BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT:	**NEWFIELD EXPLORATION MID-CONTINENT INC.**	)
RELIEF SOUGHT:	**POOLING**	) **CAUSE CD NO. 201407973-T**
LEGAL DESCRIPTION:	**SECTION 33, TOWNSHIP 16 NORTH, RANGE 6 WEST, KINGFISHER COUNTY, OKLAHOMA**	)

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CORPORATION COMMISSION
OF OKLAHOMA

REPORT OF THE OIL AND GAS APPELLATE REFEREE

This Cause came on for hearing before **Kathleen M. McKeown**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 16th day of April and 5th day of May, 2015, at 8:30 a.m. in the Commission's Courtroom, Kerr Building, Tulsa, 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, Newfield Exploration Mid-Continent Inc. ("Newfield"); **Eric R. King**, attorney, appeared on behalf of American Energy - Nonop, LLC ("AENO"); **John C. Moricoli, Jr.**, attorney, appeared on behalf of Cimarron Production Company, Inc. in support of AENO; **David E. Pepper**, attorney, appeared on behalf of EOG Resources, Inc. ("EOG"); **John Brown**, landman, appeared for JBX, Inc.; **Robert A. Miller**, attorney, appeared on behalf of Marathon Oil Corporation ("Marathon"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed her Report of the Administrative Law Judge on the 26th day of May, 2015, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Oral Exceptions was referred to **Patricia D. MacGuigan**, Oil and Gas Appellate Referee ("Referee"), on the 13th

day of July, 2015. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

AENO TAKES EXCEPTION to the recommendation of the ALJ that the Newfield pooling application should be granted and Newfield should be named operator of the well. Parties timely electing to participate (in both the initial and any subsequent wells) and requesting a deferred payment will receive a 30-day notice of spud and have 10 days to pay their proportionate share of completed well costs. Newfield should be the only party allowed to propose subsequent wells and more than two subsequent wells may be proposed at the same time.

Newfield seeks to pool the Mississippian (less Chester) and the Woodford common sources of supply as these zones underlie the subject unit. AENO objects to the terms of payment for participating parties as well as the designation of parties allowed to propose subsequent wells and how many subsequent wells can be proposed at one time.

AENO TAKES THE POSITION:

1) The Report of the ALJ is contrary to the evidence, contrary to the law, arbitrary, unreasonable, and discriminatory and fails to effect the ends of prevention of waste and the protection of correlative rights required by the applicable laws of the State of Oklahoma, and Newfield failed to comply with the Commission Rules.

2) From the ALJ Report and Recommendations, it appears that the ALJ was not persuaded by AENO's contentions and requests; instead, the ALJ found that none of AENO's requests objected to by Newfield should be allowed in the pooling order. Parties should be able to expect that the ALJ weighed the testimony and evidence of both sides, observed the witnesses' demeanor, assessed the credibility of the witnesses and determined their veracity, and evaluated all the evidence presented. Rather than perform this task, it appears that the ALJ gave carte blanche approval to everything Newfield said and did.

3) The first crucial error is that the ALJ disregarded—and even refused to hear evidence of—Newfield's failure to comply with OCC-OAC 165:5-7-7(a), which requires any pooling applicant to use due diligence to locate each respondent and make a bona fide effort to reach agreement with each respondent as to how the unit will be developed, and to give evidence to this effect at the time of hearing. On multiple occasions under direct testimony and

cross-examination, Mr. David Goodwin, the land witness for Newfield, demonstrated that Newfield failed to comply with the important jurisdictional requirements of this Commission rule.

A) Goodwin testified that the proposal letters were sent by certified mail to the respondents on October 23, 2014 (a Thursday). When asked what date Newfield filed its pooling application, he stated October 27, 2014 (the following Monday). When questioned under cross-examination about the likelihood of the proposal letters even reaching respondents in Oklahoma City and Houston by certified mail before Newfield filed the pooling, he stated that he was unsure about that. (It is relevant to note that the ALJ's Report and Recommendations, although dated and presumably mailed on May 26, were received by counsel for AENO on May 29. Thus, it took three days for mail to get from Tulsa to Oklahoma City in regular mail, let alone certified mail to Houston.)

B) Goodwin was unable to explain under cross-examination how a good faith effort was made by Newfield to reach agreement with those respondents who wouldn't have even received the proposal letter by October 27, the date Newfield's pooling was filed. Under cross- examination, Goodwin stated he was unable to "pull up" or locate any other copies of any of the other proposal letters to other respondents. However, AENO filed a late-filed Exhibit 7, which is a copy of the Newfield proposal letter to Cimarron Production Company dated November 7, 2014, some 11 days after the pooling was filed. The ALJ failed to even mention the significance of a proposal letter going out to respondents after the pooling was filed. OCC-OAC: 165:5-7-7(a) states that the applicant shall present evidence to show how a bona fide effort was made to reach agreement with each respondent.

C) Goodwin testified that he did not contact all 40 of the respondents prior to the pooling. When asked whether a representative of Newfield contacted each of the 40 respondents prior to the pooling, the witness responded that he didn't know. When asked whether he could identify who contacted the respondents, he stated "No," and when asked if he had a green card back on all 40 respondents, his answer was "No." The ALJ Report failed to make any kind of finding as to the inadequacy of Mr. Goodwin's efforts.

D) Goodwin testified that through its lease brokers, Newfield had recently checked the records in the County Clerk's Office of Kingfisher County, through the private "Oklahoma County Records" service and had a title opinion prepared. However, land witness Goodwin did not have the "new" addresses that were presented to the Commission through AENO's offer of proof. If AENO's lease broker had been allowed to testify as to his efforts to locate better addresses which AENO found, based on AENO's check of the records and Accurint, his testimony would have contradicted Goodwin's testimony.

