IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2012-CA-00357-COA

TELLUS OPERATING GROUP, LLC **APPELLANT**

v.

MAXWELL ENERGY, INC. **APPELLEE**

DATE OF JUDGMENT:	01/31/2012
TRIAL JUDGE:	HON. DAVID SHOEMAKE
COURT FROM WHICH APPEALED:	JEFFERSON DAVIS COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	GLENN GATES TAYLOR CHRISTY MICHELLE SPARKS
ATTORNEY FOR APPELLEE:	MALCOLM T. ROGERS
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
TRIAL COURT DISPOSITION:	REVERSED DECISION OF THE MISSISSIPPI STATE OIL AND GAS BOARD
DISPOSITION:	AFFIRMED - 09/17/2013
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE IRVING, P.J., CARLTON AND JAMES, JJ.

CARLTON, J., FOR THE COURT:

¶1. Maxwell Energy Inc. (Maxwell) appealed to the Jefferson Davis County Chancery Court an order of the Mississippi State Oil and Gas Board (Board) that allowed the operator of a proposed oil and gas well, Tellus Operating Group LLC (Tellus), to charge statutory "alternate charges" to each "nonconsenting owner" of drilling rights, Maxwell included, who did not timely agree in writing to exercise one of its statutory options to participate in drilling a proposed unit well in search of oil and gas. The chancery court reversed the Board's order. The chancery court found the decision of the Board that Tellus offered Maxwell reasonable

terms unsupported by substantial evidence, and that Maxwell had in fact agreed in writing to participate in the drilling of the well.

¶2. Tellus appeals, raising the following issues: (1) whether the Board's finding that Tellus satisfied the statutory requirements for the "force integration" of Maxwell's interest with alternate charges by offering reasonable terms is supported by substantial evidence, and (2) whether the Board correctly rejected Maxwell's argument that Maxwell could avoid alternate charges by simply sending Tellus a check for its share of the costs to drill the well, rather than agreeing in writing to the reasonable terms that are required by statute. Tellus alleges that because substantial evidence existed to support the Board's order, this Court should reverse the decision of the chancery court and reinstate the Board's order.

¶3. Finding no error in the chancery court's judgment, we affirm.

FACTS

¶4. On September 15, 2006, Tellus filed a petition with the Board to "force integrate, with alternate charges, a drilling unit for a proposed gas well, approve an exception well and an exception location, and grant related relief[.]" Tellus asked the Board to form the unit by force integrating all owners and interests and charge each nonconsenting owner of drilling rights in the unit the "alternate charges" allowed for by Mississippi Code Annotated section 53-3-7(2) (Rev. 2003). On October 10, 2006, Maxwell filed a notice of contest of Tellus's petition with the Board, alleging that Tellus failed to negotiate with Maxwell in good faith and asking the Board to remove Maxwell's interest from any alternate charges.

¶5. The Board heard Tellus's petition at its October 2006 meeting. Following the hearing,

the Board entered an order on November 1, 2006, which granted Tellus's petition and determined that the evidence presented at the hearing established that Tellus satisfied all of the statutory requirements of section 53-3-7(2) to force integrate the unit and to allow Tellus to charge Maxwell and any other nonconsenting owners with statutory alternate charges.[1] The order concluded by stating:

> *Each non-consenting owner shall be afforded the opportunity to participate in the development and operation of the [w]ell in the pooled unit as to all or any part of said owner's interest on the same cost basis as the consenting owners by agreeing in writing to pay that part of the costs of such development and operation chargeable to said non-consenting owner's interest*, or to enter into such other written agreement with the operator as the parties may contract, provided such acceptance in writing is filed with the Board within twenty (20) days after this [o]rder is filed for record with the Board.

(Emphasis added).

¶6. By letter dated November 14, 2006, Maxwell notified Tellus and the Board of Maxwell's agreement to voluntarily integrate its interest in the unit and to participate and join in the costs of development. Specifically, the letter stated:

> [Maxwell] hereby agrees in writing to voluntarily integrate all of its interests in the unit . . . [and] hereby elects in writing to participate and join in on the same cost basis as the other consenting owners for its share of the cost and risk of developing and operating of the . . . unit . . . insofar and only insofar as the same relates to Maxwell's leasehold interest covering mineral interests which are subject to alternate risk charges, and hereby agrees in writing to pay its pro rata share of all the costs associated therewith.

