



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 7B-0277312

COMMISSION CALLED HEARING ON THE COMPLAINT OF CAROLYN KELLY SEEKING TO HAVE HER NAME REMOVED FROM THE FORM P-5 ORGANIZATION REPORTS OF D.N.I. (OPERATOR NO. 221589) AND FROM CERTAIN FORM P-4 CERTIFICATES OF COMPLIANCE FOR D.N.I.

APPEARANCES:

FOR COMPLAINANT:

Lloyd Muennink
Carolyn Kelly

COMPLAINANT:

Carolyn Kelly

FOR INTERVENORS:

Reese Copeland
Sheila Weigand

INTERVENOR:

Commission Enforcement Section

Dwight Northcutt

Dwight Northcutt

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE APPLICATION FILED:	June 15, 2012
DATE OF NOTICE OF HEARING:	July 13, 2012
DATE OF HEARING:	October 11, 2012
HEARD BY:	Michael Crnich, Hearings Examiner Richard Atkins, Technical Examiner
DATE PFD CIRCULATED:	June 25, 2013

STATEMENT OF THE CASE

The complainant, Carolyn Kelly ("Kelly"), alleges that the Form P-5 organization reports of D.N.I. filed after 2004 and the Form P-4 certificates of compliance for D.N.I. filed after 2004 contain signatures for Kelly that are forgeries. Kelly admits to signing the initial organization report of D.N.I., multiple Forms P-4 for D.N.I., and the bond for D.N.I. used to satisfy the financial security requirements of the Commission. But, Kelly seeks to have her name removed from the Forms P-5 and Forms P-4 that allegedly contain her forged signature. Complicating

matters is the fact that Kelly claims the person responsible for D.N.I. should be Dwight Northcutt ("Northcutt"), with whom Kelly had a relationship for approximately 20 years until their recent breakup in March 2012. Unfortunately for all parties involved, Northcutt is prohibited from holding a position of ownership or control in a Commission-approved operator because he previously held a position of ownership or control in an operator that has unresolved final enforcement orders outstanding against it.

Hearing in this docket commenced preliminarily on August 6, 2012. Kelly, Northcutt, and the Railroad Commission Enforcement Section appeared at this hearing. Kelly and Northcutt indicated that they were working towards a private contractual settlement, which would essentially transfer the ownership of D.N.I. to a person other than Kelly or Northcutt. If successful, this arrangement would have permitted Kelly to withdraw her complaint. The examiners recessed the hearing for approximately 30 days, after which time, if the complaint was not resolved privately, the hearing would reconvene. The parties could not reach an agreement; therefore, the hearing was reconvened and concluded on October 11, 2012. Northcutt failed to appear at the reconvened hearing; Kelly and Enforcement appeared and participated.

DISCUSSION OF THE EVIDENCE

Carolyn Kelly

In May 2004, at the time that D.N.I. filed its first Form P-5 Organization Report with the Commission, Carolyn Kelly had been in a relationship with Dwight Northcutt for twelve years. From the evidence, it is unclear whether Kelly and Northcutt were married. Regardless of how their relationship was characterized, it ostensibly lasted for twenty years until March 2012.

Kelly presented copies of numerous Forms P-4 by which D.N.I. transferred or accepted wells and Forms P-5 by which D.N.I. renewed its status as an active operator with the Commission. Kelly stated that she had signed five of these documents, but that some other person had signed her name to the remainder of the documents. The five documents that Kelly admitted to signing were the following:

- The initial Form P-5 organization report for D.N.I., received May 17, 2004.
- The Form P-4 by which D.N.I. became operator of the J.W. Phillips Lease, Well No. 2 (RRC ID 142428), received May 17, 2004.
- The Form P-4 by which D.N.I. became operator of the J.W. Phillips Lease, Well No. 3 (RRC ID 142429), received May 17, 2004.
- The Form P-4 by which D.N.I. became operator of the J.W. Phillips (11893) Lease, Well No. 4, received May 17, 2004.
- The Form P-4 by which D.N.I. became operator of the Amalene Isaacks (16731) Lease, all wells, received May 17, 2004.

