

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

In the matter of the failure of Prairie Gas) Docket No.: 18-CONS-3253-CPEN
Operating, LLC (“Operator”) to comply with)
K.A.R. 82-3-111 at the Wineinger #1 in Greeley) CONSERVATION DIVISION
County, Kansas)
_____) License No.: 35442

**MOTION TO ELIMINATE CONFIDENTIAL DESIGNATION AND
TO REQUIRE OPERATOR’S ATTORNEY TO ENTER APPEARANCE
TO AVOID DEFAULT**

The Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission,” respectively) files this Motion, asking that the Commission eliminate the confidential designation of Operator’s January 31, 2018, “confidential request for hearing and proposed settlement offer,” and to require Operator’s attorney to enter an appearance to avoid Operator’s default in this matter. In support of its Motion, Staff states as follows:

I. Background

1. On January 4, 2018, the Commission issued a Penalty Order against Operator in this docket. On December 14, 2017.
2. On January 31, 2018, Operator filed a “confidential request for hearing and proposed settlement offer.”

II. Argument

a. Operator’s January 31, 2018 filing should be made public.

3. Although Operator marked its January 31, 2018, filing as confidential, the filing does not meet the requirements of K.A.R. 82-1-221a regarding the designation and treatment of information deemed confidential in Commission proceedings. Accordingly, it’s confidential designation should be lifted. Further, since Operator’s filing states that future correspondence

from Staff would be forwarded to Operator's counsel for review, Operator should be obligated to have its counsel enter an appearance in this docket.

4. Under K.A.R. 82-1-221a, a party may designate any document filed with the Commission as confidential. Under K.A.R. 82-1-221a(5), a party designating a document as confidential shall provide a written statement of the specific grounds for the designation at the time the designation is made. The explanation shall be specific to the document in question and shall state whether the information constitutes a trade secret or confidential commercial information. The explanation shall, further, specify the harm or potential harm that disclosure would cause to the entity seeking nondisclosure.

5. Operator's filing does none of the things required by K.A.R. 82-1-221a(5). In addition, Staff posits that it would be impossible for any reasonable person to conclude any harm would come from public disclosure of the "confidential request for hearing and proposed settlement offer," or that it contains a trade secret or confidential commercial information.¹ Thus, it should be made public.

b. Operator should be required to have its attorney enter an appearance.

6. Operator should be obligated to have its attorney enter an appearance in this docket by a specific date certain to avoid default. This specific date should be prior to a duly-scheduled prehearing conference. Operator's letter clearly states that it has counsel, but no attorney has entered an appearance in this matter on behalf of Operator.

7. State statute confers authority on the Commission to determine whether a corporation or artificial person participating in a hearing is required to be represented by counsel.² Operator is a corporate entity. With the exception of out of state attorneys permitted to

¹ Since no trade secret or confidential commercial information is implicated, K.S.A. 66-1220a does not apply.

² See K.S.A. 77-515(c).

practice law on a narrow basis, the Kansas Supreme Court recognizes four categories of individuals who may appear in Kansas courts: a) Kansas licensed attorneys; b) law school graduates with a temporary permit to practice law; c) legal interns (law students) supervised by a member of the bar responsible for the interns' activities; and d) non-lawyers who may represent only themselves and not others.³ The person filing Operator's "confidential request for hearing and proposed settlement offer" fits none of these categories.

8. Commission regulations support Operator being required to have counsel. K.A.R. 82-1-228(d)(1)(B) provides that a party may appear before the Commission and be represented by an attorney, and K.A.R. 82-1-228(d)(1)(A) only provides that a party may be heard in person on its own behalf. Operator, a corporate entity, is not physically capable of appearing in person under K.A.R. 82-1-228(d)(1)(A), but rather must be represented by an actual individual. And under K.A.R. 82-1-228(d)(1)(B), that actual individual must be an attorney.

9. Recent Commission rulings also support Operator being required to have counsel. In its February 6, 2018, *Order Denying Intervention to IBEW Local Unions No. 304 and 225*, for example, the Commission denied petitions to intervene on the grounds that the entities were to be treated like corporations under K.A.R. 82-1-228(d)(2), and the pleadings had been filed by non-attorneys.⁴ As the facts apply to the law, the present matter is indistinguishable; a corporate entity has filed a pleading without counsel.