E) OCC-OAC 165:5-7-7(a) provides that each pooling application filed with the Commission "shall include a statement by the applicant that the applicant exercised due diligence to locate each respondent..." The rule goes on to say that "the applicant will present evidence to this effect at the time of the hearing." The failure of Newfield to comply with this rule is a jurisdictional matter, and AENO had every right to inquire through cross-examination to determine whether Newfield exercised due diligence to locate each respondent. When counsel for AENO attempted to cross-examine the Newfield land witness as to the sufficiency of Newfield's pre-pooling conduct, counsel for Newfield objected to the inquiry, arguing that counsel for AENO did not represent the other respondents and therefore had no standing to object to Newfield's failure to properly check records or how many sources had been checked. After argument, the ALJ sustained the objection, to which AENO took exception. The ALJ erred in sustaining Newfield's objection to AENO's efforts to ascertain the sufficiency of Newfield's notice, thus thwarting the very purpose of the Commission rule.

The failure of Newfield to comply with OCC-OAC 165:5-7-7(a) is a jurisdictional matter. (See the findings and conclusions of Order No. 264785 entered in CD 108743.) The irony is that while the ALJ stated in her Recommendations that she believes questioning proper notice of listed respondents is always healthy," she went on to say, "However, raising the issue of Commission jurisdiction over parties unrepresented by counsel at a hearing when there has been a pattern of protests between parties can also be construed as a further delay tactic and should not be abused." So, on the one hand the ALJ welcomes the scrutiny about due diligence, but on the other hand she disallows a healthy inquiry and infers that AENO's reasonable inquiry is dilatory and abusive. (For the Appellate Referee's benefit, the records of the Commission will confirm that AENO has gone to trial with Newfield on only two prior protested poolings ever!) There is certainly no delay or abuse of process on AENO's part, and the ALJ's conclusion is clear and baseless error.

F) As a result of the ALJ sustaining Newfield's objection into an inquiry whether Newfield made a bona fide effort to give proper notice, AENO made an offer of proof. In its offer of proof, AENO, through its counsel, stated that had it been allowed to question Newfield's land witness and place into evidence AENO's lease broker's efforts and evidence of those efforts (such witness was listed on the witness exchange letter and was present in the courtroom) in one day would have presented the following:

i) As to Respondent #8, Exhibit 4 shows Delphi Enterprises, LLC's information at the Oklahoma Secretary of State's office reflects Delphi Enterprises, LLC status was cancelled and with an address of 3100 W. Wilshire Blvd, #7819, Oklahoma City, Oklahoma 73116 rather than Newfield's Exhibit

"A" which showed an address at 4059 Fairbanks Ferry Road, Havana, Florida 32333, which happens to be the address for Delphi Enterprises, Inc. Newfield's land witness was unaware of this information.

ii) As to Respondent #9, Exhibit 5 shows Dick L. Carruthers with a P.O. Box 141 in Cherokee whereas a recorded copy of an oil and gas lease from Dick L. Carruthers reflects P.O. Box 241 in Cherokee rather than that shown on Newfield's respondent list.

iii) Respondent #38, Thomas R. Cole III, was shown as address unknown. Exhibit 6 shows a Proof of Death and Heirship filed in the County Clerk's Office of Major County, recorded in Book 1866, Page 569, evidencing the fact that Thomas R. Cole III died March 12, 1998 (Certificate of Death attached) in Wichita, Kansas at an address not listed by Newfield, reflected he had "a pour over will into a living trust," was married to Eva Christine Cole and had two children, still living. By making a phone call, the lease broker for AENO was able to secure a copy of the LW&T of Thomas R Cole III, the LW&T of Eva Christine Cole, a copy of the Thomas Ross Cole Family Trust filed in Alfalfa County recorded in Book 520, Page 772, and a copy of the Amendment to Trust Agreement dated March 4th, 1999. Newfield's land witness was silent as to these facts.

G) The ALJ understood that at the original hearing on April 16, 2015, AENO attempted to impeach the credibility and competence of Newfield's land witness, acknowledging that AENO had provided accurate respondent addresses to Newfield, addresses that were readily available to Newfield had the applicant done its required due diligence. However, she excused the carelessness of Newfield with a dismissive "The end result was that Newfield was able to find better addresses for 4 of the respondents who were then given proper notice." This is a mischaracterization of what occurred: Newfield did not perform its required due diligence prior to filing its pooling; AENO's cursory investigation revealed Newfield's failure. Newfield did not "find better addresses;" rather, AENO did Newfield's homework for it and shared the results of same; only then did Newfield continue its original pooling hearing until it could take corrective measures and give late notice to such respondents. The ALJ seems to have minimized the applicant's cumulative acts of misfeasance as if they were simple oversights rather than prerequisites for the attachment of jurisdiction and the right to file a pooling.

4) A second crucial error that the ALJ committed was to ignore the applicant's utter failure to negotiate in good faith with AENO, as required by OCC-OAC 165:5-7-7(a).

A) Newfield's land witness Goodwin testified that Newfield made a good faith effort to negotiate with the respondents. However, the undisputed evidence at trial was that it made no such effort at all with AENO.

B) AENO acquired its interest through a farmout agreement from Range Resources, L.L.C ("Range Resources"). Newfield never initiated contact with AENO. If Newfield had in fact made a good faith effort to negotiate and reach agreement with its named Respondent Range Resources, Newfield would have learned of AENO's acquisition of interest under the farmout. Instead, Goodwin testified that he had only learned of AENO's acquisition of interest from Range Resources on the date of the hearing.

Strangely, the ALJ was critical of AENO. "AENO notified Newfield of its acquisition from Range Resources the day of the hearing." Rather than being critical of AENO, the ALJ should have questioned why the Newfield landman didn't learn of the farmout during its supposed bona fide efforts to reach agreement with respondent Range Resources and why Newfield's landman failed to inquire of AENO as to its interest, from whence AENO's interest came, how much AENO's interest was, and why didn't you try to negotiate with AENO? Such inquiry is basic to any meaningful preparation for testimony concerning ownership in a pooling proceeding, and again, Newfield failed to meet even the threshold standards for the pooling of AENO's interest.

