

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

**FILED**  
MAR 10 2016

COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA

APPLICANT: CITATION OIL & GAS CORP. )  
)  
RELIEF SOUGHT: VACATE ORDER NO. 628349 ) CAUSE CD NO.  
) 201408700  
)  
LANDS COVERED: SECTION 9, TOWNSHIP 2 )  
) NORTH, RANGE 4 WEST, )  
) STEPHENS COUNTY, )  
) OKLAHOMA )

**REPORT OF THE OIL AND GAS APPELLATE REFEREE**

This Cause came on for hearing before **Michael J. Porter**, Administrative Law Judge for the Corporation Commission of the State of Oklahoma, on the 10<sup>th</sup> day of June, 2015, at 8:30 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 and taken under advisement on August 17, 2015.

**APPEARANCES:** **David E. Pepper**, attorney, appeared on behalf of applicant, Citation Oil & Gas Corp. ("Citation"); **Gregory L. Mahaffey**, attorney, appeared on behalf of protestants, Newfield Exploration Mid-Continent, Inc. ("Newfield"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The Administrative Law Judge ("ALJ") filed his Report of the Administrative Law Judge on the 13<sup>th</sup> day of November, 2015, to which 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 22<sup>nd</sup> day of January, 2016. After considering the arguments of counsel and the record contained within this Cause, the Referee finds as follows:

## **STATEMENT OF THE CASE**

**NEWFIELD TAKES EXCEPTION** to the recommendation of the ALJ to grant the application of Citation to vacate pooling Order No. 628349.

Citation filed this application to vacate pooling Order No. 628349 in Section 9, T2N, R4W, Stephens County, Oklahoma. Citation had announced a protest of Cause CD 201403141-T to Newfield. Newfield was aware of the protest of Citation of Cause CD 201403141-T, which was heard on June 17, 2014 before ALJ Kathleen M. McKeown. The order was to be held until such time as Citation and Newfield had come to an agreement regarding terms of a pre pooling letter agreement ("PPLA"). However, Newfield submitted the proposed order on July 3, 2015. The parties had not come to an agreement at the time the order was submitted.

### **NEWFIELD TAKES THE POSITION:**

1) The ALJ Report is contrary to the evidence, contrary to the law and this application constitutes an impermissible collateral attack upon unappealed pooling Order No. 628349.

2) The ALJ erred in failing to grant Newfield's Motion to Dismiss as Citation's "Application to Vacate" poses an impermissible collateral attack upon final, unappealed pooling Order 628349. Citation's untimely appeal of pooling Order No. 628349 months after all applicable deadlines, disguised herein as a new case "Application to Vacate," is impermissible as a collateral attack upon a final order of the Commission. Citation waived its right to appeal final pooling Order No. 628349 by failing to file a Petition in Error to the Oklahoma Supreme Court within 30 days of the issuance thereof, on or before August 27, 2014. See 52 O.S. Section 113. The Oklahoma Constitution prohibits this type of collateral attack in Article IX Section 20, which states that "a collateral attack on an order of the Commission which is not facially void is impermissible." See also 52 O.S. Section 111.

3) Newfield incorporates by reference the complete argument, discussion and analysis set forth in Section 1 of its Trial Brief (filed on June 10, 2015 in the present case CD 201408700).

4) Citation had proper notice of pooling Order No. 628349 at the address listed in the Section 9 Pooling of Cause CD 201403141-T. Citation presented a "red herring" about its address listed in said pooling Order as follows: "Citation 2002 Investment LP, Citation Oil & Gas Corporation, P.O. Box 200206, Dallas, Texas 75320-0206". Citation's corporate office is in Houston, Texas and,

apparently, the above described address is used primarily for receipt of revenue.

5) However, as shown on Exhibit 5, Newfield's April 16, 2014 pre-pooling proposal letter to Citation was mailed to the Dallas address and its certified mailing was signed by a Citation employee. Such address apparently was not prejudicial to Citation and, in fact, was acceptable to Citation, as evidenced by Citation's Senior Landman Jennifer Webb's May 29<sup>th</sup> e-mail to Beverly Brown of Newfield, responding to such letter. See Exhibit 11. Further, service of the application and notice of the pooling order application on Citation at the above described Dallas address was sufficient for Citation to contact Citation's attorney and announce a protest via e-mail dated June 2, 2014, the day before the initial hearing was scheduled on June 3, 2014. See Exhibit 16. Citation threatened to seek a venue change yet never filed such a motion to change venue, and, in fact, never filed any written appearance or notice of protest in the pooling order Cause CD 201403141-T. Citation never stated throughout the pooling order proceedings that it failed to receive proper notice. Once Citation's attorney filed an oral entry of appearance, Citation waived any objection it had to use of its Dallas address and the pooling proceedings.

