

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: Lighthouse Oil & Gas, LP)
)
RELIEF SOUGHT: INCREASED WELL DENSITY)
)
LEGAL DESCRIPTION: SECTION 23, TOWNSHIP 17)
NORTH, RANGE 19 WEST,)
DEWEY COUNTY, OKLAHOMA)

CAUSE CD NO.
201408566

FILED
FEB 04 2016

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: Lighthouse Oil & Gas, LP)
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RELIEF SOUGHT: HORIZONTAL WELL)
LOCATION EXCEPTION)
LEGAL DESCRIPTION: SECTION 23, TOWNSHIP 17)
NORTH, RANGE 19 WEST,)
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**REPORT OF THE OIL AND GAS APPELLATE REFEREE ON AN
ORAL APPEAL OF MOTION TO DISMISS**

These Causes came on for hearing before **Paul E. Porter**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 21st day of December, 2015, at 9:00 a.m. 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 the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **Gregory L. Mahaffey**, attorney, appeared on behalf of applicant, Lighthouse Oil & Gas, LP ("Lighthouse"); **Charles Helm**, attorney, appeared on behalf of JMA Energy Co., LLC ("JMA"); **Freda L. Williams**, attorney, appeared on behalf of Chesapeake Op., LLC and Chesapeake Exploration, LLC ("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 Motion to which Oral Exceptions were timely filed 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 4th day of January, 2016. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

Lighthouse moves to dismiss the above captioned causes. These causes were heard on the Commission's protest docket on the 11th and 12th days of March, 2015, resulting with the ALJ issuing his written Report of the ALJ on June 1, 2015, recommending that such cases be denied. Lighthouse timely filed exceptions to the ALJ's Report, with such exceptions still pending before the Referee. No order has issued in these causes. Because of the drop in oil prices and economic conditions, Lighthouse will not drill the proposed Tonkawa and Cleveland wells at this time. Lighthouse requests that the Commission dismiss the causes without prejudice.

REPORT OF THE ALJ

ALJ Paul E. Porter stated Lighthouse requested an increased density and two location exceptions in these three causes. They were protested by JMA. There was a two day hearing on March 10 and 11, 2015. The ALJ issued his Report of the ALJ on June 1, 2015. Exceptions were filed by Lighthouse on June 10, 2015. The Appellate argument concerning the exceptions before the Appellate Referee was initially set on July 17, 2015 and was continued five times and is now set before the Appellate Referee on February 29, 2016. Lighthouse filed its Motion to Dismiss without prejudice on December 10, 2015. ALJ Porter heard and denied Lighthouse's Motion to Dismiss on December 21, 2015.

2) Lighthouse argued before the ALJ that they had a right to dismiss these cases without prejudice just as parties in the district court pursuant to 12 O.S. Section 683 have a right to file a motion to dismiss a case before a final submission of a case to a jury or to the court. The rules however at the Commission are different. See OCC-OAC 165:5-9-2(e)(1). If you allow a party to dismiss a case without prejudice when there is no final order issued from a contested hearing where an ALJ has been filed then every time someone would lose their case, they would just withdraw it and get another bite at the apple, over and over again.

3) If Lighthouse wants to refile these cases, they can do so after a final order issues from the ALJ Report and appeal process.

4) The Commission operates fundamentally different than the district court operates and our rules provide in OCC-OAC 165:5-9-2(e)(1) that a party may file a motion to dismiss only prior to the record being opened at the hearing on the merits in a cause.

POSITIONS OF THE PARTIES

LIGHTHOUSE

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Lighthouse, notes that these cases were tried last spring when oil prices were up to \$60 a barrel. Lighthouse believes their use of a substitute geologist, who did not prepare the maps, was the difference in the ALJ's decision.

2) Lighthouse argues that it will be substantially more difficult to refile this case if a denial on the merits occurred instead of the requested dismissal.

3) Lighthouse notes that engineering evidence shows one well cannot drain the entire section. Lighthouse further notes that the Commission has granted density exceptions in other sections with the same common source of supply.

4) OCC-OAC 165:5-13-3(e) rules of evidence provides that the Oklahoma Corporation Commission and the ALJ shall follow the rules of evidence applied in the district courts of Oklahoma except where such rules may be relaxed where the Commission or the ALJ finds that it is in the public's interest to do so. 12 O.S. Section 683 states that a plaintiff can dismiss in district court a case before a final submission of the case to a jury or to a trial court. Lighthouse thinks that should apply here. There is a recommendation from the ALJ and if it is appealed the Appellate Referee's decision has to be submitted before the full Commission to make a decision. If we were in the

district court the plaintiff in this case, Lighthouse, could dismiss without prejudice.

5) Lighthouse argues that 12 O.S. Section 2012 (G) applies to these cases and that since this case has not gone before the full Commission for a decision that the Motion to Dismiss should be granted.

