

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

FILED
JAN 27 2016

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: TIM BAKER, DIRECTOR, OIL)
AND GAS CONSERVATION)
DIVISION, OKLAHOMA)
CORPORATION COMMISSION)

RESPONDENT(S): HENDERSON OPERATING,)
LLC, AN OKLAHOMA LIMITED)
LIABILITY COMPANY, AND)
FIRST FIDELITY BANK)

RELIEF SOUGHT:)
CONTEMPT, FINES,)
COMPLIANCE WITH)
COMMISSION RULES)
AND FORFEITURE)
OF SURETY:)

CAUSE EN NO.
201500088

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OF SURETY:)

CAUSE EN NO.
201500089

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 7th day of December, 2015. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

HENDERSON TAKES EXCEPTION to the ALJ's oral recommendation that any transfer of Henderson wells has to be approved by the General Counsel's office, and any money derived from such transfers by Henderson be used to plug these three wells and restore the sites. The ALJ also recommended all of the Commission requested Relief contained in Interim Order Nos. 464434, 646435 and 646436.

CAUSE EN 201500088

1) The Commission alleges that Henderson operated the Annie #1 well, C NE/4 SW/4 of Section 1, T16N, R7W, Kingfisher County, Oklahoma, in violation of 52 O.S. Section 86.1 et seq. and the rules of the Commission and should be found in contempt thereof. Specific alleged act(s) of violation and authority thereto include:

(1) Henderson violated OCC-OAC 165:10-11-3(e)(3) in that it failed to timely plug the subject well.

(2) Henderson violated OCC-OAC 165:10-3-17(b) in that it failed to remove materials from the subject site which might constitute a fire hazard.

(3) Henderson violated OCC-OAC 165:10-3-17(l) in that it failed to timely remove equipment from the above described well site and to restore said well site.

(4) Henderson violated OCC-OAC 165:10-3-17(c) in that it failed to remove surface trash, debris and junk from the above described well site.

(5) Henderson violated OCC-OAC 165:10-3-17(d) in that it failed to post lease sign(s) concerning the subject well containing the required information.

(6) Henderson violated OCC-OAC 165:10-7-5(a) in that there was a failure at all times for operations to be conducted at the subject site in a manner that will not cause pollution.

2) The Commission requests that Henderson's Category B surety on file be forfeited and that the proceeds be used to plug the subject well, remove any equipment, trash, debris and junk from and otherwise restore the subject site in accordance with OCC-OAC 165:10-1-10, OCC-OAC 165:10-3-17, OCC-OAC 165:10-11-3, et seq. and 52 O.S. Section 318.1.

INTERIM ORDER NO. 646434

Order No. 646434, issued on October 28, 2015, requiring that on or before October 30, 2015, Henderson is required to complete the below actions regarding the subject well and site:

a) Remove materials from the site which might constitute a fire hazard.

b) Remove junk, trash and debris from the site.

(c) Post a sign at the site containing all of the information required by Commission rules.

(d) Clean up pollution at the site.

(e) Pay administrative costs to the Commission in the amount of \$1,000 due to Henderson's violations of the Commission rules.

That on or before March 31, 2016, Henderson is required to complete one of the following options regarding the subject well:

(a) Plug the subject well, file a complete Form 1003 Plugging Record with the District II Commission office in Kingfisher, Oklahoma, signed by Henderson and the plugger, remove equipment, junk, trash and debris from the site, and restore the site and the lease road associated with the well, all in accordance with Commission rules; or

(b) Produce the subject well, supply documentation to the Commission reflecting the sale of hydrocarbons from the well, and otherwise operate and maintain the site in compliance with Commission rules.

That if Henderson is determined at the reopening of this cause to be set subsequent to March 31, 2016, to have failed to comply with the requirements of the above Interim Order regarding the subject well by March 31, 2016, Henderson's \$25,000 Category B surety shall be immediately forfeited in its entirety and the proceeds used to plug the subject well, remove equipment, junk, trash and debris from and to restore the site in accordance with Commission rules.