6) The ALJ properly noted that never once throughout all the negotiations between Citation and Newfield did Citation request that its Houston address be used. See ALJ Report at Page 14, wherein the ALJ states, "it is also noted that Citation did not request that U.S. Mail correspondence be sent to their Houston address during the exchanges of e-mail."

7) Although it is irrelevant to the proper ruling in this case, the ALJ erred in stating that no proof was submitted by Newfield to show that the court in Tulsa was aware of the protest by Citation. Not only did counsel for Newfield, as an officer of the Court, advise ALJ McKeown in Tulsa of Citation's protest and Citation had agreed that the case could be heard on June 17<sup>th</sup>, but that the order would be held pending resolution of a PPLA, evidence was also offered by Newfield of such statement to the Commission/court.

8) As noted by the ALJ summary of the testimony of Beverly Brown, Newfield Landman, on Page 10, "She agreed that when the pooling hearing was held, that they did apprise the Judge that Newfield had a protest by Citation, but that Newfield was authorized to have the hearing and hold the order until the PPLA was resolved".

9) Mr. Brown further testified under oath as summarized on Page 11 of the ALJ Report, "However, she insisted that Judge McKeown was advised the matter was under protest and advised about the agreement to hold the order. She said she wasn't sure if it was in the transcript or if it was said prior to the hearing".

10) Apparently, the court reporter had not turned her recorder on and started the transcript at the time that such disclosure was made to ALJ McKeown prior to the June 17 hearing; however, sworn testimony of witness Beverly Brown is evidence and proof that the court in Tulsa was apprised of Citation's announced protest and that Citation had consented to the pooling proceeding going forward on June 17, 2014, as an uncontested matter.

11) Citation absolutely knew the case had been heard on the June 17, non-protest docket, no later than Monday, June 26, 2014, six days after the hearing, well before any order was submitted to ALJ McKeown. See Exhibit 46. In Newfield attorney's June 20 e-mail to Citation, Newfield stated "I did not hear back from you later Tuesday, when I tried to call you from Tulsa, so I heard this case, but I'm holding the order until you confirm the PPLA has been signed."

12) If Citation believed notice was improper or, more importantly, if Citation believed that Newfield should not have heard this Section 9 pooling case unprotested on Tuesday, June 17<sup>th</sup>, it should have immediately filed a motion to reopen. Citation did not file a motion to reopen in June, it did not file a motion to reopen in July, after a pooling order had been submitted to the ALJ, and it did not file a motion to reopen or vacate the Pooling Order in August, even after Citation learned a pooling order had issued, and even after their lawyer, Mr. Pepper, threatened to file a motion to reopen.

13) See Exhibit 46, containing July 31, 2014 e-mail from Newfield's attorney to Citation's attorney asking him to advise where he is on comparing the Newfield vs. Citation PPLAs. This e-mail was sent three days after the pooling order issued. Also, see Exhibit 27, August 5<sup>th</sup> e-mail advising that Citation's attorney had called Newfield's attorney on Friday, August 1<sup>st</sup>, and threatened to file a motion to reopen the pooling Order No. 628349 if "we did not finalize a letter agreement with Citation." Citation's attorney even called Newfield's attorney on August 5<sup>th</sup> saying that Citation sent another Letter Agreement to Newfield to review (which was incorrect, Citation never sent another letter agreement to Newfield). The August 5<sup>th</sup> date was eight days after the pooling order issued and, if Citation believed that entry of the pooling order was improper or that no PPLA was going to be signed by the parties, Citation was within the ten day time period permitted under the OCC rules to file a motion to reopen or motion to vacate. No motion to reopen or vacate was ever filed.

14) This application to vacate pooling Order No. 628349 was filed three months after the time had expired on August 27, 2014 to appeal the pooling order to the Oklahoma Supreme Court, eight weeks after Citation had accepted the bonus money tendered by Newfield, and approximately three weeks after it became public knowledge that the Jarred well was a tremendous producer. See Exhibit 28, Newfield's Form 8-K filed September 18, 2014 with the SEC disclosing that the Jarred well was the first well completed in the Springer play

in the scoop area and such well had an initial production rate of approximately 1,950 BOEPD and a ten day average of more than 1,500 BOEPD.

15) The ALJ erred in granting the Citation application because Citation would have been required under either PPLA to make a timely election to participate under the pooling Order No. 628349 which it did not do. As noted in the testimony of the witnesses, both the Citation landman (Jennifer Webb) and the Newfield Landman (Beverly Brown), as confirmed by review of e-mails and the different versions of the PPLA, Citation: 1) wanted Newfield to Joint Interest Bill Citation for drilling and completion costs; 2) wanted Newfield to agree to give Citation well information regardless of whether or not Citation participated and paid its well costs; and 3) wanted Newfield to send monthly production data. The Citation landman admitted on cross-examination that she had never seen the Commission enter a pooling order granting these three items. These three provisions were unacceptable to Newfield and none of these items are available from the Commission in any pooling order that the undersigned has ever seen issued. Even if Citation had its day in court to protest the Newfield pooling applications, the Commission would not have given it any of these three requested items.

