

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

FILED
AUG 09 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 589580) 201500644
)
LEGAL DESCRIPTION: SECTION 5, TOWNSHIP 16 NORTH,)
RANGE 3 WEST, LOGAN COUNTY.)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 589581) 201500645
)
LEGAL DESCRIPTION: SECTION 29, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 591874) 201500646
)
LEGAL DESCRIPTION: SECTION 36, TOWNSHIP 19)
NORTH, RANGE 4 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 599650) 201500647
)
LEGAL DESCRIPTION: SECTION 18, TOWNSHIP 18)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 601972) 201500648
)
LEGAL DESCRIPTION: SECTION 1, TOWNSHIP 18 NORTH,)
RANGE 4 WEST, LOGAN COUNTY,)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 603839) 201500649
)
LEGAL DESCRIPTION: SECTION 28, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 604345) 201500650
)
LEGAL DESCRIPTION: SW/4 SW/4 AND W/2 SW/4 AND)
SW/4 AND ALL OF SECTION 19,)
TOWNSHIP 18 NORTH, RANGE 3)
WEST, LOGAN COUNTY,)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 604350) 201500651
)
LEGAL DESCRIPTION: SECTION 26, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP. L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 604651) 201500652
)
LEGAL DESCRIPTION: SECTION 8, TOWNSHIP 17 NORTH.)
RANGE 3 WEST, LOGAN COUNTY.)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP. L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 605073) 201500653
)
LEGAL DESCRIPTION: SECTION 25, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP. L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 605440) 201500654
)
LEGAL DESCRIPTION: SECTION 15, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP. L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 606174) 201500656
)
LEGAL DESCRIPTION: SECTION 21, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 607352) 201500657
)
LEGAL DESCRIPTION: SECTION 6, TOWNSHIP 17 NORTH,)
RANGE 3 WEST, LOGAN COUNTY.)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 608451) 201500658
)
LEGAL DESCRIPTION: SECTION 20, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 609761) 201500661
)
LEGAL DESCRIPTION: SECTION 13, TOWNSHIP 18)
NORTH, RANGE 4 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 610165) 201500662
)
LEGAL DESCRIPTION: SECTION 24, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 610166) 201500663
)
LEGAL DESCRIPTION: SECTION 6, TOWNSHIP 17 NORTH,)
RANGE 3 WEST, LOGAN COUNTY,)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 610461) 201500664
)
LEGAL DESCRIPTION: SECTION 19, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 610896) 201500665
)
LEGAL DESCRIPTION: SECTION 9, TOWNSHIP 17 NORTH,)
RANGE 3 WEST, LOGAN COUNTY,)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 610899) 201500666
)
LEGAL DESCRIPTION: SECTION 2, TOWNSHIP 18 NORTH,)
RANGE 4 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 610907) 201500667
)
LEGAL DESCRIPTION: SECTION 36, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 611078) 201500668
)
LEGAL DESCRIPTION: SECTION 27, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 613527) 201500670
)
LEGAL DESCRIPTION: SECTION 30, TOWNSHIP 18)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 614655) 201500673
)
LEGAL DESCRIPTION: SECTION 35, TOWNSHIP 19)
NORTH, RANGE 4 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 614740) 201500674
)
LEGAL DESCRIPTION: SECTION 24. TOWNSHIP 17)
NORTH, RANGE 4 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP, L.L.C.)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 632729) 201500688
)
LEGAL DESCRIPTION: SECTION 36. TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP,)
L.L.C., RIVERFRONT)
EXPLORATION, LLC, STEPHENS)
PRODUCTION COMPANY, ROGER)
L. BEAVERS, MONCRIEF OIL)
PROPERTIES, LLC, SSC, INC.,)
SUNDANCE ENERGY, INC. AND)
GREENSTAR RESOURCES, LLC)
)
RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 602691) 201504809
)
LEGAL DESCRIPTION: SECTION 5, TOWNSHIP 17 NORTH,)
RANGE 3 WEST, LOGAN COUNTY,)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP,)
L.L.C., RIVERFRONT)
EXPLORATION, LLC, STEPHENS)
PRODUCTION COMPANY,)
GARRETT & COMPANY)
RESOURCES, LLC, GENIE OIL &)
GAS CORP., AND EQUITY, INC.)

RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 605275) 201504810
)

LEGAL DESCRIPTION: SECTION 16, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP.)
L.L.C., RIVERFRONT)
EXPLORATION, LLC, AND)
STEPHENS PRODUCTION)
COMPANY)
)

RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 607950) 201504811
)

LEGAL DESCRIPTION: SECTION 17, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP.)
L.L.C., RIVERFRONT)
EXPLORATION, LLC, MINESHAFT)
ROYALTIES, TETRA ENERGY.)
LLC, NEWKUMET)
EXPLORATION, INC. AND SSB)
PRODUCTION LC)
)

RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 607254) 201504812
)

LEGAL DESCRIPTION: SECTION 23, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP,)
L.L.C., RIVERFRONT)
EXPLORATION, LLC, AND DEVON)
ENERGY PRODUCTION, LP)

RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDER NO. 622799) 201504813

LEGAL DESCRIPTION: W/4 NE/4 OF SECTION 19,)
TOWNSHIP 18 NORTH, RANGE 3)
WEST, LOGAN COUNTY,)
OKLAHOMA)

APPLICANT: STEPHENS ENERGY GROUP,)
L.L.C., RIVERFRONT)
EXPLORATION, LLC. STEPHENS)
PRODUCTION COMPANY, BOBBY)
J. DARNELL, MULLER MINERALS.)
LLC, DORIL D. MOON AND MARY)
EDWINA MOON, SHIELDS)
EMPLOYEE COMPANY, LLC.)
SHOAL LAKE INVESTMENTS.)
LLC, AND JOHN P. SHIELDS, INC.)

RELIEF SOUGHT: MODIFICATION OF POOLING) CAUSE CD NO.
ORDERS NO. 608628 AND ORDER) 201504814
NO. 632734)

LEGAL DESCRIPTION: SECTION 30, TOWNSHIP 17)
NORTH, RANGE 3 WEST, LOGAN)
COUNTY, OKLAHOMA)

REPORT OF THE OIL AND GAS APPELLATE REFEREE

These Causes came on for hearing before **David Leavitt**, Administrative Law Judge ("ALJ") for the Corporation Commission of the State of Oklahoma, on the 17th day of December, 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.

