

**BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA**

**FILED**  
JUL 24 2015

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICANT: AMERICAN ENERGY - NONOP, )  
LLC )

RELIEF REQUESTED: MODIFICATION AND/OR )  
CLARIFICATION AND )  
CONSTRUCTION OF POOLING )  
ORDER NO. 623414 )

LEGAL DESCRIPTION: SECTION 16, TOWNSHIP 3 )  
NORTH, RANGE 4 WEST, )  
GARVIN COUNTY, OKLAHOMA )

CAUSE CD NO.  
201501622

APPLICANT: AMERICAN ENERGY - NONOP, )  
LLC )

RELIEF REQUESTED: MODIFICATION AND/OR )  
CLARIFICATION AND )  
CONSTRUCTION OF POOLING )  
ORDER NO. 619420, AS )  
REVISED BY ORDER NO. )  
620359 )

LEGAL DESCRIPTION: SECTION 28, TOWNSHIP 2 )  
NORTH, RANGE 3 WEST, )  
GARVIN COUNTY, OKLAHOMA )

CAUSE CD NO.  
201501706

APPLICANT: AMERICAN ENERGY - NONOP, )  
LLC )

RELIEF REQUESTED: MODIFICATION AND/OR )  
CLARIFICATION AND )  
CONSTRUCTION OF POOLING )  
ORDER NO. 622822 )

LEGAL DESCRIPTION: SECTION 19, TOWNSHIP 7 )  
NORTH, RANGE 5 WEST, )  
GRADY COUNTY, OKLAHOMA )

CAUSE CD NO.  
201501707

APPLICANT: AMERICAN ENERGY-NONOP, )  
LLC )  
)  
RELIEF REQUESTED: MODIFICATION AND/OR ) CAUSE CD NO.  
CLARIFICATION AND ) 201501943  
CONSTRUCTION OF POOLING )  
ORDER NO. 634002 )  
)  
LEGAL DESCRIPTION: SECTION 5, TOWNSHIP 16 )  
NORTH, RANGE 8 WEST, )  
KINGFISHER COUNTY, )  
OKLAHOMA )

APPLICANT: AMERICAN ENERGY-NONOP, )  
LLC )  
)  
RELIEF REQUESTED: MODIFICATION AND/OR ) CAUSE CD NO.  
CLARIFICATION AND ) 201501944  
CONSTRUCTION OF POOLING )  
ORDER NOS. 634003 AND )  
634221 )  
)  
LEGAL DESCRIPTION: SECTION 8, TOWNSHIP 16 )  
NORTH, RANGE 8 WEST, )  
KINGFISHER COUNTY, )  
OKLAHOMA )

APPLICANT: AMERICAN ENERGY-NONOP, )  
LLC )  
)  
RELIEF REQUESTED: MODIFICATION AND/OR ) CAUSE CD NO.  
CLARIFICATION AND ) 201501995  
CONSTRUCTION OF POOLING )  
ORDER NO. 622820 )  
)  
LEGAL DESCRIPTION: SECTION 27, TOWNSHIP 7 )  
NORTH, RANGE 5 WEST, )  
GRADY COUNTY, OKLAHOMA )

APPLICANT:	AMERICAN ENERGY-NONOP, LLC	) ) )	
RELIEF REQUESTED:	MODIFICATION AND/OR CLARIFICATION AND CONSTRUCTION OF POOLING ORDER NO. 622731	) ) ) ) ) )	CAUSE CD NO. 201501996
LEGAL DESCRIPTION:	SECTION 26, TOWNSHIP 2 NORTH, RANGE 4 WEST, STEPHENS COUNTY, OKLAHOMA	) ) ) ) )	
APPLICANT:	AMERICAN ENERGY-NONOP, LLC	) ) )	
RELIEF REQUESTED:	MODIFICATION AND/OR CLARIFICATION AND CONSTRUCTION OF POOLING ORDER NO. 622457	) ) ) ) ) )	CAUSE CD NO. 201502293
LEGAL DESCRIPTION:	SECTION 35, TOWNSHIP 2 NORTH, RANGE 4 WEST, STEPHENS COUNTY, OKLAHOMA	) ) ) ) )	
APPLICANT:	AMERICAN ENERGY-NONOP, LLC	) ) )	
RELIEF REQUESTED:	MODIFICATION AND/OR CLARIFICATION AND CONSTRUCTION OF POOLING ORDER NO. 622467	) ) ) ) ) )	CAUSE CD NO. 201502295
LEGAL DESCRIPTION:	SECTION 22, TOWNSHIP 7 NORTH, RANGE 5 WEST, GRADY COUNTY, OKLAHOMA	) ) ) )	

**ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S  
RULING ON A MOTION TO CONSOLIDATE**

This Motion came on for hearing before **Michael Norris**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 9<sup>th</sup> day of June, 2015, in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for purpose of taking testimony and reporting to the Commission.

