	EAGLE ENERGY PRODUCTION, L.L.C.	)
RELIEF SOUGHT:	INTERPRETATION AND CLARIFICATION OF POOLING ORDER NO. 552381, INCLUDING DETERMINATION OF CONTINUING EFFECTIVENESS OF SUCH ORDER AS TO INTERESTS COVERED THEREBY	) CAUSE CD NO. 201004062-T/O
LEGAL DESCRIPTION:	SECTION 30, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE IM, LINCOLN COUNTY, OKLAHOMA	)

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REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **Susan R. Osburn**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 3rd, 5th and 22nd day of October, 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: **Michael D. Stack**, attorney, appeared on behalf of applicant, Eagle Energy Production, L.L.C. and also on behalf of Special Energy Corporation (collectively "Eagle"); **Stephen R. McNamara**, attorney, appeared on behalf of applicant, Eagle Energy Production, L.L.C.; **John R. Reeves**, attorney, appeared on behalf of Claremont Inc. ("Claremont"); **Robert G. Gum**, attorney, appeared on behalf of Tower Royalty Co., L.L.C. ("Tower"); **Eric R. King**, attorney, appeared on behalf of Thistle Royalty Company, L.L.C. ("Thistle"); **John E. Lee, III**, attorney, appeared on behalf of Pomona Production, L.L.C. ("Pomona"); and **Jim Hamilton**, Assistant General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 5th day of December, 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 8th day of February, 2013. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

TOWER AND THISTLE (COLLECTIVELY "PROTESTANTS" OR "T&T") TAKE EXCEPTION to the ALJ's recommendation that the Commission find that pooling application of ORCA Resources LLC ("ORCA") in CD 200707536 properly named and noticed Blackburn Properties Inc. ("Blackburn") as the then current owner of the interest in question in Section 30, T15N, R4E, Lincoln County, Oklahoma and that the Commission's jurisdiction to pool that interest attached to that interest at that time. The ALJ further recommended that the Commission find that said interest which later reverted to Tower in Section 30 is subject to pooling Order No. 552381. It was also the recommendation of the ALJ that the Commission find that the operator under Order No. 552381 timely commenced and completed the unit well. It was lastly the recommendation of the ALJ that the Commission find that Order No. 552381 is in full force and effect and has properly pooled the Protestants' interest.

This is an application by Eagle seeking a determination that pooling Order No. 552381 has continuing effect on the interests covered thereby in Section 30. The interest in question was owned by Tower, which was owned by Jeff McDougall who had the interest leased to Blackburn for one year until March 27, 2008. In November of 2007 Orca filed a pooling application for the Misener-Hunton and named Blackburn as the current owner of the interest. Blackburn was properly noticed and appeared at the hearing to protest the pooling on January 8. He appealed the Report of the ALJ from that hearing. Ultimately Order No. 552381 issued on April 8, 2008 pooling the interests in Section 30. During that timeframe the lease owned by Tower expired on March 27, 2008. The Westlake well was commenced on 6-15-08 under that order and was completed in August of 2008 and Blackburn was paid over $19,000 in May of 2008 as bonus under that order. After the well was commenced Eagle acquired 56% of the unit interest and thereafter Claremont and others obtained other unit interests. In July of 2010 Tower conveyed part of the expired Blackburn lease to Thistle (owned by Chad McDougall) and they filed a district

court action to determine the 155 acres Tower originally owned was not subject to pooling Order No. 552381. Thereafter Eagle filed this application to determine that the Tower acreage was subject to pooling Order No. 552381. In October of 2010 the district court stayed their action until the Commission determined the state of the acreage named under the pooling. Subsequently the Commission has denied T&T's Motion to Dismiss and the cause came on for merit hearing before an ALJ in October of 2012. At the time of the hearing the parties had agreed to present only the Eagle land witness and exhibits reflecting the events that have occurred here, as well as briefs in support of their positions.

THE PROTESTANTS TAKE THE POSITION:

1) The ALJ Report is contrary to the law and the evidence properly admitted as part of the record of this cause.

2) The consequences to the royalty owners in this State of upholding the ALJ's Report would be profound and unprecedented. In effect, the ALJ recommends that the Commission send a message to the mineral owners of this State that the Commission, by a pooling order, can use its police powers to confiscate a separate and reserved interest in minerals that ripens as a matter of law and by private contract during the pendency of a pooling proceeding *without any action by the lessee* when that mineral owner was not afforded notice of the proceeding, was not named in the proceeding, was not afforded an opportunity to be heard, or given any notice the mineral owner must make an election. In other words, the ALJ wants the Commission to tell every mineral owner in Oklahoma that they can lose their full rights of participation or lease rights associated with their mineral ownership, without any notice or inclusion in the proceedings. All of this, even though the limited estate granted by them in an oil and gas lease expires *by* its *own terms* before a pooling order is entered. Further, the Commission can do so regardless of the terms of the oil and gas lease, without any notice to them whatsoever and without any compensation to them whatsoever. And by doing so, the Commission would force the mineral owner to resort to the courts to remedy any issues of improperly paid bonus for the owner's interest. Just to state the proposition demonstrates that the Commission doesn't have, and never has had, that kind of power to confiscate or condemn private property for the benefit of another private concern. For the Commission to arrogate unto itself that kind of power would be contrary to established constitutional principles of due process, and would send the message to the mineral owners that, regardless of what your contract says, the Commission has the power to disregard those negotiated terms and, in effect, rewrite the contract without any opportunity of the mineral owner to defend or protect its property.

3) With all due respect to the ALJ and the Commission, the Commission cannot have it both ways. The Commission must either accept protestants' position and conclude that Tower's separate reversionary interest/estate was not subject to the underlying pooling order, or the Commission must provide the necessary procedural vehicle assuring that protestants' interest/estate may be pooled, subject to the caveat that this procedural vehicle must name them as parties to the proceeding, and must give them mandated notice and an opportunity to be heard as to the disposition of their interest/estate. An important part of the right to notice and to be heard is the receipt of the pooling order when entered and the resulting right to make an election - whether to participate or to select from the menu of royalty and bonus alternatives. This entire problem could have been avoided by a "clean up" pooling prior to or contemporaneous with drilling the well - a procedure of common practice in the industry and before this Commission. The easy remedy was in the hands of the applicant, which consciously chose to try to confiscate Tower's reversionary interest through the pooling order without being bothered by the "troublesome" concepts of notice and an opportunity for Tower to be heard. Surprisingly, the ALJ fails to discuss the abject failure of the applicant to make any kind of effort in this regard, to file a clean up in the pooling, or even contact the mineral owner, but rather, places the onus on the mineral owner. This recommendation badly creates duties being placed on the mineral owners of this State, while relieving the applicant/operator of theirs. The issue here does not turn on the sophistication or lack of sophistication of the mineral owner. Due process is a constitutional imperative that applies to the sophisticated and unsophisticated alike.

