

9-24-13

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED

SEP 13 2013

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CORPORATION COMMISSION
OF OKLAHOMA

<u>APPLICANT:</u>	GANER OIL COMPANY)	
)	
<u>RELIEF REQUESTED:</u>	ENFORCEMENT OF)	CAUSE EN NO.
	COMMISSION RULES AND)	201100105
	FILING OF REQUIRED FORMS)	
)	
<u>LEGAL DESCRIPTION:</u>	GTI CATOOSA TEST FACILITY)	
	AMOCO CATOOSA TEST)	
	FACILITY)	
	PARTS OF SECTION 25-21N-)	
	14E AND SECTIONS 30 AND)	
	31-21N-15E, ROGERS)	
	COUNTY, OKLAHOMA)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF MOTION TO SETTLE ORDER**

This Motion came on for hearing before **David Leavitt**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 3rd day of June, 2013, 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: **Richard K. Goodwin**, attorney, appeared for applicant, Ganer Oil Company ("Ganer"); **Richard J. Gore**, attorney, appeared for GTI, Inc./Catoosa Test Facility, Inc. (collectively "GTI"); **Rob F. Robertson** and **John ("Jake") M. Krattiger**, attorneys, appeared for BP America Production Company ("BP"); **Sally Shipley**, Deputy General Counsel, appeared for the Oil and Gas Conservation Division of the Oklahoma Corporation Commission; and **Jim Hamilton**, Deputy General Counsel for the Conservation Division, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling on the Motion to Settle Order on the 25th day of June, 2013 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 26th day of July, 2013. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

1) **GANER TAKES EXCEPTION** to the ALJ's recommendation to deny Ganer's Motion to Settle Order.

2) On December 15, 2011, Ganer filed an application requesting that the Commission conduct an investigation into the drilling and testing activities done by Amoco Production Company ("Amoco"), now BP and GTI, at the Catoosa Test Facility located in Rogers County, Oklahoma and requiring the Commission to: (1) direct the owners and operators of the Catoosa Test Facility to file all of the proper forms required by the Commission's rules and regulations; (2) determine how drilling fluids were handled and disposed of; and (3) impose fines and penalties for the violation of the Commission's rules and regulations.

3) In its application, Ganer alleged that the operations that occurred at the Catoosa Test Facility were under the jurisdiction of the Commission and that said operations were conducted by Amoco and GTI without compliance with the Commission's rules and regulations, and that such activities constituted a hazard for subsequent operations on its oil and gas leasehold that covered the same lands as the Catoosa Test Facility.

4) Sometime in 2010 or 2011, Flint Drilling, LLC ("Flint"), along with its sister company, Catoosa Test Facility, LLC, entered into an agreement with the owner of the surface of a portion of the SE/4 of Section 8, T20N, R7E, Pawnee County, Oklahoma for the testing and development of new well techniques and the testing of drilling equipment and other related oilfield equipment.

5) On August 9, 2011, Flint filed an application with the Commission seeking to clarify its responsibilities with respect to OCC-OAC 165:10-3-1 for its operations and activities at the Pawnee County Test Facility. The application stated that Flint and Catoosa Test Facility, LLC, would utilize the subject property to test certain drilling and other related oilfield equipment and

that all wells commenced by them on the subject property would only be used for the testing and development of new well techniques and the testing of drilling equipment and other related oilfield equipment, and would not be used to explore for or produce oil and gas.

6) On April 10, 2012, the Commission issued Order No. 596214 holding that the operations of Flint in drilling test holes at the Pawnee County Test Facility are not for the exploration or production of oil and gas, injection, disposal or as a service well, reentry of a plugged well, re-completion of a well or the deepening of a well, and do not fall within the subject matter jurisdiction of the Commission. The Commission consequently held that a permit to drill pursuant to OCC-OAC 165:10-3-1 is not required for such activities.

