



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

**STATEMENT OF THE CASE**

**APPLICANT TAKES EXCEPTION** to the Conclusions and Recommendations made by the Administrative Law Judge ("ALJ") in his Report of the Administrative Law Judge.

Earl Hendricks, Oil and Gas Field Inspector, Field Operations Department, Oklahoma Corporation Commission, alleged that Proex operated the Ellison #29-1, a/k/a Ellison #1-29, C SW/4 of Section 29, T12N, R7W, Canadian County, Oklahoma in violation of 52 O.S. Section 86.1 et seq., and the rules of the Commission and should be found in contempt thereof. Specific alleged acts of violation and authority included:

1. That Proex has violated OCC-OAC 165:10-3-17(b) in that it has failed to remove materials from the subject site which might constitute a fire hazard.

2. That Proex has violated OCC-OAC 165:10-3-17(c) in that it has failed to remove surface trash, debris and junk from the above-described well site.

3. That Proex has violated OCC-OAC 165:10-3-17(d) in that it has failed to post lease sign(s) concerning the subject well containing the required information.

4. That Proex has violated OCC-OAC 165:10-3-17(m) in that it has failed to keep the subject leasehold road in a passable condition.

5. That Proex has violated OCC-OAC 165:10-1-6(c) in that it failed to test the subject well in response to a directive from the Conservation Division.

6. That Proex has failed to comply with Commission Order Nos. 630831, 630833 and 630834 which issued in Cause EN Nos. 201400072, 201400079 and 201400080, respectively.

7. That Proex has violated 52 O.S. Section 318.1 (A) and OCC-OAC 165:10-1-10(a) in that it has failed to file evidence of financial ability with the Commission to comply with requirements for plugging, closure of surface impoundments, and removal of trash and equipment as established by the rules of the Commission and by law.

The Commission stated that it may seek compliance as well as the maximum amount of \$5,000 for violation per day as authorized by 52 O.S. Section 102 or as otherwise specified by law. The Commission also stated unless dismissed, failure to appear at the time and place directed shall be taken as a confession and the maximum lawful amount assessed. The Commission further stated unless dismissed, failure to file a response on or before Proex's appearance date to the complaint shall be taken as a confession and the maximum lawful amount assessed. Forfeiture of surety may be requested pursuant to 52 O.S. Section 318.1.

**THE APPLICANT TAKES THE POSITION:**

1) Certain of the conclusions and recommendations appearing in said Report are contrary to the law and to the evidence.

2) Final Order Nos. 630831, 630833 and 630834 ("Final Orders") issued on September 18, 2014, wherein Proex was the Respondent in Cause EN Nos. 201400072, 201400079 and 201400080, respectively. In each of the three Final Orders, Proex was assessed fines in the amount of \$5,000, payable immediately to the Commission, due to Proex's violations of the Commission rules appearing in the Contempt Complaints filed in such causes. Proex's \$25,000 Category B surety was forfeited in varying amounts, with the surety proceeds to be used to plug the subject wells, remove equipment and trash from and to restore the sites in accordance with Commission rules. The three wells operated by Proex in the State of Oklahoma were to be shut in. Proex was prohibited from operating wells in the State of Oklahoma until it filed with and obtained the Commission's approval of Category B surety in the amount of \$50,000; Proex pays to the Commission all fines assessed against Proex; and Proex pays to the Commission any costs expended in excess of the forfeited \$25,000 surety to plug the three wells and restore the sites which are the subjects of such Final Orders. (See Exhibit 5).

3) As reflected in the Certificates of Service by Mail in Exhibit 5, copies of the three Final Orders were sent to Proex by certified mail on September 22, 2014, and Proex received copies of the three Final Orders by certified mail at various addresses on September 24, 2014, and September 25, 2014. The Contempt Complaint in the present cause was filed on October 13, 2014.

4) Evidence was submitted in the present cause that Proex has not paid to the Commission the fines assessed in the three Final Orders. Proex also has not filed with the Commission Category B surety in the amount of \$50,000 as required by the three Final Orders.