4) Moreover, constitutional due process is an obligation of the applicant and this Commission. It cannot be an obligation (as is suggested by the ALJ) that requires a mineral owner in protestants' position to be forever and constantly vigilant in watching out for poolings, where the mineral owner is unnamed, and that may be pending at the expiration of the primary term of mineral owner's lease. Nor can the principles of due process turn on whether a mineral owner is actually aware of the expiration of a lease and the pendency of a pooling. Nor can the principles of due process require that the mineral owner must volunteer to subject himself/herself/itself to the Commission's jurisdiction by intervening in a pending process. It is the applicant that seeks to invoke the state's police power. It is the rules of the Commission that allows the applicant to do so. As such, the law requires the applicant to initiate the proceeding where the applicant seeks such relief and further requires the applicant to afford the person against whom he seeks such relief due process of law. The Commission has always made a practice of placing on the applicant the burden of being diligent with notice for an application so that the parties who are affected receive a fair opportunity to be heard. The Commission shouldn't abandon that practice now under the circumstances of this case by shifting to the lessor, the burden of keeping up with the progress of a pooling,

of checking to see when a pooling order is entered, of checking to see whether its lessee has elected to participate or not, and of checking the location to see if the lessee or the unit operator has complied with the terms of the lease in a manner that perpetuates the lease. That approach would stand constitutional principles and the practicalities of mineral ownership on their head.

5) At trial, and over protestants' objections, applicant was allowed to buttress its position through evidence that went beyond the parties' stipulations. A transcript of the hearing has been secured and is being supplied to the Referee which clearly identifies this evidence and protestants' objections to its admission. It is obvious to protestants that the ALJ not only admitted this additional evidence, but also considered and relied heavily upon it in reaching her conclusions. To allow admission of this material and to rely upon it is error. This suggestion of error is not a complaint about trial tactics. It is much more. On its face, this application was, as stated in the caption, to "clarify and interpret" a prior Commission pooling order, *i.e.,* to determine its meaning as intended by the Commission when it was entered. As a consequence, the evidence in this cause was required by law to have been restricted to the judgment roll in the underlying cause. Clearly the evidence was not so restricted, as is expressly acknowledged in the ALJ's Report. Over protestants' consistent objections, the ALJ went outside the judgment roll to consider matters not before the Commission when it heard the underlying cause and when it entered the underlying pooling order. Many of these matters occurred after the entry of the underlying pooling order. Logic and common sense dictate that matters unknown to the Commission at the time it entered the subject pooling order would not be relevant or competent in determining the Commission's intention when it entered the subject order. This is clear error. This is prejudicial error for this material provides the factual basis for the ALJ's erroneous recommendations.

6) Even if the ALJ had restricted her analysis to the judgment roll as is required by law in a clarification/interpretation cause such as this, her analysis is even contrary to such evidence. While the judgment roll in the underlying cause does reflect an ALJ finding and recommendation, accepted by the Commission, that the Tower to Blackburn lease was not representative of fair market value, it contains no finding that the lease itself had no legal effect. Nor does the judgment roll reflect that the primary term of the Tower to Blackburn lease was even an issue in the proceeding - either relating to fair market value or otherwise. The judgment roll is totally silent on that point. It was never raised by the applicant. However, the effect of the applicant not commencing drilling operations in accordance with the specific terms of the Tower to Blackburn lease is central to this cause. By her analysis, it appears the ALJ necessarily assumes the Tower to Blackburn lease to be of no force or effect. In so doing the ALJ erroneously either misconstrues the underlying pooling order, or retries the underlying cause and substitutes her conclusions

as to the lease for that of the ALJ, the Referee and the Commission itself - or both. The ALJ then improperly relies upon her conclusion which is contrary to the judgment roll to effectively treat the Tower to Blackburn lease as having no legal effect. To so proceed is error.

7) By so proceeding, the ALJ seeks to engage in an impermissible collateral attack upon the underlying order under the guise of clarification and interpretation of that order. To do what the ALJ has recommended would be to actually modify the underlying pooling order which was never a part of the relief requested by the applicants in this cause. To modify the underlying pooling order requires the applicant to present evidence of a change in condition which is not in the record of this cause. At no point in the judgment roll of the underlying cause is there any evidence to support a conclusion that the Tower to Blackburn lease had no legal effect. Even if applicant's improperly admitted evidence contrary to the judgment roll is considered, there is no such evidence in the record. Accordingly, it is error to so treat the lease.

8) On its face the subject application is plainly a "clarify and interpret an order" application. It is not a "determine compliance" application. Nevertheless, the ALJ clearly and erroneously elects to treat it as the latter. Why? Because in a compliance determination cause, evidence dehors the judgment roll can be relevant while in a construction and interpretation cause, it is not. The consequence of the ALJ mischaracterizing this cause provides a decision-making vehicle to avoid the legal requirements that her conclusion be based strictly on the judgment roll in the underlying cause. Her reliance on an analysis appropriate to a compliance cause while adjudicating a construction and interpretation cause is error.

9) By mischaracterizing the fundamental character of this application as a compliance cause as opposed to a clarification/interpretation cause, the ALJ's Report clashes with a second rule of law: that is, the Commission lacks the jurisdiction to clarify and interpret an order that is not facially ambiguous. As to all issues material to this dispute the underlying pooling order is clear as a bell. The only issue is whether the pooling order intended to operate on Tower's reversionary interest. The judgment roll clearly establishes that the Commission intended for the order to operate only on Blackburn's leasehold interest granted by, and subject to, the terms of the Tower to Blackburn lease - whatever that might be. Special, the original pooling order operator, reinforced this point by paying the bonus to Blackburn - not Tower - and by signing a pooling affidavit showing Blackburn (not Tower) as the party pooled. The order is very plainly worded with language that is well understood and which is completely free of ambiguity. As shown directly by reference to the judgment roll in the underlying cause, neither Tower or Thistle was a party to that proceeding and yet the ALJ's recommendation would effectively cause them to be so treated. The Commission's power to clarify and interpret can only be

exercised when its order is facially ambiguous. It is not ambiguous in this case. To step out and "construe/interpret" an order which is not ambiguous as to the identity of the parties thereto by retroactively adding Protestants as parties, is to make a modification to the order which is beyond the Commission's jurisdiction to so make. This limitation on its jurisdiction has been repeatedly and consistently recognized by the Commission.

10) The ALJ's finding that Blackburn's leasehold interest reverted to Tower and that Tower thus became a successor in interest to Blackburn is error. The undisputed evidence in this cause shows Tower to have always owned a separate interest or estate from that of Blackburn. This is so as a matter of property law. Tower's separate estate is determined, in part, by the terms of the private contract right memorialized in the Tower to Blackburn lease. Under the lease, Tower reserved a reversion in itself, not a possibility of reverter. At the termination of Blackburn's interest/estate, Tower's future interest vested in possession and enjoyment. The separate Tower estate is part of its mineral interest not conveyed by the Tower to Blackburn lease. The separate interest remained with Tower after signing the Tower to Blackburn lease. Nothing reverted to Tower from Blackburn. Nothing could revert, as Blackburn's interest/estate had expired automatically. There was no estate that Blackburn could assign. The only event that would have kept Tower's reversionary interest from vesting in possession and enjoyment would have been for the applicant to have a drilling rig on location and actually drilling prior to the expiration of the primary term. That event was within the exclusive control of the applicant. That event didn't happen. As such, Tower did not "succeed" to Blackburn's interest. There was nothing Blackburn had to do to "reassign" or "re-convey" the interest back to Tower. Blackburn's interest simply expired in accordance with its own contractual limitation. For the ALJ to hold otherwise is error.