That upon the forfeiture of Henderson's \$25,000 Category B surety, the wells operated by Henderson in the State of Oklahoma are to be shut in, and Henderson is prohibited from operating wells in the State of Oklahoma until Henderson files with and obtains the Commission's approval of Category B surety in the minimum amount of \$25,000 and Henderson pays to the Commission all administrative costs assessed against Henderson. Additional

administrative costs shall also be assessed against Henderson if Henderson fails to fully comply with the above Interim Order.

CAUSE EN 201500089

1) The Commission alleges that Henderson operated the Crescent Thunder #9 well, W/2 NW/4 NW/4 NW/4 of Section 13, T17N, R3W, Logan County, Oklahoma, in violation of 52 O.S. Section 86.1 et seq. and the rules of the Commission and should be found in contempt thereof. Specific alleged act(s) of violation and authority thereto include:

(1) Henderson violated OCC-OAC 165:10-11-3(e)(3) in that it failed to timely plug the subject well.

(2) Henderson violated OCC-OAC 165:10-3-17(b) in that it failed to remove materials from the subject site which might constitute a fire hazard.

(3) Henderson violated OCC-OAC 165:10-3-18(l) in that it failed to timely remove equipment from the above-described well site and to restore said well site.

(4) Henderson violated OCC-OAC 165:10-3-17(c) in that it failed to remove surface trash, debris and junk from the above described well site.

(5) Henderson violated OCC-OAC 165:10-3-17(d) in that it failed to post lease sign(s) concerning the subject well containing the required information.

(6) Henderson has violated OCC-OAC 165:10-3-17(m) in that it failed to keep the subject leasehold road in a passable condition.

2) The Commission requests that Henderson's Category B surety on file be forfeited and that the proceeds be used to plug the subject well, remove any equipment, trash, debris and junk from and otherwise restore the subject site in accordance with OCC-OAC 165:10-1-10, OCC-OAC 165:10-3-17, OCC-OAC 165:10-11-3, et seq. and 52 O.S. Section 318.1.

INTERIM ORDER NO. 646435

Order No. 646435, issued on October 28, 2015, requiring that on or before October 30, 2015, Henderson is required to complete the below actions regarding the subject well and site:

(a) Remove materials from the site which might constitute a fire hazard.

(b) Remove junk, trash and debris from the site.

(c) Post a sign at the site containing all of the information required by Commission rules.

(d) Maintain the lease road in a passable condition.

(e) Place a bridge plug in the well above the Mississippi formation. Henderson is required to notify both Mr. Matli and Mr. James Nondorf, with Sundance at (405) 642-3894 at least 48 hours prior to placing the bridge plug in the well so as to afford Mr. Matli or another Commission representative and a representative of Sundance opportunities to witness the placement of the bridge plug in the well.

(f) Pay administrative costs to the Commission in the amount of \$1,000 due to Henderson's violations of the Commission rules.

The on or before March 31, 2016, Henderson is required to complete one of the following options regarding the subject well:

(a) Plug the subject well, file a complete Form 1003 Plugging Record with the District II Commission office in Kingfisher, Oklahoma, signed by both Henderson and the plugger, remove equipment, junk, trash and debris from the site, remediate any release of deleterious substances and restore the site and lease road, all in accordance with Commission rules; or

(b) Produce the subject well from formations above the Mississippi and supply documentation to the Commission reflecting the sale of hydrocarbons from the well, and otherwise operate and maintain the site in compliance with Commission rules.

That also on or before March 31, 2016, Henderson is required to take soil samples at the subject site in the presence of Mr. Matli, have the soil samples analyzed for Total Soluble Salts by a certified laboratory, supply the sample results to Mr. Matli within three days of Henderson's receipt of the sample results, and remediate the subject site if needed based on the sample results.

That this cause shall be reopened at 8:30 a.m. on Wednesday, November 4, 2015, to determine if Henderson has complied with the requirements of Interim Order due to be completed on or before October 30, 2015.

That if Henderson is determined at the reopening of this cause to be set subsequent to March 31, 2016, to have failed to comply with the requirements of the Interim Order regarding the subject well by March 31, 2016, Henderson's \$25,000 Category B surety shall be immediately forfeited in nits entirety and the proceeds used to plug the subject well, remove equipment, junk, trash and debris from and to restore the site in accordance with Commission rules.