APPEARANCES: **Gregory L. Mahaffey**, attorney, appeared on behalf of applicants, Stephens Energy Group, L.L.C.; Riverfront Exploration, LLC; Stephens Production Company; Roger L. Beavers; Moncrief Oil Properties LLC; SSC Inc.; Sundance Energy Inc.; Greenstar Resources, LLC; Garrett and

Company Resources, LLC; Genie Oil and Gas Corp.; Equity, Inc.; Mineshaft Royalties; Tetra Energy, LLC; Newkumet Exploration, Inc.; SSB Production LC; Devon Energy Production, LP; Bobby J. Darnell; Muller Minerals, LLC; Doril D. Moon and Mary Edwina Moon; Deep Rock Exploration, LLC; Shields Employee Company, LLC; Shoal Lake Investments, LLC; John P. Shields, Inc.; The Land Department, Inc.; Dale Folks, LLC; Black Diamond Oil Company; Suresh V. Dutta; Upland Exploration Inc.; Meagher Energy Company LLC; Randall L. Sewell and Kay M. Sewell; C3 Energy LLC; Apex Resources LLC; TR Energy LLC; Elson Oil Company; Saint Resources LLC; Ricks Family Investments LLC; Bickerstaff Associates, Inc.; Hy-Tech Energy Resources, Inc.; Weststar Oil and Gas Inc.; Craig G. Tirey Family Limited Partnership; Fall River Resources Inc.; MW Oil Investment Company, Inc.; Eagle Wind O&G LLC; TLC Energy Investments, LLC; River Resources, LLC; CMO Energy Partners II LP; Gamma Oil & Gas, LLC; Dale Folks, LLC; Shakti Energy, LLC; Parous Energy LLC; Carl Herrin Oil and Gas LLC; Jeff Hirzel and Carol Hirzel, Trustees of the Jeff and Carol Hirzel Family Trust Dated 2-1-12; SSB Production, LC; Tiptop Energy Production USA, LLC; Landpro Energy, LLC and Landpro Resources, LLC; Eagle Oil & Gas Co.; Baseline Energy Investments, LLC; HK Resources, LLC; Garrett & Company Resources LLC; J H H Jr Oil & Gas LLC; West Exploration, LLC; Thams Family Partnership LP; Arbuckle Enterprises Inc.; Mid-Continent II LLC; GJ Lee LLC Company; L. Spinner Platt; Vanell Oil & Gas LP; REI Corp.; RS Lee Enterprises; and Chesapeake Exploration, LLC; (collectively "Stephens" or "SEG"); **Mark Christiansen**, attorney, appeared on behalf of Stephens Energy Group, L.L.C.; **Richard K. Books**, **Eric L. Huddleston**, **Michael R. Perri**, and **Jason Dunn**, attorneys, appeared on behalf of U.S. Energy Development Corporation ("USED"); **David E. Pepper**, attorney, appeared on behalf of Devon Energy Production Company, LP; **Richard A. Grimes**, attorney, appeared on behalf of John P. Shields, Inc.; **John Shields**, John P. Shields Inc., 507 South 14th Street, Fort Smith, Arkansas 72901, appeared as an interested party; **Dwight Jones**, The Jones Family Revocable Trust, Joyce Tontz Jones, Trustee, 16608 Halbrooke Road, Edmond, OK 73012-6857, appeared as an interested party; **Bill K. Hoag**, P.O. Box 276, Jones, OK 73049, appeared Pro Se; **John W. Garrett**, Garrett & Company Resources LLC, 9701 North Broadway Extension, Oklahoma City, OK 73114 appeared as an interested party; **Gaylan Adams**, Sundance Energy Oklahoma, LLC, 13524 Railway Drive - Suite G, Oklahoma City, OK 73114, appeared as an interested party; **Charlene Glover**, from Chesapeake Exploration, LLC appeared as an interested party; **Gail Cummins**, 5215 New Tin Top Road, Weatherford, TX 76087, appeared Pro Se; and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The ALJ filed his Report of the Administrative Law Judge on the 20th day of April, 2016, 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 17th day of June, 2016. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

USED C AND STEPHENS TAKE EXCEPTION to the recommendation of the ALJ that the applications of Stephens be stayed until such time as the U.S. Court of Appeals for the Tenth Circuit has issued its opinion in response to Stephens' appeal.

These consolidated causes spring forth from a dispute between two operators, Stephens that also operates wells in Oklahoma as Stephens Production Company, and USED C, over which entity should be named the operator under a number of pooling orders. Although the Corporation Commission has exclusive jurisdiction to designate an operator under these pooling orders, this task is made more complex than is typically the case because Stephens is enjoined from operating by the Federal Court in the Western District of Oklahoma.

As a point of reference, Slawson Exploration Company, Inc. ("Slawson") was originally designated as the operator in these pooling orders which encompassed the Nemaha Ridge Project. These pooling orders are described in CD 201500644 through 201500689 and CD No. 201500434. Sometime thereafter, Stephens purchased Slawson's working interest in the Nemaha Ridge Project and moved to be named as the operator before the Corporation Commission.

USED C and Osage Exploration and Development, Inc. ("Osage") opposed Stephens being named operator and filed an action in opposition on November 19, 2014 in the Logan County District Court seeking a declaration that Osage is the duly elected successor operator to Slawson of wells in the Nemaha Ridge Project Area. On November 26, 2014, the lawsuit was removed to the Federal Court. See the U. S. District Court for the Western District of Oklahoma case in *Osage Exploration & Development, Inc. and U.S. Energy Development Corporation v. Stephens Energy Group*, Case No. CIV-14-1319-C. USED C then made a motion before the Corporation Commission to stay the proceedings related to Stephens application to be appointed operator under the pooling orders. On June 12, 2015, a hearing on the Motion to Stay was held and the ALJ granted the Motion based on the following findings:

a) Stephens, Osage, and USEDC are parties to a private agreement - the Joint Operating Agreement ("JOA") - that has a procedure to determine who is the eligible party to succeed Slawson as the operator of select units in the Nemaha Ridge Project. That private agreement is the subject of a federal lawsuit. It appears that this dispute arises from Stephens' unilateral decision to designate themselves as operator based on the fact of having bought a different interest in the particular unit;

b) due to the private outside agreement - the JOA - originally executed between the three parties of Osage, USEDC, and Slawson, Osage and USEDC are not bound under the pooling orders at issue;

c) Stephens bought out Slawson's working interests and therefore takes on Slawson's obligations, rights and responsibilities accordingly;

d) the Corporation Commission cannot adjudicate the rights between these parties in the Participation Agreement and Operating Agreement because it is beyond the jurisdiction of this Corporation Commission;

e) Stephens will not be harmed by this stay because the parties have allowed Stephens to continue to operate as if they were named operator. Stephens is capable of ensuring the continuance of benefits for all owners and royalty owners during the pendency of these cases;

f) based on the current filings before the Corporation Commission at this time, the Corporation Commission could name Stephens as operator if the Federal Court ruled in its favor. However, if the Federal Court does not rule in favor of Stephens, another entity would be required to file and undo such decisions if the Corporation Commission were to proceed in these matters;

g) due to this matter containing 27 causes to be heard before the Corporation Commission, potential problems could arise in the sheer number of hearing dates and the likelihood of different judges hearing different causes. While there may be simple issues in these cases, the number of causes to be heard could make these cases difficult to hear; and

h) after the Federal Court hearing, the Corporation Commission will be the tribunal to name a new operator. The parties are entitled to their due process hearing at the Corporation Commission after the Federal Court has issued its ruling in this matter.