11) The ALJ's reliance on *in rem* jurisdiction of a pooling order is misplaced. *In rem* jurisdiction empowers the pooling order to work on a specific interest/estate, and once it has attached it remains attached, but only so long as both the order and the interest survive. In the underlying pooling, the specific interest on which the *in rem* jurisdiction operated was the Blackburn *leasehold* interest - not on any interest in the Tower minerals. However, what the Administrative Law Judge ignored is that for *in rem* jurisdiction to attach to a specific interest/estate, the owner of such interest/estate must first be subjected to the Commission's *in personam* jurisdiction. That is, the owner of such interest/estate must be made a party to the proceeding and must be afforded notice and opportunity to be heard as a matter of constitutional due process. *In rem* jurisdiction was established only as to Blackburn's limited interest/estate in the Tower to Blackburn lease (not the Tower minerals), as Blackburn was made a party to the pooling and did receive notice and opportunity to be heard. However, Blackburn's interest expired by its terms

during the pendency of the underlying cause and *before the pooling order was entered and became effective.* In non-legal terms, it simply vanished, and with it the Commission's *in rem* jurisdiction over it. There was nothing vested in Blackburn at the time the pooling order was entered on which *in rem* jurisdiction could attach. Tower was never made a party with notice and opportunity to be heard; consequently, the Commission acquired neither *in personam* jurisdiction nor *in rem* jurisdiction over Tower's mineral interest/estate, including the separate reversionary interest. As such, Protestants' interests/estates are beyond the jurisdictional reach of the pooling order, and to hold otherwise is error.

12) Also, the ALJ implies, if not specifically recommends, that it is the application in a pooling proceeding which establishes *in rem* jurisdiction. That concept is fundamentally flawed. The application tells the Commission who is subject to the proceeding (i.e., *in personam* jurisdiction) and nothing more. It is the pooling order by which *in rem* jurisdiction attaches. The application, when properly done, is the vehicle by which the owner of the interest and only the interest owned by that owner is brought into the Commission's jurisdiction and subjected to the pooling order when entered. But there can be no doubt that the application by itself does not establish *in rem* jurisdiction over any interest which is not owned by a respondent.

13) Reliance on the *Sundown* case as controlling authority is also error. In *Sundown, in rem* jurisdiction was established *upon the entry of the pooling order* over the lessee's interest/estate when *in personam* jurisdiction was established over the lessee. Here, Blackburn's interest terminated *before the pooling order was entered.* The lessee's interest in *Sundown* did not terminate as was the case here. Rather, the lease in *Sundown* was a valid and existing lease at the time of the pooling order and at the time of the surrender. In *Sundown,* there was a transfer effected by way of *voluntary* surrender to the lessor. Here, Blackburn's interest terminated as a matter of law by virtue of the fact that the estate reached its contractual limit and there was no drilling activity on the unit to perpetuate the leasehold estate granted to Blackburn. In contrast, the *Sundown* lessor was acting with an interest/estate that was still subject to the *in rem* jurisdiction of the Commission's pooling order. Sundown's facts render it inapplicable and ineffective as authority here and to hold otherwise is error.

14) It is apparent that the ALJ is concerned about the practical consequences of protestants' position, *i.e.,* a concern over unduly complicating the pooling process. While such a concern might be respected under certain circumstances, the concern is misplaced under the facts of this case. This is not a case of an applicant being forced to check the record during the pendency of the proceedings to deal with voluntary changes in title of interests in effect at the time of the changes. Rather, the judgment roll is clear that Special knew of the Tower to Blackburn lease and even testified about its terms at the pooling

hearing on the merits. There can be no doubt that Special was aware of the terms of the Tower to Blackburn lease and the drilling clause that required a drilling rig to be on location and actually drilling in order to extend the lease into its secondary term. Also, there can be no doubt that we are not faced with an after-acquired interest not of record at the time of the application, for Tower's reserved reversionary interest was of record way before (nine months) to the filing of the application. Thus, to say that ruling in favor of the protestants will cause a cavalcade of uncertainty in pooling proceedings is a canard. Special had all of the facts at its disposal when the application was filed. Special had under its control the ability to put a rig on location and commence actual drilling before the expiration of the primary term of the Tower to Blackburn lease and, in fact, chose to move a rig off of this unit's well location to drill another well instead of drilling this unit.

15) Regardless of any perceived concern about administrative inconvenience or indeed the merits of such concern, it may not be allowed to override the constitutional mandates of due process and the prohibition against the taking of property without fair compensation being paid to the owner. Here, deference to this perceived practical problem has led the ALJ to recommend to the Commission that it sanction an extension of the primary term of the Tower to Blackburn lease without compensation to Tower. Here, deference to this perceived concern has led the ALJ to effectively sanction Commission-ordered confiscation or condemnation of Tower's reversionary interest in its minerals without compensation to Tower. Here, deference to this perceived concern has led the ALJ to effectively sanction all of this without Tower having been named as a party to the underlying cause and without mandated notice and opportunity to be heard in opposition to the Commission's effort to thus modify its lease and to thus confiscate or condemn its interest/estate, including its right to elect whether to participate in the unit well. This is as contrary to constitutional mandate as it could possibly be.

16) This is not merely academic legal debate about the nature of a leasehold estate and the interests reserved to a lessor thereunder. This problem offers a potential to cause material adverse financial consequences to every mineral owner/lessor in the state. This problem cannot be fixed by regulatory semantics or reference to "the right to drill" and suggesting that somehow separate interests/estates owned by separate parties cannot be created so as to coexist with respect to the right to drill. Whether you call it the "right to drill," the "working interest" or anything else, this is simply one of the rights inherent in mineral ownership. It is a property right and like any other property right it is subject to the same concepts of ownership of present and future interests/estates as is any other species of property.

17) As noted, protestants' knowledge of the proceedings is irrelevant, and to hold otherwise is error. To be aware of the underlying pooling proceeding was

at the time to be aware of the fact that no relief was sought by the applicant in that proceeding as against protestants or their interest. This shows plainly on the face of the judgment roll in the underlying pooling proceeding. Again, protestants' interest in the unit is recognized in law as a separate interest from that of Blackburn's limited leasehold estate. Seeking relief against Blackburn and its interest does not equate to seeking relief against protestants and their separate interest. Moreover, actual knowledge of the pendency of the underlying pooling cause neither establishes jurisdiction over the protestants nor places them on any sort of affirmative obligation to step up and volunteer to submit themselves and their interest to the Commission's jurisdiction. This is not a case where protestants were named as respondents, but because of a bad address did not receive formal mailed notice. To fail to properly recognize this significant distinction and to thus in effect extend the Commission's jurisdiction to non-parties is a denial of fundamental due process of law. To recommend otherwise, as does the ALJ here, is error.

18) Not only would the ALJ deprive protestants of the fundamental right to due process of law, if her report is adopted by the Commission, the Commission's order will be confiscatory, depriving protestants of their property without just compensation and substantive due process of law, but also their rights as citizens of the State of Oklahoma to be free of a taking of their property without just compensation. Here, acting pursuant to the underlying pooling order, the applicant's predecessor, and original pooling order operator, paid no lease bonus under that order to protestants; instead, it paid the bonus to Blackburn, a party who then owned no interest in the unit. To sanction the taking of protestants' right to drill without fair compensation paid to protestants is error.

