

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:                    Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Pat Apple

In the matter of the failure of Prairie Gas )     Docket No: 18-CONS-3181-CPEN  
Operating, LLC (“Operator”) to comply with )  
K.A.R. 82-3-603 and K.A.R. 82-3-604 at five )     CONSERVATION DIVISION  
wells in Greeley and Hamilton County, )  
Kansas. )     License No: 35442

**DEFAULT ORDER**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

**I. Jurisdiction**

1.     K.S.A. 77-520 provides that if a party fails to attend any stage of an adjudicative proceeding, the agency may issue a default order with a statement of the grounds. Within seven days after service of a proposed default order, the party against whom it was issued has seven days to file a written motion to vacate, which shall state the grounds relied upon.

**II. Findings of Fact**

2.     On November 21, 2017, the Commission issued a *Penalty Order* against Prairie Gas Operating, LLC (Operator), finding the Operator in violation of K.A.R. 82-3-603 and K.A.R. 82-3-604.

3.     On December 14, 2017, the Operator filed a request for a hearing.

4. On January 9, 2018, the Commission issued its *Order Designating a Prehearing Officer and Setting Prehearing Conference*, scheduling a Prehearing Conference for February 8, 2018.<sup>1</sup>

3. On January 26, 2018, the Operator filed a letter proposing “to enter into a proposed settlement agreement with the Kansas Corporation Commission regarding” this docket.<sup>2</sup>

4. On February 5, 2018, Commission Conservation Staff (Staff) filed a Motion to Eliminate Confidential Designation and to Require Operator’s Attorney to Enter Appearance to Avoid Default (Motion). Staff alleged the Operator filed its letter proposing a settlement agreement as a confidential document.<sup>3</sup> However, Staff argued that the Operator’s filing did not meet the confidential filing requirements of K.A.R. 82-1-221a, and therefore, requested removal of its confidential designation.<sup>4</sup> Staff also alleged the Operator had already retained counsel, and thus, “Operator should be obligated to have its counsel enter an appearance in this docket.”<sup>5</sup> The Operator did not respond to Staff’s Motion.

5. On February 8, 2018, a Prehearing Conference was held. Staff appeared at the Prehearing Conference, but the Operator did not.

6. On February 15, 2018, Staff filed a Motion for Default Order (Motion for Default), stating that “Operator has cleaned up the spills [at issue] but has not submitted the unreported spill forms or paid the \$3,000 in penalties pursuant to the penalty orders.”<sup>6</sup> Staff

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<sup>1</sup> *Order Designating a Prehearing Officer and Setting Prehearing Conference*, Ordering Clause B (Jan. 9, 2018).

<sup>2</sup> Letter from Ian B. Acrey, Manager of Prairie Gas, addressed to Ms. Paula Murray, Commission Conservation Staff, dated Jan. 26, 2018, p. 1.

<sup>3</sup> Motion, ¶ 4.

<sup>4</sup> Motion, ¶ 4.

<sup>5</sup> Motion, ¶ 4.

<sup>6</sup> Motion for Default, ¶ 5.

stated its belief that “Operator was properly noticed and afforded an opportunity to attend and participate in the February 08, 2018, prehearing conference, but failed to do so. Therefore, Staff requests that a default order be issued against Operator.”<sup>7</sup> Staff also asked to withdraw its request to have the Operator’s alleged attorney enter an appearance because the request is moot, but Staff reiterated its request for a ruling on its motion to remove the confidential designation from the Operator’s January 26, 2018, letter.<sup>8</sup>

7. On February 23, 2018, Lee Thompson entered his appearance as counsel on behalf of the Operator.

### **III. Conclusions of Law**

8. Pursuant to K.S.A. 77-520(a), the Commission finds the Operator’s failure to attend the Prehearing Conference constitutes default. Thus, Staff’s request for a Default Order is granted.

9. Regarding the removal of confidentiality status from the Operator’s January 26, 2018, letter, K.S.A. 77-517 allows for the exploration of settlement possibilities at a Prehearing Conference. Settlement discussions are within the discretion of Staff, and any proposed settlement is subject to approval by the Commission. However, the Operator failed to attend the Prehearing Conference, and therefore, missed the opportunity to discuss its proposed settlement agreement letter, rendering the proposed settlement offer a moot issue. Thus, Staff’s request for elimination of the confidential designation of the Operator’s January 26, 2018, letter is denied as moot.

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<sup>7</sup> Motion for Default, ¶ 6.

<sup>8</sup> Motion for Default, p. 2.

**THEREFORE, THE COMMISSION ORDERS:**

A. Staff's request for a Default Order is granted.

B. Staff's motion to withdraw its request to have the Operator's attorney enter an appearance is granted. Staff's motion to eliminate the confidential designation from the Operator's January 26, 2018, letter is denied as moot.

C. Pursuant to K.S.A. 77-520(b), any party may file a written motion requesting that this Default Order be vacated and stating the grounds relied upon, within seven calendar days after service of this Order, with three additional days added to account for service by mail. If no request to vacate is received, the Commission's November 21, 2017, *Penalty Order* remains in full force and effect against the Operator.

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering additional orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: 03/13/2018



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Lynn M. Retz  
Secretary to the Commission

Mailed Date: \_\_\_\_\_

MJD

**CERTIFICATE OF SERVICE**

18-CONS-3181-CPEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on 03/13/2018

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