That upon the forfeiture of Henderson's \$25,000 Category B surety, the wells operated by Henderson in the State of Oklahoma are to be shut in, and Henderson is prohibited from operating wells in the State of Oklahoma until it files with and obtains the Commission's approval of Category B surety in the minimum amount of \$25,000 and Henderson pays to the Commission all administrative costs assessed against Henderson if Henderson fails to fully comply with the Interim Order.

CAUSE EN 201500090

1) The Commission alleges that Henderson operated the Crescent Thunder #10 well, C NE/4 NW/4 of Section 13, T17N, R3W, Logan County, Oklahoma, in violation of 52 O.S. Section 86.1 et seq. and the rules of the Commission and should be found in contempt thereof. Specific alleged act(s) of violation and authority thereto include:

(1) Henderson violated OCC-OAC 165:10-11-3(e)(3) in that it failed to timely plug the subject well.

(2) Henderson violated OCC-OAC 165:10-3-17(b) in that it failed to remove materials from the subject site which might constitute a fire hazard.

(3) Henderson violated OCC-OAC 165:10-3-18(l) in that it failed to timely remove equipment from the above described well site and to restore said well site.

(4) Henderson violated OCC-OAC 165:10-3-18(c) in that it failed to remove surface trash, debris and junk from the above described well site.

(5) Henderson violated OCC-OAC 165:10-3-17(d) in that it failed to post lease sign(s) concerning the subject well containing the required information.

(6) Henderson violated OCC-OAC 165:10-3-17(m) in that it failed to keep the subject leasehold road in a passable condition.

2) The Commission requests that Henderson's Category B surety on file be forfeited and that the proceeds be used to plug the subject well, remove any equipment, trash, debris and junk from and otherwise restore the subject site in accordance with OCC-OAC 165:10-1-10, OCC-OAC 165:10-3-17, OCC-OAC 165:10-11-3, et seq. and 52 O.S. Section 318.1.

INTERIM ORDER NO. 646436

Order No. 646436, issued on October 28, 2015, requiring that on or before October 30, 2015, Henderson is required to complete the below actions regarding the subject well and site:

(a) Remove materials from the site which might constitute a fire hazard.

(b) Remove junk, trash and debris from the site.

(c) Post a sign at the site containing all of the information required by Commission rules.

(d) Maintain the lease road in a passable condition.

(e) Place a bridge plug in the well above the Mississippi formation. Henderson is required to notify both Mr. Matli and Mr. James Nondorf, with

Sundance at (405) 642-3894 at least 48 hours prior to placing the bridge plug in the well so as to afford Mr. Matli or another Commission representative and a representative of Sundance opportunities to witness the placement of the bridge plug in the well.

(f) Pay administrative costs to the Commission in the amount of \$1,000 due to Henderson's violations of the Commission rules.

That on or before March 31, 2016, Henderson is required to complete one of the following options regarding the subject well:

(a) Plug the subject well, file a complete Form 1003 Plugging Record with the District II Commission office in Kingfisher, Oklahoma, signed by both Henderson and the plugger, remove equipment, junk, trash and debris from the site, remediate any release of deleterious substances and restore the site and lease road, all in accordance with Commission rules; or

(b) Produce the subject well from formations above the Mississippi and supply documentation to the Commission reflecting the sale of hydrocarbons from the well, and otherwise operate and maintain the site in compliance with Commission rules.

That also on or before March 31, 2016, Henderson is required to take soil samples at the subject site in the present of Mr. Matli, have the soil samples analyzed for Total Soluble Salts by a certified laboratory, supply the sample results to Mr. Matli within three days of Henderson's receipt of the sample results, and remediate the subject site if needed based on the sample results.

That this cause shall be reopened at 8:30 a.m. on November 4, 2016, to determine if Henderson has complied with the requirements of Interim Order due to be completed on or before October 30, 2015.

