

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

COURT CLERKS OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

FILED
JUL 10 2015

<u>APPLICANT:</u>	CITIZEN ENERGY II, LLC)	
)	
<u>RELIEF SOUGHT:</u>	VACATE POOLING ORDER NO.)	CAUSE CD NO.
	251149 AS CLARIFIED BY)	201501941-T
	ORDER NO. 296048)	
)	
<u>LEGAL DESCRIPTION:</u>	SECTION 24, TOWNSHIP 10)	
	NORTH, RANGE 6 WEST,)	
	GRADY COUNTY, OKLAHOMA)	

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
AN ORAL APPEAL OF A MOTION TO DISMISS**

This Motion came on for hearing before **Curtis M. Johnson**, Deputy Administrative Law Judge ("ALJ") for the Oklahoma Corporation Commission, at 9 a.m. on the 9th day of June, 2015, in the Commission's Courtroom, Kerr Building, Tulsa, 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: **William H. Huffman**, attorney, appeared for applicant, Citizen Energy II, LLC ("Citizen"); **Roger A. Grove**, attorney, appeared for movant, Linn Operating, Inc. and Mid-Continent II, LLC ("collectively "Linn" or "Movant"); **John C. Moricoli, Jr.**, attorney, appeared for Robert A. Gerbrecht and OGP Energy Limited Partnership #1; 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 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 18th day of June, 2015. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

STATEMENT OF THE CASE

Movant requests the Commission enter an order dismissing Cause CD 201501941-T.

The application of Citizen was filed on April 27, 2015. According to the caption, the application seeks an order of the Commission vacating Pooling Order No. 251149 as clarified by Order No. 296048 (sic).

A review of Order No. 296048 reveals that it does not in any way clarify Order No. 251149 but in fact was a separate pooling order issued after said Order No. 251149. Citizen even acknowledges such in paragraph 2.c. of their application. There was an order which clarified Order No. 251149, but that was Order No. 332458. That fact was also acknowledged in paragraph 2.e. of Citizen's application.

OCC-OAC 165:5-9-2(d) specifically provides that "no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved *or the caption in the original application*, instead, any such changes from the original application shall require the filing of a new application in accordance with..." commission rules. Therefore, the error in the caption of CD 201501941-T can only be corrected by the filing of a new application. Consequently, Movant requests that the Commission enter an order dismissing the above cause without prejudice.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ Curtis M. Johnson stated that Movant filed a Motion to Dismiss the present cause CD 201501941-T which sought to vacate Pooling Order No. 251149 as clarified by Order No. 296048. Order No. 296048 did not clarify Pooling Order No. 251149 but was a separate pooling order issued after said Order No. 251149. There was an order which clarified Order No. 251149 but that was Order No. 332458. Movant cited OCC-OAC 165:5-9-2(d) that states that "no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application, instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter." The ALJ agrees with Citizen that notice was proper because the correct Order No. 332458 was in the body of the application. However, the ALJ did not dismiss the cause because notice was improper; the ALJ dismissed the cause because the caption was not correct.

The cause should be dismissed, so that the application can be filed with the correct order number listed in the caption. The ALJ granted the Motion to Dismiss upon these facts and pursuant to the above stated rule.

POSITIONS OF THE PARTIES

CITIZEN

1) **William H. Huffman**, attorney, appearing on behalf of Citizen, stated that two cases, *Holder v. Genie Oil & Gas Corp.* 885 P.2d 1388 (Ok.Civ.App. 1994) and *Oklahoma Gas & Elec. Co. v. Oklahoma Natural Gas Co.*, 205 P. 768 (Okl. 1921) say that if the pleading is sufficient for a person to understand the relief being sought and give them an opportunity to appear and be heard, then it is sufficient. This state is not a pleadings state but a notice state. Adequate notice is given when a person of ordinary intelligence can ascertain what is being requested or they are on notice to make an inquiry of what is being requested, and they have an opportunity to be heard. There is no question that our application does that.

2) In the *Oklahoma Gas & Elec. Co. v. Oklahoma Natural Gas Co.* case, supra, it says the jurisdiction of the Corporation Commission does not depend on the form or the sufficiency of any pleading. The test is not the relief being sought but the relief that is granted. It is not essential that a petition be filed with the Commission but that notice shall be had on the company or corporation to be affected. A pleading is not needed and the focus is on the requested relief.

