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

FILED

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: LORI WROTENBERY, DIRECTOR
OIL AND GAS CONSERVATION DIVISION
OKLAHOMA CORPORATION COMMISSION

RESPONDENT(S): SUPERIOR OIL AND GAS CO. OF OKLAHOMA, THE
FICTITIOUS NAME OF SUPERIOR OIL AND GAS CO., A
NEVADA CORPORATION, AND NBC OKLAHOMA

RELIEF SOUGHT: CONTEMPT,) CAUSE EN NO. 201000062
FINES, COMPLIANCE WITH)
COMMISSION RULES AND)
FORFEITURE OF SURETY) ITN: 10-21612

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **David Leavitt**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 12th day of April, 2013, 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 with respect to Respondent's compliance with Third Interim Order No. 600695.

APPEARANCES: **Richard Gore**, attorney, appeared on behalf of respondent Superior Oil and gas Co. of Oklahoma, the fictitious name of Superior oil and Gas Co., a Nevada corporation, and NBC Oklahoma (collectively "Superior"); **Susan D. Conrad**, Deputy General Counsel for the Commission, appeared for the Pollution Abatement Department of the Oil and Gas Division of the Commission ("OCC Staff"); and **Jim Hamilton**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 21st day of June, 2013, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions. On August 6, 2013, the Commission referred this cause to be set for hearing on the Oil and Gas Appellate Referee Docket. Superior then filed a Motion to

Continue Appeal and Motion to Reopen on August 15, 2013, alleging a change of condition meriting further testimony before an ALJ. The ALJ David Leavitt heard the Motion on August 23, 2013 and issued his report on November 5, 2013, to which Exceptions were properly filed and proper notice given of the setting of the Exceptions. The Appellate argument concerning the Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 10th day of January, 2014. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

SUPERIOR TAKES EXCEPTION to the ALJ's recommendation in his Report of November 5, 2013 that Superior's \$25,000 Letter of Credit Surety Bond be increased from \$25,000 to \$50,000 and that all wells operated by Superior in the State of Oklahoma be ordered shut-in until Superior files a Letter of Credit Surety Bond with the Commission in the amount of \$50,000. The ALJ further recommended that Superior be given 60 days to bring all of their wells into compliance with the rules of the Commission or face further fines and penalties, including forfeiture of its surety bond. The ALJ further recommended that the Commission issue its decision in the form of a Fourth Interim Order, whereby Superior is required to report back to the Commission to show compliance with the order.

Previously on August 7, 2012, the Commission issued Third Interim Order No. 600695 ordering Superior to pay a fine of \$2,000 for failure to comply with the terms of Second Interim Order No. 590835. The Commission also ordered the cause to be reopened to determine whether all of Superior's wells were in compliance with the rules of the Commission and for Superior to show cause why its Class B, or Category B, surety should not be increased to \$50,000 if its wells were not in compliance.

The cause was reopened for a hearing on April 12, 2013. The ALJ subsequently issued his report on June 21, 2013 recommending that Superior's \$25,000 Letter of Credit Surety Bond be increased from \$25,000 to \$50,000 and that all wells operated by Superior in the State of Oklahoma be ordered shut-in until Superior files a Letter of Credit Surety Bond with the Commission in the amount of \$50,000. The ALJ further recommended that Superior be given sixty days to bring all of their wells into compliance with the rules of the Commission or face further fines and penalties, including forfeiture of its surety bond. Superior filed exceptions to the Report of the ALJ on July 1, 2013.

On August 6, 2013, the Commission referred this cause to be set for hearing on the Oil and Gas Appellate Referee Docket. Respondent then filed a Motion to Continue Appeal and Motion to Reopen on August 15, 2013, alleging a change of condition meriting further testimony before an ALJ. The ALJ heard the Motion on August 23, 2013 and issued his Report on November 5, 2013.

SUPERIOR TAKES THE POSITION:

1) The ALJ Report filed on November 5, 2013 is contrary to the law and to the evidence, is arbitrary, unreasonable and discriminatory, and fails to effect the ends of the prevention of waste and the protection of correlative rights as is required by applicable laws of the State of Oklahoma.

