

**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 Marvin E. Boyer ) Docket No. 17-CONS-3349-CPEN  
Marital Trust ("Operator") to Comply with K.A.R. ) CONSERVATION DIVISION  
82-3-120. ) License No. 33855

**ORDER TO SUPPLEMENT THE RECORD**

1. On November 1, 2016, the State Corporation Commission of the State of Kansas (Commission) issued a Penalty Order against Operator alleging one violation of K.A.R. 82-3-120 due to an unplugged well(s) remaining on Operator's expired license.

2. On November 18, 2016, C. Duane McCammon, Trustee of the Marvin E. Boyer Marital Trust, Operator, requested a hearing on the matter. Mr. McCammon explained that the wells were transferred to the care and control of another Operator.<sup>1</sup>

3. On December 8, 2016, the Commission issued an order designating a prehearing officer and setting the matter for prehearing conference on December 20, 2016. On January 5, 2017, the Prehearing Officer continued the prehearing conference, at the request of the parties, to February 7, 2017.

4. On January 9, 2017, Commission Staff (Staff) moved to rescind the penalty in this matter stating, "Staff no longer believes it would be useful to defend the Penalty Order in this matter."<sup>2</sup>

5. On February 7, 2017, the Prehearing Conference was held at which the Operator failed to appear. Staff's motion was discussed but the matter was not scheduled for any further proceedings.

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<sup>1</sup> Request for Hearing (Nov. 18, 2016).

<sup>2</sup> Motion to Rescind Penalty (Jan. 9, 2017).

6. The Commission has serious concerns over the sufficiency of Staff's motion. Staff asked for a Commission order closing the docket which would undoubtedly be the final order in the matter. Pursuant to K.S.A. 77-526, a final order must contain, "separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed . . . ."

7. Staff's motion may not include enough information for the Commission to adequately issue a final order in this matter. If the Penalty Order were merely a fine, Staff's discretion in not prosecuting may suffice. However, the Order does much more than that. The Penalty Order also concerns unplugged well liability and a directive that the Operator shut-in the wells and either renew the Operator's license and return the wells to service, transfer the wells, or plug the wells.

8. 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. Specifically, the Commission requests that Staff inform the Commission as to the status of the unplugged wells in light of the information submitted in Mr. McCammon's request for hearing.

**THEREFORE, THE COMMISSION ORDERS:**

A. Staff shall supplement its motion and the record with regard to the unplugged wells on Operator's expired license.

B. This Order constitutes non-final agency action.<sup>3</sup> Any request for review of this action shall be in accordance with K.S.A. 77-608 and K.S.A. 77-613. Amy Green, Secretary to the Commission, is the proper party to receive service of a petition for judicial review on behalf of the Commission.<sup>4</sup>

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<sup>3</sup> K.S.A. 77-607(b)(2).

<sup>4</sup> K.S.A. 77-613(e).

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

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

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAR 30 2017

  
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Amy L. Green  
Secretary to the Commission

Mailed Date: March 30, 2017

DLK/sc

**CERTIFICATE OF SERVICE**

I certify that on 3/30/17, 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:

C Duane McCammon or Brenda L. Morris  
Marvin E. Boyer Marital Trust  
PO Box 625  
Iola, KS 66749-0625

C Duane McCammon  
Trustee of the Marvin E Boyer Marital Trust  
Kretzmeier, McCammon & St. Clair, Inc.  
PO Box 747  
Iola, KS 66749

and delivered by e-mail to:

Jon Myers  
KCC Central Office

Dustin L. Kirk, Deputy General Counsel  
KCC Topeka Office

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