On August 25, 2015, the Federal Court entered its Memorandum Opinion and Order granting summary judgment in favor of Osage and USEDC and denying

Stephens' motion for summary judgment that it should be the operator. In the corresponding Judgment the District Court:

a) declared Osage to be the operator of the relevant wells in the Project Area pursuant to the terms of the Participation and Operating Agreements; and

b) enjoined Stephens from conducting operations or retaining records with respect to any well in which Osage is the duly-elected operator.

Stephens then called for a vote to elect itself as the successor to Osage as operator. Osage and USEDC refused to participate in the vote, and Osage subsequently notified USEDC of its voluntary resignation as operator. USEDC then called for a vote, and USEDC was subsequently elected as operator.

On September 24, 2015, Stephens filed a Notice of Appeal for its appeal of the District Court's Judgment to the United States Court of Appeals for the Tenth Circuit. The appeal is now pending before the Tenth Circuit.

On or about October 2, 2015, Stephens filed amended applications seeking to proceed with its efforts to be designated as the new operator by the Corporation Commission and served Notices of Hearing on those amended applications for October 21, 2015. Stephens also filed new applications to be designated as the Operator in CDs 201504809, 201504810, 201504811, 201504812, 201504813 and 201504814.

On October 30, 2015 the Federal Court entered its Final Judgment declaring that USEDC is the operator of the wells which have been drilled and which are hereafter drilled in the Project Area pursuant to the terms of the Participation and Operating Agreements. The Final Judgment enjoined Stephens from conducting operations or retaining records with respect to any unit or well in which USEDC is the duly elected operator.

USEDC then filed its notices of protest to each of the new applications filed by Stephens and the causes were heard on December 17 and 18, 2015 and on January 6, 2016. After the hearing, the ALJ took the causes under advisement after receiving all of the parties' briefs and the transcripts on February 16, 2016.

USEDC TAKES THE POSITION:

1) The ALJ Report is contrary to the law, not supported by substantial evidence, is arbitrary and capricious.

- 2) The ALJ Report is not upon terms which are fair, just, and reasonable to all parties.
- 3) It was error for the ALJ to not designate USEDC as permanent operator of the units in question.
- 4) USEDC hereby reserves the right to amend this appeal at a later date pursuant to OCC-OAC 165:5-13-5.
- 5) USEDC requests that the Report of the ALJ be modified to designate USEDC as permanent operator of the units in question.
- 6) In addition to the reasons set forth in its initial Exceptions to the Report of the ALJ, USEDC incorporates by reference its Response to Stephens Energy Group, LLC and Stephens Production Company's Exceptions to the Report of the ALJ.

STEPHENS TAKES THE POSITION:

- 1) The ALJ Report is contrary to law, contrary to the evidence, and fails to prevent waste and protect correlative rights.
- 2) The ALJ erred, as a matter of law, in failing to designate a successor operator under the subject pooling orders.
- 3) After a four day trial, and after extensive briefing by the parties, the ALJ declined to designate a successor operator to Slawson, the OCC appointed operator under the subject pooling orders. Rather, the ALJ recommended that "this proceeding be stayed until such time as the United States Court of Appeals for the Tenth Circuit has issued its opinion in response to Stephens' appeal." The ALJ goes on to recommend that USEDC be named as Interim Operator under all of the pooling orders subject to these consolidated causes.
- 4) Such ruling by the ALJ flies in the face of the clear mandate of the Oklahoma Supreme Court: the Corporation Commission has exclusive jurisdiction to designate an operator under these pooling orders. The Supreme Court specifically held in *Crest Resources and Exploration Corporation v. Corporation Commission*, 617 P.2d 215 (Okl. 1980):

No attempted transfer of a unit operator's status is effectual unless it is done by order of the Commission and with its express sanction. Once created by the Commission, the unit operator's status cannot pass to another via private-contract arrangement. A release

from the Commission-imposed responsibility effected by order of that body is an indispensable prerequisite of a valid change in unit operator's identify.

The managerial responsibility of a designated unit operator in developing for, producing and selling oil or gas from the unitized pool is an exercise of state police power.

* * *

That power, once conferred, is nondelegable. If a unit operator by private contract with another does agree to share some or all of his responsibility, the managerial acts must nonetheless continue to be carried out in the name and by authority of the named unit operator. This is so because the latter remains responsible qua operator until he is formally relieved by an order of the Commission made upon due notice and a hearing. Ibid. at Page 217-218.

5) There are approximately 80 working interest owners and approximately 1,000 royalty owners affected by the subject pooling orders. Only three of those 80 parties are subject to a private agreement, the Participation Agreement amongst SEG (as successor to Slawson), USEDCC and Osage Exploration and Development. The other 78 working interest owners in the subject wells, along with the 1000 royalty owners, are governed by the applicable spacing and pooling orders. The Co-Applicants represent 67 out of these 78 other working interest owners. Co-Applicants have no "dog in the hunt" in the District Court litigation and have no standing to participate in such District Court litigation. Co-Applicants' only remedy for modification of the pooling orders and designation of a new operator is at this Commission pursuant to the mandate of the Supreme Court case, *Crest Resources and Corporation Commission vs. Corporation Commission*, supra. Co-Applicants, along with Stephens, have submitted overwhelming evidence that, under the traditional guidelines used by the Commission for designation of an operator, SEG should be designated successor unit operator as to 29 of the units and Stephens Production Company, should be designated successor operator for 4 of the units.

6) The ALJ's recommendation of a stay pending ruling by the Tenth Circuit Court of Appeals should be reversed and this Commission should designate a successor operator under the subject pooling orders. The overwhelming evidence mandates that SEG and/or Stephens Production Company be designated as successor unit operator.