16) It was the understanding of counsel for Newfield, from a July 1<sup>st</sup> conversation with Citation's attorney, that it was agreed that Citation would not get the above three items from the Commission in a protested hearing, thus, Citation was going to sign Newfield's PPLA. Newfield's attorney, based upon his July 1<sup>st</sup> conversation with Citation's attorney, submitted the pooling Order No. 628349 on July 2<sup>nd</sup> before he left for a two week family vacation to Europe.

17) Citation's proposed PPLA required it to timely make an election under the pooling order: "Paragraph 2,...notwithstanding any provisions to the contrary, Citation shall provide to Newfield in writing, its election whether to participate with some or all of its interest as required under the terms of the pooling order." See Exhibit 11.

18) Likewise, the Newfield PPLA, sent to Citation the day after receipt of Citation's proposed PPLA states as follows: "Paragraph 3,...It is agreed by the parties hereto that in the event Citation should elect to participate with all or any portion of its interest in the joint of a well to be drilled under the Pooling Order, then Citation shall have fifteen (15) days upon receipt of notice from NFX MC to pay its proportionate share of the completed well costs for said well with payment notice to be sent in writing no sooner than thirty (30) days prior to anticipated commencement of operations for the actual drilling of the well." See Exhibit 12.

19) If Citation and Newfield had signed either one of the above PPLAs, the results would be no different then what has occurred. Citation would be out of

the well and unit as a participant for failing to timely elect under the pooling order to participate and would be deemed to have accepted a cash bonus option and royalty.

20) The ALJ erred in failing to deny Citation's application under the doctrines of waiver, acceptance of benefits under the pooling order, estoppel, laches and unclean hands. The doctrines of waiver, Estoppel, acceptance of benefits, laches and unclean hands apply to Commission pooling orders. Newfield adopts and incorporates its filed Trial Brief.

21) Citation waived any right it may have had to challenge the pooling order by accepting and depositing Newfield's pooling bonus check. Further, under the acceptance of the benefits doctrine, Citation is barred from appealing the pooling order (a final judgment as of August 27, 2014) under which they have accepted the benefits. In this case, Citation had an opportunity to appeal the pooling order or to timely file a motion to reopen or to timely file a motion to vacate. However, Citation chose to accept the fruits of the pooling order by depositing the pooling bonus check in its general account thus, waiving a known right to protest or challenge the terms of the pooling order.

22) Citation's application to vacate is also barred by the equitable doctrine of estoppel. Estoppel by silence is applicable when one "has been silent on some occasion when he should have spoken" to the detriment of another party. Such doctrine applies to Citation's conduct subsequent to the Commission's issuance of the pooling order in failing: (1) to respond to inquires regarding a PPLA; (2) in failing to make an election after issuance of the pooling order; (3) in failing to timely file a motion to reopen or motion to vacate the pooling order or otherwise to timely challenge the pooling order; and (4) Citation's conduct manifesting its intent to accept the terms of the pooling order by depositing the pooling bonus payment check in its general account. Only after Newfield issued a press release disclosing the excellent results of the Jarred well did Citation attempt to return the pooling bonus payment and filed this application to vacate the pooling order. Newfield acted in detrimental reliance upon Citation's silence in that Newfield assumed all the risk of completing the well, without Citation's participation, and Newfield paid for Citation's share of completed well costs in the approximate amount of \$360,000.

23) Citation's application should also have been denied under the doctrine of unclean hands. Even the ALJ believed that Citation had unclean hands as set forth on Page 14 of the ALJ Report, "In this matter, neither party has clean hands."

24) Citation's Application to Vacate Order No. 628349 is an impermissible, collateral attack upon and belated appeal of the pooling order and should be denied. Citation's time to appeal has run and it did not file either a timely motion to reopen or a timely motion to vacate the pooling order. The

Commission had the jurisdictional power to issue the Pooling Order. The Commission is not in the business of enforcing private agreements. If Citation truly believed Newfield was in breach of its agreement to hold the pooling order, until Citation decided to sign a PPLA, it should have timely objected in June after the unprotested hearing occurred, or in July after it learned that a pooling order had been submitted to the ALJ and certainly no later than August 7, 2014 by filing a motion to reopen or a motion to vacate. After August 7<sup>th</sup> and before August 27<sup>th</sup> Citation should have filed an appeal to the Oklahoma Supreme Court of the pooling order. In all events, Citation should have refused the bonus payment, and should not have waited until Newfield bore the risk of a dry hole and had drilled a good well to file this Application to Vacate. The pooling order is valid, is not subject to Citation's improper, collateral attack, and the ALJ Report should be reversed and Citation's application to vacate denied.

