



## **STATEMENT OF THE CASE**

**AENO TAKES EXCEPTION** to the recommendation of the ALJ that the pooling application of Newfield should be granted and Newfield should be named operator of the well. Parties timely electing to participate should receive a 30 day spud notice and then have 10 days to pay their share of the completed well costs. Newfield should be the only party allowed to propose subsequent wells and more than two subsequent wells may be proposed at a time.

Newfield seeks to pool the Mississippian, Woodford and Hunton 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 ALJ Report is contrary to the evidence and to law.
- 2) The ALJ Report is 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.
- 3) The ALJ stated in her Report that "AENO did not sufficiently persuade the ALJ that any of these matters (AENO's requests) should be allowed in the pooling order." The presumption should be that the ALJ weighed the testimony and evidence of both sides, looked at the witnesses' demeanor, assessed the credibility of the witnesses and determined their veracity. In addition, the ALJ should evaluate the evidence presented. Rather than perform this task, the ALJ appears to have given carte blanche approval to everything Newfield said and did.
- 4) The ALJ concluded in her Report that because AENO "has been offered the same deferred payment option as the other parties electing to participate under the pooling order, the fact that AENO has not had its other requests met cannot be considered a reasonable protest resulting in further delay of this pooling." All of the issues raised by AENO are the result of Newfield's utter failure to negotiate in good faith with AENO. See OCC-OAC 165:5-7-7(a). The ALJ determined from the evidence and facts that AENO did not have a "reasonable protest" as to "all of the issues raised by AENO." This is error.
- 5) The ALJ Report failed to mention, much less question or evaluate, the credibility of Newfield's land witness as to crucial pieces of evidence addressed

through cross-examination of Newfield's land witness and the testimony of AENO's land expert:

a) Eric Weidemann, the land witness for Newfield, testified Newfield ran title in February, 2015, and under oath stated "he was unable to confirm AENO had any ownership." AENO's interest had been properly filed of record since January 16, 2015.

b) Newfield's land witness testified that Newfield had recently checked the records in the County Clerk's Office of Kingfisher County, ("probably March") through the private "Oklahoma County Records" service. He was unaware that AENO acquired its interests through an Assignment filed of record at Book 2760, Page 311, in the Kingfisher County Clerk's Office on January 16, 2015, some two months prior to his testimony.

c) The ALJ was critical of AENO - "...in fact the terms of the lease were not presented to Newfield until the day of the hearing at which time Newfield incorporated them into its recommendation of fair market value." Rather than being critical of AENO, the ALJ should have questioned why the landman testifying for Newfield failed to inquire of AENO as to their lease values. Such inquiry is basic to any meaningful preparation for testimony concerning values in a pooling proceeding.

d) When questioned about AENO's request to have all parties pay their proportionate share of completed well costs, Newfield's land witness testified that having Newfield pay their share would not be fair. His only explanation was that Newfield has invested 2/3<sup>rd</sup> of a billion dollars. This assertion, even if true, is hardly a basis for excusing the operator from paying at the same time.

e) The land witness for Newfield testified that "any leases taken after the pooling was filed should not be considered for fair market value." There is no legal basis for this conclusion, and Newfield's mistake in this regard seriously distorts the aims of the pooling process.

f) The subject pooling is a second recent pooling of the same lands and formations and constitutes what is commonly referred to as a "clean-up pooling." (The first pooling cause in CD 201406131-T resulted in creation of Order No. 636153 on February 5, 2015.)

6) Upon cross-examination, Newfield's land witness took the position, at the urging of his counsel, that AENO should not be allowed to share in the pooled acreage from the initial pooling unless AENO had requested in their election under the first pooling order to share. Upon delivery of a copy of AENO's February 25, 2015 letter to Newfield's counsel, Newfield's counsel allowed how the letter did indeed request AENO receive its proportionate share of the pooled

acreage. This is specifically allowed anyway under the holding in *Woolley v. Corp. Comm'n*, 261 P.3d 1181 (Ok.Civ.App. 2011).