5) The ALJ stated that he disagreed with Staff's inclusion of Count 6 in the Contempt Complaint in the present cause, the allegation that Proex has failed

to comply with the three Final Orders (Order Nos. 630831, 630833 and 630834 in Cause EN Nos. 201400072, 201400079 and 201400080, respectively) as a reason for the Staff to request an enhancement of the fine in this cause. The ALJ stated that it was unnecessary for Staff to display evidence of Proex's previous violations and/or noncompliance (Report, page 4).

6) The Contempt Complaint in the present action was filed pursuant to 52 O.S. Section 103 (Contempt Complaint, Section III, Legal Authority). 52 O.S. Section 103 provides in part that proceedings as for contempt for disobedience or violation of the provisions of 52 O.S. Section 84 et seq. or of the orders, rules, regulations and judgments of the Commission may be commenced by the filing of a complaint with the Commission by the Director of Conservation, among others. 52 O.S. Section 103 provides that the complaint shall state, among other things, the violations of order(s), rule(s), regulations(s), and judgment(s) of the Commission which is charged, and also that any such complaint may charge against any defendant one or more violations of 52 O.S. Section 84 et seq. and/or of any rule, order or regulation of the Commission made there under. [See also OCC-OAC 165:5-19-1(a) and (b).]

7) Applicant was certainly authorized and justified pursuant to 52 O.S. Section 103 to include in the allegations in the Contempt Complaint filed in the present action that Proex has failed to comply with the three Final Orders. Applicant disagrees with the ALJ's statement that the "display of previous violations and/or noncompliance" by Proex was unnecessary. Indeed, inclusion of allegations in the Contempt Complaint about Proex's failure to comply with the three Final Orders and its demonstrated pattern of noncompliance are very pertinent to Applicant's request for the assessment of increased fines and other relief against Proex in the present cause. The ALJ's observation that the three wells which are the subjects of the three Final Orders are located in Logan County, Oklahoma, rather than in Canadian County, Oklahoma, where the well in the present cause is located, is irrelevant.

8) The ALJ also made the statement that he disagreed with using the present action to take enforcement action for wells located in Logan County whereas this cause is situated in Canadian County, and that a separate action should be taken to enforce those orders rather than piggyback them on an unrelated cause (Report, page 4). Applicant disagrees with this statement by the ALJ. Determinations have already been made by the Commission in the three Final Orders that Proex failed to comply with Commission rules regarding the wells that are the subjects of the three Final Orders. Pursuant to the authority in 52 O.S. Section 103, Applicant is authorized to allege in the present action that Proex failed to comply with the three Final Orders.

9) The ALJ recommended that any surety Proex has is to be used to plug the well that is the subject of the present cause and to clean up the site

(Report, page 3). No alleged violation appears in the Contempt Complaint filed in the present cause alleging that Proex has failed to plug the Ellison #1-29 well. The amount of surety needed to plug the three wells that are the subjects of the three Final Orders exceeds Proex's \$25,000 Category B surety available to plug such wells. Applicant requested in the present cause that a final order issue assessing a \$10,000 fine against Proex due to its violations of the authorities appearing in the Contempt Complaint and for violation of the three Final Orders, and that Proex be required to pay such fine immediately to the Commission. Applicant also requested that Proex be prohibited from operating wells in the State of Oklahoma until it files with and obtains the Commission's approval of Category B surety in the amount of \$50,000; Proex pays to the Commission all fines assessed against Proex; and Proex pays to the Commission any costs expended in excess of the forfeited \$25,000 surety to plug the three wells and restore the sites which are the subjects of the three Final Orders.

10) For the reasons stated above and based on the evidence and testimony presented in this cause, Applicant respectfully requests that those Conclusions and Recommendations discussed above made by the ALJ in his Report filed herein be reversed, and that the recommendations made by Applicant be granted.

**THE ALJ FOUND:**

1) The ALJ recommends Proex be ordered to pay a \$10,000 fine immediately and any surety Proex has will be used to plug this well and clean up the site. Proex is in violation of Counts 1 through 5 and Count 7 as shown in the Allegation of Facts contained within the Application filed in this cause. Count 6 is discussed below.

2) Ms. Conrad did an exceptional job of presenting evidence to show that Proex was out of compliance with Commission rules. It was a very thorough presentation. The ALJ was satisfied that Proex was out of compliance and that the fine suggested by the Commission is appropriate under the circumstances. It should be noted that evidence was presented showing Proex was out of compliance at other locations not associated with this particular enforcement cause. In those causes, Proex was fined and the surety forfeited.