2) The ALJ's recommendation that Superior's Letter of Credit Surety Bond with the Commission be increased from \$25,000 to \$50,000 and that all wells operated by Superior in the State of Oklahoma be ordered shut-in until Superior files a \$50,000 Letter of Credit Surety Bond will result in waste as follows:

a) The evidence presented by the Commission at the August 23, 2013 hearing was that Superior operates 11 wells and that there were no problems/violations with two of the wells, being the Gayla and Chickie. The only problem with the Lincoln-Lewis, Lewis and Donohoe wells were that weeds needed to be mowed, but that the witness did not know the status of the wells as of December 5, 2012, the date Order No. 600695 required.

b) The first alleged violation, other than solely weeds, cited in the August 23, 2013 hearing is that Superior had junk on the ground at the Windy Vista well on August 21, 2013. No evidence was presented as to the status of the well on December 5, 2012, and two witnesses testified that Superior has never been cited for a violation on this well. In addition, the OCC witness testified at the April 12, 2013 hearing that there were no violations at the Windy Vista well, and he wished that all the well sites he inspected could look like this one.

c) The second alleged violation was a lease sign, this one on the Brown well, (transferred to Superior on December 4, 2012 by Helton Oil Co. which well has been sold to Vernon Van Beber), and weeds.

d) The third alleged violation relates to the Kirby well (transferred to Superior on December 4, 2012 by Helton Oil Co.) that grass and weeds needed to be mowed and a disputed depression/pit (3 feet deep, 15 feet wide and 15 feet long) should be filled at a cost of \$500.

e) The other violations related to the Hudgins-Reid #1 well, the Stewart-Welfare well and the Hudgins Reid #2 well all transferred to Superior

on December 19, 2012 by Helton Oil Co.; all of which have been plugged. (See OCC Forms 1003).

f) The testimony of Superior is that an additional \$25,000 bond would put Superior out of business.

g) The total costs of all violations, being cutting weeds, picking up junk and filling a small pit are around \$1,000.

h) The only evidence presented was that the existing equipment on the Superior wells could be sold for \$50,000.

i) Superior has operated wells in Oklahoma for many years without incident, no one injured or killed, no fires, no pollution and has had no problems with the Commission until Superior's owner died and a well which had only the rat hole drilled was not plugged as quickly as the surface owner desired and who filed a complaint which resulted in this case being filed. The August 23 hearing relating to this appeal involved primarily wells of which Superior had become operator after December 5, 2012, which Superior took over from its geologist, John Helton/Helton Oil Co., as a favor and most of the evidence related to problems with weeds. To put Superior out of business over weeds which will result in the State taking over the plugging liability for all of Superior's wells and will needlessly cost the taxpayers, seems excessive compared to minor offenses of which Superior is accused.

3) Wherefore, Superior requests that the decision of the ALJ be reversed, that Superior not be required to post a \$50,000 bond.

THE ALJ FOUND:

1) Superior had argued that there has been a change of condition since the December 5, 2013 deadline for compliance set forth in Third Interim Order No. 600695 that was issued in response to violations that occurred in 2010 with respect to a well in Kingfisher County, Oklahoma. Third Interim Order No. 600695 was issued in response to violations that occurred with respect to a single well on the Washington Lease located at the E/2 W/2 W/2 NE/4 of Section 25, T16N, R6W, Kingfisher County, Oklahoma. The original complaint describing these violations was filed on June 22, 2010. On or around the deadline for compliance in Order No. 600695, Superior became the operator of five additional wells that were not subject to the original complaint. See Exhibit BB which shows that Superior became the operator of these wells: the Brown #1 well dated December 4, 2012; the Kirby #28-2 well dated December 4, 2012; the Hodgins-Reid #1 well dated December 19, 2012; the Stewart-Welfare #1 well dated December 19, 2012; and the Hodgins-Reid #2 well dated December 19, 2012. Superior's attorney contended that Order No. 600695 cannot apply to these five additional wells since they were not

anticipated by the testimony and evidence that served as the basis for any of the Interim Orders, and that any violations related to these additional five wells should be a separate cause of action. Superior's attorney alleged that the Commission hasn't made a *prima facie* case to support a complaint against Superior in this present cause, since the Commission's field inspectors didn't inspect the well sites in December 2012.