6) Lighthouse argues if the Motion to Dismiss is not granted judicial inefficiency and waste would occur because Lighthouse will continue the appeal process even though they do not plan on drilling with the current economic conditions.

7) Lighthouse argues that a dismissal would not be prejudicial towards JMA because they will be able to use the initial evidence and ruling from the ALJ if Lighthouse refiles when economic conditions improve.

8) Lighthouse request that the decision of the ALJ be reversed and the disputed cases be dismissed without prejudice.

JMA

1) **Charles L. Helm**, attorney, appearing on behalf of JMA, argues that there would be substantial prejudice against JMA if the Motion to Dismiss were granted.

2) JMA notes that they expected to argue a motion to reopen and that JMA believes Lighthouse intends to re-file if the Motion to Dismiss were granted.

3) JMA argues that they asked for affirmative relief from the ALJ that all three applications be denied during the full evidentiary hearing.

4) JMA believes that Lighthouse is only pursuing a Motion to Dismiss because the ALJ denied their motion to reopen which results in Lighthouse not being able to use their new witness and evidence. Now, Lighthouse is correct in its analysis of what the resulting consequences and the distinction between an order denying and an order granting a dismissal without prejudice. A dismissal without prejudice makes the assumption that there's never been a trial, there's never been a hearing, there's never been a ruling, there's never been exceptions filed. Lighthouse is going to say these cases have no meaning. It's as though they never occurred because you didn't get a final order denying the cases, so they had no affect on Lighthouse's ability to file a brand new case and start over. It's as though we never had a hearing.

5) JMA argues the Motion to Dismiss was just a calculated move by Lighthouse because they attempted to proceed at the merit hearing without their scheduled witness and did not succeed, so Lighthouse had to decide between an order denying or attempt to receive an order granting a dismissal without prejudice.

6) JMA asserts that there must be an order denying this case based on the ALJ's decision and the facts of the case. Then Lighthouse has every right to go file a new application whenever they want. But the distinction is huge between an order denying and an order granting a motion to dismiss. Lighthouse wants to argue we just want to dismiss without prejudice because really we didn't try it. We didn't try it as well as we'd like to. We just didn't do a very good job that first time but you can't use any of those facts because they're meaningless in the new cases because the Commission has ruled on this. They said we can dismiss without prejudice. The previous case happened.

7) JMA dismisses Lighthouse's claim that they don't want to spend the time or expense arguing the appeal as JMA has spent an incredible amount of time, money, and expense in pursuit of the requested affirmative relief.

8) JMA asserts that this case should not be dismissed because the procedural rules of District Court, 12 O.S. Section 683, say that a case cannot be dismissed without prejudice once the case has gone to the jury or to the judge for decision.

9) JMA argues that under Commission rules Lighthouse had the opportunity to dismiss this case without prejudice any time before the trial started on March 11, 2015.

10) JMA argues that the case cannot be dismissed without prejudice if the record has been opened or if a party has requested affirmative relief, see OCC-OAC 165:5-9-2(e)(1). JMA argues that both circumstances have occurred.

11) JMA asserts that it would be prejudicial and substantial abuse of process would occur if Lighthouse's Motion to Dismiss without prejudice were granted because this hearing could not be used as evidence in a new proceeding.

12) JMA requests that the case should proceed so finality can occur for a case that has been heard before the Commission.

RESPONSE OF LIGHTHOUSE

- 1) Lighthouse argues that JMA did not file an application to request for affirmative relief so JMA is unable to have affirmative relief.
- 2) Lighthouse notes that since they filed the motion to reopen the price of oil has dropped, which resulted in a significant change in economic condition. So, Lighthouse could not financially justify the development in this case and decided to pursue dismissal.
- 3) Lighthouse argues that under Commission rules and 12 O.S. Section 683 the motion to dismiss should be granted because no order has issued or has been submitted from the full Commission.
- 4) Lighthouse argues that the ALJ's ruling denying the Motion to Dismiss was not well founded and it would be more appropriate to dismiss these cases without prejudice.

RESPONSE OF JMA

- 1) JMA believes an order has been issued in this case since the ALJ's decision and it was sent to the Commissioners, and they ordered the case before the Referee.

CONCLUSIONS

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

- 1) OCC-OAC 165:5-9-2(e) provides:

Dismissal. The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said cause by submitting a proposed order dismissing the cause to the Office of Administrative Proceedings. Such dismissal shall not dismiss the cause as to affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has failed to receive notice of the dismissal or who has requested affirmative relief, such respondent may enter any evidence into the record

and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

(1) At any time prior to the record being opened at the hearing on the merits in a cause, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened at the hearing on the merits in a cause, the cause may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party or record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a cause where a motion to dismiss has been filed, notice shall be served on each respondent in the cause.