C) David Goodwin, the land witness for Newfield, admitted he did not inquire of AENO how much interest AENO owned. Mr. Goodwin also admitted under cross examination that AENO had sent him a proposed pre-pooling letter agreement, but he had not responded to it, nor had he inquired about AENO's ownership, (even though AENO was protesting Newfield's pooling application), or contacted AENO to try and work anything out.

Goodwin further admitted that it was possible that Tyler Beaver at AENO sent the PPLA on January 30, 2015; Goodwin testified that he didn't recall if Tyler Beaver followed up with him on February 2, 2015. The testimony is clear, however, that neither Newfield nor Mr. Goodwin chose to respond to AENO or made any attempt whatsoever to negotiate in good faith to reach agreement concerning the development of the unit. The law as applied to the evidence cannot be clearer: if you fail to contact a respondent, the applicant fails to satisfy the "bona fide effort" standard as promulgated by the Commission rules. This is fatal error on the part of Newfield and error on the part of the ALJ to ignore it.

D) It appears that the ALJ's Report and Recommendations failed to mention, much less question or evaluate, the credibility of Newfield's land witness, David Goodwin, as to crucial pieces of evidence addressed through his direct testimony, his cross examination by AENO's counsel, and the testimony

of AENO's land expert, Matthew Athey. In addition to the jurisdiction-defeating failure to notify, failure to propose, and failure to make bona fide efforts to reach agreement as detailed above, Goodwin testified under direct examination that Newfield owned 85% of the multi-unit comprising Sections 33 and Section 28 and was therefore paying 85% of the costs of the well. Upon cross-examination, Mr. Goodwin agreed that Newfield owned 12.5% in Section 33 and 75% interest in Section 28 with ownership of 43.75% in the two units, rather than the 85% interest he previously testified to. Not even close. This is yet another example that Newfield's witness was ill-prepared, vague in memory, ignorant of key facts, and sloppy in preparation. In short, he was not a competent and credible witness upon whose testimony a pooling order could be issued.

5) The ALJ also erred in denying AENO's request to pay its share of proportionate costs by Joint Interest Billing, by paying on 30 days' notice, or by paying—along with all other well participants—its proportionate share of costs into an escrow account, rather than having to in essence give the applicant an interest-free loan of $126,869.08. (AENO's witness testified that it owns 19.1 acres in Section 33, which calculated against estimated completed well costs equals $126,869.08.)

A) Newfield's land witness Goodwin testified he was personally unaware of any instance where AENO had failed to pay any Joint Interest Billing, and yet he was not willing to afford AENO the common opportunity to pay by Joint Interest Billing.

B) When questioned about AENO's request to have all parties pay their proportionate share of completed well costs into an escrow account, Newfield's land witness testified that having Newfield pay its share at the same time would not be fair. His only explanation was that Newfield has invested two-thirds of $1,000,000,000. This assertion, even if true, is hardly a basis for excusing the operator from paying at the same time all the other parties participating in the well are to pay their share of the completed well costs or for requiring proven oil and gas exploration companies who participate to fund the Operator's undertaking up front rather than on a Joint Interest Billing basis or via an escrow account.

C) Under cross examination, both the land witness and the engineering witness for Newfield admitted that there were no pre-bills from the vendors or the drilling company. So upon commencement of drilling operations there was a lag time of at least 30 days before the operator would even receive, let alone be required to pay, any of the bills. Neither Newfield witness was able to refute the fact that if AENO and other respondents who elect to participate were required to pay dry hole costs within 30 days of notice prior to spud, Newfield would have funds in hand to pay any expenses

attributable to AENO. Likewise, the same would be true with notice of completion and payment of completion costs. Newfield's witnesses acknowledged that no services would be pre-billed to Newfield before 30 days of such notice such that Newfield would have to pay any expenses attributable to AENO or any other respondents. So, both this method and the escrow proposal truly constitute a level playing field for all parties to the pooling and would have no adverse effect on the operator.

Nevertheless AENO's requests and propositions for payment of costs under the two scenarios presented by AENO (in addition to AENO's request to pay by Joint Interest Billing) were rejected by the ALJ. The reason the ALJ gave for her ruling was that "none of the witnesses were familiar with any pooling orders containing the requested provisions. Therefore, the ALJ is not persuaded that inclusion of these requests should occur in an order issuing from this cause." Using such logic would prohibit anything "new" being ever included in an order that had never been included in a prior order. Obviously this is faulty logic and is in error.

6) The ALJ erred in her Report by not adequately determining that the Commission's rules have been complied with, particularly when notice and the taking of an interest in real property are involved. A mere assertion by an Applicant that "we did the necessary homework" is insufficient, particularly when a protesting party presents or attempts to present evidence to the contrary.

AENO contends that under both the U.S. and State constitutions, due process must be followed at the Oklahoma Corporation Commission in regard to determining whether due diligence to locate all the respondents and a good faith effort to negotiate were conducted. Rule OCC-OAC 165:5-7-7(a) is not simply a box to be checked, but a protective provision to achieve the aims of the conservation statutes in protecting and adjusting correlative rights. AENO's attempt to place sufficient facts before the court in order to determine such compliance was repeatedly thwarted by the ALJ and Newfield. Moreover, even from the testimony of the applicant's own witness, the evidence was uncontroverted that Newfield's attempt to pool the interest of AENO was fundamentally flawed by failure to comply with the important and basic regulatory requirements of OCC-OAC 165:5-7-7(a).

For all the reasons stated herein, AENO requests that the Report of the ALJ be reversed.