Maxwell sent a check to Tellus in the amount of $18,277.94 along with a letter that explained

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[1] The Board entered a revised order on November 28, 2006, which simply added clarifying language to the original order but did not change any of the findings in the original order.

that the check was for payment of Maxwell's "proportionate share of the dry hole costs for the drilling of the . . . well." The letter stated that Maxwell also agreed "to advance its share of completion costs upon election by Tellus or its affiliates to set casing for a completion attempt and by notifying Maxwell in writing of such election and request for payment of completion costs for Maxwell's share of such costs." In response, Tellus returned the check to Maxwell with a November 21, 2006 letter. In the letter, Tellus asked Maxwell to sign, date, and return the previously submitted joint operating agreement and the authority for expenditure.

¶7. On December 27, 2006, Maxwell appealed the Board's order to the Jefferson Davis County Chancery Court. The chancery court reversed the Board's order, finding that the terms that Tellus offered to Maxwell were not reasonable terms and that Maxwell had agreed to participate in the drilling of the well.

STANDARD OF REVIEW

¶8. This Court employs a well-settled standard when reviewing a decision of the Board. The Board's order will only be reversed where the decision is (1) beyond the Board's legal power, (2) violates some statutory or constitutional right of the complaining party, (3) is arbitrary and capricious, or (4) is not supported by substantial evidence. *Boyles v. Miss. State Oil & Gas Bd.,* 794 So. 2d 149, 152 (¶6) (Miss. 2001).

DISCUSSION

A. Whether the Board's finding that Tellus offered Maxwell reasonable terms is supported by substantial evidence.

B. Whether Maxwell's argument that it agreed in writing to participate in the drilling of the well is based on an incorrect interpretation and application of the statute.

¶9. Tellus seeks a reversal of the chancery court's decision and a reinstatement of the order of the Board. Tellus asserts that the Board's order is supported by substantial evidence, and Maxwell failed to timely (or at all) agree in writing to the terms offered by Tellus that the Board found to be reasonable terms. Tellus contends that the evidence clearly established that it satisfied all of the statutory requirements for the force integration with alternate charges of Maxwell's drilling rights. Additionally, Tellus argues that Maxwell's argument that it agreed in writing to the terms Tellus offered is based on Maxwell's erroneous interpretation of the alternate-charges provision of the force-integration statute. Tellus contends that such an interpretation is inconsistent with how the Board has interpreted and applied the statute, and it undermines the overall legislative purpose of the statute. We disagree.

¶10. "[T]he term 'nonconsenting owner' shall mean an owner of drilling rights which the owner has not agreed, in writing, to integrate in the drilling unit." Miss. Code Ann. § 53-3-7(1)(c) (Rev. 2003). In the context of Mississippi's statutory scheme of "force integration" of drilling rights into operating units, such owners are subject to imposition of "alternate charges" or risk penalties. Miss. Code Ann. § 53-3-7(2). The alternate charges, or nonconsent penalties, are "designed to ensure that nonparticipating owners do not benefit from the successful outcome of risks they do not take." *Waller Bros., Inc. v. Exxon Corp.,* 836 F. Supp. 363, 371 (S.D. Miss. 1993).

¶11. Mississippi also grants to nonconsenting owners a right to participate in the development and operation of wells in integrated units without incurring alternate risk charges or penalties as provided for in Mississippi Code Annotated section 53-3-7(2)(g). Section 53-3-7(2)(g) provides:

> The pooling order if issued shall provide that each nonconsenting owner shall be afforded the opportunity to participate in the development and operation of the well in the pooled unit as to all or any part of said owner's interest *on the same costs basis as the consenting owners by agreeing in writing to pay that part of the costs of such development and operation chargeable to said nonconsenting owner's interest*, or to enter into such other written agreement with the operator as the parties may contract, *provided such acceptance in writing is filed with the board within twenty (20) days after the pooling order is filed for record with the board.*

(Emphasis added). The Board in this case entered a pooling order that contained exactly such a provision.

¶12. The record shows that Maxwell acted in precisely the same manner and within the time frame prescribed by the statute. Maxwell appeared at the hearing before the Board on October 18, 2006; agreed in writing on November 14, 2006, within twenty days of the Board's November 1, 2006 order, to integrate its interest in the drilling unit voluntarily and to "join in on the same cost basis as the other consenting owners for its share of the cost and risk of developing and operating of the . . . unit." Maxwell also tendered a check to Tellus in the amount of $18,277.94 for its proportionate share of the dry-hole costs for drilling the well and agreed in writing to advance its share of the completion costs to Tellus. As such, Maxwell became eligible to participate on the same costs basis as the consenting owners under section 53-3-7(2)(g), and it was no longer subject to alternate charges by virtue of

statutory directives.

¶13. Finding no merit to Tellus's issues, we affirm the chancery court's judgment.

¶14. **THE JUDGMENT OF THE JEFFERSON DAVIS COUNTY CHANCERY COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

LEE, C.J., IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, ROBERTS, MAXWELL, FAIR AND JAMES, JJ., CONCUR.