

PROPOSAL FOR DECISION

DOCKET No. 20-0237913

THE APPLICATION OF R.L. FOREE, JR. REGARDING HIS AFFILIATION ON THE FORM P-5 ORGANIZATION REPORT AS A VICE PRESIDENT FOR MAINLAND ENERGY CORPORATION (OPERATOR No. 522422)

APPEARANCES

FOR APPLICANT:

Rex White, Attorney
R.L. Foree, Jr.

FOR INTERESTED PARTY:

No appearance for Mainland Energy Corporation

PROCEDURAL HISTORY

Dates of Initial Default Orders Against Mainland: Docket No. 06-0233177, October 7, 2003
Docket No. 02-0235500, December 22, 2003

Notice of Hearing: February 23, 2004

Hearing Held: March 4, 2004

Record Closed: March 4, 2004

Hearing heard by:

Scott Petry, Hearings Examiner

Donna Chandler, Technical Examiner

PFD Circulation Date:

April 2, 2004

STATEMENT OF THE CASE

This docket was requested by the applicant, R.L. Foree, Jr., to remove his name from all Form P-5 Organization Reports for Mainland Energy Corporation ("Mainland"). According to the applicant, he was never an officer of Mainland and Mainland's president, Douglas Keith Foree, placed him on the Form P-5 without his knowledge or consent.

BACKGROUND

16 T.A.C. § 3.1 states that no organization operating wholly or partially within this state for the purpose of performing operations within the jurisdiction of the commission shall perform such operations without having on file with the commission an approved organization report and financial security as required by Texas Natural Resources Code §§91.103-91.1091.

This section goes on to state that each organization performing activities subject to the jurisdiction of the Commission shall maintain a current organization report with the Commission until all duties, obligations, and liabilities incurred pursuant to Commission rules, the Natural Resources Code, Titles 3 (Subtitles A, B, C, and Chapter 111 of Subtitle D) and 5, and the Water Code, Chapters 27 and 29, are fulfilled.

With respect to the information included on the Form P-5 Organization Report, 16 T.A.C. § 3.1 states that the report shall contain, for each officer, director, general partner, owner of more than 25% ownership interest, or trustee, the individual's full legal name, the name(s) under which such entity or individual conducts business in the State of Texas, and all assumed names. The rule states that the individual shall file with the Commission his or her social security number, or , at that person's option, either his or her valid driver's license or Texas State Identification number. Additionally, the rule states that organization reports shall not be approved unless the organization has complied with the state registration requirements of the Secretary of State and the taxation

requirements of the Comptroller of Public Accounts.

DISCUSSION OF THE EVIDENCE

This hearing was called to determine whether R.L. Foree, Jr. is an officer of Mainland Energy Corp. (Operator No. 522442), and whether his name should be removed from the Form P-5. The applicant stated that he has never been affiliated with Mainland, and that his placement on the Form P-5 by Douglas Keith Foree was done without his knowledge or consent.

Specifically, the applicant stated that Douglas Keith Foree was his son, and that he and his son had been estranged for a period of time. The applicant noted that he is an officer of several companies and that these entities¹ are in good standing with the Commission and that he, personally, has always attempted to comply with Commission rules and regulations. R.L. Foree, Jr. noted that he was unaware of his purported affiliation with Mainland until he went to change a gatherer on a Form P-4 for one of his entities. The applicant stated that he discovered this situation on January 24, 2004, when the Commission's Proration Unit informed him that the Form P-4 was being returned due to the outstanding violations in Docket No. 06-0233177. Upon learning of his listing as an officer for Mainland, the applicant stated that he took immediate steps to correct this "misunderstanding".

Second, R.L. Foree, Jr. stated that he has never authorized the placement of his name on any of the Form P-5's. According to the applicant, the only officer of Mainland was his son, Douglas Keith Foree, and that his son wrote in his name on the Organization Reports without his consent or knowledge, and that his son did not even know his driver's license number.² With regard to corporate structure, the applicant argues that filings with the Secretary of State support his assertion that he is not an officer of Mainland. Specifically, Secretary of State records list D. K. Foree as the president and director of Mainland, and do *not* reflect that R.L. Foree, Jr. held any office in the organization. The applicant testified that he was never asked to be in Mainland and that he never worked with the organization. He also stated that he never had any financial interest in the company. When asked why his name might be on Mainland's P-5, the applicant surmised that his son

¹ These entities include R.L. Foree Trust A (Operator No. 275770) and Foree Oil Company (Operator No. 275770). As discussed later, the location address given on Mainland's Form P-5's is identical to the mailing address for the two entities Mr. Foree acknowledges being associated with.

²It is noted that the 1997, 1998, 1999, 2000, and 2001 P-5 Organization Reports repudiate this assertion in that Mr. R.L. Foree Jr.'s driver's license number is listed.

was probably attempting to take advantage of his good history to file a lower financial assurance fee.

Further, the applicant surmised that the address placed for him on the Organization Report was fabricated to insure that he never received notice of any Commission actions. The address listed for R.L. Foree, Jr. on Mainland's P-5 is Route 9, Box 500 in *Wichita Falls*, Texas. Mr. Foree stated that he does have property located at Route 9, Box 500, but that the property is located in *Cleburne*, Texas. The applicant suggested that his son placed Wichita Falls on the Form P-5 to prevent any Commission mail from getting to him.