2) OCC-OAC 165:5-13-3(e) provides:

Rules of evidence. The Commission and Administrative Law Judges shall follow the rules of evidence applied in the district courts of Oklahoma, except that such rules may be relaxed where the Commission or the Administrative Law Judge deems it in the public interest to do so....

3) Civil procedure rules in district court proceedings concerning motions to dismiss and time for those motions provide in 12 O.S. Section 683 as follows:

Dismissal of action - Grounds and time.

An action may be dismissed, without prejudice to a future action:

First, By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court.

* * *

Sixth, In all other cases, upon the trial of the action, the decision must be upon the merits.

4) 12 O.S. Section 2012, **Defenses and objections-When and how presented-By pleading or motion**, provides:

G. FINAL DISMISSAL ON FAILURE TO AMEND.

On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

5) The Referee will address the above stated statutes and rules in the order of their presentation above.

6) OCC-OAC 165:5-9-2(e) clearly provides that an application can only be dismissed with or without prejudice at any time prior to the record being opened at the hearing on the merits. In the present causes there has been a merit hearing and the ALJ has written his Report concerning said hearing. Exceptions were filed by Lighthouse concerning the ALJ's Report and the Commission referred the appellate exceptions to the Referee. The hearing on the appellate exceptions has been set five different times and continued five different times. The last hearing on the exceptions has been set by the Referee on February 29, 2016 at Lighthouse's request. Thus, OCC-OAC 165:5-9-2(e) prevents the granting of Lighthouse's Motion to Dismiss because it was presented after the record was opened, after the hearing was held, after the ALJ's Report, after the exceptions were filed by Lighthouse and after the referral by the Commission to the Appellate Referee. The general rules of the Commission have the force and effect of law and must be followed. *Brumark Corporation v. Corporation Commission*, 864 P.2d 1287 (Okl.Civ.App. 1993); *Ashland Oil, Inc. v. Corporation Commission*, 595 P.2d 423 (Okl. 1979).

7) Lighthouse asserts the district court civil procedure rules must be followed in these causes. However, OCC-OAC 165:5-13-3(e) states that the Commission and the ALJ should follow the rules of evidence applied in the district courts of Oklahoma but with the caveat that such rules may be relaxed where the Commission or the ALJ deems it in the public interest to do so.

Clearly, the Commission has its own rule concerning motions to dismiss in OCC-OAC 165:5-9-2(e) where it clearly states that a motion to dismiss will not be granted if the record has been opened at the hearing on the merits. Thus, the district court rules do not apply in these causes and can be "relaxed" if the ALJ deems it is in the public interest to do so.

8) Lighthouse argues that 12 O.S. Section 683 should apply in the present action and states that the motion to dismiss by Lighthouse should be granted. However, clearly 12 O.S. Section 683 states that a case may be dismissed without prejudice to a future action only before the final submission of the case to the jury or to the court. In the present case the merit hearing has already been heard, the ALJ has issued his Report and the Commission has referred the exceptions to such Report by Lighthouse to the Appellate Referee. Thus, this statute referred to by Lighthouse, 12 O.S. Section 683, does not apply in the present causes.

9) Lastly, the statute 12 O.S. Section 2012 clearly does not apply in the present causes. Section 2012 only applies to "Defenses and objections; When and how presented; By pleadings or motion". Subsection G only concerns a dismissal on failure to amend the pleadings filed in a case. The present causes do not address in any way amendment of pleadings and are not applicable to the present Commission causes.

10) JMA also argues in the present causes and the ALJ also states that if you allow a proceeding to be dismissed after the hearing has been held, an ALJ Report has been issued, the Commission has referred exceptions by the party losing the case to the Referee, and therefore there's no final order issuing from a contested hearing, then every time someone loses their case at the Commission you could just withdraw it and get another "bite at the apple". If it becomes the norm that if you haven't presented a very good case and you lose the case, why not just dismiss it? You then can file a motion to dismiss and then refile the next week and do a better job the second time at trial. The Commission rule however states otherwise and a party cannot dismiss without prejudice if the records have been opened and in the present causes there has been an evidentiary trial, an ALJ Report, exceptions to the ALJ Report filed, and referral by the Commission to the Appellate Referee. Seeking to dismiss a cause after a hearing has occurred is against OCC-OAC 165:5-9-2(e) and also is contrary to Oklahoma case law. See *PCX Corporation v. Oklahoma Corporation Commission*, 699 P.2d 1103 (Okl.Civ.App. 1984); *White v. Amoco Production Company*, 704 P.2d 470 (Okl. 1985).

11) Therefore, the Referee agrees with the ALJ's recommendation and conclusions. For the above stated reasons and case law, the Referee would affirm the ALJ's recommendation to deny Lighthouse's Motion to Dismiss.

RESPECTFULLY SUBMITTED THIS 4th day of February, 2016.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
ALJ Paul E. Porter
Gregory L. Mahaffey
Charles Helm
Freda L. Williams
Michael L. Decker, OAP Director
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