Kelly also testified that she signed the initial Blanket Performance Bond in the amount of \$25,000 and with an effective date of February 1, 2004.

Kelly stated that she never signed the other forms – the Forms P-5 for years 2005 through 2012 and various Forms P-4 filed on behalf of D.N.I. Her explanation is that Dwight Northcutt forged her signature on these other documents. According to Kelly's testimony, she never gave

Northcutt permission to sign her name to any Form P-4 or P-5, and in fact, she had no knowledge that he had signed her name. When asked why she signed the initial Form P-5, Kelly claimed that Northcutt had assured her that D.N.I. would be his business and his responsibility. Kelly believed that Northcutt needed her to sign the initial Form P-5 and performance bond because Northcutt did not have sufficient creditworthiness to secure a bond and needed some help with compliance.

Beyond signing the initial 2004 forms, Kelly claimed that her only other involvement with D.N.I. was to allow her credit card to be used to pay Commission fees and penalties. But, she insisted that Northcutt always reimbursed her for charges made with her credit card. Kelly offered into evidence copies of certain checks allegedly signed by Northcutt. These copies were admitted for the limited purpose of showing that certain checks, not written by Kelly, were written for payment of expenses stemming from D.N.I. leases. Kelly testified that she first became aware that she was liable, as the owner of D.N.I., for regulatory responsibility of D.N.I.'s wells in March 2012, when Northcutt left her a letter declaring, among other things, that "like it or not, you are responsible to plug these wells."

Enforcement

The Enforcement Section argued that Kelly knew what she was doing: to wit, "providing cover" for Northcutt, who could not himself be listed as the owner of D.N.I. because he held a position of ownership and control in an organization having unresolved enforcement orders entered against it. Because she participated in this arrangement with Northcutt, Enforcement asserted, she should not now be entitled to exemption from regulatory responsibility for D.N.I.'s wells.

Enforcement presented its own witness, Ms. Sheila Weigand from the Office of General Counsel, who had researched Railroad Commission records with respect to D.N.I., Northcutt, and Kelly. Weigand sponsored Commission records – remittance summaries from the Commission's Remittance Management System and similar Central Records Service Receipts from the Administration Division – detailing payments received on behalf of D.N.I. These records showed that Kelly paid numerous fees and penalties owed by D.N.I., including the following:

- The Form P-5 filing fee of \$300 for the 2007 to 2008 period, paid by cashier's check
- The Form P-5 filing fee of \$300 for the 2009 to 2010 period, paid by check
- The Form P-5 filing fee of \$300 for the 2010 to 2011 period, paid by check
- The Form P-5 filing fee of \$300 for the 2012 to 2013 period, paid by check
- On September 14, 2006, a lease severance/reissue fee of \$600, paid by credit card
- On June 8, 2010, a lease severance/reissue fee of \$300, paid by credit card
- On August 31, 2010, a lease severance/reissue fee of \$300, paid by credit card
- On April 23, 2009, a lease severance/reissue fee of \$1200, paid by credit card
- On December 8, 2009, a lease severance/reissue fee of \$300, paid by credit card
- On June 26, 2009, a lease severance/reissue fee of \$900, paid by credit card
- On June 8, 2007, administrative penalties of \$2,250, paid by cashier's check
- On August 3, 2011, drilling permit fees of \$360.50, paid by credit card

In connection with the June 8, 2007 payment of \$2,250, Enforcement presented the Stipulation, Agreed Settlement, and Consent Order from Docket No. 7B-0249974, which ordered D.N.I. to pay this amount as administrative penalties. This Consent Order concerning violations on the Amalene Isaacks Lease included the following stipulations:

- Carolyn Kelly dba D.N.I. was the person responsible for the captioned lease and wells under Tex. Nat. Res. Code Ann. § 91.113.
- Carolyn Kelly dba D.N.I. was the operator of the lease and wells under Tex. Nat. Res. Code Ann. § 89.002.
- Carolyn Kelly dba D.N.I. was the operator of the captioned lease and wells because it was responsible for the physical operation and control of the lease and wells.