3) Count 6 alleges Proex has failed to comply with Commission Order Nos. 630831, 630833, and 630834, which were issued in Cause EN Nos. 201400072, 201400079, and 201400080, respectively. This ALJ disagrees with the Applicant's recommendation to include this allegation as a reason for the Applicant to request an enhancement of the fine for the cause before the Court. Evidence was presented that gave sufficient justification of an increased fine in this case without the display of previous violations and/or

noncompliance. Additionally, the ALJ disagrees with using this enforcement cause to take enforcement action for wells located in Logan County whereas this cause is situated in Canadian County. The ALJ believes a separate action should be taken to enforce those orders rather than piggyback them on an unrelated cause. The only common feature is that the Respondent Proex is the same in each cause.

## **POSITIONS OF THE PARTIES**

### **APPLICANT**

1) **Susan Dennehy Conrad**, Deputy General Counsel, appearing on behalf of the Commission/Applicant, stated the present action involves the Ellison #29-1 a/k/a Ellison #1-29 well, located in the center of the SW/4 of Section 29, T12N, R7W, Canadian County, Oklahoma. The Respondent is Proex and the contempt complaint filed in this cause alleged violations:

(1) That Proex has violated OCC-OAC 165:10-3-17(b) in that it has failed to remove materials from the subject site which might constitute a fire hazard.

(2) That Proex has violated OCC-OAC 165:10-3-17(c) in that it has failed to remove surface trash, debris and junk from the above-described well site.

(3) That Proex has violated OCC-OAC 165:10-3-17(d) in that it has failed to post lease sign(s) concerning the subject well containing the required information.

(4) That Proex has violated OCC-OAC 165:10-3-17(m) in that it has failed to keep the subject leasehold road in a passable condition.

(5) That Proex has violated OCC-OAC 165:10-1-6(c) in that it failed to test the subject well in response to a directive from the Conservation Division.

(6) That Proex has failed to comply with Commission Order Nos. 630831, 630833 and 630834 which issued in Cause EN Nos. 201400072, 201400079 and 201400080, respectively.

(7) That Proex has violated 52 O.S. Section 318.1 (A) and OCC-OAC 165:10-1-10(a) in that it has failed to file evidence of financial ability with the Commission to comply with requirements for plugging, closure of surface impoundments, and removal of trash and equipment as established by the rules of the Commission and by law.

2) Proex received copies of the Contempt Complaint and Summons of Notice of Citation For Contempt by certified mail on October 16, 2014. The Certified Mail Receipt (see Exhibit 4 presented in this proceeding by Applicant which shows the operator's agreement by Proex to plug oil, gas, and service wells within the State of Oklahoma, the Certificate of Service on Proex, for the present case, the Certified Mail Receipt showing the signature of Proex.) and a copy of the green card showed it was received by Proex. Despite proper service, Proex did not appear at the November 12, 2014 hearing before the ALJ. Applicant presented testimony that Proex had violated the Commission rules under three previous Final Orders that were referred to in the Complaint. Applicant requested that a final order issue assessing \$10,000 on Proex due to the violations listed in the Contempt Complaint and also the paragraph 6 violation that Proex had failed to comply with Commission Order Nos. 630831, 630833 and 630834, which were issued in Cause EN Nos. 201400072, 201400079 and 201400080, and that Proex be required to pay such fine requested by the Commission. Applicant also requested that Proex be prohibited from operating wells in the State of Oklahoma until it filed with and obtained the Commission's approval of Category B Surety in the amount of \$50,000; Proex pays the Commission all fines assessed against Proex; and that Proex pays the Commission any costs expended in excess of the forfeited \$25,000 Surety to plug the three wells and restore the sites which are the subjects of the three Final Orders.

3) The ALJ filed his Report in this cause on December 2, 2014. Applicant filed exceptions to the Report on December 11, 2014.