THE ALJ FOUND:

1) After taking into consideration all of the facts, circumstances, evidence and testimony presented in the cause, it is the recommendation of the ALJ that

the subject application of Newfield be granted. Under any pooling order issuing from the cause, the ALJ recommends that all parties that timely elect to participate also be allowed to elect to 1) share in pooled acreage; and 2) receive a deferred payment of their proportionate share of the completed well costs which will be due to Newfield within 10 days from the receipt of a 30-day notice of intent to spud the subject well.

2) AENO came into its ownership in the unit after the Newfield proposal letters were mailed and the pooling application was filed; AENO was not named as a respondent in the application as its agreement with Range Resources is still not of record; AENO notified Newfield of its acquisition from Range Resources the day of the hearing. AENO's requests for the escrow of all completed well costs and the restriction on the number of subsequent well proposals that can be made at one time were referred to as being "fair" for all parties involved. Newfield presented expert testimony as to the reasons it has rejected the requests made by AENO. As the operator Newfield incurs all costs and is responsible for timely payment; requiring escrow of all monies is not something Newfield typically does in a pooling order and does not want to start a precedent here. Subsequent well proposals are often done in multiples dependent on the development of the unit. There are cost savings in drilling and completing if more than two wells are proposed at the same time. Finally, none of the witnesses were familiar with any pooling orders containing the requested provisions. Therefore, the ALJ is not persuaded that inclusion of these requests should occur in an order issuing from this cause.

3) Much was made at the hearing of the amount of (or lack thereof) due diligence and good faith effort put forth by Newfield in locating respondents to the pooling hearing. The purpose was to impeach the Newfield land witness and bring into question the Commission's jurisdiction over the named parties. The end result was that Newfield was able to find better addresses for four of the respondents who were then given proper notice. There was never any question raised about the Commission's jurisdiction over AENO or Newfield; any pooled parties may always raise the jurisdiction issue if, in fact, notice was bad as to them and they may, ultimately, be found to not be subject to the order. The ALJ believes that questioning proper notice of listed respondents is always healthy so that applicants are reminded to always proceed with due diligence and not solely rely on third party notes or statements; this is particularly true when the third parties are not going to be available as witnesses that can be questioned. However raising the issue of Commission jurisdiction over parties unrepresented by counsel at a hearing when there has been a pattern of protests between parties can also be construed as a further delay tactic and should not be abused.

4) Thus, in light of the aforementioned conclusions, it is the recommendation of the ALJ that the application in CD 201407973-T be

granted. Any order issuing out of the cause should contain the recommendations provided in the ALJ's Report.

POSITIONS OF THE PARTIES

AENO

1) **Eric R. King**, attorney, appearing on behalf of AENO, stated it will focus on two errors that were not reversed: one jurisdictional and one practical.

2) AENO notes the Commission's jurisdiction is based upon the principle of providing adequate notice to respondents and an opportunity to be heard. AENO believes the statutes and rules governing the Commission are specific about who, when and how such notice is to be given in order for jurisdiction to attach as well as the available remedies which affect the property interests of state mineral and leasehold owners.

3) AENO asserts the ALJ's recommendation must be reversed and vacated due to these notice rules being egregiously violated here. Per the evidence in the record, AENO thinks it showed that Newfield made no contact with either AENO or its predecessor-in-interest, Range Resources.

4) AENO believes that such contact is a required duty before a pooling application may be filed. AENO points out that Newfield's landman Mr. Goodwin could not remember if Tyler Beaver with Newfield had followed up with AENO's proposal letter mailed by AENO on January 30, 2015.

5) AENO notes the record shows that Newfield filed their pooling application on October 27, 2014, only four days after the proposal letters were sent by certified mail to the pooling respondents. AENO recalls Newfield was not certain that these mailings reached the respondents on the weekend prior to the filing of the Monday pooling application.

6) AENO provided a late-filed Exhibit 7 as an offer of proof, a copy of a proposal letter dated November 7, 2014, approximately 11 days after Newfield filed its pooling application.

7) AENO is unaware of what dates the other proposal letters had on them that were also mailed out by Newfield.

8) AENO notes OCC-OAC 165:5-7-7(a) provides an applicant must make a bonafide effort to reach an agreement with each named respondent prior to the filing of a pooling application.

9) AENO points out the Commission has examples as to what constitutes a bonafide effort to reach an agreement with pooling respondents prior to the filing of a pooling application.

10) Application of Esco Exploration, Inc. CD 108743, Order No. 264785, dated September 4, 1984, provided that an applicant should offer each respondent a proposal letter, with AFE, dry hole costs and completed well costs, cash bonus and royalty, plus any options recommended for fair market value in lieu of a cash bonus, and give the respondent a reasonable amount of time to reply to said proposal letter prior to the filing of a pooling application.

11) AENO notes in paragraph 14 of the Esco Order No. 264785, it states this bonafide effort is a jurisdictional prerequisite to the filing of a pooling application, subject to dismissal of the pooling application if said requirement is unmet.

12) AENO believes Newfield failed to comply with adequate notice and bonafide effort, which is required by Oklahoma statutes and regulations, which grants the Commission jurisdiction to hear such causes.

13) AENO thinks Newfield failed to give adequate notice to the respondents for a meaningful opportunity to be heard.

14) AENO finds Newfield failed to reach a bonafide effort with the respondents concerning the development of the respondents' minerals.

15) Per case law, AENO points out that *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okl.1985) provided "Notice is a jurisdictional requirement, as well as a fundamental element of due process. Due Process requires adequate notice, a realistic opportunity to appear at a hearing or judicial sale, and the right to participate in a meaningful manner before one's rights are irretrievably altered. The right to be heard is of little value unless adequate notice is given. Due process is violated by the mere act of exercising judicial power upon process not reasonably calculated to apprise interested parties of the pendency of an action, and lack of notice constitutes a jurisdictional infirmity."

16) The case of *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okl. 1968) discusses due diligence and stands for the proposition that before the Court may exercise jurisdiction based on publication notice, the Court must determine the plaintiff exercised due diligence in attempting to locate any defendants.

