

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

In the matter of the failure of Benjamin M.) Docket No: 18-CONS-3167-CPEN
Giles (“Operator”) to comply with K.A.R.)
82-3-104 and K.A.R. 82-3-111 at the Wright) CONSERVATION DIVISION
#1 OWWO well in Butler County, Kansas.)
_____) License No: 5446

**ORDER DENYING REQUEST FOR RESCISSION OF PENALTY ORDER,
DESIGNATING A PREHEARING OFFICER, AND SETTING PREHEARING
CONFERENCE**

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 makes the following findings and conclusions:

1. On October 12, 2017, the Commission issued a *Penalty Order* against Benjamin M. Giles (Operator), finding the Operator in violation of K.A.R. 82-3-104 and K.A.R. 82-3-111.¹
2. On November 14, 2017, the Operator filed a “Request for Hearing,” requesting “the penalty order in this docket be rescinded, or that this matter be set for hearing.”²
3. On November 15, 2017, Commission Conservation Staff (Staff) responded to the Operator’s Request for Hearing.³

Findings and Conclusions

4. At issue in this proceeding is whether the *Penalty Order* properly penalized the Operator for violation of K.A.R. 82-3-104 and K.A.R. 82-3-111. The findings of fact in the *Penalty Order* and the Operator’s Request for Hearing provide evidence that the issue is in dispute.⁴ The

¹ *Penalty Order*, Ordering Clauses A and B (Oct. 12, 2017).

² Request for Hearing, p. 5 (Nov. 14, 2017).

³ See Response to Request for Hearing (Nov. 9, 2017).

⁴ See e.g. *Penalty Order*, ¶ 8 (finding that “[o]n July 14, 2014, Operator contacted District #2 Staff and reported that he had spud the subject well”) and Operator’s Request for Hearing, p. 2 (stating that “to Operator’s knowledge [it] never

Commission finds that cross-examination at an evidentiary hearing is the proper venue for weighing the opposing assertions provided by the parties. Moreover, the *Penalty Order* itself constitutes a summary order, in response to which the Operator may request a hearing.⁵ Having done so, the Commission grants the Operator's request for a hearing.

5. Upon its own motion and pursuant to K.S.A. 77-551(c), the Commission finds that a Prehearing Officer should be designated in this proceeding to address any matters listed in K.S.A. 77-517(b), and a Prehearing Conference should be scheduled.

6. Although a Prehearing Officer is designated in this docket, parties are still required to file pleadings with the Commission, and filings shall be made with the Commission's Docket Room before 5:00 p.m. on the date scheduled for service. Any electronic service received after the deadline set forth in the procedural schedule, or any filing made after 5:00 p.m. on the date scheduled for service, shall be accompanied by a Motion to File Out-of-Time.

THEREFORE, THE COMMISSION ORDERS:

A. The Operator's request for rescission of the *Penalty Order* in this docket is denied.

B. The Prehearing Officer in this proceeding shall be Michael J. Duenes, Assistant General Counsel, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas, 66604-4027, telephone number (785) 271-3181, email address m.duenes@kcc.ks.gov. The Commission may designate other Staff members to serve in this capacity.

C. A Prehearing Conference is scheduled for **Thursday, January 25, 2018 at 9:30 a.m.** by telephone. The conference call information is: telephone number (866) 620-7326, Conference Code PIN: 7632914771#.

once asserted the Subject Well was spud on [July 14, 2014] until the issuance of the Penalty Order"). *See also e.g. Penalty Order*, Exh. L and Request for Hearing, p. 4.

⁵ See K.S.A. 55-164(b), K.S.A. 77-537, and K.S.A. 77-542.

D. At the Prehearing Conference, parties shall be prepared to discuss deadlines for filing testimony and briefs, discovery procedures, scheduling of a hearing with the Commission, and any other issues that will promote the orderly and prompt resolution of this proceeding.

E. At the Prehearing Conference, without further notice, this proceeding may be converted into a conference hearing or a summary proceeding for disposition of this matter as provided by the Kansas Administrative Procedure Act (KAPA). Any party that fails to attend or participate in the Prehearing Conference, hearing, or other stage of this proceeding may be held in default under the KAPA.⁶

F. A corporation shall appear before the Commission by a Kansas licensed attorney.⁷

G. The attorney designated to appear on behalf of the agency in this proceeding is Jon Myers, Litigation Counsel, telephone number (316) 337-6245, j.myers@kcc.ks.gov.

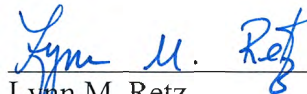
H. The parties have fifteen (15) days from the date of electronic service of this Order to petition for reconsideration.⁸

I. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: JAN 4 2018



Lynn M. Retz
Secretary to the Commission

MJD

⁶ K.S.A. 77-506; K.S.A. 77-516(c)(7)-(8).

⁷ K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2).

⁸ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 77-529(a)(1); see K.S.A. 66-118b.

Order Mailed Date

JAN 5 2018

CERTIFICATE OF SERVICE

I certify that on JAN 4 2018, I caused a complete and accurate copy of this Order to be served via electronic mail, addressed to the following:

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Jonathan R. Myers, Litigation Counsel
KCC Central Office

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/s/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date

JAN 5 2018