19) If accepted, the ALJ's Report will cause the Commission to exceed its jurisdiction by purporting to adjudicate the effect of its order on the private rights and private right disputes of the parties. As shown on the face of its judgment roll in the underlying cause, the order in question was and shall forever be a legal nullity as to protestants and their interests. There is no ambiguity requiring clarification or interpretation of the order. The only reason to bring this proceeding was to request the Commission to adjudicate the private rights of these litigants in the Tower/Thistle mineral tract. Specifically, applicant seeks a ruling that a lessor with his reversionary interest does not own a separate interest from that of his lessee and that upon the automatic termination of the lessee's interest at the conclusion of the primary term of the lessee's lease, that the lessor succeeds *to the lessee's interest.* This is not only contrary to established law, it is a private issue of the common law of property ownership. The only reason to decide the question is a private rights, non-public rights, non-conservation reason. It is to affect the outcome of the dispute as to ownership of an interest which is the issue in the quiet title action pending in Lincoln County. The ALJ would extend the Commission's

limited jurisdiction to adjudicate public rights in matters of conservation to render what is in effect a declaratory judgment of a private issue of the common law of property ownership, so as to decide not a public issue of conservation, but to decide a private-rights dispute of property ownership raised in a district court quiet title suit. As this Referee recently noted in the Report of the Oil and Gas Appellate Referee on Motions to Dismiss in the consolidated cases of *Cimarex Energy Co., et al,* Causes CD 201103741; CD 201103821; CD 201104167-T; CD 201105057; CD 201105112; and CD 201105113:

> "The Commission does not have jurisdiction to interpret its previous orders where doing so is not within its power to hear and determine disputes between parties in which the public interest in the prevention of waste and the protection of correlative rights of interested parties in a common source of supply is involved. The Commission exceeds its jurisdiction in giving its opinion about the legal effect of it previous orders on the private rights of the parties. *Southern Union Production Company v. Corporation Commission, 465* P.2d 454 (Ok!. 1970)."

This is to stretch the Commission's public interest jurisdiction beyond the breaking point, and to hold otherwise is error.

20) The ALJ committed error by her reference to the District Court's stay of protestants' quiet title action. Initially, it should be noted that the District Court order is mischaracterized in the case summary of the ALJ report. The Court's order actually reads in pertinent part as follows:

> IT IS ORDERED, ADJUDGED AND DECREED, that Defendants' Motion to Stay is GRANTED, as set forth below.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that all proceedings in this case are stayed pending a Final Order in Oklahoma Corporation Commission Cause No. CD 201004062 or upon motion of any party showing cause why this proceeding should resume.

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that upon the lifting of the stay any party may move to dismiss the matter or re-urge any previous motions to dismiss.

Of greater significance is the ALJ's reference to the order as support for her reasoning. As a matter of critical thought, the inference she draws from the Court's order is certainly not obligatory and as a matter of procedure, it is certainly error for the ALJ to rely upon such inference as authority for her position.

21) It is unclear to protestants what the ALJ intends when she recommends the Commission find Special to have commenced and completed the subject well in a timely fashion. If all the ALJ intends is a confirmation that Special complied with the terms of the Order in commencing and completing the well, then there is no error as such. In fact, it should be noted that there is no need for such finding as protestants have never sought to challenge the point. Why would they or could they and remain consistent with their position that they are not subject to the Order? On the other hand, if the ALJ intends her recommendation to refer to a finding of compliance with the terms of the Tower to Blackburn lease as it provides for the circumstances which will perpetuate that lease beyond its primary term, then this is error. Such finding is completely contrary to the undisputed evidence of this cause of the lease requirement that the rig be on location and drilling and actually engaged in drilling and the absence of such rig on the last day of the primary term of the lease. And, in fact, the applicant has not disputed that the lease did expire by its terms before the entry of the pooling order.

22) The net effect of the Commission adopting the ALJ's recommendations would be to make a pooling order retroactive to the date of the application. That cannot be done under the law without supporting evidence and a specific finding supporting such retroactivity. No such evidence appears in the judgment roll. No specific finding supporting retroactivity can be found in the pooling order. No legal authority supporting retroactivity is cited and as far as is known to protestants, none exists.

23) The ALJ did not follow established precedent in prior Commission proceedings. The ALJ's attempt to distinguish the Commissioner of Land Office ("CLO") cases (as noted in the protestants' merits hearing brief) failed to recognize that the CLO cases didn't turn on whether the CLO's interest could be pooled, which was the basis on which the ALJ attempted to distinguish them. Rather the CLO cases were decided on the very point at issue in this case; *i.e.,* that the estate granted to a non-governmental entity under a prior CLO lease had partially expired by the terms of the CLO lease and the interest

reserved by the CLO could be leased to another non-governmental company free of the prior pooling order. In addition, the ALJ failed to address the similar holding in the Dolomite case (as noted in the protestants' merits hearing brief) which likewise didn't turn on whether the CLO's interest could be pooled. And finally, the ALJ failed to address the similar holding in the Harding and Shelton case (as noted in the protestants' merits hearing brief) which didn't involve a CLO interest.

24) For all of the foregoing reasons and any other reasons which may be presented in the proceedings, the following recommendations and conclusions are contrary to law and not supported by admissible evidence:

> 23.1 The Commission has the authority to proceed in the matter [Page 30]. To the contrary, now that the evidence has been adduced, it is clear that the Commission doesn't have the authority to proceed in this case.
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> 23.2 The Commission can look outside the judgment roll especially as to actions of parties that occurred outside the judgment roll that will affect the ongoing effect of the order [Page 31].
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> 23.3 The applicant's position that the Commission's jurisdiction over the interest in question and their position that the interest is subject to the jurisdiction both before and after the Tower Lease expired is not an attempt to extend the lease beyond its original term [Page 31].
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> 23.4 The finding that the right to drill becomes subject to the Commission's jurisdiction upon Orca' s naming the then current owner of the right to drill in the pooling application and giving proper notice to that owner [Page 31].
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> 23.5 The finding that Orca did obtain jurisdiction over the interest in question if, by that finding, the Administrative Law Judge intends a finding that by naming Blackburn, Orca obtained jurisdiction over Tower's reversionary interest [Page 31].

23.6 The finding that poolings are in the nature of an *in rem* action and the naming and notifying of the current owner of the right to drill in the unit obtained jurisdiction over the interest and that jurisdiction did not disappear upon expiration of the lease [Page 31].

23.7 The finding that the expiration of the Tower Lease did not defeat the Commission jurisdiction later [Page 32].

23.8 The finding that when the interest reverted to Tower it was subject to Commission jurisdiction to pool the interest and that interest was pooled by Order 552381 [Page 32].

23.9 The finding that the subsequent reversion or transference of that interest does not defeat the Commission's jurisdiction [Page 32].

23.10 The finding that the subsequent reversion or transference of that interest would defeat the Commission's jurisdiction would result in the chaos referenced by the Court of Appeals in the *Harding & Shelton v. Sundown* case [Page 32].

23.11 The finding that the CLO cases can be distinguished on the ground that the *Sundown* case did not involve lands owned by the CLO and therefore the Commission should not rely on the CLO cases as authority [Page 32].