**THE ALJ FOUND:**

1) It is undisputed that Newfield presented its pooling application to the Commission on an uncontested basis when it knew that Citation was opposed to the application without a PPLA. It is also undisputed that in CD 201403141-T no mention was made of the protest by Citation on the record. Newfield's attorney said he thought the protest was discussed with ALJ McKeown prior to the taking of testimony. However, that is an unsupported thought. Further it is undisputed that a copy of pooling Order No. 628349 was sent to Citation's revenue lockbox located in Dallas, Texas rather than Citation's corporate office in Houston Texas. In addition, the undisputed testimony is that there was a delay between the Order arriving at the revenue lockbox office and its eventual appearance in the land division at Citation's corporate office in Houston, Texas. It should be noted that in every e-mail exchange between Ms. Brown at Newfield and Ms. Webb at Citation, Citation's office address, in Houston, Texas, was shown below her name. It is also noted that Citation did not request that U.S. Mail correspondence be sent to their Houston address during the exchanges of e-mails.

2) In this matter, neither party has clean hands. At no time did Citation advise Newfield of their correct address when they knew or should have known the correspondence address that was used for the proposal letter and/or respondent list was sent to their lockbox address. So any delays in receiving pertinent information would be the result of Citation's oversight. This oversight led to a bonus check being deposited in a Citation account and muddying up the facts in this case. Citation also was not particularly timely in responding to Newfield's correspondence which lead to confusion for Newfield. Citation likely knew that Newfield had a rig schedule to follow to drill the Jarred well. Citation's delay in correspondence and their lack of communication with Newfield certainly made matters more difficult than they should have been.

Their lack of speed to resolve this matter once they were aware of the issuance of the order is also deplorable.

3) Newfield also has some issues with their dealings with Citation. The bonus check they issued to Citation was written 50+ days after the pooling order was issued. It was supposed to be paid within 35 days of the issuance of the pooling order. As Newfield admitted during the hearing, they have had business dealings with Citation in other areas and are familiar with Citation. Why Newfield did not know Citations home office was in Houston rather than Dallas is inexplicable. This is a company they have done business with several times. Citation was named as a respondent in the underlying pooling CD 201403141-T at the Dallas, Texas address. It would appear that in the future the Commission/ALJs might consider adding yet another question to their inquiries as it regards to the corporate home office location. It seems necessary to make the record clear when a witness is stating which address is a corporate address and specifying which address is valid for use by the respondent.

4) However, the biggest hurdle Newfield has in this cause is that they were aware that Citation was protesting the application in Cause CD 201403141-T. There was considerable posturing by both attorneys as to their understandings of the status of the case. The bottom line is that there is no proof that a deal had been reached regarding the PPLA. As noted by the ALJ, there was nothing documented. Newfield contends that Citation was instructed to proceed with the hearing of the matter, that a deal would be made but the order was not to be submitted to the Commission/court. The order was submitted to the ALJ that heard the matter. No proof was submitted to show the Commission/court in Tulsa was made aware of the protest by Citation. The answer of "I think it was discussed" is not sufficient. There is no indication that a deal had been made. Neither attorney was aware of a deal settling the PPLA. It was not, as the term of art goes, "papered up". Plain and simple, the order should not have been presented to the ALJ for review until such time as the protest was actually resolved.

5) Therefore it is the recommendation to the Commission that pooling Order No. 628349 be vacated as to Citation and that Citation be allowed to present their protested case.

## **POSITIONS OF THE PARTIES**

### **NEWFIELD**

1) **Gregory L. Mahaffey**, attorney, appearing on behalf of Newfield, mentioned that Newfield owned approximately 65%, in excess of 416 acres in

Section 9 and in excess of 95%, 611 acres, in Section 16, whereas Citation owned 32.5 acres in Section 9.

2) Newfield was aware that Citation's protest was sent by e-mail prior to the merit hearing. Newfield had agreed to hold the incoming order until Citation signed off on the Newfield PPLA, so Newfield continued the cause for two weeks to allow for further negotiations. Newfield was aware that Citation wanted the option of Joint Interest Billing which was not shown in Newfield's PPLA.

3) Newfield was drilling the well and was getting pressure to submit the proposed order, so Newfield submitted the order before Citation had signed off on the PPLA, which resulted in pooling Order No. 628349 issued on July 28, 2014 in CD 201403141-T.

4) Newfield notes there was a series of e-mail discussions about the PPLA, with Citation sending a counter PPLA with the joint interest billing option included.

5) Newfield acknowledges the law does not allow a party to sit on one's rights. Newfield notes there was no Motion to Reopen filed by Citation. Newfield's bonus check was initially accepted then sent back two months later.

6) Newfield admits there is nothing in the record to indicate that ALJ McKeown was aware of the private agreement between Newfield and Citation.

7) Newfield believes there may have been a misunderstanding here yet believes Citation's actions here represent a impermissible collateral attack upon final Order No. 628349.

