



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

July 27, 2005

OIL AND GAS DOCKET NO. 20-0239495

APPLICATION OF MICHAEL KEITH HAHN TO CONSIDER REMOVAL OF HIS PERMITTING DISQUALIFICATIONS UNDER TEXAS NATURAL RESOURCES CODE §91.114 RESULTING FROM HIS ASSOCIATION WITH CORE E&P CORP. (178381). APPLICANT FURTHER REQUESTS REMOVAL OF HIS NAME FROM THE COMMISSION'S CURRENT P-5 RECORDS FOR CORE E&P CORP.

HEARD BY: Marshall Enquist, Hearings Examiner

APPLICANT:

Rex H. White, Jr., Attorney
Michael Keith Hahn

REPRESENTING:

Michael Keith Hahn
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INTERVENOR/PROTESTANT:

Reese Copeland, Enforcement Attorney RRC

PROCEDURAL HISTORY

Date of Application:	July 13, 2004
Date of Notice:	July 29, 2004
Date of Hearing:	March 10, 2005
PFD Circulation Date:	July 27, 2005

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

This is the application of Michael Keith Hahn ("Hahn") requesting the Commission to remove his permitting disqualifications under Texas Natural Resources Code §91.114. In Oil & Gas Docket No. 03-0233966, Mr. Hahn was found to be a person "in a position of ownership or control" of a P-5 organization ("Core E & P, Corp." or "Core Exploration and Production Corporation", hereinafter "Core") at the time that organization committed a violation of Commission rules. The Final Order in Oil & Gas Docket No. 03-0233966 was signed by the Commissioners on September 22, 2003 and became final and unappealable on October 15, 2003. As a result, for a period of seven

years (until October 15, 2010), the Commission will not process any P-5 Organization Report, permit application or P-4 Certificate of Compliance received from Mr. Hahn.

On December 12, 2003, Hahn attempted to renew the P-5 Organization Report for Preferred Pipeline Corp., in which he is listed as the Resident Agent, and President/Secretary. The renewal was not accepted by the Commission, due to the final and unappealable order in Docket No. 03-0233966 against Core and the taint it attached to Hahn.

Core was also the subject of Oil & Gas Docket No. 03-0235020, but the Final Order in that docket is presently being appealed in District Court and is not yet final. For legal purposes, any violation alleged in that docket has not yet been found to have occurred. Consequently, the findings in that docket are not being considered in this proceeding.

Hahn contends that the terms of an "Order After Status Conference" issued by a United States Bankruptcy Judge, Wesley W. Steen, in the United States Bankruptcy Court for the Southern District of Texas, Victoria Division, demonstrate that he was not "in a position of ownership or control" of Core at the time that Core violated Commission rules, and that his permitting disqualification under §91.114 should be removed.

Originally scheduled to be heard on August 18, 2004, the actual hearing was delayed by the resignation of Mr. Hahn's original counsel and Hahn's request for a continuance in order to secure new counsel and give that counsel time to familiarize himself with the facts of the case.

LEGAL BACKGROUND

Under Texas Natural Resources Code §91.114, the Commission may not accept a Form P-5 Organization Report, P-4 Certificate of Compliance or an application for a permit from an organization if any person holding "a position of ownership and control" in that organization also held, within a period of seven years, a position of ownership or control in another organization that violated "a statute or commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution".

Under the statute, the meaning of the term "position of ownership or control" is defined by TNRC §91.114(c):

- (c) Regardless of whether the person's name appears or is required to appear on the organization report required by Section 91.142, a person holds a position of ownership or control in an organization if:
 - 1.) the person is:
 - (A) an officer or director of the organization;
 - (B) a general partner of the organization;

- (C) the owner of a sole proprietorship organization;
 - (D) the owner of at least 25 percent of the beneficial interest in the organization;
 - or
 - (E) a trustee of the organization; or
- 2.) the person has been determined by a final judgment or final administrative order to have exerted actual control over the organization.
(underlining added)

Alternatively, under the Commission's interpretation of the statute, as stated in RRC Statewide Rule 78(a)(8), officers and owners are defined as follows:

- (a)(8) Officers and owners - Any persons owning or controlling an organization including officers, directors, general partners, sole proprietors, owners of more than 25% ownership interest, any trustee of an organization, and any person determined by a final judgment or final administrative order to have exercised control over the organization.

