

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE OF APPLICATION OF)
LPD ENERGY COMPANY LLC SEEKING AN)
ORDER OF THE OKLAHOMA CORPORATION)
COMMISSION TO PREVENT WASTE UNDER 52)
O.S. §271 & §273 ET SEQ)

CAUSE NO. CD 202000986

FILED
MAY 08 2020

DISSENT OF COMMISSIONER BOB ANTHONY
IN ORDER NO. 710884

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CORPORATION COMMISSION
OF OKLAHOMA

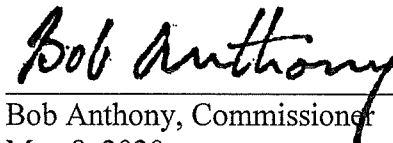
Commissioner Bob Anthony respectfully dissents, because the emergency order is replete with fatal errors. The emergency order gives any well operator the discretion to curtail or shut-in their oil production because of market price. The first problem with the grant of such a privilege is that the emergency order does not set any standard or parameters for the exercise of such discretion. If there is ever any dispute over the exercise of that discretion, how would anyone enforce such an order? If the Applicant was correct that waste was occurring on the date of the hearing, e.g., at eighteen dollars per barrel, what happens when the price goes up? When does such waste begin and end?

The emergency order is premised on the existence of waste as defined by 52 O.S. 2011 §273. If the emergency order gives a well operator discretion to curtail or shut-in a well because of waste, then logically it also gives him the discretion or choice to produce oil from his well while waste is occurring from his production. Oil production while waste is occurring violates 52 O.S. 2011 §271, which prohibits oil production where waste occurs.

The emergency order states that the waste arises from volatile market prices and lack of adequate downstream storage for crude oil, both problems allegedly beyond any well operator's control. Be that as it may, the Applicant contended during the hearing that an emergency order is

necessary to preserve or extend oil and gas leases. In that regard, no oil and gas lease may cause or grant a license to commit waste, control of which is exclusively within the power of the Corporation Commission. *Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, ¶20, 687 P.2d 1049, 1053. However, the Applicant's ultimate justification for the emergency order is the proposition that one or more oil and gas leases may expire if leasehold oil production is shut-in when it is uneconomic due to market price. Yet, the Commission would not be able to determine if that is the case, without reviewing the lease(s) which were not submitted and interpreting the operation of lease provisions, and the Commission lacks authority to do so. *Id* at ¶21. In essence, LPD asked the Commission to base a statewide order on a mere assumption about legal obligations outside the Commission's jurisdiction, based on the testimony of a layman Mr. Eddie Rongey.

Finally, as described in my Deliberations Statement filed today, I was not satisfied that the basic requirements of due process had been met with respect to notice of the hearing on LPD's application for an emergency order.



Bob Anthony, Commissioner
May 8, 2020