That if Henderson is determined at the reopening of this cause to be set subsequent to march 31, 2016, to have failed to comply with the requirements of Interim Order regarding the subject well by March 31, 2016, Henderson's \$25,000 Category B surety shall be immediately forfeited in its entirety and the proceeds used to plug the subject well, remove equipment, junk, trash and debris from and to restore the site in accordance with Commission rules.

That upon the forfeiture of Henderson's \$25,000 Category B surety, the wells operated by Henderson in the State of Oklahoma are to be shut in, and Henderson is prohibited from operating wells in the State of Oklahoma until Henderson files with and obtains the Commission's approval of Category B surety in the minimum amount of \$25,000 and Henderson pays to the Commission all administrative costs assessed against Henderson. Additional administrative costs shall also be assessed against Henderson if it fails to fully comply with Interim Order.

ORAL REPORT OF THE ALJ

ALJ Paul Porter reported that the issue in these three causes is whether the Commission has the authority to order an operator to **not** transfer any wells pending completion of an enforcement action. The Commission and Sundance are requesting a final order in these three causes. The requested relief required by the Interim Orders has not been complied with and Henderson is past their deadline. Sundance has mentioned it had two wells being considered for fracing yet were prohibited from doing so due to Henderson's Crescent Thunder #9 and Crescent Thunder #10 wells being still unplugged. Henderson claims the Commission has no authority to grant the requested relief that Henderson be prohibited from transferring any of their wells to another operator. The ALJ ruled there was to be **no transfer of any** of Henderson's properties until the three wells are plugged; that any monies received would go to plugging these wells. The ALJ found that any transfer of Henderson wells would have to be approved by the Commission. The ALJ notes the prevention of waste is a good reason for his decision in these causes.

POSITIONS OF THE PARTIES

HENDERSON

- 1) **Russell J. Walker**, attorney, appearing on behalf of Henderson, stated that Henderson believes the Commission's request is in effect placing a lien on all of Henderson's properties in Oklahoma that are not related to the wells above. Henderson notes this lien will prevent Henderson from managing their other properties, i.e. selling such properties in order to gain money to plug these wells. Henderson notes their \$25,000 surety bond has already been forfeited by the interim orders to cover the cost of plugging these wells. Henderson submits the Commission has no authority to place such a lien on their properties.
- 2) Henderson notes if Sundance believes that Henderson owes them money, then Sundance needs to file this private rights issue with the District Court, rather than ask the Commission to require Henderson to pay Sundance for alleged monies owed.
- 3) Henderson asserts it is not appropriate or proper for Sundance to request the Commission to burden Henderson's properties elsewhere in the State of Oklahoma until Sundance's private rights dispute with Henderson is settled, as such is the jurisdiction of the district court.

OCC

- 1) **Susan Conrad**, Deputy General Counsel, appearing for the Commission ("Staff" or the "OCC"), stated that Henderson is the operator of the Crescent Thunder #9 well (Cause EN 201500089) and the Crescent Thunder #10 well (Cause EN 201500090). The interim orders showed Gary Matli, District II field inspector, sent his reports to Henderson. Henderson was required to take certain actions by October 30, 2015 per Interim Orders No. 646434 (Cause EN 201500088), No. 646435 (Cause EN 201500089) and No. 646436 (Cause EN 201500090) yet compliance has not been achieved.
- 2) Staff notes the consequences for failure to comply with the above interim orders were clear-1) the surety bond was to be forfeited immediately; 2) the bond proceeds used to plug the wells, and remove equipment, trash and debris from the well sites; and 3) Henderson's wells were to be shut in until compliance was achieved.
- 3) Staff notes at the reopening hearing on November 4, 2015, Mr. Matli testified that Henderson had not complied with any aspects of the above interim orders. The field inspector's recommendation was that a final order issue forfeiting their \$25,000 Category B surety bond, with the \$25,000 being

used to plug the wells, remove equipment, etc from the well sites and restore the well sites per Commission rules; also that upon bond forfeiture, all of Henderson's wells in the State of Oklahoma be shut in until Henderson had filed and obtained from the Commission approval of a \$50,000 Category B surety bond.