The Consent Order contained a signature line for Carolyn Kelly, which was signed “Agent – Dwight Northcutt.”

Enforcement submitted a copy of a fax transmission from Carolyn Kelly to Roland Baker. The fax cover sheet was on the letterhead of “Tootie Kelly Real Estate,” the firm in which Carolyn Kelly is a real estate agent. Dated July 30, 2008, the faxed letter reads: “Roland Baker is the agent for D.N.I. I am authorizing Roland Baker to sign the P-4 paper work for the H.A. Shaw Lease.” The signature of Carolyn Kelly appears on the letter. When questioned about the fax, Kelly claimed that she didn’t remember sending the fax, but the signature was hers.

To illustrate that Northcutt has unresolved final enforcement orders entered against him or one of his companies, Enforcement presented Commission mainframe records, signed Commission Final Orders, and Final Judgments from the Travis County District Court. These documents show that Northcutt currently is subject to the restrictions of Texas Natural Resources Code § 91.114, which prohibits the Commission from accepting an organization report, accepting an application for a permit, or approving a certificate of compliance for any organization in which Northcutt holds a position of ownership or control. These restrictions stem from unresolved final enforcement orders against Northcutt Production, an organization in which Northcutt held a position of ownership or control. The restrictions apparently are effective seven years from August 13, 2009, on which date the Travis County District Court entered a Final Default Judgment against Northcutt relating to violations from Oil & Gas Docket No. 7B-0236047.

Northcutt

Northcutt appeared at an initial hearing and offered very limited testimony. The crux of his testimony was that he worked on all of D.N.I.’s wells and believed he was the owner of D.N.I. He stated that Carolyn Kelly signed D.N.I.’s first Form P-5 and bond. This initial hearing was recessed to allow D.N.I. to find an individual other than Kelly or Northcutt to become sole proprietor and to allow that individual to secure a bond. Unfortunately, this resolution never occurred, and at Kelly’s request, the Commission recommenced the hearing. Northcutt failed to appear at the reconvened hearing. After failing to appear, he filed a motion for rehearing, which essentially was a request to reopen the hearing. This request is denied because Northcutt failed to show good cause for reopening the hearing.

EXAMINERS' OPINION

This proceeding is based on a complaint filed by the listed owner of a Commission-registered operator. The Complainant, Carolyn Kelly, seeks essentially two forms of relief: (1) that the Commission remove Kelly's name from the Forms P-5 filed after the initial 2004 form and (2) that the Commission remove Kelly's name from all Forms P-4 that bore Kelly's purported signature but were allegedly signed by someone else. The practical effect of granting these requests would be to revoke the Form P-5 organization reports after 2004 and rescind or revoke the administrative approvals of the Forms P-4 bearing the allegedly forged signatures. The examiners conclude that the complainant has not proven that she is entitled to this relief and, therefore, recommend that the requested relief be denied. Furthermore, certain requirements established by the Texas Natural Resources Code preclude the Commission from granting the requested relief.

The examiners deem Kelly's testimony that she was completely unaware that someone – in her opinion Northcutt – was signing Commission forms in her name on behalf of D.N.I. and without her permission to be not credible. Kelly's actions at the time of D.N.I.'s formation and thereafter demonstrate that she was complicit in the way that D.N.I. operated. In short, Kelly participated in establishing D.N.I. as an operator with the Commission, procuring financial assurance for D.N.I., and making payments to keep D.N.I. in good standing with the Commission. At the same time, she understood that Northcutt was completely responsible for the physical operation of the D.N.I. wells. It is not plausible that Kelly, knowing that Northcutt needed her name and good credit for D.N.I. to be in compliance with Commission rules, would relegate complete control of physical operations to Northcutt, but expect that Northcutt would not make any regulatory filings with her name attached to them.