3) Here, the relief requested is to vacate Order No. 251149. This Order was issued, then a second order, and then a third order to clarify Order No. 251149. The typo is that the second order number was used, but the third order should have been used. The amendment would be appropriate because the typographical error would be the only thing changed. Mr. Grove would agree that the purpose of rule is to prevent someone from filing a spacing application, discovering that it is already spaced and then amending the application to request a pooling. That would be switching the type of relief requested. We are not switching the relief but are still asking to vacate Order No. 251149. It is inconsequential that it is clarified by a subsequent order because the original order would no longer exist.

4) In *Holder v. Genie*, supra, Genie filed an application to space a property and then realized that part of the legal description of the property had been left out of the caption in its application. Genie filed an amended application to correct the error two days later and it was accepted by the Commission. The

Court of Appeals said that the notice was sufficient and that the Commission had jurisdiction. The rule says you cannot change the legal description but it was permitted by the Commission. Therefore ALJ Johnson's recommendation should be reversed and the Motion to Dismiss should be denied.

MOVANT

1) **Roger A. Grove**, attorney, appearing on behalf of Movant, stated that the rule says no amended application shall change the caption in the original application. It is unknown why the rule exists but the rule has been applied many times in the past and must be followed. In order to change the caption, the application must be refiled.

2) The *Oklahoma Gas & Elec. Co. v. Oklahoma Natural Gas Co.* case, supra, dealt with a contract between Oklahoma Natural Gas Company and Oklahoma Gas & Electric Company. It has nothing to do with this rule. These rules were not even adopted at the time and the case was a public utilities case. In the *Genie* case, there was no comment by the District Court or the Oklahoma Court of Appeals about the OCC-OAC 165:5-9-2(d) rule or the fact that the legal description had been amended. Amending the caption was apparently allowed to change the legal description but it is unknown if this referenced rule was in effect. Just because it was not raised, does not mean the rule is not effective.

3) This is a matter of compliance with Commission rules. Citizen is going to have to file an amended application anyway to correct the caption if it is ruled that they can do that. In addition, we think they are short on parties they notified. They are going to have re-mail it and re-publish it, so the same costs will still be there. Here we are talking about the filing fee to file a new application, and presently they have spent more than that in appealing this case. The rule is simple and straightforward.

4) The incorrect order number is not a minor error. Order No. 332458 clarified the scope of the original pooling order to say it covered all common sources of supply, and on a unit basis, not limited to the initial well. The fact that the Commission clarified that the order covers all those zones is an important order. It is appropriate to have the correct order number in all places in the application. The ALJ made the correct ruling.

RESPONSE OF CITIZEN

- 1) Citizen believes this rule was in effect back in 1982 to 1984 and in effect at the time of the *Holder v. Genie* case. Footnote 2 in the *Genie* case says that "[t]he caption identified the "Land Covered" as Section 28 of a township in Oklahoma County, when it should have identified only the SE/4 of the SE/4 of that section. The body of the application correctly limited the relief sought to the described one-sixteenth section." The Citizen application clearly shows the relief requested and has the correct number for the correction order. The notice has the correct order number. The only part of the pleading that has an error is the caption. Anyone with ordinary intelligence would have sufficient notice to ascertain what is being requested.
- 2) Being short on notice is an issue for another day, Citizen does not think Citizen is short on the people notified; however, the Commission will have to determine that at a later day
- 3) The Motion to Dismiss should be denied.

CONCLUSIONS

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

- 1) The Referee finds the ALJ's Oral Report granting Movant's Motion to Dismiss should be affirmed and is in accordance with law and free of reversible error.
- 2) OCC-OAC 165:5-9-2(d) provides in part:

An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application, instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter. (7-15-2003)

3) Citizen filed the present application on April 27, 2015. The caption of the application states that the relief sought is to: "vacate pooling Order No. 251149 as clarified by Order No. 296048."

