

DECISION SHEET OF THE OIL AND GAS APPELLATE REFEREE

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

FILED
JUN 19 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. 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,)
GARVIN COUNTY, OKLAHOMA)

CAUSE CD NO.
201501707

**ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S
RULING ON A MOTION TO RE-OPEN AND TO DISMISS MOTION
TO CONSOLIDATE**

This Motion came on for hearing before **Michael L. Decker**, Administrative Law Judge for the Oklahoma Corporation Commission, at 9 a.m. on the 8th 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 15th 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

Newfield filed a Motion to Consolidate in the captioned causes on the 15th day of April, 2015. Said motion was heard on the 21st day of April, 2015, and the ALJ orally granted the motion to consolidate.

AENO timely appealed the ruling of the ALJ and said appeal was heard before the Oil and Gas Appellate Referee on the 15th day of May, 2015. The Referee orally upheld the granting of the motion to consolidate and is preparing her report.

AENO represents to the Commission that when Newfield filed its original motion to consolidate on April 15, 2015, Newfield failed to give proper notice of the hearing on the motion to consolidate in Cause CD Nos. 201501706 and 201501707 pursuant to OCC-OAC 165:5-9-2(b)(1)(A).

The Affidavit of Mailing on its face confirms that proper notice was not given in Cause CD Nos. 201501706 and 201501707.

AENO requested that Newfield's motion to consolidate be dismissed as to Cause CD Nos. 201501706 and 201501707, for the reasons stated, leaving Cause CD 201500622 to stand on its own.

AENO requested that an order issue reopening and then dismissing the motion to consolidate in Cause CD Nos. 201501706 and 201501707 with Cause CD 201501622. ALJ Michael L. Decker denied AENO's Motion to Re-Open and to Dismiss Motion to Consolidate.

ORAL REPORT OF THE ADMINISTRATIVE LAW JUDGE

1) **ALJ Michael L. Decker** recommended denying AENO's Motion to Reopen and to Dismiss Motion to Consolidate. AENO's position revolves around two matters. The first matter is that the Motion to Consolidate was dated by the file stamp from the Court Clerk's office on April 15, 2015. The Certificate of Mailing of the Motion to Consolidate showed that it was mailed on April 14, 2015. AENO argued that the Motion to Consolidate had not been filed before Newfield brought it in and file stamped it at the Clerk's office and Newfield should have waited until they got five business days from the time that it was actually filed in the Court Clerk's office. Newfield presented an Exhibit "D" which is a receipt showing his office had fax-filed the document on the 14th of April and the Motion to Consolidate had been mailed to the people that needed to be notified. They did not bring in the hard copy of the fax to file at the Court Clerk's office until the 15th day of April. They fax-filed it on the 14th and they mailed it on the 14th.

2) The rule on that particular matter indicates that you can fax-file and then you have to file the original within five days. Once the original is filed the date of the effective filing is the date of the fax filing. Therefore the ALJ made the determination that the fax was submitted to the Oklahoma City Court Clerk's office on the 14th day of April, 2015 and the original was file-stamped on April 15, 2015 in the office of Tulsa, Oklahoma. Therefore, it was the ALJ's determination that the five business days argument made by AENO was not correct as they had fax-filed the document and it was mailed on the day they fax-filed it and the original they delivered the next day and filed. Therefore the filing date was April 14, 2015.

3) The second argument AENO presented was that Newfield failed to give proper notice of the hearing on the Motion to Consolidate to every respondent in CDs 201501706 and 201501707. The notice of the Motion to Consolidate was sent to a group of attorneys who had protested these cases in CD 201501622 which Newfield had filed prior to the cases of CD Nos. 201501706 and 201501707. AENO argued that Newfield had filed the Motion to Consolidate and they should have notified 80 plus people who were respondents on the applications which were submitted in CDs 201501706 and 201501707. The parties in opposition argued that they had protested CD 201501622 and the three cases are the same and the only people that were interested from a protesting prospective were parties that were known and that had filed protests in CD 201501622. The cases in CDs 201501706 and 201501707 were in the same vicinity and were similar in nature and therefore the Motion to Consolidate was sent to the people that the litigants knew were the most likely to be interested in a Motion to Consolidate.