7) The AENO land witness testified that no such offer to share pooled acreage from the first pooling had ever been received by AENO from Newfield, even though the elections were made well over a month before the present pooling. Newfield failed to honor the request from AENO even though Newfield had had that request for two months before the present trial. Does this testimony and conduct not undermine the credibility of Newfield's case and witness?

8) AENO contends that under both the U.S. and State constitutions, due process must be followed at the Commission in regard to determining whether a good faith effort to negotiate and due diligence were attempted. Newfield presented a revised Exhibit "A" at the commencement of the trial before the ALJ. This exhibit was not exchanged when all the exhibits were exchanged. The revised Exhibit "A" does not look anything like the original Exhibit "A". When counsel for AENO attempted to cross examine the Newfield land witness as to specifics of Newfield's checking the records, counsel for Newfield objected to the inquiry because counsel for AENO did not represent any of 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 as to AENO's efforts to make inquiry into the sufficiency of Newfield's notice. For example, the Newfield witness stated Accurint had been checked, yet Joan Wortman's address in Los Angeles per the original Exhibit "A" on Accurint is shown to have an address of 4375 Deerwood Lane, Evans, GA 30809. If Newfield had actually checked Accurint (which the land witness testified he did), how was this Newfield witness not able to know about this different address unless he had not in fact checked the records and Accurint?

9) 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 witness was able to refute the fact that if AENO and the other respondents who elect to participate were required to pay within 30 days of notice of spud that Newfield would have to pay any expenses attributable to AENO or any of the other respondents. Likewise, the same would be true with notice of completion: no services would be pre-billed to Newfield within 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 that truly constitutes a level playing field for all parties to the pooling have no adverse effect on the operator, yet these

arguments were nonetheless rejected and found to be "not persuasive" by the ALJ. This is error.

10) The ALJ erred in her Report when she stated: "While the Commission does not condone bad faith negotiating of leases or development of reserves, it is without the power to specifically set out steps necessary to be complied with prior to any pooling order being filed to assure that sufficient negotiation has occurred in an approved manner; these negotiations are part of business dealings among private companies and individuals." AENO did not request that the Commission set out specific pre-filing steps to be followed in every case. However it is the Commission's duty to confirm that its 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. 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.

11) Finally, the ALJ erred in her Report when she found "...the arguments of AENO fail to be persuasive." The ALJ Report and her recommendations are contrary to the evidence.

12) For the reasons stated herein, AENO requests that the Report of the ALJ be reversed as to the assignments of error herein enumerated.

#### **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, if AENO timely elects to participate, it will receive a deferred payment of its proportionate share of the completed well costs which will be due in some form agreeable to Newfield within 10 days after the receipt of a 30-day notice of intent to spud the subject well.

2) Newfield presented expert testimony as to the reasons it rejected the various requests made by AENO. The reasons to not allow the pooling order to contain joint interest billing provisions, splitting well cost payment timing into dry hole and completed well costs, escrowing all well costs, allowing any participating party to propose no more than two subsequent wells at one time and requiring completion of each subsequent well prior to another being drilled or proposed were clearly set forth by Newfield as being in the interests of cost-saving and allowing the unit development to proceed smoothly. AENO did not

sufficiently persuade the ALJ that any of these matters should be allowed in the pooling order.

3) Under the statutory powers given to the Commission in 52 O.S. Section 87.1(e), parties may apply for forced pooling of units when owners cannot reach a voluntary agreement to develop reserves underlying said units. The purpose of the pooling hearing is to assure that the parties receive terms reflecting the fair market value for interests owned under a process that will prevent waste while protecting the correlative rights of the owners in a bare-bones pooling order. While the Commission does not condone bad faith negotiating of leases or development of reserves, it is without the power to specifically set out steps necessary to be complied with prior to any pooling order being filed to assure that sufficient negotiation has occurred in an approved manner; these negotiations are part of business dealings among private companies and individuals.