7) The ALJ erred in not designating SEG and/or Stephens Production Company as operator. The ALJ properly found that the successor operator under a pooling order, where the Commission determines either candidate is prudent and competent, is typically based upon which of the two operators has the greater working interest in the pooled unit or has the most support from the other working interest and royalty interest owners. Under this test the overwhelming evidence mandates that Stephens be designated operator, to wit:

a. Stephens has the greater working interest in the disputed wells and units and Stephens is supported by more of the working interest owners. It was undisputed that Stephens owns the single largest working interest in each of these wells and units. The ALJ, after taking into account the minimum number of changed votes, notes that appropriately 53% of the working interest owners in all the units support Stephens being named operator and only 48% support U. S. Energy. Of the 133 total working interest owners in all of the wells and units, 111 support Stephens as operator, representing approximately 81% of the total working interest owners. There are actually 78 different working interest owners and 67 of them support Stephens as operator, or approximately 86%.

b. Stephens has the largest financial commitment to the area owning 36,300 net leasehold acres out of 55,013 gross acres. Stephens also operates 50 wells and is non-operator in 7 wells in the area of the disputed wells.

c. Stephens has the most experience in operating horizontal Mississippi wells in this area and USEDC has no experience in operating horizontal Mississippi wells in this area.

d. Stephens is one of the better operators in the state and Stephens has done a really good job of getting wells drilled and completed, getting them on line, getting revenue flowing to the owners and reducing operating expenses 15% to 25% during the down turn of the last several months, per the testimony of other working interest owners.

e. Stephens and Co-Applicants own a majority of the interests and will be incurring the most financial risk in ongoing operations and future development, and where Stephens has substantially more experience in this area in operating horizontal Mississippi wells, this Commission should designate Stephens as unit operator.

8) The ALJ erred in finding that the federal court injunction precludes the Corporation Commission from making an immediate determination of the best suited party for successor unit operator. The ALJ erred in construction of

Tenneco Oil Company vs. Oklahoma Corporation Commission, 775 P.2d 296 (Okl. 1989), in finding that same required staying of a decision in these cases, pending ruling upon the appeal to the Tenth Circuit Court of Appeals of the District Court, which appeal concerns only three parties out of a total of 80 working interest owners.

9) As noted in Stephens' presentation regarding the impact upon these cases of the Federal Court proceedings, Judge Cauthron and the District Court made a very narrow ruling. As stated by Judge Cauthron in her Order dated December 15, 2015, "The issues raised by the earlier litigation were fairly narrow and the Court's order resolving those narrow issues is unambiguous."

10) Judge Cauthron stated on October 30, 2015, "I have been asked to construe a contract. I have construed that contract." Judge Cauthron goes on to say that "what the Corporation Commission does with that is up to them." Judge Cauthron even goes on to say in her December 15, 2015 order that until this Commission rules, she cannot offer an opinion as to whether the action of Stephens attempting to operate the wells and units would be any violation of her earlier injunction order, to wit: Until such time as the facts of any actions before the OCC are fully developed, the Court cannot and will not offer an opinion as to whether these actions violate its earlier order."

11) The Federal court only enjoined Stephens from operating the subject wells under the Participation Agreement, and did not enjoin Stephens from operating the wells under authority that Stephens might receive from the OCC, should the OCC designate Stephens as successor operator under the pooling orders.

12) Contrary to the "chicken little" argument of USEDCC that chaos will ensue should this Commission designate Stephens as operator, Stephens requests that the Commission make an immediate decision designating a successor unit operator under the pooling orders in keeping with the conventional principals of preventing waste, protecting correlative rights and designating the operator who represents most of the risk dollars involved in the wells and units. Co-Applicants should not be required to wait upon a Commission designated operator for the one or two years that the appeal will take to litigate. Should this Commission designate Stephens as operator, Stephens will then ask that the prior injunction order of the Federal court be modified to take into account the "new circumstances" of Stephens being designated as operator under the OCC pooling orders. Obviously, the Federal court has modified its injunction judgment once already, taking into account the "new circumstances" of Osage resigning as operator three days after the judgment with the court modifying its injunctive relief in favor of USEDCC, instead. This Commission can now take judicial notice of more recent "new circumstances" that Osage Energy has

declared bankruptcy and another party has purchased the interest of Osage Energy out of bankruptcy. If this Commission grants the relief requested by the overwhelming majority of working interest owners and designates Stephens as unit operator, then Stephens will ask the Federal court to decide the issues not previously decided of:

1. Whether it is feasible that there be two operators acting as co-operators of the wells where there is one party designated as operator under private agreement and one designated under/by the policy power of the state under the subject pooling orders; or,
2. If it is not feasible to have two operators, and there should only be a single operator, then which source of operator rights should prevail-the private agreement or the police power of the state under the pooling orders?

13) USEDCE agreed that the Commission's, June 2015 order staying these cases should be dissolved and, USEDCE agreed that these cases should go forward on the Commission's December 2015 protest docket with the Commission to designate a successor operator. The Commission has before it all of the facts and evidence that it needs to designate a proper, successor operator under the subject pooling orders. The Commission should not consider the private agreement and the District Court matters, over which it has no jurisdiction, in rendering its ruling as to which party is the appropriate successor operator under these pooling orders.

14) The ALJ erred in admitting Exhibit 19. Exhibit 19 is a letter purportedly from Kim Bradford, of Osage Exploration. Such letter is hearsay, not the best evidence and Kim Bradford was not available in the courtroom to be cross-examined.

15) Stephens requests that the Report of the ALJ be reversed and that an order issue designating SEG as unit operator under the 29 applications in which it is an applicant and that Stephens Production Company be designated unit operator in the four cases in which it is an applicant.

THE ALJ FOUND:

1) These consolidated causes springs forth from a dispute between two operators, Stephens that also operates wells in Oklahoma as Stephens Production Company, and USEDCE over which entity should be named the operator under a number of pooling orders. Although the Corporation

Commission has exclusive jurisdiction to designate an operator under these pooling orders, this task is made more complex than is typically the case because Stephens is enjoined from operating by the Federal Court in the Western District of Oklahoma.

2) The Federal Court entered its Final Judgment declaring that USEDC is the operator of wells that include the same unit wells that are subject to the pooling orders in this present cause. The Final Judgment enjoined Stephens from conducting operations or retaining records with respect to any unit or well in which USEDC is the duly elected operator. The Federal Court based its decision upon a review of the terms of the Participation and JOAs agreed to by Stephens and USEDC. Upon review, the Court found that the language of the documents was clear and unambiguous with respect to the designation of an operator. The Court narrowly focused its review upon the private agreements between private parties over which the Corporation Commission has no authority or jurisdiction. The Federal Court recognized that only the Corporation Commission has the authority to appoint an operator under a pooling order.

3) The Corporation Commission is a tribunal of limited jurisdiction charged with overseeing the conservation of oil and gas and its jurisdiction is limited to the resolution of public rights. See *New Dominion, LLC v. Parks Family Company, LLC*, 216 P.3d 292 (OK.CIV.APP. 2008). The Corporation Commission's jurisdiction and authority is limited to what is expressly or by necessary implication conferred upon it by the Constitution and statutes. See *Merritt v. Corporation Commission*, 438 P.2d 495 (Okl.1968). Matters involving the private rights of the parties are reserved to the District Court. See *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984). As held by the Oklahoma Supreme Court:

That the Commission is a tribunal of limited jurisdiction is well established in Oklahoma jurisprudence. It possesses only such authority as is expressly or by necessary implication conferred upon it by the constitution and statutes of Oklahoma. If no Commission jurisdiction stands expressly conferred or necessarily implied, either by the constitution or by statute, its order would be void. The function of the Commission is to protect the rights of the body politic; private rights and obligations of private parties lie within the purview of the district court...The Commission is without authority to hear and determine disputes between two or more private

persons or entities in which the public interest is not involved.