2) Superior's attorney also argued that it has made a good-faith effort to comply with the Third Interim Order, and that an order that increases its bond to \$50,000 would be punitive, and that surety bonds are not intended to be punitive, citing OCC-OAC 165:10-1-10(a)(4) as support for its position. Superior testified that it will cover the costs to plug all the wells and clean up the well-sites from the sale of the equipment and materials salvaged from the sites if the Commission will allow it some more time to complete this work. Superior thus contended that it could complete this work without the need for the State to take money from the surety bond.

3) The Pollution Abatement department had argued that Superior wasn't in compliance with the terms and requirements shown in Third Interim Order No. 600695 on December 5, 2012 and also wasn't in compliance when the cause was re-opened on April 12, 2103 and still isn't in compliance on the date of this hearing. Thus, Superior has had around one year to comply with the Commission's Order and has failed to do so. The attorney also noted that Superior admitted to being aware of the consequences of not complying with the Third Interim Order in December 2012 but chose to apply its resources toward the acquisition of five new wells in order to expand its asset base instead of using its resources to comply with the Order, and has not operated these five new wells in compliance with the rules of the Commission.

4) The evidence and testimony show that Superior has failed to comply with the terms and requirements of the Third Interim Order. The requirements set forth in the Third Interim Order are not limited to the operation of the original well in Kingfisher County that was the subject of the complaint in 2010. As shown in Section 12 of the Order, the Commission required that this cause be reopened before an ALJ on December 5, 2012 for a determination of whether each of Superior's wells is in compliance with Commission rules.

5) Because it was determined by testimony and evidence during the hearing of April 12, 2013 that the Brown #1, Kirby #28-2, Hodgins-Reid #1, Stewart-Welfare #1, and the Hodgins-Reid #2 wells were not in compliance with Commission rules and that Superior was the operator of these wells, it is subject to the consequences of not complying with the Order. The condition of the December 5, 2012 deadline and requirement for a hearing on that date being continued by order of the Commission and agreement of all the parties until April 12, 2013 is not a change of condition that would excuse Superior from its obligations under the Order. The evidence and testimony show that

Superior made a business decision not to comply with the terms of the Order when it purchased additional wells in December 2012 and then failed to operate them in compliance with the rules of the Commission.

6) After taking into consideration the pleadings in the cause and arguments of the attorneys, it is the recommendation of the ALJ that the Superior's \$25,000 Letter of Credit Surety Bond be increased to from \$25,000 to \$50,000 and that all wells operated by Superior in the State of Oklahoma be ordered shut-in until Superior files a Letter of Credit Surety Bond with the Commission in the amount of \$50,000. The ALJ further recommends that that Superior be given 60 days to bring all of their wells into compliance with the rules of the Commission or face further fines and penalties, including forfeiture of its surety bond. The ALJ recommends that the Commission issue its decision in the form of a Fourth Interim Order whereby Superior be required to report back to the Commission to show compliance with the order.

POSITIONS OF THE PARTIES

SUPERIOR

- 1) **Richard Gore**, attorney, appearing on behalf of Superior, stated the increase of the surety bond from \$25,000 to \$50,000 will put Superior out of business. This is a small company with only two employees.
- 2) The re-occurring problems here are over grown weeds. Nothing egregious by nature.
- 3) Original complaint filed by the surface owner required that a 'rat hole' be plugged. It is now plugged and all parties are satisfied.
- 4) Order No. 600695 indicated that the status of Superior's wells as of December 5, 2012 should be reviewed. Many of the wells testified about in the April 2013 hearing and again in August 2013, were not in possession of Superior as of December 5, 2012.
- 5) The Commission supplied no evidence that the wells owned by Superior as of December 5, 2012 were out of compliance on that date.
- 6) The four wells complained of at the December 2012 hearing needed only to be mowed and some debris cleaned up around the well site. One other well needed to have a pit filled. The total cost to comply with these complaints

is approximately \$1,000 and does not justify the increase of a surety bond with the Commission.