8) Newfield notes the case of *Crest Resources and Exploration Corp. v. Corporation Commission*, 617 P.2d 215 (Okl. 1980) found that once the election period expires, then the final order is beyond the reach of the Commission to modify the pooling order.

9) Newfield points out that 52 O.S. Sections 111 and 113 discuss that a party waives their right to appeal a pooling order by failure to file a petition in error within 30 days of a signed Commission order.

10) Newfield cites the case of *Holleyman v. Holleyman*, 78 P.3d 921 (Okl. 2003) where it says: "Neither may the docket boundary's extension render a judgment (or any of its parts) facially void as *coram non judice*." The Referee would incorporate by reference the Trial Brief filed by Citation on June 10, 2015.

11) Newfield believes it was the duty of Citation to file a Motion to Reopen if Citation disagreed with Order No. 628349. Newfield submitted the order

prior to Citation signing the PPLA due to Newfield's belief that Citation would sign it.

12) Newfield also notes no Motion to Vacate the pooling Order No. 628349 was made after 10 days nor was there any appeal to the Supreme Court. Newfield submits that Citation allowed the election period to expire and deposited the bonus check Newfield mailed to them.

13) Newfield found that Citation failed to do certain things. One, the administrative remedy was to have filed a Motion to Reopen/vacate or appeal. Thus, due to state statutes and applicable case law, the failure to do such made pooling Order No. 628349 final, making it beyond the power of the Commission to vacate or modify such order.

14) Second, Newfield believes the ALJ erred in failing to grant Newfield's Motion to Dismiss. Newfield asserts that Citation's application is an impermissible collateral attack. Newfield notes filing for a Motion to Reopen or Vacate would have been standard industry operating procedure since the results of the well were still unknown.

15) Newfield put up approximately \$775,000 to drill this well, putting up about 71 acres in Section 9 to that of Citation's 32.5 acres.

16) Newfield feels it is inappropriate timeline wise to grant Citation a new election almost two years later.

17) Newfield points out Citation did have proper notice of these proceedings per the Dallas lock-box address. Exhibit 5, the PPPL, was sent there. Newfield has numerous e-mails from Citation discussing these and other paperwork sent to the lock-box address.

18) Newfield notes there were several differences between that of Newfield and Citation's proposal letters. First, joint interest billing was not shown in Newfield's PPLA. Newfield points out that case law clearly states that security satisfactory to the well operator to protect the operator from financial loss is required. Second, Newfield required that Citation elect to participate before receipt of any well information. Newfield notes case law shows that a party is not entitled to well data unless one elects to participate in the well.

19) In the instant cause even if the letter agreement had been signed, if the party didn't make an election, the party would have been automatically out. Citation here neither elected nor gave any monies to the operator.

20) Newfield admits there was an issue with Citation's signing the PPLA and Newfield agreeing to delay the order for Section 9 until Citation signed the PPLA, but allowed the order for Section 16 (see Exhibits 22 and 23). Exhibit 24 shows Citation still wanted joint interest billing, even after all the previous

e-mail chatter. Exhibit 48 showed on July 8, 2014 an e-mail from Ms. Brown asking about the status of Citation executing the PPLA. Newfield informed Citation the proposed order had been submitted a week before, without having heard anything from Citation. Exhibit 26 shows the pooling Order No. 628349 was signed on 7-28-2014. Exhibit 27 e-mails, dated 8-5-2014, shows that Citation had called about filing a Motion to Reopen the cause.

21) Newfield notes the well was already being drilled at that time and Newfield had concerns about Citation wanting to participate due to not having elected. Newfield points out there were three days left before the ten day period would expire to file a Motion to Reopen or Motion to Vacate the pooling order. The election period goes by and the ten days to file a motion to Reopen goes by.

22) Exhibit 28 is a Form 8-K disclosing to the U.S. Securities and Exchange Commission on 8-18-2014 wherein Newfield announced its Springer shale play with an initial production of 1950 BOPD. Exhibit 29 is the bonus check sent to Citation of \$39,000 which was deposited into their bank. Newfield believes by acceptance of the bonus check that Citation accepted the benefits of the pooling. Newfield notes that Citation sent the bonus check back two months later, and it was resent to them again by Newfield (see Exhibit 33 and Exhibit 36).

23) Newfield inquired of Citation why there had been no motion to vacate or reopen with Citation having no answer. Newfield believes notice to Citation was proper.

24) Newfield disagrees that ALJ McKeown had no knowledge of the verbal agreement between Newfield and Citation. Newfield thinks the issue is irrelevant. However, in the transcript, page 103, it was the recollection that Newfield did apprise the ALJ that the hearing was to go forward but Newfield would hold the order until the PPLA issue was resolved between Newfield and Citation.

25) Newfield felt comfortable enough to submit the proposed order on July 1<sup>st</sup> despite no signature on the PPLA from Citation.

