

MAY 28 2013

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

**FILED**  
MAY 17 2013

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**

<u>APPLICANT:</u>	C. WILLIAM RICHTER	)	
		)	
<u>RELIEF SOUGHT:</u>	DRILLING AND SPACING UNITS	)	CAUSE CD NO.
		)	201202350
		)	
<u>LEGAL DESCRIPTION:</u>	SECTION 2, TOWNSHIP 24	)	
	NORTH, RANGE 11 WEST,	)	
	ALFALFA COUNTY, OKLAHOMA	)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE**

This Cause came on for hearing before Susan R. Osburn, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 30<sup>th</sup> day of August, 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:** **Gregory L. Mahaffey**, attorney, appeared on behalf of applicant, C. William Richter ("Richter"); **David E. Pepper**, attorney, appeared on behalf of Continental Resources, Inc. ("Continental"); 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 27th day of September, 2012, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions. The Oil and Gas Appellate Referee ("Referee") filed her Report of the Oil and Gas Appellate Referee on December 17, 2012. The Commission issued Order No. 606472 on January 10, 2013 Remanding Cause to the ALJ. The Commission found there were issues "which should be further examined by the ALJ. The scope of the ALJ's inquiry should include a definitive recommendation as to the proper size drilling and spacing unit(s) in the Oswego common source of supply underlying the captioned lands including an analysis of the testimony and evidence to support the findings of fact and recommendation." A Supplemental Report was filed on the 13th day of February, 2013 by the ALJ to which Exceptions were timely filed.

The Appellate argument concerning the Oral Exceptions to the Supplemental Report was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 5th day of April, 2013. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

### **STATEMENT OF THE CASE**

**RICHTER AND CONTINENTAL TAKE EXCEPTION** to the Supplemental Report of the ALJ filed on February 13, 2013 which recommended lay down 320 acre Oswego spacing with a northeast, southwest drill pattern with the Norton #1 well designated as the unit well for the N/2 of Section 2 and with a legal location for drilling wells to be no closer than 660 feet from the proper quarter section in the unit.

The Report of the ALJ filed on September 27, 2012 recommended that an interim order issue in CD 201202350 stating that the cause will be set for reopening nine months from the date of the issuance of the interim order to determine whether or not Continental has taken appropriate action to further develop Section 2 based on results of offset wells. The ALJ further recommended that failure of Continental to obtain any regulatory orders necessary for further development of this unit plus the filing of an intent to drill and failure of Continental to take further necessary action for continuing development of Section 2 will result in an order granting Richter's request to respace the Oswego on a 160 acre basis. The ALJ lastly recommended that upon reopening under the interim order the operator will provide evidence of their action in furtherance of developing this Section 2 or an order will issue respacing the Oswego consistent with Richter's request.

This is a case where Richter is requesting the Commission enter an order amending the provisions of Order No. 96691, which established 640 acre drilling and spacing units for the production of hydrocarbons from the Oswego common source of supply and to delete therefrom said common source of supply underlying Section 2-24N-11W, Alfalfa County, Oklahoma; extending the provisions of Order No. 124526 which established 80 acre lay down drilling and spacing units for the production of oil from the Oswego common source of supply to cover and include said Section 2; and designating the Norton #1 well as the unit well for the N/2 NE/4 of Section 2 for the Oswego common source of supply. At the time of the hearing Richter orally amended their application to seek establishment of 160 acre gas spacing units for the Oswego for Section 2 and designating the Norton #1 well as a unit well in the NE/4. Richter owns the minerals and surface in the SW/4, and has shared in all the Oswego production from the existing Norton #1 well in the NE/4. The requested

respacing would result in Ms. Norton, the NE/4 mineral owner, not being able to share in any future Oswego production from the other three quarter sections after sharing in the NE/4 Oswego production with owners in those quarter sections. Continental, the operator of the Norton #1 well, objects to the respacing as unfair to Ms. Norton and also on the grounds that they are awaiting the results of two offset horizontal wells being drilled to a number of zones including the Oswego in order to determine if further development should occur in Section 2. Continental will further develop Section 2 if those wells prove up the interest in Section 2. Both sides agree the Norton #1 well is nearing the end of its productive life, although each side disagrees about the Norton #1 well's remaining reserves and about its ultimate drainage.