Rogers v. Quicktrip Corporation, 230 P.3d 853 (Okl. 2010).

4) In selecting an operator, the Corporation Commission is compelled by law to prevent waste and protect correlative rights. The power and responsibility of the Corporation Commission to protect correlative rights is confined to situations which actually affect the public interest in the protection of oil and gas production. See *Samson Resources Company v. Corporation Commission*, 706 P.2d 19 (Okl. 1985) citing *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okl. 1984). The Oklahoma Supreme Court adopted a definition of correlative rights in the *Samson* case, citing *Kingwood Oil Company v. Corporation Commission*, 396 P.2d 1008, 1010 (Okl. 1964):

The term "correlative rights" has been defined as a convenient method of "indicating that each owner of land in a common source of supply of oil and gas has legal privileges as against other owners of land therein to take oil and gas therefrom by lawful operations conducted on his own land, limited, however, by duties to other owners not to injure the source of supply and by duties not to take an undue proportion of the oil and gas". *Summers, Oil and Gas*, Vol. 1, Sec. 63.

5) In the *Samson* case the "power to protect "correlative rights" is limited by definition and by the terms of the statute under which the Corporation Commission claims jurisdiction; 52 O.S. 1981 § 87.1", supra, p. 22, and the Corporation Commission "properly exercises its power to protect correlative rights by the establishment of spacing units and the setting of allowable production. This allows protection of the public interest in orderly development and production of resources", supra, p. 22. The Corporation Commission also protects correlative rights by preventing drainage from offsetting production and by forced pooling, but the powers to protect correlative rights are limited. As stated in *Samson*, supra, p. 23, "Aside from the recognized power to monitor certain terms and conditions of the contract imposed on the parties through a forced pooling order, no other powers to protect correlative rights are granted or implied by this statute."

6) The crux of the issue before the Corporation Commission in this cause is whether the selection of an operator under the pooling orders protects the public interest in the prevention of waste and the protection of correlative rights where USEDC has already been named the operator by the Federal

Court and Stephens is enjoined from operating. Here the ALJ finds that both operators are deemed to be prudent operators in good standing before the Corporation Commission. Both companies are competent operators with many years of experience drilling for oil and gas and operating wells. Stephens has more local experience drilling horizontal wells in Logan County but USEDC's experience in this area is sufficient to be able to adequately prevent waste and protect public rights. Both companies haven't had any serious or significant compliance violations related to human health and the environment in Oklahoma. USEDC did commit serious and significant environmental compliance violations in Pennsylvania and New York, but the incidents were more than seven years ago and the company came into compliance after paying fines and cleaning up the contaminated areas. Both companies have adequate professional staff, support staff and financial resources to competently conduct oil and gas operations in Logan County.

7) In such cases where two evenly matched, prudent and competent operators seek to be named the operator under a pooling order by the Corporation Commission, the selection is then typically based upon which of the two operators has the greater working interest in the pooled unit or has the most support from the other working interest and royalty interest owners. This selection criteria is not based upon law or statute but is based upon equity.

8) Here Stephens has the greater working interest in the disputed wells and units and is supported by more of the working interest owners. Stephens' working interests, however, are presently controlled by the JOA per the Final Judgment of the Federal Court, and it is the JOA that currently controls the majority of the working interests in all but one of the disputed wells. Because Stephens filed a Notice of Appeal for its appeal of the Federal District Court's Judgment to the United States Court of Appeals for the Tenth Circuit and the appeal is now pending, the working interest criteria can't be used to resolve the selection of operator until after the appeal is decided.

9) In *Tenneco Oil Company v. the Oklahoma Corporation Commission*, 775 P.2d 296 (Okl. 1989), the Oklahoma Supreme Court held that the Corporation Commission should have stayed interest owner's application to determine its status as participant pursuant to prior forced pooling order, pending outcome of appeal of the same issue in Federal Court. The Court based its decision upon the principles of comity, holding that "[t]he jurisdiction of any court exercising authority over any subject may be inquired into in every other court when the proceedings of the former are relied upon by a party claiming the benefit of that former proceeding." *State v. Corp. Comm'n*, 590 P.2d 674, 677 (Okl. 1979), *supra*, p. 298.

10) This present cause is directly on point with respect to the Court's ruling in *Tenneco Oil Co. v. Oklahoma Corp. Com'n* case cited above in paragraph 9. Staying this cause until after the appeal is decided will promote the orderly development of the disputed units because appointing two operators for the same pooled units would create conflicts and confusion. Selecting an operator without being able to use the working interest selection criteria for two evenly matched operators would lead to an arbitrary and capricious decision. Selection of Stephens at this time could lead to a situation where no operator is allowed to operate the disputed units, since Stephens is enjoined from operating by the Federal Court. During the pendency of the stay, the Corporation Commission should appoint USEDC as the Interim Operator since the company has already been appointed Operator by the Federal Court and is deemed to be a prudent and competent operator by the facts presented in this cause.

11) After taking into consideration all of the facts, circumstances, evidence and testimony presented in these consolidated causes, it is the recommendation of the ALJ that this proceeding be stayed until such time as the United States Court of Appeals for the Tenth Circuit has issued its opinion in response to Stephens' appeal. If the appeal is granted in favor of Stephens and Stephens is no longer enjoined from conducting operations by the Federal Court, then the cause will be reopened for a final determination. If the appeal is not successful and Stephens remains enjoined from conducting operations, then USEDC shall be named operator under all of the consolidated pooling orders. During the pendency of the stay, the ALJ recommends that USEDC be named interim operator under all of the consolidated pooling orders subject to this cause.

POSITIONS OF THE PARTIES

USEDC

1) **Richard Books**, attorney, appearing on behalf of USEDC, reminds the court that the parties agree on the need for a final order.

2) The parties do not agree on who should be named operator. Stephens wants itself designated as operator, even though the federal court enjoins it. USEDC, however, is already the operator under the JOA by contract and by order of the federal court.