7) Superior supplied evidence about the salvage value of equipment at the well sites of \$50,000 indicating that there is not a lack of assets available to cover plugging costs of the wells. The increase of the surety bond ordered by the Commission "to protect the State from plugging liability" is unnecessary when the operator has assets available to pay for those plugging costs.

8) Only OCC-OAC 165:10-1-10 speaks to the surety bond required by operators. Section (d) of that rule indicates that the Commission may only require an operator to increase their bond when there has been a violation of pollution or improperly plugged wells. There is no evidence in the record that Superior has been found guilty of either of these violations.

9) The Commission must adhere to its own rules. In *Hoover v. Boone Operating, Inc.*, 274 P.3d 815 (Ok.Civ.App. 2011) the court held that the Commission must follow its own rules. Here, the Commission is trying to circumvent its own rules by increasing a surety bond without cause.

10) The only violations that Superior is guilty of here are: failing to remove some debris; fill in a pit; keep a proper lease sign; and mowing the weeds around the well-head. None of these violations warrants an increased surety bond, the result of which would put Superior out of business.

11) A surety bond is not meant to be punitive, but rather to protect the State from liability relating to pollution and the plugging of abandoned wells. The actions sought by the Commission in this case are punitive in nature and do not follow the rules of the Commission.

12) The evidence presented must reflect only those wells that were being operated by Superior as of the December 5, 2012 hearing. At that hearing the testimony indicated that wells were inadequately plugged, not that the wells were improperly plugged. Since that time the plugging has been completed on the wells in question.

13) All of the violations alleged would require only an assessment of fines, not an increase in an operator's surety bond.

OCC

1) **Susan D. Conrad**, Deputy General Counsel, appearing on behalf of the OCC, stated that this has been an ongoing issue with Superior since June 22,

2010. There have been six hearings and three interim orders issued to Superior in an attempt to gain its compliance with the Commission rules. Superior has paid fines to the Commission due to its failure to comply with the interim orders issued in this cause. The Third Interim Order No. 600695 issued in this cause on August 7, 2012. Superior's attorney approved the Order No. 600695 as to form and content. The Commission ordered this cause reopened and that each well operated by Superior be reviewed for compliance with Commission rules. That hearing was to take place on December 5, 2012, however due to continuances was not heard until April 12, 2013.

2) There is testimony and evidence in the record of the April 12, 2013 hearing showing that the wells operated by Superior were not in compliance with Commission rules at that time. Wells were improperly plugged, the pit was not filled, debris still littered well sites, weeds were still not mowed, and lease signs still contained incorrect data. Many of these same violations still existed at the time of the August 2013 hearing.

3) Superior made a conscious business decision to acquire five additional wells in December of 2012 rather than use assets to bring its existing wells into compliance with all of the Commission rules.

4) The conditions established by the Commission in the December 5, 2012 hearing were not met, and continuances until April 2013 does not constitute a change in conditions which Superior now wishes to seek.

5) Superior has a history of non-compliance with the Commission rules, not just in this cause, but in other causes filed against Superior over the past several years. This history of non-compliance warrants an increase in their surety bond.

6) Superior cannot pick and choose which Commission rules it wishes to follow; it must follow all of the Commission rules.

7) Superior has had ample time, through continuances and motions, to comply with the interim order and has failed to do so

8) The 3 wells Superior now shows as plugged were not plugged as of the August 2013 hearing date. We request that either the court not consider those plugging records or that our field inspectors be granted an opportunity to testify that those same 3 wells are still not in full compliance with the Commission rules as of today.

9) Superior complained that they were not given written notice via a form 1036; however, the rules state that a form 1036 "may" be sent to an operator. That implies that it is discretionary and not mandatory. It is an operator's responsibility to comply with the Commissions rules, even when the

Commission does not provide written notice that an operator is out of compliance with those rules.