4) Staff notes Henderson was to have paid to the Commission a \$5,000 fine in each of the above three causes due to its violation of Commission rules and failure to comply with the interim orders, plus any additional costs in excess of their forfeited \$25,000 bond needed to plug the wells and restore the well sites. The field inspector noted it would cost \$25,000 for each well plugging, with \$8,000 for each well site restoration, or approximately \$99,000.

5) Henderson only has one \$25,000 surety bond on file to meet the \$99,000 plugging/restoration cost. The ALJ suggested that any money Henderson acquired from selling or from transferring these wells to other operators be specified or required to be paid to the Commission in order to meet the plugging obligation of the above wells.

6) Staff notes the ALJ recommendation would allow any well operation transfer of Henderson operated wells to be allowed only if approved by Oil and Gas Conservation Division or Office of General Counsel. Staff believes Henderson's failure to comply with both Commission rules and signed interim orders shows good cause for affirming the decision of the ALJ.

7) OCC-OAC 165:10-1-1 provides "The rules of this Chapter were promulgated in furtherance of the public policy and statutory laws of the State of Oklahoma to prevent the waste of oil and gas, to assure the greatest ultimate recovery from the State's reservoirs, to protect the correlative rights of all interest owners, and to prevent pollution.

8) OCC-OAC 165:10-1-3 provides that "All rules of general application in this Chapter promulgated to prevent waste, assure the greatest ultimate recovery from the reservoirs of this state, protect the correlative rights of all interests, and to prevent pollution shall be effective throughout the State of Oklahoma and be in force in all pools except as amended, modified, altered, or enlarged in specific individual pools by orders now in effect or hereafter issued by the Commission.

9) OCC-OAC 165:10-1-6(a), Duties and authority of the Conservation Division provides "It shall be the duty of the Conservation Division to administer and enforce the statutes of this State and the rules, regulations, and orders of the Commission relating to the conservation of oil and gas and the prevention of pollution in connection with the exploration, drilling,

producing, transporting, purchasing, processing, and storage of oil and gas, and to administer and enforce the applicable provisions of the Natural Gas Policy Act of 1978.

10) Staff observes that Henderson attempts to characterize these issues in these contempt cases that the money from any sale/transfer of Henderson's other properties would be paid directly to Sundance, and that this dispute involves a private rights issue between Sundance and Henderson. Staff believes this is a public rights issue. Henderson was given many opportunities to bring the above wells into compliance, even prior to the filed contempt actions, yet Henderson failed to comply with the Commission's requests. Staff reminds the court the amount of surety on file is inadequate to plug all of the above wells and restore the well sites.

SUNDANCE

1) **Roger A. Grove**, attorney, appearing on behalf of Sundance, stated Sundance learned last year that the Crescent Thunder #9 and Crescent Thunder #10 wells had been perforated in the Mississippian, about the time when Sundance was going to frac their drilled wells. Sundance notes that it had already drilled several multi-million dollar laterals, horizontal wells here. Sundance was unable to complete in the Mississippian due to Henderson's predecessor never having filed a completion report showing that the wells had been perforated in the Mississippian.

2) Sundance heard through the grapevine that Henderson had perforated the Mississippian zone, which Sundance was in the process of completing. Sundance opted to delay fracing their wells, due to the old Henderson vertical well sitting there with an open zone. Sundance notes this was when oil was \$90 a barrel. Sundance has been sitting on their multi-million dollar horizontal lateral wells due to Henderson's wells being unplugged with the Mississippian zone open which could cause an environmental disaster.

3) Sundance notes the provisions in the interim orders requires the placement of a bridge plug in Henderson's wells above the Mississippi formation, with the requirement that Sundance be notified of this work prior to Sundance proceeding with their well completions in the Mississippian.

4) Sundance disagrees with Henderson that this is a private rights dispute, rather it is a contempt action brought by the Commission against an operator for failure to comply with numerous Commission rules.

