

FILED
AUG 05 2015

DECISION SHEET OF THE OIL & GAS APPELLATE REFEREE

APPLICANT: CONTINENTAL RESOURCES, INC.)
RELIEF SOUGHT: POOLING)
LEGAL DESCRIPTION: SECTION 15, TOWNSHIP 4)
NORTH, RANGE 5 WEST,)
GRADY COUNTY, OKLAHOMA)

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

CAUSE CD NO.
201501193

ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S RULING ON A MOTION TO STAY THE WELL ELECTION PERIOD UNDER POOLING ORDER NO. 642598 AS CORRECTED BY NUNC PRO TUNC ORDER NO. 643145 DATED JULY 16, 2015

Paul Porter, Administrative Law Judge for the Oklahoma Corporation Commission, pursuant to proper notice, heard on the 31st day of July, 2015, the above Motion to Stay in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma.

APPEARANCES: **David E. Pepper**, attorney, appeared for the applicant, Continental Resources, Inc. ("Continental"); **Gregory L. Mahaffey**, attorney, appeared for Calumet Energy, LLC ("Calumet"); **Karl F. Hirsch**, attorney, appeared for Merit Energy Company ("Merit"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling on the Motion to Stay to which Oral Exceptions were timely lodged.

The Oral Arguments on the Oral Appeal were referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 31st 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

Calumet moves the Commission to stay the election period under Pooling Order No. 642598, as corrected by Nunc Pro Tunc Order No. 643145 until 20 days after: (a) hearing of Calumet's Motion to Modify and Clarify Order of the

Commission No. 42598 issued on July 1, 2015, as Corrected by Nunc Pro Tunc Order No. 642598 issued July 16, 2015; and (b) Continental has furnished to Calumet and the other similarly situated respondents, a copy of all title opinions and reports covering the above described lands. In support of this motion, Calumet states as follows:

1. Order of the Commission No. 642598, issued on July 1, 2015, pooled the Morrow, Springer, Caney, Sycamore, Woodford and Hunton common sources of supply insofar as the captioned land but, such order was corrected by Nunc Pro Tunc Order No. 643145 issued on July 16, 2015.

2. Order No. 643145 establishes an election period of 20 days following such order, which deadline would be on or before August 5, 2015. Calumet has timely elected to participate as to its interest and as to lands force pooled but needs to review the title opinions: (a) to confirm its leasehold interest, (b) to determine what its share of pooled acreage might be, (c) to confirm the interest of the other respondents whose interests Calumet seeks to lease; and (d) so that Calumet may prudently determine its total participation and budget the necessary funds for drilling and completion costs.

3. That concurrently with this motion, Calumet has filed a Motion to Modify and Clarify the Order of the Commission No. 642598, as corrected by Nunc Pro Tunc Order No. 643145 to provide and specify that a respondent who timely elects to participate and who upon payment of such respondent share of the completed well costs or upon execution of a private agreement obligating such owner to pay its share of the completed well costs, is entitled to immediately receive from Continental a copy of all title opinions and reports in the actual or constructive possession of Continental.

Calumet respectfully requests the above captioned Motion to Stay be granted and that an order issue staying the election period under Order No. 642598, as corrected by Nunc Pro Tunc Order No. 643145 until at least 20 days after: (a) hearing of Calumet's Motion to Modify and Clarify Order of the Commission No. 642598, as corrected by Nunc Pro Tunc Order No. 643145; and (b) delivery to Calumet by Continental of all title opinion and reports on the captioned lands.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ PAUL PORTER notes the Nunc Pro Tunc Order issued after the Final order and within 10 days of the Nunc Pro Tunc order, Calumet filed several motions. The ALJ believes Calumet wants to stay the election period and get a title opinion from Continental to determine various ownership in order to find unleased respondents. The ALJ notes this is being contested. Calumet says it

only needs to notice the attorneys of record that entered an appearance, which is what Calumet did. Calumet claims they followed the Commission rules in giving notice. Continental, however, argues that this is a final pooling order, which is now closed. Consequently, all 540 respondents should be noticed as this could affect their rights. It is noted that these respondents are not getting any notice of this Motion to Stay. The ALJ read through the Commission rules, finding that basically this could affect those respondents' election rights. The Commission rules at issue concern 165:5-9-2(b)(1)(A) and (B) and 165:5-17-1(b). Calumet wants to get a title opinion from Continental so Calumet can lease these people that have an order that says you have to elect by this date. Continental notes that Calumet wants to lease these people and have additional time to do so, after the election period has ended. The ALJ, however, said this is not good notice and granted Continental's Oral Motion to Continue until the notice matter was settled.