23.12 The finding that Protestants were aware of the pooling order and its terms and could have timely elected but chose to not do so and the deeming provision was triggered [Page 32.

THE ALJ FOUND:

1) After taking into consideration all the facts, circumstances, arguments and briefs presented in this cause, it appears there are a series of questions that must be addressed.

2) The first is the question of whether the Commission has the authority to proceed in this case. It is the opinion of the ALJ that it does. As noted by applicant's brief there is statutory authority as well as case law to support this. Additionally this type of hearing has historically been done by the Commission over the years. Clearly in this dispute the action of the Lincoln County District Court in staying their action until the Commission addresses the issues in this case is further recognition of the Commission's authority to proceed in this cause, upon proper notice which has been given in this case.

3) Upon determination of the authority and jurisdiction of the Commission to proceed in this cause the next question would be whether the Commission review in this cause would be limited to the judgment roll for the Order No. 552381. It is the opinion of the ALJ that the Commission can look outside the judgment roll especially as to actions of parties that occurred outside the judgment roll that will affect the ongoing effect of the order. Especially here as to the nonresponse of Blackburn to the order, thus, triggering the deeming provision; the acceptance of the deemed bonus payment; the exchange of information about the pooling hearing, appeal and order among the protesting parties; the subsequent litigation action of those parties in regard to the Commission's final pooling order; and the action of the operator in drilling the well pursuant to the order in developing the unit. The Commission routinely reviews these types of actions from information outside the judgment roll in this type of hearing to determine if elections, payments of bonus, payment of participation monies or well commencement are proper and timely.

4) As to the question of whether applicant's actions in this cause is an attempt to modify Tower's lease terms as protestant's attorneys argued, it is the opinion of the ALJ that applicant's position that the Commission's jurisdiction over the interest in question and their position that the interest is subject to the jurisdiction both before and after the Tower/Blackburn lease expired is not an attempt to extend the lease beyond its original term. The right to drill becomes subject to the Commission's jurisdiction upon Orca's naming the then current owner of the right to drill in the pooling application and giving proper notice to that owner. Applicant in no way has alleged or argued that the lease was extended; they agree it expired and the interest, subject to Commission jurisdiction, reverted to Tower.

5) The next question is as to whether Orca, through their filing of their application naming Blackburn and then sending notice to Blackburn obtained

proper jurisdiction over the interest. It is the opinion of the ALJ that Orca did obtain jurisdiction over that interest. Poolings are in the nature of an *in rem* action and the naming and notifying of the current owner of the right to drill in the unit obtained jurisdiction over the interest and that jurisdiction did not disappear upon expiration of the lease. Applicant in their brief referenced case law and Commission orders that support that. Protestants argued that Tower was not named so his interest was not subject to the pooling order.

6) However Blackburn was the current owner of the interest at the time Orca filed their application and his interest (which was leased from Tower) became subject to the Commission jurisdiction and the expiration of that lease did not defeat the Commission jurisdiction later. When the interest reverted to Tower it was subject to Commission jurisdiction to pool the interest and that interest was pooled by Order No, 552381. The unit well was timely commenced under the order and the order is still in full force and effect as to the interest pooled there under. The subsequent reversion or transference of that interest does not defeat the Commission's jurisdiction–that would result in the chaos referenced by the Court of Appeals in the case of *Harding & Shelton v. Sundown.* Protestant relied in their arguments on a number of cases involving interests obtained from the CLO which were later pooled; thereafter the nonproducing zones under that pooling order were released under the Pugh Clause in the CLO leases. In later Commission cases involving those released interests the Commission specifically distinguished such interests and took the position in Order No. 580438 which issued for CD 200903407, 201000274 and 201000645 that these cases were not like the *Harding & Shelton v. Sundown* case since the *Sundown* case did not involve lands owned by the CLO. The case here does not involve CLO lands and the ALJ would therefore rely on the Commission and the Court of Appeals position in the *Harding & Shelton v. Sundown* case.

7) As protestant's attorney pointed out, there are numerous issues and problems that can arise in this type of situation, but that does not alleviate a pooling applicant or respondent of the need to follow the rules and orders of the Commission and the laws of the State of Oklahoma. Protestants in this case were aware of the pooling order and its terms and could have timely elected but chose to not do so and the deeming provision was triggered. Given the payment of bonus to Blackburn and his acceptance of the money, there are accounting issues that will have to be addressed in so far as that bonus money is concerned.

POSITIONS OF THE PARTIES

T&T

1) **Robert Gum**, attorney, appearing on behalf of the Protestants T&T, argue that the Commission lacks the jurisdiction to grant the relief being sought.

2) T&T notes that the question of the Commission's power to grant relief was not foreclosed by a previously denied motion to dismiss.

3) T&T rejects the idea that the present action merely seeks clarification and interpretation of a pooling order. Instead, T&T argues that this is in fact a quiet title and accounting action.

4) T&T argues that, while the Commission certainly has jurisdiction to clarify its own orders, there must be some underlying ambiguity in the order to be clarified. T&T contends that the pooling order in question is not ambiguous on the face of the record. Accordingly, under the ruling in *Dickason v. Dickason,* 607 P.2d 674 (Okl. 1980); it would be improper for the Commission to exercise its authority to clarify if no such ambiguity exists. Importantly, in clarifying such an order, the Commission's inquiry is limited to only those parties appearing on the judgment roll.

5) T&T argues that the proper question before the court is the effectiveness of the pooling order over T&T's interests when they were not named as a respondent on the order itself. T&T notes that the Commission cannot retroactively change the pooling order to include new parties as this would constitute an impermissible collateral attack.

6) T&T suggests that Eagle has several purposes in bringing their action: a) It is an attempt to force the Commission to declare the effect of a pooling order on private rights; b) It is a request for the Commission to determine the effect of the pooling order on title; c) It is a request for the Commission to change the pooling order in question.

7) T&T argues that the Commission would exceed its jurisdiction if it gave an opinion about the legal effects of its previous orders over the private rights of the parties. Here the commission lacks the power to try title by determining the effects of its orders on legal title to property. T&T observes that, under the rule in *Tucker v. Special Energy,* 187 P.3d 730 (Okl. 2008); the Commission does not have jurisdiction to resolve disputes over private rights, a role which is properly reserved for the district courts.

8) T&T asserts that Eagle's actions amount to a collateral attack on the pooling order. There was no ambiguity for the court to eliminate in the order in question. Through its attempt to pool T&T in this proceeding, Eagle would have

the court declare that T&T was in fact a party to the underlying order even though the face of the order simply does not pool T&T.

9) T&T argues that the effect of the pooling order is a denial of their due process rights. T&T was not a party to the pooling order as evidenced by their absence from the judgment roll. Consequently, they were denied legal notice and an opportunity to be heard. T&T argues that the court obtained neither *in personam* or *in rem* jurisdiction under the rule established in *Mulane v. Central Hannover Bank*, 339 U.S. 306 (1950); which requires that *in personam* jurisdiction be obtained over the owner of an interest before *in rem* jurisdiction can be obtained over the interest itself.

10) T&T argues that under basic property law no *in rem* jurisdiction exists over T&T's interests. T&T notes that an interest which is not possessed cannot be given and also that once an interest terminates it cannot subsequently revert.