4) Immediately after filing CD 201501706 and CD 201501707 case on the 2nd of April 2015, a few days from that time there were numerous entries of appearance and protests by the people that are involved in this dispute. It was the ALJ's recommendation based upon the arguments of the parties that the practical solution and the practical construction of rule OCC-OAC 165:5-9-2(b)(1)(A) would be to focus in on the people that the parties knew were going to be protesting. There was already one of these cases that was subject to the Motion to Consolidate that was protested and people were identified, and since there had been entries of appearance from people immediately, it was apparent that that was the same for all the cases and that from a practical standpoint it was best to notify the parties that would be most likely to protest the case instead of 80 plus people that were probably not going to protest the matter. The Oklahoma Corporation Commission case summary computer docket sheets reflect the entries of appearances by parties that were protesting the matters and therefore the parties knew who was going to protest the Motion to Consolidate and notice was validly given to the parties who were most likely to be involved in the argument about the consolidation. Rule OCC-OAC 165:5-1-5(f) concerns the filing of documents pertaining to facsimiles. When they file the original, the fax's earlier date is deemed to be the filing date and that's what happened in the present situation.

DECISION OF THE OIL & GAS APPELLATE REFEREE

1) The Referee finds that the ALJ should be affirmed in part and reversed in part. The Referee finds 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 14th 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 finds 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.

I.

FAX FILING ISSUE

1) OCC-OAC 165:5-1-5(f) states:

Facsimile transfers. The court clerk shall accept pleadings submitted by facsimile transfer during regular Commission business hours pending payment of appropriate filing fee and submission of a proper original and requisite copies within five (5) calendar days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a)...A facsimile shall be deemed filed on date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within five (5) calendar days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will be destroyed and the original documents will not be deemed timely filed.

2) The transmission verification report, Exhibit "D", reflects that the fax was sent from the Tulsa office by Newfield to the Oklahoma City Court Clerk's office on April 14, 2015. The hard copy of the Motion to Consolidate was filed in the Tulsa Corporation Commission office on April 15, 2015. As the above listed rule indicates you can fax file a document and then you must file the hard copy original within five days of the fax filing. The above listed rule provides that a "facsimile shall be deemed filed on date of receipt" if the proper original is filed within five calendar days of the filed facsimile. Since the rules provide that the filing by fax on April 14, 2015 is the proper date of filing, then Newfield complied with OCC-OAC rule 165:5-9-2(b)(1)(A) which requires a motion to be served at least five business days prior to the date set for the hearing, as the

Motion to Consolidate hearing was set and heard on April 21, 2015. Thus, the Referee would affirm the ALJ concerning his recommendation on this issue.

II.

PROPER NOTICE

1) The Referee would reverse the recommendation of the ALJ which states that Newfield gave proper notice of the hearing on the Motion to Consolidate in CDs 201501706 and 201501707.

2) OCC-OAC rule 165:5-9-2(b)(1)(A) states:

(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.

It was the ALJ's recommendation based upon the arguments of the parties that the practical solution and the practical construction of the above stated rule would be to focus on the people that the parties knew were going to be protesting.

3) The Commission rules have the force and effect of law. *Wrotenberry v. Xanadu Exploration Company*, 168 P.3d 791 (Ok.Civ.App. 2007); *Public Service Company of Oklahoma v. State ex rel Corporation Commission*, 948 P.2d 713 (Ok. 1997); *Henry v. Oklahoma Corporation Com'n of State of Okl.*, 825 P.2d 1262 (Ok. 1990). The Supreme Court in *Public Service Co. of Oklahoma v. Oklahoma Corp. Comm.*, 918 P.2d 733, 737 (Ok. 1996) states: "Once these rules are in place an agency is required to follow them. Failure to do so can result in an invalidation of the proceeding." 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 (Ok. 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 (Ok. 1976).

4) Consequently, the Referee, pursuant to the above stated law, would recommend 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.

RESPECTFULLY SUBMITTED THIS 18th day of June, 2015.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
James L. Myles
Eric R. King
Gregory L. Mahaffey
Ron M. Barnes
Grayson M. Barnes
Robert A. Miller
Richard K. Books
David Pepper
David W. Mindieta
Freda Williams
Michael L. Decker, ALJ/OAP Director
Oil-Law Records
Court Clerks - 1
Commission Files