7) On April 20, 2012, Ganer filed an Amended Application requesting the Commission conduct an investigation into the drilling and testing activities conducted by Amoco and GTI at the Catoosa Test Facility and requiring them to comply with Commission rules and regulations. On that same day, Ganer filed a Motion to Vacate Order No. 596214. On May 7, 2012 the Commission issued Order No. 597313 denying Ganer's Motion to Vacate Order No. 596214.

8) On May 10, 2012, GTI moved the Commission to dismiss Ganer's present application. GTI alleged that the operations conducted at the Catoosa Test Facility were the same as that to be conducted at the Pawnee County Test Facility located in the SE/4 of Section 8, T20N, R7E, Pawnee County, Oklahoma. GTI further alleged that the Commission determined in Order No. 596214 that the Commission has no jurisdiction over the Pawnee County Test Facility because the wells or holes being drilled there are not done so for the purpose of "exploration or production of oil and gas, injection, disposal or as a service well, re-entry of a plugged well, re-completion of a well or the deepening of a well."

9) The hearing on the Motion to Dismiss than commenced on June 12, 2012 and further testimony and evidence were taken over eight days in July and August of 2012. The ALJ issued his Report on January 10, 2013 and found that the Commission did not have subject matter jurisdiction over operations and facilities that test drilling equipment and are not being used or operated to explore, drill, develop, produce or process oil and gas. The ALJ further found that jurisdiction over the Catoosa Test Facility lies with the Oklahoma Department of Environmental Quality ("ODEQ"). A proposed order was then submitted by GTI and Ganer objected to the form and substance of the proposed order.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ DAVID LEAVITT recommended that the Motion To Settle Order be denied because there's really no need for it. The GTI proposed Commission order fully complies with the rules of the Commission. The ALJ's Conclusions of Law in his Report show that the Commission didn't have subject matter jurisdiction over the Catoosa Test Facility, as well as the Flint/Pawnee County Test Facility, and showed agreement with the previous Order No. 596214 of the Commission. The time to take exception to ALJ's Leavitt's Report was after it was written during the five day time period for an appeal to be made. See OCC-OAC 165:5-13-5(a)(1). To bring up this matter at this time is inappropriate.

POSITIONS OF THE PARTIES

GANER

- 1) **Richard K. Goodwin**, attorney, appeared on behalf of Ganer to request modifications to the proposed order.
- 2) ALJ Leavitt thinks that Ganer's motion is in the form of an exception to the report that has been filed. That's not what this motion is. This is a motion to settle the order that is to be issued by the Court.
- 3) Ganer is suggesting that the language needs to be changed. The modifications to the order are to note not only the filing of a Motion To Dismiss on May 10, 2012 but also a Supplemental Motion To Dismiss being filed on May 17, 2012. It is important to note the difference between those two motions because the May 10 motion was strictly limited to the application of the Flint/Pawnee County Test Facility Order No. 596214 to this case. It had nothing to do with the argument of jurisdiction that was raised in the May 17 Supplemental Motion To Dismiss.
- 4) Ganer is not interested in changing what is in the record. Ganer would like the record to be clear as to what the findings are with regard to the Flint order and its application to Ganer.
- 5) Ganer is not trying to change any of the pleadings of record, and Ganer is not trying to amend their appeal. Ganer wants to make sure that the order issued in this cause correctly reflects what happened and the issues that were before the Court.

6) Ganer was not a party to the Flint/Pawnee County Test Facility case, CD No. 201103909-T. If the Court is going to apply the Flint Order No. 596214 to Ganer, they would like to know why. Ganer does not see anything in the findings that tell them why that order is applicable to Ganer.

7) Ganer believes there are other things that need to be involved if the Court is going to look at jurisdiction that was not in the May 10th motion.

GTI

1) **Richard J. Gore**, attorney, appeared on behalf of GTI to request the Report of the ALJ be upheld and the order be entered with no modifications.

2) GTI believes that there are two issues relating to this hearing. There is the form and the content of the order, and then there is the issue relating to the two motions to dismiss.

