

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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APPLICANT: CARL E. GUNGOLL )  
EXPLORATION, LLC )  
RELIEF SOUGHT: MODIFICATION OF ) CAUSE CD No.  
POOLING ORDER NO. ) 201406049  
616690 )  
LAND SECTION 6, )  
DESCRIPTION: TOWNSHIP 18 NORTH )  
RANGE 1 WEST, )  
PAYNE COUNTY, )  
OKLAHOMA )  
) )  
) )

**FILED**  
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OF OKLAHOMA

**REPORT OF THE OIL AND GAS REFEREE**

On September 26, 2014, Oil and Gas Referee Ben Jackson heard exceptions to the oral ruling of Administrative Law Judge Susan R. Osburn on a motion to stay subsequent well elections under a pooling order. The hearing occurred in the Commission's Courtroom A, Jim Thorpe Building, Oklahoma City, Oklahoma. At the hearing, Gregory L. Mahaffey, Attorney-at-law appeared for the Applicant, Carl E. Gungoll Exploration, LLC, et al. ("Gungoll"); and Michael D. Stack, Attorney-at-law appeared for the Protestant, Devon Energy Production Company, L.P. ("Devon").

Being fully advised of the premises, the Referee finds:

**Findings**

1. In its exceptions, Devon asks the Commission to reverse the ALJ's recommendation to grant a stay of the election period for a subsequent well under Order No. 616690, which covers drilling and spacing units for the Mississippian, Woodford, Sylvan and Misener common sources of supply underlying Section 6, Township 18 North, Range 1 West ("Section Six").

2. Section Six contains one producing well completed under the pooling order in the Mississippian. It also contains one drilling well, which is an increased density well nearing completion in the Mississippian.

3. After drilling the first well under the pooling order, Devon proposed drilling the second well for the Mississippian and the following day, Devon proposed a third well to be drilled to the Woodford Shale. Devon has yet to spud the third well.

4. With its partners, Gungoll owns approximately twenty-seven percent of the working interest in Section Six. Gungoll was not a party to the pooling proceeding. Gungoll bought its interest from a poolee in the pooling order. With this interest, Gungoll elected to participate in the first and second wells. No one disputes the validity of Gungoll's elections in the first and second wells. For the third well, Gungoll elected to participate with less than its full interest. There is a dispute over the validity of this election, but that dispute is not the subject of the motion to stay. Nevertheless, the election period for the third well has expired. If the stay is not granted, Gungoll will lose its right to participate insofar as what is not covered by its election to participate in the third well.

5. On the motion to stay, the dispute concerns whether the pooling order provides that the Mississippian and Woodford will be developed as a single unit.

6. Gungoll contends that the economics of the Woodford in Section Six are questionable and that Devon's failure to penetrate the Woodford in the first well is a change in conditions warranting amendment of the pooling order. Gungoll wants to amend the pooling order to treat the formations below the Mississippian separately. If granted, that proposal would allow Gungoll to refuse to participate with any or all of its interest in the proposed Woodford well, while retaining its right to elect to participate in any future Mississippian well(s).

7. The Gungoll application to amend the pooling order is protested by Devon and has yet to be set for hearing on the protest docket.

8. Devon contends that the plain text of the pooling order, increased density application, increased density order and location exception order support Devon's contention that the Commission has previously approved Devon's intent to develop the Mississippian and Woodford as a single unit. Devon also contends that Devon has a drilling rig on-site drilling the second well from a common pad, that Devon will sustain a four-hundred-ten-thousand dollar loss from a mobilization fee if Devon does not use the rig, when it finishes with the second well, and that if Devon drills the third well without a firm election from Gungoll, then Devon will bear an unreasonable risk if the well is unsuccessful.

9. ALJ Osburn recommended granting the motion. Devon presented ALJ Osburn's opinion through a transcript. In the transcript, ALJ Osburn found that genuine issues of law and fact exist in regard to interpretation of the pooling order and that the Gungoll interest would be compromised if a stay is not granted. The ALJ recommended a stay until the third well is fracture stimulated.

10. ALJ Osburn's recommendation would be a temporary solution for Gungoll. If the third well is fracture treated before a final ruling on the Gungoll application, the stay will not fully protect the Gungoll's participation rights, which are subject to transfer by operation of law if the stay is lifted. .

11. The Referee respectfully disagrees with ALJ Osburn for the following reasons: In its argument, Gungoll correctly noted that an order granting a stay is a form of temporary injunction. In that regard, a temporary injunction requires clear and convincing evidence on four criteria: (1) likelihood of success on the merits; (2) irreparable harm to the party seeking relief; (3) the relative effect on the interested parties; and (4) public policy concerns arising out of the issuance of injunctive relief. *Coxcom v. O.S.S.A.A.*, 2006 OK CIV APP 107 ¶10, 143 P.3d 525. Here, Gungoll's likelihood of success is poor. Both parties rely on *C.F. Braun & Co. Corp. Comm.*, 1987 OK 52, 739 P.2d 510 for that proposition that a pooling order must state whether separate commons source of supply will developed on unit basis. Along that line, paragraph number one of the order section of the pooling order states:

At this time, the Applicant could possibly penetrate the common sources of supply named herein in the well proposed, and therefore , intends to treat each of those common sources of supply in this pooling Order as an aggregate.

The plain text of the pooling order states that the Mississippian and Woodford formations will be developed together. Supporting language appears in the well density and location exception orders. Next, Gungoll acquired its interest subject to an existing pooling order with vested rights. To amend the pooling order requires a change in knowledge or knowledge of conditions. A change in conditions has not occurred for the Woodford. The first well failed to penetrate the Woodford. Therefore, drilling under the pooling order has yet to provide new knowledge about the productive potential of the Woodford Shale underlying Section Six. From a different view, public policy favors finality of the elections before drilling of the third well. The purpose of forced pooling is to equalize the risk of loss by forcing all of the oil and interest owners to choose in advance whether they will share in both the benefits and the risk of oil and gas exploration. *Ranola Oil Co. v. Corp. Comm.*, 1988 OK 28, 752 P.2d 1116, 1119. Here, granting a stay would force the other working interest owners to carry Gungoll's interest at their sole risk and expense or to pay four-hundred-ten thousand dollars as a penalty. Either result to accommodate someone who was not a party to the pooling proceeding puts a disproportionate burden on Devon. .

12. Based on the foregoing findings, the motion to stay should be denied.

Respectfully submitted .

  
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Ben Jackson  
Oil and Gas Referee

9/29/14  
Date

XC:

Commissioner Anthony

Commissioner Douglas

Commissioner Murphy

ALJ Susan Osburn

Michael Decker

Court Clerk

Commission records

Michael D. Stack

Gregory L. Mahaffey