SWR 78(m) describes the results of outstanding violations on renewals, applications and certificates:

- (c) Effect of outstanding violations.
 - (1) Except as provided in paragraph (2) of this subsection, the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for an oil lease or gas well submitted by an organization if:
 - (A) the organization has outstanding violations; or
 - (B) an officer or owner of the organization, as defined in subsection (a) of this section, was, within seven years preceding the filing of the report, application, or certificate, an officer or owner of an organization and during that period, the organization committed a violation that remains an outstanding violation.

In addition, SWR 1(a)(4) requires:

- (4) The organization report shall contain the following information:
 - (A) The name, street address, mailing address, telephone number and emergency after-hours telephone number of the organization;
 - (B) the plan of the business organization;
 - (C) for each officer, director, general partner, owner of more than 25% ownership interest, or trustee (hereinafter controlling entity) of the organization:
 - (i) that entity's or individual's full legal name, the names(s) under which such entity or individual conducts business in the State if Texas, and all assumed names;
 - (ii) the following:
 - (I) if the entity is an individual, his or her social security number.

- (II) Any individual who does not have a valid social security number shall submit, at that person's option, either his or her valid driver's license or Texas State Identification number; if the entity is not an individual, the name and, at that person's option, either the valid driver's license, social security number, or Texas Identification number of each officer, director, or other person, who, under Texas Natural Resources Code, 91.114, holds a position of ownership or control of the organization, or an active P-5 number for that entity. All controlling entities connected to an organization which are not individuals shall provide the identification of the individuals in ownership or control of those entities. (underlining added)

DISCUSSION OF THE EVIDENCE

HAHN'S POSITION

In 1989, a Commission-recognized P-5 organization named Fischer Operating Corporation was formed. By amendment of its Articles of Incorporation, its name was changed to Core Energy Corporation in 1998. By further amendment to its Articles of Incorporation filed with the Secretary of State on May 24, 1999, its name was changed to Core Exploration and Production Corporation. Its president was John Zimmerman. A Form P-5 filed by Core on November 9, 2001 listed Michael Keith Hahn as the president of Core.

On December 15, 2001, an annual shareholder meeting was held. The minutes of the meeting indicate it was called to order by M.K. Hahn, the chairman of Core Exploration and Production Corporation and owner of the only outstanding shares (1,000) of capital stock in the corporation. The minutes described changes in shareholders since the previous meeting, noting that O.S. Hahn had transferred 1,000 shares of stock to M.K. Hahn. It was then stated that O.S. Hahn and M.C. Guerra resigned as directors of the corporation.

In his capacity as president of Core, Hahn signed P-4s for 4 oil leases and one gas well in Jefferson County on December 6, 2001. A few months later, on May 10, 2002, the District Court in Victoria County, 24th Judicial District, appointed a receiver for the assets and property of Core and Del Rio Energy, LLC. Shortly thereafter, on May 22, 2002, Hahn resigned as president of Core.

On June 20, 2002, Core was placed in Chapter 7 Involuntary Bankruptcy and George Stone was appointed Trustee. On July 1, 2002, the P-5 for Core E&P Corporation became delinquent. Almost nine months later, on March 19, 2003, Notice of the Original Complaint in Oil & Gas Docket No. 03-0233966 was sent to Core, followed by the First Amended Complaint in that docket on April 3, 2003. Core was charged with violations of Statewide Rule 14(b)(2) which arose after its P-5 became delinquent. Core did not appear at the hearing and it proceeded on a default basis. On September 22, 2003, the Commissioners signed the Final Order in Oil & Gas Docket No. 03-

0233966, which was issued September 23 and became final and unappealable 23 days later on October 16, 2003.

Hahn argues that a ruling by the United States Bankruptcy Court for the Southern District of Texas, Victoria Division, proves that the officers of Core were not in a position of "ownership or control" after June 20, 2002. The March 9, 2004 ruling, in Case No. 02-36809-V-7, titled "Order After Status Conference", states:

"The Trustee stipulates, and the parties present agree, that by virtue of the provisions of 11 U.S.C. §323(a), since June 20, 2002, Susana Hahn, Cathy Guerra and Keith Hahn were not individually or collectively a representative of the bankruptcy estate of Core Exploration and Production Corporation ("Core"), were not responsible for the corporate affairs of Core, were not in control of the corporate assets of Core, never executed actual control over Core, could not assume such control and were unable and without authority to respond to any actions solely against Core initiated by any oil and gas regulatory agency, including without limitation the Railroad Commission of Texas. However, nothing in this Order shall impact or pre-determine any independent liability Keith Hahn, Susana Hahn or Cathy Guerra may have to the Railroad Commission of Texas."

