

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

In the matter of the failure of Patrick Development Corporation (Operator) to comply with K.A.R. 82-3-120 and K.A.R. 82-3-133 by operating under a suspended license. ) Docket Nos.: 23-CONS-3169-CPEN  
)  
) CONSERVATION DIVISION  
)  
) License No.: 6279

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**RESPONSE TO OPERATOR'S POST-HEARING BRIEF**

Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby files this response to *Operator's Post-Hearing Brief* (Brief) filed April 10, 2024. In support of its response, Staff states as follows:

1. Operator's Brief only addresses the issue of whether or not Operator had sufficient notice of the November 7, 2022, license suspension for non-compliance with a Commission issued penalty order in Docket 23-CONS-3030-CPEN (Docket 23-3030). However, the arguments raised in Operator's Brief miss the mark. The facts presented to the Commission at the hearing held on March 18, 2024, clearly show that Operator had sufficient notice of its license being suspended and that the heightened penalty issued by the Commission is justified. This response will address the arguments made in Operator's Brief regarding this issue.

**I. Operator was given sufficient notice of license suspension**

2. A state agency is unable to suspend a license unless the state agency first gives notice and an opportunity for a hearing in accordance with Kansas law.<sup>1</sup> Operator in its Brief, states that the license suspension lacked sufficient notice as set forth by Kansas law and that Operator's license was never validly suspended in constitutionally permissible means.<sup>2</sup> In order to determine whether Operator was given sufficient notice of its license suspension it is important to first consider the Commission's Order with which Operator was out of compliance,

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<sup>1</sup> See K.S.A. 77-512.

<sup>2</sup> Operator's Post Hearing Brief, p. 2 (Apr. 10, 2024).

Docket 23-3030. The Commission Order in that docket specifically states, “If Operator is not in compliance with this Order and the Order is final, then Operator’s license shall be suspended without further notice and shall remain suspended until Operator complies.”<sup>3</sup> The Order also states, “The notice and opportunity for a hearing on this Order shall constitute the notice required by K.S.A. 77-512 regarding license suspension.”<sup>4</sup> Based on this language in the Docket 23-3030 penalty order, it is apparent that Operator was provided proper notice and an opportunity for a hearing. Further, it appears Operator was properly served a copy of that penalty order as required by Kansas law.<sup>5</sup> Operator also acknowledges that it received the Commission’s Order in Docket 23-3030.<sup>6</sup> Operator’s Brief states that Operator provided its correct mailing address and that the address remained correct during all time periods at issue.<sup>7</sup> This means the Commission can be reasonably certain that Operator was informed about the potential license suspension.

3. Curiously, Operator’s Brief fails to acknowledge the notice of license suspension provided in the Commission’s Order in Docket 23-3030. Pages 3-11 of Operator’s Brief instead focus on the notice of license suspension letter sent to Operator by Staff on November 7, 2022. Operator uses those pages to reference select language from various cases; however, it appears that the entirety of Operator’s concerns and arguments of notice in this docket being insufficient are nullified based on the information in the preceding paragraph. Additionally, none of the pages in Operator’s Brief provide a reason why the notice of license suspension provided in the Docket 23-3030 penalty order is insufficient. As Mr. Kimbrell testified, a notice of license suspension letter is a common courtesy that Staff gives to operators.<sup>8</sup> Further, Staff is unaware of

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<sup>3</sup> Docket 23-CONS-3030-CPEN, Penalty Order, Ordering Clause F (Aug. 9, 2022); *see also* Docket 23-CONS-3169-CPEN, Hearing Transcript at p.137:1-14 (Mar. 27, 2024).

<sup>4</sup> *See* Docket 23-3030, Penalty Order at Ordering Clause F.

<sup>5</sup> *See* K.S.A. 77-531.

<sup>6</sup> Pre-filed Testimony of Kerry Patrick - Patrick Development Corporation, p. 5:6-7 and p. 7:27-31 (July 20, 2023).

<sup>7</sup> Operator’s Brief at p. 9.

<sup>8</sup> Transcript at p. 137:15-17.

any regulation, statute, or Commission guidance that requires Staff to send operators a notice of license suspension letter when suspension is already addressed by the Commission's penalty orders. Nonetheless, there is no evidence that indicates the suspension letter mailed to Operator was returned to Staff as undeliverable, or that Staff handled Operator's license suspension differently than any other license suspension.<sup>9</sup> In fact, the evidence before the Commission indicates that only one piece of mail sent to Operator was returned as undeliverable. Staff promptly re-sent that piece of mail and it was not returned a second time.

4. Operator next discusses the information that operators are able to see that their licenses are suspended on KOLAR or the Status of their license on the KCC website in what Operator's Brief describes as Staff's alternative notice theory.<sup>10</sup> To be clear, Staff is not claiming either method to be notice of an Operator's license being suspended as notice of the license suspension was already contained in the Commission's Docket 23-3030 penalty order. However, Staff is claiming that these were two different places Operator could have gone and seen that its license had been suspended. As Mr. Kimbrell testified, prudent operators should be checking KOLAR daily.<sup>11</sup> Operator's Brief states that the notice in KOLAR only changes an operator's name to red and that this change of color is not sufficient notice.<sup>12</sup> However, the characterization made in Operator's Brief is incorrect. When an operator's license is suspended, its name not only changes to red, but there is also a notice that appears on the operator's screen stating its license is suspended. This notice is also referenced in an email between Mr. Kimbrell and Mr. Jon Schlatter, who is a colleague of Operator's attorney Mr. Jackson Ely. In that email Mr. Schlatter acknowledged that Operator's KOLAR account still had a notice showing Operator's license was

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<sup>9</sup> *Id.* at p. 137:18-138:1.