DECISION OF THE OIL & GAS APPELLATE REFEREE

1) OCC-OAC 165:5-9-2 entitled "**Subsequent pleadings**" states in part:

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service by regular mail, facsimile, electronic mail or in person as provided in this subsection, stating in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement filed or a prehearing/scheduling order issued, notice shall be given by the movant by serving at least five (5) business days prior to the date set for hearing by regular mail, facsimile, electronic mail or in person a copy of the motion and notice on each respondent.

(B) After the record in the cause has been opened on the merits or a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued, notice shall be given by the movant by serving, at least five (5) business days prior to the date set for hearing, by regular mail, a copy of the motion and notice to all parties of record.

2) OCC-OAC 165:5-17-1 under **SUBCHAPTER 17. POST ORDER RELIEF - Within 10 days; motion** provides:

(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order.

* * *

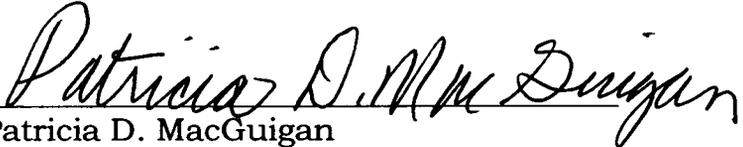
(b) Such motion shall be set for hearing before the Commission, unless referred. A copy of the motion, including notice of the date set for hearing, shall be served by the movant on each party of record by regular mail, facsimile, electronic mail or in person. If any motion filed pursuant to this Section is placed on the emergency or regular docket for hearing, the movant shall give at least five (5) days written notice to all respondents listed on the affidavit of mailing and all parties of record.

Clearly, OCC-OAC 165:5-9-2 entitled Subsequent Pleadings applies to pleadings that are filed after a cause has been commenced by an application. This rule under (b) entitled Motions clearly applies to motions prior to the record being opened on the merits under (A) and under (B) after the record in the cause has been opened on the merits. In the present case the record is closed as there is a final Order No. 642598 and a Nunc Pro Tunc Order correcting such final Order, Order No. 643145. Even if this particular rule did apply in the present situation after the record is closed and the Motion to Stay by Calumet is seeking to re-open the record and stay the election period, then clearly (A) of OCC-OAC 165:5-9-2(b)(1) would apply which states that prior to the record being opened on the merits (and in this case re-opened to stay the well election period), notice shall be given by the movant five business days prior to the date set for the hearing "on each respondent".

On the other hand, OCC-OAC 165:5-17-1 states that within ten days after an order of the Commission has been entered a motion may be filed for "rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order." Part (b) of said rule states that the motion shall be set for hearing before the Commission and if that is the case notice of the date set for the hearing shall be served by the movant on "each party of record." "If any motion filed pursuant to this Section is placed upon the emergency or regular docket for hearing, the movant shall give at least five (5) days written notice to all respondents list on the affidavit of mailing and all parties of record." Clearly this rule applies in the present situation and since the emergency hearing was heard before Administrative Law Judge Paul Porter, then notice should have been provided "to all respondents".

- 3) There are 540 respondents to this pooling application and as Continental asserts these 540 people have no idea that their elections may be stayed. The ALJ and Continental have stated that Continental is asking the Commission to stay the election under this pooling order so that Calumet can get a title opinion from Continental and can lease some parties. Continental has no idea which people Calumet wants to lease. Calumet has already elected under the pooling order. Calumet seeks to stay these elections of 540 other people who Calumet has not given notice to. Calumet states that it is only the people who Calumet wants to lease. Out of the 540 respondents no one has any idea who Calumet wants to lease.
- 4) The Referee agrees with Continental that fundamental fairness dictates that the ALJ was correct in that these 540 respondents, whose rights may be materially affected and who are not represented by Calumet or their lawyer, need notice of this Motion to Stay which may affect the election period under pooling Order No. 642598 as corrected by Nunc Pro Tunc Order No. 643145.
- 5) For the above stated reasons, the Referee finds that the ALJ's recommendation concerning notice should be affirmed.

RESPECTFULLY SUBMITTED THIS 5th day of August, 2015.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
David E. Pepper
Gregory L. Mahaffey
Karl F. Hirsch
ALJ Paul Porter
Michael L. Decker, OAP Director
Oil-Law Records