- 3) Stephens' position would allow for two operators over the same pooled units. The undisputed evidence—even from Stephens' own witnesses—is that it would be better to have one operator than two.
- 4) Mr. Books describes the history of this dispute. Slawson entered into a Participation Agreement and Operating Agreement with USEDC and Osage. Slawson owned a plurality interest of 45%, with USEDC and Osage together owning the remaining 55%. Pooling orders and a JOA named Slawson as operator. Slawson later sold its working interest to Stephens. Stephens declined to call a vote under the agreement and did not come to the Commission at that time. A vote was called under the JOA, and Stephens refused to vote. The majority bloc, USEDC and Osage, voted Osage operator. The parties ended up in federal court, which resolved the issue by first naming Osage, then in a later order USEDC, as operator. Under both of these orders the court enjoined Stephens from operating. The parties also ended up at the Commission, which stayed proceedings until a ruling was handed down from the federal court.
- 5) Only the federal court can interpret the JOA, name an operator per that private agreement, and issue injunctions. The Commission has exclusive jurisdiction to name an operator under pooling orders.
- 6) The position of USEDC is that it would be arbitrary and capricious to name an operator that is enjoined from operating. That would make no sense. That would neither prevent waste nor would it protect correlative rights.
- 7) It would be erroneous to have two operators, one under the JOA and one under the pooling order. It would be wrong to allow a company to avoid its contractual commitments by coming to the Commission.
- 8) Stephens is desperate to undo the agreement that they bought into. Stephens cannot do that through federal court, which held the contracts to be clear and unambiguous with respect to designation of the operator. Reversal upon appeal is unlikely. The only way they can get out of this bargain is to persuade the Commission to name them operator of these wells. Stephens sent out letters asking for support, but declined to tell these co-applicants—including Devon—about the injunction.
- 9) USEDC points out several cases in which Stephens requests that the Commission name them as operator: Davis Farms #2-5H, Rooster #1-2H, Blue Jay #1-13H, Crow #1-35H and the Begonia #1-30. Approximately 100% of their ownership is subject to the JOA between Stephens, Stephens d/b/a Riverfront, Osage, and USEDC. Referring to Exhibit 5, USEDC also notes that the JOA controls the majority of working interests in all of the units save one.

10) Stephens is asking this body to circumvent the effects of the injunction based upon incredibly minute interests that are not party to the JOA.

11) USEDC disagrees, however, with Stephens and the ALJ in using working interest as a criterion in selecting an operator in this case. True, in typical cases where both candidates are deemed prudent and competent operators, the Commission selects the party that has most support from other operators and royalty interest owners. This is not the typical case.

12) Stephens' assertion that it is enjoined only from the subject wells under the Participation Agreement is incorrect. The injunction order is clear. It says that Stephens is enjoined from operating any well or unit. USEDC urges the Commission to appoint the same party that is the JOA operator. USEDC asks the referee to recommend that a final order be entered naming USEDC as Operator.

STEPHENS

1) **Greg Mahaffey**, attorney, appearing on behalf of Stephens, agrees with USEDC that the Commission should enter a final order to appoint an operator. Stephens should be that operator.

2) Stephens wants the Commission to follow the law and appoint an operator that will best protect correlative rights, prevent waste, and maximize the benefit of these wells and units for all parties.

3) Stephens, USEDC, and Osage are not the only groups with something at stake here. There are over 80 other working interest owners and 1,000 royalty owners subject solely to the pooling orders. The law mandates the protection of correlative rights and the prevention of waste for all parties, no matter the size of their interest.

4) Even if USEDC is correct and there was a contract that required USEDC to be operator, the Commission is still bound to determine the best interest of all parties when selecting an operator. If that means Stephens, then that is what it ought to be.

5) USEDC has to hang their hat on the injunction argument. All of the other facts, evidence, and case law mandate Stephens Energy be operator. Judge Cauthron, the federal judge, admitted that her ruling was very narrow.

6) The JOA in question was never signed by Slawson, USEDC, or Osage. The bargain Stephens made is in the Participation Agreement. Stephens maintains that agreement is clear and unambiguous, but notes that Judge Cauthron disagrees. The Participation Agreement states that Slawson is the operator, and provides that Slawson can sell its operations if it sells its interest. This is the issue on appeal.

7) Stephens cites the case of *Crest Resources v. Corporation Commission*, supra, for the proposition that once the Commission has designated an operator to carry out managerial acts, only the Commission can change that designation. Hence that designation and Commission's police power cannot be abrogated or mitigated by private contract.

8) Parties like Slawson, (now Stephens), USEDC are sharing pooled acreage.

9) This injunction should not affect the Commission's decision. It has no power to construe private agreements.

10) ALJ Leavitt misconstrues *Tenneco v. Oklahoma Corporation Commission*, 775 P.2d 296 (Okl. 1989). The ALJ believes that case requires him to give comity to the Federal District Court and to stay the designation of an operator. *Tenneco*, however, is both distinguishable and inapplicable to the present case in that it involved elections and cost redetermination, not operations.

11) Stephens notes that the ALJ correctly analyzed how an operator is selected under a pooling order. Typically, it is an equitable consideration based upon which of the two operators has a greater working interest in the pooled unit or has the most support from the other working interest and royalty owners.

12) Here Stephens has the greater working interest and is supported by more of the working interest owners. The evidence is overwhelming as to why Stephens would be better suited to be the operator and would better protect correlative rights and prevent waste. Stephens has more local experience and already has infrastructure in place, including a local field office and a majority stake in the Nemaha Gathering System.

13) The ALJ's summary of working interests from Exhibit 5, which is based on support letters, is particularly helpful. Around 55% of the working interest owners in all of the units support Stephens being named operator, as opposed to 48% supporting USEDC. USEDC remarked that the letters sent out from Stephens to solicit support did not inform those parties about the injunction. USEDC sent out letters informing the other parties of the

injunction and that only amounted to Devon going neutral and some very small interests changing their votes. With those adjustments, Stephen's support only dropped from 54.8% to 53.4%.

14) The Commission needs to look at what the other operators say to determine who would be the best operator. There is not a single other operator, other than the now bankrupt Osage, that wants USEDC to be operator. Stephens points to the testimony of Mr. Adams and Mr. Hall as evidence of Stephens' proficiency as an operator. Stephens also points out that USEDC's engineer, Mr. Taylor, has limited experience with horizontal wells. None of his experience to date has been in Oklahoma or in the Mississippi formation. Mr. Taylor also acknowledged that Stephens is as good an operator as any other operator.

15) The ALJ erred in finding that the Federal Court injunction precludes the Corporation Commission from making an immediate operator designation.

16) In response to USEDC's argument that if the Commission rules for Stephens there will be two operators, Stephens does not believe that will be the case. The Commission could require Stephens to get the injunction lifted as a condition to being designated operator.

17) If the Commission designates Stephens as operator, then Judge Cauthron will need to revisit her injunctive relief. Judge Cauthron said that until such time as the facts or any actions before the Commission develop, the court cannot and will not offer an opinion as to whether those actions violate its earlier order.