11) T&T argues that Blackburn's interests as lessee had terminated at the moment the lease expired. T&T notes that the rights of the grantor are retained and not passed when a defeasible interest is created in a third party. Here, the rights to the minerals and the power to drill were terminated as to Blackburn on the expiration of their lease. These same rights were always retained by Tower and were never transferred back at the lease's expiration.

12) T&T argues that because the interest had not been transferred from Blackburn to T&T, Blackburn's inclusion in the pooling order as lessee would not bind T&T as lessor. T&T uses *Baytide Petroleum, Inc., v. Continental Resources, Inc.,* 231 P.3d 1144 (Okl. 2010) to reinforce their argument that a lease can expire by its own terms and, more importantly, that the lessee's rights expire with it.

13) T&T notes that *in rem* jurisdiction could be established over their interest if they had been in privity with Blackburn but rejects the notion that any such privity existed.

14) T&T argues that just as Blackburn could not voluntarily transfer its interests after the lease expired, Blackburn also cannot instead use a compulsory pooling order to transfer its interests after the lease expired.

15) T&T relies on a collection of decisions known as the *CLO* and *Dolomite* cases (CD-200903707; CD-201000274; CD 201000645; and CD 201000783) to further support the proposition that Blackburn's interest did not survive the termination of the Tower lease and could not then have reverted back to Tower. In *CLO*, a partial lapse of a lease did not result in the determination that the lessor was the successor-in-interest. T&T argues that a full lapse of the lease,

like the present case, would also bar a finding that the lessor was a successor-in-interest to the lessee.

16) T&T argues that the determinative facts in *Sundown v. Harding & Shelton*, 245 P.3d 1226 (Okl. 2010); were so demonstrably different from the circumstances at issue, they render *Sundown* completely inapplicable as legal authority. T&T argues that *Sundown* is distinguishable in several important ways: a) The pooling order in *Sundown* was issued while the lease was in its primary term. This is contrasted with the present case in which the pooling order came after the lease and the lessee's interest had expired; b) The lease in *Sundown* was held by production while the lease at issue expired at the end of its primary term; c) The lease at issue expired by operation of law and contract while in *Sundown* the lease was held by production and was surrendered voluntarily back to the lessor; d) According to T&T, the most important distinction is that the lessor in *Sundown* was the legitimate successor-in-interest to the lessee, making them subject to the pooling order. In this action, before the pooling order was even filed, the lessee Blackburn's interest expired with the lease and accordingly could not be transferred back to T&T as lessor.

17) T&T argues that *Chancellor v. Tenneco*, 653 P.2d 204 (Okl. 1982); is also distinguishable from the present case in a number of aspects: a) T&T observes that in *Chancellor* the lease was acquired after the pooling application was filed while in the present case, T&T reserved its separate interest and the Blackburn lease was recorded some 9 months before the pooling application was filed; b) The lease in *Chancellor* was not made of record until after the hearing, unlike the present lease which was made of record nine months before the filing of the pooling; c) In *Chancellor*, the applicant Tenneco had no knowledge of the lease when the pooling order was entered while in the present case, the applicant had knowledge of T&T's interest when the pooling order was issued; d) Tenneco learned of Chancellor's interest before payment of a bonus which is contrasted with Special Energy Corporation, who knew of T&T's interest but still paid the bonus to Blackburn.

18) T&T believes that if the requested relief is granted it would operate to change the terms of the lease by modifying when the primary term expired. Changing the terms of a private contract is outside the scope of the Commission's jurisdiction and doing so would deny the mineral owners their due process rights.

19) T&T admits that they had notice in fact of the proceedings. However, that alone is not enough to establish *in personam* jurisdiction. The absence of formal process on T&T made the pooling order ineffective in establishing jurisdiction over them.

20) T&T suggests that the ALJ implicitly recognized that it was outside of the Commission's power to grant the requested relief when she noted that the action would have to go to the district court for an accounting.

21) T&T hypothesizes that since Eagle could not have pooled T&T's interest by affording them due process, they are instead attempting to pool T&T by denying them their due process rights.

22) T&T argues that T&T lacked important knowledge of the pooling proceedings because they were not listed as parties to the pooling order, but even if they had notice in fact, it would not be enough to grant the Commission jurisdiction. T&T quotes from *Graff v. Kelly*, 814 P.2d 489 (Okl. 1991); in support of their contention that actual notice of a legal proceeding, on its own, cannot establish *in personam* jurisdiction.

23) T&T concludes by emphasizing that the absence of T&T on the judgment roll of the pooling order creates a fatal defect. T&T likens being left out of the pooling order to being tried *in abstentia* in a court. T&T's reiterates that pooling Order No. 552381 shows, on its face, the absence of *in rem and in personam* jurisdiction over T&T. Because of this fatal defect, the relief requested by Eagle would come at the price of T&T's due process rights.

EAGLE

1) **Michael D. Stack**, attorney, appearing on behalf of the respondents, Eagle, notes that the relief sought would determine if the Commission's pooling order functions with respect to the individual or with respect to the property.

2) Eagle argues that a pooling order affects the working interests without reference to the title of the present owner. Eagle relies on the decision in *Harding and Shelton Inc., v. Sundown Energy Inc.,* 130 P.3d 776 (Okl. App. 2006); to argue that, once properly vested, the working interest is subject to the pooling order regardless of how that interest is transferred thereafter. Eagle believes that applying this rule prevents "chaos" from ensuing every time there is a change in mineral ownership in a pooled formation.

3) Eagle argues that the nature of this proceeding is *in rem* rather than *in personam* because the pooling order attaches to the working interest without regard to the present owner.

4) Eagle believes it is important to look outside the judgment roll to the actions of the parties. Eagle asserts that there is a "special relationship" between Blackburn and T&T. Eagle points to a number of correspondences

between representatives of Blackburn and Tower to suggest that the transactions between the two were not at arms-length. Eagle uses this relationship between Tower and Blackburn to argue that T&T had notice in fact of the pending pooling order and the progress thereof.

5) **John R. Reeves**, attorney, also appearing on behalf of respondents, argues that the Commission has the authority to issue the pooling order because the three jurisdictional requirements have all been met. Eagle notes that jurisdiction over the parties is not contested by either of the litigants. At issue is the court's jurisdiction over the subject matter and the court's power to issue the order.

6) Eagle notes that to determine the nature of a proceeding the court must look to the relief requested. Eagle argues that this action is to determine if the pooling order covers the working interest now held by T&T.

7) Eagle notes that the Commission has the established authority to interpret and clarify its prior orders. This authority falls under the concept of supplementation. Eagle cites *Nilson v. Ports of Call Oil Co.,* 711 P.2d 98 (Okl. 1985); in which the Commission was found to possess the jurisdiction to determine if a pooling order remained in effect. Eagle also argues that under the Oklahoma Supreme Court's decision in the *Buttram Energy Inc., v. Corporation Commission of State of Okl.*, 629 P.2d 1252 (Okl. 1981) the Commission has the authority to decide if a specific interest remains subject to a prior pooling order.

8) Eagle argues that the Commission can look outside the judgment role to the actions of the parties involved if it will affect the ongoing results of the order. Eagle argues that the ALJ properly considered the relationship between Blackburn and Tower, including the exchange of information between the parties and the acceptance of a cash bonus, when she looked outside the judgment roll to determine the effectiveness of the pooling order.