4) Although the ALJ recommended the fee sought by Applicant in this cause, the ALJ stated that he disagreed with Staff inclusion of Count #6 in the contempt complaint, i.e. the allegation that Proex had failed to comply with the three Commission order numbers, as a reason for the Staff request of a contempt and fine in this cause. It was necessary for Staff to include these previous violations as a reason for the Staff requesting an enhancement of the fine in the present Cause before the Court. The three Final Orders previously issued on September 18, 2014. In each of those Final Orders, Proex was assessed a fine of \$5,000 because of their violation of Commission rules. Also, Proex's \$25,000 Category B Surety was forfeited and the proceeds were to be used to plug the subject wells, remove equipment and trash from and to restore the site in accordance with Commission rules. The three wells operated by Proex in the State of Oklahoma were shutin. Proex was prohibited from operating wells in the State of Oklahoma until it complied with and obtained approval of Category B Surety in the amount of \$50,000 and Proex pays to the Commission all fines assessed against Proex. Also Proex was ordered to pay the Commission any cost the Commission expended in excess of the forfeited \$25,000 Surety to plug the three wells and restore the sites of the three wells, concerning the subject three Final Orders. (See Exhibit 5.)

5) The allegations in the present Cause are similar to the allegations that were lodged against Proex which resulted in the issuance of the three Final Orders. Proex received these orders as the Applicant had good service in the three cases which resulted in the three orders. Copies of the three Final Orders were sent to Proex by certified mail September 22, 2014 and Proex received those copies by certified mail on September 24, 2014 and September 25, 2014. As reflected in Exhibit 5. This action was filed October 13, 2014, after Proex received those three Final Orders. Evidence was submitted in the present Cause that Proex had not paid to the Commission the fines assessed in those three Final Orders and had also not filed with the Commission Category B Surety in the amount of \$50,000 that was required in the three orders.

6) Staff disagrees with the ALJ's statement in his Report that it was not necessary for Staff to present evidence of previous violations in the present action. The Contempt Complaint in the present action was filed pursuant to statutory authority provided in 52 O.S. Section 103. 52 O.S. Section 103 provides in part that: "Proceedings as for contempt for disobedience or violation of the provisions of this act or of the orders, rules, regulations and judgments of the Commission...may be commenced by the filing with the Commission...." 52 O.S. Section 103 also provides that the "complaint by whomsoever filed shall state,...(b) the order or orders, rule or rules, regulation or regulations and judgment or judgments of the Commission, violation of which is charged....Any such complaint may charge against any defendant one or more violations of the provisions of this Act and/or of any rule, order or regulation of the Commission made hereunder;..." The Applicant feels that it is certainly authorized and justified pursuant to 52 O.S. Section 103 and OCC-OAC 165:5-19-1(a) which provides: "A cause filed for contempt for disobedience to a violation of law or a rule, regulation, order, or judgment of the Commission shall be commenced by the filing of a verified complaint." The Commission is certainly justified to include in the present cause the allegations Proex failed to comply with. Applicant feels the allegations in the present complaint concerning the failure to comply with three Final Orders by Proex demonstrated the pattern of noncompliance and are very pertinent to Applicant's request for fines and other violation of the rules in the present cause. Applicant disagrees with the ALJ's statement that "the display of previous violations and/or noncompliance" by Proex was unnecessary. Applicant believes the inclusion of those allegations in the contempt complaint about Proex's failure to comply with the three Final Orders and its demonstrated pattern of noncompliance are very pertinent to Applicant's request for the assessment of increased fines and other relief against Proex in the present cause. Applicant believes the ALJ's observation that the three wells which are the subjects of the three Final Orders are located in Logan County, Oklahoma, rather than in Canadian County, Oklahoma, where the well in the present cause is located, is irrelevant. The Applicant also disagrees with the ALJ's statement that "a separate action should be taken to

enforce those orders rather than piggyback them on an unrelated cause." We already have determinations by the Commission in three Final Orders that Proex failed to comply with Commission rules regarding the three wells that are the subject of the three Final Orders. Applicant felt it was important to take the exceptions to the ALJ Report both in this cause and other enforcement actions which is something that the Applicant has done on many occasions. If there has been noncompliance in previous issued Commission orders, those have been included in previous contempt actions to show a history of noncompliance.