10. The Kansas Supreme Court has recognized the challenges posed by an individual engaged in the unauthorized practice of law.⁵ Members of the bar are subject to minimum legal education, competency, and moral character requirements. A Kansas attorney is subject to the

³ See *Artificial People: Why Corporations cannot appear in court without a lawyer*, 84-Sep J. Kan. B.A. 20 (citing *State ex rel. Stephan v. Adam*, 243 Kan. 619 (1988); *State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990)).

⁴ See *Order Denying Intervention*, ¶4-5.

⁵ See, e.g., *State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990).

Kansas Rules of Professional Conduct, and the consequences of failing to adhere to the rules while representing a client in Commission proceedings. In short, statute, regulation, case law, and public policy all strongly support requiring Operator to be represented by counsel.

11. Beyond the restrictions imposed by statute, Commission regulation, and the case law regarding who can undertake legal representation of a business entity, the underlying rationale for requiring Operator to have a Kansas licensed attorney enter an appearance in this matter is even more pronounced given Operator's January 31, 2018, filing, which fails to comply any of the many provisions of K.A.R. 82-1-219 relating to general requirements for all pleadings and papers, except that it is typewritten on appropriately-sized paper with appropriate margins.

12. In addition, Operator should clearly be required to have its counsel enter an appearance prior to a duly scheduled prehearing conference. When an operator appears at a prehearing conference, it is appearing before the Commission, as described in K.A.R. 82-1-228(d)(1)(B), via the Commission-appointed prehearing officer. This common-sense approach is alluded to in the Commission's own January 9, 2018, *Order Designating a Prehearing Officer and Setting Prehearing Conference*, Paragraph E, in which, among paragraphs discussing the prehearing conference, the Commission notes that a corporation shall appear before the Commission by a Kansas licensed attorney. It makes no sense to allow a corporate entity to appear through a non-attorney at a prehearing conference to develop a procedural schedule, if the same corporate entity is going to have to later obtain counsel who will be bound by such procedural schedule without having had the ability to help shape it. Such a determination would serve limited utility while dramatically increasing the odds of delay and administrative inefficiency.

13. Operator's acknowledgement of the existence of its own counsel in its "confidential request for hearing and proposed settlement offer" also puts Staff counsel in the untenable position of either being unable to communicate with Operator, or committing an ethical violation by communicating with a represented party. Staff has no idea who Operator's counsel is, and Operator's counsel has not entered an appearance.

14. Given the above, Operator should be required to have its counsel enter an appearance prior to a duly-scheduled prehearing conference and prior to the development of a procedural schedule, within a timeframe short enough to best enhance judicial efficiency, and with default as the consequence of Operator's failure to do so.

WHEREFORE, Staff moves the Commission to eliminate the confidential designation of Operator's letter. Staff further requests Operator be provided a date certain in which to have its required attorney enter an appearance.

Respectfully submitted,

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VERIFICATION

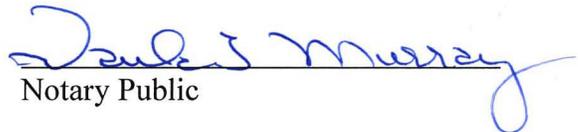
STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

Lauren N. Wright, of lawful age, being duly sworn upon her oath deposes and states that she is Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Motion*, and attests that the statements therein are true to the best of her knowledge, information and belief.

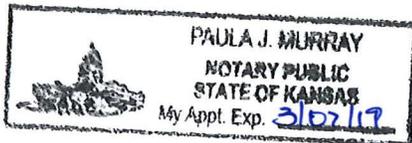


Lauren N. Wright, S. Ct. #27616
Litigation Counsel
State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 12 day of FEB, 2018.


Notary Public

My Appointment Expires: 3/07/19



CERTIFICATE OF SERVICE

I certify that on 2/12/18, I caused a complete and accurate copy of this Motion to be served via United States mail, with the postage prepaid and properly addressed to the following:

Ian B. Acrey
Prairie Gas Operating, LLC
427 S. Boston Street, Suite 520
Tulsa, OK 74103

And via e-mail to:

Lauren N. Wright, Litigation Counsel
Jonathan R. Myers, Litigation Counsel
KCC Central Office

Steve Pfeiffer/Scott Alberg
KCC District #1

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission