

DECISION SHEET OF THE OIL AND GAS APPELLATE REFEREE

APPLICANT: CITIZEN ENERGY II, LLC)
)
RELIEF SOUGHT: HORIZONTAL DRILLING AND)
SPACING UNITS)
)
LEGAL DESCRIPTION: SECTION 1, TOWNSHIP 9)
NORTH, RANGE 6 WEST AND)
SECTION 36, TOWNSHIP 10)
NORTH, RANGE 6 WEST,)
GRADY COUNTY, OKLAHOMA)

CAUSE CD NO.
201505154-T

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: CITIZEN ENERGY II, LLC)
)
RELIEF SOUGHT: MULTI-UNIT HORIZONTAL)
WELL ROSEMARY 1H-36 WELL)
)
LEGAL DESCRIPTION: SECTION 1, TOWNSHIP 9)
NORTH, RANGE 6 WEST AND)
SECTION 36, TOWNSHIP 10)
NORTH, RANGE 6 WEST,)
GRADY COUNTY, OKLAHOMA)

CAUSE CD NO.
201505258-T

APPLICANT: CITIZEN ENERGY II, LLC)
)
RELIEF SOUGHT: MULTI-UNIT HORIZONTAL)
WELL - LOCATION EXCEPTION)
ROSEMARY 1H-36 WELL)
)
LEGAL DESCRIPTION: SECTION 1, TOWNSHIP 9)
NORTH, RANGE 6 WEST AND)
SECTION 36, TOWNSHIP 10)
NORTH, RANGE 6 WEST,)
GRADY COUNTY, OKLAHOMA)

CAUSE CD NO.
201505259-T

**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON
APPLICATIONS FOR EMERGENCY ORDERS**

The above applications for emergency orders came on for hearing before **Curtis Johnson**, Deputy Administrative Law Judge ("ALJ") for the Corporation Commission of the State of Oklahoma, on the 11th day of November, 2015, at 9:00 a.m. in the Commission's Courtroom, Kerr Building, Tulsa, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **William H. Huffman**, attorney, appeared on behalf of applicant, Citizen Energy II, LLC ("Citizen"); **David E. Pepper**, attorney, appeared on behalf of EOG Resources, Inc. ("EOG"); respondent **Ms. Freddie L. Robertson**, 8214 NW 11th Street, Oklahoma City, OK 7312, appeared through her spokesperson William Burkhalter, to protest; and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Oral Report of the Administrative Law Judge to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Appellate argument concerning the Exceptions was referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 16th day of November, 2015. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

Cause CD 201505154-T is the application of Citizen for a horizontal drilling and spacing units covering Section 1, T9N, R6W and Section 36, T10N, R6W, Grady County, Oklahoma. Citizen filed its application on October 23, 2015, for an order establishing 640 acre horizontal drilling and spacing units for the Woodford common source of supply underlying Section 1, T9N, R6W and Section 36, T10N, R6W, Grady County, Oklahoma, with the unit being the governmental section, providing any horizontal wellbore, from its point of entry and along any part of the lateral hereafter drilled to the Woodford common source of supply on the horizontal well drilling and spacing units established hereby, must be drilled no closer than 165 feet to the north and south unit boundary and no closer than 330 feet to the east and west unit boundary.

Cause CD 201505258-T is the application of Citizen for a multi-unit horizontal well, the Rosemary #1H-36, covering Section 1, T9N, R6W and Section 36, T10N, R6W, Grady County, Oklahoma. Citizen filed its application on October 29, 2015, requesting the Commission issue an order establishing a multi-unit horizontal well unit for the production of oil and gas from the Mississippian and Woodford common sources of supply. The proposed well will be located no closer than 2,400 feet to the south line and no closer than 1,940 feet to the

east line of Section 1, T9N, R6W, Grady County, Oklahoma; the completion interval in Section 1 will be no closer than 2,400 feet to the south line, no closer than zero feet to the north line and no closer than 1,320 feet to the east line of Section 1, T9N, R6W, Grady County, Oklahoma; the completion interval in Section 36 will be no closer than 165 feet to the north line, no closer than zero feet to the south line and no closer than 1,320 feet to the east line of Section 36, T10N, R6W, Grady County, Oklahoma.

Cause CD 201505259-T is the application of Citizen for a multi-unit horizontal well, location exception, for the Rosemary #1H-36 well covering Section 1, T9N, R6W and Section 36, T10N, R6W, Grady County, Oklahoma. Citizen filed its application on October 29, 2015, requesting the Commission issue an order permitting the drilling of a multi-unit horizontal well for the production of oil and gas from the Mississippian and Woodford common sources of supply at a surface location of no closer than 2,400 feet to the south line and no closer than 1,940 feet to the east line of Section 1, T9N, R6W, Grady County, Oklahoma; the completion interval in Section 1 will be no closer than 2,400 feet to the south line, no closer than zero feet to the north line and no closer than 1,320 feet to the east line of Section 1, T9N, R6W, Grady County, Oklahoma; the completion interval in Section 36 will be no closer than 165 feet to the north line, no closer than zero feet to the south line and no closer than 1,320 feet to the east line of Section 36, T10N, R6W, Grady County, Oklahoma.