7) For the reasons that Applicant has stated and the evidence presented in this cause, Applicant requests that the inclusion and recommendation made by the ALJ in his Report be reversed and that a final order issue incorporating the recommendations made by the Applicant. Applicant is requesting in the present cause that a final order issue assessing a \$10,000 fine against Proex due to its violations of the authorities appearing in the contempt complaint and for violation of the three Final Orders. Proex should be required to pay such fine immediately to the Commission. Proex should be prohibited from operating wells in the State of Oklahoma until it files with and obtains the Commission's approval of Category B Surety in the amount of \$50,000; pays all fines to the Commission assessed against Proex; and pays to the Commission any cost expended in excess of the forfeited \$25,000 Surety to plug the three wells and restore the sites which are the subjects of the three Final Orders.

## **CONCLUSIONS**

**The Referee finds the Report of the Administrative Law Judge should be affirmed in part, reversed in part and modified. .**

The Referee finds the ALJ's recommendations that Proex be found in contempt; ordered to pay a \$10,000 fine immediately; and is in violation of Counts #1 through #5 and Count #7, as shown in the specific alleged acts of violation and authority under the Allegation of Facts in Applicant's Contempt Complaint filed on October 13, 2014, is supported by the weight of the evidence, and in accordance with law and free of reversible error. However, the Referee finds that the ALJ's recommendation to deny Applicant's request to include Count #6 in Applicant's Contempt Complaint is contrary to the weight of the evidence, contrary to law and constitutes reversible error.

I.

**APPLICANT'S COUNT #1 THROUGH #5 AND COUNT #7**  
**SPECIFIC ALLEGED ACTS OF VIOLATION IN CONTEMPT**  
**COMPLAINT**

1) The Oklahoma Corporation Commission has the authority to pursue contempt against any entity that violates the rules, regulations and orders of the Commission. *Union Texas Petroleum Corporation v. Jackson*, 909 P.2d 131 (Okl.Civ.App. 1995).

2) 52 O.S. Section 102 provides:

Punishment for contempt by the Commission of any person, guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session, or for disobedience of its subpoena, summons or other process, may be by fine not exceeding One Thousand Dollars (\$1,000.00) or by confinement in the county jail of Oklahoma County not exceeding one (1) year, or by both. Any person who shall disobey or violate any of the provisions of Section 86.1 et seq. of this title or any of the orders, rules, regulations or judgments of the Commission issued, promulgated or rendered by it, shall be punished as for contempt. Punishment by the Commission in proceedings as for contempt for disobedience or violation of any provision of Section 86.1 et seq. of this title or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of Section 86.1 et seq. of this title shall be by fine not exceeding in amount Five Thousand Dollars (\$5,000.00), and each day such disobedience or violation shall continue shall constitute a separate and additional contempt, and shall be punished by separate and additional fines each in amount not in excess of aforesaid amount. Any fine or penalty assessed under the provisions of Section 86.1 et seq. of this title may be enforced in the same manner as a foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act. Section 719 et seq. of Title 12 of the Oklahoma Statutes provided that such procedure shall be followed regardless of whether the offender is a resident or nonresident of Oklahoma. Such fine or

penalty shall constitute and be a lien upon all the property of the offender within the state, except the homestead of such offender, provided that a copy of the order imposing the fine or penalty, certified by the Secretary of the Commission, is filed in accordance with Section 706 of Title 12 of the Oklahoma Statutes. All monies collected as fines or penalties under the provisions of Section 86.1 et seq. of this title shall, when paid into or received by the Commission, be by it paid to the State Treasurer of the state for the credit of the Corporation Commission Revolving Fund.

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

4) The Oklahoma Supreme Court states in *Stamford Energy Companies, Inc. v. Corporation Commission of State*, supra, at 882:

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

5) Therefore the Commission's contempt power is what it wishes it to be so long as the Commission stays within the express and implied jurisdictional limits placed on it by the Oklahoma Constitution, Article 9, Section 19 and 52 O.S. Section 102. *Tenneco Oil Company v. El Paso Natural Gas Company*, 687

P.2d 1049 (Okl. 1984); *Burmah Oil and Gas Company v. Corporation Commission*, 541 P.2d 834 (Okl. 1975); and *Kingwood Oil Company v. Hall-Jones Oil Corporation*, 396 P.2d 510 (Okl. 1964).

