May 7, 2020

Chairman Todd Hiett
Vice-Chairman Bob Anthony
Commissioner Dana Murphy
Corporation Commission of Oklahoma
2101 North Lincoln Blvd.
Oklahoma City, Oklahoma 73105

Re: Comments – XTO Energy Inc., an ExxonMobil subsidiary
Oklahoma Energy Producers Alliance, et. al.
Case No. CD 202000984

Dear Chairman Hiett, Vice-Chairman Anthony, and Commissioner Murphy:

We respectfully submit these comments, in lieu of testimony, opposing the referenced Application for a determination of waste and request for an order prorating oil production in Oklahoma. The Application does not satisfy the statutory requirements for the entry of such an order. Moreover, the Application asks the Commission to take actions that would unquestionably interfere with the free market.

Free markets are best able to recover from periods of instability in supply and demand when government does not try to restrain or manipulate market forces. The operation of the free market is the most efficient means of sorting out the extreme supply and demand imbalances we are now experiencing. Indeed, the best manner in which to allow our economy to be fully restored is by addressing the public health crisis confronting us.

This is not the first time, nor will it be the last time, that the oil and gas industry has confronted market surpluses and reduced market prices. Significant market downturns have occurred frequently over the past forty years, i.e., 1986-1990, 1998, 1999, 2002, 2009, and 2016. The Commission did not institute oil proration as a response to any of those downturns.

Proposals to impose quotas or mandatory production cuts will lead to unintended consequences for the State, including benefiting competing states in the U.S. and competing foreign countries. When government has intervened in energy markets historically, as it did in the 1970s by imposing price controls on crude oil and natural gas, such actions interrupted the market's response; it contributed to supply shortages and long lines for gasoline across the country. As Oklahoma Supreme Court Justice Osborn wrote eighty-six years ago, "A false or improvident finding of the market demand can result in grave consequences not only to the industry itself, but to the consuming public." H.F. Wilcox Oil & Gas Co. vs. Walker, 32 P.2d 1044, 1051 (1934).

The allegations in the Application regarding waste cannot be sufficiently established for all operators. The Application contains numerous bare allegations that "Oklahoma crude" is being produced at a "cost exceeding its value," and is being taken at a price that is not "equivalent to the actual value of such Oklahoma crude oil." These general allegations cannot form the basis for an order requiring a mandatory shut-in or curtailment of production from all oil wells in Oklahoma. As the Commission found in Emergency Order No. 710884, entered in Cause CD No. 202000986, the operator/producer is in the best position to
determine whether economic waste is occurring. The determination as to whether waste is occurring in any given well or unit will depend on the unique circumstances of each operator. The Applicant cannot possibly know or present evidence of every conceivable set of circumstances faced by operators in the State of Oklahoma.

The Applicant’s allegation that production is occurring in excess of market demand misconstrues modern operational and market conditions. With today’s operating methods, the alleged wasteful excess production cannot happen. It is physically impossible for any operator to produce in excess of the capacity of transportation or marketing facilities, or reasonable market demands. If an operator were to ever confront any of those limitations, an operator would curtail or shut-in production. This fact is critically important because it precludes any risk that production could ever exceed transportation or marketing facilities or market demands. The statute defines waste, in part, as “production of oil in excess of transportation or market facilities or reasonable market demands.” 52 Okl.St.Ann. § 86.2. Here, that excess production cannot occur.

When originally adopted, the definition of waste in the statute addressed the then common operating practice in which operators would produce excess oil into earthen pits dug to hold oil until it might be transported to market. In modern times, that practice has been generally prohibited. The alleged excess production cannot form the basis for a Commission proration order if the lack of transportation, storage, or market will prevent excess production.

Further, contrary to the Applicant’s allegations, the price for “Oklahoma Crude” is precisely determined by market demand. The demand may be affected by unusual and unfortunate circumstances related to the COVID-19 crisis. However, it is the forces of the free market that set the current price. The statutes do not define economic waste. Nor can economic waste be defined for each well in the context of the pending Application. Only a complex evaluation involving costs relative to each well, performed by the operator of that well, can determine whether continued production of the well would constitute economic waste. In some instances, the evaluation will necessarily include long-term operational considerations relative to maximizing production from a given common source of supply. Such a determination is best left to the operator.

No doubt, there has been and will continue to be unavoidable disruption in the production, sale, and transportation of oil because of current market conditions. That disruption will occur automatically when production is curtailed or shut in by producers, as described above. A proration order would not stop such disruption.

In fact, a proration order in Oklahoma could itself cause disruption and economic waste by voluntarily renouncing a portion of this state’s share of the crude oil market. The current situation faced by our industry is demand-driven, and it may be resolved only by improving demand over time.

We ask that you deny the Application for a determination of “waste” and decline to issue a proration order relating to Oklahoma crude oil.

Respectfully submitted,

Staale Gjervik
President
XTO Energy Inc.
An ExxonMobil subsidiary