Having reviewed the record, the Reports of the ALJ and Referee, and applicable law, the Commission found that there are issues which should be further examined by the ALJ. The scope of the ALJ's inquiry should include a definitive recommendation as to the proper size drilling and spacing unit(s) for the Oswego common source of supply underlying the captioned lands including an analysis of the testimony and evidence to support the findings of fact and recommendation. The cause was remanded to ALJ Susan Osburn for the purpose of supplementing her Report.

**CONTINENTAL TAKES THE POSITION:**

- 1) The ALJ's Report is contrary to law, contrary to the evidence and fails to effect the means of prevention of waste and protection of correlative rights.
- 2) The ALJ erred in her final conclusions as to the size of the drilling and spacing unit. In her Report she states that "the Applicant did not present any mapping of the Oswego and relied upon the perforation map presented by Protestant's geologist". The only conclusion to be drawn from this is that Richter's engineer made no calculations until such time as the exhibit exchange in the case, in which he could rely upon the map of Continental.
- 3) The ALJ then states that "this is essentially an engineering driven hearing". She further states that "there were some differences in the approach of the engineers and their studies and the ALJ finds the study of the Protestant's engineer to be more in depth and more reliable."
- 4) Given that she finds the study of Continental's engineer more reliable and more in depth, she then, at the end of her report, recommends a 320 acre spacing. This in spite of the fact that Protestant's engineer recommended 516 acres, and Richter's engineer recommended 194 acres. In essence, she arbitrarily picked a number that was as she said "the Norton well will drain more than the 194 acres projected by Applicant's witness and less than the 516 acres projected by the Protestant's witness". There is absolutely no

mention of any evidence which would support the establishment of 320 acre spacing. The number selected by the ALJ was purely arbitrary, and necessary, to grant any type of relief requested by Richter. To utilize the drainage number of 516 acres by the engineer that the ALJ determined to be more reliable, one cannot then discount that amount arbitrarily by simply picking a number out of the air.

5) The ALJ should base her findings upon the evidence before it. The rights of the parties depend upon facts established at the hearing, and not upon some independent knowledge of the ALJ. A finding without evidence to support it is arbitrary and baseless.

6) Continental respectfully requests that the Reports of the ALJ be reversed and that Richter's Application be denied.

**RICHTER TAKES THE POSITION:**

1) The ALJ erred in recommending 320 acre spacing and not granting 160 acre spacing for the Oswego common source of supply effective September 1, 2012. The overwhelming evidence is that the Norton #1 well will not substantially drain more than approximately 190 acres and that there is approximately 1.6 BCFG in the Oswego that will be left unrecovered in Section 2 absent drilling additional wells. Continental has owned this well and Section for many years and has no plans to drill additional wells. They are asking the Commission to let them wait and speculate on the results of offset Mississippi wells not Oswego wells. As shown by Exhibits 1 and 7, offset units such as Sections 10, 11 and 12 to the South, have had three or at least two Oswego wells to more adequately develop the Unit.

Continental's only basis for objecting to 160 acre spacing is that they may lose leases. The Oklahoma Supreme Court has addressed this issue in *Union Oil Company of California v. Brown*, 641 P.2d 1106 (Okl. 1981). In that case the Supreme Court specifically found that granting of the despadding was merely reinstating the mineral owner's right to enforce the terms of their leases. Back when this section was spaced on 640 acres there had been no wells drilled in the immediate area. Had the Commission known that one well would not effectively drain more than 160 acres it would never have allowed 640 acre spacing. While there is one extremely good well in the area, the Baldwin well which has drained substantially more than 160 acres, Mr. Stromberg stated that the average drainage of all Oswego wells in this nine section area was only 132 acres: thus 160 acres is appropriate.

Where later development has shown that either a portion of the lands are not underlain or will not be effectively drained by an existing well, the Commission should vacate the 640 acre spacing and establish smaller spacing. *Union*

*Texas Petroleum v Corporation Commission*, 651 P.2d 652 (Okl. 1981). See also *Application of Peppers Refining Co.*, 272 P.2d 416 (Okl. 1954) and *Panhandle Eastern Pipeline Co. v. Corp. Com'n.* 285 P.2d 847 (Okl. 1955).

*Winter* is not applicable here because Continental is not seeking density authority in the Oswego. *Winter, et al. v. Corporation Commission*, 660 P.2d 145 (Ok.Civ.App. 1983). In *Winter* the operator was seeking density authority. Continental is merely asking this Commission to allow it to speculate as to whether nearby Mississippi drilling is going to pan out so they can decide whether they want to drill a Mississippi horizontal well sometime in the future. This is not a basis for this Commission to abdicate its responsibility to prevent the waste that will occur if 1.6 BCF of Oswego gas is left in the ground underlying Section 2.