18) If Stephens is appointed operator, then USEDC will return to Federal Court and ask that body to determine issues previously undecided. Namely whether it is feasible to have two operators act as co-operators, or if not feasible, should there be a single operator, and then what source of operator rights should prevail? Should it be a private agreement or the police power of the state that governs the situation?

19) USEDC's introduction and preparation of Exhibit 18 should be cause for concern. It is fraught with mistakes and errors, including a misspelling of Stephens' name. It does not correctly identify ownership, includes the wrong legal descriptions, and often uses wrong well names.

20) Stephens points to two additional concerns in appointing USEDC as operator. First, for a period of time USEDC did not pay their share of joint interest billings to Stephens. Second, USEDC has a history of environmental claims against them.

21) As for USEDC 's contention that Osage supports them as operator that is against the evidence. No one from Osage testified at trial. The evidence shows that Osage was in bankruptcy at the time.

22) Exhibit 19 is hearsay. For that reason it should have been excluded, and that's important because basically USEDC does not have any support beyond this purported support from Osage. The author of that letter wasn't there for Stephens to cross-examine.

23) Stephens asks the Commission to issue a final order designating Stephens Energy Group operator for 29 wells and Stephens Production for the other four where they have an interest.

RESPONSE OF USEDC

1) The record includes pleadings that stretch back for months showing that Osage did everything they could to support USEDC in fighting against Stephens.

2) Just days before the hearing, Osage realized that counsel David Pepper had a conflict of interest resulting from representing Devon. Mr. Pepper made an appearance to explain this, while adding that Osage also attempted to hire someone else. That person was Charles Helm, who said he would but also realized that he had a conflict two days prior to trial and could not represent Osage.

3) Stephens failed to demonstrate to the Commission how Stephens intends to operate in an injunction. How is Stephens going to prevent waste and protect correlative rights when Stephens cannot operate?

4) The minority interests not subject to the JOA in these wells will not be thrown under the bus. The only way Stephens can circumvent their bargain is to proclaim that these minority interests outside of the JOA are not being respected. Stephens is asking for a jurisdictional fight, and no one knows which jurisdiction will trump. You do not need to get in a fight with federal court under these circumstances.

5) The ALJ found however that both parties would make acceptable operators and are capable of protecting correlative rights.

6) The evidence is not overwhelming that Stephens is the better operator. The ALJ found that both parties are competent, prudent operators and have sufficient experience.

7) The only party that has had environmental problems in Oklahoma is Stephens.

8) The statute requires that pooling orders be upon terms that are fair, just, and reasonable. It would not be fair, just, and reasonable to name Stephens as operator in wells where the overwhelming majority of the parties have agreed to the contrary.

9) If the Commission follows Stephen's suggestion that it condition operator status for Stephens on getting that injunction lifted, it is unclear how long such an appeal would take. How would waste and correlative rights be affected during that time?

10) USEDCC respectfully submits that all parties agree there should be a final order, and under these unique circumstances the one party that can perform those operations is USEDCC.

RESPONSE OF STEPHENS

1) When in doubt look at the case law. *Crest Resources* says "Once created by the Commission the unit operator status cannot pass to another via private contract arrangement." *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl. 1984), adds that while certain things can be contracted away, "...no private contract or operating agreement may cause or grant a license to commit waste, or diminish correlative rights, control of which is exclusively within power of Corporation Commission", in its role of enforcing oil and gas conservation laws. Managerial responsibility is not something that can be contracted away.

2) Section six of Stephens' appeal explains how Stephens is going to operate the enjoined wells. The Federal Court only enjoined Stephens from operating under the Participation Agreement. It has not enjoined Stephens from operating the wells under some authority that they might receive in the future from the Corporation Commission if they are designated successor operator.

3) There are other interests involved here besides the parties present. Most importantly, there are royalty owners that have a stake. To the extent

that you have someone that is going to better operate economically, increase ultimate production, royalty owners are affected.

4) On federal appeal, under these circumstances the federal district court is going to have to defer to the police power of the state of Oklahoma.

5) The ALJ did find that USEDC was also a competent operator. However, the fact remains that if the traditional and conventional test to select an operator is applied, Stephens ought to be found operator. They have the greater working interest, they have all the other working interest owners supporting them. 80 plus percent of the working interest ownership wants Stephens as operator. Stephens asks that for those reasons the Commission name Stephens Energy and Stephens Production as operator.

CONCLUSIONS

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

1) Slawson entered into a participation/operating agreement with USEDC and Osage. Slawson was originally designated as the operator in these pooling orders which encompassed the Nemaha Ridge project. The ownership under the participation agreement/operating agreement was Slawson at 45%, USEDC at 30% and Osage at 25%. Slawson later sold its working interest to Stephens. Stephens declined to call a vote under the participation/operating agreement and did not come to the Commission at that time. A vote was called under the participation agreement/operating agreement and Stephens refused to vote. The majority, USEDC and Osage, voted Osage as operator.

2) USEDC and Osage opposed Stephens being named operator and filed an action in opposition on November 19, 2014, in the Logan County District Court seeking a declaration that Osage is duly elected successor operator to Slawson of wells in the Nemaha Ridge project area. The lawsuit was removed to the Federal Court on November 26, 2014 and USEDC made a Motion before the Corporation Commission to Stay the proceedings related to Stephens' applications to be appointed operator under the pooling orders. On June 12, 2015, a hearing on the Motion to Stay was held and the ALJ granted the motion.

3) On August 25, 2015 the Federal Court entered its judgment granting summary judgment in favor of Osage and USEDC and denying Stephens' motion for summary judgment that it should be the operator. The Court

further stated that Osage should be the operator of the wells "pursuant to the terms of the participation and operating agreements. Defendant is hereby enjoined from conducting operations or retaining records with respect to any unit or well in which Osage is the duly elected operator." See Exhibit 17.

4) Stephens then called for a vote to elect itself as a successor to Osage as operator and Osage and USEDC refused to participate in that vote. Osage subsequently notified USEDC of its voluntary resignation as operator and then USEDC called for a vote and USEDC was subsequently elected as operator.

5) On September 24, 2015, Stephens then filed a notice of appeal for its appeal of the district court judgment in the U.S. Court of Appeals for the Tenth Circuit. The appeal is now pending before the 10th Circuit.

6) On October 30, 2015, the Federal Court entered its final judgment declaring that USEDC is the operator of the wells which have been drilled and which are hereafter drilled in the Nemaha project area pursuant to the terms of the participation/operating agreements. The final judgment enjoined Stephens "from conducting operations or retaining records with respect to any unit or well in which U.S. Energy is the duly elected operator." See Exhibit 16. Referring to Exhibit 5 the participation/operating agreements control the majority of working interest in all of the units save one.

