

**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 River Rock Operating, LLC ("Operator") to comply with K.A.R. 82-3-407 at the W Hahn #1-1 in Labette County, Kansas.)	Docket Nos. 17-CONS-3489-CPEN 17-CONS-3586-CPEN
)	CONSERVATION DIVISION
)	
In the Matter of the Failure of River Rock Operating, LLC ("Operator") to Report Activity that Occurred During the 2016 Calendar year in Compliance with K.A.R. 82-3-409.)	License No. 35341
)	
)	

ORDER TO SUPPLEMENT THE RECORD; CONSOLIDATING DOCKETS

1. On February 21, 2017, the State Corporation Commission of the State of Kansas (Commission) issued a Penalty Order against River Rock Operating, LLC (Operator) alleging one violation of K.A.R. 82-3-407 because a current, successful mechanical integrity test (MIT) had not been performed on the W Hahn #1-1 in Labette County, Kansas (subject well).¹

2. On February 21, 2017, Operator filed a Request for Hearing in Docket No. 17-CONS-3489.

3. On April 25, 2017, the Commission issued a Penalty Order against the Operator alleging one violation of K.A.R. 82-3-409 for failure to file an annual fluid injection report on the subject well.²

¹ Penalty Order at 2-3, *In the Matter of the Failure of River Rock Operating, LLC ("Operator") to comply with K.A.R. 82-3-407 at the W Hahn #1-1 in Labette County, Kansas*, Docket No. 17-CONS-3489-CPEN (February 21, 2017) [hereinafter Docket No. 17-CONS-3489].

² Penalty Order at 2, *In the Matter of the Failure of River Rock Operating, LLC ("Operator") to Report Activity that Occurred During the 2016 Calendar year in Compliance with K.A.R. 82-3-409*, Docket No. 17-CONS-3586-CPEN (Apr. 25, 2017) [hereinafter Docket No. 17-CONS-3586].

4. On April 27, 2017, the Operator filed a Request for Hearing in Docket No. 17-CONS-3586.

5. On June 20, 2017, the Prehearing Officer held a Prehearing Conference in Docket No. 17-CONS-3489. At the Prehearing Conference, Commission Conservation Staff (Staff) requested that the Docket be consolidated with Docket No. 17-CONS-3586. The Operator did not object.

6. On July 5, 2017, Staff moved the Commission, independently in each Docket, to rescind the penalty. The rationale was the same in both motions; “[f]ollowing the receipt and review of additional information . . . although a violation of K.A.R. 82-3-407 [and K.A.R. 82-3-409] has occurred and is ongoing, the available evidence may not support that Operator is responsible for the violation.”³

7. Staff’s motions lack detail as to the evidence that has caused Staff to reconsider the facts underlying the original Penalty Orders. Staff is charged with the responsibility of investigating the facts that lead to the recommendations that culminate in the issuance of the Penalty Orders. The Commission relies on Staff to exercise its investigatory function responsibly.

8. Because Staff is now in receipt of information that has caused Staff to doubt its original recommendation, the Commission finds that such information should be spread upon the record in order for the Commission to be properly advised and the record adequately supported for the Commission to rule on the motion. Furthermore, the Commission is troubled with the uncertainty in the statement by Staff: “the available evidence *may not* support that Operator is

³ Motion to Rescind Penalty at 1, Docket No. 17-CONS-3489 (July 5, 2017); Motion to Rescind Penalty at 1, Docket No. 17-CONS-3586 (July 5, 2017).

responsible for the violation.”⁴ Therefore the Commission requests that Staff supplement its motion and the record to provide more information sufficient for the Commission to make a ruling on the motion. The supplemental information shall be filed no later than September 8, 2017.

9. Because both Dockets involve the same well and the central issue is whether Operator is responsible for the care and control of the subject well, the Commission will consolidate the Dockets for all future proceedings.

THEREFORE, THE COMMISSION ORDERS:

A. Staff’s Motions to Rescind Penalty in Docket Nos. 17-CONS-3489-CPEN and 17-CONS-3586-CPEN shall be held in abeyance pending the submission of supplemental information.

B. Staff shall submit the supplemental information by September 8, 2017.

C. Docket Nos. 17-CONS-3489-CPEN and 17-CONS-3586-CPEN shall be consolidated for all future proceedings.

D. This Order constitutes non-final agency action.⁵ Any request for review of this action shall be in accordance with K.S.A. 77-608 and K.S.A. 77-613. Lynn M. Retz, Secretary to the Commission, is the proper party to receive service of a petition for judicial review on behalf of the Commission.⁶

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

⁴ *Id.* (emphasis added).

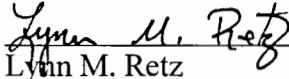
⁵ K.S.A. 77-607(b)(2).

⁶ K.S.A. 77-613(e).

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: **AUG 29 2017**



Lynn M. Retz
Secretary to the Commission

Mailed Date: August 29, 2017

DLK/sc

CERTIFICATE OF SERVICE

I certify that on 8/29/17, I caused a complete and accurate copy of this Order to be served via United States mail, with the postage prepaid and properly addressed to the following:

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/s/ Paula J. Murray
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