The ALJ also failed to note that there are no mineral owners objecting to the despacing. The fact that the mineral owners in the NE/4 will no longer participate in production in the other quarter sections is irrelevant because such mineral owners are not objecting to the establishment of 160 acre spacing. Such mineral owners will start getting four times the royalty that they have been receiving in the Norton well. In fact, Mr. Kyle McLinn, contract landman, testified that he had talked with most of the mineral owners in the section and that none of them were objecting to the despacing.

Richter requests that 160 acre spacing be granted.

2) The ALJ erred in giving Continental six months from the date of the order to issue in which to commence operations for another Oswego well. By the time that the Exceptions to this Supplemental Report of the Administrative Law Judge are heard on April 5, 2013, Continental will have had seven months from the date of the spacing hearing in which to commence operations for another well. ALJ Osburn initially recommended nine months and in fairness she did reduce the time to six months to help account for some of the delay in issuance of an order herein, by virtue of the appeals process. However, by the time a final order is issued in this cause it will likely be June of 2013, approximately 14 months after Richter filed his application. Continental has had over 30 years in which to develop the Oswego and has declined to do so. It would be more appropriate to provide a date certain of June 27, 2013, which is nine months after the ALJ's recommendation, as a deadline in which Continental must actually commence drilling of an additional Oswego well by spudding same with a rig capable of drilling to total depth.

**THE ALJ FOUND:**

1) The Report of the ALJ was filed September 27th, 2012, and after an appeal and consideration by the Commission en banc this cause was remanded to the ALJ by Order No. 606472 for a supplemental report. The Supplemental Report was for the ALJ to make a definitive recommendation as to the proper size drilling and spacing units to be formed for the Oswego common source of supply in Section 2, T24N, R11W, Alfalfa County, Oklahoma, and an analysis of the testimony and the evidence to support such recommendation. Upon remand of this cause, the ALJ has reviewed the evidence and testimony presented by both Richter and Continental in order to make more specific findings. It is noted by the ALJ that she would still recommend an Interim Order to allow the current operator of the Norton #1 well to review results of the offset wells being developed and to begin any further development of the Oswego common source of supply. However, based upon the Referee's recommendation, the ALJ would recommend the cause be reopened six months from the date of the Interim Order rather than nine months and upon such reopening, if further development by the operator has not occurred, it would then be the recommendation of the ALJ that the Oswego be respaced on a 320 acre basis, based on the evidence and testimony regarding the reservoir.

2) Richter did not present any mapping of the Oswego and relied upon the perforation map presented by Continental's geologist. Neither side could find a log on the Norton #1 well, and although Continental's geologist prepared a perforation map of the Oswego at the request of Continental's engineer, she explained that she would not use such a map for drilling and developing an area.

3) This is essentially an engineering-driven hearing. There were some differences in the approach of the engineers and their studies, and the ALJ finds the study of Continental's engineer to be more in-depth and more reliable. In Richter's study to determine the ultimate of the Norton #1 well, that engineer said he did not use a typical decline because he found a decline here to be erratic, so he used a limited period of time in 2011 to determine a 5% decline to project an ultimate of 607 MMCFG for this well. Continental's engineer did not use an exponential decline but looked at the Norton #1 well's entire production history and found a hyperbolic decline, which he projected out to a 741 MMCFG ultimate, noting that wells producing at low rates over longer periods of time can have a fairly large drainage impact.

4) Using these ultimates and other parameters, the two engineers had different drainage calculations for the Norton #1 well, with Richter's engineer calculation 194 acre drainage, and Continental's engineer calculation over 500 acre drainage. Neither drainage area would support the establishment of a 160 acre unit. Since there were no available logs on the Norton #1 well, each