3) ALJ Leavitt believes that bringing up what the form of the order is going to be should have been done in the five day time period that Ganer had to file exceptions. GTI asserts that ALJ Leavitt did address both Motions To Dismiss in his Report. So, GTI agrees with ALJ Leavitt and believes the appeal should have been requested in the allotted five day period.

4) The Commission has the discretion to formulate their orders any way they wish under Commission OCC-OAC 165:5-15-1(a). The order substantially complies with the rules and therefore GTI believes the ALJ's decision should be affirmed.

5) The Commission lacks subject matter jurisdiction over test holes and related activities at the Catoosa Test Facility, as well as activities related to the plugging of such test holes. The order complies with that and it was affirmed on appeal.

6) The first thing GTI argued was that the Commission doesn't have jurisdiction over them because there's been no exploration or production. The Catoosa Test Facility was used to test, and not to explore for or produce oil and gas in that area. All the evidence in the record is overwhelming that this is a test facility. It has nothing to do with exploring or producing oil and gas, never has, never will.

7) The ALJ was exactly right in his Report when he said the evidence is overwhelming that the Commission doesn't have any jurisdiction. Therefore,

GTI believes the order should stand as is without an attempt to limit it to the Flint order.

COMMISSION STAFF

- 1) **Sally A. Shipley**, Deputy General Counsel, appeared on behalf of the Corporation Commission, to concur with GTI and BP as to their argument concerning Ganer's Motion to Settle Order.
- 2) This order is an order concerning GTI's Motion to Dismiss. This means it is an order of the Commissioners, and not the ALJ. This particular order has nothing to do with the Flint/Pawnee County Test Facility case. This has only to do with the Catoosa Test Facility. It is therefore not relevant to include the Flint/Pawnee County Test Facility drilling case in order for this order to be approved by the Commission.

BP

- 1) **Rob F. Robertson** and **John M. "Jake" Krattiger**, attorneys, appeared on behalf of BP to concur with GTI.
- 2) The order that is proposed by GTI conforms to the rules of the Commission and it conforms to the evidence that was heard by the ALJ over numerous days of hearing. The requested changes by Ganer are not appropriate because they don't conform to what actually occurred before the ALJ over a period of nine days of taking evidence last summer.
- 3) BP thinks the ALJ's report accurately reflects both the facts and the law and that the proposed order offered by GTI should be entered.

RESPONSE OF GANER

- 1) The motion to dismiss was only argued on the Flint order. To expand the order beyond that shuts off Ganer before they had a chance to present additional evidence. Ganer wasn't through presenting testimony with regard to what took place. Mr. Bray testified that he was only familiar with the Facility from 1997 forward. The ALJ mentioned something about Mr. Bray not knowing anything that Amoco did at the site. The operations in question took

place in 1992. So Ganer believes they weren't allowed to do proper discovery and finish their case.

2) To base the motion to dismiss on the Flint/Pawnee County Test Facility Order No. 596214 you would need to look at the evidence presented in the Flint/Pawnee County Test Facility case. The facts were never looked at in the Flint/Pawnee County Test Facility case, so we don't know if they are the same. Ganer is okay with the ruling that the Commission doesn't have jurisdiction, but you've got to base it on the Flint/Pawnee County Test Facility case because that was the motion that was presented.

RESPONSE OF GTI

1) There is no doubt that the ALJ found the Commission did not have jurisdiction because the Catoosa Test Facility is a test facility and that there's never been any exploration or production for oil and gas there.

2) Ganer's arguments surrounding the Flint/Pawnee County Test Facility Order No. 596214 order are impermissible collateral attacks. If he wanted to appeal that case, then he should have done that at the appropriate time.