**APPEARANCES:** **Eric R. King**, attorney, appeared for applicant, American Energy - Nonop, LLC ("AENO"); **Gregory L. Mahaffey**, **Ron M. Barnes** and **Grayson M. Barnes**, attorneys, appeared for Newfield Exploration Mid-Continent, Inc. ("Newfield"); **Robert A. Miller**, attorney, appeared for Marathon Oil Company; **Richard K. Books**, attorney, appeared for XTO Energy Inc. ("XTO"); **David Pepper**, attorney, appeared for Continental Resources, Inc. ("Continental"); **David W. Mindieta** and **Freda Williams**, attorneys, appeared for Chesapeake Operating, L.L.C. and Chesapeake Exploration, L.L.C. ("Chesapeake"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") issued his Oral Ruling on the above Motion to which Oral Exceptions were timely lodged 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 22<sup>nd</sup> day of June, 2015. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

**STATEMENT OF THE CASE**

On April 15, 2015 Newfield filed a Motion to Consolidate Causes CD 201501622, 201501706 and 201501707, claiming that: 1) the parties in each application were identical; 2) the causes covered the same subject matter and contained the same issues; and 3) the witnesses testifying would likely be the same in each cause. These causes sought modification and/or clarification and construction of three different pooling orders involving different counties, i.e. Garvin and Grady.

On April 21, 2015, ALJ Michael Norris recommended the filed Motion to Consolidate.

On May 15, 2015, the Referee, on Oral Appeal, granted the Motion to Consolidate Causes CDs 201501622, 201501706 and 201501707.

On June 18, 2015, Order No. 642156 issued, granting the Motion to Consolidate CDs 201501622, 201501706 and 201501707.

On May 26, 2015 AENO filed a Motion to Re-open and to Dismiss Motion to Consolidate Causes CDs 201501622, 201501706 and 201501707, and on June 1, 2015 AENO filed an Amended Motion to Re-open and To Dismiss Motion to Consolidate in CDs 201501622, 201501706 and 201501707, claiming that Newfield had failed to give proper notice of the hearing on the Motion to Consolidate on CDs 201501706 and 201501707 per OCC-OAC 165:5-9-2(b)(1)(A); and requested that Newfield's Motion to Consolidate be dismissed as to CDs 201501706 and 201501707 and to allow CD 201501622 to stand on its own.

On June 8, 2015, ALJ Michael Decker denied the Motion to Re-open and Dismiss Motion to Consolidate in CDs 201501622, 201501706 and 201501707.

On June 15, 2015, the Referee issued her oral ruling on the Motion to Reopen and Dismiss Motion to Consolidate in CDs 201501622, 201501706 and 201501707, filing her Decision sheet on June 19, 2015.

The Referee affirmed the ALJ in part and reversed the ALJ in part. The Referee found that the ALJ's decision to deny AENO's Motion to Re-Open and to Dismiss Motion to Consolidate involving whether or not Newfield had complied with the requirements of OCC-OAC 165:5-9-2(b)(1)(a) should be affirmed. Newfield's fax of their Motion to Consolidate was submitted to the Oklahoma City Court Clerk's office on the 14<sup>th</sup> day of April, 2015, with the original being file stamped on April 15, 2015, and therefore the above listed rule was complied with concerning the requirement that a movant must serve the motion at least five business days prior to the date set for the motion hearing. The Referee found that the ALJ's decision to deny AENO's Motion to Re-Open

and to Dismiss Motion to Consolidate determining that Newfield gave proper notice of the hearing on the Motion to Consolidate should be reversed. The Oklahoma Corporation Commission is constitutionally empowered with the authority to make rules governing procedure and practice before the Commission. *Halpin v. Corporation Commission*, 575 P.2d 109 (Okl. 1977). The want of notice directly resulted from the default of Newfield in failing to comply with the rules of the Corporation Commission which have the force and effect of rules of law. *Barnes v. Transok Pipeline Company*, 549 P.2d 819 (Okl. 1976). Consequently, the Referee, pursuant to the above stated law, recommended that the ALJ's decision concerning this issue should be reversed as to Cause CD 201501706 and CD 201501707, leaving Cause CD 201501622 to stand on its own. On July 9, 2015, the Commissioners affirmed the Appellate Referee's decision.