engineer relied on properties from the Baldwin #1 well. Richter's engineer used 8.9% porosity from the Baldwin #1 log and made no shale correction because of mudcake on the caliper. Continental's engineer criticized that, noting that one cannot equate presence of mudcake with fluid filled reservoir. He further explained that the Baldwin #1 log is a density log, not a neutron density log, so the porosity should have been lowered using a Schumberger chart, which Richter's witness did not do. Continental's engineer made the correction to the porosity reading and used a 6% porosity in his calculation. He also noted if the corrected porosity were used, Richter's engineer would have calculated about the same Sw value that he used. Continental's witness further criticized Richter's use of a gradient to calculate pressure on the Norton #1 well of 2,271 pounds and he explained that he found in PI an actual wellhead shut-in pressure on the Norton #1 well; so in 1978 after some production the Baldwin #1 well had a P/Z of 1,941 pounds, and he calculated from the wellhead shut-in pressure test for the Norton #1 well that it would have a P/Z of 2,198 pounds, which he opined was consistent with offset data. The engineers used different thicknesses in their drainage calculations also. Richter's engineer used ten feet of thickness which would be consistent with the perforations or thickness in the Baldwin #1 and Stout #1 wells, while Continental's engineer used the seven foot thickness from the perforation record on the 1002A for the Norton #1 well. Continental's witness explained that in a review of the logs and well information that he had on offsets, he determined that the operators generally perforated net pay so he used 7'. That with these various differences used in their calculations, the engineers came up with vastly different drainage areas and opinions about the Norton #1 well. Based on the evidence and testimony presented, it is the opinion of the ALJ that the Norton #1 well will drain more than the 194 acres projected by Richter's witness and less than the 516 acres projected by Continental's witness. The ALJ would therefore recommend 320 acre spacing. The thicknesses shown on Continental's Exhibit 7 are perforation thicknesses rather than net pay thicknesses, and the geologist even explained that the 15' contour that she put in there was purely an estimate. Richter's witness did not disagree with the geometry of the reservoir as reflected on Continental's Exhibit 7 map. Since the preferential drainage of the Norton #1 well would be from the better portion of the reservoir to the west and across the north part of the section, the ALJ would recommend lay down 320 acre Oswego spacing with a northeast, southwest drill pattern, with the Norton #1 well designated as the unit well for the N/2 of Section 2 and with the legal location for drilling wells to be no closer than 660 feet from the proper quarter section in the unit.

## POSITIONS OF THE PARTIES

### RICHTER

- 1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Richter, contends the ALJ's initial recommendation of 160 acre drilling and spacing unit is more justified by the record than her latest ruling of 320 acre drilling and spacing unit in her Supplemental Report currently on appeal here.
- 2) Richter agrees with the Initial Report that there are hydrocarbons present here with the dispute being the quantity of the hydrocarbons present. Richter notes the ALJ had recommended an Interim Order for nine months in which Continental would have the time to determine if any development action on their part needed to be started. In the event that Continental failed to take regulatory action during those 9 months, Richter's request for 160 acre drilling and spacing units would be granted.
- 3) Both sides appealed the Initial Report. Richter notes the horizontal Chesapeake proposed wells are for the Mississippi formation, not the Oswego. Richter understands that Continental does not wish to drill wells here unless economics justify the drilling costs. Richter notes Continental is not seeking increased density authority for Continental's interest/lease here.
- 4) Richter notes the #1 Baldwin well to the north in Section 35 drained approximately 270 acres. Richter observes the average Oswego well here drains approximately 135 acres. Richter notes the Norton #1 well would produce from 600 to 700 MMCFG per the two opposing engineers. Richter notes that if 1.6 to 1.8 BCFG reserves were left, it would require approximately 3 wells to obtain 600 MMCFG per well; hence, Richter disagrees with the 320 acre drilling and spacing recommendation.
- 5) Richter notes that Continental has not developed the Oswego in all the 30 years it has had this interest and has no future plans to do so. Richter did point out that Continental said should Continental drill a Mississippi well it might at that point entertain an Oswego well.
- 6) Richter notes Continental can still drill a Mississippi/Oswego well at any time provided they file for a drilling permit and a location exception. Neither has been done at this time.
- 7) Richter notes while the geology may indicate wells tend to drain toward the thicker parts of the reservoir, hence 320s in this instant would be appropriate here, Richter still believes that 160 acre drilling and spacing units would be better suited.

8) Richter points out there has been no new data or testimony submitted in the record. Richter referenced the redirect examination had in the Initial Report. Richter notes the en banc, while affirming the ALJ's ruling, remanded the cause back to the ALJ for further facts or support for her recommendations of the 160 acre drilling and spacing unit.

9) Richter notes however in the ALJ's review of the record, the ALJ for unknown reasons reversed the 160 acre drilling and spacing unit recommendation and modified it to 320 lay down drilling and spacing units.