CONCLUSIONS

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

1) The Referee agrees with GTI that the GTI proposed order fully complies with the rules of the Oklahoma Corporation Commission. OCC-OAC 165:5-15-1, General Form and Procedure, provides:

(a) **Contents of orders.** The Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise:

(1) Caption, cause number on the appropriate docket and order number. Every page of the order shall also contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number

assigned to the cause by the Court Clerk, and order type, e.g. emergency order, final order, etc.

- (2) Appearances.
- (3) Date and place of all hearings.
- (4) Summary of allegations of applicant, and of all other parties of record.
- (5) Summary of evidence of applicant, and of all other parties of record.
- (6) Findings of fact, containing all ultimate facts found to have been established.
- (7) Conclusions of law, containing:
 - (A) All legal conclusions found to be applicable to the facts; and
 - (B) The directive of the order stated in concise and mandatory language.(Emphasis added)

Further, the general rules of the Commission have the force and effect of law and must be followed. *Brumark Corporation v. Corporation Commission*, 864 P.2d 1287 (Okl.App. 1993); *Ashland Oil, Inc. v. Corporation Commission*, 595 P.2d 423 (Okl. 1979). Rules and regulations enacted by the Commission pursuant to the powers delegated to it have the force and effect of law and are presumed to be reasonable and valid. *Toxic Waste Impact Group v. Leavitt*, 755 P.2d 626 (Okl. 1988).

2) First, the above rule states that "[t]he Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise..." As the attorney for the Commission stated, this is not an order by the ALJ but is an order to be determined by the Commissioners.

3) In addition, OCC-OAC 165:5-15-1 prescribes that the Conclusions of Law must contain "[a]ll legal conclusions found to be applicable to the facts; and (B) The directive of the order stated in concise and mandatory language". GTI's proposed order fully complies with the above stated rule by incorporating by reference the Report of the Administrative Law Judge filed on January 10, 2013, and the Report of the Oil and Gas Appellate Referee, filed on April 25, 2013, including but not limited to the Findings of Fact and Conclusions of Law from both reports. Also, GTI's proposed order cites a precise directive whereby it orders the following:

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma that the Motion to Dismiss of GTI Catoosa Test Facility Inc. be granted and the Application for Enforcement of Commission

Rules and Filing of Required Forms filed by Applicant,
Ganer Oil Company, be dismissed.

4) The ALJ in his Report concerning the Motion to Dismiss filed on January 10, 2013 clearly addresses both the Motion to Dismiss by GTI on May 10, 2012, as well as the GTI Supplemental Motion to Dismiss filed on May 17, 2012. Both Motions were referenced in his Report on page 2, paragraph 5. Clearly, the ALJ's Report addressed in his Findings of Fact and Arguments and his Recommendations and Conclusions of Law both the issues concerning the Motion to Dismiss filed on May 10, 2012 and the Supplemental Motion to Dismiss on May 17, 2012. The Commission affirmed the ALJ Report when it issued its corrected Decision Sheet finding that:

The Commission lacks subject matter jurisdiction over test holes and related activities of the Catoosa Test Facility as well as activities related to the plugging of such test holes. Consequently, the Commission cannot provide oversight or regulation of GTI's activities at the Facility.

Thus, both the ALJ's Report filed on January 10, 2013, and the Appellate Referee's Report filed on April 25, 2013, are final as they have been affirmed by the Commission in the corrected Decision Sheet filed May 15, 2013. The ALJ's Conclusions of Law in his Report also show that the Commission didn't have subject matter jurisdiction over the Catoosa Test Facility as well as the Flint/Pawnee County Test Facility and showed agreement with the previous Order No. 596214 of the Commission.

5) For the above listed reasons and circumstances, the Referee can find no reason to vary the Oral recommendation of the ALJ and the ALJ should be affirmed.

RESPECTFULLY SUBMITTED THIS 13th day of September, 2013.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas
Commissioner Anthony

Commissioner Murphy
Jim Hamilton
Richard K. Goodwin
Richard J. Gore
Rob F. Robertson
John ("Jake") M. Krattiger
Sally Shipley
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