10) The August 2013 hearing records contain testimony that the wells complained of were not plugged properly.

11) With respect to the Windy Vista well, there was testimony at the August 23, 2013 hearing before Judge Leavitt that the wellhead was leaking; that the tank battery was overgrown with weeds; that buckets, junk and cable were laying about the site. At the site of the Brown #1 well, there was a lease sign showing Helton Oil, the previous operator, not Superior. There's oil spilled around the wellhead, which definitely constitutes pollution and also there were weeds and debris. There was also testimony that there had been no change in the site between the April 12th hearing and four months later, the August 23, 2013 hearing. With respect to the Kirby well there was a pit that had not been closed, tall grass, debris. The field inspector testified that there had been no change at the site between the August 12, 2013 hearing and the August 23, 2013 hearing.

12) There is ample evidence in the record to affirm the ALJ ruling and increase the surety bond of Superior. The evidence indicates both pollution and an improper plugging of three wells.

RESPONSE OF SUPERIOR

1) Superior takes issue with the comments that there is evidence of wells being "improperly plugged." The Commission approved the plugging. The evidence in the record of the August 2013 hearing shows that the wells were inadequately plugged, that is, the plugging of the wells were not completed. The evidence does not show that the wells were improperly plugged. This is why Superior provided the plugging reports on file with the Commission.

2) The proper procedure of the Commission is to notify, in writing via form 1036, an operator that they are in violation of Commission rules. This notice allows both the Commission and the operator to become aware of what rules are being violated so that they can be remediated, or in the case of non-compliance, fined in accordance with the Commission rules.

3) The only way for the Commission to increase an operator's surety bond is to find an operator guilty of pollution or improperly plugging a well. That is stated in the Commission rules. The Commission must adhere to its own rules.

- 4) The burden of proof for pollution or improper plugging is on the government, and they have failed to prove their case.
- 5) In addition, the evidence presented in both the April and August 2013 hearings should have been limited only to those wells that were being operated by Superior at the time of the December 5, 2012 scheduled hearing date.
- 6) The ALJ ruling increasing the surety bond should be reversed. The ALJ came to the wrong conclusion. At most, only a fine should have been assessed against Superior. The assessment of a fine is the proper punishment for the type of violations alleged.

RESPONSE OF OCC STAFF

- 1) The testimony in the record of the August 2013 hearing shows that the wells were improperly plugged.
- 2) The rules surrounding form 1036 indicate that the form is discretionary and not mandatory. The operator is obligated to comply with all of the Commission rules. The Commission is not obligated to provide written notice of rules violations. There was testimony during the April 12, 2013 hearing about all the violations of Commission rules four months later that would certainly have served as notification to Superior that its wells were not being operated in compliance with Commission rules. Yet four months later in August of 2013 those same violations had not been corrected.
- 3) The Third Interim Order No. 600695, which Superior received and acknowledged, requires Superior to show cause why their surety bond should not be increased if all its wells were not in compliance with Commission rules. That order places the burden of proof on Superior, which they did not meet.
- 4) The ALJ ruling should be affirmed.

FURTHER RESPONSE OF SUPERIOR

- 1) Superior notes that only one rule allows the Commission to increase the amount of a surety bond required by an operator, and that rule requires either pollution or improper plugging of a well.
- 2) There is no evidence in the record that Superior caused any pollution or that its wells were improperly plugged. The only evidence in the record

shows that wells were inadequately plugged; however, for the wells in question the plugging is now completed.

3) Without evidence of pollution or improper plugging, the Commission cannot raise the surety bond of an operator.

CONCLUSIONS

The Referee finds the June 21, 2013 Report of the Administrative Law Judge and the November 5, 2013 Report of the Administrative Law Judge in Response to Motion to Continue Appeal and Motion to Reopen should be affirmed.