17) The case of *Miller v. Wenexco, Inc.*, 743 P.2d 152, 156 (Ok.Civ.App. 1987) addresses the issue of whether the Commission's notice requirement was met and whether the methods employed to impart notice were reasonably adopted to accomplish it, stating "When the names and addresses of the parties are known, or are easily ascertainable by the exercise of diligence,

notice of pending proceedings by publication service alone, is not sufficient to satisfy the requirements of due process of Federal or Oklahoma constitutions. *Cravens v. Corporation Commission*, 613 P.2d 442 (Okla. 1980)"...."Primary sources at hand, such as local tax rules, deed records, judicial records, and other official records, as well as available secondary resources, such as telephone directory, a city directory or the like must be exhausted before the approval of the publication process as a method of notification. *Bomford v. Socony Mobile Oil Company*, 440 P.2d 713 (Okla. 1968)..."

18) AENO observes that Newfield had several months with which to locate the respondents to Newfield's pooling application.

19) AENO offered proof to the Court that Newfield was able to find better addresses for at least four respondents to whom proper notice was ultimately given. AENO suggests that Newfield failed the due diligence test here. AENO notes Newfield continued the cause to May 6, 2015, in order to find better addresses for some of the respondents.

20) AENO notes the ALJ stated in her Report "questioning proper notice of listed respondents is always healthy" yet the ALJ did not allow AENO to present its evidence on the four respondents with bad addresses despite Newfield's apparent lack of due diligence.

21) The ALJ pointed to there being a past pattern of protest between the parties herein and thus deemed AENO's question of Newfield's due diligence as a delay tactic by AENO. AENO's efforts were ignored by the ALJ, with the ALJ allowing Newfield's lack of due diligence to be an acceptable act.

22) AENO submits that a party pointing out an applicant's failure to either properly serve notice or negotiate in good faith with an absentee owner/respondent is merely invoking a well-established procedural defense available to all parties. AENO does not believe this defense was an attempt to step into the shoes of the absent party to assert its rights, which Newfield apparently believes.

23) The case of *Bomford*, supra, provides: "A court is bound to take notice of the limits of its authority. It is its right and duty to make an examination into its jurisdiction, whether raised by the pleadings or suggested by counsel or not, and to determine its power to entertain the cause. If the court finds at any stage of the proceedings that it is without jurisdiction, it is its duty to take proper notice of the defect by staying the proceedings, dismissing the cause, or by other appropriate action."

24) AENO believes the Commission has an independent duty to examine the basis of its jurisdiction. AENO asserts the party who brings such an issue up is not required to have standing. AENO believes the Court should neither

ignore a potential jurisdictional problem nor limit its consideration of this issue to only the applicant in a cause. AENO submits a jurisdictional violation cannot be avoided by the perfunctory judicial approval of an unsupported conclusion of due diligence.

25) AENO believes if an applicant does not exercise due diligence in ascertaining the location of an owner before resorting to the publication notice, or does not make a bonafide effort to negotiate with an owner in good faith prior to filing the pooling application, then the Commission lacks jurisdiction over that particular owner not properly joined.

26) AENO believes the Commission must ensure its own jurisdiction rather than merely accept the applicant's conclusionary assurances that it has complied with the jurisdiction and notice requirements.

27) Due to the ALJ's error in not conducting an independent inquiry as to the sufficiency of Newfield's due diligence efforts on its filed pooling application herein, that the ALJ's decision should be reversed.

28) Professor Kuntz's Treatise mentions that the absence of a voluntary pooling agreement is jurisdictional in seeking a pooling order. This suggests that a pooling applicant has a duty from the outset to establish that a voluntary agreement could not be reached after allowing respondents a reasonable time to consider and then respond to a written proposal prior to the filing of the action.

29) AENO believes Newfield failed to perform its duty in both notification and in good faith negotiation, before filing their pooling application.

30) AENO thinks Newfield had no right to invoke the state pooling power to acquire the property rights of AENO or any other non-notified or non-negotiated pooling respondent.

31) AENO notes this compliance is central to the integrity of a pooling proceeding.

32) AENO thinks the Oklahoma statutes, along with the Commission orders and rules, and the principles of fundamental due process, all require that the ALJ's recommendation be reversed.

33) In regard to payment of cost, AENO notes the ALJ's decision was flawed by faulty logic. AENO provided three proposals: 1) that AENO specifically could pay by joint interest billing; 2) that a 30-day notice of spud, payment of dry hole costs within 30 days of receipt of such notice, 30 days notice of completion, and payment of completed well costs within 30 days of receipt of notice; and 3) to set up an escrow account where all parties would pay their well costs.

34) AENO notes Newfield only proposed a 30-day notice of spud and payment of completed well costs within 10 days of notice of receipt.

35) AENO notes there was no vendor pre-bills on the commencement of operations or the commencement of completion operations.

36) AENO notes there was a 30-day delay before initial invoices were sent out so Newfield would not be required to pay any bills for participating respondents within the 30-day spud notice or completion notice.

37) AENO saw that Newfield admitted there was no record that indicated AENO had failed to pay any JIBs.

38) AENO noted that Newfield acknowledged reluctantly if the respondents paid timely within 30 days of the sent-out notices, that Newfield would not have to pay any of its own costs or the costs of those participating respondents on those costs.

39) AENO notes Newfield had invested nearly two-thirds of $1 billion in drilling wells in Oklahoma, thus, it would be unfair for all parties to not have to pay their respective share of the completed well costs for this unit well.

40) AENO believes its three recommendations above would have caused no hardship to Newfield, in that Newfield would not have been required to pay out-of-pocket expenses or have been forced to prematurely pay any costs within 30 days after respondents had paid their share of the completed well costs. AENO does not believe Newfield's 10 days to pay costs after notice of spud is necessary in order to protect Newfield here. AENO believes its proposals for handling the payment of cost/expenses is a reasonable way of recognizing/protecting/balancing the correlative rights here. AENO notes it is a goal of the Commission in regulating oil and gas state activities to protect the correlative rights of the various owners of interests in oil and gas activities.