Finally, the examiner took official notice of Commission records in Docket Nos. 02-0235500 and 06-0233177. In both of these dockets, default orders were entered against Mainland Energy Corp., and it is the attending Senate Bill 639 "taint" that concerns Mr. R.L. Foree, Jr. At the hearing, Mr. Foree testified that he has never had any knowledge of his placement as an officer with Mainland. While it was noted at the hearing that the *location* address for Mainland was the same as the *mailing* address for Mr. Foree's other entities, Mr. Foree stated that he never received any mailings regarding the aforementioned dockets and that Mainland never officed at his address. A review of the enforcement dockets and the certified mailings in each docket support the assertion that notice was not sent to his address.

The applicant reiterated that he and his son were at odds, and further stated that his son took advantage and misused his name. Mr. R.L. Foree, Jr. requested that his name be taken off of all the Form P-5 Organization Reports for Mainland Energy Corporation.

EXAMINERS' OPINION

This hearing was held for the limited purpose of determining whether R.L. Foree, Jr. was indeed an officer of Mainland. No one appeared in opposition to this application. The examiner finds that a preponderance of the evidence supports applicant's contention that he was not an officer, and accordingly recommends that his name be removed from the Form P-5 Organization Reports.

R.L. Foree, Jr., was listed as vice president of Mainland Energy Corp. on the P-5's filed by that entity on January 6, 1997, February 4, 1998, January 4, 1999, January 26, 2000, and May 1, 2001. The P-5's correctly listed Mr. Foree's driver's license number and the location address for Mainland

was the same as the mailing address of the two P-5 entities in which Mr. Foree acknowledges serving as an officer. Those same P-5's list Mr. Foree's son as the president of Mainland.

However, Mr. Foree testified that Mainland had motive to use his name in that it could achieve a smaller financial assurance fee by using his name and history. The location address for Mainland was sufficiently similar to Mr. Foree's actual address to escape scrutiny by Commission personnel, but was factually distinct enough to prevent notice of the enforcement actions against Mainland being supplied to the applicant. The documentation entered into the record indicates that Mr. Foree was first notified of the default orders against Mainland on January 24, 2004, when the Commission's Proration Unit informed him of at least one outstanding docket and the applicant took immediate steps to attempt to correct the inaccurate Form P-5 listing. Finally, the Secretary of State records indicate that the president, director, and sole officer of Mainland is Douglas Keith Foree.

Accordingly, the examiner recommends that Form P-5 Organization Reports for Mainland Energy Corporation be amended to delete R.L. Foree, Jr. from the listing of officers. The assessed penalties and other findings of fact and conclusions of law adopted in the prior default actions remain the same. Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mainland Energy Corp., Douglas Keith Foree, and R.L. Foree, Jr. were given notice of this hearing by certified mail on February 23, 2004. R.L. Foree, Jr., and his attorney appeared at the hearing and presented evidence. No appearance was made by, or on behalf of, Mainland Energy Corp. or Douglas Keith Foree.
2. Mainland Energy Corp. (Operator No. 522442) has two unsatisfied final orders entered against it.
 - A. On October 7, 2003, the Commission entered a default order against Mainland in Docket No. 06-0233177 for violations of Statewide Rules 3, 8, and 14. The final order

directed Mainland to plug or place the subject well in compliance with Commission rules and to pay an administrative penalty of \$4,500.

- B. On December 22, 2003, the Commission entered a default order against Mainland in Docket No. 02-0235500 for violations of Statewide Rules 3 and 14. The final order directed Mainland to plug or place the subject well in compliance with Commission rules and to pay an administrative penalty of \$2,750.
3. On February 18, 2004, R.L. Foree, Jr. requested a hearing to remove his name from all Form P-5 Organization Reports for Mainland Energy Corp. ("Mainland").
 4. Mainland's only officer listed with the Texas Secretary of State is Douglas Keith Foree, who is listed as its president and director.
 5. R.L. Foree, Jr., was listed as vice president of Mainland Energy Corp. on the P-5 Organization Reports filed by that entity on January 6, 1997, February 4, 1998, January 4, 1999, January 26, 2000, and May 1, 2001. The reports correctly stated R.L. Foree, Jr.'s Texas driver's license number.
 6. R.L. Foree, Jr. did not authorize Mainland to list him as an officer on the Form P-5, and has never held a position of ownership or control in that organization.
 7. R.L. Foree, Jr. is an officer of R.L. Foree Trust A (Operator No. 275770) and Foree Oil Company (Operator No. 275770).
 8. R.L. Foree, Jr. first became aware of his purported affiliation with Mainland when he went to change a gatherer on a Form P-4 for one of his entities and was notified, on January 24, 2004, of the outstanding violations Docket No. 06-0233177.
 9. The address listed for R.L. Foree on Mainland's Organization Report was Route 9, Box 500 in *Wichita Falls*, Texas. Mr. Foree maintains property located at Route 9, Box 500, but the property is located in *Cleburne*, Texas.
 10. The location address for Mainland is the same as the mailing address for R.L. Foree, Jr.'s

other entities.

11. Notice of the prior enforcement actions for Docket Nos. 06-0233177 and 02-0235500 was sent to Mainland's designated mailing address, but notice was not sent to the designated location address.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
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. R.L. Foree, Jr. is not an officer of Mainland Energy Corp., and the Commission is not barred by §91.114 of the Texas Natural Resources Code from accepting an organization report or permit application, or from approving a certificate of compliance for an entity, because R.L. Foree, Jr. is in a position of ownership or control in the organization.

RECOMMENDATION

The examiner recommends that R.L. Foree, Jr. be removed from the Form P-5 Organization Reports for Mainland Energy Corp.

Respectfully submitted,

Scott Petry
Hearings Examiner

Donna Chandler
Technical Examiner