- 5) Sundance notes its own operations of wells have been affected by Henderson's lack of compliance with Commission rules and orders. Sundance is not requesting to be paid from any monies owed from Henderson to the Commission. Sundance believes that Henderson could form another entity to come forward and operate their other state wells, and keep on operating, despite not being in compliance with Commission rules on the above wells. Sundance believes it is unfair to allow Henderson to transfer their wells not in compliance to other brother-in-law/friendly operators and then continue to operate willy-nilly, as if no rules had been broken. Sundance wants a restriction on Henderson's ability to transfer properties in order to get Henderson to plug these wells as required by the above interim orders.
- 6) Sundance notes Henderson is not prevented from submitting a Form 1073 for a well transfer under the interim orders, only that the Commission must approve it and see that the monies from such transfer goes to the plugging of the remaining wells and restoration of the well sites.
- 7) Sundance submits that the State or the Commission should not have to use state funds to plug the Henderson wells when Henderson has other properties that could be applied to the plugging debt owed by Henderson to the Commission.
- 8) Sundance believes that any approval of a future Form 1073 needs to be coupled with the additional requirement that Henderson comply with the terms of the interim orders, i.e. to plug the wells, restore the sites and pay their fines.
- 9) OCC-OAC 165:10-1-10(e) provides if the operator "has neglected, failed, or refused to plug...or remove or cause to be removed trash and equipment in compliance with the rules...then the person shall forfeit from his bond...or shall pay to this State...a sum equal to the cost of plugging the well,...or removal of trash and equipment...If the operator is a corporation, association, partnership, limited liability company or any entity other than an individual, the operator shall file as part of its Form 1006B a complete list, in tabular form, of the names, addresses, telephone numbers, driver license numbers, and percentages of ownership of all officers, directors, partners or principals of the operator and the insiders and affiliates of the operator. The operator shall also file as part of its Form 1006B the current names and addresses of all service agents of the operator and the operator's insiders and affiliates. The operator is required to file a Form 1006B with the Conservation Division every twelve (12) months." Sundance notes those terms above are defined in OCC-OAC 165:10-1-10(i) or 165:10-1-2.
- 10) Sundance believes the rule is meant to prevent a company from setting up another entity with an affiliate/insider and then just transferring

their wells under a Form 1073, i.e. basically skirting the requirements of OCC-OAC 165:10-1-10(g).

11) OCC-OAC 165:10-1-10(g) provides "The Commission shall shut in, without notice, hearing or order of the Commission, the wells of any such person violating the provisions of this Section and such wells shall remain shut in for noncompliance until the required evidence of Category B surety is obtained and verified by the Commission."

12) Sundance notes the intent here is the disallowance of an operator to continue to operate after an operator has been in noncompliance with the Commission rules.

13) Sundance notes Henderson cited OCC-OAC 165:10-1-15(c) regarding transfer of operatorship of wells. OCC-OAC 165:10-1-15(c) provides "If an operator is not in compliance with an enforceable order of the Commission, the Conservation Division shall not approve any Form 1073 transferring well(s) to said operator until the operator complies with the order. The transferor of the well(s) listed on the Form 1073 remains responsible for the well(s) until any transfer is approved by the Commission."

14) Sundance disagrees with Henderson's position that Henderson could transfer their wells, but Henderson could not receive any new wells.

15) Sundance believes the rules do not say the Commission has no authority to not approve a Form 1073 of an operator who is not in compliance with Commission rules. Sundance cannot find a rule that says the Commission has the authority to not approve the requested relief, i.e. it is inherent and fair.

16) Sundance notes the requested relief would keep an operator from forfeiting their surety bond (\$25,000 here) that cost the operator 10% of the face value of the bond, so the operator can pay \$2500 and walk away from a \$100,000 plugging liability and then ask the State to pay for it and further ask permission to transfer their remaining 30 compliant wells to another friendly entity in order to keep in business. Sundance thinks the requested relief is a fair provision to be added and required.

RESPONSE OF HENDERSON

1) Henderson would concur that both the Sundance and the Commission previous arguments support Henderson here. Henderson notes when money

is owed to the Commission, the Commission must file in district court in order to collect from the name(s) listed on Form 1006B.

2) Henderson admits it only has a \$25,000 surety bond. Henderson disagrees that the Commission can burden the other properties of Henderson.