41) AENO notes the ALJ responded upon hearing of AENO's proposed three options that "I don't think it's ever been done before, so I'm not going to do it now.", thus disallowing AENO's options.

42) AENO believes the Commission, over the years, has adapted and adjusted the terms of their pooling orders to fulfill its duty to balance the correlative rights of the parties in a cause due to the circumstances in the record.

43) AENO asserts the ALJ's Report was erroneous and unfair in denying AENO's request for costs based on the ALJ's illogical grounds.

44) AENO notes that to deny considering AENO's proposals for cost payments just because it has never been done in the past, is to calcify the Commission's practice.

45) AENO pointed out the ALJ's Report ignored: 1) the jurisdictional law and evidence per notice, due diligence and good faith efforts to reach agreement; and 2) disallowed valuable evidence per the reasonable timing and payment of costs.

NEWFIELD

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Newfield, observes AENO cites several cases concerning the issues of good-faith effort and notice.

2) Newfield did have good notice on Range on October 30, 2014. Range never objected to any notice or jurisdictional issues. The testimony reflects that Mr. Goodwin talked to Dan Smith, the landman at Range, in December 2014 and/or January, 2015.

3) Newfield notes that AENO acquired Range's interest on November 2014 in an unrecorded agreement with Range, three weeks after the pooling was filed.

4) Newfield cites the case of *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204 (Okl. 1982), wherein the Court found if a respondent buys an interest after a pooling has been filed, then that party steps into the shoes of that particular respondent. The *Chancellor* case held that the Commission records were constructive notice, i.e. similar to district court records. Once Mr. Chancellor had constructive notice of the pooling proceeding, he had stepped into the shoes of the prior respondent.

5) Newfield believes the *Chancellor* case applies herein, i.e. when AENO acquired Range's interest, AENO stepped into Range's shoes.

6) Newfield notes Exhibit 3 was a letter sent to respondent NBI, yet this letter was sent to all of the respondents, including Range. Newfield observes that Range did not show up to either object or complain about lack of good faith effort.

7) Newfield says AENO believes that four days between the date of the proposal letter and the date of the filing of the pooling application resulted in some respondents may not have received due diligence.

8) Newfield notes that AENO requests to be JIB. If not allowed, then AENO wants all parties to pay into an escrow account. Newfield notes that AENO's request for only two subsequent proposed wells was not appealed; only the cost request is on appeal.

9) Newfield disagrees that AENO can come in and raise the jurisdiction issue for another party whom is not present and who is not objecting. Newfield asserts that only the individual respondent can raise this issue, not AENO collectively for all of the respondents.

10) Newfield notes the Esco final Order No. 264785 is not precedential authority.

11) Newfield notes that if AENO had offered a letter of credit or a bond in lieu of cash, Newfield might have considered that; however this was not offered on the record by AENO.

12) Newfield cites the case of *Marathon Oil Co. v. Corporation Com'n of State*, 651 P.2d 1051 (Okl. 1982), where Marathon was not pooled. The court said the operator can pick and choose who it wants to pool. The operator does not have to pool everyone.

13) Newfield acknowledges that AENO did send Newfield a Pre-Pooling Letter Agreement after Newfield personnel had contacted them in early 2015.

14) Newfield notes to the Court when Newfield spoke to Range in December 2014/January 2015, Range never informed Newfield that it had made an unrecorded farmout with AENO.

15) Newfield admits at the hearing it told the Court "Hey, we don't know if these addresses are good or not. We're willing to try to send them notice at those addresses."

16) Newfield did file an Amended Application. Newfield notes that the parties that AENO is raising notice questions on Newfield now has good service on.

17) Newfield notes that respondent Delphi did not have a green card back; however, Delphi is not here objecting. Newfield believes if Delphi claims later on that Newfield didn't exercise due diligence, then that will be for the Commission to determine at that time.

18) With respect to the law, Newfield believes if an applicant does not have good notice on a respondent, that respondent can raise this at a later date as a jurisdictional issue.

19) Newfield notes the ALJ found on page 4 of her Conclusions: "There was never any question raised about the Commission's jurisdiction over AENO or Newfield; any pooled parties may always raise the jurisdiction issue,...and...be found to not be subject to the order." Newfield believes this is similar to the holding in the cases of *Bomford* and *Cravens*.

20) Newfield notes the ALJ found also "...that questioning proper notice of listed respondents is always healthy so that applicants are reminded to always proceed with due diligence and not solely rely on third party notes or statements...However raising the issue of Commission jurisdiction over parties unrepresented by counsel at a hearing when there has been a pattern of protests between parties can also be construed as a further delay tactic and should not be abused."

21) Newfield notes the Form 1001 shows this well was spud on June 12, 2015. The AFE states the well will be drilled in 20 days. Newfield has spent about $8.5 million already. By early Fall when the pooling order gets signed, this well will likely be on production by then.

22) Newfield considers it is academic at this point for AENO to want to be joint interest billed or all parties paying their money in escrow. Newfield notes it has spent that cost money already, carrying many parties which they didn't have a private agreement with. Newfield notes a lot of the respondents have gotten a free ride.

23) Newfield observes the oil and gas industry has its ups and downs. There is no guarantee that a company financially solvent today cannot turn upside down tomorrow and be insolvent.

24) Newfield notes the security for the well costs is at the option of the operator, i.e. for their protection. Newfield is not going to make a deal with AENO due to AENO wanting things that Newfield is not willing to give them.

25) Newfield believes all parties involved have had the opportunity to be heard. Newfield notes the jurisdictional argument is not applicable here. Newfield couldn't send AENO a Pre-pooling Proposal Letter as AENO came in after-the-fact, not acquiring their interest until three weeks later, and still unrecorded at this time.