10) Richter knows that Continental does not want any despacing order finalized.

11) Richter believes the ALJ did not believe the case of *Winter v. Corporation Com'n of State of Oklahoma*, 660 P.2d 145 (Ok.Civ.App. 1983) applied to the current situation at hand. Richter noted the previous case law brought to the Court's attention, noting that the OCC's mandate of prevention of waste beats out that of protecting correlative rights.

12) Richter notes that initially the ALJ had suggested a nine month delay, yet almost 7 months have passed by. Richter further notes concerning the recommendation of 6 months made recently, nearly 4 months have already passed. Richter submits this extra delay would give Continental almost 14 months, when Continental has yet to take any action here in the past 30 some years.

13) Richter believes both the geology and reservoir situation here would result in greater recovery if 160 acre drilling and spacing units were adopted. Richter notes here the uncontroverted evidence shows there will be a waste of hydrocarbons with the ALJ's recommendation of 320 acre drilling and spacing unit.

14) Richter requests if the OCC should uphold the alternate decree, Richter wishes to have it modified to that of 160 acre drilling and spacing units.

15) Regardless of which spacing size is decided upon by the Commission, Richter believes the ALJ erred in giving Continental six months from the date of the Order to issue due to the appeal process allowing for a longer delay. Richter differs with the Commission giving Continental more time to determine if development here is needed.

16) Richter asserts any delay should be for a date certain, approximately June 27th which is nine months since the ALJ's ruling, and/or six months from the Referee ruling on 12-27-2012. Alternatively, Richter would suggest two months from the date of the order to issue.

17) Richter believes the ALJ's initial ruling for 160 acre drilling and spacing units justifies the detailed drainage report submitted at the hearing. Thus 160s are more appropriate than the 320 acre drilling and spacing decision.

18) Richter thus requests the Supplemental Report be modified to the original ALJ recommendation of 160 acre drilling and spacing units, with said order to be made effective immediately; and in the alternative, to have the effective date on a date certain.

### **CONTINENTAL**

1) David E. Pepper, attorney, appearing on behalf of Continental, states that the Referee issued a past report on the ALJ's initial report, which ultimately affirmed and modified the ALJ's decision to shorten the delay from 9 months to 6 months.

2) Continental notes however the Commissioners during deliberations voted to remand the cause to the ALJ to further examine several issues. The scope of the remand Order No. 606472 was to 1) include definitive guides as to the proper size of drilling and spacing units for said lands and 2) include further analysis of the record to support her recommendation.

3) Continental notes that the ALJ issued her Supplemental Report on the 13<sup>th</sup> day of February, 2013, however, the ALJ did so without taking any additional testimony.

4) Continental believes the Order No. 606472 had requested that the ALJ prepare a Report concerning the terms of the appropriate size of drilling and spacing unit needed here for proper development.

5) Continental reiterated from the Initial Report that Chesapeake had proposed to drill a Mississippi horizontal well here and Continental wished time to evaluate Chesapeake's results prior to deciding on whether to develop the Oswego/Mississippi in this area. Continental reiterates that on the first appeal, Richter's engineer stated 190 acres would be drained whereas Continental's engineer claimed 516 acres.

6) Continental agrees with the ALJ's newly added statement shown in her Supplemental Report that this cause is essentially an "engineering driven hearing".

- 7) Continental notes the ALJ, upon second review of the record, still found that Continental's engineer approach was more in depth and more reliable than that of Richter's engineer.
- 8) Continental notes its engineer had opined the existing Norton #1 well was going to recover all of the commercial hydrocarbons in this unit. The ALJ stated in her Report on page 2 and page 3 that "it is the opinion of the ALJ that the Norton well will drain more than the 194 acres projected by applicant's witness and less than the 516 acres projected by Protestant's witness."
- 9) Continental notes the above ALJ statement clearly lacks support in the record. Continental would remind the Court of important facts herein critical to the case. Continental notes that Richter owns in the SW/4; that all Richter has requested herein is wanting their acreage returned back to Richter; that with the creation of 320 acre drilling and spacing units Richter will get his acreage back with new spacing attached; and that Continental will still lose a major portion of its own acreage if the 320 acre drilling and spacing unit is affirmed.
- 10) Continental notes after the remand and Order No. 606472 was entered, the parties did not go back on the record for any more additional evidence.
- 11) Continental still does not know the status of the Oswego/Mississippi wells proposed by Chesapeake.
- 12) Continental notes that the remand Order No. 606472 required the ALJ to give a definitive recommendation as to the proper drilling and spacing unit size, and to include all evidence to support her Findings of Facts and Recommendations in the Supplemental Report.
- 13) Continental believes the ALJ did not comply with the terms of Order No. 606472. Continental thinks the ALJ merely decided that since she could not use 160 acre spacing, the next option up was to move to 320 acre units.
- 14) Continental wonders how one can arrive at a solution of 160 acre drilling and spacing unit here where potential drainage claims by two opposing engineers ranged from 190 to up to 516 acres.
- 15) Continental notes Richter did not present any geological evidence at the initial hearing.
- 16) Continental wonders also what new evidence is in the Supplemental Report which supports the ALJ's recommendation to change to 320 acre drilling and spacing units.