It is regrettable if Kelly decided to rely on the assurances of Northcutt that she would not be responsible for the regulatory responsibilities of D.N.I. Kelly explained that she signed her name on the bond and initial organization report “[b]ecause Dwight told me that it would be in name only and that I would never have to ... pay anything on it because it was his company, his business, and his responsibility.” However, reliance on the statements of a person forbidden from owning or controlling a Commission-approved operator does not absolve a person of her responsibility. This is especially true when the documents signed by Kelly contained affirmations of responsibility and the actions taken by Kelly demonstrated an acceptance of responsibility. Kelly admitted that she signed the 2004 Form P-5 that established D.N.I. as a sole proprietorship and named Kelly as the owner. Directly beneath her signature on this Form P-5 appeared the following language:

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge.

Kelly signed the Forms P-4 by which D.N.I. became the operator of the J.W. Phillips No. 2, the J.W. Phillips No. 3, the J.W. Phillips No. 4, and the Amalene Isaacks Nos. 1 and 2. Each of these Forms P-4 contained the following certification directly above Kelly's signature:

By signing this certificate as the Current Operator, I certify that all statements on this form are true and correct and I acknowledge responsibility for the regulatory compliance of the subject lease including plugging of well(s) pursuant to Rule 14. I further acknowledge that I assume responsibility for the physical operation, control, and proper plugging of each well designated in this filing. I also acknowledge that I will remain designated as the Current Operator until a new certificate designating a Current Operator is approved by the Commission.

Kelly also signed the performance bond, which jointly bound D.N.I. and the surety for \$25,000 payable to the State of Texas. Finally, the largest payment made by Kelly on behalf of D.N.I. was to satisfy administrative penalties assessed in connection with the agreed settlement of Oil & Gas Docket No. 7B-0249974 against D.N.I. That settlement included the agreement and stipulation of Carolyn Kelly dba D.N.I. that “Carolyn Kelly dba D.N.I. was the person responsible for the captioned lease and wells under Tex. Nat. Res. Code Ann. §91.113.”

Kelly’s claim that she kept her real estate business and finances separate from the business of D.N.I. not only would not be determinative of this dispute but also is not supported by the evidence. Using her credit card, personal check, or cashier’s check, Kelly made numerous payments to the Commission on behalf of D.N.I. Although she claimed that Northcutt reimbursed her for all these payments, there was no evidence, other than her testimony, of any reimbursement. Even if Northcutt did actually reimburse her for these payments, the reimbursement does not negate the fact the Kelly used her own financial resources to pay the obligations of D.N.I. on a continuous basis. In addition, Kelly’s authorization of an agent, included in Enforcement Exhibit No. 2, showed that Kelly used the letterhead of her real estate firm for the coversheet of the letter naming Roland Baker as agent for D.N.I. Using the letterhead of one business to send an authorization for another business is evidence of commingling – not separation – of the two businesses.

The agent authorization letter also illustrates that Kelly believed she held a position in D.N.I. with the authority to name an agent for the company. Thus, four years after signing the initial organization report, Kelly essentially affirmed her status as a person holding a position of ownership or control in D.N.I. such that she could rightfully name the organization’s agent. Kelly’s testimony that she “didn’t know that I was even involved in it [D.N.I.] that much” is undermined by her affirmative actions to the contrary.

Even if Kelly had proven that she was entitled to the requested relief, the Commission would be precluded from granting some of that relief. For example, D.N.I. became the operator of record of the J.L. Kelsey Lease, Well No. 1, by a Form P-4 that transferred the well from IPACT to D.N.I., effective June 1, 2005. If the Commission were to revoke the administrative approval of this Form P-4, the well would necessarily have to be transferred back to IPACT, the previous operator of record. However, the Commission could not legally approve this transfer of operatorship to IPACT. IPACT has a delinquent organization report with the Commission and no financial assurance on file with the Commission. Section 91.107 of the Texas Natural Resources Code mandates that the Commission may not approve the transfer of operatorship of a

well until the acquiring operator provides sufficient financial security. Because IPACT has no financial security, the Commission may not transfer operatorship of a well to it.