26) At the time of the hearing, Newfield found nothing of record that showed that AENO owned this Range interest. Newfield does admit though that it did receive a copy of some unreported assignment the day before the hearing. Newfield also was aware that AENO was protesting some interest but it was not of record.

27) For the above reasons, Newfield believes the ALJ's Report should be affirmed.

RESPONSE OF AENO

1) AENO reminds the Court of the background here. Newfield filed their pooling application on October 30, 2014. AENO signed the Prehearing Conference Agreement on December 22,1014, protesting Newfield's pooling application. At no time did Newfield attempt to contact AENO concerning Section 33 due to its good service on Range, its predecessor-in-interest to AENO.

2) Further, AENO was not allowed by the ALJ to testify as to the reliability of the respondents addresses, rather AENO made an offer of proof (see Exhibits 4-7). AENO notes the updated addresses showed that Newfield never bothered to go back and check for updates. AENO appears to be now banned from raising the jurisdictional issue due to Range, whom they acquired their interest from, having been noticed by Newfield? AENO did the updates on Respondents #36 through #38, which Newfield took and ran with by amending its pooling application and giving new notice to those respondents. AENO asserts the mailing on Thursday and the filing of the pooling application on Monday did not give the respondents sufficient time in which to respond to their well proposal.

3) AENO notes just because no respondent objected, this fact does not do away with AENO's raising the issue of jurisdiction for the respondents. AENO basically did Newfield's due diligence for them here by providing their offer of proof above.

4) AENO notes that case law does say if the information is easily accessible, then proof of publication is not sufficient.

5) AENO points out that Newfield did not inquire of AENO where it had acquired its interest when it lodged its protest.

6) AENO's attempt to point out the due diligence discrepancy by Newfield was thwarted by the ALJ, which AENO believes is error.

7) AENO notes of all the proposal letters Newfield sent out in October 2014, Newfield only has a copy of one letter, yet AENO notes it is dated November 11, 2014, approximately 11 days after the pooling application was filed. AENO wonders why didn't Newfield ask where AENO acquired its interest or ask how much interest AENO owned. AENO did not bring up this issue in order to delay the trial.

8) AENO notes Newfield drilled and commenced the well and took the risk. AENO notes it would have paid within 30 days if it had been given notice of the completion by Newfield.

9) AENO believes the Commission's jurisdiction comes from the rules, which AENO has followed.

10) AENO, thus believes the causes should be dismissed for the following reasons: 1) for lack of jurisdiction; 2) for Newfield's failure to acquire jurisdiction; and 3) for Newfield's failure on the due diligence to provide proper notice. AENO notes the Court ignored the fact that AENO found four more addresses that Newfield had overlooked. AENO believes that good faith negotiations is a prerequisite for filing a pooling application at the Commission.

11) For the above reasons, as well as those in AENO's written exceptions, AENO respectfully requests the ALJ's decision be overruled and the cause dismissed.

CONCLUSIONS

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

I.

JURISDICTIONAL AND DUE DILIGENCE ISSUES

1) OCC-OAC 165:5-7-7(a) provides:

> (a) Each pooling application shall include a statement by the applicant that the applicant exercised due diligence to locate each respondent and that a bona fide effort was made to reach an agreement with each such respondent as to how the unit would be developed. The applicant shall present evidence to this effect at the time of the hearing.

2) Mr. David Goodwin, the land witness for Newfield, testified that the Newfield proposal letters were sent by Certified mail to all respondents on October 23, 2014. Newfield filed its pooling application on October 27, 2014. The respondents listed on Exhibit "A" to the pooling application were 40 in total and Exhibit "A" was amended and filed as an Exhibit 2 at the hearing on April 16, 2015, where several of the respondents were listed as unlocatable. Range Resources, LLC was one of the located parties listed on Exhibit "A". A signed green card was obtained by Newfield for Range Resources, LLC on October 30, 2014. AENO obtained the interest of Range Resources, LLC on November 19,

2014 in an unrecorded assignment for 12.5 acres in Section 33 some three weeks later after the pooling was filed on October 27, 2014. Under the Supreme Court case of *Chancellor v. Tenneco Oil Co.*, 653 P.2d 204 (Okl. 1982), if you purchase a working interest in a tract of land subject to a pooling that has already been filed, then you step into the shoes of the respondent who received proper notice of the pooling from whom you acquired your interest. Range Resources, LLC did not object to any notice or jurisdictional issues. Apparently AENO sent a Pre-pooling Letter Agreement to Newfield wherein Newfield replied with their pre-pooling letter agreement to AENO and no agreement was reached prior to the pooling hearing on April 16, 2015.

3) AENO asserted Newfield had not made a diligent good faith effort to give proper notice in the present pooling cause. An offer of proof was made to substantiate this claim. Exhibits 4, 5 and 6 concerning three different respondents (two of those would be noted as unlocatable on Exhibit 2) were submitted in this offer of proof. It was also stated by AENO in its offer of proof that testimony would have been presented by AENO that various addresses and documents relating to these respondents in the three exhibits were found by AENO employees within one day by accessing Accurint and Pangaea websites which Newfield said had been checked by either company employees or Newfield brokers.