17) Continental tends to believe the ALJ picked the number of 320 out of thin air as a form of compromise between the differing numbers of 190 acre drainage and 516 acre drainage.

18) Continental believes this does not conform to the definition of substantial evidence, citing the case of *Centurion Oil, Inc. V., Stephens Production Co.*, 857 P.2d 821 (Ok.Civ.App. 1993) as support. Continental notes the Centurion case defined substantial evidence as "supporting evidence possessing substance and relevance." *Samson Resources Co. v. Oklahoma Corporation Commission*, 742 P.2d 1114 (Okl. 1987).

19) Continental contends the ALJ increased the analysis of Richter by 65%, whose testimony she did not favor initially, in order to arrive at her new 320 acre drilling and spacing unit recommendation.

20) Continental thinks the ALJ's analysis herein is a vague analysis and not one of substantial evidence. Continental can find no support for the ALJ's sudden 320 acre drilling and spacing recommendation.

21) Continental contends that even if 320 drilling and spacing units were appropriate here, Continental still needs extra time in which to review well status to determine if wells need to be drilled here.

22) Continental asserts that since Continental claimed 516 acre drainage, and the ALJ felt Continental's evidence was also more reliable, the only solution here is to deny Richter's application.

23) Continental requests the Court reverse the ALJ's new recommendation of 320 acre drilling and spacing units and deny the Richter's application or alternatively, should the ALJ's 320 acre drilling and spacing unit be affirmed, that Continental be granted extra time in which to review the results of Chesapeake's horizontal wells.

### **RESPONSE OF RICHTER**

1) Richter believed Order No. 606472 was only to give further support for the ALJ's initial recommendation. Richter does not believe that Order No. 606472 required the ALJ to re-open the record to take additional evidence. Richter references the cross examination of the engineers had in the Initial Report.

2) Richter notes that Continental has no intention of drilling any Oswego wells here yet merely wanted to look at this offset Chesapeake production.

Richter is aware of Chesapeake's financial difficulties and that these wells may not be drilled. Richter notes the fallacy here is that Continental/Chesapeake are not planning Oswego wells, but Mississippi wells.

3) Richter notes the engineers admitted the existing Oswego wells here would not drain all of the unit. Richter notes its engineer said that based on his calculations of ultimate recovery, the Norton #1 well would leave about one-half of recoverable gas inside Section 2.

4) Richter notes the ALJ modified her initial recommendation of 160 acre drilling and spacing units to that of 320 acre drilling and spacing units in her Supplemental Report, yet did not explain why.

5) Richter notes that radial drainage, if present here, won't have all the hydrocarbons coming from only Section 2 but also from the SW/4 of Section 36, the W/2 of Section 1 and possibly the S/2 of Section 35.

6) Richter notes the statutes normally require approximate uniform size and shape in most situations.

7) Richter notes the average well drainage here is less than 160 acres, which concurs with Continental's evidence. Richter notes no party refuted Continental's (Stromberg) testimony that the average drainage here is less than 160 acres.

8) Richter notes the OCC established 640 acre drilling and spacing units here prior to any wells being drilled, based on the prevailing statutory mandate at that point in time.

9) Richter notes that one of the best wells here was the Baldwin #1 well to the north in Section 35. Richter further notes that the Baldwin #1 well's porosity figures were used in the Norton #1 well's drainage calculations by Continental.

10) Richter notes this would equate to about 1.318 BCF RGIP for Section 2, which was substantially lower than Richter's 2.4 BCF RGIP. However, Richter notes with Richter's 2.4 BCF RGIP there would still be approximately 1.8 BCF reserves unrecovered.