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

In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the Commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the Commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The Commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisal of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the Commission, within reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum, in excess

of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense: Provided, That should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

7) Therefore, the nature of a Commission contempt order is unique and may be fashioned by the Commission to address the particular facts and circumstances presented to the Commission.

8) The evidence reflected in the November 12, 2014 hearing that Proex had failed to remove materials from the Ellison #29-1 well site which might constitute a fire hazard; has failed to remove surface trash, debris and junk from the Ellison #29-1 well site; has failed to post lease signs concerning the Ellison #29-1 well containing the required information; has failed to keep the Ellison #29-1 leasehold road in a passable condition; has failed to test the Ellison #29-1 well in response to a directive from the Conservation Division of the Oklahoma Corporation Commission; and has failed to file evidence of financial ability with the Commission to comply with requirements for plugging, closure of surface impoundments, and removal of trash and equipment as established by the rules of the Commission and by law.

9) Thus, the clear and convincing evidence established a clear pattern of noncompliance with the Commission rules by Proex. Therefore, the Report of the ALJ filed on December 2, 2014 concerning Counts #1 through #5 and Count #7 of the Contempt Complaint Allegation of Facts alleging specific acts of violation and authority should be affirmed. *Centurion Oil, Inc. v. Stephens Production Company*, 857 P.2d 821 (Ok.Civ.App. 1993); *Texas Cty. Irrigation and Water Res. v. Dunnett*, 527 P.2d 578 (Okl. 1974); *Texas Oil and Gas Corporation v. Rein*, 534 P.2d 1280 (Okl. 1974); *Central Oklahoma Freight Lines, Inc. v. Corporation Commission*, 484 P.2d 877 (Okl. 1971); and *Application of Choctaw Express Company*, 253 P.2d 822 (Okl. 1953).

## II.

### **COUNT #6 OF THE CONTEMPT COMPLAINT ALLEGATION OF FACTS ALLEGING SPECIFIC ACTS OF VIOLATION AND AUTHORITY**

1) Final Order Nos. 630831, 630833 and 630834 issued on September 18, 2014, wherein Proex was the Respondent in Cause En Nos. 201400072, 201400079 and 201400080, respectively. In each of the three Final Orders, Proex was assessed fines in the amount of \$5,000, payable immediately to the Commission, due to Proex's violations of the Commission rules appearing in the Contempt Complaints filed in such causes; Proex's \$25,000 Category B surety was forfeited in varying amounts, with the surety proceeds to be used to plug the subject three wells, remove equipment and trash from and to restore the sites in accordance with Commission rules; the wells operated by Proex in the State of Oklahoma were to be shut in; Proex was prohibited from operating wells in the State of Oklahoma until it filed with and obtained the Commission's approval of Category B surety in the amount of \$50,000; Proex was to pay to the Commission all fines assessed against Proex, and Proex was to pay to the Commission any costs expended in excess of the forfeited \$25,000 surety to plug the three wells and restore the sites which are the subjects of such three Final Orders. (see Exhibit 5).

2) In the present cause evidence was submitted that Proex had not paid to the Oklahoma Corporation Commission the fines assessed in the three Final Orders cited above. In addition, Proex has not filed with the Commission Category B Surety in the amount of \$50,000 as required by the three Final Orders.

3) The ALJ states in his Report of the ALJ on page 4 that:

This ALJ disagrees with the Staff recommendation to include this allegation (**Count 6**) as a reason for the Staff to request an enhancement of the fine for the cause before the Court. Evidence was presented that gave sufficient justification of an increased fine in this case without the display of previous violations and/or noncompliance....The ALJ believes a separate action should be taken to enforce those orders rather than piggyback them on an unrelated cause....(Emphasis added)

4) 52 O.S. Section 103 provides:

Proceedings as for contempt for the disobedience or violation of provisions of this act (Title 52, §84 et seq.) or of the orders, rules, regulations and judgments of the Commission made, issued and/or rendered under the provisions of this act, may be commenced by the filing with the Commission by (a) the Attorney General,

or (b) the Proration Attorney, or (c) the Proration Umpire or (d) Assistant Proration Umpire (now Director of Conservation, see Title 52 §149) or (e) by any producer of oil or taker in the state, of a complaint which shall, when filed by any producer of oil or taker, be verified upon information and belief...Any such complaint may charge against any defendant one or more violations of the provisions of this act and/or of any rule, order or regulation of the Commission made hereinunder; provided, that the acts or omissions of the defendant constituting each violation charged shall be briefly stated in general terms in separately numbered paragraphs or counts of such complaint.