4) The information provided by AENO concerning these respondents is as follows:

> i) As to Respondent #8, Exhibit 4 shows Delphi Enterprises, LLC's information at the Oklahoma Secretary of State's office reflects Delphi Enterprises, LLC status was cancelled and with an address of 3100 W. Wilshire Blvd, #7819, Oklahoma City, Oklahoma 73116 rather than Newfield's Exhibit "A" which showed an address at 4059 Fairbanks Ferry Road, Havana, Florida 32333, which happens to be the address for Delphi Enterprises, Inc. Newfield's land witness was unaware of this information.
>
> ii) As to Respondent #9, Exhibit 5 shows Dick L. Carruthers with a P.O. Box 141 in Cherokee whereas a recorded copy of an oil and gas lease from Dick L. Carruthers reflects P.O. Box 241 in Cherokee rather than that shown on Newfield's respondent list.
>
> iii) Respondent #38, Thomas R. Cole III, was shown as address unknown. Exhibit 6 shows a Proof of Death and Heirship filed in the County Clerk's Office of Major County, recorded in Book 1866, Page 569,

> evidencing the fact that Thomas R. Cole III died March 12, 1998 (Certificate of Death attached) in Wichita, Kansas at an address not listed by Newfield, reflected he had "a pour over will into a living trust," was married to Eva Christine Cole and had two children, still living. By making a phone call, the lease broker for AENO was able to secure a copy of the LW&T of Thomas R Cole III, the LW&T of Eva Christine Cole, a copy of the Thomas Ross Cole Family Trust filed in Alfalfa County recorded in Book 520, Page 772, and a copy of the Amendment to Trust Agreement dated March 4th, 1999. Newfield's land witness was silent as to these facts.

5) As a result of the offer of proof, by AENO, it was concluded that the hearing should be continued so that Newfield could make a diligent effort to locate all respondents and to attempt additional notice to the three respondents for which AENO found different addresses. Upon reopening of the case on May 5, 2015 an Amended Application and Amended Notice had been properly filed by Newfield and mailed to the respondents in question. Four previously unlocated respondents had returned green cards and none had protested the present pooling. Thus, the ALJ in these proceedings complied with the requirements set out in *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okl. 1968).

6) For the reasons stated above, the Referee believes that OCC-OAC 165:5-7-7(a) has been complied with due to AENO's offer of proof and continuation of the proceedings to give proper notice to the respondents described by AENO with bonafide efforts being made by Newfield to reach an agreement with each such respondent.

II.

AENO'S JOINT INTEREST BILLING REQUEST ISSUE

1) AENO requested to pay its share of proportionate costs by joint interest billing, by paying on 30 days notice or by paying (along with all other well participants) its proportionate share of costs into an escrow account. AENO's witness testified that it owns 19.1 acres in Section 33 which calculated against estimated completed well costs equals $126,869.08. AENO also requested no more than two subsequent wells be proposed at one time. However, AENO did

not file any exceptions to the denial of this subsequent wells request by the ALJ in her Report.

2) The testimony apparently at the hearing was that this well was going to spud in June. Newfield has stated that the Form 1001 Spud Notice states the well spud on June 12, 2015. The AFE, which is Exhibit 1, states that the drilling days for the well will be 20. Thus, the well may already be completed. Therefore, Newfield contends that it has already spent probably most, if not all, of the $8.5 million that they have in AFE costs for drilling and completing this well. Newfield points out that even if you are going to joint interest bill AENO in those circumstances you are going to get to bill them the whole amount. It will be probably late September before there's going to be an order out in this case and likely this well is going to be on production by then.

3) Further, the Commission and the industry has contemplated that the "standard" pooling order will be bare bones and not cover many of the problems that are satisfied through a Joint Operating Agreement. Whether or not special provisions are contained within a pooling order depends on the evidence presented before the Commission at the time of the hearing on the merits. Such special provisions are not "a matter of right".

4) The Supreme Court in *Ranola Oil Company v. Corporation Commission*, 460 P.2d 415 (Okl. 1969) stated:

> Plaintiff in error further maintains that the decision of the Commission in denying him the "third alternative" in a "three way order" is not supported by the evidence. The three way order is a device whereby the party who has a mineral interest in an area to be pooled has the option within a certain time to elect whether he will be carried by the operator or producer of the well as to his proportionate interest for the costs of drilling the well on a percentage penalty basis, or whether he will participate in the costs of drilling the well, or whether he will accept a bonus as compensation in lieu of participating in the working interest of the well.
>
> The "third alternative" is merely a creature of the Corporation Commission, and is not given as a matter of right. The mandate of the statute, 52 O.S. § 87.1 (d), only requires that the order of the Commission, "be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without

> unnecessary expense his just and fair share of the oil and gas."

5) The ALJ in her Report on page 3, paragraph 2 stated:

> AENO's requests for the escrow of all completed well costs and the restriction on the number of subsequent well proposals that can be made at one time were referred to as being "fair" for all parties involved. Newfield presented expert testimony as to the reasons it has rejected the requests made by AENO. As the operator Newfield incurs all costs and is responsible for timely payment; requiring escrow of all monies is not something Newfield typically does in a pooling order and does not want to start a precedent here. Subsequent well proposals are often done in multiples dependent on the development of the unit. There are cost savings in drilling and completing if more than two wells are proposed at the same time. Finally, none of the witnesses were familiar with any pooling orders containing the requested provisions. Therefore, the ALJ is not persuaded that inclusion of these requests should occur in an order issuing from this cause.

6) *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984) also addressed the "bare bones" issue:

> In short, the forced-pooling order generally, and specifically in this case, is "bare bones"; many, many problems commonly encountered in the industry must be and were covered by an operating agreement

As stated previously, the evidence at the hearing was that this well was going to spud in June and Form 1001 Spud Notice was filed on June 12, 2015. Thus, this well most likely has already been drilled and may have been completed as the AFE provided that it would take approximately 20 days to drill. As Newfield has stated, they therefore have already spent most of, if not all, of the $8.5 million that they have listed on their AFE for drilling and completing this well. Thus, even if joint interest billing was allowed, then Newfield would be allowed to bill them, if not all of the $8.5 million spent according to the AFE, at least a good portion of it.

7) For the reasons stated above, the Referee would affirm the decision of the ALJ to deny AENO's request to pay its share of proportionate costs by joint

interest billing, by paying on 30 days notice or by paying (along with all other well participants) its proportionate share of costs into an escrow account.

RESPECTFULLY SUBMITTED THIS 27th day of August, 2015.

Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
James L. Myles
ALJ Kathleen M. McKeown
Gregory L. Mahaffey
Eric R. King
John C. Moricoli, Jr.
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