<sup>10</sup> Operator's Brief at p. 11-14.

<sup>11</sup> Transcript at p. 138:2-5.

<sup>12</sup> Operator's Brief at p. 11-12.

“Inactive-Suspended Status Suspension”.<sup>13</sup> This is a clear indication that KOLAR provides operators a written notification that their license has been suspended. If Operator was prudent and had checked KOLAR on a regular basis or had checked the KCC website, then it would have clearly seen that its license was suspended.

## **II. Operator was aware of non-compliance with the Penalty Order**

5. Operator’s Brief makes comments that Operator did not believe that it was out of compliance with any Commission Order.<sup>14</sup> However, the facts presented in testimony and at hearing indicate the exact opposite was true. In order to be in compliance, Operator would have needed to bring the wells subject to the penalty order in Docket 23-3030 into compliance with the Commission’s rules and regulations, as well as pay the fine assessed by the Commission.<sup>15</sup> Attached to Mr. Kimbrell’s testimony was an email sent to him by Mr. Patrick which showed that the temporary abandonment application for the Johnson #7 well, which was subject to the Docket 23-3030 penalty order, had been denied on August 16, 2022.<sup>16</sup> Also, Mr. Patrick later untimely submitted a request for hearing in Docket 23-3030.<sup>17</sup> If Mr. Patrick truly believed that Operator was in compliance with the Commission’s Order, then there would have been no reason to submit such a request. Either way, it is an operator’s responsibility to be aware of the compliance status of the wells on its license and to ensure that it is in compliance with any Commission Orders and regulations. Here, it is clear that Operator did not conduct such due diligence in ensuring it was in compliance with either.

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<sup>13</sup> Transcript at p. 138:6-17; *see also* Exhibit PDX-9.

<sup>14</sup> Operator’s Brief at p. 1-2.

<sup>15</sup> *See* Docket 23-3030, Penalty Order at Ordering Clause A and B.

<sup>16</sup> Prefiled Rebuttal Testimony of Tristan Kimbrell on Behalf of Commission Staff, Exhibit TK-1 (Nov. 3, 2023).

<sup>17</sup> *See* Docket 23-3030, Order Dismissing Request for Hearing, ¶3 (Sept. 29, 2022).

### **III. The heightened penalty assessed by the Commission is appropriate**

6. The record before the Commission also demonstrates that the heightened penalty assessed to Operator is appropriate. Operator in its Brief states that a heightened penalty is not justified or appropriate.<sup>18</sup> However, the evidence presented to the Commission appears to indicate otherwise. First, Operator has a history of producing wells under a suspended license.<sup>19</sup> Second, the evidence shows that Operator continued to operate for a period of 42 days after it was required to shut-in its wells.<sup>20</sup> Third, the evidence shows that Operator produced 553 barrels of oil during that time, which sold for a little more than \$40,000.<sup>21</sup> Staff believes that this information and the totality of the circumstances in this docket confirm that a heightened penalty is justified and appropriate.

### **IV. Conclusion**

7. Operator in its Brief raised several arguments about why it was not properly notified of having its license suspended, but none of those arguments are convincing based on the facts presented at the hearing on March 18, 2024, and the information provided above. The evidence shows that Operator was clearly and sufficiently put on notice that its license would be suspended if it did not comply with the Commission's penalty order. The evidence also shows that Staff handled the suspension of Operator's license the same as it handles the license suspension of any operator. Further, there is no dispute that Operator was conducting oil and gas operations while its license was suspended. Operator's Brief fails to provide any legitimate argument why the Commission should not uphold the penalty assessed to Operator in the captioned matter.

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<sup>18</sup> Operator's Brief at p. 1 and 14.

<sup>19</sup> Shut-In Order – Patrick Development Corporation, ¶5 (Dec. 29, 2022).

<sup>20</sup> Transcript at p. 139:16-140:5; *see also* Tristan Kimbrell Rebuttal at p. 9:10-13.

<sup>21</sup> Transcript at p. 140:6-13; *see also* Tristan Kimbrell Rebuttal at p. 9:15-22.

WHEREFORE, Staff respectfully submits this response to *Operator's Post Hearing Brief* in support of its position that the Commission should affirm the penalty it assessed in this docket, and for such other and further relief as the Commission deems just and equitable.

Respectfully Submitted,

/s/ Kelcey Marsh

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## **CERTIFICATE OF SERVICE**

23-CONS-3169-CPEN

I, the undersigned, certify that a true and correct copy of the attached Response to Operator's Post-Hearing Brief has been served to the following by means of electronic service on April 17, 2024.

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