26) Newfield's Trial Brief shows that waiver and estoppel do apply to Commission orders.

27) Newfield notes the ALJ said both parties had unclean hands here. Citation can't sit idly by, not exercise their rights, let a well be drilled, let there be detrimental reliance where Newfield spent the money for Citation's interest, and know the results.. Then Citation comes back and says you really weren't supposed to submit that order, we really didn't have a PPLA, it doesn't matter that Citation didn't elect, let's go back to square one and re-open this and let Citation have a do-over. This is not how it works.

28) Newfield asserts it was not Newfield's place to file for a Motion to Reopen for Citation, rather Citation should have elected or not accepted the bonus check. Newfield believes for the above reasons, the ALJ's decision should be reversed and the Citation application either be dismissed or denied.

### CITATION

- 1) **David E. Pepper**, attorney, appearing on behalf of Citation, stated that any checks sent to the lock-box Dallas address were automatically deposited, i.e. no subjective analysis of the check until later. Citation tried to send the check back when Citation got notice of it.
- 2) Citation admits it had notice of the pooling as an e-mail protest was sent (see Exhibit 16). Citation sent the bonus check back once it was analyzed.
- 3) Citation did protest the cause. Citation did advise Newfield to proceed with the merit hearing yet hold off on submitting the proposed order until an agreement was reached, yet an agreement was never reached, despite the series of e-mails prior to the final order. Citation agrees there was a misunderstanding, as Newfield had said the order would not be submitted until an agreement was signed; however, Newfield submitted the order anyway.
- 4) Citation submits there is no record in the transcript where ALJ McKeown was informed of the verbal agreement between Newfield and Citation. Citation agrees there were a lot of negotiations yet no agreement reached.
- 5) Citation believes the ALJ's ruling to be proper, i.e. to vacate pooling Order No. 628349 concerning Citation's 32.5 acre interest only.
- 6) Citation thinks Newfield's idea of a collateral attack on a valid final order is trumped by the due process requirements of the Commission and the State/Federal constitutions, along with applicable case law. Citation believes due process is fundamental in being able to uphold a Commission order.
- 7) Citation notes the case of *Harry R. Carlile Trust v. Cotton Petroleum Corp.*, 732 P.2d 438 (Okl. 1986) supports the fact that before a person's interest can be adversely affected by a Commission proceeding, notice and an opportunity to be heard are requirements.
- 8) Citation asserts there was to have been no proposed order submitted until a signed agreement had been reached with Newfield.
- 9) Citation mentions the unpublished case of *Optima Oil & Gas Company, LLC v. the Corporation Commission of the State of Oklahoma and Mewbourne Oil*

*Company*, Case NO. 103742, (Okl.Civ.App. 2008) where Mewbourne did not advise the Court a case had been protested, resulting in the Court setting it aside because of due process. Citation submits the particular facts here do not warrant reversing the ALJ.

10) Citation protested the cause. Citation did negotiate with Newfield, after the hearing was concluded, yet no agreement was ever reached. Citation notes Newfield admitted the proposed order wasn't to have been submitted early, yet it was.

11) Citation has been deprived of its opportunity to be heard at the Commission in this cause. Citation notes the ALJ stated on page 14 of his ALJ Report: "the biggest hurdle Newfield has...is that they were aware that Citation was protesting the application." Citation agrees there was a misunderstanding by both parties.

12) Citation submits the bottom line was there was no proof that an agreement was reached between Newfield and Citation, i.e. no documentation. Citation notes Newfield could have informed the Tulsa court of Citation's protest, yet such is not indicated in the transcript.

13) Citation notes Newfield showed that Citation had appeared in the Tulsa case, yet this was actually not true, as Newfield merely entered an appearance for Citation. Citation never withdrew their protest.

14) Citation notes cases concerning due process, *Mullins v. Ward*, 712 P.2d 55 (Okl. 1985) and *Tucker v. New Dominion, L.L.C.*, 230 P.3d 882 (Okl. 2010), that before a person's interests can be adversely affected by a judicial process at a Corporation Commission adjudicatory pooling proceeding, such requires an opportunity to be heard.

15) Citation notes it is undisputed Citation protested yet Newfield submitted the order too early, resulting in due process not being followed. Citation asserts when due process was violated and not followed, any party can collaterally attack a final Commission order.

16) Citation clearly believes the e-mails generated between Newfield and Citation show no agreement was ever reached. Citation believes, absent some private agreement, Citation is entitled to its right to appear and be heard about this pooling Order No. 628349. Citation notes the previous Optima case was upheld by the Referee and by the Court of Appeals. Citation would request that the Commission vacate the pooling order as to the interest of Citation.