On May 21, 2015, Newfield filed a Motion to Consolidate Causes CDs 201501943, 201501944, 201501995, 201501996, 201502293 and 201502295, with the previously consolidated causes of CDs 201501622, 201501706 and 201501707, requesting these be consolidated for hearings on the June 17, 18, and 19, 2015 Protest docket. These additional causes sought similar relief of clarifying different pooling order numbers and involving two more counties, i.e. Kingfisher and Stephens.

On June 3, 2015 Newfield filed a second Motion to Consolidate, replacing the fax filed copy had on June 1, 2015, covering Causes CDs 201501622, 201501706, 201501707, 201501943, 201501944, 201501995, 201501996, 201502293, and 201502295, and replacing the original May 21, 2015 Motion to Consolidate. This second Motion to Consolidate requested the causes be consolidated for hearing on the June 17, 18 and 19<sup>th</sup>, 2015 Protest docket.

### **REPORT OF THE ADMINISTRATIVE LAW JUDGE**

1) **ALJ Michael Norris** recommended granting the Motion to Consolidate the above captioned causes. All were very similar to previous consolidated motions heard by him earlier (see Order No. 642156). AENO here presented Exhibit "A", which demonstrated the differences in the various causes such as relief sought and the number of paragraphs seeking relief therein. Other than AENO's witness, the arguments presented were the same as in the previous heard motion to consolidate, i.e. judicial economy and similar issues in all causes. AENO pointed out the differences in the various causes while Newfield noted the similarities therein. All were pooling orders seeking the same relief, same respondents and same issues. The ALJ noted for the sake of judicial

economy, time, cost and issues, that these causes could be resolved in one hearing as opposed to nine separate hearings.

## **POSITIONS OF THE PARTIES**

### **AENO**

1) **Eric R. King**, attorney, appearing on behalf of applicant, AENO, stated their landman witness prepared Exhibit "A", a breakdown of each cause as to legal description, formations, interests of AENO, and issues involved. The formations mostly included Mississippi, Woodford, Hunton and some an additional Sycamore zone. Countywise, 2 were in Garvin County with 8 to 9 issues; 3 were in Grady County with 9 issues; 2 were in Kingfisher County with 9 issues; and 2 were in Stephens County with 8 issues. There was no request relating to fair market value as such has already been determined by the pooling orders.

2) AENO would request the captioned causes be consolidated by counties, to make it less confusing for the ALJ. AENO notes there are other differences in each of the 9 causes, and believe such is better handled by having 4 separate hearings rather than one hearing or 9 hearings.

3) AENO believes it is unwise to consolidate due to these differences. Cause CD 201501622 has an order for multiple wells. The Stephen County causes (CDs 201501996 and 201502293) do not have separate elections. AENO would prefer to have the captioned causes split up by counties and consolidated in that way.

### **NEWFIELD**

1) **Gregory L. Mahaffey** and **Ron M. Barnes**, attorneys, argued on behalf of Newfield.

2) Newfield believes AENO makes the same argument as mentioned in the previous motion to consolidate CDS 201501622, 201501706 and 201501707 (consolidated in Order No. 642156), i.e. it would be too complicated for the ALJ.

3) Newfield notes the above captioned causes have almost the same number of relief issues, give or take one less relief paragraph. Newfield points out except for CD 201501706, which has 9 relief paragraphs, the remaining causes all have the same issues. Newfield notes in CD 201501706 there is a request to have a separate election for the Mississippian common source of supply versus the Woodford common source of supply.

4) Newfield notes the ALJ found the relief differences were not a complicated matter and the ALJ noted judicial economy required all of the captioned causes be consolidated for purposes of having a consistent decision and appeals from such decision.

5) Newfield sent notice to many respondents, yet only the same parties herein showed up to take the same positions over again. Newfield believes, regardless of whether in verbal or chart format, the real argument is that one additional relief issue concerning a separate election is not enough to result in all these 9 captioned causes being heard separately.

6) Newfield notes the same parties are involved; these are all final pooling orders that are being requested to be re-opened and modified. In moving forward with any of the captioned causes, Newfield notes that all these causes will have the same issues and problems.