7) Exhibit 16 is clear and unambiguous. It clearly designates USEDC as operator and enjoins Stephens from operating any wells or units involved in the Nemaha Ridge project area. USEDC was designated operator under the participation/operating agreements and Stephens was enjoined.

8) In *Tenneco Oil Company v. Oklahoma Corporation Commission*, 775 P.2d 296 (Okla. 1989), the Oklahoma Supreme Court held:

We have held that when a party's right to participate in a well flows from a Corporation Commission Force Pooling Order, rather than from private agreement, the Corporation Commission has exclusive jurisdiction to determine whether the party has elected to participate in compliance with the Force Pooling Order. In *Samson v. Okla. Corp. Com'n.*, 742 P.2d 114 (Okla. 1987), we held that absent a private agreement, the Corporation Commission is the proper forum to determine disputes over the status of elections under pooling orders.

* * *

We have consistently held that the Corporation Commission has jurisdiction to construe and clarify its previous orders to determine compliance with said orders under the authority of 52 O.S. 112. *Nilsen v. Ports of Call*, 711 P.2d 98 (Okla. 1985). Conversely, absent a change or challenge of a public rights issue of conservation, it is the exclusive jurisdiction of the district courts to adjudicate a party's status of election when the party's right to participate flows and arises from private agreements. *Samson v. Okl. Corp. Com'n.*, 742 P.2d 114 (Okla. 1987).

- 9) The Oklahoma Supreme Court also explained in *Samson Resources Co. v. Corporation Com'n.*, 702 P.2d 19 (Okla. 1995):

In the recent case of *Tenneco Oil Company v. El Paso Natural Gas Co.*, recognizing the limited nature of the Commission's jurisdiction, we stated that the function to be served by the Commission under the statutes concerning oil and gas conservation, under which respondents now claim jurisdiction for the Commission, was to protect public rights in the development and production of oil and gas. This Court went on to state:

This is not to say that the rights to produce the designated quantity of hydrocarbons from the well and the division thereof, the public interest, and the owner-operator interests are not the proper subject of a private contract. The limitation being always omnipresent is that no private contract or operating agreement may cause or grant a license to commit waste, or diminish correlative rights, control of which is exclusively within power of Corporation Commission. The Corporation Commission is a tribunal of limited jurisdiction, *Burmah Oil and Gas Company v. Corporation Commission* [541 P.2d 834 (Okla. 1975)], *supra*, and *Kingwood Oil Company v. Hall-Jones* [396 P.2d 510 (Okla. 1964)], *supra*. Respective rights and obligations of parties are to be

determined by the district court, *Southern Union Production Company v. Corporation Commission*, 465 P.2d 454 (Okla. 1970). (Emphasis added) (footnotes omitted)

In *Tenneco* we stated that the parties to a Commission force pooling order could flesh out that arrangement through contract. And if the parties' rights and obligations under the contract would be a matter for determination in the district courts, the proper forum for questions dealing with the respective rights of private parties.

The present case appears, even more clearly than *Tenneco*, to involve a question of private rights. The unit in this case had been developed under the auspices of a voluntary pooling agreement, clearly sanctioned by the terms of 52 O.S. 1981 § 87.1(e). Certain rights and obligations arose between the parties to this agreement. *Id.* at 21 (references to footnotes omitted).

See also *Meinders v. Johnson*, 134 P.3d 858, 866 (Ok.Civ.App. 2006), and *Carnahan v. Chesapeake Operating Inc.*, 347 P.3d 753, 763 (Ok.Civ.App. 2015); *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okla. 1984).

10) The Referee, based on the above stated law, would agree with the conclusions and recommendations of the ALJ in paragraph #88 of his ALJ Report on page #35:

This present cause is directly on point with respect to the court's ruling in *Tenneco Oil*. Staying this cause until the appeal is decided would promote the orderly development of the disputed units because appointing two operators for the same pooled units would create conflict and confusion. Selecting an operator without being able to use the working interest selection criteria for two evenly matched operators would lead to an arbitrary and capricious decision. Selection of Stephens at this time would lead to a situation where no operator is allowed to operate the disputed units, since Stephens is enjoined from operating by the Federal Court. During the pendency of the stay, the Corporation Commission should appoint U.S. Energy

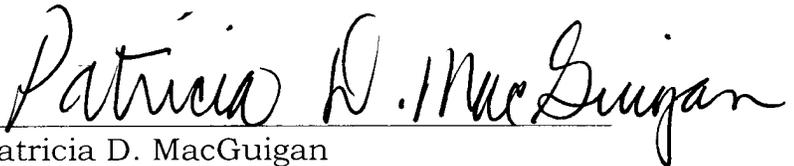
as the interim operator since the company has already been appointed Operator by the Federal Court and is deemed to be a prudent and competent operator by the facts presented in this cause.

11) For the above stated reasons and law, the Referee would affirm the recommendation of the ALJ in paragraph #89 of his ALJ Report on page #35, that:

89. After taking into consideration all the facts, circumstances, evidence and testimony presented in these consolidated causes, it is the recommendation of the ALJ that this proceeding be stayed until such time as the United States Court of Appeals for the Tenth Circuit has issued its opinion in response to Stephens' appeal. If the appeal is granted in favor of Stephens and Stephens is no long enjoined from conducting operations by the Federal Court, then the cause will be reopened for a final determination. If the appeal is not successful and Stephens remains enjoined from conducting operations, then U.S. Energy shall be named Operator under all of the consolidated pooling orders. During the pendency of the stay, the ALJ recommends that U.S. Energy be named Interim Operator under all of the consolidated pooling orders subject to this cause.

12) The Referee, for the above stated reasons, would also recommend denying USEDC's requested relief that this Commission permanently appoint U.S. Energy as the operator instead of "interim operator" as recommended in the Report of the ALJ.

RESPECTFULLY SUBMITTED THIS 9th day of August, 2016.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy

CDS - 201500644, 201500645, 201500646, 201500647, 201500648, 201500649, 201500650, 201500651,
201500652, 201500653, 201500654, 201500656, 201500657, 201500658, 201500661, 201500662, 201500663,
201500664, 201500665, 201500666, 201500667, 201500668, 201500670, 201500673, 201500674, 201500688,
201504809, 201504810, 201504811, 2015004812, 2015004813, 201504814 - STEPHENS ET AL

Commissioner Hiatt
James L. Myles
Gregory L. Mahaffey
Mark Christiansen
Richard K. Books
Eric L. Huddleston
Michael R. Perri
Jason Dunn
David E. Pepper
Richard A. Grimes
John Shields
Bill K. Hoag
Dwight Jones
John W. Garrett
Gaylan Adams
Charlene Glover
Gail Cummins
Michael L. Decker, OAP Director
Oil Law Records
Court Clerks - 31
Commission Files - 32