1) The Referee finds that the ALJ's determinations: 1) that Superior's \$25,000 Letter of Credit Surety Bond be increased from \$25,000 to \$50,000; 2) that all wells operated by Superior in the State of Oklahoma be ordered shutin until Superior files a Letter of Credit Surety Bond with the Commission in the amount of \$50,000; 3) that Superior be given 60 days to bring all of their wells into compliance with the rules of the Commission or face further fines and penalties, including forfeiture of its Surety Bond; and 4) that the Commission issue its decision in the form of a Fourth Interim Order whereby Superior is required to report back to the Commission to show compliance with the order is supported by the weight of the evidence, in accordance with law, free of reversible error and should be affirmed. 17 O.S. Sections 53, 53.1 and 53.2; 52 O.S. Section 309; 52 O.S. Section 139 et seq.; 52 O.S. Section 318.1; OCC-OAC 165:10-11-3.; OCC-OAC 165:10-3-17 et seq.; OCC-OAC 165:10-1-10 et seq.; OCC-OAC 165:10-7-16 et seq.

2) 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 (Ok.Civ.App. 1993); *Ashland Oil Inc. v. Corporation Commission*, 595 P.2d 423 (Ok. 1979).

3) A contempt proceeding is characterized as sui generis in Oklahoma. *Vogel v. Corporation Comm'n*, 121 P.2d 586, 588 (Ok. 1942); *Stamford Energy Companies, Inc. v. Corporation Com'n of State*, 764 P.2d 880 (Ok. 1988). It is neither a civil or criminal proceeding. *State ex rel. Short v. Owens*, 256 P. 704 (Ok. 1927). The Commission's contempt power is derived from both the Oklahoma Constitution and statute. See, Art. 9, Sec. 19, Oklahoma Constitution; 52 O.S. Section 102. As such, it is unique. "It is neither civil nor criminal, but may partake of either in its nature."

4) *Stamford Energy Companies, Inc. v. Corporation Com'n of State*, supra, at 882 provides:

Oklahoma's characterization of a contempt proceeding as sui generis is beyond dispute. *State ex rel Young v. Woodson*, 522 P.2d 1035, 1039 (Okla. 1974); *Vogel v. Corporation Commission of Oklahoma*, 190 Okla. 156, 121 P.2d 586, 588 (1942). This court has long held that the violation of a Commission order punishable as contempt does not constitute a crime and a contempt proceeding is not a criminal prosecution. Based on these principles, this court and *Vogel*, supra, held that although the Commission acts as a quasi-judicial body it is an administrative agency, not a trial court, and as such is not subject to the constitutional and statutory provisions concerning contempts of court which mandate trial by jury in particular proceedings for contempt.

5) In other words, the Commission's contempt powers is what it wishes it to be so long as the Commission stays within the express and implied jurisdictional limits placed on it by the Oklahoma Constitution, Article 9, Section 19 and 52 O.S. Section 102. *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okla. 1984); *Burmah Oil & Gas Company v. Corporation Commission*, 541 P.2d 834 (Okla. 1975); and *Kingwood Oil Company v. Hall-Jones Oil Corporation*, 396 P.2d 510 (Okla. 1964).

6) The Oklahoma Constitution, Article 9, Section 19 provides in relevant part:

In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the Commission, it shall have the powers and authority of a court of record, * * * to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the Commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this

Constitution or by law. * * * Any corporation failing or refusing to obey any valid order or requirement of the Commission, within reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense....

7) On August 7, 2012, the Commission issued Third Interim Order No. 600695 ordering Superior to pay a fine of \$2,000 for failure to comply with the terms of the Second Interim Order No. 590835. The Commission also ordered the cause to be reopened to determine whether all of Superior's wells were in compliance with the rules of the Commission and for Superior to show cause why its Category B Surety should not be increased to \$50,000 if its wells were not in compliance.

8) The hearing before the ALJ was held on April 12, 2013 and the ALJ determined from the evidence and testimony that Superior was not in compliance with the terms and conditions of the Third Interim Order No. 600695. Wells were not plugged, well sites were not cleared of debris, and weeds and brush were not mowed. Lease signs still didn't have adequate contact information with respect to emergency numbers or operator information. The ALJ determined that such uncorrected conditions comprised a safety and fire hazard and therefore Superior did not show sufficient cause why its bond should not be increased from \$25,000 to \$50,000. Exceptions to the ALJ Report filed on June 21, 2013 were filed by Superior on July 1, 2013.