3) Henderson notes that OCC-OAC 165:10-1-15 does not say if an operator is burdened with a Commission order that Henderson cannot transfer wells to other people who have a valid surety bond and who are unburdened by this rule.

4) Henderson notes Sundance drilled their wells in this area without knowledge of the area facts that they were drilling into. Henderson notes it is not their problem that Sundance did not check out the area prior to drilling their well, prior to spending lots of money here.

5) Henderson submits there is no Commission rule that permits the Commission to restrict a transfer later on, just because the Commission claims an operator owes the Commission money. Henderson believes if the Commission thinks that Henderson owes the Commission money, then the Commission should file an action in district court.

6) Henderson does not dispute that when an operator forfeits their surety bond, the Commission can request to have that operator shut in all their other wells. Henderson believes the rules the Commission has discussed are not relevant to the circumstances on appeal. Henderson submits there is nothing in the ALJ's decision to substantiate his recommendations.

RESPONSE OF SUNDANCE

1) Sundance points out there was no Form 1002A filed by Henderson's predecessor which showed that the Henderson wells had perforated in the Mississippian zone at the time that Sundance drilled their wells. Sundance had no way to know this information prior to drilling their wells.

CONCLUSIONS

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

1) The Referee finds that the ALJ's oral determination that any transfer of Henderson owned wells through a filing of a Form 1073 with the Commission has to approved by the Commission, and that this Commission is not going to approve any transfer of an operatorship unless there is some recoupment of these monies that are owed by Henderson under the present three Contempt cases.

2) The Oklahoma Corporation Commission has the authority to pursue contempt against any entity that violates the rules, regulations and orders of the Commission. *Union Texas Petroleum Corporation v Jackson*, 909 P.2d 131 (Okl.Civ.App. 1995).

3) 52 O.S. Section 102 provides:

Punishment for contempt by the Commission of any person, guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session, or for disobedience of its subpoena, summons or other process, may be by fine not exceeding One Thousand Dollars (\$1,000.00) or by confinement in the county jail of Oklahoma County not exceeding one (1) year, or by both. Any person who shall disobey or violate any of the provisions of Section 86.1 et seq. of this title or any of the orders, rules, regulations or judgments of the Commission issued, promulgated or rendered by it, shall be punished as for contempt. Punishment by the Commission in proceedings as for contempt for disobedience or violation of any provision of Section 86.1 et seq. of this title or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of Section 86.1 et seq. of this title shall be by fine not exceeding in amount Five Thousand Dollars (\$5,000.00), and each day such disobedience or violation shall continue shall constitute a separate and additional contempt, and shall be punished by separate and additional fines each in amount not in excess of aforesaid amount. Any fine or penalty assessed under the provisions of Section 86.1 et seq. of this title may be enforced in the same manner as a foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act. Section 719 et seq. of Title 12 of the Oklahoma Statutes provided that such procedure shall be followed regardless of whether the offender is a

resident or nonresident of Oklahoma. Such fine or penalty shall constitute and be a lien upon all the property of the offender within the state, except the homestead of such offender, provided that a copy of the order imposing the fine or penalty, certified by the Secretary of the Commission, is filed in accordance with Section 706 of Title 12 of the Oklahoma Statutes. All monies collected as fines or penalties under the provisions of Section 86.1 et seq. of this title shall, when paid into or received by the Commission, be by it paid to the State Treasurer of the state for the credit of the Corporation Commission Revolving Fund.

4) A contempt proceeding is characterized as *sui generis* in Oklahoma. *Vogel v. Corporation Commission of Oklahoma*, 121 P.2d 586 (Okl. 1942); *Stamford Energy Companies, Inc. v. Corporation Commission of State*, 764 P.2d 880 (Okl. 1988). It is neither a civil or criminal proceeding. *State ex rel Short v. Owens*, 256 P. 704 (Okl. 1927). The Commission's contempt power is derived from both the Oklahoma Constitution and statute. See Article 9, Section 19, Oklahoma Constitution; 52 O.S. Section 102. Therefore, it is unique. "It is neither civil nor criminal, but may partake of either in its nature."