9) Eagle notes that the Oklahoma Supreme Court has held that the Commission can look outside the judgment roll in relation to election-related post-order activity. Eagle argues that while the cause is styled as one of clarification and interpretation, it also includes the determination of the continuing effectiveness of such pooling order as to the interests conveyed. The present action would properly determine the effectiveness of the working interest held by Blackburn and Tower, rather than being a cause based only on the clarification and interpretation of the Commission's prior order. Consequently, the ALJ stayed within the bounds of what could properly be considered by the Commission.

10) Eagle denies that they are attempting to extend the lease through the proceedings. Rather, Eagle claims that they are simply trying to determine if

the pooling order remains effective as to a specific working interest. T&T's working interest was subject to the Commission's jurisdiction at the time the pooling application was filed, even though Blackburn owned the leased interest. When the lease expired it did not defeat the Commission's jurisdiction to pool working interests.

11) Eagle relies on *Harding and Shelton* to support their contention that pooling proceedings are, by their nature, *in rem*. Similar to the present cause, Harding and Shelton was not named as a party in the 1985 pooling order because they owned no interest at the time of the pooling order. After the lease was transferred between several parties the mineral owner executed a new lease to Harding and Shelton. Much like the present case, the Oklahoma Supreme Court held that, although the underlying working interest had changed hands many times, it still remained subject to the Commission's initial pooling order throughout.

12) Eagle argues that the Commission's jurisdiction attaches to the working interest and not to the named party. Eagle admits that T&T was not a named party to the pooling order but counters that they could not have been a named party under 52 O.S. Section 86.1. This statute requires that only parties who have a right to drill, produce, and appropriate production from a common source of supply may be listed as parties in a pooling order. T&T would not have met the statute's criteria at the time the pooling order came into effect and thus would not have been a properly named party.

13) Eagle argues that the proceeding at issue was properly classified as *in rem* and in such a proceeding the Commission obtains jurisdiction over the working interest. This jurisdiction is invoked upon the proper filing of the pooling application and remains attached to the working interest regardless of its transference.

14) Eagle contends that the important question is whether the owners of the working interest were properly named in the proceeding. In this case, Blackburn owned the working interest, and thus was properly named in the pooling order. Eagle also notes that the working interest owned by Blackburn was the same working interest carved from the mineral interest owned by Tower.

15) Eagle agrees that due process must be afforded by the Commission in pooling proceedings but argues that a party who is barred by statute or case law is not a party to whom process is due. A lessor, without holding a working interest, is not a proper party to a pooling proceeding. In the present case Blackburn was the properly named party and was fully afforded their due process rights.

16) Eagle concludes by noting that the Commission is vested with jurisdiction over the pooling upon the filing of the proper pooling application. Once this application is filed the Commissions obtains jurisdiction over the working interest. This jurisdiction is not defeated by a transfer or release of the working interest. Importantly, the working interest owned by T&T is the same interest which was properly pooled under Blackburn's ownership and thus should still be subject to the Commission's jurisdiction.

RESPONSE OF T&T

1) T&T reiterates that *in rem* jurisdiction can be established over an interest in property only after *in personam* jurisdiction is established. T&T again argues that no *in personam* jurisdiction existed over the owner of the interest at issue.

2) T&T notes that Blackburn owned only a terminable interest when it leased the right to drill and that no authority can be cited that supports the theory that this interest shifted back to T&T at the expiration of the lease.

3) T&T contends that the issue in question is not to determine the continuing effectiveness of the order or to clarify the order. Instead, this is an action to modify an existing order. In order to modify an existing order a party must file a request to amend which was not done by Eagle in this instance.

4) T&T believes that *Sundown* would be cited differently if the inquiry were focused on whether or not the lease was transferred after the fact of the pooling.

5) T&T contests the assertion that there was "manipulation" between the parties which colors the lease at issue and notes that there was nothing in the underlying order which diminishes the lease as a legal instrument.

6) T&T argues that practical problems will result if the ALJ's decision is not overturned. T&T theorizes that, under the ALJ's ruling, if a lease expires after a pooling order is entered it would be conceivable that a lessor landowner would subsequently incur an unwanted obligation to participate in a well.

7) T&T closes by arguing that the Commission does not have the authority to grant the relief sought by Eagle. T&T notes they were not a successor-in-interest to Blackburn nor were they in privity with them. Blackburn owned a terminable interest and could not grant rights beyond the term of that interest. This makes Blackburn's inclusion in the pooling order of no legal effect on T&T.

CONCLUSIONS

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

1) The issue in this case is whether pooling Order No. 552381 remains in full force and effect as to the working interest currently claimed to be held by T&T in the subject 640 acre horizontal drilling and spacing unit covered by such pooling order. Eagle's application concerning the interpretation and clarification of pooling order No. 552381 is specifically authorized by 52 O.S. Section 112 which states "Any person affected by any...administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same." The Oklahoma Supreme Court has also held that Section 112 gives the Commission authority to interpret and clarify its orders. *Forest Oil Corporation v. Corporation Commission of Oklahoma*, 807 P.2d 774 (Okl. 1990), citing *Tenneco Oil Company v. Oklahoma Corporation Commission*, 775 P.2d 296 (Okl. 1989) and *Cabot Carbon Company v. Phillips Petroleum Company*, 287 P.2d 675 (Okl. 1955). The Oklahoma Supreme Court has also held that the "authority of the Commission to enter an order clarifying a previous order is continuing in nature, flowing from the entry of that prior order." See *Nilsen v. Ports of Call Oil Company*, 711 P.2d 98, 102-03 (Okl. 1985). The Commission also has the authority and jurisdiction to determine whether a prior pooling order continues to be effective as to a specific interest and such authority and jurisdiction are incidental to the Commission's authority to determine if a subsequent pooling proceeding should be approved or denied. *Buttram Energies Inc. v. Corporation Commission of Oklahoma*, 629 P.2d 1252, 1254 (Okl. 1981). Thus the Commission has the jurisdiction to determine whether pooling Order No. 552381 was and is effective as to the working interest or drilling rights now claimed by T&T in the horizontal well unit involved herein.

2) Further, the Commission's review in this proceeding is not limited to the judgment roll in Cause CD 200707536-T which proceeding yielded the pooling order at issue in this cause, Order No. 552381. The Supreme Court in *Nilsen v. Ports of Call Oil Company*, supra at 104, states that "[P]ost-order activities calling for an assessment of conformity of the operator's conduct to the agency order lie clearly within the Commission's cognizance." The Oklahoma Supreme Court has recognized the Commission's power to review whether or not an operator's post order drilling activities have complied with the terms of a pooling order. *Chancellor v. Tenneco Oil Company*, 653 P.2d 204 (Okl. 1982); *Crest Resources v. the Corporation Commission*, 617 P.2d 215 (Okl. 1980); *Stipe v. Theus*, 603 P.2d 347 (Okl. 1979); *Shell Oil Company v. Keen*, 355

P.2d 997 (Okl. 1960); and *Cabot Carbon Company v. Phillips Petroleum Company*, supra at 679.