5) Rule OCC-OAC 165:5-19-1(a) provides:

(2) Commencement. A cause filed for contempt for disobedience to or violation of law or a rule, regulation, order or judgment of the Commission shall be commenced by the filing of a verified complaint.

6) The Referee agrees with the Applicant that the allegations in the present complaint concerning the failure to comply with three Final Orders by Proex demonstrated the pattern of noncompliance and are pertinent to Applicant's request for fines and other violations of the rules in the present cause. The Referee also agrees with Applicant that the inclusion of the allegations in the Contempt Complaint about Proex's failure to comply with the three Final Orders are pertinent to Applicant's request for the assessment of increased fines and other relief against Proex in the present cause. In the past Applicant has included previous orders and past contempt actions to demonstrate a history of noncompliance.

7) Clearly, 52 O.S. Section 103 and OCC-OAC 165:5-19-1(a) allow the Commission/Applicant to file proceedings for contempt for disobedience or violations of the orders of the Commission issued under the provisions of the Oil and Gas Conservation Act.

8) The ALJ on page 3 of his Report states:

The ALJ recommends the Respondent be ordered to pay a \$10,000.00 fine immediately and any surety the Respondent has will be used to plug this well and clean up the site.

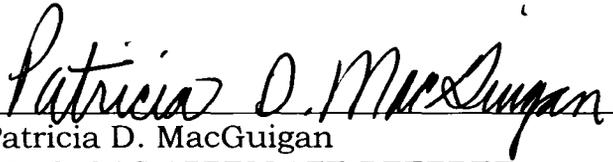
The ALJ is referring to the well that was listed in the present contempt complaint, the Ellison #29-1 well. Applicant states in its exceptions that none

of the seven counts listed in the contempt complaint by Applicant alleging specific violations and authority included an alleged violation that Proex has failed to plug the Ellison #29-1 well. Applicant asserts that the amount of surety needed to plug the three wells that are the subject of the three Final Orders exceeds Proex's \$25,000 Category B surety which is available by Applicant to plug such wells. Applicant therefore requested in the present cause that a final order issue assessing a \$10,000 fine against Proex due to its violations of the authorities appearing in the contempt complaint and for the violation of the three Final Orders. Applicant also requested that Proex be prohibited from operating wells in the State of Oklahoma until it files with and obtains the Commission's approval of a Category B surety in the amount of \$50,000; pays all fines to the Commission assessed against Proex and pays the Commission any cost exceeding the forfeited \$25,000 surety to plug the three wells and restore the sites which are the subject of the three Final Orders.

9) For the above stated reasons, circumstances and law, the Referee finds that the ALJ should be reversed as to the Count 6 specific alleged act of violation concerning Proex's failure to comply with Commission Order Nos. 630831, 630833 and 630834 which issued in Cause EN Nos. 201400072, 201400079 and 201400080, respectively.

10) Thus, the Referee would recommend that the requests of Applicant be granted and that a final order issue assessing a \$10,000 fine against Proex due to its violations of the Count 6 in the contempt complaint for violation of the three Final Orders. Proex should be required to pay such fine immediately to the Commission and should be prohibited from operating wells in the State of Oklahoma until it files with and obtains the Commission's approval of a Category B surety in the amount of \$50,000; pays all fines that the Commission has assessed against Proex; and pays to the Commission any cost expended in excess of the forfeited \$25,000 surety to plug the three wells and restore the sites which are the subject of the three Final Orders.

**RESPECTFULLY SUBMITTED THIS 30<sup>th</sup> day of January, 2015.**

  
Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiatt

James L. Myles  
ALJ Michael Porter  
Susan Dennehy Conrad  
Proex Energy Management, LLC  
Michael L. Decker, OAP Director  
Oil Law Records  
Court Clerks - 1  
Commission Files