On February 24, 2005, Hahn attempted to donate his 1,000 outstanding shares of stock in Fischer Operating Corporation, which through several name changes had become Core Exploration and Production Corporation, to the bankruptcy trustee, George Stone, who was in charge of the assets of Core E & P Corporation. By this donation, Hahn attempted to divest himself of any remaining interest in Core E & P Corporation. Whether the 1,000 shares of stock signified an ownership interest or a beneficial interest is the heart of Hahn's argument.

By letter dated March 7, 2005, the Texas Comptroller of Public Accounts, Carole Keeton Strayhorn, certified that Core Exploration and Production Corporation was in good standing with the Comptroller, having no franchise tax reports or payments due at that time. Attached was a page titled "Corporation Search Results" showing George Stone, Trustee, as the officer or director of Core. By letter dated March 7, 2005, Roger Williams, Secretary of State of Texas, certified that Core Exploration and Production Corporation was active in the State of Texas.

Hahn argues that after the bankruptcy trustee was appointed on June 20, 2002, that the officers and directors of Core no longer were in control of Core. Hahn further argues that although he was the owner of all 1000 outstanding shares in Core, he was not the owner of 25% or more of the beneficial interest in Core. Hahn relies on the definition found in Black's Law Dictionary, Seventh Edition, which states that a "beneficial interest" is "a right or expectancy in something (such as a trust or estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property." Core also quotes Black's definition of "beneficial owner", found in the dictionary as a subheading under "owner", and defined as "1. One recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for

whom property is held in trust.-- Also termed *equitable owner*. 2. A corporate shareholder who has the power to buy or sell the shares, but who is not registered on the corporation's books as the owner."

Hahn asserts that this is important because TNRC §91.114 has been amended over the years. Prior to 1997, TNRC 91.114(a)(1) read, in part, "....an officer, director, general partner, owner of more than 25 percent ownership interest, or trustee of the organization....". But by Acts 1997, 75th Leg., Ch. 121, §1, eff. Sept. 1, 1997, the phrase "ownership interest" was deleted and replaced with the phrase "beneficial interest".

Hahn argues that because he was not in a position of "control" of Core after June 20, 2002 and because he did not possess a "beneficial interest" in Core, he does not meet the requirements of TNRC 91.114 for disqualification from permitting and the P-5 application for Preferred Pipeline Corp. should be processed and approved.

ENFORCEMENT'S POSITION

Enforcement argued that the plain meaning of the words "a position of ownership or control" compels the conclusion that ownership of 100% of the stock of a corporation represents "at least 25% of the beneficial interest in the organization". Enforcement argues that a stockholder is entitled to receive any dividend paid by a company and that a dividend is a beneficial interest. As the sole shareholder of Core, Hahn was entitled to all of any dividend paid by the organization, and could elect the directors who in turn could elect the officers. The officers are required to operate the organization for the benefit of the shareholders, thus Hahn had at least 25% of the beneficial interest in Core as required under Texas Natural Resources Code §91.114.

Enforcement also notes that after SB 639 was passed and became effective in 1997, the Commission amended Statewide Rule 78. The amendments were adopted in October of 2003, at 28 Tex. Reg. 8890, defining "Officers and Owners" as "Any persons owning or controlling an organization including officers, directors, general partners, sole proprietors, owners of more than 25% ownership interest, any trustee of an organization, and any person determined by a final judgment or final administrative order to have exercised control of the organization."

EXAMINERS' OPINION

The record shows that Hahn resigned as President of Core prior to the appointment of the bankruptcy trustee and prior to the filing of the complaint that resulted in the unappealable Final Order in Oil & Gas Docket No. 03-0233699. Hahn's resignation as president of Core on May 22, 2002, preceded the date (July 1, 2002) that Core's P-5 became delinquent, initiating the time frame in which the Statewide Rule 14(b)(2) violations occurred in Docket No. 03-0233699. Additionally, the March 9, 2004 ruling of the United States Bankruptcy Court for the Southern District of Texas clearly states that Keith Hahn was not in control of Core after the appointment of George Stone, Bankruptcy Trustee, on June 20, 2002. Thus, Hahn was not an officer of Core nor in a position of "control" of Core at the time of the violations as contemplated in TNRC §91.114.

