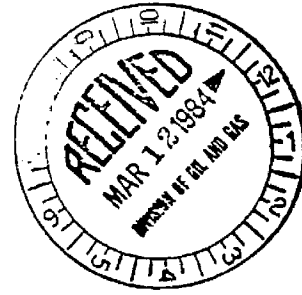


BEFORE THE OIL AND GAS BOARD OF REVIEW  
STATE OF OHIO



The Toledo Edison Company,

Appellant,

vs.

Appeal No. 71

Renee J. Hauser, Chief  
Division of Oil and Gas

Appellee.

STATEMENT OF CASE

On September 8, 1983, Appellant issued Order No. 83-67 to The Toledo Edison Company (hereinafter "Toledo Edison"), ordering it to properly plug and abandon wells on the Speck lease within thirty days and to properly restore the land surface within six months after plugging. On October 11, 1983, Appellant filed its appeal with this Board, and on December 19, 1983, a hearing was held by this Board.

FINDINGS OF FACT

1. On February 12, 1955, Julia Speck, et al., gave an Oil and Gas lease on a 60.02 acre tract in Middleton Township, Wood County, Ohio, to Eugene and Bernarr Tefft, said lease was recorded in Lease Volume 52, page 53, on February 21, 1955.

2. The Speck lease states that no additional wells are to be drilled upon the premises and if the lessees fail to operate the wells for three years, the lease shall become null and void.

3. On November 7, 1966, the Teffts transferred by means of a Bill of Sale all the oil producing equipment on the Speck lease to Carl A. Nieset.

4. On January 16, 1973, Appellant, Toledo Edison, purchased by Bill of Sale from Carl A. Nieset all the oil producing equipment on the Speck lease. The Bill of Sale from Mr. Nieset stated that it covered three operating oil wells and two inoperative oil wells. In addition, the Bill of Sale stated that it included all Mr. Nieset's right, title, and interest in and to the Speck lease.

5. On January 13, 1975, a marginal notation was placed on the Speck lease dated November 7, 1966, setting forth an assignment from

Eugene and Bernarr Tefft to Carl A. Nieset.

6. On January 13, 1975, a marginal notation was placed on the Speck lease dated January 16, 1973, setting forth an assignment from Carl A. Nieset to Toledo Edison.

7. Oil was last shipped from the Speck lease to Sohio during November of 1971.

8. There are five wells located on the Speck lease which are incapable of producing oil and gas in commercial quantities.

#### CONCLUSIONS OF LAW

Section 5301.09 of the Ohio Revised Code generally states that no lease or license for the right to operate or drill for oil or gas is valid until it is filed for record, "except as between the parties thereto." In this case, no third-party rights to the Speck lease are involved, all the transactions in question were between parties to the agreements. It is clear that Toledo Edison became owner of the equipment on the five wells in question on January 16, 1973. Likewise, it is clear that the Bill of Sale stated that three of the five wells were "operating" at the time of the sale. Furthermore, as part of the January 16, 1973, transaction Mr. Nieset assigned all his right, title, and interest in the Speck lease to Toledo Edison. On January 13, 1975, the transfer from the original lessors, Eugene and Bernarr Tefft, to Mr. Nieset, and from Mr. Nieset to Toledo Edison, were recorded on the margin of the Speck lease in Wood County, Ohio.

The issue here is whether or not Toledo Edison is liable, as owner, to plug the five wells in question. There is no question about the fact that in 1973 Toledo Edison owned the equipment on the five wells in question. Furthermore, there is no question that in 1973 Toledo Edison purchased from Mr. Nieset whatever rights he had to the Speck lease recorded in Lease Volume 52, page 53.

As we interpret the argument of Toledo Edison, it contends it is not liable to plug the Speck wells because its chain of title to the lease was not recorded in 1973 when it purchased the equipment and all Mr. Nieset's rights to the lease. Furthermore, Toledo Edison apparently argues that the lease had expired at the time they purchased it, and,

therefore, Toledo Edison could not drill on the property, and, therefore, it could not be an "owner" and therefore liable to plug the wells.


There are several problems with Toledo Edison's argument. First, the lease states that it does not expire until there has been a failure of production for three years. The letter to Toledo Edison from Sohio, dated April 27, 1976 (Exhibit "F" to Toledo Edison's Memo in Support of Appeal), states that there was oil run November, 1971. Therefore, under the terms, the lease would be good until about November, 1974. Toledo Edison's purchase of the equipment and Mr. Nieset's rights in January, 1973, were well prior to the expiration date set by the terms of the lease. Furthermore, Mr. Nieset's Bill of Sale stated that three of the wells were "operating" at the time Toledo Edison made its purchase.

Finally, since it appears that Toledo Edison purchased the equipment and a valid lease, it was an "owner" within the meaning of Section 1509.01(K) of the Ohio Revised Code. Therefore, under Section 1509.12 of the Ohio Revised Code, Toledo Edison as the owner is liable to plug the wells in issue.

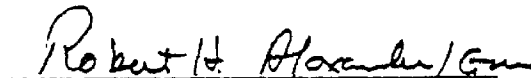
#### CONCLUSION

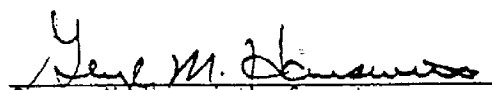
For the reasons set forth above, the Board finds Order No. 83-67, dated September 8, 1973, to be lawful and reasonable and hereby affirms such Order.

Dated this 9<sup>th</sup> day of March, 1984.

  
James J. Morgan, Chairman

  
Lance W. Schaefer

  
Robert H. Alexander

  
George M. Hauswirth, Secretary