5) The Oklahoma Supreme Court in *Stamford Energy Companies, Inc. v. Corporation Commission of State*, supra, at 882 states:

Oklahoma's characterization of a contempt proceeding as *sui generis* is beyond dispute. *State ex rel Young v. Woodson*, 522 P.2d 1035, 1039 (Okla. 1974); *Vogel v. Corporation Commission of Oklahoma*, 190 Okl. 156, 121 P.2d 586, 588 (1942). This Court has long held that the violation of a Commission order punishable as contempt does not constitute a crime and a contempt proceeding is not a criminal prosecution. Based on these principles, this Court in *Vogel*, supra, held that although the Commission acts as a quasi-judicial body it is an administrative agency, not a trial court, and as such is not subject to the constitutional and statutory provisions concerning contempts of court which mandate trial by jury in particular proceedings for contempt.

6) Thus, the Commission's contempt power is what it wishes it to be so long as the Commission stays within the express and implied jurisdictional

limits placed on it by the Oklahoma Constitution and 52 O.S. Section 102. *Tenneco Oil Company v. El Paso Natural Gas Company*, 687 P.2d 1049 (Okla. 1984); *Burmah Oil and Gas Company v. Corporation Commission*, 541 P.2d 834 (Okla. 1975); and *Kingwood Oil Company v. Hall-Jones Oil Corporation*, 396 P.2d 510 (Okla. 1964).

7) The Oklahoma Constitution, Article 9, Section 19, provides:

In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the Commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the Commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The Commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisal of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the Commission, within reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission

(proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense: Provided, That should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

8) Thus, the nature of a Commission's contempt order is unique and may be fashioned by the Commission to address the particular facts and circumstances presented to the Commission.

9) The ALJ at the November 4, 2015 reopening hearing determined that the \$25,000 surety bond would be very inadequate to plug all three of these wells. The estimated cost to plug these three wells and restore the sites was \$99,000. It was determined that there was a concern that Henderson could transfer these wells to another entity, a "brother-in-law/friendly" entity under a Form 1073 transferring wells to another operator and retain these funds and not use them for plugging these three wells with a plugging liability of \$99,000. The Referee agrees that an operator could forfeit a \$25,000 bond that probably cost them 10% of the face value, and then walk away from a \$100,000 worth of plugging liability, while transferring their 32 other wells that they operate to another friendly brother entity and keep operating them.

10) OCC-OAC 165:10-1-15(c) states:

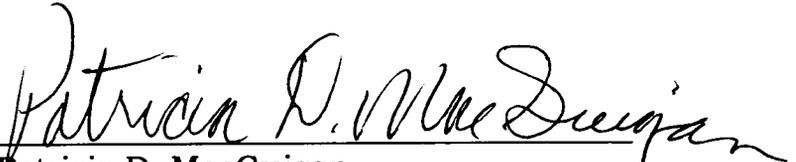
If an operator is not in compliance with an enforceable order of the Commission, the Conservation Division shall not approve any Form 1073 transferring well(s) to said operator until the operator complies with the order. The transferor of the well(s) listed on the Form 1073 remains responsible for the well(s) until any transfer is approved by the Commission."

This particular rule does not provide that the Commission does not have the authority to not approve a Form 1073 of a change of operator to an operator who is not in compliance with Commission rules. The Referee agrees that it is only fair to allow the Commission to not approve any transfer of an operator

from Henderson to a "brother-in-law/friendly" entity unless there is some recoupment of the monies that Henderson owes under these cases. The Referee further agrees that the Commission and the State should not have to use state funds to plug these wells when Henderson would be able to sell other properties they operate in the State that are regulated by this Commission and pocket the money and walk away. Any approval of the Form 1073s from Henderson to another entity/operator ought to be coupled with the requirement that Henderson comply with the terms of the interim orders in the present cases and plug these wells and pay their fines.

11) For the above stated reasons the Referee would affirm the Oral Report of the ALJ.

RESPECTFULLY SUBMITTED THIS 27th day of January, 2016.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiett
James L. Myles
ALJ Paul Porter
Susan Dennehy Conrad
Russell J. Walker
Collier H. Pate
Stuart A. Knarr
Roger A. Grove
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