Citizen has a rig under contract, contractual commitments, lease expiration issues and is ready to drill a horizontal well to the designated common source(s) of supply. If operations are not commenced immediately, Citizen will suffer a financial loss. The denial of these applications would result in economic waste. The Commission should establish the requested relief on an emergency basis and permit the drilling of the proposed well in order to prevent waste and protect correlative rights. Additional financial loss will occur if Citizen is not permitted to complete and test the test well prior to the issuance of a final order in these causes.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

ALJ Curtis Johnson granted the above applications for emergency orders. Citizen has leases expiring in this area and that was the basis for the emergencies. The cost to reacquire 430.41 acres would cost \$537,000 at current prices. Ms. Robertson had leased her 55.1 acres to Citizen and it was alleged that it would cost \$68,000 to reacquire just her portion of the lease and it is also subject to the expiration in that 430.41 acres. Mr. Burkhalter and Ms. Robertson gave the reason for their request to deny the emergencies and to deny the applications was that there was a potential for earthquakes relating to horizontal drilling and injection of salt water, and there was potential for sink holes. The ALJ stated he knew that there were concerns concerning the

earthquake activity in the State of Oklahoma, but he did not know of any earthquake activity that has been related or associated with fracture stimulation. Most of the information that has come forward regarding the earthquake activity had been salt water injection wells located in close proximity into the granite. A majority of those wells have been plugged back or deeply curtailed. The bottom line of this whole situation is these applications don't even concern any salt water injection facility associated with the well. There was testimony presented that the water would be trucked out of this area and injected into other wells. This, however, is not an application seeking an injection well. If Mr. Burkhalter and Ms. Robertson want to protest the injection well they will later have an opportunity to do that, but this was not the time or the place, because these emergency applications have nothing to do with the salt water injection well and just concern the drilling of the Rosemary #1H-36 well. There was also testimony that the wellbore would not even go under the surface acreage or mineral acreage that is owned by Ms. Robertson. Based upon the testimony, the ALJ recommended that all three of the emergency applications be granted as there was an emergency of over a half a million dollar worth of leases going to expire if the applications were not granted. This was the basis for granting the emergency applications.

DECISION OF THE OIL & GAS APPELLATE REFEREE

- 1) The Referee finds the ALJ's determination to recommend the granting of Citizen's three applications for emergency orders is supported by substantial evidence, free of reversible error and should be affirmed.
- 2) The ALJ is the trier of fact, and it is his duty as the trier of fact to observe the demeanor of the witnesses, assess their credibility and assign the appropriate weight to their opinions. *Grison Oil Corporation v. Corporation Commission*, 99 P.2d 134 (Okl. 1940).
- 3) The Referee notes that the emergency orders sought by Citizen are interlocutory orders, not final orders, and are subject to the determination to be made on the merits. The Supreme Court stated in *DLB Energy Corp. v. Oklahoma Corp. Com'n*, 805 P.2d 657 (Okl. 1991):

An interlocutory order is an order which is not "final." Whenever a tribunal's ruling does not culminate in a judgment, its decision is interlocutory. Interlocutory orders do not operate to preclude a party from proceeding further in the cause nor do the orders prevent judgment. The issuance of an interlocutory order leaves the parties in court to try the issues on the merits....(footnotes omitted)

- 4) The emergency applications are temporary orders and will not prejudice the hearing on the merits. Citizen is willing to take the risks that the Commission may deny Citizen's applications for horizontal drilling and spacing units, and a horizontal well location exception for the Rosemary #1H-36 well. Any surface concerns that Ms. Robertson or Mr. Burkhalter have concerning the proposed well can be addressed at the merit hearing.
- 5) The Referee observed that the ALJ as the trier of fact determined that a financial loss existed. The financial loss concerned the expiration of 430.41 acres of leases which start expiring on January 5, 2016 with the remainder of the leases all expiring on January 17, 2016. The costs for reacquiring these leases would be \$537,000 at the current prices. Ms. Robertson obtained a lease from Citizen concerning 55.1 acres and if such lease expired her portion to reacquire the lease by Citizen would be \$68,000. The Referee agrees with Citizen's contention that Citizen's actions in this lease expiration situation are prudent and cause an emergency situation under the present facts.
- 6) The Referee notes that while the Citizen Rosemary #1H-36 well will be allowed to be drilled under the emergency applications, Citizen takes the risk that the applications may be denied at the merit hearing or the allowable restricted on the Rosemary #1H-36 well if there is evidence showing the Rosemary #1H-36 well could occasion waste or cause a violation of correlative rights of the owners within the common sources of supply.
- 7) For the above stated reason, the Referee would affirm the ALJ's ruling to grant the emergency applications of Citizen.

RESPECTFULLY SUBMITTED THIS 20th day of November, 2015.


PATRICIA D. MACGUIGAN
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
James L. Myles
William H. Huffman
Freddie L. Robertson
David E. Pepper
AAJ Curtis Johnson
Michael L. Decker, ALJ/OAP Director
Oil Law Records
Court Clerk
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