3) With respect to election related post order activities, the Commission is also granted the authority to review those facts. *Amarex Inc. v. Baker*, 655 P.2d 1040 (Okl. 1983); *Woods Petroleum Corporation v. Sledge*, 632 P.2d 393 (Okl. 1981); *Buttram Energies Inc. v. Corporation Commission of Oklahoma*, supra at 1254; and *Gose v. Corporation Commission*, 460 P.2d 118 (Okl. 1969). Thus, the Oklahoma Supreme Court has consistently and continuously authorized the Commission's review activities outside the judgment roll of a pooling proceeding when clarifying, interpreting or supplementing a pooling order entered in such proceeding.

4) The application and notice of hearing set forth the nature of this proceeding and frame the issues to be determined in this cause which issues require the review of evidence outside the judgment roll in cause CD 200707536-T.

5) Controlling case law determines that the Commission's jurisdiction in the present case properly attached to the working interest involved herein; that such working interest was transferred to Tower upon the termination of the lease subject to the jurisdiction of the Commission in the relevant pooling proceeding; that pooling Order No. 552381 operated upon such interest; and that such pooling order is still in full force and effect as to such interest.

6) In *Harding & Shelton, Inc. v. Sundown Energy, Inc.*, 130 P.3d 776 (Okl.Civ.App. 2006) the Court held:

> When considering whether to grant or deny an application to pool common sources of supply, the Corporation Commission possesses "incidental" authority to determine whether a prior pooling order was still effective as to the applicant's interest. *Buttram Energies, Inc. v. Corporation Commission of State of Oklahoma*, 1981, OK 59, ¶ 7, 629 P.2d 1252, 1254.
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> * * *
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> In the present case, Applicants, as successor lessees of 480 acres of the 640 acre unit previously pooled, sought to both re-pool the formations covered by the 1985 pooling order, and to pool previously unpooled formations underlying the same 640 acres. The prior

> pooling order constitutes a final determination of the rights and obligations of any present or future holders of a mineral interest in the affected common source(s) of supply, because to hold otherwise would cast the established rights and obligations of any holder of a mineral interest in the previously pooled common source(s) into chaos every time there was a change in ownership of mineral or leasehold rights in any pooled formation. Applicants must be held to have obtained their lease(s) subject to the terms of the prior pooling order.

See also *Sundown Energy, L.P. v. Harding & Shelton, Inc.*, 245 P.3d 1226 (Okl. 2010).

7) In Cause CD 200707536-T which resulted in pooling Order No. 552381 the Commission obtained jurisdiction over the working interests or drilling rights now claimed by T&T by joining Blackburn to such cause and properly serving Blackburn with notice thereof. Blackburn actively protested cause CD 200707536-T and therefore Blackburn submitted the working interests or drilling rights it then held (now claimed by T&T) to the Commission's jurisdiction in such cause. Clearly an interest may be bound by a pooling order and while the owners of that interest may change through various trades or agreements, once the interest itself is pooled, it is bound by that order.

8) In *Harding & Shelton, Inc.*, supra, the working interest involved therein traveled an extended route initially being transferred from the mineral owner to the original lessee by virtue of the initial oil and gas lease, with the Corporation Commission obtaining jurisdiction over such working interest in the 1985 pooling proceeding by naming such original lessee as a respondent in such proceeding. Upon release of the initial oil and gas lease the working interest was reacquired by the mineral interest owner, remaining subject to the Commission's jurisdiction in the 1985 pooling proceeding. The working interest was then transferred by the mineral owner to Harding & Shelton, Inc. by virtue of a subsequent oil and gas lease, with Harding & Shelton, Inc. as the subsequent lessee, acquiring such working interest subject to the 1985 pooling order. Despite the different parties owning the relevant working interests over time in the *Harding & Shelton, Inc.* case, supra, the ALJ, the Oil and Gas Appellate Referee, the Commission en banc and the Oklahoma Court of Civil Appeals (as ratified by the Oklahoma Supreme Court) determined that the working interest remained subject to the 1985 pooling order. The working interest involved in the present case should also be found to remain subject to the prior pooling Order No. 552381.

9) As stated in the *Harding & Shelton, Inc.* case, supra, the Commission's authority in a pooling proceeding attaches to and has impact on the actual working interest and not solely on or over the parties. Thus, the fact that T&T were not named as respondents in cause CD 200707536-T is irrelevant and insignificant. The relevant fact is that the working interest involved herein was properly joined in cause CD 200707536-T. On the date cause CD 200707536-T was filed, the working interest now claimed by T&T was held by Blackburn under the lease from Tower. The Commission in cause CD 200707536-T thus obtained jurisdiction over the working interest now claimed by T&T because Blackburn, as the owner of such working interest, was properly joined as a respondent in such pooling proceeding and Blackburn actively protested the merits of such pooling proceeding. Upon expiration of the primary term of the lease, the working interest covered thereby transferred by operation of law to Tower subject to the pending pooling proceeding because the expiration of the lease cannot and did not defeat the Commission's jurisdiction over the subject working interest according to the law pronounced in the *Harding & Shelton, Inc.* Oklahoma Court of Civil Appeals case, supra and the Oklahoma Supreme Court case of *Sundown Energy, LP*, supra.

10) It should also be noted that prior to the *Harding & Shelton, Inc.* case, supra, the Oklahoma Supreme Court in *Chancellor v. Tenneco Oil Company*, 653 P.2d 204 (Okl. 1982) had previously reached the conclusion consistent with and similar to the conclusion reached by the Oklahoma Court of Civil Appeals in *Harding & Shelton, Inc.*, supra. The Oklahoma Supreme Court found in the *Chancellor* case at 206:

> Also, such a holding would permit parties adverse to the pooling application to defeat it by simply transferring their property to another at or about the time the pooling hearing was held and/or to stand by and, if the well be a producer, elect to participate. Again, this was never the intent of the pooling statute.

11) In summary, the Appellate Referee would find that the working interest held by Blackburn at one point in time, and then held by Tower at a subsequent point in time is at all times the same working interest carved from the same mineral estate and such working interest was properly joined and became subject to pooling Order No. 552381.

12) The factual differences between the current controversy and the one in *Harding & Shelton, Inc.*, supra, do not render the legal theory set forth in *Harding & Shelton, Inc.*, supra inapplicable in the present situation. The Commission obtained jurisdiction over the working interest upon the filing of the application in this prior pooling proceeding CD 200707536-T which resulted in pooling Order No. 552381 and the service of notice on Blackburn as

the then current owner of the subject working interest. The timing of the entry of pooling Order No. 552381 and the entry of the pooling order in *Harding & Shelton, Inc.*, supra, are not determinative of when the Commission obtained jurisdiction over the working interest covered by each of such orders.

13) For the above stated reasons, the Referee would recommend that the relief requested in the application in this cause be granted, determining that the working interest now claimed by T&T remains subject to pooling Order No. 552381. Therefore, based upon the above stated reasons, law and authority the ALJ's recommendations contained in her Report of the Administrative Law Judge should be affirmed.

RESPECTFULLY SUBMITTED THIS 16th day of April, 2013.

Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony
Commissioner Murphy
Jim Hamilton
ALJ Susan R. Osburn
Michael D. Stack
Stephen R. McNamara
John R. Reeves
Robert G. Gum
Eric R. King
John E. Lee, III
Michael L. Decker, OAP Director
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