However, the record also shows, even through his own evidence, that Hahn retained ownership of 100% of the outstanding shares in Core from December 15, 2001 until at least February 24, 2005, (shortly before this hearing) when he attempted the "donation" of his stock in the company to the bankruptcy trustee in a letter written for him by his counsel. Therefore, Hahn was in a position of "ownership" during the time of Core's violations of Commission rules, from July 1, 2002 through September 22, 2003, the date the Final Order in Docket No. 03-0233699 was signed. The wells involved in that docket, Well Nos. 7D and 7F on the Koch Santa Fe Unit Lease (RRC ID# 07820) and Well No. 7H on the Koch Santa Fe Unit lease (RRC ID# 07833) are still in Core's name and the wells have not been plugged, thus the violation is ongoing.

Hahn's arguments rely heavily on definitions of various legal terms as presented in Black's Law Dictionary ("Black's"). The definitions in Black's are extremely helpful to practitioners of law, but they are not meant to be exhaustive. The Preface to the examiner's edition of Black's contains the following admonition:

"The language of the law is ever-changing as the courts, Congress, state legislatures, and administrative agencies continue to define, redefine and expand legal words and terms, Furthermore, many legal terms are subject to variations from state to state and again can differ under federal laws. Also, the type of legal issue, dispute, or transaction involved can affect a given definition usage. Accordingly, a legal dictionary should only be used as a "starting point" for definitions. Additional research should follow for state or federal variations, for further or later court interpretations, and for specific applications." Black's Law Dictionary, Sixth Edition, West 1991.

Hahn quotes the definition of "beneficial interest" as "A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property." Black's Law Dictionary, 7th Edition, West 1999. Hahn proceeds to argue that the term must imply the existence of a trust and that a "beneficial interest" in an organization is an indirect interest, as through stock held by a trustee who is the record owner of corporate stock.

However, as stated above, the definitions in Black's are not represented to be exhaustive. Reference to Texas caselaw demonstrates that a "beneficial interest" need not be confined to trust relationships, but may extend to corporation/shareholder relationships as well.

"Under our authorities the corporation is a legal entity, distinct from its stockholders. In this regard, strictly speaking, the ownership of the corporate assets is vested in the corporation itself and not in its stockholders. Also, strictly speaking, the ownership of stock does not carry with it equitable title to the corporate property. This simply means, however, that the stockholders have no right to require the corporation to convey to them the legal title to the corporate property. In a larger or real sense, the stockholders of a corporation are the beneficial owners of its corporate properties. 10 Texas Jur. P. 781, par. 153; Yeaman v. Galveston City Co., 106 Tex. 389 (see page 426), 167 S.W. 710 (see page 723), AnnCas. 1917E, 191." McAlister v. Eclipse Oil Co., 98 S.W.2d 171 (Tex.

1936). (Emphasis added). This interpretation is consistent with and parallel to the definition in Black's, in the sense that a stockholder does not hold legal title to the corporate property (the corporation does), but is entitled to receive a beneficial interest from the corporate properties (a dividend).

Texas Natural Resources Code §91.114 allows the tainting of a person with 25% or more of the "beneficial interest" in a company that has been found in violation of Commission rules. Ownership of the shares of a company confers a beneficial interest, i.e., the right to receive a dividend, and Hahn had 100% of the shares in Core at the time that the Commission found Core in violation of Commission rules, thus meeting the test in the statute.

Hahn also meets the test under the Commission's Statewide Rule. The Texas Railroad Commission incorporated the provisions of TNRC §91.114 into its own Statewide Rule 78, which was adopted in a rulemaking procedure published in October, 2003 at 28 Tex. Reg. 8890. The Commission rule uses the term "ownership or control", not "beneficial interest", and in Rule 78(a) defines owners as persons that are "owners of more than 25% ownership interest."