4) Prior to the subject pooling being filed, Newfield took leases and, once the application was filed, parties interested in participating under the pooling order were given a deferred payment of completed well costs. While AENO has been offered the same deferred payment option as the other parties electing to participate under the pooling order, the fact that AENO has not had its other requests met cannot be considered a reasonable protest resulting in further delay of this pooling. AENO came into its ownership in the unit after the proposal and pooling application filing by Newfield; therefore it was not named as a respondent; in fact, the terms of the AENO lease were not presented to Newfield until the day of the hearing at which time Newfield incorporated them into its recommendation of fair market value. Due to the ownership and operation position of Newfield and the actions taken to successfully drill and pool the subject well, the ALJ finds the arguments of AENO fail to be persuasive and believes it would be in the best interests of preventing waste and protecting correlative rights to grant the Newfield application under the terms Newfield proposed at the hearing. Thus, in light of the aforementioned conclusions, it is the recommendation of the ALJ that the application in CD 201408715-T be granted. Any order issuing out of the cause should contain the recommendations provided herein.

## **POSITIONS OF THE PARTIES**

### **AENO**

1) **Eric R. King**, attorney, appearing on behalf of AENO, argues that the Corporation Commission does not have jurisdiction to hear this case because of improper notice. Newfield did not show due diligence when searching the record for interest owned by AENO. Also AENO objects to the terms of

payment for participating parties. Lastly the ALJ did not adequately consider the testimony of Newfield's witness when making her recommendation to approve pooling.

2) Jurisdiction is based on providing adequate notice and a meaningful opportunity to be heard in a pooling case. AENO contends that they were not given notice or an opportunity to be heard by Newfield. Newfield did not attempt to reach an agreement with AENO or negotiate with AENO before filing the pooling application. There is a duty to negotiate before filing a pooling application. Newfield did not make the effort necessarily required to locate AENO, which is a pre-requisite to jurisdiction. The Corporation Commission does not have jurisdiction to hear this case and due process has been violated.

3) AENO contends that the recommendation of Newfield's cost provisions lacks substantive support. AENO recommended three different cost provisions which were rejected by the court instantly. These recommendations provided by AENO would not cause any hardship or cause Newfield to pay out of pocket for any expenses outside of their proportionate share. Newfield states that because they have invested a large sum of money into drilling in Oklahoma they need their cost provisions to be upheld. There is no precedent to support this argument and therefore no substantive support. The court rejects AENO's cost provisions without merit despite the Corporation Commission's duty to recognize a reasonable way of protecting and balancing expensive correlative rights. Since no reason is given for rejecting AENO's cost provision recommendations the decision to uphold Newfield's cost provisions is arbitrary and an unfair denial of consideration.

4) Newfield states that AENO should not be allowed to share in the pooled acreage from the initial pooling unless AENO initially requested in their election under the first pooling order to share. AENO contends that they did request to receive its proportionate share of the pooled acreage in the initial pooling and sent an election letter to Newfield. The land witness did not know about this letter and AENO contends that Newfield rejected the letter even though it was sent months before the hearing. AENO contends that Newfield never acknowledged the election letter by contacting them. The testimony by Newfield and the production of the election letter in court speaks to the veracity of the testimony and whether it is reliable or not. However the ALJ does not question this testimony and shows a bias critical of AENO.

5) The ALJ's report ignores the evidence concerning due diligence and good faith of Newfield's testimony, the due diligence of Newfield to search the record, and valuable evidence has been ignored concerning reasonable cost provisions.

## **NEWFIELD**

1) **Ron M. Barnes**, attorney, appearing on behalf of Newfield, contends that there is no jurisdictional issue because Newfield did exercise due diligence in giving notice to all interest owners. AENO did not own an interest at the time of the initial pooling. The cost provisions offered by Newfield are reasonable and AENO's only argument with the cost provision is that it is not their cost provision. Lastly only a proposal is required when giving notice not a negotiation.