7) Newfield believes it would be less cost to all the parties involved to have one decision made, with one appeal to process, and thus would result in judicial economy. Newfield would request that the consolidated motions be granted.

8) Newfield also notes the same Mississippi-Woodford play is across this whole area of the captioned causes. Newfield states that AENO did raise in their Exhibit "A" that some causes had a density order for multiple wells and some had a separate election for certain zones. Newfield notes that if consolidation is done by county with four hearings, it is possible that there could be four different outcomes on the same issues.

9) Newfield thought the ALJ noted a slight distinction on some of the requested relief in these captioned causes yet felt any differences could be dissected by the involved attorneys, even if it resulted in multiple hearing days. Newfield agrees with the ALJ's idea that one hearing is better to resolve the issues here than to have either four or 9 separate hearings where all involve similar pooling orders.

10) Newfield notes that AENO picked up their interest after these pooling orders in these causes had already been heard. Newfield believes that AENO now wants to participate and thus change the terms of these final orders.

Essentially, Newfield believes the relief in these captioned causes are all the same.

11) Newfield notes the AENO landman was unaware that geologically, the Sycamore zone in Stephens County was the same as the Mississippi zones found in nearby counties. Further, Newfield notes AENO's landman was also unaware if the Hunton zone was present or productive. Newfield observes that AENO is requesting in some of these captioned causes for a separate election to the Woodford (which is in all of the nine captioned causes). Newfield notes that the Mississippi/Sycamore is involved in all 9 causes, so basically all the same formations are the same in the captioned causes. Newfield says the Hunton zone is a bracket formation below the Woodford yet AENO is not asking for separate relief there.

12) Newfield believes that AENO, in these 9 causes, is seeking the same things: joint interest billing or escrow the money, separate elections, and limiting to 2 or less density wells in these pooling orders. Newfield notes the ALJ said that litigating values or ownership were not issues here. Newfield wants to do a change of condition request except in a couple of cases they are not asking to modify for a separate election on the Woodford. Newfield notes that AENO, who has a small interest in these causes, did not care enough about their interest to show up at any of these hearings.

13) Newfield finds it would make more sense to save the time/cost of all the parties, including the Court's time, to have one hearing rather than split the consolidated hearings into 4 or 9 separate hearings. Newfield thus requests that the ALJ be confirmed in granting the motions to consolidate.

### **MARATHON**

1) Robert A. Miller, attorney, appearing for Marathon, states these are legal issues to be determined and supports the consolidation efforts of Newfield and requests that the ALJ's granting of the consolidation motions be affirmed.

### **RESPONSE OF AENO**

1) AENO states there was no evidence of notice on the captioned motion to consolidate which Newfield mentions. AENO notes that there is only a

verbal statement that notice of this consolidation motion was sent to all the right people. AENO notes it never said that consolidation would have been difficult when the three causes (see Order No. 642156) were consolidated.

2) AENO notes that jurisdiction can be raised at any time, even if such was not raised before the ALJ at the time of the hearing. AENO never argued that the captioned causes be heard individually, but rather split up by counties.

3) AENO notes when Newfield filed its cases in Tulsa, AENO's witnesses must travel to Tulsa yet when in reverse there are cases filed by AENO in Oklahoma City and it requires Tulsa witnesses to travel to Oklahoma City, this then becomes an issue.

4) AENO disagrees with Newfield's statement that there's a separate election in every cause. AENO notes that Exhibit "A" shows there is no separate election required in CDs 201501622, 201501996 and 201502293. AENO states this so the Court can be straight about what is on the record.

5) AENO believes dividing the captioned causes by counties is more appropriate than having one hearing. AENO does not believe that consolidating all nine causes will result in judicial economy. AENO feels it will be confusing and hard to deal with for any ALJ to hear all 9 causes at once, due to the separate issues involved and the various legal descriptions and facts therein to resolve.

6) AENO notes there was no updates to notice information to the 700-odd parties that Newfield claims to have given notice to. AENO will leave that issue to the Court to determine if such notice by Newfield passes the mustard test.

7) AENO requests the Motion to Consolidate the nine captioned causes be denied, or alternatively, consolidated as to the four different counties involved.

### **FURTHER RESPONSE OF NEWFIELD**

1) Newfield notes, definitionwise, the words difficult and complicated, when talking about notice, mean the same thing. Since Newfield used all of the same respondent/address list as AENO had on AENO's filings, Newfield does not understand why AENO is now complaining about notice.