11) Richter asserts the OCC's priority here is to prevent waste.

12) Richter acknowledges that it does not understand why the ALJ modified her initial 160 acre drilling and spacing choice to that of 320 acre drilling and spacing units.

13) Richter believes there is substantial evidence in the present record to support despacing.

14) Richter notes that Continental's map only showed one proposed horizontal Mississippi Chesapeake well in the W/2 of Section 10. Richter pointed out to the Court the proposed Chesapeake horizontal Mississippi well for Section 36.

15) Richter reminds the Court that the Richter engineer used numbers from the Baldwin #1 well since there was no available well log for the Norton #1 well.

16) Richter believes the ALJ indicated lay down 320 acre drilling and spacing units with a NE/SW drill pattern would allow a well to be drilled in the SW/5 of Section 2 without a location exception order.

17) Richter notes should the Richter application be denied, the result will be a waste of hydrocarbons available in Section 2, regardless of what amount of acreage is ultimately drained.

18) Richter urges the Commission to decide the proper drilling and spacing size needed here.

19) Richter believes the ALJ's decision, whether 320 or 160, should be made effective immediately; however, alternatively, Richter would request the order be made effective in late June of 2013 or early July 2013 in order for the appeal process to be completed.

### **RESPONSE OF CONTINENTAL**

1) Continental notes that Richter references the cross examination of Continental's engineer from the initial ALJ Report in his arguments today. Continental notes that Richter implied that Continental's engineer testified therein that based on calculations, if all were absolutely consistent across the board, the Norton #1 well would leave about one-half of the recoverable gas inside Section 2. Continental notes however that Continental's witness had indicated due to the varying porosity and area thicknesses, such assumption would not be valid. Continental's engineer in the cross-examination notes that the thickness on the map is overstated. Continental further points out there is no core data for the porosity values, thus any interpretation must be had from log data. Continental believes the ALJ was aware of this cross examination when she wrote her Supplemental Report. Continental believes that the little snippet of cross examination does not rise to the level of the definition of substantial evidence.

- 2) Continental notes that despite being remanded by the Commissioners, the ALJ still preferred Continental's evidence to that of Richter's testimony.
- 3) Continental requests that the application of Richter be denied outright; and alternatively, should the ALJ's decision be affirmed, that Continental be granted additional time in which to determine if Chesapeake's wells have been drilled.

## **CONCLUSIONS**

**The Referee finds that the Supplemental Report of the Administrative Law Judge should be reversed.**

1) Upon review of the evidence and testimony presented by both Richter and Continental, the Referee finds that the ALJ's recommendation of 320 acre spacing which amends the provisions of Order No. 96691, which established 640 acre drilling and spacing units for the production of hydrocarbons from the Oswego common source of supply, and to delete therefrom said common source of supply underlying Section 2, is contrary to the weight of the evidence presented before her and contrary to law. 52 O.S. Section 111 prohibits collateral attacks on prior Commission orders. In order to overcome this prohibition against collateral attacks, an applicant is required to show a substantial change of conditions or change in knowledge of conditions which will justify the vacation of Order No. 96691. If Richter was successful in establishing a substantial change of conditions or change in knowledge of conditions, then Richter was required to prove that its particular method of modifying the spacing orders would either prevent waste or protect correlative rights. 52 O.S. Section 87.1(d); *Corporation Commission v. Union Oil Company of California*, 591 P.2d 711 (Okl. 1979); *Kuykendall v. Corporation Commission*, 634 P.2d 711 (Okl. 1981); *Union Texas Petroleum, a Division of Allied Chemical Corporation v. Corporation Commission of the State of Oklahoma*, 651 P.2d 652 (Okl. 1982); *Winter v. Corporation Commission of Oklahoma*, 660 P.2d 145 (Okl.Civ.App. 1983); and *Denver Producing and Refining Company v. State*, 184 P.2d 961 (Okl. 1947).

2) The applicant Richter carries the burden of proof under his spacing application to justify the requested relief. In Commission hearings the applicant seeking relief has two burdens: the burden of persuasion (that if the evidence is evenly balanced, the party that bears the burden of persuasion must lose); and the burden of production (a party's obligation to come forth with evidence to support its claim). *Director, Office of Workers Compensation*

*Program, Department of Labor v. Maher Terminals, Inc.*, 512 U.S. 267, 272, 275 (U.S. 1994).