2) There are no jurisdictional issues in this case. The Corporation Commission has jurisdiction because there are no addresses unknown and notice was given to all interest owners. The interest that was obtained by AENO was obtained in January of 2015 and the pooling application was filed in November of 2014. AENO did not own an interest at the time of initial pooling. Nassau Resources, LLC. did and they received notice. AENO stepped into the shoes of Nassau Resources, LLC.

3) The cost provisions are the only disagreement. The fair market value was agreed to and was never an issue. When there is a disagreement on cost provisions the Corporation Commission according to statute shall make reasonable definite provisions for the payment of costs. That is what the ALJ did and the cost provisions are reasonable. Furthermore the ALJ's decision is consistent with what the Corporation Commission has done in the past.

4) When a well is proposed the only thing required initially is the proposal. Negotiation is not required. Newfield contends however that an effort was made to reach an agreement with AENO and an agreement was not reached.

5) The arguments offered by AENO are "red herrings" offered to delay production and are therefore frivolous. The ALJ did not say that AENO could not be pooled, this case fails to have a claim beyond AENO's dislike of the cost provisions which said provisions are reasonable according to the ALJ.

## **RESONSE OF AENO**

1) Newfield did provide an updated Exhibit "A" at the time of the hearing and there were no address unknowns, but they didn't provide an update on the Joan Wortman address from their filing in 2014. Further, there was no effort by Newfield to check fair market values from AENO.

- 2) Both AENO and Newfield presented evidence that showed there was no prepayment by Newfield of bills. If you get 30 day notice, the invoices would not have come back, so there is no downside for Newfield. The 30 day notice, the 30 days to pay, is well founded, and if you don't agree with that, an escrow account could be used. The fact that Newfield's witness stated that it wouldn't be fair for everybody to pay their fair share into the escrow account because Newfield has spent two-thirds of \$1 billion drilling wells in Oklahoma is not a good reason.
- 3) AENO respectfully requests that the Report of the ALJ be reversed as to the assignments of error enumerated in AENO's exceptions to the Report of the ALJ.

### **CONCLUSIONS**

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

#### **I.**

### **BONAFIDE EFFORT ISSUE**

- 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 bonafide 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) Newfield owns a 81% interest in the subject unit and has taken approximately 66 oil and gas leases in the twelve section area. AENO took an assignment from Nassau Resources, LLC resulting in AENO owning 33.778 net acres in the subject unit. The subject assignment was recorded January 16, 2015 and a copy was provided to Newfield at the protested hearing on April 15, 2015. Nassau Resources, LLC was a respondent named by Newfield in its pooling application filed on November 21, 2014 as respondent #23 on Exhibit "A" attached to said pooling application. Respondents presented an updated Exhibit "A" to the pooling application and there were no address unknowns.

3) While OCC-OAC 165:5-7-7(a) does provide that a "bonafide effort was made to reach an agreement with each such respondent as to how the unit would be developed", this rule does not require nor is the Commission required by law to "negotiate" with each respondent. A proposal letter to each respondent is normally the procedure that parties use when filing a pooling. Charles Nesbitt in a primer on Forced Pooling of Oil and Gas Interests in Oklahoma, 50 Okl.B.J. 648 (1979) states:

Contrary to widespread popular belief, the applicant is not required by law to negotiate with or even contact the other owners prior to filing an application for forced pooling.

Black Law's Dictionary states:

**Bona fide.** In or with good faith; honestly, openly, and sincerely; without deceit or fraud.

4) AENO obtained the interest of Nassau Resources, LLC resulting in AENO owning 33.778 net acres in the subject unit with the assignment recorded on January 16, 2015. Under the Supreme Court case of *Chancellor v. Tenneco Oil Company*, 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. Nassau Resources, LLC did not object to any notice or jurisdictional issues.

5) For the reasons stated above, the Referee believes that OCC-OAC 165:5-7-7(a) has been complied with due to proper notice being given by Newfield to the respondents listed on the amended Exhibit "A" provided at the hearing on the merits, and bonafide efforts being made by Newfield to reach an agreement pursuant to proposal letters provided by Newfield to each respondent.