4) Order No. 296048 did not clarify pooling Order No. 251149 but was a separate pooling order issued after Order No. 251149. There was in fact an order which clarified Order No. 251149 but that order was No. 332458 which was issued on November 16, 1988. Order No. 332458 clarified the scope of the original pooling order to say it covered all common sources of supply and was on a unit basis, not limited to the initial well. The Commission found the second pooling Order No. 296048 had expired on its own terms as no well was drilled pursuant to said order and Order No. 251149 pooled the unit and not the wellbore. Order No. 296048 issued on April 10, 1986 pooled the interests of various owners in the Cottage Grove, Hogshooter, True Layton, Checkerboard, Big Lime, Oswego, Lower Pennsylvanian sands, Mississippi, Woodford, Misener and Hunton common sources of supply underlying Section 24. As stated no well was drilled pursuant to said order. Citizen requested in this cause that an order issue vacating Order No. 251149, as clarified by Order No. 332458, as to the Prue, Skinner, Red Fork, Bartlesville, Woodford, Hunton and Viola common sources of supply.

5) The Commission rules have the force and effect of law. *Wrotenberry v. Xanadu Exploration Company*, 168 P.3d 791 (Okl.Civ.App. 2007); *Public Service Co. v. State ex rel. Corporation Comm.*, 948 P.2d 713 (Okl. 1997); *Henry v. Corporation Com'n of State of Okl.*, 825 P.2d 1262 (Okl. 1990). The Oklahoma Corporation Commission is constitutionally endowed with authority to make rules governing procedure and practice before the Commission. Okl. Const. Art. IX, Section 18; *H.F. Wilcox Oil & Gas Co. v. State et al.*, 19 P.2d 347 (Okl. 1933). The Supreme Court in *Public Service Co. of Oklahoma v. Oklahoma Corp. Comm.*, 918 P.2d 733, 737 (Okl. 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 a proceeding." The Supreme Court of Oklahoma in *Henry v. Corporation Com'n of State of Okl.*, supra, at 1267 states:

These rules, regulations and standards adopted by the Commission have the force and effect of law. When an administrative agency such as the Commission promulgates rules to govern its proceeding these rules must be scrupulously observed. Once the agency creates procedural rules it denies itself the right to violate these rules, and an action taken in violation of these procedural rules will be stricken down by the courts. This doctrine was announced in the case of *United States ex rel. Accardi v. Shaughnessy*. 347 U.S.

260, 265-67, 74 S.Ct. 499, 502-03, 98 L.Ed. 681
(1954).

6) The Referee would agree with Movant that the incorrect order number in the caption is not a minor error. Order No. 332458 was issued on November 16, 1988 clarifying Order No. 251149. Order No. 332458 found a second pooling order issued covering the unit, Order No. 296048, had expired on its own terms as no well was drilled pursuant to said order and Order No. 251149 pooled the unit and not the wellbore.

7) The Referee also agrees with Movant that the case of *Oklahoma Gas & Elec. Co. v. Oklahoma Natural Gas Co.*, 205 P. 768 (Okl. 1921) is not persuasive concerning this issue. OCC-OAC rule 165:5-9-2(d) was not in effect at the time in 1921 when this case was decided by the Supreme Court. In addition, the case of *Holder v. Genie Oil & Gas Corp.*, 885 P.2d 1388 (Okl. 1994) is not persuasive as the *Holder* case was decided in 1994 and the Oklahoma Corporation OCC-OAC rule 165:5-9-2(d) was not the same as the present OCC-OAC rule 165:5-9-2(d). OCC-OAC rule 165:5-9-2(d) provided at the time of the *Holder* case:

(d) Amendment. Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or a supplement, deletion of language or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application may be filed in a conservation or pollution cause and is acceptable where notice is given according to the statutes or rules under which the original application was filed. **Provided, however, no amended application shall be filed that changes the applicant's name or the type of relief requested in the original application.**

8) In the *Holder* case Genie Oil and Gas Corporation filed an application with the Corporation Commission to pool the interests in an existing 40-acre oil and gas drilling and spacing unit and to designate Genie as the operator of the well which Genie planned to drill. After filing the original application Genie discovered that part of the legal description of the proposed unit had been left out of the caption in its application and two days later it filed an amended application to correct the error. Thus, the applicable rule at the time did not require that an amended application could not be filed concerning the legal description of the lands involved. Whereas the present rule implemented in 2010 states that an amended application may not be filed concerning the legal description of the lands involved, but instead a new application must be filed.

9) Consequently the Referee pursuant to the above stated present rule OCC-OAC 165:5-9-2(d) and the above stated law would recommend that the ALJ's decision be affirmed.

RESPECTFULLY SUBMITTED THIS 10th day of July, 2015.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
ALJ Curtis M. Johnson
William H. Huffman
Roger A. Grove
John C. Moricoli, Jr.
Michael L. Decker, OAP Director
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