**RESPONSE OF NEWFIELD**

- 1) Newfield notes there were no objections to any previous mailings to the Dallas lock-box address until the receipt of the bonus check. Newfield considers Citation's comments about the lock-box and not accepting the benefit of the pooling order is a red herring.
- 2) Newfield admits that Citation did not file a formal entry of appearance in this cause CD 201403141-T.
- 3) Newfield sent the bonus check on 9-19-2014, about the same day the well results were released publicly yet Citation waited two months before resending it back to Newfield.
- 4) Newfield believes Citation did have proper due process and the discussion about the collateral attack issues were not trumped by due process.
- 5) Newfield contends that agreement between Newfield and Citation was for Newfield to proceed with the hearing, that a deal would be made, then an order would be submitted. Newfield thinks the facts show that Citation had due process and the opportunity to be heard yet Citation waived that right by not filing a Motion to Reopen.
- 6) Newfield notes the *Carlile* case said spacing did affect a person's right, regardless of the property interest, hence, actual notice was required. Newfield notes that Citation is not contesting notice of the pooling, as the e-mail chatter shows this.
- 7) Newfield disagrees if the protest by Citation had been shown in the record or not, that the outcome would have been any different. Newfield admits there was a private agreement yet differs in the outcome, i.e. Citation's remedy was to either file a Motion to Reopen or sue for breach of agreement.
- 8) Newfield authorized the submission of the proposed order contingent on Citation signing the PPLA, which never occurred.
- 9) Newfield thought Citation was aware that Newfield would not grant Citation their desired joint interest billing nor give Citation well information unless Citation elected to participate by signing the Newfield PPLA.
- 10) Newfield submits due process is not an issue here, rather, Citation waived their rights by failing to file a Motion to Reopen or Motion to Vacate the pooling order or to sue Newfield for breach of contract before the 10 days when the pooling order became final.

11) Newfield notes the circumstances of the Optima case are not the same as in the instant cause. Optima's protesting was not told to the Commission and Optima didn't say, go ahead and hear the case and then hold the pooling order. Newfield admits it delayed the proposed pooling order for a time until Newfield believed a deal could be reached, but no deal was reached and Citation didn't enter a PPLA.

12) Newfield notes even if the proposed order had been held up, one of the parties would have had to file a motion to reopen the cause to have it placed on the protest docket. Newfield thinks the actions of Citation here resulted in their waiving their right to appeal the ALJ's decision.

13) Newfield notes Citation accepted the benefit of the pooling by accepting the bonus check and now waits until the well results are known before complaining.

14) Newfield notes the responsibility here falls on Citation, as the cases cited in Newfield's Trial Brief show. Newfield believes Citation could have had their day in court by filing either a Motion to Reopen or a Motion to Vacate yet Citation did nothing. Newfield believes the Citation application should be dismissed as an impermissible collateral attack and/or denied for the above stated reasons.

## CONCLUSIONS

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

1) When issuing pooling orders the Oklahoma Corporation Commission is functioning in an adjudicatory capacity. The Commission's adjudicatory function is comparable to a court. Constitutional due process requirements governing notice apply to Commission adjudicatory proceedings in the same force and quality as to judicial proceedings. *Harry R. Carlile Trust v. Cotton Petroleum Corp.*, 732 P.2d 438 (Okla. 1986). Before a person's interest can be adversely affected by a judicial process or the Commission adjudicatory proceeding, the 14<sup>th</sup> Amendment to the United States' Constitution in Article II, Section 7 of the Oklahoma Constitution requires notice and an opportunity to be heard. *PFL Life Insurance Co. v. Franklin*, 958 P.2d 156 (Okla. 1998). The Court in *Tucker v. New Dominion L.L.C.*, 230 P.3d 882 (Okla. 2010) states:

Notice is jurisdictional and an indispensable element of due process, *Shamblin v. Beasley*, 1998 OK 88, ¶ 12, 967 P.2d 1200, 1209 and is the mechanism for affording the opportunity to be heard. *Grannis v.*

*Ordean*, 234 U.S. 385, 394 (1914). Due process "requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections." *Shamblin*, 1998 OK 88, ¶ 12, 967 P.2d at 1209; *Booth v. McKnight*, 2003 OK 49, ¶ 20, 70 P.3d 855, 862. "The 'due process of law' clause, however, does not impose an unattainable standard of accuracy." *Grannis*, 234 U.S. at 395. The test in determining if the requirements of due process have been met is whether, under all the circumstances, the person being summoned would have recognized that she was being haled into court. *Collingsworth v. Hutchison*, 1939 OK 17, ¶ 7, 90 P.2d 416, 418.