9) On August 6, 2013, the Commission referred this cause to be set on the Oil and Gas Appellate Referee docket. Superior then filed a Motion to Continue Appeal and Motion to Reopen on August 15, 2013, alleging a change of condition meriting further testimony before an ALJ. The ALJ heard the motion and issued his report on November 5, 2013 again finding that the evidence and testimony showed that Superior had failed to comply with the terms and requirements of the Third Interim Order No. 600695. Exceptions to the ALJ Report filed on November 5, 2013 were then filed by Superior on November 15, 2013.

10) The ALJ found that the Third Interim Order was not limited to the operation of the original well in Kingfisher County with respect to the site at the E/2 W/2 W/2 NE/4 of Section 25, T16N, R6W, Kingfisher County, Oklahoma that was the subject of the original complaint filed by Commission Staff in

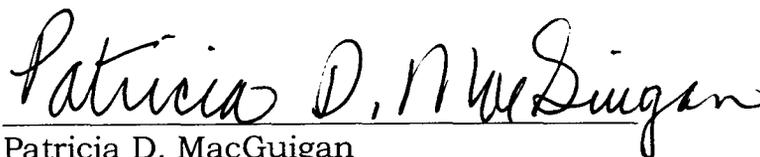
2010. As shown in the Third Interim Order No. 600695 on page 4, paragraph 3, the Commission required that this cause be reopened before an ALJ on December 5, 2012 for determination of "whether each of Respondent Superior Oil and Gas Co. of Oklahoma's wells is in compliance with Commission rules." The Referee would agree with the ALJ's determination in this regard. Superior made a business decision to acquire five additional wells in December of 2012 but did not use any assets to bring existing wells into compliance with all of the Commission rules.

11) There have been six hearings and three Interim Orders issued to Superior in an attempt to gain its compliance with the Commission rules.

12) The evidence reflected in the April 12, 2013 hearing that the wells operated by Superior were not in compliance with Commission rules at that time. Wells were improperly plugged, a pit was not filled, debris still littered well sites and weeds were still not mowed with a lease sign still containing incorrect data. At the time of the August 23, 2013 hearing there were still existing violations by Superior. With respect to the Windy Vista #1-22 well there was testimony that the wellhead was leaking, the tank battery was overgrown with weeds and buckets, junk and cable were lying about the site. Also, at the site of the Brown #1 well there was testimony that a lease sign showing Helton Oil, the previous operator, not Superior. There was oil spilled around the wellhead constituting pollution and also there were weeds and debris. There had been no change in the site from the April 12, 2013 hearing and four months later the August 23, 2013 hearing. With respect to the Kirby #28-2 well there was a pit that had not been closed, tall grass and debris. There was testimony that again there had been no change at the site between the August 12, 2013 hearing and the August 23, 2013 hearing.

13) Therefore, since the clear and convincing evidence establishes a clear pattern of noncompliance with the Commission rules by Superior, the Reports of the Administrative Law Judge on June 21, 2013 and November 5, 2013 should be affirmed. *Centurion Oil, Inc. v. Stephens Production Company*, 857 P.2d 821 (Ok.Civ.App. 1993); *Texas Cty Irrigation & Water Res. v. Dunnett*, 527 P.2d 578 (Okl. 1974); *Texas Oil and Gas Corporation v. Rein*, 534 P.2d 1280 (Okl. 1974); *Central Oklahoma Freight Lines, Inc. v. Corporation Commission*, 484 P.2d 877 (Okl. 1971); and *Application of Choctaw Express Company*, 253 P.2d 822 (Okl. 1953).

RESPECTFULLY SUBMITTED THIS 12th day of March, 2014.



Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Douglas
Commissioner Murphy
Jim Hamilton
ALJ David Leavitt
Richard Gore
Susan D. Conrad
Office of General Counsel
Michael L. Decker, OAP Director
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