## II.

### BILLING REQUEST ISSUE

1) AENO requested certain methods for payment of well cost: 1) each participant pay their proportionate share of well costs through joint interest billings; 2) give participants a 30-day spud notice with 30 days after receipt of the spud notice to pay their proportionate share of the dry hole costs followed by a 30-day completion notice and 30 days after receipt of that notice to pay their proportionate share of the completed well costs; or 3) have all

participants' proportionate shares of the completed well costs (including Newfield's) escrowed. AENO also requested that no more than two subsequent wells should be proposed at one time by any participant and each subsequent well should be completed before additional subsequent wells may be commenced. However, AENO did not file any exceptions to the denial of this subsequent well request by the ALJ in her Report.

2) 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. Special provisions contained in a pooling order are not "a matter of right."

3) The Supreme Court in *Ranola Oil Company v. Corporation Commission*, 460 P.2 415 (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."

4) The ALJ in her Report on page 3 paragraphs 2, 3 and 4 stated:

2. Newfield represented expert testimony as to the reasons it rejected the various requests made by AENO. The reasons to not allow the pooling order to contain joint interest billing provisions, splitting well cost payment timing into dry hole and completed well

costs, escrowing all well costs, allowing any participating party to propose no more than two subsequent wells at one time and requiring completion of each subsequent well prior to another being drilled or proposed were clearly set forth by Newfield as being in the interests of cost-saving and allowing the unit development to proceed smoothly. AENO did not sufficiently persuade the ALJ that any of these matters should be allowed in the pooling order.

3. Under the statutory powers given to the Commission in 52 O.S. 87.1(e), parties may apply for forced pooling of units when owners cannot reach a voluntary agreement to develop reserves underlying said units. The purpose of the pooling hearing is to assure that the parties receive terms reflecting the fair market value for interests owned under a process that will prevent waste while protecting the correlative rights of the owners in a bare-bones pooling order...

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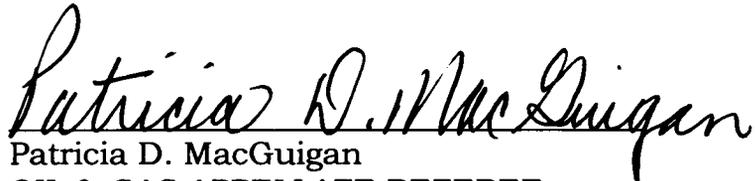
4. Prior to the subject pooling being filed, Newfield took leases and, once the application was filed, parties interested in participating under the pooling order were given a deferred payment of completed well costs. While AENO has been offered the same deferred payment option as the other parties electing to participate under the pooling order, the fact that AENO has not had its other requests met cannot be considered a reasonable protest resulting in further delay of this pooling. AENO came into its ownership in the unit after the proposal and pooling application filing by Newfield; therefore it was not named as a respondent; in fact, the terms of the AENO lease were not presented to Newfield until the day of the hearing at which time Newfield incorporated them into its recommendation of fair market value. Due to the ownership and operation position of Newfield and the actions taken to successfully drill and pool the subject well, the ALJ finds the arguments of AENO fail to be persuasive and believes it would be in the best interests of preventing waste and protecting correlative rights to grant the Newfield application under the terms Newfield proposed at the hearing.

5) *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okla. 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.

6) For the reasons stated above the Referee would affirm the decision of the ALJ to deny AENO's request for payment of well costs: 1) to pay a participant's share of proportionate costs by joint interest billing; 2) by paying within 30 days after a 30-day spud notice their share of the dry hole costs and after a 30-day completion notice their share of the completed well costs; or 3) by paying (along with all other well participants) their proportionate share of the completed well costs into an escrow account.

**RESPECTFULLY SUBMITTED THIS 17<sup>th</sup> day of September, 2015.**

  
Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiett  
James L. Myles  
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