During the hearing, the examiner requested both parties to late-file a brief distinguishing between a "beneficial interest" in an organization and an "ownership interest" in an organization. On page 7 of the "Post-Hearing Brief of Michael Keith Hahn", Hahn states, "Keith Hahn, as the registered owner of stock in Core, had a direct ownership interest, as opposed to an indirect beneficial interest, in Core. Keith Hahn owned the capital stock; he was the registered owner on the corporate records of Core." Again, on Page 12 of the Brief, Hahn states, "Keith Hahn as owner of stock in Core, registered on the books of the corporation as the owner, has a direct interest, as opposed to having a "beneficial interest" "in the organization" known as Core - at the time the Railroad Commission Final Orders were entered against Core." Capital stock is defined, in part, in Black's as "The shares of stock representing ownership of a business. The types of stock include preferred stock and common stock".

Thus, by Hahn's own admission, at the time of the violations found in Oil & Gas Docket No. 03-0233966, as the sole owner of 100% of the capital stock in Core, he had 100% of the ownership interest in the company. Under Statewide Rule 78, the Commission was correct in tainting Michael Keith Hahn for a period of seven years and refusing to process Hahn's P-5 application for Preferred Pipeline Corp.

There is no conflict in stating that Hahn had both a beneficial interest and an ownership interest in Core. Hahn had a beneficial interest in the company, the right to receive a dividend, through his possession of stock in the company. At the same time, the possession of 100% of the capital stock gave Mr. Hahn complete ownership of the company, by his own admission.

The examiner recommends that the permitting disqualification attached to Michael Keith Hahn under Texas Natural Resources Code §91.114 and Commission Statewide Rule 78 remain attached.

FINDINGS OF FACT

1. Notice of Hearing was given on July 29, 2004 to all parties entitled to notice in this hearing.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Applicant Michael Keith Hahn seeks removal of the permitting disqualification attached to him by operation of Texas Natural Resources Code §91.114 due to his association with Core E&P Corporation and its violation of Commission rules related to safety of the prevention or control of pollution as found by Final Order in Oil & Gas Docket No. 03-0233966, which became final and unappealable on October 16, 2003.
4. The period of time that Core was in violation of Commission rules related to safety or the prevention or control of pollution in Oil & Gas Docket No. 03-0233699 was from July 1, 2002 to September 22, 2003 (the date the Final Order in the docket was signed by the Commissioners). The violations have not been corrected and are ongoing.
5. Michael Keith Hahn owned 100% of the outstanding shares (capital stock) in Core E&P Corporation (previously Fischer Operating Corporation) from December 15, 2001 to at least February 24, 2005, a period of time that includes the time of the violations of Commission rules in Docket No. 03-0233699.
6. Ownership of capital stock in a company confers a beneficial interest in the company.
7. Under Texas Natural Resources Code §91.114, any person having a beneficial interest of 25% or more in a company found to be in violation of Commission rules by a final order which has become unappealable is subject to a permitting disqualification for seven years from the date the order became final and unappealable.
8. Capital stock is defined as the shares of stock representing ownership of a business.
9. Under Texas Railroad Commission Statewide Rule 78, any person having an ownership interest of more than 25% in a company found to be in violation of Commission rules by a final order which has become unappealable is subject to a permitting disqualification for seven years from the date the order became final and unappealable.
10. Michael Keith Hahn owned 100% of the outstanding shares of capital stock in Core E&P Corporation during the time of the violations in Oil & Gas Docket No. 03-0233699, placing him in a position of ownership under Statewide Rule 78.

CONCLUSIONS OF LAW

1. Proper notice was timely given to all parties legally entitled to notice.
2. Under Texas Natural Resources Code §91.114, Michael Keith Hahn had "at least 25% of the beneficial interest" in Core E&P Corporation during the time it was in violation of Commission rules related to safety or the prevention or control of pollution and thus a permitting disqualification attached to him on October 16, 2003, the date the Final Order in Oil & Gas Docket No. 03-0233699 became unappealable.
3. Under Texas Railroad Commission Statewide Rule 78, Michael Keith Hahn had a "more than 25% ownership interest" in Core E&P Corporation at the time that it was in violation of Commission rules related to safety or the prevention or control of pollution and thus a permitting disqualification attached to him on October 16, 2003, the date the Final Order in Oil & Gas Docket No. 03-0233699 became unappealable.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions of law, the examiner recommends that the permitting disqualification attached to Michael Keith Hahn pursuant to TNRC §91.114 and Statewide Rule 78 remain in place.

Respectfully submitted,



Marshall Enquist
Hearings Examiner
Office of General Counsel