Likewise, even if the Commission revoked the administrative approvals of the Forms P-4 dated after 2004, D.N.I. would still be the operator of record for the J.W. Phillips No. 4 (Lease ID 11893), J.W. Phillips No. 2 (RRC ID 142428), and Amalene Isaacks Nos. 1 and 2 (Lease ID 16731). D.N.I. first became the operator of record for these wells by three Forms P-4, each of which was admittedly signed by Kelly in 2004. These wells were then transferred from D.N.I. to LTS Oil & Gas, effective July 1, 2008. Subsequently, these wells were transferred from LTS Oil & Gas back to D.N.I., effective October 1, 2008. Kelly claims that the six 2008 forms making these transfers contain a forgery of her signature. If the Commission were to revoke the administrative approvals of these six Forms P-4 as requested by Kelly, then all the affected wells would revert to D.N.I. because it was the operator of record for these wells prior to the 2008 transfers. Thus, D.N.I. would remain the operator of record responsible for regulatory compliance of the wells.

D.N.I. became the operator of record for wells on the H.A. Shaw Lease (Lease ID 00994) by a Form P-4 that was signed by Roland Baker as filing agent for D.N.I. With her July 2008 faxed letter, Kelly authorized Baker to act as agent and sign the forms for the H.A. Shaw Lease. Therefore, regardless of whether the Commission revoked the approvals of the Forms P-4 that contain the allegedly forged signatures of Kelly, D.N.I. would remain the operator of record for the H.A. Shaw Lease.

Based on the record in this case, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Railroad Commission (the "Commission") sent notice of the hearing in this docket at least ten days before the hearing to all parties entitled to notice.
2. The Commission called this hearing to consider the complaint of Carolyn Kelly ("Kelly") by which she seeks the removal of her name from the Form P-5 organization reports and from the Form P-4 certificates of compliance for D.N.I. filed after 2004.
3. On May 17, 2004, the Commission received the initial Form P-5 organization report of D.N.I. This Form P-5 organized D.N.I. as a sole proprietorship with Carolyn Kelly as the owner. The Form P-5 was signed by Carolyn Kelly, and her title in the signature block is President.
4. Each of D.N.I.'s Forms P-5 filed with the Commission from 2004 through 2012 listed Kelly as the owner of the organization and listed the organization's mailing address as the residence shared by Kelly and Dwight Northcutt.
5. On May 17, 2004, a \$25,000 blanket performance bond was filed with the Commission for D.N.I. The bond form was dated February 1, 2004, and was signed by Carolyn Kelly as President of D.N.I.

6. On May 17, 2004, the Commission received and subsequently approved four Forms P-4 that were signed by Carolyn Kelly for D.N.I. These Forms P-4 transferred operatorship of the following wells and leases to D.N.I.: the J.W. Phillips Lease, Well No. 2 (RRC ID No. 142482) from Santa Anna Partners LP; the J.W. Phillips Lease, Well No. 3 (RRC ID No. 142429) from Santa Anna Partners LP; the J.W. Phillips Lease (Lease No. 11893), Well No. 4 from Santa Anna Partners LP; and the Amalene Isaacks Lease (Lease No. 16731), Well Nos. 1 and 2 from Richey Operating, Inc.
 - a. By signing these forms, Kelly on behalf of D.N.I. certified that all statements in the forms were true and correct, acknowledged responsibility for the regulatory compliance of the leases and wells, including the plugging responsibility, and acknowledged assumption of the responsibility for the physical operation and control of the wells.
 - b. Neither Santa Anna Partners LP nor Richey Operating, Inc. have an active organization report or any financial security filed with the Commission.
7. D.N.I. became the operator of record of the J.L. Kelsey Lease, Well No. 1, when the Commission approved a Form P-4 transferring the well from IPACT to D.N.I., effective June 1, 2005. IPACT currently has a delinquent organization report with the Commission and has no financial security filed with the Commission.
8. Kelly paid various administrative fees and penalties owed by D.N.I. to the Commission. The specific payments made by Kelly included the following:
 - a. On September 14, 2006, Kelly used her personal credit card to pay a lease severance fee of \$600.
 - b. On June 8, 2007, Kelly used a cashier's check to pay administrative penalties of \$2,250 and a cashier's check to pay the Form P-5 filing fee of \$300.
 - c. On March 9, 2009, Kelly used a personal check to pay the Form P-5 filing fee of \$300.
 - d. On April 23, 2009, Kelly used her personal credit card to pay lease severance fees of \$1,200.
 - e. On June 26, 2009, Kelly used her personal credit card to pay a lease severance fee of \$900.
 - f. On December 8, 2009, Kelly used her personal credit card to pay a lease severance fee of \$300.
 - g. On February 16, 2010, Kelly used a personal check to pay the Form P-5 filing fee of \$300.
 - h. On June 8, 2010, Kelly used her personal credit card to pay a lease severance fee \$300.