2) Newfield believes splitting into counties versus one huge hearing still consolidates the same relief issues that AENO disagrees with herein.

3) Newfield notes the driving to Tulsa versus to Oklahoma City in order to have judicial economy makes no sense.

### **CONCLUSIONS**

**The Referee finds the ALJ's recommendation to grant Newfield's Motion to Consolidate should be affirmed.**

1) OCC-OAC 165:5-9-5(d) provides:

The Commission or Administrative Law Judge may consolidate two or more causes for hearing where such action would be just.

2) 12 O.S. Section 2018 provides in relevant part:

C. CONSOLIDATION. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

D. SEPARATE TRIALS. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

3) The testimony reflected that the above captioned causes have almost the same number of relief issues, give or take one less relief paragraph. The same Mississippi-Woodford play is across this whole area of the captioned causes. The Sycamore zone in Stephens County is the same as the Mississippi zones found in the other nearby counties. In some of these causes AENO is requesting for a separate election to the Woodford. The Hunton zone is a bracket formation below the Woodford and is only listed in case they accidentally get out of the targeted zone. Exhibit "A" reflects that there is a density Order No. 641543 for multiple wells in one cause and some of the other

causes had a separate election for certain zones. Exhibit "A" also reflects that the relief requested are either 8 issues or 9 issues. Countywise, two were in Garvin County with 8 to 9 issues; three were in Grady County with 9 issues; two were in Kingfisher County with 9 issues and two were in Stephens County with 8 issues. There was no request relating to fair market value as such has already been determined by the pooling orders. While there is a slight distinction in the requested eight issues or 9 issues relief in the various captioned causes, it is the Referee's belief that any differences could be dissected, communicated and discussed by the attorneys involved and while it may result in multiple hearing days it would not result in the amount of time that would be required if there were four or 9 separate hearings. While there are some separate election issues requested, these issues are not a complicated matter.

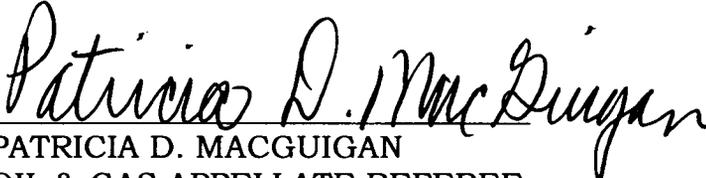
4) The Referee would therefore agree with the ALJ that the relief differences and matters involved are not complicated and judicial economy warrants all of the captioned causes be consolidated for purposes of having a consistent decision and appeals from such decision. Thus, the granting of the Motion to Consolidate these nine causes would serve judicial economy as similar evidence will be heard and would lead to a more reasoned decision in the nine cases. See *Liberty Nat. Bank and Trust Co. of Oklahoma City v. Garcia*, 776 P.2d 1265 (Okl. 1989); *Superior Oil Co. v. Oklahoma Corporation Commission*, 242 P.2d 454 (Okl. 1952); *Gettler v. Cities Service Co.*, 739 P.2d 515 (Okl. 1987); *Christian v. Gray*, 65 P.3d 591 (Okl. 2003); and *Patel v. OMH Medical Center, Inc.*, 987 P.2d 1185 (Okl. 1999).

5) Joinder of parties and of causes of action under the case law is not compulsory even where there are common issues of fact or law. *Independent School Dist. I-29 v. Crawford*, 688 P.2d 1291 (Okl. 1984). The statute governing joinder of claims is permissive in nature and does not alter the preexisting common law that governs the trial court's discretionary power over consolidation requests. Thus, consolidation of claims for trial is neither mandatory nor a matter of right. *State v. One Thousand Two Hundred Sixty-Seven Dollars*, 131 P.3d 116 (Okl. 2006).

6) An appellate must show a clear abuse of discretion by the trial court, as to the consolidation or separation for trial, of claims, cross-claims, counterclaims, or third-party claims. *Thomas v. E-Z Mart Stores, Inc.*, 102 P.3d 133 (Okl. 2004).

7) For the above stated reasons and law, the Referee finds that the ALJ's recommendation to grant Newfield's Motion to Consolidate should be affirmed.

RESPECTFULLY SUBMITTED THIS 24<sup>th</sup> day of July, 2015.

  
PATRICIA D. MACGUIGAN  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiett  
James L. Myles  
ALJ Michael Norris  
Eric R. King  
Gregory L. Mahaffey  
Ron M. Barnes  
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