2) As stated above due process requires notice to be given by means reasonably calculated to inform all affected parties. *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okl. 1968). When a proceeding is likely to affect constitutionally protected property interests, notice to interested parties must be "reasonably calculated, under all circumstances" to apprise them of the pendency of the action and afford them an opportunity timely to interpose their objections. *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Notice is the fundamental element of due process as well as a jurisdictional requirement. *Union Texas Petroleum, A Div. of Allied Chemical Corp. v. Corporation Com'n of State of Okl.*, 651 P.2d 652 (Okl. 1982) Before jurisdiction may be exercised over a person in proceedings that may directly and adversely affect his legally protected interests, the minimum standards of due process require notice that is calculated to provide knowledge of the proposed exercise of jurisdiction and an opportunity to be heard. *Union Texas Petroleum*, supra, *Cravens v. Corporation Commission*, 613 P.2d 442 (Okl. 1980), *Application of Tubbs*, 620 P.2d 384 (Okl. 1980). "The right to a hearing is of little value unless adequate notice is given." *Harry R. Carlile Trust v. Cotton Petroleum Corp.*, supra, note 25.

3) In the present case Exhibit "A" represents the "Timeline of Events" and the evidence reflects that negotiations were ongoing concerning Newfield's PPLA and Citation's proposed PPLA from May 29, 2014 onward through August 5, 2014. The evidence reflects that there was an agreement between Citation and Newfield that the Newfield pooling application would be heard but the order would not be submitted until Newfield and Citation could come to an agreement concerning the PPLA. On June 2, 2014, Citation announced its protest of the Newfield's pooling application to Newfield. Newfield apparently ignored Citation and Newfield's agreement to hold submitting the order until after their PPLA agreement was entered into, as Newfield submitted the pooling order for the Goddard formation covering Section 9 to the Commission on July

3, 2014. The order was approved by the Commission on July 28, 2014. During that period of time Citation and Newfield continued to negotiate the PPLAs. Elections became due under the pooling Order No. 628349 on August 16, 2014. Newfield Check No. 77626 in the amount of \$39,000 was sent to Citation as bonus consideration for Citation's deemed interest in Section 9. The check went to a lock box which Citation uses as a revenue lock box where checks are automatically deposited and the check was deposited by Citation on September 25, 2014 without the knowledge of Citation as to what the check was for. When Citation finds out that the check is for the bonus, Citation issues their own Check No. 450739 on November 17, 2014 in the amount of \$39,000 to serve as a refund to the Newfield previously issued bonus payment check under pooling Order No. 628349. There were several communications on November 19, 2014 between Citation and Newfield concerning the status of Citation's interest and Citation informing Newfield that they would file an application to vacate as Citation has protested this proceeding and there had been an agreement between Citation and Newfield that an order would not be submitted until a PPLA had been signed, yet an order was submitted by Newfield in conflict with this agreement.

4) Citation informed Newfield of Citation's protest concerning CD 201403141-T on June 2, 2014, but the transcript does not reflect that ALJ Kathleen M. McKeown was informed about Citation's protest. Citation's appearance was listed but there is nothing in the transcript that states that there was a protest by Citation. Citation's protest was announced to Newfield on June 2, 2014 and the agreement concerning the holding of the order until Citation and Newfield could sign a PPLA was ignored when Newfield filed its pooling order in the Tulsa case. On November 20, 2014 Citation files the present application to vacate Order No. 628349.

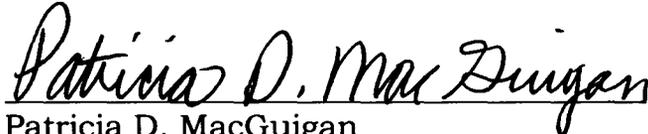
5) The Referee agrees with Citation that it has been deprived of an opportunity to be heard at this Commission. Newfield was aware that Citation was protesting the application in CD 201403141-T. There is nothing in the record that reflects Citation's protest and the evidence reflects that there was an agreement between Newfield and Citation to proceed with the hearing, but the order should not be submitted as there would be a PPLA signed by both parties. However, the order was submitted by Newfield and there was no reflection in the transcript that the ALJ in Tulsa was made aware of the protest by Citation. The Referee believes pursuant to the above stated law that Citation was denied its opportunity to be heard.

6) The Referee would also state that the *Optima Oil and Gas Company LLC v. the Corporation Commission of the State of Oklahoma and Mewbourne Oil Company*, Case No. 103742, (Okla.Civ.App. 2008) supports the ALJ's determination in the present case that Citation's interests were adversely affected by the judicial process at the Corporation Commission where the transcript does not reflect that the ALJ was aware of Citation's protest and the

order was submitted by Newfield contrary to the agreement made between Citation and Newfield that the order would be held until an agreement could be reached between Newfield and Citation concerning the PPLA.

7) For the above stated reasons and law, the Referee would affirm the recommendation of the ALJ.

**RESPECTFULLY SUBMITTED THIS 10<sup>th</sup> day of March, 2016.**



Patricia D. MacGuigan  
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony  
Commissioner Murphy  
Commissioner Hiatt  
James L. Myles  
ALJ Michael J. Porter  
David E. Pepper  
Gregory L. Mahaffey  
Michael L. Decker, OAP Director  
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