- i. On August 31, 2010, Kelly used her personal credit card to pay a lease severance fee of \$300.
 - j. On August 3, 2011, Kelly used her personal credit card to pay drilling permit fees of \$360.50.
 - k. On January 30, 2012, Kelly used a personal check to pay the Form P-5 filing fee of \$300.
9. Kelly prepared and signed a letter, dated July 30, 2008, by which she named Roland Baker as the agent for D.N.I. and authorized Baker to sign the Form P-4 for the H.A. Shaw Lease. Kelly faxed this letter to Baker on July 30, 2008, and the fax cover sheet bore the letterhead of Tootie Kelly Real Estate, for which Kelly was a realtor.
 - a. The wells on the H.A. Shaw Lease were transferred to D.N.I. by a Form P-4 received on July 23, 2008, and signed by Roland Baker as filing agent for D.N.I.
10. Kelly's testimony that she was completely unaware that someone – in her opinion Northcutt – was signing Commission forms in her name on behalf of D.N.I. and without her permission is not credible.
11. Northcutt currently is subject to the restrictions of Texas Natural Resources Code § 91.114, which prohibits the Commission from accepting an organization report, accepting an application for a permit, or approving a certificate of compliance for any organization in which Northcutt holds a position of ownership or control. These restrictions stem from unresolved final enforcement orders against Northcutt Production, an organization in which Northcutt held a position of ownership or control.
12. The wells for which D.N.I. is currently the operator of record have been controlled by Northcutt. Northcutt has performed or controlled all of the physical operations related to those wells.
13. The current status of D.N.I.'s organization report with the Commission is "Delinquent."

CONCLUSIONS OF LAW

1. The Commission gave proper notice of hearing to all persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties to this hearing have occurred or have been accomplished.
3. Carolyn Kelly did not demonstrate that her name should be removed from the Form P-5 organization reports of D.N.I. or the Form P-4 certificates of compliance for D.N.I.
4. Carolyn Kelly should remain listed as an officer on the Form P-5 organization reports of D.N.I. already on file with the Commission.

5. A person holds a position of ownership or control in an organization if the person has been determined by a final administrative order to have exerted actual control over the organization.
6. Both Carolyn Kelly and Dwight Northcutt have exerted actual control over D.N.I. and hold a position of control or ownership in D.N.I.
7. Pursuant to Texas Natural Resources Code § 91.114, the Commission is prohibited from accepting a Form P-5 organization report or approving a Form P-4 certificate of compliance for an organization in which Dwight Northcutt holds a position of ownership or control.
8. The Commission may not accept a future Form P-5 organization report for D.N.I., except for the limited purposes listed in Texas Natural Resources Code § 91.114, while Dwight Northcutt holds a position of control in D.N.I.

RECOMMENDATION

The examiners recommend that Carolyn Kelly's request for the removal of her name from certain Form P-5 organization reports and Form P-4 certificates of compliance for D.N.I. be denied. Further, the examiners recommend that the Commission find that Dwight Northcutt and Carolyn Kelly each hold a position of ownership or control in D.N.I.

Respectfully Submitted,



Michael R. Crnich
Hearings Examiner



Richard Atkins
Technical Examiner