3) The ALJ found that basically the only scientific evidence presented that gave probative value was the expert opinion offered by the Continental experts. The ALJ found in her Supplemental Report, after reviewing the evidence and testimony presented by both Continental and Richter, that Richter:

"did not present any mapping of the Oswego and relied upon the perforation map presented by Protestant's geologist. Neither side could find a log on the Norton well, and although Protestant's geologist prepared a perforation map of the Oswego at the request of Protestant's engineer, she explained that she would not use such a map for drilling and developing an area. (Page 1 and Page 2)

This is essentially an engineering-driven hearing. There were some differences in the approach of the engineers in their studies, and the ALJ finds the study of the Protestant's engineer to be more in depth and more reliable. (Page 2)

\* \* \*

Using these ultimates and other parameters, the two engineers had different drainage calculations for the Norton well, with Applicant's engineer calculation 194-acre drainage, and Protestant's engineer calculation over 500 acre drainage....That with these various differences used in their calculations, the engineers came up with vastly different drainage areas and opinions about the Norton well. Based on the evidence and testimony presented, it is the opinion that the ALJ that the Norton well will drain more than the 194 acres projected by Applicant's witness and less than 516 acres projected by Protestant's witness. The ALJ would therefore recommend 320 acre spacing." (Page 2 and Page 3)

4) The Referee finds that the evidence and testimony reflects that Richter did not prove a substantial change of conditions or change in knowledge of

conditions warranting the amendment of Order No. 96691 which established 640 acre spacing.

5) There were no available logs on the Norton #1 well and each engineer relied on properties from the Baldwin #1-35 well. Basically, the only scientific evidence presented that gave probative value was the expert opinion offered by Continental's expert and clearly the evidence adduced before the Commission did not satisfy the terms of the statute to support Richter's application. The Referee believes that the expert opinions were not supported with a rational basis which constituted probative evidence sufficient to sustain Richter's application. Only further drilling or studies will establish a basis upon which to vacate the Order No. 96691. The testimony reflected there were offset horizontal wells being drilled which include among various formations the Oswego. While the offset wells target the Mississippi, the applications for those wells include the Oswego and the results could support density development of the Oswego in Section 2. The Referee believes that the evidence provided by Richter does not possess "something of substance and of relevant consequence and such that carries with it fitness to induce conviction." *Application of Choctaw Express Company*, 253 P.2d 822 (Okl. 1953); *Cameron v. Corporation Commission*, 414 P.2d 266 (Okl. 1966); *Haymaker v. Oklahoma Corporation Commission*, 731 P.2d 1008 (Okl.Civ.App. 1986); *Downs v. Longfellow Corporation*, 351 P.2d 999 (Okl. 1960); and *Palmer Oil Corporation v. Phillips Petroleum Company*, 231 P.2d 997 (Okl. 1951).

6) The Richter engineer's testimony dealt in "possibilities" and not "probabilities". Clearly the evidence provided by Richter did not generate probative force to establish a prima facie case for the granting of the application. The Richter engineer focused on the facts that the granting of the application could lead to further development of Section 2; that Continental had not shown any interest in development; and that Continental used a method of determining geology from properties from the Baldwin #1-35 well. In the Referee's view these considerations do not go toward the establishment of a substantial change of conditions or change in knowledge of conditions to justify a modification of the prior spacing order. When one considers the Richter evidence, along with the evidence which detracts from the Richter's position; one must find that the totality of the evidence does not induce conviction in a reasonable man that the granting of the application is proper. *El Paso Natural Gas Company v. Corporation Commission of Oklahoma*, 640 P.2d 1336 (Okl. 1981); and *Landowners Oil, Gas and Royalty Owners v. Corporation Commission*, 415 P.2d 942 (Okl. 1966).

7) Clearly, in these circumstances Richter failed to meet its burden of proof to justify the granting of the application to amend the provisions of Order No. 96691 deleting the Oswego common source of supply from said order and establishing 320 acre drilling and spacing units in Section 2 and therefore the

Supplemental Report of the ALJ should be reversed and Richter's application should be denied.

**RESPECTFULLY SUBMITTED THIS 17<sup>th</sup> day of May, 2013.**

  
Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Douglas  
Commissioner Anthony  
Commissioner Murphy  
Jim Hamilton  
ALJ Susan R. Osburn  
Gregory L. Mahaffey  
David E. Pepper  
Office of General Counsel  
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